

**THE NOVA SCOTIA RESTORATIVE JUSTICE PROGRAM: ASSESSMENT OF  
CURRENT STATUS AND FUTURE DIRECTIONS**

PREPARED FOR

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## EXECUTIVE SUMMARY

The Nova Scotia Restorative Justice (NSRJ) program for young offenders began in November 1999 at four regional sites after almost two years of intensive consultation and preparatory planning. The program expanded in 2001 to provide restorative justice (RJ) services to youth province-wide, delivered by non-profit, community-based organizations throughout Nova Scotia. In 2010, a pilot project was initiated to deliver RJ programming to adult offenders in two areas of Nova Scotia.

There has been significant evaluation of the NSRJ initiative from its initiation through to the formal completion of the Integrated Adult Restorative Justice Pilot Project (IARJPP) in 2012. That work provides a solid base for the current collaborative assessment by the NSRJ and Dalhousie's Atlantic Institute of Criminology regarding the requirements for expanding the IARJPP province-wide. This research updates previous reports and provides information relevant to a number of key issues; such as the potential options for expansion of the NSRJ program for adults province-wide; consideration of the moratorium on the use of RJ in cases of gendered violence; and examination of the proliferation of restorative initiatives throughout Nova Scotia.

*Chapter two* of this report examines the *context* within which the current NSRJ policy has emerged. The first phase of the NSRJ program from its launch in 1999 to 2010 is discussed; here the focus is on the institutionalization of RJ in the criminal justice system and the NSRJ program's achievements and challenges by the end of this first phase. The second phase (starting around 2010) begins with the re-location of NSRJ from the Court Services Division to the Correctional Services Division and features the development and implementation of the Integrated Adult RJ Pilot Project. The IARJPP's key highlights are described and the assessment identifies its significant achievements and the implications for a province-wide adult RJ initiative.

As part of the context for this review an examination of RJ programs in other

Canadian jurisdictions was undertaken. While there are many similarities among the jurisdictions (e.g., RJ programs are generally delivered by local non-profit agencies, existence of a moratorium on the use of RJ for cases of intimate partner violence), there are sharp differences too as, compared to the most jurisdictions, RJ is much more centrally organized, funded and directed in Nova Scotia by the Department of Justice (i.e., the NSRJ unit).

*Chapter three* of the report explores *current issues* that the NSRJ must consider in advancing possible future initiatives. There are four sections:

The first section focuses on the NSRJ's youth RJ programs. There has been a sharp downward trend in youth referrals since 2010 for each of the RJ agencies. The agencies continue to provide an effective service but it is clear that there have been only modest changes in staff complement, caseload complexity, and in the development of alternative compensatory strategies (e.g., community initiatives). The agencies are quite eager to take on additional referrals as would be the case were the IARJPP approach expanded throughout the province. There is good opportunity also to develop further the mandate of the NSRJ and the agencies;

The second section of this chapter deals with the budgetary implications for each agency of a province-wide adult RJ program. Two service delivery models are examined: the IARJ model (a collaboration whereby cases are shared between the community RJ agencies and probation staff) and a model whereby all referrals are handled by the RJ agencies. The former would necessitate no new funding or resources for the agencies while the latter option would require modest and largely temporary or bridging additional resources for the agencies.

The third section focuses on the Adult Diversion (AD) program in Nova Scotia. The AD caseloads have also declined significantly in recent years. For a variety of reasons (including caseload patterns and developments within Community Corrections which have stimulated changes more compatible with the restorative approach), there is much interest in maintaining strong links to alternative justice approaches by Community Corrections staff.

The fourth section focuses on the current themes and emerging developments

with respect to the moratorium issue. There is very strong consensus among CJS role players that the moratorium should be lifted for certain types of intimate partner violence and sexual offences. There is also evidence of increasing interest in the potential for the use of restorative approaches among equality-seeking women's groups as the proliferation of these approaches in both governmental and other milieus has occurred in recent years. Some policy options are advanced in this section.

The *final chapter* of the report - *Future Directions for the NSRJ* - is reproduced in its entirety in this executive summary since it sums up the conclusions of this assessment. There is additionally a three-part appendix which provides (a) more detailed data and analyses on the IARJPP which provided a field-tested model for further adult expansion; (b) an elaboration on moratorium issues and (c) a description of how RJ has been implemented in some other jurisdictions in Canada.

## **FUTURE DIRECTIONS FOR THE NSRJ**

There is little doubt that, since its introduction in 1999, the Nova Scotia Restorative Justice program has demonstrated considerable success in realizing its objectives. The RJ program for youth is comprehensive in that referrals can be made at any stage of the criminal justice process for virtually any offence<sup>1</sup>.

"Its strengths organizationally are many - province-wide programming; secure, substantial, long-term government funding generous for a small so-called have-not province; collaboration with local non-profit agencies who deliver the service while the provincial NSRJ management provides coordination, protocols and training...It has also partnered with, and contributed significantly to the success of, the province-wide Aboriginal RJ program. Its impact, measured in terms of conventional CJS evaluation concerns, has been impressive - less recidivism than in similar court-processed cases; high levels of satisfaction among all categories of participants in the RJ sessions (offenders, victims, supporters, police attendees and others); and diversion of roughly 33% of all cases of youth arrest from the court processing stream."<sup>2</sup>

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<sup>1</sup> According to the NSRJ protocol, the most serious offences can only be referred at the post-conviction or post-sentence levels. In addition a moratorium has been in place since 2000 on the referral of sexual assault or spousal/partner violence offences.

<sup>2</sup> Getting Past the Gatekeepers, Dalhousie Law Journal, Vol 36, 2013, p.361

Compared to the majority of other Canadian jurisdictions surveyed, the Nova Scotia restorative justice program for youth appears particularly robust. The provincial authority plays a pivotal role in setting standards for program delivery and maintaining a relatively high level of funding for community agencies<sup>3</sup>. Unlike many jurisdictions where RJ programs are delivered primarily by volunteers, the Nova Scotia program is delivered by the agencies' paid staff (supplemented by volunteers) with oversight and consultation provided by community boards. This community-government partnership was designed to provide an equitable province-wide service, responsive to local needs. The significance of agency/community ownership and entrepreneurship has varied significantly but is most evident in the large metropolitan HRM and among the Mi'kmaw province-wide MLSN agency. It is clear that the agencies look to the provincial government administrators of the NSRJ for direction and that the NSRJ communicates essentially and regularly with the agencies, not their boards.

From the outset, it was envisaged that the NSRJ program would expand to adults province-wide, replacing the Adult Diversion program (AD) established in 1995. But it was not until 2011 that a two year adult RJ pilot project was initiated in two areas of the province (Cape Breton Regional Municipality and Truro-Shubenacadie). The project - the Integrated Adult Restorative Justice Pilot Project (IARJPP) – integrated two programs in Community Corrections namely the NSRJ and AD, and protocols defined the collaborative process whereby probation officers (POs) and agency RJ facilitators shared criminal code referrals both pre-charge (police) and post-charge (crown prosecutors) in the two areas. As noted above, in-depth assessment has indicated that the IARJPP by all accounts worked very well. The collaborating community RJ agencies experienced significantly declining youth RJ caseloads during the pilot project period (actually declining since 2007) and were able to handle their share of the adult RJ caseload with minimal increase in resources. The evaluation of the pilot program revealed that handling the adult cases posed no particular problems for the agencies. Community agencies and probation staffs worked well together; the views of participants in the adult

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<sup>3</sup> The agencies draw virtually their entire budget from the NSRJ, including staff salaries and operating costs although, apart from salaries, there has been no provincial budget increases for the RJ agencies for the past decade.

RJ process were positive; and the pilot was well received by other criminal justice players in the pilot area.

Over the past three years the development of the NSRJ program has been described as “treading water”. The caseloads for the youth RJ program have continued to decline greatly and there is little evidence to suggest any significant compensation effects or adjustments by the RJ agencies’ staff (complement size has been largely unchanged), such as having to respond to more serious offences and offenders or being more engaged in other community crime prevention activities. During the same period the possible expansion of the IARJPP was constantly under consideration and a consensus popular choice among the RJ agencies as well as CJS role players. It was however not acted upon for a variety of reasons such as perceived costs and lack of certainty concerning the location of the NSRJ program within the Department of Justice (the NSRJ program was transferred from Correctional Services to Police and Public Safety in 2013-2014); the result was that the pilot project has lingered on past the “due date” (February 2013) at the two pilot sites but elsewhere AD has remained intact.

None of the positive factors generating support for expansion of the adult RJ program has diminished in any way in recent years and the RJ and AD caseloads for the RJ agencies and Community Corrections respectively are now such that the expansion across the province can be achieved with no new resources / funding required. Our central recommendation therefore is that the adult RJ replace the AD program in Nova Scotia as soon as possible to avoid the waste of excess capacity and the associated morale issues, and realize a diversion that focuses more on offender reintegration / desistance and the concerns of victims. We would also recommend that, as in the youth NSRJ program, referrals should be allowed at the court entry point (post-conviction / pre-sentence) and post-sentence (corrections entry point); it would be expected that such referrals would be quite modest in number, as in the youth RJ.

Much consideration has been given in this update assessment of the NSRJ to the model whereby ARJ services should be delivered if ARJ is expanded. In the evaluation of

the IARJPP it was found that that the collaborative model integrating the efforts of the POs and the RJ agencies worked well and was perceived to work well by the partnership. The recommendation here is that the IARJ model be adopted in the expansion of the adult RJ. No new additional resources would be required for either Community Corrections or the RJ agencies to take on the new responsibilities whereas were the RJ agencies to handle all referrals some modest new funding would appear necessary, at least on a temporary, “bridging” basis as done in the 2011-2012 IARJPP.

Our recommendation is based however, not on the issue of whether new funding would be required for an alternative model but rather on the arguments for maintaining the partnership, the linkage between the formal CJS and the community-based non-profit RJ agencies. Community Corrections and the RJ agencies each would bring strong but different positives to the ARJ as detailed elsewhere in this report. The former’s assets, according to many interviewees, would include formal representation of the CJS, greater knowledge of criminogenic conditions, and access to other officials and services (governmental and professional) while the latter’s assets would include greater knowledge and experience with the restorative approach, familiarity with victim concerns and issues, and community networking. The partnership model would likely have greater credibility with a public more sceptical about the value of adult RJ than of youth RJ. As noted earlier, there has been a developing overlap in perspectives and interests but most CJS people interviewed for this report have properly identified the need for more substance to the integration between Community Corrections and the RJ agencies posited in the IARJ designation. A fourth recommendation then is for more training and orientation to achieve a more integrative approach in ARJ, especially for the POs who would be the conduits for referrals received from all levels of the CJS\*\*

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\*\*Other models for delivering adult RJ might have all referrals handled by Community Corrections or the latter managing the program but “subcontracting” the service to community groups. These models have very limited support among stakeholders and are not recommended.

## **The Moratorium on the Referral of Gendered Violence Offences to RJ**

As noted above, the moratorium has been in effect since February 2000 and despite considerable attention (discussions and multiple meetings across the province) the stalemate remains among the diverse stakeholders. There is a deep divide between those (often CJS role players but also some others advocating the salience of RJ) positing that the moratorium inflates the significance of “minor” intimate partner violence (IPV), and those (often equality-seeking women organization leaders and victims’ advocates) who contend that the moratorium is a necessary protection against “conflation” (i.e., minimization of the significance of ostensibly “minor” acts of IPV due to lack of understanding of the complexity and subtleties of IPV, thereby enhancing the vulnerability the female victims and placing them at serious risk).

Congruent with previous evaluations of RJ in Nova Scotia, virtually all the CJS principals interviewed for this report favoured the use of restorative approaches for certain types of spousal/partner violence offences. After two decades of experience with the pro-charge, pro-prosecution policies and acknowledgement of the progress that has been made, there is strong evidence that the traditional justice system seems ill-equipped to deal with some of the many cases and types of intimate partner violence. The CJS personnel interviewed for this report expressed frustration with the impotence of the current system’s approach which results in significant court backlogs, poorly serves both victims and offenders and has little reintegrative value for those relationships which could safely benefit from such an approach. Research has shown that restorative approaches can be effective, albeit such research is limited and the case for changing the moratorium currently is more a push away from the inefficient and ineffective conventional court processing than a pull by a consensually positive valuation of an RJ approach.

Recent developments have underscored the need for further examination of the restorative approach among the options for dealing with IPV-related offences. Nova Scotia Cyber-Safety Act laws (2013) and Cyberscan investigators now regularly deal



with sexual harassment cases, Nova Scotia universities routinely handle “minor” IPV and sexual misbehaviour in their residences (Clairmont, 2015), and proposals by community agencies have been advanced to the NSRJ and the Status of Women Canada for pilot restorative projects to respond to these IPV issues. There has been increasing interest in the potential for the use of restorative approaches in cases of IPV (and lesserly for sexual offences) among equality-seeking women's groups in recent years to explore the possibility of adopting a new approach.

Modifying the moratorium, as most well-informed interviewees acknowledged, would be a major policy change for government in Nova Scotia as indeed it would be for other Canadian provinces where IPV and sexual offences are typically beyond the eligibility for extra-judicial measures and sanctions. The RJ agencies, while willing and in some cases eager to handle minor IPV cases, attest to the need for more training in the salient issues and for more collaboration with women’s’ centers and transition house staffs in developing appropriate and effective RJ strategies. It is unclear what the impact ultimately would be on RJ agencies’ caseloads since both the number of such cases and the resources expended on them are difficult to project, but there is little doubt that there could be a significant impact for both youth and adult caseloads.

The changing context and the continuing, and even increasing, frustration of CJS role players with the conventional court processing of many moratorium cases makes it imperative that the NSRJ become more engaged. It seems clear that a number of important conditions must be met before cases of gendered violence could be considered for referral to RJ, including effective risk assessment tools, program protocols governing all aspects of case processing, victim support throughout the process and appropriate training for those providing the restorative processes.

The framework for such an undertaking must be developed in a pilot project environment as a partnership among government, criminal justice personnel and community agencies with expertise in responding to gendered violence. At the very least the NSRJ would need to be a repository for what is happening in the province and

elsewhere, assess and make available awareness of best practices, and collaborate in the establishment of a social network devoted to such development in Nova Scotia.

### **A More Robust NSRJ**

While, aside from the IARJPP, there has been little forward movement in the NSRJ program in recent years, there has been a surge in interest in restorative approaches in other milieus. As noted above, within Correctional Services a restorative practices approach has been adopted with considerable success in the Nova Scotia Youth Facility. Exploratory discussions are taking place regarding the possibility of adopting such approaches in the adult correctional facilities. The practices of Cyberscan investigators exhibit 'restorative' characteristics in resolving certain types of complaints under the Cyber-Safety Act. NSRJ has collaborated with Dalhousie University in an RJ initiative there and other similar proposals have been developed by Saint Mary's and Acadia universities. Various provincial government entities (e.g., Education, Community Services and Human Rights Commission) have utilized the restorative approach in specific incidents\* and some RJ agencies have become involved with police programs in their areas such as the RCMP's HUB and other community programming aimed at medium to high risk youths or community conflict\*\*. Of course there has also been considerable publicity associated with the utilization of the restorative approach in the Dalhousie Dentistry scandal and as a dimension of the "Home for Colored Children" settlement (i.e., the Restorative Inquiry into Abuse at the N.S. Home for Colored Children).

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\*The Nova Scotia Human Rights Commission, for example, currently offer restorative approaches as the first option to assist parties to resolve a human rights complaint (website). Since 2012, the Restorative Approaches in Schools Project (a collaboration of the departments of Justice and Education) has provided schools with the tools, resources and supports necessary to adopt a restorative approach to many forms of conflict within the school environment. Restorative approaches have reportedly been used by the NS Public Service Commission.

\*\* For example, a consortium of community organizations on the South Shore, led by the Second Story Women's Centre submitted a proposal to Status of Women Canada entitled 'A Restorative Approach to Intimate Partner Violence in the Justice System'.

Unfortunately, most of these initiatives have been developed in isolation and there have been few opportunities created for the sharing of experiences: for example, best practices, training and other resources. Is there a potential role for the NSRJ as a focal point or 'centre of excellence' regarding the expansion of restorative approaches in the province? The program has sixteen years of experience in developing and delivering restorative justice programs. It has established a presence in all areas of the province, with extensive government and community contacts. The location of the NSRJ within the Crime Prevention unit of the Department of Justice is appropriate for a broader vision of restorative practices, given the definition of crime prevention as encompassing the social determinants of crime. A more robust vision of the NSRJ mandate would include **both** its major direct services contributing to the efficiency and effectiveness of the CJS and a coordinative and facilitative role vis-à-vis the restorative approaches identified above. Explicitly taking on such a broad mandate at the NSRJ level would also be the appropriate way to encourage community engagement on the part of the RJ agencies and would be an effective response to critics who contend that the NSRJ program's shortcoming is a lack of significant grassroots / community participation.

## LIST OF ABBREVIATIONS

AD	Adult Diversion
AM	Alternative Measures (Alternative Justice Program for Youth)
ARJ	Adult Restorative Justice
CBRM	Cape Breton Regional Municipality
CBRPS	Cape Breton Regional Police Service
CCCJS	Cumberland County Community Justice Society
CJS	Criminal Justice System
CSC	Correctional Services of Canada
EJS	Extra-Judicial Sanctions
FN	First Nation
FPT	Federal Provincial and Territorial (Working Group on Restorative Justice)
HCJS	Halifax Community Justice Society
IARJ	Integrated Adult Restorative Justice
IARJPP	Integrated Adult Restorative Justice Pilot Project
ICJS	Island Community Justice Society
JEIN	Justice Enterprise Information Network
JHS	John Howard Society
MLSN	Mi'kmaq Legal Support Network (Nova Scotia)
NS	Nova Scotia
NSRJ	Nova Scotia Restorative Justice (Program)
NSYF	Nova Scotia Youth Facility
NSVS	Nova Scotia Victim Services
NOV	National Office for Victims, Public Safety Canada
PO	Probation Officer
PSR	Pre-sentence Report
RCMP	Royal Canadian Mounted Police
RJ	Restorative Justice
SAP	Strategic Action Plan

SC	Sentencing Circle
SCC	Supreme Court of Canada
SSCJS	South Shore Community Justice Society
TRCCJS	Tri-County Community Justice Society
VIS	Victim Impact Statement
VRJS	Valley Restorative Justice
VS	Victim Services
YCJA	Youth Criminal Justice Act

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## **INTRODUCTION: UPDATING NSRJ DATA AND STATUS**

The Nova Scotia restorative Justice (NSRJ) program for young offenders, referred to RJ by police, prosecutors, the judiciary and correctional officials, began in November 1999 at four regional sites after almost two years of intensive consultation and preparatory planning. The program expanded, as projected, in 2001 to include NSRJ coordination of the youth-focused RJ services delivered by non-profit, community-based organizations throughout Nova Scotia. In 2010, as long anticipated, the NSRJ program, re-located in Community Corrections, expanded on a pilot project basis – the Integrated Adult Restorative Justice Pilot Project (IARJPP) was established in two areas of Nova Scotia, as an initiative involving collaboration between probation officers (POs) and the three RJ agencies delivering the RJ youth program there.

There has been significant evaluation of the NSRJ initiative from its beginning through to the formal completion of the adult pilot project in 2012 and that work provides a solid base for the current collaborative assessment by the NSRJ and Dalhousie's Atlantic Institute of Criminology regarding the possible format of and requirements for expanding the IARJPP province-wide.

This assessment has especially involved updating the previous comprehensive assessments completed from 1999 to 2012. That has included examining the NSRJ objectives and overall logic model, caseloads, trends in RJ usage and effectiveness, the capacity of the local RJ agencies to take on additional responsibilities (e.g., dealing with adult referrals) and current and projected budgetary implications of caseload and service level.

The Department of Justice's NSRJ program and the Dalhousie University's Atlantic Institute of Criminology (A.I.C.), through its director, professor Don Clairmont, have had a history of collaboration that extends from the period of pre-implementation planning (1998-1999), to the A.I.C.'s official federally-funded evaluator status (1999-2005) to the well-known CURA collaboration (2006-2011), and most recently to the evaluation of the pilot project expansion of the NSRJ option for adult offenders (2010-2012). Previous assessments have involved extensive networking among government, CJS, non-profit service providers and evaluators that greatly facilitated the current update. The A.I.C.'s evaluation team for this new endeavor is Don Clairmont and Kit

Waters who as Director of Policy, Planning and Research played a major role in the establishment of the RJ initiative in the Department of Justice and its subsequent institutionalization there.

## **EVALUATION APPROACH AND RESEARCH STRATEGIES**

A collaborative assessment strategy was developed which included regular meetings between the NSRJ program administrators and the A.I.C. evaluation team, and their collaboration in the development of assessment themes and issues, the interview guides and the sampling frames utilized. The A.I.C. undertook the actual research tasks defined below and the NSRJ provided RJ traffic reports, limited analyses of the in-house NSRJ data system, and positive support for the assessment with agency directors and other stakeholders within the criminal justice system. The A.I.C.'s contribution was completely voluntary and represents the considerable interest that the evaluation team has had in the evolution of the CJS and the place of the restorative approach in that development.

The specific research strategies that were employed in this assessment included

1. Updated graphs and trends in RJ usage by youths and adults especially highlighting the number of referrals (there has been a significant decline in youth referrals across agencies primarily for demographic reasons), their referral sources and completions by site.
2. Analyses of RJ data with respect to type of offences referred, the offenders' characteristics, and the level of compliance.
3. Selective sampling of perspectives on RJ among the referral agents for the RJ program (i.e., police, prosecutors, judges and correctional officers). Overall, twenty such persons were interviewed one-on-one, usually at their offices.
4. Interviews with the local directors, and in a few cases some of their staff members, of the non-profit agencies providing the RJ service. Usually there were multiple interviews with the directors.
5. Interviews with NSRJ staff and appropriate senior provincial government officials in the Department of Justice.



6. Review of the considerable, locally generated data by the A.I.C. and the C.U.R.A. project headed by professor Jennifer Llewellyn as well as a scan of the pertinent literature and selective canvassing (i.e., telephone interviews) of the RJ developments across the country.
7. No interviews were carried out with users of the RJ service – offenders, victims, and their respective supporters - since no resources were available to carry out such a task. It should be noted however that the previous A.I.C. and C.U.R.A. research have generated large samples (thousands of cases) of exit and follow-up interviews of youth RJ clients and other session participants and, more recently, samples of a high percentage of adult participants in the IARJPP in 2011-2012.
8. Interviews were also carried out with community stakeholders engaged in and informed with respect to moratorium issues, restorative approaches in NS universities and community initiatives on conflict and at-risk behaviour.
9. Statistical data were obtained on a variety of issues such as trends in youth probation, adult diversion and court caseloads.

## **THE CONTEXT**

### **RESTORATIVE JUSTICE IN NOVA SCOTIA 1999-2010**

A recently published paper in the Dalhousie Law Journal\* has described the evolution of the NSRJ program and analysed its accomplishments and challenges for the period 1999 to 2010. The key points highlighted included the following:

1. The province-wide RJ program introduced for youths provided for greater eligibility with respect to type of offence (e.g., interpersonal violence) and offenders (e.g., explicit eligibility of repeat offenders) than the AM program which it replaced. It also allowed RJ referrals at all stages in the CJS processing (policing, prosecution, sentencing and post-sentencing). In 2005 a comparison of RJ and AM case data indicated that these changes had been implemented and that RJ was significantly different than AM in terms of the number of cases handled and case and offender characteristics.
2. The NSRJ program, while delivering services through non-profit community agencies as had AM, was a centralized service and an entity within Court Services, much more formalized than AM in its policies and procedures, considerably more funded by the provincial Department of Justice, provided the financial resources required for the agencies' staffs and operating expenses, monitored the latter's RJ activity and provided counsel and training for all the collaborating agencies (including the province-wide Aboriginal-serving MLSN) and their community boards.
3. Within a decade of its launching, the NSRJ had become institutionalized in the Nova Scotia CJS. AM had essentially been a police-referred program, significant but marginal to the CJS, but RJ went well beyond the police gatekeepers for youth diversion not only in receiving many referrals post-

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\*Don Clairmont and Ethan Kim, "Getting Past the Gatekeepers: The Reception of Restorative Justice in the Nova Scotia Criminal Justice System", Vol 36, 2013

charge and pre and post-sentence but also in its impact on CJS culture and even the negotiation strategies between prosecutor and defence counsel.

4. As the growth in referral cases to the NSRJ youth program peaked and started to decline – almost entirely due to demographic factors - in the later years of the decade, its accomplishments were considerable. There had been a significant positive impact on lowering costs for police services, reducing court caseload, and improving victim satisfaction. The impact on the views and satisfaction of participating offenders and offender supporters was very positive and there was at least a modest improvement in offender desistance.
5. The achievements of the NSRJ program were congruent with the explicit objectives of its initial logic model and went beyond those objectives in two ways. The RJ program as implemented produced a gain in CJS equity since over-represented minority youths and others were proportionately more common referrals at the post-charge stage than at the police pre-charge stage; also, the program was province-wide and did not depend on local funding. Secondly, as the evaluation's panel studies of CJS officials evidenced, the RJ program over a few years became more acceptable to by CJS role players and by 2010 they had largely reached a consensus that it was a valuable dimension of the CJS and was here to stay.
6. Symbolically this first phase of the NSRJ program concluded with the International Conference on Restorative Practices meeting in Halifax in June 2011 where the program received much attention and praise and was proudly acknowledged by NS political and governmental leaders.

Clearly, NSRJ had evolved over the decade and was, in the views and experience of criminal justice system professionals, and in terms of the sheer number of youth cases handled, “part of the woodwork” of the Nova Scotian criminal justice system. It had attained a stable level of CJS penetration in terms of youth cases and, with the support of most CJS role players, there was much discussion of it being expanded to include adult offences. There was, on the whole, a quite positive view of the restorative justice options in the CJS and an appreciation of the beneficial implications of NSRJ for facilitating

more balanced workloads there. There continued to be however significant ambivalence concerning the extent to which NSRJ was more than a limited useful tool. Few criminal justice system role players, apart from police officers, ever attended a restorative justice session and most were uncertain about its impact on youths, though they generally acknowledged that most youths referred to restorative justice usually do not repeat as accused persons. The strength of the restorative justice option was commonly argued by these professionals in the context of their negative assessments about the effectiveness of conventional criminal justice system's responses to youth offending.

In 2009-2010 the NSRJ was re-located in the Department of Justice, moving from Court Services to Correctional Services. This change heralded a new phase for the program and the NSRJ was deemed to fit well with the Community Corrections unit (Probation and the NSYF). Plans were developed to expand the NSRJ, as originally set out for subsequent years in 1999, into adult offending. There were many issues still to be determined. Can and should there be developments within the restorative justice service—and appropriate resources made available—that would enable it to deal with more complex cases rather than being limited to the modest interventions now characteristic? Can it succeed as well with adults as with youths? Should the moratorium on “minor” IPV and sexual offences be changed? Can the public-at-large and local community leaders, whose support may well be crucial to any substantial increment in penetration of restorative justice in the criminal justice system, gain an understanding and appreciation of what has been a top-down justice initiative, and encourage further use of restorative justice by criminal justice system professionals in their areas? How far could NSRJ develop as a significant, successful social initiative in justice?

### **The Integrated Adult Restorative Justice Pilot Project, (IARJPP) 2011-2012**

This NSRJ pilot project was launched in 2010 under the auspices of Community Corrections and began to handle CJS referrals in 2011. Its perceived importance for the next stage of NSRJ development was appropriately seen as major since adult cases outnumbered youth cases in the Nova Scotia CJS by a ratio of 7:1 in 2010, the public and local community leaders were much less sympathetic to diversion programs for adults

than for youths, and there was no legal imperative for adult diversion programs comparable to the YCJA alternative measures provisions for youths. Accordingly, the pilot project was extensively evaluated using a multi-methodology of interviews with participants and CJS stakeholders in the areas involved, secondary data analyses, and participant observation. The evaluator worked closely with the NSRJ in developing logic models, process and outcomes models and provided regular feedback. A detailed executive summary is attached to this report (appendix A); here the key highlights will be discussed:

1. The IARJPP was implemented in two areas (CBRM and Truro-Shubenacadie) and involved POs and three RJ agencies delivering the program (JHS at Truro, ICJS in CBRM, and MLSN receiving all Aboriginal referrals in both areas).
2. As when RJ replaced AM eleven years earlier, IARJPP replaced the AD program in these areas and allowed greater eligibility of offences and offenders (i.e., with respect to offenders' criminal record). Referrals were allowed at both the pre-charge (police) and post-charge (crown prosecutors) entry points.
3. The IARJPP was integrated in that POs and RJ agency staffs collaborated in providing the service. Following a flexible protocol, all referrals came to the designated POs who would send those cases involving a person victim to the RJ agencies and retain most of the remainder as formerly done in AD (exercising some discretion about sending some cases of public damage or involving corporate victims to the agencies).
4. There were six chief objectives identified in IARJPP documents, namely (a) reducing court load, (b) improving victim satisfaction, (c) impacting positively on offenders, (d) reducing recidivism, (e) enhancing community capacity and public confidence in the justice system, and (f) determining the resource and effectiveness implications of the NSRJ becoming involved with adult criminal cases. The evidence clearly established that, aside from reducing recidivism (an objective almost impossible to assess in the modest and short-term assessment), these objectives were met, all in significant

fashion. The key shortfalls would appear to be in realizing more victim presence (although the IARJPP yielded far more victim engagement and options than would have been achieved if the cases were handled under the conventional AD program), and the limited outreach out to various publics in order to impact positively and beyond the session participants, on the level of public confidence in the justice system. As for the resource implications of a full-province IARJ implementation, it was clear that the only increased investment required would be modest, at least outside metropolitan Halifax.

5. The IARJPP had five chief implementation imperatives, namely (a) reaching the target population (e.g., including those under the broadened eligibility criteria), (b) putting in place adequate extra-judicial measures (e.g., as per the division of responsibilities between designated probation officers and the RJ agencies), (c) effective mobilization of CJS role players such as police and crown prosecutors, the referral agents, (d) developing and implementing adequate standards and measures to achieve anticipated outcomes and record the level of achievement, and (e) adequate training and orientation for the staffs and facilitators providing the IARJ service. Overall, the evidence suggests that these implementation imperatives were indeed accomplished and accomplished very well. The shortfalls included the inadequacies in the utilization and completeness of the checklists by the referral agents which were the basis for the administrative data system, the low level of victim presence in the RJ sessions (of course victim presence was minimal in the cases retained by the POs), the minimal new training offered the service providers (both POs and RJ), and the lack of a strategy to inform local civic leaders and the public at large about the new initiative and its potential benefits.
6. The RJ agencies' staffs were positive in their assessments of the IARJ format, reported no special difficulties with the adult referrals (compliance was good and the adult offenders generally appreciated the option to court processing) and managed the increased caseload essentially without significant need for more resources.

7. CJS role players considered that the RJ agencies delivered on community involvement, victim contact and engagement, and was cost-effective. Police officers and POs, attendees at a large number of the RJ sessions, expressed positive views about the RJ service and considered that the IARJ should become permanent.
8. Victims in their exit questionnaires and subsequent one-on-one, in-depth telephone interviews assessed the RJ process as fair and efficient, and their own experience there as positive. They reported having a more positive view of the justice system as a result of participating but also considered that the ARJ process should not be used for more serious offending.

### **Conclusion**

The IARJ initiative was successful in terms of realizing its implementation imperatives and achieving its chief objectives. The service delivery model worked well, collaborators followed the protocols, and the initiative was well-received by the stakeholders. There was strong consensus that it should be maintained at least for the near future. Both the designated probation officers and the RJ agencies' staff occasionally voiced possible alternatives but each option had (in the views of the evaluator), some "fatal flaws", whether it be cost implications were POs to take on an increased workload and introduce a more fully restorative approach into the AD practice or, on the other hand, possibly questionable public legitimacy were the RJ agencies at this point in time to be solely responsible for adult alternative justice processing. The IARJ service delivery, as one crown prosecutor put it, represents an excellent and publicly acceptable collaboration between the state and the community.

Two areas where there could be, and should be, profitable investment of resources to enhance the IARJ model would be in (a) reaching out much better and more comprehensively to the community (civic officials and the public at large) informing them as to the possible benefits of ARJ, and (b) enhancing the reach of the IARJ approach to adult offending. Police and crown prosecutors frequently mentioned the current shortfall in this regard and clearly it does not only impact on the referral process but would have negative implications for the further penetration of the adult RJ approach in the CJS. It has to be appreciated that there is no equivalent to the strong legal support

(e.g., the YCJA, SCC –generated policy) for youth RJ, and acknowledged that the public culture is, not inappropriately, very wary – as well as uninformed - about adult alternative justice.

Another area concerns victim involvement and satisfaction. The IARJPP has clearly been positive regarding both these victim concerns even while the actual presence of victims at RJ sessions may have been disappointingly infrequent. Many suggestions were advanced by CJS officials concerned about increasing victim presence including the greater public exposure to alternative justice, development of specific strategies and distribution to victims of information packages related to the type of offence, and more consideration of compensation strategies as emphasized in the RJ literature.

There was little new training provided to either the RJ agencies as they moved onto adult cases or to the PO gatekeepers and AD providers as they became more embedded in the RJ approach. Certainly the evidence is that they coped well with the new challenges. It would be useful however to draw on the experience of this pilot project to consider what value could be achieved were those issues now discussed more thoroughly and in collaboration by the POs and the RJ people. It is recommended that such an exercise occur.

### ***Issues emerging from the cross-jurisdictional survey***

In order to gather information regarding restorative justice programs in other jurisdictions, a questionnaire<sup>4</sup> was circulated to members of the FPT Restorative Justice Working Group<sup>5</sup>. Responses were received from six jurisdictions: Yukon, British Columbia (Ministry of Justice), Alberta (Justice and Solicitor General), Saskatchewan (Ministry of Justice), Manitoba (Department of Justice), Yukon Territory (Department of Justice) and Ontario (Ministry of Children and Youth Services). Information was also received from Correctional Service Canada, Restorative Justice Division.<sup>6</sup>

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<sup>4</sup> questionnaire is provided in Appendix II

<sup>5</sup> The FPT Working Group was established as a forum "to consider and coordinate discussion on administrative, policy and evaluation issues that emerge from the implementation of RJ and related alternative criminal justice programs." [www.publicsafety.gc.ca/cnt/centrng-crm/crrctns/rstrtv-jstc-eng.aspx](http://www.publicsafety.gc.ca/cnt/centrng-crm/crrctns/rstrtv-jstc-eng.aspx)

<sup>6</sup> a summary of the jurisdictional responses is provided in Appendix II



The information provided in this summary is derived from the questionnaire responses and therefore does not include information from all jurisdictions. Moreover, restorative justice programs may be provided by NGOs or community-based agencies that do not receive funding from government and, therefore, information regarding their activities may not be included in responses provided by the FPT Working Group representatives. Accordingly, while this summary provides an overview of restorative programs provided in some jurisdictions, it is by no means exhaustive.

There is great diversity in the type of programs that are considered 'restorative'. Accountability sessions figure prominently in a number of jurisdictions (offender meets with caseworker/other agency personnel). Concern was voiced by a number of respondents regarding the restorative quality of these sessions.

The lack of definitional consistency creates difficulties for making jurisdictional comparisons. Another complicating factor is the lack of data available in the jurisdictions. It is difficult to determine caseload trends, nature of cases handled, form of agreements and outcomes. A number of jurisdictions did report concern about declining caseloads. On the youth side, this was variously attributed to changing demographics or decreased referrals from police/Crown. Most jurisdictions expressed concern regarding the low participation rates of victims in restorative processes and are interested in developing strategies to increase that involvement.

Among jurisdictions responding, Nova Scotia is the only one not providing RJ programs to adults province-wide. However, it was not possible to determine whether the coverage is universal in many jurisdictions. Moreover, due to definitional issues, it was difficult to determine whether or not a program labelled 'adult RJ' in some jurisdictions is fundamentally different from the Nova Scotia adult diversion program.

For the most part, the bulk of cases handled are minor, with referrals occurring at the pre- and post-charge levels. Most jurisdictions reported the majority of referrals come from the police. Few cases are handled post-conviction.

Virtually all jurisdictions reported reluctance (if not a complete ban) regarding referral of domestic violence and sexual assault cases to RJ programs. Such cases are rarely referred and only in very special circumstances. The exception appears to be in the North where it is reported that judges may ask a community justice committee to deal with such cases (invariably these cases are in First Nations communities).

Almost uniformly, RJ programs are delivered by community justice committees or NGOs. In the case of NGOs, programs are often provided by paid staff, but services provided by community justice committees are most often delivered by volunteers. In Alberta, where no youth justice committees exist, RJ programs for youth are delivered by probation officers. In Calgary, youth probation officers are part of the team of the John Howard Society *Restorative Action for Transformation* (RAFT) program, a post-conviction restorative program for youth. In Manitoba, the *Restorative Resolutions* program (post-conviction program for adult offenders who would otherwise be sentenced to six months or more imprisonment) is delivered jointly by probation officers and John Howard Society staff.

In two jurisdictions, probation officers play a role in referral of cases to RJ programs. In Alberta, youth probation officers serve as the focal point for referral of cases from the Crown to community justice committees. In one area of Manitoba (Interlake District north of Winnipeg) probation officers serve as the focal point to ensure referral of cases to the appropriate community justice committee.

In most cases, the provincial authority sets standards for program delivery and provides some funding, although the extent of the provincial role varies considerably among the jurisdictions. On one end of the spectrum, Saskatchewan and Nova Scotia maintain a very strong presence in setting standards and monitoring the performance of contracted agencies. On the other end, Alberta (adult program) intentionally issues no program standards, with the understanding that RJ should be a community-driven process. (Alberta believes that it is the role of the Alberta Restorative Justice Association

to develop practice standards and principles for best practices in RJ.) In British Columbia, the Province provides program guidelines but does not issue program standards. Manitoba provides a policy guide for community justice committees and contracted agencies and requires annual financial reporting and quarterly program reports<sup>7</sup>. Some jurisdictions provide training directly and others offer some funding for training of community agency personnel.

Jurisdictional funding contributions to RJ programs vary widely. The most significant contribution is made by Saskatchewan: a total of \$5.9M in 2014-15 was provided to community agencies offering RJ services. Much lesser contributions are made by BC (provides 5% of total budget for Community Accountability Programs). Manitoba provides a \$200 annual honorarium to each community justice committee. Some jurisdictions do not contribute to program operations; e.g Alberta (youth) provides \$350,000 for training, coordination and volunteer appreciation. Alberta (adult) provides grants to community agencies of up to \$50,000 for up to three years for a total of \$360,000/year. Manitoba contributes toward core funding for some NGOs offering RJ programming. It is clear that RJ programs are provided in a number of jurisdictions by NGOs with very limited funding or direction from the provincial authority; funding for these programs can come from municipalities, federal government (for First Nations restorative justice programs), United Way, service clubs or other sources.

Most jurisdictions identify the lack of funding as a major obstacle to the operation of RJ programs currently and in the future. In some areas, low wages paid to community agency staff have resulted in high turnover rates. Some jurisdictions indicated that their capacity to set policy and provide strategic direction is hampered by the limited funding they can provide to community agencies delivering RJ programs.

A number of jurisdictions point to the need for more training - of criminal justice staff (where high turnover in some areas results in the need to repeatedly inform

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<sup>7</sup> Manitoba officials believe that the new provincial RJ legislation will result in greater standardization and accountability of RJ programs.

personnel about RJ programs) and of community agency volunteers and staff who are delivering the programs.

It is unclear what priority is accorded to RJ programs in the various jurisdictions and to what extent they are viewed as a key component of the justice system. Some jurisdictions pointed to the need to develop a greater comfort level generally across the jurisdiction with the use of RJ processes. In some areas, this was elaborated as a need for RJ service providers to develop stronger relationships with key criminal justice system personnel and with other community-based agencies.

It is evident that RJ processes have been embraced by schools in most jurisdictions and it appears that many NGOs delivering restorative justice programs are also providing neighbourhood dispute resolution services<sup>8</sup>.

Manitoba is the only jurisdiction to have passed specific legislation regarding RJ. As the Manitoba Restorative Justice Act has so recently been proclaimed, it is too early to gauge whether it will have any significant impact on RJ programs. No other province has passed such legislation and it is clear that the development of a comprehensive provincial RJ program is not dependent on the existence of specific legislation (witness the Saskatchewan and Nova Scotia programs).

Both Alberta and Manitoba identified the important role of the Restorative Justice Association in those jurisdictions: Alberta because of the work that has been accomplished by the ARJA in recent years; and Manitoba, because of the anticipated impact the newly created RJAM could have as a united voice for RJ groups and as a focal point for information regarding RJ programs in that province.

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<sup>8</sup> this was reported by BC, Saskatchewan, Alberta and Manitoba

## **CURRENT ISSUES**

### **BEYOND THE PILOT PROJECT: CURRENT NSRJ YOUTH RJ PROGRAM**

#### **Agencies' Caseloads Declining**

The most significant change since 2010 with respect to the NSRJ youth RJ program has been its decline in caseload. As the table below indicates for each RJ agency, that caseload decline has accelerated in the past 5 years. Indeed, with one exception all agencies had their peak caseload in 2007 or earlier; the one exception occurred in CCRJS in 2012 and apparently was occasioned by an NSRJ informational campaign to inform CJS referral sources there about the possible implementation of an adult RJ initiative in the area, an initiative which was subsequently deferred. Since 2010 the declining yearly caseloads were consistently so and the overall decline between 2010 and 2014-2015 was usually well beyond 50% for the agencies. Total RJ referrals accepted by the agencies were 1565 in 2010 and 652 in 2014-2015 (58% less) while in HRM, where the HCJS accounted for roughly half the provincial youth RJ caseload, the corresponding numbers were 750 and 328 (56% less). Other agencies such as the ICJS and SSRJS over the same 2010 to 2014-2015 period saw their youth caseloads plummet by roughly 70%. Agencies' staff complements did not change significantly over the same period.

Clearly the decline in youth RJ referrals was chiefly the result of demographic factors as the population of youths 17 years old and under declined sharply over the past decade (Clairmont, 2008). The effects have been evident throughout the CJS in Nova Scotia. The number of youths on probation has consistently diminished since 2007-2008 as have provincial youth court numbers (unlike adult court cases); between 2007-08 and 2011-2012 youth court cases fell roughly by 35% (NSRJ, 2014). While such court data for the past three years have not been available, interviews for this assessment with crown prosecutors, legal aid staff and police officers have confirmed that the decline in youth court caseload has continued.

## **Beyond The Numbers: The Features of Caseload**

Another significant change in NSRJ youth RJ caseload has been the increase in referrals from crown prosecutors, a trend highlighted in the introduction. In the years leading up to and including 2006, police referrals were by far more numerous than crown referrals, save in metropolitan HRM, but by 2014-2015 the two CJS sources were yielding similar numbers of referrals. As shown in the designated table below, four agencies received more police than crown referrals and four had more of the latter. There was a pattern of convergence whereby the difference in number between police and crown referrals diminished for almost all RJ agencies with the result that overall there was a scant seventeen more crown referrals.

A third issue regarding the youth RJ program concerns whether the referrals handled by the agencies have increased in complexity or seriousness (i.e., involve more serious offences and offenders); if so, how significant has that trend been and what are its implications for agency caseload? Do they offset the decline in numbers? Crown referrals as shown elsewhere have been modestly more likely than police referrals to deal with more serious offences (e.g., assaults, breaches) and with more serious offenders (e.g., repeat offenders and “close not completed” police-referral files). As noted, crown referrals to the agencies have increased over the past decade and now are as common as police referrals. There is also some modest evidence in the table below that crown referrals have been more challenging for the agencies. In the case of HRM’s HCJS, as the table shows, “closed not completed” (CNCs) cases have consistently been greater for the crown referrals, but outside the metropolitan area CNCs have been equally common among both police and crown referrals.

Analysing the CNCs by year and agency, apart from the referral source, sheds further light on this issue. The metropolitan agency, HCJS, regularly returned a significantly higher proportion of its referrals as CNCs than the other, non-metropolitan agencies, more than double the median percentage of the other seven in the each of the last three years. The median CNC percentage among these seven for each of the last four years as shown in the table below has been 17%, 15%, 12% and 15%. There has been no trend evident in the agencies – whether HCJS or the non-metropolitan agencies as a

grouping - recently having more complex cases based on analyses of CNCs data though there is “random” variation by year.

Two other indicators of more complex caseloads would be the seriousness of the offences dealt with and the frequency of having to deal with repeat offenders or re-filed referrals. The table below presents data on the offence profile of the referrals handled by the agencies. This analysis assumes that violent offences (typically minor assaults) and breaches are the best indicators of more serious caseloads so it focuses on the number of such cases and their percentage of the total caseload for each agency by year. The time frame is only the last four years (three years for 2 agencies). There is quite limited support for the thesis that caseloads have been dealing with more serious offences in recent years. Only a few of the eight agencies’ caseloads experienced any increase in the number and proportion of violent and administration of justice (breaches) offences; indeed the majority of the agencies witnessed a decline in those offences in the past two or three years and otherwise there was no significant trend.

Another dimension of having to deal with serious or complex cases would be the number of repeat cases that the agency has to handle since presumably a repeat case indicates that perhaps whatever was accomplished in processing the youth’s first referral was wanting in some respect. Agencies were asked to provide data from 2011 onwards on two types of repeaters, namely (a) repeaters as offenders referred to the agency more than once on different dates and for different offences\*; (b) repeaters occasioned by an CNC case being re-referred usually by the crown prosecutor.

The data received indicated that among agencies outside metropolitan HRM there has been a median of 6 repeaters per year and 1 or 2 cases per year where a CNC file was re-referred by crown prosecutors. Data were unavailable for the metropolitan area (HCJS) but both agency staff and knowledgeable CJS officials assigned to the youth court reported that there were many repeaters and that it was frequently the case that a CNC case would be re-referred by the crown prosecutors. Those observations are consistent

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\* Where more than one referral was sent for an individual but all were dealt with at the same time by the agency, it was not considered a repeat case;

with previous research carried out by the evaluator with the HCJS. The conclusion with respect to the issues of repeaters would be that as a significant consideration in complicating agency workload it would largely be limited to the metropolitan agency.

Interviews carried out by the evaluators with agency staff and CJS officials indicated that most respondents in both groupings readily identified the declining youth RJ caseloads just as they witnessed a consistent decline in youth court cases. With few exceptions they did not think that declining caseloads were offset by the agencies having to deal with more serious offenders and offences. CJS respondents readily identified opportunities for the CJS to become more proactive in dealing with youth at risk, in modifying the current moratorium on intimate partner violence, and in expanding the NSRJ to include appropriate adult offenders. Agency staffs were generally eager to better utilize capacity released by declining youth referrals. Their views differed somewhat on whether the referrals had become more challenging but the two most common perspectives espoused were variations of the position that they had not, namely (a) the cases have not become significantly more complex and serious in the past five years; and (b) the cases are similar in complexity but available capacity has made it possible to deal with some cases in greater depth than formerly.

The focus here has been on the agencies' caseloads in relation to its RJ functions in the CJS. All agencies have also engaged in some community activities where their staff's RJ experience could be valuable (e.g., schools, jails/prisons, working with other organizations involved with at-risk youths). While such community engagement has been also encouraged by the NSRJ (essentially the sole funder for the RJ agencies), it falls outside the official mandate and is difficult to assess in terms of its actual claims on agency resources.

## **Conclusion**

The central theme in the current youth RJ program was deemed to be the declining caseloads and the consequent capacity of the agencies to take on more referrals (or refocus their activities). Here the chief ways of assessing whether youth RJ caseloads have become more challenging and thus limit this ostensible capacity were addressed, namely referral sources, frequency of "closed not completed" files, the seriousness of



offences being referred, the number of different types of repeaters dealt with, and the views of agency staffs and CJS officials. The general conclusion is that, with the exception of the metropolitan agency, they do not mitigate the decline of caseload and the need to better utilize agency resources.

**TRENDS RE # YOUTH RJ REFERRALS ACCEPTED**

	<b>ALL AGENCIES</b>	<b>HCJS</b>	<b>ICJS</b>	<b>VRJ</b>
<b>BEST YEAR</b>	<b>2007 (1736)</b>	<b>2007(803)</b>	<b>2001 (280)</b>	<b>2003 (177)</b>
<b>2010</b>	<b>1565</b>	<b>750</b>	<b>189</b>	<b>77</b>
<b>2011</b>	<b>1235</b>	<b>594</b>	<b>153</b>	<b>88</b>
<b>2012</b>	<b>1228</b>	<b>519</b>	<b>146</b>	<b>50</b>
<b>2013</b>	<b>883</b>	<b>401</b>	<b>83</b>	<b>51</b>
<b>2014-2015</b>	<b>656</b>	<b>328</b>	<b>55</b>	<b>37</b>

	<b>CCRJS</b>	<b>JHS (T)</b>	<b>SSRJS</b>	<b>TCRJ</b>	<b>JHSRJ</b>
<b>BEST YEAR</b>	<b>2012 (129)</b>	<b>2002 (151)</b>	<b>2006 (133)</b>	<b>2007 (101)</b>	<b>2004 (130)</b>
<b>2010</b>	<b>106</b>	<b>107</b>	<b>118</b>	<b>48</b>	<b>80</b>
<b>2011</b>	<b>62</b>	<b>84</b>	<b>86</b>	<b>71</b>	<b>57</b>

<b>2012</b>	<b>129</b>	<b>69</b>	<b>85</b>	<b>58</b>	<b>81</b>
<b>2013</b>	<b>61</b>	<b>66</b>	<b>43</b>	<b>51</b>	<b>35</b>
<b>2014-2015</b>	<b>41</b>	<b>48</b>	<b>29</b>	<b>29</b>	<b>42</b>

**POLICE (P) AND CROWN (C) REFERRAL SOURCES AND CLOSED CASES  
NOT COMPLETED; YOUTH RJ**

AGENCY	2006		2012		2013		2014-15	
	P	C	P	C	P	C	P	C
<b>JHS (T)</b>								
SOURCE	55	19	54	15	45	20	30	17
NONCOMP	10	3	9	0	3	5	5	8
<b>CCRJS</b>								
SOURCE	86	18	92	33	45	14	29	12
NONCOMP	11	1	19	8	4	3	1	0
<b>ICJS</b>								
SOURCE	183	35	74	69	40	39	35	22
NONCOMP	31	13	16	12	12	7	6	3
<b>JHSRJ</b>								
SOURCE	86	33	36	45	9	26	26	15
NONCOMP	18	6	5	7	0	2	0	6
<b>TRCRJ</b>								
SOURCE	40	32	12	43	8	39	6	22
NONCOMP	9	5	0	5	0	0	0	1
<b>VRJ</b>								
SOURCE	91	27	20	30	17	31	8	27
NONCOMP	16	1	7	10	4	7	5	3
<b>HCJS</b>								
SOURCE	301	371	223	260	180	194	146	156
NONCOMP	52	87	60	115	26	61	40	50
<b>SSCJS</b>								
SOURCE	110	20	45	40	16	26	6	22
NONCOMP	9	2	3	9	3	3	1	8

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Traffic Reports, NSRJ

**REFERRAL OFFENCE PROFILE BY RJ AGENCY, 2011 TO 2014**

<b>TRCRJ</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Property	51	36	39	39
Violence	14	16	14	2
Breaches	11	6	6	3
<b>Total offences</b>	<b>113</b>	<b>86</b>	<b>76</b>	<b>57</b>

<b>CCRJS</b>				
Property	30	58	49	102
Violence	12	31	12	8
Breaches	8	10	1	0
<b>Total offences</b>	<b>92</b>	<b>177</b>	<b>79</b>	<b>122</b>

<b>SSCJS</b>				
Property	28	47	21	11
Violence	15	22	7	10
Breaches	8	6	2	5
<b>Total offences</b>	<b>107</b>	<b>132</b>	<b>59</b>	<b>32</b>

<b>JHS (T)</b>				
Property	65	62	130	93
Violence	12	15	17	14
Breaches	6	7	8	8
<b>Total offences</b>	<b>172</b>	<b>187</b>	<b>285</b>	<b>219</b>

<b>VRJ</b>				
Property	36	33	26	12
Violence	24	14	13	13
Breaches	11	3	0	0
<b>Total offences</b>	<b>118</b>	<b>90</b>	<b>69</b>	<b>46</b>

<b>ICJS</b>				
Property	130	90	84	47
Violence	44	33	15	15
Breaches	42	56	17	1
<b>Total offences</b>	<b>249</b>	<b>228</b>	<b>140</b>	<b>84</b>

<b>HCJS:</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Property</b>	<b>486</b>	<b>399</b>	<b>302</b>
<b>Violence</b>	<b>79</b>	<b>71</b>	<b>92</b>
<b>Breaches</b>	<b>92</b>	<b>45</b>	<b>91</b>
<b>Total offences</b>	<b>895</b>	<b>674</b>	<b>665</b>

**JHSRJ**

<b>Property</b>	<b>47</b>	<b>18</b>	<b>34</b>
<b>Violence</b>	<b>5</b>	<b>10</b>	<b>8</b>
<b>Breaches</b>	<b>0</b>	<b>3</b>	<b>3</b>
<b>Total offences</b>	<b>78</b>	<b>49</b>	<b>55</b>

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## **EXPANDING ADULT RJ IN NOVA SCOTIA**

### **UPDATING THE ADULT PILOT PROJECTS IN CBRM AND TRURO**

As noted above, there has been a steady decline in the number of youth cases referred to the RJ agencies over the past five years, including the ICJS and the JHS (Truro) agencies, sites of the adult RJ pilot project now in its fifth year in CBRM and Truro / Shubenacadie. There has been a continuous and steep decline in youth referrals in both milieus from 2010 onwards. In 2010 the ICJS received 189 youth referrals whereas in fiscal 2014-2015 that caseload had dropped to 55; in the JHS instance its caseload dropped from 107 in 2010 to about 52 in fiscal 2014-2015. The table below presents the salient data on the agencies' adult RJ caseload for the past four calendar years. Clearly there has been modest yearly variation in referrals received (chiefly in the JHS case) but no consistent pattern of decline or growth. In both agencies, the adult referrals have outnumbered the youth referrals over the past two years\*.

The adult RJ caseload varies between the two agencies in referral source and types of criminal code incidents referred. The ICJS agency has consistently received a much greater percentage of its referrals from the PPS (post-charge crown referrals) than from the police services in CBRM (pre-charge) whereas the JHS agency drew referrals in roughly equal proportions from these sources. This divergence is related to the types of offences being referred; in CBRM, assault, breaches and drug possession incidents – more often PPS referrals – have been referred to RJ in greater number than in the Truro milieu where over 60% of the referrals received have dealt with “theft under” and public disturbance, offences more likely but not dominantly so, to be police referrals.

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- The Mi'kmaw agency, MLSN, has experienced a similar decline in youth cases throughout the province but its youth population has not declined to the same extent. MLSN is not discussed here since it is a special case having province-wide jurisdiction for Aboriginal offenders referred to RJ, its funding is cost-shared between federal and provincial governments, and its justice programming is much

more extensive than that of the non-profit agencies with whom it collaborates in the NSRJ program.

Other tables indicates that the percentage of adult RJ referrals kept by Community Corrections in CBRM has declined over the past four years, going from 50% after the pilot's first two years (February 22, 2011 to February 22, 2013) to 48% after four years (February 22, 2011 to February 22, 2015; in the case of Truro-Shubenacadie the corresponding decline has been from 50% to 47% (NSRJ Checklists, 2015). Overall, the NSRJ checklists show a decline in adult referrals between the two 2-year periods of 196 cases (i.e., 784 minus 588 referrals); the decline in referrals retained by Community Corrections accounted for 136 or 70% of these 196 cases. These checklist tables also show that there has been no strong, across-the-board pattern of offences referred to adult RJ either increasing or decreasing in seriousness over the two 2-year phases of the pilot project existence. However, key serious criminal offences such as assaults, breaches and drug possession cases have each declined – overall from 211 in February 22, 2011 to February 22, 2013 to 124 cases from February 22, 2013 to February 22, 2015 – so it could be argued that there has been, at the minimum, a modest trend for referrals entailing more serious offences to have declined.

The tables presented below indicate that the proportion of adult files “closed non-completed (i.e., CNC)” by the RJ agencies, a possible measure of the challenge of adult cases for the RJ option, varied between the agencies. In the case of the CBRM milieu, the % CNC for adult RJ has been less than the % CNC for youth referrals to the agency (the average over the past three years for adults was 15% yearly, while for its youth referrals it was 21% yearly). In the Truro milieu, adult referrals were more likely to have more CNCs than the youth referrals (25% compared to 18%). RJ files closed non-complete, whether pre-session, at the RJ session phase or at the agreement phase, were occasionally re-referred to the agency by the Crowns.

Generally the main conclusions identified in the 2012 assessment of the adult pilot project (attached is the executive summary of that report) continue to exist and the pilots have been quite successful in relation to their initial objectives; for example, both agencies' staff and probation officers report a very positive collaborative relationship; the RJ agencies report having no special security issues associated with

having to deal with adults; the time to process RJ cases and the completion of agreements have been similar to the handling of the youth cases; the exit interviews continued to indicate a high level of satisfaction with the processes and outcomes among the diverse types of participants in the RJ sessions; the high level of support for the pilot project among CJS personnel has continued – all those interviewed (Crowns, Legal Aid lawyers, POs and Police Officers) in both sites strongly supported the pilot project and recommended the project be maintained and indeed spread throughout the province.

Given the trends cited above with respect to sharply declining youth referrals, declining Adult Diversion cases and the continued satisfactory processes and outcomes associated with the pilot program, there is little doubt that there is in both sites adequate capacity to maintain the project in its current guise without any significant increment in resources (aside from the usual considerations of wage increases and administrative costs). The caseload for the JHS agency under the current protocol has been heavy given its long-term staff of 3 full time persons (which includes the director / coordinator and the administrative secretary) but **the total current adult and youth referrals has been less than the agency's total caseload in each of the 3 previous years** – 2011, 2012 and 2013, roughly 120 files compared to roughly 140. It appears likely that some additional resources (i.e., an additional case worker) would be required were the agency to have responsibility for all adult referrals since the caseload would increase to 150-160 (adjusting for further declines in youth and AD referrals).

In the CBRM milieu, it can be noted that in 2014 the total number of youth and adult referrals accepted by ICJS was less than the number of youth referrals handled alone in 2011 and 2012 (i.e., 143 to 153 and 146) so clearly, as the agency staff says, there is no specific capacity problem if the current process protocol for splitting adult referrals between Community Corrections and the RJ agency is continued. If the agency were to received all adult referrals, then, given the files kept by the POs (i.e., roughly 47%), the agency caseload (adult and youth) would be roughly 220, essentially the same total number of referrals (adult and youth) handled by the same agency staff in 2011 and 2012; adjusting for continuing decline in both youth RJ referrals and adult



referrals to Community Corrections, the future caseloads in this scenario would likely be significantly less than 220. The total ICJS staffing was augmented by a part-time administrative assistant for 2011-2012 but that funding ceased in February 2013. That kind of temporary funding might well be required in any transition to the agency assuming all ARJ referrals. Currently there are 5 full time staff plus volunteers and ICJS is a stable organization with veteran, highly regarded administrators and facilitators.

Interviews with CJS role players and agency staff in 2015 found that the former in both CBRM and Truro milieus quite strongly supported the current processing model whereby both Community Corrections and the RJ agencies split the adult referrals according to an agreed-upon protocol. Police officers, POs, NSLA staff and PPS crowns gave a variety of reasons for their position (e.g., collaboration across silos, “two sets of eyes”, combining the strengths of POs’ “gravitas” and the agencies’ grass-root linkages) which will be elaborated upon elsewhere in this report. Virtually no reference was made to agency capacity per se as a key factor in retaining the current protocol rather than having an extra-judicial sanctions system parallel to that for youth whereby all adult referrals would directly go to RJ agencies. Similarly, the agencies did not emphasize capacity issues when advancing their views; essentially that position was that the current model has been working well but it would be best to have all adult referrals come directly to the agencies since they have the expertise in RJ, more experience working with victims and victims’ supporters, and have built up solid community linkages and networks.

**ADULT PILOT PROJECT MILIEUS: CASES HANDLED BY THE RJ AGENCY**

**ICJS in CBRM**

(YOUTH)	YEAR	ADULT REF	CNC*	POLICE REF	CROWN REF
153	2011	68	9 (14%)	24	44
146	2012	84	13 (14%)	22	62
81	2013	85	8 (10%)	28	57
55	2014	88	19 (21%)	25	63

\* CNC refers to “closed not completed” cases for adult referrals, whether at pre-session, session or post-session stage; generally, more crown referrals led to CNC.

**TRURO JHS**

(YOUTH)	YEAR	ADULT REF	CNC*	POLICE REF	CROWN REF
84	2011	56	6 (10%)	24	32
69	2012	69	17 (24%)	35	34
66	2013	83	22 (26%)	43	39
52	2014	71	19 (27%)	35	36

\* CNC refers to “closed not completed” adult cases, whether at pre-session, session or post-session stage; generally, more crown referrals get CNC.

## **BUDGETARY IMPLICATIONS AND FEASIBILITY FOR THE EXPANSION OF ADULT RJ THROUGHOUT NOVA SCOTIA**

In early Fall 2012 a short paper was produced by the IARJPP evaluator analyzing the budgetary implication of extending the pilot project model throughout the province (see attachment). The analyses focused on each of other milieus beyond the pilot project areas and on their agencies' capacity and readiness to adopt the pilot project's organizational framework and protocol whereby Community Corrections and the RJ agency would collaborate in handling adult referrals. At the core of that collaboration was the agreement that Community Corrections would receive the referrals from police (pre-charge) and crowns (post-charge), retain those involving minor property crimes, and send referrals involving person victims to the RJ agencies. The protocol was flexible beyond that fundamental point. Eligibility criteria for police and crowns to consider in making referrals were also modestly changed to reflect the less restrictive RJ eligibility criteria for youths. The moratorium with respect to the ineligibility of sexual offences and intimate partner violence was retained in the IARJPP.

In preparing the 2012 budgetary analyses and projecting expected RJ caseloads from the hypothesized province-wide expansion, the evaluator extrapolated from the actual referral numbers found in the pilot project sites and from the number of basic AD cases outside the pilot project areas. The conclusion was that modest budgetary increases would be required to mount the adult RJ initiative elsewhere but especially significant new resources would be required in the case of the HRM RJ agency, HCJS. The estimates underlying that conclusion have been proven incorrect for a variety of reasons:

1. The decline in youth referrals in the past 3 plus years, as noted above, has been much greater than anticipated for all RJ agencies, especially for HCJS. The average decline since 2010 has been more than 50%.
2. Referrals to Adult Diversion for the past 3 years have also declined sharply across the province outside the pilot project areas (from 921 in 2012 to 647 in 2014); the decline, predictably given the demographics

of HRM compared to Nova Scotia as a whole, has been especially in HRM which accounted for 50% of the decline.

3. The AD data available to the evaluator were limited to the first half of 2012 for most areas (i.e., PO offices) in Nova Scotia. Extrapolation to the entire 2012 year turned out to be excessive by as much as 25% in most areas save HRM where extrapolation yielded an accurate count for the entire year.
4. There was an unexpectedly large spike in the number of IARJPP referrals in the first six months of the program, apparently primarily due to (a) the IARJPP's more generous eligibility criteria; (b) the NSRJ campaign to inform key stakeholders in the local CJS about the initiative. That spike inflated the extrapolation numbers developed for other agencies' expected caseloads if they were to adopt the IARJPP model. A corollary assumption was also advanced that actual referrals made to Community Corrections would be twice the number of AD referrals usually received due to more generous eligibility rules (and at least 45% of these referrals would be passed along to the RJ agencies). This assumption turned out to be incorrect since, after the initial spike in referrals in 2011, the total referrals to the IARJPP program in the pilot areas were roughly 33% not 100% greater than the usual number of AD cases.

The situation now is that for all RJ agencies outside the pilot project milieus the expected caseloads would be much more manageable (everything else being equal about the service provided) whether the model used by the NSRJ is the integrated adult model found in the pilot projects or the youth RJ model where all referrals go to the agencies. Further comment will follow brief analyses of the each of the agencies' circumstances.

### **CUMBERLAND COUNTY RESTORATIVE JUSTICE SOCIETY (CCRJS)**

In this jurisdiction, there has been significant decline in youth RJ referrals in recent years while the number of AD cases has been quite stable. Youth referrals declined to about 40 files in 2014, continuing a declining trend since 2012, while adult

referrals to AD in 2014 were only 34. Taking into account the more generous eligibility of Adult RJ, it would be expected that if the pilot project model was extended to that milieu, there would be  $34 + (33\% \times 34) = 45$  adult referrals in the first year. Under the pilot project protocol then the CCRJS would handle roughly 63 cases ( $40 + (50\% \times 45)$ ) and under the youth RJ referral protocol, 100% or 85 files. The RJ agency handled 106 youth cases in 2010 and 129 in 2012 so it would appear that it has the capacity to accommodate whatever model the NSRJ should advance. The CCRJS staff of 3 full-time and 1 temporary persons represent an experienced, stable RJ service organization which has a good working relationship with local POs and is eager to move on to the adult cases whether at the 50% or 100% level.

### **TRICOUNTY RESTORATIVE JUSTICE SOCIETY (TRCRJ)**

The Tri-County RJ Society basically follows the CCRJS patterns with a declining trend in youth RJ referrals while the local Community Corrections deals with a stable number of roughly 54 yearly referrals to AD. The youth RJ caseload has declined sharply since 2011 and the most recent fiscal year yielded only about 30 files. As for the roughly 54 yearly AD cases, extrapolating to the possible adult referral numbers and taking into account the more generous eligibility of Adult RJ, it would be expected that if the pilot project model was extended to that milieu, there would be  $54 + (33\% \times 54) = 72$  adult referrals in the first year. Under the pilot project protocol then the TRCRJ would handle roughly 66 cases ( $30 + (50\% \times 72)$ ) and under the youth RJ referral protocol, 100% or 102 files. The RJ agency handled 71 youth cases in 2011 with the same staff it currently has, namely 2.5 full-time equivalents and its staff is experienced, stable and eager to take on adult RJ cases. It would appear that it has the capacity to accommodate the increased caseload that the NSRJ current pilot project protocol would entail but not the youth RJ model where it would receive all the adult referrals; in the latter situation, an additional case worker would be required at least in the short run.

### **SOUTH SHORE COMMUNITY JUSTICE SOCIETY (SSCJS)**

The SSCJS has seen a consistently steep declining trend in its youth RJ referrals since 2010 when it processed 118 youth referrals; in 2014-2015 the received files

numbered 29. The files received by the local POs in Community Corrections have also sharply declined, falling to 46 in 2014 from 96 in 2012. With the extension of RJ to adults, and taking into account the enhanced eligibility, adult referrals to extra-judicial measures would likely increase to  $46 + (33\% \times 46) =$  roughly 61 cases in the first year. Under the pilot project protocol then the SSCJS would handle roughly 60 cases ( $29 + (50\% \times 61)$ ) and under the youth RJ referral protocol, 100% or 90 files. The RJ agency with essentially the same sized staff handled 118 youth cases in 2010 and 86 in 2012. Its staff of 3 full-time and 1 part-time persons is experienced, well connected in the several communities of its jurisdiction and quite eager to take on adult RJ referrals. It would appear that it has the capacity to accommodate to either the collaborative/integrated pilot project model or an approach paralleling youth RJ where it would directly receive all adult referrals. At the same time some strategic short-term transitional funding would likely be necessary and appropriate were the agency handle all adult referrals.

#### **JOHN HOWARD SOCIETY RESTORATIVE JUSTICE NORTH EAST NOVA (JHSRJ)**

The JHSRJ program in North East Nova Scotia has experienced a decline in its youth RJ referrals, and in 2014-2015 had roughly 50% of the number received in 2012 (i.e., 42 and 81 respectively). Adult Diversion referrals also have had some decline, falling to 56 cases in 2014 from 70 in 2012. If adult RJ came to this milieu, adjusting for policy changes in eligibility, the number of adult referrals would be  $56 + (33\% \times 56) = 75$  cases. Under the pilot project protocols the agency would be responsible for  $42 + (50\% \times 75) =$  roughly 80 files, and under a model paralleling the youth RJ, 117 files. The current staff has 3 full-time persons and as part of the John Howard Society is well-connected to the local community organizations and to CJS officials. Its staff is competent and eager to take on adult cases. It would appear that the agency would have the resources to collaborate via the pilot project model but would require an additional case worker were it to receive all the adult referrals.

## **VALLEY RESTORATIVE JUSTICE SOCIETY (VRJ)**

The VRJS has witnessed a sharp decline in its received youth RJ referrals from its peak of 177 youth files in 2003 and its 88 in 2011. In 2014-2015 the agency received but 37 youth referrals. Adult Diversion numbers have also consistently declined in that milieu falling to 84 in 2014 from 132 in 2012. If adult RJ came to this milieu the number of adult cases would increase to  $84 + (33\% \times 84) = 112$  cases. Under the pilot project model, the agency would have responsibility for  $37 + (50\% \times 112) = 93$  cases and under what we have been referring to as the parallel to youth RJ model, the caseload would be 149 files. Currently the agency has a staff of 4 full-time persons, all well-experienced, long-term employees and all eager to take on adult cases. The resources are there for the agency to accommodate to whichever model that the NSRJ advances but some strategic transitional administrative funding may be required in the first or second year.

## **HALIFAX COMMUNITY JUSTICE SOCIETY (HCJS)**

The decline in youth referrals to the HCJS has been consistent and steep since 2010 when it received 750 such files; in 2014-2015 the number had fallen to 328. In AD cases received by HRM's POs, there has been a significant decline since 2012 when the POs received 481 cases; in 2014 that number had fallen to 345. The sharp declines were dramatic and unexpected given the population growth of HRM which was singular in Nova Scotia and the large proportion of the HRM population who were young adults as compared to other metropolitan centers in Canada. The implications are significant in that instead of the HCJS needing several more staff if it was to collaborate in the expansion of adult RJ beyond the pilot areas, it appears that the capacity in terms of staff complement exists even if the agency were to be responsible for all adult extra-judicial referrals. If adult RJ were to occur in HRM, the number of adult cases (again, taking into account the enhanced eligibility of RJ vis-à-vis AD) would be  $345 + (33\% \times 345) = 460$  referrals.

The HCJS currently has 4 management positions, 8 or 9 caseworkers (RJ facilitators) and some 22 volunteers (virtually all being engaged in facilitation). The staff size has not been reduced in recent years though not all positions are currently filled (e.g., a few persons are on maternity leave etc). Staff turnover over the past 5 years has been significant compared with the other agencies outside the metropolitan centre but a stable

experienced core also exists. The agency believes it can handle all adult referrals and the data appear to support that position. Under the pilot project model, the agency would have responsibility for  $328 + (50\% \times 460) = 558$  cases, well under the youth alone caseloads of 2010 and 2011. Under what we have been referring to as the parallel to youth RJ model, its caseload would be 788 files. Given the likelihood of continued decline in referrals after a possible spurt in the first year, the capacity is also there then for the agency to handle 100% of the adult referrals, especially if there is strategic temporary funding in the first year or two for administrative assistance.

## **CONCLUSION**

Overall then, clearly the RJ agencies now have the capacity – the staff – to handle the number of adult cases that would be sent to them under the current pilot project arrangements, that is, at least 50% of all the referrals to adult RJ would be channeled through Community Corrections to the agencies. With a few exceptions, these agencies also appear to have the capacity to handle directly 100% of the referrals, bypassing Community Corrections completely. These estimates are based on current trends in AD cases and youth RJ referrals and assume a 33% increase in the usual adult extra-judicial cases owing to the more generous eligibility criteria under the RJ protocols. It is likely that there would be an initial spurt in adult referrals associated with enhanced NSRJ communication with key CJS and other stakeholders so some strategic funding arrangements should be considered for some agencies as in the temporary funding granted to the ICJS for additional part-time administrative assistance in 2012-2013. A modest factor in assessing the level of temporary transitional funding could be how many referrals would be directed to the Mi'kmaq Legal Support Network (MLSN) if, as in the IARJPP, all eligible adult Aboriginal offenders are handled by that agency; since the areas covered by the current pilot projects have the largest concentrations of potentially eligible Aboriginal offenders, it is expected that this factor would be quite modest in any provincial expansion.

There are some considerations that would impact on the agencies' capacity to handle more cases, especially if assuming responsibility for 100% of the adult cases, but not the fact that they would be dealing with adults and not just youths. All the evidence



from the pilot project indicates that there were no administrative, processing or completion issues that resulted in the adult cases taking up more time or creating more difficulty than the youth cases did. Considerations that do bear on the agencies' capacity would include whether or not adult referrals could also come from post-conviction (Judicial referrals) and post-sentencing (Corrections referrals) levels as in the case of youth RJ and whether the moratorium on intimate partner violence (IPV) might be altered such that minor IPV cases become referable. The former could generate modestly more cases in some jurisdictions while the latter likely would not only increase the number of referrals but also necessitate more training of the RJ facilitators.

Another consideration, applicable to most agencies, would be whether the enhanced management responsibilities associated with the larger numbers and possible more varied if not more complex underpinnings of crime and desistance would require the agencies' coordinators to spend more time and energy in networking with community organizations, engaging with other CJS initiatives (e.g., the RCMP's HUB or HRP's Full Circle Policing), and in coordination with other RJ initiatives (e.g., Dalhousie RJ, Women's RJ projects); currently some agency directors / coordinators themselves carry a very large facilitation caseload.

Finally, it needs recalling that the issue of whether NSRJ adopts the current pilot project's collaborative or integrated model of agencies and community corrections handling the adult extra-judicial measures or advances a parallel to the youth model where all referrals are directed to and handled by the RJ agencies, did not hinge on simple resource capacity from the perspectives of both CJS personnel and RJ agency staffs. They typically called attention to other factors. There are strong arguments advanced for both models which will be discussed below. The tables below sum up the current salient and projected agency caseloads and staffing needs for the two models of service processing discussed above.

**AGENCY CASELOAD IN A PROVINCE-WIDE ADULT RJ SYSTEM**

<b>AGENCY</b>	<b>CURRENT YOUTH RJ</b>	<b>CURRENT AD CASELOAD IN AREA</b>	<b>PROJECTED MAX ARJ CASES</b>	<b>AGENCY CASES * A MODEL</b>	<b>AGENCY CASES B MODEL</b>
<b>CCRJS</b>	<b>40</b>	<b>34</b>	<b>45</b>	<b>63</b>	<b>85</b>
<b>TRCRJ</b>	<b>30</b>	<b>54</b>	<b>72</b>	<b>66</b>	<b>102</b>
<b>SSCJS</b>	<b>29</b>	<b>46</b>	<b>61</b>	<b>60</b>	<b>90</b>
<b>JHSRJ</b>	<b>42</b>	<b>56</b>	<b>75</b>	<b>80</b>	<b>117</b>
<b>VRJS</b>	<b>37</b>	<b>84</b>	<b>112</b>	<b>79</b>	<b>121</b>
<b>HCJS</b>	<b>328</b>	<b>345</b>	<b>460</b>	<b>538</b>	<b>788</b>
<b>JHS T</b>	<b>52</b>	<b>66**</b>	<b>-</b>	<b>123</b>	<b>155</b>
<b>ICJS</b>	<b>55</b>	<b>84**</b>	<b>-</b>	<b>143</b>	<b>225</b>

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\* Model A refers to the NSRJ processing protocol adopted in the IARJPP where all adult referrals were directed to the local Community Corrections and then were divvied up with some being retained and others sent to the appropriate RJ agencies. Model B refers to a possible NSRJ protocol whereby the RJ agencies would handle all such adult extra-judicial referrals.

\*\* In these instances the numbers refer to the IARJPP cases handled by Community Corrections. The number of adult cases handled by the JHS (T) agency was 71 and by the ICJS, 88.

**AGENCY CASELOAD AND RESOURCE NEEDS IN THE TWO NSRJ MODELS**

<b>AGENCY</b>	<b>AGENCY CASES A MODEL</b>	<b>NEW STAFF MIN NEEDS A MODEL</b>	<b>AGENCY CASES B MODEL</b>	<b>NEW STAFF MIN NEEDS B MODEL</b>
<b>CCRJS</b>	<b>63</b>	<b>NONE</b>	<b>85</b>	<b>NONE</b>
<b>TRCRJ</b>	<b>66</b>	<b>NONE</b>	<b>102</b>	<b>1 CASEWORKER</b>
<b>SSCJS</b>	<b>60</b>	<b>NONE</b>	<b>90</b>	<b>1 TEMP/BRIDGE POSITION</b>
<b>JHSRJ</b>	<b>80</b>	<b>NONE</b>	<b>117</b>	<b>1 CASEWORKER</b>
<b>VRJS</b>	<b>79</b>	<b>NONE</b>	<b>121</b>	<b>1 TEMP/BRIDGE POSITION</b>
<b>HCJS</b>	<b>538</b>	<b>NONE</b>	<b>788</b>	<b>1 TEMP/BRIDGE POSITION</b>
<b>JHS T</b>	<b>123</b>	<b>NONE</b>	<b>155</b>	<b>1 CASEWORKER</b>
<b>ICJS</b>	<b>143</b>	<b>NONE</b>	<b>225</b>	<b>1 TEMP/BRIDGE POSITION</b>

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\* Model A refers to the NSRJ processing protocol adopted in the IARJPP where all adult referrals were directed to the local Community Corrections and then were divvied up with some being retained and others sent to the appropriate RJ agencies. Model B refers to a possible NSRJ protocol whereby the RJ agencies would handle all such adult extra-judicial referrals.

**BEYOND THE IARJPP: ADULT DIVERSION**

Post-charge, pre-docket adult diversion (AD) began in Dartmouth and North Sydney in 1995 then quickly expanded province-wide (Aitken and Smith, 1995). According to departmental documentation ((Policy, Planning and Research, 2004), “the Adult Diversion Program was originally created as a means of reducing escalating costs

and delays associated with the backlog of cases in court. In addition to an economic and efficiency rationale, the program also sought to enhance the level of accountability compared to the traditional court system, foster increased victim involvement and increase community participation in the justice system. The program focuses on non-violent, minor offences which are seen as being appropriate for an alternative process to the courts. It provides that those individuals who are 18 years of age or older, who are first-time offenders or have not been convicted of a similar criminal offence within two years will be eligible for the program”.

In their Canada-wide examination of Adult Diversion programs in Canada, Bonta and associates (Bonta, 1998) contended that AD only deals with a small 1%-2% of the criminal caseload because of eligibility rules, and that primarily first time offenders, mentally challenged offenders and minor crimes are dealt with. In their view its benefits hardly outweighed the costs (e.g., increasing staff, “net-widening”) and significant value-added would require deeper penetration into the CJS. A more recent examination of AD by province and territory in Canada (Penney, 2008) indicated that AD programs usually were found but typically were quite limited and nowhere near the degree of significance of the youth programming found in the same jurisdiction. The AD programming was usually delivered by volunteers with referrals coming from either the police or crown prosecutors.

The Nova Scotia government’s own review of its AD program in 2004 (Policy, Planning and Research, 2004) provided a more nuanced assessment. It reported, “The key points that emerge from this analysis of the data are that only a relatively small percentage (14%) of the offenders had a criminal record in Nova Scotia prior to being referred to the Adult Diversion Program, and only a relatively small percentage (11%) of those 90% who successfully completed the program were convicted of a criminal offence in Nova Scotia in the 3 to 4 years after program completion.” The large majority of the stakeholders interviewed for the review indicated that the AD program was working well, growing in referrals, and was relevant. Other positive findings included a high level of offender satisfaction, significant funds raised from the offenders for local charities, and an estimated 12% reduction in the court caseload for adults.

In Nova Scotia the AD option has been post-charge, usually upon, but not

limited to, recommendations by the police with the imprimatur of the crown prosecutor. Probation officers, not community volunteers, have delivered the AD program. They reportedly have had little formal training or orientation in AD and their utilization of victims and local community services has been very limited. As one veteran PO conducting AD sessions noted, “The [sessions] are basically one-on-one and, if victims were to be present, the time spent on arranging the session and the follow-through would be astronomical”. The delivery of AD by POs has varied much by region, sometimes the activity being distributed among the POs there (or at least several of them) and in other areas a single PO (with back-up as necessary) has been responsible for all the AD cases.

The core criticism of AD as noted above for Canada as a whole remained pertinent in Nova Scotia. The most emphasized shortfall cited in the 2004 review was that there should be more leeway in the eligibility criteria; such a view was widespread among the stakeholders interviewed for that review. The review’s recommendations, congruent with the earlier review of AM for youths that ultimately led to RJ in Nova Scotia in 1999, called for a more robust AD program including pre-charge AD, better alignment with RJ, a wider range of offences (including minor violent crimes against persons) and a broader range of offender eligibility (including repeat offenders). It was not clear what was to be done to foster increased victim involvement and increase community participation in the justice system but the report acknowledged that AD was more administrative than restorative as these kinds of objectives were largely ignored.

The official government response to the review did indicate some encouragement of a move towards more RJ collaboration and coloration of the AD program (Roe, 2005). However, over the next 5 years little change in AD occurred – no change in eligibility (some PO interviewed suggested more serious cases were being considered but no supporting data were available), no special training or orientation in either AD or RJ, nor for that matter any evidence of significantly more collaboration in the form of Probation referrals to the NSRJ youth programs, aside from with two RJ service providers (CCCJS and JHS at Truro). HRM’s HCJS, accounting for nearly half of all the youth RJ referrals in the province, received virtually no Correctional Services’ referrals to its youth RJ program for the whole first decade of the new century. Such limited involvement underscored a comment from a senior Probation official in 2008, namely “yes we’ve been

thinking about expansion to do more RJ. At the same time we are careful since our officials view AD and RJ as having different underlying philosophies; moreover, there is much AD activity now so if we do RJ, there would be a need for more resources”. The perspective that Correctional Services entails more professionalism and a different mindset than characterized the RJ agencies was deemed to be widespread among POs.

In 2010 Corrections formally adopted its Core Correctional Practices (CCP) into its Policies and Procedures and began CCP training; in 2011 there was significant training for CCP facilitators and subsequently CCP training for all staff. On the basis of recent interviews, it appears that these practices have had a subtle impact especially on Community Corrections (i.e., Probation and the Nova Scotia Youth Facility). Several significant developments have converged, notably (1) the transfer of the NSRJ from Court Services to Correctional Services in 2009-2010, (2) the 2010 planning for an integrated adult extra-judicial case processing collaboration between NSRJ and Probation (the Integrated Adult Restorative Justice Pilot Project or IARJPP launched in 2011), and (3) the 2010-2011 restorative practices initiative at the NSYF.

The above developments have been occurring at a time when important contextual factors converged. These factors include (1) the response of the Department of Justice to its 2004 review; (2) demographic trends in Nova Scotia that pressured for organizational adaptations, and (3) cultural changes reflected in increased enthusiasm for the restorative approach in the CJS and the more formal emphasis on probation officers as agents of social change throughout North America (Clairmont 2014). The demographic trends have resulted in major declines in caseloads for all the NSRJ service providers, for all the Community Corrections’ offices providing AD, and perhaps most dramatically in the number of youths incarcerated at the NSYF. The patterns for the NSRJ and for the NSYF have been discussed above. The table below highlights the decline in AD caseloads over the past three years; it has been substantial (30%) and has occurred in all but one region of the province. While the NSRJ was transferred from Corrections to Public Safety in 2013 (reportedly at least in part because Public Safety was eligible for government grants in crime prevention whereas Corrections was not), and without minimizing basic differences (credentials, salaries and work experiences)

between POs and RJ caseworkers, there is now also more overlap in perspectives, skills and interests.

**AD REFERRALS BEYOND THE IARJPP AREAS: 2012 to 2014**

Agency area	2012	2013	2014
Overall	921	773	647
Metro HRM Bedford/Dartmouth / Halifax / Spryfield	481	443	345
NorthEast NS Antigonish / New Glasgow	70	56	56
Valley Windsor /Kentville /Middle	132	93	84
Cumberland Amherst	35	37	34
South Shore Bridgewater/Liverpool	96	65	46
Tri-County Digby / Shelburne/Yarmouth	69	49	58

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**NOVA SCOTIA COMMUNITY CORRECTIONS SPRING 2015**

## **Interview Data**

Senior Community Corrections officials in 2008 and 2009 noted in interviews with the evaluator (in previous evaluation projects) that, while there had been much thinking / discussion about incorporating more of the restorative approach into the AD program, considerably more resources would be required, not to speak of the challenge of merging the different underlying philosophies of RJ and AD. Workload considerations and perceptions of limited resources appeared to clash somewhat with the desire of some POs to take on a more restorative approach and work more with victims and local service providers rather than being quite limited to a strictly enforcement and monitoring role. The interviews with POs carried out as part of the evaluation of the IARJPP reinforced the latter viewpoint. The POs in the pilot areas who were in a dedicated collaborative role with the RJ agencies were generally quite positive about the relationship, quite satisfied with the RJ services (there were many occasions where the designated PO partner attended the RJ sessions) and wanted to continue the collaboration (Clairmont 2012) if the pilot became a regular program.

The five interviews conducted one-on-one with Community Corrections staff in this update reiterated that position. All respondents noted the declining caseloads for Probation staff (AD and other community corrections), the successful collaboration in the IARJPP, and the importance of Community Corrections in maintaining its involvement in adult extra-judicial case processing. While generally appreciating the focus (relationships), restorative strategies (working with victims, engaging other community resources), and training of the RJ agencies, they all considered that Correctional Services brought important assets to the table such as strong management and leadership, greater knowledge of criminogenic social conditions, and the “gravitas” and public credibility of Correctional Services as a formal representative of the CJS.

The interviewees expressed strongly the opinion that if the current collaborative relationship characterizing the pilot project areas was ended and the agencies received all adult court-diverted cases, the consequences for Community Corrections and Probation officers would be serious. One senior PO observed, “it would be a kiss of death if one changed the triage model (the pilot project model) at this time ... if it ain’t broke, don’t



fix it so don't let PO go from adult RJ". Another PO, emphasizing the above assets of Correctional Services personnel and the limited public acceptance for diverting adults from the courts, commented "I really think it would be a huge loss for the credibility of the program if Correctional Services was no longer involved". The Correctional Services respondents considered that Corrections would not require any new resources should the pilot project model be expanded throughout Nova Scotia. Generally they conveyed the sense that POs liked handling these adult diversion cases and found the work rewarding and the clients usually grateful. A few specifically identified doing AD work as congruent with the core correctional practices.

Only one Community Corrections respondent suggested that an alternative to the pilot project model might be having NSRJ return to the Community Corrections fold, replacing AD with adult RJ and having Community Corrections handle all the adult RJ cases. That respondent considered that there was a PO cadre of quite skilled and trained case managers who could readily be given appropriate upgrading in the restorative approach. It was a singular position and other POs supported sticking with the pilot project model if ARJ was routinized and expanded.

There was a diversity of views among other CJS role players (police, crowns, legal aid and judicial) concerning protocol and process in the expansion of the adult RJ/AD program, a future which they all strongly endorsed. In the pilot project areas of CBRM and Truro, the pervasive perspective was that the IARJPP model of collaboration between POs and the RJ agencies in delivering the service, worked well and should be maintained; as one police officer stated, "an extra set of eyes never hurts". A senior police officer in another area emphasized that the most important consideration for him is timeliness and feedback information about the success and shortcomings of the intervention, not whether POs or RJ facilitators control the service delivered. Others pointed to the IARJPP model as a valuable linkage between the CJS (i.e., Community Corrections) and the community (the RJ agencies). NS Legal Aid respondents in different regions were also generally satisfied with the IARJPP integrated approach. The majority of the CJS interviewees did contend however that if a collaborative relationship was not feasible, then their preference would be that all adult extra-judicial measures should be handled by the RJ agencies with their greater focus on and experience with reintegration,

victim engagement and their stronger community ties. The majority also considered that if the IARJPP model of collaboration were maintained, Correctional Services should provide an enhanced service and develop a more restorative approach in their client meetings such that the program becomes a more truly integrated one.

***MORATORIUM ON THE USE OF RJ FOR CASES OF SPOUSAL/PARTNER VIOLENCE AND SEX OFFENCES<sup>9</sup>:***

***The establishment of the moratorium:***

When the NSRJ program was being developed as a system-wide model that would permit referral to RJ processes at each point in the criminal justice process, it was considered that referral of domestic violence cases at the pre-charge and pre-prosecution stages would be inconsistent with the 1995 Framework for Action Against Family Violence<sup>10</sup>. Diversion of such cases, it was thought, would be viewed as an inappropriately lenient response to perpetrators of family violence.

From the outset, the *Program Authorization*<sup>11</sup> and *RJ Protocol*<sup>12</sup> established that summary conviction sex offences and spousal/partner violence offences could only be referred at the court entry point (post-conviction/pre-sentence stage) or at the corrections entry point (post-sentence). Indictable sex offences could only be referred at the post-sentence (corrections) entry point. It was determined that these cases (sex offences and domestic violence) should not be referred at the pre-conviction stage.

Soon after the province-wide implementation of the NSRJ program for youth, concerns expressed by a coalition of women's equality-seeking organizations regarding the use of RJ at any stage of the justice process for offences of violence against women

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<sup>9</sup> A more complete discussion of the moratorium issue is presented in Appendix C.

<sup>10</sup> Nova Scotia Department of Justice (1995) Framework for Action Against Family Violence. Halifax, NS

<sup>11</sup> Nova Scotia Department of Justice (1998) *Restorative Justice: A Program for Nova Scotia*. Halifax, NS

<sup>12</sup> Nova Scotia Department of Justice (2007) *Restorative Justice Program Protocol* (rev). Halifax, NS.

led to a moratorium on the referral of gendered violence cases to RJ or adult diversion programs. Despite some efforts over the years to consider changes to the policy, the moratorium continues to this day. The situation in Nova Scotia is reflected in similar policies in effect in most other Canadian jurisdictions.

### ***Growing frustration with the current model***

Evidence is clear that charge rates increased dramatically following the institution of pro-charge/pro-prosecution policies. However, after two decades of experience with the policies and acknowledgement of the progress that has been made, there is evidence to suggest that the traditional justice system may be ill-equipped to deal with many cases of intimate partner violence. Criminal justice personnel interviewed for this report expressed frustration with the impotence of the current system. Crown attorneys stated that, too often, cases fail because victims are unwilling to provide evidence. Defence lawyers are inclined to seek adjournments, recognizing that greater elapsed time prior to trial results in more withdrawal of charges due to lack of evidence. Police implement the pro-charge policies with reluctance in cases they have seen repeatedly fail. The majority of the interviewees expressed the view that many 'low-end' domestic violence cases<sup>13</sup> could be better handled through a restorative justice process.

### ***Changing context?***

Recent developments have underscored the need for further examination of a restorative approach among the options for dealing with interpersonal violence. Nova Scotia Cyber Safety legislation and Cyberscan investigators now regularly deal with sexual harassment cases; Nova Scotia universities routinely handle 'minor' interpersonal violence in their residences; and proposals by community agencies have been advanced

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<sup>13</sup> The definition of cases as 'low end' is anything but clear. Some researchers maintain that "many cases and incidents on the spectrum of what constitutes violence against women are not at the extreme end of the continuum, and instead are on-time occurrences or relatively isolated events". Randall, M. (2013) 'Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert', *Dalhousie Law Review*, 36(2), 477. However, others assert "an abundance of research consistently shows family violence cases typically involve a long-standing chronic pattern of behaviour rather than a single incident." Bazemore, G, and Earle, T.H (2002) 'Balance in the Response to Family Violence: Challenging Restorative Principles' in H. Strang and J. Braithwaite (eds). *Restorative Justice and Family Violence*, Cambridge University Press, p.157

for pilot restorative projects to respond to gendered violence. There has also been considerable publicity associated with the use of a restorative approach in the Dalhousie Dentistry scandal and in the Restorative Inquiry into abuses at the Nova Scotia Home for Colored Children.

There appears to be a consensus among criminal justice personnel interviewed that the moratorium should be lifted for 'low-end' domestic violence cases.<sup>14</sup> Interviews were conducted with a number of members of women's equality-seeking organizations actively involved for many years in efforts to address violence against women. It would appear that views regarding the moratorium have moderated among at least some members of these groups in that there is a willingness to explore the use of RJ processes for some spousal/partner violence cases. It would be incorrect, however, to conclude there is unanimity amongst this group and it is clear that there remains considerable skepticism regarding the openness of government officials to work in partnership with community organizations to develop a strategy for the use of RJ processes in cases of gendered violence.

### ***Potential impact of changes to the moratorium***

The impact on the criminal justice system, were certain intimate partner violence cases deemed eligible for referral to RJ at the pre-conviction stage, would likely be profound. It is not possible to determine actual case numbers until a specific definition of eligible cases is constructed. However anecdotal information collected through interviews with criminal justice personnel suggests the number would be significant. Moreover, court time currently associated with these cases is reported to be disproportionately high, given the large number of adjournments. Removal of a significant proportion of these cases from the formal criminal justice system can be expected to greatly reduce court caseloads.

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<sup>14</sup> The view is not as strongly shared regarding cases of sexual assault. Some reasons given include the lack of victim support services in many areas of the province. See FN 5 re definitional issues relating to the term 'low-end'

Each of the RJ agencies expressed a willingness to accept these referrals, but were adamant that this must not be contemplated unless a number of conditions were met. All acknowledged the need for training to equip staff and volunteers with the knowledge and tools to handle these complex matters. Agency directors also identified the need to access support services in the community for all parties involved in the RJ process. Cases of intimate partner violence are more complex than the majority of cases currently handled by the agencies. They would undoubtedly require more time from agency staff at all stages of the RJ process. It is likely that agencies would require more staff, although estimates of increases cannot be made without a fuller understanding of anticipated caseload volumes.

### ***The way forward***

The issue of the use of RJ processes in cases of domestic violence was considered by a federal-provincial-territorial Working Group in 2003. Although this group issued its report some years ago, their conclusions remain relevant.<sup>15</sup>

It is clear that a number of important conditions must be met before cases of domestic violence could be considered for referral to RJ, such as:

- a clear formulation of the type of 'low-end' cases<sup>16</sup> that would be considered for referral at the post-charge, pre-conviction level<sup>17</sup>
- implementation of validated risk assessment tools to be used to determine eligibility
- program protocols governing all aspects of case processing
- appropriate training for agencies involved in risk assessment, delivery and supervision of the RJ processes
- adequate support for victims throughout the process
- ongoing assessment and evaluation of the process

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<sup>15</sup> see Appendix III for the Working Group's conclusions regarding RJ

<sup>16</sup> the issue of conflation (where the seriousness of some cases is under-rated) and inflation (where all cases are assessed as 'serious') must be addressed

<sup>17</sup> changes would be required to the *Program Authorization* and *RJ Protocol* to permit referral of some DV cases at Level 2

The framework for such an undertaking must be developed as a partnership between government, criminal justice personnel and community groups with expertise in responding to gendered violence<sup>18</sup>. It is our understanding that a number of these groups have been meeting in recent years to consider issues to be addressed before referral of some domestic violence cases to RJ processes could be contemplated.

It is evident that if such an undertaking were to be initiated, most certainly it should start with a pilot project. Consideration should be given to communities where there is a strong partnership with the various groups referenced above. Some consideration should also be given to a pilot in youth court (where the number of cases involving violence among young people in relationships is reported to be significant).

It must be recognized that additional government resources will be required. At this point it is unclear what additional volume of cases might be expected, but it is highly unlikely these could be handled by the RJ agencies with current staffing levels. Funding for training will be required, as well as resources for community agencies (e.g. transition houses, women's centres, men's intervention programs) who will be called upon to provide training and support programs.

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<sup>18</sup> These would include transition houses, women's centres and men's intervention programs.

## **FUTURE DIRECTIONS FOR THE NSRJ**

There is little doubt that, since its introduction in 1999, the Nova Scotia Restorative Justice program has demonstrated considerable success in realizing its objectives. The RJ program for youth is comprehensive in that referrals can be made at any stage of the criminal justice process for virtually any offence<sup>19</sup>.

"Its strengths organizationally are many - province-wide programming; secure, substantial, long-term government funding generous for a small so-called have-not province; collaboration with local non-profit agencies who deliver the service while the provincial NSRJ management provides coordination, protocols and training...It has also partnered with, and contributed significantly to the success of, the province-wide Aboriginal RJ program. Its impact, measured in terms of conventional CJS evaluation concerns, has been impressive - less recidivism than in similar court-processed cases; high levels of satisfaction among all categories of participants in the RJ sessions (offenders, victims, supporters, police attendees and others); and diversion of roughly 33% of all cases of youth arrest from the court processing stream."<sup>20</sup>

Compared to the majority of other Canadian jurisdictions surveyed, the Nova Scotia restorative justice program for youth appears particularly robust. The provincial authority plays a pivotal role in setting standards for program delivery and maintaining a relatively high level of funding for community agencies<sup>21</sup>. Unlike many jurisdictions where RJ programs are delivered primarily by volunteers, the Nova Scotia program is delivered by the agencies' paid staff (supplemented by volunteers) with oversight and consultation provided by community boards. This community-government partnership was designed to provide an equitable province-wide service, responsive to local needs. The significance of agency/community ownership and entrepreneurship has varied significantly but is most evident in the large metropolitan HRM and among the Mi'kmaw province-wide MLSN agency. It is clear that the agencies look to the provincial

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<sup>19</sup> According to the NSRJ protocol, the most serious offences can only be referred at the post-conviction or post-sentence levels. In addition a moratorium has been in place since 2000 on the referral of sexual assault or spousal/partner violence offences.

<sup>20</sup> Getting Past the Gatekeepers, Dalhousie Law Journal, Vol 36, 2013, p.361

<sup>21</sup> The agencies draw virtually their entire budget from the NSRJ, including staff salaries and operating costs although, apart from salaries, there has been no provincial budget increases for the RJ agencies for the past decade.

government administrators of the NSRJ for direction and that the NSRJ communicates essentially and regularly with the agencies, not their boards.

From the outset, it was envisaged that the NSRJ program would expand to adults province-wide, replacing the Adult Diversion program (AD) established in 1995. But it was not until 2011 that a two year adult RJ pilot project was initiated in two areas of the province (Cape Breton Regional Municipality and Truro-Shubenacadie). The project - the Integrated Adult Restorative Justice Pilot Project (IARJPP) – integrated two programs in Community Corrections namely the NSRJ and AD, and protocols defined the collaborative process whereby probation officers (POs) and agency RJ facilitators shared criminal code referrals both pre-charge (police) and post-charge (crown prosecutors) in the two areas. As noted above, in-depth assessment has indicated that the IARJPP by all accounts worked very well. The collaborating community RJ agencies experienced significantly declining youth RJ caseloads during the pilot project period (actually declining since 2007) and were able to handle their share of the adult RJ caseload with minimal increase in resources. The evaluation of the pilot program revealed that handling the adult cases posed no particular problems for the agencies. Community agencies and probation staffs worked well together; the views of participants in the adult RJ process were positive; and the pilot was well received by other criminal justice players in the pilot area.

Over the past three years the development of the NSRJ program has been described as “treading water”. The caseloads for the youth RJ program have continued to decline greatly and there is little evidence to suggest any significant compensation effects or adjustments by the RJ agencies’ staff (complement size has been largely unchanged), such as having to respond to more serious offences and offenders or being more engaged in other community crime prevention activities. During the same period the possible expansion of the IARJPP was constantly under consideration and a consensus popular choice among the RJ agencies as well as CJS role players. It was however not acted upon for a variety of reasons such as perceived costs and lack of certainty concerning the location of the NSRJ program within the Department of Justice (the NSRJ was re-located in 2013 from Correctional Services to Police and Public



Safety); the result was that the pilot project has lingered on past the “due date” (February 2013) at the two pilot sites but elsewhere AD has remained intact.

None of the positive factors generating support for expansion of the adult RJ program has diminished in any way in recent years and the RJ and AD caseloads for the RJ agencies and Community Corrections respectively are now such that the expansion across the province can be achieved with no new resources / funding required. Our central recommendation therefore is that the adult RJ replace the AD program in Nova Scotia as soon as possible to avoid the waste of excess capacity and the associated morale issues, and realize a diversion that focuses more on offender reintegration / desistance and the concerns of victims. We would also recommend that, as in the youth NSRJ program, referrals should be allowed at the court entry point (post-conviction / pre-sentence) and post-sentence (corrections entry point); it would be expected that such referrals would be quite modest in number, as in the youth RJ.

Much consideration has been given in this update assessment of the NSRJ to the model whereby ARJ services should be delivered if ARJ is expanded. In the evaluation of the IARJPP it was found that that the collaborative model integrating the efforts of the POs and the RJ agencies worked well and was perceived to work well by the partnership. The recommendation here is that the IARJ model be adopted in the expansion of the adult RJ. No new additional resources would be required for either Community Corrections or the RJ agencies to take on the new responsibilities whereas were the RJ agencies to handle all referrals some modest new funding would appear necessary, at least on a temporary, “bridging” basis as done in 2011-2012 IARJPP.

Our recommendation is based however, not on the issue of whether new funding would be required for an alternative model but rather on the arguments for maintaining the partnership, the linkage between the formal CJS and the community-based non-profit RJ agencies. Community Corrections and the RJ agencies each would bring strong but different positives to the ARJ as detailed elsewhere in this report. The former’s assets, according to many interviewees, would include formal representation of the CJS, greater knowledge of criminogenic conditions, and access to other officials and services (governmental and professional) while the latter’s assets would include greater knowledge and experience with the restorative approach, familiarity with victim concerns

and issues, and community networking. The partnership model would likely have greater credibility with a public more sceptical about the value of adult RJ than of youth RJ. As noted earlier, there has been a developing overlap in perspectives and interests but most CJS people interviewed for this report have properly identified the need for more substance to the integration between Community Corrections and the RJ agencies posited in the IARJ designation. A fourth recommendation then is for more training and orientation to achieve a more integrative approach in ARJ, especially for the POs who would be the conduits for referrals received from all levels of the CJS\*

### **The Moratorium on the Referral of Gendered Violence Offences to RJ**

As noted above, the moratorium has been in effect since February 2000 and despite considerable attention (discussions and multiple meetings across the province) the stalemate remains among the diverse stakeholders. There is a deep divide between those (often CJS role players but also some others advocating the salience of RJ) positing that the moratorium inflates the significance of “minor” intimate partner violence (IPV), and those (often equality-seeking women organization leaders and victims’ advocates) who contend that the moratorium is a necessary protection against “conflation” (i.e., minimization of the significance of ostensibly “minor” acts of IPV due to lack of understanding of the complexity and subtleties of IPV, thereby enhancing the vulnerability the female victims and placing them at serious risk).

Congruent with previous evaluations of RJ in Nova Scotia, virtually all the CJS principals interviewed for this report favoured the use of restorative approaches for certain types of spousal/partner violence offences. After two decades of experience with the pro-charge, pro-prosecution policies and acknowledgement of the progress that has been made, there is strong evidence that the traditional justice system seems ill-equipped to deal with some of the many cases and types of intimate partner violence. The CJS personnel interviewed for this report expressed frustration with the impotence of the

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\*\*Other models for delivering adult RJ might have all referrals handled by Community Corrections or the latter managing the program but “subcontracting” the service to community groups. These models have very limited support among stakeholders and are not recommended.

current system's approach which results in significant court backlogs, poorly serves both victims and offenders and has little reintegrative value for those relationships which could safely benefit from such an approach. Research has shown that restorative approaches can be effective, albeit such research is limited and the case for changing the moratorium currently is more a push away from the inefficient and ineffective conventional court processing than a pull by a consensually positive valuation of an RJ approach.

Recent developments have underscored the need for further examination of the restorative approach among the options for dealing with IPV-related offences. Nova Scotia Cyber-Safety Act laws (2013) and Cyberscan investigators now regularly deal with sexual harassment cases, Nova Scotia universities routinely handle "minor" IPV and sexual misbehaviour in their residences (Clairmont, 2015), and proposals by community agencies have been advanced to the NSRJ and the Status of Women Canada for pilot restorative projects to respond to these IPV issues. There has been increasing interest in the potential for the use of restorative approaches in cases of IPV (and lesserly for sexual offences) among equality-seeking women's groups in recent years to explore the possibility of adopting a new approach.

Modifying the moratorium, as most well-informed interviewees acknowledged, would be a major policy change for government in Nova Scotia as indeed it would be for other Canadian provinces where IPV and sexual offences are typically beyond the eligibility for extra-judicial measures and sanctions. The RJ agencies, while willing and in some cases eager to handle minor IPV cases, attest to the need for more training in the salient issues and for more collaboration with women's centers and transition house staffs in developing appropriate and effective RJ strategies. It is unclear what the impact ultimately would be on RJ agencies' caseloads since both the number of such cases and the resources expended on them are difficult to project, but there is little doubt that there could be a significant impact for both youth and adult caseloads.

The changing context and the continuing, and even increasing, frustration of CJS role players with the conventional court processing of many moratorium cases makes it imperative that the NSRJ become more engaged. It seems clear that a number of

important conditions must be met before cases of gendered violence could be considered for referral to RJ, including effective risk assessment tools, program protocols governing all aspects of case processing, victim support throughout the process and appropriate training for those providing the restorative processes.

The framework for such an undertaking must be developed in a pilot project environment as a partnership among government, criminal justice personnel and community agencies with expertise in responding to gendered violence. At the very least the NSRJ would need to be a repository for what is happening in the province and elsewhere, assess and make available awareness of best practices, and collaborate in the establishment of a social network devoted to such development in Nova Scotia.

### **A More Robust NSRJ**

While, aside from the IARJPP, there has been little forward movement in the NSRJ program in recent years, there has been a surge in interest in restorative approaches in other milieus. As noted above, within Correctional Services a restorative practices approach has been adopted with considerable success in the Nova Scotia Youth Facility. Exploratory discussions are taking place regarding the possibility of adopting such approaches in the adult correctional facilities. The practices of Cyberscan investigators exhibit 'restorative' characteristics in resolving certain types of complaints under the Cyber-Safety Act. NSRJ has collaborated with Dalhousie University in an RJ initiative there and other similar proposals have been developed by Saint Mary's and Acadia universities. Various provincial government entities (e.g., Education, Community Services and Human Rights Commission) have utilized the restorative approach in specific incidents\* and some RJ agencies have become involved with police programs in their areas such as the RCMP's HUB and other community programming aimed at medium to high risk youths or community conflict\*\*. Of course there has also been considerable publicity associated with the utilization of the restorative approach in the Dalhousie Dentistry scandal and as a dimension of the "Home for Colored Children" settlement (i.e., the Restorative Inquiry into Abuse at the N.S. Home for Colored Children).

Unfortunately, most of these initiatives have been developed in isolation and there have been few opportunities created for the sharing of experiences: for example, best practices, training and other resources. Is there a potential role for the NSRJ as a focal point or 'centre of excellence' regarding the expansion of restorative approaches in the province? The program has sixteen years of experience in developing and delivering restorative justice programs. It has established a presence in all areas of the province, with extensive government and community contacts. The location of the NSRJ within the Crime Prevention unit of the Department of Justice is appropriate for a broader vision of restorative practices, given the definition of crime prevention as encompassing the social determinants of crime. A more robust vision of the NSRJ mandate would include both its major direct services contributing to the efficiency and effectiveness of the CJS and a coordinative and facilitative role vis-à-vis the restorative approaches identified above. Explicitly taking on such a broad mandate at the NSRJ level would also be the appropriate way to encourage community engagement on the part of the RJ agencies and would be an effective response to critics who contend that the NSRJ program's shortcoming is a lack of significant grassroots / community participation.

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\*The Nova Scotia Human Rights Commission, for example, currently offer restorative approaches as the first option to assist parties to resolve a human rights complaint (website). Since 2012, the Restorative Approaches in Schools Project (a collaboration of the departments of Justice and Education) has provided schools with the tools, resources and supports necessary to adopt a restorative approach to many forms of conflict within the school environment. Restorative approaches have reportedly been used by the NS Public Service Commission.

\*\* For example, a consortium of community organizations on the South Shore, led by the Second Story Women's Centre submitted a proposal to Status of Women Canada entitled 'A Restorative Approach to Intimate Partner Violence in the Justice System'.

## **APPENDIX A**

### **MOVING ON TO ADULTS: AN ASSESSMENT OF THE NOVA SCOTIA RESTORATIVE JUSTICE PROGRAM'S ADULT PILOT PROJECT (EXECUTIVE SUMMARY EXCERPT\*)**

#### **EXECUTIVE SUMMARY**

The mandate of the NSRJ program to expand into dealing with CJS referrals for adult criminal offences was established a decade ago and finally implemented in fiscal 2010-2011 as a pilot project in two areas, namely Truro / Shubenacadie (Colchester County / Municipality of East Hants) and Cape Breton Regional Municipality. The implementation followed closely the format, protocols and administrative data management systems as were developed and honed for eleven years in the NSRJ youth programming. Perhaps the most distinctive feature was that adult referrals were limited to police (pre-charge) and crown (post-charge) referral sources and based on Level 1 and Level 2 criminal two offences; excluded were violations of provincial statutes and post-conviction CJS referrals. As in the youth program, moratorium offences (e.g., domestic violence, sexual assault) were also excluded. In the pilot areas the newly initiated model – the Integrated Adult Restorative Justice or IARJ project – replaced the conventional Adult Diversion programs and introduced a broader set of eligibility criteria. Also, the IARJ introduced a new process for referring and service delivery; police and crown referrals were sent to designated probation officers in the two areas who were charged with monitoring the appropriateness of the referrals, sending those where there was a person victim to the RJ agencies and dealing with the remainder themselves in conventional AD sessions. All files received by the probation officers in either area that concerned Aboriginal adult offenders were directly sent on to the Mi'kmaq Legal Support Network (MLSN).

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- Don Clairmont, Atlantic Institute of Criminology, Dalhousie University 2012

The evaluation approach adopted for this pilot project was that of a formative evaluation. There was a close involvement of the evaluator with program managers and service providers in all aspects of the implementation, ranging from developing basic project administrative forms (i.e., checklists), to attending orientation sessions for police and other stakeholders in the field, presenting updates on processes and outcomes at occasional meetings with the stakeholders and regularly with program management and the designated probation officers and directors of the RJ agencies. The specific evaluation methods included analysing the checklists submitted with referrals, preparing and analysing exit questionnaires used in all AD and RJ sessions, conducting follow-up telephone interviews with offenders and victims, one on one interviews with probation officers, police, crown prosecutors and defence counsel, and multiple interviews and meetings with IARJ managers and the directors of the RJ agencies involved. Additionally, there was a limited amount of direct observation of the AD and RJ sessions by the evaluator.

Four contexts were examined closely as backdrops for the initiative. These were the trends and patterns in the NSRJ 's youth RJ service, the evolution of AD in Nova Scotia, the Opportunities and Challenges for a restorative justice adult program, and the two selected sites as appropriate milieus for the pilot project. The trends and patterns in youth RJ were conveyed through a number of charts dealing with the how different it was in number of cases and offence types from the earlier Alternative Measures program and from the Youth Court, and the decade trends in RJ referrals by referral sources, and the type of offences handled. In 2010 the NSRJ service was an established part of the CJS. In a word, it was institutionalized in that (a) it handled roughly 30% of all youth offending in Nova Scotia, (b) had solid support structures in the YCJA, court decisions about how to deal with young offenders, and the strong advocacy support of Nova Scotia's top government officials, (c) was accepted and collaborated with by police and crown prosecutors, (d) was interwoven in many respects in the adversarial relations between prosecutors and defence counsel, and (e) provided a well-defined service with trained full-time staff (plus volunteers) throughout the province and well-monitored standards of operation. In addition, several assessments had found high levels of

satisfaction among its participants (offenders, victims, other session attendees such as police officers) and grounds for optimism about reduced recidivism. It was a program well-praised in other jurisdictions both elsewhere in Canada and abroad.

As regards Adult Diversion, government reviews over the past decade or so of the AD programs in Canada have shown that they have been rather marginal to the criminal caseload and questionably cost-effective. In Nova Scotia an official review in 2004 depicted AD (launched in the mid-1990s) as a reasonably well-implemented program with growing numbers of referrals, high levels of compliance and satisfaction, low recidivism and modest costs, but nevertheless requiring more robust and nuanced eligibility criteria and more connection to the RJ programming in the province as was initially planned for when the latter was developed in the late 1990s. For several reasons, including the shift within the Department of Justice of the NSRJ program from Court Services Division to Community Corrections, momentum developed for change which led to this IARJ initiative in 2010. Overall, then, there were opportunities for the development of a new approach to adult alternative justice as a result of the evolution of youth RJ (e.g., a niche in the CJS was attained, unused capacity was developing) and adult AD programming (AD numbers were increasing and workload pressures mounting) as well as other supportive developments. There were some significant challenges for a more robust AD that would include a significant RJ dimension, most seriously perhaps being the lack of impetus from supportive laws and a wary CJS, not to mention the public at large. At the same time successful adult RJ programs were being increasingly carried out elsewhere and process issues were being shown to be resolvable (e.g., safety, victim engagement).

The pilot sites were well-selected. Both the RJ agency and the AD program at each site have experienced veteran staffs and are appreciated by other CJS role players. They have provided a solid successful alternative justice programming. Both have been responsive to the IARJ initiative, especially perhaps the RJ agencies for practical as well as theoretical reasons. Several tables are provided describing trends for the RJ agencies over the past decade with respect to the number of referral, referral sources, and types of offences dealt with. These data indicate that the youth referrals have tailed off in recent years but have been reasonably stable on the other dimensions. The demographic trends



in the areas indicate that the youth referral caseloads would be expected to continue to decline, especially in CBRM. The trends in referrals to AD reflected a stable pattern over the past decade, and that is congruent with the views of the POs there; they too would be unlikely to increase and given the same demographics should decline some as the low or no growth population continues to age. Other tables provided indicate that at present there is a high ratio of adults to youths as evidenced in the provinces court statistics. This suggests that an IARJ program with broadened adult eligibility criteria could generate many referrals. That possibility is underlined by several tables that examine how in the past seven years the kinds of offences most likely to go through IARJ have been processed to date for adults. The four key offences, namely simple assault, theft under, property damage / mischief, drug possession and minor frauds have had a modest to low conviction rate (drug possession excepted) and the majority in each category have been dismissed or withdrawn; such a pattern, in conjunction with the high ratio of recorded adult to youth offences, suggest that a well-received IARJ could obtain a large number of adult referrals. The MLSN agency, to which all Aboriginal IARJ referrals were sent, dealt with the same Corrections' officials, and with crown prosecutors and other CJS personnel based in either Truro / Shubenacadie or Sydney. It too had an experienced staff which was highly regarded by CJS officials.

The next section, Findings, discusses the basic checklist data and general issues of process and outcome that emerged from the pilot project. In the 13 months since the IARJPP was launched, the number of referrals has increased considerably at both sites. All told there has been roughly a doubling of adult referrals to alternative justice paths. Despite considerable missing data from the checklists received by Community Corrections probation officers at the project sites, there are clear patterns in the referrals. The referred adults were overwhelming single, and the majority were young adults (18-25 in particular), males, and of Caucasian ethnicity. Male and female offenders were similar in the proportion having at least one prior conviction but differed in that females were concentrated in "theft under" offences while the males were spread chiefly over four offences, namely theft under, simple assault, public disturbance and drug possession. 'Theft under' was the most common offence referred for all combinations of age and

gender that were analysed but the proportion varied considerably from 30% among young adult males to 67% among older adult females. The referred young adult males were most likely to have been arrested for the more serious Level 2 offences.

Clearly, police predictably were less likely to refer to IARJ persons with prior convictions, and where the offence involved violence or violation of court-ordered undertakings. The crown referral patterns were quite different from the police referrals in that they were twice as likely to involve persons with prior convictions (42% to 20%), and persons committing violent offences (23% to 10%). While the majority of both police and crown referrals were Level 1 offences, the broadening of the eligibility of accused persons and offences is evident primarily in the crown referrals. The argument can be advanced that police pre-charge referrals centered around the offences and offenders that otherwise would have been the typical AD referrals while crown referrals modestly went beyond the conventional AD referrals and thus illustrated the expansion of eligibility and the acceptance of same by the referral agents. The checklist analyses underline what one would have expected in a pilot project – still largely conventional AD offences such as theft under, mischief and simple assault being referred – but some broadening of eligibility, especially reflected in the crown referrals.

Tracking the IARJPP implementation, it was found that the planning for the initiative involved establishing an administrative data system (i.e., based on checklists) and drew heavily on the extant NSRJ youth programming for protocols. This activity was followed by significant orientation and program updates with stakeholders and especially, and continuously, with the principal service providers, namely the POs and the RJ agency directors. The initiative evolved as planned, achieving the significant collaboration of referral agents and service providers. The large number of referrals received from police and crown prosecutors at both sites was indicative of that collaboration as was the non-controversial distribution of referrals among the AD and RJ service providers. There were some communication gaps, some ambiguities in the protocols to resolve, and some “transcendent” issues such as the maintenance and interpretation of the moratorium on

intimate partner violence, but these were relatively minor issues for the processes and outcomes framework of the IARJPP.

More serious was the shortfall that developed with respect to a key administrative data tool, namely the checklist that was to be completed whether or not there was a referral for all Level 1 or 2 offending incidents; unfortunately checklists were only sent in when a referral was made and the checklists received had much missing data. The checklist shortfalls did limit some of the expected probes of the project's outcomes. The IARJPP implementation did produce, with its broadened eligibility for alternative justice options, a significant increase in referrals and a modest increase in more Level 2 offences and more offenders with previous convictions. There was then a deeper penetration of alternative justice into the CJS. The RJ agencies reported no difficulty dealing with adult offenders but securing victim involvement in the sessions was a challenge as expected. Offenders, whether at the AD or RJ sessions, reported a high level of gratitude for the option and much satisfaction with its processes and sanctions (agreement terms). Victims, police officers and probation officers who attended the RJ sessions expressed much satisfaction and confidence in the processes and outcomes and considered the alternative justice option very appropriate for the modest offending being dealt with.

The next section of the report describes further the participants' views and assessments. Four hundred and twenty exit forms were obtained and formed the basis for the analyses here. Apart from the facilitators, the participants included offenders, offenders' supporters, victims and victim supporters, police and probation officers, community representatives and volunteers. Two indexes were constructed from participants' response to the exit form's statements measuring the positive assessments of their AD or RJ experience. The results showed that there were no significant differences in index scores by gender, level of the offence, or whether a victim was present or not at the session. In the case of Index A, offenders had almost three times as many high positive scores as did victims (33% to 12%). Among the four groupings analysed, the largest proportion of high scores came from the police exit forms (41%) while the lowest proportion of high scores came from the victims. The exit forms completed by probation officers yielded fewer high scores than the police responses though still double the

proportion found among the victims (23% to 12%). Index B scores were generally higher than those of Index A, apparently because the former dealt more exclusively with process issues (e.g., fairness). Index B scores did not differentiate as much among the different role players as there was more positive assessment across the board; however, even here there were more highly positive assessments among the police exit forms (62%) than in any other grouping. A comparison of offenders' scores by program (i.e., whether they were processed in AD or RJ) showed that, for both indexes, the RJ offenders had a significantly greater percentage of high positive score than did their AD counterparts.

The analyses of responses to statements excluded from the indexes revealed that the different role players attending RJ sessions were alike in thinking that the RJ experience was positive and that it would be beneficial to both offender and victim. The fact that offenders were most likely to report having a different view on the crime / offence because of the session, could also be taken as a positive sign since such an outcome is an objective of having RJ sessions. The comments written on the exit forms by the participants were quite positive and quite varied. Offenders most often expressed gratitude at having the alternative justice option and avoiding a criminal record. Victims emphasized having an opportunity to "give my side" and obtaining some closure on the incident. Police and probation officers emphasized how effective the management of the RJ session was and considered that it was effective for all parties, not just the offenders. In sum, then, the exit data indicate that IARJ program has been well-received by the participants of all roles. Both the AD and RJ programs were positively assessed. The offenders in the RJ stream were especially positive but, somewhat surprisingly, so were the highly positive assessments of police officers and probation officers who attended the RJ sessions.

The telephone interviews conducted with 59 offenders and victims yielded much rich information, organized in the text by the five phases that constitute the experience, namely pre-session, session, agreement, reintegration and closure, and overall assessment. The patterns found in the interviews were consistent with the findings of the exit questionnaires and indicate that the IARJPP has achieved its objectives very well. The reasons for participation varied by offender or victim status but were in keeping with

targeted thinking. The AD and RJ processes were very positively assessed by both offenders and victims. The agreements were considered fair, reflective of the input of both 'sides', and committed to by the offenders. All parties considered – usually quite strongly – that the session and agreement made up for the harm done. Offenders frequently reported positive change in their lives which they attributed to the alternative justice experience, and victims usually stated that they had achieved significant closure. The respondents generally identified 'best things' about having such matters dealt with in an extra-judicial fashion and virtually none thought, in retrospect, that the incident should have gone through the courts. Both offenders and victims clearly defined the offences as minor and indicated strong reservations about extending this approach to more serious offences or offenders. Victims indicated that the experience left them with a more positive appreciation of the justice system in Nova Scotia. A summary by phase is provided but here, for illustrative purposes, only the summary of the overall assessment is given:

**Overall Assessment:** Reflections of offenders and victims about the best things that resulted by going through AD or RJ rather than the courts yielded factors virtually identical with their initial hopes. Offenders pointed to avoiding the court and a criminal record while victims emphasized the direct exchange among the parties involved in the offence but in addition the respondents exhibited some nuance, identifying additional advantages for their role and others' role as well as for the efficiency of court processing, and the importance of second chances and guidance. Virtually no one believed, in retrospect, that their incident should have been processed in court. They also believed that while incidents at this minor criminal level are appropriately handled through extra-judicial sanctions, the approach would be quite problematic for more serious offences and offenders. Leaving the last word to the victims, it can be noted that the majority indicated that the experience had left them with a more positive view of the justice system.

Turning to the assessments of the CJS role players and RJ agency staffs, as garnered through interviews (usually multiple interviews), there was significant

consensus among the CJS role players with respect to five themes salient to the IARJ initiative, namely

- There will be reluctance to refer adults beyond the minor level of criminal offences
- There is not enough denunciation in the restorative justice intervention
- Restorative justice delivers more community involvement, victim contact and engagement, and is cost effective
- The current pilot project's delivery system with all referrals channeled through the PO and the PO passing on referrals where there is a person victim, is the way to go in alternative justice adult programming
- More information to and engagement with community leaders and the public at large is needed so that there can be understanding and support for the IARJ initiative

There was significant variation among CJS role players with respect to a number of other IARJ features such as maintaining the moratorium on offences related to intimate partner violence and sexual assault. The POs engaged in the program had concerns about how the IARJ was initiated but considered that it had been implemented well and saw advantage in the IARJPP being continued. The service deliverers also were positive about the IARJ program. The RJ agencies welcomed the project both for theoretical and practical reasons (expand RJ, increase received referrals). They reported that the implementation went well, that working with adult offenders was quite satisfying, and that the IARJ with its protocols and division of responsibilities among the POs and themselves should continue on.

The final section of the report discusses in summary fashion the extent to which specified processes and objectives of the pilot project were realized and advances some possible future directions for the IARJ approach. There is discussion of five chief implementation imperatives, namely (a) reaching the target population (e.g., the broadened eligibility criteria), (b) putting in place adequate extra-judicial measures (e.g., as per the division of responsibilities between designated probation officers and the RJ

agencies), (c) effective mobilization of CJS role players such as police and crown prosecutors, the referral agents, (d) developing and implementing adequate standards and measures to achieve anticipated outcomes and record the level of achievement, and (e) adequate training and orientation for the staffs and facilitators providing the IARJ service. Overall, the evidence suggests that these implementation imperatives were indeed accomplished and accomplished very well. The shortfalls included the inadequacies in the utilization and completeness of the checklists, the basis for the administrative data system, the low level of victim presence in the RJ sessions, the minimal new training offered the service providers (both AD and RJ), and the lack of a strategy to inform local civic leaders and the public at large about the new initiative and its potential benefits.

There were six chief objectives identified in IARJPP documents, namely reducing court load, improving victim satisfaction, impacting positively on offenders, reducing recidivism, enhancing community capacity and public confidence in the justice system, and determining the resource and effectiveness implications of the NSRJ becoming involved with adult criminal cases. The evidence clearly establishes that aside from reducing recidivism, an objective almost impossible to assess in this modest and short-term assessment, these objectives have been met, all in significant fashion. There are nuances in the level of achievement that are difficult to summarize further than was done in these brief sections in the text so the reader is referred to the full document. The key shortfalls would appear to be in realizing more victim presence (although the IARJPP yielded far more victim engagement and options than were the case under the conventional AD program), and the limited reaching out to various publics in order to impact positively and beyond the session participants, on the level of public confidence in the justice system. As for the resource implications of a full-province IARJ implementation, it seems clear that the only significant, increased investment required would be modest and related to simple, direct caseload increases for the RJ agencies involved, at least outside metropolitan Halifax; in the latter area the caseload implications could be considerable and there could be other costs to take into account as well.

The report concludes with several points for consideration in mapping future strategies for the IARJ's possible expansion, namely (a) that the current model of service delivery shared by probation officers and RJ agency staff has strong support among all segments of stakeholders and is supported by this evaluation; (b) that more effort has to be extended improving victims' awareness of how alternative justice processes operate in relation to the various types of offences and their own options in becoming involved; compensatory strategies require explicit discussion especially since the RJ agencies have already pioneered much victim outreach; (c) that much more effort should be directed by Community Corrections and the NSRJ program in informing civic officials and the public at large about the benefits and limits of extending the alternative justice approaches to adult crime; and (d) that a three-fold NSRJ strategic action plan should be developed for (a) maintaining the current program in the two sites, (b) expanding the program to other non-metropolitan sites, and (c) conducting a feasibility study of the issues and possibilities in implementing the program in the metropolitan Halifax area. In addition to these substantive points it is recommended that there be a review of the data management issues, especially concerns about the checklists which are crucial for regular monitoring of the program.



## ***Cross-jurisdictional Summary of Restorative Justice Programs***

In order to gather information regarding restorative justice programs in other jurisdictions, a questionnaire<sup>22</sup> was circulated to members of the FPT Restorative Justice Working Group<sup>23</sup>. Responses were received from six jurisdictions: Yukon, British Columbia (Ministry of Justice), Alberta (Justice and Solicitor General), Saskatchewan (Ministry of Justice), Manitoba (Department of Justice), Yukon Territory (Department of Justice) and Ontario (Ministry of Children and Youth Services). Information was also received from Correctional Service Canada, Restorative Justice Division.

The information provided in this summary is derived from the questionnaire responses and therefore does not include information from all jurisdictions. Moreover, restorative justice programs may be provided by NGOs or community-based agencies that do not receive funding from government and, therefore, information regarding their activities may not be included in responses provided by the FPT Working Group representatives. Accordingly, while this summary provides an overview of restorative programs provided in some jurisdictions, it is by no means exhaustive.

### ***A note on terminology***

There are many different views regarding the nature of a restorative process and the critical elements of a program that qualify it as restorative. As Tomporowski notes in her account of the evolution of restorative justice programs in Canada: "The mix of terminology - restorative justice, community justice, Aboriginal justice, not to mention alternative measures and extrajudicial sanctions - is confusing and has made it difficult to gather comprehensive information about the number of restorative programmes and referrals across the country."<sup>24</sup>

The United Nations Declaration on Restorative Justice defines a restorative process as "any process in which the victim, offender and, where appropriate, any other

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<sup>22</sup> The questionnaire is attached to this report.

<sup>23</sup> The FPT Working Group was established as a forum "to consider and coordinate discussion on administrative, policy and evaluation issues that emerge from the implementation of RJ and related alternative criminal justice programs." [www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/rstrtv-jstc-eng.aspx](http://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/rstrtv-jstc-eng.aspx)

<sup>24</sup> Tomporowski, B. (2014) Restorative justice and community justice in Canada. *Restorative Justice: An International Journal*, 2 (2)

individual or community members affected by a crime, participate together actively in the resolution of matters arising from the crime generally with the help of a facilitator".<sup>25</sup> However, it is clear from the submissions of the various jurisdictions that a program may be considered 'restorative' without all elements of the UN definition being present (for example, the direct participation of a victim). For the purposes of this summary, inclusion of a program as an RJ program rests with the definition of the respective jurisdictions submitting the data.

***Populations served:***

In all responding jurisdictions (except Nova Scotia) RJ programs are available for both adults and young persons. A pilot project in NS, initiated in 2010, provided adult RJ programs in two locations (Truro and Cape Breton). The adult RJ program has not yet been expanded throughout the province, although an adult diversion program (post-charge referrals only) has been provided province-wide for many years.

***Types of RJ program options provided***

Community Accountability Programs in British Columbia offer an array of RJ programs. According to 2012-13 statistics, the distribution of programs was as follows:

Community Justice Forums (RCMP model):	82% of agencies provide
Circle process	52%
VO conferencing	36%
VO mediation	32%
Community accountability panels	30%
Family group conferencing	23%

BC reports that the CAP-funded groups typically offer multiple types of services (76%) and that there has been a substantial increase in the number of groups delivering four or more types of RJ programs as groups receive more training and diversify their skills.

Alberta (Youth Justice Initiatives) reports that a continuum of RJ processes is provided, from community justice committees dealing with relatively minor offences through to peacemaking circles ordered by the judiciary for serious cases. In the case of

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<sup>25</sup> United Nations ECOSOC Resolution 2002/12 [www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf](http://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf)

adult services, Alberta reports that, for the most part, community conferences and victim-offender mediation are the primary program options used and that circle processes have generally not been used.

Saskatchewan reports that generally the whole spectrum of RJ processes are provided; i.e. victim-offender mediation, community conferencing, family group conferences and circles. Approximately 41% of the meetings involve the victim, offender and facilitator although support people also attend. The Province reports that 21% of the meetings are 'accountability sessions' in which the offender meets only with the caseworker.. These are considered to be minimally restorative and other options are considered preferable. The use of circles, community justice conferences and family group conferences are reported to be quite low.

Manitoba reports that all forms of RJ program options are available, although program options provided by individual organizations differ; for example community justice committees in the North (serving primarily Aboriginal populations) may offer healing circles, while others CJsCs may offer primarily accountability sessions or victim-offender mediation.

Ontario (Ministry of Children and Youth Services) reports that an agency may provide any or all of the following programs: family group conferencing; victim/offender mediation/reconciliation; healing or justice circles; informal restorative practices; and individual counseling.

Yukon Territory reports that the RJ program options (adults) vary across the Territory, depending on the First Nations service carrier, although the bulk of the RJ work is reported to centre around diversion. Other RJ processes offered include sentencing circles, support circles, community conferencing, s.84 release plans and Gladue reports.

***Stage of criminal justice process:***

Most jurisdictions indicate that RJ processes are available at all stages of the criminal justice process, but by far the majority of referrals are made at the police and

Crown levels. In some jurisdictions, post-conviction referrals to RJ programs can be made. For example, the Restorative Resolutions program in Winnipeg (a partnership of Manitoba Justice and the John Howard Society of Winnipeg) provides a restorative approach to convicted adult offenders facing a sentence of incarceration of six months or more. In British Columbia, the Fraser Region Community Justice Initiatives Association provides mediation services for victims and offenders impacted by violent and other serious crime at the post-incarceration stage. In many provinces, the *Circles of Support and Accountability* program provided an opportunity for high risk sex offenders, released to the community at the end of a period of incarceration to participate in a community-based reintegration program based on principles of restorative justice.<sup>26</sup>

***Characteristics of offence and offender:*** (excluded offences)

The majority of cases handled involve relatively minor offences. For example, offences handled most frequently by British Columbia's provincially funded Community Accountability Programs (CAPs) are theft, mischief/trespass and common assault. The majority of these cases (71% of cases in 2012/13) are referred by police at the pre-charge level. Some CAPs enter into a Memorandum of Understanding with Crown offices and can thereby take referrals for more serious cases post-charge from Crowns.

In Alberta, no provincial guidelines are provided regarding the types of offences that may be referred to RJ programs pre-charge for young offenders (i.e. extrajudicial measures referrals are at the discretion of the police). However a list of excluded offences is provided for the post-charge Sanctions program (i.e. crimes of violence or attempted violence (except for simple non-domestic assaults), break and enter into a dwelling house, perjury, driving offences and drug offences (except simple possession of marijuana).including domestic violence/sexual offences). These same restrictions apply in the adult alternative measures program. The Province does not issue program guidelines (including offence types) for adult RJ programs, as RJ programs are seen to be community-driven. However, funding would generally not be provided to programs handling sex offences and domestic violence cases. No offence guidelines are provided for post-conviction referrals by the judiciary.

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<sup>26</sup> note on the termination of funding for the program

In Saskatchewan the list of excluded offences is as follows:

- incidents involving the use of or threatened use of a weapon where the Crown proceeds by Indictment;
- any offence involving the use of or threatened use of bladed weapons, firearms, or any restricted or prohibited weapons;
- offences involving violence against any person where the Crown proceeds by Indictment;
- offences involving sexual violence against children or the sexual exploitation of children (including sexual assault, sexual interference, luring, child pornography and procurement);
- offences involving spousal/partner violence;
- offences involving a sexual assault where the Crown proceeds by Indictment;
- perjury;
- *Criminal Code* driving offences in which drugs or alcohol are a contributing factor or in which the offender was driving while disqualified;
- federal offences other than *Criminal Code* offences (the availability of alternative measures and extrajudicial sanctions regarding these offences is determined by the federal Department of Justice.)

In Manitoba, community justice committees handle primarily minor offences, although more serious cases may be handled in the North due to the lack of other available resources. In addition, as noted above, the Restorative Resolutions program handles post-conviction cases for adult offenders who would otherwise be facing a sentence of incarceration of more than six months.

In Ontario extrajudicial measures (pre-charge) are presumed adequate if the offence is not violent and a young person has not been previously found guilty. Policy states that they should also be used if they are adequate even if the young person has been previously found guilty or participated in EJM. The Ontario Ministry of the Attorney General provides guidelines for Crown Attorneys regarding extrajudicial sanctions (post-charge). Class 1 offences are presumptively available; Class 2 offences are at Crown discretion and Class 3 offences (offences causing death or serious bodily harm; dangerous or impaired driving causing bodily harm; firearms; kidnapping; child abuse; child pornography; sexual offences; drink/driving offences; spouse/partner offences) are not available. Ontario's Crown guidelines are currently under review.

In the Yukon, there are no territory-wide guidelines in order to allow for flexibility to respond to unique circumstances of individual cases.

The majority of RJ programs do not accept cases of domestic violence or sexual assault. For example, in British Columbia, CAPs cannot accept these so-called 'power-based' offences<sup>27</sup>. Although Alberta does not provide program guidelines for pre-charge referrals to RJ programs, the Province generally refrains from funding programs that handle DV/SA cases. Crimes of violence or attempted violence (except for simple non-domestic assaults) are not eligible for referral to the Alberta extrajudicial sanctions program for youth. In Saskatchewan, in special circumstances the Crown will refer a spousal abuse case to an RJ program, but this is reportedly a rare occurrence. The stated policy of Manitoba Justice is not to refer (pre-/post-charge) cases of domestic violence or sexual assault to RJ programs. However, it is reported that matters may be handled differently in the North where a judge may ask a community justice committee to deal with such cases. Ontario (youth) sexual offences and spousal/partner violence cases may not be referred to an extrajudicial sanctions program.

***Program delivery mechanism:***

Almost uniformly, RJ programs are delivered by community justice committees or NGOs. In the case of NGOs, programs are often provided by paid staff, but services provided by community justice committees are most often delivered by volunteers.

In the Yukon Territory, programs are provided by First Nations government bodies.

In BC, RJ programs (Community Accountability Programs) are provided by NGOs and grass-roots community groups, 36% of which are volunteer-run with no paid staff.

In Alberta, RJ programs for youth are delivered by 131 Youth Justice Committees of volunteers. Where no YJCs exist, the RJ program is administered by probation officers. A number of NGOs provide RJ programming for youth (e.g. John Howard RAFT program), but although YJCs may refer cases to the NGOs, they receive no direct

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<sup>27</sup> It is interesting that the BC Crown Guidelines specify that alternative measures may be considered in certain circumstances for domestic violence offences [www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/sp01-SpousalViolence.pdf](http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/sp01-SpousalViolence.pdf)

provincial funding as YJCs. RJ programs for adults are delivered by NGOs (including the John Howard Society, Mediation and Restorative Justice Centre).

In Saskatchewan, programs are delivered by community agencies (e.g. John Howard Society, Tribal Councils, etc.) under contract to the Saskatchewan Ministry of Justice. In remote areas, individuals may be contracted on a fee-for-service basis to provide RJ programs. Due to the extensive network of funded, community-based agencies, there are almost no police-led RJ programs. The police role is primarily as a referral agent, but there is a significant use of police cautions and informal diversion. Some faith groups provide RJ programs, but the Province does not provide funding to them.

In Manitoba, programs are provided by NGOs: volunteers, community justice committees and community agencies (volunteers and paid professionals). There are 45 community justice committees in Manitoba: five serve youth only and the other forty serve youth and adults.

In Ontario RJ programs are provided by community-based agencies.

***Role of the governmental authority:***

In most cases the provincial authority sets standards for program delivery and provides some funding, although the extent of the provincial role varies considerably among the jurisdictions.

In the Yukon, the territorial government provides agency funding, training, monitoring of RJ activity and coordination among agencies.

In BC the Province provides program guidelines but does not issue program standards. The government authority requires statistical reports, but does not 'monitor' RJ program activity.

In Alberta, the Province intentionally issues no program standards for adult RJ programs, with the understanding that RJ should be a community-driven process. The province requires annual reports from agencies receiving Alberta Community Restorative

Justice grants for the delivery of adult RJ programs, but ongoing monitoring is not provided by provincial staff. The Province does set standards and issues a policy manual for the extrajudicial Sanctions program for youth. The program is actively monitored by the Province, with probation staff serving as the focal point. The Province is actively involved in youth justice committee training.

In Saskatchewan, the Province sets standards and monitors the performance of contracted agencies. The Province employs two program managers who work intensively with the RJ agencies. The Province plays an active role in delivering training to the agencies.

In Manitoba, the Province provides a policy guide for the community justice committees and contracted agencies. In the Interlake District, the probation officer serves as the focal point for RJ referrals.

In Manitoba, community justice committees must be designated by the Minister. They are provided with a policy guide outlining roles and responsibilities for CJsCs and contracted agencies. Contracted agencies are required to submit an audited financial report at year end and programs are monitored by the Province via quarterly reports. Probation officers sit on some CJsCs but the Department is taking steps to lessen the reliance of the CJsCs on probation officers in order that CJsCs may have more of a grass-roots orientation. The Province plays a unique role in case processing in the Interlake District (north of Winnipeg). The Crown diverts cases to a focal point within the Community Justice Branch of the department of Justice, who then directs cases to the appropriate CJC. The Restorative Resolutions program is a partnership between Manitoba Justice and the John Howard Society of Manitoba. Five probation officers (provincial employees) staff the program which operates out of the JHS offices. JHS has input into the selection of the program director but not the probation officers.

In Ontario (youth), service contracts set out requirements for service delivery, budget and required quarterly reporting. The Ministry offers some training.

***Funding:***

Jurisdictional funding contributions vary widely across the country.



In British Columbia (2012-13), the Province provided 5% (\$110,000) of the total budget (\$2.1M) for Community Accountability Programs (program funding to a maximum of \$2500/group/year) plus in-kind contributions of \$365,162. Agencies receive funding from other sources, such as municipal and federal governments, United Way, etc.

In Alberta, the Province provides a total of \$350,000 to youth justice committees for training, coordination, volunteer appreciation, etc. No funding is provided for program operation. For the adult RJ program, the Province provides Community Restorative Justice grants of up to \$50,000/year for up to 3 years for a total of \$360,000/year for initiatives demonstrating "innovative, promising or proven practices". Grants to 13 agencies were provided in 2013-14; e.g. John Howard Society (Calgary and Medicine Hat), Alberta RJ Association, Mediation and Restorative Justice Centre).

In Saskatchewan, the Province provided \$5.4M (2014/15) to community agencies that offer restorative justice services, with an additional \$500,000/year for provincial salary and administrative costs.

Manitoba provides a \$200 honorarium to each community justice committee per year with eligibility for an additional \$800 for training, etc. The Province contributes \$76,000/year to the John Howard Society for the Restorative Resolutions program. In addition, the Province contributes some core funding to Mediation Services, the Aboriginal NGO in Winnipeg and Westman Mediation (John Howard Society Brandon).

The Ontario Ministry of Children and Youth Services funded seven RJ programs province-wide (contracted through decentralized regional offices).

***Caseload trends:***

Many jurisdictions do not maintain comprehensive statistics of participation in programs provided by community justice agencies and it is therefore not possible to present a coherent picture of RJ program participation. British Columbia reports that caseloads have been fairly constant with a gradual increase in more serious cases

(between 2007 and 2012 total number of cases ranged between 1350-1600). Alberta reports a decline in Sanctions cases for youth with a modest increase in more serious cases. For adult cases, the statistics reflect caseloads for funded agencies only, with a 35% increase in referrals from 2008-2011 (200 to 270). No change in the seriousness of cases was reported. In Saskatchewan, recent statistics are not available, but the number of cases is typically in the 4000-5000 cases/year range with an estimated decrease in recent years. No increase in the seriousness of cases was reported, although Saskatchewan notes that assault cases have always figured prominently (one-third of cases). Manitoba reports no solid trend in caseload. Ontario reports a general decline in referrals.

***Participation of victims:***

The majority of the jurisdictions reported difficulties in securing victim participation in RJ processes. However, BC and Alberta (youth) reported anecdotally some increase in victim involvement.

***Key successes:***

Yukon Territory (adult programs) identifies the following successes:

- Collaboration - notable examples in the past two years include the 2014 National Joint Committee RJ Symposium, creation of the Yukon RJ Steering Committee, multi-party committee on Gladue Reports
- Successful launch of back to the land treatment options (Jackson Lake Healing Camp)
- Teslin Tlingit Council drawing down their Administration of Justice Agreement to create the Peacemaker Court

British Columbia notes that the skill sets of Community Accountability Programs have expanded beyond the basic skills addressed in RCMP training (community justice forums) to include more advanced skills required in order to handle more complex cases. This growing expertise of CAPs reportedly has resulted in greater respect and acceptance by police agencies.

Alberta (adult) reports that the establishment of the Alberta Restorative Justice Association has been a major success. The need for such a body was based on an acknowledgment of the lack of coordination among players active in RJ and the dysfunctional dynamics between government and community RJ programs. In 2005

Mediation and Restorative Justice Centre (MRJC) received a grant from the provincial Department of Justice and Solicitor General to conduct a review; a symposium of government and community was held in 2006 to review the results; and in 2008 the ARJA was established as a partnership between government and community. At the time, 26 RJ service providers were identified. The Province is an associate member and provides significant funding to the organization. The Association's mandate includes the following:

- effective provincial organization to represent collective voice for RJ practitioners in Alberta
- build relationships within the RJ community at the provincial, national and international levels
- develop practice standards and principles for best practices in RJ

Alberta (youth) reports that training programs are considered to be a great success and that there has been considerable 'buy-in' to the RJ process by both recent and long-serving volunteers.

Saskatchewan identifies as a key success the high number of referrals to the program and note that they were the first province to accept adult and youth cases as well as assault cases. The extensive training programs offered to community agencies is also identified as is the presence of RJ program managers (Saskatchewan Justice employees) in communities to provide assistance and support to the agencies (through networking and resolving problems at an early stage).

Manitoba identifies as a key success the passage of the *Restorative Justice Act* (c.R119.6 CCSM) in June 2014. The legislation, recently proclaimed, calls for the establishment of an RJ Advisory Committee. Manitoba notes that there has been increased collaboration among service providers in recognition of the need for the involvement of multiple disciplines to address complex community problems.

***Key challenges:***

A number of jurisdictions point to the need for more training - of criminal justice staff (where high turnover in some areas results in the need to repeatedly inform

personnel about RJ programs) and of community agency volunteers and staff who are delivering the programs.

Jurisdictions also noted that funding continues to be a major issue. In some areas, low wages paid to community agency staff has resulted in high turnover rates. Some jurisdictions indicated that their capacity to set policy and provide strategic direction is hampered by the limited funding they can provide to community agencies delivering RJ programs.

A number of jurisdictions expressed concern regarding the relatively low level of victim participation in RJ processes and are interested in developing strategies to increase that involvement.

Some jurisdictions pointed to the need to develop a greater comfort level generally across the jurisdiction with the use of RJ processes. In some areas, this was elaborated as a need for RJ service providers to develop stronger relationships with key criminal justice system personnel and with other community-based agencies.

The lack of data was cited as a problem by virtually all jurisdictions. Some called for the development of a stronger research and evaluation capacity.

The need to develop more culturally appropriate programming was identified by some jurisdictions

***Frontiers:***

Most jurisdictions point to the significant expansion in the use of RJ processes in schools over the past few years. The Human Rights Commissions in a number of jurisdictions have incorporated RJ processes. Many jurisdictions permit the referral of environmental cases, hunting, fishing and wildlife offences to community-based RJ programs.

Some provinces note that RJ processes are routinely used in family law cases. Community-based agencies in some jurisdictions (BC, Saskatchewan, Alberta, Manitoba ) handle cases involving neighbourhood disputes/community conflict resolution (non-criminal).

In terms of future directions, a number of jurisdictions identified the hope that the use of RJ processes in schools would be expanded. Some expressed the desire for increased of RJ programs at the post-conviction levels of the criminal justice process, as most referrals now take place at the police and Crown pre- and post-charge entry points.

Both Alberta and Manitoba identified the important role of the Restorative Justice Association in those jurisdictions: Alberta because of the work that has been accomplished by the ARJA in recent years; and Manitoba, because of the anticipated impact the newly created RJAM could have as a united voice for RJ groups and as a focal point for information regarding RJ programs in that province.

### ***Aboriginal Justice Initiatives***

The Department of Justice, through its Aboriginal Justice Strategy (AJS), supports community-based justice programs in partnership with Aboriginal communities, cost-shared with provincial and territorial governments. First Nations restorative justice programs for youth and adults are eligible for funding under this program. The AJS currently provides funding to 275 community-based programs serving 800 communities.

***Saskatchewan*** reports that RJ services are provided in 69/72 First Nations communities in that province. Programs are provided by First Nation, Tribal Council or Metis organizations and are subject to the same provincial guidelines as non-Aboriginal programs. Saskatchewan reports regular, ongoing communication/collaboration between Aboriginal and non-Aboriginal agencies in many communities and regions. The relationship between Ministry staff and Aboriginal Justice Strategy personnel in province is reported to be excellent. Coordinators in some communities convene regular regional meetings attended by police, Crowns, service providers, other relevant agencies. Agencies delivering Aboriginal and non-Aboriginal programs exchange information,

maintain ongoing contact. The Ministry believes its partnership model has been successful and attributes this to a large extent to the collaborative, partnership approach taken in all aspects of this work. For example, the 2013 review and revision of the alternative measures/EJS policies included meetings with agency staff, police, Crown prosecutors and others to gain their input, and a small focus group that included community-based agencies participated in revising the alternative measures/EJS manual.

In *British Columbia* the AJS provides support to over 30 community-based justice programs operating in Aboriginal communities. It is reported that collaborative efforts between Aboriginal and non-Aboriginal RJ programs are strong, particularly regarding training initiatives.

*Alberta* (youth) reports that 20-30% of the total of 131 youth justice committees (YJCs) exist in First Nations communities. Sanctions programs delivered by YJCs in First Nations communities are governed by the same standards as all programs, however the FN YJCs typically are more involved in reintegration circles or sentencing circles convened by judges. In these cases, Sanctions program policies and procedures do not apply.

The degree of communication and collaboration between Aboriginal and non-Aboriginal programs reportedly varies. In some instances it is very strong; e.g. in Calgary there is a specific committee dealing with the response to FN offenders - the Calgary Aboriginal Youth Justice committee. This committee works closely with the Calgary Youth Justice Society which is the umbrella organization for 25 neighbourhood based YJCs in the city. This high degree of communication/collaboration would also be the case in many rural areas, but may not be so strong in other areas.

In *Alberta*, coverage of RJ programs for adults in First Nations communities appears is reported to be an issue as only a few organizations are funded adequately to handle the demand. Aboriginal organizations are represented strongly in the Alberta Restorative Justice Association, which provides a forum for collaboration and communication.

In *Manitoba*, the Province contracts directly with seven Aboriginal groups. Although in the past trilateral agreements (province, federal government, Aboriginal community) were negotiated, agreements are now bilateral, with the federal and provincial authorities negotiating separate MOUs with the Aboriginal communities.

The Manitoba Keewatinowi Okinakanak (MKO) organization, originating in 1997, works with community justice committees in 16 northern communities, handling pre- and post-charge referrals. The organization is staffed by 16 community justice workers and 3 administrative staff. The Hollow Water Community Holistic Circle Healing Program provides RJ services in dealing with intergenerational effects of domestic violence and sexual assault. The St. Theresa Tribal Court System Program provides RJ programming in that community. These programs offer services to adults and youth, both Aboriginal and non-Aboriginal in the communities they serve. Communication and collaboration among Aboriginal and non-Aboriginal RJ programs are reported to be excellent.

In *Ontario*, the Ministry of Children and Youth reported that in 2013-14, 3 Aboriginal RJ programs served 330 Aboriginal youth; 9 Extrajudicial Measures programs served 369 Aboriginal youth; and 3 Aboriginal Extrajudicial Sanctions programs served 45 Aboriginal youth. The Province contracts with various transfer payments agencies for the delivery of RJ programs as follows: RJ conferencing, family group conferencing, victim-offender mediation, healing/justice circles and informal restorative practices. The Ministry reports there are some opportunities for local negotiations with service providers to meet regional needs. A number of RJ programs incorporate formalized linkages between Aboriginal communities and Ministry Restorative Justice sites and opportunities for communication/collaboration are created through formalized partnerships between a range of community-based organizations.

**Appendix**  
**Nova Scotia Restorative Justice Research Project**

The Atlantic Institute of Criminology, in collaboration with the Nova Scotia Department of Justice (Public Safety Division) is undertaking an assessment of the current status and future directions of the NS Restorative Justice Program. As part of the review we are hoping to gather some information regarding RJ programs in other Canadian jurisdictions.

The following is a list of questions we would like to discuss with you. The initial questions relate to non-Aboriginal restorative justice programs, with some additional questions addressing Aboriginal programs.

We expect it may be more convenient for you to provide your responses via a telephone conversation rather than in written form. Could you suggest some possible times to conduct a telephone interview? I thank you in advance for your cooperation.

***Non-Aboriginal restorative justice programs:***

1. What types of restorative justice (RJ) program options (e.g. healing circles, community conferencing, victim-offender mediation) are provided in your province?
2. Are RJ program options available to adults as well as young persons?
3. At what stage of the criminal justice process are RJ program options available (e.g. pre-charge, post-charge, post-conviction)?
4. Do RJ program guidelines exclude specific offence types (e.g. sex offences or other violent offences)?
5. Are RJ programs offered uniformly throughout your province or restricted to certain geographic locations?
6. Are RJ programs operated by non-governmental organizations, by the Province, or a combination of both?
7. What funding sources provide support to restorative justice programs in your jurisdiction (e.g. federal, provincial, municipal, other)?
8. What role does the Province play in the operation of RJ programs: e.g. setting policy/procedures/standards; providing training; direct program operation; monitoring; funding?
9. In what year were RJ program options first provided?



10. What have been the caseload trends in recent years? Have there been changes in the nature of cases (e.g. more acceptance of more serious offences; more referrals and admissions of repeat offenders to the programs)? Has there been an increase or decrease in the proportion of victims participating in RJ processes?
11. Has there been an expansion of the use of RJ processes beyond the criminal justice sphere (e.g. to family/civil justice, to schools, other institutions)?
12. What would you characterize as the key successes of RJ programs in your jurisdiction over the past several years?
13. What key obstacles have been encountered?
14. What are your thoughts regarding the future directions of RJ programs in your province? How would you characterize your hopes and expectations in this regard?
15. Are you familiar with the Nova Scotia Restorative Justice Program? If so, what are your views regarding this program?
16. What do you see as the role of the FPT Working Group on Restorative Justice?

***Aboriginal restorative justice programs:***

17. Are there significant Aboriginal RJ programs in your jurisdiction? Are they administered locally/provincially?
18. What is the scope of these programs in terms of age (adults/youths); level of seriousness of offence; characteristics of offenders (first time/repeat offenders)?
19. What is the extent of communication/collaboration between Aboriginal and non-Aboriginal RJ programs? How do they impact on one another?
20. How similar/different are the Aboriginal and non-Aboriginal programs in their evolution over time with respect to funding, caseload, types of offenders and offences?

## **Appendix C**

### **Moratorium on the use of restorative justice for cases of spousal/partner violence and sex offences**

Throughout the 1970s, spurred by grassroots women's organizations who established emergency shelters for female victims of domestic violence, there was growing public awareness regarding the problem of violence against women and increasing concern about the perceived inadequate response of the justice system to this serious social issue. As a result, many Canadian jurisdictions, including Nova Scotia, implemented 'pro-charge/pro-prosecution' policies for police and Crown attorneys to follow in these cases.

When the NSRJ program was being developed as a system-wide model that would permit referral to RJ processes at each point in the criminal justice process, it was considered that referral of domestic violence cases at the pre-charge and pre-prosecution stages would be inconsistent with the 1995 Framework for Action Against Family Violence<sup>28</sup>. Diversion of such cases, it was thought, would be viewed as an inappropriately lenient response to perpetrators of family violence.

The *Program Authorization*<sup>29</sup> and *RJ Protocol*<sup>30</sup> establish four offence levels which determine at what stage of the criminal justice process an offence may be referred to an RJ process. According to the protocol, the most serious offences (Level 4), which include indictable sex offences may only be referred at the post-sentence (corrections) entry point. Level 3 offences can only be referred at the court entry point (post-conviction/pre-sentence stage) or at the corrections entry point (post-sentence). Included in Level 3 offences are summary conviction sex offences and spousal/partner violence offences. From the outset, it was determined that these cases (sex offences and domestic violence) should not be referred at the pre-conviction stage.

Soon after the province-wide implementation of the NSRJ program for youth, concerns expressed by a coalition of women's equality-seeking organizations regarding

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<sup>28</sup> Nova Scotia Department of Justice (1995) Framework for Action Against Family Violence. Halifax, NS

<sup>29</sup> Nova Scotia Department of Justice (1998) *Restorative Justice: A Program for Nova Scotia*. Halifax, NS

<sup>30</sup> Nova Scotia Department of Justice (2007) *Restorative Justice Program Protocol (rev)*. Halifax, NS.

the use of RJ at any stage of the justice process for offences of violence against women led to a moratorium which continues to this day.

Evidence is clear that charge rates increased dramatically following the institution of the pro-charge/pro-prosecution policies and there is a general sense that violence against women is viewed as a serious matter by criminal justice personnel. However, after two decades of experience with the policies and acknowledgement of the progress that has been made, there is evidence to suggest that the traditional criminal justice system may be ill-equipped to deal with domestic violence cases. The relationship between victim and perpetrator creates a layer of complexity to the adversarial nature of the justice system whereby the victim and the State may not share the same goals. The frequently collateral issue of family support can be negatively affected for a victim if a perpetrator is removed from the home. Many victims who are committed to an ongoing relationship with the perpetrator express the sole wish for the violence to stop - for treatment, not punishment.

Criminal justice personnel interviewed for this report expressed frustration with the impotence of the current system. Crown attorneys state that, too often, cases fail because victims are unwilling to provide evidence. Defence lawyers are inclined to seek adjournments, recognizing that greater elapsed time prior to trial results in more withdrawal of charges due to lack of evidence. Police implement the pro-charge policies with reluctance in cases they have seen repeatedly fail. The majority of the interviewees expressed the view that many 'low-end' domestic violence cases<sup>31</sup> could be better handled through a restorative justice process (a view that has been advanced by many CJS role players for more than a decade.).

### ***Concerns re the use of RJ***

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<sup>31</sup> The definition of cases as 'low end' is anything but clear. Some researchers maintain that "many cases and incidents on the spectrum of what constitutes violence against women are not at the extreme end of the continuum, and instead are on-time occurrences or relatively isolated events". Randall, M. (2013) 'Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert', *Dalhousie Law Review*, 36(2), 477. However, others assert "an abundance of research consistently shows family violence cases typically involve a long-standing chronic pattern of behaviour rather than a single incident." Bazemore, G, and Earle, T.H (2002) 'Balance in the Response to Family Violence: Challenging Restorative Principles' in H. Strang and J. Braithwaite (eds). *Restorative Justice and Family Violence*, Cambridge University Press, p.157

There has been intense controversy regarding the use of RJ in cases of gendered violence.

Concerns centre around a number of aspects of the RJ process:

- that women's safety cannot be guaranteed; that they may be subjected to intimidation and re-victimization
- that women may not receive adequate support throughout the process
- that women may feel pressured into participation
- that perpetrators may not be held accountable
- that opportunities for perpetrators to change their behaviour may not be provided
- that informal RJ processes preclude the public denunciation of gender violence
- that RJ facilitators may not possess the skills needed to perform effectively

#### *Potential advantages*

Proponents of the RJ approach in gendered violence cases point to a number of advantages: e.g.

- victims have the opportunity to participate, tell their story and be empowered by confronting the offender and having a role in decision-making regarding appropriate consequences for the offender;
- the victim's account can be validated, acknowledging that she is not to blame;
- the process can be tailored to victims' needs and capacities, and because it is flexible and less formal, it may be less threatening;
- opportunity for offenders to take responsibility for their actions; and
- the process can address violence between those who want to continue their relationship, increasing opportunities for relationships to be repaired, if that is what is desired.<sup>32</sup>

The issue of the use of RJ processes in cases of domestic violence was considered by a federal-provincial-territorial Working Group in 2003, which offered the following conclusions after examining the reported advantages and concerns:

“The majority of the Working Group recommends against the use of alternative justice processes in spousal abuse cases *except* in the following circumstances:

- i. the referral to the alternative justice process is made post-charge on Crown approval;
- ii. trained and qualified personnel, using validated risk assessment tools, determine that the case is not high-risk (in other words, if after a consideration of a variety of factors, including any history of violence, threats of serious violence, prior breaches of protective court orders, the use or presence of weapons, employment problems, substance abuse and suicide threats, the offender is assessed to be at low risk of re-offending and therefore of low risk of harm to the victim's safety, as well as that of her children and other dependents, both throughout and after the process);

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<sup>32</sup> Daly, K. and Stubbs, J. (2006) Feminist Engagement with Restorative Justice. *Theoretical Criminology* 10(1) 9-28

- iii. the alternative justice process offers the same or greater measure of protection of the victim's safety as does the traditional criminal justice process;
- iv. the victim is fully informed of the proposed alternative justice process and her wishes are taken into consideration. In addition, victim consent is required and victim support must be provided where the victim will be asked to participate in the alternative justice process;
- v. the offender fully accepts responsibility for his action;
- vi. the alternative justice process is part of a program approved by the Attorney General for the purpose of providing alternative justice responses to spousal abuse and is overseen by the Attorney General or the court;
- vii. the alternative justice process is transparent (that is, it maintains formal records of the actions taken by those engaged in the process) and it is undertaken in a timely and reasonable manner;
- viii. the alternative justice process has the capacity to deal with spousal abuse cases and is delivered and supervised by persons possessing the requisite skill, training and capacity, including the ability to recognize and address any power imbalances, as well as cultural differences; and
- ix. the possibility of criminal conviction and sentence remains if the process fails.

The Working Group also recommends that approval of the use of alternative justice processes in spousal abuse cases needs to be supported by the following:

- the development and delivery of ongoing training and education for those involved in conducting risk assessment and the delivery and supervision of the alternative justice processes and programs, including criminal justice personnel;
- the development and application of validated risk assessment tools for spousal abuse cases; and
- ongoing assessment and evaluation of alternative justice responses, including of those used in spousal abuse cases, against new evidence-based research on the effectiveness of these processes, their ability to ensure the safety of the victim and her children, and their ability to reduce the likelihood of re-offending.<sup>33</sup>

### ***The way forward***

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<sup>33</sup> Justice Canada (2003) Final Report of the Ad Hoc Federal-provincial-territorial Working Group Reviewing Spousal Abuse Policies and Legislation. p.32

There appears to be a consensus among criminal justice personnel interviewed that the moratorium should be lifted for 'low-end' domestic violence cases<sup>34</sup>. Views regarding the moratorium also appear to have moderated among at least some members of the women's equality seeking organizations in that there is a willingness to explore the use of RJ processes for some domestic violence cases. It would be incorrect to say there is unanimity amongst this group and it is clear that there remains considerable skepticism regarding the openness of government officials to work in partnership with community organizations to develop a strategy for the use of RJ processes in cases of gendered violence.

Over the past year the public has become more sensitized to the use of restorative approaches in gender-based conflict through publicity accompanying the Dalhousie dentistry scandal (even though the behaviour of the dentistry students was not determined to be criminal and did not involve acts of physical violence). The reported 'success' of the restorative justice process could gender-based conflict through publicity accompanying the Dalhousie dentistry scandal (even though the behaviour of the dentistry students was not determined to be criminal and did not involve acts of physical violence). The reported 'success' of the restorative justice process could be viewed as opening the door for considering the potential of such processes for other gender-based conflicts, including criminal matters such as 'low-end' domestic violence cases.

An external review of the process used by Dalhousie University to address the matter concluded that "the RJ process benefited many of the participating dental students. They developed a deeper and more sophisticated understanding of sexism, misogyny and homophobia"<sup>35</sup>. However, the review team went on to state that it did "not support a departure from the province-wide moratorium on the use of RJ in cases of sexual abuse and intimate partner violence"<sup>36</sup> in the absence of consideration of the issues which led to

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<sup>34</sup> the view is not as strongly shared regarding cases of sexual assault. Some reasons given include the lack of victim support services in many areas of the province. See FN3 re definitional issues relating to the term 'low-end'.

<sup>35</sup> Backhouse, C., McRae, D. and Iyer, N. (2015) *Report of the Task Force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry*. Halifax, NS. p.67

<sup>36</sup> *ibid*, p. 67

the imposition of the moratorium. "Fuller examination is essential, along with respectful consultation with the violence-against-women organizations and those who lobbied for the moratorium on RJ"<sup>37</sup>.

As noted in the report of the FPT Working Group, a number of important conditions **must be met** before cases of domestic violence could be considered for referral to RJ:

- a clear formulation of the type of 'low-end' cases<sup>38</sup> that would be considered for referral at the post-charge, pre-conviction level<sup>39</sup>
- implementation of validated risk assessment tools to be used to determine eligibility
- program protocols governing all aspects of case processing
- appropriate training for agencies involved in risk assessment, delivery and supervision of the RJ processes
- adequate support for victims throughout the process
- ongoing assessment and evaluation of the process

The framework for such an undertaking must be developed as a partnership between government, criminal justice personnel and community groups with expertise in responding to gendered violence<sup>40</sup>. It is our understanding that a number of these groups have been meeting in recent years to consider issues to be addressed in the event that some domestic violence cases are referred to RJ processes.

Each of the RJ agencies expressed a willingness to accept these referrals, but was adamant that this must not be contemplated unless a number of conditions were met. All acknowledged the need for training to equip staff and volunteers with the knowledge and tools to handle these complex matters. Agency directors also identified the need to access support services in the community for all parties involved in the RJ process.

It is evident that if this step were contemplated, most certainly it should start with a pilot project. Consideration should be given to communities where there is a strong

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<sup>37</sup> *ibid*, p.68

<sup>38</sup> the issue of conflation (where the seriousness of some cases is under-rated) and inflation (where all cases are assessed as 'serious') must be addressed

<sup>39</sup> changes would be required to the *Program Authorization* and *RJ Protocol* to permit referral of some DV cases at Level 2

<sup>40</sup> These would include transition houses, women's centres and men's intervention programs.

partnership with the various groups referenced above. Some consideration should also be given to a pilot in youth court (where the number of cases involving violence among young people in relationships is reported to be significant).

It must be recognized that additional government resources will be required. At this point it is unclear what additional volume of cases might be expected, but it is unlikely that these could be handled by the RJ agencies with current staffing levels. Funding for training will be required, as well as resources for community agencies (e.g. transition houses, women's centres, men's intervention programs) who will be called upon to provide training and support programs.