Establishing Alternative Measures Programs: Native Peoples and Section 4 of the *Young Offenders Act*

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Native peoples across Canada have increasingly voiced their desire to establish self-justice ideals and community correctional programs specific to their individual and communal needs. The perceived inabilities of the formal criminal justice system and subsequent youth justice legislation have added substantial merit to such demands. Section 4 of the Young Offenders Act allows for the use of alternative measures as one means of dealing with wayward youth. The potential exists for various Native groups to establish meaningful alternative measures programs specific to their troubled children. However, such program implementation must encompass specific criteria that may assist in assuring "success."

D'un bout à l'autre du Canada, les peuples autochtones expriment de plus en plus fortement leur désir d'établir leurs idéaux d'autonomie en matière de justice et de programmes correctionnels communautaires spécifiques à leurs besoins individuels et communs. La perception de l'impuissance du système judiciaire criminel formel et les récentes lois concernant la criminalité juvénile ont ajouté considérablement de poids à ces revendications. La Section 4 de l'acte sur les jeunes contrevenants permet l'utilisation de mesures alternatives comme solution au problème de la délinquance juvénile. La possibilité existe pour divers groupes autochtones d'établir des programmes de mesures significatives spécifiques aux besoins de leurs enfants perturbés. Cependant la réalisation de tels programmes doit inclure des critères spécifiques qui aideront à en faciliter le "succès" tout en jetant les fondements de ses débuts.

During the 1970s the concept of "diverting" youth from formal justice system measures began to gain momentum. Under youth legislation based on the Welfare Model, such as Canada's *Juvenile Delinquents Act* (JDA), the idea of avoiding the harmful stigmatization youth receive during the

court process was thought to be beneficial. Mainly through trial and error, various diversionary programs throughout Canada and the United States both prospered and faltered (Lundman, 1993). A progressive rise in youth and adult crime rates triggered a continental concern over the effectiveness of philosophies based on the Welfare Model and subsequently over the process of diversion itself. Public demands for a less lenient stance on criminal behaviour, coupled with concern for the legal rights of youth and philosophical debate over appropriate youth justice models, compelled Canada to revise its young offender legislation. This revision arguably reflects a Modified Justice Model approach instead of one based solely on Welfare Model philosophies (Corrado, Bala, Linden and LeBlanc, 1992).

Despite the philosophical shift and partial abandonment of diversionary programs during the late 1970s and early 1980s, the *Young Offenders Act* (YOA) does allow for the limited use of alternative measures that could be expanded in the near future. Accordingly, section 4 of the YOA lists guidelines for alternative measures programs. It is important to note, however, that diversion and alternative measures are two distinct approaches in addressing youth crime. Diversion refers to the process of steering mainly first-time offenders away from the court process, while alternative measures refers to options available during youth court dispositions. Though the YOA refers to alternative measures only, both will be discussed below.

There has been a rebirth of interest in alternative measures programs recently. Aboriginal groups have seen them as an initial step towards addressing demands for self-justice initiatives and increased autonomous control at the community level, and have seriously examined the possibility of creating alternative measures programs (Smith, 1993). Backed by research, personal experience and scholarly writings, various Native groups have pushed for the exclusion of their children at certain stages of the youth justice system. Supported by research, such as the Alberta and Manitoba justice inquiries, Native groups detail the hardships and perceived prejudicial treatment their young persons experience in formal youth justice systems. In addition, such reports illustrate that there appears to be a genuine lack of concern among provincial governments and key justice system personnel regarding Native alternative measures programs, since neither sufficient funds nor encouragement are provided (Cawsey, 1991; Hamilton and Sinclair, 1991). The result is that more Native youth are placed in custody, which further contributes to an already alarming Native custodial rate.

Even with keen desire, the problems of initiating alternative measures programs are numerous. For instance, any group, Native or non-Native, will usually find that, under the YOA, guidelines for implementation and inception are virtually non-existent. Furthermore, the legislation does not

provide concessions for different interest groups, nor clear directives on how to address appropriately the "special needs" of multi-problem youth (Leschied, Jaffe and Willis, 1991). The act simply lists criteria under which a young person can be considered for alternative measures; anything beyond that must be inferred. However, such ambiguity can be constructively used by Native groups to create alternative measures programs specific to both their youth and community needs. With such a "window of opportunity," the decision to attempt alternative measures programs may need to follow specific criteria that will assist in program inception, implementation and even "success."

The Need for Alternative Measures

Numerous arguments can be presented to outline why alternative measures are a necessary means of addressing some Native youth deviance. Three of the most persuasive are the belief in diversion for first-time offenders, the marked increase in custodial dispositions and the justice system's perceived inability to accommodate minority group youth effectively.

Giving Youth a Second Chance

Because children are not generally viewed as fully mature adults and have yet to completely attain the various stages of moral and cognitive development, there appears to be a continual willingness to give youth a "second chance" in hopes that their delinquent behaviour may subside. If youth can somehow be shown that criminal behaviour is damaging to themselves and those around them, perhaps their adverse behaviour will cease. Richard J. Lundman (1993) supports this reasoning in his depiction of what he calls various preadjudication programs that address youth crime by focusing on the individual. In so doing, individualized programs include the use of diversion for first-time offenders, routine probation as the first and most frequent sentencing alternative, and the expansion of community treatment initiatives that, it is hoped, assist offenders in improving social functioning. Lundman (1993) further illustrates that such preadjudication intervention is the more appropriate means of addressing youth crime, since previous attempts that reflected an "adult" orientation did little to help young offenders. Hence, the commitment to incarcerate youth as though they are adults arguably does little in assisting young persons to address their social, criminal and personal problems.

Increased Incarceration Rates

One of the forthright criticisms of the YOA is that it has contributed to an increase in custodial dispositions (Corrado et al., 1992). With the

legislation supposedly following the principle of least interference, Markwart (1992) asserts that it is confusing why incarceration has proliferated. Explanations usually centre on the fact that the YOA has no definitive guidelines or direct avenues that decision-makers and youth justice professionals can follow easily (Cawsey, 1992). Even further, the legislation primarily emphasizes the youth's offence rather than the situation from which the behaviour originated. This, in turn, creates a tendency for decision-makers to decline community or treatment dispositions and instead rely on punishment (Corrado, 1992; Greenberg, 1991; Leschied et al., 1988).

It has been documented that well over half of all youth court cases throughout Canada deal with property offences. This statistic is rather disconcerting when combined with the fact that, since the inception of the YOA, incarceration has dramatically increased—in effect it has become a means of dealing with property offenders (Markwart, 1992). In British Columbia, for example, the amount of incarcerated youth from the last JDA year (1983/84) to the third YOA year (1986/87) increased by 85 percent, even though adult committals decreased by 12 percent for the same time period. This total accounts for the effects of the UMA (uniform maximum age) by excluding all seventeen-year-old youth from the data (Markwart, 1992, p. 236). Similarly, admissions to custody centres for youth aged twelve to fifteen in southern Ontario for the same time period rose by 120 percent compared to committals under the JDA to Children's Aid Societies or training schools (Markwart, 1992, p. 289). This trend is fairly constant throughout the available data across the country. Furthermore, it is maintained that of all youth court cases heard in Canada in 1991, 25 percent resulted in some form of custody, though less than 20 percent dealt with violent offenders (Greenberg, 1991, p. 1). Although violent offences are slowly rising (currently around 13 percent of all youth crime) and seriously need to be addressed, the means of dealing with property offenders is really what encompasses the debates surrounding the expansion of alternative measures programs as a viable means of addressing such less serious and more frequent forms of juvenile criminality.

Manitoba and Alberta Justice Inquiries

The final argument concerning the need for alternative measures centres on the findings of the 1991 Aboriginal Justice Inquiry of Manitoba. The inquiry discovered that, in the province of Manitoba, Native youth account for about 70 percent of all young persons incarcerated within secure institutions. This is vastly disproportionate—Native peoples comprise (unofficially) about 14 percent of the entire provincial population (Hamilton

and Sinclair, 1991, p. 549). Citing the numerous accounts of previous hardships encountered by Native persons, it is argued that the province of Manitoba's youth justice system has changed little in its biased treatment of Native persons. Realizing this, two questions immediately present themselves: do Native youth account for more crime than non-Natives, and are the disproportionate numbers due to inherent prejudice and racism within the youth justice system itself?

In addressing these questions, Hamilton and Sinclair (1991) found that, in comparison to non-Native youth, Natives tend to have more charges laid against them; are less likely to benefit from legal representation because they often live in isolated northern communities and the closest defence lawyer may be one hundred to two hundred miles away; are more often detained before trial, are detained longer and are denied bail; and experience more delays before their cases are processed, though they are more likely to receive custodial dispositions (Hamilton and Sinclair, 1991, pp. 549-550). Arguably, these trends are not unique to the province of Manitoba and can be identified in some form throughout many Canadian provinces. A similarly conducted inquiry in the province of Alberta supports this position.

Concerned over the number of Native persons coming into contact with the criminal justice system, the government of Alberta commissioned a task force to examine its treatment of Aboriginal peoples. Realizing that the province's Native birth rate is twice that of the non-Native population, the Alberta government speculates that in the next eighteen years more Native youth will experience contact with the criminal justice system, and efforts have to be initiated immediately if proper services are to be made available. Though the inquiry did not specifically focus on Native youth, a large amount of anecdotal and statistical information on Native young offenders was obtained from the various community meetings and interviews conducted in youth detention centres. Similar to that in Manitoba, the inquiry found Native youth were over-represented in youth custodial facilities. For example, during 1989 about 1,450 Aboriginal youth received custodial dispositions and, on average, Native youth accounted for about 36 percent of the custodial population (Cawsey, 1991, pp. 8-57).

Equally disturbing is the number of Native youth who received sentenced dispositions in comparison to their non-Native counterparts. Between 1986 and 1989, sentenced admissions for Native young offenders increased by 18.2 percent while admissions for non-Native youth decreased by 8 percent. In 1989 specifically, 38.5 percent of Native youth were admitted to custodial centres in comparison to 21.4 percent of non-Natives (Cawsey, 1991, pp. 8-57). Such statistics illustrate that Native youth living in the province of Alberta have a greater chance of being sentenced to a custodial

disposition than their non-Native counterparts. By contrast, 93 percent of all youth participating in alternative measures programs were of non-Aboriginal descent (Cawsey, 1991, pp. 8-57).

Presented with this profile, the inquiry attempted to provide possible explanations for the disproportionate number of Native offenders within Alberta's youth justice system. It was found that the youth system had no apparent and/or identifiable philosophy or mandate to which all components of the system could comply. Furthermore, there were no integrated approaches for dealing with identifiable Aboriginal social, political, criminal or economic problems (Cawsey, 1991). The report further found that the criminal justice system was too centralized and formalistic and needed to "bring justice back" to the community through an integrated approach with Native self-justice ideals (Cawsey, 1991). The lack of communication between service providers and Aboriginal peoples was also deemed problematic, just as was the continual focus of those who work within the justice system to rely on incarceration instead of prevention (Cawsey, 1991).

The above provincial inquiries detail how Native young offenders are vastly over-represented within several youth justice systems compared to non-Natives. This then begs the question as to why alternative measures are not being used to process Native youth more efficiently. Can this help ease the financial burden minority group over-representation places on youth correctional systems? Perhaps the answer lies in the fact that Native communities themselves have to decide to initiate appropriate alternative measures programs that assist their troubled youth. It is within this framework that the YOA potentially allows for Native self-justice ideals to be achieved.

Section 4: Alternative Measures Programs

Section 4 of the YOA is unique in that it allows the youth court the option of processing adolescents by means of alternative measures. Perhaps a remnant of the previous Welfare Model based JDA, section 4 can be viewed as an attempt to afford youth "one last chance" before being processed in a more serious manner. Alternatively, section 4 can be viewed as simply "net widening" in that youth must enter alternative measures programs through the direction of justice system personnel. In this manner, the youth goes through some degree of formal processing and identification before an alternative measures program is granted.

Unfortunately, the process for using section 4 is somewhat subjective. Unlike the usual practice of placing first-time offenders in diversionary programs where ideally they can attain guidance and/or counselling, most

youth who are placed in alternative measures programs, such as wilderness camps, are repeat offenders who are seen by justice system personnel as not worthy of harsher dispositions like custody. These youth enter the programs knowing that, if their behaviour does not change, the next disposition received may be an "open" or "closed" custodial sentence. Though youth have to agree to participate in alternative measures and accept responsibility for their criminal charges, the decision for placement ultimately depends on youth justice system personnel. Despite the subjective nature of identification, section 4 has specific criteria for placement.

Section 4 clearly lists the criteria for assigning youth to alternative measures programs. It states that a young person alleged to have committed a criminal offence can proceed to an alternative measures program that is authorized by the attorney general only if:

- the program is appropriate to the youth and regards his or her needs and the interests of society
- the youth fully and freely agrees to participate in the program
- the youth is fully aware of his or her legal rights and before entering the program has conferred with counsel
- the youth accepts responsibility for the alleged offence
- there is sufficient evidence to otherwise proceed with prosecution of the offence
- the prosecution is not in any way barred by law.

From these criteria, alternative measures programs depend highly on youth co-operation and adhere strictly to procedures of due process, thereby ensuring no rights or freedoms are infringed. Despite such legal safeguards, the opportunity exists for Native groups to initiate programs that may assist their youth on a community-wide or individual level, be it within the framework of the youth system or totally autonomous, such as early intervention programs. However, as mentioned earlier, one problem is that the legislation provides little in the way of guidance as to how programs ought to be created. This has led to a situation where criminal justice authorities in various jurisdictions have discretionary control over what may be implemented under the guise of alternative measures programs (Simon, 1987). Furthermore, problems originate from the ambiguity of the legislation itself. Namely, conflicting principles within the legislation do not indicate whether the focus of programs should be addressing the "special needs" of youth or ensuring the protection of society (Corrado et al., 1992; Simon, 1987).

The Inherent Confusion of the YOA

In 1982, Bill C-61 (the *Young Offenders Act*) was enacted by the Canadian parliament, thereby unifying and standardizing all federal law pertaining to young offenders. Coming into effect in 1984, the YOA was heralded as a progressive and necessary reform in Canadian juvenile policy since it repealed the outdated Welfare Model philosophies of the former JDA (Leschied et al., 1991). Combining various principles of the Welfare, Justice and Crime Control Models of juvenile justice, a new mandate was established that youth justice system personnel were directed to achieve. Though the combination of youth justice models came under considerable criticism, proponents of the legislation claimed that youth crime was committed in various circumstances and therefore could not be addressed through one particular justice model (Bala, 1992). However, according to critics such as Markwart (1992, p. 33), the YOA's principles are damaging for policy makers and justice system personnel because the legislation does not definitively address youth crime; instead, it attempts to be "all things to all people." Support for Markwart's claim can be seen in an examination of the main principles found in section 3 of the legislation.

First Principle

The YOA follows tenets of the Justice and Crime Control Models in that young offenders are responsible and accountable for their behaviour. Though the legislation concedes that youth ought to be "accountable in a manner appropriate to their age and maturity," the principle arguably moves the legislation in a direction more resembling adult court proceedings (Hamilton and Sinclair, 1991, p. 554).

Second Principle

The second principle is very much oriented toward the Crime Control Model in that "Society has a right to protection from illegal behaviour" (Hamilton and Sinclair, 1991, p. 554). In addition, it is felt that society has the "responsibility to prevent criminal conduct by young people" (Hamilton and Sinclair, 1991, p. 554).

Third Principle

The third directive can be viewed as a limited return to Welfare Model principles. Here it is maintained that young people have "special needs" and those needs ought to be met. However, this should be done only in a manner such that the protection of society is not endangered. Such "special needs" include supervision, discipline and control combined with the possibility of guidance, assistance, alternative measures and support from family members.

However, the legislation also states that no such alternative measures must or have to be taken. In effect, this principle can be interpreted as a return to Welfare Model ideals, with a Crime Control Model qualifier conveniently attached (Hamilton and Sinclair, 1991).

Fourth Principle

The fourth principle is legally based in that young offenders are afforded the same rights and freedoms as adults. This includes due process of law, fair and equal treatment, and protection under the *Canadian Charter of Rights and Freedoms* (1982). These are important and fundamental rights within the Canadian legal context; however, they are arguably problematic as they signify a shift in youth court procedure toward more traditional criminal law, which may not be the most appropriate and effective manner for dealing with wayward children (Bala, 1992; Corrado, 1992; Hamilton and Sinclair, 1991; Pearson, 1991).

From this overview of the YOA's principles, it can be seen that the legislation creates a degree of uncertainty in how to deal with the often unique needs of various youth. According to Corrado (1992), the legislation attempts to address youth crime by applying confounding philosophies in a rather "blanket" fashion. In addition, the legislation employs excessive legal rights procedures, contributes to increased court back-logs, coincides with a marked increase in custodial dispositions and allows for the emergence of legal loop-holes that assist youth in avoiding sanctions, thereby diminishing responsibility for their actions (Corrado, 1992; Reid-MacNevin, 1991; Wilson, 1990; Corrado and Markwart, 1988). The YOA not only has philosophical and operational pitfalls, but also suffers from an inflexibility towards Native culture.

The YOA and Native Culture

Throughout the lengthy process of drafting and implementing the YOA, Native peoples were not included in the ensuing discussions. Not surprisingly, the legislation fails to accommodate the often unique aspects of Native culture. Since its introduction into Canadian juvenile justice, the legislation appears to have had the devastating effect of disproportionately removing large numbers of Native youth from their communities and placing them in custodial centres (Markwart, 1992). Aboriginal leaders have subsequently raised concerns about these custodial trends as well as other aspects of the current youth justice system's inapplicability to Native culture.

Arguably, the most pronounced difference between the YOA and Native culture is the legislation's adversarial nature. Citing numerous youth court delays, back-logs and the length of time for dispositions, Skoglund and

Igliorte (1990) assert that the formal court setting is not a good arena for solving human problems. In addition, Schissel (1993) maintains that traditional Native culture does not rely on adversarial adjudication, but rather on a mediated compromise between offender, community and victim. In the process, offender self-improvement and a degree of retribution can often be achieved.

The YOA further contradicts Native culture through its inability to include the family and community as powerful healers for troubled youth (Mourot, 1991b). Given that many Native people live, work and socialize in extremely small and isolated settings, the family, extended family and community tend to be the focus of Native life. With the family and community playing such a critical role, the potentially devastating effects of removing Native youth seem apparent. It can be readily understood, therefore, why critics claim that the YOA does not sufficiently take into account the Native family communal setting and its importance, or potential, for Native youth. For many of these critics, the legislation is viewed as yet another example of "colonial-mentality" law being inappropriately applied to Native peoples.

The final criticism offered is that the YOA is ineffective due to monetary restrictions and misinterpretation. Dube (1987) claims that the act is too complex and formalistic to be interpreted by anyone but the legally trained. In addition, administration of the legislation is most appropriate to a formal courtroom setting, which is often culturally alienating to many Native youth, their families and their communities. In response, Dube (1987) asserts the alternative is a youth justice system based more on mediation.

The underlying theme of most criticisms surrounding the YOA is that the legislation is culturally insensitive. Its operational and legal philosophies are contradictory to traditional Native techniques of solving problems and have resulted in a trend of disproportionately incarcerating Native youth, even though such removal from the community may have unintended damaging consequences. The alternative, then, is for Native groups to initiate programs specific to their young persons' needs in hopes that traditional techniques of social control will provide assistance for at-risk adolescents. However, it is within the confusing legal and philosophical framework of the legislation that Native groups must create and implement alternative measures programs. If efforts can successfully meet the various criteria within the YOA, then self-initiated program implementation and continuance may be possible. Before this occurs, though, the process of program evaluation potentially poses an obstacle that Native groups must learn to overcome.

"Success" versus "Failure": Potentially Damaging Words

Integral parts of any program are evaluation assessment, continuance and most importantly, "success." However, "success" and "failure" are powerful subjective terms that depend on which criterion is used. For a program to be seen as a "success," it usually must produce positive results or meet preliminary objectives. The inability to do so is often categorized as "failure." For self-initiated programs, however, it may be necessary for Native groups and those who provide funding to move away from traditional program evaluation techniques, at least initially. This is not to belittle Native culture, but rather to recognize that Native lifestyles are often distinct and ought not to be subject to non-Native values and judgements. Even if a program is initially seen as administratively, objectively or politically faltering, it does not mean necessarily that those youth who participated were not positively affected. In this manner, the powerful words used to classify and objectify the worth of alternative measures programs—"success" and "failure"—must be slowly and carefully applied.

As Smith (1993) indicates, Native self-justice ideals can not be achieved overnight. They must occur slowly and be given appropriate time to expand and grow accordingly. The most important aspect of program origin and implementation, then, is that the desire for "success" must come from and be classified by the Native groups themselves. It may be necessary, therefore, for Native groups to follow this criterion without direct support or guidance from government and/or justice system personnel. If sufficient time is not allowed for programs to develop and evolve, the ultimate losers will undoubtedly be the very youth the programs were intended to help.

Program Criteria and Objectives

Alternative measures programs are often thought of as originating from progressive individuals within various governmental agencies. Paternalistic notions concerning Canada's Aboriginal populations seem to make the concept of community-initiated programs inconceivable. However, often the programs most appropriate for Native peoples are local endeavours. Admittedly, governmental agencies are often responsible for initiating programs and providing such amenities as funding, information and guidance; but the ultimate responsibility often rests with community citizens. In view of this burden, it is essential to provide initial guidelines for Native groups who decide to initiate alternative measures programs.

In his article "Community-Based Corrections for Young Offenders: Proposal for a 'Localized' Corrections," Griffiths (1988) outlines six principles necessary to assist community-based correctional programs in

achieving their objectives. These principles, along with others, should be employed by Native groups wanting to initiate alternative measures programs. Though the list provided is not all-encompassing, it does offer initial direction that may not exist otherwise.

1. "There must be a clear definition of 'community' as well as the objectives of the program vis-a-vis the community and its youth." [Griffiths, 1988, p. 223]

Griffiths recognizes that each community may differ in its needs and directions since Aboriginal communities across Canada are not one homogeneous group. They differ in customs, religion and cohesion. Therefore, it is essential that programs created by outside agencies take into account the complexities of each community and allow communal input into program operation.

2. "Communities, and the youth who reside within them, have different needs, even within the same jurisdiction." [Griffiths, 1988, p. 224]

Griffiths highlights the fact that problems confronting youth and communities can vary considerably. Therefore, it is essential that program initiatives recognize the problems in each particular community and accordingly apply appropriate policies.

3. "There are, among communities, differing levels of interest in becoming involved in program initiatives and in the available personal and community resources that can be mobilized for community participation." [Griffiths, 1988, p. 244]

In stating the third principle, Griffiths recognizes that communities are not always holistic and immutable. In addition, certain communities may have the appropriate resources to initiate programs, while others, with good intentions, may not. Those who initiate programs, then, must recognize that community politics, resources and directions may differ considerably and therefore require a certain amount of flexibility and understanding.

4. "The decision-making process surrounding the creation and operation of community corrections programs for young offenders should, whenever possible, be decentralized and involve direct community participation and input." [Griffiths, 1988, p. 225]

The notion Griffiths forwards is that communal input often comes from specific interest or lobby groups with political agendas different from those of the overall communities. It is necessary, therefore, that government agencies allow all community interests to be voiced concerning the operation

and implementation of community-based correctional programs. In essence, Griffiths argues that if governmental agencies are involved, they ought to assume a role more resembling a facilitator than a governing body.

5. "Community-based programs should, where possible, make extensive use of traditional methods of social control, incorporate traditional community values and customs and have a strong experimental component." [Griffiths, 1988, p. 225]

The fifth principle maintains that when a community initiates programs, attention must be focused on incorporating traditional attributes within the overall objectives. Griffiths states this will lead to the increased use of elders and traditional methods of social control, which may prove a more effective method of dealing with wayward youth. However, such an enterprise can only work if the community wants to return to traditional methods as opposed to relying upon the formal criminal justice system.

6. "Community-based programs must be designed to consider the total community context, rather than merely the 'corrections' context." [Griffiths, 1988, p. 225]

The final principle Griffiths identifies is that correctional based programs should avoid separating youth from the larger community. Though it is true that adolescents involved in such programs are somewhat "different" from other community members in that they have offended, a community-based program ought to involve all community members if the troubled youth are going to be helped. In addition, programs should not solely consider correctional issues. They may need to deal with a wide variety of problems facing young persons, so flexibility is essential.

The six principles Griffiths provides are useful for Native communities that decide to initiate alternative measures programs. However, there are additional criteria that should be considered in order to assist program development and application.

7. The "success" of a program heavily relies upon the amount of adult support.

A report issued by the Four Worlds Development Project stated that "the degree of unity, vision and commitment of the adults will make or break a youth program" (1988, p. 5). If a community decides to initiate a program, be it diversion or alternative measures, adults who are responsible for the initial implementation need to be committed for extended periods of time (Christie and Doyle, 1989; Draper, 1987; Evaluarjuk, 1985). This does not mean the program depends entirely on adults with no youth input or

decision-making functions; rather, those adults who are responsible for various administrative tasks need to be reliable. The unfortunate problem is that if adults in the community are unreliable, then programs initiated may experience difficulties that, in effect, mirror the overall challenges facing the community.

8. It may be necessary for youth programs to start addressing "basic" problems as a means of dealing with larger ones.

In a report on dispute resolution for the British Columbia Ministry of the Attorney General (1989), the Gitksan-Wet'suwet'en people stated that community programs must overcome the stereotypes that surround Native peoples and start to address the specific problems of each community from "square one." It has been argued that youth problems are often simply a reflection of larger social or communal problems. For example, young persons with substance abuse behaviour should receive help not only for their addiction, but also for the underlying reasons that contribute to their abuse. In this manner, when designing an alternative measures program it may be necessary to deal with youth problems in their simplest or primary forms. Furthermore, government agencies, individuals and society at large must dismiss old stereotypes about Native peoples and proceed in an open-minded, non-judgemental fashion.

9. Program design must foster a conciliatory environment rather than adversarial one.

Traditional Native law often juxtaposes the philosophical tenets of the formal criminal justice system. Namely, it relies upon ideas of arbitration and reconciliation while the formal criminal justice system is adversarially based (Cawsey, 1991; Hamilton and Sinclair, 1991; Dube, 1987). If alternative measures programs are to be implemented within Native communities, it may be necessary to foster an atmosphere of arbitration, reconciliation and compensation. An atmosphere based on these attributes may reduce negative feelings by the community and offender compared to one based strictly on punishment. In addition, since community members and the offender must remain living with each other, a degree of community input in the final disposition is achieved.

10. Promises made to troubled youth should not be broken.

Often youth who find themselves in legal trouble are given promises by adults, creating a false sense of hope (MacDonald, 1994). Desperate, scared and confused adolescents often believe such statements and are bitterly disappointed when promises do not materialize. Perhaps not fully realizing

the political, social and economic problems within their communities, many Native youth become distrustful and disrespectful of adults because they are tired of being offered promises which fail to occur. Though the failure of promises may range from simple misunderstandings to hidden political agendas, Native youth often believe adults will "make good" on their statements. In this context, adults need to carefully scrutinize what they say to young persons so as to ensure honesty and not provide suggestions they cannot realistically fulfil.

11. Youth themselves ought to have some degree of control over the programs which are intended to assist them.

It is commonly argued that the best way to make any program successful is to involve those who are directly affected. This most certainly applies to troubled youth. Many adolescents who need assistance are the ones who have not experienced a great deal of "success" in their lives (MacDonald, 1994). Therefore, an alternative measures program may be the perfect opportunity to start instilling pride and responsibility. If discontented youth feel they have some degree of control over some aspect of their lives, their resulting behaviours may become more responsible and productive.

Attributes of Alternative Measures

Within the *Young Offenders Act*, the potential for Native groups to initiate unique alternative measures programs exists. Though the legislation is often viewed as culturally unaccommodating and alien, section 4 provides a vehicle whereby Native peoples can begin to achieve initial progress towards self-justice ideals. However, such progress must be reached through the adverse and often controversial nature of the legislation. Namely, Native groups must overcome the philosophical and practical problems of the act and design alternative measures programs according to their unique communal situations. In this manner, programs will reflect the needs of both youth and community, as opposed to ideological tenets of the YOA or requirements of governmental agencies.

Though the legislation may offer little in the way of guidance for establishing alternative measures programs, individuals must be prepared to design, develop and test ideas to see if applicability exists. After this, commitment from those involved and the community at large is essential. Admittedly, support from various agencies such as federal and provincial governments, police, courts and social welfare agencies is necessary, but the ultimate desire must come from the communities themselves.

Perhaps the strongest attraction of alternative measures programs is as

a means for administering self-justice ideals. Usually seen as a very lengthy and complicated process, the practical and philosophical mechanics of self-justice can be tested and refined during the implementation and operation of community-initiated alternative measures programs. In essence, such programs can illustrate to both the Native and non-Native communities that aspects of self-justice can co-exist within Canadian society. Furthermore, because they would likely include traditional Native concepts of justice and offender rehabilitation that differ from non-Native concepts, self-initiated programs can specifically assist Native youth in the necessary process of spiritual "healing." As stated throughout this article, Native youth are disproportionately incarcerated and subject to a process of justice that does not include the powerful healing forces of family and community. The result of such a system is often cultural alienation, which contributes to cultural confusion or even rejection. Therefore, it may be beneficial to allow certain Native young offenders the opportunity of remaining within the community and experiencing either healing or punishment according to traditional Native culture.

Several criteria are essential for establishing lasting alternative measures programs. With Native groups being both diverse and distinct, it is necessary that individual communities initiate programs that reflect their cultural norms and traditions, as well as present community needs or characteristics. Adult support seems to be a prerequisite for program continuation, just as an atmosphere of accommodation and conciliation is required. However, two criteria remain paramount: youth participation and community enlightenment. It is essential that young people be afforded the opportunity to participate in the decision-making process because this will foster a sense of control and improve self-esteem. Similarly, community enlightenment is necessary because adolescent problems are often a mirror of larger communal hardships and identification may require foresight, vision and unpretentiousness. It is also necessary that the community make a conscious effort to accept change and admit to the obligation of helping the younger generation. It is only after these and other steps are taken during the initial design and implementation of alternative measures programs that community involvement will attain a level of commitment that produces productive and beneficial results.

Appendix

Listed below are examples of past and present alternative measures and diversionary programs initiated throughout many Native communities across Canada. Most involve the community, a willingness to tackle

problems, a political infrastructure capable of supporting initiatives and the assistance of key justice system personnel who allowed communities autonomy over developing and implementing new ideas.

Chisasibi Youth Group Home (Christie and Doyle, 1989)

- created by the community in 1985
- operated using traditional Cree language and encouraged youth to become involved in such activities as hunting, fishing and camping while fostering a "loving" family atmosphere
- designated as "open custody"
- problems experienced were that more counselling was required and the task of informing the community regarding the operations of the YOA was difficult

Lay Assessors Program (Ontario, Attorney General, 1985)

- witnessing a substantial rise in youth crime, Christian Island, Ontario, implemented a program that involved community members assigning dispositions to young offenders which were sanctioned through formal court proceedings
- program had support from the community, police, probation, and social services

St. Theresa Point Youth Court System (Wood, 1990)

- St. Theresa Point, Manitoba, experienced a severe gas sniffing problem in 1983/84
- in response parents and community created a self-run, Native administered and non-funded youth court to serve as an alternative to the provincial youth court
- had co-operation of local R.C.M.P.
- later began to address other minor youth offences

Intensive Supervision in Saskatchewan (Mourot and Bird, 1990)

- as an alternative to custody the province of Saskatchewan allowed community-intensive supervision programs
- programs placed a high degree of emphasis on community involvement and responsibility
- youth were allowed to stay at home where they received counselling, strict supervision and most important of all, love
- operational budget in 1988 was $28,000 for the entire province, which involved thirty-six youth

Northern Labrador Open Custody (Skoglund and Igloliorte, 1990)

- Northern Labrador is experiencing rapid social change which has arguably left youth in a state of insecurity and confusion
- because of this several communities have initiated open custody group homes
- within these group homes youth are subject to counselling on topics such as drug and alcohol abuse, life skills and survival technique

Crisis Intervention Programs (Draper, 1987; Shkilnyk, 1985)

- initiated in the community of Grassy Narrows, Ontario
- courts were dealing with an average of 130 youth cases per month though the community only had 77 families
- programs started with a few concerned individuals within the community who decided to create intervention/patrol groups because 65 percent of youth sniffed glue or gas
- though the infant stages of the program were plagued by problems, after about six months positive results became apparent

Spirit of the Rainbow Youth Program (Four Worlds Development, 1988)

- initiated in 1987 by two gentlemen responding to elders' concerns over youth
- program consisted of counselling and workshops that taught unity, self-worth, Native pride, confidence, identity, cultural awareness and drug and alcohol awareness
- program had adult and community support

Mediation Programs (Tobin, 1987)

- three main types of mediation programs exist:
  1. negotiation - two parties work out a compromise
  2. arbitration - a third party decides judgement and mediation
  3. a neutral third party helps meet a compromise
- previous programs have faltered due to the insistence that lawyers and other legally trained personnel handle the mediation process instead of community members

Junior Achievement Program (Mourot, 1991a)

- operated in several communities in Saskatchewan
- youth are given the opportunity to form a small company which will manufacture, market and sell a particular product
- learn skills such as decision-making, selling a product, organizing a work force, managing profit and experiencing capital loss

- develops self-esteem and leadership abilities
- available to youth both in custody and the community
- facilitates high community involvement though young persons essentially make the decisions

Inuit Youth Councils (Evaluarjut, 1985)

- Life in the Arctic region is quickly changing due to mass assimilation of White culture values. To help youth cope, several communities organized youth councils that help prepare children for the future as well as enabled them to cope with the present.
- allowed adolescents the opportunity of decision making as youth decide how their council will operate, types of funding, how projects will be executed and how extensively the community will be involved with the councils
- councils tended to bolster communal pride and occupy youth's spare time

Northern Fly-in Sports Camps (Winther, 1990)

- operated by a non-profit, nationally based company servicing sixteen communities in northern Manitoba
- program's objectives include delivering services that stress physical fitness, self-esteem, time management, trust, friendship and cultural exchange
- seen as reducing crime because it occupies youth's time and gives them personal direction, social skills and self-esteem

Peer Counselling Model (Saunders and Carr, 1983)

- program employs the positive effects of peer models
- uses professional athletes, scholars, community leaders or experienced individuals who all donate their time
- peer models are used to help drug abuse, alcoholism, low school attendance, stress management, pregnancy, violence and loneliness

Alcohol and Drug Abuse Programs (Tremblay, 1987)

- alcohol and drug awareness programs are used to tackle the high occurrences of alcohol-related violent deaths in many Native communities
- programs involve counselling, awareness, home support, spiritual training and cultural involvement
- funding is sometimes available through the National Native Alcohol and Drug Abuse Program

- programs educate youth through sports, drama, counselling and crisis lines

Ander Management Programs (Howitt and Facer, 1987)

- anger management programs are neither therapy nor counselling but life skills training
- programs attempt to teach adolescents how to recognize anger-inducing situations and avoid them

Nazko Band Wilderness Caravan (Brunton and Boyd, 1987)

- community decided that after experiencing a problem with youth crime a wilderness caravan to Bella Coola, B.C., would be good for youth
- program had support of the local provincial social services agency
- program involved the use of elders, which helped to facilitate respect between youth and older community members

Project Rediscovery (Henley, 1987)

- operated independently by Haida Natives on Queen Charlotte Islands, B.C.
- open to all youth, Native or non-Native
- attempts to teach life skills and tackle problems youth experience on the Islands
- objectives include recreation, leadership, self-reliance, a greater sense of pride, cultural identity, environmental awareness and specialized training such as first aid, guiding and search and rescue
- uses small counselling groups as well as field trips to Alaska and California
- has high level of community support

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