New Directions in Restorative Justice
Issues, practice, evaluation

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Penetrating the walls: implementing a system-wide restorative justice approach in the justice system

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Abstract

In November 1999, after several years of pre-implementation planning and extensive discussions among both non-profit agencies delivering alternative measures and leaders at all levels of the justice system, Nova Scotia launched its ambitious restorative justice initiative. The central objective was to have the restorative justice approach operationalised in different strategic ways, phased in by offender status and by region, and applicable to all offences and all offenders throughout the province. Compared with other Canadian restorative justice initiatives, the Nova Scotia model is unusual not only in its scope but also in its mixture of core paid staff and volunteers, and its province-wide coordination. Initial research indicated that however well funded, prepared and institutionalised, the restorative justice initiative would have to deal with two major ‘walls’ limiting and marginalising its impact on the justice system. These ‘walls’ were the uncertain engagement of post-charge, post-police, criminal justice system role-players, and the hesitant support and participation of victims and community leaders advocating on behalf of victims. This chapter examines the processes and outcomes associated with implementation to date, especially highlighting process issues and the successes and challenges in penetrating these ‘walls’. The chapter draws upon an extensive and in-depth evaluation that the author has been conducting of the Nova Scotia initiative.
The central challenges for Nova Scotia restorative justice

There is an incorrect view of the [restorative justice] agencies as diversion services. What they offer within the criminal justice system is a different way of looking at crime, with an opportunity to work out effective outcomes in complex conflicts (Foundation Day Discussion, Nova Scotia Restorative Justice, January 2003).

The Nova Scotia Restorative Justice Initiative (NSRJI) was implemented in November 1999. It was preceded by almost two years of discussions throughout the criminal justice system in Nova Scotia, protocol development, strengthening the capacity of the service providers (non-profit agencies which had delivered alternative measures for youth for over a decade) and other preparatory planning. It is now a thoroughly institutionalised programme, coordinated and entirely funded by the Department of Justice, Nova Scotia. The thrust of the NSRJI, as cited above, has been, in principle, to implement the restorative justice approach for all offenders and offences, albeit in stages and utilising strategic interventions appropriate to the different circumstances.

As indicated in three major evaluation monographs written by this author (Clairmont, 2001, 2002, 2003), the programme has been quite successful in most respects and has made significant progress with regard to all its objectives. Not surprisingly, NSRJI has to date largely depended on police referrals (with significant low-end crown prosecutor referrals in the Halifax area) and could be said to have been largely a diversion programme for low-end offences. There are clear indications that such a characterisation is increasingly less valid as new collaborative arrangements have been developed to secure referrals beyond the police level, and most especially at the prosecutions and corrections entry point (i.e. custody and probation). As these changes impact on the NSRJI, they yield a more penetrating implementation of the restorative justice approach and, in these respects, make the NSRJI a potential world leader in the restorative justice movement. Diversion, healing, reintegration, complex cases and serious offenders, all increasingly become ‘grist’ for the NSRJI ‘mill’.

While much is known about extra-judicial measures, alternative and restorative justice at the front-end of the criminal justice system, little is known about how these approaches impact at higher levels. Clearly, some re-specification might be required here; for example, the concept of ‘an agreement’ associated with success at a ‘diversion’ restorative justice session probably differs profoundly (would lack of such an ‘agreement’ represent failure?) in the post-sentence restorative justice session given that the offender has already completed his or her sentence. This uncertainty and ambiguity concerning the operationalisation of the restorative justice approach is largely the consequence of restorative justice programmes either failing to penetrate the criminal justice system (i.e. remaining rather marginal) or being of limited scope (i.e. not being part of a comprehensive system-wide programme). Implementation that purports to be system-wide takes time to penetrate more fully. The NSRJI, after several years, has only just begun to penetrate deeply.

The context for restorative justice

Restorative justice as a social movement within the criminal justice system has had both a long history and a chequered past (Viano, 2000). The criminal justice system in its present guise (i.e. structures and processes) has developed over the past two centuries, at least in part in reaction to practices advocated in restorative justice (e.g. direct participation by offenders and victims, informalism or popular justice). The alternative justice movement of the 1970s, less theoretically elaborated than the current restorative justice movement and more focused on diversion and ‘community’ mediation, was largely discredited by academic research and criminal justice system practitioners as being ineffective, inefficient and of limited value for larger goals of justice. A major circumstance associated with this judgment was that alternative justice practices, such as diversion and community panels, were of limited scope (e.g. minor offences, restricted to special population segments) and largely marginalised by system-equilibrating forces within the criminal justice system.

For a number of reasons (continuing push factors associated with the costs and alleged rehabilitative ineffectiveness of the criminal justice system, and pull factors associated with the victims’ movement, Aboriginal justice movement and the revitalised moral entrepreneurship of progressives and/or religiously committed advocates) the restorative justice movement has become very influential over the past decade. Restorative justice philosophy and practices have explicitly assumed the mantle of alternative justice, building upon the past approaches. It remains to be seen what impact they will have on the criminal justice system. There are some reasons to think that the impact will be substantial this time. The restorative justice movement appears to be more theoretically firmed up now, more internationally rooted, more focused on holistic, system-level change, and to have much stronger support among senior governmental officials and justice personnel. There is a widespread appreciation that ‘entering the mainstream’ requires the recognition of
restorative justice as a basic premise of how the criminal justice system is to function (Clairmont, 2000). Most restorative justice initiatives have been primarily directed at young offenders and low-end offences and, at that level, have established a solid basis for optimism among advocates (Latimer et al., 2001). Still, it is often contended that only when restorative justice emerges as an important factor in how serious offences and adults are treated will it trump the marginalisation of the alternative justice experience and realise its promise, even in how restorative justice would apply to young offenders.

The social constructions of restorative justice (RJ) and the criminal justice system (CJS) that have accompanied RJ’s recent revitalisation, despite the greater grounding and realism of its advocates, remain largely edenic and binary in character. RJ is depicted in positive ideal-type terms and contrasted to the CJS, which is depicted as ideal-typically but with much emphasis on its negative features. In this regard — sharply contrasting themes and images to the conventional approach — the RJ social constructionism has striking similarities to those social constructions associated with the community-based policing movement (which was presented as a radically new paradigm but subsequently became absorbed and compartmentalised in policing), and to the Aboriginal justice movement (which has sharply contrasted themes and images of Aboriginal and mainstream justice but which, thus far anyway, has made very modest inroads in how natives receive justice). Moreover, there is either much discussion of the appropriateness of diverse RJ strategies for different kinds of offences and offender-victim situations nor studies of how the dynamics of the ‘black box’ of the RJ session/intervention actually work. Other areas of shortcoming include the lack of discussion or analysis concerning strategies to effect a system-wide usage of RJ principles in the CJS (e.g. how to get RJ used more at CJS levels subsequent to the laying of charges) and to convince victims and victims’ advocates of the appropriateness of the RJ approach.

If RJ is not to experience the same fate as alternative justice approaches did in the 1960s and 1970s, there has to be more sophisticated, empirically based conceptualisation, more strategic reflection and more vigorous effort to have the RJ approach permeate all levels of the justice system. It should be recognised, too, that there are credible alternatives to RJ, certainly in dealing with young offenders, which have to be taken into consideration. Intensive supervision, whether of a rehabilitative, supportive or a punitive, monitoring sort, is advocated by many researchers and CJS practitioners. In these models, most young offenders — low-end offenders — presumably can be dealt with through letters of caution or low investment strategies, while the intense supervision would be directed at the serious and repeat offenders. It is not clear where the RJ approach would fit in these models. It may well be that the restorative justice movement would carve out a middle ground of applicability for offenders and offences, between minimal intervention strategies for the ‘low end’ and intensive supervision for the ‘high end.’ It may also be that restorative justice strategies or practices will become a component of a larger, more thorough intervention. Clearly, issues of process (i.e. how RJ is implemented and meshes with other philosophies and practices in the CJS) and outcomes (i.e. how well RJ achieves its objectives of participation and reconciliation/reintegration of all parties to an offence) are important and intertwined.

There seems little doubt, though, that one key to a major impact of RJ on the justice system will be getting past the police gatekeepers. Judges, crown prosecutors and correctional officials have often been the moral entrepreneurs behind RJ movements in Canada and some exerted a significant presence in the NSRJ initiative being examined in this chapter. Still, the RJ literature indicates that, in both Europe and North America, prosecutors and judges have generally been reluctant to engage in RJ and to see it as more than a fall-back (Archibald, 2001; Green, 1999). A leading RJ scholar has contended that

... the strongest opposition has come from lawyers, including some judges, under the influence of well-known critiques of the justice of informal crime processing (Braithwaite, 1997: 3).

In his appraisal of prosecutors’ viewpoints internationally, Archibald found

... a uniform tendency for prosecutors to see their role as one of presenting evidence in court to get convictions, rather than promoting problem-solving restorative options (Archibald, 2001: 38).

Notwithstanding the dramatic and international development of problem-solving courts (e.g. mental health courts and drug treatment courts) over the past decade, the corrections level may well be the level of the CJS where the most significant implementation of the RJ philosophy will occur in the near future.

The challenge and the opportunity

The NSRJ could well be said to be on the cusp of breaking through the
An overview of the processes and outcomes of the NSRJ initiative to date

The author has recently completed two assessments of the NSRJ initiative dealing, respectively, with outcomes and with processes (Clairmont, 2002, 2003). Each report begins with an overview of the NSRJ programme, focusing upon, in sequence, the project challenge and background, project outcomes/processes and indicators, the key partners and major project elements, interim process evaluations, interim outcomes evaluations and lessons learned. The NSRJ programme has basically been implemented, as planned, as a system-level innovation bringing the restorative justice (RJ) philosophy and practices to bear on almost all youth offences everywhere in the province. A continuing moratorium on sexual assault and spousal/partner violence (put in place in 2000 in response to criticisms from female-oriented victims’ advocates several months after the NSRJ initiative was launched) and the restriction of NSRJ to young offenders (there has been a delay in extending the RJ programme to adult offenders) limit its system-wide implementation at present.

The NSRJ programme has been thoroughly institutionalised within the Nova Scotia Department of Justice and is no longer a project marginal to justice planning and strategising. It is argued that the NSRJ has been a successful initiative in substance as well. It has made significant progress on all objectives delineated in its originating proposal. The path of change has been in the desired and anticipated direction on all relevant issues — recidivism, participant involvement and satisfaction, the utilisation of the RJ session format, agency capacity, provincial coordination and the presumption of restorative justice among police and corrections capturing, respectively, perhaps, the diversion and healing dimensions of restorative justice. Still, the ‘value-added’, in comparison to its alternative measures predecessor, has been modest, and unless there is much greater collaboration and use of the RJ agencies by crown prosecutors, judges and correctional staff, it will likely remain so. Difficult challenges for the NSRJ programme will come if it has to deal more with serious offenders and offences, with adults and with family violence of all sorts. Then the adequacies of the RJ strategies, the agencies’ capacities and their collaborative linkages with other community service providers will be more severely tested. There remains widespread scepticism among field-level criminal justice system personnel and community leaders that the NSRJ and the non-profit RJ agencies could meet these challenges, but, at the same time, there is much support for the programme as it is presently implemented.
Outcomes

The outcomes report (Clairmont, 2002) deals with core outcomes analyses, that is case processing under restorative justice and its impact on the major NSRJ objectives for offenders, victims, the community and the criminal justice system. Analyses are also provided, in order to assess these outcome impacts more fully, on court-processed youth cases and more serious offenders and offences. Analyses of court-processed youth charges and cases for 2001 indicated that the NSRJ programme and police cautioning did have a modest effect in reducing the court load, continuing a trend observed in the 2000 data when the restorative justice programme compared favourably on this measure vis-a-vis the alternative measures programme it replaced. Still, more than one-third of all charges and cases dealt with in court involved minor, or level one, offences (four levels of offences were delineated in the original NSRJ protocol). Youth aged 16 or 17 were the chief young offenders in terms of both numbers of offences and serious offences. The minor level offences handled in court typically result in probation, fines or court costs, singly or in combination. Even in the limited time-frame of the data set and the absence of data on criminal record information prior to November 1999 or in adult court for those who reached 18 years of age, the court data indicated there was significant recidivism. Shortfalls in the provincial court data management system (JCIS) included the absence of measures of ethnicity and socio-economic status, and the limited time-span of the data.

Formal police cautions have increased with the duration of the Nova Scotia restorative justice initiative, and have been very largely restricted to level one offences and first-time offenders. In these respects, perhaps as anticipated in the NSRJ programme, the police caution system virtually reproduces the earlier alternative measures programme in Nova Scotia that focused on level one offences and first-time offenders. There was some interesting variation in the issuing of cautions by police service and by region. There was some modest variation by age, gender and ethnicity (e.g. females virtually always were cautioned for shoplifting while males received letters of caution more often for less minor offences).

The data also indicate that cautions and restorative justice referrals have gained a modestly larger share of the total youth charges or cases since 1999. Nova Scotia courts are dealing with fewer level one or minor youth offences. Both police cautions and police RJ referrals increased significantly in 2001 while crown prosecutor and other RJ referrals remained essentially at their 2000 levels. Police cautions and police referrals essentially focus on level one or minor (i.e. the 'alternative measures template') offences and there has been little change in that regard over the first 25 months of the NSRJ programme. Crown prosecutor and higher CJS entry level RJ referrals have moved decidedly in the direction of involving more serious youth charges but that benefit, from the NSRJ perspective, has been somewhat mitigated by the lack of growth in the number of 'crown prosecutor and other' RJ referrals. The data also point to the diversity of discretion in cautioning and restorative justice referral; there are clearly some police services and some police officers more likely than others to exercise the discretion to caution or to refer youth cases to restorative justice agencies.

The Restorative Justice Information System (RJIS) – a data management system created for the NSRJ initiative – yielded some useful comparisons between cautions and referrals to restorative justice and underlined the significance of post-charge restorative justice referrals. While police cautions were quite evenly distributed among female and male youths, it is clear that restorative justice referrals were given more to males who, of course, were considerably more likely to have committed eligible offences. Post-charge RJ referrals were the most likely to be directed at male youths (i.e. 67 per cent). The age category 14 to 15 received the most referrals but the distribution of referrals was more skewed to older youths than was the distribution of police cautions. Whether discussing charges or cases, post-charge referrals were modestly more likely than police referrals to be directed at males, older youths and incidents where the accused faced more than one charge (presumably a weak indicator of seriousness).

The RJIS data gathered through the NSRJ programme indicates that males and older youths are proportionately more likely than females and younger youths to receive a restorative justice referral than a caution. Post-charge RJ referrals enhance that difference, not surprisingly given that these types of referrals are less likely to focus on level one or minor offences. Recidivism in terms of repeat RJ referrals has been quite modest. Recidivism in general terms (i.e. repeat offence incidents) was shown in this data set to be less likely if one’s first case processed was done as either a caution or restorative justice referral rather than through the courts. And while there are many caveats to acknowledge concerning these findings, at the very least they are consistent with restorative justice objectives.

Overall, then, analyses of the processing of youth cases in Nova Scotia have found that cautions and RJ referrals have reduced the court load each year by some 6 per cent compared to the alternative measures era but that about one-third of the court load still involves minor or level one offences. Recidivism is high among those going to court and those going to court are especially likely to be males and aged 16 or 17. Both cautions and restorative justice referrals have increased significantly since 1999 and
together now account for between 20 per cent and 25 per cent of all youth charges or cases. Cautions and police referrals have remained focussed primarily (over 80 per cent) on minor, level one offences where the offender is a first-time offender. Still, there was significant variation in the police use of discretion in this regard. Crown prosecutors and other RJ referrals typically involved more serious offences and repeat offenders but the numbers here have shown little increase over the first two years of the NSRJ programme. There is some evidence that cautioning and restorative justice referral reduce recidivism compared to court processing, but it is difficult to draw firm conclusions given the limitations of the data sets and lack of random assignment in the NSRJ programme. Detailed analyses of the Halifax Regional Police Service’s processing of youth crime underlined the point that police cautions and RJ referrals were basically given to first-time offenders for level one offences. That combination has accounted for more than 90 per cent of all Halifax police cautions and referrals since November 1999. The Halifax police data also point to significant differences by gender and by ethnicity. In particular, the high level of accused among Afro-Canadian youths, in both alternative justice and court venues, merits serious attention and underlines the need for creative and perhaps more macro-level strategies to supplement the NSRJ initiative.

The impact, from the participants’ perspective, has also been quite positive. The RJ session exit data for 2001 (year two) reveals a strong, pervasive positive consensus about the experience among all types of participants and over the different types of sessions and offences. The patterns found strongly echo those found in the year-one data. Where there is variation, the factors producing it are the participant’s role (e.g., whether the person is an offender, a victim or a supporter) and, to a lesser extent, the type of session participated in (e.g., accountability or victim–offender conference). The interpretation of the variation advanced in the outcomes report suggests that, where differences exist, these differences support the premises and objectives of the restorative justice initiative.

As for the follow-up interviews, the interviewee sample appeared to be representative of the participants attending the RJ sessions in the first-phase agencies. Roughly half of those in each role category who agreed to be interviewed were interviewed, though only some 43 per cent of the offending youths were. The description and analyses of the follow-up interviews represented a ‘first cut’, pending the examination of interviewee comments and potentially more sophisticated statistical analysis. The follow-up data dealt with participants’ assessments of pre-conference issues, the conference itself, the agreement or disposition reached, reintegration and closure issues, and overall assessment of the RJ experience.

The RJ participants indicated that for the most part they had little knowledge of restorative justice approaches prior to the incident being considered. The reasons for participating varied by role, with offenders and their parents/supporters emphasising the avoidance of court and a criminal record, while victims and their parents/supporters stressed that they liked the idea of RJ, as it was explained to them. Evidence suggests that few participants needed much persuasion and certainly most considered their participation to be totally voluntary. The majority of RJ session participants indicated that they had significant contact with agency staff prior to the session and that this contact involved both telephone calls and face-to-face meetings. As for the conference itself, the participants ‘most important thing about it’ varied by role, with young offenders emphasising the ‘good resolution’ of the process and the avoidance of court, while their parents/supporters pointed to the opportunity for the youth to show remorse and apologise. On the victim ‘side’, the opportunity to talk about the offence was highlighted. Few participants reported surprises happening at the conference but when surprises were noted, the positive surprises were more common than the negative ones, especially on the part of the young offenders themselves.

The large majority of participants in all role categories could find nothing negative about the conference and, on the positive side, it was commonly noted that they had an opportunity to discuss the incident and present their views about it and what should be done. Virtually all participants considered that the conference was fair to all parties and most interviewees were emphatic about this feature; the least positive were the victims but even 50 per cent of them considered the conference to be ‘very much’ fair. Both offenders and victims were equally likely to report (and with equal emphasis) that they understood what was happening at the session, were treated with respect, had adequate support there, and liked the conference set-up. On both the offender and the victim ‘sides’, a large percentage of respondents emphasised that they had had their say. Most neutral participants reported that they witnessed a frank and in-depth exchange among offenders, their parents, their supporters and the victims and victims’ supporters.

The participants, especially the offenders and their parents/supporters, indicated that in retrospect they were satisfied with the conference outcomes at the time of the session. The large majority reported themselves also to be happy with how the agreement had worked out for them, although there was some modest drop-off in enthusiasm on the victims’ parts. Offenders reported significant closure in ‘being able to put it all behind now’, while their parents/supporters reported themselves better able to cope with the youth. Roughly 40 per cent of the victims reported
positive closure but a large minority indicated that they were unsure on this score. Most neutral participants considered that the conference had probably helped to reintegrate the offender into the community.

In assessing the RJ experience as a whole, few participants could identify anything when asked about 'the worst thing' but they were quick to cite various facets as 'the best thing': Offenders and their supporters emphasised avoiding court and the fairness and friendliness of the sessions, while victims and their supporters highlighted having their say and the direct communication between the offender and the victim. Few suggested that in retrospect the matter should have gone through the court process. Most respondents considered that, if the latter had happened, there would have been significant differences, primarily that the court experience would have been more intimidating and yielded more severe sanctions. The participants overwhelmingly believed that, for offences such as the ones featured in their incidents, restorative justice was the desirable option. However, there was much less enthusiasm among all role types, save the neutral participants, for utilising restorative justice in the case of more serious offences; this restrictive position was especially taken by the victims and their parents or supporters. In conclusion, the participants generally considered the RJ experience to be quite positive and felt that no changes were required concerning its structure and processes.

The outcomes report also examined more deeply serious offences and offenders, where the former involved level three and four offences, and the latter multiple repeat offenders within a one-year time span. Here all data were drawn from the metropolitan Halifax area serviced by the Halifax Regional Police Service. Overall, robbery accounted for 75 per cent of the more serious offences committed by youth in 2001, those offences ineligible for police cautions or RJ referrals. Afro-Canadian youths and multiple repeat offenders were prominent among this group of offenders charged by Halifax police officers. If restorative justice programming were to impact on these youths it would have to be from referrals beyond the police level. Similarly, youths arrested on two or more occasions by Halifax police officers in 2000 typically continued to reoffend and get arrested in 2001, and in that year rarely received a caution or police RJ referral. They, too, were essentially outside the RJ system at the police level. Repeat offenders arrested by Halifax police in 2001 who did not have a record in 2000 were also disproportionately Afro-Canadian youth, and youths in this repeater grouping as a whole, typically (80 per cent), did not receive a police caution or RJ referral on any of their offences. Data can be (and will be) obtained to determine whether these repeat offenders and others involved in serious offences did receive subsequent RJ referrals at the crown prosecutor and corrections levels. Clearly, unless it is to be considered the case that these youths are beyond the scope of restorative justice (and that the focus in RJ programming has to be entirely on much more effective early intervention), there must be much more RJ activity at the crown prosecutor, judicial and corrections levels.

Turning to follow-up interviews conducted with those involved in court-processed cases, the offenders, supporters and victims in these court-directed cases reported that they were not presented with an RJ option, but many would have been interested in considering it. The total court processing experience was perceived in more positive terms by the youth than by either the parents/guardians or the victims. Youths appeared to more surprised by, and appreciative of, their treatment while the parents and the victims, perhaps focusing more on the substance of the experience, were more critical. Youths were more reticent but many presented a self-image of indifference and 'coolness'. Parents were more emotional and engaged in discussions of the experience. Victims, in turn, conveyed a sense of marginality in virtually all aspects of the process subsequent to the police investigation. Both youth supporters and victims reported less reintegration and closure than the youths did. While the plurality response in all three groupings was that the experience had not altered their views about the justice system, the youths were more likely than the parents or the victims to indicate that this court case experience had increased their confidence in and respect for the justice system.

Future evaluation of the NSRJ outcomes will continue to focus on the four major objectives of the initiative, dealing with the offenders (e.g. recidivism, behaviour and attitudes, etc.), the victims (e.g. participation and satisfaction), community (e.g. involvement and respect for the justice system) and the CJS itself (e.g. court load and collaboration with other justice players). In examining these concerns, there will be comparisons over time within the RJ case processing system (e.g. offences and offenders dealt with and victim participation), rural–urban comparisons in RJ processes and outcomes, and comparisons regarding the impact of RJ intervention at the police and crown prosecutor and corrections levels. The latter comparisons will be especially important given the lack of a random assignment of cases in the RJ programme. Referrals at the prosecutor and corrections levels are by definition more similar to cases processed through the courts involving more serious offenders and offences and effecting other aspects of restorative justice (i.e. more healing than diversion). The comparison of RJ and court-processed cases remains a main evaluation objective and new strategies are being devised to obtain larger, more representative, court samples.
Processes

The process report (Claumont, 2003), deals with (1) the context for the NSRJ initiative and development; (2) the special features, value-added measures and central operational issues of the RJ agencies; (3) patterns of discretionary decision-making and perspectives on RJ and referrals held by police officers and crown prosecutors (the two major referral sources); and (4) the standpoints of CJS and community panel members whose assessments of RJ and the NSRJ are regularly monitored. In addition, there is a brief section on concluding observations and recommendations.

In examining the process dimension of the NSRJ initiative, the initial focus has been on ‘placing’ NSRJ and the RJ agencies with reference to restorative justice elsewhere in Canada, other related programming in Nova Scotia, the other constituents of the CJS and the earlier alternative measures service. It has been contended that NSRJ is unique in its hybrid character (e.g., significant core paid staff and large volunteer base) and in its system-wide objective. Within Nova Scotia, the linkages with other related programmes – the Royal Canadian Mounted Police’s community justice forum, the Mi’kmaq’s Young Offenders Program, the Public Prosecution Service’s Cautioning Project and Corrections’ Adult Diversion – were examined and the overall argument made that there is a positive symbiosis operating to the benefit of all programmes. The fiscal year 2001/2002, it was observed, has seen the institutionalisation of NSRJ and the implications of the programme having a place at the CJS table were discussed. Finally, several features of the RJ agencies were discussed, particularly those wherein the transformation from alternative measures to restorative justice was quite meaningful. The features discussed were resources (e.g., the resources implications for core staff, for volunteers and for different agencies), procedures (e.g., how the programme works and responding to victims), training and the scope of RJ activity (training was considered adequate only for the present and near-future scope of the RJ activity but some shortfalls were identified), networking and the active organisation (i.e., the push and pull factors that have profoundly changed the organisational style of the RJ agencies), and perceptions of the added value on the part of agency personnel (e.g., confidence that the transformation has yielded added value, an assessment that RJ is efficient and efficacious, and high intrinsic work satisfaction).

In terms of the three major criteria for determining the added value vis-a-vis alternative measures of the agencies’ involvement in the NSRJ initiative, there is little doubt that progress has been made. According to both the restorative justice information system (RJIS) and the agencies’ monthly reports, the RJ agencies received more referrals in 2001 than in 2000 and now handle more cases than in the alternative measures era. While police referrals accounted for most of the increase, there were modest gains in securing RJ referrals from the Crown prosecutor and corrections levels. The cases that the agencies dealt with in 2001 were, on average, more complex than those dealt with in 2000 and substantially more complex than those handled in the alternative measures era. The accountability session, analogous to the alternative measures conference, remained the most common type of session in 2001 but less so than in 2000, testimony to the increasing complexity of the agencies’ interventions (i.e., involving victims and others much more in the agencies’ contacts, services and conferencing). There were some interesting variations by agency in growth patterns, offences dealt with and types of sessions held.

The value-added measures were considered in the context of other important objectives such as the ‘turnaround time’ in the agencies’ processing of RJ referrals and their multi-faceted response to victims. Through discussions with agency personnel and other sources, a number of key issues were identified as especially pertinent to the success of the agencies in meeting the NSRJ objectives. In large measure the issue of resources cut across almost all the areas of concern raised. There appeared to be a strong consensus that if the resources could be there for the training, the co-learning and the proactivity, then the challenges of getting and responding effectively to more serious referrals could be met. There was no apparent lack of confidence in the efficacy of the restorative justice alternative but there were frequent nagging doubts about whether the agencies, for the most part, were instead involved primarily in a ‘downsizing and offloading’ of justice responsibilities.

Virtually all referrals to the RJ agencies, thus far, have come from the police and crown prosecutors so much attention was paid to their perspectives on RJ and the patterns of their discretion in deciding whether to send a case to RJ or to proceed through the court process. A variety of samples were analysed. The findings from the several police samples were quite consistent. In deciding not to refer youth cases, police officers highlighted legally relevant variables (e.g., criminal record and the seriousness of the offence), or ‘bad attitudes’, or ‘not taking responsibility’ on the part of the offenders. The blending of the latter two factors was evident. The wishes of the victims were also heeded, especially where the victim was seen by police as supportive and in an authority relationship with the youth. The need to bring more sanctions than RJ presumably could to bear on problem youth acting up was also highlighted by police as a consideration for taking the incident to court. Police tended to see letters of caution and RJ referrals as ‘a break’ and limited in their interventionist efficacy.
Comparison of police and crown prosecutor discretionary decision-making revealed that police officers were focused more on the context and relationships entailed by the youth’s actions or offence while the crown attorney focused on the offence itself. Police, with their more detailed knowledge of the youth, his or her social milieu, the criminal context and the victims, quite reasonably considering their role in the CJS, took all these factors into account in deciding whether to lay charges or divert. The prosecutor lacked that rich detail and had inadequate access to information, but, perhaps more importantly, focused more on the fact that what was being considered were often ‘minor offences by young kids’, a focus that was probably due to the individual’s professional training and a sense of what is legally relevant for a successful prosecution. Where police and prosecutor disagreed on a case – whether or not it was appropriate for RJ – police explained their decision to charge in terms of this larger context. Perhaps only a counter-argument based upon different or reconsidered contextual factors could have changed their minds; clearly, arguments solely on the act and the value of extra-judicial measures were not effective in doing so.

Each year, the evaluation re-interviews roughly 150 CJS and community leaders to ascertain their experiences with, and assessments of, the RJ initiative. The viewpoints and actual experiences of CJS panel members in 2001/2002 were marked by continuity than by change vis-à-vis 2000/2001. At all levels, though, there was some detection by the panel members of modest changes, whether it be police officers’ perceptions that more referrals involving more serious offending were being made at subsequent CJS levels, prosecutors’ and judges’ sense that fewer minor cases were being court-processed, defence counsel’s belief that the RJ option was being acknowledged more in open court, victim services staff ‘beginning to see some post-charge cases’ going to RJ, or correctional officers’ sense that ‘natural minimums’ were vanishing from their caseload partly because of the RJ initiative and that collaborating with the RJ agencies was increasingly incorporated into their case management. ‘Other’ CJS panel members, leaders in the RJ initiative, referred both to significant accomplishments and to significant challenges for the NSRJ programme. There was a widespread recognition that the RJ programme was now an established part of the CJS and could figure substantially in future CJS strategising, particularly if the results demonstrated efficacy and efficiency. There was evidence of RJ becoming more of a factor in the strategic planning of police, crown prosecutors, correctional staff and victim services officials. And this development was expected by many panel members to be enhanced due to the imperatives of the YCJA which emphasizes conferencing and reintegrative programming for young offenders.

Generally, CJS panel members readily identified the potential benefits of the RJ approach for all parties but especially for offenders and for the CJS as a whole. There was more ambivalence concerning the impact of RJ for victims, especially among panel members from victim services but also among the crown prosecutors and judges. With few exceptions, the panel members thought that the RJ programming should be extended to adults for minor, non-violent crimes at least. There was much divergence of views about whether the RJ programming should extend to more serious offending than it does now and to the moratorium offences, whatever their level of seriousness. Panel members from policing and victim services were quite wary of a lifting of the moratorium and of extending the reach of RJ. Defence counsel encouraged a broader implementation of the RJ approach. Crown prosecutors, judges and correctional panel members generally supported a broader implementation of RJ but their viewpoints were quite nuanced.

The different role-players raised different issues concerning the RJ initiative, ranging from police concerns about what to discuss at the RJ sessions to the concern of other panelists for inspiration and ‘champions’ from all segments of the CJS. Panel members usually emphasized the need for timely feedback on referrals made and for some evidence concerning the impact of the RJ intervention for both offenders and victims. For some role-players (e.g. police and victim services), RJ was seen as appropriate for a limited range of offending, and for most of the remainder (e.g. crown prosecutors and judges) RJ was seen as largely falling outside their initiative. In the case of defence counsel and correctional officers, there was uncertainty about how extensive their engagement might become. The ‘wall’ referred to in the year-one report (Clairmont, 2001), was still standing, its bricks clearly discernible, but there were many cracks and openings showing.

Information and knowledge were crucial factors for RJ referrals, operating in different ways at different levels of the CJS. For police, knowledge of the victims, the family background and the milieu was important to the exercise of their discretion. For crown prosecutors, their lack of such detailed background knowledge was central in their standpoint that RJ referrals should be left to the police save in special circumstances (e.g. defence counsel initiative, etc.). And judges, in turn, emphasized that they did not have sufficient relevant knowledge of the cases and offenders to exercise their initiative without requests from either the prosecution or the defence. Of course, other factors were found to be important and to interact with the knowledge factor, especially important here being the panel members’ view of their role vis-à-vis other role-players. Clearly, if the objective is to obtain more and higher end referrals, then a strategy has to be developed for each CJS level: for example, some
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guidelines for prosecutorial or judicial referrals that transcend mere
designation of eligible offences.

The 2001/2002 re-interviews of community panels found considerable
continuity in their viewpoints and experiences with respect to NSRJ and RJ
programmes. These continued to be sharp differences in enthusiasm with
respect to both support and anticipation of benefits between the offender-
oriented service panelists and those identified as representing victims’
concerns (i.e. female-oriented victim advocates, seniors and family
services representatives) and other community interests (e.g. school
officials). Still, the common themes identified in 2000/2001 continued to
undergird the different perspectives or standpoints. These include an
emphasis on the macro social factors in the causation and prevention of
Youth crime, a general belief that dealing with minor youth property crime
via the RJ approach is a good strategy, a caution about too quickly
implementing a more elaborate RJ approach, and a sense that the RJ
agencies have limited capacity and that the RJ intervention itself, as
presently designed, is limited in its efficacy for dealing with offenders.
Other perspectives included the contention that the NSRJ initiative has
been top-down, CJS-exclusive and largely driven by downloading and
cost considerations, and scepticism about the adequacy of the resources
that government is prepared to invest in the initiative.

The offender-oriented individuals were knowledgeable about the NSRJ
initiative and often quite engaged with it. They were very positive about
the RJ approach and saw lots of potential benefit in it not only for offenders
but also for victims, the community at large and the CJS. There was
consensus among the panelists with respect to both the benefits and the
possible extension of the RJ approach to more serious youth offending and
to adult crimes. On offences of sexual assault and family violence, the
panel members’ views were quite varied but all exhibited some concerns
about the utilisation of RJ without guidelines, more agency resources and
some evidence of RJ’s effectiveness. Three issues associated with the
impact of the NSRJ initiative were highlighted by panel members:
implementation resources, fairness (equity) concerns in terms of accessing
RJ and the need to get the public on side.

Among the panelists chosen to represent the interests of victims and
the community at large, there was much less enthusiasm for the RJ
approach but, nevertheless, a widespread sense that it could be appro-
priate, at least for a narrow range of youth offending. Even the panelists
most engaged in RJ programming, while clearly more enthused about its
achievements and potential, were wary about any significant elaboration
of the programme. Three factors appeared to account for this viewpoint on
the RJ approach: the panelists’ views of crime and justice, of the nature of

the RJ intervention and of the resources available to the RJ agencies (for
training, in-depth session preparation, etc.). These panelists typically did
not think that more serious youth offending, adult offences, and sexual
assault or family violence cases, should be referred to RJ, certainly not at
the pre-court level, if at all.

There was virtually no change in standpoint reported by the victim-
oriented panelists nor had their involvement in actual RJ programming
increased. The female-oriented victims’ advocates were much more
exposed, over 2001/2002, to literature and debates on the RJ approach via
research carried out by their provincial organisations. They had consid-
erable knowledge about the RJ philosophy and its implementation in
various contexts, though not in Nova Scotia (their research might well be
filling that gap). The other panelists, with a few exceptions, had a limited
awareness of the RJ approach and equally limited familiarity with NSRJ
and the local RJ agencies. The victim-oriented panelists, on the whole,
perceived the RJ programming as benefiting offenders and also possibly
having some benefits for victims, the community and the CJS. At the same
time, they thought there was a ‘downside’ in RJ for victims, and expressed
scepticism that the potential benefits for the community and the CJS
would be realised. The panelists raised a number of general issues, such
as the importance of maintaining the moratorium against the use of RJ for
certain offences, the burden that downloading what might have been
probation responsibilities has produced for women and parents, the
dangers of inequity in access to RJ, the need for a more holistic, inclusive
approach to youth and other crime problems, and the need for public
discussion fuelled by appropriate statistical and other evidence.

Business and other community leaders generally expressed views congruent
with the victim-oriented panel members. They were not well
informed about RJ, either as a philosophy or as operationalised in Nova
Scotia, and they acknowledged their marginality. They supported the RJ
approach for a limited range of youth offending but were concerned about
any, more elaborate, implementation. The main issue advanced by these
panelists was the need for more information on the programme and
evidence concerning its impact.

The concluding observations and recommendations in the process
report advance several themes: (1) that progress continues to be made with
respect to the primary objectives of the NSRJ initiative; (2) that RJ is now
established in the CJS and is an increasingly relevant player in CJS
strategising; (3) that there are certain dilemmas or tough choices now
facing the RJ agencies that will have to be considered carefully; (4) that
there is a need for more strategic planning concerning where NSRJ and the
RJ agencies are going in their continuing development of RJ in Nova
Scotia's CJS, balancing NSRJ programme objectives, resource requirements and the standpoints of agency personnel, CJS officials, and community leaders in related service provision and mobilisation; and (5) that more strategic thinking should also be directed at developing protocols and guidelines for the sessions, for feedback and experience sharing among staff/volunteers and among the agencies, for identifying more specifically expectations and operational guidelines for RJ referrals from beyond the police level, and for responding to special referrals (e.g. flagging cases involving family violence and dealing with repeat and serious offenders).

Conclusion

The NSRJ initiative, through the RJ agencies, has added value to the former alternative measures programming. The contribution is continuing and much fine-tuning can be done to enhance it further, for example, providing modest resources to stabilise core staff by increasing their compensation, especially fringe benefits, resolving the liability concerns of the local boards and centralising training oversight under NSRJ for staff and volunteers. Strategic planning, though, appears to be necessary before significant new challenges are engaged (e.g. extensions of the programme to adults and ‘serious’ offenders) or major new resources allocated. Special, well-conceived pilot projects could explore new challenges while the RJ initiative remains focused on stabilising and fine-tuning what has already been put into place.

References
