Sociology 4099: Victimology

Lecture Notes Week 7:

Victims and Criminal Justice 2: Official Responses

In the last class, we looked at the traditional place of victims in the criminal justice process, and a few of the recent changes that have been made in that regard. Today we will extend this latter discussion, and look at the four most significant responses to victims concerns in the legal process. These are:

(1) The civil courts;
(2) Criminal Injuries Compensation programs;
(3) Victims Services Programs; and
(4) Restorative Justice.

(1)The Civil Courts:

Canadian courts have held to the traditional viewpoint that victims of crime have no place as parties to the proceeding in criminal matters as they have the option to pursue a civil lawsuit for their losses. The validity of this argument will now be examined.

Technically, if a person has been injured by the act or omission of another without just cause, a *tort* has been committed. The injured person has historically been entitled to civil damages if (i) the defendant's act was wrongful; (ii) s/he owed a duty to the plaintiff; and (iii) the damage was reasonably foreseeable. The standard of proof in such matters is no longer "guilt beyond a reasonable doubt," but the much lower standard where the defendant must be proven to have caused the injury on "a balance of probabilities."

Without getting into the complex legal hurdles involved in establishing the above points, which may be even more problematic if the suit is defended, it must be noted that victims usually have much more immediate and pressing difficulties to contend with:

(i) The victim, in many cases, may be unable to identify and locate the offender. This, by itself, effectively precludes a lawsuit as service of court documents becomes impossible.

(ii) Limitation periods for bringing suit may expire before the victim has recovered enough emotionally to consider suing.

(iii) Court-ordered damage awards are not always enforceable in practical terms, as "you can't get blood out of a stone." While there are costly, time-consuming legal mechanisms to execute on judgements, for example, by placing a lien on the defendant's land, seizing bank accounts and personal property, garnishing wages, and summoning the defendant to court regularly to be examined with regard to any assets or income, *none* of these are effective against someone who owns nothing of value, has prior judgements against them, whose property is encumbered by secured or preferred debts, or who declares bankruptcy. Ultimately, such a defendant is

effectively "judgement proof."

(iv)Where the victim does recover damages, they may be whittled away by the legal costs involved in bringing the suit and any costs incurred in executing upon the judgement.

(v) The offender may file a civil counterclaim against the victim, and, at least in the past, was eligible for legal aid. Victims generally are not, especially when they own any significant assets. This can be an emotional nightmare for the victim, and leave them almost broke with legal costs.

(vi)In many cases, the collection of criminal fines has priority over the payment of civil damages or of restitution/compensation orders.

Considering all of these problems, it is little wonder that the civil courts have been rarely used by victims of crime. Three surveys bear this out:

(1) A pioneering 1968 study by Allen Linden found that in Toronto at the time, only 1.8% of victims surveyed collected anything by filing a lawsuit, despite the fact that some economic loss was suffered by 74.2% of those surveyed. In addition, only 14.9% considered suing, 5.4% consulted a lawyer, and 4.8% actually tried to collect from their attackers.

(2) A later study conducted in Vancouver and Delta, B.C. in 1974 had similar results: only 4% of the Vancouver residents succeeded in recovering anything from their attackers while none of the Delta residents did.

(3) More recently, the 1988 General Social Survey found that in only 1% of reported victimizations were attempts made to seek redress through the court system.

So much for the civil courts as a realistic alternative for victims of crime to seek redress.

(2) <u>Criminal Injuries Compensation Tribunals:</u>

The second major institution of civil redress for crime victims is represented by a variety of state-funded compensation schemes. These administrative programs initially grew out of dissatisfaction with the problems involved in utilizing the civil courts for redress. The idea was that tribunals would provide quicker and more efficient compensation to victims of crime than the courts.

These were justified politically as:

(i) a way of providing of "natural justice" to the innocent and worthy;

(ii) a way to contribute to the public welfare by protecting and restoring the core values of trust in society, both by the victim and by the general public, in order to preserve the stability and security of the social system; and

(iii) as a form of "insurance" against certain types of crime inevitably arising out of our current social and economic arrangements.

Historically, the pioneer in implementing such state-funded compensation was New Zealand, which, in 1963, passed an Act to provide state compensation to victims of violent crime. Other governments quickly followed. Britain passed its law in 1964. In 1965 California became the first U.S. state to enact such a system, and it has been followed by most of the other states since then. In Canada, Saskatchewan was the first province to pass such a law in 1967. This was evidently a popular idea, as when B.C. introduced its system in 1972, it was the eighth province to do so. Since then, the two territories, N.S. and P.E.I. have been added to the list, leaving no province in Canada without a scheme for compensating victims of violent crime (although recently, some provinces have disbanded their boards and amalgamated their functions with either their Workers' Compensation Boards or Victims' Services programs).

Until 1992, these programs were run on a cost-shared basis between the federal and provincial governments, although the boards are constituted and administered provincially. While none are identical, they have shared a number of common features:

- All were designed to aid the victims of violent crime. These include surviving dependents of victims of homicide, and usually persons responsible for the maintenance of the victim;

- Many programs also compensate "Good Samaritans" who are injured in the course of attempting to enforce or assist in the enforcement of the law;

- All jurisdictions consider the possible contributory behavior of the victim in assessing the eligibility and size of the award;

- The compensation schemes were all designed to alleviate pecuniary loss. Compensation may be obtained for financial costs incurred as a result of the injury, death or disability of the victim (e.g. funeral expenses, the cost of some therapeutic equipment).

- Compensation could also cover the losses to dependents as a result of a victim's death, to pay for the maintenance of a child born as a result of rape, or for other expenses deemed reasonably the jurisdiction in question.

- *Some* programs also compensate for pain and suffering (although this has become much more restricted since the termination of federal cost-sharing in 1992).

While these may sound helpful in comparison to the civil courts, in practice there are many areas that victims have traditionally argued are upsetting, unjust, and inhumane. These include:

(i) While there is the advantage that no identification or conviction of an offender is required, it is also true that **the compensation obtained is usually far less than a court would order in a**

private lawsuit. Furthermore, if the victim later does later sue successfully, s/he can only recover an amount in excess of the compensation paid, as the Board is entitled to have its share back.

(ii) **Many jurisdictions apply a limitation period within which application must be made** (e.g. 1 year after the crime). After that, victims in most cases are out of luck.

(iii) **Most jurisdictions impose maximum limits on awards to victims.** Ontario, for example, has a maximum lump sum award in the event of injury or death of $25,000, or $1000/ month in the case of periodic benefits. It has also restricted awards to $150,000 (lump sum) and $250,000 (periodic) as the total compensation payable to all applicants in respect of any one occurrence.

(iv) **Many boards deduct collateral benefits** from the amount of compensation awarded. Some even deduct welfare payments which, in effect, does little to compensate victims in times of financial need. Indeed, many have a means test ensuring that compensation is only given to the poorest of the poor.

(v) **Property damage or loss is virtually never covered**, despite the fact that many victims either do not have, or cannot afford private insurance.

(vi) **Not all boards have included payments for non-pecuniary loss** such as pain and suffering, nor do those that do all recognize that pain and suffering are not restricted to the primary victim.

(vii) **Long delays occur between the time of application and the time compensation is actually paid** to victims. Indeed, it has been argued that many victims are deterred from applying by the lengthy bureaucratic procedures and investigative process. For those that do apply, these can be very difficult as there are frequently bills to pay as a result of victimization, such as for specialized therapeutic equipment, or, in the worst cases, funeral bills. Moreover, this is aggravated by the fact that either injury or "post traumatic stress" frequently make it difficult for victims to hold regular employment.

(viii) **These Boards are notoriously underfunded** by both levels of government. As one victim put it (1982 figures): "It costs every taxpayer $320 to support the justice system. Of this, 32 cents goes to victims." Fattah (2000) adds: "Since in many jurisdictions the budget is determined in advance and cannot be exceeded, the more applications the program receives, the lower the awards. As the schemes are poorly funded in the first place, successful applicants usually end up receiving ridiculously low amounts as compensation for their victimization."

(ix) **The existence of government compensation for victims is not well known**, nor has it been well-advertized - even by the police. In some respects this follows from underfunding, with Fattah (2000) commenting that "It is easy to understand why it is in some countries there is a deliberate attempt not to publicize these state compensation schemes." This means that many victims never find out that such programs are open to them. Nationally, a 1987 Gallup Poll

reported that 73% of Canadians were unaware of the existence of these programs. Indeed, it has been reported that in Ontario only one in fifty-five eligible victims actually seeks compensation. This appears to be similar to the situation in other jurisdictions. A study of the New York and New Jersey programmes revealed that fewer than 1% of all victims of violent crime even applied to the Boards, and only 35% of those who applied were compensated.

(x) **Compensation may be denied for numerous reasons.** For example, in almost all systems, eligibility is contingent upon reporting the offence to the police and the victim's willingness to cooperate with the justice system. Most also exclude (or drastically reduce the awards to) victims who provoked or otherwise contributed to their own victimization. One rule that renders the majority of victims of violence ineligible is the high minimum limit that is usually set for compensation and below which victims do not qualify. Of course, the burden of proof is on the victim, and very often it is difficult to prove that the injury resulted from a criminal attack when the attacker has run away and there were no witnesses. As a result of these restrictions, a large number of victims simply do not qualify for compensation.

(xi) **Victims are often not satisfied with the nature of the hearings themselves**. While, on the one hand, they are given "a forum in which to tell their side of the story which may not have been brought to light at the court hearing," there have been numerous reports of victims being grilled by Board officials over their role in the incident, their financial position, and/or the extent of their injuries. This does little to help individuals who are trying to come to terms with horrific personal experiences, and may, at times, amount to revictimization. Indeed, researchers have found that among victims who go through the process of compensation, even those who end up receiving some funds are less satisfied than those who do not apply (Elias, 1983).

(xii) **Federal-Provincial cost-sharing for these programs ended in 1992**, when the Canadian government cut back funding to the provinces. This resulted in many provinces reorganizing their programs (i.e. amalgamating criminal injuries compensation with either their victims services programs or workers compensation boards). It also meant severe cutbacks in eligibility and coverage (e.g. non-pecuniary damages such as pain and suffering being eliminated or harshly curtailed). In addition, some provinces, such as Nova Scotia, have cut all types of compensation other than counselling awards.

The upshot of all this is that very few victims apply, even fewer are minimally compensated, and these individuals are often more dissatisfied than those who didn't bother. What can we make of this?

A convincing argument is made by Robert Elias (1983). Elias argues that these schemes really have very little to do with compensating victims, but are instead examples of "symbolic politics." In his view criminal injuries compensation uses symbolic language or apparent gestures to detract attention from tangible issues of resource allocation, particularly from the fact that substantive programs do not always follow political rhetoric. These enable politicians to say that something has been put in place to do something for victims, while in fact it fails to provide most victims with assistance. Elias emphasizes how these programs serve to quiet public demands or

concerns with a so-called policy announcement that fails to provide any tangible results.

In support of his argument, Elias notes that in many states unprecedented number of legislators ended up co-sponsoring such programs. Sponsors, and even other supporters, loudly trumpeted their support for the programs among their constituents, and the public greeted such plans with great favor and appreciation. Ironically, however, many of these same supporters and proponents of compensation later voted against the appropriations to fund the programs, or for extremely meager funding with very restrictive eligibility requirements. "Even from the beginning therefore, the actual commitment to creating substantive programs was low, but the political advantages of supporting the plans were nevertheless realized."

Elias also argues that apparent public support for these programs was the precursor to the expansion of police services to fight crime. Going hand in hand with this, these apparent compensation programs served as a form of welfare to psychologically "appease" those most likely to commit - and suffer the effects of - crime (e.g. the poor and minorities), through *apparent* concern with the rampant crime and violence in their communities. Rather than addressing the sources of crime and poverty, however, this strategy resulted in a mixture of toughness and symbolic pacification enabling effective social control. Elias notes that "It is probably no coincidence that these programs arose in the late 1960's at precisely the time that welfare roles were expanded to cope with urban discontent. And, it is also probably no accident that most of the programs actually adopted were established within a few years of that crisis period or not at all, were instituted in states whose cities were most beset by disruptions, and have been plagued by tentative and insufficient budgetary support since the decline of urban discontent in the early 1970's (despite the fact that the number of violent crime victims continued to rise).

Finally, Elias argues that "perhaps the best reason to label victim compensation as symbolic politics is simply due to its lack of success and substance in practice." Elias administered a survey to board officials and 342 victims of two programs in New York and New Jersey. Among victims, there were control groups of claimants and non-claimants for both jurisdictions. He discovered three things, each of which corresponded to an ostensible goal of victims compensation.

With regard to the tribunals' ostensible goal of compensating victims, Elias found that fewer than 35% of those applying ever received compensation (and many of these considered the amounts insufficient). This was in addition to the fact that less than 1% of all violent crime victims even applied in the first place. So much for the goal of compensating victims.

With regard to the tribunals' ostensible goal of helping to control crime, studies have shown that these "have no apparent effect on reducing the crime rate, the clearance rate, or on conviction rates. They are not providing a greater certainty of justice that might, if achieved, deter crime.

As for the tribunals' ostensible goal of improving attitudes and cooperation among people

toward criminal justice and government, Elias' research has found that increased willingness to cooperate with authorities has not been forthcoming (e.g. there has not been increased reporting of crime or willingness to prosecute as a result). In fact, the majority of those who dealt with such tribunals exhibited a *worse* attitude towards future cooperation with authorities due to their treatment. This was particularly so among uncompensated or "inadequately" compensated claimants. The small minority that were satisfied with their compensation (or who did not apply), however, were more inclined to support the programs, government and cooperation with criminal justice institutions - the latter apparently impressed by the fact that policymakers have been considerate enough to show their concern for victims by providing compensation programs. Elias states: "A perfect example of symbolic politics: the public is thankful for the program and hopes it will never need it, when in fact, should the program ever be needed, for the vast majority of people, it will not actually be there!"

In the end, Elias argues that victim compensation has some very serious problems that will not likely be fixed - even though many things could be done to make them more substantial. He says this is because our real commitment to victims is considerably unclear. Rather than get at the root causes of violence (e.g. poverty, inequality, over-criminalization, inadequate gun-controls, and alienation), policymakers prefer to stick "band-aids" on a problem after it occurs. This merely helps justify our "bankrupt" crime-prevention policies. With victims apparently "taken care of," it is not as necessary to have any impact on crime. Ultimately, he feels that "real, and not symbolic assistance for victims should not be promoted in isolation, but should be accompanied quite closely by demands for major transformations in criminal and social policy focusing on the real sources of crime in society. Future research and work should dwell not so much on how to make victim compensation and other aid better as on how to make victim assitance unnecesary in the first place."

(3) Victims Services Programs:

The last 20 years have witnessed an unprecedented development in the field of victim services. Indeed, victim services have been called the growth industry of the decade. The expansion of service programs for victims of crime in the United States, Canada, Britain and many other countries has been nothing short of phenomenal. Ten years ago, in 1990, Davis and Henley estimated the number of victim servie programs in the U.S. to be over 5000, whereas 20 years earlier there had been none.

In a 1997 report by the Canadian Resource Centre for Victims of Crime, the four basic types of program models were identified:

(i) Police based victim services: usually located in police detachments/departments, these types of programs are designed to help the victims as soon as possible after their contact with the justice system begins. The types of services that police based programs may include are: death notification, information about the justice system, information about the investigation, assistance with victim impact statements and criminal injuries compensation applications, referrals, etc;

(ii) Crown/court based victim/witness services: these are usually located in courthouses, and work very closely with the Crown's office. The emphasis is on court preparation. The types of services offered may be: information about the court process, tours of the courthouse, emotional support throughout the court process, facilitating meetings with the crown, working with child victims/witnesses, etc. Obviously, victims usually only have contact with the Crown/court based programs if the police identify and arrest a suspect;

(iii) Community based victim services: these types of programs are usually not government operated, but may benefit from government funding. They usually specialize in the types of victims they deal with, i.e. sexual assault centres, domestic violence transition homes, impaired driving victims, etc;

(iv) System based services: this is a relatively new approach to providing assistance to victims in that it is not "police" or "crown" based but "system" based. This means that the victim only has to go to one place to get the types of services they can access from both police and crown based programs. This service based model has been adopted by both P.E.I. and Nova Scotia.

If you look at the article by Marriott-Thorne in your readings, you will see an outline of how models of service delivery vary throughout the various Canadian provinces and territories. I will not go into these in detail today, focusing instead on the variety of services for victims available in Nova Scotia.

Marriott-Thorne divides these into four categories:

(a) Services available to all victims;
(b) Services to victims of family violence;
(c) Specialized services to victims of crime; and
(d) Mandated non-justice services.

In the first category are (i) the Provincial Victims' Services Division, part of the Nova Scotia Department of Justice; and (ii) the RCMP Volunteer Victims Assistance Program. The former operates four key programs, including Criminal Injuries Compensation, the Regional Victims' Services Program, the Child Victim/Witness Program, and the Victim Impact Statement Program. The latter operates out of RCMP detachments with volunteers providing support, information and referral to victims of crime.

In the second category are services with a specific focus on victims of family violence. In general, these can be divided into public and private services. In the former case we see municipal police based victim services run by the Halifax and Cape Breton Regional Police, as well as projects and initiatives funded by the Department of Justice through the Framework for Action Against Family Violence. Private services, in contrast, include transition houses, women's centres, and organizations such as Citizens Against Spousal Abuse.

In the third category we find specialized services to victims of crime. Three major examples

include services to victims of sexual assault (Avalon), services to victims of impaired driving (MADD), and various legal services such as legal aid, the Public Legal Education Society, and the Mi'kmaq Justice Institute.

In the final category are mandated non-justice services, including Adult Protection Services under the Adult Protection Act, Child Protection Services under the Children and Family Services Act, and Mi'kmaq Family and Children's Services.

Marriott-Thorne notes that funding for these services comes from a variety of government sources, the Department of Justice, and the Victims' Assistance Fund. This latter source is funded through surcharges (the "victim fine surcharge") added to offenders fines at the time of sentencing. These are authorized under both the Criminal Code and the provincial Victims Rights and Services Act. It should also be pointed out that, Marriott-Thorne aside, some of the private organizations also conduct their own fundraising to avoid becoming "coopted" by the government.

Today I will be focusing my critical comments on the Nova Scotia Victims Services Division, with which I am most well-acquainted. This was intially set up in 1989 under the Victims Rights and Services Act, and subsequently restructured following a 1991 study on victims needs and services in N.S. by Prof. Chris Murphy of Dalhousie University.

Victims' Services has already been evaluated once, in 1996, in government-sponsored review by Bill Collins and Ann Martel. This report, which has been included in your readings, is largely supportive of the Victims Services program, and merely suggests some administrative changes to improve the *efficiency* of the program as it is currently constituted (e.g. cessation of funding short-term community projects under the Victims' Services Funding Program in favor of a more integrated province-wide network; hiring some staff on a fee-for service basis, etc).

However, I also conducted my own research on the Nova Scotia Victims' Services Division over the last few years. Following a descriptive overview of their activities, I will outline what I found.

Nova Scotia Victims' Services contacts and provides support services to victims of crime who are involved in the court process, typically after a charge has been laid against the offender. Operating largely as an information provider and referral service it provides a variety of voluntary programs and services, including court preparation sessions, the child victim-witness program, funding for counselling through criminal injuries compensation, and assistance with preparing victim impact statements. “Victim Services Officers” essentially deal with clients - either over the phone or in person - in an attempt to explain the court process. They provide emotional support, keep clients informed about their case, pass on relevant forms and documentation, and liaise with prosecutors, other officials in the justice system, counselors and community organizations that may be of help to clients.

Some internal figures may be of help in illustrating what they do. For example:

(1) Regional Victims' Services Program: *(p.7: Caseload Statistics)
*(p.8: Summary of Services)
*(p.12: Stage of Referral)
*(p.13: Source of Referral)
*(p.10:Client's Age/Gender)
*(p.11: Types of offences)

(2) Child Victim/Witness Program: *(p.15: Cases by Year)
*(p.16: Age and Gender)
*(p.17: Relation to Accused)
*(p.17: Types of Offences)

(3) Victim Impact Statement Program: *(p.20: Caseload by Year)

(4) Criminal Injuries Compensation: *(see above)

In my own study, I examined the question of encouragement vs. discouragement of the victim identity by Provincial Victims Services and 2 other support organizations. Of the 44 clients and 22 support staff surveyed, by far the largest group of subjects indicated that victims' encounters with victim support organizations had a mixed impact on victim identity. There were a variety of reasons for this. In many cases clients simply pointed to things that they liked and disliked about the service, and support staff responded with factors that they considered helpful and unhelpful to their clients. However, it quickly became clear that these surface issues masked a larger tension in the data. Each service was at some level *aware of*, and *attempted to deal with* the central issue: the potential for increasing clients' sense of victimhood through support practices. Yet, their attempts were *not exhaustive*, such that *ways of encouraging or increasing clients' sense of victimization inadvertently entered interactions all the same*.

In the case of Provincial Victims' Services, it was clear that staff underwent extensive training for their role and were clearly sensitized to the possibility that their dealings with clients may further their sense of victimhood. One worker stated:

> I don't identify them as victims. The only way that term comes up is self-identification. If a person identifies to me that they've been a victim of an assault, then I certainly understand that and I affirm that back to them. If the person identifies themselves as having had an incident, or something unpleasant has happened, I certainly give them information, give them options from that perspective as well. I think there are a whole lot of issues around the term victim and I think that if people come to an understanding that they feel they've been victimized and they're overwhelmed by that victimization, then there's certainly a set of options to respond to that. If people feel that they have suffered an unpleasant situation and want to know the consequences - they're looking for information and they're looking to continue to take control of their life, I certainly

> provide the information option - and I give them a whole range of options to choose from ((Interview #30: Female, age 47).

Indeed, the same subject suggested that "knowledge is power," and that her job was to "normalize" the client's situation as a "short term problem" after which they would get their "balance back." Other workers suggested that part of their job with clients was to "build them up" (Interview #24: Female, age 42).

In some cases, clients appreciated this approach: other times not. Consider the contrasting reactions of the two following clients:

> If I need anything I can call and they listen. They believe me and understand. Every time that I called them they gave me the information that I need. I have control with them, and they aren't going to keep going unless I want them to. They aren't treating me as helpless, but are trying to build me up more. (Interview #31: Female, age 28).

> I was confused and shattered, but found that they didn't help me in my confusion. They just treated me like I was a normal person who had walked off the street looking for some information, like I had total control of all my faculties. I was in need of answers and they couldn't tell me anything. They don't even make you feel they could help. I was made to feel that I was not important, like I was shunned (Interview #11(b): Female, age 43).

In the former case, the client implies that this treatment encourages a sense of empowerment, which is clearly contrary to the powerlessness inherent in victimization. However, the latter client implies that she felt further victimized by this strategy. Of course, this also relates to the latter's view that she was not treated with the concern, sympathy and "respect" she felt was appropriate given her circumstances.

Aside from differing client responses to this approach, it is important to note that a separate sense of victimization may develop out of the *inconsistent* or *incomplete implementation* of this philosophy by staff. The worker above, for example, was observed to ask a client "Have you been a victim of crime," immediately softening her voice and adding "It's not easy, is it?" Another staff member, after outlining a policy like that above, stated: "We're not really into labeling people, other than identifying them as a victim." She noted how she tells clients that "this is not your fault. This is about the offender taking responsibility" (implicitly altercasting clients as victims). As well, she indicated that she provides clients with information on the "cycle of abuse" such that they can understand their situation. In her words "You can't move on unless you identify where you are"(Interview #16: Female, age 43).

While such policies to avoid casting clients into the victim role, and inconsistency in their application were clearly important, something else was far more significant. This had to do with

Victims Services' location in the Department of Justice - and hence its *close ties to the criminal justice system*: an institution whose significant impact on victim identity has already been noted. Both staff, clients, and workers in other victim support organizations commented in this regard. Staff, for example, noted:

> I have to walk a fine line and avoid criticizing the system. I can't commiserate with clients in that regard (Interview #16: Female, age 43).

Indeed, the role of Victim Services Officer does not change clients' traditional rights vis-a-vis the offender and the state within the criminal justice system. One officer noted that:

> "Probably one of the most difficult areas is if a victim believes that the Victim Services Officer can somehow change the process. I understand that, but certainly don't have any more power than the victim (Interview #30: Female, age 47).

Hence, while able to provide information, refer clients to services, and help access recent procedural changes such as victim impact statements, they face many restrictions built around the traditional criminal justice process. In addition to their demonstrated failure to increase victim satisfaction in the reading by Davis and Smith (1994), for example, there are legal restrictions on what victims can write in their victim impact statements related to the offender's rights (i.e. the victim can't speak to sentence). The Victim Services Officer has to explain these to clients, a victim impact statement not meeting these guidelines may be rejected by the court despite their objections, and the Victim Services Officer can't prevent defense counsel from cross examining the victim on these statements.

These institutional restrictions have prompted criticism from support workers at other organizations, generally revolving around the theme that Victims Services is "part of the system." For example, consider the following comments, the former from a staff member at a shelter, the latter from a "victims' advocate" of the impaired driving organization:

> Victims Services is part of the system. While some workers are willing to go the extra mile, they take a lot of flak for it from the Department of Justice. They are constantly being pulled and defending what they're doing (Interview #25: Female, age 42).

> There is so much red tape. Some of them may care, but there is only so much they can do. Their hands are tied. (Interview #11(a): Male, age 47).[1]

[1] Indeed, several respondents noted that impaired driving is not on the schedule for compensation, and a low priority for workers in many cases.

Similarly, clients commented on these restrictions. For example, one man who reported a "good" relationship with his Victims Services Officer was critical of how these restrictions inhibited her role, and impacted on the sense of powerlessness associated with his victim identity:

> Victims Services is the only bright spot in the whole system. While they're caring, there's got to be some kind of legislative change put in place so they have some teeth, so if the victim doesn't agree with the way things are going they have some avenue of appeal instead of feeling so bloody powerless. I feel so sorry for the Victims Services officer. She may be there to provide a service, but the bottom line is she is bloody near as powerless as the victim. There is nothing in place to allow her to have any kind of real clout. It's like she's both inside and on the outside of some conversations that we have. It's like she's supposed to be there as an advocate of the victim, but when she deals with the Crown it's like 'Why the hell are you sticking your nose in?' The way things are set up right now, she is little more than a feel good option - certainly better than nothing, but almost a figurehead (Interview #12: Male, age 43).

Other clients reported more negative aspects of these institutional restrictions, and were far less generous in terms of how they felt these impacted on their sense of victimhood. Some complained that "it's all about what happens in court, and they don't want to talk about anything but court and how you felt there"(Interview #20: Female, age 17). Others complained that the content restrictions on victim impact statements inhibited them from speaking about their own experiences from their own "point of view" (Interview #21: Female, age 35), representing "an exercise in seeing whether I could write an essay" (Interview #11(a): Male, age 47). While these restrictions exist, in the first instance, to protect officers from being subpoenaed, cross-examined by defense counsel, and potentially damaging their clients' case, and in the latter, to ensure that victims' input is not excluded, such rules become very difficult for clients in practice. Indeed, they relate to the powerlessness associated with victimhood that they already experience in the criminal justice system:

> Victims Services told me not to talk about my case. It's in your face all the time to be quiet or you'll hurt the case. That's the biggest problem cause you can't talk about your experience, even though you're there because you need help. It revictimizes by shutting you up. It's very limiting and adds to the feeling of the horrible secret in the first place. It triggers those feelings, and is not empowering, but inhibiting (Interview #21: Female, age 35).

> I decided not to do a victim impact statement. It wasn't that I didn't want to. It just looked like so much work, and there is a lot of 'you can't say this and you can't say that.' If I am going to write a victim impact statement give me credit. Let me just do it. Whatever I say about my experience from my point of view is what I say. Frig that (Interview #21: Female, age 35).

Ultimately, while many respondents found the information provided by Victims Services helpful to some degree, both clients and support staff from other organizations were critical of these institutional restrictions, particularly how they sensed that staff were just doing a job:

> It's a token response. With all the cutbacks the people at Victims Services didn't really understand what is happening. They were good listeners, but I almost felt at times when I was talking with them that they had a list in front of them. That's the feeling I got. Very quickly I realized who signed their paycheques. It's a conflict of interest. They know if they want their jobs they can't go outside of political policy. The system is the key - they are in so let's protect ourselves. I felt they thought I would go so far, realize I couldn't fight the system, and learn to accept it. It definitely made me feel more like a victim, more reliant on the system. (Interview #23: Female, age 48).

> Victims Services staff get a salary and go to the office and do their job. It is a more structured approach than ours and they don't want to cross professional boundaries (Interview #7: Female, age 53).

Victims Services Officers responded in three ways. Some blamed the legislation limiting their responsibilities, claimed that they wished they could do more, and put the blame on the system. In the words of one woman: "I often take the heat for the system's failures." (Interview #24: Female, age 42). Others minimized the impact of their interactions by pointing to the brief encounters that they have with most clients (Interview #30: Female, age 47). Some added that clients already saw themselves as victims before their encounters, thereby minimizing any accentuation of victim identity during their interactions (Interview #30: Female, age 47). Nevertheless, these do not entirely negate the impact of their encounters on clients' sense of victimhood.

Summing up my research, there is a tension at Victims Services between attempts to avoid inculcating a victim identity in clients and the presence of factors that do just that. Victims Services Officers are clearly sensitized to the potential for their actions to engender a further sense of victim identity in clients, and at least some emphasis is placed on not treating clients as victims at the outset. Their approach is to provide information on options and choice of referrals at the client's behest. While some clients found this approach encouraging, others considered it to be an inappropriate response under the circumstances and felt revictimized as a result. Moreover, the inconsistent application of this approach was problematic, where clients were implicitly altercast or labelled as victims in some cases.[2] Yet a third factor impacting on victim identity

[2] Either approach poses difficulties depending on the specific situation, and, if seen as mutually exclusive alternatives, the best response here is that Victim Services Officers gauge the situation carefully and formulate an appropriate response based on training, experience, and the presenting client so as not to make them feel more victimized as a result of the encounter.

loomed much larger: the intimate connection of Victims Services with the criminal justice system. It not only is identified as part of the system by many clients and support staff in other services, but operates under restrictive rules that clients find disempowering, if not outright revictimizing. While Victim Services Officers respond that they are not the only factors impinging on clients' victim identities, and merely operating under the rules as written, many clients consider that they assist one of the former through applying the latter. Ultimately, the tension in this context illustrates the curious paradox of attempting to encourage empowerment in an institutional context where support staff have little or none themselves.

Before closing this section on Victims' Services, I would simply like to address one key related issue. Noted criminologist Paul Rock (1990) has argued that victims' interests were never the motivating or mobilizing force behind such programs. Similarly, Robert Elias (1983) argues that victims services really serve official needs, not victims needs. Keeping these in mind, I want you to consider the following quotes from your reading by Marriott-Thorne, who also just happens to be the Director of Nova Scotia Victims' Services Division. These are extracted from her written submission to the Parliamentary Committee of Justice and Human Rights in 1998 as it considered the proposed Federal Victims Bill of Rights:

> "There are enough service providers without the entry of the Federal Government in either direct service delivery or direct funding to organizations. The need now is for better local coordination, cooperation and specialization. The Federal Government has a role in assisting each province/territory to accomplish this." (p.21)
>
> "Implementation of a National Bill of Rights would distort local priorities, may create expectations that not all provinces/territories could meet, and create legal uncertainty in intruding on Provincial jurisdiction over the administration of justice." (p.23)
>
> "It is recommended that legislation prescribing a Bill of Rights for Victims remain within provincial jurisdiction where the right to a specific service can be linked to the availability of resources." (p.23)
>
> "It is recommended that a Federal Victims Strategy to enhance the rights of victims should include the provision of adequate resources to enable the provinces/territories to provide the necessary services to address those rights." (p.23).

(4) <u>Restorative Justice:</u>

The final major response of the justice system to victims' concerns is restorative justice. Widely practised in small, agrarian, rural societies, restorative justice has a long and rich history in the aboriginal communities in Australia, Canada's First Nations, and the Inuit communities of the North. The quasi universal disenchantment with the traditional punitive/retributive justice

system encouraged those calling for justice reform to seek alternatives to the current system of punishment - particularly in this area of community-based sentencing alternatives.*(Chart, p.2)*

In 1977 Nils Christie published Conflicts as Property, in which he explained that the root problem of the system is that conflicts were stolen from their legitimate owners, the victims, and became the property of professionals rather than people. This work provided a strong impetus to those calling for the replacement of the current, ineffective system with the constructive practices of dispute settlement, conflict resolution, mediation, reconciliation and reparation. Advocates of restorative justice point out that in addition to its devastating effects on offenders, their families, and the larger society, the current system of punishment serves to intensify the conflict rather than solve it.

Spearheaded by the Mennonite Church, and consistent with 1975 recommendations of the Law Reform Commission, victim-offender reconciliation programs were initially set up in Canada and the U.S. in the mid 1970's to serve as an *alternative* to jail. These programs then spread to many other countries - rapidly growing in popularity. The early programs, largely run by volunteers, have now been in existence for over 20 years, and the movement is expanding at a rapid pace.

Dittenhoffer and Ericson, writing in 1983, conducted a study of one of these early Canadian victim-offender reconciliation programs. This was supposed to involve offenders agreeing to meet with their victim(s) *post-conviction,* negotiate over the amount of harm done, and decide on mutually acceptable terms of compensation. Voluntary participation in the program by both the victim and the offender was required. Dittenhoffer and Ericson interviewed judges, probation officers, and prosecutors, as well as examined the operation of this program during which time 51 offenders entered the program (which involved 47 crimes). 159 victims were counted in these cases. 85% of the offenders had no relationship to their victims prior to the offence. All referrals to the program were made through a probation order. There was victim-offender contact in 18 cases, and refusal to meet in 12 (6 victim; 5 Offender; 1 Both). The rest did not meet for administrative reasons.

Dittenhoffer and Ericson's study found some serious problems in terms of meeting the initial goals of this victim-offender reconciliation program. Originally, it was to provide a new sentencing alternative which would allow the offender to pay for the crime by a method more constructive than imprisonment. The victim would also gain, becoming more involved in the criminal justice process and further obtaining compensation for losses. The main goal was to be reconciliation: resolving the conflict between the victim and the offender and restoring balance to their relationship.

However, the manner in which the program actually operates departed substantially from this picture. The majority favoured the program because of what it could do for the victim (e.g. often insurance companies recouping losses from clients), showed lack of interest in reconciliation, and had a negative attitude toward the program as an alternative to prison. Punishment and financial recompense received particular emphasis, perhaps in reference to a crime-control

model, and this directly interfered with the reconciliation objective. Moreover, administrative interests influenced decision-making, with judges and prosecutors being very selective in choosing 'shallow end' cases, and program officials preferring them. This makes it doubtful offenders who would have gone to jail would be included. All of this suggests, like earlier correctional reforms, that victim-offender reconciliation was not answering the need for alternatives to incarceration, and that it too was destined to become part of the widening net of social control. Instead of avoiding problems created by the use of the prison system, another sentencing option has been implemented which pulls a different set of offenders deeper into the system of social control, and inevitably increases cost.

Half a decade after Dittenhoffer and Ericsson's study, Mark Umbreight (1989) added to this debate by doing an exploratory study on whether victim-offender reconciliation should be applied to violent crime. Using a very small sample (6 interviews, review of informal conversations with victims, and drawing on his experience as a mediator in 1 case), he argued that this process was quite helpful to victims in certain cases, in that it enabled them to get answers to questions about the offence and to gain a greater sense of emotional closure. While obvious methodological questions arise as to the representativeness of his sample, self-selection of his respondents, how they may differ from those not so willing, and the potential for "exampling," he does make it clear that some "selected" victims of violent crime would welcome such a process. While not defining what he means by this, he does, however, urge caution about pushing victims into such programs, or even approaching them about it too quickly, as this may result in revictimization by the program. As well, he emphasizes that there need to be available more extensive casework services and resources than are found in the usual victim-offender mediation case.

But restorative justice has remained a popular idea. I often refer to it as the "hot new thing" in criminology. Over the last decade or two, restorative justice initiatives have developed all over the commonwealth (e.g. Australia, Canada, New Zealand, South Africa and Britain). Typically, they are intended to involve offenders, their families, victims, other interested members of the community, and a facilitator. All affected by the crime are encouraged to actively participate in the resolution of matters arising from the crime. In principle, the victim is a central actor in this process. In practice, levels of participation in RJ schemes, at least in Britain, have been very low. In 2001, for example, only 7% of youth offender panels were attended by victims. Given that responses to a 1998 British crime survey suggested that 41% of victims were willing to meet with the offender, it's possible that the problem lies with inadequacies in the means by which victims are involved (e.g. in New Zealand, victims attended about half of all family group conferences, and in Australia, rates are even higher 73% in N.S.W. and 89% for crimes of personal violence in experiments in Canberra. A recent study in the U.K.(Masters, 2002) suggests that the reason for these radical differences lie in the way that victims are encouraged to participate in RJ: basically the U.K. has had consistently "poor practice" - while only about 23% of victims didn't wish to attend, 53% were not informed about it, and many that were couldn't attend at the scheduled time (or rescheduled time). The labour intensive nature of victim involvement, high case loads, and poor interagency cooperation, moreover, suggested better staffing, training and coordination of caseworkers was necessary to bump up victim attendance.

So why are these studies relevant to us? Quite simply, it is because *restorative justice is being implemented, in varying degrees, throughout Canada as we speak.* Here in Newfoundland and Labrador, and mainly in St. John's, RJ is provided by three community groups: (1) Community Mediation Services Inc.; (2) The John Howard Society*;* and (more broadly) Aboriginal "Circles of Support."

The most developed of these is Community Mediation Services, which runs community mediations and conflict resolution training (since 1996). It provides support for victims before, during and after the CJS process. Aside from a core paid staff, much of their programming is run by trained volunteers (avg=25/year). Requests for the use of RJ come from police officers, community agencies, schools, victims, and community referrals (though their information notes that points of referral are "unrelated to the criminal justice process"). When involved, victims are generally involved in community mediations as participants in the RJ process. Much of their work deals with things like vandalism and neighborhood disputes.

The John Howard Society, a group with a long history of working with offenders, has provided, since 2000, a peer mediation program for youth. This trains peer mediators (students) to help other students resolve conflicts in a neutral setting (e.g. bullying, rumours, misunderstandings, personal property disputes, relationship issues, etc. Points of referral are unrelated to the criminal justice process.

Finally, Circles of Support offers one on one services to victims of sex offences and violent crime in Newfoundland (since 1997). Requests for the use of RJ services may come from a victim, an offender, or a community referral. Victims that become involved usually participate voluntarily, providing a caseload of 10-20 victims a year (vs. 30-60 offenders). Essentially, this is a program to help warrant expired sex offenders integrate into the community. Referrals are made following conviction, either pre or post-sentence. The program generally deals with men, sometimes mentally challenged, who have committed offences like sexual assault and sexual abuse, though other violent offences may also come into play.

As can be seen, restorative justice in Newfoundland and Labrador is available through a patchwork of community services. As I understand it, after attending a presentation during "Restorative Justice Week" in November 2004, there is some talk of expanding RJ here through either the Department of Justice or Victims' Services, though this will take time.

However, to really get a look at a comprehensive RJ program, I should point out that Nova Scotia has currently implemented a much more wide-ranging restorative justice system, and has been doing so for the last decade, with the primary goals of reducing recidivism and increasing victim satisfaction. This is the one that many provinces - and academics - are watching. The reading I gave you about the Nova Scotia program indicates that this initiative, run by the Department of Justice, *potentially diverts offenders by police prior to being charged, by the prosecutor prior to dealing with the charges, by the judge after conviction but before sentence is passed*. It explicitly *deals with more than minor property crimes* (with restrictions on what entry

point referrals can be made depending on seriousness of offence). *Considerable community involvement is expected* in implementing the restorative justice process (these can involve victim-offender conferences, family group conferences, and sentencing circles, among other things). The program is to be delivered through community agencies, and is to be phased in gradually, beginning with young Offenders in four counties, then provincewide, and (supposedly) later provincewide for *all* offenders (this last item may never happen).

The first thing I would suggest is that *many of the problems found by others may crop up here as well* (e.g. criminal justice officials not wanting to refer serious cases, widening the net of social control, poor attendance). However, because the program is designed to be much broader, these issues may be even more pronounced here. Time will tell if this thesis is correct.

However, there are other issues to consider. For the last several years I have been working with Don Clairmont of Dalhousie University interviewing representatives of community agencies and the criminal justice system regarding their views of this program. In 15 interviews, comprising 11 community influentials and 4 parties involved in the justice system, I found the following:

When asked about *the possible risks and benefits of RJ to victims*, the term "revictimization" was common among community respondents, as were concerns about the lack of a victims' veto, RJ being used for serious or violent offences, little power in the process, RJ being used in lieu of charges, and few supports being put in place. However, some did see a benefit to victims who did not want charges to proceed. Not surprisingly, most of these comments came from respondents representing victims' organizations - although others also expressed some concerns about violent offences being included. Most offender oriented respondents commented little, but considered that victims' expectations would play a large role.

The justice system respondents expressed the potential benefits of RJ as catharsis, understanding and closure, but considered that preparation, expectations and outcome were important. There were concerns about training of moderators and previously offender-based systems switching their focus to victims, but it was expressed that there were already risks and delays in the system, and the potential for empowerment, so why not give this a chance.

When asked about *the possible risks and benefits of RJ to offenders,* community respondents commented that the obvious benefit was to avoid incarceration. However, this was expressed differently depending on the perspective of the respondent. For example, those who worked - or primarily worked with - offenders expressed this in the context of a philosophy that it was better to avoid incarceration, would help rehabilitate, and assist with community re-establishment. Other community respondents, not necessarily sharing this philosophy, thought that RJ's potential for avoiding incarceration was not such a good thing, and would enable offenders to play the system. In the middle were individuals who work with both victims and offenders, who expressed both aspects as an upside and a downside, and felt that RJ gave another option given the right attitude, instead of just being seen as "a better deal." Another theme was that RJ, if it worked, would hold offenders accountable, make them take a look at what they've done, take responsibility for their actions, and relieve guilt. It would get away from the current system

where they are “cloistered” away from the events and their victims. Many of the respondents expressing these views either worked in victims’ organizations, or expressed, at least in part, a sympathy for the victim.

Turning to the justice system respondents, some of the same themes emerged, such as avoiding incarceration, being held accountable, making offenders take a look at what they’ve done, countered with the potential that offenders may just see RJ as a “slap on the hand.” However, the issue of risks took on more of a legal flavor, with one official pointing to potentially giving up constitutional rights to keep silent and not incriminate oneself, while another did not see such problems if RJ was done prior to charges being laid.

When asked about the *possible risks and benefits of RJ to communities*, the theme of cost-effectiveness emerged as significant. Some felt that this would save money on courts and the criminal justice system, but most felt that RJ masked a hidden agenda involving “downloading” costs onto the non-profit sector. Indeed, to really work as it should, they felt RJ should have sufficient resources put in place to enable agencies to do their job. The most critical in this regard were respondents somehow connected with victims’ organizations. Those coming from an offenders perspective voiced some of the same concerns, but also, in line with their philosophy of reintegrating offenders, tended to also express that the community needed education to understand RJ, support it, and get involved. Other interesting comments included RJ as an artificial way to reduce crime statistics, the issue of just who would decide whether a case went to RJ, and the potential for an increased sense of control in stigmatized communities.

As for the justice system respondents, the majority agreed with the philosophy of restoring peace as beneficial to the community. Indeed, several pointed out that there are already risks within the system, and in releasing offenders into the community. Others, however, pointed to the issue of properly informed decisions being made, with some particularly vocal about the problem of expecting high levels of expertise from small, poorly funded community organizations. Several pointed to the fact that the community would not like RJ - particularly “get tough” types - and that education was necessary.

When asked about *whether they felt that RJ would be effective,* only 3 community respondents said yes without extensive qualification (possibly because they have already unofficially used similar strategies, as well as the fact that they work with offenders). More critical were victims groups and those with a victim orientation. Some of these felt that it would not be effective, that it should be carefully phased-in and evaluated to avoid revictimization, and that the lack of a victims’ veto would be a hindrance. Third, some commented that its success depended on how it was managed. Indeed, these latter respondents commented on how program statistics can be fixed, and that “you can build in success or set up for failure.” Finally, two respondents commented that they didn’t know whether RJ would be effective. In the words of the latter “the jury’s still out.”

The justice system respondents were fairly positive about the potential effectiveness of RJ. One

Judge felt it would probably cut recidivism, while another felt that it would be more effective for young, first time offenders. One official found “the theory quite compelling,” while another felt that it would be effective “in some cases,” adding that RJ was “worth a shot” as the traditional system doesn’t do such a great job anyway.

When asked *whether RJ was likely to be efficient*, community respondents became quite vocal: one simply said “Bullshit!” All denied its efficiency considering that (1) it is a government program, and (2) social programs dealing with human emotions aren’t geared to efficiency. It was felt that such a program would be expensive, and that the necessary resources needed to be put in place for the program to work . “If rushed, it will be flawed.” There was also some suspicion about why RJ was really being implemented, and that it was not really to help resolve crimes, but to save government money.

Justice system respondents were split on efficiency, but spoke more from a systemic perspective. Several felt that initial diversion would clear up the court docket, while one Judge felt that it could slow things down if cases were put on hold to engage the offender in RJ. The issue of downloading came up among all respondents, and one succinctly commented, in line with the community respondents, that “No system tailored to individual needs is efficient.” Finally, the issue arose of “efficient for who?” Increasing court efficiency by diverting cases elsewhere may simply increase the burden elsewhere. Indeed, one well-placed official brought up the issue of the survival of the RJ program after federal financial support ends.

When asked about *whether RJ was likely to be equitable*, community respondents broke down again largely on victim-offender lines. Victims’ organizations, or those who took a victim perspective, felt that it would not be equitable for victims as offenders' rights were paramount, and there was no veto for victims. Offenders’ organizations offered qualified hopes that RJ would be equitable. Examples inlcude: “So long as people understand what’s involved”; “So long as resources are put in place for all”; “I hope so. It may be painful but beneficial for victims and offenders both”; and “I guess I can always live in hope”. Two respondents also spoke of minority access issues in terms of gender, class, and particularly race.

As for the justice system respondents, all commented on the lack of veto for victims. One official commented that the victim already has no rights, so is not losing anything in RJ. One Judge agreed, adding that victims now have an option they didn’t before, and that a veto would intrude on the rights of another party - the community. A government official commented how she once would have believed in a veto, but has since seen cases where it would have created an injustice (e.g. where the technical victim of an assault had a long history of abusing others, and a person who fought back could then be forced, by the victims' veto, into criminal court for assault). A second Judge felt that the lack of a veto is not fair, but it should be possible to conduct RJ sessions in another manner if the victim does not want to be involved. All of these respondents commented that minority access was an issue that needed to be looked at. Finally, there were comments on RJ’s equitable implementation, such as making sure participants know what the parameters are, and the impact on participants perspective (e.g. comments on the

possibility that RJ could achieve the same outcome as court in a shorter time with a greater feeling of having an impact on the result).

As these interviews closed, respondents were asked to share their comments on any issues or concerns that RJ would raise for their particular organizations. Many of the above issues came up again, and will not be repeated here. New comments largely related to the mandate of the particular community organizations in question, and there was again a split between offender and victim-oriented organizations. A sampling of interesting issues raised include:

- the possibility of being co-opted through funding;
- downloading/ RJ done for wrong reasons;
- RJ not really getting away from the adversarial model;
- The potential for subtle dynamics of intimidation and control being used by offenders in sessions;
- Parachuting Aboriginal models of conflict resolution onto culturally and numerically different communities and expecting them to work;
- the potential impact of RJ diversion on police record checks;
- the potential impact of RJ diversion on criminal statistics;
- the potential impact of RJ on the pro-arrest/pro-charge policy in domestic abuse cases;
- the need for sufficient training of staff;
- parallels with problems occurring in family court mediation;
- seniors probably wouldn't want to be involved, except perhaps in family situations involving financial abuse;
- if RJ allowed to expand, we may be able to expand our halfway houses/programs;
- RJ provides more options for referral.

The criminal justice respondents commented more from a systemic perspective in this regard. A sampling of issues raised include:

- Increasing vs. decreasing delays and time demands;
- How does information come before the court? Are RJ discussions privileged, or can they be used in cross-examination;
- The relationship between RJ and conditional sentences
- Whether non-compliance is like a breach of probation;
- The possibility of RJ having unintended consequences;
- The significance of RJ depending on its implementation and use in the system and community;
- How records are to be kept and cross-referenced by community organizations;
- How well-trained are community volunteers;
- What kinds of supports are in place for community volunteers;
- How different is RJ from current alternative measures in practice - How little this has affected my duties to date;
- The need for judiciary to remove selves from trials if involved in an offender's circle sentencing or other forms of RJ.

Finally, when asked for suggestions or recommendations, community respondents broke down on victim-offender orientations. Those with a largely victim perspective wanted either to move slowly with RJ, doing more consultation, to scrap it, or to make it more equal between the parties. The need for adequate resources came up as well. Those dealing with offenders either focused on community education, or wanted to learn more about RJ.

As for the justice system respondents, the only suggestions came from the judiciary, both of whom indicated that they needed to know what community support services for offenders were available. One phrased this in terms of better communication, while another suggested doing a separate study on this in its own right.

Summing up, the 15 RJ surveys provided a great deal of interesting information on where community influentials and members of the justice system see this program in its early stages. The most consistent finding involves the relatively sharp difference in perspectives between victims organizations, and those taking a victims' perspective, on the one hand, and those working with offenders on the other. These are repeated, but to a much lesser extent, among those working within the justice system itself - who appear to have not only a more systemic perspective on this program, but appear to see different sides of issues more readily.

Finally, and in addition to the above, I should point out that the Year Two Interim Report on the N.S. restorative justice initiative found that only about 11% of victims/victim substitutes attended restorative justice sessions in the period in question. Perhaps this reflects some of the "poor practices" noted in Britain. Moreover, police, who did the bulk of the RJ referrals, tended to refer predominantly first time/less serious offences to this program. While those few victims who did attend tended to rate the RJ experience quite favorably, it may be suggested that this was largely the result of such "creaming" in the referral process such that more serious, violent offences were not represented. This represents an initial failure of the program in two ways. If it does not deal with serious cases, and even then only 11% of the victims participate, what kind of an alternative is it? On the other hand, if more serious cases are dealt with, it is quite possible that either victim satisfaction, attendance, or both, will not prove as supportive of this program as the government and academic literature suggests. More research needs to be done to clarify these questions.

In closing, restorative justice has re-emerged as a popular current policy response to victims' traditional problems in the justice system. However, in studies of earlier programs, it was discovered that all was not as originally set out. Despite this, Nova Scotia has gone even further in its current restorative justice initiative. Not only may this run into some of the same problems, but the opinions of affected community organizations and justice system officials leave us much to think about. Indeed, the initial review of this program has not adduced overwhelming victim participation in this program, and evidence of only minor cases being referred. This leaves us with many questions to consider about the future of RJ.