Interim Report to Alberta Justice:
Phase One
STAKEHOLDER INPUT ON THE SINGLE TRIAL COURT INITIATIVE

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Consultation Overview

Cambridge Strategies Inc. was retained by Alberta Justice to hold stakeholder engagement consultations throughout Alberta based on the justice system reforms and relating to the Single Trial Court initiative. Consultations were held from the beginning of April to the end of May 2003 in seven locations. They will be referred to throughout the report by abbreviations: Grande Prairie (GP), High Prairie (HP), Fort McMurray (Fort), Edmonton (Ed), Red Deer (RD), Medicine Hat (MH) and Calgary (Cal).

At the beginning of April invitations, along with the discussion paper, "A Single Trial Court as a Focus for Reform and a Catalyst for Change", were sent out to various stakeholders involved in the Alberta justice system. Invitees included lawyers, court clerks, members of the police service and others directly involved in the legal system such as mediators and arbitrators. As well, members of organizations such as sexual assault centres, Aboriginal groups, elder care associations, mental health associations, crime and violence prevention organizations and justice groups specific to various ethnic communities attended. Involved members of the community were also included such as victim's services volunteers, members of Youth Justice Committees, as were provincial and municipal politicians, academics and psychologists.

The attendance at each location was as follows:

Grande Prairie	25
High Prairie	29
Fort McMurray	17
Edmonton	
Afternoon	39
Evening	16
Red Deer	16
Medicine Hat	23
Calgary	
Afternoon	49
Evening	21
Total	235

Introduction

Alberta is in a unique historical and political position. Due to our relative political stability and economic prosperity, Albertans can afford to take the time to look closely at one of the most fundamental pillars of our society, the justice system. This is done to assess how it might be altered to improve upon its own workings and thereby enhance the functioning of society as a whole.

It is our mutual respect for the rule of law which contributes to holding our society together. A well- performing justice system facilitates economic, political and social activity. It is, therefore, extremely important that citizens have confidence and faith in, as well as respect for, their justice system.

By most accounts our justice system is running well. However, it is well recognized that there is room for improvement. Laws are not static, but evolve to meet the needs of an ever shifting society; so too must our justice system adapt if it is to effectively respond to those changes. The argument can be made that we should not undertake to "fix that which is not broken." However, the justice system is integral part ot the foundation of our society and it effective workings. There are obvious cracks in our system, however minor they may appear in comparison to the unstable systems found elsewhere in the world. We cannot afford to let these cracks expand, as any instability in the justice system will be felt elsewhere with potentially very negative consequences.

The Alberta Justice Summit in 1999 and the All Party MLA Justice Committee Consultations conducted in 1998, identified some of the cracks and recommended ways to fill them. Many of these recommendations have been put in place. Still, not all of the issues have been addressed. Therefore, Alberta Justice has undertaken further investigation and consultation to assess what direction to take in continuing system reform. During the spring of 2003, Cambridge Strategies carried out consultations in 7 locations across Alberta. The meetings held were not publicconsultations per se, but engaged invited representatives from of a wide cross section of stakeholders directly and indirectly involved in the justice system.

Participants included members of the legal and law enforcement community, such as lawyers, police officers and court clerks. They also included volunteers who work within the justice system itself, including members of youth justice committees and victim's services volunteers. Mental health and addictions agencies were also represented along with psychologists and educators. Political representatives of the various communities also attended the sessions.

Together, the groups were asked to discuss their thoughts on some suggested changes to the justice system, which are laid out in the discussion paper, "A Single Trial Court as a Focus of Reform and a Catalyst for Change". Suggestions included a single trial court, specialized courts and various methods of Alternative Dispute Resolution (ADR). Barriers to accessing the justice

system were also discussed and solutions suggested, including how they might be addressed by major system reform.

A single trial court was put forward as a "focus for reform and a catalyst for change." Nevertheless it was pointed out, the single trial court concept should not be thought of as the central point to the reform process and one which had already been decided on by government. Instead, it was presented as a starting point to initiate thought and discussion. Our justice system is functioning well and positive changes are occurring to address some very persistent issues and concerns. Participants considered approaches from individual and incremental changes and if they are enough to truly improve the justice system and improving outcomes for those who find themselves engaged in it? Or, is a whole system transformation needed, taking what is positive from the current system and combining and expanding upon it to create an enhanced and more effective system?

Part One: Single Trial Court and Specialized Courts

Support for a Single Trial Court:

Many participants felt that change to the justice system is long overdue and that the ideas presented in the discussion paper are timely and innovative. Support for a single trial court came from people interested in full scale transformation of the current system in the hope of reducing barriers to access. High Prairie was the community most supportive of the single trial court (STC) initiative.

Advocates support the creation of a single trial court because they think it could cut down the complexity of the system. One Aboriginal participant stated that Aboriginal people who need to go to court don't currently know which court their case fits into (HP). Anything that would help Aboriginal people access and engage the system better was seen as a positive improvement (RD). However, it was expressed that this problem is not limited to Aboriginals alone, but that simplifying the system could benefit the population as whole (HP, Fort, Ed, RD).

Furthermore, reducing the complexity of the system is seen as step towards saving time (Ed, RD). For example, one lawyer raised the point that having all judges able to see all cases would cut down the amount of time that parties in the system who do not live near a point have to spend on the road getting to Queens Bench (HP). Furthermore, if cases did not get bumped between the two levels of court and preliminary cases were no longer necessary in a unified system, time would be saved. As well, victims would not have to testify more than once, thereby cutting down on their burden (HP, Cal).

Reducing the amount of time that is spent either getting to or appearing in court could also cut down on costs for all sides (Cal). There was a sense that anything that would free up money for the justice system and those using it would be worthwhile (HP, Cal). The possibility of saving time and money is a factor that has led many to support a STC.

Participants voiced the hope that by freeing up resources (by making the court system more efficient) more money could then be used to develop alternative measures and to address the cause of crime (HP). Alternative measures, as will be discussed subsequently, are very popular. Therefore, supporters liked the idea of creating a STC so long as it is structured in a way which incorporates and strengthens these initiatives (HP, Fort, Ed).

Support for specialized courts,

There was also some positive interest in the creation of specialized courts within an STC, especially in Calgary (GP, HP, Ed, Cal). It was discussed that courts are needed that have an understanding and sensitivity to items such as family issues, people with mental illness, Foetal Alcohol Syndrome and disabilities (HP, MH, Cal).

Judges who have a better understanding of specific areas would be better able to present solutions (such as therapy) that could improve the outcomes of cases and reduce recidivism (Cal). This was seen as being especially true for cases involving people with addictions or mental illness (Fort, Cal). Specifically, an Aboriginal participant called for the establishment of an addictions court in Wetaskiwin, since, it was said, the root cause of most crime there is addiction (Cal). As another example, consultation participants who work with victims of sexual assault felt that a court dealing with sexual assault crimes could provide an environment sensitive to the needs of victims and even offenders (Ed, RD).

The Family Violence Court in Calgary was held as an example of the potential benefits of such specialized courts. Here, judges and lawyers have a strong understanding of the dynamics of family violence and are able to find solutions in an effective and timely manner. The swift resolution of disputes enables the defendant to receive treatment and the victim to start recovering more quickly. Victims are treated respectfully in the court and have a support worker who serves as an advocate for them. Consequently, this specialized court is seen as having great value to all parties (Cal).

Similarly, the Youth Court in Calgary is also heralded as an example of the advantages of specialized courts. Relationships have developed within the court, where judges, lawyers and social service workers communicate well, leading to more effective outcomes. Although concern was raised that these relationships can become too close, forming cliques and preconceived notions about certain offenders and offences, supporters of the court claim that relationships are kept very professional (Cal).

Details and Research

There were participants in each community who expressed interest in the STC in theory, but have reservations about how it would operate. Many think that it is a very ambitious idea (Fort, Ed, RD, MH). Their views can be summed up with the phrase “proceed with caution”.

As one participant pointed out, to be successful the court must be comprehensive, well planned and well resourced (Cal). Many participants felt that they did not have a clear understanding of what a Single Trial Court entails (GP, HP, Ed, RD). Others understood the concept, but wanted more details as to whose idea it was, what reasons there were for putting the idea forward, and most importantly, how the changes would work (Ed, MH, RD, Cal).

It became evident at all of the sessions, that without a clear understanding of the details and implications of a single trial court, the initiative is unlikely to receive the general support needed for implementation. Participants want to see details so that they can understand how the principles presented in the discussion paper would be incorporated into how the system works (RD). Until more evidence and details are given many participants felt and continue to feel reluctant to pronounce whether or not they support the idea (GP, Ed., RD).

People want to know whether there is research to support the concept of a single trial court. Has it worked in other jurisdictions (GP, Ed., Cal, RD)? The suggestion was made that efforts should be focused on establishing the Unified Family Court to see how well the process of unification works, before talking about a STC (MH). As one participant pointed out, without evidence that a STC will enhance the justice system, it will not get support from the necessary political constituencies (RD). Participants also pointed out that a STC is only a means to an end. Unless it can be proved that a STC will improve outcomes there is no point in proceeding (Cal).

Unification

Participants also wanted a better picture of what a single trial court could look like. Would it resemble a Provincial Court or Queen's Bench (HP)? The sentiment was expressed by one participant that Provincial Court is less formal with an analogy made to Wal-Mart, while Queen's Bench is more formal, resembling Holt Renfrew (Ed). Some prefer the environment of Provincial Court, which is easier to access and where the rules of court are less rigorous (RD, Ed.). Others, however, think that the formality of dress and procedures in Queen's Bench gives the court respectability in the eyes of the public (HP,RD). There is concern that formality is already slipping and might be further reduced if a Single Trial Court that mirrors Provincial Court is introduced (RD).

On the other hand, it was acknowledged that formality is not required in every case and may serve to distance certain people from the system. Aboriginals, it was noted, are particularly unimpressed with formality, and would prefer to see the courts engage in their community rather than be imposed upon it with pomp (RD). It was agreed by those participating in the debate that if the boundary between Provincial Court and Queen's Bench was eliminated, there would have to be guidelines as to how much formality is warranted based upon the severity of the case and the circumstances.

There were also many enquiries as to how the system of appeal would work when one level of court is eliminated (HP, Ed, Rd, Cal). Participants were concerned that the only option would be to go to the Court of Appeal, an expensive path which would make the process even more prohibitive for many (HP). Checks and balance would need to be created, and feedback loops were suggested as one possibility to address the issue (Cal).

The argument over formality and losing a level of appeal is indicative of concerns that good aspects of both courts would be lost if they are amalgamated in to a new system. Conference participants wanted assurance that court initiatives, such as the Youth Justice Committees, and extra- judicial programs associated with both levels of court would be integrated into the new system (Cal).

Specialization

Questions were raised as to how specialized courts would be created. How would specialization be defined? What kind of training would judges, lawyers and other players undergo? Who would conduct the training? How would the system be standardized (Cal)?

To be fully effective, participants argued, specialized courts would need to work with people in the mental health field, police, and social workers, among others (HP, MH, Cal). Right now this communication and cooperation is not taking place (MH). The question was raised as to how greater integration of the courts, police and extrajudicial service providers would be ensured (Cal)?

Some participants were concerned that if specialized courts are created they would inevitably start to break away from one another and become isolationist, creating their own administration and undoing the potential benefits of unification, including simplicity and efficiency. (HP, Ed, RD, MH). A perception was articulated at each session that specialized courts appeared to be contradictory to the purpose of creating a single trial court.

Specialization was seen as potentially increasing complexity of the system, as people struggle to figure out what court they should go to. In Fort McMurray one participant posed a theoretical dilemma involving a person with FAS who has addiction problems and beats his wife. Would this person go to the family violence court, perhaps a court for people with FAS, or one for those with addiction problems (Fort)? This example demonstrates that many problems coexist and arguably have better outcomes when addressed concurrently(Ed). Specialization is thus a double-edged sword, with the potential to better deal with specific issues, but also to create fragmentation and confusion as to what issues belong in which court.

Other concerns about specialization focused on judges. It was asked whether judges would want to be limited to specific areas or whether they would prefer variation to keep fresh.(RD, Ed) For example, judges who constantly have to deal with criminal cases may become jaded, affecting their ability to make the best decisions (RD).

Questions were also raised about how judges with the appropriate expertise, would be appointed to a specialized court. Currently there is some concern that judges do not possess the knowledge they should have to deal with certain issues, such as family matters, and that lawyers often have to educate them. The appointment process needs to be aimed at finding judges with the right capabilities. Specialization can only work if judges have the necessary knowledge (HP, RD, Ed).

Once these judges are appointed it becomes an issue as to how their expertise will be distributed around the province (Ed). Many participants voiced the concern that specialized courts could work well in major urban centres, namely Edmonton and Calgary, but not in rural areas where population size does not warrant having multiple judges (MH, Cal). The idea was put forward that video conferencing could be used to facilitate access (MH). It was also pointed out that judges could travel to various locations as needed. However, one participant wondered whether judges would happy to be on the road that much (RD).

Having judges travel around the province to meet the needs of specialized cases raised the issue of scheduling. Waiting for judges increases time, as is currently the case with Queens Bench in communities where it does not permanently sit. Police in particular raised concerns about specialized courts making scheduling more difficult (MH).

The concerns about specialized courts points to the need for careful planning, to ensure that such courts enhance the system rather than contribute to the barriers of complexity, availability and time, which currently hamper the system. On the other hand, a few advocates of the STC and specialized courts suggest that the new system should not be over-designed in the beginning, with structure and procedures becoming enshrined in legislation. Instead they suggest that skeletal legislation should be introduced leaving enough flexibility for the structure to be designed administratively as needs become evident. For example, specialized courts should not be rigid, but rather allow judges with expertise in a certain area to branch out for variation to a limited degree. These proponents saw the development of the STC as being a "learn as you go" process (Cal). Thus careful planning would have to be balanced with the system's ability to be responsive, with each facet of the system being scrutinized, as it is implemented, on the basis of simplicity, accessibility and timeliness, among other goals.

Jurisdiction

Apart from concerns about implementation, many participants wondered whether the STC initiative would even be accepted by the Federal Government. They worried that lack of cooperation due to "turf wars" between the Provincial and Federal government would prevent the changes from occurring (GP, HP, Ed., RD, Cal).

If the initiative were to proceed, there is unease over how jurisdiction would be divided. The question was raised as to who would appoint judges (HP, Ed, Cal). Some participants were apprehensive that Alberta would lose power over the appointment process if a STC were created in which all judges were elevated to the level of Queen's Bench and thereby came under the federal jurisdiction for appointments (HP, Cal).

The question of who appoints judges, naturally leads to a question of who will pay for judges salaries and other costs in general (GP, HP, Ed., RD,). Cooperation would be needed between the two levels of government to allow for the amalgamation of the two levels of court. Success thereby depends, in part, on the two government's ability to collaborate during the reform process and after.

Cost

As with most proposed initiatives, money was also a central concern in the debate. Whether a single trial court could save money, or would simply absorb money became a factor in many people's support for the initiative, or in the lack thereof.

Many believed that a STC would simply cost too much money to develop. There were concerns that if all judges were raised to the level of Queens Bench they would have to be given raises, increasing overall costs to the system (Ed, Cal). Participants also argued that, by its nature, change costs money. Expenses due to the changing of letterhead or altering facilities, among others, were cited (HP, RD).

Furthermore, it was pointed out that revamping the system would not reduce the cost of lawyers, which is the most prohibitive cost for many people (RD,Cal), nor would it reduce the cost of needed counselling (GP). Additionally, sceptics argued that change creates more complexity as people struggle to understand a new system (GP, RD). In the end there was concern that the burden of change would fall on front end workers, such as the police, who would shoulder the task of making changes work (MH, Ed.) Therefore, as will be discussed in greater detail in the

discussions about barriers and alternatives, many thought that the focus of reform must be on getting people the resources they need to resolve disputes effectively, rather than changing the structure of the system itself.

In contrast, as mentioned earlier, other participants saw the potential for savings rather than further expenditures. In addition, one participant raised the possibility that citizens may be willing to contribute more financially in order to improve the justice system (GP). Consequently, it was suggested that conducting a cost benefit analysis would clear up the uncertainty and give a better idea as to whether the initiative is worthwhile (Ed, RD, Cal).

Even if money is saved through the creation of an STC, cynicism is evident as some people questioned whether money saved would actually be put back into the justice system. Some participants felt that cost savings may simply go into general revenues rather than being directed to resource programs or to helping people who are unable to afford the court process (GP, HP, Cal).

Whether there are savings or not, some participants were of the opinion that the decision should not be based on economics, but solely on the basis of improving the justice system (GP, RD). One person with knowledge of the justice system in Nunavut stated that it had simply been created in such a way for monetary reasons (GP). The pursuit of justice, to these conference participants, is more important than monetary concerns.

Nevertheless, particulars such as the possible reduction in spending, the easing of complexity and other details of implementation were extremely important to most participants. In Calgary one participant expressed the sentiment that once these details were worked out, the STC could present a much needed change to the system. This sentiment seemed to be shared in other locations. Citizens want a complete picture of reform before they decide to support its implementation, or look at other options.

Existing Services

At each of the sessions across Alberta, the point was raised that much could be done to enhance the current system without creating a single trial court. Some participants wanted to see fine tuning done where necessary, rather than a full scale transformation. Many suggestions were made as to how this could be done.

One such suggestion was that, money could be saved in locations where both Provincial Court and the Queen's Bench sit in the same area if they were put in the same building with the same administration. The perceived barrier to accomplishing this is the protection of turf, which is not seen an acceptable reason to bar such change. Furthermore, such amalgamation could occur without creating a STC (Cal).

It was also raised that even specialization may not require the establishment of a STC (RD, MH). A participant from Medicine Hat explained that specialization already occurs to a degree through the pooling of expertise from surrounding areas. He argues that this could continue and intensify through discussions between judges and lawyers without being formalized in law and structure (MH). In Calgary, it was argued that specialized courts, such as those dealing with domestic violence are already overburdened; resources must be used to support those services already in existence, which are proving to be effective, rather than on changing the system and creating more specialization (Cal).

Focus

Consequently, there is a sense from some that a Single Trial court is the wrong focus for justice system reform (GP, Cal). They are worried that time and resources could be spent on changing the system without enhancing outcomes (Ed, RD).

Judges would still be presiding over the same laws. Therefore, it was suggested that it would be easier and more effective to change laws than the courts(GP). Furthermore, it was argued that it is more important for laws to be upheld consistently and fairly, which is not happening now among jurisdictions (Ed.) or ethnic groups, particularly Aboriginals (HP, Calg). Participants did not see how exactly a STC would accomplish this.

No matter how unified the system is, one man worried that the justice system will always be complex(HP). Change simply means that all players have to gain understanding about a new system.(GP). Therefore it may be more practical to improve education about the current system, than to reform it.

As well, the sentiment was expressed that in the end people are not concerned about different levels of court, but are more concerned with meaningful practices and rules of operations (GP). Procedures are seen by some as being the main source of complexity as well as cost in the system. To these participants, changing the rules of court is more important than creating a STC (GP, RD).

Furthermore, as will be discussed in subsequent chapters, it was felt that more attention and resources should be placed in keeping matters out of court, using techniques such as mediation and youth justice committees. Even more importantly, people hoped to increase prevention. System reform, it was said by some, should thus focus on collateral areas such as health and education (GP, HP, MH, ED). For these participants a STC was not seen as necessary to increasing prevention or diversion measures and is thus the wrong focus for improving the justice system (GP, RD, MH, ED).

Fear was expressed that time and resources could be spent on changing the system without making it better or, in fact, making it worse (GP, Cal). An advocate for disabled people expressed his concern that the court system is the last hope for disabled people when other systems, such as Assured Income for the Severely Handicapped (AISH), have failed them. If the justice system flounders, these people will lose an important recourse (Cal). This issue points once again for the need for more research into the effects of creating a STC.

Whether people thought the idea was good or bad there was scepticism as to whether anything will actually happen. It will be difficult, it was stated, to get the necessary buy-in from judges, lawyers and others with a stake in the current system. A great amount of effort will be needed to collect data and convince players that a STC is a venture worth pursuing, if it is to receive the necessary support for implementation. (GP, HP, Calgary)

Summary

Overall there was a sense that while a STC may be beneficial, it is not an end in itself; it is simply one way to improve the system and there are others which may be more beneficial, as will be discussed in the section on Choices and Alternatives. More research needs to be put into how the system is working now and how a STC could improve the system before the initiative is moved forward.

Part Two: Barriers to Access

Introduction

No matter what the position on a STC, there was general consensus that there are barriers to justice which need to be addressed. These barriers include: the complexity of the system; a lack of knowledge about the justice system; issues surrounding language and culture; time, cost, and geography; and issues unique to Aboriginal people. Many barriers could be addressed by ADR, which will be discussed in its own section. However, other suggestions were made which are presented along with the barrier they aim to break down.

Complexity of the System

As became evident in the discussion on Single Trial Courts, the justice system is very complex. The complexity of procedures is targeted as a main factor in increasing the time and cost of courts (GP RD). It was argued that some players take advantage of procedure in order to delay proceedings intentionally (RD, Ed). On the other side, procedure and the emphasis on paperwork makes the court process more difficult for self-represented litigants who end up tying up court time as they try to learn the process (Cal).

Caution was given, however, on overly cutting back procedures. It has already been noted that procedure and formality lends courts an aura of respectability. More importantly perhaps, rules of court are in place to ensure that trials are conducted fairly (RD). Any changes made to procedure must be made to make the system easier to understand without relaxing rules that ensure the proper carriage of justice.

Apart from procedure being simplified, it also must be better explained to citizens. The lack of understanding of the court system was cited as a major barrier to people using the justice system effectively (GP Ed, Cal). Specifically, it was said that the knowledge barrier blocks the elderly, Aboriginals, minority groups and women from receiving justice properly (GP, HP, Fort, Cal). There was a unanimous call for more education or at least for information resources to be available to the general public. Having advocates to assist people was one suggestion for aiding people in the system. This possibility will be discussed in a later section.

The call that, "[t]he justice system has become remote, it needs to be linked to the service providers who deal with front end issues" was made in Medicine Hat. Reforming procedures and providing more education can help to bring the system closer to citizens who need it.

Language

Language was another discussed factor that adds to the complexity and reduces understanding of the court system. This occurs in two ways. First, the legal jargon that is used is hard for many average citizens to understand. People often have a difficult time comprehending what is happening during proceedings or what decisions mean (HP, RD, Cal). Time needs to be taken, or resource people provided to better explain the meaning of proceedings and judgments.

Secondly, as Canada is a multicultural country, many people who use the court system are not fluent in English. Right now translators are found on an as-needed, ad hoc basis. It can be challenging to find trained people who can translate proceedings appropriately. Therefore it was suggested in two separate instances that a bank of certified interpreters should be created that can be relied upon to assist in cases whenever necessary.(Ed, Cal)

Special Needs

Communication problems also arise for people with mental disabilities or Foetal Alcohol Syndrome. There is a concern that there is no safety net for people with disabilities and communications issues. Citizens with such problems often fall through the cracks if they do not have the support in place to guide them through the system.(Cal)

Some participants made the point that the way in which people with mental illness or FAS are dealt with by the system creates barriers to solutions (Ed, Cal). People with disabilities are not seen as credible witnesses and generally not given the respect afforded other citizens (Cal). There was a call by one attendee for recognition that there are mental issues, without overlooking the diversity of the people with these problems. The concern is that such issues are oversimplified, leading to symptoms being addressed rather than the underlying problems which are unique to each person. This attendee stated "If you just treat one symptom, people will simply come out of the system with a different symptom"(Ed).

Time

Issues relating to time were brought up at most of the sessions. The most common argument was court procedures must be sped up (Ed, HP, RD, MH, Fort, Cal). There are various reasons for this. In terms of youth, if there is too much time between when they commit the crime and appear in court, the action becomes disconnected from the consequences (Ed, HP, Cal). For victims, having cases delayed too long after the event reopens wounds (Fort, MH). Sexual assault counsellors and victims services volunteers find that women often give up on the system in the in the process of waiting (Fort, MH).

Victims' services volunteers explained that frustration arises when people do not understand why cases take so long (MH, Cal). People might be less impatient if they understood the reasons for delays (MH).

Nevertheless, some people pointed to the need for sensitivity as to timing. For example, in some cases time should be given for people to get counselling before they go to court or have sentencing so that they can cope with the process; Youth, some victims of sexual assault and people with mental illness were given as an example(Fort, Cal). There is also a need for time between the preliminary enquiry and the actual trial to give prosecutors time to assess the case and fill in any gaps (Cal). As one participant summed up, "there needs to be a balance between

speed and effectiveness. If you simply look for a quick fix, a revolving door syndrome is created. We need to look for long term solutions"(Cal).

In addition, it was said the court schedule needs to be more flexible so that kids do not miss as much school or adults as much work as has been occurring. One participant argued that the Monday to Friday concept does not work (Cal). Overall, it appears, the justice system needs to be more responsive to the individual needs of those using it.

Cost

Many people do not have proper access to court due to lack of resources. Costs can be prohibitive for those with a steady income, because there are so many expenses. At the extreme, it is felt homeless people simply fall through the cracks (HP, Cal).Many people cannot afford to hire a lawyer, so they end up representing themselves (Ed., HP, Fort). These people are often unaware of all of the requirements of putting forward a case and have need for a great deal of attention from court clerks (RD). As argued above, because of procedural problems, these people can tie up the system further increasing costs (HP, RD).

Even once a case has been through court, people still face financial problems fulfilling what the judgment prescribes. For example, courts may mandate counselling, yet many people cannot get counselling because they cannot afford it. As a participant in Grande Prairie pointed out, the cheapest counselling available is $18.00/hour. How, the participant asked, can someone who may only be getting $6.00/hour afford to pay those fees (GP)? As another example, in cases of family violence people often go back to an abusive relationship or start another abusive relationship, because they do not feel they can make it economically on their own (Fort). Although the justice system does not have the ability to address issues of economics on a wide scale, it must start to look at ways to deal with issues relating to income if it is to provide people with positive outcomes.

Additionally, there exists a perception that people with enough money can hire good lawyers and get off with no charges. This phenomena, it is argued, leads to a "two tier justice system where money buys you freedom" (HP). Such serious charges must be addressed if faith in the justice system is to be maintained and restored.

To help remove economic barriers to justice it is suggested that legal aid should receive more funding. Attendees expressed the belief that justice is a public good and therefore all citizens must be granted the right to adequate representation. (Fort, Ed, Cal) One man stated emphatically, "Justice is denied when one party cannot continue financially" (HP).

Rural Communities and those 'Outside the Corridor'

The barriers of complexity, knowledge, disability, time and money are seen to be intensified in rural areas and those smaller urban centres located outside of the booming Edmonton/Calgary corridor. Residents of these communities who participated in the sessions complained that they are often ignored, while attention and resources are directed to Edmonton, Calgary and their surrounding areas (GP, HP, Fort, MH).

Participants from Grande Prairie and Medicine Hat are particularly concerned that they are not getting the programs or resources their communities need for the justice system to be effective. One participant in Grand Prairie feels that the voice of the North is not being heard, and was

sceptical that views presented in the consultation would even be presented in the report. In Medicine Hat a participant complained that it is a grave omission that many successful programs are established only in Calgary and Edmonton while they could be beneficial to rural communities as well. Although participants in Medicine Hat and Grande Prairie were the most expressive of such grievances, each area that was visited expressed concerns about regional and geographical barriers to justice.

Attracting and retaining the necessary staff to run the justice system and related services is of grave concern in most rural areas. First off, there is a shortage of judges due to lack of infrastructure that would attract them (HP). Participants at Fort McMurray consultations claimed that one resident provincial judge is not enough for their area and that Queen's Bench should have more sittings. They worry that if a large case comes up the judge will not be able to deal with it. Holidays need to be covered as well as cases where a judge is in conflict. In smaller communities resident judge/judges are needed to deal with things quickly. At the same time it is beneficial to have rotating judges to come in fresh and deal with things where special expertise is required (Fort, MH).

There is also a lack of arbitrators, mediators, therapists and counsellors to help people deal with problems (GP, HP, Fort). Police, who are stretched to the limit, often cannot respond to calls and cannot handle any more initiatives either (GP). If programs are going to be maintained or created in these areas, it is necessary to direct more money at building up the human resources which enable the justice system to function.

Instead, citizens in rural areas feel that that their resources are being taken away. A case in point is the closure of circuit courts which attendees thought served the needs of rural communities well. Their closing removed a most fundamental access to justice for people in remote areas (GP, MH, Cal). The justice system loses credibility in communities when their points of access are closed down (MH).

There was also resentment voiced over the effectiveness of centralizing the Justice of the Peace (JP) system, which worked well when JPs were located in communities. The concern that this system had been undermined was expressed in all rural communities that were visited (GP, HP, Fort, RD, MH). Residents and Police complain that the JP system was extremely good at providing quick service when it was located within different communities. However, the government centralized the system so that JPs in Edmonton and Calgary serve smaller communities. Now police in these communities spend hours on the phone waiting to get through to JPs who are serving walk in clients from their respective cities (MH). This new system taxes already stretched police resources and slows down the processing of many issues. Members in each community called for JPs to be reinstated at the local level (GP, HP, Fort, RD, MH).

One participant expressed the general feeling that "when the government closes things down, it shows that rural areas don't matter" (GP). The reduction and consolidation of court services in rural areas reduces the ability of communities to be heard (HP). More dialogue is needed with communities who are being shut out by having their services reduced (MH).

It is necessary to have many points of access to the justice system, because lack of transportation is a barrier to many people. People miss court appearances, which is very costly to the system or are unable to get prescribed treatment simply because geography presents a barrier to getting there (HP, RD, Cal). Courts do not always have to be in a court house (MH). Government should use innovation to come up with ways to bring justice to rural and remote communities.

Smaller communities can contribute to the justice system. Medicine Hat is a hot bed of collaborative law, which shows that places like this can benefit from and contribute to promising initiatives if given the proper resources (MH). The government needs to recognize the needs and abilities of smaller communities in order to provide effective service.

Aboriginals

More attention also needs to be paid to Aboriginal citizens' engagement with the law. It was acknowledged that Aboriginals make up a disproportionately high number of those prosecuted in the justice system (HP, Ed). As one participant put it, "Penalizing Aboriginals has become an industry" (Ed.). Tragically, it is this group who feel especially disconnected from the system. Aboriginals, some argue, do not have a strong understanding of the justice system. Conversely, the justice system does not comprehend Aboriginal society. The justice system is not dealing with the cause of problems and cannot therefore offer solutions. (RD) Furthermore conflict can arise between the Aboriginal community and members of the legal and law enforcement community. One participant described how she felt like she was "banging heads" with members of the justice community when she tried to get them to understand her community's issues (Edmonton).

Another serious issue raised was Aboriginals can commit the same crime as other citizens but receive a different, harsher judgment (Cal, HP). A gentleman explained that in Wetaskiwin one judges' court is filled predominantly with native people, so when Aboriginals come before the judge and prosecutors they are given particularly harsh sentences. Fairness is a central value to justice. If citizens perceive that that various groups are treated differently, this important foundation is undermined.

To address issues of access and fairness some suggest that there is need for more Aboriginal judges and lawyers who are sensitive to the realities of the Aboriginal community (HP, Ed., RD, Cal). In addition, Non-Aboriginal judges and lawyers must try to, in the words of one gentleman, "see from others' eyes their reality, their pain"(Ed). Currently, there are not enough resources for programs run by Aboriginals for Aboriginal citizens. One participant in Edmonton who works for a youth justice counselling agency is worried they are going to go out of business due to lack of funding. If they close down, she asks, "Who is going to fill these needs?"(Ed) If Aboriginals are to stop being over-represented as accused and inmates, they must be better represented as judges, lawyers and other support workers.

There was further agreement from various native (as well as non-native) participants, that the court system is not the best place to resolve problems facing the aboriginal community. Alternative measures need to be available to them which reflect their cultural and spiritual traditions. In fact it was suggested that many Aboriginal practices could be applied to the justice system for the benefit of all citizens (HP, Fort, Ed, Cal).

Assessing the barriers to justice leads directly into a discussion about alternatives; therefore, this is the focus of the next section.

Part Three: Alternatives

Introduction

In each location of the consultation there was a great deal of support for increasing alternatives and choices in the justice system. One of the most poignant statements heard was, "The justice system does not solve problems, it deals with problems" (Fort). In other words, the system picks winners and losers very well, but does so in an adversarial manner, which is seen to promote fighting rather than resolution (Cal). Those sentiments were shared by many at each of the sessions. However, some would change wording of the quote from "justice system" to "legal system or "court system". One man pointed out, "There is a difference between a court system and a justice system" (Ed). A court system is just one part of a complex legal system, which, in turn, must be looked at as part of the whole system of justice (GP). While the legal system may not be able to solve problems by itself there is hope that by enhancing social services and extrajudicial measures, solutions to many problems can be found.

In addition some participants argued that traditional punishment does not serve society well (Ed, Cal). Paying fines or being incarcerated do not necessarily lead people to deal with the problems that have lead them to disputes or crime. Instead there was a call for greater support to be granted to people in terms of treatment, counselling and community backing (Ed). Finding alternative consequences for crime can be done through the traditional court system, but is also strongly associated with Alternative Dispute Resolution (ADR) Mechanisms.

The Front End

The cliché "stop problems before they start" is very fitting to express the consensus out of the consultations, that there needs to be more emphasis on preventing problems from occurring or resolving them before they reach court. This involves investing in the "front end", which entails a wide variety of social and justice related services from health and education to policing.

Improving the education and health care systems, as well as social services in general, is seen as imperative to reducing stress on the justice system (GP, HP, Fort). If people were better educated, their ability to understand the complexities of the system would increase. If people had better physical and mental health, there would be less crime related to mental illness. Other social services such as child welfare need more of a focus on increasing the ability of parents to raise law abiding citizens. Blame is placed for problems that are faced now on the cutbacks made to these crucial areas (GP, HP).

Currently, it was argued, the divisions of government which provide health, education, welfare and justice form their plans in too much isolation. If departments continue to do this, their programs will continue to fail to prevent legal problems. Inter-ministerial cooperation is needed in these crucial areas to develop programs that can address a wide variety of issues (GP, HP, Ed, MH).

Investing in such programs will not pay off immediately. A Fort McMurray resident urged patience. It is a long term process to raise different people and support families he argues, but there will be a great pay off in the end (Fort, RD).

Diversion/Treatment

Improvement to social services can prevent many problems from starting. Yet, once problems start there is still room for pre-court resolution, police diversion, or counselling which can address the root cause of problems.

A diversion program has been initiated in Calgary where police, social workers, mental health workers and the community work together to get people with mental illness who are having problems with the law, into treatment programs rather than sending them through the court system. So far the program has found alternative ways to deal with 55 such offenders (Ed, MH, Cal). It is programs like this one which other centres are requesting to have expanded into their jurisdictions. Before expansion, however, police need to be given the resources to handle issues more effectively. As has been discussed, Police are already overburdened. If police were able to enforce effectively and put more effort into diversion, there would be less stress on the system(Ed). Again resources put in the front end can pay off in the end.

However, diverting people out of courts and jails is not just about saving money, but addressing issues more effectively. For example, people with Foetal Alcohol Syndrome (FAS) need structure, but many argue that jails are not the place to give them this (ED). Therefore, there was a strong call to move people with problems like FAS and mental illnesses away from court (Ed, MH, Cal). Along the same lines, a past offender pointed out that most armed robberies are committed by drug addicts. He argued that the criminal justice system is not the place to deal with this. Instead increased upfront treatment would be more effective in decreasing addiction related crime (Ed). People should be referred to AADAC and NAADAC to address their addictions rather than simply being punished for their symptoms (HP).

Diverting people away from the court system is not about letting people off the hook for their actions, but about forcing people to try to change the way they live. Treatment does not necessarily need to occur instead of going to court or possibly jail, but as a companion process as a part of an overall response to crime and other legal issues. Once counselling and treatment has been tried already, one police officer explains, it is easier for the court to assess the needs of the individual and pass judgment accordingly (Fort).

Many people do not address addictions until they are involved in court (Cal). For those who do end up in the system, more treatments which delve into deep rooted problems need to be available. Judges and institutions should not just provide guidance (Fort). People suffering from addictions need to be assured that they count for something in society (Cal). Having treatment available as part of the criminal justice system demonstrates that society cares, thereby contributing to the healing process. As a police officer from Fort McMurray explained, it is in the interest of a safe society that offenders receive proper treatment before being released.

Furthermore, past offenders should not simply be left to themselves after being released from the system. Mechanisms need to be in place for follow-up and to keep matters on track (HP, Fort). A High Prairie women suggested that a survey of inmates and past offenders should be done to see what they need.(HP)

Nevertheless, mandating more treatment was not seen as promising by some. Many treatment centres do not accept court ordered cases, because such clients are not perceived to be serious about the program. Instead they are simply going through the motions so that they can tell the court that they have gone for treatment. Some participants argued that court ordered treatment has not shown to be successful (HP, Fort). This assertion was countered, however, by those who

have found evidence that "court ordered clients are as successful as voluntary treatment clients if the treatment is designed specifically for the court ordered person" (Ed). The matter of how best to facilitate treatment will have to be looked at closely so that it can be successfully prescribed to those who need it.

Overall there needs to be an aspect of healing in the justice system, in order to add value to the legal system (RD). It is a matter of finding ways of integrating healing into the justice system effectively.

Alternative Dispute Resolution (ADR)

To create more possibilities for diversion and healing, alternative dispute resolution measures are being turned to at an increasing rate. There is generally strong support for alternative dispute resolution. People want a cultural shift away from the adversarial approach which leaves winners and losers, to incorporate more ADR approaches into the justice system.

There are various aspects to ADR. Those addressing criminal matters are placed under the category of Restorative Justice, while mediation is associated with civil matters.

Restorative Justice

The term restorative justice refers to ADR methods such as Youth Justice Committees (YJCs), or sentencing circles which address criminal matters. Restorative justice, one participant explained, is about working with people, not "doing to" people. It is communitarian, calling upon a variety of citizens, as well as members of the justice environment to work together in order find resolution to criminal cases. (Ed)

The most discussed method of restorative justice was Youth Justice Committees. These committees are made up of volunteers from the community, young offenders, their parents and victims. They come together to discuss the offence and work towards how to address it. Observers conclude that youth become more accountable to the community when they go before a committee. They are forced to serve the community rather than simply paying off a fine, which they might receive if they went to court. (RD) Attendees have found that community approaches can be as punitive as courts. Nevertheless, the sentence often better fits the crime because there is room for innovation (ED). For example, in Fort McMurray, kids caught making counterfeit money, were made to produce brochures for the committee.

Victims receive a benefit from YJCs, because they are better able to express what has happened to them and how it has impacted their lives. Perpetrators better understand the consequences of their action on others and are more likely to show regret, which is also healing for the victim. Healing is facilitated through a dialogue that is much less confrontational than the court system (HP, RD). Recidivism rates are low for alternative measures, credited one participant, because offenders go through the system quickly and see the consequence for the victim and the community (Fort). Furthermore, parties' participation in their own sentencing is beneficial because they have respect for it. ADR empowers people, giving them ownership over the results (RD).

There are similar initiatives that cover a larger age group in some communities. Fort McMurray attendees spoke highly of the community circles that have been set up in Fort Chipewyan. The circles incorporate native traditions of justice and healing. Through them the community takes

greater responsibility for the actions of its members in cooperation with police and members of the justice system. The degree of success can be seen in the reduced size of dockets. Comparable projects with equally positive outcomes are said to be happening in British Columbia and Manitoba. These programs, supporters submit, should not be limited to Fort Chipewyan but expanded to encompass the entire province and its diverse cultures (Fort, RD).

Aboriginals are especially interested in pursuing more initiatives like sentencing circles, which are sensitive to their history, spirituality, culture and current situation. As it currently stands, the justice system is not providing enough positive outcomes for the Native community so effective alterations and alternatives must be pursued (HP, Fort, Ed, RD, Cal). One woman called upon the Aboriginal community to take more responsibility for the problems they face. She suggested that creating partnerships with the justice system in order to create alternatives may be best way to accomplish this. (HP)

Unfortunately there are draw backs to sentencing circles and justice committees which must be acknowledged. Sentencing circles may be too close for a number of victims. Some may not be comfortable directly addressing their perpetrators. Others may have too close a relationship with the accused. These victims may push for a resolution that would not serve as enough of a deterrent for the perpetrator to not re-offend, putting society at risk (Cal). In contrast, many victims may push for disproportionately harsh sentencing (RD).

One attendee felt that the committees and circles are inadequate to replace the court in terms of providing a forum for it to be fairly decided who should be punished. Victims, he pointed out are "are not always angels – sometimes they are a criminal the next day"(Ed). Furthermore in community justice, the community's values will be represented. If, the example was given, the community is racist, then decisions will be tainted by this prejudice (Cal). ADR can only be successful when all parties are committed to finding a fair and just resolution through the chosen method (RD, Ed).

When people are committed, restorative justice can promote positive outcomes and teach people how to deal with disputes that may arise in the future. Simply going to court and being incarcerated does not supply this lesson. (RD)

Mediation

Not all disputes are of a criminal nature. For civil issues, especially those involving family matters, mediation is seen as a very useful tool for resolution (HP, ED, RD) .

In particular, there were complaints that family law courts are too expensive and do not provide enough alternatives. Picking winners and losers in situations where litigants need to have ongoing relationships is not an effective resolution. Mediation gives people the ability to work out their issues in a less adversarial manner, which can facilitate an outcome that may not be perfect for each party, but which each can live with. It was even suggested that mediation should be made mandatory (Ed, HP).

However, others had reservations about mediation. The approach only works if people are committed to the process. In one lawyer's experience, people fight during the mediation process until a court date is set, at which time they find a resolution to avoid going to court.

Furthermore, in some situations ill-feelings may be too strong to be worked through in a conciliatory manner. In such cases, going to court is necessary.

Enforcement

Consequently, ADR does not replace the need for courts. As its title suggests, it provides alternatives. Courts serve as an inducement for litigants to make ADR work to avoid them and can also serve as integral authority in upholding the outcome of justice circles, committees or mediation.

A police officer in Fort McMurray passed on that police find youth justice committees to be highly successful. The weakness of an YJC is that when people do not complete their obligations, nothing happens. He called for there to be consequences for non-compliance with the decisions of the committee (Fort). At this point a court would likely need to step in to pass judgment.

Unfortunately, there is a perception that the current legal system does not do enough to recognize and enforce the results of various ADR processes. One gentleman felt that the Youth Criminal Justice Act prevented acknowledgement of community based justice (Ed). Subsequently, laws may need to be changed to allow creative sentencing and recognize the outcomes of ADR (Ed). An Edmonton participant asserted that mutual respect needs to be developed between the judiciary and others such as elders and other community members who contribute to ADR (Ed). If laws were in place and working relationships created, ADR could be an even more effective tool, relieving the court system of many cases.

There are areas where courts do recognize and even encourage alternative justice. It was a judge from Fort McMurray who spear-headed diversion and ADR measures there (Fort). As well, in Peace River it was reported that youth justice committees are now being respected by judges, who are willing to put off trial in order to give committees or councillors time to work with young offenders (HP). These examples show that working relationships can be created; they simply need to be expanded and made province wide.

Integration/Communication

The lack of recognition given to ADR points to the need for there to be greater integration and communication within the justice community and between this community and others connected to the system.

All areas (drug addiction treatment, victim's services) need to be synthesized into one system and diverse players need to have an understanding of the services available. Changes to the justice system won't work in isolation (Ed, Fort). In Aboriginal communities, an Edmonton participant suggested, community and justice services should be grouped and a committee established to direct issues to the appropriate method of resolution. Such integration would reduce complexity by helping people find the proper alternatives to resolve their issues(Ed).

Yet, it was warned that the legal community does not have good communication skills. It is going to have to be educated to work better within itself and with outside service providers (MH). Professionals, whether lawyers or other service providers, must be attentive to how programs are working at the community level and cooperate to make them work better (Ed). Part of the education process is simply getting involved in alternative measures. A member of a

Youth Justice Committee proposed that committees could be even more effective if members themselves had more training, and she hoped that this could come, in part through building stronger relationships with police, justices and judges, lawyers and other related personnel. Such relationships could help to ensure that the committees are of benefit to the system overall (Cal). It would also help to educate members of the traditional justice system as to what alternatives are available and how they work. Protocols may need to be introduced to establish greater consultation and collaboration with service providers outside the judiciary (MH).

Even in court cases, outside experts should be called on more regularly for advice. This should be done on a regular, informal basis rather than just occurring when experts are subpoenaed (MH).

In the experience of many participants, partnerships do work, leading to connections between people and the services that they need. It can be concluded that partnership and collaboration are the key to success in ADR and to reforming justice system. (Cal)

Resources

Nevertheless, for partnerships to work they need to be properly resourced (GP, HP, Fort, Ed RD MH, Cal). If ADR is under resourced, it could turn into a second class justice system for those people who cannot afford to go to court (Ed). Programs can only be as effective as the resources and staffing with which they are provided.

The complaint was heard that the Government starts initiatives and then does not supply adequate resources for them to be implemented successfully (HP, GP). Police officers explain that there is great enthusiasm and momentum when new initiatives start. However, enthusiasm quickly wanes and volunteers come and go, leaving police to hold programs together (RD, Ed). Others concurred that Police are not given the necessary resources to then handle the new responsibility, leaving them overstretched.

Counselling agencies and other organizations that provide services to victims and offenders are also being overstretched and need resources to hire and train more staff.(Cal) Alternative measures, and court mandates that call on people to utilize these agencies cannot be upheld unless the programs are in place and have adequate resources to deal with the demand (Fort, MH). If alternative measures are to succeed, then resources must go to the appropriate people and places (RD, MH). Money needs to be stable. Currently many programs rely on money from grants. Time is wasted applying for grants by police who carry the task of administrating many of the initiatives. Without stable funding, long term plans for programs cannot be made (Cal, Ed).

If the money is not in place, community initiatives simply represent downloading onto agencies and the community itself (Ed, Cal). Therefore, the question of the state's responsibility to pay for extra programs becomes of central importance (Cal).

Volunteers

The current system relies heavily on volunteers. However, volunteers cannot do the job of the justice system (Ed, MH).

Volunteer burnout is an issue (Cal). Only so many people become volunteers and they are called upon to do great things. In cases where they are qualified, "volunteers" should be paid or

provided with an honorarium (Cal). For example, lawyers put many volunteer hours into alternative programs and should be rewarded for this (Cal). In other cases unqualified volunteers must receive better training or be replaced by paid professionals (RD, MH, Ed, Cal).

Any program where too much responsibility is left on the shoulders of volunteers is unsustainable. Agencies often spend resources training volunteers, who then leave because they do not have a high enough commitment (Ed). Other volunteers help for the love of children, leaving programs for adults understaffed (Cal). In sum, volunteers cannot be the foundation of programs. Professionals must provide the foundation with volunteers providing value added labour (RD).

That said, there is concern, that replacing volunteers with professionals is also unsustainable because it will cost too much money (RD, MH). Still, others pointed out however, that if more money is spent on making diversion and ADR more effective, court and incarceration costs would be reduced, saving money in the end (Cal).

Awareness

Despite the promise of initiatives that are underway, there is a lack of knowledge among the general public about ADR measures. Money is needed to educate the community about alternatives (HP). Further resources are needed to give more detailed insight into the process to people who will be involved. If participants do not know how to use alternatives properly, the process can go terribly wrong. Before entering into a sentencing circle or justice committee, people must understand the philosophy of restorative justice and the process of the committee (ED).

Without proper understanding of alternative measures, they will be underutilized and unable to act effectively. It is necessary to bring community awareness to restorative justice and mediation options to get public and participant buy-in (Cal). Lawyers need to be educated so that they can advise their clients of the various alternatives (RD). Alternative measures are already happening in the criminal justice system. (For example, use of peace bonds that allow people to get treatment.) Yet some have the perception that criminal justice is all about punishment (Cal). People need to be aware of what is already happening before they can be expected to understand or support changes to the justice system or properly utilize what is already in place.

Caution

Despite the positive contributions that diversion, therapy and alternative measures are making to the justice system, some participants have urged for caution in their use. As mentioned, it is imperative that participants and the public have an understanding and acceptance of what these measures entail. There is concern however, that if there are too many choices, the system will simply become too complex for people to comprehend their alternatives (Fort., Ed, RD) .

Another issue raised, in regards to diversion, was that it takes away peoples' right to be heard in court (Cal). People with mental disabilities should not simply be placed in treatment without first establishing that they have committed an offence that warrants recourse. Although treatment in general is positive, citizens still have the right to choose whether or not they want to undergo it.

Issues such as these, point to the need for thinking about the ramifications of different methods of justice. Some participants were sceptical that alternative measures actually work, and wanted to see hard evidence of their success (Ed). For some people, alternative measures would be enhanced by creating a Single Trial Court. Others speculated that creating a STC would use up time and energy which would be better utilized by improving and expanding on preventative and alternative measures. Participants wanted more details on how alternatives fit into a STC. In sum, there is a general trend that people want to see more research into the changes that are occurring in the justice system, whether they are ongoing expansion of ADR or new ideas like the STC.

Summary

While ADR may not be appropriate to all cases, there was agreement among many that it best balances the needs of litigants in the case of civil matters and victims, perpetrators and society in criminal issues (Fort, Ed, RD, Cal). The enthusiasm for ADR was expressed by a lawyer in Red Deer, "Good? It is the only way to go! I have no doubt that Alternative Dispute Resolution will revolutionize society's concept of justice."

Even before ADR becomes necessary people also want to see more emphasis placed on the "front end." Addressing problems in their beginnings is more important than putting money into the legal system (MH). Currently, participants suggest, not enough support is given to people until their situation is desperate. Because support is not given earlier, the last resort (courts) are overloaded. Having more resources at the front end will give people more ability to take responsibility for their own actions and help to hold their community and families together. (GP)

In the end, preventative measures, ADR and the court system all make up a justice system. Each unit needs to be strong and well functioning to enhance the workings of the others.

Part Four: Technology

Another suggestion for enhancing the workings of the justice system is to incorporate more technology into the system. Peoples' response to introducing more technology into the justice system depends on their feeling towards technology in general. If they are comfortable with technology, they think that it could improve access to the system. However, those who are not as comfortable feel that it will simply be dehumanizing, and will add more complexity to the system.

Participants saw two principle benefits to having more technology. First, using technology such as closed circuit television would be beneficial to victims because they would not have to be in the same room as the perpetrator (HP). Second, video conferencing can be used to allow procedures to be carried out involving people in different locations (RD). For people in remote communities, this reduces the burden of having to travel long distances and could provide access to services that they otherwise may have not been able to use.

Nevertheless many attendees saw serious drawbacks to incorporating more technology into the workings of justice. Technology can have a dehumanizing effect. People want to talk to people (GP, HP). There is concern that those who do not understand technology would be left out (HP). In addition, technology often takes needed human connections with the justice system out of

communities (MH). When people are replaced by technology, jobs and the economic benefits that come with them are lost.

In Medicine Hat, the point was made that the government has a history of putting money into hardware but not into human resources and intangibles. A participant stated, "The SuperNet is great, but if you look at technology which is in place in classrooms, one sees 'planned continual obsolescence'"(MH). Obsolescence makes technology a money pit. While it can be an important tool, it is just that. Money needs to go towards human resources first for technology to be valuable (MH). For example, e-filing was suggested as one way to speed up the system and increase accessibility (Ed). However, unless there are enough personnel to process the documents received, those benefits will not come to fruition (HP). Therefore, like all proposed changes to the justice system, caution will have to be taken so that the introduction of greater technology leads to improvement of the quality of justice rather than its degradation.

Part Five: Advocates

A common theme through all of the discussion was that more human resources need to be invested in the justice system for it to better meet the needs of citizens. It was suggested at four separate sessions by people who work with the public that advocates are needed to help citizens navigate the justice system (GP, HP, RD, Cal).

For example, a woman who works with seniors has discovered that although seniors have a high respect for the system, they are intimidated by it, so try to avoid it. They need someone to give them a simple version of what to do (GP). In High Prairie one attendee called for children's advocates to be introduced; they could then find out how they are coping and speak for children's interest (HP). Overall there is a need for advocates to be available to the most vulnerable victims so that they do not perceive that the accused has the control (Cal). As well, having advocates to help self represented litigants could reduce the stress on both themselves and the system (GP, RD).

The role of advocates would serve to benefit individual citizens who would not otherwise be able to engage in the system effectively. Through helping such parties, the overall working of the system would be improved, as people gain the ability to move through the system more efficiently. Introducing advocates and other measures that make peoples' interaction with the justice system easier does not require a major overhaul of the system, but simply a change in focus to one that puts more emphasis on the needs of citizens who are utilising the system.

Part Six: Change

Many people addressed issues around change in general. There was a repeated iteration that change should not simply be done for the sake of change. Instead, it must be undertaken in a manner that will actually improve the justice system. There was a concern that the STC is being put forward as a solution to an undefined problem (Ed). Further articulation needs to be done of what issues need to be addressed. In addition, before the justice system can be improved, there needs to be an understanding as to what will be defined as "improvement". What outcomes are we trying to achieve? For whom? How do we decide what needs to be changed? What are the

roles of the court system? What is expected from ADR (RD)? What levels, or combination of retribution or restoration, are desirable? How are we going to measure the success of changes?

The overall philosophy of the justice system needs to be established before changes should be made (Ed). Without knowing what the goal of reform is, in other words, what we want the justice system to achieve, it is difficult to set the reform process on track to get anywhere.

There were some suggestions as to what we want the justice system to provide to society. Many expressed a shared sentiment that "an effective outcome is that the community is safer and that the people have changed for the better" (RD). More thought must to be given as to what exactly this entails.

How we achieve a safer community, and improve the behaviour of citizenry becomes the next focus. Some argued that changes necessitate a change in culture. The justice system must shift its focus from punishing people, or creating winners and losers, to treating the roots of problems (Cal). As established in the section on alternatives, the justice system needs to incorporate more prevention and treatment.

Does this change in culture, though, necessitate a complete revamping of the system or can it occur with alterations to the current structure. Some participants wondered if it is necessary to implement a whole new plan, or whether it would be possible start on a smaller scale with what fits (RD)? Could we start with small things that improve contact with the system for people? As an example, could we give victims the choice of not physically appearing in court, but giving their testimony via video conferencing so they don't have to come face to face with the perpetrator (HP, Fort) ?

Some felt that changes to measures of prevention will need to be separated from changes to the actual justice system in order to prevent things from getting confused (Ed). Others want a holistic approach (Cal). The justice system is complex, made up of many different parts, and therefore the focus should not be on the court only as it is part of a whole (GP). In the end, many preferred to use as a starting point what is working well in our current system, whether in terms of prevention or the court system itself, and move on from there (Cal).

Attendees also raised the need for changes to be flexible so that different programs can be implemented to meet the needs of various communities (Cal). Throughout discussions, the comment was made that one size does not fit all (RD). Although the basic needs of justice are the same, the system needs to be responsive to various issues (such as disabilities and geography) that will affect how justice should be delivered. This leads to the need, expressed by some participants, for more creativity. To increase our ability to come up with different solutions, it was suggested that we need to be more aware of reforms occurring in other provinces and countries. There are lessons to be learned of what to do and what not do from the experience of other jurisdictions (Cal).

In order to ensure reform meets the needs of those using the justice system, its focus needs to be on citizens not the justice system itself. When focus is placed on citizens it is easier to find solutions that meet their needs. This sentiment was expressed in Calgary: "Do not design the justice system for people who are already working in-house, but focus on citizens. In focusing that way solutions to complex cases will naturally flow" (Cal). A case in point, establishing

advocates was suggested by people who work with various segments of the public and witness their struggle with the justice system. It is the closeness and understanding that enables them to propose solutions aimed at filling needs.

Although changes to the justice system should be aimed at better meeting the needs of citizens who use it, caution was given that the justice system cannot be everything to everyone (Cal). That is why a philosophy needs to be established to set priorities for outcomes.

Establishing a philosophy to guide the justice system is also essential to deciding how outcomes will be measured (Ed). Measurement is crucial to the reform process. One must make sure that the right objectives/outcomes are being measured if it is to be established whether the new system in place is successful (Cal).

Currently participants saw many problems with the way the outcomes of the justice system are being measured (GP, Fort). Fort McMurray lost one of its judges because the judge had been effective in diverting cases to alternative measures that were successful in reducing caseload to an extent. In addition Queen's Bench judges were also being more proactive in diverting cases out of court. Consequently, Fort McMurray was granted less sittings. The judicial community in the town feels like it is being penalized for success. The province, they argued, needs to realize that even if judges are not sitting, they are often still working through other venues. The way in which resources and time is distributed needs to be done on a qualitative basis rather than simply on a quantitative basis. The community is worried that since prosecutors and police are doing a good job, their resources will also be scaled back.

A more general problem with current measurements is that only two percent of cases go trial but the measurement of success is based on the outcomes of trials so the reviews are missing much. Because cases do not end up in court does not mean they are being resolved effectively, as can be seen in the case of family law. As stated earlier, people may stay out of court because they lack the knowledge or resources, or are scared of the outcomes. Unless the scope of measurements is increased, a full picture of what is occurring will not be painted. Consequently before changes can be made, the proper measurements must be in place to ensure that change is undertaken where it is needed and in the proper manner.

A participant in Red Deer raised the further dilemma of how changes will actually be measured if a diverse number of changes are made. How will it be discovered what is working and what is not? He suggested that we look at how enhancing front-end services works first, before changing the court structure. (RD) There is a chance that once that is improved, there would be no need to overhaul the court system.

As restorative justice expands it also becomes necessary to find ways to measure the success of restorative justice and retributive justice, not only to compare them, but to see how the two methods work to make up the justice system as a whole. The criteria suggested in Edmonton include the following:

- Cost and time taken
- Quality of the procedures
- Public understanding
- Ability to honour diversity
- Capacity to rehabilitate perpetrators, victims and the community.

Setting the criteria to measurement points again to the necessity of having an overall philosophy of what the justice system is meant to accomplish. The philosophy, focus, and measurement of changes must be in place before they are undertaken, if they are to be accepted and effective.

Summary

There was a general consensus that whatever changes are made and however they are measured, the process has to be well planned, given the proper resources and followed through in order to make a difference in terms of outcomes. People have seen too many initiatives started with much energy, only to have these initiatives fail or not reach their full potential due to a lack of follow up (RD, Calgary, GP).

Many felt that it is best to start from the ground up. The argument has been repeatedly stated that people don't care what court they are in or how many levels there are. They are more interested in preventing things from getting to court, and, once there, in receiving effective resolution in good time (GP, Ed). A belief exists that money should be invested in front end services such as policing, health and education rather that completely transforming the court system (GP, RD). Subsequently, more alternatives to court can be bolstered and the court system itself can be altered through reforming procedures.

As has been reiterated throughout the discussion, stable long term funding and human resources must be invested in the system. As one participant pointed out "structure is only as good as the people who make it up" (Cal). There is fear that changes would be made but outcomes would remain the same unless the right resources were put in place (Cal).

Furthermore, as seen throughout this paper, one size does not fit all in terms of the degree of generalization or specialization, time, or services. Many reforms, from specialization to increased ADR, however positive they may be, are often a double edged sword (Cal). Specialization especially was seen as having the potential to better address specific issues, while at the same time, creating more complexity in the system.

In conclusion, people cannot decide whether developing a single trial court with specialized areas, or increasing alternative measures, will reduce the barriers to justice until they have more information as to how the reforms will work, and what possible outcomes they will achieve.

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