

**THE WINSTON MEMORIAL CHURCHILL TRUST OF AUSTRALIA**

# **ABORIGINAL HEALING CIRCLE MODELS ADDRESSING CHILD SEXUAL ASSAULT**

**AN EXAMINATION OF COMMUNITY BASED HEALING CIRCLES USED TO ADDRESS  
CHILD SEXUAL ASSAULT WITHIN ABORIGINAL COMMUNITIES IN CANADA**

**Report by: Mandy Young  
2006 Churchill Fellow**

**I understand that the Churchill Trust may publish this Report, either in hard copy or on the internet or both, and consent to such publication.**

**I indemnify the Churchill Trust against any loss, costs or damages it may suffer arising out of any claim or proceedings made against the Trust in respect of or arising out of the publication of any report submitted to the Trust and which the Trust places on a website for access over the internet.**

**I also warrant that my Final Report is original and does not infringe the copyright of any person, or contain anything which is, or the incorporation of which into the Final Report is, actionable for defamation, a breach of any privacy law or obligation, breach of confidence, contempt of court, passing-off or contravention of any other private right or of any law.**

**Author: Mandy Young  
Date: 7 September 2007  
Contact details:  
E: [mandy\\_young@agd.nsw.gov.au](mailto:mandy_young@agd.nsw.gov.au)  
P: 02 9228 8056 (w)  
0408 681 123 (m)**

**ABORIGINAL HEALING CIRCLE MODELS ADDRESSING CHILD SEXUAL ASSAULT  
MANDY YOUNG CHURCHILL FELLOW 2006**

## INTRODUCTION

While managing the Aboriginal Child Sexual Assault Taskforce (ACSAT) for the NSW Attorney General's Department, I met so many Aboriginal people across the state that have been failed by the criminal justice and child protection systems that are mandated to deal with child sexual abuse. After we had done some research into alternative system, there looked to be some hope. In Canada a number of holistic healing models, working in partnership with government systems, were having some amazing results. We were on one of our many road trips, talking about the issues and becoming really hopeful that something like this could work here in Australia, when Aunty Melva Kennedy, a 2001 Churchill Fellow and ACSAT member encouraged me to apply for a Churchill Fellowship, so that I could go to Canada and see how these programs were working.

I went to Canada thinking that they would have all the answers. What I found were many incredible people, who are committed to dealing with all the wrongs that have happened to the Indigenous people of Canada. They too are still on their journey to healing and are facing that with a courage and tenacity very similar to that of Aboriginal Australians. The similarities between cultures and systems were abundant including the experience of colonisation; the community and family based cultures; and the government systems. The issues that are being faced are so similar, as is the sense of humour that we Indigenous people use to deal with it all, I often felt like I hadn't even left home.

My study took me to Canada where I was able to spend time with the Hollow Water Community Holistic Circle Healing Team; I was also able to visit with many government and non-government service providers that supported this initiative. As Hollow Water is considered a remote community in Manitoba, I also visited with the Bidaaban: Mnjikaning Community Healing Model in Ontario, which is regionally based. In addition I visited national and state service providers and policy makers in Winnipeg, Ottawa and Toronto, which allowed me to see how these healing models were able to operate in partnership the government systems. Finally I travelled to New York, where I was able to visit with UNICEF as well as a similar restorative justice model recently established in Harlem.

The ability to visit with such a broad range of individuals and services has allowed me to comprehensively consider the implementation of these healing models within an Australian (particularly NSW) context.

### MIIGWETCH

To all of the people who I have met in Canada and New York throughout my journey, miigwetch (thankyou in Ojibwe). I have really valued you providing your time and expertise to me. I feel privileged to have shared in your experiences.

Particular thanks must go to Ed Buller and the Aboriginal Corrections Team at Public Safety Canada. They helped me make all the contacts that I needed and ensured that I never got more than five minutes to myself, both in Ottawa and the rest of Canada! I would also like to thank Sharon Klyne, who took me into her home and family at Hollow Water and listened to me complain about the freezing weather!

Thank you to my referees, ACSAT and my family and friends who have always had such strong faith in me and my ability to put what I learnt overseas into action here.

I would like to acknowledge the support of the NSW Attorney General's Department, who not only allowed me to have study leave to undertake the fellowship, but also really support and believe in what I am doing.

Finally I would like to thank the Churchill Trust who gave me this opportunity to help improve the services that are provided to Aboriginal children, families and communities that are effected by child sexual assault in Australia.



Me freezing in Hollow Water, Manitoba, Canada, March 2007.

# INDEX

<b>Executive summary</b>	<b>6</b>
<b>Chapter one: Setting the Scene: The Canadian Context</b>	
The Aboriginal Experience in Canada	10
Criminal Justice System in Canada	11
Child Protection System in Canada	14
<b>Chapter two: Manitoba</b>	
Hollow Water Community Holistic Circle Healing Model	15
Funding Of CHCH	28
Child Protection Agencies	29
Wanipigow School	31
Royal Canadian Mounted Police	32
Manitoba Justice – Corrections	34
Judiciary – Manitoba Courts	36
Manitoba Prosecution Service	39
Victim Support Services – Manitoba Justice	41
Forensic Psychological Services	43
Winnipeg Police	43
<b>Chapter three: Ontario</b>	
Mnjikaning – Rama	44
Mnjikaning Community and Family Services: Biidaaban	44
Aboriginal Legal Services Toronto	49
Native child and family services Toronto	51
Toronto Police	52
London Family Services – Center for Children in Justice	52
Wabano	53
<b>Chapter four: The Federal Perspective</b>	
Public Safety Canada	54
National Parole Board	56
Correctional Service Canada	57
Aboriginal Healing Foundation	59
Pauktuutit Inuit Women of Canada	59
<b>Chapter five: New York</b>	
United Nations	62
UNICEF	62
UN Permanent Indigenous Forum	63
Center on Violence and Recovery	64
Harlem Restorative Justice Project – Neighbourhood Defenders Service	65

# INDEX

## **Chapter six: Holistic Healing Circle Models**

Benefits for Offenders	67
Benefits for Victims	67
Benefits for Families and Communities	68
Benefits for the Healing Process	68
Benefits for the Criminal Justice Process	69
Limitations of Healing Circle Models	70

## **Chapter seven: The Australian context**

Aboriginal Healing in Australia	71
Current Political Climate	72
Aboriginal Community Commitment	72
The Collaborative Approach	73
Development of an Australian Healing Circle Model	73
Operational Considerations	75

## **Chapter eight: Where to from here?**

Using Existing Federal Mechanisms	77
Trialling a Healing Circle Model in NSW	78
Recommendations	80

## **Appendices**

Agencies consulted in the development of this study	81
---	----

## Executive Summary

This report examines the holistic circle healing processes being successfully implemented in some Canadian Aboriginal communities. The first chapter provides a brief insight into the experience of Aboriginal people in Canada and includes some of the historical interventions that have continue to impact on the Aboriginal community's contemporary experience today. This includes; the implementation of the Indian Act; the Canadian residential school system; and the Royal Commission in Aboriginal Peoples.

Chapter one also provides a contextual overview of the contemporary criminal justice and child protection systems in Canada. Canada currently operates a federal system of government very similar to that of Australia. The Crime Code is federal legislation however it is primarily administered through the provincial and territorial courts. The Gladue sentencing decision in 1999 provides for special considerations for Aboriginal offenders in the sentencing process and facilitates alternative sentencing options, such as the healing circle models. The child protection system in Canada is the responsibility of individual states and territories and both provinces (Ontario and Manitoba) considered in this report have developed Aboriginal specific child protection services.

Chapter two provides an insight into the system in Manitoba and more specifically the implementation of the successful Hollow Water Community Holistic Circle Healing (CHCH) program. The philosophy and development of the program have been integral to its success. The program is community owned and driven and allows for a holistic community intervention approach to victims and offenders of child sexual abuse. The process involves an intensive support structure within the community for the victim, the offender and their families. An offender can only be included in the program if they accept responsibility for their offending behaviour. At this stage they work with the program to address their issues and restore balance to the community. It is a lengthy process which can take more than five years to complete.

The chapter observes not only the program itself, but its partner agencies within the criminal justice, child protection and Hollow Water community. All agencies agree that the process is beneficial, but needs to be managed carefully to ensure that it continues to operate effectively. Many partner agencies indicated that it is the most satisfying process that they have had the privilege to be involved in.

The program is deemed successful and data shows that offenders who enter it are unlikely to reoffend and the entire process saves the government up to \$1.35 million per year. There are many benefits of CHCH. Some of these benefits include: the incorporation of traditional healing practices and the criminal justice system provides a more holistic and culturally relevant response; individual, family and community healing are set at the pace of the people involved consequently providing a safe and effective space for healing to occur; and the offender is held into account for their behaviour through both the courts and the community.

However we can learn a number of lessons from the experience in Hollow Water. These include: it is critical that relevant support, education and training process are implemented to ensure that the program can operate at its best; it is critical that relationships between stakeholders are managed and all parties are viewed as equal stakeholders; and it is important that the criminal justice and child protection systems support the process otherwise the service will flounder.

Chapter three examines the Biidaabaan: Mnjikanining Community Healing model. This model operates in the Mnjikaning community in northern Ontario and is based on the CHCH model. Biidaabaan have had the advantage of learning from the CHCH experience and subsequently adapting the program so that it is appropriate for their community. The program is very well respected within the community (as is CHCH) and plays a key role in it. Biidaabaan have developed clear protocols on how they operate including clear lines of communication and allocation of responsibilities for partner agencies. The ability of the program to be flexible and meet the needs of the individual, family and community allows for a holistic approach and facilitates the well being of everyone involved.

This chapter also examines a number of other programs operating in Ontario including the Aboriginal Legal Service, Native Child and Family Services, Center for Children in Justice and Wabano medical Service.

Federal agencies are supportive of the healing circle models, indicating that they are one of the few programs providing an alternate justice intervention that works. Chapter four examines the federal perspective on healing circle models as well as providing an insight into the Correctional system within Canada. Observations of offender programs in custody and particularly sex offender programs suggest that they are not working for Aboriginal people in their current form. Other organisations such as the Aboriginal Healing Foundation and Pauktuutit Inuit Women of Canada have also had considerable success in the development of healing programs and suggest the circle healing model would be effective for addressing child sexual abuse issues in other communities across Canada.

Chapter five examines the implications of the United Nations (UN) Conventions of the Rights of a Child (CROC) and the UN Declaration on the Rights of Indigenous People. Both of these conventions reiterate the importance of including Aboriginal people in the development and implementation of programming that addresses child sexual abuse in Aboriginal communities.

This chapter also includes information on the Center on Violence and Recovery and the Harlem Restorative Justice Program. These programs have been developed similar principals to healing circles and have so far been successful in Arizona for domestic violence and Harlem for sexual assault and violence. The programs have been adapted according to the community they service and it is interesting to note that neither program is specifically for Indigenous people, but rather the main stream community.

Holistic healing circle models provide many benefits for offenders, victims, families, communities, criminal justice systems and the healing process itself. It is critical that extensive planning is undertaken in the development of a healing circle process and

relevant policies and protocols are put in place to ensure that they program runs effectively. The program needs to be driven by the community, for the community and hold offenders into account for their actions. A range of programming is needed to ensure that the circle healing process addresses the needs of the individual, family and community. The circle healing models are cost effective and allow for a level of intervention with victims and families that is currently not attainable in the western criminal justice system.

There are very few limitations to the healing circle program, however some barriers may include: inadequate or insecure funding; the political climate; communication breakdowns between stakeholders; lack of clear guidelines for stakeholders; lack of community understanding of the program; lack of support by the criminal justice and child protection systems.

Chapter seven considers the implementation of a healing circle model within the Australian Context. Aboriginal healing in Australia is dependant on the notion that the land, people and spirits are interconnected and any failure to observe the laws on relationships between people (for example the act of sexually abusing someone) results in great harm and chaos within the community. This resonates with the traditional Aboriginal healing focus in Canada.

The healing circle process is particularly relevant to the Australian context as statistics show that in Aboriginal communities, victims are likely to be related to or know their offender. The disclosure of child sexual abuse in this context means that the entire family unit and community can be affected. The current criminal justice system does not allow for an intervention which addresses the needs of all people impacted by the abuse. Because the present criminal justice system focuses on the individual it does not allow for traditional healing in a collective context to occur. The healing circle intervention process would have the capacity to do this and therefore, address the abuse in a holistic context that would lead to greater community and individual well being in a culturally relevant way.

In Australia, the current political focus on addressing child abuse in Indigenous communities suggests that it is the perfect time to consider implementing a healing circle model as the likelihood of receiving financial and political support is good.

It is imperative when considering the development and implementation of an Australian healing circle model, the following principles are incorporated: commitment from the Aboriginal community; involvement of the Aboriginal community in the development and implementation of the program; establishment of collaborative partnerships between stakeholders; extensive planning and development phases; extensive consultation with all stakeholders; development of a comprehensive risk management framework; establishment of clear policies and protocols to guide service delivery; establishment of a functional and supportive service structure; ensuring that the program is holistic; development of a comprehensive evaluation and research framework; and adherence to the UN conventions.

An Australian healing circle model would also benefit from considering the following critical factors when implementing the model: continuous community education and training

regarding the service provision of the program; secure support from the criminal justice and child protection systems; training and education of program staff in criminal justice and child protection issues and processes; regular stakeholder forums are required to ensure that collaborative working relationships are achieved; regular and well planned sentencing circles are critical to an effective process; and the healing circle model and existing victim service providers must work in partnership.

Chapter eight outlines how a healing circle model could be implemented within Australia and possibly trialled in NSW. This could occur through the use of existing federal and state policy frameworks. In NSW such a model could work closely with existing Joint Investigative Response Teams, Aboriginal Community Justice Groups and Circle Sentencing processes. However there would need to be consideration in relation to the legal basis of a healing circle model within the criminal justice and child protection systems. A number of risks such as political opposition; Aboriginal community reluctance; judicial reluctance would also need to be considered.

A well planned and phased implementation process would need to be initiated. This would include: a scoping and planning phase; an establishment phase which would incorporate extensive community and stakeholder consultation; a trial operational phase; and an evaluation phase.

Consequently it is recommended that this report is provided to the Australian Federal and NSW State Governments for consideration. It is also recommended that the report is provided to the Human Rights and Equal Opportunity Commission, Secretariat of National Aboriginal and Islander Care and the NSW Aboriginal Child, Family and Community Care State Secretariat.

## Chapter one:

# SETTING THE SCENE: THE CANADIAN CONTEXT



### THE ABORIGINAL EXPERIENCE IN CANADA

Aboriginal people in Canada are Indigenous Peoples recognised in the Canadian Constitution Act, 1982. They include Indians (as a generic term), Aboriginal (First Nations people from the south of Canada), Métis (those with mixed heritage, originally French and First Nations, however now the term is more generic to include other races), and Inuit (from the north of Canada). It also refers to the self-identification of Aboriginal Peoples who live within Canada, but who have not chosen to accept the extinction of their rights of Sovereignty or Aboriginal Title of their lands.<sup>1</sup> Throughout this report the terms Native and Aboriginal will be used interchangeably referring to the Indigenous peoples of Canada.

Aboriginal people in Canada have interacted with Europeans as far back as 1000 AD with friendly trade practices. This changed in 18<sup>th</sup> century when Aboriginal people were targeted for assimilation into European/Canadian culture. Assimilation policies climaxed with the establishment of the Canadian residential school system, the prohibition of Indigenous cultural practices, and the Indian Acts of the late 19th and early 20th century.<sup>2</sup>

The Indian Act ("An Act respecting Indians"), R.S., 1985, is the Canadian statute that concerns registered Indians (Aboriginal peoples of Canada), their bands, and the system of Indian reserves identified through the treaty process. The Indian Act was enacted in 1876 and provides Canada's Federal Government exclusive authority to legislate in relation to "Indians and Lands Reserved for Indians." The Indian Act is administered by the Minister of Indian Affairs and Northern Development.<sup>3</sup>

<sup>1</sup> [http://en.wikipedia.org/wiki/Aboriginal\\_peoples\\_in\\_Canada](http://en.wikipedia.org/wiki/Aboriginal_peoples_in_Canada)

<sup>2</sup> [http://en.wikipedia.org/wiki/First\\_Nations#History\\_before\\_European\\_contact](http://en.wikipedia.org/wiki/First_Nations#History_before_European_contact)

<sup>3</sup> [http://en.wikipedia.org/wiki/Indian\\_Act](http://en.wikipedia.org/wiki/Indian_Act)

According to the Indian Act, Indigenous women who married white men lost their treaty status, and their children would not be granted status at all. In the reverse situation (Indigenous men married to white women), men could keep their status, and their children would also gain treaty status. This was overturned in 1985 and women who had lost their status and children who had been excluded were then able to register and gain official Indian status. Despite these changes, First Nations women who married white men could only pass their status on one generation; their children would gain status, but (without a marriage to a full status Indian) their grandchildren would not.

In 1991, the Royal Commission on Aboriginal Peoples was created. Their report was issued in 1996 and proposed the creation of a government for (and by) the First Nations that would be fully responsible within its own jurisdiction, and with which the federal government would speak on a "Nation-to-Nation" basis. The federal government responded to the report a year later, providing an official apology for the forced acculturation the federal government had imposed on the First Nations, and by offering an "initial" provision of \$350 million. The bulk of which was provided to the Aboriginal Healing Foundation.<sup>4</sup>

## **CRIMINAL JUSTICE SYSTEM IN CANADA**

### **LEGAL JURISDICTIONS**

Canada has a federal system of government. This means that the authority to make laws is divided between the Government of Canada and the provincial and territorial governments. The federal government deals with matters that affect all of Canada, such as criminal law, trade between provinces, telecommunications, immigration and extradition, and fisheries.

The provinces and territories make laws in such areas as education, property and health services.<sup>5</sup> The Provinces and Territories of Canada consist of: British Columbia, Alberta, Saskatchewan, Newfoundland/Labrador, Manitoba, Ontario, Nova Scotia, Quebec, Nunavut, Northwest Territories, New Brunswick, Prince Edward Island and Yukon. This report reflects the author's experiences in Ontario and Manitoba.

### **FEDERAL GOVERNMENT AGENCIES:**

#### **The Department of Justice Canada<sup>6</sup>**

The Minister of Justice is responsible for more than 45 statutes and areas of federal law. To support the Minister, the Department of Justice provides policies and programs to address key issues that affect the lives of Canadians.

The Department's day-to-day work falls into four main areas:

- Providing legal advice to federal departments and agencies;
- Litigating to uphold federal laws and prosecuting violations of those laws;
- Drafting and reviewing legislation and regulations in both official languages, reflecting both the common law and the civil law tradition in Canada;

---

<sup>4</sup> [http://en.wikipedia.org/wiki/First\\_Nations#History\\_before\\_European\\_contact](http://en.wikipedia.org/wiki/First_Nations#History_before_European_contact)

<sup>5</sup> <http://justice.gc.ca/en/jl/index.html#court>

<sup>6</sup> <http://justice.gc.ca/en/jl/index.html#court>

- Developing policy and supporting programs in areas such as human rights, youth justice, Aboriginal justice, family justice, criminal law, privacy, and official languages.

The provinces prosecute most criminal offences; however the Department of Justice, acting for the Attorney General, carries out prosecutions under all other federal laws, including drug offences.

The Department of Justice strives to achieve its policy objectives through a number of initiatives carried out in partnership with federal, provincial, territorial, municipal, international and non-governmental partners.<sup>7</sup> The primary strategies focussed on in this study were the:

### **The Aboriginal Justice Strategy (AJS)**

The AJS is composed of community-based justice programs that are cost-shared with provincial governments to improve access and effectiveness for Aboriginal people who are at risk of or in contact with the criminal justice system.<sup>8</sup>

### **Family Violence Initiative**

The Initiative seeks to prevent and respond to violence against women and children in the home. It concentrates on: promoting continued public awareness; strengthening the criminal justice and housing systems' responses to family violence; and undertaking data collection, research and evaluation measures that will enable the identification of effective interventions.<sup>9</sup>

### **Justice Partnership and Innovation Fund**

The Fund is designed to support short-term, innovative projects that improve the justice system and contribute to the development of policy and program initiatives. Current areas of interest include family violence, legal studies for Aboriginal Peoples, public legal education, drug treatment and projects specific to the development of a justice system in Nunavut.<sup>10</sup>

### **Policy Centre for Victim Issues (PCVI)**

The PCVI works to increase the confidence of victims of crime in the criminal justice system through raising awareness among victims of crime and their families about their role in the criminal justice system and of services and assistance available to support them. The PCVI administers the Victims Fund, which provides monetary compensation and resource development to victims of crime.<sup>11</sup>

---

<sup>7</sup> <http://justice.gc.ca/en/ps/index.html>

<sup>8</sup> <http://justice.gc.ca/en/ps/index.html>

<sup>9</sup> <http://justice.gc.ca/en/ps/index.html>

<sup>10</sup> <http://justice.gc.ca/en/ps/index.html>

<sup>11</sup> <http://justice.gc.ca/en/ps/index.html>

## **Youth Justice Renewal**

The renewal of youth justice works on; prevention to address the root causes of youth crime; meaningful consequences for youth crime; and rehabilitation to help young people turn away from crime.<sup>12</sup>

## **THE COURT SYSTEM**

### **FEDERAL COURTS<sup>13</sup>**

All Federal Courts are also known Provincially as the Queen's Bench. Federal Courts include:

- Supreme Court of Canada - The Supreme Court of Canada is Canada's highest court. It is the final general court of appeal, the last judicial resort for all litigants, whether individuals or governments.
- Federal Court of Appeal - the Federal Court of Appeal hears Appeals from the Federal Court. The Federal Court and Federal Court of Appeal also review decisions, orders and other administrative actions of federal boards, commissions and tribunals.
- Federal Court of Canada - The Federal Court is Canada's national trial court. It hears and decides legal disputes arising in the federal domain, including claims against the Government of Canada, civil suits in federally regulated areas and challenges to the decisions of federal tribunals.
- Court Martial Appeal Court of Canada - This Court hears appeals from military courts and the courts have power to try military personnel.
- Tax Court of Canada - The Tax Court of Canada is a superior court to which individuals and companies may appeal to settle disagreements with the Government of Canada on matters arising under tax legislation.

### **PROVINCIAL AND TERRITORIAL COURTS**

Provincial and Territorial Courts are an administrative court and primarily has a criminal jurisdiction, as well as limited concurrent jurisdiction with the Queens Bench in family law matters that originate outside a metropolitan areas.

A Defendant can elect to be heard in the Queens Bench (with or without jury); however over 95% of matters are heard in Provincial Court.<sup>14</sup> Both courts have access to the same sentencing options. The only matters that cannot be heard in the Provincial Court and consequently must be heard by the Queens Bench are for the following offences: murder, treason and piracy.

### **JUDICIAL OFFICERS**

The Provincial Courts of each Province are an appointed bench (Judge). Judges are appointed after going through an application and interview process. The Federal Courts (Queens Bench) is a federally appointed bench (Justice). Judges send in an application and the Chief Judge vets them. The Federal Attorney General then appoints candidates.

---

<sup>12</sup> <http://justice.gc.ca/en/ps/index.html>

<sup>13</sup> <http://justice.gc.ca/en/jl/index.html#court>

<sup>14</sup> [http://www.manitobacourts.mb.ca/pr/pr\\_work.html](http://www.manitobacourts.mb.ca/pr/pr_work.html)

Judicial Officers undertake education programs, mostly run through the National Judicial Institute. Judges are not forced to attend these programs, but are “strongly encouraged” by their respective Chief Judges to attend. The Judges consulted during this study indicated that the National Judicial Institute provides great programs but they are not resourced well, particularly in relation to providing Province based programs.

### **SENTENCING OF ABORIGINAL OFFENDERS**

Section 718.2(e) of the Criminal Code of Canada allows for special sentencing considerations for Aboriginal offenders. This legislation is known as the Gladue decision, which was the case law preceding its development and implementation. The legislation dictates that any court that imposes a sentence must also take into consideration the principle that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders."<sup>15</sup> This provides an opportunity for offenders to alternative sentencing options including programming such as the healing circle models.

### **CHILD PROTECTION SYSTEM IN CANADA**

Canada’s formal response to child abuse and neglect is through its provincial child protection systems. The provincial laws on child welfare require that all cases of suspected child abuse and neglect be investigated. A variety of actions can be taken if the investigation indicates the child is in need of protection. Responses range from providing counselling and support services to the family, to temporarily or permanently removing the child from the home, to removing the abuser or abusers from the home. In the most serious cases, abusers may be convicted under the *Criminal Code of Canada*.

This report refers the provinces of Ontario and Manitoba. These provinces have both developed systems that include Aboriginal specific child protection.

---

<sup>15</sup> R. v. Jamie Tanis *GLADUE*, April 23, 1999, Supreme Court of Canada / Appeals

## Chapter two:

### MANITOBA



#### **HOLLOW WATER COMMUNITY HOLISTIC CIRCLE HEALING (CHCH)**

Hollow Water is an Ojibway community of some 600 people located on the east side of Lake Winnipeg, some 200 kms. north of Winnipeg. In 1984, a group of social service providers, concerned with the future of their young people, looked into the issues of youth substance abuse, vandalism, truancy and suicide. Their focus shifted to the children's home life and, upon closer examination, inter-generational sexual abuse was identified as the root problem. By 1987, they tackled sexual abuse head-on, creating their Community Holistic Circle Healing Program (C.H.C.H.). They presently estimate 75% of Hollow Water residents are victims of sexual abuse, and 35% are offenders.<sup>16</sup>

#### **Philosophy of CHCH**

The Anishnabe people can be traced back to Ontario, they moved west and some settled in this area known as Hollow Water. The philosophy of the people related back to seven principles; respect; humility; truth; honesty; wisdom; kindness; and courage.

The philosophy of CHCH is to go back to living in accordance with the seven principles and the circles of life. If people return to the principles, they and the community will become more healthy and functional. There is a need to understand the philosophy and respect it. Only then will they begin to heal through ceremonies, teachings and therapies (traditional and contemporary).

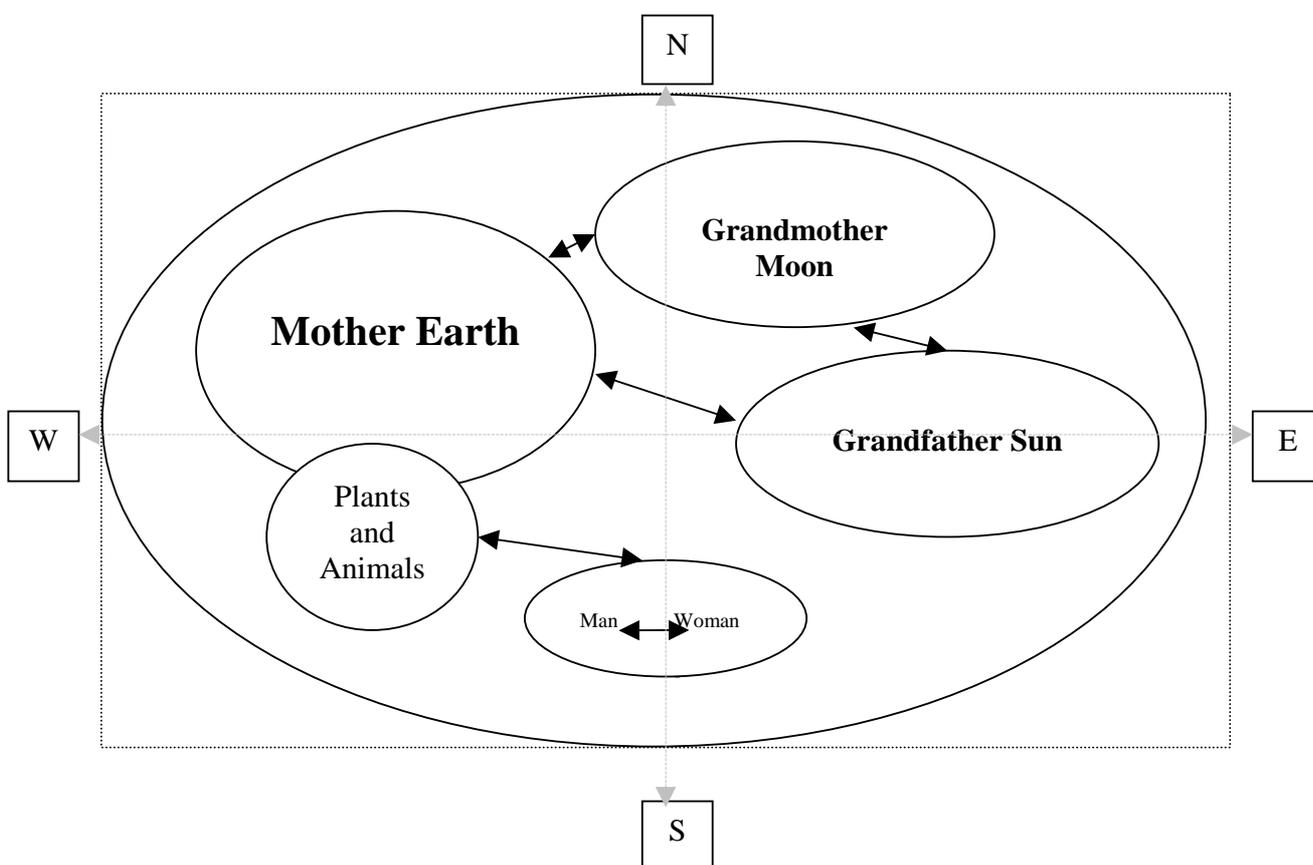
---

<sup>16</sup> This is an excerpt from Rupert Ross's discussion paper *Duelling Paradigms? Western Criminal Justice versus Aboriginal Community Healing*. and was published in: *Justice as Healing : A Newsletter on Aboriginal Concepts of Justice Native Law Centre Spring 1995*

For many years the teachers and elders in the community did not teach for fear of reprisal from government authorities. In the late 1980's an elder talked to the community about its traditional beliefs and the importance of continuing traditional lifestyles, everyone in the community has a responsibility – whether it is a teacher or something else. The involvement of this elder in the community was the impetus for the development of CHCH.

Diagram 1 outlines the traditional Aboriginal circles of life. Every element of life is interrelated and dependent on each other. Each direction has a role and if things within this circle breakdown it will lead to chaos, destruction and death. Everyone has a role within this circle, dependant on when they are born together and their strengths in the circle, every direction has certain strengths and these work together to become a harmonious world.

**Diagram 1**



The philosophy of the people includes physical, emotional, spritual and mental health. Each of these gifts and the seven Grandfather teachings must be in balance with one another to lead a balanced life. Until contemporary times and the impact of the Residential School System, the grandparents nurtured and taught the children the meaning of life the importance of respecting life. Without this knowledge the young people are lost and people are seen as individuals impacted on by external systems. This leads to dysfunctional

behaviours. CHCH tries to bring back the teachings to the people and accordingly incarceration is only appropriate if a victimiser is unwilling or unable to take responsibility for their behaviours and/or the community cannot hold them accountable and offer support to all parties of the victimisation. Without this occurring, healing cannot begin. The vision of the Hollow Water community has always been to provide culturally relevant treatments to restore the balance to its people in accordance with the traditional Anishinabe worldview.



CHCH Office building at Hollow Water -  
The Tepee is used in healing ceremonies year round.

### **Development of CHCH**

People at Hollow Water started to speak out about child sexual abuse however the white system was not able to address it within their community. The Aboriginal Justice Inquiry in Manitoba was established when two Aboriginal people who had been victims within the system died and the government was under pressure to respond. The people of Hollow Water had been attempting to secure funding and therefore “the time was ripe” for CHCH to approach with their proposal of going back to traditional methods of healing and justice.

Many circles were involved in the development of the program. Elders, chiefs, victims and offenders, services and communities were all included in discussions about the process and the best way to proceed. They spoke to a number of Aboriginal people within the gaols and found that “were no place for offenders” as they would be at risk of being harmed by other inmates and there was no opportunity for healing to occur. Offenders were being released at the end of their incarceration period without an opportunity to change their behaviour. Therefore the Hollow Water community decided to set up the circle process within the parameters of the criminal justice and welfare systems in 1988 and have been successfully operating since.

CHCH is based on the value and beliefs that; sexual abuse is one of the main contributors to alcohol, drug abuse and family violence; the safety and well being of victim is the priority; to break the cycle of abuse the victimisers behaviour must be addressed; victimiser needs to be accountable for their actions; healing will only happen in a safe, open and non

threatening environment; healing is only successful if it is approached holistically; people will only heal if they take responsibility for their own healing process.

The objectives of CHCH are to provide intervention in sexual abuse and domestic violence situations; ensure victim safety; provide an alternative to the legal system that includes aspects of healing; deal with community attitudes toward sexual abuse; and develop skills within the community to enable it to become self-sufficient in addressing sexual abuse and family violence.

The community has supported the alternative model as it allows for people to remain in the community and serve their sentence. They are closely monitored by CHCH and their calendar is filled with their treatment programs, so it is far from an easier sentence. It has been difficult to implement and develop the program at times, as many people do not understand what CHCH is trying to do and consequently they are fearful of the program. That is why continuing education and involvement in the community is so important. It is a community-owned and operated process and it is the role of the workers and elders to teach the traditional healing methods to the rest of the community.

The philosophy of the program is crucial to its operation. Once people learn about the philosophy and understand how the program works, they are more supportive. This is particularly important in relation to working with external agencies.

Obtaining and sustaining support from the Government is an ongoing process. The support is dependant on current political climate and funding is used when they want to push their own agenda. The relationship between CHCH and the Government is crucial, but can be difficult to sustain, as they are dependant on staff turnover. The staff in Government changes regularly and CHCH spends considerable time educating new officers on the program and what they are trying to achieve.

**Benefits:**

- ✓ Offenders are able to access services that they could not access previously either in gaol or in the community that are effective for Aboriginal people
- ✓ Model allows for an offender to remain in their community to serve their sentence
- ✓ The community participated and drove the development of the model, resulting in a high level of ownership and commitment to the program
- ✓ Traditional healing practices are incorporated into all levels of programming to ensure that the programs are culturally relevant to all Aboriginal people involved.

**Lessons Learnt:**

- Consultation is critical to the development of a successful program with all stakeholders including community, government, non-government agencies, victims and offenders
- Government and politics impacts on development and establishment so this needs to be managed as a risk
- Community and service education about healing is critical in supporting program
- Ensure that people understand the philosophy of the program so they are more likely to support its implementation.

- Government support is critical to the process, stability in this support means that the programs can spend their time focussed on the work at hand.
- Relationships between agencies are crucial and mechanisms need to be in place to ensure that these relationships function independently of staffing issues
- The development phase of a healing program is critical and it can take years before it is implemented completely.
- It is critical that any healing model is based on the following beliefs; sexual abuse is one of the main contributors to alcohol, drug abuse and family violence; the safety and well being of victim is the priority; to break the cycle of abuse the victimisers behaviour must be addressed; victimiser needs to be accountable for their actions; healing will only happen in a safe, open and non threatening environment; healing is only successful if it is approached holistically; people will only heal if their take responsibility for their own healing process.

### **Implementation of CHCH**

CHCH operates within a traditional healing context. It is difficult to attain written information on this process, however it is described through an internal document provided to me by CHCH.<sup>17</sup> It is only recently that CHCH has undertaken the development of a formal protocol with criminal justice system. This is still in draft form, but outlines the process and the referral system between agencies very clearly. Following its ratification it will be a formal agreement between CHCH, Crown, RCMP, Hollow Water First Nation and Probation Services.<sup>18</sup> In line with this protocol a work plan has been developed. This work plan outlines each activity agencies are undertaking within the protocol and is to be reviewed annually. It is interesting to note that the relevant child protection and victim service agencies are not included in this agreement.

A brief outline of the CHCH is as follows: When a child discloses sexual assault a CHCH team is called together to hear from the child and ensure their safety, this is done in partnership with the Royal Canadian Mounted Police (RCMP) and Child and Family Services (CFS). A team is established to support the child and their immediate family. The referral for the support can come directly from the victim, offender, their families or another agency such as the Crown or Probation.

Another team is established for the offender. They work in partnership with the police and confront the offender about the allegations. Once the offender acknowledges the abuse the team explains the process and they have the choice of entering the program or continuing through the western criminal justice system.

The matter goes to court and the offender enters a guilty plea. Healing Circles are not legislated. Essentially police will charge the accused and the Crown Prosecutor will ask the court for a six month adjournment to work with the offender and assess their suitability and commitment to the program. At this stage they are bailed with strict conditions that they agree to work with CHCH and undertake direction from them in relation to any

---

<sup>17</sup> Internal CHCH documents

<sup>18</sup> *Protocol respecting criminal justice system referrals to the Hollow Water Community Holistic Circle Healing*, Draft version 7.3, April 2006

programming. Following their acceptance to the program, a further two-year adjournment, for CHCH to work with the families, will be requested with CHCH providing six monthly progress reports to the court.

There are four primary circles/processes that the offender is then required to go through. The first is with the offenders team, where they must talk about the crime they committed and engage in individual therapy, group programming and one on one sessions with their case worker weekly.

The second circle the offender works with their immediate family and admits their abuse and listens to the impact that it has upon each family member. This is an ongoing circle.

The third circle is where the offender must tell the entire community what they have done and listen to how it has impacted on individuals, families and the community as a whole. This includes their own family such as their parents and siblings. This is a well organised and staged circle and can be done as many individual circles or one forum depending on the individual case.

The fourth circle is the sentencing circle where the offender must tell the court and the community what they have done and what they are charged with. The community is involved in this process and can provide recommendations on what they think should happen. Following the formal sentencing process, which is held in conjunction with this circle, an offender will be ordered continue to be involved in the program to address their offending behaviours for the length of their probation.

CHCH believe that if the offender cannot complete any of the circles they are not taking responsibility for their behaviour and will be returned to the western court process. The process of reintegrating with the community begins as soon as the offender admits guilt.

***Lesson Learnt:***

- The development of clear protocols between agencies is critical to the programs success. This should be done in the development of the program rather than after it has been operational as it provides clear direction and responsibilities for everyone involved.

**Circles**

Whilst I was observing the program there were no planned circles for any of the clients, however I was able to observe one circle. CHCH received a call regarding a disclosure in a nearby community. A girl of 15 disclosed sexual assault but did not want to tell police. Her mother contacted CHCH for advice on what she could do. Staff held a circle to discuss the situation and consider the options. They then called the mother back and asked her to bring the girl to CHCH and they would all discuss the options together. This was done in an open discussion and a very non threatening way, which meant that the family were able to make decisions based on their understanding of both the CHCH and criminal justice processes. However it was interesting to note that they did not consider providing forensic advice and options to ensure the best possible evidentiary outcomes.

In a week with CHCH only two offenders come into the centre and not once did I see the workers go out to visit. It was spring break so caring for children or other family commitments may have restricted clients from attending the service. The human sexuality group was cancelled that week and the men's group was held but I was unable to attend (as I am female and that would be inappropriate).

**Benefits:**

- ✓ Open and non-threatening dialogue through the circle process allowed the family to make decisions based on their understanding of both the CHCH and criminal justice processes.

**Lessons Learnt:**

- Need to consider how to educate community on programs being delivered by the program
- It is important to combine contemporary processes with traditional practices. This ensures that people remember the reasons behind their actions and the develop a shared focus
- It is important that program staff are aware of criminal justice processes including evidence gathering issues
- Regular stakeholder meetings assists in the coordination of the program and facilitating positive working relationships

**Sentencing circles**

A significant circle in the CHCH program is the sentencing circle. The sentencing circle uses the principals of traditional practices of the community to bring an offender's behaviour out into the open, to protect the victim and minimally disrupt the family and community functions, to hold the offender accountable and for balance to be restored to all parties of the process. The process provides to outcomes; promoting community healing processes by providing a forum for the community to address the parties at the time of sentencing; and it allows the court to hear directly from the people most affected by the pain of the victimisation. The Sentencing process was discussed at length with many of the agencies. This appeared to be the focus of the model for most agencies rather than the healing process itself. Further details on perceptions of this process are included in stakeholder's discussions throughout this report

The sentencing circles operate in the community. A Judge will come to the community and the individuals affected by the crime (victim, offender, family of both, support people); crown prosecutor, defence counsel, RCMP and CHCH will sit in the inner circle and participate directly in the process. The rest of the community is able to observe, but only those in the inner circle are able to speak at the sentencing circle. The process of the circle is as follows:

1. Smudging
2. Opening prayer
3. Confirmation of pleas
4. Outlining of ground rules
5. First go round the circle (why did I come today/why am I here)
6. Second go round (participants speak to the victim)

7. Third go round (participants speak to the offender about how it has affected them and their family/community)
8. Fourth go round (participants outline expectations to offender and give an opinion of what needs to be done to restore balance)
9. Judge gives a decision regarding sentencing
10. Closing prayer

Participants will then be invited to stay and use the circle for debriefing. The circle is followed by a feast and sacred fire.



The quilting and common area within the CHCH office.

### **Sentencing Reports**

CHCH provide the court with sentencing reports on each offender prior to a sentencing circle. The sentencing reports take into consideration an offenders history and life experience context and are consequently adhering to the Gladue decision. After reviewing a number of the sentencing reports the following was observed:

- The reports provide a background of the offender's community and family experiences, many of these experiences were identical, which could be expected as most families are related and/or connected in some way.
- The reports include statements on the impacts of the victims and their families. Some victims still had contact with CHCH and had a high level of detail regarding the impacts of the harm. However many had little detail and were reliant on limited information, which did not clearly reflect how the victim and the family had been impacted.
- The sentencing reports provided very detailed information on the offender's level of progress and accountability in a holistic way. It is unlikely that this level of detail could be achieved through a Corrections formulated sentencing report.
- The reports provide a high level of detail regarding the work that still needs to be undertaken by the offender and how this can happen, including strict undertakings within parole conditions.

**Benefits:**

- ✓ Sentencing reports will be more reflective of the current situation regarding offenders healing and likelihood for recidivism if the community develops them.
- ✓ CHCH are able to provide a high level of supervision and support of offenders and use local knowledge to provide the most appropriate services.

**Lessons Learnt:**

- It is critical that the justice system, including the Crown and Corrections provide support and input into the development of any reports for the court by a community agency.

**Sentencing Circle transcripts**

A sentencing circle was held on 2 March 2007, unfortunately I was unable to attend, however I have been provide with confidential copies of the transcripts from proceedings. The following is a number of observations and quotes from the transcripts that provide an insight into the power of the CHCH program within the criminal justice system.

**Benefits for the victim:**

- ✓ The circle acknowledges the courage of the victims in coming forward with their disclosure and participating in the process. *“ I’m glad that these young women were able to talk and tell their story they did....healing doesn’t happen in one or two days. It’s a constant life long thing”.*
- ✓ The victim can have their say, *“And the reason why I done this is so that it wouldn’t continue on, so it wouldn’t keep on with the abuse, like to deal with it. And it’s helped, it’s helped a lot.”*
- ✓ It assists in the healing process, *“...holding him accountable so that he has to say what he’s done to me, it’s easier to forgive. ‘Cause when they can admit what they’ve done, then you know they’re at least starting to work on themselves.”*
- ✓ For a victim who did not want to attend, but provided a letter to the court showed that the process *“takes time and healing. It took me six years to forgive my dad....how I feel about myself now is I love being me....I challenge myself to survive, to be a sexual abuse survivor. And guess what I am.”*

**Benefits for the offender:**

- ✓ Provides an avenue for accountability for the offender *“XXX, sorry. When you first spoke this morning I couldn’t even put my head up because I that’s your, your flesh and blood. And I have kids too, and I wouldn’t want anything like that to happen to them, and here I am sitting here and everybody’s hearing what I’ve done. I feel so low. And I’ll carry this for the rest of my life, but I want you to know that I’m sorry, from the bottom of my heart”.*
- ✓ Gives the offender an insight into the impacts of their behaviour, *“...it has to be something preventative, that it needs to open, because nobody wants to feel this. It’s way to painful.”*

**Benefits for the families:**

- ✓ It provides an opportunity for the families to deal with the abuse together, *“..I’m really glad my family’s here and we had some circles before this, because a lot of this I never told to my sisters...”*

- ✓ Able to provide support in a safe and healthy environment, *“I want to be able to hold you in my arms and let you know that you are truly loved. Don’t ever be afraid to give me a hug. I want to walk with you, with you through your journey ahead. And I really want you to hold yourself accountable for what you’ve done.”*
- ✓ A sense of accountability within the family, *“...no sentence in the world will ever give back my sister her innocence. Charles will have to live with that for the rest of his life and make certain that he doesn’t hurt anybody else, and I am going to call him on that.”*

**Benefits for the community:**

- ✓ All participants believed that *“this is where all the healing takes place and everything happens that’s good in the circle.”*
- ✓ The community supports the offenders in taking responsibility for their actions and see it as a strength that can be used by the rest of the community to move forward.
- ✓ The importance of the CHCH team to take on such a big task in the community is critical *“One person alone cannot do it”.*
- ✓ People participate as they have ownership and input into what happens to the offenders and their families *“...Things that brought me here today is the love that I feel for my brother and my family and for my community. And I know how hard, you know, the cycle – we’re working at breaking that cycle...and I’m very proud of that because at least we’re working towards that as a community”.*
- ✓ Provides a place for healing in the community, *“this is really hard, but at the same time, I feel like it’s...full of hope too, because if we just send these guys to jail, we wouldn’t get a chance to hear, to hear their remorse or to hear their shame.... they’re validating how bad their actions made us feel. I’m grateful for this. I still wish it didn’t happen, but it did, and I’m grateful for this opportunity to work through this...”*

**Benefits of the process:**

- ✓ It is an emotionally charged process that affects everyone whether they are observing or participating. It allows for people involved to understand the impact of the offender’s behaviour, *“People kind of knew what the charges were today. And for some people, including myself, it was the first time to hear them formally read...that’s something that kind of hit home, at least to myself. There was definitely some anger, some anger in the room. I’ve been sitting here for the entire day and just watching people’s expressions and their emotions, and those of you that hold your heads up, you also hold your heads down. And it’s difficult because there, there was lots – a lot of innocence lost both with the victims and the victimisers.  
.... Honestly, today, I did feel anger....but at the end of the day, I believe in the system that we have here. I really do....And CHCH has been a part of our community for a number of years now and it’s becoming more and more active once again.”*
- ✓ Incarceration is not the place for healing to occur *“...they’ve physically died there, and more importantly – and yes, I will say more importantly –they’ve spiritually died there. And that’s the worst thing that can possibly happen to anybody because they come out of there empty....and they’re just a shell wandering around looking for help, but yet there’s nobody there to help them.”*
- ✓ The program is able to involve the community further in their work and in the criminal justice process of making offenders accountable, *“...these five people (criminal justice officers), they leave our community and they won’t see these men again. But we will.”*

*And it's our responsibility when we see them not following a condition, is to report them. If we do not report them, we're not helping them. Don't get mad at us if we breach them."*

- ✓ The community makes the program accountable, *"in think we have lost focus in our program working with sex offenders. I think we turned it into a sewing machine club or dogs. You're more interested in that rather than helping our community people."*
- ✓ The sentencing judgements take into account all of the factors discussed during the process, as well as the sentencing reports.

### **Lessons Learnt**

- The program requires more than one worker as engaging the community, offenders and victims is a massive task, which requires a high level of peer support.

### **CHCH files**

During the visit at Hollow Water I was able to review a number of CHCH offender and victim files. The files generally did not contain information regarding number of contacts with clients or progress reports following the initial disclosure. They tended to include only the initial referral and incident information, a copy of the treatment plan and copies of any other legal documents such as sentencing reports.

The treatment plans were relatively generic and included provisions such as the offender working under the direction of CHCH, participate in individual and family therapy sessions, participate in victimiser circles and workshops relating to the dynamics of sexual abuse, assist in the healing of others, undertake community restitution through community work with various agencies and participation in community events, abstinence from alcohol or drugs and no unsupervised contact with children.

In the 30 plus files I read, there was not one court update other than sentencing reports. It was difficult for the CHCH team to articulate the progress of offenders and for an outsider to ascertain the exact level of time put into the healing process.

There was even less information on the victim files, or information on the victim in the offender files. It was therefore difficult to ascertain how these two aspects interacted. There was also limited information on the family and circles that may have been undertaken with them.

### **Lessons Learnt:**

- The maintenance of contemporary notes would allow for the program to report back to the courts and articulate the progress of the offender more effectively.

### **CHCH review meetings**

A meeting where CHCH review and discuss all relevant cases and any other program issues is undertaken bi weekly. The CHCH team as well as relevant support services such as the National Aboriginal Drug and Alcohol Program (NADAP) and the medical service attend this meeting. The meetings are also used to share ideas and help each other in addressing any issues.

### ***Discussions/Observations***

If an offender is not complying or working towards his own healing the CHCH will set up circles with family, probation and parole and any other relevant workers and stakeholders involved in the matter. They will also review the treatment plan and consider having probation or parole orders breached if their commitment does not change. This was observed through a CHCH team meeting where an abuser was discussed and it was decided that CHCH would hold a circle with the abuser and Probation to discuss the issue and ultimately breach the offender for not complying with the program.

All programs offered by CHCH are discussed in this meeting. They include: Returning to Spirit<sup>19</sup>, Eco tourism (dog sledding), Wilderness Therapy, Teaching Lodges and Sweat Lodges. CHCH is currently developing a foster care and independent living program, which will include a house for children in care with programs attached. The programs are not framed as healing programs; however they are “therapy without saying therapy”. For example the wilderness therapy is framed as a “wilderness Program” rather than therapy. All programs compliment each other and the program the healing circle model.

There was considerable discussion in the meeting about developing strategies to ensure the community is aware of the programs available.



The community still fish on Lake Winnipeg and programming of CHCH includes teaching community people how to retain this tradition whilst using all modern conveniences.

### ***Benefits:***

- ✓ A regular meeting of participating stakeholders provides a forum for development, review and discussion to improve coordination and programming for the clients and the community.

---

<sup>19</sup> This is a series of workshops that run once a month for a weeks duration. The program addresses life issues and healing processes and has been so successful it has been recognised nationally and people come from other communities to undertake it. There are approximately 30 participants per program.

### **CHCH Piping Ceremony**

CHCH acknowledged that it was having some issues in its implementation and needed to refocus their work. To address this, they conducted a planning day, which also incorporated the traditional practices.

This included a prayer ceremony to ask the creator to help with healing and provide direction. Pipes, drums and gifts were presented to the creator and a traditional pipe ceremony was undertaken. A feast that was blessed by the burning sage followed it. A feast occurred and the chief attended, gifts were shared and information on Australian versus Canadian Aboriginal culture was discussed.

### ***Discussions/Observations***

Discussion with the Chief of Hollow Water suggested that his focus was on the economic progression of Hollow Water rather than providing infrastructure and social services to the people. He indicated that a service system was already established so that he could focus on improving the economic status of the community as a whole. He supported the service sector and provided considerable funding to medical and welfare services including CHCH. He is not disclose what funding this included.

### ***Benefits:***

- ✓ Including traditional practices helped the people of the program come together and strengthen their common focus.



Hollow Water Band Office which houses all medical and social services for the community.

## **FUNDING OF CHCH**

In 1991 the Canadian Report of the Aboriginal Justice Inquiry was released detailing 296 recommendations to address questions of Aboriginal rights and reforms to existing the existing justice system. The major initiative of the reforms was to develop an Aboriginal justice system based on rights of self-government. An implementation committee was established to oversee the implementation of the recommendations.<sup>20</sup> The Federal Government matches this funding through the Aboriginal Justice Initiative, Justice Canada in line with the Aboriginal Justice Inquiry.

CHCH is funded \$210 000 by province through their Manitoba Justice, Corrections Division in line with the Manitoba Aboriginal Justice Inquiry. The Manitoba Aboriginal Justice Inquiry was undertaken in 1995 in relation to a number of people Aboriginal people who had been victims within the system died.

### ***Discussions/Observations***

There has been a high level of staff turnover within the agency and consequently the staff met with for this study were unable to provide much insight into their current level of involvement with the program.

The Aboriginal Justice Initiative, Justice Canada admitted that they had difficulty knowing what level of support to provide CHCH. The program needs to remain community focused and there has been a fear of interfering or imposing on it. However this has resulted in the program not being supported as well as it could be.

It was suggested by almost all agencies that there are very high expectations attached to the funding, particularly from the state. More recently CHCH has been expected to provide services to almost all of the offenders at Hollow Water under their supervision. This is with little support or training.

Both funding bodies and CHCH indicated that there is very limited involvement of the funded agencies in the operation of the program. I was unable to observe the funding contracts, however it was suggested that the contracts are very simple and not strictly monitored. This means that it could be difficult for the agencies to ensure that the program is meeting its funding requirements and for the program to access the support that it needs.

It was also interesting to note that all stakeholders identified a need for training and external support mechanisms for the program; however it was observed that this was not addressed through the current funding agreements.

### ***Benefits:***

- ✓ The program has complete discretion over the use of funding and can therefore use it to meet the needs of the community

---

<sup>20</sup> [www.ajic.mb.ca/reports/final\\_ch01.html](http://www.ajic.mb.ca/reports/final_ch01.html)

### **Lessons Learnt:**

- Ensure funding agreements are supportive and provide responsibilities for both the funding agency and the program, including training and support mechanisms.

### **CHILD PROTECTION AGENCIES**

In Manitoba, a network of child protection supports exist to; strengthen families; engage communities to resolve issues that affect the safety and well-being of children; and protect children. Services include counselling; education; emergency assistance; practical support; treatment; and temporary care, including foster care or residential care, while issues are being resolved, or appropriate permanent care, including adoption, when reunification is no longer possible.<sup>21</sup> All agencies are provided with the mandate to intervene in child protection issues through the *Child and Family Services Act of Manitoba* and their interventions are guided by the *Manitoba Guidelines on Identifying and Reporting a Child In Need of Protection (Including Child Abuse)*.

The Aboriginal Justice Inquiry – Child Welfare Initiative (AJI-CWI) was established in 2000 in response to a recommendation made earlier that year by the Aboriginal Justice Implementation Commission (AJIC). The AJIC recommended that the Government of Manitoba work with First Nations and Metis leaders to develop a plan that would result in First Nations and Metis communities developing and delivering child welfare services. Consequently the child protection system in Manitoba has recently undergone major reform and restructure. The one central agency providing child protection services was devolved and a number of agencies established including Aboriginal specific agencies. All of these agencies are mandated to undertake child protection service provision.

### **Southeast Child and Family Services - Hollow Water**

In Hollow Water the agency responsibility for child protection services is the Hollow Water Child and Family Services and is auspiced through Southeast Child and Family Services (based in Winnipeg). There are three child protection workers with Hollow Water Child and Family Services (CFS) and a supervisor. Each worker case manages approximately 20 children in care, 5 foster family files and 15 child abuse matters. This is approximately 7% of the total population for the geographical area of 1500 people (Manigotogan, Seymourville and Hollow Water).

### **Discussions/Observations**

CFS provided little comment on the CHCH process or their own work, however they did indicate that when a report comes in they do investigate it in partnership with the police and CHCH. A CHCH staff member advised that a rift with CFS occurred through a miscommunication a few years ago (Sept 2005). Since this time individuals have worked within both agencies, however there is still a separation, which makes it very difficult to work in child abuse cases, which are the basis of the CHCH model. Other community members noted that there was a distinctive rift between the CHCH and CFS. However the reason for this tension was never disclosed. A couple of years ago the two agencies were working well together and were in fact sharing office space.

---

<sup>21</sup> [http://www.gov.mb.ca/fs/org/cfs/child\\_protection.html](http://www.gov.mb.ca/fs/org/cfs/child_protection.html)

Many community agencies indicated that they try and achieve a positive working relationship with CFS but it is difficult. For example, the school admitted that they are obligated to report any child protection concerns to CFS, but they were unsure what they were actually doing. They recently asked for a list of kids in care and a month later they still have not received it after a number of months and many follow up calls.

**Benefits:**

- ✓ The protection of children is the primary concern for all involved in the process. Therefore, support services that interact with victims, families and the offenders allows for a sharing of information and ultimately an increase in protection for children who are a victim of sexual assault. The CHCH process allows for this collaboration to happen and therefore increases the safety of not only the individual victim, but the family and community as well.
- ✓ All parties indicated that when CFS and CHCH were not in conflict, the provision to victims was exceptional. They were provided with a more holistic and focused level of support.

**Lessons Learnt:**

- It is vital that all service providers are considered equal partners in the process. The loss of CFS interaction with the program has quickly shown that victims become lost in the process.
- We need to ensure that working relationships are not personality based and provide mediation and negotiation mechanisms within any protocols to address conflicts between service providers.



Lake Winnipeg, Hollow water. In Winter the Lake is frozen over and used as an access road (cars, trucks etc) for remote communities further north in Manitoba. This is also a traditional trade route.

## **WANIPIGOW SCHOOL**

The school offers Kindergarten to Senior 4 curriculum but is complemented at both ends with a pre-kindergarten and Adult Education Program. The current population for the 2005/2006 school year is 347 students.

The staff at Wanipigow School are dedicated to working in partnership with parents and community in order to provide a service that reflects high social and academic skills. A strong School Committee whose members reflect the greater community supports the staff in these efforts. The School Committee guides the administration in areas of policy, programs and direction and includes the Hollow Water Band Chief and Council.<sup>22</sup>

### **Discussions/Observations**

The holistic approach of CHCH is much more effective than the western criminal justice system and the school is very supportive of the program. Mr Reilly, the current Principal, was part of the initial set up of CHCH and involved in the meetings with the larger community on how they should develop the program.

Currently the school is trying to engage the community with through developing cultural programs and other activities such as downhill skiing. They are still dealing with the legacy of the residential schools and feel they have an obligation to address this through programs such as the Immersion Program (Ojibwe language is incorporated into the curriculum from kindergarten).

The school deals with high levels of truancy and this non-attendance is difficult to manage. However in the last few years they have been able to almost triple their enrolment and retention rates. The Principal believes that this is the result of a number of strategies, including the development of cultural programs such as drumming, strings to try and involve community and family. This increase in enrolment and retention of students, has also resulted in the school requiring additional classrooms, therefore the children are currently learning in a very cramped environment until the extensions to the school are completed.

The school is essential in any approach like CHCH as they spend a considerable amount of time with the children and consequently need to be aware of their circumstances so that they can manage their behaviour and address their individual needs. Their relationship with CHCH streamlines processes and ensures that all people involved in the children's lives are aware of what is happening and the impact on the children can be minimised.

Currently the Canadian system does not have protective behaviours within its curriculum. The Salvation Army is delivering the RESPECT program throughout the Manitoba. This program teaches about healthy relationships and personal safety, but this is not viewed as culturally appropriate for Aboriginal children. Consequently, CHCH have developed a "feelings" program, which is being implemented at the school. The delivery of this program requires a high level of coordination and networking across the community, particularly as there are often disclosures of abuse after the program is run. An advantage of this local

---

<sup>22</sup> <http://www.frontiersd.mb.ca/school.asp?SchoolID=41&SchoolCatID=285>

involvement in the school community, means that children are not only provided with culturally appropriate protective behaviour programs, the children are aware of the staff of CHCH and are likely to have already had contact with them prior to becoming a client of the service.

The school believes that the community has mixed feelings about the CHCH program. If individuals have been through the process they tend to be strong advocates for it and people around them listen, but some in the community still believe offenders should be gaoled.

***Benefits:***

- ✓ The holistic approach is much more effective and the school is very supportive of the program.
- ✓ The school is an integral partner in a healing model approach. It will ensure that children and the community are supported and services are more coordinated for the children involved.
- ✓ CHCH has been so successful because programs work well when people work together.
- ✓ The offender being accountable to the community is positive for everyone involved, but the program needs to be able to support this. People working for the program also need to be held into account for their own actions and illegal behaviours (this wasn't elaborated on but was suggestive of internal issues affecting community politics).
- ✓ The involvement of CHCH in school program facilitates positive relationships with the children and staff of the program

***Lessons learnt:***

- Any issues between agencies must be addressed quickly to ensure that it does not jeopardise the process
- There needs to be a high level of accountability for the program to report any breaches of bail/sentencing conditions, particularly if they re-offend. It puts the programs reputation on the line when they are not breached and re-offend.
- The school is an integral partner in a healing model approach. It will ensure that children and the community are supported and services are more coordinated for the children involved.
- A healing program should include capacity to work with schools and other children service providers on protective behaviours and personal safety issues.

**ROYAL CANADIAN MOUNTED POLICE**

The Royal Canadian Mounted Police (RCMP) is the Canadian national police service and is unique in the world since it is a national, federal, provincial and municipal policing body. They provide a total federal policing service to all Canadians and policing services under contract to the three territories, eight provinces (except Ontario and Quebec), more than 200 municipalities and 165 Aboriginal communities.

The RCMP's Aboriginal Policing Branch is responsible for the initiation, development and evaluation of practical and culturally sensitive policing services and education programs for Aboriginal communities. The RCMP and the Province of Manitoba's objective is to invest in

the long-term wellness and safety of Aboriginal communities by being involved in initiatives surrounding education, employment, and health.<sup>23</sup>

Powerveiw RCMP has responsibility for Hollow Water and the areas covered by the CHCH program.

### **Discussions/Observations**

Corporal Gabe Boulette is the only Aboriginal police officer at Powerview RCMP, which services Hollow Water. He has responsibility for the RCMP involvement in CHCH. The RCMP and the Hollow Water community have a positive relationship. Corporal Boulette is from that community and most community members trust him because of this. The biggest complaint from both the community and the RCMP is that the police are not visible at Hollow Water. This is due to the distances involved in servicing the Powerview command, it does not allow for the police to attend the community and undertake a proactive role.

Essentially the issues faced by the RCMP mirror the Australian Indigenous policing experience. The RCMP are a little more received by the community as they were less involved in the removal of children to residential homes. One of the primary difficulties is around the expectations of the RCMP. Aboriginal people call for help (when at risk) however when the RCMP are following through with charges, Aboriginal complainants want nothing more to do with the RCMP and as Corporal Boulette states “they can’t have it both ways”.

The RCMP believes that CHCH have undertaken too many responsibilities within the community. The move into the management of almost all offenders on probation within the Hollow Water community, means that they have less time to take on the intensive intervention required in the sexual abuse cases. The ultimate result is a loss of direction and drive, even though there is ample commitment.

When a disclosure comes from a victim, the police and CFS will interview the child together. The police usually leads this process as the local CFS is not well trained or confident in undertaking criminal investigation interviews. CHCH provide support to the child and family and sometimes sit in on the interview when requested. However this can be difficult, as CHCH staff have not been trained in investigative interviewing and the role of a support person within this process. The RCMP has found that CHCH involvement with victims drops off early in the process.

CHCH's work with offenders is exceptional; however there is a concern that CHCH do not breach offenders for non-compliance to the program as much as they should. The RCMP are concerned that this lack of action has an impact on their perception in the community, for example people get the idea that offenders are left to walk among the community placing the victim and others at risk.

Recently CHCH kicked someone off the program as they were not participating, and consequently the offender has been incarcerated. The RCMP believe that this was a

---

<sup>23</sup> [http://www.rcmp-grc.gc.ca/mb/webpages/priorities\\_description\\_e.htm#aboriginal](http://www.rcmp-grc.gc.ca/mb/webpages/priorities_description_e.htm#aboriginal)

positive action by CHCH as it has shown that they are not a “soft option” and offenders have a responsibility to undertake the program if they want to remain in the community. The offender is now trying to change his plea to not guilty, even though he pleaded guilty on his version of the facts. The RCMP believes that the outcome of this process will test the process and the community’s perception of CHCH. Some people may blame CHCH for the offender being incarcerated and therefore think negatively of it.

The RCMP hopes that things will improve now that they have had another circle and the momentum within the program has picked up. The RCMP has recently made a firm commitment to work more closely and proactively with the Hollow Water community and CHCH. They are very supportive of the program, particularly as it appears to be something that works. They would like the CHCH model to be considered for use in domestic violence matters in the future.

***Benefits:***

- ✓ The outcomes of CHCH are positive and police can play a critical role in working with offenders to reduce reoffending
- ✓ The CHCH work with offenders is exceptional. They are able to engage offenders in their own community’s and work closely with them on their offending behaviour in line with their cultural traditions
- ✓ This type of approach is very effective with violent crimes and therefore should be considered for use in domestic violence related offences, giving these offenders an opportunity to address their offending in a more culturally sensitive context

***Lessons Learnt:***

- Cross agency training in Police processes for all parties involved in the child protection and CHCH process is critical
- There needs to be an emphasis on victim support services
- There is the potential for the support programs to lose focus by becoming engaged in servicing other offenders and community members. Therefore the support programs need to be structured with a strict client base to ensure that services are not stretched too thinly.
- Need to ensure that programs work closely with police and probation services to ensure that offenders are complying with the program. This will facilitate the management of risk around a very negative perception of the program in the community that offenders are not engaging with the program and are not reprimanded in any way.

**MANITOBA JUSTICE, CORRECTIONS (PROBATION)**

The Corrections Division (Corrections), Manitoba Justice mandate is to manage offenders with the appropriate degree of control, supervision and support. It provides programs and services to help offenders deal with the issues that cause conflict with the law. Corrections consists of two sections: Adult Correctional Services and Youth Correctional Services. The division administers and operates seven adult correctional facilities, two youth facilities and 27 community corrections offices to supervise probation and conditional sentences for adult and youth offenders.

Community Corrections services cover all non-custody, community-based offender services and programs. Twenty-seven community corrections offices are located across the province, 11 in First Nations communities. Probation officers supervise probation and conditional sentences, support youth justice committees, custody reintegration programs, court reports and provide behaviour intervention programs. The degree of supervision and the program are based on the risk presented by the offenders and their likelihood to re-offend. Higher-risk offenders receive more intensive services and programs.<sup>24</sup>

### **Discussions/Observations**

Corrections assisted in the establishment of the CHCH program and felt that program has been a resounding success. Corrections currently have 19 clients from probation being supervised by CHCH and suggested that there were approximately the same number again being supervised by CHCH through Correction Service Canada, Parole. Parole pays CHCH a fee for service to supervise offenders, whilst probation clients are managed through an existing funding agreement (see funding section on page 28).

All sentencing reports are undertaken by CHCH and probation provides guidelines but do not oversee these reports. This is because most court orders are placing offenders directly under CHCH supervision. However it is important to note that the Crown indicated that, legislatively, Corrections is the only agency that can provide sentencing reports to the Court, therefore they are ultimately responsible for what is submitted. After reviewing the template provided to CHCH, it was observed that it limited CHCH to ticking a box in sections and providing little room for a narrative on how the offender has progressed in relation to the holistic nature of their healing. Therefore, it is not surprising that CHCH rarely use the template in their sentencing reports as they are inadequate for reporting on such an intensive and complex program.

Probation felt that the only thing that was lacking within CHCH was their report writing skills, particularly in relation to court reports. When asked what Probation did to assist CHCH to improve these skills, they said that they tried a pro forma however it did not really work and the staff continued to provide the original reports. The Crown also raised this issue; however they too, had done little to address this with CHCH.

### **Benefits:**

- ✓ CHCH has the ability to spend time with offenders that Corrections never could. They are also able to provide programming that meets the offender's individual needs and therefore reduce the likelihood of them re-offending.

### **Lessons Learnt:**

- It is important to provide relevant support and training to ensure that the program is able to operate at a high standard.
- The commitment of the community and the program's workers is critical as this is what makes it a success.

---

<sup>24</sup> <http://www.gov.mb.ca/justice/corrections/index.html#aboutus>

## JUDICIARY - MANITOBA COURTS

See page 13 for Canadian and Manitoba Courts service provider information.



Manitoba Courts, Winnipeg Court Building

### Discussions/Observations

Justice Ian Sinclair adjudicated the initial circle in 1998 and Judge Ken Champagne undertook the most recent one on 2 March 2007. Both Judges commented that the sentencing days are extremely emotional and long. However they strongly believe that it is an experience that all judges should have. For example, Judge Champagne said that this was the only time a prosecutor would read out the facts of the case and when it came to speaking to the accused said “what that woman said – I am a sex offender – I did all of that” with complete admission and accountability.

The Judges commented that the inner circle (victims, affected family members, CHCH staff) are all very vocal and honest about the situation. The level of commitment from the community and the families involved is extraordinary. Judges stated that they put a lot of stock in what everyone had to say regarding the offenders level of accountability and progress through the program. For example one offender had been attending counselling sessions every week for four years, another was attending irregularly and the community was disappointed in his progress. Therefore the Judge considered this and applied a heavier penalty to the second offender.

Sentences tended to be suspended sentences and additional probation period under the supervision of the CHCH. All judges felt that this was a much harsher sentence than incarceration could ever be. The community members generally requested this sentence and the Judges felt that it was appropriate to grant them their request because of the level commitment and effort that has gone into rehabilitating the offenders.

A CHCH matter could potentially be in the court system for many years. When questioned about the level of reporting to the court, Chief Judge Ray Wyant conceded that a matter could be adjourned for up to four years while an offender is receiving treatment and

support without reporting back to the court. They had not considered the impact of this and the absence of a regular risk assessment for each offender within the community. Currently the Crown Prosecutor has responsibility of requesting reports and could have the matter returned to court if they are concerned that an offender is not complying or poses a risk to the community.

The Judges provided me with a copy of the National Film Board of Canada, documentary “Hollow Water” outlining the process of CHCH and following a family’s transition through the program. This was one of the original family’s to enter the program. One of the clear benefits has been that the parents involved continue to participate in the program as leaders and counsellors helping other families in crisis.<sup>25</sup> Judge Sinclair, who sentenced these offenders, commented that he has since seen this family in the community and they have thanked him for allowing them to deal with their offences through the CHCH program. They acknowledged that they would not have dealt with their behaviours if they had not been provided with this opportunity and were sentenced through the criminal justice system alone.

Justice Sinclair and Judge Moar are both Aboriginal and felt that the Circle process which brought together traditional justice processes and the western justice system extremely well. Justice Sinclair indicated that it was difficult to set up, especially in relation to getting the western justice system to see the advantage of this sort of process, but it is one of the most meaningful things he has done in his career. All judges agreed that circle courts are not being used to their full potential for other matters in Canada at this stage.

The Judges admitted that they have received backlash from other members of the judiciary for what appeared to be light sentences or questioning “why should the Aboriginal people have a different process to the white people”. However they felt that the process was the most effective method of sentencing they have experienced. When they completed the sentencing process they believed that the sentence was appropriate and the community was going to be safer. Over time, the scepticism from other members of the judiciary seems to have abated and most judges are now supportive of the process.

The Chief Judge who presided over a Hollow Water Sentencing Circle some years ago stated that it was the “most enriching experience of my life”, an “incredible process” where he felt out of place in traditional setting. He felt like a “white man in an Aboriginal system” and he was there only to provide a rubber stamp on the justice that had been administered by the community. The process is extremely effective and worthwhile and it is very dependant on the dedication and commitment of the community to the process.

Pre planning and careful consideration of risks/issues that may arise in the context of the sentencing circle is critical, for example past abuse on other family members. As it is such an emotive and sensitive environment, people may disclose their own experiences of abuse. While this is an important part of the process for the families and the community, this needs to be managed to ensure that people are focussed on the victims and offenders of the current matter.

---

<sup>25</sup> National Film Board Canada, Hollow Water, 1998

At the last sentencing circle 5 matters were addressed at once. This was not effective and did not allow for the process to be carried out in line with the principles of the circle. Each sentencing matter should be dealt with individually and appropriate time allocated by the courts to undertake each hearing. It was suggested that a minimum of half a day per offender is allocated. The impacts of this not happening in Hollow Water meant that it was a very emotionally draining day and a very long day for the community. Many community members come and observe particularly if the matter impacts on them.

Judges commented that sentencing circles were irregular and some offenders had been on the program for seven years before being sentenced. This is not appropriate and there should be scheduled times for when an offender needs to come before the court, as well as a timeframe around program intervention prior to sentencing. There should be structured and regular reporting to the courts throughout the process. This would ensure that matters are progressed effectively and risk is regularly assessed.

**Benefits:**

- ✓ Offenders acknowledged that they would not have dealt with their behaviours if they had not been provided with the opportunity to work with CHCH and were sentenced through the criminal justice system alone.
- ✓ Offenders are less likely to re offend
- ✓ Only program which successfully brings together traditional justice processes and the western justice system
- ✓ It is the most effective method of sentencing judges have experienced
- ✓ The process is extremely effective and worthwhile and it is very dependant on the dedication and commitment of the community to the process

**Lessons Learnt:**

- It was crucial that the community leads the development of the program.
- The Judiciary should support the process, as they will find that it is the most enriching and fulfilling process that they will have the privilege to take part in.
- Pre planning and careful consideration of risks/issues that may arise in the context of the sentencing circles needs to be undertaken.
- Each sentencing matter should be dealt with individually and appropriate time should be allocated by the courts to undertake each hearing. It was suggested that a minimum of half a day per offender is allocated.
- Sentencing circles need to be regular and there should be scheduled times when an offender needs to come before the court, as well as a timeframe around program intervention prior to sentencing. There should be structured and regular reporting to the courts throughout the process. This will ensure that matters are progressed effectively and risk is regularly assessed.



Manitoba Parliament House, Winnipeg

### **MANITOBA PROSECUTION SERVICE**

Manitoba Prosecution Service is responsible for the prosecution of all offenders identified by the Manitoba provincial statutes and most offenders identified by the federal Criminal Code Canada and the Youth Criminal Justice Act. The Manitoba Prosecution service employs Crown Attorney's to responsible for presenting evidence before the court for a fair and just determination of the case.<sup>26</sup> The Crown Attorney is an independent member of the court. Manitoba rural prosecution services are divided into circuits covering vast distances.

### **Discussions/Observations**

A previous Crown responsible for Hollow Water voiced concern about the operation of CHCH. There is little involvement of the crown and they are unaware of what is happening during process. The crown often requested reports, without response by CHCH. She was prosecutor and in seven years did not sit in one sentencing circle. This is too long to have offenders not accountable to the court. However they do believe that the process would be extremely powerful and effective with the right mechanisms and safeguards in place It is very based on the people involved and the consistency of service, so need to be careful of nepotism and community politics don't get in the way.

Debbie Bouirs is a Metis woman who took over the Hollow Water circuit approx 6 months ago. She expressed concern following the 2 March 2007 Circle and is now motivated to do some work with CHCH around their relationship and expectations of the Crown and the criminal justice system as a whole. She intends to go to Hollow Water every month or two to check in and possibly provide some training on legal issues to staff to ensure that they understand the legal obligations and the best way to use the court to get results. She will do this in partnership with Victim Services.

Debbie found the circle experience difficult and felt there was great benefit in being Metis as she was allowed to call it as it is. Aboriginal community members responded well to her as she is speaking from the same cultural background. There is a need for the two systems

---

<sup>26</sup> <http://www.gov.mb.ca/justice/prosecutions/mbprosecutionservice.html>

to work closely together otherwise it will not work. The legal system exists and can be used to the advantage of CHCH and allow healing to occur within a criminal justice context.

She believes that there has been a reluctance to address the issues of CHCH, particularly the fact that there have not been any circles for almost ten years. Her aim is to schedule two circles (in one day) every 3-6 months. This will allow a continuous pattern and an ability to better monitor the offenders. Having five offenders in one day was not feasible and took away from the process. It felt rushed and victims. The Crown, Judge and support people were not prepared. It was evident that everyone needs to work more closely together to be more prepared and have better outcomes for the victim, offender and community.

Debbie spoke about being Metis and working within a criminal justice system that provides little support available Aboriginal people. When working in this field it is crucial that workers are able to be supported including opportunities to debrief. Currently this has to be done through friends and family. This is applicable if you are metis, Aboriginal or Inuit.

The original Crown involved in the establishment of the program indicated that the process allows for a level of justice and accountability that could not otherwise be achieved. Offenders being made accountable to the community means that they are less likely to re offend. Community members are able to protect their children from the offenders as they have been clearly identified. The community knows the staff of CHCH understand and trust the process and are therefore more likely to report an offence involving their children or someone else's.

**Benefits:**

- ✓ The process allows for a level of justice and accountability that could not otherwise be achieved.
- ✓ Offenders being made accountable to the community means that they are less likely to re offend.
- ✓ The community knows the staff of CHCH, understand and trust the process and are therefore more likely to report an offence involving their children or someone else's.
- ✓ The ability of the western criminal justice system and the traditional healing approach working together allows a better outcome for both victims and offenders.

**Lessons Learnt:**

- There needs to be a reporting mechanism built in to have them report back to the court more often.
- There is a need to ensure that procedures and protocols are put in place to negate community politics and personalities impacting on service provision
- The establishment of regular Circle's (every 3-6 months) would enhance the courts ability to monitor the offenders and ensure that victims are supported.
- It is essential that cultural and professional support mechanisms be implemented for Aboriginal people working within the area of child sexual assault.

## **VICTIM SUPPORT SERVICES, MANITOBA DEPARTMENT OF JUSTICE**

Victim Support Services provide court preparation, support and referral services to victims of crime within Manitoba. The emphasis for support is on child and domestic violence witnesses. There are victim support workers throughout the province, general they sit with the Crown Prosecutors or within the RCMP. The Victim Support Service that covers Hollow Water is placed at Lac Du Bonnet RCMP, which is approximately one and a half hours from Hollow Water.



### **Discussions/Observations**

Victim Services provided insight into the child protection system in Manitoba and the recent devolution of Child and Family Services. This change in structure has had dramatic impacts on the delivery of child protection services for children. Child and Family Services are generally unsupportive of alternate models and have great difficulty working within them. Officers suggested that most services relating to child protection were uncoordinated in Manitoba.

Until recently, rural Victim Support services are provided on a circuit structure based in Winnipeg, meaning that officers have been able to provide a very limited service to the CHCH. Recently, the structure of Victim Services changed and the responsibility of the area in which Hollow Water is located has been designated to the officer situated in Lac Du Bonnet, which is approximately one and a half hours from Hollow Water.

Victim Services had concerns that victims were not adequately supported through the process by CHCH, particularly the children themselves. It is critical that the victim is prepared for the Circles and is provided with support throughout the process. Victim Services believed that this was occurring due to a breakdown of communication between victim services, Child and Family Services and CHCH. No one agency has been attributed with this blame.

Sentences requested by CHCH are uninformed by the Crown Prosecutors or Corrections. They tend to ask for a blanket five years; however it is not legally possible for the judge to grant a probation period for that length of time. This suggests that the Crown Prosecutors and Corrections are not providing CHCH with the correct advice on sentencing options. It also suggests that the CHCH staff could benefit from increased communication and education from the Department of Justice. For example the same length of supervised

probation could be attained through a suspended sentence followed by maximum two-year probation order.

Victim Services are concerned that there is a high rate of worker burnout within CHCH. It is very demanding work, as there are extremely high expectations from both the community and the criminal justice system. Adequate supports need to be implemented to ensure that workers have access to support processes and networks.

Circles are difficult when addressing more than one offender at a time. At the last circle, five were held five in one day and victims had to be there for all of them (not just their own matter). This has significant impacts on the victims, particularly when they are children, so the process should be amended to address only one offender per circle.

Victim Services were also concerned that there are not regular updates to the court. These updates should include information on the offender's progress as well as information on the safety of the victim and the community.

Victim Services believed that the CHCH process was invaluable. It provides a level of community participation in addressing justice issues and supporting families that is unable to be provided anywhere else in Manitoba or Canada. Whilst there are some concerns about CHCH as it is currently operating, however these are mostly process issues that could be addressed quickly and easily. The CHCH process is extremely powerful and effective. It involves all of the relevant affected people and is good for the overall community.

***Benefits:***

- ✓ The model provides a level of community participation in addressing justice issues and supporting families that is unable to be provided anywhere else in Manitoba.
- ✓ The CHCH process is extremely powerful and effective. It involves all of the relevant affected people and is good for the overall community.

***Lessons Learnt:***

- The healing program and existing victim service providers must communicate and collaborate when working with victims and their families. This will assist in ensuring that the victim's needs are being met and they are being provided with the highest possible level of support.
- Need to ensure that all stakeholders are provided with training and support from criminal justice agencies
- Adequate supports need to be implemented to ensure that workers have access to support processes and networks.
- Sentencing circles should only deal with one offender at a time.

## **FORENSIC PSYCHOLOGICAL SERVICES (FPS)**

FPS is a private psychological service provider. Their focus is on providing a combination of therapeutic services to offenders of sexual violence and they have done significant work with the Aboriginal community. FPS has developed a Spiritual Healers Program, which employs a number of elders, and advisors who work with the offenders on their Aboriginal spiritual connections and teachings. This is combined with group and individual counselling programs) using Cognitive Behavioural Therapy (CBT) approaches.

Dr Lawrence Ellerby, Director of FPS, has indicated that this approach has worked very well. Dr Ellerby reports that they have found minimal differences in their approach of traditional healing and CBT. In fact the two approaches complement each other.

FPS employs a coordinator for Aboriginal integration back into the community. This role involves a process where an offender is supported through the psychological and day-to-day practical issues of being released from incarceration back into the community.

People referred to FPS are primarily through Corrections and Child and Family Services on a fee for service basis. These agencies also provide funding for recreational and cultural activities with offenders to assist in their integration, the cost for these programs is shared dependant on who attends.

FPS does have some concerns with the CHCH process. They have worked with offenders both in custody and in the community who have been through the CHCH program. Whilst the traditional methods of healing can fail to recognise that the offending behaviour needs to be addressed rather than accepted before being able to move forward. This omission does not actually help offenders and CHCH could benefit from training to ensure that they understand the psychology of offenders and the changes that they need to make to stop them from reoffending.

### ***Lessons Learnt:***

- Ensure that program providers have adequate training and understanding of sexual offending behaviour and the need to address this with a combination of approaches.

## **WINNIPEG POLICE**

Issues for Winnipeg Police in working within Aboriginal communities mirror the Australian context. Currently in relation to child protection, Winnipeg and Manitoba do not have joint response mechanisms with child protection service providers. They are exploring the option of "one stop shops" such as centres that have been established in the USA.

The Winnipeg Police cover only the city of Winnipeg. Their issues with the Aboriginal community arise primarily when people come off reserve and relocate to the city. This also happens when offenders are transitioning from gaol, often an offender will stay in the city as they are too embarrassed to return to the reserve. They have difficulty in returning offenders to their home locations and there are few supports in place to assist them in doing this.

## Chapter three:

# ONTARIO



Little Black River, Rama.

### **MNJIKANING - RAMA**

Rama is the home of the Chippewas of Rama Mnjikaning First Nation. The name Mnjikaning refers to the fishing weirs at the narrows between Lake Simcoe and Lake Couchiching and it means means “in/on/at or near the fence”. It was once known as Rama but has since assumed its former name of Mnjikaning. The Mnjikaning people have established Casino Rama and Entertainment complex. Which provides a substantial amount of income for both the Government and the community. There are approximately 500 members living in on the reserve and about 700 living off the reserve. The Ontario Provincial Police provides dispatching services for the community, but the officers that police the town of Rama are members of the Mnjikaning Police Service.<sup>27</sup>

### **BIIDAABAN: THE MNJIKANING COMMUNITY HEALING MODEL**

In 1995 the Mnjikaning community decided to begin addressing child sexual assault within the community. They looked at a number of native healing models and decided that the CHCH model was the most suitable for their community. They named the model Biidaaban, which is an Ojibway word for a new beginning or new day.

Biidaaban is a Mnjikaning community based healing program based on accountability, restitution and reconciliation to restore balance in the lives of those people who have been affected. It is a victim driven process that promotes healing rather than punishment. The Biidaaban Circle promotes community wellness, breaking the cycle of abuse within families and within the community, respecting individuals not only for their personalities, but also their beliefs and values. The philosophy is to *“label the behaviour not the person”*.

<sup>27</sup> [http://en.wikipedia.org/wiki/Chippewas\\_of\\_Rama\\_Mnjikaning\\_First\\_Nation](http://en.wikipedia.org/wiki/Chippewas_of_Rama_Mnjikaning_First_Nation)

The implementation of the program has taken a number of years. In 1995/96 extensive training in community healing began as well as community education, outside agency education and working with families. In 1997 the first community gathering was facilitated and the first sentencing circle was undertaken in 1999 following the securing of funding from Aboriginal Correction, Public Safety Canada in 1998.

To become involved, persons who have harmed others (offenders) need to take responsibility for their actions and commit to making amends. In addition, those who have been harmed (victims) must consent to the offender participating in the program even if the people who were harmed are not yet ready to go through the process themselves.

The core of the healing model is the Biidaaban Protocol, a detailed process that provides explicit procedures to follow when there is a disclosure of sexual abuse. The Protocol is a signed agreement between, Biidaaban Circle, Mnjikaning First Nation and the Simcoe County Crown Attorney's Office. The protocol details the referral processes, information sharing agreements, diversion agreement, and consent issues. The protocol provides for the following:

- The person who has been abused or the person who has abused requests support
- The Biidaaban team meets with both parties separately
- A four month interim treatment plan is developed
- The interim plan is presented to the Crown Attorney
- The court provides a four month adjournment
- Intake assessment is completed and the interim plan is implemented
- A progress review and case consultation with the Crown occurs
- Return to court for judges decision regarding agreement to a community gathering and development of a long term treatment plan and sentencing

The community, as a whole, then works toward healing through extensive counselling sessions. Should there not be willingness on the part of the victim or the offender to participate, the case is handled by the mainstream justice system. Once the offender accepts responsibility, the community will work with all affected individuals to develop a treatment plan that it will submit to the mainstream courts. This plan focuses on the offender working with the Biidaaban team towards the healthy resolution of the victimisation. The community, police and the Government of Ontario, signifying the importance of the process and validating it through the court process, have signed the protocol.

The services Biidaaban provide include: individual, family and couple counselling; men's, women's and community healing circles; structured relapse prevention; anger management; women's survivor groups; youth/family conferencing; community education and awareness in sexual abuse, family violence, addictions healthy relationships; prevention and safety programs in schools; court support; visiting incarcerated community members; facilitating community healing gatherings and sentencing circles; ongoing training for government and non-government service providers.



A traditional Aboriginal Sweat Lodge.  
A Sweat is a traditional healing and cleansing ceremony conducted by an Elder.

### **Discussions/Observations**

Biidaaban service all band members and their extended families whether they live on reserve or elsewhere. Since its implementation the service has dealt with approximately 90 offenders, primarily for assault. Of the 53 who elected to proceed with the Biidaaban Circle, 30 have completed the program and none of these 30 have reoffended.

Funding is provided through the Ministry of Attorney General (Ontario), the Department of Justice (Ontario), Public Safety Canada - Crime Prevention and the Mnjinking Band Office. The service employs; 4 staff members in the Biidaaban program, 2 child welfare workers; an addictions worker (funded by Health Canada and the Rama Casino); an independent living support worker; a prevention worker; a welfare administrator; and clinical psychologist who provides supervision for all employees.

The program is well supported by the community and reported that there was no objection to its development or implementation. The community recognised it needed to develop an alternative to the current services provided. The model is based on the Hollow Water CHCH, however they have changed the processes to suit their community.

It has been a long process, taking over 10 years with the development of developed strict protocols and guidelines. This ensures that there is accountability for both themselves and other agencies involved in the program. This level of agreement and protocol has been critical to the success of the program. Whilst it may have taken longer to develop, it means that the process will be more effective for the community in the long run.

Challenges that the program has had to overcome included the growth of the program and its acceptance in the community. This growth has meant that the service has needed to evolve and adapt so that they are still able to address the needs of the community. The key to their success is this ability to adapt. For example the establishment of open and regular

groups have made people feel welcome. Community Circles are held every two weeks and everyone can attend. All community members are allowed and often encourage to leave work to attend. No one is ever excluded from coming to heal.

The program is constantly challenged and undergoes continual self-reflection. They consistently consider the language that they are using to ensure that they continue to engage the community. For example the use of positive terminology such as abuser rather than offender, means that the community is more likely to engage as they are not being labelled as a criminal. It is critical that relationships are equal and an abuser is able to move forward with the worker as a partner in the journey.

The 7 grandfather teachings are built into all the work that is done through the program. It is important that they always come back to these teachings as it reminds people why they are there and what their responsibilities are. The emphasis of Biidaaban is to move justice towards healing and change the focus from the individual to the larger group, reflecting the Grandfather teachings.

The circle process includes a ceremonial opening, declaration of purpose and introductions, explanation of wrongful behaviour, person who has offended accepts responsibility for their actions, participants of the gathering speak, solution/treatment plan are drafted by the participants, the person who offended apologises and accepts the treatment plan, a six monthly review date is set, a ceremonial closure occurs and finally there is a debriefing for all participants. Following this gathering, the treatment plan/healing contract will be implemented. Biidaaban believe that this circle process can be used for many things including criminal behaviour or addictions. The holistic focus of the healing is used to emphasise the spiritual, mental, emotional and physical healing rather than compartmentalising people and bringing balance back into the lives of the individual, family and community.

The model allows people to respect each other and come together on common ground and accept that it is okay to have a different way of seeing things but still have value in the group. The circle also provides a sense of belonging that gives confidence and increases community functioning.

Biidaaban run a variety of programs to assist in the support and healing of clients. They include:

- An anger management program, “Keep it Cool”, is run regularly (every six weeks)
- “Building healthy relationships” is a holistic 12 week program to address family violence, anger, self care, holistic and is run on a regular basis
- “Strengthening the family circle” is another 12 week parenting program that can be attended by the whole extended family as per traditional child rearing practices
- Separate Men and Women circles are held every Friday morning. Sometime these programs join together if the topic indicates that it is appropriate
- A cultural program which looks at traditional practices and ceremonies occurs regularly for both groups and individuals
- A Youth circle is conducted weekly

- “Inner child healing” program is conducted a couple of times a month. Participants work with staff to develop techniques for their own healing
- Every change of seasons a Spiritual program will be implemented. This is a two day program, the first is a group program and the second is for individuals with a spiritual healer. This incorporates a sweat.

Biidaaban have recently started providing Gladue reports under the guidance of the ALST. This will assist the program in developing their skills as well as ensuring that community members are able to access the programming they require and achieve the most appropriate sentences for their offences.

One of the programs implemented by Biidaaban includes a Pre Diversion protocol with the police for young offenders and adults. This means that young offenders will be sent to Biidaaban for program support rather than through the criminal justice process when appropriate. (Mnjikaning have a community police agency in operation, which is not part of the Ontario Police or RCMP services).



Rama Casino: the casino is owned, designed and developed by the community and has a significant cultural artworks throughout. The Rotunda (as seen here) conducts an hourly light show explaining the history of the Mnjikaning people.

**Benefits:**

- ✓ Having the native child welfare workers within the same agency facilitates a very positive working relationship. The two program area’s meet regularly and work closely with shared clients.
- ✓ There are very clear protocols with the Probation service who supervise offenders. The probation service provides supervision whilst Biidaaban provides support and programming. This allows for clear lines of communication and responsibility.
- ✓ The program works because people relate to it and they work hard to keep on an even keel. It has the ability to adapt to the community’s and individuals needs.
- ✓ A range of programs being available for both the individual and groups ensures that responses are holistic

- ✓ The development of protocols and a high level of organisation, along with very active staff within the community contributes the success of the program
- ✓ The open nature of the service and programming provides a safe venue for offenders and victims to explore the issues and develop their own healing methods.
- ✓ The holistic focus of the healing is used to emphasis the spiritual, mental, emotional and physical healing rather than compartmentalising people and brining balance back into the lives of the individual, family and community.
- ✓ The model allows people to respect each other and come together on common ground and accept that it is okay to have a different way of seeing things but still have value in the group. The circle also provides a sense of belonging that gives confidence and increases community functioning.
- ✓ The circle provides a framework for people to heal at their own rate in their own way.
- ✓ Those who completed the program have not re offended.
- ✓ An evaluation of Biidaaban in 2003 found that within five years the community self reported that its state of health and wellness had improved dramatically. This was attributed to both a financial injection through the development of the Casino, but primarily through the implementation of Biidaaban and its role in community healing.<sup>28</sup>
- ✓ The same evaluation found that the program bridged the justice system and the community and operates in true partnership with the existing social service and criminal justice systems.

### **Lessons Learnt**

- Clear frameworks and protocols are essential in the development of healing models. This would include agreed values and approaches to healing across the community, including government agencies.
- The more structured Biidaaban is likely to be more accepted by existing service providers because of the clear protocols and accountability mechanisms. Whilst it has not been in operation for as long as Hollow Water, it has been able to adapt the principle of Hollow Water and apply them to their community successfully. The higher level of structure has meant that it has been able to be implemented more quickly as each stakeholder is clear on their responsibilities within the model.
- Biidaaban's ability to service a larger geographic location (as they provide services to those living off-reserve) suggested that it is possible to implement the program outside of the geographical boundaries of a discreet community.
- Biidaaban has all the benefits of the Hollow Water model, but has been able to learn from them and ensure that they are provided with the structure and support needed to implement the program.

### **ABORIGINAL LEGAL SERVICE TORONTO**

Aboriginal Legal Service Toronto (ALS) provides advocacy and support to the Aboriginal community in Toronto. They aim to strengthen the capacity of the community to deal with justice issues and provide Aboriginal controlled and culturally based justice alternatives. ALS receives funding from numerous service providers, both government and non-government.

---

<sup>28</sup> Dr Joe Couture and Ruth Couture, *Biidaaban: The Mnjikaning Community Healing Model*, Aboriginal Peoples Collection, Canada 2003

## **Discussions/Observations**

ALS manages a number of programs that indirectly deal with child sexual assault. They do not provide direct service provision in relation to this issue.

The Gladue Program is currently the only one running in the country. Any agency can undertake Gladue reports however most do not give enough context to make the reports useful. The ALS is currently taking a number matters to the higher courts, around use and standards of Gladue to make it more effective. Within the ALS program there are three courts in Toronto, which include Gladue aftercare workers. These workers provide support to offenders inside and outside of gaol. They also employ three report writers.

The ALS provides court support programs and that assist with bail plans, support and referral to services and treatment. It is often difficult for Aboriginal offenders to get bail due to a legislative opposition to bail for domestic violence offences (many defendants are on domestic violence related charges), a previous failure to appear at court and also the assumption that they will not get it, so why bother applying.

The ALS runs an Aboriginal Justice Program which consists of a Community Council established in local area's who focus on criminal diversion. The following process applies:

- The Crown will refer an offender to the program and the offender must have accepted responsibility for the crime.
- An offender will appear before the council and undertake series of actions to assist in restoring justice.
- The offender sits with the council and they make decisions on what should happen including treatment housing and support mechanisms.
- The council will review the offender before they are released from the program. If the offender does not comply they will return to the regular criminal justice process (the court).
- If the offender complies and completes the process, no criminal conviction is recorded against them.
- Approximately 200 hundred offenders go through the process per year.

The ALS is also developing a similar model in partnership with the Native Child and Family Service to deal with child protection matters. Essentially the aim is that the council will be a fact finding mechanism to reduce the adversarial nature of child protection processes. It will also allow community input into decision making processes around the care of children. The process will begin after the statutory authorities have removed a child. A care plan (decision) will be developed that can be taken to court for ratification by judge

### **Benefits:**

- ✓ Having an agency solely focussed on criminal justice issues for Aboriginal people, means that they remain on the agenda. This service needs to be flexible to allow for the development of initiatives such as the Community Council to develop and provide an effective justice response for the community.
- ✓ The ALS is very well respected across Canada. Almost agencies visited within this study commended them on the work they are doing within the community and particularly in relation to their work around Gladue.

- ✓ ALS encourages all to challenge the justice system and not be afraid of trying something new, particularly if the outcomes will be more effective for Aboriginal people.

**Lesson's Learnt:**

- Good program supports and functioning will include:
  - Ensure service providers are aware of what is expected of them
  - Setting up support structures for program providers
  - Consistency of partners and people involved
  - Evaluating all programs including the way the government provides support
  - Standardisation of Aboriginal Justice programs

**NATIVE CHILD AND FAMILY SERVICES, TORONTO**

Native Child and Family Services (NCFS) is one of 53 Children's Aid Societies assuming responsibility under the Child and Family Services Act to provide child protection services. They all operate under the Child Protection Standards in Ontario, 2006.

There are only 8 Aboriginal specific services in Ontario and NCFS provides services to native children and their families in the Toronto and Scarborough areas. There are approximately 45 000 status Indians in the Toronto area. Most clients are either self referred, or referred through child protection processes such as the court or risk of harm reporting. 8% of children in care in Ontario are Aboriginal.

The service structured with two distinct divisions: child protection and support services. Support Services include:

- Mental Health Services ( Children)
- Early Childhood Development
- Youth (16-24)
- Voluntary case management (family support)

**Discussion/Observations**

Some of the major social issues that the NCFS deals with are related to the use of crack cocaine. They work closely with Ashinabe Health Services (Aboriginal Medical service in Toronto) on these and other health issues. However they commented that services related to drug use are badly coordinated. It is very difficult to get rehabilitation placements and this makes it difficult for children to return home as they remain at risk.

Lack of coordination of services applies generally across the Toronto/Ontario service system. Currently the Ministry of Children and Youth Services is attempting to undertake a shared services initiative to overcome this issue; however this has been a lengthy process and nothing has changed in relation to service deliver thus far.

There has been no evaluation around the effectiveness of NFCS. NFCS was not able to say if they provide a more effective service than a non-native service would. They indicated that the nature of NFCS being an Aboriginal organisation allow a level of flexibility and a higher level of cultural sensitivity within service delivery for clients; however they are not sure that the outcome is any better. Particularly as there is both native and non-native staff within the organisation. They believe that Aboriginal people feel more comfortable with their

service because they are an Aboriginal organisation and not only provide core child protection responses, but a raft of support services as well.

**Benefits:**

- ✓ The nature of NFCS being an Aboriginal organisation allows a level of flexibility and a higher level of cultural sensitivity within service delivery for clients
- ✓ Aboriginal people feel more comfortable with their service because they are an Aboriginal organisation and not only provide core child protection responses, but a raft of support services as well.

**Lessons Learnt:**

- The provision of child protection services, supported by a raft of other services improves people's engagement in the system and provides a more holistic response.

**TORONTO POLICE**

The Toronto Police Service has an established sex crime unit consisting of: a sexual assault squad (investigate sexual assault matters); child exploitation unit (works primarily in the investigation and management of child pornography and prostitution matters); and a behavioural assessment team (a resource unit to assist with matters involving stalking, threatening or harassing behaviour and offender management).

**Discussions/Observations**

The Toronto Police have limited involvement with Aboriginal communities, as this is usually undertaken outside of Toronto with the RCMP. They have an officer working on developing an alternative model based on a similar one stop shop similar to those created in San Diego. Currently they provide a level of joint response with Native Child and Family Services, however this work is limited and they could do more proactive work to improve this process.

**LONDON FAMILY SERVICES – CENTER FOR CHILDREN IN JUSTICE**

The Center for Children and Families in the Justice System (formerly the London Family Court Clinic) assists children and families involved with the justice system as victims of crime, witnesses of crime, parties in custody disputes, subjects of child protection proceedings, litigants in civil suits for compensation, teenagers in therapeutic care settings, or youthful offenders. They provide victim supports and witness preparation

**Discussions/Observations**

London Family Services provides victim supports and witness preparation. They received approximately 600 referrals per year and cover the London area which has a population of approximately 350 000. They participate in numerous interagency forums and provide training countrywide. Their focus is on the development and implementation of best practice standards and materials. They provide a similar role to the Director Public Prosecutions Witness Assistance Scheme in NSW. They have a child sexual assault team as well as a domestic violence team.

## **WABANO MEDICAL SERVICE**

The main purpose of the Centre is to create and deliver services that will prevent ill health, treat illness and provide support and aftercare. Services will be offered in a culturally sensitive way that welcomes, accepts and represents all Aboriginal people.<sup>29</sup>

Wabano is funded through many different sources and they service all of the Native community in Ottawa including Inuit, Metis and First Nations. They are a medical service providing basic primary medical services. It is very similar to the Aboriginal Medical Service establishment in Australia. Their focus has not been domestic violence or child sexual assault; however they do have a lot of contact with both issues.

Wabano started programming a number of years ago according to the need of the community. They now provide mental health, substance use, homelessness, men's groups, women's groups, maternal health and parenting, Family art therapy, sexually transmitted infection services. They often address issues relating to child sexual assault through these programs. Child victims will be referred to the Childhood Trauma Centre for counselling, but Wabano will continue to support the family if possible. They try to have a holistic approach and all programs work well together and strive to be connected. People generally make contact through the clinic and then get introduced to the appropriate worker by the doctor or nurse almost immediately.

Wabano are currently recruiting for a victim advocate worker who will be able to provide the more specific support and referral services that are needed to victims of violence and crime. They believe that this position will improve services for victims of child sexual assault who have contact with the service.

---

<sup>29</sup> <http://www.wabano.com/main.html>

## Chapter four:

# FEDERAL PROGRAMS



Canada's Federal Parliament House

### **PUBLIC SAFETY CANADA (PSC)**

Public Safety Canada is Canada's lead department for public safety. They develop and implement national policies for emergency management and national security. We help ensure community safety by delivering crime prevention programs and developing federal policies for, emergency management, national security, law enforcement and corrections.

### **Aboriginal Corrections**

Aboriginal Corrections are a division within Public Safety Canada and are responsible for providing policy support and funding new initiatives to assist in people who are involved in or likely to become involved in the correctional system. Aboriginal Corrections fund pilot projects that use holistic and restorative approaches, emphasising methods that have not yet been tried. They assist Aboriginal communities to develop capacity to address crime and victimisation.

### **Discussions/Observations**

There are a number of difficulties in providing funding to community initiatives, as Aboriginal correction can only fund within a specific set of guidelines. If they are unable to provide the funding they often influence other relevant divisions of Public Safety Canada, such as crime prevention and Aboriginal Justice Initiatives to do so. One of these divisions is Crime Prevention, which has a significant budget allocation. However, they prefer to provide grants, which have minimal monitoring, rather than contribution agreements, which allow for more monitoring and improved support processes. Aboriginal Corrections have found that grant schemes do not tend to work with Aboriginal community programs.

Aboriginal Corrections work is dependant on establishing and maintaining good relationships with the community and all government agencies. They essentially try to assist communities in accessing the justice system and providing alternate ways of engaging communities in achieving justice.

Aboriginal Correction provides a high level of promotion of the success of the Hollow Water and Biidaaban community healing models. They undertake this role at both the community and government levels. They also provide funding for evaluations and development of publications included the cost benefit analysis of the healing models.

Some of the difficulties they have encountered specifically with healing models are:

- ❖ Ability of communities to write proposals that fit within funding requirements
- ❖ Reporting back to funding providers (or lack thereof)
- ❖ Report writing skills of community – Aboriginal Corrections tends to rewrite proposals for them rather than assist them in learning those skills
- ❖ PSC have not developed agreements that include evaluation, they tend to fund evaluation separately and much later in the implementation process
- ❖ There is limited funding they can provide to these sorts of models across Canada
- ❖ It is difficult to convince some agencies that the healing models are worthwhile
- ❖ There is still a high level of covert racism in Canada and within Government agencies

A Cost Benefit Analysis commissioned by Aboriginal Corrections found that for two dollars spent on CHCH by the governments (Federal and Provincial) the community would receive between \$6.21 and \$15.90 worth of services. For every one dollar spent by the Provincial government, saved \$2.75 on pre- incarceration and probation costs. Essentially the funding of the CHCH program saves the governments up to \$1.35 million per year.<sup>30</sup>

**Benefits:**

- ✓ Aboriginal Corrections believe in the program and spend a substantial amount of funding to assist CHCH staff to attend other communities to talk about the program. They would like to see this type of models in other places in Canada.
- ✓ CHCH is a community based program that is successful in providing an alternate justice that fits the individual community
- ✓ People are forced to work in a more holistic way which provides for a better overall outcome for both victims and offenders
- ✓ A cost benefit analysis of the Hollow Water healing model commissioned by Aboriginal Corrections has shown that the CHCH program saves the governments up to \$1.35 million per year.

**Lessons Learnt:**

- Need to ensure that program providers are supported in their development and establishment

---

<sup>30</sup> Native Counselling Services of Alberta 2001, A cost benefit analysis of Hollow Water's Community Holistic Circle Healing Process, Ontario, Canada

- Need to ensure that programs are provided with appropriate training in government processes
- Need to ensure appropriate evaluation mechanisms are put in place to measure the effectiveness of the program and any cost savings

### **NATIONAL PAROLE BOARD**

The National Parole Board (NPB) is an independent administrative tribunal that has exclusive authority under the *Corrections and Conditional Release Act*, *Criminal Records Act* and the *Criminal Code of Canada* to grant, deny, cancel, terminate or revoke day parole and full parole. The NPB may also order certain offenders to be held in prison until the end of their sentence.

The NPB reports to Parliament and to ensure impartiality, the Minister, does not have statutory authority to give direction to the Chairperson or other members of the NPB in the exercise of their decision-making powers regarding the conditional release of offenders.

The NPB's national office is located in Ottawa and there are six regional offices located in: Moncton (New Brunswick), Montreal (Quebec), Kingston (Ontario), Saskatoon (Saskatchewan), Abbotsford (British Columbia) and Edmonton (Alberta). The Appeal Division of the Board is also located in the national office.<sup>31</sup>

### **Discussions/Observations**

The Aboriginal Manager within the National Parole Board role is to ensure that the parole board understands issues for Aboriginal applicants and also develops relevant policies, training and recruitment. Currently the board has two weeks generic training and then a further three weeks within their local region. Most Aboriginal cultural training occurs within the region by local community. There are few Aboriginal Parole Board members, particularly outside the Prairies (Saskatchewan, Manitoba and Northern Ontario).

The Parole Board depends on CSC for the integration of offenders into the community. They make recommendations and conditions for release, but they have no control over what actually happens on release.

The Parole Act allows for community to provide input in the release plan and Elder assisted parole hearings with Aboriginal offenders. Essentially this is a community based hearing with the Board and an elder from the community that the offender is from or intends on returning to. Parole has community development officers in each region, who are there to educate the community on process and provide some liaison around the release of inmates.

Victims provide input into parole decisions through a statement at the hearing. This can be either in person, or by the provision of a written or audio/video recorded form. The parole board will provide some funding to assist victims in attending the hearings. Since this support has been put in place, and people within in the region have been appointed to

<sup>31</sup> [http://www.npb-cnrc.gc.ca/about/overw\\_e.htm](http://www.npb-cnrc.gc.ca/about/overw_e.htm)

support victims, there has been a 50% increase on victim's participation in parole hearings. An evaluation showed that the regional communication officer (victims support) was an 86% beneficial process (in a survey from four years ago).

The Aboriginal Manager of the Parole Board felt that Aboriginal people applied for parole less and tended to be released only on their statutory release date. This is influenced by a number of factors including inmates being unaware of their right to apply for parole and a lack of appropriate programming so inmates have no way to show that they are trying to address their offending behaviours. They also indicated that Aboriginal people tended to elect to go to a federal penitentiary as conditions are seen as better, for example smoking is allowed and the difference in sentencing length can be minimal. A sentence for any length of time over two years means that an offender will be placed in a federal facility.

#### **Lessons Learnt:**

- Employment of communication officers at a local level has significant impacts on victim involvement in Parole hearings
- It would be useful for the various Australian Parole Boards to consider:
  - Elder assisted and community based parole hearings
  - Strategies to engage the Aboriginal community in Parole proceedings. This should include recruitment and cultural appreciation training.

### **CORRECTIONAL SERVICE CANADA**

The Correctional Service of Canada (CSC) is the federal government agency responsible for administering sentences of a term of two years or more, as imposed by any court in Canada. CSC is responsible for managing institutions of various security levels and supervising offenders under conditional release in the community.

#### **Joyceville and Pittsburgh Federal Institutions**

Joyceville Institution is a completely inter-connected medium-security facility, which holds approximately 500 inmates. The main housing of this facility consists of four story barrack blocks around a central courtyard and is adjacent to Pittsburgh Institution. Pittsburgh Institution is currently mandated to accommodate inmates of the Ontario Region's minimum-security population.

Pittsburgh Institution provides correctional programming strategies focusing on addressing the offender's personal needs to enhance and prepare the offender for release to the community in a timely fashion. It offers residential style townhouses designed to accommodate 7 to 8 men per residence.<sup>32</sup>

#### **Discussions/Observations**

Marvin Lafoe, President of Inmate Committee, is an Aboriginal inmate who talked about his experience of the prison system. Mr Lafoe indicated that many men, including himself, learnt about the Aboriginal culture whilst in gaol and this was disappointing. "It makes me sad, that I had to come here to learn my culture, it makes me so sad". He indicated that the schools should bring more culture into the education system, rather than in the gaols.

---

<sup>32</sup> [http://www.csc-scc.gc.ca/text/facilit/institutprofiles/joyceville\\_e.shtml](http://www.csc-scc.gc.ca/text/facilit/institutprofiles/joyceville_e.shtml)

We discussed the difficulties of being Aboriginal and within the prison system. It is difficult to “cascade” through privilege levels and work towards early release. This is because that the courses that currently exist don’t engage Aboriginal people. Many of the courses have a pre requisite such as literacy, which means that many Aboriginal people cannot participate. Then it is perceived by the relevant authorities, that they haven’t even tried to deal with their behaviours. There is an urgent need for Aboriginal specific programs, as Mr Lafoe said, “if we don’t connect with the program, it doesn’t work you need to feel it yourself”.

The Native Liaison Officer (NLO) employed by the gaol is responsible for supporting Aboriginal inmates at both institutions. She is extremely busy and has limited supports. The gaol also employs an elder to undertake traditional ceremonies and practices with inmates. Each gaol has an area specified as Native grounds with a tepee and sometimes even a sweat lodge, where the Aboriginal inmates perform their ceremonies and can gather for various programs. These grounds are well respected by all the inmates.

Mr Lafoe and the staff at the gaol indicated that there is little assistance available for inmates transitioning back into society. They have developed a pathways program; however it is currently not running at these institutions. It is difficult to find people trained in the delivery of the program. Currently there are only six people in the province (Ontario) trained.

Sex offender programs currently run in Pittsburgh. It is very difficult to run in Joyceville as the offenders are not usually ready to deal with their behaviours. The sex offender program manager stated that there is little Native involvement in the program. The program does not work unless people connect to it. The Elder, NLO and Aboriginal Corrections attended this meeting with the sex offender program manager and they agreed to begin work on improving the program for Native people and developing a role for the Elder and NLO within it. The NLO and Elder suggested that program managers generally had difficulty accepting criticism regarding their service provision for Aboriginal offenders and therefore it was difficult to initiate change.

Currently Pittsburgh run a 12 week Cognitive Behavioural Therapy based program, staff then have three weeks to write the inmate evaluations, one week to prepare the next program and then they start again. There are three levels of intensity for the program: minimum, medium and maximum. There are only two institutions in Ontario running sex offender programs.

There are community based sex offender psychologists working with paroled offenders, however the program manager and other staff were unaware how this operated. When an offender is due to be released, they do develop a plan for transitioning, however they are unsure if this is followed up.

It was acknowledged that the western provinces such as Manitoba were providing more effective programs for native inmates, this primarily instigated through the work of Dr Lawrence Ellerby from Forensic Psychological Services in Winnipeg.

**Lesson's learnt:**

- Cultural programs are important to inmates; however culture needs to be taught at an earlier stage, such as through school.
- It is important to implement Aboriginal specific programming for offenders, particularly in relation to sex offender programs.
- Need to ensure there is a comprehensive transitioning process for offenders to return to the community following incarceration.

**ABORIGINAL HEALING FOUNDATION (AHF)**

The AHF was established to support Aboriginal people in building and reinforcing sustainable healing processes that address the legacy of Physical Abuse and Sexual Abuse in the Residential School system, including intergenerational impacts. The AHF use a holistic approach to provide resources for healing initiatives, promote awareness of healing issues and needs, and by nurture a supportive public environment for Aboriginal people. They provide approximately \$350 million to healing programs and research across Canada. These are all discreet projects with time limited funding.

**Discussions/Observations**

When the Canadian Government responded to the Royal Commission on Aboriginal Peoples in 1992, they committed \$350 million to provide services to address issues relating to the acculturation of Aboriginal people in Canada. The AHF was established to administer and support programming to address these issues. This was an important first step as it was the first time funding has been given to an Aboriginal organisation to undertake this type of work.

The AHF fund a number of programs focused on healing. For example they provide the funding for the Hollow Water Returning to Spirit Program. They have also undertaken extensive research on healing practices and the impacts of colonisation. This research agenda is developed and undertaken in partnership with government and non- government agencies.

**Lessons Learnt:**

- The centralisation of funding for healing programs means that services are more coordinated.
- The development of a comprehensive research and evaluation agenda, allows for a string evidence base in relation to what works in healing practices.

**PAUKTUUTIT INUIT WOMEN OF CANADA**

Pauktuutit Inuit Women's Service fosters greater awareness of the needs of Inuit women, advocates for equity and social improvements, encourages participation in the Canadian community, leads policy development and community projects for the betterment of the women, their families and communities.<sup>33</sup>

---

<sup>33</sup> [http://www.pauktuutit.ca/about\\_e.asp](http://www.pauktuutit.ca/about_e.asp)

## **Discussions/Observations**

Pauktuutit currently provides programming in following areas; sexual health; abuse; maternal and child health; community and healthy living which includes corrections, business, diabetes, early learning, injury prevention, mental health. These are provided primarily through education awareness training and cultural sensitisation. Pauktuutit are also doing some work on intellectual property rights.

They have a female board of directors but programs work with both men and women. Their policy is that to effect change we need to work holistically and that includes with men. There are currently 15 people employed and the program started in 1984.

In relation to abuse (abuse includes domestic, family and sexual violence of children and adults) they:

- Have developed a database of more than 400 wellness service providers with both traditional and western services.
- Are researching men's involvement in violence, which has led to a gathering of men, which they are trying to get funding for. This gathering will allow the men to talk about the issue and develop strategies to address it.
- Have developed a national strategy to prevent abuse, with a zero tolerance emphasis. Almost all the Inuit clans have accepted this strategy.
- Work on the premise of community mobilisation in relation to healing. They have been meeting with various stakeholders and are now working on developing healing circle models. This model will include a calendar of events, confidentiality issues and an evaluation component. They aim to develop four healing models which include:
  - i. Family abuse prevention act in Nunavut (including protection orders)
  - ii. Child sexual abuse project – this will survey the communities and find out what works to more effectively address Child Sexual Assault. The basis of the program will be on research; however they have found it difficult to secure funding for this research to take place.
  - iii. A Men's gathering
  - iv. Four day training forum on suicide, sexual assault, healing circles and residential schools

Most obstacles faced by the service's success are related to funding. Funding is always program related and generally grant or limited and consequently there is no sustainability.

Another obstacle for the service is distance. Almost all the communities are fly-in and this is very expensive. This is also a problem for community members who have to come to the city for treatment services, or court dates. They often they get stuck as it can cost around \$1000 to get back home.

They indicated that approximately 80% of Inuit men in prison are there for sexually related offences. There is also a fear of an increase in child prostitution particularly when the children come down to the city.

**Benefits:**

- ✓ Pauktuutit provide a raft of services and policy development areas. These all compliment each other and provide a much more holistic response. Their services are successful because they undertake extensive consultation to ensure that it is what the community needs and is able to sustain it.
- ✓ It is critical that we engage men addressing abuse issues such as domestic violence and sexual assault. The ability of Pauktuutit to do this whilst remaining a gendered service provides an incredible amount of work, however means that there are better outcomes for the Inuit women.

**Lessons learnt:**

- Distance has significant impacts on service delivery and this needs to be considered in developing and funding programs
- Healing circles with other complimentary healing programs (such as educational programs) should be considered as they may be more effective
- Need to undertake extensive community consultation before implementing programs and ensure that the community has the capacity to maintain the program

## Chapter five:

### NEW YORK



United Nations General Assembly Room

#### **UNITED NATIONS**

There are two distinct conventions of the United Nations that impact on child sexual abuse. The Convention on the Rights of a Child (CROC) is a universally agreed set of non-negotiable standards and obligations setting minimum standards entitlements and freedoms that should be respected by government (or human rights). Australia is a signatory to CROC and as such has a responsibility to adhere to and report on the conventions in the best interests of the child. This convention is monitored by the Committee on the Rights of the Child (CRC) and supported through UNICEF (see below).

The Human Rights Council adopted the UN Declaration on the Rights of Indigenous People, reaffirming the rights of self determination of Indigenous peoples and other Indigenous rights such as; protection against actions taken without free, prior and informed consent; the right to be consulted on decisions and action that have an impact on Indigenous rights and interests; rights to traditional lands and resources; rights to maintain and develop spiritual and religious practices. The Declaration is monitored and implemented through the UN Permanent Forum on Indigenous Issues (see below).

#### **UNITED NATIONS CHILDREN'S FUND (UNICEF)**

UNICEF believes that all children have the right to survival, development, protection and participation. Every adult shares the responsibility of building an environment that safeguards children from violence, abuse, exploitation, discrimination and neglect and helps them reach their full potential.

UNICEF advocates and supports the creation of a protective environment for children in partnership with governments, national and international partners including the private sector, and civil society. National child protection systems, protective social practices and children's own empowerment coupled with good oversight and monitoring are among the elements of a protective environment and enable countries, communities and families to prevent and respond to violence, exploitation and abuse.<sup>34</sup>

UNICEF focuses on violence, against children, justice for children, trafficking and exploitation and is guided by the provisions and principles of the Convention on the Rights of a Child (CROC).

### **Observations/Discussions**

UNICEF is working in 147 countries but most work is decentralised. There is a child protection officer in all offices including Headquarters in New York. The role of Headquarter is to provide support to those in the regions, however it was not made clear how this occurred.

UNICEF assist in developing partnerships with private sector to undertake research and sponsor programs, for example The Body Shop commissioned a report on the impacts of domestic violence on children.

Some of the best practice examples of child sexual assault programming include:

- The "one stop shop" care centres in South Africa implemented through the court system
- Girls Education and Mentoring Service (GEMS) in New York which was established to empower young women, ages 12-21 years, who have experienced sexual exploitation and violence to exit unsafe and abusive lifestyles and to develop their full potential. GEMS' provides young women with empathetic, consistent support and viable opportunities for positive change.<sup>35</sup>
- Child Sexual Assault Centre developed in Iceland
- The Stop it Now, which is a USA awareness campaign focussing on domestic violence advocacy

Much of the work being undertaken now focuses on the World Report on Violence Against Children undertaken in 2006 by the UN. UNICEF in partnership with the UN Secretary General are monitoring and developing the implementation of this report. This is still in its early stages of establishment and therefore little information could be provided.

### **UN PERMANENT INDIGENOUS FORUM**

The UN Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. The UN Indigenous forum meets annually to decide on relevant interventions on indigenous issues.

---

<sup>34</sup> <http://www.unicef.org/protection/index.html>

<sup>35</sup> <http://www.gems-girls.org/services.html>

### **Observations/Discussions**

This meeting was unable to occur due to the Permanent forum being held at the time I visited New York. This year the forum was focused on the environment. However, I was able to attend some of the forum itself, which discussed the importance of men and their changing role within indigenous communities. This was discussed in relation to a number of issues including the social challenges of this change. This reiterated many of the discussions with both the Canadian Aboriginal communities and the Australian context, where it has been acknowledged that this changing role has impacted on men's ability to participate in the development of intervention models for violence and abuse issues. The UN is going to undertake a study to examine the effects of this change.

The forum also facilitated the exchange of information between countries on their, health, education and culture which are all key components of any healing program.



United Nations Flag

### ***Lessons Learnt:***

- It is critical that the development of programming around Indigenous child sexual abuse continues and that there is a high level of Aboriginal involvement in its development and implementation to ensure that it adheres to both the Indigenous and CROC conventions. The Healing models in Canada closely adhere to both se UN conventions.

### **THE CENTER ON VIOLENCE AND RECOVERY**

The Center on Violence and Recovery undertakes research on the causes of violence and alternative interventions toward recovery. The Center undertakes a research network and program develop role, primarily in relation to domestic and family violence.

### **Observations/Discussions**

The Center has developed a restorative justice program with similar principle to the healing models. This has been a very successful endeavour and shows that the model could be used for family violence as well as child sexual assault issues. Anyone can access the service regardless of culture; however there is a high representation of Native American people in Arizona accessing this program. The model has been extensively trialled in Arizona and is currently being evaluated.

Healing Circles is a community-based domestic violence intervention that brings together an affected couple, their children and a care community of family and friends to address verbal or emotional abuse, as well as past physical violence. This supportive circle helps the couple re-examine underlying relationship issues and destructive behaviours, develops a plan to treat them and monitors their progress. The matter goes through the following processes:<sup>36</sup>

**Assessment:** Coordinator ensure that the process is voluntary and assess safety risks, support people are identified for each party, the participating family and community identify cultural values and norms and any issues to be addressed eg substance use

**Pre-Circle Conference:** each participant voices their view to the coordinator individually, family strengths and support structures are identified and the coordinator clarifies their role with the circle members.

**Circle Process:** participants identify patterns of dysfunction and develop plans for behavioural change, which are formalised in an agreement, parties are engaged with relevant services and each participant engages with the change process by ensuring compliance with the agreement.

**Post Circle Conferences:** coordinator, community and family regularly assess risk and care community and participating family review progress toward plan for change and make adjustments as needed.

It was difficult to establish these models as the general feminist community opposed the philosophy behind it, but early signs have suggested great success in Arizona. The Judge there initiated the process with the support of the Centre. As time goes by, the community are becoming more involved and accepting of the program.

***Lessons Learnt:***

- The healing circle process can be adapted to, and is effective in places other than Canada and to non-Indigenous communities. As long as the tenets remain the same, the program can be altered to fit the community and the culture that it is designed to service.
- The healing circle process successfully be adapted to incorporate other personal violence offences such as domestic violence.

**HARLEM RESTORATIVE JUSTICE PROGRAM – NEIGHBOURHOOD DEFENDERS SERVICE**

Harlem Neighbourhood Defenders Service is currently developing a restorative justice process based on the Hollow Water healing model. The application of this model is not culturally specific and they provide a service to anyone in the community. They are in the development stage, however the proposed process is: defendants and victims will come to the centre, which is a community legal service, to report domestic violence or sexual assault issues but do not want to make a report to the police. The coordinator of the

---

<sup>36</sup> <http://www.nyu.edu/cvr/intimate/healing.html>

program will make contact with the offender/victim and assess their suitability for the program. They will then undertake considerable work in relation to preparing for a circle. This period (up to six months) will include counselling and behavioural management programs. The model can be applied to any relationship dispute as long as the focus remains on people being accountable to the community.

### **Discussions/Observations**

The current focus of the coordinator is to establish relationships with community partners. Currently Harlem has many agencies working in the field of domestic violence and sexual assault, however they are not well coordinated. At this stage there is no desire to bring Government agencies on board with the process, so it is difficult to see how this will work in the criminal justice context. It was difficult to ascertain exact information on how this model works.

Harlem is a diverse community so planning and vision is essential to achieving success.

### **Lessons Learnt:**

- Extensive planning and a strong vision are essential to achieving success in the development of circle models.
- It takes considerable community engagement to get the healing circle approach operational. It is important to ensure that an intensive community engagement strategy is developed to gain the support and trust of the community and consequently ensure the program is effective.

## Chapter 6:

# HOLISTIC HEALING CIRCLE MODELS



Through my observations and discussions with the various healing circle programs and agencies that work alongside them, it is evident that there is a great benefit to the offenders, victims, families and communities and the criminal justice system in implementing this type of program.

### **BENEFITS FOR OFFENDERS**

Offenders are able to access culturally relevant services that they could not access previously, either in gaol or in the community. In addition the programs allow for an offender to remain in their community to address their offending behaviours and accept responsibility for their crime. Criminal justice agencies work collaboratively to ensure that offenders are monitored and supported throughout the process allowing the offenders to receive a high level of integrated support.

The offender is held into account for their actions by the people who are most impacted by the crime. The offender gains an insight into the impacts of their behaviour, which has a profound effect on them and is a critical factor in reducing the likelihood of reoffending.

### **BENEFITS FOR THE VICTIM**

Victims are able to disclose to and access services from a trusted community program. The level of support provided to them through the healing circle model is more holistic and allows for a more supportive intervention. As agencies work so closely together, the victim is able to access the various support components more easily. The delivery of the services by the circle programs ensures that they are culturally relevant and consequently more effective.

Holding the offender accountable to the community allows the victim to be acknowledged more effectively in the community and the criminal justice process. The victim is also able to contribute to the various circles to ensure that their views and feelings are considered in the work being done with the offender.

The process assists in the victim's own healing, especially as the offender is often a family or community member. There is less pressure on the victim to feel responsible for the abuse; the pressure is placed on the offender who must be accountable for their actions instead. Victims often do not want the offender to go to gaol, they simply want the abuse to stop. The circle healing process allows for the offenders behaviour to be addressed in a safe environment whilst the victim does not feel responsible for breaking up the family or the community.

### **BENEFITS FOR FAMILIES AND COMMUNITIES**

The circle process provides an opportunity for the families to deal with the abuse together. This means that families do not have to take sides with the victim or the offender. Circles are facilitated to help the family and community talk about the situation in a safe environment and they provide a place for collective healing to occur. There is no mechanism for this in the western criminal justice system.

The community supports the offenders in taking responsibility for their actions and see it as a strength that can be used by the rest of the community to move forward. Families and communities participate in the circles as it is a community driven process which provides them with a sense of ownership and responsibility to the program.

An evaluation of Biidaaban in 2003 found that within five years the community self reported that its state of health and wellness had improved dramatically. This was attributed to both a financial injection through the development of the Casino, but primarily through the implementation of Biidaaban and its role in community healing.<sup>37</sup>

### **BENEFITS FOR THE HEALING PROCESS**

Traditional healing practices are incorporated into all levels of programming to ensure that the programs are culturally relevant to all Aboriginal people involved. The circle process allows for people involved to have an understanding of the impacts of the offences which assists in their ability to heal.

The model allows people to respect each other and come together on common ground and accept that it is okay to have a different way of seeing things but still have value in the group. The circle also provides a sense of belonging that gives confidence and increases community functioning. The circle provides a framework for people to heal at their own rate in their own way.

The open nature of the service and programming provides a safe venue for offenders and victims to explore the issues and develop their own healing practices. The holistic focus of

---

<sup>37</sup> Dr Joe Couture and Ruth Couture, *Biidaaban: The Mnjikaning Community Healing Model*, Aboriginal Peoples Collection, Canada 2003

the healing circle model is used to emphasis the spiritual, mental, emotional and physical healing rather than compartmentalising people and brining balance back into the lives of the individual, family and community.

### **BENEFITS FOR THE CRIMINAL JUSTICE PROCESS**

The ability of the western criminal justice system and the traditional healing approach working together allows a better outcome for both victims and offenders. The model provides a level of community participation in addressing justice issues and supporting families that is unable to be provided anywhere else. This makes the healing circle process extremely powerful and effective. It involves all of the relevant affected people and is good for the overall community and helps the programs and the community come together and strengthen their common focus. People are forced to work in a more holistic way which provides for a better overall outcome for both victims and offenders.

The protection of children is the primary concern for all involved in the process. Therefore, support services that interact with victims, families and the offenders allows for a sharing of information and ultimately an increase in protection for children who are a victim of sexual assault. The circle process allows for this collaboration to happen and therefore increases the safety of not only the individual victim, but the family and community as well. They are provided with a more holistic and focused level of support.

The healing circle model allows for open and non-threatening dialogue throughout the process facilitating people to make more informed decisions based on their understanding of both the circle and criminal justice processes.

It is critical that extensive consultation with the community and stakeholders occurs in the development of a circle model. It is also essential that we engage men in addressing abuse issues. This will ensure that the community develops a high level of ownership of the process.

Regular meetings with participating stakeholders provide a forum for development, review and discussion to improve coordination and programming for the clients and the community and ensure that the program is meeting the needs of the community.

The community plays the primary role in ensuring that offenders are made accountable for their behaviours. It has been proven through evaluations of the circle programs that this minimises the likelihood of reoffending. The community knows the staff of the circle programs, understand and trust the process, and are therefore more likely to report an offence involving their children or someone else's.

Offenders acknowledged that they would not have dealt with their behaviours if they had not been provided with the opportunity to work with circle programs and were sentenced through the criminal justice system alone.

The development and implementation of protocols with partner agencies such as probation, police and child protection services allows for clear lines of communication and responsibility. These protocols, along with very active staff within the community contribute

to the success of the program as they reflect a true partnership with the community and criminal justice system.

A range of programs being available for both the individual and groups ensures that responses are holistic and have the ability to adapt to the community's needs. Aboriginal people feel comfortable with the service as they are an Aboriginal program run by Aboriginal people allowing a higher level of cultural sensitivity within service delivery for clients

The circle programs are cost effective and able to provide a high level of supervision and support of offenders and use local knowledge to provide the most appropriate services. The sentencing judgements take into account all of the factors discussed during the process, as well as the sentencing reports. Due to the amount of time that the circle programs are able to spend with offenders, sentencing reports are more reflective of the current situation regarding offenders healing and likelihood for recidivism. Consequently it is the most effective method of sentencing judges have experienced. Biidaaban provided the following table outlining their perspective on community healing models versus the contemporary justice system.

**Comparisons between justice system and healing model<sup>38</sup>:**

<b>Justice System</b>	<b>Healing Model</b>
Serious/less serious offences	All offences are serious
Innocent until proven guilty	Offender accepts responsibility
Promotes silence	Promotes breaking cycle of abuse
Process lengthy	Process lengthy
Community is not safer	Promotes a safer community
Courtroom not safe for disclosure	Circle safe for disclosure
Minimal or no treatment provided	Treatment offered for everyone
No community involvement	Total opportunity for community involvement

**LIMITATIONS OF HEALING MODELS**

There are very few limitations to operation of the healing models in Canada. This is a result of the circle process being adapted to fit with the individual community, as well as a high level of consultation and support from criminal justice/child protection agencies and the community itself.

The limitations and barriers experienced by the circle programs which inhibit the programs can include; inadequate and/or insecure funding; changes in the political climate; breakdown in communication between stakeholders; lack of clear guidelines on stakeholder responsibilities; lack of community understanding of the program; lack of training and support for the program; and lack of judicial support.

It is critical that we learn from the Canadian experience and include risk management strategies to address these issues effectively in any form of circle we consider implementing in Australia.

<sup>38</sup> Provided to author in loose documentation in May 2008 by Biidaaban

## Chapter seven:

# THE AUSTRALIAN CONTEXT

### ABORIGINAL HEALING IN AUSTRALIA

Aboriginal cultures in Australia are complex and diverse. The Indigenous cultures of Australia are the oldest living cultural history in the world going back at least 50,000 years. One of the reasons Aboriginal cultures have survived for so long is the ability to adapt and change over time.

In Australia, Indigenous communities keep their cultural heritage alive by passing their knowledge, arts, rituals and performances from one generation to another, speaking and teaching languages, protecting cultural materials, sacred and significant sites, and objects. There were about 600 Aboriginal nations (clans) in existence when Europeans first invaded Australia. These are all very diverse groups and consequently we need to remember that when developing any programs within each community. They need to be tailored to the individual community and their distinctive beliefs and values.

Whilst each nation has their own set of values and laws, there is consistency across nations, that failure to observe the laws governing the relationships between people and the land results in great harm and chaos within the community. The land, people and the spirits are all interconnected and the laws exist to ensure that we can live in harmony. The impact of colonisation has meant that the Aboriginal people in contemporary society have lost their knowledge and understanding of these laws and consequently we are now in chaos.

This resonates with the contemporary experience of the Aboriginal people of Canada. The relationship between the earth, spiritual (creator) and people has been moved and the values (laws) are no longer being adhered to, so the community is in chaos.

The Aboriginal notion of wellness is intrinsically tied up with things like land and spirituality and good social relations. Child abuse, particularly child sexual abuse is not permissible in Aboriginal culture. The harm that it causes not only the individual victim, but the family and the community is irreparable in the current criminal justice context. This is because the current criminal justice system in Australia focuses on the individual and the western notion of justice rather than the collective and Aboriginal notion of healing.

It has long been recognised that Aboriginal people are over represented in the criminal justice and child protection systems, with over 29% of children in out of home care and 25% of men in prison in NSW being Aboriginal. This is particularly concerning when Aboriginal people make up approximately 2% of the entire population. Governments have been attempting to develop culturally relevant programs and interventions for a number of years in an attempt to decrease this over representation. Some of these programs based on the same tenets as the circle models used in Canada, such as Circle Sentencing in NSW and Koori Courts in Victoria, have had considerable success.

The healing circle process is particularly relevant to the Australian context as statistics show that in Aboriginal communities, victims are likely to be related to or know their offender. The disclosure of child sexual abuse in this context means that the entire family unit and community can be affected. The current criminal justice system does not allow for an intervention which addresses the needs of all people impacted by the abuse. Because the present criminal justice system focuses on the individual it does not allow for traditional healing in a collective context to occur. The healing circle intervention process would have the capacity to do this and therefore, address the abuse in a holistic context that would lead to greater community and individual well being in a culturally relevant way.

### **CURRENT POLITICAL CLIMATE**

Recently the issue of child sexual abuse in Aboriginal communities has been highlighted in the political arena, both nationally and in individual states and territories. In 2003, NSW established a Taskforce to examine the incidence of child sexual abuse and develop strategies to address it. Another Inquiry was established in the Northern Territory in 2006 to undertake a similar process.

Both reports generated consistent reasons for the incidence of the abuse and strategies to address the issue. The strategies developed by the respective reports vary, however both suggested that the Canadian healing circle model could be adapted within the Australian context. The underlying philosophies and processes would compliment the current criminal justice system by incorporating more traditional and culturally relevant healing practices within communities. It would allow the community to be involved in the administration of justice and provision of support to victims and offenders. This would likely result in more positive outcomes for not only the individuals, but the communities involved.

Recently the Federal Government has instigated a number of reforms in an attempt to address the issue of child sexual abuse in the Northern Territory. These reforms are quite controversial however the one thing that everyone can agree, everywhere in Australia, is that they want the abuse to stop and offenders to be held into account.

Therefore given the recent media coverage and the fact that the issue is currently receiving both state and national priority, it is the perfect time to consider implementing a circle process in Australia. The healing circle model is a recommendation of both reports and it is likely that the both state and federal governments would seriously considering trialling such an approach.

### **ABORIGINAL COMMUNITY COMMITMENT**

It is evident through the Canadian experience that the Aboriginal community is involved in, and in fact drives the development of a community based healing circle model. All people that were consulted in this study reiterated this. This is also supported by the Australian experience that when the Aboriginal community provides support, commitment and input into a program it is much more successful.

This of self determination is reinforced in child protection legislation and Aboriginal policies federally and in individual the states and territories in Australia. Empowering the community

to be involved in the development of programming for Aboriginal communities is also supported by the UN convention regarding Indigenous rights.

Throughout the author's experience in a NSW context, the Aboriginal community wants to address child sexual abuse but is often unsure on what they can actually do. A number of communities in NSW have heard of the healing circle models being implemented in Canada and suggest that they would be committed to a similar process being implemented within their community.

For any healing circle program to work in Australia, it must be guided by the following:

- ❖ The community must be aware and involved in all aspects of program development and implementation.
- ❖ Extensive community consultation and negotiation must occur before implementing programs and ensure that the community is committed to and has the capacity to maintain it.
- ❖ The community must be provided with an understanding and education of how the program operates and how it is progressing.

### **COLLABORATIVE APPROACH**

Governments within Australia are generally working on a 'whole of Government' approach to address criminal justice and child protection issues. The implementation of a healing circle model would require this approach to be expanded to include the Aboriginal community. It is evident from the Canadian experience that this collective and collaborative approach is what makes the healing circles work. When the relationships between agencies breakdown such as the relationship between child and family services and CHCH, it can have detrimental effects on the program/process and in fact put victims and the community at risk.

A number of programs developed to address child abuse and criminal justice issues in Australia have proven that this collaborative approach is more effective. For example the Joint Investigative Response Teams developed to address child abuse in NSW have had considerable success in providing a more efficient and effective response between NSW Police Force, Department of Community Services and NSW Health.

### **DEVELOPMENT OF AN AUSTRALIAN HEALING CIRCLE MODEL**

It is critical that any healing circle model is based on the following beliefs; sexual abuse is one of the main contributors to alcohol, drug abuse and family violence; the safety and well being of victim is the priority; to break the cycle of abuse the victimisers behaviour must be addressed; victimiser needs to be accountable for their actions; healing will only happen in a safe, open and non threatening environment; healing is only successful if it is approached holistically; people will only heal if their take responsibility for their own healing process.

The development and establishment of a healing circle model in Australia would need to consider the following principles:

1. Commitment from the Aboriginal community and involvement in the development and implementation of any program.
2. Establish collaborative partnerships between stakeholders:

- Relationships between agencies are crucial and mechanisms need to be in place to ensure that these relationships function effectively and are true partnerships. The development of clear protocols between agencies is therefore critical to the programs success. This should be done in the development of the program rather than after it has been operational as it provides clear direction and responsibilities for everyone involved. This protocol must also include conflict resolution mechanisms.
  - Partners critical to the development and implementation of a successful healing circle program include: the Aboriginal community, Police, child protection services, courts and the judiciary, victim support and counselling providers, correctional services, schools, and state and federal funding agencies.
3. Extensive planning and development phases:
    - The development phase of a healing program is critical and it can take years before it is implemented completely.
    - Extensive planning and a strong vision are essential to achieving success in the development of circle models.
    - It can take considerable time to attain the support of the Aboriginal community and the existing service system when developing a new approach to such a sensitive and complex issue such as child sexual assault
  4. Consultation with the Aboriginal community and other stakeholders:
    - Wide consultation is critical to the development of a successful program with all stakeholders including community, government, non-government agencies, victims and offenders.
  5. Development of a comprehensive risk management framework:
    - A comprehensive risk management strategy needs to be developed to include the following: impacts of the political environment; funding concerns; breakdown in communication between stakeholders; confusion regarding stakeholder roles and responsibilities; wider community perceptions of the program (e.g. it is an easy way out of a gaol term); and most importantly a lack of community understanding and/or support of and commitment to the program.
  6. Establish clear policies and protocols to guide service delivery:
    - Clear frameworks and protocols are essential in the development of healing models.
    - The development of strict referral criteria to ensure that the program retains its structure and ability to support its clients effectively.
    - The program must be held accountable for the monitoring and supervision of offenders in partnership with corrective service agencies. This is to ensure that breaches are reported and the program is not seen as an easy way out of a gaol sentence.
  7. Establish a functional and supportive program structure:
    - Good program supports and functioning will include support structures for program providers, consistency of partners and people involved
    - The program requires more than one worker as engaging the community, offenders and victims is a massive task, which requires a high level of peer support. It is also important that those workers supporting the offender are separate from those supporting the victim. This ensures that both interests are represented equally within the process.

- Ensure funding agreements are supportive and provide responsibilities for both the funding agency and the program, including training and support mechanisms.
  - Distance has significant impacts on service delivery and this needs to be considered in developing and funding programs
  - It is essential that cultural and professional support mechanisms be implemented for Aboriginal people working within the area of child sexual assault. Adequate supports need to be implemented to ensure that workers have access to support processes and networks.
8. Ensure that the program is holistic:
- The combination of contemporary processes with traditional practices ensures that people remember the reasons behind their actions and develop a shared focus.
  - The provision of child protection and offender support services, supported by a raft of other services improves people's engagement in the system and provides a more holistic response.
  - A healing program should include capacity to work with schools and other children service providers on protective behaviours and personal safety issues.
  - It is important to implement Aboriginal specific programming for offenders, particularly in relation to sex offender programs.
9. Development of a comprehensive evaluation and research framework:
- The development of a comprehensive research and evaluation agenda, allows for a strong evidence base in relation to what works in healing practices and any cost savings for the government.
10. Adherence to the United Conventions on Indigenous and Children's rights:
- It is critical that the development of programming around Indigenous child sexual abuse continues and that there is a high level of Aboriginal involvement in its development and implementation to ensure that it adheres to the UN conventions. The Healing models in Canada closely adhere to both of these conventions.

## **OPERATIONAL CONSIDERATIONS**

Some of the lessons learnt from the Canadian experience for us to consider in the operation of a healing circle model in Australia include:

- ❖ Development of continuous community and service education about healing is critical in supporting program. Ensuring that people understand the philosophy and operation of the program is more likely to ascertain their support.
- ❖ Government support is critical to the process, stability in this support means that the programs can spend their time focussed on the work at hand. This support includes supporting the healing circle program in developing court reports, training in criminal justice and child protection processes and services, cross agency training in circle processes for government agencies occurs on a regular basis.
- ❖ It is important to provide relevant support and training to ensure that the program is able to operate at a high standard. Training and education across of healing circle program staff must include:
  - Contemporary criminal justice processes including investigation and court processes
  - Contemporary child protection processes

- Addressing and understanding of victim responses to trauma and sexual assault
- Addressing and understanding of sexually offending behaviours
- Development of court reports and provision of progress reports
- ❖ Regular stakeholder meetings assists in the coordination of the program and facilitating positive working relationships
- ❖ In relation to sentencing circles:
  - Pre planning and careful consideration of risks/issues that may arise in the context of the sentencing circles needs to be undertaken on every occasion.
  - Each sentencing matter should be dealt with individually and appropriate time allocated by the courts to undertake each hearing. It was suggested that a minimum of half a day per offender is allocated.
  - Sentencing circles need to be regular and there should be scheduled times when an offender needs to come before the court, as well as a timeframe around program intervention prior to sentencing. There should be structured and regular reporting to the courts throughout the process. This will ensure that matters are progressed effectively and risk is regularly assessed.
  - The establishment of regular Circle's (every 3-6 months) would enhance the courts ability to monitor the offenders and ensure that victims are supported.
  - Sentencing circles should only deal with one offender at a time.
- ❖ The healing program and existing victim service providers must communicate and collaborate when working with victims and their families. This will assist in ensuring that the victim's needs are being met and they are being provided with the highest possible level of support.

## Chapter eight:

### WHERE TO FROM HERE?



The healing circle process is an effective way for Aboriginal communities to address child sexual abuse. It provides an opportunity for the individual, family and communities impacted by this abhorrent crime to heal, and it also significantly reduces the likelihood of reoffending. The adaptation of healing circle models in the USA (Harlem and Arizona) suggests that the tenets of the process can be successfully transferred to other areas. Given the similarities in not only cultural values, but also colonisation experiences, it is likely that such a model would work in an Australian context.

#### **USING EXISTING FEDERAL MECHANISMS**

There is currently a number of policy mechanisms within the federal and state/territorial governments, which would facilitate the implementation of a healing circle model in Australia. Federal Policies include:

- A National Framework of Principles for Service Delivery to Indigenous Australians: this policy underpins the way state and federal governments work together in Aboriginal Affairs. It includes tackling agreed priority issues, of which child sexual abuse and family violence is one.
- Bilateral Agreements: provide a mechanism for individual states to work with the federal government on providing a consistent approach, identifying gaps and enhancing service delivery.
- Recently (2007) the Federal Government committed to provide funds to support initiatives addressing child sexual assault in partnership with the states and territories.

All of these policies support the facilitation of a community program to address child sexual abuse in Aboriginal communities in partnership with the state (as the state has jurisdictional powers on child protection and most criminal justice matters).

### **TRIALING HEALING CIRCLE MODELS IN NSW**

Existing policies in NSW that would facilitate the development and implementation of a healing circle model include the following:

- The Two Ways Together, Aboriginal Affairs Plan 2002-2012: was developed to address Indigenous disadvantage in NSW in partnership with Aboriginal communities.
- The NSW Aboriginal Justice Plan 2004-2014: is a holistic policy framework to address the causes of crime offended by Aboriginal people and improve their access to the criminal justice system in NSW.
- NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011 (the Plan): was developed in response to the NSW Aboriginal Child Sexual Taskforce report *“Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities”*. The Plan includes a strategy to consider the development and implementation of a healing circle model based on the Hollow Water CHCH.

The current criminal justice and child protection systems in NSW focus on collaborative responses to child sexual abuse. This collaborative focus allows for the possibility of expansion to non Government service providers. For example, much of the early intervention child protection work is now undertaken by community organisations.

In relation to the investigation of child protection offences, NSW already has Joint Investigative Response Teams (JIRT) consisting of NSW Police Force, Department of Community Services and NSW Health. The healing circle program could quite easily be developed and established in partnership with these existing services and the community. Particularly in relation to coordinating and providing victim support. Currently there is very limited support available for offenders, so this aspect of service delivery would provide offenders to access to support services to assist in addressing their offending behaviour at the earliest opportunity.

NSW has established 20 Aboriginal Community Justice Groups (ACJG) across the state. The role of ACJG is to bring together local Aboriginal people to tackle local criminal justice issues. They represent the interests of both offenders and victims and work together with their local criminal justice agencies to identify and address issues arising in the community.

NSW also operates a Circle Sentencing program in 9 locations across the state. Circle Sentencing is an alternative sentencing court for adult Aboriginal offenders. The Circle has the full sentencing powers of the court. It directly involves local Aboriginal people in the process of sentencing offenders, with the key aims of making it a more meaningful experience for the offender and improving the Aboriginal community's confidence in the criminal justice system.

Circle Sentencing takes the sentencing process out of its traditional court setting and into the community. Here, community members and the Magistrate sit in a circle to discuss the offence and the offender. The Circle also talks about the background and effects of the offence and develops a sentence that is tailored for that offender. Circle Sentencing can involve victims of offences, respected community people and the offender's family. It allows greater Aboriginal involvement in the criminal justice process, particularly at the community level, and aims to increase Aboriginal satisfaction with the operations of the criminal justice system. Circle Sentencing complements existing diversionary schemes and provides a further sentencing format for NSW Magistrates.<sup>39</sup> Currently Circle sentencing does not deal with sexual offences.

This process is very similar to the healing circle model sentencing process and could quite easily be adapted to compliment a healing circle process. There would need to be further consideration as to how the healing circle processing would sit in the NSW Court System. Currently sexual assault matters can be heard; dependent on the nature of the crime, in either the Local or District Courts. Therefore further exploration into the jurisdiction of a healing circle program would need to be undertaken to ensure that it can consider both indictable (District Court) and summary (Local Court) offences.

Using these community driven mechanisms, it would seem that it is quite possible a healing circle program could be developed and implemented in collaboration with the existing child protection and criminal justice systems. Obviously this would need to be carefully managed process including the following phases:

1. Scoping of the model through extensive consultation with existing service providers and the Aboriginal community. This scoping would also consider possible locations for implementation.
2. Establishment of the healing circle model in a relevant location. This phase would involve extensive consultation and engage the community in the process of service development as well as address operational issues with existing service providers.
3. Trial operational phase. The program would be trialled for a fixed period; this period is to be agreed on by funding agencies and the community.
4. Evaluation

Given the national interest in addressing child sexual assault in Aboriginal communities and considering the implementation of this program in other states/territories it is recommended that the program is developed and supported in partnership with the Aboriginal community, NSW and Australian Governments.

Some of the risks that are likely to be faced in NSW and consequently need to be addressed and managed through the development phase include:

---

<sup>39</sup>

[http://infolink/lawlink/cpd/ll\\_cpd.nsf/vwFiles/AboriginalCommunityJusticeGroups.pdf/\\$file/AboriginalCommunityJusticeGroups.pdf](http://infolink/lawlink/cpd/ll_cpd.nsf/vwFiles/AboriginalCommunityJusticeGroups.pdf/$file/AboriginalCommunityJusticeGroups.pdf)

- Political opposition from parliamentarians as many may have the view that the law exists for everyone and participation in a healing circle program may be perceived as an easy way out or “special laws” for Aboriginal people.
- Opposition from the Aboriginal community as they may not understand or agree with the process. They may be reluctant to engage and therefore the program will not work as it relies on the commitment of the Aboriginal community.
- Judicial reluctance to an alternative process is likely to occur (as experienced in Canada). Consequently we would need to consider the facilitation of judicial education and risk reduction strategies to initiate a shift in attitude toward alternative criminal justice responses to child sexual abuse in Aboriginal communities.
- Possible amendment to legislation (Crimes Act 1900 and Children and Young Person’s Care and Protection Act 2000) and its subsequent administration within the court system to facilitate a legal basis for healing circle models.

## **RECOMMENDATIONS**

1. This report is provided to the NSW and Australian Governments to consider developing and trialling a healing circle model program in line with the aforementioned principals. This includes the following government agencies:
  - NSW Government agencies including: NSW Police Force, NSW Departments of Health, Corrective Services, Community Services, Aboriginal Affairs and Attorney General’s Department
  - Australian Department of Families Communities and Indigenous Affairs and Attorney-General’s Department
2. This report is provided to provided to the following peak bodies, concerned with the well being of Aboriginal children, families and communities, for consideration:
  - Human Rights and Equal Opportunity Commissioner
  - Secretariat of National Aboriginal and Islander Child Care (SNAICC)
  - Aboriginal Child, Family and Community Care State Secretariat (ABSEC)

## Appendix

### AGENCIES CONSULTED IN THE DEVELOPMENT OF THIS STUDY

Date	Agency	Location
14 -15 Mar 07	Manitoba Courts - Judiciary	Winnipeg
16 Mar 07	Forensic Psychological Services	
19 Mar 07	Victim Support Services - Manitoba Justice	
20 Mar 07	Aboriginal Justice Strategy	
22 Mar 07	Manitoba Prosecution Service	
23 Mar 07	National Crime Prevention Strategy	
26 Mar 07	Victim Support Services - Manitoba Justice	
27Mar-3 Apr 07	Hollow Water Community Holistic Circle Healing	Hollow Water
4 Apr 07	Manitoba Prosecution Service	Winnipeg
5 Apr 07	Winnipeg Police	
8 Apr 07	Manitoba Courts	
10 – 13 Apr 07	Public Safety Canada	Ottawa/Joyceville
16 Apr 07	Pauktuutit Inuit Women	
17 Apr 07	Correction Service Canada	
18 Apr 07	Wobano	
19 Apr 07	National Parole Board	
24 Apr 07	Victim Support Services/South East Child and Family Services	
25 Apr 07	Aboriginal Legal Service Toronto	
	Toronto Police	
26 Apr 07	Native Child and Family Services	
	Center for children in justice	London
1-5 May07	Biidaaban: The Mnjikaning Community Healing Model	Rama
9-10May 07	Aboriginal Healing Foundation	Montreal/Ottawa
11 May 07	Public Safety Canada	Ottawa
16 May 07	United Nations	New York
17 May 07	Center for Violence and Recovery	
22 May 07	Harlem Indian Restorative Justice Program	
23 May 07	Unicef	

W