The Practical Application of Traditional Aboriginal Healing Practices as a Restorative Justice Process: A Case Study of the Helen Betty Osborne Story

By Iris Griffin

A thesis in partial completion of the requirements for the degree of
Master of Social Work, University of Manitoba

15 June 2001

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BY

Iris Griffin

A Thesis/Practicum submitted to the Faculty of Graduate Studies of The University of Manitoba in partial fulfillment of the requirements of the degree of

Master of Social Work

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ABSTRACT

Restorative justice is a process whereby criminal actions are dealt with in a manner that attempts to reduce the harm caused to the victim and community. The principles and concepts of restorative justice share many similarities with traditional Aboriginal teachings, and as such, the two processes can be jointly applied to address the needs of victims, offenders, and communities.

This qualitative case study explores the application of traditional Aboriginal healing practices as a restorative justice process using the Helen Betty Osborne case as an example. Primary data are from interviews conducted with several key participants during November 1998 and January 1999, and from informal discussions between October 1997 and May 1999. The thesis focuses on how participants were affected by the restorative process and the potential for this process to be incorporated into the Canadian correctional system.

The restorative process in the Helen Betty Osborne case affected those involved in a variety of ways. Many indicated it was a powerful and positive experience for them; while others found it to be emotionally difficult and of more benefit to the offender than the victim. Most felt that this process, with increased supports for the victim, could be successfully incorporated into the justice system.

There is a role for social workers as part of the restorative justice process in the community, in the institutions, and in the development of policy and programs. Future research should focus on how this process can be incorporated into the justice system, its effect on the victim and offender, and its effect on successful community reintegration. As well, a means of evaluating this process should be developed.

"He just opened up things that I needed to know all these years, and that's really helpful to me and my healing. I know I have a lot of healing to do but now its lighter than before I came here." Cecilia Osborne, December 18, 1996

"[i]t's important for me to understand the effects on everyone in the community. I understand some of the process, and it's certainly been good for me to be part of it. I didn't come into this thinking forgiveness would come easy. I just don't know how to say I'm sorry enough for my part [in the murder]." Dwayne Johnston, December 18, 1996

"It was hard to believe, staring across the circle at the man who had confessed to stabbing Helen Betty Osborne with a screwdriver, that the aboriginal [sic] community could embrace him, and that he had embraced them." Winnipeg Free Press, December 19, 1996.

CHAPTER 1 – INTRODUCTION

The purpose of this case study is to examine the practical application of traditional Aboriginal healing practices as a restorative justice process such as that utilised in the Helen Betty Osborne case. The details of this case have been documented extensively in a book, a movie, Volume 2 of the Aboriginal Justice Inquiry (Manitoba, 1991b), and in the media; they will be briefly outlined in order to provide a backdrop for the events upon which this thesis will focus.

On November 13, 1971, four white men abducted a young Cree woman from the streets of The Pas, Manitoba. The young woman was beaten to death. Her name was Helen Betty Osborne. Only one of the men, Dwayne Archie Johnston, was convicted for the murder. He was convicted in December 1987, 16 years after the fact. Lee Colgan was granted immunity for his testimony; James Houghton was acquitted, and Norm Manger was never brought to trial.

The abduction and murder of Helen Betty Osborne in 1971 shocked the community of The Pas, Manitoba. The inadequate investigation of the murder, and the subsequent 16 year delay before those involved in her death were brought to trial shocked the rest of Canada. That only one person has ever been convicted of this crime speaks to the value placed on the life of a young Aboriginal woman in Canada. The Aboriginal Justice Inquiry (Manitoba, 1991b) determined that racism played a major role in the abduction and murder of Osborne, the subsequent investigation into the case, and the delay in justice being served.

Throughout the investigation, the trial, and the inquiry, Johnston maintained his silence. He was convicted in 1987 of second-degree murder in the death of Helen Betty

Osborne, and sentenced to life in prison with no parole eligibility for ten years. He never took the stand in his own defence. When given the opportunity to speak at the Aboriginal Justice Inquiry, he refused to do so and continued to maintain his silence. At the inquiry, he presented as hostile and uncooperative – a stance he had maintained since the murder.

In 1996, Johnston agreed to meet with members of the Osborne family and leaders of Manitoba's Aboriginal community. It was shortly before this period of time that he had received counselling from an Elder at the prison. Coincidentally, the Elder was originally from Norway House – Helen Betty Osborne's home community.

Johnston met with representatives from the Osborne family and Aboriginal leaders from Manitoba and agreed to participate in two healing conferences and a series of sweat lodge ceremonies. He broke his silence after twenty five years by telling the Osborne family of his role in the murder and giving a statement to the RCMP. As a result of his statement, the Attorney General of Manitoba reviewed the case to determine whether further charges could be brought against the others involved. On February 12, 1999, the province of Manitoba determined that bringing charges against the others would be an abuse of process and closed the case.

This study will present the events that have occurred since July of 1995 – when the family of Helen Betty Osborne discovered that Johnston had been released on day parole; they had not been notified of the Parole Board hearings, or of Johnston's pending release. Under the Corrections and Conditional Release Act enacted in 1992, the National Parole Board and Corrections Services Canada must ensure that information available from victims is obtained and incorporated in the decision making process

(Canada 1998). This did not occur in this case. The Osborne family decided to appeal the Parole Board's decision.

Further investigation is warranted to examine the healing process undertaken in this case and to assess the effect of this process on those involved. Johnston has begun this process by initialising reconciliation with the Osborne family, and facing those who he had wronged so many years earlier. He has acknowledged his role in the abduction and murder of Helen Betty Osborne, and he has done that face to face with the Osborne family.

By attending traditional ceremonies and continuing contact with Elders from Ferndale Institution, Johnston appears to have embraced Aboriginal teachings as a means by which to resolve within himself his role in the murder of Helen Betty Osborne. As such, according to the Elder of Ferndale Institution, Johnston has accepted, in the Cree tradition, that he has made a lifelong commitment to the Osborne family. He has acknowledged this commitment and has pledged to do his part to bring the other three men to trial in order for further justice to be achieved; this may include testifying against them if a further trial is held. Bringing the other three men to trial may assist the Osborne family to have closure to this aspect of their lives as "there is no healing without justice" (LaRocque, 1997:85).

In this case, traditional Aboriginal healing practices were undertaken with a non-Aboriginal man who had taken the life of an Aboriginal woman twenty-five years earlier. Racism has played a large part in every aspect of this case from the abduction and the inadequate investigation to the delay in justice. Reconciliation and healing have begun

with the acceptance by Johnston of the traditional teachings of a people he had terribly wronged.

There are several terms in this thesis that must be clarified as they frequently appear in the literature with inadequate explanation. These terms are 'healing', 'traditional healing practices,' and 'restorative justice'. I will attempt to clarify the meaning of these terms with respect to their application in this research project.

The term 'healing' is frequently used to describe change in people or society, and is often heard in association with Aboriginal communities and people. It is a culturally based term which seems to lack a common definition. However, there appears to be a common consensus that to 'heal' means "to obtain a sense of 'wholeness' or 'balance' by addressing all parts of one's life concurrently and not in isolation." (Krawll, 1994:19). This balance can be attained by dealing with a person holistically, by addressing their physical, mental, spiritual, and emotional needs. For the purposes of this study, the term 'healing' refers to the process that is undertaken to restore balance to these four aspects of the individual. The process undertaken to restore balance and wholeness includes traditional healing practices.

'Traditional healing practices' refers to the ceremonies that are undertaken in an attempt to address the needs of the individual in a holistic fashion. These ceremonies might include, but are not limited to, sacred pipe ceremonies, talking circles, smudging, fasting, sweat lodge ceremonies, and teachings relating to the manner in which people should interact in their relationship with others and their communities. An Elder would guide the individual with respect to which ceremony, or series of ceremonies, might be

undertaken in the healing process. The healing process using traditional healing practices can also be viewed as a restorative justice measure.

'Restorative justice' is a term that refers to the manner in which offenders are dealt with by the justice system. It "is a way to do justice so that healing can take place and this includes the important elements of: calling to account for one's actions; reparation; dealing with what went wrong; dealing with the feelings and issues around it; dealing with the harm of the crime, but also of the harm of the criminal-justice system" (Berzins, 1996, as quoted in Correctional Services of Canada, 1998b:4).

Restorative justice processes attempt to address criminal actions in holistic a manner by actively including the victim, and elements of the community, in the justice process in a manner that will reduce the level of harm that has resulted from the crime. The concept and principles of restorative justice will be discussed in more detail in chapter three. For the purposes of this study, restorative justice refers to the process in which a victim and offender are brought together in an attempt to repair the damage that was caused by the crime.

Qualitative research methods were utilised in the case study design as these methods are consistent with the exploratory nature of this project. The research attempted to determine the effect of the restorative process undertaken in the Helen Betty Osborne case on those involved, and whether this process could be utilised in other situations involving offenders and victims in a correctional situation.

The second chapter of this thesis presents the research objectives and research design of this case study. The principles and concepts of restorative justice are presented in the literature review in the third chapter. As well, the applications of restorative justice

and the commonalties shared with a traditional Aboriginal world view are presented in the third chapter. Issues and concerns with respect to restorative justice processes and the general comparisons that are made frequently in the literature comparing restorative justice and traditional Aboriginal world views will also be discussed in this chapter. Finally, chapter three provides a discussion with respect to the current restorative practices incorporated by the Correctional Service of Canada that utilise traditional Aboriginal healing processes.

The fourth chapter will detail the chronology of key events in the Helen Betty Osborne case from the time of the murder until February of 1999 when the province of Manitoba determined that no further charges would be brought forth in this case. As well, this chapter will detail the events of the healing conferences undertaken in this case with a focus on the process of the meetings, as opposed to the content of what was revealed to the Osborne family. The reflections of those involved in the meetings will also be presented with a focus on how their involvement affected them and whether they felt the process could be incorporated by the justice system. Finally, this chapter presents a discussion of the process of the healing conferences as a restorative justice tool that could be incorporated within federal and provincial correctional systems.

The final chapter will detail the limitations of the study, as well as the implications of the healing conferences for social work practice. Recommendations for future research are also presented in this chapter, along with conclusions drawn from the research. Overall, participation in this restorative process had an effect on all involved, with some finding the experience more positive than others. As well, most participants felt that this process could be incorporated by the correctional system as a means of

meeting the needs and concerns of victims by including them more actively in the correctional process.

This case study contributes to social work practice in the area of working within the justice system with victims and offenders. The presentation of the practical application of traditional Aboriginal healing practices as a restorative justice process is useful to social workers in direct clinical practice, and program and policy development. As the Correctional Services of Canada moves to incorporate restorative processes in the field of corrections, it can be argued that the Helen Betty Osborne case has served as a catalyst and point of reference for this process.

CHAPTER 2 – RESEARCH OBJECTIVES AND METHODOLOGY

This chapter will detail the research objectives and methodology utilised in this research project. The research questions and objectives will be presented, as well as the design and the methodology of the study. Discussion with respect to the selection of participants, the manner in which consent and confidentiality were addressed and the manner in which the data were analysed will also be discussed in this chapter.

RESEARCH QUESTIONS AND OBJECTIVES

There are two research questions posed in an attempt to meet the research objectives of this case study.

i) research questions

The two research questions addressed in this study are:

a) How has participation in this restorative process affected those involved?

This research question attempted to determine the effect of participation on those involved in the restorative process. Speculation was that participants would come away from the process changed in some manner. This question was asked of all interviewees regardless of their degree of participation in the process.

b) What is the potential for the application of this process to other situations?

The applicability of this process to others involved in the criminal justice system is a key focus of this research. At issue is whether the factors in this case are so unique as to prevent success with this process if applied to other situations. Participants were

surveyed to determine their thoughts on this issue. Restorative processes are currently being examined and incorporated in varying degrees within the Correctional Service of Canada. As such, a process similar to that incorporated in this case may serve as a catalyst, and a model, for further development in this area.

ii) research objectives

There are several research objectives in this study that the above questions attempted to address. These objectives are:

- To determine the effect of the healing conferences on key people involved in the Helen Betty Osborne case.
- Using a practical application, to illustrate traditional Aboriginal healing practices as a restorative justice process that may be considered for implementation by elements of the justice system.
- To illustrate the role of traditional Aboriginal healing practices as tools to assist rehabilitation of offenders, both Aboriginal and non-Aboriginal.

RESEARCH DESIGN AND METHODOLOGY

This research project is a case study design in which qualitative research methods were utilised.

i) design

The design of this study is a one-shot case study which is a method of conducting qualitative research that involves gathering information by conducting interviews with participants. This study can also be described as an instrumental case study in which "a particular case is examined to provide insight into an issue" (Denzin and Lincoln, 1994:237). When utilising a case study design in this manner, the case itself becomes secondary to facilitating a further understanding of an issue that is part of the case. In this research project, the Osborne case is examined to provide insight into the use of

traditional Aboriginal healing practices as a restorative justice model. Studying the Osborne case is a means of facilitating understanding of the role of traditional Aboriginal healing practices as a model of restorative justice. In this situation, the case itself supports the facilitation of understanding restorative justice processes.

The case study, as a qualitative research method, is the most applicable research strategy for this situation. Frankfort-Nachmias and Nachmias (1996:146-147) state that "[a] one-shot case study involves an observation of a single group or event at a single point in time, usually subsequent to some phenomenon that allegedly produced change." The healing conferences that were undertaken in the Helen Betty Osborne case can be described as a singular event that allegedly produced change; in this case study, the focus is to determine whether change occurred. The determination of the occurrence of change will be conducted through the qualitative analysis of interview transcripts. The strength of a case study design in this situation is that it is possible to gain insights into an experience that otherwise would be unavailable through quantitative methods (Yegidis, Weinbach, and Morrison-Rodriquez, 1999:139).

Yin (1994) also argues that a case study is the appropriate research design in a situation where the researcher has no control over the events that have occurred, but the events have occurred recently enough to interview those involved. This is different from an historical study where those involved in the event may have since passed away. In a situation where "a 'how' or 'why' question is being asked about a contemporary set of events over which the investigator has little or no control" the case study is the most appropriate research strategy (Yin 1994, p9). In this study, the events that occurred are

beyond the control of the researcher, yet they have occurred recently so that those involved are available to participate in interviews.

ii) methodology

A qualitative methodology was chosen as the appropriate research approach due to the exploratory nature of this study. In this case, the research attempted to determine the experiences of those involved in the restorative process; and to explore the potential for incorporation of this process into the justice system.

According to Denzin and Lincoln (1994), qualitative research is multi-method in focus which strengthens the study by increasing its depth and scope. This multi-method approach to inquiry is referred to as triangulation. The methods of inquiry utilized in this case study are semi-structured interviews, literature research, and document analysis.

Lofland and Lofland (1984) describe semi-structured interviewing as a guided conversation in which the goal is to elicit from the interviewee information that can be used in qualitative analysis. During a semi-structured interview, the interviewer asks questions to elicit information about experiences or events. The interview questions provide a means of guiding the interview and ensuring that necessary information is solicited. At the same time, the semi-structured format provides tremendous flexibility with respect to the range of information gathered as interviewees are able to provide information they feel is relevant to their experience. This interviewing style allows for the generation of a tremendous amount of rich detail with respect to the experience of those being interviewed as the topic of discussion can be explored in more depth.

In this study, a series of interview questions were developed and used to guide the interviews (see Appendix A for the interview questions). There were some variations

between interview question formats contingent on the role of the participant in the healing conference. For example, questions asked of Mr. Johnston were somewhat different than those asked of the Deputy Commissioner of Correctional Services of Canada for the Pacific Region. However, as stated, all participants were asked the two main research questions. The interviews were semi-structured as this method is consistent with the qualitative aspect of this particular case study which is exploratory in nature (Denzin and Lincoln, 1994).

The interviews in this study were conducted with key individuals who indicated a willingness to participate. Due to the sensitive nature of the information being gathered, conditions for use of the information gathered in the interviews include the approval of the key participants as to how the information will be presented in the final report. Copies of the transcribed interviews were made available to participants to allow provision of further insight into their experience. As well, this provided an opportunity to indicate what, if any, information the participants wished to exclude from the final project. Participants have been offered the opportunity to review drafts of the final report to provide further insights or feedback for consideration. As well, participants have also been offered the opportunity to receive final copies of the report.

A review of the literature detailing restorative justice principles and concepts was conducted for this research project. As well, a review of the literature detailing traditional Aboriginal approaches to justice, conflict resolution, and traditional healing practices was conducted and included in this report. The review of relevant literature is crucial to contextualize this case study as the healing conferences were premised upon the concepts of restorative justice and traditional Aboriginal healing practices. Also

included is a comparison of the principles of restorative justice and traditional healing practices; the issues raised by such a comparison are also examined.

Media coverage of the events of the Helen Betty Osborne case since 1995 were also reviewed to asses overall public reaction to the restorative process undertaken in this case. Due to the national profile of this case, media coverage of this case must be considered. The time frame of media coverage to be reviewed includes July 1995 until February 1999.

The use of documents and literature, in addition to interviews, strengthens the case study as these data sources will increase the depth and scope of the study. This research design also allows for the experiences of those involved in this restorative process to be best explored, analysed and presented as "the case study allows an investigation to retain the holistic and meaningful characteristics of real-life events" (Yin, 1994, p3).

iii) participants

The research for this case study was conducted as part of a larger research initiative undertaken by Eric Robinson, Member of the Legislative Assembly of Manitoba, and Sandra DeLaronde, Director of the Aboriginal Court Worker Program for the Province of Manitoba. The purpose of the larger initiative is to provide a detailed descriptive narrative of the experiences of those involved in the restorative process undertaken in the Helen Betty Osborne case. As well, the larger research initiative will provide documentation and explanation of the role of traditional Aboriginal teachings involved throughout the restorative process

With the permission of Cecilia Osborne, Eric Robinson and Frank Settee approached participants of the healing conferences to determine their willingness to participate in a documentary of the process. As such, the participants for the current study were drawn from the larger research project, and were selected based on their direct involvement in the healing conferences.

The list of participants in the healing conferences that were included in this project are Dwayne Johnston, offender; Peter DeVink, Deputy Commissioner for the Correctional Services of Canada in charge of the Pacific Region; Ron Wiebe, Warden of Ferndale Institution; Frank Settee, Regional Elder for the Pacific Region; Pam Jack, Regional Project Officer for Aboriginal Programs in the Pacific Region; Phil Fontaine, then Grand Chief, Assembly of Manitoba Chiefs; and Jim Lavallee, assistant to Phil Fontaine. These participants were selected based on their level of involvement in the healing conferences. They were all present and participated in the conferences. As well, interviews were conducted with two people, Graham Shand and Sandy Wiepert, who participated as helpers during the sweat lodge ceremonies.

Most of the participants expressed a willingness to participate and share their experiences. As well, interviews of most participants were audio-taped and transcribed. Due to technical difficulties, the interviews with Grand Chief of the Assembly of Manitoba Chiefs and his assistant were not able to be audio-taped. Instead, interview transcriptions were derived from combining the notes of the two interviewers. As well, Mr. Johnston was not comfortable with his interview being audio-taped. Respecting his wishes, the researchers derived an interview transcription by combining notes taken

during the formal interview, and through subsequent informal conversations, with Mr. Johnston.

Although supportive of this, and the larger research project, Ms. Osborne declined a request for a formal interview. As well, due to Eric Robinson's busy travel schedule and the demands of his elected position, the researchers were unable to co-ordinate an interview with him. The absence of these two interviews is a weakness in this study. However, the richness of the information provided by the other interviewees and the information gathered from other sources provides sufficient material to meet the research parameters outlined for this study. Given the extraordinary sensitivity of the topic being discussed, the willingness of the participants to share their experience was truly remarkable.

iv) consent and confidentiality

Obtaining the informed consent of the participants included the completion of a consent form (see Appendix B for the informed consent form) that detailed the purpose of the study, and the manner in which the information gathered would be utilized. As well, the researchers discussed with each participant aspects of the study for which they needed further clarification, and explained what their participation in the study would include. Consent to audio-tape the interviews was given by participants.

The high national profile of this case meant that ensuring the confidentiality of participants could not be guaranteed; this issue was addressed in the consent form. Participants were informed that protection of their identity could not be guaranteed, as persons familiar with the case may be able to identify them. Those interviewed did not appear to be concerned about the lack of guaranteed confidentiality. All participants

signed the consent form indicating that they did not wish a pseudonym to be used to protect their identity; however specific identifying information such as addresses and phone numbers would remain confidential.

Participants were informed that upon completion of the larger project, the detailed experiential narrative, all transcripts would be returned to the appropriate interviewees. No copies of the transcripts or audio-tapes will be retained by any person other than the interviewees. All confidential materials identifying interviewees will be destroyed upon completion of the larger research project. These steps were taken due to the extraordinary circumstances surrounding this case, and the potential risk of manipulation or exploitation of the experiences that were shared with the researchers.

v) data analysis

The data for this project are the written transcripts from the formal interviews. Data also include the written report of the healing conference prepared by the Regional Elder for the Pacific Region who facilitated the healing conferences. Also included as data are print and radio media coverage of the case.

By conducting semi-structured interviews with key participants, information detailing the experiences of those involved in the healing conferences was gathered. The use of semi-structured interviews allowed participants to relate the details of their experience in a manner that provided the richest detail. From these interviews, the individual experiences of those participating in the healing conferences was assessed. The interviews were transcribed and analysed with a focus on the experience of each participant involved in the healing conferences. A qualitative analysis of this case study is crucial to capture the experience of those involved in this restorative process. Use of

qualitative methodology allowed for the different experiences to be articulated. Key excerpts from the interviews that reflect the experiences and thoughts of those participating in the healing conferences are included in this report.

It is also crucial to analyse the process in this case in terms of applicability to other situations. As this case study, and the larger research project, will be presented as a restorative justice model potentially to be incorporated by elements of the justice system, it is essential to ascertain the applicability of this process to other cases. The transcribed interviews were also analysed to determine the thoughts of each participant with respect to the applicability of the process undertaken in this situation to other situations.

The transcribed interviews were analysed using a process of coding that is frequently employed in qualitative research. "The primary task of coding is to identify and label relevant categories of data, first concretely (in first-level coding) and then abstractly (in second-level coding)" (Tutty and Rothery, and Grinnell 1996:100).

As indicated there are two levels of coding involved in the analysis of the data.

> "First-level coding is predominantly concrete and involves identifying properties of data that are clearly evident in the text. Such content is found without combing the data for underlying meaning. Second level coding is more abstract and involves interpreting the meaning underlying some of the more obvious ideas portrayed in the data." (Tutty et al, 1996:100)

There are five tasks that must be completed in first-level coding of data. The first task involves identifying 'meaning units' in the data. 'Meaning units' are the building blocks for the categorization and classification of data, and consist of segments of the transcript that reveal information about what the interviewees are saying (Tutty et al, 1996:101). Identifying 'meaning units' involves reading the transcripts and assigning a

code to a section, or segments, of text that describes a phenomenon, articulates an idea, or denotes a certain response.

The second task in first-level coding involves identifying categories by grouping all of the 'meaning units' based on their similarities. The technique used to guide the categorization process is referred to as 'constant comparison'. This process begins after all the data have been examined and the meaning units have been identified. The meaning units are then categorised based on similarities and differences, and coded accordingly. Categories and codes are identified and created as the meaning units are examined. The dynamic process of constant comparison "continues until all meaning units are classified into either previously described or new categories" (Tutty et al, 1996:103).

The third task in first-level coding involves assigning codes to the categories that were created through the process of constant comparison. The codes "are simply a form of the category name that becomes a short-hand method of identifying the categories" and usually consist of a string of letters or symbols (Tutty et al, 1996:105) (for a list of codes used in this analysis, see Appendix C). The fourth task involves reviewing the transcripts and data to ensure that the analysis conducted accurately reflects what the participants have said, and that the categories 'fit' together in a manner that is clear and cohesive. The final task is to determine when to stop the process of first-level coding.

According to Tutty et al (1996:106), the most common indicator that the process of first-level coding should be brought to a close is that no new information is being gathered with new research participants. Essentially, no new categories are revealed and the meaning units derived from the new interviews fit easily into the existing categories.

"This process is called 'category saturation'....the data become repetitive and further analysis only confirms the ground that you have already covered" (Tutty et al, 1996:106).

Performing the above five tasks of first-level coding provides the foundation upon which the next level of analysis – second-level coding - can be conducted. As mentioned, second-level coding is more abstract that first-level coding and involves interpretation of the categories that were developed in the initial coding process. In this level of analysis, the focus is shifted "from the context of the interviewee to the context of the categories", thus allowing for a level of analysis that is further removed from association with the interviewee. Second-level coding involves "(1) retrieving meaning units into categories, and (2) comparing categories" (Tutty et al, 1996:107).

The first task in second-level coding is to take all of the meaning units that have been drawn from each transcription, and remove them from the context of the interviewee by aggregating them into categories. As a result, all of the meaning units from each category are grouped together in this process. The second task at this level of analysis is to compare and contrast the resultant categories to assess any relationships between them. According to Tutty et al (1996:108), the "goal is to integrate the categories into themes and subthemes based on their properties." The themes and subthemes are then coded in a manner similar to the codification process undertaken during first-level coding. The major conclusions of this thesis will then be drawn from the themes that have been derived from the coding process.

CHAPTER 3 – RESTORATIVE JUSTICE

Restorative justice is a term that has been used with increasing frequency in criminal justice circles. It is also a term that has several different interpretations and applications contingent on the context in which it is being applied. As well, it is a term with implications for justice processes that differ dramatically from current retributive justice processes.

Restorative justice and retributive justice vary in a number of ways. According to Zehr (1990:181), within the framework of retributive justice "crime is a violation of the state, defined by lawbreaking and guilt." The justice system determines guilt and administers punishment within the adversarial court system all the while operating within a specified system of rules and laws. Within the framework of restorative justice, crime is viewed as a violation between people and relationships. "Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance" (Zehr, 1990:181).

The Canadian justice system is based on the retributive model of justice in which blame is established, and punishment is administered. For the most part, victims are relegated to a marginal role in this process with little regard for their needs resulting from the crime. Restorative justice processes attempt to take a more holistic approach to justice by including victims and communities in the correctional process.

It is important to note that discussions pertaining to restorative and retributive justice processes are frequently reduced to overly simplistic dichotomies which do not reflect the complexities and strengths inherent in each of these processes (for example,

see Van Ness and Strong, 1997; Bazemore and Schiff, 1996; and Griffiths, 1996). These discussions also tend to imply that retributive and restorative processes cannot function simultaneously, or that they are mutually exclusive in nature. A detailed discussion of this issue is beyond the scope of this thesis. However, it is important to note that this thesis is not attempting to portray one process as being 'superior' to the other, and is not advocating the replacement of the current justice system with restorative processes. Instead, the incorporation of restorative processes into the current justice system is being advocated, and the manner in which this could occur is presented. Arguably, there is a role for both processes in the justice system.

Due process, which is incorporated in the current justice system in Canada, "emphasises procedural fairness and a presumption of innocence" (Griffiths and Verdun-Jones, 1994:10). As such, due process is in place to protect the rights of the accused from the possible misuse of power of the agencies of the state. The trial process, which takes place in the courts, is that part of the justice system where due process is employed. It is important that the due process of law is followed to ensure that innocent persons are not convicted of criminal offences.

The focus on the protection of the rights of the offender often leads to complaints that the interests and needs of victims are ignored. Ashworth (1993:281) argues that victims have a right to services in the justice system such as those offered through various victim services programs. However, it is questionable that victims have a right to be involved in the procedural aspects of the criminal process such as decisions regarding bail, prosecution, or sentencing. "Whereas victims' wants and needs, howsoever defined, ought to be the basis for the provision of victim services, they have much less relevance

to the determination of what procedural rights (if any) victims should have in the criminal process" (Ashworth, 1993:282). Arguably, restorative justice processes could be incorporated in the justice system in an attempt to address the needs of the victims.

Wright (1996:255) acknowledges that there is some tension inherent in operating a restorative service within a retributive system, but that the "difficulties can be reduced to acceptable levels with good management and practice." These tensions will be presented in a later discussion detailing the differences between retributive and restorative processes. Efforts should be made to resolve these tensions as both retributive and restorative philosophies have much to offer the victim and offender.

This section will discuss the principle and concepts of restorative justice, and will provide an overview of restorative justice applications. As well, the commonalties of restorative justice and a traditional Aboriginal world view will be presented along with the issues that arise from such comparisons and generalities. Also included in this section is an overview of the restorative practices within Correctional Services of Canada using traditional Aboriginal healing processes. This literature review will serve to provide a context for the restorative processes undertaken in the Helen Betty Osborne case and will help to illustrate the role of this process in the justice system.

i) principles/concepts of restorative justice

Restorative justice promotes a different way of thinking about crime, and promotes a different way of dealing with crime. Within a restorative justice approach the focus is on the harm caused by the crime to the victim, to the community, and to the offender. Reparation of the harm is a central component of restorative justice. The inclusion of the victim in the justice process is different from current justice systems

which frequently relegate victims to the status of witness for the prosecution, usually with little consideration for their needs as victims of crime. Restorative justice actively considers the needs of victims and allows a more active role for them in the justice process. Within a restorative justice system, success is not measured by the amount of punishment inflicted on the offender, but by the amount of harm that has been repaired, or potentially prevented (Van Ness and Strong, 1997:42).

Conventional justice systems use a definition of crime which focuses strictly on the laws that have been broken, and how the state will sanction the offender. Restorative justice broadens the range of parties involved in the justice process by including victims and communities who were affected by the criminal activity. The importance of community involvement and initiative with respect to responding to and reducing crime is acknowledged in a restorative justice model. There is recognition that crime prevention is not solely a responsibility of government (Van Ness and Strong, 1997:42).

With respect to responding to crime, restorative justice emphasises the recovery of the victim through redress, vindication, and healing. Restorative justice supports reparation, fair treatment, and habilitation as a means of recompense by the offender. Another means by which restorative justice responds to crime is through establishing processes that allow the parties involved to discover the truth about what happened and the harms that resulted. As well, the injustices that occurred can be identified, and action necessary to address the harms can be discussed. This process can occur in a variety of ways including face-to-face meetings with the aid of a facilitator, or they can take place within the context of a talking circle (Van Ness and Strong, 1997:42).

From processes such as talking circles and meetings between victims and offenders, evaluation process can be established that allow the community and government to consider whether new strategies for crime prevention are needed. Restorative justice operates to prevent crime in other ways such as building on the strengths of communities and government. With restorative justice processes, government can bring and maintain order to a community through a fair, effective and conscientious use of force. At the same time, the community is able to build peace through strong, inclusive, and honest relationships with all of its members (Van Ness and Strong, 1997:43).

Restorative justice measures may prevent crime in other ways as well. Emphasising the need to repair past harms allows parties involved in the restorative justice process to address and resolve issues resulting from the crime, and to prepare for the future relatively free from crime related feelings of anxieties, anger, fear, or guilt. By reconciling offenders with those against whom they have committed an offence, the offender is truly held accountable at the most basic level – the personal level. This allows the offender to see and hear the impact of his/her actions on those affected by the crime, and may influence future crime-related decisions (Van Ness and Strong, 1997:43).

Restorative justice measures also may prevent future crimes by teaching communities how to reintegrate victims and offenders. Both victims and offenders are stigmatised by the crime. Offenders are stigmatised for the choice they made to commit the crime, and for their involvement in the justice system; those who were incarcerated face the additional stigma of being an ex-prisoner and a parolee. Victims may blame themselves for the crime, may experience elevated levels of stress and fear that make

performing routine activities impossible, and may feel isolated within their community by their status as a victim and fear of being victimised again. Some victims may find that community members treat them as being more vulnerable, or in need of protection, due to their victimization. Based on the stigmatisation of offenders and victims, both benefit from community reintegration processes (Van Ness and Strong, 1997:112-116).

According to Van Ness and Strong (1997:131), the community has a responsibility in helping the victim and offender overcome barriers to reintegration; one of these barriers is the stigmatisation already discussed. The role of the community in the reintegration of the offender is to hold that person accountable for the harms inflicted on others. As well, the community must offer the person real opportunities to try and gain a place in the community in the form of employment, or volunteer work. With respect to helping the victim, the community should ensure that the person is compensated for any losses. The community should also address the harms of the victim in a caring and supportive manner.

Restorative justice attempts to address the needs of all persons affected by the crime – the victim, the community, and the offender. Operating in this manner, restorative justice processes can be applied during different stages of the justice process.

ii) applications of restorative justice

Restorative justice processes can be initiated and implemented at any stage of the justice process. This section will provide an overview of the application of restorative justice measures during some of these different stages.

a) as a means of reducing harm

Restorative justice measures have been used as a means to reduce the harm caused to victims by the commission of a crime. Examples of these programs include victim and offender mediation programs, circle sentencing, family group conferencing, and community sentencing panels and youth justice committees. These programs all share the feature of increasing the role of the victim in the justice process.

Victim and Offender Mediation programs bring these parties together with a facilitator in a safe and controlled environment. The victim is afforded the opportunity to address the offender, and the offender is afforded the opportunity to apologise for the harm resulting from the commission of the offence. These mediation sessions are helpful to the victims as they provide an opportunity for reducing fear of revictimization (i.e. they discover they were random victims and were not specifically targeted), and for demanding accountability and reparation from the offender. The sessions are also helpful for the offender as they are held personally accountable for their actions and have an opportunity to begin reparation (The Church Council on Justice and Corrections, 1996:36).

Circle Sentencing programs were founded in traditional Aboriginal methods of dealing with community members who violated community norms. In these programs, members from the community, family members, the offender, and the victim(s) sit in a circle and discuss appropriate sanctions for addressing the crime. Keeping the offender out of prison is not the goal of this process; instead the decision of the circle with respect to potential sanctions is presented to the judge for consideration. Sentencing circles "provide for a community-based, pre-sentence advisory process that presents a healthy opportunity for emotional expression of grieving, anger, and support, and has a strong

focus on accountability, reparation, and restoration of peaceful and just relations in the community" (The Church Council on Justice and Corrections, 1996:36).

Family Group Conferencing is a restorative justice process with its basis in the traditions of the Maori people of New Zealand. Most family group conferences focus on young persons who have committed an offence. This process is similar in concept to a sentencing circle; however, attendance is more restricted and usually includes family members, the offender, the victim(s), and other immediate supporters. Family group conferencing satisfies justice in much the same way as circle sentencing; the difference is that the process involves re-integrative shaming during which disapproval for the offender's behaviour is expressed in conjunction with gestures of re-acceptance into the community. This process has been found to satisfy the needs of the victims, and to reconnect offenders with their families and communities in a healthy way, thus reducing rates of incarceration and recidivism among young people (Braithwaite and Mugford, 1993:168).

Youth Justice Committees and Sentencing Panels consist of volunteers community members or Aboriginal Elders who determine or recommend a disposition for a case. These committees or panels usually incorporate restorative justice measures such as mediation, involvement of the victim, and restitution or reparation (The Church Council on Justice and Corrections, 1996:38).

Restorative justice measures used as a means of reducing the harm caused by the crime can be initiated prior to sentencing the offender, as part of the sentencing process, or during a period of incarceration. They are frequently incorporated with young people as is the case with Family Group Conferencing and Youth Justice Committees.

b) as an alternative to incarceration

In Winnipeg, Manitoba, the John Howard Society has developed and implemented a restorative justice program called 'Restorative Resolutions' as an alternative to incarceration. The offender is sentenced to the program as opposed to a period of incarceration. The goals of this program are "to promote a model of restorative justice through providing innovative community based responses to an offence; to be victim sensitive; [and] to empower the community to become involved in the criminal justice process" (Richardson et al, 1996:211).

The activities in which the Restorative Resolutions program engages to meet its goals include:

> accepting referrals and identifying eligible offenders; developing restorative, community based plans with these offenders, with input from the victim(s) and the community; and supporting and supervising offenders who are sentenced to carry out their community based plans (Richardson et al, 1996:211)

The community-based plans are developed in conjunction with the offender and victim. The plan is then presented to the court at the time of sentencing with the recommendation that the offender be sentenced to complete the restorative program as opposed to completing a period of incarceration. According to a review of the program conducted by Bonta et al (1998) on behalf of the Solicitor General of Canada, the Restorative Resolutions program was generally successful in meeting its goals of restorative justice. Over a three and one-half year period, this program provided an alternative sentence to incarceration for 81 Aboriginal and non-Aboriginal people who might otherwise have gone to prison. As well, the participants in the program were less likely to re-offend than comparable offenders in other community based programs.

Bonta et al (1998:31) concluded that the Restorative Resolutions program was a "safe and viable option for supervising inmates in the community and promoting victim involvement in the justice system." The Restorative Resolutions program in Winnipeg is an example of the successful use of restorative justice as an alternative to incarceration.

There are other programs that attempt to meet the goal of using restorative justice measures as an alternative to custody. These measures include diversion programs, community service orders, intensive supervision probation, family preservation models, alternative placement/residential programs, bail options programs and administrative sanctions, and client specific planning. These programs use restorative justice methods in an attempt to provide supervision in the community as an alternative to custody (The Church Council on Justice and Corrections, 1996:86).

c) as a means of reducing periods of incarceration

Reducing periods of incarceration is another means of incorporating restorative measures in the justice system. Restorative processes can be used during a period of incarceration to assist an offender in accessing early release mechanisms such as temporary absences, or day parole. The early releases provide an opportunity for increased supervision in the community and provide a means by which community reintegration and support programs can be accessed (The Church Council on Justice and Corrections, 1996:150). The Restorative Community Reintegration Pilot Project currently being implemented by the John Howard Society of Manitoba is an example of a program that will use restorative justice measures to reduce periods of incarceration by advocating for early release on parole, and by assisting in community reintegration

planning as a means of reducing future risk of recidivism (The John Howard Society of Manitoba, 1998).

Restorative justice processes are measures that, if incorporated in the justice system on a regular basis, may result in an overall reduction in rates of incarceration, and length of incarceration. The next section will address restorative justice measures with respect to the needs of Aboriginal people.

iii) commonalties with traditional Aboriginal world view

Restorative justice processes and traditional Aboriginal healing practices appear to have many similarities. Restorative justice "focuses on the harmful effects of the offenders' actions and actively involves victims and offenders in the process of reparation and rehabilitation" (Waldram, 1997, p.24). Traditionally, dealing with crime in Aboriginal communities meant "resolution of disputes, the healing of wounds and the restoration of social harmony...The matter was considered finished once the offence was recognised and dealt with by both the offender and the offended" (Manitoba, 1991a, p.27). The philosophies behind these approaches appear to be more similar than different; however, closer examination of the similarities of these approaches is essential.

Table 1 provides a comparison of the central tenets of the Anglo-Canadian approach, the restorative justice approach, and an Aboriginal world view approach to understanding the resolution of offending behaviour. The shared similarities between restorative justice and traditional Aboriginal world views are apparent, as are the dissimilarities between these views and the views of the current system.

Table 1

Anglo-Canadian Law and Justice, Restorative Justice, and Aboriginal World View

CURRENT SYSTEM	*RESTORATIVE JUSTICE*	ABORIGINAL WORLD VIEW
Crime is a violation of the state.	Crime is an act against another person and the community.	Crime is the violation of one person by another.
Focus is on establishing blame or guilt.	Focus on problem solving, on liabilities/obligations, on the future (what should be done).	The focus is on problem-solving and restoration of harmony.
Justice is defined by intent and process.	Emphasis on dialogue and negotiation. Restitution as a means of restoring both parties; goal of reconciliation/restoration.	Dialogue and process negotiation are normative. Restitution and reconciliation are used as a means of restoration.
Community does not play a leading role.	Community as an active facilitator in the restorative process.	The community acts as a facilitator in the restorative process.
Action revolves around the offender. Accountability of the offender is put in terms of punishment.	Accountability is defined as assuming responsibility and taking action to repair harm.	The offender is impressed with the impact of his/her action on the total order.
Offences are strictly legal and devoid of moral, social, political, and economic considerations. Past behaviour is important.	Crime has both individual and social consequences.	The holistic context of an offence is taken unto consideration, including moral, social, economic, political and religious, and cosmic consideration.
Social stigma of criminal behaviour is almost unremovable.	The offender is defined by capacity to make reparation.	Stigma of offence is removable through conformity.
Remorse, restitution, and forgiveness are not important factors.	Restoration and reconciliation are goals.	Remorse, repentance and forgiveness are important factors.
Offender plays a passive role depending on proxy professionals.	Offenders are active participants in the restorative process.	Offender takes an active role in the restorative process.

Source: adapted from Griffiths (1996:200) and Bazemore and Schiff (1996:314)

As indicated in Table 1, restorative justice processes and traditional Aboriginal world views appear to share more similarities than either share with retributive justice concepts. For example, restorative justice models and traditional Aboriginal perspectives both view criminal activity in a more holistic manner than the retributive model. As such, the restorative models tend to be more inclusive with respect to considering the effect of the criminal activity on the victim and the community. The retributive model defines criminal activity as a violation of the laws of the state; whereas restorative and Aboriginal models view criminal activity as causing injury to a person, or people, and relationships (Griffiths, 1996:200; and Bazemore and Schiff, 1996:314).

Within the retributive perspective of the current system, the focus is on the offence and the establishment of blame and guilt. This differs from a restorative, or Aboriginal world view, perspective where the focus is on the offender and what must be done to resolve the issue in a manner that is satisfactory to all parties. As such, the current system focuses on the past and what was done as opposed to the future and problem-solving.

Accountability is also viewed differently within the different perspectives. For example, in the retributive approach, the offender is held accountable through the court system and accountability is defined in terms of the punishment imposed. Within an Aboriginal world view or restorative perspective accountability is defined as assuming responsibility and taking action to repair harm. The offender is impressed with the impact of their actions on the people and relationships involved. The offender is held accountable to the person who was hurt by facing that person and providing explanation for their actions (Griffiths, 1996:200; and Bazemore and Schiff, 1996:314).

The concepts of remorse, restitution, and forgiveness are not carefully considered in the current justice system. Sentencing may be influenced by a show of remorse on the part of the offender, and as well victims may receive some restitution to compensate for their injuries or loss. These aspects are not central to a retributive process. Within the restorative models restoration and reconciliation are goals that are the focus of the mediation process. Remorse, repentance, and forgiveness are considered to be important within the Aboriginal world view perspective (Griffiths, 1996:200; and Bazemore and Schiff, 1996:314). However, there is some dispute with respect to the role of forgiveness in the Aboriginal world view perspective.

LaRocque (1997:85) questions the role of forgiveness as being consistent with a traditional Aboriginal perspective, and argues that "pressuring victims to 'forgive' is more Christian and patriarchal in origin than it is either Aboriginal or therapeutic." The role of forgiveness may be questionable within the traditional Aboriginal perspective, but the concept of restitution is not as it was customary for presents to be offered and accepted as atonement for harm (Coyle, 1986:622).

As mentioned, restorative justice and traditional Aboriginal world view perspectives appear to share more similarities than either share with retributive processes. These similarities lend support for the notion that traditional processes can be incorporated as restorative justice practices within the current justice system as aspects of the current system begin to take a more restorative approach to dispute resolution. However, there are caveats to be issued with respect to making sweeping generalities about traditional Aboriginal world views, restorative justice processes, and retributive justice processes. These issues will be considered in the next section.

iv) issues to be considered

There are several issues to be considered when discussing the application of traditional Aboriginal healing processes to resolve current-day criminal justice issues. The first concern relates to the construction of charts or tables such as Table 1 in this document. Comparisons such as those depicted in Table 1 are relatively common in the literature (for example Griffiths (1996:200); Bazemore and Schiff (1996:314); and Griffiths and Belleau, 1995). However, LaRocque (1997:77) expresses concerns about the use of charts and tables for such comparisons as this practice may lead to the perpetuation of stereotypes.

> "Among other things, 'typologizing' Aboriginal cultures results in gross generalisations, draws on stereotypes, reduces Aboriginal cultures to a pitiable handful of 'traits', and by oversimplifying, ends up infantilizing the very cultures Aboriginal people are trying to build up in the eyes of the colonisers. Further, "reducing and fitting cultural expressions into charted, boxed-in modules falls prey to simplistic, rigid, formulaic, and doctrinaire 'solutions' to very complex issues and problems" (LaRocque, 1997:77).

At issue is that such charts do not effectively portray the complex and dynamic social systems of various Aboriginal cultures, and do not accurately reveal the processes incorporated to address the violation of social norms. This argument can be extended to apply to retributive and restorative processes presented in such charts.

Another concern with respect to the current-day interpretation of traditional processes relates to the fact that the portrayal and application of Aboriginal traditions through such simplified methods as those presented in charts or tables does not address the needs of the victims. Of concern is that since the focus of traditional practices is

portrayed as being on the restoration of harmony, the needs of the offender and the community are considered without due regard for the victim. Interpretation of traditional practices in this manner implies that the collectivity is more important than the individual rights of the victim, and that 'healing' the offender may come at the expense to the well-being of the victim (LaRocque, 1997:80). This may be inconsistent with traditional practices which placed a strong focus on compensation to the victim in an attempt to repair injury and reduce harm.

Yet another concern expressed by LaRocque (1997:80) relates to the notion that Aboriginal traditional mechanisms for dispute resolution are appropriate in every situation, including those involving personal violence such as sexual assault or domestic violence. Bringing a victim and offender together for 'healing' in such a situation may lead to further damage to the victim, especially if the victim has been traumatised by the attack. With respect to sexual assault, "keeping child molesters and rapists in the same vicinity as victims puts victims at greater risk, and studies on sexual abuse also strongly indicate it is psychologically destructive for victims to be subjected to their attacker's presence" (LaRocque, 1997:81).

Also questioned by LaRocque (1997: 83) is the accurate representation of traditional Aboriginal methods of dispute resolution as portrayed and conducted in current practice. Research conducted by LaRocque (1997:83) reveals that in many cultures "offender mediation processes such as 'healing circles' were not usually pursued", and that more punitive processes were exercised to maintain social control and to address individual transgressions.

In fact, LaRocque (1997:83) argues that the healing circle process incorporated to deal with sexual assaults in the community of Hollow Water, MB, may not be consistent with the manner in which sexual assaults were traditionally addressed in Aboriginal communities. In the case of Hollow Water, the question is raised as to whose traditions are being followed. According to LaRocque (1997:84), "all original cultures exercised mores and strict taboos to regulate sexual relations" which included such sanctions as death, ostracism, and spiritual consequences.

It is important to be aware of, and consider, the concerns expressed by LaRocque (1997) with respect to the application of traditional Aboriginal healing processes in the current-day justice system. However, these concerns do not negate the role of traditional processes as a potentially effective and valuable restorative justice measure. Restorative and traditional processes may not be applicable in all circumstances, but in cases where they are employed, it is paramount that the needs of victims be carefully considered.

While not disputing the relevance of LaRocque's (1997:77) criticisms with respect to the generalisation and simplification of Aboriginal cultures and values through the use of comparative charts and tables, it must be acknowledged that these comparisons reduce Western perspectives in the same manner. For example, Table 1 states that the Western system views crime as a "violation of the state." This broad and general statement does not consider the victim in the crime. However, the Western system does provides for involvement of the victim in the justice process through the submission of a victim impact statement to be read in court prior to sentencing the offender (Griffiths and Verdun Jones, 1994:36). If nothing else, these charts and tables provide a useful means

to compare the basic tenets of the different perspectives, even though they must be considered as broad generalisations.

LaRocque's (1997:83) argument that mediation between victim and offender was not frequently pursued by Aboriginal cultures is as difficult to dispute as it is to substantiate as codification of these practices was not part of the traditional culture, and as such there are few written records. The records available that detail methods of dispute resolution incorporated by traditionally nomadic groups such as Ojibwa and Cree were created by European observers of these practices, and hence the interpretation is subject to bias (Coyle, 1986:613). However, Coyle (1986:622) reports that written records indicate Ojibwa and Cree communities that utilised negotiations between victims and offenders in an attempt to reconcile.

These written records, substantiated by the oral history of the Cree and Ojibwa people, support the use of mediation as a traditional means of resolving disputes between victims and offenders. Questions are raised in the literature (for example, see Dickson-Gilmore, 1992; Griffiths and Belleau, 1995; and McDonnell, 1992b) with respect to the 'invention' of traditions and customs that challenge the legitimacy of current day practices as being reflective of traditional activities. Assimilationist government policies and colonisation strategies attempted to destroy traditional practices and cultures. Many traditional practices may have been lost due to these policies. However, many of the customs were practised covertly and traditions were maintained. The use of victim-offender mediation as a traditional means of dispute resolution is arguably not an 'invented' tradition as it can be substantiated through oral history and written records.

Traditions evolve and change, as do cultural practices. The 'fit' between restorative justice and Aboriginal 'culture' from the past is less important than how it fits with the interests of contemporary Aboriginal peoples; in this case, how it was beneficial to the Osborne family and Dwayne Johnston.

v) restorative practices within Correctional Services of Canada using traditional methods

There are many examples of restorative justice practices incorporating traditional Aboriginal healing process in Canada; however, most of these are at the community level, and are not available to offenders incarcerated federally or provincially (Griffiths, 1996). Traditional spiritual ceremonies and counselling are available to inmates incarcerated in provincial and federal institutions through the services of Elders. However, there are no programs in the institutions that combine traditional practices with restorative justice measures and which also include the victim in the process (Waldram, 1997). The powerful combination of these factors is what makes the Helen Betty Osborne case so unique.

The restorative justice initiatives in place at the community level are frequently utilised with young offenders and are often diversion programs or alternative dispute resolution programs. These mechanisms are applied as an alternative to incarceration, and are dealt with at the community level under the supervision of community members (Linden and Clairmont, 1998). In many of these cases, the victims are included in the mediation and resolution process (Griffiths, 1996:202). However, these programs are not readily available to those in the institutions (Correctional Service of Canada, 1998a).

In recent years, the National Parole Board has incorporated, to a greater degree, services that focus on Aboriginal culture and values. According to a consultation paper released by the Solicitor General (Canada, 1998a:24):

> The National Parole Board has developed and implemented policies and alternative decision models which respect Aboriginal culture and values. In 1992, the Board initiated elder-assisted hearings based on restorative approaches with panels comprised of Aboriginal and non-Aboriginal Board members.

The role of traditional Aboriginal healing practices as tools for rehabilitation are relatively new restorative justice initiatives in the Canadian justice system. The National Parole Board (NPB) and Correctional Services of Canada (CSC) are beginning to realise the potential role of these practices as a means of successfully reintegrating offenders back into the community. However, usually victims are not included in these restorative processes.

From a broader perspective, there is a renewed interest in restorative justice measures as is evident through the work of the John Howard Society, and recent publications by Van Ness and Strong (1997), Messmer and Hans-Uweo (1992), Umbreit (1994), Wright (1996), Zehr (1990), and Wright and Galaway (1989). There has also been literature published recently addressing the role of traditional Aboriginal teachings within the correctional system. These works focus on reconciliation and healing and include such works as Waldram (1997), Ross (1996 and 1992), Price and Dunnigan (1996), and Silverman and Nielsen (1994).

In 1996, the Correctional Service of Canada established a Restorative Justice and Dispute Resolutions Unit at headquarters in Ottawa. This two-person unit is responsible for coordinating restorative justice initiatives within the Correctional Service of Canada.

This unit has been in existence for approximately five years, and operates in conjunction with non-profit organizations such as the John Howard Society and the Elizabeth Fry Society.

The three main functions of the unit are education, research and development, and capacity building. The unit conducts "educational presentations to key stakeholders at internal and external events and conferences" (Correctional Service of Canada, 1998b:8). As well, the unit develops community and agency partnerships relevant to the advancement, sponsorship, and evaluation of restorative justice initiatives. Finally, the unit provides staff mediation training as a means of expanding the capacity for internal dispute resolution, and provides training for CSC staff in restorative approaches (Correctional Services of Canada, 1998b:8).

The Restorative Justice and Dispute Resolutions Unit of Correctional Service of Canada does not administer any programs within federal institutions. To date, there are no established programs within Canadian federal institutions that bring victims and offenders together in a restorative justice process. As such, there are no victim/offender restorative programs within the institutions that incorporate traditional Aboriginal healing processes (Correctional Service of Canada, 1998).

The only federal program in Canada to involve victims in the restorative process while the offender is still incarcerated is a pilot project initiated by the John Howard Society of Manitoba. The John Howard Society is in the process of implementing a pilot project incorporating restorative justice measures at the offender-release stage of incarceration. The Restorative Community Reintegration Pilot Project of the John Howard Society of Manitoba will apply to federally incarcerated inmates who are

approaching their parole eligibility date. This pilot project incorporates restorative justice processes at the parole stage of incarceration; however, it does not necessarily incorporate traditional Aboriginal healing processes (John Howard Society of Manitoba, 1998). Of interest is the fact that this pilot project bears a striking resemblance to the process undertaken in the Helen Betty Osborne case in 1996 with the major difference being that in the Helen Betty Osborne case the entire process was grounded in traditional practices.

The restorative justice measures are incorporated to address the needs of offenders and victims of crime by attempting to "restore that loss of ability by the victim to feel safe and secure in the community, while at the same time providing new direction for the offender in coming to terms with the impact of their behavior upon their victim(s)" (John Howard Society of Manitoba, 1998). This sense of security for the victim is especially important if the offender plans to return to the community where the offense occurred, and where the victim may still reside, especially if it is a small community where the likelihood of accidental victim-offender contact is high.

The Restorative Community Reintegration Pilot Project will also attempt to reduce periods of incarceration through successful application for, and completion of, parole. This project is of specific relevance to Aboriginal offenders as they have a lower success rate with respect to successful application for, and successful completion of parole (Canada, 1998b). The prior discussion pertaining to restorative justice practices and traditional Aboriginal means of sanctioning community members also speaks to the relevance of this project to Aboriginal offenders.

The Restorative Community Reintegration Pilot Project will be incorporated into the offender release planning stage and the parole stage of the sentence. Detailed client-specific release plans will be developed in conjunction with the case management staff at Correctional Services of Canada (CSC), the offender, and the victim. The National Parole Board (NPB) will be presented with the plan for consideration. The needs and concerns of the victim, the needs of the offender, and the resources available in the community will be considered during the planning process. The plan will be developed in such a manner as to answer the question 'What would it take to prevent this offender from re-offending?" (John Howard Society of Manitoba, 1998).

The Restorative Community Reintegration Pilot Project will operate in concert with the offender release planning process that is utilized by the case management staff within the CSC. This process is intended to complement that of the offender release planning process and not replace it in any way. It is also a means by which current deficiencies in the release process can be strengthened.

Currently, the release planning process incorporated by CSC does not make provision for direct involvement of victims in the process. The Restorative Community Reintegration Pilot Project will provide the victim with the opportunity to become involved in this process in a safe and controlled setting with appropriate supports, such as counselling. One of the potential obstacles identified in the proposal for the Restorative Community Reintegration Pilot Project is the very real prospect of low victim participation.[1] The evaluation of the Restorative Resolutions Project (Bonta et al, 1998:18) revealed low victim participation in the restorative process. Bonta et al

(1998:18) argued that many victims want to "forget the experience", or they "have not been sufficiently affected by the victimization to seek some form of emotional closure to the experience." Galaway (1988:671) reported similar findings and also found that some victims "did not want to go to the trouble of meeting with the offender, usually because...they did not think it was worth the bother and did not think a meeting would serve any useful purpose." This mindset on the part of the victims may be reflective of a lack of understanding of restorative justice principles and potential benefits. As well, it may be indicative of the inherent difficulty to implement restorative measures within a largely retributive justice system.

Another deficiency of the current system that is addressed in the Restorative Community Reintegration Pilot Project is the insufficient community staffing or resources available to give attention to the needs or concerns of victims. As victims become more involved in the release planning process, their concerns and fears with respect to being revictimized can be addressed (John Howard Society of Manitoba, 1988).

Through the Restorative Community Reintegration Pilot Project, the victim will be given the opportunity to meet face-to-face with the offender. This meeting will take place in a safe, controlled setting where the victim has control over the direction of the meeting, or has directed a facilitator with respect to the desired format of the meeting. An event such as this is emotionally charged for all involved, and it is important that the appropriate supports be in place for both the victim and the offender. Meeting in this manner may facilitate the healing process for both parties as it will provide an

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[1] Funding to the Restorative Community Reintegration Pilot Project was cut in 2001 as a result of minimal victim involvement in the project. An analysis of this pilot project is being prepared by Professor Steve

opportunity for the victim to ask questions, and have concerns addressed. The meeting may provide the offender with the opportunity to begin the process of reparation necessary for their own well-being (Umbreit, 1993:70).

This meeting may also serve the purpose of removing the mystique of the offender in the eyes of the victim. The offender may no longer be the larger-than-life figure that continues to threaten the personal well-being of the victim. The meeting may allow the victim to see the offender in a more personal manner, and realise that the threat of future violence from this person is potentially eliminated. The offender may also be able see the victim as a real person that has been hurt by their actions. They may take the opportunity to apologise, and begin to address their own feelings of guilt over their actions (Umbreit: 1993:70).

Offenders are expected to be active participants in the Restorative Community Reintegration process. The offenders who do participate must do so on a voluntary basis, they cannot be expected, coerced, or forced to participate. As well, offenders will be asked to identify potential or actual community supports that can be accessed. They will also be expected to participate in developing "a process for involving community support groups both in the developing of parole plans, and in assisting in the monitoring of the plans" upon release in the community. Offenders are expected to develop plans to address how they plan to deal with any concerns the victim may express. They are also expected to detail how they intend to contribute to their community in a positive manner. Offenders who do not meet their commitment to the project could potentially be returned to the institution for violation of their parole (John Howard Society of Manitoba, 1998).

Brickey. (Personal communication, S. Brickey, 2001-06-15, University of Manitoba)

As mentioned, the Restorative Community Reintegration Pilot Project being implemented within CSC by the John Howard Society focuses on restorative justice measures at the parole stage of incarceration, and does not necessarily incorporate traditional Aboriginal healing processes. However, as discussed, many of the restorative aspects of this project lend themselves to the incorporation of traditional practices. This is the first project of its kind in Canada, and may prove to be the impetus for further development in this area.

CHAPTER 4 – *APPLICATION OF RESTORATIVE MEASURES IN THE HELEN BETTY OSBORNE CASE*

This chapter will provide a closer examination of the restorative process undertaken in the Helen Betty Osborne case. A chronology of the events will be presented as this provides a context for the restorative process itself. This chronology has been compiled from interviews with key participants, from media reports of the events as they occurred, and as well, from the second volume of the Aboriginal Justice Inquiry (Manitoba, 1991b).

The format of the Healing Conferences will be detailed with a focus on the process involved in these conferences as opposed to their content. Again, information with respect to the format of the conferences was compiled from key participants. Also, information with respect to the process of the conferences was gathered from an internal report prepared by the Regional Elder for the Pacific Region for the Correctional Service of Canada (CSC) regarding the conferences.[2]

Also presented in this chapter are some reflections of key people involved in the conferences and events that took place before and after the conferences. The focus of these reflections will be directed to answering the two research questions posed in this study: *a) How has participation in this restorative process affected those involved;* and *b) What is the potential for the application of this process to other situations?*

i) chronology of events

The chronology of events will cover the time frame dating from the murder of Helen Betty Osborne on November 12, 1971 to the decision of the Manitoba Department of Justice and the RCMP to close the case on February 12, 1999. This time frame is

[2] This report has been used with the permission of Frank Settee, Regional Elder for the Pacific Region.

covered in order to present the full time-line of the case to date, and to provide a context for the Healing Conferences.

- **November 12, 1971** – Helen Betty Osborne, 17 years old, was abducted from the streets of The Pas, Manitoba, by four men. She was brutally assaulted and stabbed fifty-six times with a screwdriver. The next day, her naked and mutilated body was found.

- **October/November 1986** – After fifteen years, first-degree murder charges were laid against two of the men involved in the murder – Dwayne Johnston and Lee Colgan.

- **March 1987** – The RCMP in Thompson, Manitoba, dropped the charges against Lee Colgan, and arrested James Houghton in connection with the murder.

- **November 1987** – The murder trial for Helen Betty Osborne began in The Pas, Manitoba. Johnston and Houghton plead not guilty. Colgan was granted immunity from prosecution in exchange for his testimony.

- **December 2, 1987** – Johnston was found guilty of second degree murder and sentenced to life in prison with no chance of parole for ten years. Houghton was acquitted by the jury.

- **December 5, 1987** – The Pas Chief Oscar Lathlin and Mayor Bruce Unfried demanded an inquiry into the murder of Helen Betty Osborne, and the ensuing police investigation.

- **June 19, 1989** – The Aboriginal Justice Inquiry began in The Pas, Manitoba, looking into allegations of racism and police handling of the investigation into the murder of Helen Betty Osborne.

- **August 10, 1989** – Dwayne Johnston refused to testify at the Aboriginal Justice Inquiry unless granted a new trial.

- **October 3, 1989** – The Aboriginal Justice Inquiry hearings are completed after hearing from more than 1000 witnesses and presenters.

- **August 29, 1991** – The Aboriginal Justice Inquiry was released and it issued a scathing report on the murder and subsequent investigation of the Helen Betty Osborne case. The report concluded that Helen Betty Osborne was killed because she was an Aboriginal woman. The report also determined that the investigation by police was sloppy and tainted by racism. As well, the report recommended that lesser charges be considered against Houghton.

- **January 28, 1992** – The Minister of Justice announced that an independent review into Houghton's case would be conducted.

- **April 16, 1992** – The independent review is completed and determines that no further charges are warranted against Houghton.

- **October 27, 1993** – Dwayne Johnston became eligible for day parole after serving seven years of a life sentence.

- **March 1994** – Dwayne Johnston began his day parole in a half-way house in British Columbia.

- **July 1995** – The family of Helen Betty Osborne are made aware that Dwayne Johnston is on day parole. They have not been contacted by the National Parole Board of his pending release. In the fall of that year, a petition was launched in Norway House protesting Johnston's parole.

- **November 12-18, 1995** – The Walk for Justice was initiated by the Women's Wellness Circle. About two hundred protestors walked eight hundred kilometres to Winnipeg from The Pas protesting Johnston's release on parole.

- **December 1995** - The Chief of Norway House, a Women's Wellness Circle Representative, and Eric Robinson, MLA for Rupertsland, met with senior Parole Board Officials in Abbotsford, British Columbia. They discussed Johnston's parole and the lack of input from the Osborne family regarding the Parole Board's decision to release Johnston. The Parole Board agreed to review the day parole decision.

The National Parole Board also agreed to travel to Norway House, Manitoba, to hold a public meeting into the parole decision, to allow the Osborne family to have input into the decision, and to review Volume 2 of the Aboriginal Justice Inquiry detailing the circumstances surrounding the murder of Helen Betty Osborne.

- **January 1996** - Members from the National Parole Board travel to Norway House to hold a public meeting. They also met with the Osborne family, and for the first time, sought their input into the decision to release Dwayne Johnston on day parole.

- **April 3, 1996** – The National Parole Board revoked Dwayne Johnston's day parole. He was returned to custody.

- **November 1996** – A delegation from Manitoba travelled to British Columbia to convene a healing circle with Dwayne Johnston and representatives from the CSC. Johnston agreed to take part in the conference after he had been participating in

counselling with an Elder at the prison in British Columbia. For the first time in twenty-five years, Johnston discussed his role in the murder of Helen Betty Osborne, and gave a statement to the RCMP. The statement was later released to the public.

- **December 1996** - Another Healing Conference was held with Cecilia Osborne, Grand Chiefs of the AMC and MKO, Eric Robinson, and Johnston. At this time, a series of sweat lodge ceremonies were planned with Johnston as part of the healing process. Johnston also gave a statement to the RCMP after this conference detailing his involvement in the murder of Helen Betty Osborne.

- **May – October 1997** - The first sweat lodge ceremony was held with Dwayne Johnston in May 1997. The second sweat lodge ceremony was held in July of the same year. In October 1997, a third sweat lodge ceremony was held with Johnston in Abbotsford, British Columbia.

- **September 1997** – The family of Helen Betty Osborne wrote to the National Parole Board expressing their opposition to the upcoming release of Dwayne Johnston on full parole.

- **October 10, 1997** - Johnston was granted full parole effective the end of November 1997. The decision of the National Parole Board was split with two in support of parole and one in opposition. At this time, Johnston agreed to testify if charges are laid against the other three men involved in the murder.

- **October 21, 1997** – The Osborne family received a copy of the National Parole Board decision. They decide not to appeal the decision

- **October 29, 1997** - Eric Robinson met again with Johnston in Abbotsford, British Columbia. Again, Johnston reiterated his commitment to working with the Osborne family to bring the others involved in the murder to trial.

- **December 12, 1997** – The Manitoba Justice Department and the RCMP established a three-person review team to look into the possibility of new charges being brought against the killers of Helen Betty Osborne.

- **March 24, 1998** – A fourth sweat lodge ceremony was held with Dwayne Johnston.

- **January 18, 1999** – A preliminary meeting was held with provincial justice officials, representatives of the RCMP, Cecilia Osborne, and Eric Robinson.

- **February 12, 1999** – A second meeting is held with provincial justice officials, representatives of the RCMP, Cecilia Osborne, and Eric Robinson. The RCMP closed the case after determining that there are no grounds for further charges against

anyone involved. Their review disputed the claims that one of Dwayne Johnston's co-accused was responsible for the death of Helen Betty Osborne.

ii) the Healing Conferences

This section will detail the process of the two Healing Conferences held in British Columbia in November and December of 1996. Of importance in this section is the presentation and examination of the restorative process undertaken as opposed to any details of the crime that may have been disclosed during the conferences. Unless otherwise stated, the names of those involved have not been changed to protect anonymity as these details were widely distributed in the media at that time.

These conferences gave the victim the opportunity to meet face-to-face with the offender in a safe, controlled setting where the victim had control over the direction of the meeting, or had directed the moderator with respect to the desired format of the meeting. An event such as this is emotionally charged for all involved, and it is important that the appropriate supports be in place for both the victim and the offender during the meetings and after.

It is important to note that prior to the offender meeting with the victim, Frank Settee, the Regional Elder for the Pacific Region, met and worked with Dwayne on a weekly basis for several months to prepare him for the meeting. In addition to participation in sweat lodge ceremonies, this preparation involved assessing the offender's level of understanding of traditional Aboriginal healing practices, such as sweat lodge and pipe ceremonies. As well, through counselling sessions, the Elder assessed and determined the level of respect that the offender held for such practices, and decided that the offender would be responsive to meeting with the victim in a setting that involved traditional practices. During the counselling sessions, the Elder provided the

offender with explanation and education relating to traditional practices and the spiritual meaning associated with those practices.

As well, the Elder assisted the offender to develop insight into his criminal actions, and the resultant effects on his life and the lives of those related to his victim, from a traditional Aboriginal perspective. For example, in traditional Aboriginal teachings, when a person takes the life of another, then that person is viewed as having violated the family of the victim. As such, s/he remains obligated to the family of the victim and must make atonement or amends in whatever way possible. In traditional times, this might involve providing the victim's family with food or other elements or assistance essential for survival. In this case, in meant meeting the family, and providing them with information relating to the offender's involvement in the crime. It also meant assisting the family by co-operating with the justice system should charges be brought against the other men involved in the crime. In this case, the offender came to understand that he was responsible for assisting the family to cope with the effects of his actions (Personal conversation with Regional Elder, Frank Settee, January 5, 1999). Prior to meeting with the victim, it is crucial that the offender develops insight into his actions and the resultant effect of those actions on others, otherwise the meeting will be of little benefit to the victim.

A meeting between victims and offenders, such as the Healing Conferences, serves many purposes. Mediation process may facilitate the course of healing for both parties as it provides an opportunity for the victim to ask questions, and have concerns addressed. "Mediation can often have a significant impact in facilitating the healing process and moving beyond one's sense of vulnerability" (Wright and Galaway,

1989:102). The meeting also provides the offender with the opportunity to begin the reparative process that is necessary for their own well-being. "They are given the equally rare opportunity to display a more human dimension of their character, even to express remorse personally" (Umbreit, 1993:70).

As well, meeting in this manner may also serve the purpose of challenging the stereotypes that victim and offenders may develop about each other. According to Galaway (1988:677), victim/offender mediation allows victims to test their views of the offender against reality, and thus can assist in removing the mystique of the offender in the eyes of the victim. As such, the offender may no longer be the larger-than-life figure that continues to threaten the personal well-being of the victim. The meeting may allow the victim to see the offender in a more personal manner, and to assess the potential, or threat, of future violence from this person (Umbreit, 1993:70).

As well, the meeting may provide the offender with the opportunity to see the victim as a real person that has been hurt by their actions, and have the opportunity to apologise, and to begin to address their own feelings of guilt over their actions. "Offenders rarely understand or are confronted with the human dimension of their criminal behaviour – that victims are real people and not only objects to be abused" (Umbreit, 1993:70). The active communication required in the mediation process "furthers communication, individualisation, and reduction of stereotypes of both crime victims and offenders" (Galaway, 1988:677). As such, the mediation process may serve to benefit both victims and offenders.

November 25, 1996

For this, the first of the two Healing Conferences held during 1996, the Manitoba delegation included Cecilia Osborne, sister of Helen Betty Osborne; Cindy Gamblin, a cousin to the Osborne family; Phil Fontaine, then Grand Chief of the Assembly of Manitoba Chiefs (AMC) and his assistant, Jim Lavalee; George Muswagon, then Grand Chief of Manitoba Kewatinowi Okimakanak (MKO); and Eric Robinson, MLA for Rupertsland, and his assistant, David Chadwick.

Those present from the CSC Pacific Region included Peter DeVink, Deputy Commissioner in Charge of the Pacific Region; Fraser Simmons, Director National Parole Board; Brian Lang, Director of Parole Services Division; Frank Settee, Regional Elder; Pamala Jack, Project Officer Aboriginal Programs; Ron Wiebe, Warden of Ferndale Institution, and Dwayne Johnston. Also in attendance from CSC were Dwayne's parole officer, two case management officers, and the Unit Manager from the unit where Dwayne was incarcerated.

morning session

The first meeting of the first Healing Conference was held during the morning of November 25, 1996 at Ferndale Institution. Ferndale Institution is a minimum security federal institution located in Mission, British Columbia. The morning session lasted approximately three hours.

All those listed above were present except Dwayne Johnston and Fraser Simmons, Director of the National Parole Board for the Pacific Region. The intent of the first meeting was to provide information to the victim with respect to the incarceration history of the offender. It provided an opportunity for the victim and those supporting her to

gather information regarding the offender and the factors that were included during the assessment for release on parole.

The morning meeting was divided into two sections which included a Talking Circle and an Open Forum, with a break during the Open Forum. The Talking Circle began with a ceremonial smudge and offering of prayer. All participants were seated in a circle around a conference table, and each participant in the meeting was given sweetgrass and tobacco in a traditional acknowledgement of their contribution. The moderator, in this case the Regional Elder, explained in detail the significance of each activity as there were many present who were not familiar with these teachings.

The importance of support for the victim and the offender in this process was emphasised and all were encouraged to put other, political, agendas aside. At this point during the Talking Circle each participant was given the opportunity to express their thoughts and emotions about participating in the healing process that was being undertaken. The moderator acknowledged the words that were spoken and brought the Talking Circle to a close.

The second segment of the morning conference on November 25, 1996 was the Open Forum. During this segment, questions that were put forward by participants from Manitoba were addressed by the appropriate persons. The benefit of having such a range of CSC staff available is that questions and concerns regarding all aspects of the offender's period of incarceration and release on parole were addressed immediately. Corrections Service of Canada has determined that victims frequently request information with respect to programming and conditional release; a meeting of this nature addresses this expressed need for information (Canada, 1998b:9).

Upon having all questions and concerns addressed, the Open Forum was brought to a close by the moderator. At this point, the strength and courage of all those involved in the restorative/healing process was reiterated. The participation of all parties was acknowledged, and the meeting was brought to a close.

The morning meeting, without the offender present, allowed the victim to become familiar with those representing the CSC Pacific Region. It was also an opportunity for assurances to be given with respect to the commitment of CSC to the restorative process. As well, at this time parameters were established relating to the format of the meeting that would include the victim and offender. The victim was afforded the opportunity to have addressed any concerns present relating to the upcoming meeting. This is an opportunity to establish a level of comfort for the victim in a very stressful situation.

afternoon session

The session in the afternoon of November 25, 1999 began at 1:45pm and lasted for approximately two hours. At this meeting, the victim and her cousin were absent, but the offender and all other members of the Manitoba delegation were present. The moderator brought the offender into the room after all others were seated; again, the moderator was the Regional Elder for the Pacific Region.

The afternoon meeting was opened with a prayer, and all participants were again acknowledged with sweetgrass and tobacco. Opening statements by the moderator focussed on the importance of the Healing Conference and the healing process, and emphasised that the offender was not present to be interrogated. At this point, introductions were made.

Members of the Manitoba delegation addressed the offender first and acknowledged the courage it took to come forward to participate in such a meeting. It was impressed upon the offender that the purpose of the conference was to provide answers to the Osborne family to assist them in bringing some closure to the tragedy that had been brought upon them by the offender. At this point, the offender was afforded the opportunity to speak, and answered questions relating to details of the murder. The offender was also able to express his feelings about the murder, discuss his role in the events that took place that night, and how it had affected his life. The moderator thanked all participants, and closed the meeting with a prayer and song.

The meeting in the afternoon with the offender allowed all members present to assess the sincerity of the offender's commitment to the healing process, to stress to the offender the significance of the Healing Conference, and the role that he played in this process. As well, during this session, the parameters of the upcoming meeting with the victim were clearly established. Finally, the offender was afforded the opportunity to express any concerns regarding the Healing Conferences, and to have those concerns addressed prior to meeting with the victim.

November 26, 1996

There was no morning session on November 26, 1996. The afternoon session began at 1:00pm and lasted for approximately 2¼ hours. All of the Manitoba delegation was present at this meeting, including the victim and her cousin. As well, all of the CSC delegation as previously listed were in attendance, including the offender. The meeting was held in a conference room at Ferndale Institution.

The members listed above were seated in the conference room prior to the offender being brought in by the moderator. The moderator then brought the meeting to order with a prayer, after which he addressed the meeting with a reiteration of the importance of the healing process and the format that the meeting would follow. Introductions between the offender and victim were then made, and the floor was opened for discussion.

A representative of the Manitoba delegation spoke first and indicated that the victim had some questions for the offender. This representative also made clear the difficulty that the victim was experiencing with respect to sitting in the same room as the offender.

The floor was then opened to the victim who asked questions of the offender relating to the details of the circumstances surrounding the murder of her sister. This question-answer session continued until the victim was satisfied that all of her questions and concerns had been addressed. The offender expressed remorse for his part in the murder and indicated that he hoped participating in the conferences would bring some closure to the family.

At this point, a member of the Manitoba delegation addressed the offender and acknowledged that he had revealed aspects of the crime that had heretofore been untold. Then another member of the Manitoba delegation addressed the offender by thanking him for his disclosure after so many years of silence and for the courage to finally discuss his role in a murder that had affected so many people. Finally, the offender was addressed by a third member of the Manitoba delegation who thanked him for his disclosure and commended him for the courage it took to come forth with the information that he had

shared. As well, the offender was reminded of his commitment to continue helping the family bring closure to this matter by co-operating to assist in bringing further charges against the other men involved in the murder. This commitment was reiterated by the offender along with his commitment to the healing process and to the family of the victim. The offender was then reminded that the Manitoba delegation would be returning for another conference in December.

At this point, the moderator thanked all present for their participation in the circle. The meeting was closed with a prayer and a handshake by all involved. However, the victim chose not to shake hands at this time, but did thank the offender for the disclosure.

December 17, 1996

The second Healing Conference was held on December 17 and 18, 1996 at the Ferndale Institution in Mission, British Columbia. Present at these meetings from Manitoba were Cecilia Osborne and her cousin; Grand Chief of AMC and his assistant; Grand Chief MKO; and Eric Robinson. Present from CSC Pacific Region were Dwayne Johnston; the Regional Elder who was moderating the meeting; and the Aboriginal Programs Officer. There was no morning session on December 17, 1996.

The meeting on December 17, 1996 began at 1:00 p.m. and lasted approximately two hours. Prayers and acknowledgements opened the meeting. The Manitoba delegation spoke first and had the opportunity to express their thoughts and feelings with respect to the events which had occurred during and since the Healing Conferences. Representatives from the CSC addressed those present with respect to their perception and reflections of the Healing Conferences. Then the offender was afforded the opportunity to address those present.

In this case, this was of particular importance as after the meetings in November, the offender revealed that he had not relayed, in its entirety, the events of the night of the murder. During a teleconference held shortly after the November meeting, the offender revealed to the victim further details with respect to his involvement in the murder. The December meeting allowed the offender to reiterate those details in person to the victim. After the offender spoke, the moderator addressed the meeting and spoke of the healing process and the intent of the meetings as being a means of facilitating and furthering that process.

At this point the Talking Circle began, and the victim was given the opportunity to seek further information from the offender with respect to the murder of her sister. During the Talking Circle, a break was called, and the offender left the room to take a short walk; the victim followed him. The Aboriginal Programs Officer observed from a distance as the victim and offender talked privately about what had transpired. Upon reconvening the Talking Circle, the session was closed with a prayer and acknowledgement of the contribution of all in the healing process.

December 18, 1996
morning session
The morning session of this Healing Conference consisted of a breakfast meeting between the Regional Elder and the Manitoba delegation to discuss the upcoming afternoon session. This meeting also provided an opportunity to address any concerns, questions, or expectations regarding the Healing Conferences, the events of the prior day, or any concerns or questions that may have been present with respect to the meetings in November.

afternoon session

The afternoon session began at 1:00 p.m. and lasted approximately two hours. The purpose of this meeting was to bring the Healing Conferences to a close. A traditional sacred pipe ceremony was held with the Manitoba delegation, the CSC delegation, the victim, and the offender. Each participant had an opportunity to address those involved in the ceremony and was able to share their feelings and thoughts on the experience.

As well, a traditional 'give-away' ceremony was held in which the Manitoba delegation presented to the offender gifts representing healing and truth. These gifts also represented an acknowledgement of acceptance of the story that had been offered by the offender. By accepting these gifts, the offender acknowledged the good will of the presenters and acknowledged that the truth was spoken to assist in the healing process. Also by accepting the gifts, the offender acknowledged his commitment to the healing process and to the Osborne family (Price and Dunnigan, 1995:7).

The meeting ended with prayers and acknowledgements to all those involved in the Healing Conferences during the prior two months.

iii) reflections of those involved

This section will briefly present the reflections of those who were involved in the Healing Conferences. Although the interviews were more broad than the two research questions outlined for this research project, the focus of this project is the impact of involvement in this process and the potential for its incorporation into the justice system

as a restorative justice measure. As such, the reflections of those involved, as presented in this section, will focus on these two research questions.

Victim

As stated in Chapter 2, although Cecilia Osborne is supportive of this research project and the larger research project that it is associated with, she declined to be interviewed for either project at the time of this writing. Discussing in detail the impact that this crime has had on her and her family is very difficult for her, even with the Healing Conferences and passage of time. Cecilia is a very private person, and in spite of the media attention drawn to the Healing Conferences, it her preference not to be formally interviewed regarding her feelings about the meetings with Johnston. I respect her wish for privacy and peace as I do not want to bring further emotional distress to her for the purposes of preparing this thesis.

Having said this, I have had several informal discussions with Cecilia regarding the Healing Conferences and meeting Johnston. The information for this section will be drawn from those informal discussions, and the reflections of those who participated in the Healing Conferences with Cecilia. As well, media reports from the time of the Healing Conferences are also a source of information for this section.

With respect to the Healing Conferences and meeting Johnston, Cecilia received information about her sister's murder that the justice authorities had not been able to provide to her family. Acquiring this information has brought some measure of closure to the Osborne family; this is one impact of the Healing Conferences that is reiterated by those interviewed, and also reported in the media.

"...she's [Cecilia] finally received some information she was hoping that she would have received long ago through the investigating people, you know, even from the police, because she has expressed her dissatisfaction in never receiving any information from the RCMP, from the prosecution people." (Frank Settee, Regional Elder Pacific Region)

"Just to have the answers from one of the offenders, you know, one of them who was there, who knows what transpired. And the information she [Cecilia] received from Dwayne was in a way satisfying to her, and that's what I pick up from Cecile. She still, you know, she still aches, she still hurts. She always will, but she seemed to be a bit more at ease." (Frank Settee, Regional Elder Pacific Region)

"She's [Cecilia] thankful in her own way that she's finally receiving answers." (Frank Settee, Regional Elder Pacific Region)

"I think that she [Cecilia] had to face him [Johnston] and stand before him alone. He had to stand before her and give an account. There was a lot of talking about what had happened to her sister and what had happened that night. She wanted to hear it from him. And he had to stand before her and give an account... (Pam Jack, Regional Project Officer, Aboriginal Programs)

"He [Johnston] just opened up things that I [Cecilia] needed to know all these years, and that's really helpful to me and my healing... I know I have a lot of healing to do but now it's lighter than before I came here [to the Healing Conferences]." (The Winnipeg Free Press, December 19, 1996)

"Cecilia Osborne, who clutched her mother's hand and wept, said the meeting with Johnston provided some 'closure' for her family. 'On behalf of my mom, Justine, and the rest of the family...(we) feel my sister will finally rest in peace.'" (The Winnipeg Sun, November, 28, 1996)

As Umbreit (1993:70) reports, a meeting between a victim and offender provides an opportunity for the victim to ask questions relating to the crime, and possibly ease concerns relating to the release of the offender back into the community. This appeared to be the case with the Osborne family as they received information about the crime that they had never had access to before. This information appeared to assist in bringing some measure of closure for the Osborne family. The meeting between Cecilia and Johnston also provided Cecilia with the opportunity to put a face to the name that had

been a part of her family for so long, and in doing so, address some of her fears relating to Johnston.

> "...because he [Johnston] had made such an impact on their [Osborne family] life that he became a part of their life – thinking about him all the time... And now they can put a body, a face to this invisible spirit that haunted them, that continued to bother them... After the sentencing, all they knew was Dwayne Johnston, Dwayne Johnston, you know. I mean they see a picture of him, that wasn't good enough... She can now put a face to the name." (Frank Settee, Regional Elder Pacific Region)

> "I think when she [Cecilia] was sitting there and Dwayne Johnston walked through the door. I think that she was expecting this seven hundred foot monster giant to come through with fangs and big hairy arms, and...." (Pam Jack, Regional Project Officer, Aboriginal Programs)

> "And I think those things had to be talked about in order to take this giant down a notch at a time to something that she [Cecilia] could cope with. You know, and it already came in this little package, you know, and it was like she had to do those things to refute all the years of telling herself and the media and other people, you know, pouring into this jug about this big monster. And I think that where she began to really become empowered was getting the answers to these questions that had haunted her all her life and I think she felt that he was telling her the truth." (Pam Jack, Regional Project Officer, Aboriginal Programs)

Meeting with the offender allowed the Osborne family to see him as a person as opposed to being a larger-than-life figure that still represented a threat to their personal safety and well-being. As stated in Chapter 3, Umbreit (1993:70) argues that meeting the offender may allow the victim to dispel concerns or fears about the offender, and see the offender as being less threatening than what they had believed him to be. Meeting the offender in a safe, controlled and supportive environment may remove the mystique of the offender in the eyes of the victim, and may eliminate fear of future violence at the hands of the offender. As the above comments indicate, Cecilia was able to put a face to

the name that had been part of her life for several years, and confront the fears she had of Johnston. In doing so, she may have been able to address some of the concerns she had about Johnston causing future harm to herself and to her family.

Due to the fact that Cecilia was not formally interviewed, it is difficult to assess the personal impact the Healing Conferences had upon her. However, those in attendance at the Healing Conference provided some reflections on this matter.

> "I watched her come in a scared little girl, frightened. And I watched her walk out an empowered woman. That was about it. Quite a difference in a really short period of time." (Pam Jack, Regional Project Officer, Aboriginal Programs)

> "They (Osborne family) could see the person behind the monster. The closure has different meanings of empowerment for the community and family with parole hearings in Norway House. It took a tragedy to accomplish this empowerment. They were able to rid themselves of the suffering and pain." (Phil Fontaine, Grand Chief, Assembly of First Nations)

The other research question that cannot be addressed in this specific section, as Cecilia was not formally interviewed, is the potential for the Healing Conference process to be undertaken with others. However, informally, Cecilia expressed that this process could be undertaken with others and has expressed that appropriate support for the victims is essential.

With respect to her own experience, on several occasions, Cecilia expressed that she felt Johnston benefited more from the Healing Conferences that did she or her family due to the extraordinary loss her family suffered with the death of her sister. She has stated the information she received from Johnston regarding details of her sister's death brought some level of closure for her and her family. However, she has stated that the overall manner in which this case has been dealt with by the justice system, the passage

of time since the offence, and the fact that only one person has been convicted when three others were involved in the crime combine to make true closure for the family difficult, if not impossible.

Offender

In this case, formal and informal discussions with Johnston revealed much insight into his experience with the Healing Conferences regarding the impact of this experience on him personally, and the potential for this process to be utilised with others. On a personal level, having been involved in the Healing Conferences, Johnston was able to better understand his actions and their effect on his victims. He was able to acknowledge and address the pain and suffering that his actions had brought to the Osborne family, and attempt reparation by providing the family with information relating to the crime, and pledging to assist in the court process should the case be re-opened and returned to court.

> "I had an opportunity to say I was sorry for the pain and suffering that is still going on. I can never fix it. I can put my sense of closure on this terrible tragedy. The walk in the woods was good for me, and it was good for her. You would have to be as cold as a mackerel if you felt no effect sitting across from the victim and members from the community." (Johnston)
>
> "I've wanted to say I was sorry for the pain and suffering I caused the Osborne family and the community for many years. I hoped for some forgiveness and maybe give the people some explanation of what I did, and what happened... (Johnston)
>
> "I believe that I am a very negative part of the Osborne family, but that I also hope that I have provided some answers to them and hope that some closure will come to them." (Johnston)
>
> "I am a part of the family, a very bad part, and will be that way forever. I can't change this. I was hoping for closure for myself and for the family." (Johnston)

In this situation, meeting with the victim enabled the offender to better realise the pain and suffering caused by his actions. As well, the meeting allowed him to be held directly accountable for his actions to those people who he had hurt with his actions, and to apologise to them. As discussed in the previous chapter, accountability in terms of an Aboriginal world-view, and a restorative justice perspective, involves assuming responsibility for one's actions and taking measures to repair the damage caused. The offender is also held accountable to his/her victims by facing them directly and providing explanation for their actions and information relating to the crime. In this way, the offender is able to more fully comprehend the impact of their actions on those involved (Griffiths, 1996:200; and Bazemore and Schiff, 1996:314). Counselling with the Elder assisted Johnston to prepare for participation in the Healing Conferences where he was held accountable to his victims, and was able to take direct responsibility for his actions. In doing so, he attempted to bring some measure of closure for the victims as well as for himself.

"Before becoming involved in this process, I was unable to accept or talk about my role in this very bad situation. I am now able to accept my responsibility. I can also openly say to the community and the family that I am sorry for the pain I have caused. Sorry for not being accountable for my actions many years ago." (Johnston)

"It is incredible to have a victim face the perpetrator and the perpetrator face the victim. It was a groundbreaking process. The perpetrator can see the pain they caused and the victim can see the human side of the perpetrator." (Johnston)

"Because of my weakness and self-centredness, I couldn't tell Cecilia my role – having met with her and seeing her pain and feeling her sorrow and her anger, I had to try again and explain what I had done and been involved in... (Johnston).

"To put a victim and an offender in the same room together and get understanding was moving and sad to see the pain that was carried all these years. This family deserved to have questions answered years ago and they still had to pry it out of me." (Johnston)

The Healing Conferences provided an opportunity for Johnston to be held directly accountable for his actions. According to Zehr (1990:42), "genuine accountability, then, includes an opportunity to understand the human consequences of one's acts, to face up to what one has done and to whom one has done it." Johnston appeared to develop some understanding of the impact of his actions on the victims.

Johnston also offered some insight and reflection into the Healing Conference meetings. He was able to acknowledge how difficult it was for him to face his victims, and how difficult it was for his victims to face him. This experience is consistent with the findings of Zehr (1990:165) that offenders felt that meeting their victims was "difficult and talked of it as being tough punishment."

> "The anguish and hatred was very visible from the family." (Johnston)
>
> "Being able to sit with people you have been bad to is incredible. It is very scary to do this. To do it once is hard. You don't know how you will feel until you sit there." (Johnston)
>
> "This was very hard to do. There are no words that can describe the way I felt about it – just stuff, just feelings. It was hard to put words to it." (Johnston)
>
> "I thought about this a long time. It took an enormous amount of courage for Cecilia to come to the meetings. Sitting across from Cecilia was what did it for me, I knew I had to come clean about my part. It took a long time to get there, but I finally did. I always wanted to say I was sorry, but I never wanted to admit my part in it. I have a lot of shame for not being able to stand up and do it. It was a relief, I could stand up and turn a page in my life." (Johnston)
>
> "This process has shown me what empathy is." (Johnston)

Johnston reported that it was difficult it was for him to meet with his victims, but also that he felt closure in taking responsibility, and being accountable, for his actions.

Others who were involved with Johnston in the Healing Conferences and worked with him in the sweat lodges offered some insight into the changes that they had observed in him after the Healing Conferences. Specifically, Regional Elder, Frank Settee and his helper, Graham Shand provided insight into visible changes in Johnston that they attribute to his participation in the Healing Conferences and the accompanying sweat lodge ceremonies. As well, Ron Wiebe, Warden of Ferndale Institution, shared some of his observed changes in Johnston.

"He's [Johnston] more confident of what it is he wants to do, how it is he wants to do it. He's more organised, even in his business affairs." (Regional Elder, Frank Settee)

"...he [Johnston] just does what he has to do to throughout the course of the day, he knows his energies will provide him with whatever he needs for the day. There's an air of confidence in his ability to, not only to walk the straight and narrow and be truthful, but to accept whatever occurs." (Regional Elder, Frank Settee)

"...they've [traditional practices] enhanced his [Johnston] understanding of life within the daily circle. It has enhanced his understanding of himself in that forgiveness factor. It's not that he's wondering every, you know, 'what's going to happen to me'...he just accepts whatever happens whether it is good or bad...He knows...it's not a discouraging thing to make a mistake. It's a learning process, he's able to turn that around and see and view it as that and learn from it, and to acknowledge all of the people, even the victims... He said at one point there, after the initial meeting with Cecile that he learnt a lot from Cecile just from the courage and the strength that she had within her just to take that walk with him." (Regional Elder, Frank Settee)

"Over the period of time of the lodges, I have seen him [Johnston] open up and become more comfortable with himself, more comfortable with the process. Yet, mostly more comfortable with himself. You know...to me he's shown a lot of courage to come forward and accept responsibility." (Graham Shand)

"The way he [Johnston] talks to people, the way he's using the lodge. The way – his comfort level is... and the way that, you know, in the times that I've talked to him about the kinds of things that is going on in his life. The clarity that he started to be able to see happen in his life. The ability to (pause) to see what his responsibility is and what other peoples responsibility is and to deal with his responsibilities. To focus on himself as a human being, and the changes he needs to make and the commitment to his family and the commitment to this process. He is so strongly committed to this process from what I have seen." (Graham Shand)

"He [Johnston] became much more respective, you could see it in his sort of physical demeanour. A much more thoughtful and careful kind of individual, and less, and became less, I would say, less egocentric...It's interesting, I run into him from time to time, and I've had some conversations with him. Usually, you know, we sit down and have a coffee or something because I'm curious, and I just see a very sober reflective kind of guy, that I don't think I would have seen before." (Ron Wiebe)

Those who worked with Johnston in the sweat lodges and Healing Conferences observed changes that occurred in his level of confidence with respect to the manner in which he carried himself to the manner in which he conducted his business. As well, changes were observed in the manner in which he interacted with others, he was observed to be more confident in his interpersonal interactions. In addition, those who worked with Johnston reported that he appeared to have increased his insight into his offending behaviour and his resultant responsibilities with respect to his role in the offence. Not only did Johnston, and those working with him, feel that he had benefited from participation in the Healing Conferences and sweat lodges, but Johnston felt others might benefit from a similar experience.

> "The potential for others in this process is very good. The victims may find some relief by being able to confront and talk to and listen to the perpetrator." (Johnston)
>
> "The family deserves an 'I'm sorry'. In every case where anybody who offends, then goes to court, the victim deserves an 'I'm sorry'. Most offenders would want to do it, because most are human. Most people I know would want to do this. Even the most horrendous people can be involved." (Johnston)
>
> "I think people would participate in this process if it were available and possible." (Johnston)

Johnston stated that he felt the process of Healing Conferences would work with other offenders, but he expressed that the traditional Aboriginal teachings were a crucial factor in this case. The non-confrontational aspect of the Healing Conferences seemed to

have made an impact on Johnston, and he stated that this approach might be effective with others.

> "The traditional processes made it calm, not aggressive. This is important because inmates like confrontation. It was very mellow, peaceful, calm in the room. It was uplifting for everyone. The traditional practices helped out; it was new and effective." (Johnston)

> "This process would have to work with others. If they are not willing to use traditional practices, then they are not ready." (Johnston)

> "I can't get over how calm the process was. It was non-confrontational; most guys in the joint expect aggression, so to go into that kind of process to come out changed would be impossible." (Johnston)

Not only did Johnston support the process of using traditional teachings in other cases, he supported the incorporation of meetings such as the Healing Conferences as part of an offender's release plan. He argued that there was a role for the National Parole Board (NPB) in the process.

> "I could only hope that the NPB could use this process to assist in assessing offenders, and giving them a chance to show remorse. This process would help families and victims cope with the release of offenders, and would involve families and community members as a part of the a release plan for offenders." (Johnston)

> "The people who participate in the Healing Conferences should be part of the release process. Everybody who has been part of the healing circle should be part of the release plan." (Johnston)

Johnston's observation that victim and offender meetings should be included as part of the offender release plan is consistent with the format proposed in the Restorative Community Reintegration Pilot Project by the John Howard Society of Manitoba. As presented in Chapter 3, the Restorative Community Reintegration Pilot Project proposes to work in concert with, and to complement, the current release planning process that is

currently utilised by the case management team at CSC. The release plan, including the restorative justice component, would then be presented to the NPB as part of the offenders parole application process. The needs of the victims and the offender would be detailed in the plan, as well as the available community resources. (John Howard Society of Manitoba, 1998)

Johnston reported that meeting with his victims made a difference in his life and hoped that it made a difference in the lives of those who had been hurt by his actions. Meeting the victims gave him the opportunity to apologise, and express remorse, for his actions and to take responsibility for his role in the crime. As well, he hoped that the meetings brought some level of closure to the family, but acknowledged that in this case, the family is still suffering from the effects of his actions.

> "I was hoping more would come out of it for Cecilia and the family – some understanding. This was still not enough for the family. I hoped there would be more closure than there was; I wish that they had got more out of it. This was not the end result to everyone's satisfaction; it is still difficult to deal with." (Johnston)

As the above comment indicates, although Johnston was able to assist in bringing a measure of closure for the family, they are still coping with the trauma of the crime. Those who worked with Johnston throughout the Healing Conferences reported that he seemed more relaxed and confident in his interactions with others and more at peace with himself. Johnston supported the incorporation of the Healing Conferences as a restorative justice process to be used during the release planning stage of an offender's sentence. He indicated that there was a valid role for this process in addressing the needs and concerns of victims prior to the release of the offender to the community.

Correctional Service of Canada

Several members of the Correctional Service of Canada that were involved in this process were interviewed. Their insight and experience is important to consider as they are in positions to effect change in the federal correctional system. Peter DeVink is the Deputy Commissioner for the Correctional Services of Canada in charge of the Pacific Region, and reports directly to the Commissioner of the Correctional Service of Canada in Ottawa. At the time these interviews were conducted, Ron Wiebe was the Warden at Ferndale Institution in Mission, BC where Johnston was incarcerated at the time of the Healing Conferences. Mr. Wiebe has since succumbed to cancer in July 1999. Pam Jack is the Regional Project Officer for Aboriginal Programs in the Pacific Region and is responsible for co-ordinating the Elders, Native Liaison Officers and Aboriginal programs for the region. Frank Settee is the Regional Elder for the Pacific Region and sits on the National Advisory Committee for Aboriginal Issues within the CSC. As well, Frank Settee was the facilitator for the Healing Conferences and worked with Johnston to prepare him for meeting Cecilia. All of these individuals expressed that being involved in this process had a personal impact on them and they expressed that there was potential for this process to be applied in other situations.

With respect to personal impact, there was a variance of responses contingent on whether the individual was present for the entire Healing Conference as Frank Settee and Pam Jack were, or whether they attended the morning session of the first day of the Healing Conference with Cecilia as Peter DeVink and Ron Wiebe did. Another dynamic that must be considered with respect to the impact of this process at a personal level is that Frank Settee and Pam Jack are First Nations people who follow traditional Aboriginal teachings. Peter DeVink and Ron Wiebe are not First Nations people, but

reported some familiarity with Aboriginal culture and ceremonies. The personal impact on this group of individuals ranged from experiencing a sense of hope for a brighter future for the correctional process to experiencing a sense of increased personal growth and development.

> "So everybody spoke, and I think my feeling of that teaching was there were two things - it held to me a potential, but probably more importantly there was hope. And I think often in Corrections we forget the issue of hope, and so I think that to my mind where whether if you ask me what were the sort of the most poignant sort of things that I felt, it was an expectation that something could come of this. But there was also, sort of the whole issue that, you know, that hope, and I believe part of what was for significant for me anyway in the teaching, was that I believed the process itself created hope. And that things could go differently, and that there was hope for people to sort of get out the quagmire that they were in..." (Peter DeVink, Deputy Commissioner CSC, Pacific Region referring to participation in the Healing Conferences)

> "It (Healing Conferences) also just gave me a lot of practical knowledge about Aboriginal spirituality and how it actually works. I guess it's one thing to discuss it anthropologically, and then to have a good sociological discussion on it, but I think actually pragmatically how it works out is a learning experience, and you can only learn that through actually going through that kind of experience... In a small way, I think, one thing I've learned from my experience just in the Aboriginal-focus, much more than I've learned from my own culture, quite frankly, is the whole matter of respect." (Ron Wiebe, Warden of Ferndale Institution)

> "For me it (Healing Conferences) probably made me a more patient person... And there were lots of things, like honesty and integrity and kindness and sharing and caring and all those principles that we were raised with have become really focussed in my life again as a result of it." (Pam Jack, Regional Project Officer, Aboriginal Programs)

Those involved in the Healing Conference reported that participating in this restorative justice process had a personal impact on them at some level. All reported that it was a difficult experience due to the high level of emotional tension in the room with

the victim and offender present. However, they reported that they had benefited in a positive manner through their participation, and felt that there was potential for others to benefit.

> "...I think that case (Osborne family and Johnston) set a good example that Native strategies with respect to the healing circles and sweat ceremonies and whatever type of other ceremony needs to be implemented into the correctional services service system. It's viable, it will work." (Frank Settee, Regional Elder, Pacific Region)

> "But what the Elders tell us, the true Elders tell us is truth and that it (Healing Conferences) can work and that it will work. It can even work for a white guy like Dwayne Johnston. When I look at an offender I don't really care what colour he is, I know that there is hurt that has taken place to make him the kind of person that he is today. And if you can reach in there and touch just that one spot, that right spot, you can change it, and you can change future victims and future victimisation...and the offence cycle is broken." (Pam Jack, Regional Project Officer, Aboriginal Programs)

The individuals from the Correctional Services of Canada who were involved in the Healing Conference supported the application of this process in other situations. All agreed that this process could be applied in situations involving non-Aboriginal people. However, they also felt that the inclusion of traditional practices, such as the pipe ceremony and smudging, added an element of solemnity to the situation that underscored the importance of the victim and offender meeting. With respect to the Healing Conferences, Ron Wiebe stated, "there was no doubt in my mind that [this] was a very serious and solemn event." Further insight into the potential for the process of Healing Conferences to be included in the justice system, specifically within CSC will be discussed later in this chapter.

Other involved individuals

Other people who were involved in the Healing Conferences and the accompanying sweat lodge ceremonies reported that the experience had a very real, and personal, impact on them. Some of those interviewed were present during the Healing Conferences only, and some participated in the sweat lodges only. All interviewed felt that there was potential for this process with others.

The personal impact on those who attended the Healing Conference meetings appeared to relate to their emotional reaction to meeting Johnston for the first time as opposed to any revelation about whether or not a personal change was observed. In part, this may be due to the fact that those interviewed were from Manitoba and were very much aware of the long history of this case. As well, their specific reaction to Johnston might stem from their knowledge of the findings of the Aboriginal Justice Inquiry that pervasive racism in the justice system was a key in the delayed and partial resolution of this case. Those interviewed from Manitoba expressed surprise at Johnston's stature and appearance and it seemed as though they shared the experience of victims who come to view their perpetrators as larger than life figures (Umbreit, 1993:70).

> "I was amazed that Johnston looked so small. I had a fear because I did not know what he looked like, his size struck me." (Phil Fontaine, then Grand Chief of the Assembly of First Nations)

> "I feared what this was all about. I was afraid of Dwayne's violence; fear of a white person killing an Indian. The size of Dwayne was disconcerting, and added to the fear – small people kill, too." (Jim Lavallee, Assistant to Phil Fontaine)

Those who were not involved directly in the Healing Conferences, but were part of the series of sweat lodge ceremonies reported personal changes in themselves that ranged from achieving a different perspective on their dealing with their personal issues

to a deepening of their own sense of spirituality. One person reported that they were just a part of the larger process of helping others to deal with personal issues through traditional ceremonies.

> "For me this process is just part of a larger process. While these lodges are for a specific process, I am involved in all the lodges that we do. So, while we may have specific purposes, other lodges have specific purposes, too. Certainly, I can see the growth in my life in walking this way, this path. But in terms of these specific lodges, I think they are just part of a larger process." (Graham Shand)

> "And, you go to the lodges basically, that is what all of us are seeking is to become stronger people, but to become stronger people sometimes you have to rip down a lot of stuff. It's the unlearning. I did a lot of unlearning when we did these lodges. I unlearnt all this stuff that I had learnt over the years and all of a sudden it made it all seem, it was like I was starting over again. And but I unlearnt, and from the unlearning is when you actually truly start to become stronger." (Sandra Wiepert)

> "...it's changed me so much in the way, that just realising that in the times in your life when the weight of the world seems to be wearing you down, that its nothing. You work through it. It's made my own problems, lets say in my life, seem much more superficial, and I've worked through them a hell of a lot faster than I ever did before I first started doing these lodges...That's been, I've noticed the huge change in me." (Sandy Wiepert)

Those interviewed that were involved only in the sweat lodges expressed that their participation had a personal effect on them and their lives. As mentioned, those who participated only in the Healing Conferences appeared to be more affected by the presence of Johnston, more than being involved in a restorative justice process. As stated previously, this could be the result of their knowledge of the case prior to attending the conferences. However, all interviewed expressed an opinion regarding the potential for this process to be utilised with others.

Again, there were differences in the focus of the responses based on participation in the Healing Conferences or participation in the sweat lodge ceremonies. Those who participated only in the sweat lodge ceremonies offered more philosophical responses, while those who participated only in the Healing Conferences were more pragmatic in their responses. This difference could be attributed to the more active personal involvement in traditional Aboriginal practices as expressed by those who participated only in the sweat lodge ceremonies. Those who participated only in the Healing Conferences were not actively involved in traditional Aboriginal spiritual practices on a personal basis.

"I'd say it (Healing Conferences and sweat lodge ceremonies) could work with other people... There is a great need for this...if it could be done within communities, within institutions, that – face it – a crime happens. There is a victim, there is an accused, there's the victim's family. And those sides never talk, really, except maybe in court...But this whole process brings it full circle that...its not sides anymore. They're people. We're dealing with people again. And we're realising that we're dealing with the human capacity... I can see this. I hope...that if this can be used as a prototype, that it can be done." (Sandy Wiepert)

"I've seen it (sweat lodge ceremonies) work all the time in many situations with people from many different communities. The process of the sweat lodge, pipe, and sun dance and in the traditional ceremonies is a process of healing your life and preparing ourselves for that time when we step to the other side. And in the community there is many, many people with a lot of sicknesses - body, mind and spirit - there is a lot of pain. And, you know, through the lodges that I see people changing, their lives changing, healing happening within themselves, within their families. Ignorance starting to be taken away, because to me that's the root of his crime is ignorance. By taking those blinders off people, and that's the only way things can ever change." (Graham Shand)

"This process (Healing Conferences and sweat lodges) has to be done by those who have dealt with their own baggage. You need to take into account that healing took place in the community with support. This [healing] process truly works, but it is not to be romanticised. It must be done for the right motivations...We need to address the system that is out there...Healing is more in depth, and with Dwayne it has occurred to a certain comfort level at which people can accept. The circles need to be safe so what can be said about feelings can be freely expressed." (Jim Lavallee)

"It would not work for all, but it would work with those who are sincere. Johnston did this for both Osborne and himself. [The] CSC uses punishment and retribution even though they know it doesn't work. This should become part of the their programming; it is cheaper, if you believe in it." (Phil Fontaine, Grand Chief, Assembly of First Nations)

Overall, those who were interviewed that participated in the Healing Conferences and the sweat lodge ceremonies felt that their involvement in this process had an impact on their lives. This impact was more profound with some than others and the key distinction appeared to be based in the individual prior knowledge of the case. For those who were more familiar with the case, meeting Johnston seemed to have more of an impact than being involved in the healing process. Those who were less familiar with the case history reported that participating in the sweat lodges for the purposes of assisting the victim and offender reach some level of closure made an impact on them. All those interviewed felt that this process has potential for application in other situations. Precautions were issued by the interviewee regarding appropriate levels of support for all involved and ensuring that the sincerity of the participants is genuine. Those involved who were members of the CSC stated that there is a role for this process within the correctional system. This role will be discussed in further detail in Chapter 5.

CHAPTER 5 – *DISCUSSION*

This chapter will provide a discussion relating to the limitations of this research project, the implications for social work practice, restorative justice as a justice process, and the recommendations for future research.

i) limitations

Many of the limitations of this research project are directly related to the inherent characteristics of case study research. However, there are other limitations which are specific to this case that will be discussed as well.

The first limitation is that this study, as with most case studies, only focuses on one case. As such, the findings of this study may be limited in their capacity to be generalised to the larger population (Yin, 1994:10). Because of the limited number of participants in case studies, any conclusions that are reached have to be qualified with respect to the limitations of their ability to be generalised.

It is unrealistic to expect that the experiences and findings in this case study will be replicated exactly in other situations, which makes the external validity of this study, and others, very low (Yegedis, 1999:140). However, this is not to say that similar findings may not occur in other situations as many victim/offender evaluations report that those involved are generally satisfied with the experience and find it helpful in reducing the harm they experienced resulting from the crime (Bonata et al, 1998:4).

A second limitation of a case study design "is its limited capacity to generate knowledge that could be described as definitive" (Yegedis et al, 1999:139). As there are an infinite number of variables, and interaction between variables, it may be impossible to identify and define the variables and their relationships to one another. These

variables and their interactions influence the outcome of processes, such as the Healing Conferences, which make it impossible to isolate and define a cause and effect relationship (Frankfort-Nachmias and Nachmias, 1996:147).

Another limitation in this study rests in the inherent weakness in case study research which stems from the lack of rigor in the design. A common complaint is that the researcher has allowed questionable evidence or "biased views to influence the direction of the findings and conclusions" (Yin, 1994:9). In the present research project, I have tried to address this limitation by being cognisant of the potential for personal bias to influence the research, and as well by being aware of the ambiguity in the nature of the information being gathered. As well, to address the concern regarding lack of rigor, I tried to be careful and thorough in conducting the interviews and gathering information for this study. All of the interviews followed a similar format and structure, and were guided by a series of prepared questions (see Appendix A).

Caution was taken during analysis and presentation of the data to ensure that the report of the information is balanced. The process of coding was utilised to analyse the interview transcripts to ensure that no information was excluded. This coding process, as presented by Tutty et al (1996), and discussed in detail in Chapter 2, involved identifying "meaning units" in the data and assigning a code to a section of the text that articulates an idea or describes a phenomenon. For example, a comment or thought expressed by an interviewee regarding the applicability of this type of restorative justice to be utilised with others would constitute a meaning unit. Once this initial coding task was accomplished, the meaning units were categorised by the process of constant comparison into groups that were based on similarities. With reference to this research, the meaning

units relating to the applicability for this process with others were categorised in the same group. This process continued until all of the meaning units were categorised and grouped.

The next step in the data analysis involved assigning codes to the categories that were created through the above process of constant comparison. The interviews were then reviewed again to ensure that the completed analysis accurately reflected the ideas presented by the participants. This process continued until no new information was revealed in subsequent interviews indicating that 'category saturation' was reached. According to Tutty et al (1996:106), reaching category saturation is an indication that the process of coding is complete. At this point in the analysis, the data that was gathered from new interviews revealed no new categories, and the meaning units that were derived fit into the existing categories. In this case, the process of coding continued with all of the interview transcripts until category saturation was achieved and the data analysis was complete.

There are several limitations expressed with respect to conducting case study research. However, as stated above, there are measures and means of working with these weaknesses. In spite of the limitations expressed with respect to case study design in general, the case study is the most appropriate research design to be utilised in a research project such as this (Frankfort-Nachmias and Nachmias, 1996:147).

The major limitation specific to this research project, beyond the limitations discussed with respect to the research design, is the potential for individual bias resulting from the media attention this case has garnered over the years. The interest that may be shown in this research project may influence the manner in which those interviewed

share their experience of the Healing Conferences. For the most part, developments in this case are usually reported at a local and national level in television, radio, and print media.

Another limitation of this specific case study stems from the fact that many of those interviewed and involved in this case were, or currently are, employees of CSC. The initiative undertaken through the Healing Conferences in the Helen Betty Osborne case generated much scrutiny from within the CSC and from the media. As well, according to Frank Settee, Ron Wiebe, and Peter DeVink the Healing Conferences in this case set a precedent in the CSC with respect to the application of traditional healing practices as a restorative justice process within an institutional setting. Until these Healing Conferences were undertaken, this process had never been utilised in this fashion or setting by CSC. The Restorative Justice and Dispute Resolutions Unit at CSC was established shortly before the Healing Conferences were undertaken. As such, these conferences were, and remain, consistent with the direction in which the CSC is moving towards implementing restorative justice measures within the service (1998b).

Due to the scrutiny of this case by the media, and the potential interest in this research study by the media and CSC officials, there is the possibility that employees interviewed from CSC might be biased or influenced with respect to their interpretation and experience at the conferences. There is no accurate means of determining if this is the case, and one must trust that the interviewees were being candid and honest in relating their experience with this process. The interest and concern with respect to learning from these healing conferences, as revealed in the interviews, was such that the experience would potentially be used to guide similar initiatives in the future.

Another limitation specific to this study is the time frame during which the interviews were conducted and the occurrence of events after the conferences were held, but prior to the interviews being conducted, that might influence the experience of those interviewed. The Healing Conferences were held in November and December 1996 and the interviews with key CSC personnel were conducted in November 1998, almost two years after the fact. The interview with the Regional Elder did not occur until early January 1999, and the interview with Mr. Johnston did not occur until mid-June 1999.

A series of events were set into motion as a result of details relating to the murder of Helen Betty Osborne that were revealed by Mr. Johnston during and after the Healing Conferences. These revelations led to further investigation into the case by the RCMP and the possibility that further charges might be brought against the other men involved in the abduction and murder of Helen Betty Osborne.

Due to circumstances beyond the control of the researcher, the interview with Mr. Johnston was not able to be conducted until after the RCMP completed their investigation and determined that no further charges would be laid and effectively closed the case. The effect of this decision may have an impact on the manner in which this key person viewed his experience of the Healing Conferences.

A final limitation of this case study is the lack of formal interviews with Cecilia Osborne and Eric Robinson. As stated in Chapter 2, although this is a weakness with respect to the pool of data gathered, I feel that the richness of the information provided by the other interviewees provided sufficient material to meet the research parameters outlined for this study. This assertion is supported by the fact that category saturation was reached during the analysis of the interviews.

ii) implications for social work practice

The Healing Conferences held in the Helen Betty Osborne case hold much potential for social work practice in many different capacities. The implications for social work practice for this research project are directed towards cases in which a crime has resulted in a period of incarceration. This should not be misconstrued to mean that social workers do not have a role in restorative work with victims and offenders in other settings or situations. It is important to note that in situations such as the case in this study, an understanding and appreciation of traditional Aboriginal healing practices is essential.

There is opportunity for social work intervention and influence at micro, mezzo, and macro levels in restorative justice processes. Social workers can be involved by working with victims or with offenders, by acting as a program co-ordinator, or by influencing policy. As well, social workers can engage in restorative processes in different settings such as a correctional institution, a community agency, or advocacy organisations such as the John Howard Society or the Elizabeth Fry Society.

At a micro level, social workers can be a valuable asset to victims involved in a victim/offender restorative process. According to Wright and Galaway (1989:76), during a mediation session, "the social worker is instrumental in putting all those attending at ease, encouraging both parties to discuss their feelings about the offence and the effect on them as individuals, and reflecting on 'statements' made by each party."

Operating within the community, social workers can provide assistance in the form of counselling and support necessary to help the victim work through the healing process. This support could be offered through individual counselling, or through

involvement in awareness or support groups. As well, the victim's family or friends can be included in this process. Again, an understanding and appreciation of traditional teachings is essential if they are being utilised in the reconciliation process.

Social work intervention and participation in the restorative process can begin at any time after a person has been victimised by a crime. Social workers are frequently employed by police services and as such are frequently among the first to provide services to victims. Determining when to undertake a restorative process between a victim and offender depends on the nature and degree of victimisation. A victim of crime may need to participate in counselling for a period of time prior to meeting with the offender. Each case must be assessed to determine the individual needs of the victim.

The social worker can also assist a victim by acting in the capacity as a liaison with personnel in the institution where the offender is incarcerated. In this capacity, the social worker would help co-ordinate the healing conference, gather information for the victim relating to the offender's period of incarceration, and ensure that the needs and concerns of the victim are considered. As well, the social worker can liaise with other agencies in the community to provide assistance and support to the victim. Those interviewed for this research project indicated that assistance in the form of support services for the victim was key in this process.

Also at a micro level, the social worker can work with the offender in a variety of capacities. Social workers are frequently employed as case management or parole officers within correctional institutions, and as such, are well-positioned to provide support, and counselling to offenders who are interested in participating in restorative processes. An issue to consider when examining the role of social work with offenders is

that the clients are inherently involuntary, and the social worker is in a position of power and authority over them (Rooney, 1992).

According to Rooney (1992:7), it is difficult to maintain a counselling relationship if there is a power differential between the client and counsellor. In a prison setting, the offender may feel coerced to participate in a restorative process, or may do so because of some perceived benefit such as early release. Realistically, within a correctional environment, reducing the power imbalance between the social worker and the offender is impossible. However, the offender can potentially participate in the restorative process without being coerced to do so, and without expecting some benefit. Feelings of coercion can be reduced if participating in the restorative process is strictly voluntary and not mandated as part of a correctional release plan. Clear explanation that participation in the restorative process will not automatically improve chances for early release, or result in a reduction in security level, should address motivation to participate that is based on self-gain. The offender must understand that participating in the restorative process is a choice and not an expectation. Also the social worker must clarify that there are no negative consequences for choosing not to participate. Presenting participation in a restorative justice process in this fashion should diminish feelings of coercion and address the issue of motivation for self-gain.

Within the institutional setting, a social worker can work in conjunction with the Elders, and other levels of administration, in the institution to assist in co-ordinating the healing conferences between offenders and victims. If the healing conferences were held as part of a program such as the Restorative Community Reintegration Pilot Project discussed in Chapter 3, the social worker in the institution would liaise with supports in

the community to assist in a successful transition into the community. Again, an understanding and appreciation of traditional healing practices is essential in situations where these teachings form the foundation of the restorative process.

At a mezzo level, social workers in communities and institutions can provide an educational function by conducting workshops and participating in other information sharing sessions where restorative justice processes are the focus. In a supervisory capacity, social workers can oversee and co-ordinate restorative programs in conjunction with other collateral agencies.

Finally, at a macro level, social workers can be involved in the application of traditional healing practices as restorative justice initiatives through program development, implementation, and evaluation. At this level, social workers can be involved in policy development and formation, as well as policy implementation and evaluation. There would be little direct practice intervention at this level. However, in this capacity, social workers would have the opportunity to effect change at a more influential level of the organisation or department. Again, it is important to stress an understanding and appreciation of traditional healing practices if they are to be utilised as a restorative process.

It is apparent that there are several implications for social work practice with respect to the application of traditional processes as a restorative measure in the justice system. As this is an area in the justice system that is developing and expanding, the counselling, advocacy, and brokering skills of social workers allows them to be well-positioned to take an active and proactive role in this area (Wright and Galaway, 1989).

Restorative justice, both in theory and in practice, shares many similarities with the values and premises of social work. At the level of the individual, restorative justice principles express that the physical, psychological, emotional, and spiritual needs of the person should be addressed as part of the restorative process (Correctional Service of Canada, 1998b:5). This holistic approach to the individual is consistent with the social work premise of addressing the needs of the "whole person" which includes the biological, psychological, social, and spiritual aspects of the person (Sheafor, Horejsi, and Horejsi, 1994:88).

The holistic approach taken by restorative justice and social work to addressing the needs of the person are also consistent with the traditional American Indian teachings of the Lakota people to understanding the four dimensions of self. According to Voss, Douville, Little Soldier, and Twiss (1999:235), in order to be healthy, a person must have good emotional, mental, physical, and spiritual health; these elements must all be addressed and cannot be treated separately. Restorative justice, social work, and Lakota teachings all share the premise that the individual must viewed and treated in a holistic manner.

Restorative justice and social work also share the premise that participants must be actively involved in whatever process is being undertaken (Galaway, 1988:677). One of the tenets of social work is that in order for a change process, such as restorative justice, to be meaningful and lasting "the people who need to change must be active participants in the change process" (Sheafor et al:1994:90). This premise is consistent with restorative justice principles which also encourage the active participation of victims, offenders, and communities (Linden and Clairmont, 1998:4; and New Zealand,

1995:8). Mediation, such as the healing conferences presented in this case study, provides an opportunity for victims and offenders to participate directly in the change process.

Social workers 'help the clients to help themselves' by guiding the change process and building on the strengths of the individuals involved in the process (Sheafor et al, 1994:90). Restorative justice processes, such as mediation, also incorporate the concept of building on the strengths of those involved and operate on the premise that the presenting problems are solvable and that change can occur. Galaway (1988:677) argues that these social work "concepts are utilised in offender-victim mediation programs that are based on assumptions that offenders have the strength to undertake negotiations, solutions can be found, and solutions will be implemented." As such, on a philosophical level, restorative justice and social work operate from several similar premises. However, restorative justice and social work share many similarities in practice as well.

The core practice of restorative justice is mediation; it is seen as "the main vehicle for restorative processes and the victim and offender are the main participants" (New Zealand, 1995:3). Mediation is also considered to be an emerging area of social work practice, and is viewed as "a specialist function in social work", especially as it applies to family-focussed practice (Compton and Galaway, 1999:312). However, the role for social workers as mediators in the justice system is emerging (Umbreit, 1993).

According to Umbreit (1993:69), social workers are taking a more active role in the mediation process between crime victims and their offenders where these two parties meet, discuss the offence and any concerns, and possibly negotiate a restitution agreement. As mediators in the criminal justice system, social workers are working as

"community organisers, program developers, board members, trainers, and staff or volunteer mediators" (Umbreit, 1993:69). The role for social workers in the mediation process is ongoing in its development.

iii) restorative justice as a justice process

This section will present the Healing Conferences held in the Helen Betty Osborne case as a model that could potentially be incorporated into federal and provincial justice systems in Canada. As stated previously, those involved in this specific case reported that there was potential for this process to be applied elsewhere within the CSC. For example, Ron Wiebe discussed the application of this process to the Aboriginal-based program at Elbow Lake, and stated that "we want to convert many of our traditional administrative decision-making or resolution processes and use similar [restorative justice] models." He indicated that the CSC was considering applying restorative justice processes, such as healing circles, to address disciplinary, or conflict, issues within the institution. This would apply to staff members, as well as inmates.

As well, Ron Wiebe stated that restorative justice processes, such as healing circles, could be incorporated throughout the CSC. However, these processes may be more easily accommodated within lower security level institutions as opposed to those with higher levels of security as the lower security institutions have less security-related issues to consider when bringing people together. Regional Elder, Frank Settee stated that the concept of healing conferences can be "utilised to a greater degree within the system to help offenders who are wishing to share with their victims as to...how it is that the crime has impacted on themselves and to understand how their crime has impacted on

the victims." Pam Jack argues that such a process may result in reducing recidivism by assisting the offender to break the offence cycle that lead to their criminal behaviour.

The Healing Conferences that were undertaken in the Helen Betty Osborne case is a process that could be incorporated into federal and provincial justice systems with relative ease. As discussed in Chapter 3, the Restorative Community Reintegration Pilot Project that is currently being implemented by the John Howard Society of Manitoba is a process that is similar to that incorporated in the Osborne conferences. The striking difference is that the process in the Osborne conferences was grounded in traditional healing practices of Aboriginal peoples.

Of interest in this case is that Dwayne Johnston is not a person of Aboriginal heritage. However, the application and incorporation of traditional processes through the Healing Conferences indicate that these processes can be utilised with non-Aboriginal persons as well, if they have a level of understanding of, and respect for, traditional Aboriginal teachings. This sentiment is supported by those interviewed.

Ron Wiebe stated that he felt this process was applicable to non-Aboriginal people as traditional Aboriginal teachings are "much more universal than most traditional spiritual constructs." This view was supported by Pam Jack who argued that the healing process is not "just for Native people", but what is important is to "deal with people holistically" by dealing with "every aspect of that person's life." Peter DeVink, the Deputy Commissioner of Corrections in charge of the Pacific Region expressed his support for utilising this process with non-Aboriginal people, as well.

"I don't think you have to be...Aboriginal...in order to benefit from the process. I think that there is a greater universality to the process than to...say it only works for Aboriginals, or you have to be Aboriginal in order for it work. I think that the certain

principles here that if they're adhered to, can work way beyond just the Aboriginal culture, if one is willing to be open to it."

As application of the healing process undertaken in the Osborne case indicates that this process is not restricted in its application to only First Nations offenders, this process could potentially be incorporated in a program similar to the Restorative Community Reintegration Pilot Project. However, as stated it is important that those involved in the traditional Aboriginal practices have a level of respect and understanding for the symbolic meaning of the ceremonies involved.

These practices and ceremonies can only be conducted by an Aboriginal Elder who is recognised, and respected, as such by the Aboriginal community (Waldram, 1997:109). It is possible to argue that utilisation of traditional Aboriginal practices can be employed with non-Aboriginal offenders and victims if they understand the symbolic significance and role of the sacred items involved in the "symbolic healing," or ceremony. Elder Frank Settee worked with Dwayne Johnston to assist him in understanding the underlying teachings related to the traditional ceremonies in which he was participating. As such, Johnston developed a level of respect for the traditional practices involved in the Healing Conferences and accompanying sweat lodge ceremonies.

According to Waldram (1997:72), "symbolic healing" refers to "the use and manipulation of culturally-constructed symbols in healing" and is a "component of all healing traditions." For example, the sacred pipe is a traditional Aboriginal culturally-constructed symbol; similarly, rosary beads are a culturally-constructed symbol within Catholic teachings. "Symbolic healing involves the healer convincing the patient that his problems can be defined in terms of this world view and treated through the manipulation

of healing symbols" (Waldram, 1997:73). Arguably, for a person to appreciate the utilisation of these symbols for healing purposes, they must first subscribe to the underlying values and belief system that supports these symbols. As such, this does not preclude non-Aboriginal persons from participating in, and benefiting from, a restorative justice process that incorporates traditional Aboriginal practices if they are willing or interested in subscribing to the underlying belief system. Further, one does not need to subscribe to a particular belief system to acknowledge the benefit that others may gain from participating in activities related to that belief system. For example, administrators within the justice system do not have to subscribe to traditional Aboriginal teachings or Catholicism to appreciate the role of Elders and Priests in providing assistance to offenders.

As discussed in Chapter 3, this restorative process is especially relevant to Aboriginal offenders, and components of the Pilot Project could be modified to include grounding in Aboriginal teachings. The necessary factors are currently in place to support this initiative as federal institutions utilise Elders to provide cultural and spiritual services and teachings to Aboriginal offenders (Waldram, 1997). Providing these services as part of a restorative process, which also includes victims, is consistent with the direction of the Restorative Community Reintegration Pilot Project and the expressed commitment of CSC to restorative justice and traditional processes (Correctional Service of Canada, 1998b).

It is of note that interest in restorative justice and a surge of literature addressing traditional Aboriginal healing processes and dispute resolution are occurring at the same time that the Aboriginal population in Canadian prisons is at an all-time high, and is

expected to increase. A study by Statistics Canada (Makin, 1998) indicates that the number of Aboriginal people in prison could potentially double in the next few years due to the high birth rate in the Aboriginal population. This is a disturbing prediction as it speaks to underlying social issues that continue to be inadequately addressed.

To address this expected population increase and to acknowledge the healing role of Aboriginal traditions within the institution, more services will need to be implemented to meet the needs of Aboriginal people in the justice system. Changes to the way CSC provides services to Aboriginal inmates such as incorporating the use of Elders to counsel inmates, and making provisions for traditional ceremonies are already occurring in the institutions (Waldram, 1997). However, these processes are not considered to be restorative justice processes as they do not include victims in a reconciliation or mediation capacity.

Currently and historically, a mediation process similar to that undertaken in the Osborne case exists; these programs are referred to as Victim Offender Reconciliation Programs (VORPs) which were developed in the 1970s. The VORPs

> "used structured mediation techniques in face-to-face meetings between offender and victims. The purpose of these meetings was to deal with the need by *both* parties to gain information about the criminal justice process and to resolve the victim's emotional upset" (Bonta et al, 1998:2).

These VORPs do not usually incorporate traditional Aboriginal healing practices into the mediation process. However, mediation processes and programs could potentially include traditional healing practices where appropriate. The mediation process undertaken in the VORPs, and other similar programs, is examined by Umbreit (1993).

Umbreit (1993:70) presents the four phases of the mediation process between victims and an offender. The first phase is the 'intake stage' which usually begins with an offender being referred to a mediation program by the courts after being found guilty or after an admission of guilt. The second phase is the 'preparation phase' in which the mediator approaches each party separately to explain the process and determine a willingness to participate. The third phase is the actual 'mediation phase' where the parties come together in a meeting to discuss the offence and possibly negotiate a mutually satisfactory resolution to the conflict.

The final phase of the mediation process is the 'follow-up phase', and involves an acceptance of the restitution agreement by the agency that referred the case to mediation. Also during this phase, the mediator maintains telephone contact with the victim to ensure that compliance is occurring and takes appropriate action should the offender not be complying with the agreement. It may be necessary to schedule another mediation meeting between the victim and offender if non-compliance with the negotiated restitution agreement occurs (Umbreit, 1995:70).

The similarities between the Healing Conferences undertaken in the Helen Betty Osborne case and the case described by Umbreit (1993) are striking. Three of the four phases described by Umbreit (1993) - the preparation, the mediation, and the follow-up phases – are similar to those in the Helen Betty Osborne case; although in the Osborne case, these phases were never explicitly identified as such. A process similar to the intake phase was not a part of the process in the Osborne case as Dwayne Johnston was not referred to the Healing Conferences as part of his sentence or programming. Instead, the meetings were arranged after Johnston's parole officer arranged for Johnston to meet

with an Elder from the institution where he was incarcerated. The Elder provided counselling to Johnston and suggested the meetings as a healing process for Johnston and the Osborne family.

Another difference in the Osborne case compared to the mediation process described by Umbreit (1993) is the number of people present at the meeting. Umbreit (1993) described a process where the mediator, victim, and offender were present, whereas in the Osborne case, several CSC staff were present along with several people who represented communities in Manitoba that were affected by the crime. As well, in the Osborne case, a second set of Healing Conferences were held during which traditional healing ceremonies were performed as part of the healing, or mediation, process. Umbreit (1993:70) indicated that a second meeting may be necessary if the offender is not complying with the negotiated agreement.

Umbreit (1993:70) describes a negotiated agreement, or contract, that is reached and signed by both parties indicating that a resolution has been reached in the conflict. In the Osborne case, no written agreement was prepared. Johnston committed verbally to giving a statement to the RCMP with respect to his role in the murder, and committed to testifying at a future trial against the other men involved in the murder should the opportunity arise.

It is important to note that in most mediation sessions there is an assumption that there is ongoing conflict for which mediation is required. This is not the situation in this case as there is no ongoing conflict to be resolved between the Osborne family and Dwayne Johnston. However, mediation in the context of this case refers specifically to the manner in which the Healing Conferences were conducted. The Elder acted in the

capacity of a mediator, or facilitator, in the meetings by ensuring that the appropriate ceremonial practices were conducted, by identifying the order in which members would speak, and by overseeing the discussions that were held to ensure that the appropriate tone of respect was maintained.

It is apparent that the process undertaken in the Osborne case shares many similarities with restorative justice and mediation processes already in practice. As such, the structure and mechanisms for the incorporation of the unique processes undertaken in the Osborne case are in place and could be modified to accommodate the traditional Aboriginal healing practices that were part of the Healing Conferences in this study. To incorporate such a process as that utilised in the Helen Betty Osborne case, appropriate liaisons with available supports in the community to meet the needs of the victims must be ensured.

The development of these community supports within First Nations' communities is accommodated within sections 81-84 of the Correctional and Conditional Act (CCRA). These sections of the CCRA enable "Aboriginal communities to be involved in the release plans of offenders seeking parole in an Aboriginal community, and enables the Minister to make formal arrangements with Aboriginal communities for the care and custody of Aboriginal offenders" (Canada 1998b, 142). It is within this existing framework that the principles of the Healing Conference and restorative justice can be applied.

iv) recommendations for future research

During the process of conducting the research for this project, the full impact of what had transpired in this case became more apparent. This was the first time in CSC history that members of the National Parole Board travelled to a community to consult with members about their concerns pertaining to the impending release of an offender.[3] This was also the first time that an offender and victim were brought together in a meeting in which traditional Aboriginal healing practices were utilised to begin the reparative process (Personal communication with Frank Settee, Regional Elder, Pacific Region CSC, March 24, 1998). These events are remarkable when considered in isolation.

What makes these events even more remarkable is that the case that resulted in their occurrence is arguably one of the most notorious murder cases in Canadian history. It is a case that is rife with racism both in the community and the social institutions that investigated the murder. The Aboriginal Justice Inquiry of Manitoba (Manitoba, 1991b) captured the essence of the murder and the subsequent investigation.

> It is clear that Helen Betty Osborne would not have been killed if she had not been Aboriginal. The four men who took her to her death from the streets of The Pas that night had gone looking for an Aboriginal girl with whom to 'party'. They found Betty Osborne. When she refused to party she was driven out of town and murdered. Those who abducted her showed a total lack of regard for her person or her rights as an individual. Those who stood by while the physical assault took place, while sexual advances were made and while she was being beaten to death showed their own racism, sexism, and indifference. Those who knew the story and remained silent must share their guilt. (Manitoba, 1991b:98)

[3] Personal communication with Fraser Simmons, Regional Director, Pacific Region, National Parole Board, October 22, 1998.

The circumstances surrounding the murder of Helen Betty Osborne and the subsequent police investigation, justice inquiry, and reviews combine to make this case a touchstone of the injustice and racism that Aboriginal people have experienced, and continue to experience, in Canadian society and the Canadian justice system. As such, it seems oddly fitting that a restorative process, grounded in traditional Aboriginal healing practices, would be the means that would finally bring the offender to speak of his role in the murder. It is also fitting that this process has been the impetus for change within the correctional system and has been embraced by the justice system that so completely failed the Osborne family.

Future research in this area will most likely consist of more case studies into the experiences of those who have participated in a process such as that undertaken in this case. However, this may initially be difficult as there are very limited cases in which this process has been utilised in a similar manner and under similar circumstances. As such, determining the effect of these processes on recidivism and reducing the harm experienced by victims may be difficult to determine in the near future. The Restorative Community Reintegration Pilot Project discussed in Chapter 3 may generate further cases for study; however, the pilot project does not currently utilise traditional practices as part of the restorative process.

Research should also be focused on the determining how this process could be utilised as part of the parole process in the current system to increase the rate of successful parole application and completion among Aboriginal offenders. As well, research should be focused on the experience of victims in the process to determine the nature of the services they require to support them in their participation. First Nation and

Aboriginal people and communities will have an integral role in the development, implementation, and evaluation of such healing processes in communities and institutions.

v) conclusion

The interviews that were conducted for this thesis provided rich information and insight into the application of traditional Aboriginal healing practices as a restorative justice process. As such, this process could be incorporated at several different stages in the justice system. More specific to this research, this restorative process could be incorporated as part of the release plan for federally sentenced offenders.

With respect to the two research questions posed in this thesis, all those interviewed revealed that their involvement in this process, regardless of the level, had a personal impact on them. Although not formally interviewed, Cecilia Osborne reported that meeting Johnston provided a certain level of closure for her and her family. She was able to have questions answered regarding events and circumstance resulting in the death of her sister, Helen Betty Osborne, that had gone unanswered for several years. As well, she was able to address fears and concerns she had relating to Johnston's release to the community. The meeting allowed her to reduce Johnston from a larger than life figure to a person who represented no further threat to her or her family.

Johnston revealed that meeting with Cecilia Osborne enabled him to take responsibility for his actions and to apologize for the pain and suffering he had brought to the Osborne family. He expressed relief at being able to meet and talk to the people that he had hurt so badly. As well, he felt that as difficult as it was to meet with Cecilia, he needed to do this to assist in bringing closure for the Osborne family and for himself.

Johnston also stated that the incorporation of traditional Aboriginal practices, such as smudging, resulted in a non-confrontational approach and tone which he felt was effective in facilitating the meeting. He stated that most offenders expect aggression and confrontation, so removing these elements essentially removed their accustomed strategies of dealing with difficult issues.

Those interviewed who represented the Correctional Service of Canada expressed that participating in this process provided them with insight into ways in which they can incorporate restorative justice principles into the approach they take to address their tasks within the CSC. As well, they expressed that participation in the process gave them a sense of hope that there can be positive gains within a correctional environment that is so often rife with negativity and suffering.

The people interviewed that helped with the series of sweat lodge ceremonies revealed that participation in this restorative process provided them with insight and strength to deal with their personal difficulties and had an impact on the manner in which they interacted with others. They also expressed that they felt a sense of personal growth and development in their own spirituality resulting from their participation in this process.

With respect to the potential for the application of this process to other situations, all interviewees expressed that they thought it would be applicable and beneficial to both victims and offenders. However, caveats were issued regarding appropriate screening of participants for their sincerity and insight into their offense cycle. Offenders who are insincere with respect to their remorse for their actions and their desire to reduce the harm caused by their actions may further victimize their victims. Several interviewees

stressed the importance of ensuring that appropriate supports, and follow-up, be provided to victims as they participate in this process.

On a broader level, members of the CSC expressed that the meeting between Cecilia Osborne and Johnston was a catalyst for change in this area of restorative justice within the CSC. Ron Wiebe attributed his participation in the Healing Conferences as providing him with the impetus to develop an Aboriginal-focused healing centre at a correctional facility that was scheduled to close. As well, principles of restorative justice are reported by CSC members, such as Peter DeVink, to be incorporated in other areas of management within the CSC. As a result, the degree of respect between staff members is reported to have increased and conflicts are more easily resolved.

Future research in this area should focus on defining the role of social workers in this process. The principles of restorative justice, traditional Aboriginal teachings, and the values espoused social work all share the premise that the spiritual, physical, emotional, and psychological aspects of an individual must be addressed when considering an intervention. As well, the premise that the individual must be active participants in the change process is espoused in traditional Aboriginal teachings, the principles of restorative justice, and social work theorists. As social work and restorative justice processes share many similar premises, there is a natural role for social workers in the restorative justice process either in the community or in the institution, working with either the victim or the offender.

As well, future research should attempt to develop evaluation measures to determine means of assessing this process. These measures would assist in determining levels of participant satisfaction and areas that require improvement. As well, research

should focus on developing training protocols for social workers interested in this field of work.

The Healing Conferences involving Cecilia Osborne and Dwayne Johnston were a unique experience for all involved and have been a catalyst for change in many areas of the federal correctional system. Ron Wiebe, Warden of Ferndale Institution, said that he thought that this case resulted in a paradigm shift within CSC towards taking a different approach to dealing with offenders and 'doing corrections.'

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APPENDIX A

INTERVIEW QUESTIONS

- Talk about your duties, and role in the correctional system.
- How and why did you become involved with Dwayne Johnston?
- Trace the events that have occurred since you have become involved with Dwayne.
- What has been your role in this healing journey?
- Talk about the initial meeting with Dwayne and the Osborne family. What are your perceptions of this meeting?
- Talk about the significance of the healing conferences and sweat lodges with respect to the healing process.
- Has this process worked with Dwayne? I.e. has he accepted responsibility for his actions?
- Talk about any change you may have witnessed in Dwayne since you became involved with him.
- Talk about the potential of this process for others. How would it work, what would the process be, what factors would have to be in place?
- What do you see as the role of Pam Jack, Eric Robinson, and Ron Wiebe (Warden from Ferndale).
- What was the role of the parole board in this case?
- Has this process affected the Osborne family? How?
- Has this journey and process affected you? If so, in what ways?

APPENDIX B

Consent Form

Research Project – Case Study of the healing journey with respect to Helen Betty Osborne

You are being asked to participate in research as part of a Master of Social Work thesis. It is a case study of the practical application of Aboriginal traditional healing processes and restorative justice principles as utilised in the Helen Betty Osborne case.

This research is part of a larger project under the auspices of Mr. Eric Robinson, the Member of the Manitoba Legislative Assembly for Rupertsland. The researchers in this project are Iris Griffin (204) 945-3710 and Sandra DeLaronde (204) 945-3909. Both researchers will be conducting interviews jointly, and separately, as time constraints dictate.

Participation in this project will consist of an interview, or a series of interviews, relating to experiences of involvement in the healing journey undertaken in the Helen Betty Osborne case.

None of the interviews will be longer than two hours unless agreed to by all present. Interviews may be terminated at any time by the participant. Should any participant experience emotional stress due to participating in this interview process, support will be offered by the interviewers and information regarding available counselling services will be provided.

With permission from participants, the interviews will be audiotaped to ensure all relevant information is captured. The interviews will later be transcribed and analysed. Participants are free to withdraw from the project at any time without penalty.

As the subject of this research has had extensive coverage in the national media, anonymity of participants can not be guaranteed. However, specific identifying information (e.g. addresses, phone numbers, etc.) will not be used in the written thesis. Participants may choose to use a pseudonym and the researchers will have sole knowledge of the true identity of the participant. However, participants should be aware that it is possible that someone familiar with this case may be able to identify them.

Copies of the transcribed interviews will be made available to participants to allow provision of further insight into their experience. As well, this will provide an opportunity to indicate what, if any, information is not to be included in the final project. Should participants choose, drafts of the final report will be made available to provide an opportunity to add any further insights or feedback that may be useful. Participants will also be provided with final copies of the report.

Upon completion of this project, all transcripts will be given to the appropriate interviewees. No copies will be retained by any person other than the interviewees. All confidential materials identifying interviewees will be destroyed upon completion of this project.

I, _____, have read the above information, and agree to participate in this project as specified below. I have discussed with Iris Griffin, and/or Sandra DeLaronde, the potential risks or benefits that may result from participating in this project. I also understand that I may withdraw from participation in this project at any time without penalty or recourse. I understand that measures to protect personal information will be undertaken at my request. As well, I understand that I will be provided, if I wish, with transcriptions of the interviews to allow me to provide further insights and details of my experience. I also understand that I will be provided with a draft of the final report, again to provide further insight and feedback.

Please sign #1 if you wish to participate as indicated. Please sign #2 as well if you wish to be identified only by a pseudonym.

1. I have read this consent form, and agree to participate as specified, in this research project and personal information not relevant to this project will remain confidential.

_____ _____

SIGNATURE OF PARTICIPANT DATE

2. I do not wish to have my name used and prefer to be identified in any written report of the research through the use of a pseudonym.

_____ _____

SIGNATURE OF PARTICIPANT DATE

APPENDIX C

INTERVIEW AND MEDIA CODES

CODE	EXPLANATIONS
IFF	Information for family
CFF	Closure for family
ICOF	Impact of crime on Osborne Family
HP	Healing process
HPO	Healing process with others
HPNA	Healing process with non-Aboriginal
HPA	Healing process advice
VS	Victim support
HPCSC	Healing Process CSC (restorative justice)
OAV	Offender accountable to victims
JRF	Johnston's responsibility to family
AHP	Application of healing practices
JRHP	- Johnston's reaction to healing process
JS	Johnston's sincerity
CJ	Credibility of Johnston
JMNPG	Johnston's motive - no personal gain
JMHOF	- Help Osborne Family
JMHS	- Heal himself
JC	Johnston's commitment
CRHP	- Cecilia's reaction to healing process
IHPOF	Impact of healing process Osborne Family
OFC	Osborne Family courage
OFF	Osborne Family forgiveness
IHPS	Impact of healing process on self
IHPCSCS	Impact healing process CSC staff
RM	Reaction to Meetings
RMCH	- created hope
PIM	Purpose initial meeting