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Sentencing Alternatives for Women:

Options for a Woman-Centered Justice Model's Sentencing Component

© Jane S. Evans
1998

**Submitted to the Department of Criminology,
University of Ottawa,
in partial fulfillment of the requirements for the degree of
Master of Arts**



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Preface

I first became interested in exploring the possibility of a woman-centered justice model after reading Creating Choices and other documents concerning the 1989 Task Force on Federally Sentenced Women. It was these documents which introduced me to the term women-centered (Task Force on Federally Sentenced Women, 1990; CSC, 1994; Hannah-Moffat, 1995). Although it was used frequently in relation to the possibility of a women-centered prison and the need for women-centered prison programming, the term women-centered was never adequately defined. My initial interest in defining the term women-centered increased when I realized that academics, Correctional Services Canada, and women's advocacy groups were using the same term. I found it very difficult to accept that women-centered would mean the same to each of these groups.

I began to think about what an entire justice system based on women-centered principles would look like. Would such a system be possible? Would it follow the design of the traditional system or would it be completely different? I decided to conduct an exploratory study to address these questions. However, given the limits of a Master's thesis, it was not possible to look at an entire women-centered justice system. Rather, I narrowed my focus to one component of the system, the sentencing component. Although there is a need for change throughout the entire traditional criminal justice system, there is particularly a need for the development of alternative sentences. The present over-use of carceral sentences needs to be addressed.

Although there has been considerable debate as to whether a feminist criminology, feminist jurisprudence, or a women-centered/women-wise penology is necessary, little or no literature exists regarding the nature of a women-centered justice model. Consequently, I applied literature on alternative community-based models of justice as well as the primary information gained from interview respondents. Since the debates surrounding a distinctly feminist jurisprudence and a feminist criminology are similar to the question of creating a separate woman-centered justice model, a section was included in chapter 3 which outlines these debates.

One of the difficulties I encountered while writing this thesis was the necessity to work both within and outside of the traditional correctional and sentencing literature. I realize that there is a concern about using traditional language when discussing alternative concepts and ideas. However, I feel it is necessary to use language that is familiar when a new concept or idea is being formulated. I do not think it is possible to explore new phenomena unless the discussion is rooted in familiar language. However, one must remain vigilant about the danger in using traditional terms such as recidivism when introducing an alternative model.

I also found it difficult to focus only on the sentencing stage of the criminal justice system. By doing so I was not being fully consistent with the transformative justice model and its holistic approach. However, I felt that it was important to discuss the healing principles of transformative justice so that a more holistic sentencing model for women could be designed. If I were to suggest a woman-centered justice model that does not have a sentencing component, it may fail to be implemented, as has transformative justice.

This thesis only provides a small glimpse at alternative ways for addressing the needs of women in conflict with the law. It is my hope that it will be used as a resource for further discussion and study on this topic.

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ABSTRACT. This thesis focuses on justice and women's groups perceptions regarding the possibility of a woman-centered justice model. Face-to-face interviews were conducted with eight representatives from Canadian justice and women's groups. The benefits and limitations of three justice models: community corrections, restorative justice, and transformative justice are discussed with relation to sentencing women in conflict with the law. The traditional criminal justice system and present justice models do not adequately address the needs of either women or men; therefore, fundamental changes to the system are needed. Although it is recognized that men would also benefit from a new approach to sentencing, only the possibility of a woman-centered justice model that looks at sentencing women is discussed. The justice and women's groups' respondents argue that non-carceral sentences should be used for all women who do not pose a threat of violence to themselves or the public. Another theme that emerged from these interviews was that a woman-centered justice model might be too narrow an approach to deal with the individualized needs of women. Therefore, a woman-centered justice model's sentencing component should be based on a transformative model which addresses the social, political, and economic realities of women as well as tailor its sentencing program to meet the specific needs of each sentenced woman. There was no consensus among the representatives regarding the nature of a proposed separate system for women. The author proposes that the present system be changed to allow for a woman-centered sentencing model which is based on transformative justice principles.

Introduction:

The traditional Canadian approach to sentencing relies too heavily on the use of prison (Canadian Sentencing Commission, 1986; Doob, 1990; CCJC, 1996; NCPC, 1997) as a means of dealing with individuals in conflict with the law. Canada has one of the highest incarceration rates in the Western industrial world (CCJC, 1996; Christie, 1994; NCPC, 1997). There is a general belief that non-carceral alternatives need to be sought for both women and men (Doob 1990; Solicitor General Canada, 1996; Christie, 1994; Morris, 1995; Canadian Sentencing Commission, 1986), especially for those who commit non-violent offences.

Historically, due to their small numbers, women have been seen and treated as secondary within the criminal justice system. The programs provided have been androcentric and do not necessarily address the needs of women who have been sentenced.

In 1989 the Correctional Service of Canada created a Task Force on Federally Sentenced Women. The objective of this Task Force was to study the correctional management of federally sentenced women and to develop a plan to guide and direct this correctional process in a manner that was responsive to the unique and special needs of these women (Shaw, 1992a:441). As a result of this study, a decision was made to close the Prison for Women in Kingston, Ontario and to open four regional facilities for federally sentenced women, as well as an Aboriginal Healing Lodge. One of the goals of these new facilities was to allow for more community involvement with federally sentenced women (Shaw, 1992a:441). Although these facilities are an improvement over the Prison for Women, there are still several limitations to the regional facilities. These

limitations include an over-reliance on static security measures, the over-classification of women, the inability to house maximum-security women and those with mental health needs, lack of programming, and lack of community presence. This thesis will examine whether a community-based woman-centered sentencing model would better address the needs of women in conflict with the law.

The concept 'women-centered' emerged within prison reform literature during the late 1980s and early 1990s, as a guide to help reconstruct women's prisons on feminist ideals and principles (Hannah-Moffat, 1995). The Task Force on Federally Sentenced Women adopted a women-centred approach as the basis for their proposals for new correctional programming for women (Correctional Services Canada, 1994). According to Correctional Services Canada, women-centred principles include:

- 1) the contextual analysis of women's lived realities;
- 2) an emphasis on non-hierarchical, cooperative programming, with each woman serving as her own expert;
- 3) non-confrontational interaction between women and the facilitator which is challenging, yet, supportive;
- 4) connections with other women are encouraged so as to learn from each other;
- 5) an emphasis on agency and the belief that women are active agents not passive victims (Correctional Services Canada, 1994: 15).

The problem associated with applying these 'women-centred' principles to a conventional prison setting is that they are contradictory to the operation and structure of the traditional correctional system. It is not possible to realize the principles of non-hierarchical and non-confrontational interaction in an institution where these elements are embodied in the structure of the institution. The rhetoric of women-centered corrections

is used to present a more humane and empowering image of the traditional practice of punishment. The implementation of women-centered principles will not be effective unless the very structure of the prison system is challenged.

A woman-centred justice model that uses non-carceral means to focus on the transformation of relationships within the community and promote more positive and healthy relationships may be more conducive to addressing the needs of women who are sentenced.

This thesis will address the question of whether separate correctional programs should be created which might be more responsive to the needs of women. More specifically, it will focus on the possible nature of a woman-centered sentencing system. In order to gain an understanding of a possible woman-centered justice model, three other community-based justice models: community corrections, restorative justice, and transformative justice, will also be examined. The limitations of community corrections as an alternative to the use of incarceration and the inability of restorative justice to actively address the social conditions that contribute to criminal activity will be discussed. The failure to move beyond theoretical discussion of transformative justice and to implement a transformative model of justice will also be examined.

A review of community-based sentencing literature and qualitative interviews with representatives from Canadian justice groups and women's groups will be used to explore perceptions of the nature of a woman-centred justice model and suggestions about possible community-based sentences for adult women who are in conflict with the law. Although women are not a homogeneous group, due to the constraints and purposes of this thesis, the term 'women' will refer to all women as a status group.

It is however, important to note that by only looking at women as a status group the issues of race, ethnicity, and class are lost. This is a limitation of this thesis which needs to be recognized. This thesis looks specifically at women who are sentenced within the criminal justice system. A similar study could and should also be conducted with regards to men who are sentenced.

The first chapter will outline the methodology used to explore what a woman-centered justice model's sentencing component would look like. Qualitative face-to-face interviews were conducted with representatives of Canadian justice and women's groups. The interview schedule consisted of four sections. These focus on:

- 1) the needs of women in conflict with the law;
- 2) carceral versus non-carceral sentences;
- 3) alternative community-based justice models;
- 4) woman-centered justice model.

Chapter two will briefly outline the purposes of sentencing within the Canadian traditional justice system and discuss the over-reliance on prison by the traditional system. A review of present community-based sentencing literature will be included. Community corrections, restorative justice, and transformative justice will be examined with regard to their potential as alternative sentencing models. Concerns related to theory and implementation failure (Rosenbaum, 1987) will be discussed in light of these models' limitations.

The third chapter will examine types of 'female offending', outline the needs of women who are in conflict with the law, take a closer look at the regional facilities for

federally sentenced women, examine what has been defined as women-centered in correctional spheres, and discuss the possibility of a woman-centered justice model.

The fourth chapter will report on findings from the qualitative interviews with the representatives from various justice and women's groups. This chapter is separated into four sections: needs of women in conflict with the law, carceral and non-carceral sentencing practices, different sentencing components, and a woman-centered justice model's sentencing component.

The final chapter will summarize general themes from the interviews and discuss whether a separate woman-centered system could or should be implemented. Proposed sentencing alternatives will also be discussed in this chapter.

Chapter 1:

Methodology

The Design of the Study:

The purpose of this qualitative study was to explore the sentencing component of a woman-centered justice model. Semi-structured in-depth interviews were conducted with representatives from five women's groups and with three justice groups which have worked with women in conflict with the law in the Ottawa, Toronto, and London areas.

This was an exploratory study. Face-to-face interviews were conducted in order to gain more in-depth responses than a questionnaire would have permitted, and to allow for clarification of new concepts, phenomena, and ideas. The interviews were semi-structured so as to assume some consistency and have the freedom to adapt the interview. Open-ended, or free-response questions were used in order to provide direction to the interview while enabling the respondent to describe the phenomenon in his/her own words. These open-ended questions allowed for new definitions and terminology to surface.

The participants were asked questions about the sentencing components of three different justice models: the traditional criminal justice model, restorative justice, and transformative justice. Also participants were asked about the nature, policy and practice of a woman-centered justice model with specific reference to the sentencing component. A copy of the interview schedule is provided in Appendix I.

The interviews, which were taped, were transcribed. The results of these interviews can be found in the fourth chapter.

Interview Sample:

This study is based on an opportunistic sample which was drawn from the Canadian women's groups and justice groups population. The sample is not representative of these populations, therefore, the results of this study must be generalized with caution. Representatives from women's groups were interviewed in this study due to their knowledge of women's issues and of the needs of sentenced women in the community. Although they were interviewed as representatives of their organizations, they may have expressed some ideas that were personal and not necessarily those of the groups. Some groups work directly with women in the community, such as the Elizabeth Fry Society of Toronto. Other groups, such as the National Council of Women of Canada, work with legislative bodies on behalf of women in the community. Criminal justice groups that have worked on issues related to women in conflict with the law were also included in the interviews due to their knowledge of the traditional criminal justice system and perceived alternatives to its use. The initial sample also included groups that deal specifically with Aboriginal and Black women due to the over representation of these women in the traditional justice system.

Sampling Technique:

A purposive sampling procedure was used to draw a sample of Canadian women's groups that are presently active in discussions of legal or criminal justice issues. Due to geographical, time, and financial constraints, only groups that have offices in Ontario were sampled. The sample was drawn from the Status of Women Web Site, which includes a list of e-mail addresses for Canadian Women's Groups; a Women's

Groups Consultation Attendance List from a Violence Against Women and Children Conference which was held on September 16-18/97 in Ottawa; and the Women's Link 1994 National Capital Directory of Women's Groups and Equity Opportunities. These lists are not inclusive of all Canadian women's groups and may not be representative of the entire women's group population. Since no inclusive list exists, it was necessary to draw on several sources.

A group was selected for the study if they had a legal or criminal justice focus within their mandate or objective. A total of twelve women's groups and three justice groups were selected from these lists. One justice group, National Associations Active in Criminal Justice, was added to the sample after referral by one of the respondents in this study (see Appendix A for addresses and Appendix B for mandates). Therefore, a total of sixteen groups made up this sample. They are:

- Canadian Advisory Council on the Status of Women (CACSW)
- Canadians Against Violence Everywhere Advocating Its Termination (CAVEAT)
- Canadian Association of Elizabeth Fry Societies (CAEFS)
- Church Council on Justice and Corrections (CCJC),
- Congress of Black Women
- Elizabeth Fry Society of Toronto
- Metropolitan Toronto Action Committee on Public Violence Against Women and Children (METRAC)
- National Action Committee on the Status of Women (NAC)
- National Associations Active in Criminal Justice (NAACJ)
- National Association of Women and the Law (NAWL)
- National Council of Women of Canada (NCWC)
- Native Women's Association of Canada (NWAC)
- PAUKTUUTIT: Inuit Women's Association
- Status of Women Canada (SWC)

- The Salvation Army Correctional and Justice Services Department
- Women's Legal Education and Action Fund (LEAF).

Although the Church Council on Justice and Corrections (CCJC), and The Salvation Army Correctional and Justice Services Department are not women's groups, they were added because of their work with restorative justice and women in prison. The National Associations Active in Criminal Justice (NAACJ) was included because it represents a coalition of voluntary and professional organizations that have an interest in criminal justice procedure, corrections, and crime prevention. It was believed that this association would bring insight to the study of alternative systems of justice due to their active involvement in promoting socially responsible approaches to criminal justice. Canadians Against Violence Everywhere Advocating Its Termination (CAVEAT) was also included because of their focus on victims. This group does not have a mandate specifically directed at the status of women, but their understanding of victims' needs may help increase the understanding of the concept 'woman-centered'. In this study, CCJC, the Salvation Army Correctional and Justice Services Department, NAACJ, and CAVEAT will be referred to as justice groups.

A total of eight interviews were conducted out of the sample of sixteen groups.

These interviews included representatives from the:

- Salvation Army Correctional and Justice Services Department
- Elizabeth Fry Society of Toronto
- Church Council on Justice and Corrections (CCJC)
- Canadian Association of Elizabeth fry Societies (CAEFS)
- National Council of Women Canada (NCWC)
- National Association Active in Criminal Justice (NAACJ)

- Lawyer
- Bonnie Diamond

A lawyer was interviewed independently from the group she is associated with due to her unfamiliarity with the group's policy on interviewing. Bonnie Diamond was also interviewed independently since she preferred to respond based on her involvement as co-chair of the Task Force on Federally Sentenced Women.

Interviews were arranged with groups who were available and willing to participate. Although the original sample was drawn to include representation of groups that specifically deal with issues related to Aboriginal and Black women, it was not possible to set up interviews with these groups. Therefore, the sample is limited in its representation of women who are in conflict with the law.

Two groups refused to participate in the interviews: the representative from PAUKTUUTIT did not feel comfortable participating in an interview due to lack of knowledge on the topic of women in conflict with the law, and no representatives from Status Women Canada were available to participate in an interview. Two attempts to make contact with the Canadian Advisory Council on the Status of Women were made, however, there was no contact made since the organization has been abolished. This was the case with the Native Women's Association of Canada and Congress of Black Women because their phone numbers were no longer in service. Two attempts to set up an interview were made to Canadians Against Violence Everywhere Advocating Its Termination. However, it was not possible to schedule an interview with CAVEAT. A message was also left with the National Action Committee on Status of Women, however, the representative with whom I was delegated to speak to was not available during the time in which the interviews were conducted. Two phone messages were left

with a representative at the Metropolitan Toronto Action Committees on Public Violence Against Women and Children, however, neither were returned so no interview was scheduled for METRAC.

Interview Procedures:

The interview participants were volunteers over the age of eighteen drawn from the sample of sixteen justice and women's groups. If a contact name was provided on one of the lists, along with the description of the group's mandate and address, that individual was approached. If no contact name was provided, a representative was sought. The first contact with the group was made by telephone. The contact person or a representative was asked to participate in the study (see telephone script in Appendix D). During the first telephone call, if a representative was willing to participate in the study, an interview date was scheduled. A confirmation letter was then sent to the participant prior to the interview in order to confirm the date and time (see Appendix E). After the interview, a follow-up letter was sent to thank the participant for their time (see Appendix G). If a selected group refused to participate in the study, their number was out of service, or repeated attempts at contacting a representative failed, another group was approached. This procedure continued until all sixteen groups had been contacted and all interviews were conducted.

The subjects were asked to participate in a face-to-face semi-structured interview. The interviews were conducted at the participant's office and lasted approximately one hour.

Participant Confidentiality:

In accordance with confidentiality guidelines outlined by the University of Ottawa Human Research Ethics Committee, the tapes were erased after they were transcribed. Anonymity was secured by providing each participant and their group with an identification number. Since the participants may be quoted, they were able to choose how they wished to maintain their anonymity on the consent form (i.e.: use of a pseudonym, without any identification; see Appendix F). If a participant chose not to maintain anonymity, the group remained anonymous unless written consent was given to allow disclosure of the group's name. If anonymity was desired, the group was only referred to according to their type of organization (i.e.: advocacy) or mandate (i.e.: violence against women). Only one representative chose to maintain the anonymity of both herself and the group she is associated with, while another representative only chose to maintain the group's anonymity. The remaining six representatives did not choose anonymity for either their group or themselves. However, for reporting clarity only the group's name is used when quoting from the interviews.

Advantages and Limitations of Semi-structured Interviews:

Some of the advantages related to using interviews instead of other qualitative methods include: a decrease in problems related to clarity and confusion about particular questions, and the ability to create a rapport which may lead to more in-depth questioning. However, like all methodologies, there are also disadvantages associated

with using interviews. One of the biggest disadvantages is the cost and time required in conducting the interviews. Compared to questionnaires, interviews can be more expensive and time consuming (Palys, 1992: 166). Other disadvantages are the chance for reactive bias, which occurs when individuals behave differently when they know they are being studied, is far greater than with other methods. Confidentiality may also be a concern for some participants especially when the questions are of a sensitive nature. A final concern is related to deciding how to record the responses. Distortion may occur if the interviewer summarizes the responses, trying to write down responses verbatim can become tedious and may take away from the momentum of the interview, and transcription from a taped interview can be expensive and time consuming (Palys, 1992: 166). These are some general disadvantages of using interviews, however, interviews are an excellent component in exploratory research and for qualitative/inductive studies in-person interviews can offer the flexibility required to respond to unanticipated phenomena (Palys, 1992: 166).

Most of the limitations of interviews were not an issue in this study because of the small sample used. Problems related to travel expense were minimal since only three interviews were conducted outside of Ottawa. Also the problem of time constraint was reduced due to the small sample and since the interviews were approximately one hour in length. The problem of confidentiality was addressed by providing the respondent with several options to maintain their anonymity on the interview consent form. The interviews were taped in order to minimize the problem of distortion when recording the interviews. Although the interviews were transcribed, which was time consuming, it was the most appropriate method for recording the results of these interviews.

The next chapter provides a review of traditional and community-based sentencing literature. In particular three models of justice are discussed.

Chapter 2:

A Review of Community-Based Sentencing Literature

A. Non-carceral Sanctions and the Goals of Sentencing

Prisons have been and are continually being over-relied on by the Canadian Criminal justice system (Doob, 1990). “Canada has a relatively high rate of imprisonment compared to most western democracies” (Canadian Sentencing Commission, 1986:77). Canada incarcerates 130 adults and juveniles out of every 100,000 (National Crime Prevention Council (NCPC), 1997: 2). This is problematic since there is inconclusive evidence regarding the ability of prisons to reduce recidivism, deter, rehabilitate, or to protect society in the long run. Moreover, prison is a very costly form of intervention (Morris, 1995; Solicitor General of Canada, 1998). A closer examination of these deficiencies will further demonstrate the problems associated with relying on imprisonment for individuals who do not pose a threat of violence to themselves or the public.¹

Limitations of Prison:

Although incarceration may guarantee that an individual will not commit additional crimes while in custody, it is a costly insurance tool considering that it is very difficult to predict who will recidivate. According to Statistics Canada at least 65% of

¹ It is important to note that this discussion of the limitations of prisons is not new. For a more in-depth critique of the use of prisons see Michel Foucault’s (1979) Discipline & Punish: The Birth of the Prison.

people will not recidivate (NCPC, 1997:6). Also there is little indication that the process of incarceration will reduce chances of recidivism once a person has completed their carceral sentence, it may even increase their chances of recidivism (NCPC, 1997; Morris, 1995).

If an individual is segregated from the wider society for a period of time and if they are not able to gain or maintain skills while incarcerated, their ability to productively contribute to society may decrease. An ex-prisoner's likelihood of reoffending is increased if they are unable to compete in a society that may have changed dramatically while they were incarcerated (Morris, 1995). "Many prisoners emerge from prison more isolated and marginalized, which may increase their likelihood of re-offending and returning to prison" (NCPC, 1997: 4). Also, with the deterioration of social supports for individuals serving lengthy sentences, and the stigmatization of having a criminal record, supporting themselves through conventional means may prove difficult. "It has been suggested that imprisonment can actually *increase* the likelihood of subsequent re-offending since offenders will be placed in an environment that is supportive of criminal activity" (Bridges and Stone, 1986, as cited in Griffiths & Verdun-Jones, 1994: 408). By their nature, prisons make it difficult for individuals to interact with conventional people. Individuals with long sentences can find that their ability to maintain relations with family or positive peer groups outside prison is reduced. Therefore, once released from prison, their social contact with non-criminal peers can be limited which may lead to further criminal activity.

Imprisonment is one of the most costly types of interventions presently available. Although the costs may fluctuate depending on the year and level of custody, there is a

recognition that overall “incarceration is the most costly alternative we have in responding to crime ... several times as costly as any community alternative” (Morris, 1995: 5). According to a report on prison overcrowding by the Solicitor General Canada in January 1998, the amount of money that Correctional Services Canada spends to incarcerate one federal prisoner for a year is \$50,375. It costs \$32,811 for a halfway house and \$9,145 to supervise an individual on parole (Solicitor General Canada, 1998: 1). Although the costs of community sanctions may vary depending on the extent of supervision initiated, on average non-carceral sanctions cost less than incarceration (Morris, 1995; Solicitor General Canada, 1998).

Imprisonment can play only a limited role at best in a crime prevention strategy. When restricted to violent offenders who are likely to re-offend, removal of people from the community is necessary and effective. It is an expensive alternative, and therefore should be reserved for this profile of offender as opposed to non-violent offenders (NCPC, 1997: 4).

Lastly, prisons do not realize the utilitarian goals of sentencing. Prisons fail to effectively deter, rehabilitate, or protect society in the long run. In reality, short-term protection of society by segregating the individual and punishment appear to be the only goals achieved through incarceration.

The next section will outline the goals of sentencing and further discuss the limitations of carceral sanctions to effectively realize the utilitarian goals of sentencing.

Traditional Purposes of Sentencing

The traditional goals of sentencing within the current criminal justice system include “general and specific deterrence, incapacitation, rehabilitation, punishment and

doing justice” (Roberts and Stalans, 1997: 199). These goals can be divided into utilitarian and retributive goals. Utilitarian goals include individual and general deterrence, incapacitation, and rehabilitation. These utilitarian goals “look to the future as a means of justifying the imposition of legal sanctions” (Griffiths & Verdun-Jones, 1994: 407). The retributive goal of punishment, which includes “the philosophy of ‘just deserts’ and denunciation, looks primarily to the past, fixing upon the blameworthiness of the offence committed” (Griffiths & Verdun-Jones, 1994: 407).

Deterrence can be either specific or general. Specific deterrence focuses on discouraging an offender from re-offending, while general deterrence aims to discourage individuals in the public from committing a criminal offence. The universality of deterrence “stems from the mere fact that an array of sanctions are known to be imposed with some regularity” (Canadian Sentencing Commission, 1986: 138). It is not the severity of the punishment that is likely to have a deterrent effect, rather it is the certainty of punishment that determines whether or not an individual will commit a criminal act (Griffiths & Verdun-Jones, 1994: 408).

Another goal of sentencing is incapacitation. The protection of the public from further criminal activity is one of the primary purposes for the use of incapacitation.

The theory underlying the sentencing strategy of incapacitation rests on the premise that offenders who are incarcerated are unable to commit crimes in the community and that, therefore, adoption of this strategy should result in the reduction of crime (Griffiths & Verdun-Jones, 1994: 410).

Within the sentencing literature there are three distinct types of incapacitation: collective, selective, and categorical. Collective incapacitation refers to the imposition of a prison term on all individuals convicted of a particular offence. Selective incapacitation refers to

sentencing an individual according to the likelihood of re-offending. Categorical incapacitation falls between collective and selective since it attempts to predict the probability of recidivism associated with a particular type of offence rather than a particular individual (Canadian Sentencing Commission, 1986).

A third purpose of sentencing is rehabilitation.

Rehabilitation is the idea of “curing” an offender of his or her criminal tendencies. It consists, more precisely, of changing an offender’s personality, outlooks, habits, or opportunities so as to make him or her less inclined to commit crimes (von Hirsh & Ashworth, 1992: 1)

The focus of rehabilitation is on providing programs or counselling in order to change the criminal behaviour of the individual.

A final purpose of sentencing within the traditional justice system is punishment.

Punishment, as can be seen in the dictionary, as the deliberate infliction of pain as retaliation, justified by law because the person has done something bad enough to deserve it. Many people don’t think about punishment in this way... the only reason this has remained acceptable in our modern world of human rights is because we believe in it as a means to some positive purpose (The Church Council on Justice and Corrections, 1996:xiv).

Punishment is a means to achieve the retributive goals of ‘just deserts’ and denunciation. Punishment is imposed in order to make individuals pay for their wrongdoing. It is based on the historical notion of ‘an eye for an eye’ (Griffiths & Verdun-Jones, 1994: 410). “Punishment is imposed for its own sake, not because it is supposed to achieve any particular result such as deterrence or rehabilitation” (Griffiths & Verdun-Jones, 1994: 414). The doctrine of just deserts is not a goal in itself but rather is a restraining principle that limits the amount of punishment imposed. Punishment as expressed through the just deserts perspective, assumes that, “an offender deserves punishment to restore a balance

which played in his[/her] favour when he[/she] flouted the rules by which other citizens abide” (Canadian Sentencing Commission, 1986: 143).

General denunciation, which attempts to reinforce moral boundaries for the community, “has been identified as a goal of sentencing with increasing frequency” (Griffiths & Verdun-Jones, 1994: 417). This principle is based on the premise that sentencing can actually influence people’s behaviour by demonstrating that unacceptable behaviour will be punished.

There is inconclusive evidence that the utilitarian goals of sentencing, deterrence, incapacitation, and rehabilitation can be realized through the use of carceral sentences. However, although “there are serious doubts as to the efficacy of the sentencing process as an educative or denunciatory device” (Griffiths & Verdun-Jones, 1994: 418) the retributive goal of sentencing, punishment, appears to be a main goal of carceral sanctions.

There appears to be “little or no evidence to sustain an empirically justified belief in the deterrent efficacy of legal sanctions” (Canadian Sentencing Commission, 1986: 136). Deterrence strategies do not appear to have the effect that has been assumed: The reasons for the failure of deterrence may be due to the uncertainty of punishment and the fact that offenders do not believe that they will be apprehended. “Punishment is too uncertain and too erratic to influence even those few who rationally plan crimes” (Morris, 1995: 27). Since there is inconclusive evidence regarding the effects of deterrence, “sentencing courts adopting it as a goal should do so with extreme caution” (Griffiths & Verdun-Jones, 1994: 407).

Prisons fail to rehabilitate (Griffiths & Verdun-Jones, 1994; Morris, 1995; Canadian Sentencing Commission, 1986). There is a general belief that those who are processed through the criminal justice system do not function appropriately within their communities. Through incarceration, these individuals are segregated from their communities for a period of time. While in prison their opportunities for creativity, independent decision-making, and exposure to positive social skills are removed. These individuals are further exposed to sensory deprivation and prevented from adapting to the changing social world on the 'outside' (Morris, 1995). Once the custodial portion of the sentence is complete, these individuals are released into a society where their positive social ties are either weakened or non-existent, where their ability to make independent decisions or interact in social settings may be hindered. They have been labeled as an ex-offender, so their opportunities for a livelihood are impaired. Their job skills are either limited or appropriate to specifically criminal involvement. In such a situation, opportunities to gain conventional means of survival are reduced, therefore, increasing the likelihood of recidivism (Morris, 1995: 29), not rehabilitation.

Recent research has questioned the effectiveness of forcing unwilling individuals into rehabilitation programs. Due to their environment, carceral settings increase the likelihood of forced participation, and may not work on the individual who is resistant to change. Therefore, "a term of imprisonment should not be imposed, or its duration determined solely for the purpose of rehabilitation" (Canadian Sentencing Commission, 1986: 138). Non-custodial sanctions should be used if rehabilitation is the purpose of sentencing. If a "judge feels that a particular offender can be rehabilitated, then that offender should be given an individualized sentence that should be 'neither a custodial

sentence nor a fine” (Griffiths & Verdun-Jones, 1994: 413). Since the goal of rehabilitation can conflict with the other goals, such as deterrence, a non-carceral sentence should be used if there is hope for rehabilitation for an individual.

Protection of society through incapacitation is another goal that appears to be limited. Prisons may offer immediate protection of society, through a period of segregation; however, this is a short-term solution. In the long run, incapacitation can be more detrimental to society since almost all prisoners will one day be released. The environment to which incarcerated individuals are exposed is violent and ‘unconventional’. Therefore, “no matter who we incarcerate, when we finally let them loose we will have increased public danger, not increased protection” (Morris, 1995:28). Although many individuals do not reoffend, the environment and experience of prisons may make it difficult to assimilate into their communities.

The over-reliance on incarceration by the Canadian criminal justice system is problematic especially since there appears to be:

a consensus in Canada that more people are being imprisoned than should be. In a national poll carried out in the mid-1980s, about 70% of Canadians indicated that they would rather put tax money into the development of community sanctions than into building more prisons (Doob, 1990: 416).

The belief that community sanctions would be more appropriate for most offenders is not specific to the Canadian general public but is also present within the correctional field itself. Federal/Provincial/Territorial Deputy Ministers and Heads of Corrections met in January 1995 to discuss the rapid growth of prison populations. As a result of this consultation, proposals were made that Canadian courts:

make greater use of diversion programs and other alternative measure[s]; de-incarcerate low-risk offenders; increased use of restorative justice and mediation approaches; and Aboriginal justice and corrections pilot projects to test innovative, traditional methods based on restoration and healing (Solicitor General Canada, 1996: 9-13).

If there is such agreement that non-carceral sanctions should be used instead of imprisonment, then why has the rate of incarceration not declined? (Christie, 1994:31)

Non-carceral Sanctions Appear to be More Conducive to the Goals of Sentencing:

Section 718 of the criminal code states that:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
 - (b) to deter the offender and other persons from committing offenses;
 - (c) to separate offenders from society when necessary;
 - (d) to assist in rehabilitating offenders;
 - (e) to provide reparations for harm done to victims or the community; and
 - (f) to promote a sense of responsibility in offenders; and
 - (g) acknowledgement of the harm done to victims and to the community.
- (Martin's Annual Criminal Code (1998), Canadian Law Book Inc., CC/1141)

Objectives (a), denounce unlawful conduct; and (c), separate offenders from society when necessary, are achieved through incarceration. However, there is limited evidence that objective (b), deterrence, is actually achieved through sentencing (Canadian Sentencing Commission, 1986: 136). Objectives (d), rehabilitation; (e), reparation to victim; and (f), sense of responsibility; are difficult to achieve through carceral sentences. They would be more likely achieved by means of non-carceral sanctions where the purpose is focused on the reparation of relationships with the victim and the integration of the victimizer into the community. Non-carceral sanctions appear to be better at

incorporating more of the principles behind sentencing than do carceral sanctions. “Other sentences, such as a period of supervision in the community under a probation order, are just as effective as incarceration and in some cases more effective” (NCPC, 1997: 5).

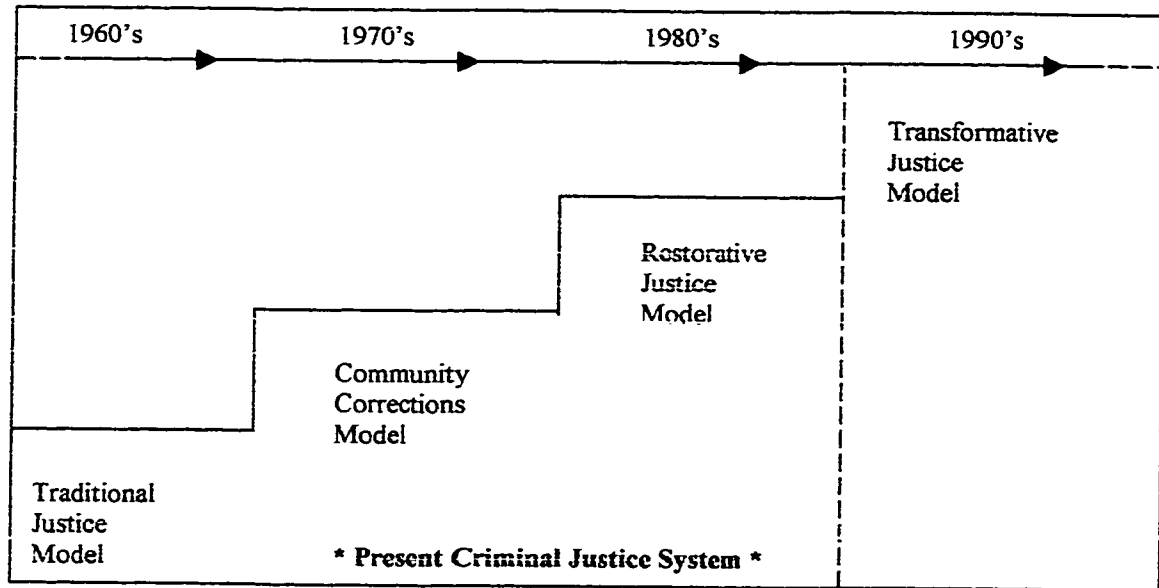
Non-carceral sanctions are believed to have a greater impact on recidivism (Morris, 1995) since the individual in conflict with the law remains in the community; they appear to cost less than carceral sanctions; and are more conducive to rehabilitation and the protection of society in the long run. However, since non-carceral sanctions are perceived as ‘alternatives’ to the use of imprisonment, they are only considered after the possibility of a carceral sanction is ruled inappropriate. The manner in which the Canadian Criminal Code is written reinforces this notion. Non-carceral and community-based sanctions, need to be viewed as adequate sanctions in their own right, rather than as alternatives for certain individuals.

In the remainder of this chapter, three community-based justice models: community corrections, restorative justice, and transformative justice will be discussed.

B. Community-Based Justice Model Continuum:

There are three predominant community-based justice models which are presently discussed within academic and correctional literature. The best way to discuss these three models is to think of them as part of a historical continuum. Over the past four decades there have been explicit shifts in the correctional system. Each shift can be attributed to the development or adoption of a new justice model which builds on the previous in an attempt to improve the correctional system. It is important to recognize that although each model is presented as an alternative to the previous model in actuality

the new model supplements the old which results in a growth in the overall system. Below is a diagram which emphasizes the manner in which each shift is not independent of the previous and in actuality builds upon existing models.



The first shift occurred in the late 1960's with the development of community corrections. This shift was one which moved individuals outside of the traditional prison system. The second shift occurred in the late 1970's with the adoption of restorative justice. This model placed a greater emphasis on the victim's role in the criminal event and the focus of corrections began to take a more holistic approach to those being sentenced. The third was a theoretical shift since transformative justice has not yet been implemented. This is why the shift is indicated with a dotted line in the above diagram. With transformative justice there has been recognition that a more holistic approach to sentencing which contextualizes the criminal event and involves all participants including the community. The next two sections of this chapter will discuss each justice model in more detail.

C. A Step Towards Alternative Sanctions: Community Corrections

In the United States, community-based correctional programs are defined within Community Corrections Acts which are:

“statewide mechanism[s] included in legislation for involving citizens and granting funds to local units of government and community agencies to plan, to develop, and to deliver correctional sanctions and services at the local level” (Harris, 1996: 199).

Although this definition outlines the intention of governments to shift some responsibility for correctional services to local levels, it fails to define what is meant by the term community corrections. It is difficult to define what ‘community corrections’ is, considering that almost any sentence that is not completed within a prison could be classified under the heading ‘community’.

Sometimes the emphasis in discussion of community corrections is on noninstitutional programs, sometimes it is on local versus state program administration, sometimes it is on citizen involvement, and sometimes the emphasis is on something else entirely (Harris, 1996: 204-205).

There is a lack of consensus regarding the requirements for sanctions to be classified under the heading ‘community corrections’. Some argue that anything that allows individuals to spend part or all of their sentence outside custodial establishments can be considered a community sanction (Vass, 1990: 1-2). Others would argue that a prerequisite for community corrections is not simply an alternative to a prison cell, rather it is the physical space to which the entire system is diverted (Cohen, 1985: 116). Therefore, not only is the individual treated outside of a custodial institution but those who have the responsibility for corrections are part of a ‘political subdivision’ other than the criminal justice system, such as municipalities (McSparron, 1980: 227), non-government organizations, and community groups.

Defining the 'Community' in Corrections

The problems with defining what community corrections entails may lie in the inability to specify what the word 'community' means. Because community has several different meanings and interpretations, almost anything can be classified under this term, there is potential for confusion.

Not only is there a problem with defining what is meant by the term 'community', but it is an abstract term that lacks any negative connotations. It is used frequently since it is full of symbolism and nostalgia (Cohen, 1985:117). This has led to a revival of the vision of community. It is believed that through the community, the limitations of the traditional correctional system (Cohen, 1985: 117) can be corrected.

Community has become a political 'buzz-word' that has been adopted by both the political Left and Right. This creates a false sense of consensus and homogeneity within the political arena since the same word is used to represent the ideologies of two very different groups with two different agendas and interpretations of what community means (Crawford, 1995: 97). From the Right, a top-down approach is supported where the existing formal institutions assist in structuring community supports and directing community initiatives, while the Left promote a bottom-up approach by encouraging strategies for local 'empowerment' through grassroots activities (Crawford, 1995: 97). On the surface it appears that all of the formal state agencies are working together to appeal to the sense of community as a solution to previous crime control practices. However, what is often masked is that the term community may mean different things depending on who is interpreting it.

Within the field of crime control, as well as crime prevention, there are a number of reoccurring assumptions upon which the appeals to community are based in government and policy statements (Crawford, 1995: 102). These themes are used as rallying points to mobilize individuals around crime control and prevention initiatives.

The first assumption is that a lack of community leads to crime (Crawford, 1995: 103). This is based on the belief that a breakdown of community life leads to social disorganization and criminal activity. It is through community mobilization, and a revival of informal community controls that reinforce law-abiding norms, that community reorganization and a reduction in the level of crime will occur. 'Community' is both the means to a better life as well as a better life as an end in itself. This can become confusing since it is not apparent whether the overall aim is the reorganization of the community or the reduction of crime. Therefore, the success of community initiatives becomes difficult to evaluate (Crawford, 1995: 104-105).

The second assumption is that the more 'organized' the community the less crime will be present (Crawford, 1995: 105). Under this assumption all negative and criminogenic elements of an organized community are ignored. This is misleading since some communities, for example gangs, are criminogenic in themselves (Crawford, 1995: 105).

The third assumption is that the term community implies a set of shared attitudes (Crawford, 1995: 105). However, there are two distinct visions of community: community is symbolically a set of shared attitudes, and secondly, community is more structural and includes the various institutions and the interconnection of social and economic forces (Crawford, 1995: 105-106). The problem with these two different

interpretations is that with the first vision, all that is needed to decrease the levels of crime is a change in attitude: “improved attitudes lead to better behaviour” (Crawford, 1995: 106). With the second vision a lot more needs to be changed than just collective attitudes; there needs to be a change in the social and economic underpinnings of society if crime levels are going to be reduced (Crawford, 1995: 106). This cannot be done solely through a single community, rather a restructuring of all communities with the active participation of the government is required to make a difference. Therefore, it is easier for political officials to promote the first vision since, although it may not be successful, it makes individuals feel like they are actively working towards a solution.

The fourth assumption is that community acts as a defense against ‘outsiders’ (Crawford, 1995: 106). With this assumption the offender is seen as an ‘outsider’ rather than a member of the community. It reinforces the presumption that danger is found primarily in public rather than private domains. This is contrary to a lot of empirical evidence (Crawford, 1995: 107) especially in the area of violence against women and children.

The alien nature of the ‘outsiders’ – often overlaid by racial overtones – and the threat that they pose to the ‘shared’ values under attack, constitutes an important element of the discourse in dominant appeals to the community (Crawford, 1995: 107).

Therefore, most crime control and prevention initiatives focus on keeping offenders out of the community rather than realizing the criminogenic factors in the community that may have contributed to the offending in the first place.

The fifth assumption is that communities are homogeneous (Crawford, 1995: 107) and that neighbourhoods have universal interests. In many cases, “non-consensual” voices are often ignored in order to further solidify the assumption that homogeneity of

interests and ideologies exist (Crawford, 1995: 108). This is problematic since individuals who vocally question the social order of the community or the underlying objectives of the proposed community initiative are silenced.

The last assumption is that community means a shared space (Crawford, 1995: 108). Community in crime control and prevention is usually defined in geographical terms and is often the point of entry for most interventions (Crawford, 1995: 108). This can be problematic not just because it ignores the possibility of abstract forms of community which may for example be defined culturally, but it also can result in certain areas being labeled as 'high crime' areas and abandoned (Crawford, 1995: 109).

One other problem associated with the appeal to the community is that there is a belief that all communities have the resources to mobilize for social control (Crawford, 1995: 109). Due to fiscal crises within the criminal justice system, the community in economic terms has been seen as a cheaper alternative to existing institutions (Crawford, 1995: 109). However, this 'self-financing philosophy' is flawed because it incorrectly presumes that the necessary resources for crime reduction are present in the community and it fails to recognize that some communities have more resources to tap than do others (Crawford, 1995: 110-111). It is most often the communities that have the most severe crime problems that have the least amount of resources. This creates a shift in the blame to the community for its inability to combat their crime problem rather than seeing that redistribution in resources is required.

The blind acceptance of any crime control or prevention initiative without taking a look at the underlying assumption can be problematic. This will be further discussed in

the next section by looking at the problems associated with the belief that community corrections are the panacea for the limitations of the traditional penal system.

History of Community Corrections:

During the 1960s, there appeared to be a consensus amongst reformers over the need to reverse the directions the social control system had taken in the late eighteenth century (Cohen, 1985; Vass, 1990: 4). There was a shift away from the state through 'decentralization', the expert by 'deprofessionalization', the institution with 'deinstitutionalization' and the mind with the focus on 'behaviourism' (Cohen, 1985: 31). These shifts resulted in a redistribution of the mechanisms for control from the hands of the state to community-based and less bureaucratic agencies, the questioning of experts and their monopoly over classifying and treating deviants. There was also a move from the traditional closed institutions to open community-based control and a shift away from individualized treatment-based psychological models to a focus on the body and the act rather than the mind and the actor (Cohen, 1985: 31). The greatest attack during this destructuring movement was focused on the idea of imprisonment. "The prison – we were widely assured – was an experiment whose time had come to an end" (Cohen, 1985: 32). Alternatives to incarceration were needed (Griffiths & Verdun-Jones, 1994: 586).

During the 1970s and 1980s the resurrection of the community as the solution for dealing with individuals in conflict with the law was a popular view within corrections. This notion of the community holding the solutions was located partially in the limited ability of the prison system to lower levels of crime; the fiscal restraints creating a need

to seek less expensive means than prison; and the call for more humane treatment of convicted individuals.

In the mid-1980s, there was a backlash against the 'soft approaches' to crime. There was an emergence of intermediate sanctions; "dispositional options that lie between traditional probation and total confinement in prisons on a spectrum of intrusiveness, level of punishment, and control" (Harris, 1996: 203); as a result of the increased public interest in becoming "tough on crime" (Buddress, 1997: 8; Petersilia, 1995: 479). There was concern in the late 1970s that probation was not a credible, meaningful sanction (Petersilia, 1995: 488) and that anything but incarceration was a sign of being "soft on crime" (Buddress, 1997: 12). Therefore, intermittent sanctions, for example house arrest, electronic monitoring, and intensive supervision, were developed as community-based sanctions designed to be tougher than regular probation but less stringent and expensive than prison (Petersilia, 1995: 488-489).

The Revival of Community Corrections in the Wake of Recent Get Tough Measures

Public demands for tougher sanctions have persisted into the 1990s. Timothy Flanagan (1996) argues that the greater willingness to support tougher penalties that focus on incarceration are a result of a shift in public perceptions about who are 'offending'.

Offenders are no longer seen (if they ever were) as products of poor social settings or as unfortunate victims or 'boys gone bad'. Instead the view of the criminal in the public mind has transformed into a more volitional, more willful actor (Flanagan, 1996: 5).

If the perception is that individuals choose lives of crime, rehabilitation seems less appropriate than severe sanctions such as prison (Flanagan, 1996: 5).

Incarceration has increasingly become the 'punishment of choice' in the public mind and that any penalty less than imprisonment is viewed 'in lieu of punishment' or the colloquial 'slap on the wrist' (Flanagan, 1996: 6).

Although the 'get tough on crime' campaign has political appeal, criminal justice practitioners and scholars are not supportive. Even prison wardens, who stand to benefit the most from these campaigns since they guarantee a continual prison population, do not feel that the back-end responses such as prison offer effective solutions to the problem of crime (Petersilia, 1995: 480).

While prosecutors, judges, and corrections officials were supportive of a comprehensive system of community-based intermediate sanctions, they perceived 'public resistance' to any sanction other than imprisonment for most offenders to be the most significant barrier to its implementation (Flanagan, 1996: 4).

Therefore, public education needs to play a large part in promoting community-based alternatives to incarceration. There are several intermediate sanctions that are cost-effective and safe ways of dealing with the 'offender' population (Petersilia, 1995; Flanagan, 1996;).

In order to create new appeals for community corrections, the key dimensions: decentralization, citizen involvement, and deinstitutionalization, have been retained. However, in an attempt to create a more holistic approach, the fourth dimension has been extended to not only include rehabilitation but also reintegration, restitution, and restoration. This change is due to the realization that crime can only be reduced if the problems that both reflect and perpetuate criminal activity are addressed. Community corrections should not solely focus on the 'individual offender' but rather attention must

be given to the victims and community members that are also affected by the 'offending' (Harris, 1996: 216).

The Benefits of Community Corrections:

Community-based sanctions reflect the belief that prisons do not successfully deter or rehabilitate individuals in conflict with the law (Cohen, 1985: 33-34; Hylton, 1982: 371; Vass, 1990: 4, Petersilia, 1995: 490). If there is no threat of violence to the public or the individual, non-carceral sanctions are believed to be more appropriate.

Many proponents of community corrections believe that most deviants can be managed safely in the community, as effectively in the community, more cheaply, and more humanely than prison (Flanagan, 1996: 8; Cohen, 1985: 33-34; Hylton, 1982: 371; Vass, 1990: 4).

Also most community-based sentences are more focused on reintegrating the individual into the community rather than isolation. Theories of labeling and stigma demonstrate that reintegration is harder the further an individual is processed into the system (Cohen, 1985: 33-34; Hylton, 1982: 371; Vass, 1990: 4). Community corrections attempts to reduce isolation and estrangement for most individuals by allowing them to remain in their community. Community-based programs enable individuals to maintain or improve their job skills; maintain contact and help support their families; and help the community through restitution or community service (Buddress, 1997: 9).

Although community corrections are an improvement over the traditional penal system, there are some limitations that need to be addressed.

Community Corrections Rhetoric:

During the 1970s and 1980s there was a belief that with the use of community corrections, crime rates would decrease over time since individuals were not placed in artificial environments. The rationale behind this argument was that alternative and non-custodial programs were more effective than correctional institutions in rehabilitating individuals who came into conflict with the law because they provide more links to the community (Hylton, 1982: 341). However, there was no evidence that the development of community-based programs was associated with a reduction in the rate of crime. In actuality, during the 1980s, official crime statistics indicated an increase in the volume of crime in all Western countries that adopted these programs (Hylton, 1982: 342; Cohen, 1985: 37). This increase was a result of an overall growth of the criminal justice system.

The presumed inhumanity of correctional institutions and the belief that community programs were able to humanize the correctional system were seldom carefully examined. There was a tendency to assume the superiority of community-based programs without thoroughly examining their impact (Hylton, 1982: 349). In actuality some programs managed to recreate institutional environments within the community. Interventions used in the community may have even been as intrusive as those used in traditional institutions (Hylton, 1992: 365). Intermittent sanctions such as electric monitoring and house confinement programs were introduced in the 1970s and 1980s. They were thought to cost less than incarceration and provide a more humane alternative to prison confinement by allowing the offender to remain in the community and maintain family and employment ties (Griffiths & Verdun-Jones, 1994: 587).

However, due to the level of intrusion and control, the level of humanity achieved by these programs may be questionable.

There has also been inconclusive evidence that community corrections cost less than institutional programs (McSparron, 1980: 229; Cohen, 1985: 38; Hylton, 1982: 365). In cases where community programs did cost less, this may have been a reflection of the quality and quantity of services provided. Some individuals serving their sentences within the community may have received little or no programming (Hylton, 1982: 364). If these individuals were given the employment, educational, and vocational opportunities that they needed, costs might have been considerably higher (Greenberg, 1977, in Hylton, 1982: 364). The savings achieved were often the result of reduced programming and service availability.

The apparent savings of community corrections might also have been due to other agencies or the community at large (Hylton, 1982: 366) allowing access to resources and providing services for the correctional population which were already established in the community. Also, because community programs tend to supplement rather than replace traditional programming, the overall expenditure of running two systems has often been ignored (Hylton, 1982: 367).

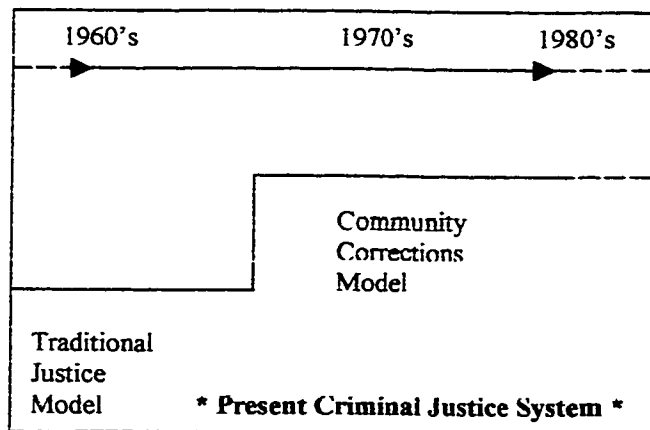
Although there was inconclusive evidence that community corrections were more cost efficient, there was a general belief that in the long run, if the traditional penal system was phased out, community corrections would cost less (McSparron, 1980).

Even though community corrections were developed in order to replace the use of imprisonment for most individuals, there have been no signs of the number of prisons disappearing anywhere in the world (Hylton, 1982: 342; Cohen, 1985: 37). "In Britain,

Canada and the USA rates of incarceration are not at all declining and in some spheres are even increasing. Community control has supplemented rather than replaced traditional methods” (Cohen, 1985: 44).

Instead of replacing prisons, community corrections are seen as a means of freeing up spaces for more individuals who are convicted of serious crimes and alleviating overcrowding (Vass, 1990: 38). Since the prison system is viewed as an important element of our criminal justice system, even today, it will remain and expand with the implementation of community ‘alternatives’ (Vass, 1990: 15; Cohen, 1985: 49). It is the need to reassure the community that individuals in conflict with the law are being strictly supervised which leads to the recreation of institutional environments within community-based programs (Hylton, 1982: 352) and the maintenance of the prison system.

Community Corrections: New Delivery of Traditional Prison Programs:



It is important to remember that the shift to community corrections did not result in the disappearance of the traditional justice model, rather community corrections supplemented the already existent programs offered.

Accepted community 'alternatives' were seen as those initiated by the state and, to a large extent, run within communities by the state. These programs, however, were not true alternatives to traditional methods because they still involved either some form of incapacitation (halfway houses, house arrest, group homes) or restriction of movement (probation, community service orders) and state control over the content and delivery of these programs. They were add-ons to the original correctional system, which produced a net widening of control services. These programs were a form of community-based corrections rather than an alternative to the traditional correctional system (McSparron, 1980). Although there was an attempt to integrate sentenced individuals within the greater community, community corrections were still developed using the traditional philosophies of punishment, deterrence, protection of society and rehabilitation. A true alternative to the traditional penal system involves more than the getting rid of prisons, there also must be a shift in focus from punishment to integration.

Community initiatives such as electronic monitoring and house arrest fall close to the traditional view of corrections; it will simply shift the problems found within prison walls outside into the community. Even today, community corrections assume a new delivery, in the community, of the same sentencing tactics and by the same authorities as the traditional system.

‘Net-widening’ of Control and Surveillance within the Community:

Instead of any destructuring, however, the original structures have become stronger, far from any decrease; centralization and bureaucracy remain; professions and experts are proliferating dramatically and society is more dependent on them; informalism has not made the legal system less formal or more just; treatment has changed its forms but certainly has not died... (Cohen, 1985: 37).

Community corrections programs which are designed to be alternatives to incarceration often result in “net-widening” since they become additions to traditional means of carceral corrections rather than substitutes (Griffiths & Verdun-Jones, 1994: 586). Community programs increase state control over a portion of the population (Hylton, 1982: 341) who would have not been involved in the criminal justice system if it were not for the softer-end programs such as formalized diversion and house arrest.

Softer-end deviants have been drawn into the criminal justice system through the formalization of diversion programs. The system has expanded to include those individuals who would not have been processed at all (Cohen, 1985: 51). Instead of a reduction in state intervention, as the proponents for community corrections had originally argued, state intervention has increased (Hylton, 1982: 362). Therefore, not only has the criminal justice system’s population increased, but so has state intervention into more areas of the community. “Overall, the system enlarges itself and becomes more intrusive, subjecting more and newer groups of deviants to the power of the state and increasing the intensity of control directed at former deviants” (Cohen, 1985: 38).

With the development of the modern “correctional continuum” extending from the institution to the community, it has become difficult to recognize where the social

control apparatus begins and ends (Hylton, 1982: 362; Cohen, 1985: 57). Formal control invades the wider community and has become less visible. The traditional correctional institutions, prior to community corrections, had clear boundaries that distinguished between the 'normal' and the 'deviant' (Cohen, 1985: 57) while the development of community corrections has blurred these boundaries.

Consequently, it becomes unclear who, at any time, may legitimately be subjected to social control (Hylton, 1982: 359). "A number of authors have cautioned that modern correctional programming has blurred the boundaries between 'the institution' and 'the community' and left the community susceptible to entirely new strategies of supervision and control" (Hylton, 1982: 361).

The destructuring movement was aimed at decreasing the size, scope and intensity of the formal control system. However, there has been an increase in the total number of 'deviants' that are entering the system. Many of who would have previously been either ignored or dealt with informally are now being processed formally through the criminal justice system. There has also been an increase in the intensity of intervention for all 'deviants' because the new agencies and services have supplemented rather than replaced original control mechanisms (Cohen, 1985: 44; Hylton, 1982: 367).

The word 'alternative' has been accepted blindly without adequately addressing the problems associated with the development of the new 'nets'. The claim to be doing less harm is not valid if these alternatives supplement rather than replace previous forms of corrections (Cohen, 1985: 70). The result is a re-creation of similar programs delivered in traditional institutions under a different name. Due to judicial constraints and public demands for sentences that punish and restrict, community sanctions are

controlling and intrusive. The result is the creation of other programs that incapacitate individuals similar to previous imprisonment practices (Cohen, 1985: 75), however, in a different setting such as a house or community treatment facility. Even when security is not the main concern, community corrections often fail to provide anything but traditional programmes whose physical location is in the community (Cohen, 1985: 71).

What has actually occurred behind the veil of the term community corrections is much of the same as what went on and is still going on in the traditional correctional system. The new services offered in the community are dominated by the same forms of individual or group treatment used in custodial institutions or traditional programs such as probation (Cohen, 1985: 75; Vass, 1990: 14). “The same old experts have moved office to the community and are doing the same old things they have always done” (Cohen, 1985: 75). What is actually new is the physical space in which the same ‘experts’ provide these old programs.

In the name of reviving the ‘community’ there has been a greater tolerance for social control and state intervention into the private and public spheres of the community. However, “of all the modes of community control, only ‘community service’ (restitution, reconciliation, reparation, compensation) evokes most directly the vision of community” (Cohen, 1985: 126). By invoking the vision of what the family, school or community looked like once and should look like now (Cohen, 1985: 83) there were hopes that the alienation, estrangement, rootlessness, and disintegration of the social bonds (Cohen, 1985: 119) caused by urban decay would be reversed. However, what is often overshadowed by the desire for realizing the vision of the community is that the overall “societal conditions which made community control possible – pre-capitalist markets,

fixed hierarchies, the pervasiveness of ritual and traditions – do not exist in industrial societies” (Cohen, 1985: 122). Also, instead of changing the community to address the needs of ‘deviants’, community corrections has become another form of blaming the victim. Although the community is considered to be partially responsible for the creation of the ‘deviant’, state intervention is solely directed at the individual (Cohen, 1985: 126).

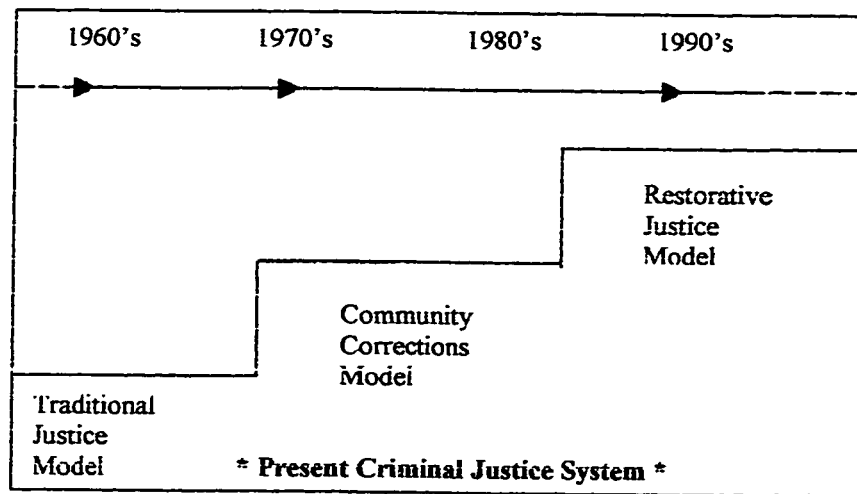
Healing justice models such as restorative and transformative justice are more likely to provide ‘alternatives’ to the traditional justice system since they offer different ways of viewing the offence, and of dealing with the offender as well as the victim. Restorative justice perceives crime as a violation of the relationship between people. Consequently, justice is served once wholeness is restored to the victim and the accused has accepted responsibility for his/her actions. Transformative justice goes one step further than restorative models by attempting to understand why the offence happened in the first place. Transformative justice argues that there is a need to uncover the inequalities that perpetuate deviance. Therefore, with these healing models the focus is not solely on the individual as was the case with community corrections, but rather also looks at the social conditions which influence individuals’ involvement with the law.

D. Alternative Justice Models: Restorative and Transformative Justice

One of the reasons why community corrections failed to be an alternative justice model is due to the manner in which it has been implemented. Instead of replacing the present prison system, community corrections supplemented the traditional programs. Although in theory community corrections was developed as an ‘alternative’, there was a failure in the implementation process. “Implementation failure occurs when the program

is not implemented as planned or is not implemented at all. Without setting in motion the 'causal process' that is expected to produce the desired outcomes, the underlying theory cannot be tested" (Rosenbaum, 1987: 111). This has also been the case with restorative justice.

Restorative Justice



Restorative justice is based on Aboriginal healing models as well as Judeo-Christian biblical justice which emphasize the restoring of relationships. In theory, it is a holistic model that is concerned with the relationships of all three components of crime: the victimizer, the victim and the community. Restorative justice does not separate the offender or the act from the context within which they are derived. Restorative justice sees crime as a violation of people and relationships. The problem begins with the crime while the solution is to restore wholeness to the victim and to transfer responsibility to the offender (Morris, 1997:2).

Restorative justice in theory realizes the importance of the social context in which the offending takes place. However, in practice restorative justice appears to often fail to

take the social context into consideration. This will be further discussed with the introduction of transformative justice.

How is Restorative Justice Different from Community Corrections?

As restorative justice is practiced today, there are few differences between restorative justice and community corrections. However, if one were to think of community-based correctional models as a continuum, restorative justice is a more complete model since it takes more aspects of the criminal event into consideration while sentencing. Restorative justice has recently become part of the present criminal justice system. Its role is to decrease the number of people who are incarcerated in both the prison system and community-based supervision orders. Although there are few differences between restorative justice and community corrections as they are presently practiced, in theory restorative justice is quite different. The focus of restorative justice is on healing rather than controlling (CCJC, 1996).

The traditional justice system views “crime [as] a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by systematic rules” (Zehr, 1990: 181). While restorative justice views “crime [as] a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance” (Zehr, 1990: 181). The traditional system focuses on the ‘offender’, while restorative justice focuses on everyone involved in the criminal event.

The traditional system uses an adversarial approach in order to establish blame based on guilt. Although restorative justice sees the importance of establishing responsibility, the process is focused on problem solving through dialogue and negotiations between all the parties rather than focusing solely on establishing blame. As a facilitator within the restorative model, the community has a more vocal and active role than in the traditional model. Each representative from the community is given the opportunity to voice their concerns surrounding the event. In the traditional model, community presence is less visible, and less vocal since their only representation in the court is through the crown attorney, or through participation on a jury where once again only one individual is permitted to speak. Also, within the adversarial process the victim and the accused play a less active role than within the restorative process since they are represented by lawyers and are rarely permitted to address the court themselves.

We view crime through a retributive lens. The 'criminal justice' process which uses that lens fails to meet many of the needs of either victim or offender. The process neglects victims while failing to meet its expressed goals of holding offenders accountable and deterring crime (Zehr, 1990: 178).

Within the restorative process, both the accused and the victim are actively involved. The accused is encouraged to take responsibility and the victim's needs and rights are recognized.

One of the goals of restorative justice is to reintegrate the accused through a reintegrative ceremony that attempts to remove the stigma related to deviant behaviour (Zehr, 1985). The traditional system sees the offender as a bad person, while restorative justice sees the act as being bad.

In the non-Indian community, committing a crime seems to mean that the individual is a *bad person* and therefore must be punished ... The Indian communities view a wrongdoing as a *misbehaviour which requires teaching or an illness which requires healing* (Ross, 1996:5, emphasis in original)

Restorative justice condemns the act not the actor.

The traditional system views incarceration as an effective form of punishment. However, the restorative system sees the negative consequences of using incarceration. "Incarceration, they concluded, actually works against the healing process, because 'an already unbalanced person is moved further out of balance'" (Ross, 1996:38). By removing an individual from their community, there is no chance to restore the relationships that have been thrown out of harmony. Restorative justice proposes accused individuals be dealt with within their own community or the community in which the event occurred.

Aboriginal-Based Models of Restorative Justice

The healing approach restorative justice takes emphasizes accountability, responsibility and helping. Examples of Aboriginal-based models of restorative justice are reintegrative shaming, sentencing circles, and the Family Group Conference.

Reintegrative shaming sees the need to separate the perpetrator from the criminal act since the event is often related to the social context in which the perpetrator was situated. Therefore, there is need for both individual and collective shaming. Reintegrative shaming ceremonies differ from the traditional system's degradation ceremonies because of their level of stigmatization. Reintegration ceremonies follow the

sequence of disapproval, nondegradation, and inclusion; while degradation ceremonies emphasise disapproval, degradation, and exclusion (Braithwaite & Mugford, 1994: 143).

Sentencing circles, like reintegrative shaming, are a method used to restore relationships and achieve justice. Sentencing circles give the victim and the community an opportunity to address their feelings and questions with the victimizer. Such an opportunity is not possible within the traditional adversarial system. Sentencing circles are based on the healing model that helps restore balance to all parties involved. A cleansing ceremony during the final stages of the sentencing circle is used “to mark the completion of the Healing Contract, the restoration of balance to the victimizer, and a new beginning for all involved” (Ross, 1996:33). The healing contract is created with equal input from the victimizer, the victim and the community. There is an equal focus on the healing of all the participants involved in the event, which is distinct from the traditional adversarial system.

The Family Group Conference (FGC) is used with young offenders who have committed summary offences. One of the central conditions for the FGC is that the young offender must take responsibility for what they have done (Ross, 1996: 19). The FGC is very similar to sentencing circles and reintegration ceremonies. The main differences are that FGC are only used for youth and unlike sentencing circles, there is only one chance to create a sentencing agreement. If the group fails to gain consensus on the agreement, the matter is returned to the courts (Ross, 1996: 20). Although the FGC is based “on the teachings of the Maori, the Aboriginal people of New Zealand, they are used with all young offenders, Aboriginal or not, urban or not” (Ross, 1996:19). There is a belief that no matter how large a city the youth resides in, they still live emotionally and

psychologically within a small community. Therefore, the FGC can be used in any setting.

The word 'community', within a restorative model, does not restrict itself to geographical definitions. Communities exist as psychological and emotional creations of all individuals. A 'personal community' represents those with whom individuals have contact or are close to. "Those communities are composed of family, friends, employers, and other significant people" (Ross, 1996: 20). Consequently, restorative justice can be incorporated into any geographical setting, even urban settings.

Although there are several positive aspects to restorative justice, there are some problems that need to be addressed as well. The problem with using restorative approaches within small communities, as several of the Aboriginal communities are, is that the accused may have enormous influence within the community. Justice may be unattainable if the influence is brought to the sentencing circle or reintegrative shaming ceremonies. In such circumstances, an outside court may be able to provide a more suitable solution in the eyes of the victim. Therefore, before a healing approach is undertaken it must be agreed upon by all parties of the event since everyone's participation is key.

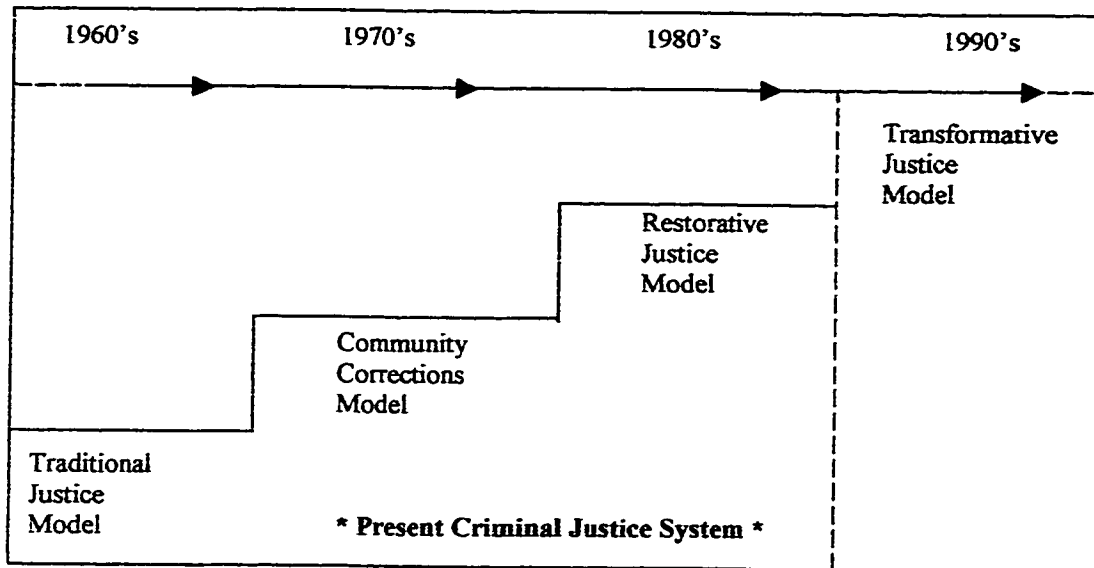
The same problems found with influence in Aboriginal communities can also be seen in other communities. This can be especially problematic in cases of abuse where the abuser continues in a dominant position over the victim, such as within a family.

Restorative justice can also be difficult when used in highly transient communities. The extended families often found in rural and smaller communities are not as common in urban cities. Some individuals are able to move within an urban centre,

interacting minimally. Is it possible to reintegrate an individual that does not feel apart of a community already? If an individual does not feel any close ties to their work, home, or neighborhood, would a sentencing circle benefit any of the parties? Restorative justice works on the premise that everyone has ties to a community, however, in our modern transient society, this may not be the norm. Although restorative justice may be beneficial for young offenders and small communities, it may not be as easily integrated into diverse, transient urban settings.

Another concern with restorative justice, as it is practiced, is that if it is limited to the restoration of relationships, adequate healing may not take place and may even perpetuate further criminal activity if the social context in which the event took place is not addressed as well. Ruth Morris (1997) argues there is a need to transform relationships in order to create a more healthy community that will reduce criminal activity. It is not possible to return to what was there before the event there needs to be focus on the social environments of both individuals in order to change any circumstances that may have contributed to the offense. Although restorative justice as it is practiced is a positive shift away from more traditional models of justice it may not be entirely adequate since it fails to actively address the social conditions that contribute to criminal activity what may be needed is a transformative justice.

Transformative Justice



Transformative justice is also based on a healing philosophy, however, in theory it takes restorative justice one step further by arguing that it is not enough to restore the relationships to what they were before the event. Rather it is perceived as an opportunity to heal as well as create more healthy relationships within the community. Like the traditional justice model, restorative justice also believes the problem begins with the criminal act. However, what makes transformative justice different is the realization that the problem began before the criminal act. The criminal behaviour is perceived as a symptom of greater social structures that not only allow crimes to take place but also perpetuate criminal activity (Morris, 1995).

It is in the questioning of greater social conditions and structures which lead to criminal activity that transformative justice is most characteristic of the principles at the core of feminism: connectedness, healing, creating relatedness, empowering and respect (Morris, 1995). Restorative justice sees crime as a violation of relationships between

people. The solution is to change these relationships by returning wholeness to the victim and having the victimizer assume responsibility. Transformative justice takes the healing principles of restorative justice further by viewing crime as an opportunity to transform the whole community. The solution is to transform the negative social structures that cause crime. There is a need to transform these conditions to allow for healthier relationships that promote equality within the community.

What then does restorative justice lack? In my view, it fails to recognize the causes of most crime in the original victimization of most offenders. It ignores structural causes of crime and assumes the world was a benign place before this terrible criminal ruptured the social peace with her or his dreadful crime. In fact, crime is one manifestation of the many inequalities and wrongs in a flawed community. Crime offers the community an opportunity to observe some of those flaws and deal with their causes. By failing to consider this, restorative justice fails, in my opinion, to meet some crucial needs of the offender and the community (Morris, 1995:72)

Proponents of transformative justice argue that restorative justice is similar to the traditional model because it does not question the underlying social problems that led to the criminal event. Also, since rehabilitation and the protection of society may be more easily achieved by using restorative justice methods, restorative justice has been seen as an attractive addition to the traditional system. Restorative justice has been easily co-opted by the traditional justice system, especially through the adoption of healing language (Morris, 1997).

However, the proposed differences between restorative and transformative justice may be due to the way restorative justice is presently practiced, whereas in theory restorative justice may not be as limited as proponents for transformative justice may believe. The true differences between restorative and transformative justice may only be a question of semantics.

For some individuals, restorative justice has negative connotations as a result of misinterpretations about what is exactly meant by the term. In the popularized version of restorative justice which is presently being practiced, the focus appears to be only on the victim and ‘offender’ and not on the rest of the community. This does not take into account social inequalities that may have led to the offending.

Although transformative justice offers a more holistic approach to sentencing it has not been implemented and remains only a theoretical model. This failure may be a result of only a few academics and advocates being familiar with the concept transformative justice. It probably also speaks to the influence of those groups whose interests would be threatened by a complete redesign of the criminal justice system.

Failure to Move Beyond Theory

Restorative justice practices and the critical analysis of society found within transformative justice offer a more holistic approach than the traditional criminal justice model. However, since restorative justice fails to contextualize the criminal event with its wider structural origins, and transformative justice has not been implemented, neither of these models may be enough to adequately address the needs of women. There is a need for a woman-centered justice model that includes healing justice principles and places the needs of women at the center rather than secondary as has been done in the past.

Now that the three community-based justice models have been discussed, the next step is to see which model would be the most appropriate for sentencing women. The next chapter will take a closer look at ‘female offending’, the needs of sentenced women,

and examine what the concept 'women-centered' means with regards to the development of a woman-centered justice model.

Chapter 3:
Women-Centered Principles

Profile of the ‘Female Offender’: The Types of Crimes Women Commit

Women who are sentenced by the criminal justice system tend to commit offences that reflect the social, political and economic realities of most women (Kim Pate, 1998; Elizabeth Fry Society of Toronto, 1995; NAWL, 1991). Although this may also be true of ‘male offending’, this thesis is only looking at women in conflict with the law and more specifically sentenced women. The majority of the crimes women commit are economic in nature and more often than not, these crimes are committed due to desperate life circumstances (NAWL, 1991: 1). Even the relatively few women, who have committed violent crimes, 16% of federally sentenced women serving life sentences (Shaw, 1992a: 440), pose little threat to public safety. Violence by these women is often a single act on a specific individual in response to systematic abuse.

The majority of women who are sentenced have been victims of social and economic inequality. These women tend to be young, poor, undereducated, and unskilled. Most women have been victims of physical and sexual abuse and many have substance abuse problems. Also many women are single mothers living in abject poverty; or homeless (CSC, 1995; Dauvergne-Latimer, 1995: 8; Correctional Services of Canada, 1994: 8; NAWL, 1991: 1). Most women serving federal sentences, not unlike men, are from marginalized backgrounds, live close to the poverty line, have a history of abuse, are the primary care giver, have limited educational attainment, and have few opportunities to obtain adequately paid work (Pate, 1998). Women who come into conflict with the law are further disadvantaged and their ability to ‘function as

autonomous adults' is further reduced by the present criminal justice system (CSC, 1989:

1). These women are punished further, and the criminal justice system fails to address the needs which may have contributed to the criminal behaviour of these women.

Needs of Women in Conflict with the Law

Women who come into conflict with the law have specific needs that are related to their lived realities. Some of these needs predate their involvement with the criminal justice system. Although these needs may not be gender specific, they are common to most women due to their social, political, and economic realities. These needs can be material such as food, medicine, and other necessities of life for their children and themselves (Sommers, 1995: 25).

Once in the traditional criminal justice system, women who are sentenced to carceral sentences frequently have to face geographical dislocation, even with the new regional facilities. While incarcerated, women find they are over classified; are not given the opportunity to adequately deal with histories of abuse; and since 60% of federally sentenced women are the primary care giver for their children, their families' lives are disrupted when they are separated from their children (Pate, 1998; Heidensohn, 1986: 292). A closer look at Creating Choices (Task Force on Federally Sentenced Women, 1990) will further highlight the needs of women who are sentenced by the traditional criminal justice system.

Creating Choices: A Brief Background

In 1989, the Task Force on Federally Sentenced Women was set up by the Correctional Service of Canada to discuss the 'correctional management' of federally sentenced women (Shaw, 1992a:441). The mandate given to the Task Force was

to examine correctional management of federally sentenced women from the commencement of sentence to warrant expiry, and to develop a plan to guide and direct this process in a manner that was responsive to the unique and special needs of this group (Correctional Services Canada: 2).

Although this was the initial intention of the Commissioner of Corrections, the Task Force was determined to use this opportunity to also discuss the

widespread agreement that women in prison needed to be seen within the context of women's status in society, and not as a part of a male-dominated correctional system. The notion that they have more in common with other women than with male prisoners has been a dominant one for a number of years in Canada (Shaw, 1992a:443).

There was believed to be a need to create fundamental changes not only in the 'operational management' of federally sentenced women, but also the Task Force saw this as an opportunity to make larger structural changes too the way women were sentenced in the correctional system. The first step towards action by the Task Force was to conduct a survey at the Prison for Women. The survey was used as a tool for collecting information about 'inmate's needs' since very little information existed about the characteristics of federally sentenced women. This lack of information was especially true with regards to the assessment of the living conditions for women in provincial prisons who were serving long-term federal sentences. All federally sentenced women were given the opportunity to participate in one-on-one qualitative interviews.

Only 12% of federally sentenced women refused to participate in the survey (25 out of 203).

According to the results of the study (Shaw, 1992a): two-thirds of the women had children (half of the children were under 16), two-thirds had little education, one-third had long-term work experience or training, and only three women said they were not planning on getting a paid job once they left prison. Three-quarters had a history of drug or alcohol addiction, two-thirds of the women had been physically abused, one-half sexually abused, and half of the population had slashed, injured themselves or attempted suicide previously (Shaw, 1992a: 445).

How women experience imprisonment was of crucial importance. Discovering what women actually wanted was also of great importance to the goal of the Task Force.

The central issues are how the women have experienced imprisonment or release, how they have been treated, the kinds of expectations which have been made of them, the quality of the relationship established with staff and others who support or control them which mediate that experience (Shaw, 1992a:445).

Of greatest concern to these women was an increase of control over their lives, including over their bodies and health care, and being treated with respect by staff and personnel (Shaw, 1992a: 446). Less than half of the women wanted to be placed in a co-correctional prison with men. They felt that it would be a more natural setting and would help prepare them for life outside prison. Also it would give them better access to vocational training and they could enjoy the company of men. However, 42% of the women stressed how inappropriate that would be considering the number of women who have been abused by men. Privacy issues were also raised. With regards to having male guards, some women

felt that they would be more compassionate while other women feared possible abuse and a lack of privacy (Shaw, 1992a: 448).

Similar to viewpoints raised for co-correctional facilities, there were diverse feelings about the proposed Healing Lodge for Aboriginal women. For many outside, as well as inside the walls of the Prison for Women, the Healing lodge symbolized “the very first step on a road to recovery for many native women” (Mogner, 1996:A3). However, not all Aboriginal women agreed. One woman in the Prison for Women argued that “it wouldn’t be different than being forced to live on a reservation, cut off from her non-native friends and the rest of society” (Native Prisoners Balk at Move to Native Facility, 1992:26). She further argues that “the bottom line is politics. It’ll be run by CSC, and if it’s run by CSC, then it’s not native” (Native Prisoners Balk at Move to Native Facility, 1992:26).

The Task Force presented the results of the study, Creating Choices, in 1990. The recommendations from the Task Force “proposed moving away from traditional ‘correctional’ approaches for women and increase[d] community involvement to address pertinent issues for ‘victim’, ‘offender’, and ‘community’” (Federally Sentenced Women Program CSC, 1995: 2). In order to begin to realize the necessary changes with the correctional system, the Task Force recommended the closure of the Prison for Women, and its replacement with four regional centres for federal women as well as an Aboriginal Healing Lodge (Shaw, 1992a:441).

The Task Force plan was ... based on the belief that a holistic approach to the treatment of federally sentenced women is required to address the historical problems, and is predicated on principles of empowerment, meaningful choices, respect and dignity, supportive environments, and shared responsibility. The plan places high emphasis on the need for federally sentenced women to recover from past trauma, and to develop self-esteem and self-sufficiency through programs and services designed to respond to their needs. It stresses the need for physical environments which are conducive to reintegration, highly interactive with the community, and reflective of the generally low security risk of federally sentenced women (Correction Services Canada: 3)

According to the Task Force's recommendations, the regional facilities were to be built on several acres of land, with a central area and a series of cottage-style living areas for small groups of women. The main goals of this design were to foster self-sufficiency, well-being, and privacy, and to utilize community norms and resources as much as possible. An emphasis would be placed on dynamic rather than static security, and staff support for women of higher risk would be preferred to physical security measures. Programs would be holistic in nature and responsive to the needs of women. Unlike previous designs there would be an increase in the range of accommodations that would allow for varying security levels, as well as a focus on increasing services available to women upon release (Shaw, 1992a: 441).

Following the publication of Creating Choices in April 1990, the Solicitor General announced that the Prison for Women would be closed in 1994 and replaced by four regional facilities and a Healing Lodge (Shaw, 1992a: 441).

Crucial to the full implementation of the Task Force recommendations is adherence to the principles that introduce and underlie the Report. Fundamental to the success of this initiative is the empowerment of federally sentenced women as well as the provision of opportunities to make meaningful choices about institutional programming and community integration, within a supportive and respectful environment. In order to focus on developing more proactive, healing interventions, as well as to facilitate the re-entry of the women into the community, the expectation

remains that the services offered women in the new prisons must be women-centred and community-based (CAEFS, 1993: 1).

There were two equally important components to the Task Force's recommendations. The first was the development of new regional facilities, and the second was the strategy for community release with an enhanced network of community facilities. It was essential that both of these be implemented and the plan be accepted as a whole (Shaw, 1992a: 441). Even though the recommendations of the Task Force were accepted, there were several roadblocks to the implementation of the new initiative.

the implementation process [of *Creating Choices*] has been marred by exclusions and redefinitions of the meaning of women-centered corrections ... feminists have failed to adequately define the meaning and criteria of women centeredness. The implementation of the task force's recommendations and the definition of *women centered* have been left to Corrections Canada with little external (feminist) input (Hannah-Moffat, 1995: 141, italics in original).

After the release of *Creating Choices* in 1990, the Task Force Steering Committee and Working Groups were replaced by a National Implementation Committee which was devoid of representation of federally sentenced women, Canadian Association of Elizabeth Fry Societies (CAEFS), or any other community representation. This was done against the recommendations of the Task Force (CAEFS, 1993: 1). This was not the only recommendation that was not implemented, it was merely a first. It was recommended that the regional facilities be located where there were well-developed women-centred community services, as well as accessibility for visits with family and friends. The only facility that currently meets these recommendations is the Edmonton facility. Additionally, the call for lower levels of security had been ignored with regards to the Burnaby Correctional Centre in British Columbia (CAEFS, 1993: 2).

The Task Force on Federally Sentenced Women identified five principles that were believed to increase the ability for women in conflict with the law to make new life choices (Task Force on Federally Sentenced Women, 1990: 105). The five principles outlined in Creating Choices are empowerment, meaningful and responsible choices, respect and dignity, supportive environment, and shared responsibility (Hannah-Moffat, 1995: 138).

The first principle, empowerment, is related to the inequalities and reduced life choices women experience in society. There is a belief that many federally sentenced women have low self-esteem and feel they have little power over their lives. Low esteem is thought to reduce ones' ability to cope with stress, make meaningful choices about ones' future, and take responsibility for ones' actions (Task Force on Federally Sentenced Women, 1990: 107). The anticipated result of empowering women who come into conflict with the law through programs which enhance self-esteem is an increase in their ability to accept and express responsibility and be able to plan for their future (Task Force on Federally Sentenced Women, 1990: 107). Although low self-esteem and feeling disempowered may be a reality for some women, it is interesting to note that none of the women who were interviewed by the Task Force in 1989 said that they wanted programmes on self-esteem (Shaw, 1992a: 449). Rather others defined these as needs that may be more of a need related to imprisonment than necessarily being a woman in conflict with the law.

The second principle, meaningful and responsible choices, is based on the premise that women need access to meaningful options which will enable them to make

responsible choices in the future (Task Force on Federally Sentenced Women, 1990: 107).

The dependence on men, alcohol or drugs, and/or on state financial assistance which is a part of the lives of many federally sentenced women, has robbed them of the opportunity and ability to make choices. To break out of this dependent cycle, these women need to experience the success [of] with making sound, responsible choices (Task Force on Federally Sentenced Women, 1990: 108).

This principle is directly related to the need for empowerment, since without access to meaningful options, women in conflict with the law will not be able to realize a more positive future.

The third principle, respect and dignity, is based on the belief that “if people are treated with respect and dignity they will be more likely to act responsibly” (Task Force on Federally Sentenced Women, 1990: 109). Correctional Service of Canada has been criticized in the past for encouraging dependent behaviour among federally sentenced women. By incorporating mutuality of respect into all correctional programming the possibility of realizing the first two principles is increased.

The fourth principle, need for a supportive environment, is conducive to fostering independence, responsibility and personal development. The environment can be defined politically, physically, emotionally/psychologically, and spiritually. Therefore, before any programs can be implemented the right environment needs to be constructed so as to encourage positive outcomes.

The last principle, shared responsibility, looks at the need for a holistic approach to dealing with women who come into conflict with the law. Interrelated support systems and the continuity of service for women in conflict with the law are necessary if these women are going to be able to make positive life choices (Task Force on Federally

Sentenced Women, 1990: 111). Corrections should not be the only agency that deals with sentenced women. There should be involvement by all government agencies, correctional workers, voluntary organizations, community members, and the private sector in order to give women the support they need to make positive life choices.

Although Creating Choices has been seen as revolutionary (Shaw, 1992a: 441), it falls short of realizing a women-centered approach since the principles used are specific to carceral programming. There also needs to be a move towards initiating women-centered programming within the community through non-carceral sentences.

Proposals to Address the Needs of Women: A Woman-Centered Approach

In order to address the needs of women who are in conflict with the law, any developed strategy should be 'women-centered'. The term 'woman-centered' has been used readily by academics and practitioners alike. However, not unlike the term 'community corrections', it is difficult to effectively define what woman-centered means except that there is an agreement that a woman-centered approach to dealing with women in conflict with the law is appropriate. The Church Council on Justice and Corrections (1995) has defined 'women-centered' "as taking into account women's life experience and needs from a female perspective" (p. 7). While the Task Force used "the term to include 'work which integrates knowledge of discrimination against women and their generally inferior status socio-economically and does not necessarily imply an analysis grounded on the ethic of care'" (The Church Council on Justice and Corrections, 1995: 7). Correctional Services of Canada has "stated that a woman-centered approach means 'that programs must reflect the social realities of women and respond to the individual

needs of each woman' (p.3). To implement the women-centered philosophy" (Hannah-Moffat, 1995: 142).

What does 'women-centered' really mean? Is this another umbrella word such as 'community'? Correctional Services Canada (1998) uses this term with regards to programming within prisons and feminist scholars (Heidensohn, 1986: 296) also use it when arguing for the need of a different model of justice. Can these definitions possibly be the same? These questions will further be discussed in chapter five since the respondents were asked to define the concept 'women-centered' in the interviews.

A Woman-Centered Justice Model's Sentencing Component

In order to create a model which is woman-centered, there has to be a focus on fully addressing the needs of women so that the likelihood of recidivism may be lowered. Within a woman-centered model the criminal act is viewed as a symptom of unmet needs. Therefore, unless the underlying needs are addressed the possibility of further 'offending' may exist. The purpose of sentencing should not be based on traditional retributive goals such as punishment, rather sentencing should incorporate utilitarian goals. The sentencing stage is seen as an opportunity to integrate the accused into their community in a positive manner. Therefore, all sentences should take the social context in which women live into account in order to achieve these goals. "Procedural justice has to be seen in its wider social context and in particular women, in relation to the disadvantages they experience in society" (Heidensohn, 1986: 291).

Providing women-centered programming, as Correctional Services of Canada has advocated, may not be enough to actually see a difference in the way women are treated

within the criminal justice system. A woman-centered model needs to go beyond creating programs that address the needs of women. The core philosophy of the system needs to be changed.

New models and programs alone will not make a significant difference. No matter what the purpose, if the process and context are stigmatizing, labelling, scapegoating, and do not include some really good 'expressive justice' for all those who are suffering the effects of the lawful behaviour and the sentence, we will just be adding more infrastructure to the same old problems (The Church Council on Justice and Corrections, 1995: 14)

The question then arises as to whether or not a woman-centered justice model can co-exist with the traditional criminal justice model. This question is similar to the debates surrounding whether a feminist criminology or jurisprudence is possible.

Is a Separate System Necessary?

There has been some debate among feminist scholars about whether or not women in conflict with the law should be studied within the discipline of criminology (Smart, 1990; Carlen 1992). Carol Smart argues that by restricting themselves to studying women within such a narrow androcentric discipline, feminist criminologists lead a marginal existence to both criminology and feminism (Smart, 1990: 71). Smart further argues that the study of women and crime must take place outside the confines of criminology since it's goal is to create social policies that will further intervene in women's activities (Smart, 1989b: 524).

Pat Carlen also argues that a feminist criminology is not desirable or possible because it uses universalizing theories that are as reductionist as previous biological theories that seek 'truths' about women's criminality (Carlen, 1992). Carlen also does not believe that there is a distinctly feminist theory that could adequately explain the

phenomenon 'women and crime'. However, unlike Smart, Carlen does not argue for a non-interventionist stance, since the abandonment of theoretical work would only further disadvantage women who are involved in the criminal justice system. Rather she argues it is the methods in which women and crime have been traditionally and are currently studied which need to be abandoned.

There has also been considerable debate around whether there needs to be the construction of a feminist jurisprudence (Carlen, 1989; Smart, 1989a).

The search for a feminist jurisprudence signals the shift away from a concentration on law reform and 'adding women' into legal considerations to a concern with fundamental issues like legal logic, legal values, justice, neutrality and objectivity (Smart, 1989:66).

Carol Smart argues that a feminist jurisprudence may be as problematic as constructing a feminist criminology. The creation of a feminist jurisprudence, a 'grand theory' of law, is merely an act in "replacing [one] abstraction about law with another" (Smart, 1989a: 68). This focus on the abstraction of law as a site of struggle and reform maintains the belief that through law the truth and justice may be sought. Smart argues that the development of resistant discourses which provide alternative ways of viewing criminalized behaviour as more than just a legal issue would be more appropriate (Smart, 1989a: 88).

Although Carlen agrees that there are concerns around the development of a feminist jurisprudence, she argues that avoidance of the law as Smart has suggested is not possible for women who are involuntarily awaiting punishment (Carlen, 1989:111). What Carlen suggests is the development of a feminist penology or a 'women-wise penology' that does not see women as 'add-ons'.

Because of the ‘involuntary’ relationship between lawbreakers and the criminal law, and because too, women have traditionally been so invisible in the criminal justice and penal systems, I do think that in relation to this branch of law feminists should seek principled ways in which the criminal justice and penal systems might become more women-wise” (Carlen, 1989: 111).

The creation of a ‘women-wise penology’ that makes the experiences of women central to the operation and programming of women in correctional facilities is a necessity if the discrimination by the criminal justice system is to be reduced (Carlen, 1989: 114).

These arguments are similar to those surrounding the question of whether it is possible to realize women-centered principles within the traditional criminal justice system or whether a separate woman-centered system needs to be developed.

The traditional “judicial system is built round males, so that women who encounter it have to measure up to male-based norms and rules which may ignore for instance women’s” (Heidensohn, 1986: 294) realities and experiences. In order to implement a women-centered system, women’s needs and experiences must be at the core of such a system.

Our criminal justice system is based on a set of principles which uses male-centered perspectives claimed to be universal or neutral, and in which women’s concerns are marginal. The criminal law does not consistently reflect women’s values nor does it adequately protect women’s safety and quality of life. It puts great emphasis on the protection of property and uses conventional codes of morality to control women and reinforce their inequality (NAWL, 1991: 2).

Any attempt to create women-centered programming within the traditional system will be seen as add-ons and will not be implemented fully. This can be seen with the implementation of Creating Choices and the failure of the regional facilities to realize all of the programs outlined by the Task Force.

It is not possible to effectively deal with women in conflict with the law in a system that does not take the larger social context in which ‘offenders’ live into consideration upon sentencing. “When women come into conflict with a criminal justice system created by men and for men, they are further victimized by paternalism and sexism resulting in inadequate and inappropriate programs and services that do not address or even identify their social reality” (NAWL, 1991: 1).

There needs to be a deconstruction of what is ‘already known’ about women lawbreakers, and a reconstruction of concepts from a variety of theoretical discourses in order to understand women’s lawbreaking and imprisonment (Carlen, 1992).

The traditional system fails to realize the differences in the needs between men and women in conflict with the law. Sentences that are presently used, although they may be limited and may not realize the needs of men, have been developed with the ‘male offender’ in mind. Women in the criminal justice system are faced with programming that does not meet their needs.

Women’s experience of sentences differs from that of men with similar sentences because of their maternal role, and in case of fines, because of their lower income. Women face inequality in the programs and alternatives available to them. Also, many women are single mothers unable to support or care for their children while fulfilling the terms of their sentences (NAWL, 1991: 2).

The traditional criminal justice system may be too androcentric to be able to implement a women-centered model which can effectively deal with the needs of women in conflict with the law.

The next chapter will present the results from the qualitative interviews with the representatives from the eight justice and women’s groups.

Chapter 4:

Perceptions of a Woman-Centered Model of Sentencing

In this chapter, the results of the interviews with the eight representatives from the justice and women's groups are presented. Although the participants were interviewed as representatives from various groups, some of the opinions and ideas expressed may be personal and may not represent the views of their group or organization. In such a case, the idea or quotation will be referenced as such (representative from [name of the group], 1998). All other quotes will be referenced by the group's name alone (name of the group, 1998). The interview participants include a lawyer; Bonnie Diamond who was interviewed independent of the present group she is working with; representatives from the Canadian Association of Elizabeth Fry Societies (CAEFS); Elizabeth Fry Society of Toronto (EFS of Toronto); National Council of Women of Canada (NCWC); Church Council on Justice and Corrections (CCJC), National Associations Active in Criminal Justice (NAACJ), Salvation Army Correctional and Justice Services Department. A total of eight interviews were conducted.

The questions that were asked in these interviews can be located in appendix G. The interviews were divided into four sections. The first section dealt with questions pertaining to the needs of women in conflict with the law, as well as the specific needs of women who have been sentenced. The second section focused on questions pertaining to carceral and non-carceral sentencing practices. The third section looked at the different sentencing components of community corrections, restorative justice and transformative

justice. The final section detailed questions regarding the option of a woman-centered justice model and in particular a woman-centered sentencing component.

Section 1: Needs of Women in Conflict with the Law

The respondents all argued that each stage of the criminal justice process highlights different needs for women. What also emerged was a general belief that it is very important to examine the greater social context in which women's offending occurs. Interviewees argued that it is not sufficient to look only at the behaviour of the woman in conflict with the law; in addition, the context in which the behaviour occurs must also be examined.

When you look at a woman you have to look at her background. She likely, very first of all, has to be healed through programming, you have to empower her to restore her self-esteem so she will be able to make good decisions about planning for her own future. You are going to have to look at education and training because so many of these women who get into conflict with the law have very little education and don't have the training when they get out of prison to get a job and keep themselves out of the justice system in the future. Many of them will have substance abuse [problems] and they will need a lot of help with that. And when I said healing, so many of them have abuse, sexual assault, or violence in their lives. You have to look at that and treat that first so you can empower her and restore her to a state where she will be able to really look at what can be done (representative from NCWC, 1998).

All of the respondents identified the first set of needs to be general needs related to the social, economic, and political realities that most women face in society, regardless of whether or not they are in conflict with the law. It is often through attempts to fulfill these needs that women commit offenses that may bring them into conflict with the law.

There is a whole variety of needs that pre-date their coming into conflict with the law. We are dealing with still a situation where women do not enjoy equality: economic equality, political equality, and social equality. So given they are living in a context where the misogyny, which of course isn't just the hatred but also the fear of women, is prevalent and the inequality of women is still prevalent. And as we see more economic down turns we see more of that fear of the other whether it is women, racialized groups, poor people, come into the forefront. We see in fact now a real pushing back down of women. In the recent media depictions of women very few and infrequent victories in the justice system really typifies that we are in fact seeing again a pushing down of women. At a time when many, many people think of women as having greater equality in fact we are seeing just the opposite. So that is the context in which we need to talk about women in conflict with the law (CAEFS, 1998).

When women's criminal activity is examined, it becomes evident that, not unlike men, social context can play a role in why women engage in criminalized behaviour and in particular the types of criminal behaviour in which they partake. The crimes women commit tend to be economically motivated. Crimes that are violent tend to occur when women are involved in abusive relationships. Although these are not the only types of offenses women commit, they represent a vast majority of women's criminal behaviour.

The first need is to recognize what kind of systemic factors have contributed to their behaviour being criminalized or the event of their coming into conflict with the law. When I talk about systemic factors I am thinking about the historic inequality that women experience knowing what we know about women who come into conflict with the law in terms of their victimization within the family. So their history of abuse within the family, their sexual and physical abuse they experienced. The fact that women have historically and chronically suffered economic inequality and what not being able to make ends meet means to women, and what we see is that when women are not able to make ends meet is a result of poverty. That is they either can't keep their families together or that they resort to crimes of economics like welfare fraud for example to be able to keep the integrity of their family unit together. That needs to be taken into account when we are talking about what the specific needs are for women in conflict with the law because those systemic and historical inequalities need to be addressed. (NAACJ, 1998)

Then there is a whole other set of needs that arise when women come into conflict with the law. These needs are related to biases within the criminal justice system. The types of women, this may also be true of men, who are processed through the criminal justice system tend to be those who have been marginalized the most. They have long histories of abuse, long histories of involvement with the law, and may be from de-institutionalized mental health facilities. Therefore, these women have high needs around issues of abuse and trauma.

So then you finally get to the criminal justice system with all of that back drop you see the particular women that come into the system often tend to be those who have been most shoved to the margins. On the one hand in terms of those who are coming in that have a long history of being involved with the law. The long history of class, race, gender discrimination you will often see come into the system. First they show up as missing kids, then they show up in the child welfare system, then show up in the juvenile justice system, then show up in the adult system. So you will see often a long history of abuse, overwhelmingly they will be living in poverty, often they will be Aboriginal women, and in some pockets of the country we are seeing women who have been in mental health institutions. These institutions are being de-institutionalized largely because of cuts to funding not because of concern and effort to integrate into the community but sometimes it is both. So we see the women coming into the system as having high special needs around those sorts of areas in terms of abuse and trauma. They have often used legal and illegal drugs to cope as coping mechanisms to not deal with their issues they often haven't been employed they have been living in poverty most of their life. Now you'll see some of those histories in men as well but in my experience you will see a very profound difference in the degree to which a woman has been so disenfranchised by the system. (CAEFS, 1998)

Another concern was that the present criminal justice system is not sensitive to the social, economic, and political contexts which women in conflict with the law come from.

I think they need adequate representation. I think they need the criminal justice system in general to have a better understanding of the regime of social inequality which women face. They need there to be an understanding of the link between social deprivation and crime. They need to have an understanding of how women's crimes are different from men's crimes. They need to have evaluation and other types of methods that are used on women to be gender sensitive. They need appropriate gender as well as culturally sensitive treatment services, counselling services, things of that nature. (a lawyer, 1998)

There is another set of needs that arise once a woman has been processed through the criminal justice system and has been sentenced to a carceral setting. Due to the nature of incarceration, men may also experience similar needs as a result of incarceration, however, due to the small number of women in carceral settings, women are often treated differently, or experience incarceration differently. The needs at this stage include issues around childcare and parenting skills.

In terms of other special needs we know that approximately over 60% of the women who are federally sentenced are moms. I don't have the precise stats on the provincially sentenced women but I suspect there is a fair number there too. The stats are probably even higher because of the shorter periods and the sorts of things women often do when they are on welfare or trying to support themselves and their kids. But in the federal system where the majority are moms, there are over 60% that are moms, and that two-thirds of those women when the Task Force [on Federally Sentenced Women in 1989] did the research found that they were sole support moms prior to entering the prison. So that's vastly different from again the male population. In my experience it is the rare man that doesn't have a woman on the outside waiting with his kids. Often it is his partner, it may not even be the partner who is the mother of the children. Sometimes it may be some girlfriend that is participating in caring for the children along with the natural mother of the children. Maybe his mother or his sister but most frequently the mother of the children will be there waiting for him while he is in prison and some women will wait decades for the guys to get out of jail. The opposite is usually true for the women; many of them are on their own when they start out in the first place. And if they have got a partner whether or not the partner is the father of the children the chances of them staying in touch having the relationship remain in tact even with the same access to private family visits and all the rest of it most don't stick around. Sometimes they will last out a year but most times they are gone much faster than that. So a specific issue for

women is who is taking care of their kids, where they are, how they maintain a contact. It is surprising to most people, [that] the most obvious area for women in prison who want assistance is the family law area. And since there is no legal aid for family law if you are sitting in prison and trying to fight to get custody of your kids that is a very difficult spot to be in. Not to mention all of the stereotypic responses that if you are in prison, an assumption that you may not be a good mother. Which is of course from my perspective and certainly as the experiences of women bear out, that that is not at all true in fact most of the women are very caring. (CAEFS, 1998)

Since women remain the primary caregivers, when they are incarcerated they are often faced with having to find someone to look after their children. For many women this may result in losing contact with their children especially if they are incarcerated for a lengthy period of time.

Also due to their small numbers, women in carceral settings do not have the access to the programs that would provide them with tools to change their life circumstances once released into the community.

I think we pay lip service to the concept “rehabilitation” for the lack of a better word, in that it doesn’t really happen. And that the major fault in our system is that we are putting people back on the streets probably worse off than they were when they came in. They do need education upgrading, employment training and employment training of some significance, something that they can actually earn a living at and something that will perhaps have some growth potential. They also need to offer them more opportunity, what happens is that you have one program and one program is not going to suit everyone’s needs, that is if you have one program. I think there are a lot of needs around clearly some kind of counselling or support work around abuse. Very significant issues, substance abuse, parenting. One of the things we are seeing is a move towards some commitment from CSC to recognize parenting needs of women, but for example they offer programming inside but not once they are back out and are actively parenting. I think there is a lot of logic missing in what’s offered women and their hard core practical needs. (EFS of Toronto, 1998)

There are also very few vocational programs offered to women, as well as limited access to work release programs (CAEFS, 1998). The mental health services that have been made available to women have also been inadequate, this may be due once again to their small numbers (CAEFS, 1998).

Another need for women is to have a separate classification system that can adequately assess women's level of risk regarding maximum, medium, and minimum security rather than continuing to rely on a system that has "previously overclassified women" (Bonnie Diamond, 1998; CAEFS, 1998).

The representatives from the eight justice and women's groups were asked if they believed the needs of women were being addressed by the new regional facilities which have been housing federally sentenced women since 1995. Although some representatives stated that it may be too soon to evaluate the effectiveness of the new facilities, there was a general belief that the facilities have not been entirely successful in realizing the recommendations set out by the Task Force on Federally Sentenced Women.

Some concerns include an increase of static security, over classification of women, the inability to house maximum-security women and those with mental health needs, lack of programming, and a lack of community presence.

There is concern with the increase in static security at the facilities. According to the recommendations of the Task Force, there was supposed to be 'high-tech' perimeter security so that it was not visible (Bonnie Diamond, 1998). However, all of the facilities, excluding the healing lodge, have wire fences.

They have wire fences which means that we have made them into a maximum security facility although very few of the women inside need to be held in a maximum facility. So that is a disappointment because we [Task Force on Federally Sentenced Women] didn't anticipate that they were going to put fences around, that was the one thing we talked a great deal about. Communities took a hold of the idea that they were going to have one of these facilities within their community, that it wasn't going to have high walls or wire around it because the women are not dangerous. Now we have put up the fences to separate them which must be a concern for some people that live in the community. Because as soon as they see the fence they immediately think all those women in there are a danger and that is simply not true (representative from NCWC, 1998).

Even though the facilities appear to house high security women, and were originally set up to receive all federally sentenced women, most maximum-security women have not been accepted by the regional facilities. Women who have been classified as being a maximum-security risk are presently being housed in the Prison for Women in Kingston, which was supposed to be closed upon the opening of the regional facilities, and in various other male facilities around the country. There is a belief that the regional facilities cannot accommodate their 'high-security needs', even with the increased static security. "It now looks like perhaps women who are classified as maximum will never get to the regional centres" (Bonnie Diamond, 1998).

Within the regional facilities, all women regardless of whether they are classified as minimum or medium security risks are housed under similar high-security precautions.

Women who would be classified as minimum under a 'reasonable classification system' would be held in conditions that far out-stripped their security needs as for women who are medium security as well. And that is one of the real injustices when you are talking about the incarceration of women is that men who are considered minimum can look to a fairly free carceral setting. Whereas the new regional facilities it looks like they are not going to provide anywhere near the same level of freedom to minimum and medium women that men now enjoy. So it is a historical discrimination against women who are incarcerated that is being perpetuated (Bonnie Diamond, 1998).

Women are also over-classified because the classification model used is based on male offending which is gender biased when applied to women's patterns of offending. The Canadian Association of Elizabeth Fry Societies is presently arguing that the entire classification system needs to be dismantled since it cannot be modified for women (representative from CAEFS, 1998).

They [Correctional Services of Canada] use a blanket classification that is used for men and women and it doesn't suit well. We need a classification for security that is for women and we could look at the women and make the decision 'are they truly a danger to society' (representative from NCWC, 1998).

Another concern with the regional facilities is the lack of programming available to the women. In order to increase the number of programming options and maintain budget requirements, the Task Force on Federally Sentenced Women recommended that the women be able to access programs offered in the community.

We [Task Force on Federally Sentenced Women] also envisioned that the women would go out of the facility to receive a lot of their programming. They would go out into the community because they are not considered a risk to society and programs would not necessarily have to come into the prison. But women are not being allowed to go out for their programming. They are not being allowed to go for their health services unless they are shackled. We [Task Force on Federally Sentenced Women] thought we would be able to save costs by using what is already available in the community. Now I am sure they are using what is available in the community to help to build a program that takes place inside the facility. But through going out for some of their programming, by going out for their educational programs, they would have been in a process of learning how to integrate which they are not if they are completely inside the facility (representative from NCWC, 1998).

There is also a lack of community presence in the facilities. Even if women were not allowed for safety reasons to enter the community to receive programming, then it was suggested that the required community programs should be brought into the facilities.

What did not please me at all was the lack of community presence within the facility. Creating Choices very specifically was meant to work hand and hand, the institution with the community in which it was placed. Although we [Task Force on Federally Sentenced Women] had to, at the time stay within Canadian law as it currently was written, it was not possible to bring women out into the community. But it certainly was possible to bring the community very close to the institution and I don't think that has happened adequately (Bonnie Diamond, 1998)

There are also very few vocational training programs available to women. Those that are available do not appear to be very practical or provide women with the training they need to become gainfully employed once released from the facility.

There is virtually no vocational training for women. The only program for federal women is at Burnaby Correctional Centre. There is a floral design program [where] women can get a certificate. So it is not strictly speaking a vocational training program but it is the only one where women can get any kind of certificate. It was envisioned through Creating Choices that there would be at least one vocational training program at each of the prisons. The next closest thing after the floral design, which is of course at Burnaby, which is a provincial institution for women in the Pacific region, they are looking at giving people a certificate in restoration of artifacts at Grand Valley in Kitchener. Now that's great, I'm not sure if that is as marketable as what they were planning at Joliette for instance. At Joliette the women were supposed to be getting a program where they would dismantle old computers and take out the reusable parts to be recycled into new computers or else into other used computers. Basically dismantling computers for their parts. And that is a growth industry that's an area where there are jobs available. Just before the prison opened, however, at Joliette, that industry was taken and put into a man's prison. It was deemed more significant that more numbers of men could go through it. In my view [that] is the misogyny of the system again that it is more marketable, that it is more important, for men to get jobs than it is for women to get jobs. Now the trading program for the women is folding box corners for the furniture that men make in other institutions. Covers that protect furniture when its being transported. That is what their 'vocational training program' is. I don't think there are many jobs folding box covers for protecting furniture in transportation (representative from CAEFS, 1998).

Similarly access to work release programs is very limited for women due to lack of education and job skills. However, the Canadian Association of Elizabeth Fry

Societies is advocating that care of children and elderly parents should be considered grounds for receiving work release permits.

There is a provision for work release in the Corrections and Conditions Release Act that allows individuals to go into the community for up to sixty days on warden's authority to work. Now we have a situation where the access of women to work release has always been much more limited than it is for men, that women do not have any vocational training, often that they may have limited education. How many women do you think get sixty-day work release passes? I know of none, absolutely no one. We [CAEFS] have been arguing that women's work should be recognized as their care for their children. Increasingly we are seeing women going out and caring for elderly parents and other family members and so encouraging the system to recognize that as an appropriate work release option. Thus far we haven't been successful (representative from CAEFS, 1998).

There is also concern regarding the lack of mental health programming at the facilities. The programs that are provided deal with behaviour modification, so women with mental health issues, rather than behavioural problems, are not given the treatment they require.

With women the resources have been very limited and what has been made available in the past year or so has primarily been focused around the development of models that involve behaviour science technicians and from my perspective, staff that are very well intentioned often very pleasant positive staff with very minimal training. We are talking about people who are coming into the system with a two-year diploma as a behaviour science technician. Who were historically geared more towards the mentally handicapped rather than individuals with mental health issues. They are being used to work with both and not surprising the behaviour modification techniques for women who may have very real mental health issues but certainly do not have capacity issues fall flat. If you're using a token economy to try and encourage someone not to slash and that person is not someone with a capacity issue you can imagine its not laughable and if the consequences weren't so serious it would be laughable. So we are seeing inadequate resources. There are psychiatric centres set up for men around the country, again I am not suggesting that these resources are sufficient for men but we see again disproportionately the population of women who have historically been over represented are now in the prison setting with very limited access to mental health

resources. We are arguing that in fact their Charter Rights are being violated in the prison setting (representative from CAEFS, 1998).

Although the new regional facilities are seen as an improvement over the Prison for Women, there are several limitations which need to be addressed. There is also a concern surrounding the failure to close the Prison for Women as was proposed with the opening of the regional facilities. There is a small number of women who are still being housed at the Prison for Women (Bonnie Diamond, 1998). Consequently, not unlike other correctional programs, the regional facilities have added to the growth of the penal system rather than providing an alternative.

Once the interviewees had identified the specific needs of women, those in conflict with the law, as well as women who have been sentenced, the focus of the interview questions shifted. The last three sections explored how the traditional criminal justice sentencing component and 'alternative' sentencing models were designed to address the varying needs of women at the sentencing stage.

Section 2: Carceral and Non-Carceral Sentencing Practices

When asked whether women should receive carceral sentences all eight representatives agreed that there are a few women who, for reasons of personal and public safety, need to be under constant supervision, although the duration and purpose of this supervision varied among the responses.

I think that there are probably circumstances where for a finite time they [carceral sentences] are appropriate. I don't think that our current system of justice and corrections sufficiently takes into account the rehabilitative potential to be exercising the carceral options as judicially as they ought to. By that I mean it is used far too often, it's used as a way of ... as an easy answer to a complexity of problems that seem to defy the solution.

My position is that they don't defy the solution but that the solution has to be all encompassing and it has to be integrated into the experiences that the women have had that have led them into conflict with the law in the first place. So I think that there have to be sincere and honest efforts to look at the alternatives before incarceration is used. And I don't think our justice system or our government are sufficiently motivated to be sincere in its efforts to find alternatives to incarceration because they are not prepared to look at the complexity of factors that lead to a person being criminalized in their behaviour. I said that for a finite period of time I think they are appropriate. What I would further like to say to refine that answer is that they are appropriate as long as there is programming in place (NAACJ, 1998).

Although carceral sentences may be necessary for short periods, they are believed to be a last resort for sentencing.

I always feel that if anything it [a carceral sentence] would have to be the last resort if at all. I think we could prove that it's not necessary... I think there is so much you can do with an individual prior to putting them in an institution and basically all we are doing is taking them out of society and not dealing with the root of the problem. There is so much [that] can be done in the community that you would see your recidivism rate drop substantially because you would have someone focused in on what ever that may be, that issue. Like I said the biggest thing is getting to the root of the problem, which led to them coming into conflict with the law in the first place. So if you can get to the root of that, incarceration in my opinion does not get to the root of that. It feeds to again what society wants. I think the majority of agencies would agree with that aspect of it, that incarceration is not the answer. (Salvation Army Correctional and Justice Services Department, 1998)

There is a general belief among the representatives that there are a small number of women who do require constant 'dynamic' supervision and support.

There are four women in this country who I think would require constant supervision and support. That doesn't mean I think they should all be running around and nothing happening for them in the community. We've got prisons filled with women who have reacted to defend themselves against violence [and] they take responsibility for it, so they punish themselves forever regardless of what the system imposes on them. So that is about half of the women in the system and the others are women who are struggling to manage on assistance and get dinged with welfare fraud. Or they take drugs across the border because they are trying to make a fast buck to try and pay the rent this month or pay off the guy's

drug debt or the guy came and trashed the house last week and they have to buy new furniture. Or they are just trying to get by and get themselves off of assistance. And then you've got a few that are seriously drug addicted who are often dealing with other stuff they are anesthetizing and are going just any which way to get money to get drugs. Then you have a few who have been so institutionalized, very few, that they need constant support, constant supervision, constant intervention, they are what the system has made (CAEFS, 1998).

Similarly all eight representatives replied that women who do not pose a threat to themselves or society should receive a non-carceral sentence. They argued that the decision to use a non-carceral sentence should be determined on a case by case basis, and that mandatory sentences are not the answer.

I don't agree with mandatory minimum sentences. We [CAEFS] know that the least likely to reoffend are those women who are in for murder. The women who I am talking about, I mean their greatest strength is when they decide that the last thing they want is a relationship with a man when they get out because they have been so reliant on men. When they decide that, it is incredible, it is such an incredible growth for them that they can survive and will survive without some guy. Being the appendage of some guy and if we can encourage women to be in the community supported that it's probably better I think we need stronger communities of support for women as well. Some of what they find in prison is a travesty that they can't find that in the community. What I mean by that is having people supportive of them, ensuring that they are safe and that the kids are safe (CAEFS, 1998).

The decision to use a non-carceral sentence should not be made according to the offense committed since 'type of offence' is a poor predictor of future criminal activity.

I believe it certainly shouldn't be tied to types of offenses. If there is a poor predictor of the ability to be rehabilitated or the ability to gauge the probability for future violence, is the worst thing you can look at. I have met people who have committed petty crime who in fact were far more dangerous than people who had killed. It's [type of offense] not a predictor. I would not tie it to crime in any respect. I really believe that apart from a handful of women in Canada who are incarcerated the rest could walk freely amongst us and we would have nothing to fear of in terms of violence (Bonnie Diamond, 1998).

The decision to use non-carceral sentences should be made on a case by case basis, by determining the ability to sentence the woman safely in the community.

I think it's particular women I don't think it should matter what the offence is. That's an abstract category of the criminal code. I think it should depend, whenever a woman can be safely in the community bearing in mind her own safety as well as the safety of others. If she can be safely in the community then there should not be a carceral sentence. But that requires a lot lot lot of attentive resourcing and dealing with the feeling of people who have been affected by her behaviour (CCJC, 1998).

However, there was a concern expressed by one of the representatives that when violence is involved in any offense, there is an element of public tolerance that needs to be addressed.

I think that if the crime has involved any kind of violence in any way, of course the public would not accept that the person is not in prison. Some how they just won't accept that. And I would have some trouble accepting that if someone has been violent that they haven't received the proper sentence for that. For early crimes, first-time offenders, maybe even somebody who this is their second time around, if they are not a danger to society they should make part of the sentencing what would help them straighten themselves around. And make it mandatory so that they have to do that. Make it a mandatory sentence to a program (NCWC, 1998).

Although there is a concern with public perceptions of justice, incarceration in traditional prison settings may not be the only way public acceptance can be achieved.

I think that when you have violent crimes committed by women there should definitely be an examination whether a woman needs a period of custody for a period of time. In more non-violent crimes like fraud and bouncing checks, those kinds of economically related crimes which a lot women find themselves doing to survive, I'm not sure that custody is necessarily appropriate. There are other ways to effect our societal abrogation of the conduct rather than locking the women up. (a lawyer, 1998)

A lot of the concern and call for "get tough measures" are a result of media sensationalization.

We sensationalize all the horrible cases, the public doesn't realize for example, it's been in the paper that the crimes with guns have been going down and the crime rate in Canada is going down. And yet most people when asked think they are in far more danger now than five years ago. But we [have] got to get the right information out there and we have to show the successes and the long term successes of alternative means because it is not that they are untested (EFS of Toronto, 1998).

There needs to be public education if there is to be acceptance of community-based sentencing models.

I think the criminal justice system is basing all of its policies and everything else on public perceptions [of] 'lets get tough on crime, lock them up, throw away the key'. That's not the answer. If done properly and if they truly follow through with the core values that have been established by Correctional Services of Canada, I think yes they could address these needs very well. But the question is how do you weigh that political pressure versus the mandate of your department, be it corrections or any other department. But we know for a fact there is zero tolerance right now in society as far as criminal activity and the politicians are feeding into the whole aspect of get tough, lets get tough on crime. That's another thing they need to do in the justice system which they do a terrible job, it's a good public education campaign. All we hear about is the sensationalized cases that take place (Salvation Army Correctional and Justice Services Department, 1998).

All eight representatives agreed that some form of carceral sentence is required if public safety or the personal safety of the woman is threatened. There was also a consensus that non-carceral sentences should be used for all women who do not pose a threat to themselves or the public. Six of the eight representatives stressed that the carceral sentence does not need to be completed in our present prison system but more creative methods may be used. One representative suggested the option that instead of prison constant dynamic supervision could be provided for the individual in her own home (representative from CAEFS, 1998).

Section 3: Different Sentencing Components

The representatives were asked to define the term 'community'. Seven of the eight representatives defined community as being both geographical and cultural. "Many people would think of community as the immediate small area in which they live, others would think of it as their cultural heritage and people who share in their heritage" (a lawyer, 1998). Community is defined differently by everyone, the definition is very subjective. Although most of the representatives agreed that both elements are essential when discussing community, there appears to be a belief that geography is less important.

it [community] is defined by the person who is living in it. For some, community is your immediate setting, your family, your friends, people you feel supported by. Sometimes it's geographic, sometimes it's cultural, for me it is a fluid definition. Community is not just geographic, it is definitely not just that, in fact it is probably the last thing it is. Some of the strongest, the most connected, and supportive communities exist in some of the worst hell holes" (representative from CAEFS, 1998).

However, when community corrections are discussed it is interesting to note that the geographical location is emphasized more than the cultural aspect.

Community to me is all of the human collectivity that makes up Canadian society. It is all of the human interface with all the institutions and the interaction person to person, group to group. And anything that rests outside of incarceration is what I would consider to be community in a correctional sense. If I am talking about community corrections I am talking about all of those activities that would happen outside of the carceral setting (Bonnie Diamond, 1998).

The representatives were also asked to define community corrections. There was an overall agreement that community corrections entails more than simply housing an individual outside prison. A community corrections sentence should provide the individual with the structured environment that is required while allowing them to work within the community to contribute in a meaningful way.

Community corrections is where a person is sentenced so that they are working within that community to repay in some way for the crime they have committed. Instead of being incarcerated they are going to serve 100 hours of volunteer service in a particular area, that sort of thing (representative from NCWC, 1998).

There is more of a humanizing aspect to community corrections compared to the traditional penal system. There is more community involvement in the rehabilitation and reintegration of individuals. Community corrections would also have a proactive approach, there would be a focus on crime prevention through social development (representative from EFS of Toronto, 1998; representative from NAACJ, 1998).

The representatives were asked whether they believed that the present criminal justice system's sentencing component could adequately address the needs of women. There was a general consensus among all eight representatives that fundamental changes with the system would have to be made. Firstly there needs to be changes made in the way women are perceived by law.

I think that there are some fundamental changes that need to be made in how the law views women and attempts to lay blame. So I think that there have been numerous attempts to incorporate so called gender sensitivity into the criminal law. I'm not sure, I don't think they have necessarily been successful. I think the theory tends to be a little ahead of the practice in this area and people are willing to talk about meeting women's needs in an abstract sense but when it comes to actually designing the program and delivery methods there are many obstacles. So I would say there are fundamental changes that are needed (a lawyer, 1998).

Then there needs to be change to the way women are processed through the system.

The traditional criminal justice system doesn't get at systemic factors, it is not equipped to deal with those kinds of issues. It doesn't have the flexibility to be able to take those factors into account when sentencing. It doesn't have the programming to be able to address those needs. The other context that needs to be addressed, if we were to go back to the first question you asked about the specific needs of women, is to reflect on the extent of the breakdown of our social safety net has contributed to women not being able to make ends meet. So that also ties in with the present

criminal justice system being able to address women's needs and it can't. The justice system cannot address the needs of breakdown in health and social services and breakdown in providing adequate housing providing assistance to women who's kids are at risk, providing assistance to women with mental health concerns for example. The present system is not equipped to be able to address those needs (NACCJ, 1998).

One representative argued that since there is confusion over the purpose and goals of the present criminal justice system, and until there is public consensus as to what is the objective of the criminal justice system, any sentence would not be adequate for either women or men.

There has to be a rethought criminal justice system. I don't think anyone knows what it is based on, what the underpinning philosophy is. There is a good proportion of the Canadian public that if you asked is purely retribution, another proportion would say it is rehabilitative in nature. There is a range of points of view in the Canadian public I don't think there is a really cohesive philosophical underpinning that allows it to succeed at the moment. We don't have any Canadian consensus I think we need to educate the Canadian public a great deal in striking that consensus. Canadians have an overblown imagination when it comes to the safety or the danger of Canadian society. I observed in the last period of time, as economic conditions became worse for some Canadians that they are really resentful of spending money on justice. I think we have to come to grips with those really large questions. I don't think it suits anyone very well right now I guess is the short answer and as soon as it doesn't generally suit those people who are relegated to the margins as is First Nations people and women. It certainly doesn't suit them at all as a matter of fact it even works absolutely counter to any personal health they want to enjoy. (Bonnie Diamond, 1998)

When asked which justice model (community corrections, restorative or transformative justice) most adequately addresses the needs of sentenced women, five of the representatives said that either restorative or transformative justice would be the most appropriate model since they would offer a more individualized and creative approach to sentencing.

It's [restorative justice] much more specific to the actual action that has taken place. So it's very much centered on a response to that action, so it would be much more individual tailoring. Rather than community sentencing where you can have actual guidelines as to how you treat certain crimes and certain offences. Restorative justice I gather would be much more creative with the person and you could possibly arrive at a 'marid' of solutions (a lawyer, 1998).

There was a recognition that since community corrections, as it is practiced today, is too closely tied to the traditional system, it would not adequately address women's needs.

If it [community corrections] is just going to be an extension of the control system downloading into community agencies it is not going to take us very far. It can have a tendency to become as impersonal and bureaucratized as the rest of the system. It [community corrections] has tended to want to buy into the public's expectation that punishment is important and to sell itself as being as punitive as prison and therefore acceptable. I think that is the thin edge of the wedge and that just makes a lot of negative effects of the rest of the system spill over into community corrections (representative from CCJC, 1998).

However, one representative stressed that although restorative justice may be the best model, community corrections would be more appropriate than incarceration in the prison system for women since it would enable them to maintain continual contact with their families and children (NCWC, 1998).

I would say restorative slash transformative [would be the best model] because I'm not sure there is a difference other than again ... I think the word transformative is more accurate than restorative. Community corrections is still a large piece of the formal corrections system, it's run by the formal corrections system which is punitively based. I don't see that we have had a whole lot of success with that. A punitive response to people who have generally lived lives at being beaten down, is not going to have all that much impact. Somebody said to me when I first started to work here that prison is only a deterrent for those it is a deterrent for. Then I realized that if something happened to me and I should go to prison that would probably scare me to death and I would be following the straight and narrow for the rest of my life. For people who have already

lived very hard lives, prison may not be that much of a deterrent. They may have an expectation of it, of going to prison. So the harsh response which is the more traditional correctional response and the community corrections response is still very much about monitoring, supervision, description, it doesn't do very much to change behaviour or self image. (EFS of Toronto, 1998)

Two of the representatives were not willing to say that any of the present models would appropriately address women's needs.

I think we do have to start looking at an equality-based model that says you don't violate the rights of those who are accused. When I see the self-named victims groups starting to say we need a victims bill of rights to control the rights that prisoners or those accused have. I find it very sad, it's sickening and it scares me to think that that some how is going to achieve anything for anybody. It's not that we want to see people's rights being trampled or them not having the protection. We don't want people being falsely accused and be punished whether it be by a transformative model or restorative model or the current model. But what we do want is people feeling safe in their communities to be supported and have issues dealt with that need to be dealt with. Let's say as a transition model we wanted everybody supervised twenty-four hours a day, well there is no doubt that would create a lot more work than we currently have. Forget electronic monitoring let's say I came out and was seen as a risk to society, maybe I am high risk, so maybe there should be six people dedicated to supervising and supporting me, who are dedicated to ensure that I get work so that I am not going to go rob someone and I mean adequately paid work. Or first I have to get education and training, they are there so that I don't have an opportunity to be doing something illegal. They are there so that I can start thinking of different things I can do recreational wise instead of going out and getting stoned or drunk on the street. If it is layered with the support as opposed to just being supervisory, I am not just talking about just six cops coming and living with me and I am thinking around the clock so six people would mean different shifts and things like that. So basically let's say I was seen as sufficiently a risk so I would need two people there always just in case I did do something. But if they're doing that in a supportive way and supporting me to move out of that we would probably be pretty close to one hundred percent employment. We would have people actually learning things in a productive way, I may be able to contribute something in the community, be cleaning up the streets, I may be able to be assisting in building something, public housing. There are all kinds of things I potentially might be able to do if we freed up the operating and the capital

expenditures that are now devoted to imprisoning people that we could be doing a whole lot more (CAEFS, 1998).

Although there was not one model that stood out as being the best equipped to address the needs of women in conflict with the law, there was a consensus that the traditional criminal justice system is not equipped to deal with the needs of women.

Section 4: Woman-Centered Justice Model and it's Sentencing Component

Each respondent was asked to define the term 'woman-centered'. The themes which emerged that define women-centered include: a focus on the needs of women; recognition of the diversity of women's experiences; recognition of the historic inequalities that lead women into conflict with the law; need to look at the social context in which the individual is situated; and through rehabilitation, counselling, and programming address all of these factors.

To me women-centered only truly means that a woman's experience is central to everything else that happens. That you understand in setting in programming that the woman has a life she has a history with other women she has a whole series of needs that all women have to must be addressed (Bonnie Diamond, 1998).

Once the term woman-centered was defined, the representatives were asked what a woman-centered justice model would entail. One representative felt that a woman-centered justice model would:

look at the real social context, the involvement of all the parties affected as part of the process. The element of meaningful accountability, reparation, getting at the root causes, dealing with the social inequality causes, dealing with everything the woman needs, interventions and resources she needs in order to be able to take responsibility for herself the harm done by her actions. And healing her relationship with her community both in terms of what had already caused her to be marginalized if that is the case

and the effects that the harm done by her behaviour has also had on her community (representative from CCJC, 1998).

The respondents were also asked whether they felt that a separate system is required for women in conflict with the law. Two of the representatives were undecided as to whether a separate system was possible or necessary. One respondent expressed that although she could not even think of it as a separate system for women, she could picture women having a different set of rules in the present criminal justice system. However, if change to accommodate women's needs cannot be realized within the present system, then it may be an indication that a separate system is required since the programs are so off base they cannot relate to women at all. But this respondent could not picture a separate system in the near future.

From the remaining six representatives there was an even split, three representatives argued that a separate system is necessary for women.

I would like to see as things stand in Canada right now, I would like to see a separate justice system for women from the arresting stage right through to the person is reintegrated into society. Because so few women come into that system that by sheer numbers alone they are always going to be after thoughts in the system. Certainly everything about the current justice system was created with absence of women there was no thinking of women's lives at all in the creation of it. But I also believe that our system has such archaic roots that the reality of men's lives are no longer visible in it as well (Bonnie Diamond, 1998).

Although these representatives argued that a separate system is necessary for women, they also believe that the manner in which men are sentenced is also problematic.

The other three representatives argued that a separate system is not only not wanted, but may be impossible to realize. One of the reasons for not wanting a separate system is that women should not be the only ones receiving appropriate treatment, rather the system should be changed to provide better treatment for both men and women.

I am not very much in favour of creating another system. I think it is fraught with lots of misunderstanding and a sense of injustice the rest of the community would have around that. I think to use the existing system but to get its collaboration to adjourn certain things and allow for a different process to be explored to deal with all the concerns related to an individual case is a better way. I wouldn't want to put a lot of energy into creating a whole separate system I think you could explore other ways that would be better to men too, the current approach isn't satisfactory for men either (representative from CCJC, 1998).

Three of the representatives argued for an individual-centered model as opposed to a solely woman-centered model. They argued for a model that is focused on the individual, on a case by case basis, whether the accused is male or female.

I am speaking just as myself because I don't know what the E-Fry position is on this, I don't think it's about women-centered as it is about individually-centered. I wouldn't want a system where women are separated from men and women are getting appropriate treatment and men aren't. I wish we would think of it as treatment opposed to punishment... If somebody can be turned around that's what I would prefer to see happen. Not just as a bleeding heart left wing liberal but because it seems to me that's the most practical thing for the community, for society, for the person, economically it is a smarter way to go. It costs less money. But when you really want to talk about, community safety you have to do something that will significantly change people's lives. Again I can't think of it as just women-centered because you hear things like, I may have the statistics wrong, 80% of offenders are only one time offenders and 20% are high risk repeat recidivists. Do we really need to lock up that 80%? What is that costing us not just in terms of dollars but in terms of, I really risk sounding 'Polly Annaish', in terms of our humanity. I don't mean to sound that I don't support women-centered but I think absolutely you have to take a look at the issues that are relevant to women but I think you then have to take the next step and do that for everybody. I don't know what it would look like absolutely, positively, I just know it would take an enormous shift in thinking and that it would take a commitment to stop incarcerating, stop building prisons. It would take a commitment within the community itself, we're going to take some responsibility for these people as members of the community (Representative from EFS of Toronto, 1998)

Although the concept woman-centered may be accepted with regards to programming in the present criminal justice system, for one representative the thought of a woman-centered justice system was too unbelievable to consider.

I never thought of a woman-centered justice system. It is hard for me to answer that because it is hard to think about us actually taking that on. If we were to get to the point of designing a woman-centered justice system then we would have already acknowledged the factors that lead to women being disadvantaged in society. And if we were going to acknowledge all of these factors and actually address them it would be hard to imagine then what the justice system would then look like. I guess another answer would be to talk about a woman-centered justice system would also have to take into account the existing bias that exists against women both at a substantive law bias level as well as a procedural bias. As well as women's ability to access the justice system through legal representation, which is severely compromised right now due to, cutbacks. It would also take into account bias emanating from the justice personnel be it the cops, the judiciary, the crown. So a woman-centered justice system is a fantasy it is a complete fantasy. It is a good one and it is nice that you are giving thought to it because if you don't give thought to it how do we set out the road map then (NAACJ, 1998).

The representatives were asked to describe possible women-centered sentences. Six of the eight representatives expressed the importance of the sentencing process instead of providing examples of sentences. All of the representatives agreed that mandatory sentences are too narrow. What is needed is a multifaceted sentencing approach where the woman's needs are central.

I think you have to stop thinking of it as a sentence and start thinking about it as ... development models or whatever. And you look at issues like whether or not someone needs drug treatment or employment training, how much is poverty driven so you can get them into assistant housing and as I say it is very holistic with a number of ministries working together. One of the things you will see are women who have conditions of going to employment training or something like that, but they don't have child care available to them and they have three kids. What are they supposed to do? And a lot of the training programs do not pay anything anymore, they used to pay minimum wage or an allowance. Now they don't pay anything so once again what do they do about children? We have to stop looking at everything as separate pieces. I am not a big

believer in the retributive model, I don't think it works ... I worked with one woman who had a thirty-day provincial sentence for shoplifting a frozen chicken to feed her kids. What purpose did it serve to send that woman to prison. The kids then had to be picked up by Children's Aid, if the cost that was incurred, it did nothing to deal with this women's problems whatsoever. I think you need to start with an assessment, a really well trained team that can sit down and figure out what this person needs. It has to be something that will have some impact on the offender and that is where the assessment comes in (EFS of Toronto, 1998).

The first step in the sentencing process should be an assessment of the woman's needs. If she does not pose a threat of violence to herself or the public than non-carceral sentences should be sought.

Something that is going to fix what needs to be fixed or repair what needs to be repaired or at least give a symbolic action that shows you are taking seriously what has happened and you want to do something to make it up. So I think some voluntary service is possible something that will help her do something useful for the victim or the community and something that puts some safeguards into behaviours she has had trouble controlling and putting any kind of economic and social supports she needs in order to make that happen. I think something has to be done for the victim, there has to be something done for the community, and there has to be something done for her (CCJC, 1998).

Possible woman-centered sentences the respondents discussed tended to be non-carceral sentences already being used by the present justice system. What made the sentences woman-centered according to the representatives was not the type of sentence given but rather it was the reason for giving the sentence. If it was tailored to suit the specified needs of a particular woman it was considered to be woman-centered.

Sentences that would permit women to keep the integrity of their families together, sentences that permit women to continue to take responsibility for nurturing their children and increasingly the elderly relations that they are responsible for. And to give women the resources and flexibility in their sentences to be able to do that, sentences that provide women with useful life skills and provide them with an entrée into the job market. And wouldn't it be nice if they actually had a chance at the higher paying jobs rather than the clerical and service centre. A sentence that would provide appropriate programs for women to address experiences of abuse, a

sentence that would not make a woman whose citizenship [is] undecided further vulnerable particularly women whose sponsorship breaks down, the sentence should not jeopardize that sponsorship (NAACJ, 1998)

One respondent did give examples of possible woman-centered sentences which are 'alternative' to the present sanctions available.

I think we would see far more women staying in their homes and presumably we would be seeing community-based and community-responsive sanctions. So if a woman is committing fraud and it is deemed she owes the state something presumably we would see [her] contribute to the overall welfare of the community. Whether it is through assisting a child care program in the community, or assisting in constructing a playground for the kids in the community, developing a cooperative shopping, food, whatever. I could see ways that could be interpreted as paying back the community. If it was individual violence then I think the context in which the woman is committing the violence would need to be reconfigured. And my guess would be that we would see fewer women being ... well accountability would be a different way, probably accountability would be to set up communities of support for yourself to keep yourself and your children safe as opposed to jailing for defending yourself. There would be more of a recognition of your ability to support and keep yourself safe in a context where you can't get welfare. You could set up safe homes, they could do public education around their experiences there are lots of ways they could pay back the community. The bigger issue though is at what point will we start to determine, not that women don't bear responsibility, but that the community has a responsibility for the situation as well. And right now there is no mechanism for holding a community responsible for their inaction (CAEFS, 1998).

The examples of sentences that were provided by the representatives tended to be sentences that are presently considered to be restorative in nature.

Reparation I think is very important, it doesn't need to be monetary but acknowledgement; self-awareness, taking responsibility; contributing to the life of the community; possibly some periods of incarceration would be needed or institutionalization; counselling; mandatory treatment for drug abuse, alcoholism; parenting courses (a lawyer, 1998).

Three of the respondents argued that a system for both women and men which takes a more individualized sentencing approach which places the 'accused' at the center of the

process may be able to take into consideration the needs of those being sentenced more so than a separate system. With regards to women-centered sentences great importance was given to the process and criteria surrounding appropriate sentencing. Therefore, it is not the sentence itself that makes it women-centered, rather it is the process in which the sentence is structured and administered. There was a general consensus that the present prison system is not women-centered.

An underlying theme that emerged throughout all eight interviews was that there should be fundamental changes made to the present correctional system. Community-based sentences should be the first priority for everyone that does not pose a threat to public or personal safety. Those who do pose a risk should be under continual supervision, however, this too may be within the community. The representatives argued that the focus of the sentences should be designed to enable the accused to accept responsibility through reparation to the victim and by contributing to the community in a meaningful way. Also community responsibility needs to be taken for the social, economic, and political context which may have contributed to the individual's criminalized behaviour. Although there was a recognition by the representatives that individual responsibility for their actions needs to be taken, there is also an understanding that a large portion of women's and men's offending is a result of their less than desirable life circumstances. Therefore, if the chances of recidivism are to be reduced, there needs to be assistance given by the community to the individual in order to make behavioural and lifestyle changes.

The last chapter will summarize the general themes which emerged from the interviews with the justice and women's groups representatives. Also in the remaining

chapter, proposals for a woman-centered justice model will be examined in light of the possibility for a separate justice system and alternative sentencing practices for women.

Chapter 5:

Proposals For A New Sentencing Approach For Women

The views held by the justice and women's groups representatives are uniform with recent sentencing literature (Doob, 1990; Solicitor General Canada, 1996; Christie, 1994; Morris, 1995; Canadian Sentencing Commission, 1986) regarding the belief that non-carceral community-based sentencing options should be sought for all non-violent individuals.

According to the representatives in this study a restorative or transformative approach would be the best model to structure non-carceral sentencing alternatives for women. Although some community corrections sentences were viewed by the representatives as appropriate (representative from NCWC, 1998), there was a general belief that a more holistic approach to sentencing should be undertaken so that all of the factors which may have contributed to the criminal behaviour may be addressed.

Restorative and Transformative Semantics

According to three of the representatives who were interviewed the difference between restorative and transformative justice in theory appears to be nothing more than semantics (Bonnie Diamond, 1998; EFS of Toronto, 1998; CCJC, 1998).

I don't know [if] you can talk about restorative justice and transformative justice as two separate things. I think there is an element of semantics involved as far as I understand it. What I have heard is that Ruth Morris and others, and I would agree too, prefer the term transformative justice over restorative justice because in many cases you are not restoring people to somewhere they were before, they were never there. You're not restoring their place in the community, they never had a place in the

community. You are not restoring their relationship with somebody, they never had a relationship with somebody. So it is about transforming as opposed to restoring. But I think the methodologies are the same, it's just the difference in what you choose to call it. I am not aware of something that is specifically considered a transformative justice technique or approach as opposed to being a restorative justice. I have only heard the difficulty with the name (representative from the EFS of Toronto, 1998).

However, in practice the popularized version of restorative justice, due to being adopted by the traditional justice system, takes a less holistic approach than transformative justice. Presently only some aspects of the restorative justice model are being practiced by the traditional justice system. The present focus of restorative justice has been on reintegration of the sentenced individual and reparation of the harm done to the victim (NCWC, 1998). Transformative justice, on the other hand, appears to be more focused on the social context in which the criminal event takes place than does restorative justice as it is presently practiced (CCJC, 1998). Transformative justice appears to have been developed in part to provide an alternative to the traditional system, in order to challenge its monolithic approach. Transformative justice, as does restorative justice in theory, takes into account all parties, not just the 'offender' and victim. It also considers the social, political, and economic factors in the community which may have contributed to the criminal behaviour.

A transformative approach to sentencing may be the best model to address the needs of women who are sentenced since it would take into consideration the woman's social context when sentencing (EFS of Toronto, 1998; CCJC, 1998; NAACJ, 1998).

A Woman-Centered Justice Model

The traditional system presently does not take into account the social, political, and economic realities of women in conflict with the law. There is a need for a woman-centered approach that will. A woman-centered model should be community-based and take into consideration the social, political and economic context in which a woman's criminal activity takes place (Bonnie Diamond, 1998; Salvation Army Correctional and Justice Services Department, 1998). A woman-centered approach to sentencing should also incorporate the five principles outlined in the document Creating Choices; empowerment, meaningful and responsible choices, respect and dignity, supportive environment, and shared responsibility. In keeping with these principles, sentences should empower the women by taking into consideration the structural inequalities experienced by women in their communities. Women should also be provided with the necessary tools to make meaningful and responsible choices. Sentences should not focus on humiliating or infantilizing sentenced women, rather they should encourage women to gain respect for themselves and for others in the community. In order to empower, create self-respect, and foster positive changes in their future, a supportive environment in the community should be created. Finally, sentences should promote the notion of a shared responsibility for the criminal activity so that sentenced women as well as the community are able to accept responsibility, learn from the event, and make positive changes in the future.

There was no overall agreement between the representatives from the justice and women's groups who were interviewed regarding whether or not a woman-centered justice system has to be separate from the present criminal justice system. Two of the

representatives were undecided on whether the system needs to be separate. Three of the representatives argued the system must be separate, while another three representatives argued it should not be separate.

One concern was that if a separate system is not implemented, women's needs would always be secondary to men's within the correctional system (CAEFS, 1998). Another concern was that the feminization of the correctional system, the adoption of women-centered or feminist principles in the present system, is not enough to change the punitive nature of the system. "The feminization of penal regimes does not absolve these regimes of their punitive and oppressive tendencies, particularly when the subjects of the regimes are involuntary" (Hannah-Moffat, 1995: 147). There must be a change at the core of the system, not just new programs if a woman-centered model is to be realized.

On the other hand, a separate system may not be the solution for having women's needs addressed. Rather a fundamental change to the entire criminal justice system for both women and men may be more successful. Concerns related to the creation of a separate system include: the creation of a false male/female dichotomy; and a separate system for women will inevitably result in change in the present system for men which will lead to women's needs becoming secondary once again.

By creating a separate system, a false dichotomy is set-up that denies the reality of diversity amongst both women and men.

The construction of two separate and distinct models of corrections – woman centered and male centered – sets up a false dichotomy. The woman-centered approach tends to be juxtaposed to its obvious counterpart, the male-centered approach. Some feminist critics argue that women’s penal regimes have epitomized male-centered corrections with an emphasis on security, discipline, and control. The woman-centered approach is conversely characterized as caring, empowering, supportive, respectful, and meaningful. This split reproduces and reinforces normative standards of femininity in the correctional discourse. (Hannah-Moffat, 1995: 146).

This dichotomy also creates a simplistic picture of one system as more caring and less punitive than the other when in reality both systems are punitive by their very nature as correctional systems.

Another concern related to a separate system for women is that their needs will become secondary since any advances made for women will inevitably be given to men. This is not negative in its own right. However, due to the small number of women, their needs will once again be secondary to men’s. This has already become evident with the development of the regional facilities for women. Before the first site was chosen and construction was underway, male minimum-security institutions were already erecting cottage style houses on their properties. However, unlike the new male facilities, the women’s were fashioned with perimeter fencing due to concern over housing all security levels of women in the same facility (CAEFS, 1998). Consequently, a separate system does not guarantee that the greater numbers of men will not overshadow women’s interests in the system.

Since there was no consensus between the representatives regarding the development of a separate woman-centered system, it is not possible to draw any conclusions at this time. Therefore, the remainder of this chapter will focus on the possibility of a woman-centered sentencing model within the present justice system.

Problems with the Concept Women-Centered

There is concern related to the over-simplification of the concept women-centered. Looking at women as a homogeneous group denies the realities that women have different experiences that are not related to their sex. This also assumes that sentenced women have more in common with other women in society than they do with their male counterparts who also have experienced sentencing. Although women do as a status group experience several biases and inequalities due to their sex, the commonalities between women and men who have been sentenced cannot be ignored.

The women-centered prison is a manifestation of this oversight. Although the women-centered model acknowledges that women suffer injustices because of their sex, it fails to see how a feminist vision of justice can reproduce different kinds of injustices by denying the problematic experiences of incarceration and by viewing women as a homogeneous group (Hannah-Moffat, 1995: 145)

There is also a problem with the oversimplification of women's experiences by assuming all women are victims of economic, sexual or physical abuse. By grouping sentenced women into the category 'victim' they are denied individualism. The Task Force failed to recognize that these women have a range of views and some are antithetical to a feminist viewpoint. The belief that women need programming in order to raise their self-esteem is an example of this oversimplification, especially considering that not one of the women interviewed by the Task Force on Federally Sentenced Women in 1989 said they wanted self-esteem programming (Shaw, 1992a: 449). The belief that women are a homogenous group that are in need of help is not new.

The current trend of seeing women as victims – exploited by society economically, and as individuals physically and sexually – while powerful in terms of many women’s experiences, runs such risks of substitution and oversimplification. It also denies any element of choice on the part of individual women. Some women have chosen *at some time in their lives* to use violence, to pursue a criminal career (emphasis in original, Shaw, 1992a: 449).

Although it is true that a large majority of women who are sentenced have experienced abuse, labeling all sentenced women as victims takes away the aspect of responsibility and reinforces an infantilized approach to dealing with women in the correctional system (CCJC, 1998).

The concept women-centered has been so frequently used in several different contexts and by several different people that the definition has been extended. This became evident to some individuals on the Task Force on Federally Sentenced Women. As a result, there was a suggestion that the concept be changed to women-directed so as to re-emphasize the positive aspects of the term.

During the inquiry I actually proposed that we stop using women-centered and start talking about women-directed because women-centered by then had already evolved to meaning ... use the word women a lot, say it is about women, but don’t really necessarily have women as the center, the core, whether it is the policy, the program, service, or the life-cycle provisions. So when I first heard the term women-centered I presumed it meant just that the woman was at the center, that it all emanated from the experiences of women, the needs of women, the issues that women face, and in fact I don’t think that’s at all what it has become for corrections. It has become what I have said, you use the term women, you, say it is applied to women, you may throw in a few things that are specific to women like a mother-child program. But the woman isn’t at the center and the woman isn’t certainly directing the action around it or the policy (representative from CAEFS, 1998).

Others have argued that an individual-centered approach should be used instead of women-centered since it would allow for individualized sentencing, without relying on

false dichotomies or stereotypes about women and men (CCJC, 1998; representative from EFS of Toronto, 1998; a lawyer, 1998).

The Possibility of an Individual-Centered Approach

According to three of the representatives from the justice and women's groups, the traditional criminal justice system should be fundamentally changed to allow for an individual-centered approach for both women and men.

Instead of calling for a separate individual-centered system, there is a belief that the present system can be changed to incorporate a more individualized approach to sentencing. Consequently, instead of using offense-based sentencing models, an individual-based approach should be implemented.

I think to use the existing system but to get its collaboration to adjourn certain things and allow for a different process to be explored to deal with all the concerns related to an individual case is a better way. I wouldn't want to put a lot of energy into creating a whole separate system. I think you could explore other ways that would be better to men too. The current approach isn't satisfactory for men either (CCJC, 1998).

This does not mean that an individual-centered approach should be used instead of a women-centered approach, rather the concern is that a women-centered approach is too narrow. Therefore, the individual-centered model would incorporate women-centered principles in order to address women's sex-based needs, but their other needs not related to their sex would also be addressed through individualized sentencing. This model does not only provide a more holistic approach for women but could also be applied to men.

Although these representatives agree that women, as with men, may have specific needs related to the social, political, and economic realities in society, to only look at the needs related to their sex is to ignore other needs which may be cultural, racial or

physical. A women-centered approach is beneficial since it enables the criminal justice system to specifically look at the needs of women, however, a women-centered approach on its own may be too narrow since it does not look at other needs which may not be related to a woman's status.

I would say we need an individual-centered system. I greatly appreciate that they [Correctional Services of Canada] recognize that there are specific needs for women and I think that that does need to be addressed. But I think that there [are] also lots of other specific needs people might have that are cultural, they could have to do with physical disorders or mental disorders so I don't think women-centered by itself is enough (representative from EFS of Toronto, 1998).

Therefore, with an individual-centered approach, programming would be individually tailored and multifaceted because even if the root causes for the needs may be the same, each person is different and so might their needs (representative from EFS of Toronto, 1998).

Problems with Individual-Centered

The term individual-centered can also be problematic since it may imply a return to rehabilitative, individualized models used in the past which placed most of the blame for criminal activity on the individual rather than recognizing that social structures may also have contributed. This failure to recognize underlying social ills is one of the problems with the present traditional justice system. Adopting a woman-centered model which takes into consideration the social, economic, and political realities of women first and then tailors the sentence to address the individual needs of each woman would also provide a multidimensional approach. Consequently, this would also address the concern related to only addressing women as a homogeneous group. Also the problem related to

oversimplifying women's experiences could be addressed by individually tailoring the sentencing program. Therefore, instead of adopting an individualized model which incorporates women-centered principles, a woman-centered model which uses an individualized approach to tailoring the sentence for each woman may be more appropriate.

Evidentially whichever term is used for a new concept, if it is adopted by a variety of groups with differing agendas, distortion of the original purpose will occur. Therefore, one way to minimize distortion is to develop an explicit definition and objective for the new concept or model from the very beginning. This too is the case for the woman-centered justice model which has been introduced in this thesis.

A New Direction: A Woman-Centered Approach to Sentencing

Sentencing practices that are based on a woman-centered model will be discussed in this section. Although these sentences may also be appropriate for men, this section will only be addressing sentencing alternatives for women.

In accordance with the representatives from the justice and women's groups who argued for a transformative justice approach when sentencing women, (EFS of Toronto; CCJC; NAACJ) the proposed woman-centered sentencing alternatives would also be based on a transformative model of justice. This approach would reflect the utilitarian goals of sentencing and use non-carceral community-based sentencing practices. Although public and personal safety would be the first priority when sentencing, intensive supervision orders rather than prison terms would be used for women who pose a threat of violence. For those women who do not pose a threat, the non-carceral

sentence would take into account the “effects of the criminal behaviour upon the victim and the community, and how these might be redressed; [and] address some of the underlying reasons for the offending” (The Church Council on Justice and Corrections, 1998: 5).

Another objective of sentencing would be to encourage the sentenced woman to take responsibility for her actions (NAWL, 1991: 3). Individual responsibility needs to be accepted, before any form of healing can take place. It is important to recognize that responsibility and blame are quite different. This objective does not imply that the sentenced woman must be blamed for what has happened, rather the woman has to realize that her actions impact others, not only the victim but also other individuals in the surrounding community (CCJC, 1998). There is also an element of public responsibility on the part of the community: responsibility to address the social, political, or economic inequalities which may have contributed to the criminalized behaviour (CAEFS, 1998). This also includes the public responsibility to denounce these inequalities found within communities, for example violence against women (CAEFS, 1998).

A holistic approach to sentencing which takes into account all of the variables that may have contributed to the criminal behaviour is required (NAWL, 1991: 2). As with a transformative approach, the criminal act may be a symptom of underlying social ills which need to be addressed (Morris, 1995). This does not mean that behaviour should be ignored. This is where the objective of responsibility comes into play. The goal is to alter the social causes, which if left unattended may lead to future criminal activity.

Although Correctional Services of Canada would still be a key provider of community-based sentences, community involvement is also essential. The primary roles

of Correctional Services Canada should be as a resource provider, legitimator of sentences, and responsible for altering the power imbalances in the community that may cause inequalities (CCJC, 1998). The community in which the sentenced woman is located would also need to become involved in the sentence since relationships with community members is important. These relationships are essential if the sentenced woman is to become a productive member and contribute to the community in a meaningful way in the future (CCJC, 1998).

The woman's future is in the community, working out a relationship with her community, a community is very, very important for her future life. On the other hand, if the community will have unbridled power to act out its own prejudices towards her, she needs the protection of the system, because the system at least provides some legal safeguards against abuse of power. On the other hand, turning the whole process into this adversarial attempt to protect women from abuse of power through the legal system can be moving away from dealing with the real situation that needs to be addressed in terms of their relationship with the community. So it's very, very difficult to know which path to take to move ahead trying to work with the community but use the legal system as a tool when needed (CCJC, 1998).

Consequently, the partnership between Correctional Services of Canada and the community in which a woman is to be sentenced can become very difficult, however, both parties are necessary for the system to work.

Proposed Woman-Centered Sentencing Alternatives

As mentioned earlier, there is a handful of women who for various reasons do pose a threat to themselves or to the public (CAEFS, 1998; EFS of Toronto, 1998). Consequently, these women need constant supervision. However, this supervision need not be in a carceral facility segregated from the rest of society. Intermittent sentences such as electronic monitoring and house arrest represent the get tough demands of the

public and are used to send a message to the community that some community-based sanctions can be punitive and restrictive (representative from NCWC). However, intensive supervision orders carried out by case managers rather than using computer-based monitoring techniques may be more successful in protecting the public. Supervision orders can provide the support necessary through dynamic rather than static security measures, to enable the sentenced women to contribute to her community and learn the necessary skills to interact safely in the community (CAEFS).

Most sentences are not indefinite. Once a woman is released into a community, there may be concern of her reoffending unless she has acquired the necessary tools and skills to be able to adapt and support herself. Intensive supervision orders can provide her with the support needed.

In order to provide a woman-centered sentencing approach there must be a variety of options available in the community. “Any strategy must acknowledge the realities of poverty, abuse, dependency, unemployment, lack of education, [and] parental obligations” (The Church Council on Justice and Corrections, 1998: 6). Sentencing should not be monolithic, rather sentencing should reflect the multidimensional issues that surround most sentenced women. Each sentence should encourage responsibility, allow the sentenced woman to repay her victims and their community for the harm caused, and provide her with the necessary tools and skills in life for her to direct her own future.

To encourage sentenced women to take responsibility for their actions, sentences which include reparation orders, victim-offender mediation, reconciliation orders, or contributions to the life of the community, should be initiated (a lawyer, 1998).

Community-based woman-centered sentences should also enable women to maintain contact with their families and continue with their care giving roles. "Projects should be developed at a local level which provide support and attempt to minimize the disruption of the women's parental involvement with their children" (The Church Council on Justice and Corrections, 1998: 5). Contact with one's family is considered to be very important because it is a primary source of support upon return to one's community (Salvation Army Correctional and Justice Services Department, 1998; The Church Council on Justice and Corrections, 1998: 6).

As stated earlier, non-carceral sentences which are presently used by the criminal justice system can be used as long as the sentence is in response to one of the needs identified for the particular woman. It is not the sentence that is woman-centered, rather it is the sentencing process which focuses on the needs of each individual woman and the multidimensional approach taken to develop a sentencing plan that makes this model woman-centered.

Concluding Remarks

Since the late 1960s there has been a focus on the 'community' as a solution to the problems of crime and the limitations of the traditional penal system. However, in the mid-1980s and now more so into the 1990s it has become evident that the nostalgic notion of a homogeneous 'community' which is void of criminogenic elements is unrealistic. Simply shifting the correctional apparatus into the community, as does community corrections, will not result in a more positive correctional system. What needs to take place is a system that will work within communities and with communities to restructure

the social, economic, and political imbalances which lead to criminal activity. The traditional criminal justice system has been taking a reactive approach to dealing with offending. If the goal is to reduce levels of crime than a more proactive approach needs to be adopted.

The transformative justice model takes a proactive approach by working towards reducing recidivism and eliminating the criminogenic factors in communities. Although this may seem idealistic, it is a more sensible solution to reducing criminal activity than the 'band-aid' approach taken by the present correctional system. Although transformative justice may be able to realize several of the limitations of the present justice system, it has failed to be implemented.

According to the interviews with the eight representatives, women-centered means that the women's experience is central to everything (Bonnie Diamond, 1998). This means that any programming or model needs to take into consideration the diversity of women's experiences, recognize their distinct needs in relation to historical inequalities, and in relation to the social context in which they are situated (NAACJ, 1998; CCJC, 1998; Bonnie Diamond, 1998). What is needed is a model which incorporates both transformative and women-centered principles.

Three of the eight representatives from the justice and women's groups called for an individual-centered approach to corrections for both women and men. Within this model, sentencing for women would be based on both transformative and woman-centered principles, and would be individually tailored to meet their social, economic and sex-based needs. What I have argued in this chapter is that a woman-centered model that is based on transformative principles and takes an individualized approach to tailoring the

sentences to the needs of each woman would offer a more holistic, multidimensional sentencing model. This model would take the greater social structures into consideration first, then would tailor the sentencing plan to suit the needs of each individual woman. It is the process of sentencing and how the sentence is carried out which would make it women-centered. Unless it can be proven that a particular woman poses a threat to herself or to the public she would be given a non-carceral sentence. For those women who do pose a threat, they would remain in the community under an intensive supervision order which utilizes dynamic rather than static security measures.

Although the possibility for a separate woman-centered system of justice may be unrealistic in the near future, there needs to be a more woman-centered approach to sentencing. This approach needs to take into account all of the factors surrounding the individual rather than only responding to the criminal behaviour which brought them into conflict with the law.

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Appendix A
Women's and Justice Groups Addresses

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151 Slater St., Suite 701
Ottawa, Ontario
K1P 5H3
(613) 238-2422

Congress of Black Women
240 Sparks St.
P.O. Box 55037
Ottawa, Ontario
K1P 1A1

Elizabeth Fry Society of Toronto
215 Wellesley St. East
Toronto, Ontario
M4X 1G1
(416) 924-3708
fax: (416) 924-3367

Metropolitan Toronto Action Committee on Public Violence Against Women and Children (METRAC)
158 Spadina Road
Toronto, Ontario
M5R 2T8
(416) 392-3135
fax: (416) 392-3136
e-mail: metrac@interlog.com

National Action Committee on the Status of Women (NAC)
57 Mobile Drive
Toronto, Ontario
M4A 1H5
(416) 932-1718
e-mail: nac@web.apc.org

National Associations Active in Criminal Justice (NAACJ)
383 Parkdale Ave., Suite 308
Ottawa, Ontario
(613) 761-1032

National Association of Women and the Law (NAWL)
1 Nicholas Street, Suite 604
Ottawa, Ontario
K1N 7B7
(613) 241-7570
fax: (613) 241-4657

National Council of Women of Canada (NCWC)
151 Slater St., Suite 911
Ottawa, Ontario
(613) 232-5025
fax: (613) 232-8419
e-mail: ncwc@intranet.ca

**Native Women's Association of
Canada (NWAC)**

Mailing address
9 Melrose Avenue
Ottawa, Ontario
K1Y 1T8
out of service

Head Office:
P.O. Box 185
Oshweken, Ontario
N0A 1M0

**PAUKTUUTIT: Inuit Women's
Association**

192 Bank St.
Ottawa, Ontario
K2P 1W8
(613) 238-3977
Fax: (613) 238-1787

Status of Women Canada

360 Albert Street, 7th Floor
Ottawa, Ontario
K1A 1C3
(613) 995-7835
fax: 957-3359
e-mail: webcoord@msmail.swc-cfc.gc.ca
Webpage: www.swc-cfc.gc.ca

**The Church Council on Justice and
Corrections (CCJC)**

507 Bank St., 2nd Floor
Ottawa, Ontario
K2P 1Z5
(613) 563-1688
fax: (613) 237-6129

**The Salvation Army Correctional and
Justice Services Department**

1140 Wellington Street
Ottawa, Ontario
K1Y 2Z3
(613) 772-7217

**Women's Legal Education and Action
Fund (LEAF)**

415 Young St., Suite 1800
Toronto, Ontario
M5B 2E7
(416) 595-7170
fax: (416) 595-7191

Appendix B
Mandates of Groups in Sample

Canadian Advisory Council on the Status of Women (CACSW)

The Canadian Advisory Council on the Status of Women (CACSW) was established in 1973 as an independent organization funded by the federal government. The CACSW's mandate is to advise the government and to inform the public on matters of concern to women.

The CACSW produces in-depth research on a wide variety of issues affecting women and publishes these findings as books, booklets, background papers, briefs, and fact sheets.

(CACSW Publications Order Form Winter 1992)

Canadians Against Violence Everywhere Advocating Its Termination (CAVEAT)

CAVEAT is a grassroots, anti-violence, charitable organization which was founded in 1992 by Priscilla de Villiers of Burlington, Ontario, following the murder of her daughter, Nina. Since that time, CAVEAT has grown into a national organization, with a head office in Ontario, regional offices in Albert and British Columbia, and volunteers and supporters from coast to coast. CAVEAT's mission is to contribute to the creation and maintenance of a just, peaceful and safe society through public education, advocating changes to the justice system and ensuring the rights of victims.

(Stopwatch (1997) June vol. 5 no. 3)

Canadian Association of Elizabeth Fry Societies (CAEFS)

CAEFS is a federation of autonomous societies, which works with, and on behalf of, women involved with the justice system, particularly women in conflict with the law. Elizabeth Fry Societies are community based agencies dedicated to offering services and programs to marginalized women, advocating for legislative and administrative reform and offering for a within the public may be informed about, and participate in, aspects of the justice system which affect women.

(Annual Report 1996-1997)

Congress of Black Women

No Mandate Available.

Elizabeth Fry Society of Toronto

The Elizabeth Fry Society of Toronto is a woman-centred, non-profit organization which represents and fosters the community's interest in and responsibility to women who are, have been, or may come into conflict with the law.

The agency offers transitional accommodation, counseling services, and facilities for research and education. At nearby locations we provide additional housing, a court program, and an employment training program. We regularly visit the Metro West Detention Centre, Vanier Centre for Women and the Kingston Prison for Women.

Our mission is to facilitate the empowerment of women and to address the reasons why women come into conflict with the law by: facilitating choices and opportunities for individual women; affecting systemic change of social conditions, laws and structures; promoting a system of justice that leads to the healing of society and responds to the needs of all people involved in and affected by crime; ensuring that in all its operations, the Elizabeth Fry Society of Toronto embraces the diverse racial and cultural backgrounds of the people it represents and serves.

(Annual Report 1997)

Metropolitan Toronto Action Committee on Public Violence Against Women and Children (METRAC)

METRAC is a non-profit organization committed to the right of women and children to live their lives free of violence and the threat of violence.

Recognizing that all forms of violence against women and children are systemic and interrelated, METRAC works to challenge societal acceptance of violence, to develop on the part of citizens, professionals and public officials alike an increased understanding of the cause of violence, and to bring about changes that will reduce the high incidence of violence. METRAC's role is as educator and catalyst for a society still largely unaware of the degree to which women and children are routinely at risk in their environments.

Using wherever possible an integrated, multidisciplinary approach, METRAC works with other community-based organizations, including those focusing on domestic violence, and with educators, to identify the need for action and to determine appropriate responses to violence against women and children.

(http://www.metrac.org/metrac_works/about_metrac/)

National Action Committee on the Status of Women (NAC)

NAC is a non-profit organization operating throughout Canada. The Purposes and objectives of NAC shall be to initiate and work for improvements in the status of women by: actions designed to change legislation, attitudes, customs and practices; evaluating and advocating changes to benefit women, including measures proposed by the Royal Commission on the Status of Women, and those adopted by NAC; encouraging the formation of, and communication and cooperation among, organizations interested in improving the status of women in Canada; exchanging information with member organizations and other interested persons or groups, and providing information to the public about the current status of women and recommend changes for improvement.

(NAC Constitution Revision 1993)

National Associations Active in Criminal Justice (NAACJ)

The National Associations Active in Criminal Justice is a coalition of twenty-one national voluntary-sector organizations concerned with justice issues. The coalition was founded in 1975 by Bill McGrath, as an initiative of the Canadian Criminal Justice Association, in order to facilitate information sharing and collaboration among national voluntary and professional organizations with an interest in criminal justice procedure, corrections and crime prevention.

The mission of NAAJC is to bring together National Agencies from the voluntary and private sectors interested in criminal justice who are actively promoting a socially responsible approach among those involved in the criminal justice system.

National Association of Women and the Law (NAWL)

NAWL is a national non-profit women's organization which promotes the equality rights of women through legal education, research and law reform advocacy. We recognize that each woman's experience of inequality is unique due to systemic discrimination related to race, class, sexual orientation, disability, age, language, and other factors. In our view, a just and equal society is one, which values diversity and is inclusive of it. We are committed to working collectively and in coalition with other groups to dismantle barriers to all women's equality.

(Jurisfemme (1994) Vol. 14 no. 2)

National Council of Women of Canada (NCWC)

NCWC today is a federation of 22 local Councils, 4 Provincial Council, and 25 Nationally Organized Societies. NCWC's mission is to empower all women to work towards improving the quality of life for women, families and society, through a forum of member organizations and individuals.

NCWC's vision is for a vibrant, pro-active credible Council of Women reflecting the diversity of society, influencing potential decision making and public attitudes for the well-being of society, through education and advocacy.

Native Women's Association of Canada (NWAC)

The Native Women's Association of Canada (NWAC), is founded on the collective goal to enhance, promote and foster social, economic, cultural and political well-being of First Nations and Metis women of Canada. Incorporated in 1974, the NWAC is an aggregate of Aboriginal women's organizations. Our membership across Canada consists of representation from all regions.

The Association is committed towards the following principles: to be the national voice for Aboriginal women; to promote self-determination and self-sufficiency for Aboriginal women; to promote equal opportunities for Aboriginal women; to support and assist in the development of community initiatives that are designed by Aboriginal women at the local and regional levels; to advance Aboriginal women's voices and work toward common goals with other Aboriginal Leadership in Canada.

Pauktuutit: Inuit Women's Association

Pauktuutit, the national Inuit Women's Association, is a non-profit organization representing all Inuit women in Canada, particularly those living in the Northwest Territories, Nunavik (Northern Quebec) and Labrador.

Our mandate is to foster greater awareness of the needs of Inuit women and to encourage participation in community, regional and national concerns in relation to social, cultural and economic development.

Issues of concern include: spousal abuse, family violence, child sexual abuse, alcohol and drug abuse, child care, traditional midwifery, gender equality, and issues surrounding the treatment of Inuit women in the justice system.

(Women's Link: 1994 National Group: 146)

Status of Women Canada (SWC)

Status of Women Canada (SWC) is the federal government agency which promotes gender equality, and the full participation of women in the economic, social, cultural, and political life of the country. SWC focuses its work in three areas: improving women's economic autonomy and well-being, eliminating systemic violence against women and children, and advancing women's human rights.

(<http://www.swc-cfc.gc.ca/direct.html>)

The Church Council on Justice and Corrections (CCJC)

The Church Council was established in 1974 by the churches largely to assist them to go beyond chaplaincy with regard to the criminal justice system. Besides the pastoral role exercised by the chaplains, the founding denominations felt that churches should play a prophetic role, including undertaking research, advocacy, education and networking.

The criminal justice system embodies our social values with regard to sin, crime, victimization and punishment and reflects so very fundamentally our society's beliefs and actions about how we should respond to evil. Societal attitudes, however, as institutionalized in the criminal justice system, often seem diametrically opposed to the gospel of grace, which is so central to our Christian faith. CCJC was mandated to assist the churches to reflect theologically and to act collectively on these issues.

(Update: The Church Council on Justice and Corrections Spring 1994: 2)

The Salvation Army Correctional and Justice Services Department

Mission Statement: To minister to persons involved in the criminal justice system through a demonstration of Christian love and concern, by practical assistance to the offender, the victim, the witness and to those persons affected by and serving in the criminal justice system.

Positional Statement: Needs of Female Offenders

The Salvation Army is vitally concerned with maintaining the dignity and innate worth of the individual designed by God. It is recognized that conviction of the female offender can place her in a situation that creates special problems. Due to the small proportion of offenders who are female, the correctional system cannot provide all the care necessary for rehabilitation and preparation for re-entry into society. In order to put its beliefs into action, The Salvation Army seeks to establish community resources and programs that will help these women resume normal living patterns and alleviate their concerns about their children.

(Consultation Response: A National Perspective to the Working Group of the Task Force on Federally Sentenced Women: September 1989)

Women's Legal Education and Action Fund (LEAF)

Members of LEAF seek to improve the legal status of women, primarily using the equality guarantees of the Charter of Rights and freedoms as a tool. These rights guarantee women not only the equality before the law and equal protection of the law, but also equality under the law and equal benefit of the law. LEAF was formed to ensure the funds and organization necessary to fight court battles. In addition, it does research and public education on equality rights for women. It is a national organization with offices in Toronto and Vancouver and branches in every province and territory.

The mandate is to argue Test Cases before the Canadian Courts, human rights commissions and government agencies on behalf of women. Through test cases, the meaning of the equality provisions are being determined by the courts. LEAF also is mandated to provide public education on the issues of sex equality.

(Women's link: 1994 National Group: 149)

Appendix C **Contact and Recruitment Procedure**

Participants will be recruited by telephone (see Appendix C for the telephone script). Initial contact will be made by telephoning the randomly selected Women's Group and asking to speak with a representative. The representative will be asked if they or anyone else within the Group would be willing to voluntarily participate in this study. If there is no one who wishes to participate, another Group will be randomly selected from the initial sample.

If a representative has volunteered to participate, an interview time will be scheduled. The interview will be conducted at the participant's office unless they feel uncomfortable with this. If they wish to conduct the interview somewhere else, arrangements will be made to use an office at the University. A confirmation letter will be sent to the participant within one week of initial contact. This will serve as a reminder of the interview date and reiterate in writing what was discussed over the telephone (i.e.: purpose of study, participant's role).

The participant will be asked to sign a written consent form at the time of the interview (see Appendix D). A follow-up letter will be sent within one week after the interview, as a form of debriefing and to thank the participant for their time (see Appendix E).

Final contact will be made with those participants who asked for a summary of the studies findings once the thesis has been accepted.

Appendix E: Confirmation Letter

Date

Group/Organization Name
Address
Telephone Number

Dear _____

This letter is to confirm that you will be participating in a face-to-face interview with Jane Evans on _____ at _____ as a part of her Master's Thesis. The interview will take place in _____.

The purpose of this interview is to explore justice and women's groups' perceptions of a woman-centered justice system's sentencing component. Alternative justice models that have been introduced within the field of criminal justice will also be explored in light of their contribution to the development of a woman-centered justice system.

A consent form will be presented at the time of the interview. The interview will be taped unless you are not comfortable with this procedure. The tapes will be erased once they have been transcribed. Your anonymity and confidentiality will be respected and protected stringently. You have the right to stop participating in this study at any time.

If there are any concerns about any part of the study please do not hesitate contacting my advisor, the university or myself. I look forward to meeting with you on _____.

Sincerely,

Jane Evans
MA Student
U of Ottawa
(613) 234-9099
jsevans@ibm.net

Dr. Ross Hastings
MA Thesis Advisor
U of Ottawa
(613) 562-5800 ext. 1797

Appendix F: Written Consent Form

Name of Researcher: Jane Evans

Institution:

Department: MA Criminology
University of Ottawa

Telephone Number:

Research projects that use human subjects require the written consent of those subjects. This does not imply, of course, that the project in question necessarily involves a risk. Rather, given the respect owed to you, the University of Ottawa has made this type of agreement mandatory.

I, _____, would like to take part in the explorative study on a Woman-Centred Justice System conducted by Masters student Jane Evans of the Department of Criminology at the University of Ottawa. The purpose of this study is to examine what the essential principles are that underlie a Woman-Centred Justice System.

My participation essentially involves attending one face-to-face semi-structured interview during which I will be asked open-ended questions. The interview has been scheduled from _____ to _____. I understand that the data and results will be used only for the researcher's Master's Thesis and that my confidentiality will be maintained.

I am free to withdraw from the project at any time; I can also simply refuse to participate in the project, or I can refuse to answer questions without any risk of reprisal. I have been assured by the researcher that the information I share will remain strictly confidential.

On the issue of participant anonymity, I have selected the option checkmarked below (please check one):

- I will not be quoted, unless a pseudonym (false name) is used.
- I will be quoted, but without any identification (ex., *one person said that...*)
- I will be quoted, but with identification number
- I will be quoted, but only along with my employment status or category
- I will be quoted, along with my name

Women's Group/Organization anonymity

- The Group/Organization is to be referred to only by an identification Number
- The name of the Group/Organization name may be used

Tape recordings of interviews will be listened to only by the researcher, Jane Evans,; they will be destroyed once they have been transcribed, and the transcripts will be kept in a secure place. I can, however, refuse to have the interview taped (please check one).

- I agree to have the interview taped
- I do not want the interview to be taped

If I have information requests or complaints about the ethical conduct of the project, I can contact the University Human Research Ethics Committee (UHREC) at the University of Ottawa by calling the Secretary of the Committee (613) 562-5800 ext. 1245.

If I have any questions, I may contact Jane Evans, researcher, at (613) 234-9099 or Professor Ross Hastings, thesis advisor, at (613) 562-5800 ext. 1797.

I would like a summary of the findings of this study, which will be available in September 1998
(approximate date) mailed to me.

- Yes
- No

This consent form has two copies, one of which I may keep.

Researcher's signature: _____ Date: _____.

Participant's signature: _____ Date: _____.

Appendix G: Follow-up Letter

Date

Group/Organization Name
Address
Telephone Number

Dear _____

I wish to thank you for participating in the interview with me on _____.
I appreciate the time you took to help explore some interesting new approaches to criminal justice.

A summary of this study will be available in September 1998. If you did not indicate that you wished a copy of this summary on the consent form but would like one please give me a call.

If you have any questions, comments or concerns about the interview or the study in general please contact me personally or my thesis advisor at any time. Once again thank you for your contribution to this project.

Sincerely,

Jane Evans
MA Student
U of Ottawa
(613) 234-9099
jsevans@ibm.net

Dr. Ross Hastings
MA Thesis Advisor
U of Ottawa
(613) 562-5800 ext. 1797

Appendix H
Interview Questions

- 1) What would you consider to be the specific needs of women who are in conflict with the law?
- 2) Do you think these needs are being addressed by the development of the new regional facilities?
- 3) Can the present criminal justice system address these needs?
- 4) Do you think carceral sentences should be used for women?
- 5) When do you think non-carceral sentences should be used for women?
- 6) How would you define community?
- 7) How would you define community corrections?
- 8) What are possible sentences within community corrections?
- 9) Are you familiar with the concept restorative justice?
- 10) Is there anything else you would like to add in order to further define restorative justice?
- 11) How would you say restorative justice is different from community corrections?
- 12) What are possible restorative justice sentences?
- 13) Are you familiar with the concept transformative justice?
- 14) Is there anything else you would like to add in order to further define transformative justice?
- 15) What are possible transformative sentences?
- 16) Which justice model do you think would best address the needs of women in conflict with the law?
- 17) If it is possible to create a justice system specifically for women what would it look like?
- 18) Are you familiar with the concept women-centered?

- 19) How would you define the concept women-centered?**
- 20) How would you define a woman-centered Justice system?**
- 21) If it is possible to create a justice system specifically for women what would it look like?**
- 22) What are possible sentences within a woman-centered justice system?**

Appendix I Interview Schedule

Purpose of the Study:

The purpose of this study is to explore women's groups' (justice groups) perceptions of a woman-centered justice system's sentencing component. Also alternative justice models within the criminal justice field will be explored in light of their contribution in the development of a woman-centered justice system.

I am interviewing women's groups, and some justice groups, because I feel they will have gained an understanding of the needs and realities of women who come into conflict with the law through working with or on behalf of women within the community.

Objectives:

- 1) Gain an understanding of which type of justice system would best address the needs of women in conflict with the law
- 2) Define the concept woman-centered
- 3) Create a list of woman-centered sentencing practices

Sections:

- 1) Needs of Women in Conflict with the Law
- 2) Types of Sentences
- 3) Types of Criminal Justice Systems
- 4) Woman-Centered Justice System

Part 1: Needs of Women in Conflict with the Law

Recently academics, advocates for women and the government have specified concern about the manner in which the specific needs of women are addressed through sentencing by the traditional justice system. This concern has been especially highlighted with the 1990 Task Force on Federally Sentenced Women.

1) Scheduled Question: What would you consider to be the specific needs of women who are in conflict with the law?

Scheduled Probe: Some other needs discussed have been related to:

- 60% of FSW are mothers, 2/3 are sole support moms
- 82% of FSW have histories of abuse
- women are over represented in psychiatric facilities
- poverty
- little education
- due to small numbers lack programming and are geographically dislocated

2) Scheduled Question: Do you think these needs are being addressed by the development of the new regional facilities?

Scheduled Probe: Why or Why not?

3) Scheduled Question: Can the present criminal justice system address these needs?

Scheduled Probe: Why or Why not?

Part 2: Types of Sentences

Since the late 1960s non-carceral and community-based sentences have been used more frequently for some individuals. Proposed benefits of the use of non-carceral sentences include: reduction of recidivism rate, cost efficiency, more humane, reduction of the crime rate

D) Carceral vs. Non-Carceral Sentences

4) Scheduled Question: Do you think carceral sentences should be used for women?

Scheduled Probe: If so, when? For whom?

5) Scheduled Question: When do you think non-carceral sentences should be used for women?

Scheduled Probe: Are there any certain types of offences which should receive a non-carceral sentence?

Scheduled Probe: Are there any particular women who should receive non-carceral sentences?

II) Community Sentences

6) Scheduled Question: How would you define community?

Scheduled Probe: Would it be geographically or culturally defined?

Part 3: Types of Criminal Justice Systems

There is a general consensus that community-based sentences are more appropriate than prison for most non-violent offences. However, what has differed is the manner in which these community-based sentences should be structured and who exactly should receive them.

I would like to ask you some questions pertaining to three different community-based justice systems: community corrections, restorative justice and transformative justice.

I) Community Corrections

Community corrections appeared in the late 1960s as an alternative to imprisonment for several non-violent offences. Community corrections is an extension of our traditional criminal justice system, which is based on retributive and utilitarian principles.

7) Scheduled Question: How would you define community corrections?

Scheduled Probe: What does it look like?

8) Scheduled Question: What are possible sentences within community corrections?

Scheduled Probe: could you give me some examples?
(CSO, conditional sentence, probation/parole, electronic monitoring/house arrest)

Scheduled Probe: What criteria must be included?

II) Restorative Justice

Restorative justice is based on healing principles found in several Aboriginal justice models. The focus is on restoring relationships between the victim and victimizer through reintegrative sentencing.

9) Scheduled Question: Are you familiar with this concept?

10) Scheduled Question: Is there anything else you would like to add in order to further define restorative justice?

i i) Scheduled Question: How would you say restorative justice is different from community corrections?

Scheduled Probe: If so then how?

12) Scheduled Question: What are possible restorative justice sentences?

III) Transformative Justice

Transformative justice is a concept Ruth Morris has coined which takes restorative justice one step further. Transformative justice is based on the premise that it is not possible to restore relationships after the event. Rather it is only possible to transform them. Transformative justice focuses on the transformation of relationships between both parties of the event as well as relationships with the community.

13) Scheduled Question: Are you familiar with the concept transformative justice?

14) Scheduled Question: Is there anything else you would like to add in order to further define transformative justice?

15) Scheduled Question: What are possible transformative sentences?

Scheduled Probe: How would they be different than restorative sentences?

IV) Women's Needs

16) Scheduled Question: Which justice model do you think would best address the needs of women in conflict with the law?

Scheduled Probe: Community Corrections? Restorative? Transformative?

17) Scheduled Question: Why?

Part 4: Woman-Centered Justice System

I) Women-centered

The concept women-centered has recently appeared in academic literature. More recently Correctional Services Canada has adopted the concept in order to discuss women-centered principles related to programming for women in prison. Although there has been some debate about whether or not it is possible to realize women-centered principles within the present criminal justice system, little time has been used to effectively define what the term women-centered means.

18) Scheduled Question: Are you familiar with the concept women-centered?

19) Scheduled Question: How would you define women-centered?

II) Woman-centered Justice System

Some feminist scholars such as Pat Carlen (1992) and Carol Smart (1990) argue that women should not be dealt with within the traditional criminal justice system since it does not adequately address the distinct realities of women who come in conflict with the law.

- 20) Scheduled Question:** How would you define a woman-centered justice system?
- 21) Scheduled Question:** If it is possible to create a justice system specifically for women what would it look like?
- 22) Scheduled Question:** What are possible sentences within a woman-centered justice system?