

## Emerging Trends in Restorative Practices

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Since the early 1990s child welfare and youth justice systems internationally have been developing new court alternative approaches for resolving issues of child abuse, neglect and juvenile delinquency. These new initiatives have grown out of escalating concerns that traditional approaches to resolving these problems are not only ineffective and costly but as some studies indicate can actually worsen situations.<sup>1</sup>

Recently a judge interviewed for a study on foster care in the US stated “*If you get in foster care, the risk factors go up and you’ll probably see the kid in the delinquency system.*”<sup>2</sup> The undeniable link between child maltreatment and juvenile delinquency is reflected in the 2002 United States Juvenile Justice and Delinquency Prevention Act (JJJPA).<sup>3</sup> In Canada, a recent study found that “...youth taken into care by child welfare authorities, or placed in foster homes or residential treatment centres often emerge from the system ill-equipped to cope with the challenges they face after turning 18. Compared to their peers, [these young people] are often consigned to a cycle of persistent poverty, are more dependent on adult social assistance, and are overly represented in the mental health and criminal justice system...”<sup>4</sup> One estimate put the economic cost of child abuse for 1998 in Canada at over \$15 billion.<sup>5</sup> At the same time welfare systems everywhere are in crisis as more children are coming to the attention of child welfare agencies, there are fewer foster homes and less money available for services.<sup>6</sup>

Increases in demand for foster care and escalating costs of child welfare systems are growing trends. In a 1995 report of the Ontario Association of Children’s Aid Societies found that children who are in temporary foster care for more than six months, tend to remain in care throughout their childhood. The same report states that finding foster homes in an urban centre was almost impossible due to increases in housing costs.<sup>7</sup> Changes in life style as parents work, more single led families, cutbacks to social programs, as well as overall growth in population were also reasons given for the current crisis. These changing lifestyles within the family, emerging global socio-economic trends coupled with the complexity and increased demand for services have

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<sup>1</sup> Michael Winstanley, Foster Care and Adoption: Inadequate Remedies to Child Protection Issues. A Course by Judge J. Williams, Children and the Law, Dalhousie University, Nova Scotia, Canada, December, 1997 quoting from Mushkin, M., “Unsafe Havens: Case for Constitutional Protection”, Humm, S. R. *Child Parent and State, Law and Policy Reader*, Philadelphia: Temple University Press  
Report of the Task Force on Safeguards for Children and Youth in Foster Care or Group Home Care: Commissioned by the Minister for Children and Families, Province of British Columbia, 1997.

<sup>2</sup> Freundlich, Madelyn DeWoody, Youth Involvement in the Child Welfare and Juvenile Justice Systems: A Case of Double Jeopardy? Children’s Rights, New York, USA, Nov. 2004

<sup>3</sup> Summary of the Key Provisions Regarding the Connection Between Child Welfare and Juvenile Justice Systems, Child Welfare League of America

<sup>4</sup> Youth Leaving Care: How do they Fare? Task Force on Modernizing Income Security for Working Age Adults, Toronto, Ont., Canada, October 2005

<sup>5</sup> “The Economic Costs and Consequences of Child Abuse in Canada”, submitted to Law Commission of Canada in March 2003

<sup>6</sup> Deloitte & Touche, Final Governance and Business Model Review, Department of Community Services, Nova Scotia, Canada, 2004

<sup>7</sup> Children at Risk...The Responsibility of the Public and All Political Parties, report of Ontario Association of Children’s Aid Societies, 1995;Goddard Chris, Stanley, Janet, *in the Firing Line: Violence and Power in Child Protection Work*, Monash University, Victoria, Australia, 2002;

driven the proliferation of new groundbreaking approaches to resolving child protection and youth justice problems. Numerous examples of promising programs now exist worldwide (Mirsky, 2003).

### **New Directions**

More than 25 US states are now using or developing family group conferencing (FGC) models in child welfare and youth justice systems based on New Zealand's Children, Young Persons and Their Families Act, 1989.<sup>8</sup> In England, Scotland, Wales, Northern Ireland and the Republic of Ireland, the Netherlands where more than 500 conferences have been held over the past four years, Sweden, Denmark and Israel, family decision-making models are emerging as promising, evidence based programs (Mirsky, 2004, Pagée, 2004). In Canada several FGC as well as healing circles and new restorative justice models have existed for years. Initially there were significant differences between the new models in child welfare systems and the new models within youth justice systems. However, many of those differences are becoming reconciled as families experience and professionals recognize, the power of engaging families and communities in decision-making for themselves, regardless of the type of legal and/or organizational system. Thus restorative practice and family conferencing have arrived at similar conclusions concerning practice and outcome goals. (Sivak, 2003).

There are two basic approaches to child welfare and youth justice court alternative programs; those rooted in conflict theory and those rooted in ecological and family systems theory. Most recent studies of evidence-based effective programs are rooted in ecological and family systems theory.

Conflict theory approaches are driven by a belief system that views the offender, in the case of youth justice, or the parents, in child protection instances, to be in conflict with society's standards for appropriate behaviour. As such, the State assumes responsibility for resolving these conflicts on behalf of the individual harmed (Braithwaite, 2002). These approaches typically involve professionals to facilitate resolutions in disputes between parties in conflict; in youth justice situations, to develop restitution plans, and for children at risk of harm, protection plans for the child. Often these programs involve the child and family, and in youth justice situations, the victim and their supporters as well. Professional mediators or facilitators lead the process to an agreed upon solution or plan.<sup>9</sup>

Ecological and family systems driven models are rooted in the belief that the family and their immediate community can understand and assume responsibility for the behaviours of its members. Programs that adopt this approach are driven by the belief that the family, whose shared realities, cultural traditions, knowledge of, and ties with each other, provide the critical context for collective decision-making; in child welfare situations, to develop effective plans to protect a child or youth from harm, and in youth justice situations, to develop restorative plans to hold the young person accountable and reintegrate h/her back into the family and community. From this perspective, the State's role is to support the family's efforts and plans.

### **The New State/Citizen Partnership Approach**

State intervention in the lives of families in which there is a risk of child abuse and/or neglect typically adopt traditional professional intervention approaches in which professionals develop plans for families based on their training and experience in working with families, and their knowledge of resources available. Similarly in youth

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<sup>8</sup> The New Zealand Children, Young Person and Their Families Act incorporate both youth justice and child welfare legislation and calls for a radically different State/Citizen relationship.

<sup>9</sup> Child Welfare mediation and Alternative Dispute Resolution are examples of programs modeled on conflict theory

justice systems, formal court proceedings or professionally facilitated dispute resolution approaches are used to resolve juvenile delinquency problems. Terms such as 'dysfunctional family' are commonly used to describe a family in which conflict, misbehaviour and abuse on the part of individual members of the family occur on a continuing basis. Family members are viewed as having common symptoms and behaviour patterns learned and developed from continued exposure and experience of living in a dysfunctional family environment. Seldom are such families deemed to have the capacity or resources within their existing family and community networks, to resolve their own difficulties.

Recent studies show that in fact, families involved with child welfare and youth justice systems, when provided with opportunities to engage in their own decision-making processes paired with the resources needed to execute their intentions, are very capable and resourceful in making and implementing safe and highly effective plans. Studies consistently reveal that professionals' expectations are surpassed, family members feel empowered, and offenders and victims indicate high rates of satisfaction with the process and outcomes of family conferences. (Burford, 1997, 2005; Pennell, 1999; Pagee, 2004). This has particular implications in terms of emerging changes in the relationship between the State and the citizen. Associated with those changes is the challenge to change traditional systems based on professional interventionist approaches, to new systems designed to build the bridges necessary so that citizens have access to decision-making processes and the resources needed to implement plans developed from their decisions, and policies, practices and organizational structures that do not burden professionals with beurocratic barriers.

Progressive decision-making models in child welfare and youth justice systems are now widely recognized as innovative, effective and cost efficient in reducing the occurrence of abuse and neglect of children and/or youth, and reducing the rate and severity of reoffending where children and young people have committed crimes. As a result, new professional terms are being created to describe these approaches and new theoretical perspectives are emerging to provide contextual frameworks of understanding to serve as guides for the development of fundamental principles from which to develop policy and strategic direction. All of this of course is happening within the various jurisdictions, institutes and organizational systems in existence, and the various traditions and cultural norms of given societies. Remarkably, despite all of these differences, studies consistently confirm that there is agreement in terms of outcome as well as critical program elements essential for successful outcomes. (Burford, Doolan, Hoover, Pennell, Merkel -Holquin, Mirsky, Nixon, Pagée).

As these new programs evolve, social science researchers are developing new methodologies for collecting and analysing data. Participatory research methods that involve stakeholders at various stages throughout the evaluation process are increasingly recognized as essential methods to assist in shaping the questions and data collection processes needed to reveal the critical elements of effective decision-making models.

Barriers to Bridges: Connecting Kids with Families and Strengthening Communities will provide a) an Evaluation framework for use in future evidence based research, b) a National Resource of tools, materials, and evidence of community-based progressive models, c) a Project Report of Canadian aggregate conclusions and summarizations of promising models for use and dissemination nationally and internationally, d) a National Inventory of promising child welfare and youth justice community based programs, e) Knowledge transfer mechanisms to link crime prevention researchers, practitioners and communities to foster, support and promote community models of

evidence based programs effective in reducing/preventing child abuse, neglect and juvenile crime.