

**Submission to the BC Justice Review
May 9 2012**

The Green Paper “Modernizing British Columbia’s Justice System” seeks system-wide ways of addressing increasing costs and delays in the BC criminal justice system. It suggests that the solutions must be capable of being accurately measured and must be developed in consultation with stakeholders in order to effect lasting systemic and structural change.

Mediate BC Society is a not-for-profit society which is committed to providing people with practical, accessible, and affordable choices to prevent, manage and resolve disputes. While it focuses on mediation, it possesses expertise and experience in a wide variety of dispute resolution tools and processes and supports effective triage which matches the process to the situation and the needs of the parties.

In this submission, Mediate BC offers some observations as well as its support of and involvement in further collaborative dialogue with respect to how effective conflict resolution mechanisms can be utilized to achieve the goals of the Justice Review.

Mediate BC’s experience has been in the civil justice system, although many of the mediators listed on its Civil and Family Mediator Rosters also have extensive expertise in restorative justice and related initiatives. We are certain that there is much to be learned from the civil justice experience in fashioning a plan for criminal justice reform. While, in practice, “dispute resolution” has been applied in the civil matters and “restorative justice” has been allocated to the criminal sphere, dispute resolution and restorative justice evolved from a common origin. The dispute resolution and restorative justice communities in BC believe in similar foundational concepts including:

"Peace is not the absence of conflict but the presence of creative alternatives for responding to conflict -- alternatives to passive or aggressive responses, alternatives to violence." - Dorothy Thompson

The Green Paper makes numerous references to “alternative measures” (methods to divert lower-risk accused persons to other options short of a criminal trial) and laments that they appear to be under-used. While it is not specifically mentioned in the Green Paper, we assume “alternative measures” includes the wide variety of approaches included within “restorative justice”.

We support the views of the restorative justice community that alternative measures of all kinds need to be considered earlier and in a more organized and consistent way across the system. In particular:

- the goals of sentencing as outlined in section 718 of the Criminal Code of Canada and the Youth Criminal Justice Act (YCJA), in many circumstances, can be best served and accomplished by these models and approaches.

- Canadian law, policy and legal precedents make clear that there is an obligation to consider restorative and Aboriginal justice approaches at all levels of the system from police diversion through post incarceration.
- Significant research and case study examples exist, illustrating that the primary goals of Canadian law, as well as those of the Criminal Justice System, can often best be achieved through restorative applications of Alternative Measures (section 717), Extrajudicial Measures (YCJA), Conditional Sentencing (section 742.1), Probation (section 731), Corrections and Conditional Release Act (sections 81 and 84) and the Gladue Decision.¹

These processes have such a huge potential to meet needs currently largely ignored by the system (involving and hearing the voices of victims for example), to take a proportional approach to criminal justice, to open the right doors for low-risk offenders and to resolve conflict before engaging the expensive and formal criminal justice system. They deserve to be carefully considered, funded, implemented and tested.

We believe creative ideas can be drawn from the civil context that may well provide solutions in the criminal context. For example, in Mediate BC's experience in Small Claims Court, effective triage (i.e. assessing the needs of cases and parties and then assigning them to the most appropriate process) is crucial to making alternative-to-court reform options work. We have no doubt that early triage will also be an essential component of a revitalized criminal justice system.

As the Green Paper is looking for broad, system-wide solutions which break down silos and gather creative ideas across boundaries, it makes sense that consultation on these critically important issues involve a broad spectrum of stakeholders, including those who may be able to bring fresh eyes to the criminal system and apply concepts and processes that are working well in other areas of the justice system.

The Green Paper supports engagement of stakeholders and the public and says:

"We must find a framework in which independent participants can have a common dialogue and create a shared understanding of how the system functions, its strengths and its challenges." Page 19

Mediate BC is ready to engage in this dialogue. We don't yet have specific solutions, but we have the expertise and experience to work collaboratively with other stakeholders to explore and implement options in a reflective way that allows for an emerging, rather than a blue-print approach to reform.

Based on our experience in civil justice reform we believe that the following is necessary to move towards an effective criminal justice system:

¹ <http://www.heartspeakproductions.ca/rj-is-the-law/>

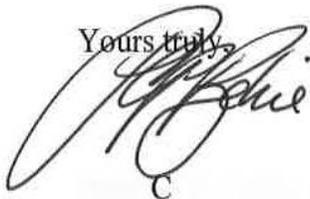
1. A transformative reconciliation approach to the Canadian criminal law system's relationships with the Aboriginal peoples of Canada. We have learned from our involvement in both our Child Protection Mediation Practicum Program and a project we are just completing, in partnership with the Tsleil Watuth First Nation, on how to reflect First Nations' legal traditions and customary laws in *Canadian Human Rights Act* processes, that we need to think quite differently about process when we are purporting to resolve conflicts involving Aboriginal peoples. We need to consider our obligations as a state in the context of the *UN Declaration on the Rights of Indigenous People*, and its emphasis on the role of community, as well as the individual.
2. Collaboration among diverse agencies and stakeholders. For example, from our perspective, the criminal justice reform initiative is an irreplaceable opportunity to bring the Dispute Resolution and Restorative Justice communities/experts together to share ideas and begin a creative dialogue. This discussion would be most fruitful if it also involved the other key players in the criminal context including the Judiciary, Crown Counsel, defence counsel, probation officers, the police, the aboriginal community etc. We are happy to offer to that process our long-standing strong working relationship with the Provincial Court, built through many years working closely with the Judiciary and Court Services Branch through our Court Mediation Program in five registries of the Provincial Court.
3. Thoughtful design of conflict resolution alternatives. Again we are happy to offer our experiences in design. They include:
 - a. Office of the Police Complaint Commissioner: we designed and administer a mediation referral process for police complaints as well as conflict resolution training program for professional standards and front-line supervisors;
 - b. Child Protection Mediation Practicum Program: we designed and successfully implemented a mediation practicum using a co-mediation model in order to increase the number of child protection mediators in the province from remote and aboriginal communities;
 - c. Vancouver Justice Access Centre: we assisted in the design of the civil portion of the VJAC including a multi-disciplinary approach and a civil mediation referral service. This service aligns well with the criminal initiatives which support a more holistic approach to preventing and responding to criminal activity.
4. The development of rosters of people with specific skills to provide conflict resolution services. If reform in the criminal law system offers alternative-to-court measures as the norm, the need to offer the public some assurance of qualified practitioners in the area will arise, as it has in the civil and family areas. The civil and family rosters that Mediate BC administers became a necessity when government introduced the Notice to Mediate regulations for Civil disputes, and then later in the Family Law area.
5. Research, evaluation, financial analysis and metrics. Over the past 14 years our Court Mediation Program has engaged in extensive collecting, analyzing and reporting on

performance data. We recognize how important monitoring progress is to shaping emerging strategies and programs to implement reform.

6. Well-designed and implemented pilot projects. We can attest, from 14 projects we have been involved in that were funded by the Law Foundation of BC, that the Foundation is a supportive partner for pilot projects to test out reform ideas that are potentially scalable to province wide programs.
7. Nimbleness, flexibility and innovation by collaborating with extra-government not-for-profit organizations. Government bureaucracies are not often well-placed to innovate. In Mediate BC's experience, being outside of government allows an organization to be nimble and flexible enough to take on the risks that are attendant upon innovation.

Mediate BC appreciates this opportunity to contribute to the BC Justice Review process. We would be pleased to discuss this submission at your convenience.

Yours truly,



Peter C. P. Behie, QC
Chair



Kari D. Boyle
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