

SECTION 84 – CORRECTIONS AND CONDITIONAL RELEASE ACT: RECOMMENDATIONS FOR REFORM

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ABSTRACT

Section 84 was introduced by the Correctional Service of Canada in 1992 to address the overrepresentation of Aboriginal peoples in federal prisons in Canada. The intent of Section 84 is to collaborate with Aboriginal communities and offenders in the prerelease planning for Aboriginal offenders. The outcome of this collaboration may include the transfer of care and custody of the offender to his/her Aboriginal community with the ultimate goal of increasing positive outcomes for Aboriginal offenders and communities. Little is known, however, about how Section 84 is used in First Nations communities across Canada. The purpose of this study is to understand the contextual barriers and catalysts to implementing Section 84. Using trained facilitators we conducted three contiguous two-hour focus groups in November 2010 with participants involved in the Section 84 process across three major geographic regions in Alberta: central (n=21), northern (n=40) and southern (n=25). We audio-recorded, transcribed and thematically analyzed the focus group discussions. In this article we discuss each of the five themes: (1) barriers to Section 84 implementation; (2) facilitators of Section 84 implementation; (3) role of the community in implementing Section 84; (4) the concern for victims of criminal behaviours; (5) successes and hope for Section 84, and conclude with recommendations for reform to enhance the effective implementation of Section 84.

Key words: Section 84, Aboriginal peoples, justice system, prerelease planning

The number of Aboriginal people in Canadian prisons is escalating. In 2005, Aboriginal people made up 20% of federal offenders across Canada, despite comprising only 2% of Canada's population (Kong and Beattie, 2005; Welsh and Ogloff, 2000). The overrepresentation of Aboriginal peoples within the prison system is not new; attention was drawn to this issue in the 1991 Royal Commission of Aboriginal Peoples (RCAP) (Indian and Northern Affairs Canada, 1996). The disproportionate number of Aboriginal people in federal prisons is particularly prominent in the Canadian prairie provinces, where they account for a staggering 60% of offenders (Office of the Correctional Investigator, 2010). Multiple systemic barriers and experiences within the justice system contribute to this phenomenon (Canadian Criminal Justice Association [CCJA], 2005; Walsh et al., 2011). For example, Aboriginal people are more likely to be denied bail, spend more time in pretrial, are at higher risk of being charged with multiple offences, are less likely to have legal representation, often plead guilty because the court system intimidates them, and are more than twice as likely to be incarcerated than their non-Aboriginal counterparts (CCJA, 2005). Aboriginal Elders are often not given status within the criminal justice system (CCJA, 2005). Additionally, the need for court members to fly in to attend to the legal process in northern or remote communities results in a lack of time to consult with lawyers, and further challenges in planning court schedules (CCJA, 2005). A limited understanding of the justice system has also been described as a major detriment for Aboriginal people:

It appears that they have little understanding of their legal rights, of court procedures, or of resour-

ces such as legal aid and most Indian people enter guilty pleas because they do not understand the concept of legal guilt and innocence, or because they are fearful of losing their rights. In remote areas the Aboriginal people appear confused about the functions of the court, particularly where the Royal Mounted Canadian Police officers act as Crown Prosecutors, or where the magistrates travel about in police aircraft (CCJA, 2005, p. 4).

Beyond the justice system, the history of colonization and the residential school movement has had profound and persistent detrimental effects on Aboriginal people. Residential schools removed and isolated Aboriginal children from their homes, families, traditions, and cultures in order to assimilate them into the dominant European culture (De Leeuw, 2009; Kirmayer et al., 2003). Furniss (1995) explains that the conditions created in residential schools were an effort to colonize Indian children, and argues that “knowledge was to be gained not by heeding one’s own ideas and intuition, but by accepting without question the truths presented by external authorities” (p. 48). This ideology originated from assumptions that Aboriginal spirituality and culture practices were inferior and thus the residential school movement was designed to “kill the Indian in the child” (Swanson, 2010, p. 432).

The enforced separation of children from family for months, or years brought about a loss of language, culture, and spiritual beliefs and resulted in the loss of a sense of belonging to a family or kinship network (Haig-Brown, 2006; Kirmayer et al., 2003; Menzies, 2009). In addition, many Aboriginal children living in residential schools suffered physical, sexual, and psychological abuse (Kirmayer et al., 2003; Menzies, 2009). Weingarten (2004) explains that the Aboriginal people are affected by the cycle of intergenerational trauma, which proposes that a family member who has experienced trauma can expose another member to residues of that trauma. Lateral violence refers to oppressed individuals utilizing covert and/or overt tactics to harm others in their group, often those more disempowered than themselves (Goodleaf and Gabriel, 2009). It particularly affects Aboriginal people, a result of the historical experience of colonization and the dominance of systemic and political oppression whose effects

continue today (Native Women’s Association of Canada [NWAC], 2011).

Aboriginal people in Canada face greater disadvantages than non-Aboriginals prior to incarceration including higher rates of poverty, greater exposure to violence, and higher rates of morbidity and mortality (Brown et al., 2008; La Prairie, 2002). Aboriginal people in northern, remote, and rural areas face higher rates of poverty, fewer economic opportunities, and greater health disparities than their urban counterparts (Adelson, 2005; Marrone, 2007; Riebschleger, 2007). Rural and remote communities are under stress from demographic, political, and economic variables beyond the community’s control. These are frequently unrecognized and inadequately resourced by urban policy makers (Bodor, 2009; Riebschleger, 2007). These communities often lack formal resources, which challenges local services to develop and strengthen local community based support systems through flexible, collaborative, creative, and integrated interagency services. This fosters self-reliance, local autonomy, institutions (clubs, families, and schools), and tradition (Riebschleger, 2007).

Incarcerated Aboriginal people have poor health status, high rates of child abuse, mental health and substance abuse issues (Brzozowski et al., 2006; Perrault, 2009). A holistic approach, including an examination of the relationship between health determinants, health status, and crime is necessary to advance the health of Aboriginal people (Office of the Provincial Health Officer, 2013). Offering client centred, holistic, and culturally sensitive mental health services — focusing on building wellness along the continuum of care and connecting services before, during, and after correctional system care — is paramount to improve health outcomes for those involved in the justice system and to contribute to safer communities (Mental Health Strategy for Corrections in Canada, n.d.).

The epidemic proportions of Aboriginal people involved in the criminal justice can be attributed to a legacy of historical and persistent colonization, resulting in social, economic, and health inequities. RCAP theorizes the overrepresentation of Aboriginal people within the justice system as a consequence

of three interrelated factors: culture clash, socioeconomic realities, and colonialism (Turnbull, 2012). To address one of the key mandates of the RCAP — building a more just relationship between Aboriginal and non-Aboriginal People in Canada — Indian and Northern Affairs Canada (1996) amended legislation to better meet the unique circumstances facing Aboriginal people, including the *Corrections and Conditional Release Act* (CCRA) enacted in 1992 (Correctional Service Canada [CSC], 2010). The *Act* specifically recognizes the special needs of Aboriginal peoples (Turnbull, 2012) and is designed to enhance Aboriginal community involvement to address the longstanding overrepresentation of Aboriginal people in corrections (Office of the Correctional Investigator, 2012). The *Act* enables Aboriginal people to be involved in developing correctional policies and procedures (CSC, 2010) and provides access to spiritual ceremonies and programs for those incarcerated (Martel and Brassard, 2006).

Section 81 of the *Act* supports a wide variety of custodial or service delivery requirements for the care and custody of Aboriginal offenders. It covers processes for Aboriginal offenders including the transfer of an offender under a custodial agreement to an Aboriginal community, the operation of an urban or rural based facility designed for offenders (i.e., healing lodge or halfway house), parole supervision or services offered in an Aboriginal community or urban centre, and correctional services delivered within federal institutions or community parole offices (CSC, 2012).

A related piece of legislation, Section 84, concerns the focused reintegration plans for Aboriginal offenders that has evolved from the CCRA (CSC, 2010). The premise of Section 84 is that communities are able to provide an effective support network for offenders and that successful reintegration of offenders to the community requires preparation and a strong community focus (Brown et al., 2008; CSC, 2010). This encourages Aboriginal communities to become part of the prerelease planning process (CSC, 2010). From 2010–2011, 99 successful release plans were completed in Canada utilizing Section 84 processes (Office of the Correctional Investigator, 2012).

Sections 81 and 84 each hold components that are supportive of initiatives related to healing because of their capacity for community involvement and involvement around alternatives in sentencing. Achtenberg (2000) identified the connection between these two sections in relation to Restorative Justice, suggesting this concept be used as a foundation for work in communities, engagement in healing circles, and culturally based activities post parole. The foundations of healing from trauma and issues related to particular crimes can be supported through Section 81 and Section 84 and contribute to healing and justice through creative applications informed by and within specific Aboriginal communities. The importance of engaging in conversations about the applications of these policies forms the basis of responding to the needs of diverse communities.

Section 84 is not a type of release, but rather a form of consultation with Aboriginal communities to best meet the contextual needs of offenders as they integrate back to their home communities (CSC, 2010). Corrections professionals are increasingly aware that prerelease or transition programs are necessary and should be a central part of correctional programming (Shand, 1996). It is proposed that implementation of Section 84 with Aboriginal community consultation provides better transitional programming to bridge the gap between correctional facilities and various communities to which individuals are released (Brown et al., 2008; Shand, 2006). This allows an individualized approach tailored to each person's identity as an Aboriginal person (Martel and Brassard, 2006). While Section 84 policy has been in place since the early 1990s in Canada, it is necessary to develop a better understanding of what is needed between stakeholders of Section 84 releases to enhance and implement the policy's aims and function. Improving correctional services through Section 84 will improve reintegration and thus improve health outcomes for Aboriginal offenders and their communities through engagement in prerelease planning (Turnbull, 2012). We considered it important to inquire into the implementation of Section 84 within Alberta. To this end, we conducted an exploratory, qualitative study

to identify gaps, strengths, barriers, and recommendations for implementation of Section 84 among key stakeholders in Alberta.

METHODS

This research project received ethics approval from the University of Calgary Conjoint Faculties Research Ethics Board. We utilized focus groups methodology, which supports hearing the voices of persons involved with the particular topic of research (Krueger, 1994). This method has been widely utilized to develop knowledge and understanding about a particular phenomenon (Freeman, 2006) — in this case the implementation of Section 84 in First Nation communities in Alberta.

STUDY DESIGN AND SAMPLE

We used a qualitative and interpretive research approach designed to focus on the “perceptions, beliefs and ideas that individuals have about their reality” (Neuman, 2007, p. 43). We adopted a grounded theory method to create a theoretical explanation (Neuman, 2007) about the nature, barriers, and facilitators of prerelease planning for Aboriginal people exiting federal prison.

Immediately preceding the focus groups CSC offered a Section 84 Symposium on November 26, 2010 in Red Deer, Alberta the purpose of which was to increase awareness of Section 84 among various stakeholders (CSC Staff, Band Council Members, Elders, and Community Agencies). Prior to the symposium, invitees who worked in some capacity with Section 84 were sent an e-mail invitation to attend one of three concurrent focus groups according to the region (northern, central and southern Alberta) in which they worked. At the commencement of the symposium a registration form was available for interested participants to volunteer for a specific focus group, if they so desired.

DATA COLLECTION

Three concurrent focus groups took place at the end of the formal symposium. At the outset of each focus group, the study was explained by two trained facilitators and participants had the opportunity of having questions answered before providing written

informed consent. Brief demographic information was then obtained from participants. Facilitators used a field guide comprising the following four key open-ended questions to frame the discussion:

1. What has your experience been with Section 84?
2. What are barriers and facilitators to successful Section 84 process and releases?
3. What are ways to improve Section 84 and have more successful releases?
4. What is your current agencies/communities role in the Section 84 process?

Open-ended questions allow participants to answer in detail which permits creativity and self-expression regarding the phenomenon of study (Neuman, 2007). In addition, facilitators compiled detailed field notes to enhance observation and meaning and to corroborate transcripts (Burgess, 1991).

The focus groups, each of which lasted approximately two hours, were audio-recorded and transcribed verbatim. Participants were given the option of using their name, a pseudonym, or remaining anonymous on the written transcript.

DATA ANALYSIS

Focus group transcripts were checked for accuracy of information by referring to field notes taken by the facilitators and the audio-recording. They were read repeatedly to get a general sense of the data. Once familiar with the transcripts, we began the process of open coding which is designed to bring out themes from the data (Cresswell, 2012; Denzin and Lincoln, 2008; Neuman, 2007). We conducted a line by line review of each transcript to identify processes in the data, critical terms, or key events. Preliminary concepts were written on the margin of the transcript and open coding was terminated when no new information arose from the data.

Next, we conducted axial coding which consisted of reviewing and comparing initial codes, and coded data to identify any patterns in the data (Neuman, 2007). Finally, we performed selective coding to identify central themes from the data (Neuman, 2007).

RESULTS

STUDY PARTICIPANTS

A total of 86 individuals participated in the three focus groups from central (n=21), northern (n=40), and southern Alberta (n=25). Participants included a wide array of practitioners involved in Section 84 work including CSC staff, First Nations community members, and community agency staff. Over half (54%) of the participants were female. Most participants identified as First Nations (55%) followed by Métis (24%) and Caucasian (21%). The majority of participants (41%) were 51–60 years of age, 28% were 31–40, 19% were 41–50, 9% were 61–70, and 3% were 20–30. Most participants had limited experience implementing Section 84: 68% had a year or less, 12% had 2–5 years, 16% had 6–10 years, 3% had 11–20 years, and 1% had 21–30 years.

Through the process of data analysis we identified five major themes: (1) barriers to Section 84 implementation (2) facilitators of Section 84 implementation; (3) role of the community in implementing Section 84; (4) concern for victims of criminal behaviours, and (5) successes and hope for Section 84. The first major theme, barriers to successful implementation of Section 84 comprised three subthemes: (i) lack of knowledge of Section 84; (ii) lack of resources; and (iii) geographical challenges. The second major theme, facilitators of successful implementation of Section 84, contained three subthemes: (i) effective collaboration; (ii) culture, spirituality, and healing; and (iii) attention to the diversity of local contexts. While the themes are presented as discrete entities they were described by participants as multifaceted, interrelated, and overlapping. In the following section we present each theme and subtheme with illustrative quotes attributed to the region and the participant.

BARRIERS TO SUCCESSFUL IMPLEMENTATION OF SECTION 84

The most prominent theme identified in the analysis was the significant barriers to successful implementation of Section 84. These barriers clustered around three major concerns: (i) lack of knowledge, (ii) lack of resources for implementation, and (iii) challenges due to geography.

Lack of knowledge of Section 84

Overwhelmingly participants identified a lack of sufficient knowledge of Section 84. Concerns were raised about the level of understanding or awareness of the individuals involved in the process at all levels: offenders, institutions, and community. Members of the southern region offered illustrative comments: “the biggest thing is that Section 84 is misunderstood” (Ashley); “I have big concern — program started in the 90s [yet] most Nations have never heard of it” (Anonymous) and “Band Council members don’t understand 84” (Anonymous). This lack of knowledge in the community was noted as contributing to the length of time necessary to implement Section 84 and its ultimate failure in some cases. As an anonymous participant from the central region stated:

You prepare six months in advance but then it takes five months to even get the letter back from his community because they don’t understand what he’s asking for. By the time the Aboriginal Community Development Officer gets there, by the time all the protocols are followed, and so on and so forth, they don’t have the supports in place they need back at the institution to get the parole hearing.

In addition to the limited time to prepare for the process the lack of knowledge was linked by some participants to inadequate education on Section 84:

I think what should have been done was there should have been more education on Section 84 right from the beginning. You know, it seems we always wait until the last-minute, then start doing things, and you know, you know, I’m hearing people say, this process, this process should be started when the individual gets in, instead of waiting, you know, two, three months before he gets out. (Donald, central)

The limited understanding of Section 84 also resulted in confusion concerning who was ultimately responsible for its implementation. Rob stated, “It is a responsibility in the community, the Native communities, to take an active role in their release” (central) while Ed advised, “supervision of the offender, is done by the parole officer, it’s the community that provides the input” (central).

Several recommendations for improving knowledge and access to information about Section 84 were proposed by focus group participants. An anonymous participant from the northern region suggested,

I think it might be a good idea to have a video and have it circulated amongst everyone so that everyone has some information about it, if that's possible.

She also advised making a list of all the different reserves or communities that have incorporated Section 84 detailing the different steps that they have taken as well as their challenges and successes. The same participant recommended that this information be distributed to the relevant parties by a coordinator for CSC in the form of a newsletter.

Lack of resources

The lack of resources including addictions support, spiritual ceremonies, counseling, housing, and employment, was described as a significant barrier to successful implementation of Section 84. Inadequate resources were depicted as ubiquitous,

[w]hen we have, 80% of the population on welfare, and are trying to bring someone else from an institution, and get him a job, it's pretty difficult, and that's where the problem lies a lot of the times. (Anonymous, central)

Another anonymous participant from the northern region expressed, "sometimes the services that they might need, we don't have in our communities."

A southern participant similarly noted the need for addictions treatment, "after care for alcohol, he came home and there was nothing there. Treatments provide a place to go" (Anonymous). A northern participant identified the general deficiency of resources in First Nations communities,

[in] my community we have looked at dealing with justice for a long time and we haven't really got anywhere funding wise because we're not recognized; like an institution that incarcerates people is more recognized. (Anonymous)

If First Nations communities are responsible for Section 84 implementation, they need access to knowledge and sufficient resources, as an anonymous participant from the northern region specified:

If you are going to give the responsibility [to the community] ... then you got to give me a little bit more. You still have to look at the sanction, administration with the leadership, there is risk involved plus beyond that there has to be other sources available as far as financial support for those individuals in the community.

Others emphasized the need to move forward despite the seeming lack of resources. Les from the central region offered,

I think that's the biggest problem we have in today's society, we are always worried about where the funding is coming from? You as a community, you work together, you can make anything happen.

Another respondent noted, "[if] we wait around for the government to look for this money. Some things are the right thing to do" (Anonymous, southern).

Participants offered examples of resource development. As Iowa from the southern region noted,

[a specific First Nation] has a fantastic program — addictions, spirituality, and employment. They have capacity. Other Nations do not have capacity. [Another specific First Nation] has a multimillion dollar casino. The [another specific First Nation] has capacity. With capacity you can make strides.

Geographical challenges

In addition to the lack of resources in general, geography posed a significant barrier to successful Section 84 implementation, according to focus group participants. Section 84 releases to a reserve community had negative consequences in areas of transportation and access to resources, such as the ability to meet with parole officers and resource staff. In rural and remote communities access to CSC may not be readily available, as Rachel from the central region noted:

We have Aboriginal Community Development Officers go around the country. That is huge, our institutions are far away, our communities are far away, you know there are huge wide proximities in prairie region and one person is doing this? It's way too difficult to get that information out to everybody.

Max, a social worker practicing in an urban area in the central region commented:

We have reserves all around us. I think one of the struggles that we have, if you want to talk about bringing people in and working on a community plan, transportation. We have a lot of people reaching out at us from the reserves who have transportation issues, who want to go back to the reserves; but that's a huge breaker is that we can't get out to the reserves to provide those a lot of those services.

Sharon from the northern region identified the relationship between geographic challenges and lack of resources,

we have two probation officers that are expected to look after everybody that's released and it's just too big of a geographical area. And I think that's part of the problem.

FACILITATORS OF SUCCESSFUL IMPLEMENTATION OF SECTION 84

Focus group participants identified that effective collaboration, culture, spirituality and healing, and attention to the diversity of local contexts served as key facilitators to successful implementation of Section 84.

Effective collaboration

Collaboration between institutional staff, the offender, the community parole office staff, and the home community was identified by focus group participants as critical for successful Section 84 implementation. The effectiveness of collaboration was noted by one participant:

Quite often we recognize there is a failure of the school system, the juvenile system or provincial system that they end up in the federal system. It's more than a criminal justice problem. The ownership should go to the whole community. We have to walk together inside and outside together to achieve a common goal in the protection of society. That at least people will become better citizens, better husband, better worker, better neighbour. And so they will become a much more productive and law abiding citizen. (Anonymous, northern)

Brad from the central region noted the benefits of collaboration on behalf of the justice system:

It's gonna make my job a lot easier 'cause I am going to have the whole community, if he's not

displaying proper conduct, making my job easier as a parole officer. I'm not gonna have this guy try to go and make it on his own, I'm gonna have the group in helping to supervise him.

A job placement coach from the northern region noted that the level of complexity required of Section 84 implementation demanded collaboration, "in our community, we have 40 different agencies that come to the table at any given time."

Sheila from the northern region compared the collaboration necessary for successful implementation to family case conferencing:

And so I think that there is a process involved here, but I think it's also is the same thing as family group conferencing when you remove a child from family and you're taking and putting that child in foster care, family group conferencing brings the family and your extended family together to have a voice to say what should happen with that kid. That's what this Section 84 is all about.

She also offered an example of successful collaboration:

When the guys come on Section 81 from a [minimum security healing lodge] they also have an application for Section 84 in process. Thanks to [name of the Aboriginal Community Development Officer] and parole officers in the institutions it's starting to happen more, we're starting to get those guys at our place. Because our place is a stepping stone to the community. 'Cause we are downtown Edmonton we are a releasing institution. If you want to call it that, a halfway house or whatever. We got going here with a Section 84 committee that Urban Committee in Edmonton and we just got going this year. And basically it was a call out to all the Aboriginal agencies in Edmonton who are interested, that want to help out in this process. And what we had is a couple pipe ceremonies to start things off.

A job placement coach identified the need for collaboration for successful reintegration:

It takes a community to release an inmate. So whether it's urban or it's First Nations whether it's a Métis settlement or whatever, what we all want to do is to nurture the individual so that he/she has successful reintegration into society. So that's where we have to come together as resource

people and decide what is it that we can do to help nurture that individual. (Anonymous, northern)

Culture, spirituality, and healing

A focus on culture, spirituality, and its link to healing was noted as fundamental in a Section 84 release to facilitate the spiritual journey from institution to reserve or urban community. An anonymous participant expressed his view of healing:

My healing is: when I walk honest, it's my heart. Anywhere I go it's my heart. Anywhere, I can go across overseas. It's still my beat. And as long as that beat is there, it can happen. It's everything, because I am spiritual. So if you don't understand what spiritual is then it is hard to trickle down healing. (northern)

Participants noted the culture and historical aspect of culture for Aboriginal peoples. As one participant from the northern region summarized, "[w]hen you work in justice it has to be holistic and that's why we're unique as Aboriginal peoples" (Anonymous). Another added,

[w]hen we lived in a Tepee the days took care of each other. In today's world — nothing against non-Native, we lived in a different world. We live on a reserve. We've been oppressed so long. (Anonymous, southern)

A participant from the northern region stated:

Well if you're an Aboriginal first and foremost you have to learn our culture. Our culture is so unique because it hasn't been written, some of the Nations have written a little bit of their protocols, I'll call them, but a lot of ours isn't even mentioned or we never even talk about justice. How does our justice work? How many Aboriginal people sitting here now how is your justice run? How many people know? Before the European contact what regulated you? You know, do you know your justice? We had justice and it was healing. It wasn't a matter of me putting this person in a cell and then trying to heal them after and trying ways to heal them. Because I have created a monster. If you lock me up I guarantee you will have results. (Anonymous)

Healing was an important theme that was discussed in depth by participants. Trina from the central region defines the role of healing in successful reintegration:

We know inmates are being released and are doing their work inside the institution, how can we, as a community, support the family during that time, so they can do healing and be connected and be supported, so when the inmate is released, they're going back to a healthier, hopefully more functional family.

Many participants articulated that embracing identity and culture was integral in the healing process. As one anonymous participant stated:

The beginning is to heal. Recognize who you are, each one of us, 'cause you have a unique culture and every background, it has an identity with it. We all have similarities; religion, languages, and we have protocol and dance and so on; each one of us. So if we all know those, we can help so much each other. (northern)

Another advocated for the role of First Nations community members in promoting healing through culture and spirituality, "[w]e're helping them with their healing journeys. Promoting the culture, spirituality in everything that we do" (Sheila, northern). Jennifer from the central region added:

And if I can treat all the guys that way and make sure that they have enough self-esteem left ... that they're going to go out and do well and believe in themselves. That's what I see, and not come back to [the specific institution].

Bonnie from the northern region stated that healing for the entire community was necessary for successful integration of Section 84:

... if you are going to go in Section 84, not only is that individual going in there being healed, but the community has to heal. So the healing is on both sides and that sticks in my mind. That is true. You have to change some things in your community to be ready for that process to happen in a good way.

Attention to the diversity of local contexts

Focus group participants recommended that recognition of the diverse individual needs and local context were important considerations for successful implementation of Section 84. Each reserve, respondents noted, has a different context and so does each individual on a Section 84 release. As an anonymous participant from the northern region

commented, “I think every community is different. And they have to approach it different.” Another added,

[my] justice may be different from how you look at healing people. Because when I look at a person I don’t look at them for what they’ve done. It’s what I can do to help them. (Anonymous, northern)

A participant from the southern region offered a suggestion for understanding context, “come on our reserves, sit down with us, and learn about us” (Anonymous).

ROLE OF COMMUNITY IN THE IMPLEMENTATION OF SECTION 84

Focus group participants expressed several diverse opinions regarding the role of the Aboriginal community in the implementation of Section 84. While several respondents recognized the challenges in communities related to lack of resources, coordination, and established procedures others commented on the opportunities this presented for offenders and communities.

In terms of developing local capacities, participants commented:

I really think there should be negotiating bodies to move the government to fund the inmates that are released because once they are out of the system it’s like here you go. Take ‘em. Get them outta here. And they need to keep in mind, these are people that they have housed and if they don’t want them back there they need to be willing to address [their needs]. (Anonymous, northern)

I think that the Section 84 would work in the community if they’re brought to a panel, like a committee instead of our councils. ‘Cause our councils are elected, it could be an offender that has a big family worth a lot of money and that’s come up. So I think we would need some sort of panel that has no interest like that. And maybe one elected official, I don’t know. (Anonymous, northern)

Regarding the development of local returning options specifically, a job placement coach from the northern region stated:

... that’s the responsibility of the community whether its urban or First Nation or a Settlement

to step up to the plate, form a committee, designate a committee, organization or a society that will address the reintegration of individuals back into the community. (Anonymous)

In terms of benefits to Aboriginal communities a community member from the central region expressed,

I’m so glad that it’s happening, finally happening, finally the doors are opening for us, Native people to get involved in the system that our people are in, and it’s about time. (Anonymous)

Others encouraged community members to be more actively involved in reintegration efforts:

The community members that are worried about offenders coming out to the communities, if they’re that worried, then more people should be stepping up. And to those volunteer positions. Those people that want to have a voice knowing that they are coming to their community. (Anonymous, northern)

I think that at the same time it shouldn’t just be left up to CSC. I think community members should be stepping up to that plate as well it shouldn’t be left up to the Elders or the ACDOs or institutions period. I think by community members being here, more community members need to come out and step up to that plate too. (Anonymous, northern)

Jordan spoke of the importance of community involvement in Aboriginal releases, “[c]reate an ownership from the community give an ownership to the people. As Native people keep dignity” (southern). Finally, Sue from the southern region offered a call to action, “I’m taking responsibility to engage in Aboriginal communities. Who wants to work with us?”

CONCERNS FOR VICTIMS OF CRIMINAL BEHAVIOUR

Concerns for victims of crime were noted in each of the focus group, although they were particularly salient for participants from the northern region. The interrelation between offender and victim was noted as one participant expressed, “the process of getting that community involvement in and saying ok we need something to happen here for both the

victims and the offenders" (Anonymous, northern). This was likened to restorative justice, based on a theory of justice that considers crime and wrongdoing to be an offence against an individual or community, rather than the state (Zehr, 1990). A participant from the correctional setting in the northern region commented:

One of the things we're working on in the institution is restorative justice. Bringing the family in there gradually, step-by-step. It is part of the re-integration process that has to take place in bringing this Section 84 to focus.... Restorative justice is bringing back the healing process for the family and to the victims themselves. (Anonymous)

Brad from the central region highlighted the role of the offender in Section 84, "[it] makes your offender accountable to the community" while an anonymous participant from the northern region emphasized the impact on the victim and questioned:

Does somebody actually approach the victim, the victims' family and ask them? Like a significant role in the process? Like what do you feel about the individual returning to the community? What needs to happen for you to feel safe in the community? What needs to happen to stop the violence in the next generation and the next generation? Because it's happening in our communities.

One First Nations community participant offered a solution to address offender victim concerns:

I know what would work. In our community if you could come together with a past offender and a victim and come and work with them and the community can see that it resolved the issue. That they came to some understanding, it would just open the door. (Anonymous, northern)

HOPE AND SUCCESS

Participants noted that successful community re-integration provided hope to those who were returning to society and the communities to which they return. Gloria, a participant who has been involved with Section 84 as an offender, shared:

It's helped me come in a positive way in speaking my truth. Because my community wants to know are you ready to come back? Eventually no matter what you're gonna wanna go home. And if we work together we can do it (northern).

Another participant noted that hope was an outcome of effective Section 84 planning:

I think the Section 84 is an integral part of getting offenders out back into the community. I think that without Section 84 planning, I don't think that there is hope. But I think that with more planning more of us can come out to stuff like this. (Anonymous, northern)

One participant shared an example of a successful longstanding Section 84 release:

But kind of reflecting back, we had a case in our community where an inmate was released through a Section 84 in 2003, it turned out very positive. The person still hasn't gone back to jail or been incarcerated since. (Anonymous)

Another participant mentioned: "It (Section 84) worked. It does work; finding the support and resources" (Anonymous, northern).

DISCUSSION

Many studies have reported on the significant over-representation of Aboriginal people involved in the justice system and suggested remediating actions on policy and practice levels (Indian and Northern Affairs Canada, 1996; Kong and Beattie, 2005; Office of the Correctional Investigator, 2010; Walsh et al., 2011; Welsh and Ogloff, 2000). Our study uniquely examines the extent to which Section 84, a policy enacted by the Canadian federal government to explicitly address this issue (CSC, 2012), is understood and implemented. We engaged a relatively large number of participants who represented the important constituents of those responsible for implementing Section 84 releases across the three major geographic regions in Alberta. Findings from our study identified both barriers and facilitators for the implementation of this policy as well as examples of success and hopes for the future.

Overwhelmingly, participants noted that the lack of knowledge about Section 84 in terms of policy and practice served as the primary barrier to effective implementation. The limited awareness of Section 84 was perceived to be prominent among all stakeholders. Greater and more effective collaboration was also seen as a critical aspect of Section

84. The Federal Community Corrections Strategy Vision for 2020 outlines five strategic principles one of which is “Community Reintegration is achieved through collaboration,” emphasizing the need for effective collaboration and a common vision between stakeholders to coordinate services for offender’s release (CSC, 2012, p. 7).

Members of First Nations communities expressed concern over their perception of the failure of CSC to engage in ongoing consultation with communities regarding the nature of Section 84 and more specifically the role of First Nations communities in the process of reintegration for Aboriginal men and women leaving federal institutions. To rectify this gap we suggest that further educational events and networking opportunities be developed in consultation with First Nations communities and leadership. This could be in the form of quarterly meetings to share learnings about strategies to promote successful Section 84 releases. To support ongoing communication, knowledge, awareness, and collaboration, a recommendation from one of the focus groups was to have a Section 84 Newsletter which could highlight best practices and challenges faced with Section 84 process.

Similar to other research (Griffiths et al., 2007), findings from our study highlight the function of the local context in determining the success of Section 84. For example, obtaining a job for a returning offender may not be possible in communities with very high rates of unemployment (United Nations, n.d.). In this case, institutional staff may have to accept other forms of community engagement, such as volunteering, as a more realistic option. Understanding of and attention to the local context necessitates developing a “half way” approach, wherein a collaborative agreement is created about what works best while accounting for both the needs of the person released to the community and the community itself.

Given the variations and diversities across each of the three major regions we suggest that strategies to enhance knowledge dissemination activities and collaboration be gathered through a regional chairperson. The chair could represent his/her area and its unique strengths and areas of improvement with respect to Section 84.

Further, as a means of fostering collaboration and increasing knowledge about offender experiences within prison settings and the unique local contexts of the receiving communities, those responsible for offender reintegration in First Nations communities should have the opportunity to visit the penal institutions and CSC staff should be provided the opportunity to visit First Nation communities. Engaging in this process would encourage relationship building and support prerelease planning and successful reintegration.

The lack of resources for employment, housing, mental health and substance abuse treatment, health care, and other forms of support among First Nation communities in Canada is well documented (Green, 2000; Loizides and Wuttunee, 2005). Not surprisingly, the lack of resources in First Nations communities was noted as a significant barrier to successful implementation of Section 84 in this study. Resources were described as even more limited with the northern region. Geographical challenges (Nuffield, 2003), compounded with the limited resources, were also noted as a deterrent for Section 84 releases in some regions. For example, transportation can be an issue for offenders trying to access supports which are typically located in urban centres. In the context of the study we were unable to present a more detailed picture of the resources available and the gaps in services to support offender reintegration in First Nations communities across Alberta. Future research, grounded in the local context, is necessary to understand this situation more fully.

Focus group participants raised concerns about the victims and the role, responsibility, and ability of communities to supervise offenders and protect victims. The reality is that many of the First Nations offenders plan on returning to their home reserve (Hylton, 2002). Often the home community is also where the victim resides. This creates a paradox somewhat unique to Aboriginal communities; many offenders and victims are members of the same community and there may be limited options for relocation, particularly in small or remote communities. Further, the home community is often where supports for both offender and victim are located. This raises the question as to how best to

balance the need to reintegrate the offender while protecting the victim of the crime. Participants in our study recommended that victim and offender reconciliation processes need to happen long before the offender returns to the community. This practice could reduce the potential harms for victims. Section 84 was noted as instrumental in promoting the reconciliation process as it allowed Aboriginal Community Development Officers to conduct victim and offender reconciliation sessions under escorted temporary absences.

First Nation participants in our study expressed concern about not knowing when offenders are returning to their communities. This knowledge was necessary to facilitate the development of plans to establish a safe situation and to ensure that the victim is not revictimized. Enhanced collaboration is one mechanism which could reduce this challenge.

This study, similar to other research (Waldram, 1997), noted the fundamental role of culture, spirituality and healing from an Indigenous perspective in successful offender re-integration. Reforms to enhance the effectiveness of Section 84 must attend to the central role of culture, spirituality, and healing as paramount and priority within Aboriginal offender reintegration.

Although Aboriginal culturally based programs exist in the institution (CSC, 2006) and in many First Nations communities (CCJA, 2005), it is imperative that cultural institutional Elders/CSC staff and community Elders/community agency staff communicate, are informed and responsive to give the individual who is reintegrating a continuum of care (CSC, 2006). It is also important that everyone with a role in the individual's reintegration knows where the offender is in his/her healing journey to provide the appropriate support. For example, one former offender shared how attending sweats with her Elder at her home community while on escorted temporary absences from the institution was critical in supporting her health, healing, and ultimately successful reintegration. One of the outcomes of the recommendation for increased communication and collaboration could be the sharing of strategies communities are using to facilitate the spiritual and cultural transition from the institutional Elder to

the community Elder to ensure a continuum of care (CSC, 2006).

While recommendations for reform of the justice system were introduced more than 20 years ago by RCAP, findings of this study suggest several additional opportunities for enhancement of Section 84 releases. We propose that enhancing Aboriginal community involvement in these releases has a role in influencing health outcomes for offenders by providing a continuum of care of connected, contextually appropriate resources to enhance their well-being (Mental Health Strategy for Corrections in Canada, n.d.). In addition to increasing the effectiveness of the Aboriginal community, involvement through collaboration, education, and resource allocation can strengthen and promote healthier, safer communities.

STUDY LIMITATIONS

While this study is the first to comment on Section 84 from the perspective of those responsible for its implementation at the institutional and community level, it is limited to the data generated by participants of three focus groups at a single point in time. Although two former offenders attended the focus group, findings from this study cannot be used to understand the needs and experiences of individuals exiting federal institutions. We were also not able to delve more deeply into the unique needs of specific populations such as women, parents, or those with mental health, alcohol, or substance abuse issues (Green, 2000; CSC, 2009; Griffiths et al., 2007; Walsh et al., n.d.). Future research should attend to the role of Section 84 in transitioning members of these vulnerable subpopulations from institution to community.

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