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**CITY UNIVERSITY OF HONG KONG**

**An Alternative to Prosecution:  
A Comparative Study between Restorative Service Provision  
in Queensland and Hong Kong**

A Report Submitted to  
Department of Applied Social Studies  
in Partial Fulfillment of the Requirements for  
the Bachelor of Social Sciences in Criminology

by

Yin Ha NG & Gabriel Tsz Wah WONG

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# **An Alternative to Prosecution: A Comparative Study between Restorative Service Provision in Queensland and Hong Kong**

Y.H. Ng and Gabriel T.W. Wong

## *Abstract*

The current study aims to examine ways to improve restorative service provision and provide practical implication for future development of restorative justice in Hong Kong, using a documentary comparative study and then supplemented by some interviews with restorative justice practitioners in Queensland and Hong Kong. The results show that the restorative service provision in Hong Kong is still immature when compared to the Queensland system which has adopted the restorative justice measures into the mainstream of criminal justice system. The information collected from several key literatures and interviews are discussed with some precise figures and tables. Lastly, short-term and long-term practical implications are provided regarding the challenges which were raised by the interviewees.

## **Introduction**

During the 1970s and 1980s, restorative justice (hereafter RJ) as an alternative philosophy of justice emphasizing healing, forgiveness and the development of the practice of victim offender mediation has been growing rapidly (Lo, *et al.* 2005, Schatz 2008, Wong 2009).

## ***Definition of Restorative Justice***

RJ as both a conceptual framework and sociopolitical movement aiming to alter the current criminal justice system is itself a complex and capacious concept (Besthorn 2008, Daly and Immarigeon 1998, Hiranandani 2008). There is no consensus about the theory, and RJ is frequently referred to the inseparable dimensions of its evolution and practice (Besthorn 2008, Hiranandani 2008). Nevertheless, attempt on agreement or some general definitional boundaries that underlay the philosophies are reasonably made (Besthorn 2008, Boyack, *et al.* 2004, Hiranandani 2008). For a more convenient discussion in this thesis, the core values of RJ are subsumed into a framework with four components, the (1) conferencing elements, (2) accountability and reparation, (3) reintegration, and (4) reduction of reoffending.

RJ has advocated a reorientation of conceptualization about crime and justice (Besthorn 2008, Hiranandani 2008, To 2000, Zehr and Mika 1997). The RJ paradigm, which adopts a non-adversarial approach and emphasizes the impact of crime and obligation of offenders, elicits a process whereby all the parties with a stake take a central role in decision-making (Marshall 1999, Corrado, *et al.* 2003, Van Wormer 2002).

The discrepancies between the two appear to be some completely different notions and orientations where RJ philosophies and practice challenge the domination of retributive justice by rethinking the assumptions on criminal behavior, client and values as well as the goal of justice (see Table 1).

Table 1. Comparisons of the Core Values between Restorative Justice and Retributive Justice.

Retributive Justice	Restorative Justice
<u>Assumptions on Criminal Behavior</u>	
Crime is an act against the state, a violation of a law.	Crime is an act against another person and the community.
<u>Client and Values</u>	
Offender is main client to be tracked, punished and controlled.	Offender, crime, and community receive balanced attention as client/customers of the system who are each target of intervention and partners in the response to crime.
<u>System Goals</u>	
Rehabilitation through individual treatment; ambivalence regarding sanctioning and public safety roles with resulting reactive approach focused on punishment and isolation	Rehabilitation through competency development; Sanctioning through accountability to victims and communities; Public safety through increased community security; preventative capacity development, and relationship building.
<u>Performance Objectives</u>	
Efficient administration of punishment; service provision; compliance with rules of supervision, complete treatment; changes in offender attitude, removal of offenders from community; retribution and deterrence.	More competent offenders, reintegration of offenders, restoration of victims and offender awareness of harm, safe and secure citizens engaged in preventative activities, separation of violent, predatory offenders from community.
<u>Practices</u>	
Incarceration as punishment, monitoring and surveillance, individual casework, counseling and traditional treatment.	Reparative sanctions and processes; victim services; work, service and learning programs; structuring offender's time; guardians & mentors in community; limited use of incarceration for public protection, not for punishment.

(Adopted from To, 2000; Zehr, 1990)

### *Emergence of Restorative Justice*

There were some of the terms used by the academics to express similar concept, while Eglash (1977) is generally credited with coining the term "restorative justice", and Barnett (1977) has first used the term to refer to certain principles that attribute to the use of mediation between victims and offenders in early experiments in America.

RJ "has been the dominant model of criminal justice throughout most of human history for all the worlds' people" (Bajpai n.d., Marshall 1999). In earlier human history, conflicts are often being settled within family and clans (Hassall 1996, Lilles 2001, Maxwell and Hayes 2006, Skelton and Frank 2001, Weitekamp 1999, Zehr 1985). Van Ness and Strong (2002) offered a helpful chart distinguishing the ancient approach to crime from our current approach (see Table 2).

Table 2. Comparisons of the Core Values between RJ and Retributive Justice.

	Ancient Pattern <sup>o</sup>	Current Pattern <sup>o</sup>
Crime <sup>o</sup>	Injury to victims and their families in the context of the community <sup>o</sup>	Violation of the law <sup>o</sup>
Parties <sup>o</sup>	Victims, offenders, community and government <sup>o</sup>	Offenders and government <sup>o</sup>
Goal <sup>o</sup>	Repair damage and reestablish right relationships <sup>o</sup>	Reduce future lawbreaking through rehabilitation, punishment, deterrence and/or incapacitation. <sup>o</sup>

(Van Ness & Strong, 2002)<sup>o</sup>

However, Bottoms (2003) and Sylvester (2003) still question that it may be a "problematic nature of drawing selectively on criminology's early texts in order to reclaim a lengthy history for restorative justice" (Richards 2004). Braithwaite (1996) also mentions that he has "yet to discover a culture which does not have some deep-seated restorative traditions. Nor is there a culture without retributive traditions".

For RJ in more recent days, Van Ness and Strong (1997) identify five movements which have influenced the development and re-emergence of RJ philosophies in modern days:

1. The informal justice movement emphasized informal procedures with a view to increasing access to and participation in the legal process. They focused on delegalization in an effort to minimize the stigmatization and coercion resulting from existing practices.
2. Restitution as a response to crime was rediscovered in the 1960's. The movement focused on the needs of victims, maintaining that meeting the needs of victims would serve the interests of society more generally.
3. The victim's rights movement works to have the right of victims to participate in the legal process recognized.

4. Reconciliation/conferencing movement – It has two major strands in this movement:
  - *Victim-offender mediation (VOM)* -- Originating from efforts of the Mennonite Central Committee, this process brings victim and offender together with a mediator to discuss crime in order to form a plan to address the situation.
  - *Family group conferencing (FGC) movement* in New Zealand -- arising out of the Maori traditions in New Zealand.
5. The social justice movement -- This label refers generally to a number of different groups working for a vision of justice as concerned inherently with social well being.

Van Ness and Strong (2002) argue that “many who are now preoccupied with restorative justice came to it from one of [these] perspectives”. Furthermore, the overloading of court cases and other justice agencies may be a factor contributing to the development of RJ, since restorative concept mobilizes more supports and resources in the community (Messmer and Otto 1992, Swanepoel 2008).

Under a cost-effective calculus, the money put into the court system and custody must be much higher than that for conducting conference or training convenor. Many scholars agree that RJ practices may be better option than incarceration in view of the negative experiences of institutionalization and difficulties on reentry of ex-prisoner (Bazemore and Maruna 2009).

In all, the discussions of history of RJ are based on an extensive research of relevant literature, but reader should be reminded that there may be other factors which foster the development of RJ. The focus of this thesis will be mainly on the comparative study of restorative service provision between Queensland and Hong Kong.

### ***About the Research Study***

A secondary policy comparison will be made between Queensland and Hong Kong with regard to the restorative service provision. Documentary analysis will then be followed by in-depth interviews with an experienced convenor from Queensland and several local practitioners about the service provision, limitations and constraints of current implementation of RJ in Hong Kong and Queensland.

Since the restorative service provision in Hong Kong has specifically adopted an additional or dependant model offering by several NGOs. The scope of restorative services is ranging from some Post-Police Superintendents’ Discretion Scheme (Post-PSDS) program to the fields of campus for school bullying and family for domestic violence. It is also noteworthy that only a negligible number of outcome research have been done (Panel on Administration of Justice and Legal Services 2007, Evangelical Lutheran Church Social Service 2007).

Interviewing experienced practitioners from Hong Kong and Queensland will provide an up-to-date picture of the service provision in terms of effectiveness, challenges and recommendations. Appropriateness of adopting the Queensland model of RJ in the Hong Kong system will also be examined. Our research topic, “*An Alternative to Prosecution: A Comparative Study between Restorative Service Provision in Queensland and Hong Kong*”, therefore, indicates our eagerness for contributing to the reformation tide of criminal justice.

### ***Research Aims and Objectives***

This research study has three main purposes and they are listed as follow:

1. To compare and contrast the implementation of restorative justice in Queensland and Hong Kong.
2. To identify the present challenges of restorative justice provision in Hong Kong.
3. To explore the future development of restorative justice as an alternative intervention measures in Hong Kong.

## **Literature Review**

### ***Reintegrative Shaming Theory***

Braithwaite (1989), a prominent criminologist advocating RJ, has proposed the theory of reintegrative shaming which is one of the most important fundamental elements in the RJ philosophies. In his influential book, “Crime, Shame and reintegration”, Braithwaite (1989) develops the theory by comparing and contrasting the social elements of some low crime rates countries, e.g. Japan, with high crime rates countries, e.g. USA., He discovers that places with relatively low crime rates can effectively shame the criminal act, and subsequently reintegrate the outlaw person after proper reparation and apology are made to the crime victim. Regarding places with relatively high crime rates, society often adopts stigmatic shaming to offender leading to higher tendency of recidivism due to the labeling effect, under which reoffending no longer originated from the personal reasons for first offence, but the criminal label when the person incorporates his/her identity with the stigma (Mantle, *et al.* 2005).

Braithwaite (1989) defines shaming as “all social processes of expressing disapproval which have the intention or effect of invoking remorse in the person being shamed and/or condemnation of others who become aware of the shaming”. Contrasts with stigmatic shaming, community that favors to reintegrative shaming “blame[s] the offender's conduct as unacceptable but affirms their commitment to the offender and their active desire to reintegrate him/her back into society” (Bazemore 2001). Reintegrative shaming theory emphasizes on the empowerment of victim and offender, and a fundamental shift in avoiding stigmatization and negative labeling (Maxwell and Morris 2001, Morris 2001, Van Ness 2003, Walgrave 2002, Zehr 1990).

### ***Models of RJ***

#### ***Categorization of RJ Practice***

Attempts have been made to assort various types of RJ practices, and Gavrielides (2007) has suggested a classification basing on two aspects (see Table 3). This segregation is supplemented by Miers's (2001) proposed model and research findings according to his prominent report, namely “An International Review of Restorative Justice”, which compares and contrasts the restorative services of sixteen jurisdictions.

For the first category, which base on the relationship with criminal justice system, RJ practice can be divided into 3 types. “Independent” (or “alternative”) provision is usually located at the early stage of case proceedings offering real alternatives for criminal litigation that diverts the case out of the formal process (Gavrielides 2007, Groenhuijsen 2000, Miers 2001). Then, the “relatively independent” (or “integrated”) provision offers restorative service as part of the regular criminal justice procedure, and RJ practice will be conducted at certain stage of proceeding. Finally, “dependent” (or “additional”) provision is “situated adjacent to the conventional system of criminal

justice system” (Gavrielides 2007, p.32, Miers 2001).

According to Gavrielides (2007), the second classification of the RJ practice is based on their operational style distinguishing 5 types of RJ practice. The primary orientation towards either victim or offender refers to the different views on service clients. Meeting among parties vs. unrelated parties, differentiates RJ practices between practice that allows victims to meet their offenders or other unrelated offenders. Besides, the conflict between face-to-face meetings and indirect mediation/conference constitutes RJ practices which offer direct meeting between victims and offenders or, indirect meeting in which the conveners go between them as a deliveryman. Lastly, the professional staffs vs. volunteers, distinct RJ practices which are carried out by professional staffs or trained volunteers.

#### *Direct RJ vs. Indirect RJ*

In addition to Gavrielides’s (2007) classification of the face-to-face mediation and indirect mediation, Kinsley (cited Liebmann 2007, p.74) also bring out the differences between direct and indirect RJ practice. According to Liebmann (2007), despite holding a practice in a direct way which is often an ideal, under some situations, indirect RJ (or shuttle negotiation) may be advisable. The method is useful when victims are not willing or not psychologically prepared to meet the offenders but accept letter of apology, compensation or other information from the offender through the help of the convenor or mediator (Gavrielides 2007). Possible situations for adopting the indirect RJ practice are when dealing with cases which involve death, sexual offenses or other serious violence (Payne and Conway 2006).

Both direct and indirect RJ practice allow the victim to express their feeling to the offenders and they may come to know more about the rationale behind the incident, while the victim, at the same time, receive some kind of compensation (virtually or symbolically).

#### *Unilateral, Authoritarian and Democratic Restorative Justice*

Wright (2000) divided RJ provisions into three groups, unilateral, authoritarian and democratic RJ (Miers 2001). For a unilateral restoration, it intended to create benefits for either the offender or the victim in a mutually exclusive manner (Miers 2001). Authoritarian restoration focuses on offender more than victim. It emphasizes on the punitive outcome rather than the process (Miers 2001). Lastly, the democratic restorative justice is a community based ideology in which the stakeholders operate the mediation aiming to benefit both the victim and offender (Wright 2000, p.23).

#### *Unified Model, Dual-track Model, Safety-net Model and Hybrid Model*

Van Ness (2003) summarized four types of RJ in the USA’s criminal justice system. Van Ness (2003) described the unified model as an approach which only provides the RJ service and any extreme intervention would be treated as last resort (Van Ness 2003). Secondly, the dual-track model refers to criminal justice system which operates both RJ and traditional philosophies. With a simultaneous operation of the two systems, participants, patricianly perpetrator, move back and forth between the systems as necessary. Safety-net model embodied the features of dual-track model but it gives its priority to RJ service. Last but not least, hybrid model is the justice system that progress from one system to another, depending on the step in the process or the character of the offender, such as the age of the offender.

#### *Fully Restorative Justice, Mostly Restorative Justice and Partly Restorative Justice*



Saade (2008) asserts the restorative practice into three categories, which are fully, mostly and partly RJ. To begin with the fully restorative justice, examples are peace circles, community conferencing and FGC. Besides, the mostly RJ practices are victim restitution, victim support circles, VOM and therapeutic communities. As for the partly RJ, it includes victim services, offender family service, youth aid penal and crime compensation.

### ***Common Practices of Restorative Justice***

Key practices that are now seen to be central to restorative justice are VOM programs, restorative conferencing and circles.

#### ***Victim-Offender-Mediation***

VOM (often called victim-offender reconciliation, victim-offender dialogue) is one of the most well known and commonly used restorative practices (Bazemore and Umbreit 2001, Gavrielides 2007, McCold 2001, Morris and Maxwell 2001 Umbreit, *et al.* 2006). VOM usually involves a victim and an offender in a direct meeting which is facilitated by a trained mediator (Cohen 2001, Gavrielides 2007, Umbreit, *et al.* 2006). Besides, in a face-to-face meeting, apart from the victim and offender, the supports of victim/offender, such as friends and family members often present. The dialogue runs through by the mediator carrying the information back and forth between the victim and offender, and this is sometimes called the “shuttle mediation” (Gavrielides 2007, Liebmann 2007).

#### ***Restorative Conferences***

Conferencing programs (including family group conferences (FGC), family conferences or community conferences) are similar to VOM, but comprise the participation of families, community support groups, police, social welfare officials and attorneys in addition to the victim and offender (Stewart 1996, pp. 66-73). Umbreit, *et al.* (2006) differentiate restorative conference from VOM with definition that supports are only often present in a VOM, while they are routinely presents in the restorative conference. Also, some conferencing programs are “scripted” (Gavrielides 2007, Umbreit, *et al.* 2006), facilitator can follow a prescribed pattern in guiding the conference (Gavrielides 2007 p.33)

#### ***Circles***

Circles are variously called “peacemaking circles,” “restorative justice circles,” “repair of harm circles” and “sentencing circles.” Parties involved are similar to the conferencing, but it involves wider community member participation (Umbreit, *et al.* 2006). People inside the circle will pass a “talking piece”, and only the person who holds the object is allowed to speak, thus, it ensure that each person has an opportunity to be heard (Coates, *et al.* 2000, 2006, Bazemore and Umbreit 2001, p.6, McCold 1999, pp.16-17).

All these restorative processes can help an offender to develop empathy with other people, including the victim and victim’s supports (Van Ness and Strong 2002). The offender will then be brought to feel a mixture of all kinds of unpleasant emotions, such as shame, remorse and humiliation (Van Ness and Strong 2002).

### ***Scope of Restorative Program***

Moreover, the scope of restorative programs which can be seen in well established jurisdictions is usually in an extent for both adult and juvenile offenders (Miers 2001).

However, for most of the jurisdiction, no matter experimental or any actual schemes, the interventions' focus is usually more on young offenders, rather than adult offenders (Miers 2001).

### ***Frameworks for Restorative Practice***

RJ varies in its forms and shapes. Factors affecting the appearance of the RJ practice include the criminal justice system's structure, public tolerance level, politicians and cultural and historical background (Gavrielides 2007, p.31). Although there are different models for RJ, the design of the VOM, FGC or others also aims to meet the following criteria which are defined as the key framework for discussion in this thesis.

#### ***Conferencing elements-The involvement of impartial third party***

Firstly, Gavrielides (2007) points out the essential task for a facilitator/convenor/mediator, it is to assist participants to achieve a new and shared understanding during the RJ process redirecting participants' attitudes and disposition toward each other. Besides, a facilitator aims at maintaining a constructive dialogue toward a mutually agreeable resolution (Hiranandani 2008, p.166). Also, the facilitator keeps the RJ process focusing on the incident and allowing direct expression among parties (Strang *et. al.* 2006). One of the responsibilities of facilitators mentioned by researcher is that facilitators are always responsible to provide a safe and comfortable environment, where the ground rules, roles and responsibilities of the participants are clearly explained (Marshall 1999).

#### ***Conferencing elements- Stakeholder Involvement, Encounter and inclusion***

Victims, offenders and community are usually involved in a RJ process. Researchers define the "stakeholder involvement" as chance for the victims, offenders and community to take part in the RJ process actively (Bazemore and Maruna 2009). It is also generally agreed that one of the primary elements of RJ is to encourage the participation of persons who are affected by an offense (Stahlkopf 2009, Zehr and Mika 1998).

The process that all the victim and offender meet together is called "encounter" (Aertsen, *et al.* 2008, p.46, Wenzel, *et al.* 2008). Direct (face-to-face) engagement between victim and offender is regarded as a general feature of RJ (Hiranandani 2008, Presser and Gaarder 2000). Besides, the restorative encounter promotes reconciliation (Aertsen *et.al.* 2008), reintegration and healing process (Presser and Gaarder 2000). According to Presser and Gaarder (2000), the outcome of encounters may include reparation or agreements, and the encounter reintegrates victim and offender into the community.

The element, "inclusion", refers to chances for parties to take part in the resolution (Seto 2008, Stahlkopf 2009). RJ advocates believes that community plays an important role in the RJ process since the involvement of community members allows the offenders to be aware of the collective impacts or consequences caused by the offense, and the inclusion fosters a sense of community and 'us' (Besthorn 2008). RJ achieves 'inclusion' by empowering different parties in the RJ practice, and it reflects another principle of RJ (Stahlkopf 2009).

By bring together victims, offenders and community, RJ puts equal attention to all the stakeholders and offer them opportunities to cope with the aftermath of the crime and repair the harm done by the offender (Stahlkopf 2009). As Gavrielides (2007) describes, facilitator empowers the parties in the RJ process to regain the control of the conflict.

### *Conferencing elements-Accountability and Reparation*

Holding the offender accountable for their wrongdoing is one of the main purposes of RJ. RJ defines accountability as understanding of the impacts that caused by the offense and decide to make things right (Canadian Resource Centre for Victims of Crime 2011). The restorative encounter and border involvement of stakeholders in the conference facilitate the understanding.

In the direct encounter, the offender hears the actual harm that they bring to the victim (Besthorn 2008), which allows offender to understand the true effect of the behavior. Strang and his colleagues (2006) explain that the offenders are asked to articulate their responsibility for the consequence of the offense and repair the harm they have caused in the RJ process.

RJ offers alternative ways for harm reparation that different from retributive criminal justice system. The commonly used forms of reparation are financial reparation such as monetary compensation; physical reparation, e.g., community service, and symbolic reparation such as apology (Stahlkopf 2009).

Stahlkopf (2009) discovers that, the most serious losses that people suffered are emotional and psychological affects, for instance, losses of confidence. Hence, RJ generally restores victims' sense of security, dignity and control.

### *Conferencing elements-Reintegration*

To restore the stakeholders, victims, offenders and reintegrate them as a whole is one of the goals of RJ (Dignan 2004, p. 118, Szto 2008, p.149). RJ sees the perpetrator as a full member of the community and all the three parties are under an on-going relationship rather than an individual that can be excluded out from the community. Consequently, RJ finds the importance to re-establish the bonding of the parties and heal the estrangement (Besthorn 2008, p.132).

RJ attempts to repair the affected social fabric by encouraging the offenders to bear the responsibility of their wrongdoing (Lee 2008). It is also believed that victims can hardly forgive and reconcile with the offenders unless they admit their wrongdoing. The acknowledgement of the crime gives victims with the occasion to forgive the offenders, give rise to the reconciliation between the two parties and reintegration of the perpetrators into the community (Bazemore and Maruna 2009, Combs 2006).

### *Conferencing elements-Reduction of reoffending*

Advocators of the RJ support the view that offenders become less dangerous after the RJ process which brings reconciliation to the offender and community (Hiranandani 2008, p.166). The reduction of the likelihood of reoffending comes from the achievement of the key goals in RJ, which are accountability, reparation, restoration and meeting the needs of victims (Hayes 2005).

Researchers emphasize the role of empathy in reduction of reoffending (Bazemore 2005, Bazemore and Stinchcomb 2004, Hayes 2005). First, academics agree that the establishment of empathy in the offender towards the victim reduce the chances of reoffending. In the conference/mediation, the empathy built up on the base of victim's disclosure of impacts of crime and stories that are unknown to the offender.

Offenders are given chances to make amends and repair the harm done. Bazemore, Ells and Green (2007) indicate that through reparative work, offenders' impression may be changed in the eyes of victims and community. This new formed

identity favors the relationship development and reestablishment, which lead to further reintegration of the offender into the community and strengthen the offenders' commitment in conforming behaviour.

### ***Summary***

From the above literature review, the research and theories provide knowledge about the influence of RJ on all the participated parties in the RJ practice. However, the linkage fails to connect to the victim-oriented study in Hong Kong with association to the distinctive Hong Kong culture and strains. Therefore, the RJ development in Hong Kong will be examined with relevant resources and supplementary information from interviews in the present study.

## **Research Methodology**

### ***Research Methods***

A qualitative approach was employed throughout the research. Qualitative methodology offers great insights about the subjective meanings and personal experiences (Whitley and Crawford 2005). To achieve the aims of the present study, a qualitative comparative framework was employed in this study. Besides, the implementation of RJ in Queensland and Hong Kong, as well as the difficulties and challenges that faced by the practitioners were studied by means of conduction of literature review and in-depth interview. The extensive literature review provides information of RJ in two levels, the general level and the contextual level. The general level refers to worldwide RJ development, as for the contextual level represents the RJ development in Queensland and Hong Kong. The in-depth interview is used to understand the real situation of the RJ implementation in the contextual level.

### ***Sampling***

For the Queensland context, an experienced convenor from Queensland, Australia was invited to take part in an in-depth interview. For the Hong Kong context, three NGOs providing restorative services in Hong Kong were invited to participate in the interview. The targeted NGOs include the Integrated Service Centre for Reconciliation of the Evangelical Lutheran Church Social Service-Hong Kong, the Hong Kong Methodist Centre and the Centre for the Restoration of Human Relationships. Two RJ practitioners for each organization, i.e. six in total, were being invited to join the interview. The interview was conducted by two researchers with the two practitioners in the interviewees' institutions.

### ***Procedure***

Group-based interview was adopted to allow group discussion and avoid unnecessary duplication of information. For the experienced practitioner from Queensland, she was being interviewed by two researchers at the same time, whereas for the local practitioners, each pair of interviewees was interviewed by two researchers at a same time in their own institutions. Besides, each interview took around 30- 45 minutes. Before the conduction of interview, a consent form was given to the interviewees to obtain their consent on the participation of the interview. Agreement was made clearly that only their name and the name of their represented institutions will be reported and no sensitive information will be disclosed in this thesis. It is reminded that this research project collects information mainly by documentary analysis and secondarily by interview.

### ***Guideline for interview***

The guideline for interview consisted with six questions. Firstly, the guideline requests a brief description of the current restorative service provided by the targeted organization. Secondly, the interviewees were asked to rate the level of goals attainment of the service provided by their organizations. Eight goals were designed basing on the framework which was proposed by researches from the literature review. The framework was designed to measure the degree of attainment by dividing the attainment into a 5-level scale (level 1 represents the lowest level of goal attainment and level 5 represents the highest level of goal attainment). For example, for the goal of involvement of impartial third party, if the practitioner rated “5”, it implied that the interviewees believe that their service provision had achieved the goal of involving impartial third party at the highest level. In other words, the organization always involves an impartial third party in their RJ practice.

The second half of the guideline was designed with an objective to collect supplementary information of the pervious part. Questions are about the underlying reasons of how the goals be achieved or fail to be achieved. Besides, the guideline also asks about the challenges that the practitioners come across in the experience of implementing RJ in different contextual levels. Finally, the researchers are interested in whether there is any room for improvement of the current service provision in different organizations.

### ***Expected Outcome***

Through reviewing literatures, an overview of the global RJ development and the implementation of RJ in Queensland and Hong Kong were explored. Comparison and contrast between the restorative service provision in the two targeted places have been made in the areas of implementation, management of the program, referral procedure as well as the challenges and improvement related to the current provision. Ultimately, this thesis aims to explore the future development of RJ service in Hong Kong by addressing our research question: how can Hong Kong improve the current restorative service provision with reference to the Queensland system?

### ***Restorative Service Provision in Queensland***

The main focus in this section is to explore the implementation of RJ conference in Queensland by looking into the history, legal foundation and areas where restorative conference has been applied. For a more comprehensive knowledge about the actual situation in Queensland, the data from interview with an experienced convenor from Queensland will be included in this section.

Queensland is one of the first regions in Australia initiating Family Group Conference for young offenders (Department of the community 2012). The development of RJ for young offenders in Queensland has a long history (Department of the community 2012):

### ***The Development of Restorative Justice in Queensland***

In 1997, following the Juvenile Justice Act 1992, the community conferencing scheme was piloted. The conference was initially managed by the Department of Justice, and cases are dealt only when young offenders admit their wrongdoing and agree to join the conference (Maxwell and Hayes 2006).

In 1998, the FGC was transferred to the Department of Communities. Additionally, the prerequisite of victim consent was eliminated and the name of the

program was changed to Youth Justice Conference in 2003 (Maxwell and Hayes 2006). With a huge increase in demand, referrals increased staggeringly from 766 cases in 2002-2003 to 2058 in 2003-2004 and sustained its growth in 2007- 2008.

In 2007, the Queensland Government was requested by the Hong Kong Methodist Centre for aiding its attempt on developing RJ service for Hong Kong juveniles (Department of Communities Queensland Government 2012). Hence, the Queensland Government agreed to provide support and facilitated the set up of Project Concord.

The program is now providing service across the state (Richards 2010), and it has received positive feedbacks from the program participants in Queensland, including high participant satisfaction rate (Department of Community 2012).

### ***Legal foundation of Restorative Justice in Queensland – Youth Justice Act 1992***

Young people in Queensland who committed an offense can be charged under juveniles and adult legislation. The Youth Justice Act 1992 guides how the young people committed offence is responded in Queensland (Department of Community 2012).

### ***Principle of Youth Justice Act 1992***

The principles describe the expectations for how the young people, victims and families are handled by all youth justice responses (Department of Community 2012). They includes “vulnerability”, “detention as a last resort” , “diversion from the court”, “the rights of a young person”, “the young person’s accountability”, “reintegration, age, maturity and sense of time”,

### ***Areas of Implementation***

#### ***Criminal justice system***

The conference implemented in Queensland is administrated by the Department of Communities (2012). It provides all the funding for the program and is responsible for examining the convenors (Department of Community 2012).

#### ***Restorative Justice for Juveniles***

The community conference for juvenile is introduced into Queensland since 1997. As illustrated by Department of Communities, Queensland Government (2012), Queensland is different from other jurisdictions in Australia. There are no limitations on the types of offence that can be referred to the conference in Queensland.

According to the in-depth interview with the experienced convenor from Queensland, the conference deals with some cases of sex offenses. As long as the young person admitted the offense, there are chances that he/she will be brought into the proceeding of youth justice conference, which is listed as below:

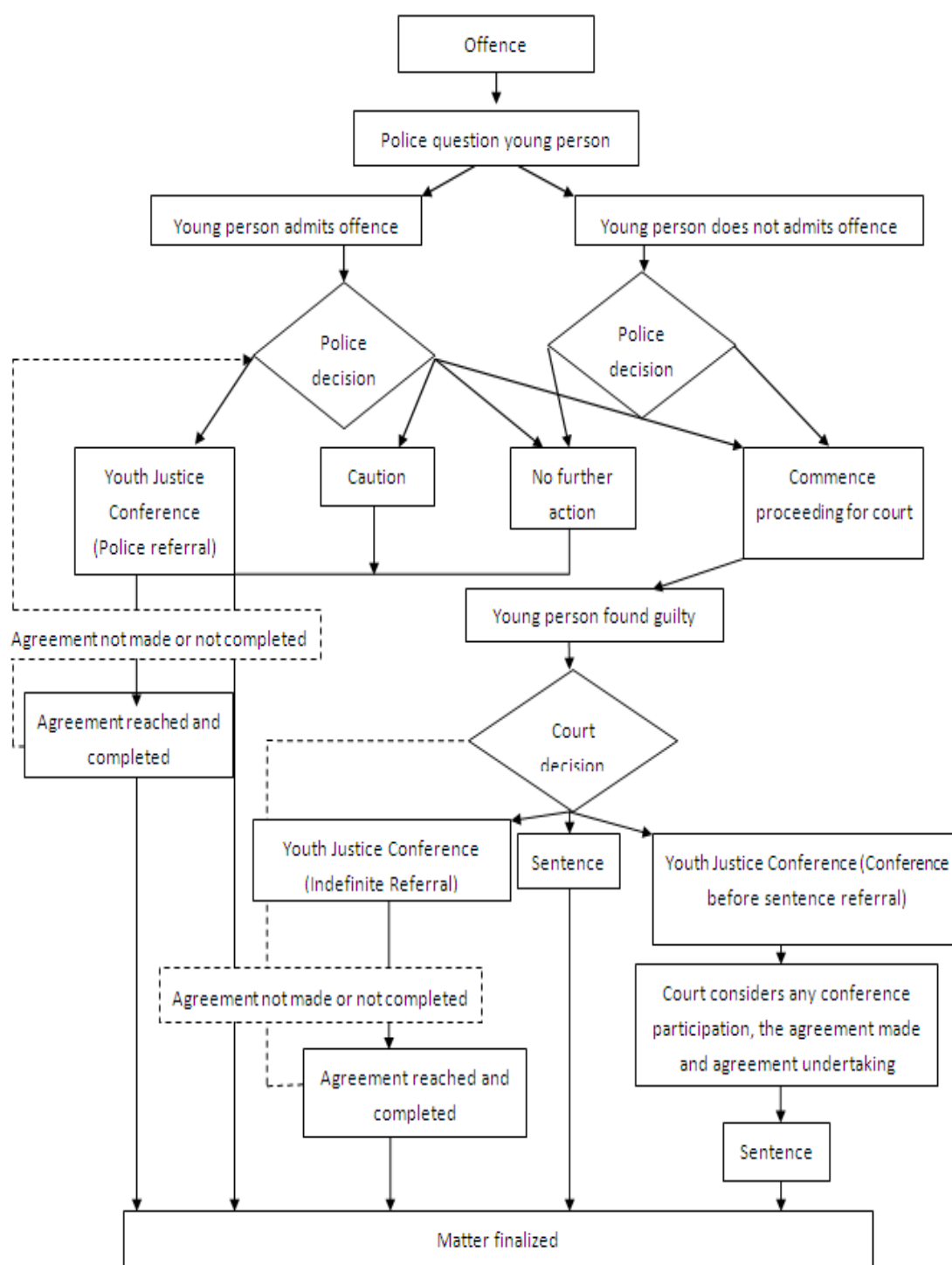


Figure 1. Youth Justice Conferencing Flowchart.

### *Sources of referral in youth justice conference*

As shown in the Figure 1, there are three referral sources for the justice conference. Firstly, a police officer may refer a young person to the conference who admitted the offence by police referral. Secondly, the indefinite referral allows a young person to be referred to the conference by the court after him/her being found guilty. Lastly, in conference before sentence referral, the court refers a young person to conference after the proving of guilty, and the court see it suitable to make consideration on outcome of the conference before sentencing.

### *Police referral (sections 11 and 22-24)*

Before entering to court proceeding, police officers must consider referring the case to youth justice conference after the decision of caution is not appropriate for the young person. After the conference, the youth justice conferencing regional coordinator will report the outcome of the conference to the referring police officer. The young person cannot be charged for the same offense after the conference agreement is made and reached. On the other hand, if the conference failed to meet an agreement or the agreement is not completed, the referring police officer is responsible for determining what actions have to be taken. Commonly, the case would be transfer back to the court proceeding (Department of Community 2012).

### *Indefinite court referral (sections 161-164)*

After finding a young offender guilty of an offence, the court must premeditate the case to conference when the offense is suitable to be dealt by conference. After the conference, the regional coordinator is required to give a conference-outcome report to the court. If the agreement cannot be completed, the court will decide an appropriate action taken to the young person. Oppositely, if the court is reported that the conference agreement is completed the case will then come to an end (Department of Community 2012).

### *Conference before sentencing referral (Section 161-162 and 165-166)*

After finding the guilt of a young person, the court must consider referring the matter to the conference. The court refers the case before sentencing when the conference can help to achieve an appropriate sentence. Additionally, the youth participation of the conference, agreement as well as the conference-outcome report should be considered to make an appropriate sentence (Department of Community 2012).

In all, the occurrences of the conference can be before the court proceeding, at the beginning of the court proceeding or before the court sentencing. Hence, the model which adopted by the Queensland system belongs to “partly dependent” model mentioned by Groenhuijsen (2007). It also shows signs of the safety-net model which give preference to RJ measures before considering other options (Van Ness 2003).

### *Evaluation of the Youth justice program in Queensland*

An evaluation of the pilot test carried out by a team from Griffith University in 1997-1998 (Hayes, *et al.* 1998). The evaluation was based on both structured and unstructured interview with the conference participants. It also included a telephone-follow-up which was conducted after two months of the conference (Hayes, *et al.* 1998). Furthermore, program financial data, police data and court data were analyzed.

Regards to the cost of RJ measures, research findings suggest that the cost per case is ranged from \$200 to \$900. Besides, the cost for dealing with a case by conference is higher than that by the court but cheaper than the cost of victim-offender reconciliation and community development. The study concluded that the conference is highly successful regarding the consistently high satisfaction by participants (Hayes, *et al.* 1998).

### *Restorative Justice for adult*

Queensland is one of the three jurisdictions in Australia that include adult conferencing. In Queensland, adults are defined as people with age of 17 or above.



There were about a quarter of the adult offenders joining the, 48 percent of them were 17 years old when they were referred to the conference. The youth justice conference accepts the referral of adult offenders in addition to the juvenile offenders. More specifically, court does not refer adult offenders to the conference like the juvenile referral system. All the adult offenders' cases are dealt by police and Department of Communities. Under some administrative arrangements of the parties, some adult cases can be referred to the conference (Strang 2001).

#### *Restorative Justice in School Setting*

There are two pilot schemes in Queensland that initiate conferencing program in school setting. It was introduced in school in response to a serious assault at in 1994 (Cameron and Thorsborne 1999). The program was used to deal with the students' behavior problems. It also responds to the search of non-punitive way to handle student misconduct (Hyndman and Thorsborne 1993, 1994). During the two pilot studies, a total of 119 schools have being involved in the testing (Cameron and Thorsborne 1999) and there were a total of 89 conferences which held in Queensland schools (Thorsborne 2000).

#### *Restorative Justice for Family*

Family Group Meeting is a conferencing program that aims to deliver care arrangement for family members (Harris 2009). Queensland initiated the family conferencing meeting in 2006 (Harris 2008). Family conferencing model works under the principles for empowering the family and community by involving them in the process of decision making that benefits the outcomes of the child (Harris 2009, Murry 2007).

#### *Summary*

The RJ service in Queensland covers the areas of criminal justice system, school and family. For RJ in the criminal justice system, a well established system is ready for the juveniles, while the RJ service for adult is in a piloting stage. Besides, the pilot scheme in school setting is used to deal with students' behavioral problems. For RJ in the family context, it aims to empower the family in the decision making process. Overall, we can conclude that the RJ development in Queensland is sound, governmentally centralized and self-sustaining.

### **Restorative Service Provision in Hong Kong**

#### *Current Situation of Restorative Justice in Hong Kong*

The Secretary for Justice's Working Group on Mediation (-Working Group) was set up in 2008 to review the current development of mediation and provision of mediation services in Hong Kong. The Working Group mentioned the growing interest of using mediation for mediating juvenile offenders as well as bullies with their case victims in Hong Kong (Department of Justice Hong Kong Special Administrative Region Government 2010).

#### *Provision by Non-Governmental Organizations*

##### *Juvenile: Post-PSDS Service*

According to the Police Superintendent's Discretion Scheme (PSDS), police officers may caution young offenders aged between 10 and 17 who are evidenced to have

committed a relatively minor offence. Table 4 indicates the numbers of arrested and cautioned juveniles under PSDS from 2005 to 2010 with the corresponding percentages of caution rate per year.

Table 3. Numbers of arrested and cautioned juveniles under PSDS from 2005 to 2010.

Year	No. of Juveniles Arrested	No. of Juveniles Cautioned	Caution Rate of Juveniles Arrested
2010 <sup>a</sup>	5454 <sup>a</sup>	2076 <sup>a</sup>	38.1% <sup>a</sup>
2009 <sup>a</sup>	6049 <sup>a</sup>	2220 <sup>a</sup>	36.7% <sup>a</sup>
2008 <sup>a</sup>	6303 <sup>a</sup>	2358 <sup>a</sup>	37.4% <sup>a</sup>
2007 <sup>a</sup>	6875 <sup>a</sup>	2736 <sup>a</sup>	39.8% <sup>a</sup>
2006 <sup>a</sup>	6891 <sup>a</sup>	2774 <sup>a</sup>	40.3% <sup>a</sup>
2005 <sup>a</sup>	6821 <sup>a</sup>	3026 <sup>a</sup>	44.4% <sup>a</sup>

(Fight Crime Committee Hong Kong Special Administrative Region Government, 2005; 2006; 2007; 2008; 2009; 2010)<sup>a</sup>

Cautioned juveniles may be referred to one or more of the following agencies for appropriate follow-up service (Fight Crime Committee Hong Kong Special Administrative Region Government 2010):

1. NGOs running the Community Support Service Scheme;
2. the Social Welfare Department (SWD); or
3. the Education Bureau (EDB).

Table 5 shows the number of case referrals to different agencies under PSDS in 2010, and Table 6 reviews the number of cases that were referred to CSSS under PSDS from the year 2005 to 2010.

Positive feedbacks towards the services were reported by two systematic evaluation research projects which were conducted by Lo (1997) and Lee (2001). However, the services deliveries for juvenile delinquents have been criticized as being occupied by disciplinary welfare-oriented and traditional court-based approaches which reflect some characteristics of interventions from earlier times (Chui and Lo 2008, Gray 1991, 1994, Lo, *et al.* 2005).

Table 4. Number of case referrals to different agencies under PSDS in 2010.

<b>Name of Scheme/ Agencies</b>	<b>Number of Referrals under PSDS in 2010</b>
Juvenile Protection Section	2 076
Community Support Service Scheme	2 068
SWD	29
EDB	16
<b>Total</b>	<b>4 189</b>

Remarks: (a) A cautioned juvenile offender may be referred to one or more agencies/ scheme.  
 (b) The statistics are based on the actual take-up date of the referrals by the respective agencies/ scheme.

(Fight Crime Committee Hong Kong Special Administrative Region Government, 2005; 2006; 2007; 2008; 2009; 2010)

Table 5. Number of cases referred to CSSS under PSDS from the year 2005 to 2010.

<b>Year<sup>o</sup></b>	<b>Number of Referrals to CSSS under PSDS<sup>o</sup></b>
2010 <sup>o</sup>	2068 <sup>o</sup>
2009 <sup>o</sup>	2491 <sup>o</sup>
2008 <sup>o</sup>	2340 <sup>o</sup>
2007 <sup>o</sup>	2792 <sup>o</sup>
2006 <sup>o</sup>	2435 <sup>o</sup>
2005 <sup>o</sup>	2162 <sup>o</sup>

(Fight Crime Committee Hong Kong Special Administrative Region Government, 2005; 2006; 2007; 2008; 2009; 2010)<sup>o</sup>

With the perceivable needs for holding the juvenile accountable and responsible for their wrongdoing, as well as the assistance and support by several local RJ advocates and scholars, such as K. S. Chu, W. H. Chuk, and Dennis S. W. Wong, some of the NGOs have started to recognize the benefits of adopting RJ elements in their interventions to juvenile offenders. Besides, with reference to the positive practice outcomes of some Western countries, the local practitioners preview some actual benefits of the RJ practices including victim participation, reintegration of young offender and family/community participation (Chu and Lo 2010, Methodist Centre 2011, Youth Enhancement Scheme of the Evangelical Lutheran Church Social Service 2007).

There are currently 2 out of 5 NGOs offering fully or mostly RJ interventions to

cautioned young offenders under the CSSS. Integrated Service Centre for Reconciliation of the Evangelical Lutheran Church Social Service of Hong Kong has piloted and initiated the Post-cautioning Mediation and Reconciliation Project since 1999 and 2005, whereas the Hong Kong Methodist Centre has begun the Project Concord since 2007 (Chu and Lo 2010, Youth Enhancement Scheme of the Evangelical Lutheran Church Social Service 2007).

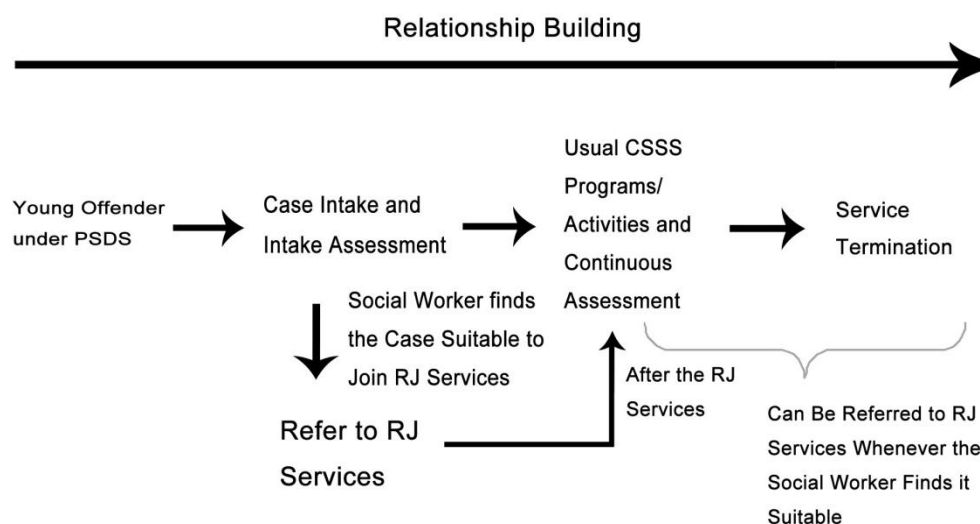


Figure 2. Operational Management for RJ Case Referrals.

Figure 2 illustrates the actual procedure of how a cautioned juvenile moves from the sections of intake to service termination. Both the Reconciliation Project and the Project Concord have a similar process of operational management (W. H. Chuk and H. Y. Lam).

Before the intake of juveniles, social workers from the Evangelical Lutheran Church Social Service of Hong Kong and the Hong Kong Methodist Centre usually meet the young person one by one inside a room in the police station to introduce the CSSS to the young persons and their parent or guardian(s) and request consent. With the agreement of participating in the CSSS, the social workers will collect the juveniles' personal information and interview them with questions on the Intake Assessment Form, which includes some aspects in relation to the young person's family, schooling/employment, peer relationship, behaviour and willingness of harm reparation and dangerous drugs.

Whenever the juveniles show keenness on taking their own responsibility or are eager to repair the harm done, the social workers will always try to provide them the chances to claim their remorse and apologies verbally or literally through restorative services. The VOM Service Diversionary Flow of the Reconciliation Project as well as the revised version of the Diversified Case Management Model of Project Phoenix is attached in the back of this report.

After agreeing to participate in the RJ practice, both the victim and young offender will be contacted by the convenor/mediator. In most of the cases, there will be two convenors/mediators where one of them will be the follow-up case worker of the juvenile. However, it is also important to note that any referral that is not made in the initial phase (i.e. after case open in usual CSSS program), the responsible case worker of the juvenile will not be the convenor/mediator of the case. This practice is

to avoid any impairment of the convenor/mediator's impartiality.

Going through the preconference meetings where all the parties begin to understand more about the rationale of the practice and the rights as well as potential benefits of joining the practice, both the parties will make decision on whether they are going to have a direct or indirect restorative service.

W. H. Chuk believes that it may sometimes be risky for a particular vulnerable party meeting the other parties under a face-to-face situation. In some case, the actual encounter of the parties may traumatize any party or lead to revictimization. Nevertheless, both the Reconciliation Program and Project Concord give preference to direct than indirect RJ practices (K. S. Chu and W. H. Chuk).

The convenor/mediator may recommend there service users to use the indirect restorative approach by writing Restorative Apology Letters or audiotaping his/her reflection on the offence. The victim may then choose to reply the offender through the same ways. Normally, similar to that of a direct restorative practice, an agreement will be reached.

Regarding the satisfaction towards the services, most of the participants in the Post-cautioning Mediation report high satisfaction rates in different aspects, such as "Fair Treatment", "Rights to Listen and be Listened", and "Understand the Other Parties" (Youth Enhancement Scheme of the Evangelical Lutheran Church Social Service 2007), whereas the participants who attend the conference of Project Concord also report some positive feedbacks (Chu and Lo 2010).

With regard to outcome research study of RJ practices as post-PSDS service, both the institutions have attempted to conduct some research in relation to the effectiveness of the service. The Youth Enhancement Scheme of the Evangelical Lutheran Church Social Service (2007) has made an integrated multiple assessment basing on textual analysis of 19 VOM which were conducted during 1st September 2005 to 30th August 2006. Questionnaires were given to the victims and offenders before and after the VOM. Case analysis was used to collect the opinions and feedbacks of all the participants after the VOM. Key findings include 21 out of 39 and 17 out of 39 participants of the VOM express satisfied and strongly satisfied with the "Fair Treatment" in the VOM respectively. For the "Rights to Listen and be Listened", 18 out of 39 and 18 out of 39 participants rated satisfied and strongly satisfied respectively. Lastly, 20 out of 39 and 17 out of 39 participants satisfied and strongly satisfied for "Understand the Motives or Impact on Other Parties" respectively.

Furthermore, within the 19 VOMs, a majority of 17 cases solved conflict with verbal apology while some of the others used apology letter and financial restitution. 36 out of 39 participants were satisfied or strongly satisfied with the "Problem Solving" in VOM. Moreover, most of the participants (33 out of 39) felt less worry for future victimization or relieved after the VOM. More importantly, participants in 8 out of 19 VOMs stated that their relationships were restored, whereas participants from 9 VOMs changed their perceptions towards other parties from negative to positive. None of the participants reported deteriorated relationship with others after the VOM.

Similar positive outcomes can also be found in the book, "From 'Harm' to 'Concord' – Records of Mediation Cases in Project Concord" (Chu and Lo 2010), which recorded some of the valuable experiences during the first three years of the service starting by 2007. Numbers of apology letters from juveniles were attached, and some reflections by the convenors, victims, offenders, their supports and community members were provided to show the effects of conference (Chu and Lo 2010).

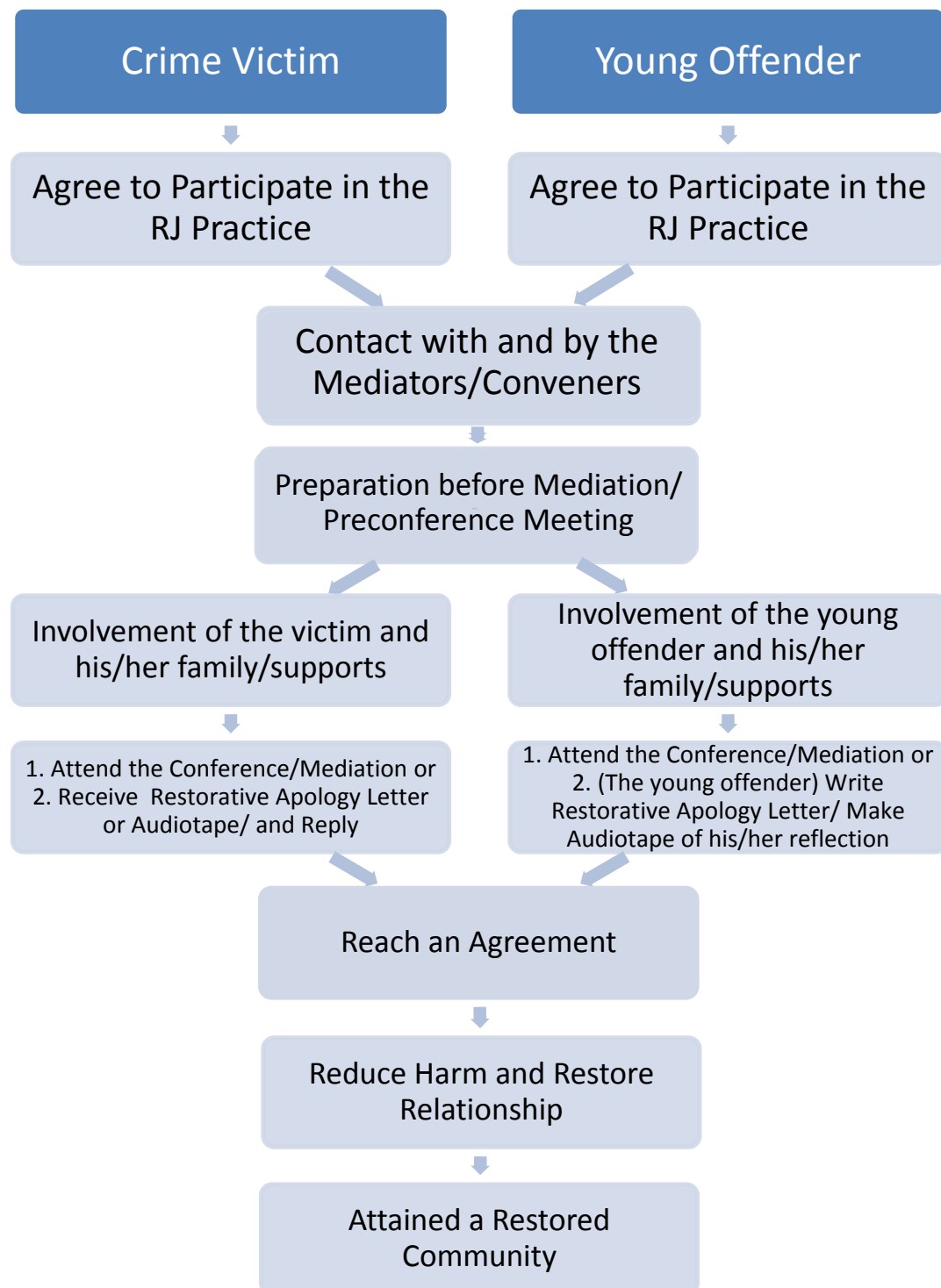


Figure 3. Case Proceeding in Reconciliation Project.

From the words of participants of Project Concord, more understanding of the victims' mind, more knowledge of the offenders' willingness to repair the harm done and more idea of how a rigid 'heart' of the participants may soften via a conference can be achieved. Yan (Chu and Lo 2010), a victim of theft in school, said that "During the conference, I had never expected they will have this degree of remorse and will admit their wrongdoing. The inner conflicts were solved during the conversation."

Many other examples from the book also show that the young offenders were more able to appreciate their criminality, the victims were able to express the impacts of crime, and all the parties might have an end of the matters, experience a restore of relationships and live a new life (Chu and Lo 2010).

### *Domestic Violence*

Based on the existing literature, there is only one NGO, namely Hong Kong Christian Service, which operating the Elder Abuse Reconciliation Service (EARS), trying to adopt the RJ model into an integrated model for solving elderly abuse cases (Chow 2009) (see Figure 4).

Starting by October 2005, EARS combines the idea of Alternative Dispute Resolution with the Adult Protective Service Model, Public Health Model, Domestic Violence Prevention Model and Restorative Justice Model to handle elderly abuse cases upon voluntary application (Chow 2009). A case will begin with a risk assessment via which the case worker will decide whether crisis intervention should be applied and whether the case is suitable for mediation or restorative conference (Chow 2009). A theoretical flow of the Integrated Mediation Intervention Model for Elderly Abuse Case is illustrated in Figure 4.

Sometimes, in view of the power imbalance between elderly and the abuser, individual empowerment would be provided to the more 'inferior' party before moving to further interventions. For examples, the worker can teach the elderly to protect themselves and avoid neutralization for the experience of being abused (Chow 2009).

Conciliation and reparation are attempted through the examinations of the need/want/current difficulties of the abuser; the examination of the views of the abuser; the learning of unimaginable impacts of abuse; the rethinking of constructing healthy or non-abusive elements in relationship with others (Chow 2009). Finally, both the abuser and elderly will be encouraged to join a restorative conference (Chow 2009).

### *School*

Dr. Dennis S. W. Wong (2005) as a professor in Criminology in the City University of Hong Kong and the Chairman of Center for Restoration of Human Relationships has been advocating juvenile justice reform that incorporates with RJ philosophies and practices since 1996. Wong has conducted several important research about the effectiveness of restorative projects in tackling school bullying and set up the Centre for the Restoration of Human Relationships (-the Center) which is the first center for restoration in Hong Kong providing professional support for restorative conference in schools and educational establishments.

Established since August 2000, the Centre has been actively provided RJ practices in schools and trained many teachers and social workers to resolve conflicts (Wong 2008). Upon request, the Center will send qualified mediator/facilitator to the schools for doing 'preconference meeting' and the restorative conference.

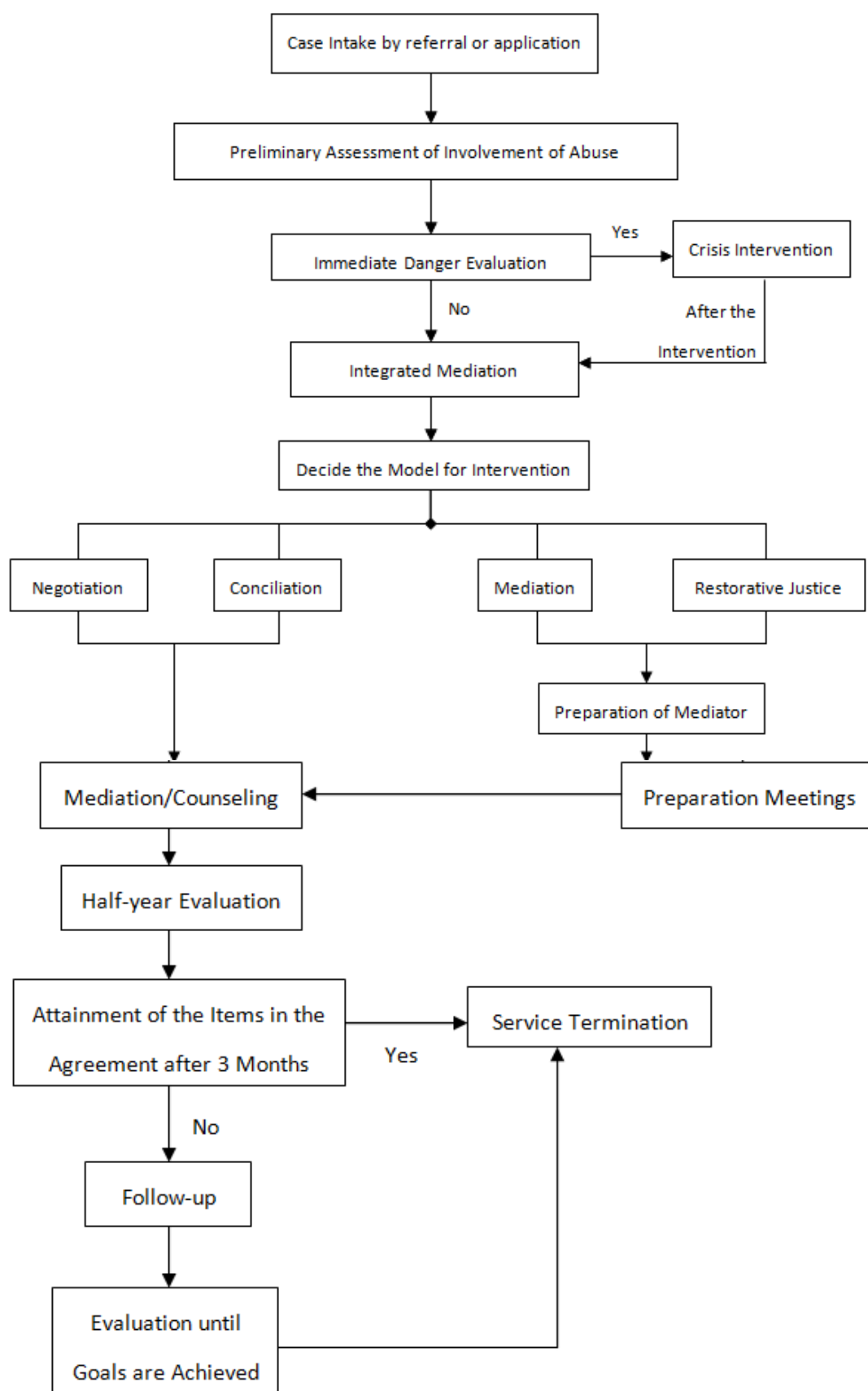


Figure 4. Case Flow of the Integrated Mediation Intervention Model for Elderly Abuse Case.

The pilot anti-bullying program—whole-school restorative approach as well as



its research were first conducted in a secondary school in Hong Kong from 2000 to 2001 (Wong and Lee 2005). Moreover, Wong and his colleagues (Cheng, *et al.* 2007) conducted a longitudinal study from 2004 to 2006 investigating the effectiveness of Restorative Whole-School Approach (RWSA) in handling school bullying in Hong Kong. The assessments which based on field observation documentary analysis, focus group interview, and objective assessments were used to study the four schools including a school with full implementation of the RWSA, two with partial implementation of RWSA and one (control group) did not implement RWSA. The findings suggest that RWSA program significantly reduces the number of bullying behaviour and enhances the student's self-esteem.

The Evangelical Lutheran Church Social Service has offered some peer restorative training to student leaders in school by the Campus Integration Scheme. Furthermore, the Hong Kong Methodist Centre has also implemented some RJ elements in its Concord Campus Scheme providing workshop for teachers, seminars and promotion of social restorative conference since 2008.

### ***Summary***

To conclude, a dependent or additional model of restorative practice is currently provided by two NGOs for cautioned juveniles under PSDS. The development of RJ as an intervention in the field of domestic violence is still in an explorative stage. For the implementation of RJ in school bullying cases, many credits will be given to the Centre for the Restoration of Human Relationships and Dennis S. W. Wong's impetus to the industry. Overall, it is proper to comment that RJ is rapidly developing in Hong Kong but yet, outside the mainstream of criminal justice system and lack of support from the government.

## **The Differences between the Scope of Restorative Service Provision in Hong Kong and Queensland**

### ***The Scope of Restorative Services***

Table 7 has been divided into two main columns with regard to the targeted places with eight sub-columns, which are the RJ services providers or administrators that have been introduced in previous chapters. Several aspects from the comparison between the dimension of RJ programs in Queensland and Hong Kong deserve our attentions.

First, it is noteworthy that all the RJ services in Queensland are administrated under the government, while the RJ projects that came to be noticed by the researchers in Hong Kong are all supported by NGOs. It obviously reflects the prevalence and acceptance of RJ philosophies among the governors in both places. Since the Queensland Government has taken an active role in administrating RJ services, RJ practitioners are professionally trained, then supported by and registered from the official department. On the other hand, trainings of convenor/mediator in Hong Kong are mainly based on cooperation with some well established and experienced institutions from other countries, and financial supports for RJ practitioners in Hong Kong are mainly from some project-based or yearly funding.

Table 6. The Scope of Restorative Services in Hong Kong and Queensland.

Place/ Area	Queensland (Qld)				Hong Kong (HK)			
	Dept. of Justice (1997); Families, Youth and Community Care Qld (Since 1998)	Police and Family, Youth and Community Care Qld	Family, Youth and Community Care Qld	Education Dept.	Evangelical Lutheran Church Social Service of HK	Hong Kong Methodist Centre	Hong Kong Christian Service	Centre for the Restoration of Human Relationships
<b>Juvenile (Aged under 17 in Qld; and under 18 in HK)</b>	Community Conferencing Scheme (Family Group Conference) and Youth Justice Conference was piloted in 1997 and has been initiated since 2003 respectively; Covered Brisbane metro area, Southeast District and Cairns				Post-cautioning Mediation and Reconciliation Project was piloted and has been initiated for cautioned juveniles under PSDS in 1999 and since 2005 respectively; Covers newly developed residential areas mainly in New Territories	Project Concord for cautioned juveniles under PSDS since 2007; Covers the entire Hong Kong Island as well as the outlying islands (except Tung Chung)		
<b>Adult</b>		Pilot Scheme of Victim Offender Mediation for adult in 1990s; Adult conferencing since 1997						
<b>Family</b>			Family Group Meeting applies the RJ principles in dealing the family issue		Harmonious Restoration Workshop: Not specific in the area of domestic violence but general restorative		Elder Abuse Reconciliation Service has adopted the RJ philosophies into an integrated	

			since 2006 <sup>4</sup>		training for women <sup>4</sup>		model for solving elderly abuse cases since 2005 <sup>4</sup>	
<b>School</b> <sup>4</sup>	<sup>4</sup>	<sup>4</sup>	<sup>4</sup>	Two pilot schemes bring the conferencing program in school settings since 1994 <sup>4</sup>	Campus Integration Scheme offers peer restorative training to student leaders in school <sup>4</sup>	Concord Campus Scheme provides workshop for teachers; seminar; and promotion of social restorative conference since 2008 <sup>4</sup>	<sup>4</sup>	Restorative Whole-School Approach (RWSA) for handling school bullying since 2000 <sup>4</sup>

Second and more important is that although Hong Kong seems to have similar scope of restorative service provision with Queensland, it is an understanding regardless of the depth of services in terms of its ability to provide true alternative or ‘real justice’ as diversion from traditional criminal proceeding. Insofar as Hong Kong has covered three out of four areas, RJ practitioners in Hong Kong are not permitted to intervene the criminal proceeding, and services for domestic violence are underdeveloped. Regarding RJ service for adult, it is undeveloped in Hong Kong and underdeveloped in Queensland. One of the reasons for the last phenomena is that RJ practices are perceived to be too lenient for adult offenders.

Furthermore, it is noted that the RJ services for juveniles have only covered some sectors in the New Territories, Hong Kong Island and outlying islands (except Tung Chung). Contrasting with the RJ programs for juveniles in Hong Kong, Queensland Government provides service covering most part of the region.

Regards to the restorative service provision for family, Queensland has a better developed system than Hong Kong. Family Group Meeting which applies the RJ principles in dealing the family issue was introduced in Queensland in 2006. With a much limited scale, the Hong Kong Christian Service covers only the elderly abuse, whereas the ELCSS-HK provides general restorative training for women.

Moreover, Queensland as a pioneering jurisdiction adopting RJ practices in the mainstream of criminal justice system has a relatively mature system as well as service provision for the most common RJ targets—juvenile offenders, nevertheless, its development on other areas, such as school, is still in a piloting stage. Hong Kong as a relatively late developing country which does not have a unified or governmentally centralized provision, however, has more flexibility merely on the implementation of RJ outside the mainstream of criminal justice system.

#### *Self-rated goal attainment*

Regarding the self-rated goal attainment of the targeted organization, they all reported an above-average level of goal attainment (1 is the lowest level of goal attainment while 5 is the highest level of goal attainment) (see Table 8).

#### *The involvement of impartial third party*

##### *a) Hong Kong*

Hong Kong practitioners rated level “5” in this area. According to K. S. Chu, the quality of convenor has been valued and upheld in the Methodist Centre. Professional training for convenors allows convenors to share their experiences in conducting conferences. Besides, conference is co-facilitated by two convenors allowing the convenors to support each other as a team. S. T. Lee also mentions that when the parents realized that the conflict resolution process would be conducted by a professional and impartial third party, they would be more likely to join the restorative conference. It is because the participation of an impartial third party in the RJ process implies that the conflict will be dealt in a fair way. In some incidents, if the conference is directed by general teacher from school, the level of acceptance will be decreased, since the staffs from school is perceived to be biased, such perception held by the parents may be that the teacher is trying to cover the incident for the sake of school’s reputation (S. T. Lee).

Table 7. The comparison of self-rated of goal attainment in Hong Kong and Queensland.

Place \ Goal	Hong Kong			Queensland
	Hong Kong Methodist Centre	Evangelical Lutheran Church Social Service of HK	Centre for the Restoration of Human Relationships	Experienced Mediator from Queensland
The Involvement of Impartial Third Party	5	5	5	5
Encounter	5	5	5	3-4
Stakeholder Involvement	5	5	4	4
Inclusion	5	5	4	4-5
Accountability and Reparation	5	5	4	4/3
Reintegration	5	4	4	4
Reduction of Reoffending	5	3-4	4-5	-

#### b) *Queensland*

The conference convenor training in Queensland is not carried out in a perfunctory way. People who want to be a convenor must go through an interview and a five-day training program. The selection and training process aims to ensure the quality of the practitioners in Queensland (Experienced convenor from Queensland).

#### *Encounter, Stakeholder Involvement, and Inclusion*

##### a) *Hong Kong*

The Hong Kong practitioners rated “4” or “5” in these aspects. K. S. Chu pointed out that, the majority of victims can be successfully reached through the offenders or the police officers in the Hong Kong Methodist Centre. It is found that as long as the victims are reached, the majority of them would like to participate in the conference, because the convenors would demonstrate their willingness to listen to the victims in the beginning. Similarly, the Centre for the Restoration of Human Relationships valued on the preparation of the conference in the pre-conference stage (S. T. Lee). Conveners actively show their care to the victim and stressed that the conference is grounded with firm rule as a fair mean to solve the conflict. Sometimes, school will take the role to encourage victim participation in the conference.

According to W. H. Chuk and K. S. Chu, apart from face-to-face encounter, the Hong Kong Methodist Centre and the Evangelical Lutheran Church Social Service of HK provide in-direct encounter for victim and offender, for instance, letter

communication and audiotaped communication.

S. T. Lee expressed that centre for the Restoration of Human Relationships is being requested by school to hold conference in response to conflict, the request has indirectly reflected the schools' understanding and trust in the philosophy of RJ, and it also means that the school representatives are willing to join the conference. In addition to school representatives, family members and students are likely to take part in the conference. Different parties in the conference have the opportunities to take part in the resolution. For example, in some cases, parents suggest that the offenders have to maintain good behaviour, and the school will usually agree to be the supervisor of the offenders in school.

#### *b) Queensland*

Victim attendance in the conference is a long-time challenge for implementing RJ in Queensland. Victim participation in the conference is voluntary. Sometimes victim fails to see the benefits of RJ, the conference would be lacking of the participation of victim. Without the participation of victim in the conference, the achievement of encounter is impaired (Experienced convenor from Queensland). Although the situation of victim participation in Queensland may be unsatisfactory, the importance of the victim is stressed in the conference. Such as, firemen are invited to the conference to talk about the impacts of incident of arson. Similarly, in traffic offense cases, victims of car accident will be invited to join the conference in order to share how they were affected by the car accident. Furthermore, people in Queensland are willing to go the conference as the community members. The types of offense, however, may affect the chance of participation of the community. For example, people are less likely to join the conference if it is an assault case (Experienced convenor from Queensland).

### *Accountability and Reparation*

#### *a) Hong Kong*

The attainment levels of Accountability and Reparation are "4" and "5" respectively. According to H. Y. Lam after the offender's intake process, mediators from Evangelical Lutheran Church Social Service of HK conduct crime review for the offender by asking the "three golden questions", which enhance the offender's self reflection. These questions help the offender to reflect their behaviour and account for their responsibility. As for the Centre for the Restoration of Human Relationships, S. T. Lee pointed out some cases that the goals cannot be achieved in the conference. In some cases the enmity had accumulated between the victim and offender for a period of time, and it makes the mediation hard to achieve accountability. For example, in a school bullying case, numbers of offenders bullied the victim who was afflicted with Asperger syndrome, and the victims expressed his/her feeling towards the incidents during the conference. However, not all the offenders admitted their fault, and some of them insist that school should not recruit this kind of students. Hence, at the end of the conference, not all the offenders reach an agreement with the victim.

#### *b) Queensland*

The capability of conference in Queensland in achieving accountability was rated at level "4" by the interviewee. The convenor described the conference process begins with an introduction by convenors and the reading of the legal code about the offense which followed by asking the offender whether he/she admit the offense by a police

officer. Secondly, the offender is required to tell the details of the offense, which also help to attain the self reflection and further accountability of one's action. The interviewee also pointed out that the achievement of reparation is hard, due to the lack of victim participation in the conference. It is noted that the Queensland system abandoned the requirement of victim consent in 2003 in the amendments to the *Youth Justice Act 1992* (Department of Communities Queensland Government 2012).

### *Reintegration*

#### *a) Hong Kong*

For the goal of reintegration, it is rated as “4” or “5” by Hong Kong practitioners. Through the conduction of conference in Hong Kong Methodist Centre, the relationship between different parties is restored, after the conference, the offender may feel being accepted and the victim may feel safer (K. S. Chu). Moreover, H.Y. Lam from the Evangelical Lutheran Church Social Service of HK said that the cases of shop theft reflect the reintegration nature of RJ. In some shop theft cases, the offender was not willing to enter the shop which he/she committed the crime. However, after the conference, the shopkeeper showed his welcome to the offender to go to his shop again. This case reflects obvious reintegration between the victim and offender. Last but not least, S. T. Lee from the Centre for the Restoration of Human Relationships observes a gender difference in relationship reconciliation. After a conference, many of the relationships between victims and offenders will not deteriorate, but in some cases, the relationships cannot return or restore to the original stage. Girls, especially, are more complicated and deeper than the boys in their affection and feelings.

### *The Culture Related to the Development of RJ*

Table 8. The Comparison of the culture related to the development of RJ in Hong Kong and Queensland.

Hong Kong Methodist Centre <sup>o</sup>	Evangelical Lutheran Church Social Service – Hong Kong <sup>o</sup>	Centre for the Restoration of Human Relationships <sup>o</sup>	Experienced Convenor from Queensland <sup>o</sup>
– <sup>o</sup>	– <sup>o</sup>	Proneness to Retributive system <sup>o</sup>	Proneness to Retributive system <sup>o</sup>
Without sense of community <sup>o</sup>	– <sup>o</sup>	– <sup>o</sup>	With sense of community <sup>o</sup>
– <sup>o</sup>	– <sup>o</sup>	– <sup>o</sup>	Respect of the elderly <sup>o</sup>
– <sup>o</sup>	Fail to balance the power between parties <sup>o</sup>	– <sup>o</sup>	– <sup>o</sup>
No customary of expression <sup>o</sup>	– <sup>o</sup>	– <sup>o</sup>	– <sup>o</sup>

The following discussion will be based on the information synthesized in Table 9.

### *Proneness to the Retributive System*

The practitioners from Queensland and Centre for the Restoration of Human Relationships expressed the tension between service provision and conflicting culture which possessed by the public favouring to the retributive system than the restorative justice system.

The convenor from Queensland indicated that some people may perceive RJ as a soft option, and may not be able to see the benefit of RJ. Similarly, S. T. Lee pointed out that many schools have their routine guidelines to deal with conflicts among students. Hence, RJ measures may only be additional to their “discipline”, and the RJ service would not achieve its diversionary ideal.

Another possible reason for people to prefer the retributive system is that they do not want to take risk in trying the new alternatives. People tend to follow ‘tradition’ even though they do not resist the philosophy of RJ. The culture that tends to the retributive system has led to some challenges of RJ implementation in Queensland and Hong Kong.

### *Sense of Community*

Queensland and Hong Kong are different in this culture, and citizens of both places have different sense of community. In Queensland, many people would like to participate in the conference except in assault cases, and it is relatively easy to have the ‘community’ being involved in the conference (Experienced convenor from Queensland). Oppositely, the sense of community is relatively weak in the Hong Kong society. According to K. S. Chu, Hong Kong citizens do not have a precise and concrete sense of community. However, a case happened in Stanley Main Street was an exception which worth attention. That area is close to a hamlet where dwellers living there have a strong sense of community. According to K. S. Chu, numbers of neighbor were willing to join the conference when they knew that the young person had committed an offence. The lack of sense of community has also impaired the RJ implementation of Hong Kong in other ways.

### *Respect of the elderly*

In Queensland, the culture of respecting elderly has been included in the conferencing procedure. In order to show respect to the old people, the convenors will let the elder person to be the first to express his/her opinion (Experienced convenor from Queensland).

### *Fail to balance the power between parties*

H. Y. Lam observes that participants in the conference may not have an equal foot. The power relationship between the victim and offender would affect the fairness of the conference. For instance, H. Y. Lam states that conflicts between father and son or teacher and student are difficult to solve. The unbalanced power relationship between parties hinders the achievement of some core goals of RJ practice.

### *No customary of expression*

The convenors in Methodist Center observed that many people in Hong Kong do not used to express their opinions or disclose themselves when comparing to people in Australia (K. S. Chu). To solve this problem, the mediators in centre put more effort in the preconference preparation.

## **The Differences of Relationships between the Restorative Programs and**



### **Criminal Justice System in Hong Kong and Queensland**

The relationships between the restorative programs and criminal justice system in the targeted jurisdictions are compared, and their adopted models are listed in the table below (see Table 10). In general, the Hong Kong RJ practices are mainly sectorized for cautioned juveniles with an additional model, while the Queensland Government has adopted a hybrid model providing restorative services to juveniles and adult with a safety-net and hybrid model respectively.

NGOs in Hong Kong provide referral option with restorative service after the end of the criminal proceeding by PSDS. RJ programs in Hong Kong can only adopt an additional model because the Hong Kong SAR Government does not see the necessity for implementing RJ. Thus, the extension of service is restricted and limited to a voluntary-based and marginalized provision in the outermost part of the criminal justice system.

In Queensland, the orientation of models is different according to the offenders' age. Juvenile offenders are given the priority to be diverted into RJ practice and referred out from the proceedings by police. The key element of safety-net model is demonstrated by the requirement of the Act that the administrator should give preference to RJ referral before evaluating the appropriateness of other interventions (Strang 2001). With regard to adult offenders, the age of offender was shown to have a significant effect on the tendency to be referred to restorative service. Research show that some 48 percent of the total adult referrals have been occupied by adult offenders who were 17 year olds since the program began in 1997 (Strang 2001).

Lastly, although the restorative service in Hong Kong is not able to divert the young offenders from the traditional criminal proceedings at the moment, Hong Kong RJ practitioners perceive a great value to persevere unremittingly with the practice, and they are hoping for a judicial reform and brighter future for RJ development in Hong Kong.

Table 9. The Relationships between the Restorative Programs and Criminal Justice System in Hong Kong and Queensland.

Place/ Area for Comparison	Queensland	Hong Kong
Adopted Model	Hybrid model (Safety-net/ relatively independent model for Juvenile Offenders; Hybrid model for Adult)	Dependent or Additional Model for cautioned Juveniles under PSDS

### **The Differences between the Training Programs for Restorative Justice Practitioner in Hong Kong and Queensland**

For the training program of Youth Justice Conferencing convenor in Queensland, the Queensland Government's Department of Communities has specific unit offering training with an accreditation process in which an experienced convenor mentors the mentee until assessment of the knowledge and skills have been completed (see Table 11).

Table 10. The Training Programs for Restorative Justice Practitioner in Hong Kong and Queensland.

Area \ Place	Queensland	Hong Kong		
		Evangelical Lutheran Church Social Service - Hong Kong	Methodist Centre	Centre for the Restoration of Human Relationships
Administrator(s)	Youth Justice Training Unit, Department of Communities (Only for training of youth justice conferencing convenor)	ELCHK-Youth Enhancement Scheme in cooperation with Center for Restorative Justice and Peacemaking, the University of Minnesota	Hong Kong Methodist Centre in cooperation with Queensland Government's Department of Communities	Centre for the Restoration of Human Relationships in cooperation with the International Institute for Restorative Practices (IIRP)
Name of Program	Introductory Youth Justice Conferencing Convenor Training Program	Restorative Dialogue: Victim-Offender Mediation (Certificate Course)	Professional Mediator Certificate Training Course; Advance Mediation Skills Training; Pre-conferencing	Restorative Mediation Convenor Certification Course
Training Manual	The 'Youth Justice Conferencing Queensland - Restorative Justice In Practice' Manual	The 'Theory, Practice and Sharing on the Victim-Offender Mediation Services Manual	The 'Youth Justice Conferencing Queensland- Restorative Justice In Practice' Manual	Adopted from 'Conferencing Handbook: The New Real Justice Training Manual'
Duration of Trainings	Five-day training program	24 hour training program	26 hours training program; eight hours advance training program	13 hours training program (Two-day training)

Follow-up Accreditation Process	Mentoring by an experienced convenor until assessment of the knowledge and skills have been completed	Knowledge and skills assessed by experienced mediator from ELCHK- Youth Enhancement Scheme; and prospective mediator has to volunteer to complete the Victim Offender Mediation apprenticeship and mediate a minimum of two cases in one year	Knowledge and skills are assessed by assessors from the Queensland Government in a role playing examination	Knowledge and skills are assessed by the trainers who are approved convenors of IIRP
Registration and Recognition	Officially register to the government, Dept. of Communities	No official registration will be made to the government	No official registration will be made to the government	No official registration will be made to the government
Training for Other Targets	Collegial connection is established with Hong Kong Methodist Centre in 2007; Representatives travel to Hong Kong to deliver training seminars and assess convenor candidates since 2008		Shanghai (East China University of Science and Technology; Children's Welfare Institute); and Wenzhou	Macau in 2007; Taiwan (National Taipei University) in 2009

The training manual used in the five-day training program is the 'Youth Justice Conferencing Queensland - Restorative Justice in Practice' Manual. The Youth Justice Unit has been sending trainers to the Hong Kong Methodist Centre since 2008 after the establishment of partnership between the two institutions in 2007.

K. M. Lee and K. S. Chu were invited to receive training and afterwards, conduct formal Mediation and Youth Justice Conferencing Training in Brisbane, Australia with the Queensland Government. The Australian Conferencing wisdoms and the experience of co-training in Australia have been sublimated into the Hong Kong localized context for training and practice development (Methodist Centre 2011). The rights of using the 'Youth Justice Conferencing Queensland- Restorative

Justice in Practice' Manuel was given by the Queensland government. A training program specifies for pre-conference meeting is also provided, and the teachers for this advance course are trainers from the Youth Justice Training Unit, Department of Communities, Queensland Government (see Table 11). Besides providing trainings in Hong Kong, the Methodist Center had been to Shanghai and Wenzhou to conduct seminars and share the experience of RJ implementation.

Regards to the training program for mediator in the Reconciliation Project of Evangelical Lutheran Church Social Service-Hong Kong, cooperation has been made with the Center for Restorative Justice and Peacemaking, the University of Minnesota. After receiving the training, the candidates are expected to join the Victim Offender Mediation apprenticeship and mediate at least two cases in one year (see Table 11).

Lastly, the Centre for Restoration of Human Relationships (2010) has been cooperating with the International Institute for Restorative Practices (IIRP) and offering restorative mediation training with training manual by IIRP. The conference facilitator's script model and other key techniques for the operation of VOM will be taught during the training program (see Table 11). Moreover, the training team had been to Macau and the National Taipei University to conduct the training in 2007 and 2009 respectively (Centre for Restoration of Human Relationships 2010).

To sum up, the diversity of training programs by different institutions has reflected the rapid development of RJ philosophies in Hong Kong. For the three interviewed NGOs, all of them have formed partnerships with experienced training institutions from foreign countries. Many of them have adopted the training manual and optimized the training with their local experiences. The phenomenon that some of the institutions started to develop trainings in Southeast Asia may be attributed to the limitation of RJ development in current Hong Kong system.

### **Implication**

In this section, several practical implications will be introduced basing on all the examination and comparison of the information that we have discussed before. The implications are divided into two schedules. The short-term measures are suggested for tackling some immediate difficulties that faced by the institutions. In the long run, in order to better respond to the global tide of justice reinvestment and advocacy by the United Nations (2006), the inclusion of RJ measures in the Hong Kong judicial system is suggested as a long-term goal.

#### ***Short term – Immediate Practical Implication***

##### *Challenges of the implementation of RJ in Queensland and Hong Kong*

##### *Limited or Biased Public Understanding on RJ*

The practitioners of ELCHK, Integrated Service Centre for Reconciliation have faced the challenge due to limited understanding on RJ in general public. H. Y. Lam indicates that many parents do not understand the philosophies of RJ. For example, it is sometimes difficult to explain the benefits of RJ to victims as well as the victims' parents, since some of them may hold the view that they do not need the service.

Also, some parents may think that it was too late to intervene, when they think that the measures should be placed before the PSDS. However, H. Y. Lam believes that the reconciliation between the victim and the offender as well as the understanding of the how it can positively affect the stakeholders should be stressed (H. Y. Lam).

Table 11. The comparison between challenges raised by Queensland and Hong Kong RJ Practitioners.

Methodist Centre	ELCHK, Integrated Service Centre for Reconciliation	Centre for the Restoration of Human Relationships	Experienced Convenor from Queensland
-	Limited or Biased Public Understanding on RJ	-	-
Culture Hindering Stakeholder Involvement	-	Culture Hindering Stakeholder Involvement	Culture Hindering Stakeholder Involvement
-	-	Lack of Resources	-
-	Fail in Reaching the Crime Victim	-	-
-	Technical Problem for Inexperienced School Teacher Practitioner	-	-

#### *Culture Hindering Stakeholder Involvement*

The challenge for stakeholder involvement can mainly be attributed to the culture which prone to retributive system. The same issue was raised by interviewees in both Queensland and Hong Kong, especially, the victim participation. One of the difficulties encountered by the Project Concord is that some victims were not willing to join the conference since they see RJ as unnecessary (K. S. Chu). In Queensland, some victims also tended to reject the conference as they could not see the benefits of RJ and thought that RJ is a soft option (Experienced convenor from Queensland)

Apart from victim participation, some teachers in Hong Kong also believe that the original system is successful in dealing with conflicts in school. S. T. Lee states that teachers who choose not to take part in the conference because they do not think RJ is effective.

In addition, according to K. H. Leung, a negligible numbers of teacher give unsupportive feedbacks to the RJ training program offered by the Centre for the Restoration of Human Relationships. They do not agree with the RJ philosophies and prefer the traditional way to deal with students' behaviour problems.

#### *Lack of Resources*

One of the challenges faced by Centre for the Restoration of Human Relationships is the resources problem. S. T. Lee points out that their staffs have to put efforts in

finding and applying sponsorships, and the instability or competition of funding have led to stress and, more importantly, demand of time.

#### *Fail in Reaching the Crime Victim*

The challenge of locating the victim is caused by the current lack of a transmission system which can connect the service providers and crime victims. In some cases, the inaccessible information of victims hinders the NGOs inviting the victims. As an example, an old lady was robbed by a young person who was being cautioned and would like to make amend to what he did, however, the lady who was just a passerby could not be contacted. (H. Y. Lam). In order to gain better access to the crime victims, the Methodist Centre has been working to build up connections or, more ideally, partnerships with the constabularies (K. S. Chu).

#### *Technical Problem for Inexperienced School Teacher Practitioner*

In the school context, some teachers, who had some general ideas about RJ but had not received any proper restorative conference/mediation training before, may not possess enough skills and knowledge to conduct a conference/mediation. Hence, at any stage of the process, the teacher might make mistakes, such as forced participation of the parties and fail demonstration of impartiality as third party. These mistakes may deteriorate the situation and impaired the stakeholders' impression about "RJ" so that the victim may be unwilling to participate in the conference/mediation next time even it may be conducted by professionals or different people.

#### *Immediate actions for improvements of service provision according to the challenges*

Table 12. The Comparison between actions for improvement of current service provision raised by Queensland and Hong Kong practitioners.

Methodist Centre	ELCHK, Integrated Service Centre for Reconciliation	Centre for the Restoration of Human Relationships	Experienced Mediator from Queensland
Staff training	Staff training	-	Staff training
partner ship	-		-
Research support	-	Research support	-
-	-	Backup service for trainee	-
-	-	Promotion of RJ	-

Our interviewees have pointed out several directions for improving the service provision by their organizations. Firstly, they treat the quality and competency of the convenors as essential. Many of them stressed the importance of future and staff



training (Experienced convenor from Queensland, H. Y. Lam, K. S. Chu). Furthermore, the sharing of experience or informal research study may not be convincing enough to prove the effectiveness of the RJ practice. Thus, K. S. Chu and S. T. Lee also state that more scientific and formal research can be done in the future assessing the outcome of RJ practices in the Methodist Centre and Centre for the Restoration of Human Relationships.

Besides, the Methodist Centre would like to build partnership with the police force and school (see Table 13). Since their regular involvement in the conference allows the offender to know the opinions of the community or school with regard to their behaviour. With the partnership with the police, hopefully, the convenors can meet the victim at the police centre and have the opportunity to introduce the RJ service to them directly (K. S. Chu).

Lastly, the Centre for the Restoration of Human Relationships would like to provide more supports and backup services to teachers after the training. S. T. Lee points out that the implementation of RJ in school which was highly depending on a few numbers of trained teachers in a school has restricted the promotion of RJ in school context. S. T. Lee suggests that the promotion of RJ should focus not only in school but also the general public, and the promotion should be forward looking.

### ***Long-term – Continuous Practical Implication***

#### ***Judicial Reform (Diversion)***

A lot of practitioners and scholars have vigorously promoted the notion of restorative justice to the Legislative Council asking for a judicial reform (Panel on Administration of Justice and Legal Services 2007, Lo, *et al.* 2002, 2006). Lo, *et al.* (2003) have proposed a model of RJ referral with two referrals which are the pre-charge diversion and pre-sentence diversion for the Hong Kong system (see Figure 5). Many of the proposals are about the adoption of RJ in the mainstream of criminal justice system, and the clients are mainly juveniles (Lo, *et al.* 2006).

With reference to Lo, Wong and Maxwell's (2003) proposal, the Queensland system as well as our research findings, our researchers have outlined some diversionary measures which aim to limit the extent of the traditional retributive intrusion in offenders' lives, while, providing more rights to the other stakeholders and utilizing the ready resources in the community (see Figure 5). The proposed diversionary measures, Restorative Diversion for Juvenile offender (Safety-net Model), include four types of referral which are the PSDS referral, the indefinite referral, the prior-to-sentence referral and the custody referral (see Figure 6).

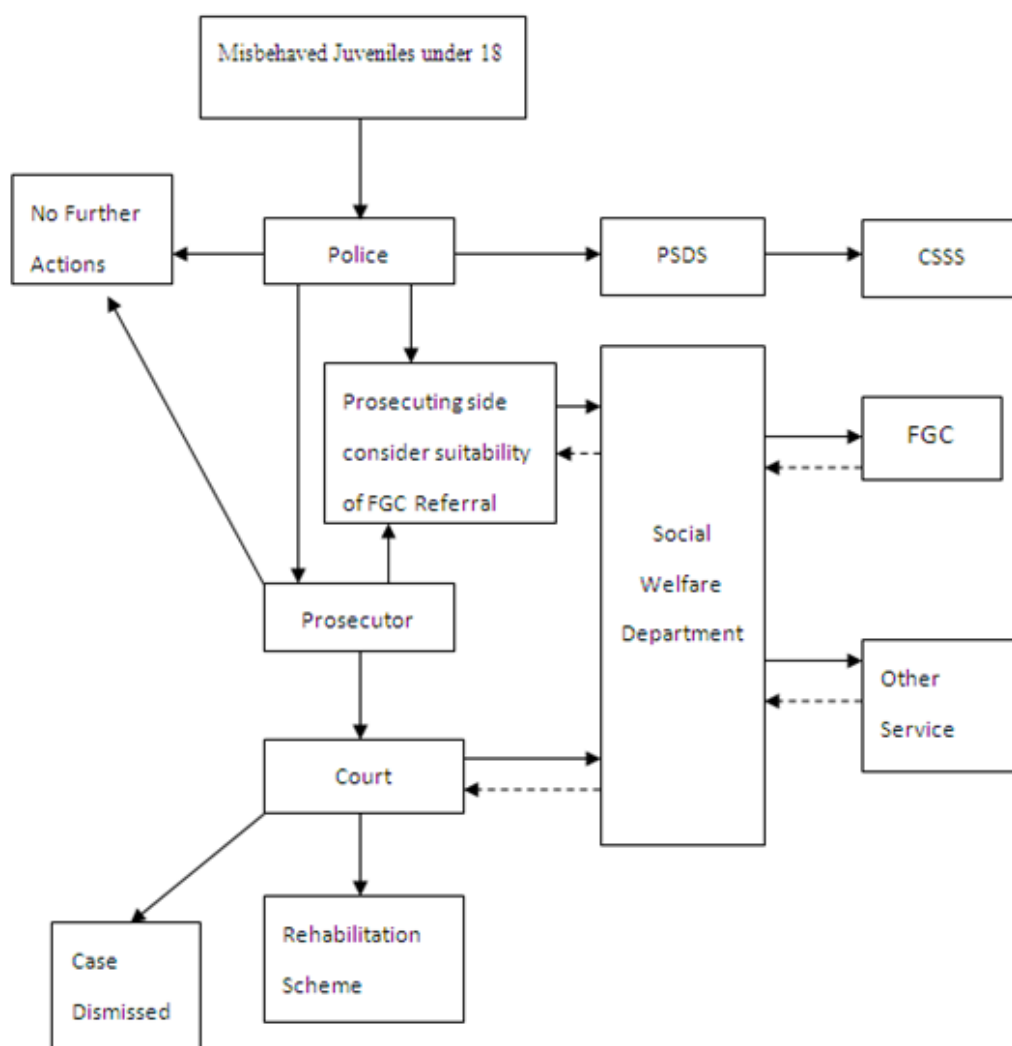


Figure 5. Lo, *et al.* (2003) Proposed System for Youth Criminal Justice Proceedings.

Firstly, PSDS referral, which is an independent RJ provision offering real alternative for criminal litigation, consisted with two facets implies an extension of the police discretionary power. Police's discretion is no longer limited to the delivery of caution or referral for court proceeding. Referrals under this category can be a direct referral or a post-caution referral. A juvenile offender arrested with sufficient evidence to prove guilty of an offence can be referred to receive restorative service directly. Similar to the Queensland system, police officers must consider referring the case to a RJ practice after the decision of caution is not appropriate for the juvenile.

In a practical level, the RJ measures can be provided by some government's approved social institutions, which possess the experience to offer restorative service to juveniles. Those institutions may be the Evangelical Lutheran Church Social Service-Hong Kong or the Methodist Centre, which, at the time of judicial reform, have been operating RJ project for long enough to demonstrate some convincing competencies as a well established restorative service provider in Hong Kong. While preference should be going to direct restorative practices, such as VOM or FGC, RJ measures under PSDS referral can be indirect, i.e. using Restorative Apology Letter.



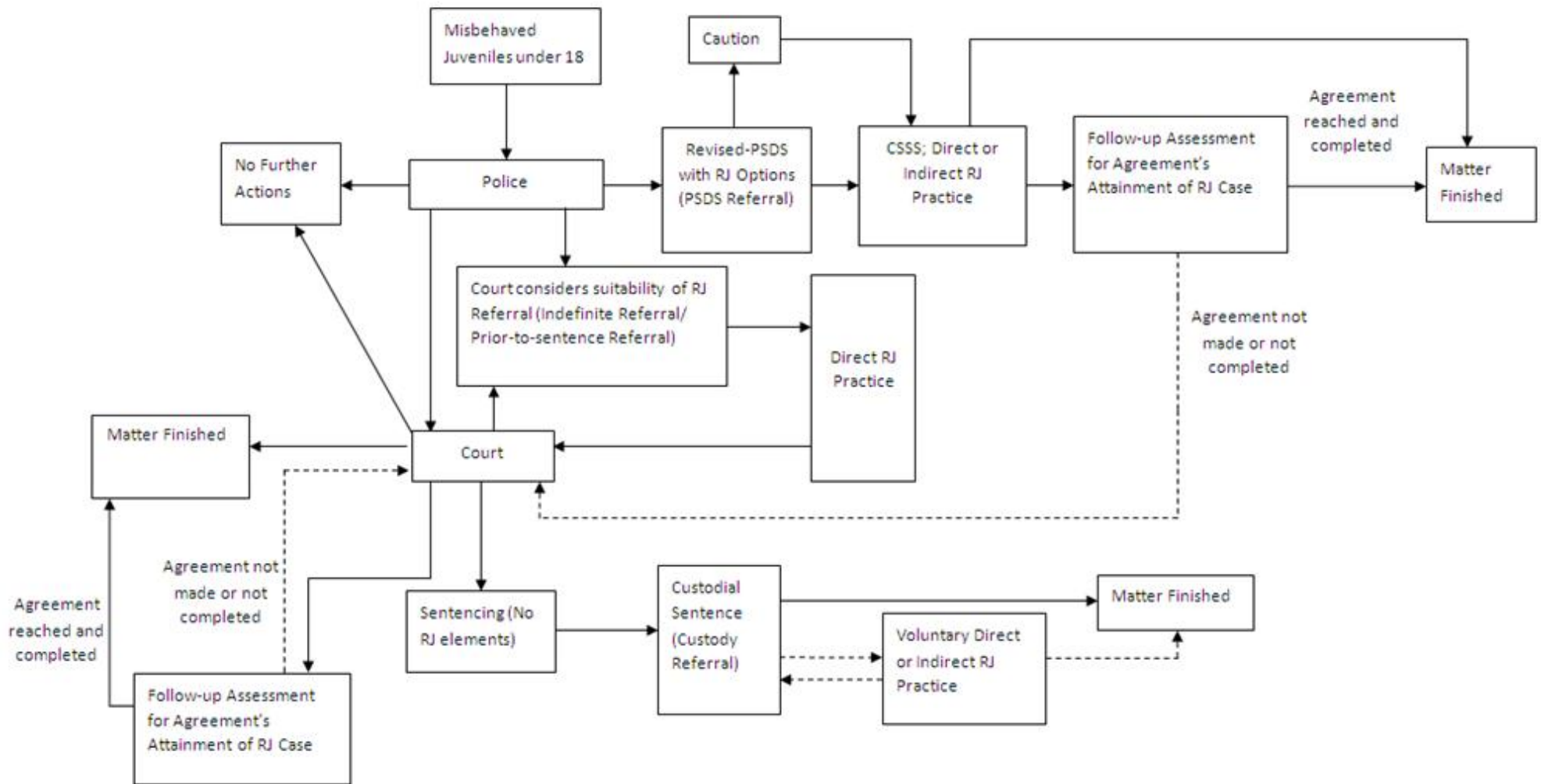


Figure 6. Restorative Diversion for Juvenile offender (Safety-net Model).

Secondly, the indefinite referral can be arranged by a court to divert case away from the traditional process. As a relatively independent RJ measures, the restorative program serves as an end of the criminal justice process. A successful accomplishment, for example, reaching a workable and mutually acceptable agreement in a VOM or FGC, can be the ultimate outcome of the entire process. The offender will only be transferred back to the traditional process if he fails to reach an agreement during the restorative practice or fails to work according to the agreement. In this stage, referral is required to conduct only direct RJ practices, such as VOM and FGC.

Thirdly, the prior-to-sentence referral provides an opportunity of encounter during any stage of the regular criminal justice procedure by VOM or FGC. It also operates as a relatively independent provision which the RJ program will be conducted at certain stage of proceeding, and an agreement may work as a mitigating factor affecting the sentencing by judge. Similar to the indefinite referral, only direct RJ practices are admissible for the court to make reference.

Lastly, it is the custody referral which can be made by the custodian during or at the end of an offender's incarceration. This notion adopts the dependent or additional model, in which the provision is situated adjacent to the traditional process. RJ provision in this level does not aim at diversion but a last opportunity for reparation, apology and symbolic exchange, for instance, the offender may express or demonstrate his reflection or change during the custodial sentence. Both direct and indirect forms of RJ practices are acceptable under this referral.

To conclude, the current proposed diversionary measures, namely Restorative Diversion for Juvenile offender (Safety-net Model), targets to judicial reform, first, in the youth criminal justice system, and second, in the adult criminal justice system. Ideally, the appreciation of the benefits of adopting RJ concepts in the youth criminal justice system may trigger the reform of the adult system. However, it is suggested that the degree of modification for the adult system should be remained mild and maintained under a relatively independent and dual-track provision.

### *Unified Training*

All the three interviewed NGOs provide different convenor/mediator training programs according to their training manuals and own elaboration of experiences in RJ implementation. A unified training program is suggested for a more consistent administration, qualification of convenor/mediator and expected outcomes of the RJ practices. This is to say, if all the government's approved institutions operate different models of RJ practice and trainings for their colleagues, it will especially lead to some difficulties for the government to assess or reassess the outcomes of practices as well as the convenor/mediator's competency. A centralized training for the convenor/mediator with assessment and official registration which made by the government can lead to administrative and practical benefits.

### *Resources Allocation under the Centralization of RJ Measures*

Orientation shift from the conventional process to the inclusion of RJ philosophies in the criminal justice system will lead to arrangement of public expenditure. All the three interviewed NGOs gain their financial supports from private donations and non-governmental funding. The intense competition for the funding consumed many of the workers' strengths which shall otherwise be put in the service provision. Thus, a centralized provision of RJ practices may in turn leads to more stabilized resources for staff recruitment, training and improvement of overall service quality.

### **Summary**

Some of the challenges were caused by lacking of a centralized system that manages the implementation of RJ in Hong Kong. If the judicial reform has been made possible, some of the challenges may be solved. The adoption of RJ measures into the mainstream of criminal justice system seems to be beneficial, however, readers should note that other challenges and difficulties can be associated with the RJ measures even in the mainstream of criminal justice system. Queensland which is the targeted place and reference of this study has been shown as a mature jurisdiction with a long history of RJ development, but it also has its own difficulties in its service provision.

### **Limitations**

In the in-depth interview, social desirability which refers to a natural tendency for people to give a response in a socially desirable way may affect the honesty of the information provided by the interviewee. Additionally, the present study did not apply the technique of member checks to enhance the research credibility. Member checks are considered as the most important provision of credibility in a qualitative research (Shenton 2004). However, due to the limited of time, the member checks were not included. Thus, participants did not have a chance to crosscheck the accuracy of the information provided or whether they want to make amendments after the interview. Also, the presumptions and bias from the researchers may bring into the study.

### **Conclusion**

To conclude, the present research had attempted its research question which is to discover ways for improving the RJ provision in HK through examining the Queensland system and understanding the status quo in Hong Kong with some supplementary interviews. The information collected from literatures, secondary sources as well as interviews were sublimated to some meaningful discussions in the report. It is particularly noteworthy that Hong Kong RJ practitioners have striven for the development of RJ not only in Hong Kong but also in Southeast Asia even under the condition with extremely limited support. Also, comparisons about the scope, RJ trainings and judicial involvement were made between Hong Kong and Queensland. In the finale, two phases for short-term and long-term RJ development in Hong Kong were proposed basing on the inspirations from the comparison between the two targeted places as well as the interviews with several practitioners. The implication allows the currently marginalized RJ implementation to be appreciated in the mainstream of judicial system in a gradual manner.

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