

Notes on Adult Diversion Program

David DAUBNEY*

Let me begin by reminding you quickly of the legislative framework as described previously by Mr. Justice Béliveau. Section 717 of the *Code* allows provinces to establish alternative measures or diversion programs for adults. The provisions are modeled after those in the *Young Offenders Act*. Referrals to such programs may be made pre- or post-charge. Alternative measures may be used to deal with a person alleged to have committed an offence only if not inconsistent with the protection of society and if several conditions, among them the following, are met : the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim; the person fully and freely consents to participate; the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed.

So far, four provinces — Saskatchewan, Alberta, Nova Scotia and Prince Edward Island — have formally authorized alternative measures programs, but we expect most others to follow suit this year. Jan Turner will have more information to convey about this in her remarks. The Department of Justice hopes to announce the expansion of its federal diversion policy to adult offenders in the near future.

The policy will set out guidelines listing factors focused on the circumstances of the offender, the nature of the offence and the circumstances of the offence.

With respect to circumstances of the offender, Crown counsel are asked to consider factors such as the following, in assessing as offender's suitability for diversion :

- whether the offender has previously violated the criminal law (including convictions, discharges or diversions) and if so, the date and nature of the violations;
- the offender's remorse (including for example, whether the offender has agreed to fairly compensate any victim(s));
- whether the offender poses a risk to the community;
- whether the offender is facing other criminal charges.

With respect to assessing the seriousness of the offence charged, the policy will suggest the following factors be considered :

- whether the offence is summary or indictable;

* Coordinator, Sentencing Reform Team, Department of Justice, Ottawa, Ontario.

- whether a minimum punishment is prescribed;
- whether the offence usually results in a sentence exceeding three months imprisonment;
- the potential or actual harm to the victim(s) or society in general.

Finally, as regards the circumstances of the offence, the policy will suggest that the following circumstances would generally preclude diversion :

- where the offence involved the use of, or threatened use of, violence reasonably likely to result in harm that is more than merely transient or trifling in nature;
- where a weapon was used or threatened to be used in the commission of the offence;
- where the offence affected the sexual integrity of a person;
- where the offence had a serious impact upon the victim (physical, psychological or financial);
- where the community was endangered (including, for example, impaired operation of a vehicle);
- where the conduct demonstrated reasonably sophisticated planning (for example, the offence was part of an ongoing criminal enterprise);
- where a person trafficked in a controlled substance or possessed the substance for the purposes of trafficking, in or near a school, on or near school grounds or in or near any public place usually frequented by persons under the age of 18 years;
- where a person trafficked in a controlled substance, or possessed the substance for the purpose of trafficking, to a person under the age of 18 years;
- where a person used a person under the age of 18 years to commit a drug offence;
- where the motivation for committing a drug offence was primarily profit.

It is proposed that federally-prosecuted alleged offenders, who meet these criteria would be diverted to provincially-authorized programs.