

# Ontario Observations on Effective Diversion Programs

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Margaret STANOWSKI\*

I am pleased to offer you some Ontario observations about current diversion practices and programs. My observations are that of a practitioner and an administrator of a non-profit community corrections agency which services 8,000 youth and adults each year.

Although currently in its policy making stages, Ontario has not yet proclaimed Alternative Measures for Adults. Diversion remains a discretionary and informal option of the Crown Attorney and about 3% of cases appearing before the courts are diverted. These cases are normally first-time offenders and involve offences of shoplifting, mischief and other minor cases. For the most part, diversion arrangements involve charitable donations and community service hours.

Diversion requires the accused to admit responsibility for the offence and agree to an arrangement that, upon completion, will substantiate the withdrawal of the charge. Failure to complete the alternative arrangement would result in the case proceeding through the court. The previous admission of guilt for diversion purposes would not be considered in future courts proceedings.

Support and expectations for diversion varies among criminal justice professionals. Although Judges have no formal role in diversion they would expect fairness and the accused rights to be upheld throughout the process. Many criminal bar lawyers express concern that diversion can be an inducement for the accused to admit responsibility and avoid the possibility of a criminal record.

Some Crown Attorneys oppose diversion because it is viewed as being soft and not holding the individual accountable as would formal court proceedings. Other Crowns believe that providing community based alternatives for the accused will hold the offender more accountable and that a diversion arrangement can better and more timely address the implications of and the underlying reasons for criminal involvement.

Many criminal justice professionals do not want to give up the management of criminal proceedings to the community and resist any changes on the delivery and satisfaction of justice.

Apart from philosophical and pragmatic issues surrounding the use of diversion, courtrooms are simply overburdened. Most provincial and federal justice policies support

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\* Executive Director, Springboard, Toronto, Ontario.

the need to focus costly court resources on the more serious violent accused and to consider community alternatives for non-violent offences.

With the passage of *Bill C-41* the importance of gaining judicial, Crown, defence bar and corrections' support for alternatives to formal criminal justice measures becomes paramount. Public support is of equal importance and particularly challenging in light of increasing demands for tougher, more punitive sentences.

When properly and fairly administered, diversion can represent a powerful force in building and broadening support for the use of community alternatives at other criminal justice points such as sentencing.

I would like now to describe a Greater Toronto Area model that increased the use of diversion at the Peel and Scarborough Provincial Courts, courts that were experiencing significant volumes and backlogs. This diversion model is also serving to gain community and victim satisfaction and support for alternatives to formal court measures. I will then highlight some of the key principles that underlie the acceptance of community alternative measures by criminal justice professionals and the public.

This post-charge-brokerage diversion model was developed in Peel by Crown Attorney Paul Taylor and the Elizabeth Fry Society of Peel. It was later adapted by Scarborough's Crown Attorney, John McMahon and Springboard.

The Peel model has achieved, over a two-year period a 96% success rate in servicing 614 clients. Over this period, the Peel Court has also diverted an additional 1000 cases to a specialized Shoplifters' Program. The Scarborough Court program has diverted 210 clients in 15 weeks with four individuals, to date, failing to complete their diversion arrangement. We hope to evaluate the program further by tracking and comparing recidivism rates.

These programs are designed to enable Crown Attorneys to refer individuals recommended for diversion to Elizabeth Fry Society of Peel and Springboard who are then entrusted with the responsibility of explaining diversion implications and the rights of the accused to seek legal counsel.

If the accused agrees, meaningful and accountable diversion arrangements are determined. Project staff then monitor and report back to the Court on the completion of the diversion requirements. If successfully completed, the charge is withdrawn or stayed. If the offender fails to satisfy the diversion arrangement, he or she appears in court to set a date for trial.

These diversion arrangements utilize principles of restorative justice and community development models. Intake interviews at the post-charge diversion point, stress offender responsibility for the offense and the implications of their actions on the community. Opportunities to make amends to the community and victim serves as the basis for the development of the diversion arrangement.

Diversion arrangements may require the completion of community service, donating to a charity, restitution and apologies to the victim and accepting counseling

services for problem areas that contributed to the offence, such as anger management or illiteracy. Engaging victim input to the development of the diversion arrangement is also a key consideration with the Peel program and is now being incorporated in Scarborough.

Elizabeth Fry and Springboard utilize other social service agencies and community groups in service provision to this diverted offender population. This participation is of particular importance to broadening a community response and involvement in developing solutions to crime prevention and reduction.

I should point out that in introducing these programs restorative justice principles were not formally prescribed or identified. The programs allowed the courts and the public to experience and witness a diversion model that focused on the victim and held the offender accountable for their actions.

Sometimes labeling diversion programs under restorative justice principles can lead to preconceived notions and unnecessary resistance before opportunities are given to experience their impact. When positive feedback was received about a citizens' satisfaction with a diversion arrangement that required the offender to speak with the victim, remove the graffiti and to paint the fence, one of the Crown Attorneys was more inclined to consider other victim offender reconciliation arrangements than at the start of the project.

For many across Ontario and the country, this restorative justice model is not new or innovative. What is important, however, is the incredible effect that these principles can have in influencing support for community alternative measures and increasing satisfaction with the justice system, let alone freeing up court resources for more serious offences.

Alternative Measures for Adults in *Bill C-41* provides several references to principles of restorative justice responses as it relates to reparation for victims and the community and offenders assuming responsibility for their actions and making amends for the harm their actions have on the community.

I would suggest that when considering the successful introduction of diversion programs to heterogeneous communities, emphasis should be placed on these areas :

1. A community development and consultation process including but not limited to judges, Crowns, the defence bar, victim groups, retailers, diverse ethno-cultural groups, and community service providers which can take up to 6 to 12 months;
2. The development of and training on defined diversion protocols and roles that will actually streamline and reduce the workload of Crown Attorneys and duty counsel;
3. Development of clear and measurable objectives and outcomes;
4. Continuous written and verbal communication with key court and community stakeholders on the requirements for and completion of diversion arrangements and flexibility in adapting program protocols;

5. Divestment by the court to community groups and representatives for the development and management of the diversion arrangement;
6. Flexibility in developing diversion arrangements which focus on victims' needs, offender accountability and needs and opportunities for the offender to make amends with the victim and the community;
7. Sensitivity to the rights and diverse backgrounds of the accused and ensuring fairness in accessing diversion opportunities.

Another key area, which government funders will not be surprised to hear, is the need for adequate funding for the community development process, delivery and evaluation of diversion projects.

With scarce human and financial resources it also seems prudent to identify and focus interventions on those offenders who represent the most risk for re-offending. In Ontario, eighty percent of first-time adult offenders will not become reinvolved with the criminal justice system.

For this majority, applying restorative justice measures at the diversion juncture, such as victim offender mediation and family group conferencing which require significant volunteer and staff investment, may be overly intrusive and have limited effect on recidivism, let alone the impact on draining community resources. In fact, research has shown that this may have the reverse effect on the offender. A charitable donation or community service may be sufficient to substantiate charge withdrawal in these cases.

In efforts then to increase support for the use of diversion, we must employ caution in differentiating a balanced criminal justice or community-based response between those low risk and need offenders and those whose circumstances and needs suggest that they will become reinvolved in criminal activity.

In closing, diversion programs must be fairly and equally administered with due regard to the accused's rights. Programs that utilize the yardstick of restorative justice principles and allow the courts and community to experience alternative methods of satisfying justice while also concentrating interventions on those offenders most in need will most probably build and sustain support for community alternatives to formal criminal justice measures.