

Adult Diversion : A Progress Report

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The following will deal with the use of alternative measures. I will briefly review developments across the country, the Saskatchewan policy for adult diversion and some of the attendant issues.

Saskatchewan was not the first jurisdiction to introduce a formal policy of adult diversion policy. Prince Edward Island introduced a Minister's Order on September 3, 1996 consistent with *Criminal Code* provisions that came into force that same day. Saskatchewan followed suit September 30, 1996. Alberta and Nova Scotia both introduced similar policies in December, 1996.

The policies are very similar with respect to the program criteria for eligibility of offenders and offence classifications. Alberta uses an offence classification system where the others, including Saskatchewan, use a policy of exclusion. In the packages of materials you received in advance of this session there are copies of the Saskatchewan Minister's Order and adult diversion policy. The Nova Scotia policy differs from the others as it considers only matters at a post-charge stage while in the other provinces matters are considered both as pre-charge and post-charge.

Saskatchewan's policy is unique in the way the community is engaged and programs are delivered. My jurisdiction is very committed to a methodology of community development and a community-based delivery system. The other provinces currently use Community Corrections and Probation to deliver these programs.

How we came to develop this policy in Saskatchewan has put us on the road to the Restorative Justice initiative. Early in 1993, there were discussions with the Saskatchewan Department of Justice and representatives from the criminal justice sectors that an opportunity to collectively discuss current issues facing the criminal justice system and the potential consensus on actions was needed. At the time of conceptualizing this two-day think tank, we did not realize that this was not commonly done and in doing so we were breaking new ground. We brought together the senior leaders of the R.C.M.P., municipal police, judiciary, Aboriginal organizations, corrections, courts, crown prosecutors, Legal Aid and policy advisors to discuss the key issues and potential new directions. This effort was called *Justice 2001*.

A tremendous consensus developed on the type of changes needed in our jurisdiction and what should be the first step. As a result, committees were struck in approximately ten local communities with a mandate to grapple with operational issues

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as well as the larger concern of how to change the practice of the criminal justice system. One of the key, practical requirements was a policy for adult diversions. Community, police and crowns, wanted clear direction of the kinds of matters and offenders that were suitable for diversion.

One of the consensus points of *Justice 2001* was an agreement to try to reduce the number of matters dealt with by the traditional system. It is interesting to note that unlike some of the other provinces, in Saskatchewan the primary reason was not to control volume. (Although there are those types of management problems in some of the court locations). Overall offence rates and volumes of matters stay somewhat consistent over time. We were driven by wanting to find ways of managing the system that were more satisfactory to community, victims, offenders and to the interest of those who work in the system.

To that end, in the spring of 1994, we drafted a set of policy guidelines not dissimilar to what you see here today. Then, as is our way in Saskatchewan, we went out to talk. For eighteen months opinions were sought from community organizations, Crowns, Legal Aid, judges, police, R.C.M.P. and Aboriginal groups to develop the best consensus policy possible. Not everyone in our province likes everything in the policy and not everyone has everything they wanted, but everyone can agree with this policy. For Crown and police, it served as an important framework to give them the authority to start making changes. That was one of the key goals. One of the issues for police and Crowns was the need for their decisions to be supported and recognized by their superiors.

One of the methods we use to achieve our strategies is community development. How do we start engaging the community, Aboriginal and non-Aboriginal communities in finding different paths, different routes to make these guidelines a reality? It is one thing to start making changes within the criminal justice system and provide new models for those who work in the system but it is a different thing to start engaging communities to be part of these changes. There are a multitude of issues around community readiness to become involved with conflict resolution and management of offenders and victims. This is the primary focus of activity these days in assisting communities to develop a capacity and strength to be able to fully participate in creating the alternatives.

I will make a few comments about the adult diversion criteria. It is based on a model of exclusion which lists the offences which cannot be sent to a diversion. This allows for more flexibility when considering the cases rather than providing a list of matters to be considered. Offences excluded are as you would imagine, weapons, serious assaults, sexual assault, etc. Family violence is excluded and I will talk about that in a moment more specifically.

The policy also sets out the type of diversion option, such as mediation. Mediation is distinguished as a particular type of diversion as victim participation, while always voluntary, is absolutely required to proceed with the mediation. In family group conferencing or community accountability conferences victim surrogates are sometimes used. Saskatchewan has a rich history in the use of mediation, most notably with ten years of mandatory mediation for all farmland disputes and with more than two years of pilot projects which commit all civil, all non-family matters to a mandatory mediation session. We are fortunate to have accumulated this mediation experience and have a cadre of

trained mediators throughout the province which in turn enhances our ability to consider alternatives for criminal incidents.

There are, however, some issues with respect to the criteria. We consider this as a starting point which will evolve over time. The most controversial issue in the criteria is the exclusion of family violence matters, which is a concern of most sectors of the community. The police note that there are some incidents which would be more suited to a diversion opportunity than to a charge. Crowns often hold the same view, as do Aboriginal women's organizations. This latter group support the ten-year-old mandatory charging policies but observe that those policies alone, even accompanied by *The Victims of Domestic Violence Act*, have not produced peaceful family life. Family violence remains a tremendous problem and concern in Aboriginal communities. They suggest that we must seek a different approach and new directions to alleviate some of those situations. So, it is an element in these policies which might very carefully change over time.

I will end my remarks with a question that is often put to me. Did we need the provisions for alternative measures provided in *Bill C-41*? In Saskatchewan there is more than one school of thought on this issue. Did the legislative amendment help develop a program for adult diversions or do the *Criminal Code* provisions hamper community-based development? On one hand the provisions lend authority to creating an adult diversion and sets a national standard which is always good. But many in the community, and to some extent police and Crowns, voice concerns that the procedures hamper the speed and effectiveness which matters can move to the diversion programs. Saskatchewan has a variety of communities, urban as well as very remote. How do we meet the needs of the more remote communities which have a good community structure, but might not have police or a Crown to approve the diversion? Undoubtedly we will continue to debate the benefits and obstacles.