

Community Based Justice Initiatives of Saskatoon Tribal Council

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1. Overview

Saskatoon Tribal Council is comprised of seven First Nations in the central portion of Saskatchewan with a population base of approximately 9,000 people. There are three different Tribal groups being Saulteaux, Cree and Dakota/Sioux. Approximately one half of the Saskatoon Tribal Council members live in urban areas with a large transient population.

Two of the four corporations of Saskatoon Tribal Council are directly involved with the justice initiatives: STC Urban First Nations Services Inc. and Saskatoon Tribal Council Inc. STC Urban First Nations Services Inc. has a mandate to provide services and programs on a status blind basis for the Aboriginal population of Saskatoon. Saskatoon Tribal Council Inc. provides programs and services to the on-reserve population of the seven member bands. Many of the programs overlap to some degree to adequately serve a non transient and migrating population and include: Education, Labour Force Development, Housing and Engineering, Finance, Human Resources Management, Justice, Health and Social Development.

The emergence of justice programming for Saskatoon Tribal Council began in July 1997 with the signing of agreements between government funders and the Saskatoon Tribal Council for the development of community based justice initiatives for the seven member bands and the urban services in Saskatoon. A great interest developed among the Aboriginal urban population and the seven member bands to re-claim justice or develop a system that would work for the people that the system has engulfed.

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Many of the problems were evident from the beginning, the legacy of the colonial policies have left their mark on the Aboriginal people within the City of Saskatoon and with Saskatoon Tribal Council's on-reserve members. The residential school system has left deep wounds on generations of people both on and off reserve who are currently in the criminal justice system who are besieged with complacency and hopelessness of knowing their progeny are sure to follow. Many of the youth in the urban setting have lost their language, culture and traditions to a point of not even knowing what bands their parents came from—never having set foot on reserve land. The youth are faced with problems so horrific and tragic that it seems unimaginable in Canada as a first world country. These are the youth whose faces are seen in court on a regular basis and the ones who comprise most of the population in the young offender facilities. These are the drifting children who were born into a country who government policies insisted on disposing of and assimilating their parents and grandparents with the brown skin and the savage traditions.

One of the first steps in tackling the colossal task of building programs that would work for youth and adults was to understand what diversion meant to the people affected. The Elders are the wise ones, the ones with the memories and the knowledge as taught by their Elders. The only common sense approach was to request their participation in the sharing of their knowledge. A process was initiated in 1997 where proper protocol was implemented to formally request their help. The process took a month and involved visiting the Elders in each reserve at their homes. Due to the different tribal groupings and unique traditions, advice was sought from the community justice workers in each reserve on the proper process required to request the presence of the Elders. Gifts and tobacco were given in each of the Elder's homes, on one occasion it was necessary to join in the festivities of a traditional feast in honor of one of the Elders. The goal was to gain enough trust of each individual Elder, through meager explanations of what diversion meant in the current justice system to convince them, to attend a gathering of Elders to discuss their knowledge of traditional justice.

The first Elder's gathering was held in 1997 at Wanuskewin Heritage Park just outside of Saskatoon. Wanuskewin Heritage Park is considered sacred ground for tribes gathering at the site for centuries previous and it was evident by the tears, hugs and warmth of the Elders as they met one another for this event. A talking circle was held whereby the Elders and the participants spoke on justice issues important to them.

At the permission of the Elders the conversations at the original circle and the subsequent circles were recorded and transcribed into books.

Elder's gatherings are held twice per year at Wanuskewin Heritage Park and have focused upon the sharing of the Elder's knowledge of traditional justice and what was taught to them by their Elders. The main lessons learned at these gatherings is that showing respect is the basic law of life, truthful at all times, all races are children of the Creator, traditional justice must include healing, reconciliation, accountability, respect and kindness. Without the incorporation of these tenants the justice program, both on-reserve and urban are doomed to failure.

2. Urban Programming—Youth Circles Program

The Youth Circles program diverts youth from the criminal justice system within the City of Saskatoon. It has been operational since October 1997 and is steadily and rapidly growing. The process used is unlike mainstream mediation programs which has excluded Aboriginal youth from the option of mediation to divert their charges. The program planning research indicated that the reason why Aboriginal youth have been excluded is that by the time they reach the young offender age of 12 they already have so many contacts with the police that they are considered unsuitable for diversion. The Youth Circles program developed a mandate, in accordance with the Saskatchewan Justice Policy of diversion to include these youth and target them so that they did not become entrenched in the criminal justice system. At the earliest stage of development it was discovered that Aboriginal people are best suited to determine and develop programming that is appropriate, culturally and sensitively for the Aboriginal population who comprise the majority of youth in system.

Keeping in mind the lessons as taught by the Elders the approach used traditional justice with the medicine wheel approach. With every referral a home study was done to determine which aspect of the medicine wheel was out of balance. Generally speaking, many Aboriginal youth have similar characteristics of low self esteem, extreme poverty combined with challenges in the home life including one or more addictions which can and often does lead to conflict with the law.

In terms of our process, the youth is asked to attend a circle voluntarily and take responsibility for his/her behaviour. The circle is then set up with our Elder(s) guiding the process with the victim,

family/support, the offender's family/support, community representative (sometimes the home reserve) and a professional facilitator from our program. The circle determines what path the youth needs to follow to gain a re-balancing in their lives which always includes the family. If the youth's family is not capable, willing or requires further support, an "artificial" family is created through the support of the other youth or resources in the program. Every person is treated with equal dignity and respect. There is a strong victim/offender mediation component to the circle with certain victim/offender reconciliation. Grandparents who attend the circle provide valuable input to the offender, furthermore, it is far more difficult for a youth to explain to his/her grandmother why they committed the offence than it is to a judge in a robe on a bench. Further, the impact of a youth looking a victim in the eye and saying "I am sorry" is very powerful experience. Once there has been several rounds or opportunities for all the parties to speak, a consensus is drawn to what areas of the youth's life requires re-balancing. The youth's input into their own healing journey is crucial to the outcome and their ability to change their behaviour. A set of tasks or conditions are created by the circle for this purpose which usually take a few months to complete.

A compelling characteristic of the Youth Circles Program is the follow-up care provided for the youth. There is a daily challenge to find resources to accommodate each individual's needs. One consistent area noted which requires more resources is the treatment component for addictions. Nearly all of the youth in the Youth Circles program have one or more addictions or have family members with serious addictions. If the physical aspect of the medicine wheel is noted to be requiring attention, the STC youth workers and the youth participate in the basketball games with the Saskatoon City Police Team. This provides the opportunity for the youth to address their physical needs as well as break down barriers between the police and the youth. If a youth has anger management problems they may attend boxing classes with our workers or other activities and through this they learn discipline with a positive outlet for their anger. Other outlets are summer canoe trips with Saskatoon City Police Services which have been nominated one of thirty top crime prevention strategies world wide by the International Institute on Crime Prevention. As well, the youth may attend Elder's gatherings and pow wows. If required, some youth attend Elder counseling sessions or are referred to family counselors. Education is always a key component to the mental aspect of the medicine wheel approach. If education is not applicable or realistic then work experience or training is implemented.

Sometimes there are family issues to be addressed and there is a referral made to the STC Urban First Nations Services Family Center for healing circles. Twice in the summer months 15 youth are taken to the Healing Lodge at Wahpeyton First Nation. The Healing Lodge houses provincial and federal male inmates who are completing the last portion of their sentence. The youth have the opportunity to sit in a talking circle with the older inmates and camp for two days in a teepee with the STC Youth Circle staff. The impact of the older inmates telling their little brothers of the bad choices they have made in their lives and their decision to start their healing journey always leaves a haunting memory for the youth. Generally youth are chosen for this trip who have exhibited a negative attitude or had previous involvement with gang activity. Whatever the needs of the youth, the staff must be very creative in their endeavors to provide opportunities to the youth to help them re-balance themselves which brings more positive life choices. When the youth's tasks or conditions are complete, the staff return to the courts and have the charges withdrawn. Most retain contact with the STC Youth Circle staff and there are many successes at various levels. Presently, 10 to 15 youth now who have made drastic positive life choices and have become leaders for the younger ones entering the program. These young people have been trained in mediation and are used as role models and co-facilitators in the youth circles.

The type of evaluation that the Youth Circles uses when determining the "success" of the program is not gauged so much upon the re-offence statistics, but on the smaller outcomes of the ability for the youth to make some changes in their life which reflects a more healthy well balanced lifestyle. Of the 108 cases completed in the 1998—1999 fiscal year, twelve youth have system generated re-offences and one youth went on to a more serious crime than the one which originally brought him into the program. Given these numbers, it seems clear our processes are making a difference in the lives of Aboriginal youth.

However, the process of changing attitudes in the criminal justice system is very slow and the amount of funding received reflects this notion. The maximum resources we receive hardly compares to the amount of money saved in housing the youth in facilities, or various agency staffing or the follow up care required in our program. Because of the unique needs of Aboriginal youth in the urban environment, the youth must be picked up at their homes for their appointments, their family moves tracked, do home visits and transport them for the camping trips, fishing and all follow up activities. Without this individualized care and concentrated effort it is unlikely any tangible change would occur.

3. On-Reserve Community Justice Programs

All of the seven member bands of Saskatoon Tribal Council have community based justice programming in place. The unique cultural and traditional requirements of the individual reserves and tribal groupings each justice committee functions differently (as in the urban environment), it has been a challenge to keep the programs running effectively with a small amount of funding. Other band initiatives and programs must fund the justice initiatives to keep them functioning. Every band functions at its own pace and some programs are further developed than others. The requirements in each reserve vary dependant upon the population that is incarcerated or otherwise in the criminal justice system, the acceptance level of the justice initiatives in the community, and the overall support of Chief and Council.

Many of the problems and issues are the same on reserve or in the urban environment. Poverty and addictions and a sense of hopelessness are forefront. One distinct difference on reserve is the closeness, both in proximity and relationships, of the community. With the community input and direction, community based justice and follow-up is easier to monitor and maintain.

Some of the justice initiatives that have been implemented are sentencing circles, healing circles, mediations both individually and community based, family group conferencing, community group conferencing, cautioning, re-integrations and other dispute resolutions. Although these are descriptions of dispute resolution methods, the actual processes implemented can be a combination of all or a few. Regardless, all are based on traditional justice as taught by the Elders. The following is brief explanation of each in relation to the experiences of Saskatoon Tribal Council communities:

A. Sentencing Circles

The sentencing circles which the on-reserve communities have hosted have been very difficult for the community and the very smallest steps have been considered a success. In 1997, the first sentencing circle was a great challenge whereby it took nearly one year for the community to be prepared to reinitiate a circle again. In this instance the circle was held at the Prince Albert Court House, defence counsel, police, prosecutor, victim, offender and supports of the community were in place. Training

sessions had previously taken place and the judge, prosecutor and police had been briefed on their expectations in the circle. Defence counsel was not available to take calls and the first time he appeared was at the circle itself. The circle itself went as planned except there was a major component absent and that was the feeling or the “truthfulness” of the circle. A consensus was drawn and the judge passed the recommendations which were very harsh on the offender. The victim and the offender were related and the offence was a longstanding family feud which resulted in serious charges. There was no victim/offender reconciliation. It was discovered in the “de-briefing” following the circle that the defence counsel had forbidden the offender to say anything. This simple little point corrupted the whole circle and the community was left with picking up the pieces and trying to salvage the positive points of the circle.

In a more recent sentencing circle, the judge, prosecutor and police again attended along with the victim, offender, supports and three Elders. This particular community has more of an Elder’s peacemaking court of it’s own and Saskatoon Tribal Council only provided a facilitator and an Elder to help guide the process. At the beginning of the circle the sacred circle process was explained to all of the participants, the importance of the respect for each other and for the circle, why the circle proceeds in a clockwork fashion and the importance of the respect for not speaking out of turn. At the gateway to the circle, two Elders sat as gatekeepers to guard the sacred circle process.

As I have mentioned previously in this submission, the Elders are considered deserving of the upmost respect and honor in Aboriginal culture. They are honored with eating first at meals, if there is one cup of juice left it is given to the Elder, if they need help walking, they are helped, it is considered an honor which must be earned to serve the Elders at feasts, an Elder is NEVER interrupted and their stories are considered valuable and precious.

During this particular circle the Elders were constantly interrupted by the judge and the prosecutor. The RCMP officer who attended broke the circle by walking out, when she was asked by the Elder if there was anything wrong, she snapped “it’s personal” and stomped out with total disregard for the Elders and the sacred circle process she had the honor to attend. The actions of the judge, the RCMP officer and the prosecutor was very disheartening to the Elders and the community members. I personally was ashamed knowing that the two worlds which I belong to are so far apart.

A few days ago I was approached by the justice co-ordinator in one of the Saskatoon Tribal Council communities and asked if I would help set up a sentencing circle in the fall. This particular community is advanced in their justice initiatives but realized the upcoming problems. The justice committee has requested that they be allowed to handle the circle without the judge, defence council, prosecutor and the police. It is unlikely their request will be granted because of the severity of the offence. A prominent criminal lawyer is defence council who has expressed to the justice committee that he wants the circle over with as quickly as possible as "his time is money". In desperation they have requested that I speak to this individual and get him to understand the circle process. I do not believe I can change this individuals attitude and the circle will once again be debased.

With all of the sentencing circles that Saskatoon Tribal Council bands have been involved in, I believe there has been only a handful which have not been blemished in one way or another. While attending a sentencing circle at Muskoday First Nation I had the opportunity to discuss the role of judges, prosecutors and the police in sentencing circles with a very progressive judge of the Prince Albert Provincial Court. We both agreed that there is no role for either the judges, prosecutors and the police in community based justice. The experiences of the Saskatoon Tribal Council bands proves this to be true.

Either the community must intervene before the sentencing or be trusted enough to pass sentence on its own offenders in each community's own ways. If the community diverts the charges before sentencing, the charges must conform to the Saskatchewan Justice Policy of diversion which severely limits what charges the communities can divert. A more preferable route would be to allow the community to hold it's own circle, pass sentence and bring the recommendations to the court following the circle. The First Nations people of the Saskatoon Tribal Council bands people do not want to offend anyone by excluding them from the circle and often agree because it is "easier" to allow themselves to be offended and be able to have some rather than no control over the life and sentence of one of their own people and band members.

B. Re-integration under *Corrections and Conditional Release Act* (CCRA)

Many of Saskatoon Tribal Council members are institutionalized in either the Federal or Provincial correctional centers. For federally

sentenced offenders, sections 81 and 84 of the CCRA may apply whereby the custody and care may be transferred to an Aboriginal community or an Aboriginal facility, community parole supervision or the provision and delivery of correctional services within the institution or parole services.

Saskatoon Tribal Council has had less opportunities to work with this legislation than other Tribal Councils or independent bands. In 1997, one of the communities asked me to explain to them what all this new legislation meant. To be quite honest, I really didn't know but knew that if I asked the right people I would be able to find out. That process took a very long time. It seemed that the knowledge within the corrections system about this legislation was scant and may have lacked adequate communication from one department to another and then to the First Nations communities.

Muskoday First Nation wanted to implement an early release for a young man who had been incarcerated since he was fourteen years old, he was at the time approaching his 34th birthday and had spent 20 Christmases in prison. The community was determined to help this young man reconnect with his family on reserve and with the community he once belonged to. Chief and Council met on several occasions to discuss a plan to allow a safe re-entry back to his home community. The justice committee worked very hard at putting a plan together which would effectively allow this. The process took nearly two years to complete and ultimately the CCRA was not implemented as this young man should have been paroled years before. The end result was a thorough release plan which was prompted by a caring and committed community, created by the young man incarcerated in co-ordination with the justice committee and implemented by the community itself. This release plan is currently being used as a model for many other First Nation communities in the province and the young man is settled, happy and safe in his home community

C. Other Dispute Resolutions

Although I have described some gloomy experiences that the justice committees have experienced, there also have been many more encouraging events. Various court interventions and healing initiatives are occurring on a regular basis in each of the Saskatoon Tribal Council communities. Mediations, group conferencing both family and community, healing circles for preparation for more difficult cases or survivors of residential school abuse, proactive approaches and any other creative approach using traditional justice are all used in an

interchangeable way. The end result is that the communities are slowly taking more control over their lives and their family members in the justice system.

4. Summary

The Report of the Royal Commission on Aboriginal Peoples states that the strongest message heard from the Round Table discussions was that successful justice projects must be firmly rooted in the community they are intended to serve. The point was made by Judge Robert Cawsey, chief judge of the Provincial Court of Alberta. Judge Cawsey chaired the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta and stated the following:

“Everything that has worked when we’re dealing with Natives has come from the Natives. I don’t know of anything that has worked that has been foisted upon them from above”.

There is no one model of justice development. This must be kept in mind while the communities and the urban centers are developing the processes which best addresses their own needs. Further, the process of building credibility among stakeholders and agencies within the city and the municipalities surrounding the on-reserve communities has been slow and painful. Many times the courts, police and the crown have mistrusted or not had the confidence that Aboriginal people have the education, knowledge, and the ability to effectively deal with their own problems in their own ways. However, good working partnerships are developing between stakeholders and other diversion agencies in the city to strengthen and enhance each others abilities to further the common goals of building stable mutually beneficial relationships which will lead to a clearer understanding and a more balanced justice system.