

# Transforming the Punishment Environment

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I want to provide an overview of the directions we are taking at Saskatchewan Justice to develop justice alternatives. This conference seeks to provide a context and an exchange of information about the future of punishment. One of the major themes includes this question:

“How can the process of imposing and administering punishment be organized in such a way that the most disenfranchised members of society are not grossly over represented in prison populations, are not over stigmatized by socially counterproductive sentences?”

Over the last few years, Saskatchewan Justice has embarked on a series of interrelated initiatives which together offer a promise of creating safer communities and reshaping the way we think about the justice system. In taking this approach one of the goals is to respect the needs of community, with particular attention to those who are most disenfranchised. These initiatives are still relatively new as we continue to define the parameters, strike partnerships and implement programs.

## Background

Why embark on change within the criminal justice system? We live in a climate that prompts a need for a creative and innovative response. The requirement to foster change within the criminal justice system lies within the social, economic, and demographic realities which have shaped our history. Other speakers have painted the picture of the

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high crime rates for youth and adults and the rates of incarceration. The continuance of family dysfunction, poverty, low education, lack of employment, substance abuse, family violence and racism produce an ongoing demand for justice system interventions.

Other factors have also greatly influenced our thinking and shaped the current response. These include restitution as a response to crime; the victims' rights movement; social justice movement, including crime prevention, family violence programming; an increased demand for transparency and openness in explaining justice process; changes in criminal law; and, the demand and expectations that the justice system will address Aboriginal issues for alienation, over-representation and disempowerment.

Saskatchewan has many at-risk communities which continue high levels of involvement with the criminal justice system. Many of these communities are Aboriginal which suffer intergenerational poverty, lack of employment and attendant social issues. During this conference you have heard about the over representation of Aboriginal offenders in Saskatchewan correctional facilities. Of equal concern are the needs of Aboriginal people and families who are victims of criminal offences and for whom historically, less attention has been focused.

We continue to define and shape this direction, but rely on two public strategies to guide much of this discussion. It is useful to have a public statement of our intentions as it is essential in developing the necessary collaborations that are a critical component to the type of fundamental changes we seek.

### **The Strategies**

Restorative justice strategy. The goals of this strategy are to:

- Enhance community safety and protection;
- Reserve the formal justice system for the most serious of matters;
- Develop alternative measures for less serious crime;
- Strengthen communities by involving victims, offenders, government and community members in a balanced approach to criminal behaviour;

- Reduce crime by increasing offender accountability to victims and community; and,
- Increase public trust and public perception of the fairness of the criminal justice system.

The Aboriginal Justice Strategy is, “To foster a justice system relevant to, respectful of, and respected by aboriginal people through measures, both within the existing system and as developed by Aboriginal people”.

The Strategy lists four areas of activity which include:

- Crime prevention and reduction;
- Building bridges to Aboriginal communities through community-based justice development;
- Employment equity and race relations; and
- Self-determination and self-government strategies.

The goals of the Aboriginal Justice Strategy are:

- To confront the root causes of Aboriginal crime and victimization in Aboriginal and non-Aboriginal communities;
- To balance the needs of accused, victims and communities;
- To respond to the unique needs of each community, including the degree of interaction between Aboriginal and non-Aboriginal people, Aboriginal policy, the Constitution, the Charter of Rights, and the Criminal Code,
- To respond to the need and potential for Aboriginal people to have greater control over justice services and decision;
- To increase the credibility of decisions and outcomes arising out of justice processes involving and affecting Aboriginal peoples and communities;
- To focus focus on justice objectives that resonate with the values and cultures of Aboriginal people; and,

4

- To develop justice services that are more responsive to and representative of the Saskatchewan population.

### **Continuum of response**

The fundamental approach in designing a different delivery of justice services is found in the degree of collaboration and cooperation with the other sectors of the criminal justice system, government human service agents such as health, education and social services; and community agencies, committees, Aboriginal organizations and governments.

This collaboration informs the threefold approach in the design and development of a full range of alternatives. It involves:

- reform within the criminal justice system;
- an integrative strategy with other essential human service agents; and,
- a favouring of a community-based approach to involve the community in the resolution of conflict.

I hasten to add, that these approaches are not mutually exclusive and must proceed in a degree of measured harmony to achieve the broad systemic changes we seek. Together they form a continuum of response to crime and conflict. There will always be a need to protect society from those who would harm others; to send a clear message denouncing certain crimes; and to provide a means for accused persons to assert their innocence. The current Saskatchewan criminal justice system for youth and adults involves a number of intervention points and services: crime prevention, police, victims services, Aboriginal courtworkers, legal aid, Crown prosecutors, courts and judiciary, community and institutional corrections, and community-based service providers for alternative measures.

I want to take a few moments to talk about these three approaches but for the most part will focus on the community based-initiatives. Others at this conference have talked about the reforms within the criminal justice system as a reshaping of programs and initiatives to better achieve

a balanced approach to offending. It is a welcome sign that the victim issues are receiving the degree of attention that they deserve.

Similarly, the broad interventions that will truly restore health to individuals, victims or offender, and to communities can only be realized through a multifaceted integrative approach involving an array of social justice response.

### **The Community-based Approach**

What then is the shape of the community-based approach which offers promise in creating safer communities. Although some justice services, such as policing and community corrections, have a history of working with the community, other areas of the justice system have had less interaction with the communities they serve. Over the past three years, Saskatchewan Justice has continued to expand the number and capacity of justice services that are delivered by or in partnership with communities.

This move is based on the recognition that the community can deliver a more effective form of justice in many cases than can the centralized criminal justice system. It also respects local expertise and recognizes that the public should be involved in developing and delivering justice services. For these reasons, community-based justice programs involve communities in a wide range of activities such as crime prevention, public education, and providing programs for victims and offenders, while community-based alternative measures programs involve community organizations in resolving conflicts.

Restorative justice is a return to traditional methods of resolving conflict that were used by many cultures, including Canadian Aboriginal peoples. Programs that demonstrate restorative justice encourage accused persons to be more accountable to victims and to the community. These programs foster healing, reconciliation, and positive change, while protecting the safety and interests of the community. They involve balancing the needs of victims, offenders, and communities, while using the most appropriate form of intervention at the most appropriate time.

### **Community-based Initiatives**

Several Saskatchewan communities, First Nations, Tribal Councils, and Metis communities within Saskatchewan are involved in developing justice programs and providing justice services to their members. These programs include:

- Community-based justice programs in which communities take part in developing justice programs and providing justice services such as public education, crime prevention, and alternative measures including healing circles. In many communities, these programs may involve Community Justice Workers, Elders, and Community Justice Committees.
- The Saskatchewan Aboriginal Courtworker Program helps accused people who are going through the criminal justice system. Courtworkers offer assistance and support to accused persons, accompany them to court dates, and explain court proceedings.
- Community policing programs encourage involvement between citizens and police. The First Nations Policing Program involves citizens in a Police Management Board that makes decisions about policing issues in their communities. These programs also involve Elders, who help the police to understand the community and to provide culturally-sensitive policing. Community Police Boards have recently been formed in northern Saskatchewan with a similar design and mandate.
- Community-based correctional programs provide support and intensive supervision for offenders within the community.
- Victims are supported by programs that provide support, advice, and referrals. Community-based Aboriginal Family Violence Initiatives help Aboriginal families deal with violence and abuse, and Aboriginal Resource Officer Programs help Aboriginal victims of crime and their families by providing information, support, and referrals to other programs.

Community justice programs involve citizens and community organizations in identifying justice issues and resolving local conflicts. These programs involve a wide range of activities such as crime prevention, public education, and teaching skills for resolving conflict. Some community justice programs also supervise low-risk offenders within the community or accept referrals from the Crown Prosecutor.

Many of these programs are funded in partnership with the Aboriginal Justice Directorate of Justice Canada and/or Saskatchewan Social Services. They may be offered by community organizations, First Nations, Tribal Councils, or other community groups and agencies.

### **Strategic Issues**

What are the strategic issues which are essential in creating community-based alternatives? The federal/provincial/territorial Working Group on Restorative Justice has articulated some of these issues in the form of questions which must be considered in the conceptual design and implementation of alternative programs and approaches. Some of the questions are philosophical while others deal with administrative, procedural, communications and evaluation issues.

#### **What role should government and community play in restorative justice?**

Achieving a balance between the role of the government and the role of the community may be one of the most challenging tasks in developing restorative justice programs. The foremost question is: how can the criminal justice system balance the need for due process and protection of public safety against needs for community participation and respect for individual victims and offenders?

#### **What is the relationship between restorative and Aboriginal justice?**

There is a strong relationship between restorative and Aboriginal justice because restorative justice models have drawn upon Aboriginal methods of resolving disputes.

Aboriginal justice may be characterized as addressing the unique needs of Aboriginal people using methods that are grounded in Aboriginal values and customs. Restorative justice programs, on the other hand, seek to be culturally sensitive to the community and represent the membership of the community, but may not always focus specifically on Aboriginal people or represent Aboriginal values.

**What offences are appropriate for restorative processes?**

Just as restorative approaches can be used at any stage of the justice process, with proper preparation and at an appropriate time, they can be applied to any type of criminal offence. Advocates of restorative justice suggest the most positive outcomes occur in cases where more serious crimes have been committed and that it is never too late to seek a restorative resolution.

**How does restorative justice affect victims?**

The direct involvement of victims in restorative justice processes has a number of positive impacts for victims, including opportunities to express their feelings about the offence and to contribute their views about what is required to put things right. Studies have indicated that victims who are involved in these processes are often more satisfied with the justice system and that they are more likely to receive restitution. Involvement can also lessen a victim's fears about crime and re-victimization.

**How does restorative justice affect offenders?**

Advocates suggest that offenders benefit significantly from participation in restorative justice processes. In turn, society benefits from effective intervention in offending behavior. Restorative processes provide an opportunity for offenders to feel and express remorse, to develop empathy for victims, to accept responsibility for their actions, to participate in proceedings, and to contribute to resolutions.

**How to ensure that restorative justice programs are accountable?**

Some of the accountability questions that will have to be considered include:

- Will these programs be available and equitable to all citizens, regardless of age, race, class, or gender?



- Will these programs be accountable to victims?
- Will these programs be accountable to communities by protecting public safety and by providing communities with an opportunity to participate in the criminal justice process? Will they be accountable to taxpayers for the use of public money? Will they protect offenders' dignity and legal rights, while providing them with opportunities to be accountable for their actions and to make positive changes in their lives?

### **What administrative issues do these programs raise?**

Workers, agencies and community justice committees raise questions about authority to handle cases, confidentiality, legal liability and data collection.

### **What are the issues regarding training and standards of practice?**

Training is required for many different audiences, including community members who need to know how to apply restorative philosophies in local programs. Community justice workers, probation workers, police, community justice committee members, and mediators need training relating to policy application and program delivery. Staff need the support of colleagues who are engaged in similar work, while the community must be assured that outcomes are within the norm of community standards. Another challenge lies in determining what standards should be applied to practitioners.

### **What messages should be communicated to the public about restorative justice?**

Although options such as sentencing circles have received widespread media attention, it is likely that the public is not familiar with terms such as “restorative justice”. There is a need to educate the public about this philosophy and to emphasize that these programs attempt to meet the needs of victims and communities as well as offenders.

**What research and evaluation need to be done?**

In recent years, good evaluation work has been undertaken in the area of restorative justice. The results demonstrate cautious optimism for the promise of restorative processes.

**How will we proceed?**

Our approach has been to collaborate with community members and organizations and Aboriginal governments to define and construct a set of different programs and services with the goal of creating safer places to live. There is a dualism of purpose in our approach. It is essential that we articulate the questions to inform the direction and design but most importantly it is the needs and the experience with the community which shapes the programs. Our intention must always be focused on the duality of conceptual design which is rooted in the practical application with the community.