

HANDOUT 7: Alternatives to Criminal Court

Alternatives to Criminal Court

As society evolves, so does how society sees and deals with people who break the law. Crimes have changed over the centuries and today's crimes and criminals also need to be dealt with in a more evolved way.

Our criminal courts have begun to change and there are now alternatives for the varying degrees of crimes. Alternatives to courts such as diversions, restorative justice and community courts have begun to change the face of our justice system.



Diversion

Broadly speaking, it includes the community taking steps to deal with traditional criminal justice cases without involving police or Crown. It also allows police and Crown to make alternative processes to court. If courts are used, diversion allows judges to use absolute or conditional discharges, restitution, suspended sentences, probation and community service work. BC's Ministry of the Attorney General has developed a specific policy on diversion.

Guidelines for Diversion in BC

- Used as a pretrial procedure whereby Crown uses its discretion on a case-by-case basis.
- The offender is referred to an individual or agency where the offender takes the opportunity to demonstrate personal responsibility for the offence or harm done.
- It is voluntary.
- If an agreement is made, the Crown relinquishes its rights to prosecute.
- Helps negotiate resolution for the victim or society for suffering and includes various counseling programs.
- Crown has to have enough evidence that the case against the offender would have gone to trial.
- The offender would not be a threat to the community.
- Someone who has already been diverted, received a warning or a previous criminal record cannot be diverted again.
- Drunk drivers cannot be diverted again.
- Only in special circumstances can an accused be diverted who has committed an assault on family or any sexual assault.
- Diversion records are kept in case the offender offends again and the records may be needed for court.

Restorative Justice

Our court system is adversarial - one side argues against the other. While this seems to be a good method for settling many disputes, going to court can be time-consuming and expensive. It can also leave people incredibly dissatisfied. When it comes to criminal courts, the victims do not play any role. Criminal courts are for the protection of society and not to help victims of crimes. However, the justice system is beginning to change, as seen with the above alternatives to criminal courts. Some alternatives take victims into account. Restorative justice is one of them.



The concept of restorative justice comes from our First Nations people in Canada. It is a system where the offender, the victim(s) and the community members find a way to “restore” the relationship between people, repair any damage done and prevent any future criminal acts, rather than simply punishing the offender. An important factor is that the offender must admit to having done the harm, accept responsibility for it and be personally involved in trying to make things better for the victim and the community.

Healing Circles

Healing circles are another form of restorative justice. It is a First Nations technique but is not solely for First Nations people. Anyone can participate in a healing circle. Not all offenders qualify for this type of program. The police, the Crown or the judge decides on a case-by-case basis if conferencing is appropriate for the crime. Healing circles can take many different forms depending on the needs of the parties and the community. They can be sentencing circles or healing circles. The focus is on the offender, the behaviour and the community taking on the problem. It is shared by all who have roots in the community. They require significant planning before the circle is held.

What Happens?

The conference facilitator arranges a meeting between the investigating police officer, the offender, the victim and people who are willing to support the victim and offender. They sit in a small circle and the facilitator leads them through a process that requires the offender to accept responsibility for what he or she did. Victims have an opportunity to tell the offender how the act has affected them. Others in the circle are allowed to do the same. Apologies from the offender are given to all who are concerned. The victim(s) may suggest ways the offender can fix the harm that they have done. For example, if the offender stole something, then maybe the offender would have to pay for it or replace the stolen item. Once the group has come to an agreement, the facilitator writes up an agreement which everyone signs.

What is the Result?

For the offender, the final settlement might appear less punitive than a result in a criminal court, but it requires a greater commitment on the part of the offender. Facing the victim and others in a circle is not easy for most offenders. Because the victim plays a role in the conference, unlike in a criminal case, he or she gets more satisfaction; they may come to understand the motives of the offender, receive an apology and see remorse from the offender.