



The Evolution of Criminal Justice System at the Beginning of the 21st Century

In the last *Issue* of **The Reporter**¹, the issue of an apparent misconception concerning the role of our Courts was discussed. The distinction between Crime Control and Due Process, as set out by Professor Herbert Packer in his 1968 book, *The Limits of the Criminal Sanction*, was provided as a guide to understanding this misconception.

But while that debate concerning the appropriate role of our Courts rages in the mass media and amongst those adherents of particular political philosophies, a far more fundamental shift in the role of our Courts has already started to occur – largely as a result of the actions of Judges of these very Courts, with the support of provincial and federal Ministries of Justice.

What is happening is that while those who believe the response to the “revolving door” aspect of our criminal justice system is to move to the Crime Control model at the expense of Due Process, the Judges and administrators of our justice system who deal with this on a daily basis have recognized that a system that exists to penalize offenders has had very little effect on changing their behaviour, and absolutely no effect on addressing the root causes of the problems.

As with most of the innovations that have arisen in the administration of criminal justice in last decades, this movement started in the United States with the introduction of “Problem Solving Courts” or “Community Courts”. A vernacular has been created that variously refers to the processes in these Courts as “restorative justice”, “community justice”, or “therapeutic justice” (to name but a few). And as the names for these Courts and the labels for the processes within them imply, the focus of the activities is not the punishment of offenders, but the healing of the harm caused by the offender – the harm to the victims, the community, and to the offender him or her self. Recent examples in Alberta are the Domestic Violence Courts in Calgary and Edmonton, and the Edmonton Drug Treatment and Community Restoration Court.

¹ *The Role of the Courts*. **The Reporter**, Spring 2005. The John Howard Society of Alberta. Edmonton.

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One thing that these Courts all have in common, is that they are predicated on the process beginning with an accused voluntarily agreeing to plead *guilty* to an offence (or offences), and thereafter submitting to the program the Court imposes in its best effort to “heal the harm”. While in the program, the offender is subject to conditions of release and, if he or she breaches any of those conditions, they may be returned to the traditional Court system to there be dealt with according to law - i.e.: punished.

But while this Therapeutic Justice model is going in the opposite direction of the Crime Control model, it does have one thing in common with the Crime Control model – and that is the suspension, in varying degrees, of the citizen’s right to Due Process.

In *The Role of the Courts*², it was asserted that:

The Due Process Model is fundamental to our Canadian way of life, and it is the primary function of our Courts and Judges to ensure that it is given effect.

Make no mistake, the movement to Community Courts, and Therapeutic Justice, is a movement away from Due Process and as such, is truly a fundamental change to our approach to criminal justice.

But does that mean we are moving in the wrong direction?

The John Howard Societies in Alberta (and across Canada) have been saying for over 5 decades that punishment is not the answer to controlling crime; that crime prevention is a community responsibility and begins in the community; and that the primary focus of the criminal justice system ought to be on healing the harm crime causes to all in the community. So this movement towards Therapeutic Justice certainly accords with our Societies’ beliefs – which beliefs, by the way, are based on the best criminological evidence that’s available.

But John Howard Societies also believe very strongly in the fundamentals of Due Process as contained in the *Canadian Charter of Rights and Freedoms*, so how to accommodate these (apparently) conflicting viewpoints within our Vision is of no small consequence.

The answer lies, we believe, in safeguards that are, or must

be included in the process of administering Therapeutic Justice. These safeguards are the very safeguards that are at the core of the Due Process model, and include such elements as:

- ⚖ the treatment of all citizens with dignity and respect;
- ⚖ the imposition of penal sanctions as a last resort, when all else fails, and that such sanction be appropriate to the crime and the offender;
- ⚖ the right to counsel; and
- ⚖ the right to be tried by a fair and impartial Court, according to law, and to be presumed innocent unless proven guilty beyond a reasonable doubt.

So first, the citizen must have a meaningful choice as to whether to apply for entry into the therapeutic Justice Process or proceed through the Due Process system as it presently exists. Second; if the citizen continues to offend, even after having participated in the Therapeutic Justice process, then that person faces the prospect of being limited to the Due Process of our criminal justice system as it presently exists.

Canada has nothing to lose by adopting a Therapeutic Justice approach that parallels our existing Due Process system, without entirely replacing it, and has everything to gain. This is but a next step in the continual evolution of our legal system; a step away from the notion of protecting the citizen’s basic rights and freedoms from erosion by the state, and towards implementing the citizen’s right to live in the community in harmony and dignity. And if by chance this does start to lead to the erosion of existing fundamental rights and freedoms, our Judges remain the gatekeepers of the process, and will continue their vigilance in this regard.

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² *supra*



The Charitable Dilemma – Part 4

[In this, the fourth of a series of commentaries, Brad Odsen, Executive Director of the John Howard Society of Alberta continues his examination of issues impacting charitable organizations across Canada, with particular relevance to those in the human services business, including the John Howard Societies in Alberta.]

“There are two critical questions that have to be answered:

- 1. Do we want our community-based voluntary organizations to die an agonizingly slow death, or do we want them to thrive? and**
- 2. If we want them to thrive and grow, what needs to be done to reverse the course we are presently on?”**

This is how I concluded *The Charitable Dilemma – Part 3*, published in **The Reporter** last Spring. So now let’s examine this more closely.

The answer to the first question is straightforward: *Of course, we do not want our community organizations to die an agonizingly slow death, and we do want them to thrive and grow.* So why ask such a (rhetorical) question?

Quite simply, to highlight the fact that many of the current funding policies and practices of provincial and federal government departments and quasi-government Commissions and Boards, as well as most Foundations, public and private, are having the very effect that is contrary to that which we, and they, all desire.

How can that trend be reversed?

The fact is, most funders, particularly in government (at least at the administrative level) already do recognize this. It is the policy-makers who either do not recognize the effect their policies are having or, as is more likely the case, perceive the potential risks of a supportive funding model as being so great that they are unwilling to adopt it.

What are the risks? First, there’s the apparent risk that once you start funding the operation of a community agency for its core operation you will be obliged (at least morally) to continue that funding. And it’s certainly true that this would be the case – but is that really a “risk”? The actual risk may well be that the organization is unable to continue to function. An important service to the community will

either be lost altogether, or government will have to step in and start providing it – typically at significantly greater cost, and at a greater distance from the community. Efficiency and effectiveness decline, costs go up and this, in reality, is a far more detrimental result than meaningful operational support for worthy community agencies.

Second there is the issue of public accountability that underlies the policies of government (and other funders). But the questions in this regard that really need to be asked are, “Was the money well spent? That is, has the community benefited from the work of this Agency?”

If it can be acknowledged that the work done by an agency in the community benefits the community, then the *prima facie* case for “money well spent” is made out.

More in the next *Issue* of **The Reporter**.

The Reporter, a publication of the John Howard Society of Alberta, is distributed free of charge to a wide audience of citizens, educators, agencies, and criminal justice staff. Our goal is to provide information and commentary on timely criminal justice issues. We welcome and encourage your feedback on *The Reporter*.

The John Howard Society of Alberta is an agency composed of citizens in Alberta who are interested in criminal justice reform and preventing crime in our communities. We recognize that dealing with crime is the responsibility of the community as well as public agencies.

We gratefully accept donations to help offset the costs of our efforts in criminal justice reform and crime prevention. Donations are income tax deductible.

To make a donation or provide feedback please contact us at the address on the opposite page.

You are cordially invited to join us in celebration of the

*55th Anniversary of the
John Howard Society of Alberta
November 17th, 2005*

Guest Speaker:

The Honourable Ron Stevens, Q.C.,
Alberta Attorney General and Minister of Justice

*The Coast Edmonton Plaza Hotel
10155-105 Street, Edmonton, AB*

Reception: 6:00 p.m.

Dinner: 7:00 p.m.

Dinner:

\$ 100 / plate (\$50.00 charitable receipt)

\$ 175 / couple (\$75.00 charitable receipt)

\$ 1,200 / table of 8 (\$800.00 charitable receipt)



Business Formal

R.S.V.P. - October 28, 2005

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