

Vancouver's Aboriginal Restorative Justice Program: The challenges ahead

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The Vancouver Aboriginal Restorative Justice Program (VARJP) is expected to receive its first referrals in September of this year, when it will join the ranks of other Canadian cities (including Toronto, Thunder Bay, and Winnipeg) to have implemented an alternative criminal justice program for aboriginal people in conflict with the law. Under this new program, selected consenting aboriginal offenders and victims will have their cases diverted from the mainstream justice system to an Aboriginal Community Council Forum. The forum will resolve cases in a manner that is consistent with the aboriginal community's healing and restorative principles.

Background

The development of Vancouver's Aboriginal Restorative Justice Program is consistent with

broader trends in Canada, and internationally, in the recognition of the collective rights of indigenous people to self-governance and self-determination. The Royal Commission on Aboriginal Peoples, for example, asserted that such rights exist within the context of existing aboriginal and treaty rights protected by the Constitution. The United Nations Working Group on Indigenous Populations also recognizes these rights in its Declaration on the Rights of Indigenous Peoples. The management of justice is a part of that self-governance.

The need for justice systems that are designed and controlled by aboriginal people(s) is well established. In Canada, a succession of commissions and inquiries (including the Donald Marshall Inquiry, the Manitoba Aboriginal Justice Inquiry, the Law Reform Commission, and the Royal Commission on Aboriginal Peoples) show that the mainstream Canadian justice system has failed aboriginal people miserably. All conclude that both aboriginal people and the broader Canadian public would be better served by allowing for the development of aboriginal justice structures that run parallel to, and/or independent of, the mainstream system.

Diversity, ownership, and control

There is no question that there is an urgent need for aboriginal justice systems in urban centres. More than 50 percent of Canada's aboriginal population live in cities, and the largest number of charges and incarcerations involving aboriginal people arise in urban settings. However, the implementation of an urban aboriginal justice system poses unique challenges.

The first issue is that the urban aboriginal community is considerably more diverse than any single First Nation reserve community. And

although a focus on healing and restorative principles is virtually a universal aboriginal concept, the justice traditions of First Nations can vary considerably. One important consideration noted by Vancouver elders was the need to ensure that this diversity was maintained and respected in the VARJP community council protocols.

Also important to the elders was that the VARJP be an “aboriginal” program in more than just the identity of its clientele – in other words, that it be controlled and driven by the aboriginal community. The standard for addressing this particular concern was set by the VARJP’s now legendary predecessor: Aboriginal Legal Services of Toronto. That project was undertaken at the initiative of Toronto’s aboriginal community, and has succeeded in no small part because of its grass roots origin.

The question of who is driving the VARJP is, in some ways, one of the program’s more contentious challenges. Consider, for example, the range of crimes, as well as the diversity of the offenders’ backgrounds, the VARJP will be dealing with. One might presume that the kinds of crimes to be addressed by the community council should include those considered, by the community, to be most pressing. Offenders eligible for the program might include those for whom standard mainstream approaches have been unsuccessful (i.e., those with many previous incarcerations) and/or who are considered by the program co-ordinators and the community council to be most likely to benefit from the program. However, this rationale requires that the VARJP’s community members (the program director and co-ordinators, as well as members of participating agencies such as the Legal Services Society) and/or members of the community council are able to initiate referrals to the VARJP.

As yet, such a mechanism does not exist; only the Crown, or its designate, is mandated to select aboriginal offenders for diversion to the VARJP. Similarly, the protocol in place states that only a specific range of offenders (no prior convictions) and offences (only Category 3 and 4, i.e., minor offences) are eligible for the program.

Although this eligibility protocol was approved by the program’s aboriginal caucus (on the reasonable grounds that one must crawl

before one can walk), because of it, it would appear that the control of aboriginal justice is still within the mainstream system – a possibility that was specifically eschewed by Vancouver’s community elders at a recent consultation.

Over the long haul, this protocol is problematic for at least two reasons: (1) placing eligibility criteria completely in the hands of the Crown diminishes the very community authority required for a project of this sort to succeed; and (2) it requires aboriginal leaders to be accountable to the authorities whose justice system has failed aboriginal people, rather than to their own communities.

All participants in the VARJP seem aware of this weakness, and recognize it as such. Accordingly, attention by all parties has been directed to ensuring that any constraints imposed on the program at its inception are not carved in stone. The Crown is committed to being “flexible” in designing a protocol that reflects the vision of the program. The negotiated agreement anticipates a time when referrals may emanate from several sources, and when the program’s jurisdiction will include a broader array of offenders and crime categories than is possible at present.

Looking ahead

It is hoped that the VARJP participants will address the challenges of diversity, ownership, and control as soon as possible. “Traditions” are established quickly and, as the administrative status quo, can be difficult to change. The necessary tradition to be established here is one of ongoing project evolution – in the direction of ever-greater community responsibility.

Over the last six months, I have had an opportunity to observe and participate in meetings of the VARJP’s steering committee and aboriginal caucus, and to attend consultations with elders and other members of Vancouver’s aboriginal community. Overall, members of both the caucus and the steering committee deserve congratulations for their openness to each other’s concerns, and their demonstrated willingness to discuss a range of issues in a spirit of partnership and mutual respect. Both aboriginal people(s) and the broader Canadian public will benefit. ■