

Drug Treatment Courts

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The amount of offenders within our criminal justice system with problematic drug use concerns are alarmingly increasing. Data indicates that about four out of every five offenders admitted to the Correctional Services of Canada (CSC) correctional institutions have serious drug or alcohol problems.ⁱ In order to understand the challenges faced by CSC regarding how to treat such offenders, we also have to consider the fact that in general, inmates are in poorer health than the population as a whole. As a group, they are generally disadvantaged in terms of employment, housing, income and social relationsⁱⁱ. The CSC has many factors to consider when establishing rehabilitative method for such a special population that require much more services. Among these are the aging infrastructure of a number of its correctional facilities, inadequate funding, difficulties in recruiting and retaining mental health professionals, and conflicting priorities in a correctional system designed to both assist and control offenders. However, in order to substantially increase the solution for substance abuse problems, more funding must be established. Funding is difficult to establish in Canada as our crimes have been socially constructed to that similar of the United States, in which we pursue neo-liberal and neo-conservative ideologies that dismantle the welfare state. The purpose of this paper is to view Canada's social construct of drug crime and how drug rehabilitative measures such as restorative justice and therapeutic jurisprudence could be used within a Drug Treatment Court as the best method of dealing with offenders with substance abuse difficulties.

Crime is very much a social construct considering every country deals with offenders differently. What might be considered a deviant act in one society is not necessarily deviant in another location based on the culture and norms within the society. Nevertheless, Canada and the United States share many aspects of culture together, whether it is the television shows being

aired, the stores and corporations that are prominent in both countries, and even professional sports teams that compete against one another and travel between the two countries. “The proximity of Canada to the U.S., both in culture and geography, provides an excellent opportunity to examine the sensitivity of public policy to differences in values and history, especially in the area of drug policy, with all of its emotional and political accessories.”ⁱⁱⁱ In our attitudes on crime and punishment, for instance, Americans and Canadians appear to have a common belief that our systems of justice are too lenient with offenders. Research also indicates that most North Americans are ill informed about both the operation and penalty structure of their countries’ criminal justice systems. In addition, both populations express levels of concern about crime that, at times, appear unrelated to its actual incidence or the threat that it poses to them.^{iv}

Historically, Canada and the United States have shared similar perspectives on the control of illicit drug use. However in the 1980’s the United States declared a “War on Drugs” which was supported by many citizens. Some see in Canada’s tough drug laws a stance and rationale of the same kind to the U.S. war on drugs, and the claim has been made that Canada followed the U.S. lead in establishing our own version of their war within our borders. Even though our policy initiatives for drug crimes can easily be related to that of the United States, the citizens of Canada and America continue to share different beliefs regarding drug and healthcare issues.

“Canada has been a much more conservative, traditional, and hierarchical-elitist society than the United States. These differences stem from the varying histories of the two nationals. The United States is a result of a victorious revolution against British rule; Canada is an outgrowth of the triumph of the counterrevolution. The disparate results of the revolution meant

the creation of two very different national ethos. One took pride in being the result of a revolution and emphasized egalitarian and populist elements in its self-image. Canada justified itself in not being like the United States. It took pride in its ties with Britain and its monarchical institutions. ^v.

Also, the lack of welfare provided by the state for offenders can be explained by our current neoliberal and neo-conservative thought that underlies our exclusionary society. Exclusion is increasingly prevalent in our society and functions on three levels; economic exclusion from labour markets, social exclusion between people in civil society, and exclusion by the criminal justice system. As mentioned by Maidment, “Exclusionary regimes reemphasize the undeserving and unreformable nature of deviants, tend to stigmatize and separate socially the marginal, and hence are more likely to feature less generous welfare benefits and more punitive anti-crime policies”.^{vi} Both neo-liberalism and neo-conservatism are underlying ideologies of an exclusive society and are customary within Canada.

Neo-liberalism is premised on the values of individualism, freedom of choice, market security, and minimal state involvement in the economy^{vii}. Outcomes of neo liberalism have seen a withdrawal from any apparent commitment to social welfare. Instead of formulating policies and targeting spending on programs that would meet the social needs of the members of society, governments were now focusing on enhancing economic efficiency and international competitiveness.^{viii} Under neo-liberalism, the state should get out of the way of the forces that decide which regions, and which people, prosper and which don't. The only assistance from the state are “incentives” to work.

Within neo-conservative ideology, administration and government shifts the focus towards a law-and-order agenda. Policies targeting the underclass have become a governing tool in the arsenal of a neoconservative regime. Central to Ontario's neo-conservative reforms are the recent spotlight attention that has been cast upon the "disorderly", in our society, such as squeegee kids, violent youth, and aggressive beggars.^{ix} Neoconservatives argue that the family and church should be the source of charity and support for the unfortunate. The current neo-conservative reforms have been deliberately designed to dismantle the welfare state. Also, this shift as taken place at the very sites in which the government is responsible for some of the most vulnerable and marginalized in our society. Social and criminal justice system under neo conservative and neo-liberal regimes result in weakening of social service provisions for the most vulnerable in our society and a social Darwinist approach to governing.^x

During the 1950s, rehabilitation was the primary goal of the criminal justice system.^{xi} In the 1970s, the effectiveness of rehabilitative programs began to be questioned. By the 1980s, support for rehabilitation had eroded, and the focus shifted from rehabilitation of criminals to punishing and taking them off the street through incarceration^{xii} A good example of punishing and taking individuals off the street through the implementation of laws is best described by the addition of mandatory minimum sentences and their effects on drug offences.

Most Canadians do not realize that minimum sentence requirements already apply to more than forty offences, including everything from murder to impaired driving. Almost all of these MMSs came into being after 1995.^{xiii} The government asserts that by implementing these mandatory minimum sentences, they can ensure that the severity of punishment meets with the severity of the crime that has been committed. Nevertheless, there are numerous negative effects that accompany these mandatory minimums.

One negative effect is the removal of judicial discretion. Through the implementation of mandatory minimum sentences, the Conservative government seems to scrutinize the ability of experienced judges to apply an appropriate sentence to cases. However, judges do in fact know the differences regarding the severity of crime and establishing them as either less or more serious offences. Criminal lawyer and sentencing expert Alan Manson says, “Judges in Canada can and do distinguish between offenders and offences that require firm sentences. They can be heavy hitters when the case warrants a harsh response.”^{xiv} With less discretion given to judges, mandatory minimums also presume that such sentences will deter the offender.

Criminologist Anthony Doob points out that we should be taking a lesson from south of the border. The United States, he says, is “a big laboratory on minimum sentences.”^{xv} The result there has been a disaster. Several states have retreated from MMSs for drug offences, saying that they are a “glaring symbol of the failed U.S. war on drugs^{xvi}.” Studies have frequently portrayed that mandatory minimum sentences provide very little deterrence to crime rates and prospective criminals. As an example of the near-impossibility of understanding some of these minimum sentences, the proposed regime of MMSs for drug offences is so complicated that the Department of Justice had to resort to a three-page chart to set out the details. Large and multifaceted laws are unlikely to astound a potential offender. If a potential offender does not have the least idea of the likely consequences of his actions and the harm done by his criminal activity, there can be no deterrent effect.^{xvii} Many experts also agree that lengthy sentences (mostly caused by mandatory minimum sentences) are not effective. This list includes the CSC, Canadian Safety Council, and the National Criminal Justice Section of the Canadian Bar Association, just to name a few.^{xviii} Although many examples of mandatory minimums can be

traced back to specific bills that have been implemented, Bill C-10 looks to make drug laws much harsher.

Bill C-10 was introduced to help alleviate the concern of organized crime and any violence that occurs with organized crime. Some aspects of the new amendments include: Anyone growing six to 200 marijuana plants will go to jail for a minimum of six to nine months, if the production is for the purpose of trafficking, anyone growing 201 to 500 plants will go to jail for a minimum of twelve to eighteen months, with no requirement that production be for the purpose of trafficking.^{xix}

Correctional Service of Canada says that the new federal legislation will hit Aboriginal people the hardest^{xx}. The over-incarceration of Aboriginal people has been described by the Supreme Court of Canada as a “staggering injustice.”^{xxi} At 4% of the population, Aboriginal people comprised fully 24% of those admitted to provincial and federal prisons in 2006–2007.^{xxii} Canada’s growing Aboriginal population has experienced a disproportionate burden of health problems compared to the national average. It has been argued that the groups’ shared experiences of colonization, and the resultant poverty and social stressors have contributed to poorer outcomes across the life span.^{xxiii} Particularly prevalent in Aboriginal communities are the conditions that factor into crime, such as poverty, poor education, unemployment, marginalization, substance abuse, violence, and dysfunction within the family home^{xxiv}. These conditions, in combination with limited rehabilitative services and interventions aimed at prevention, and a judicial system that has had difficulty considering the Aboriginal worldview (e.g., avoidance of confrontation and adversarial positions) have invariably led to disproportionate levels of Aboriginal incarceration.^{xxv} Nonetheless, Bill C-10 has had many critics on its effectiveness.

Neil Boyd, Professor at Simon Fraser University and an expert on drug policy, told the Standing Senate Committee on Legal and Constitutional Affairs that the drug amendments were especially hard on marijuana offenders. The Bill, he said, would have “the unfortunate consequences of annually jailing thousands of Canadians who do not threaten our social fabric any more than those who produce, in a regulated framework, drugs such as tobacco and alcohol.”^{xxvi} Neil Boyd further stated that alcohol use actually causes significantly more deaths than does marijuana use.

Among individuals under community supervision, the Bureau of Justice Statistics (2007) report indicates that 27% of probationers committed drug law violations and 37% of parolees served their prison sentence for a drug offence.^{xxvii} According to a report on substance abuse by the Government of Saskatchewan, Saskatchewan’s substance abuse services support the needs of the most vulnerable members of our society. Successful addiction policy, programming and prevention should be viewed as contributing not only to population health, but also to the economic well being of the province. Substance abuse is linked to domestic violence, crime, school dropout, and health concerns such as unintended pregnancy, diseases from unprotected sex as well it also strains health care, social services, education and legal systems, stresses the emotional and financial resources of families, and causes significant losses in workplace productivity.^{xxviii} This report by the Government of Saskatchewan also describes the best method of assisting individuals with substance abuse concerns. Evidence suggests that a broad community response is the most effective way to prevent drug and alcohol abuse, reduce the harm caused by substance abuse, decrease supply, and treat those with substance abuse problems.^{xxix} Such a response can be traced in the holistic Restorative Justice approach to dealing with offenders.

Restorative Justice focuses on the harm caused by the crime and seeks through responses to repair the damage done to offenders, victims, and communities^{xxx}. Nevertheless, the focus of the Restorative Justice approach is on the victim`s needs and on the offender`s responsibility for repairing harm. The offender establishes social harm with the effects of their criminality to the community and any physical harm caused. From the harms caused, the offender has created obligation due to their criminal actions. The offender must show accountability and responsibility for their actions and even out the typical scale of justice. The restorative justice approach also involves participation by the offender and the victim in order for the offender to understand the harm caused.

Liz Elliot maintains that “It (Restorative Justice) was used as a means of conflict resolution in the communities’ throughout Europe prior to the development of the formal justice systems that we are familiar with today.^{xxxii} In Canada, early usage of Restorative Justice practices can be traced back to the Aboriginal community based approach that was used as a part of a holistic way of life prior to colonization. In 1974, the first non aboriginal group to adopt a Restorative Justice model was the Mennonite Central Committee in Kitchener, Ontario^{xxxii}. The RCMP also played a large role in a Restorative Justice type approach when initiating Family Group Conferences. The RCMP found that community justice approaches to crime were consistent with their philosophy of community policing. In early 1997, the RCMP launched a Restorative Justice Initiative which was a training program that took part across the country^{xxxiii} (pg. 240). The objective of the initiative set by the RCMP was to train those who would be conducting such conferences with the appropriate skills necessary to complete the task efficiently. Restorative Justice principles continue to be prevalent within the current Youth Criminal Justice Act and is practiced through extrajudicial measures and provisions. One

example of a Restorative Justice approach that is currently being funded by the Federal government is the creation of drug treatment courts as a means of dealing with offenders with substance abuse issues.

The first drug treatment court (DTC) opened in Miami in 1989 and are now becoming a method of dealing with offenders who have substance abuse related offences. Drug courts rely on a team effort of organizations who must work together to keep the offender out of the criminal justice system and reintegrated back as a helpful member of the community. Aos et al completed a meta-analysis of 92 studies of drug-related offenders and found that reoffending rates were reduced by drug treatment in the community (12.4%), therapeutic communities (or separate units) in prison with community reintegration (6.9%) and without community reintegration (5.3%), and cognitive-behavioural treatment in prison (6.8%).^{xxxiv} Sources of funding for such specialized court programs vary depending on what type of abuse related issue the offender needs to be established. Sources of funding include the following: General and special revenue funds, interagency cooperation, non-profit organizations, community-based service and philanthropic organizations, and grants.^{xxxv} The cost of starting a drug court can be considerable, and courts commonly vie for state or federal grants to cover these costs.

Drug treatment courts aim to reduce crime committed as a result of illicit drug dependency through court-monitored treatment and community service support for offenders with substance abuse problems^{xxxvi}. Participants of Drug Treatment Courts are subject to random drug tests and typically attend counselling that can be done with or within the courts. The subject also appears in court frequently in order for the judge to monitor negative and positive behaviours during the treatment. Members of the Drug Treatment Courts work with community partners to assist with the rehabilitation process of the offender with such aspects as safe

housing, and any training or programs that are expected to help the offender^{xxxvii}. Once a participant gains stability and demonstrates control over the substance abuse problems, criminal charges may be stayed or, in some cases, the offender may receive a non-custodial sentence. If unsuccessful, an offender will usually be sentenced as part of the regular court process. The main goal of DTCs is to reduce substance use and subsequently reduce criminal behaviour which is committed as a result of the substance abuse.^{xxxviii}

DTCs are part of a broader contemporary phenomenon – one born out of a theoretical movement known as therapeutic jurisprudence (TJ). Coined by David Wexler and Bruce Winnick (1996, xvii), the term “therapeutic jurisprudence” refers to the “study of the role of law as a therapeutic agent. It is an interdisciplinary enterprise designed to produce scholarship that is particularly useful for law reform^{xxxix}. TJ proposes the exploration of ways in which, consistent with principles of justice, the knowledge, theories and insights of the mental health and related disciplines can help shape the development of the law.”^{xl} This movement of the therapeutic jurisprudence model expanded to include all kinds of issues including drug use. The therapeutic jurisprudence model looks for both therapy and law working together in the offender rehabilitation. “TJ, as it is written about in the fecund literature, is not limited solely to advocating for the establishment of special courts organized around addressing therapeutic issues; rather, TJ is applied to all kinds of legal practices in which a crossover between law and therapy is possible.”^{xli} As a legal inquiry, therapeutic jurisprudence considers: 1) substantive law- whether the law actively promotes therapeutic objectives by balancing community rights against individual rights; (2) legal procedures- whether the legal system maximizes therapeutic effects and minimizes anti-therapeutic consequences; and (3) legal roles- whether the behaviours of legal actors are therapeutic or anti-therapeutic.^{xlii}

The question of motivation is central to the therapeutic orientation of the DTCs. The DTC programs are based on a branch of behavioural psychology that holds that individual motivation is crucial to affecting any sort of change within an individual. According to Maidment, “the ‘psy’ disciplines have reinvigorated the notion of individual responsibility for criminal conduct and provided neatly pre-packaged modules that can be delivered by prison staff to replace or reprogram an individual’s faulty criminogenic thinking.”^{xliii} Motivation is generated through both external and internal factors, and the courts work on the premise that individuals need a balance of both external and internal motivations to stop using drugs.

Many drug treatment courts are now established in the United States, such as the Colorado Eighth Judicial Juvenile Court which provides substance abuse programs through the court. In the Colorado Eighth Judicial District Juvenile Court, the court serves eligible males and females ages 10-18 with parental participation being a crucial part of the program.^{xliv} These court programs are established to provide the family and the victim a rich store of rehabilitation tools and positive social relationships. A drug court team must be established as well. According to Roperd and Lessenger, a drug court team should include “at minimum, a judge, prosecutor, defence attorney, treatment provider, evaluator, and a representative from School to collaborate and assist the offender and their family.”^{xlv} They further state that intervention right after the offender’s initial contact with the criminal justice system is a key critical success factor. “Intervention by the court as soon as possible following the juvenile’s initial contact with the justice system is the key to success, along with continuous judicial supervision of the juvenile through frequent status hearings.”^{xlvi} The overall strategy of the program is to strengthen and reinforce positive qualities and aspirations for the offender and their family. In Canada, the differences between the first drug court in Toronto, Ontario and the second in Vancouver, British

Columbia operate differently according to the social constructs that they make up. Drug courts have become so popular in the United States that a pilot test was done where a drug court was created on a University Campus.

Colorado State University established the first University drug court in hopes that it would be an effective measure of dealing with students with drug related offences. In the 1999–2000 academic year, the Center for Drug and Alcohol Education, in collaboration with the University Counselling Center at Colorado State University, conducted a pilot program utilizing a small group format to help students deal with issues related to substance abuse and to teach more adaptive socialization skills, harm reduction, and coping strategies.^{xlvii} Drug Courts have also found prominence within Canada.

The first Canadian DTC opened in Toronto in 1997, and the second opened in Vancouver in 2001.^{xlviii} By looking at the differences of the two courts we can further establish how crime is a social construct with a Canadian context. In Vancouver, some of the court services are gender segregated in order to avoid gender exploitation or victimization. The majority of offenders within the treatment program are drug traffickers or have committed property offences.^{xlix} Sanctions in the Vancouver Drug Treatment Court are typically placed on clients who fail to appear either in court or at the treatment centre and also the Vancouver court does not require abstinence from drug use. On the other hand, The Toronto Drug treatment Court involves a considerable amount of participants who are both drug traffickers and drug users. Nonetheless, the drug use and drug trafficking scene in Toronto varies from Vancouver. “The scene in Toronto, however, is geographically dispersed, lacking the dramatic, palpable concentration found in Vancouver”¹ Dawn Moore states, “Abstinence is a requirement for graduation in Toronto, and, in general, the TDTC tends to take a harder line on drug use than does the VDTC”

^{li} Nevertheless, according to the Department of Justice Canada, DTC`S have three objectives. “To promote and strengthen the use of alternatives to incarceration with a particular focus on Aboriginal men and women and street prostitutes; to build knowledge and awareness among criminal justice, health and social service practitioners, and the general public about drug treatment courts; and to collect information and data on the effectiveness of DTCs in order to promote best practices and the continuing refinement of approaches.”^{lii}

Australia has also implemented the use of Drug Courts. In a study of the Australian system, “It is suggested that the older offenders with significant goal histories were more successful on the Drug Court as they have ‘decided they have had enough’.”^{liii} Also, participants seemed to do much better if their support structures such as their family are supportive and law abiding. Motivation is once again a central theme to drug courts. “It is suggested that they have to ‘decide to opt for sobriety rather than no self esteem’.”^{liv} Also, many participants elaborated on their experience within the drug court. Participants appreciated many aspects of such courts, such as how it helped in keeping them from using. Additionally, many participants mentioned that as a result of their involvement with the DTC, they had their family and life support back, and many found the different types and levels of support that they received to be of benefit.^{lv}

Belenko (2001) overviewed 37 evaluative reports on drug courts. According to this study, 47% of offenders referred for treatment through drug courts complete their rehabilitation programs. Offenders referred for treatment through a drug court also presented a lower risk of being arrested (5.4%) and fewer days of incarceration (6.6) than comparison group subjects (21.5% and 13.6 days respectively).^{lvi}

The DTCs are places in which roles, knowledge, and goals are redefined, and the boundaries surrounding the knowledge is permeable. These courts represent networks in which therapeutic and legal knowledges are exchanged among the different personnel, rendering them- at the same time and often in the same breath, spaces of both justice and therapy^{lvii}. Thanks to a federal grant providing 13.3 million dollars over 4 years for the establishment of more DTC`s, the government has expanded to a total of 6 locations across Canada. The current cities that contain funded DTC`s are Toronto, Vancouver, Ottawa, Winnipeg, Edmonton and Regina.^{lviii} With continuing financial support, the creation of DTC`s can further support the rehabilitation of offenders.

In conclusion, the criminal justice system established by Canada can see traces of similarities within the United States. Canada`s close ties and close proximity to the United States has both cultures sharing many customs and values. Nevertheless, our current neo-liberal and neo-conservative thought that we are portraying further establishes an exclusive society within Canada. Such an exclusive society has detrimental effects on the aspects of the state that look at the welfare of offenders. However, under this current climate, the best method to deal with the large number of offenders with substance abuse problems may lie in a restorative justice and therapeutic jurisprudence approaches to crime. Such approaches are exemplified in DTC models, which are currently expanding across Canada as a means of dealing with offenders with substance abuse concerns. By increasing accountability and accessibility of treatment, these courts can increase public safety while providing people with the tools that are needed to lead productive lives.^{lix}

Although DTCs have demonstrated their success on several fronts, funding for such programs is often a difficult to sustain without continuous support or funding from government

funds. The Canadian government and its citizens should continue to strive for a more welfare based approach on crime and move away from a law-and-order agenda which has been established through many studies not to be effective. Tough on crime is actually a lazy approach to crime. However, it is certainly tough on taxpayers. A better approach is to be thoughtful on crime or smart on crime. Our legislators must pay attention to all the best evidence on the subject. Voters must demand this of their elected representatives. Anything less will result in a system which abuses human rights, incarcerates large numbers of people for long periods of time, and leaves average citizens more vulnerable.^{ix} The next step for increasing DTCs lies in funding. The federal government should continue to provide funding in order to expand drug courts within at least every major city within each province as it is an effective method of reducing criminal behaviour among individuals with substance abuse problems. Overall, Canada must establish more welfare-based approaches in order to assist offenders and help reintegrate them back into society as successful members. Without such approaches, Canada will continue to lock up the marginalized within our societies and warehouse them into the criminal justice system through a law and order approach that the Conservative government appears to strongly support.

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