

DIVERSION AND SENTENCING

DAVID ARNOT

JUDGE, PROVINCIAL COURT OF SASKATCHEWAN

The Katapamisuaik Society was formed in 1992 as an equal partnership between the Battlefords Justice Advisory Council and the Aboriginal community in northwestern Saskatchewan. The Battlefords Justice Advisory Council is a holistic group of all contributors to the delivery of justice, including Crown prosecutors, legal aid, the Battlefords Bar Association, Adult Corrections and Probation, Youth Corrections and Probation, and the Royal Canadian Mounted Police.

The Council has been in existence since 1975 and has fostered and sponsored various initiatives in the Battlefords Community, including the Battlefords Community Correctional Centre, Interval House, Sexual Assault Centre, Concern for Youth Organization and the Battlefords Adult Diversion Project.

The Battlefords Adult Diversion Project is a pilot project sponsored by Saskatchewan Justice. It has been in existence since 1991 and was designed to develop a model that could possibly be implemented in other areas of Saskatchewan. The concept entails a mediation and diversion program that allows victims to participate in the justice process and gives offenders the opportunity to acknowledge guilt, compensate victims and achieve restoration in the community. Through face-to-face contact by mediation with the offender, the victim can obtain redress and the offender is allowed to right his wrong. The mediation process also facilitates a reconciliation between the victim and the offender. A key component in the program is to divert offender and victim from the ordinary court process. The program provides a direct service to victims and a wide range of rehabilitative opportunities for the offender. The project has attempted to address criminal justice issues in the context of diverse and varying cultural values, and, in the opinion of the Battlefords Justice Advisory Council, the diversion program has met the goals of the project well. The experience gathered in the diversion project is something that we hope to utilize when we deal with sentencing and healing circles in the Katapamisuaik Society.

Katapamisuaik is a Cree word that means to take control or responsibility for oneself. The Katapamisuaik Society is chaired by Chief Blaine Favel of the Poundmaker Reserve. The board is representative of the equal partnership concept. We have followed the advice of several people, including Kathy Louis, regional vice-chair of the National Parole Board of

Canada, Pacific Region. She is a Cree person who has been able to give our society specific advice about the perspective of Aboriginal women. The Society is based on a model designed by Judge Douglas Campbell of the Western Judicial Education Centre. We followed the simple tenets of the model, which were to create a dialogue, build relationships of trust and together define a plan of action to work toward solutions. The trust relationship has to be built between the Aboriginal and non-Aboriginal community. It is that fundamental concept that has produced positive results.

The Battlefords Justice Advisory Council realized that the justice system is designed to serve the whole community and that Aboriginal people were clearly of the view that they were not being well served. We believed it behooves the professionals in the delivery of justice to examine the validity of those observations and to explore methods of resolving the issues within the context of the current justice system. In our dialogue with the Aboriginal community, it was made clear to us that racism and the dynamics of differentiation within the system had to be understood and addressed. The Justice Advisory Council made it clear to the Aboriginal community in the Battlefords that we intend to work within the current justice system. We believe that criminal law and procedure are liberal and flexible enough to accommodate the needs and concerns of the Aboriginal community. The Aboriginal community made it equally clear to us that they have an inherent right of self-government and that under that rubric there will be a separate justice system.

The Aboriginal community is working with us in equal partnership to build an understanding and work toward accommodation through the medium of the Katapamisuk Society. We know we must build bridges between the Aboriginal community and the non-Aboriginal community because society will not be a pleasant place if we fail. We recognize that self-government is something that will be implemented through the political process, and we believe that, in the interim, we have a duty to make the current system respond to the needs of the whole community.

We have developed a protocol with the Poundmaker Band and their community justice committee that provides guidelines for the use of sentencing and healing circles. The healing circle is in effect a diversion of matters from the court setting for both youth and adult cases. The sentencing circles provide alternatives to the traditional methods available to the court in sentencing. Sentencing circles are designed to find the most effective intervention available between the community and the accused. The ultimate goal is to attain the highest quality of justice. We feel the implementation of these processes represents a step toward the attainment of that goal.