



## ***IMPAIRED JUDGEMENT – CORRECTING MISCONCEPTIONS ABOUT DRUG TREATMENT COURTS***

June 25, 2012

The Canadian Association of Drug Treatment Court Professionals (CADTCP), the national representative of all Drug Treatment Courts (DTC) across Canada, wishes to respond to the HIV/AIDS Legal Network Report entitled: *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use in Canada, October 2011*. DTCs operate provincially (most with federal funding support). CADTCP's representatives have come together to provide an informed response, in consultation with independent evaluators of DTCs in Canada.

Thank you for the opportunity to respond to this report in advance of its circulation. We agree with the following points as outlined in your report:

- addiction is a chronic disease that needs to be treated;
- there should be greater access to drug treatment services;
- adequate funding should be provided so DTCs can address the needs of target populations;
- an effective national DTC evaluation strategy is needed.

Our response to the report is based on, and limited to, the mandate of Drug Treatment Courts: to provide a justice alternative for high risk/high needs addicted offenders charged with a criminal offence or offences, where addiction is the underlying cause of the criminal behaviour.

We would also like to take this opportunity to correct some of the statements specific to DTCs in Canada made in the report. Outlined below are principal areas of correction we must address:

### **DTCs respect the Charter of Rights**

DTC participants are represented by lawyers who protect the participants' rights as guaranteed by the Canadian Charter of Rights and Freedoms. Any waiver of rights occurs only with the informed consent of a participant. Participants are free to leave the DTC program at any time and thereafter be governed by and sentenced under the Canadian Criminal Code sentencing provisions.

DTC policy in Canada follows the "twelve key principles" for court directed treatment as outlined by, among others, the United Nations Office of Drugs and Crime<sup>1</sup>. These stipulate, *inter alia* and in brief:

- an integrated, non-adversarial approach offering a broad spectrum of prompt, individualized treatment and rehabilitation services;
- ongoing interaction between the participant and the DTC judicial /legal and treatment team with consistently applied incentives and rewards; and
- the development of partnerships between DTC teams with local, specialized service providers.

We assure you that the DTCs respect, and fully protect, the privacy and due process rights of all participants.

### **DTCs promote abstinence in conjunction with harm reduction strategies**

DTCs require that abstinence be attained by the time of graduation<sup>2</sup>, but apply harm reduction principles during the course of treatment. DTCs do not "punish relapse", but instead recognise, and actively address, relapse when it occurs in the addiction treatment and recovery process.

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<sup>1</sup> UNODC (1999, p9) Report Informal Expert Working on Drug Treatment Courts. Vienna, 1999 V.00-59222 (E).

### **DTCs are voluntary**

DTC participants choose to enter DTC after receiving the advice of counsel. Participants voluntarily agree to the restrictions and obligations of the DTC program; they can withdraw from the program if they do not wish to continue. The criminal justice system does not purport to be a treatment provider for individuals with addiction, but when individuals commit crimes as a consequence of their addictions and, as a result, end up in the criminal justice system, DTCs are a far more humane, rehabilitative option than traditional sentencing alternatives.

### **DTCs are non-discriminatory**

DTCs recognize that the disease of addiction does not discriminate. DTCs work with high risk/ high needs addicted individuals involved in the criminal justice system regardless of socio economic class, colour, ethnicity, gender, or sexual orientation; DTCs are sensitive to<sup>3</sup> and address these realities. DTCs do not – and cannot by the very nature of their mandate – discriminate.

### **DTCs help reduce justice and other societal costs**

DTC programs also target high risk/high needs offenders with histories of non-compliance with court orders, often frequent past failures at treatment, and criminal records and offences that could otherwise compel a significant jail sentence.

The cost of incarceration is high: Statistics Canada<sup>4</sup> notes the one year per person cost in provincial institutions is approximately \$52,000 in 2005-06; federally it was 69% greater, at \$88,000, and had increased to \$106,600 by 2008-09. Additional societal costs include: cost of stolen goods; police hours; court-related services; health-related service use (e.g. emergency departments); and social services costs (such as child protective services; income support). DTC programs are designed to:

- assist criminally-involved addicts in coming to terms with their drug addiction;
- end or reduce their criminal recidivism;
- assist their social re-integration (through education, employment and volunteering); and
- thereby, reduce both the direct (and indirect) personal and societal costs of their addictions.

### **DTCs' participants' needs are assessed and triaged**

DTC programs offer a continuum of drug, alcohol, criminal thinking, and other related treatment and rehabilitative services, either on their own, or with existing and/or contract services; participants are triaged into detox, residential, and day programs as their needs require and space becomes available.

### **DTCs are evidence-based, and follow internationally recognised, well-established 'Best Practices'**

DTCs in Canada follow the key principles for court directed treatment as outlined by the United Nations Office on Drugs and Crime and recently restated by the Organization of American States<sup>5</sup>. DTCs are part of the national harm reduction and drug control strategies in the United States, United Kingdom, Australia, New Zealand, the Caribbean and Latin America.

DTCs have operated in the United States longer than in any other jurisdiction. As a result, the overwhelming majority of research is based on U.S. DTCs. This research has been extensively reviewed and critiqued over a 20 year history, with the following results:

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<sup>2</sup> To graduate, DTCs typically require participants to be consistently drug-free (as shown by their weekly urine drug tests) for at least three months; some DTCs have granted participants a 'completion' certificate when their tests reveal only cannabis use.

<sup>3</sup> At DTCV, women represent 39% of current participants, significantly more than the general offender (12%) population. Similarly, women comprise 41% of WDTC's treatment group, and Aboriginal participants total slightly fewer than 50%, although only 12% of Manitoba's population has Aboriginal ancestry. At RDTC, one in three (36%) participants is female (88% First Nations or Métis), and two in three (67%) among all participants have either First Nations or Métis ancestry.

<sup>4</sup> Federal cost of incarcerating a male prisoner in fiscal year 2008-2009 was \$106,583 p.a.; cost for females is substantially more. (Public Safety Canada Website, [www.publicsafety.gc.ca](http://www.publicsafety.gc.ca)). Provincial cost of incarcerating a male prisoner in fiscal year 2005-2006 was \$143 per day, or \$52,195 p.a. (Landry, L & Sinha, N, Adult Correctional Services in Canada, 2005-06, Statistics Canada *Juristat* {v. 28:6}). See also Statistics Canada website [www.statcan.gc.ca](http://www.statcan.gc.ca), document # 85-002-x.

<sup>5</sup> Organization of American States (2012, p9). Preliminary Framework for Evaluating Drug Treatment Courts in the Americas. Washington D.C., January 2012.

## Recidivism

- In a recent address, U.S. Attorney General Eric Holder said: *...Fully three quarters of drug court graduates nationwide are able to avoid re-arrest for at least two years after the program. Studies suggest drug courts can reduce crime as much as 45 percent more than any other sentencing options.* (NADCP website, May 24, 2012).
- Five meta-analyses have been conducted.<sup>6</sup> The most recent, comprehensive published meta-analysis, based on 154 independent studies, concluded that DTC participation reduced recidivism by 12%, on average (Mitchell *et al.*, 2012)<sup>7</sup>.

## Costs

- In the same address Holder also remarked: *...and for every dollar spent, three tax dollars are saved. Even more critically, you're illustrating that they can reunite families, help communities feel safer and more secure - and make lives whole again.* (NADCP website, May 24, 2012).
- In testimony before the U.S. House of Representatives Committee on Oversight and Government Reform, Douglas B Marlowe, J.D. Ph.D. Chief of Science, Law and Policy, NADCP, said: *... A recent cost-related meta-analysis performed by the Urban Institute concluded that drug courts produce an average of \$2.21 in direct benefits to the criminal justice system for every \$1 invested - a 221% return on investment.* (Bhati *et al.*, 2008).

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<sup>6</sup> Five meta analyses have been performed to date, on the effects of adult drug courts (Wilson *et al.*, 2006; Lowenkamp *et al.*, 2005; Latimer *et al.*, 2006; Shaffer, 2006; Aos *et al.*, 2006).

<sup>7</sup> Mitchell, O., Wilson, D.B., Eggers, A., & MacKenzie, D.L. (2012). Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and nontraditional drug courts. *Journal of Criminal Justice*, 40, 60-71.

## DTCs in Canada and a National Evaluation Framework

No national evaluation framework exists for Canadian DTCs at this time. We are working hard with federal and provincial governments to structure a national strategy. Nevertheless, Canadian DTCs were evaluated, with requirements and strategies for their conduct (Department of Justice of Canada, 2006), during their three-year start-up periods (and since then) by independent evaluators<sup>8</sup>.

Although a framework will be useful, results for Canadian DTCs are available. Briefly summarised, these are just some excerpts from Canadian evaluations about the shared objectives of reducing drug use and criminal recidivism, social re-integration, and associated costs:

### Drug Use Reduction

- In Edmonton, a comparison<sup>9</sup> of the DTC's participants with court-involved clients of residential treatment program found 100% of the DTC participants were abstinent at follow-up vs. only 64% of those who had received addiction treatment but were without the other supports and supervision available from a drug treatment court program.
- Calgary's DTC<sup>10</sup> found about one-third of DTC participants remained clean and sober for a year.
- Ottawa's DTC reports 'in program' frequency of drug use declining from an average of 28.5 days per month to only 0.8 days per month.

### Recidivism

- In a recent peer-reviewed evaluation of the Drug Treatment Court of Vancouver, Somers and colleagues at Simon Fraser used a matched comparison group (n=180 each for DTCV cohort and comparison) design, and found that drug court participation resulted in *significantly greater reductions in offending, ... including reductions in offences involving drug violations*<sup>11</sup>.
- In Regina, the evaluation<sup>12</sup> tracked and compared participants while with the DTC and for up to 18 months afterwards; 86% of the graduates were either crime-free, or had substantially reduced the amount and seriousness of their criminal charges, along with 35% of discharged participants who were also crime-free.
- Winnipeg's DTC evaluation<sup>13</sup> found that 87% of graduates had remained crime free, while 60% of discharged cases had not committed a predatory or drug-involved crime.

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<sup>8</sup> Without meaningful foundation, the HIV/AIDS Legal Network Report (2011, p29) raises an apprehension about "bias" in these reports, and states "[i]n the case of Canadian DTCs, the evaluations are conducted by invested parties...". We note: i) none of the evaluators for the six DTCs were consulted or even contacted by the authors of the report; and ii) this statement is untrue for the initiating process and outcomes evaluation reports, except as noted (Edmonton, Ottawa {process only}, Regina, Vancouver, and Winnipeg).

<sup>9</sup> Wolfe, J., Komarnisky, S., & Wild, T.C. (2009), EDTCRC: Outcome Evaluation Report.

<sup>10</sup> Synergy Research Group (undated), in a presentation for the CADTCP Conference, February-March 2012.

<sup>11</sup> Somers, J. *et al* (2011) Drug Treatment Court of Vancouver (DTCV): An empirical evaluation of recidivism. *Addiction Research & Therapy* 2:5. (ISSN:2155-6015 JART)

<sup>12</sup> smithworks (2009b), RDTCC Supplementary Outcomes Report. At admission, graduates (15) had an average of 40.6 lifetime convictions, and carried an average 6.6 criminal charges on admission, with 0.1 charges while in the DTC, and 0.9 charges for a substantive (i.e. not an administration of justice charge) crime 11.7 months (average) post-graduation. Long-term discharge (n=29) average comparisons: 33.6 life-time convictions; 5.0 charges on admission; 1.0 'in DTC' charges; and 1.1 charges 11.6 months after discharge.

<sup>13</sup> Weinrath, M. & Bellan, M. (2012), Winnipeg Drug Treatment Court Program Evaluation 2012.

## Social re-integration & Quality of life

- Ottawa states that providing employment/education preparation services shows impressive outcomes.
- Calgary reports that **approximately 50% of DTC participants re-establish** a connection with supportive family members after program entry.
- Regina's DTC evaluation found that participants' satisfaction with their lives overall improved<sup>14</sup> substantially, from an average score of 1.8 on admission to 7.8 at 9-12 months.

## Costs

- In Ottawa, DTC involvement resulted in an annual estimated<sup>15</sup> reduction of \$3 million spent on drugs, with criminal activity required to support that drug use (such as goods stolen and/or drugs trafficked) estimated at another \$9 million, for a total estimated savings of approximately \$12 million.

## Conclusion<sup>16</sup>

Drug Treatment Courts have proliferated in response to burgeoning numbers of offenders with drug-related problems (Huddleston, Marlowe and Casebolt, 2008). Growth in DTCs is most apparent in the United States, where it is estimated over 2,000 DTCs now function (Bureau of Justice Assistance, 2009), but they are also now established in the U.K., Australia, New Zealand, the Caribbean and Latin America.

DTCs are designed to facilitate the treatment of substance use disorders and to provide opportunities for diversion from incarceration (Najavits, 2002). The structure and operation of DTCs have been described and promoted by overarching professional organizations (such as the National Association of Drug Court Professionals, 1997). DTCs are informed by the practice of therapeutic jurisprudence (Hora, 2002), encouraging non-adversarial approach alongside the integration of drug treatment with administration of justice.

We believe in the continued potential of Canadian DTCs to improve public safety through the reduction of drug use, criminal recidivism, and the associated direct and indirect personal and societal costs. We welcome working with those genuinely interested in creating a national evaluation framework for Canada. And we will continue to work hard optimizing DTCs and applying evidence-based 'best practices' or key principles to meet the needs of men and women who are addicted criminal offenders, their families, and the communities across Canada they impact.

We thank you again for the opportunity to respond to this report.

Justice Kofi Barnes on behalf of the CADTCP.

### Quotes from participants about DTCs

- *"Getting into this program saved my life. ... This program got me away from coke, which I thought I'd never be able to do. The program's awesome: really, it's changed my life."*
- *"I know I've got a long way to go still, but it's a known fact: if it weren't for this program, I'd either be locked up for a really long time – and wouldn't have learned anything – or I'd be in a grave."*

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<sup>14</sup> Using Cantril's Life Ladder (1965, a simple scale measuring clients' quality of life perceptions, with sub-dimensions) with 1 as the worst, and 10 as the best, life.

<sup>15</sup> Rideauwood Addiction and Family Services (2009), Outcome Evaluation Report ODTCP Pilot Project.

<sup>16</sup> References drawn from Somers, J *et al* (2012) Mediators of Drug Treatment Court Outcomes in Vancouver.