A Lofty Goal:
A look at working mental health courts in other provinces

by donalee Moulton
Freelance Writer

Provincial Court. Supreme Court. Appeal Court. These are familiar titles to anyone working in the criminal justice system. Advocates are pushing for one more title to add to the list: Mental Health Court.

“Mental health court programs are established to address the unique needs of persons with mental illnesses who find themselves in conflict with the criminal justice system,” explains Brendan Crawley, spokesperson for the Ministry of the Attorney General in Ontario, which has one full-time, dedicated mental health court in Toronto and satellite programs up and running in eight other communities including Ottawa, Brampton, and North York.

In Ontario, these programs usually feature dedicated Crown prosecutors, judges, and duty counsel. In some places, a psychiatrist is available at designated times and mental health-related cases are scheduled for those times.

“In larger jurisdictions, psychiatrists may come to the courthouse to conduct brief, routine, court-ordered assessments of an accused’s fitness to stand trial, so that the accused does not have to spend unnecessary time in jail waiting to be assessed at a psychiatric hospital,” says Crawley.

“In other jurisdictions, with lower case volumes, arrangements can be made to have the accused expeditiously assessed by a psychiatrist who attends at the detention centre and is able to report their findings to the court within five days,” he adds.

As well, mental health court support programs funded by the health sector, and independent of the court system, are present at many court locations around Ontario to link accused to mental health services and make diversion recommendations to the Crown for people who would be more appropriately treated outside the criminal justice system.

Closer to home, both New Brunswick and Newfoundland and Labrador have mental health courts in place, if only on a trial basis. In neighbouring New Brunswick, the Saint John Mental Health Court has been in operation since 2000 and was established to meet four far-reaching objectives: to effectively deal with accused persons with a mental illness within the provisions of the Criminal Code; to provide accused with effective treatment following the principles of least restrictive intervention in the least restrictive environment; to protect the rights of the public, the rights of the accused, and the integrity of the criminal justice system; and to hold those accused accountable for their behaviour.

While adhering to the regular procedures of a criminal court, the mental health court expands the focus of some of those procedures and uses a targeted program to deal effectively with people with mental health problems who have landed in the criminal justice system, which research indicates happens to upwards of nine per cent of mental health patients within the first year after hospital admission.
“(New Brunswick) is a ‘treatment’ court as opposed to a ‘process’ court as might be found in Toronto,” notes Judge Alfred H. Brien, who helped to develop and guide the program, which began as a pilot project and became a permanent program of the Provincial Court in Saint John in 2003.

There are two main components to the New Brunswick initiative. First is the admission phase, which consists of presentation, eligibility, compliance, and acceptance into the program. Next an accused participates in a judicially monitored program and continues until successfully completing the program, voluntarily withdrawing, or being removed.

In Newfoundland and Labrador, the Provincial Court is operating a mental health court on a pilot project basis. “The goal of the pilot project is to identify persons whose mental illness and related lifestyle issues cause them to commit offences and to provide them with supports, both to see them through the Court process and to enable them to live lawfully in the community,” says Ruth Peters Wakeham, the Crown attorney assigned to the Court since it was established in early 2005.

“The court currently has features of restorative justice and adult diversion, but is first and foremost a criminal court,” she adds.

Partners in the pilot project – the Provincial Court of Newfoundland, the Director of Public Prosecutions, the Newfoundland Legal Aid Commission, and Eastern Health – have pooled resources to create a system, and a place, for addressing issues. The Provincial Court has provided a judge, a courtroom with clerk, and meeting space. The Prosecution Service has provided a prosecutor. Legal Aid has secured funding for a lawyer and a paralegal. Eastern Health has provided a psychiatric social worker and case manager, who make up the Court Support Team.

“The Court does not routinely deal with issues of fitness to stand trial or with criminal responsibility defences, which are heard in the regular criminal courts,” notes Ms. Peters Wakeham. “The Mental Health Court is a disposition court for persons who have accepted responsibility for the offence and who are prepared to work with the Court Support Team to achieve and maintain wellness and to effect recommended lifestyle changes.”

It’s a lofty goal – though apparently attainable. Most jurisdictions in this country do not have a mental health court program, but they are looking closely at what is going on in those provinces that do. The results, in many cases, are noteworthy.

According to the most recent annual report for the New Brunswick mental health court, for example, 78 per cent of those admitted to the Program Phase successfully completed the program and graduated. Of those who did graduate, 76 per cent did not re-offend, a 6 per cent increase in the overall rate from the previous year.

Ontario has been so impressed with the results of its mental health court that the Ministry of Health and Long-Term Care committed an annual allotment of $27.5 million in community mental health agencies across the province to help more people with mental illness stay out of the criminal justice and correctional systems.

That money, says Mr. Crawley, was used to hire 61 new mental health court workers; fund 500 new units of support housing; and serve more than 1,500 individuals. “There was a significant increase in use of court diversion and a considerable reduction in number of accused awaiting trial or bail,” he
While there are few academic studies exploring the issue of mental health courts and related supports, one research project conducted in Ontario found that the recidivism rate for participants was only two per cent to three per cent after a year of supervised care. The researchers concluded that, “Pretrial diversion of offenders with mental illness accused of minor crimes is eminently feasible for both urban and rural settings, provided that police, Crown, and treatment policies are coordinated to favour the treatment option rather than prosecution.”

Of course, the grass is not always greener in a mental health court. “It takes a great deal of time and effort to create and maintain the court,” says Judge Brien, noting that in New Brunswick, at least, there is no funding from the province except in-kind human resources, which makes it difficult to train team members and to embark on new initiatives that require cold hard cash.

But still, he says, “the results for the participants, the community, and, to a large extent, the justice and health systems, are clearly worth it.”