

## Expanding the use of Restorative Justice: Exploring innovations and best practices

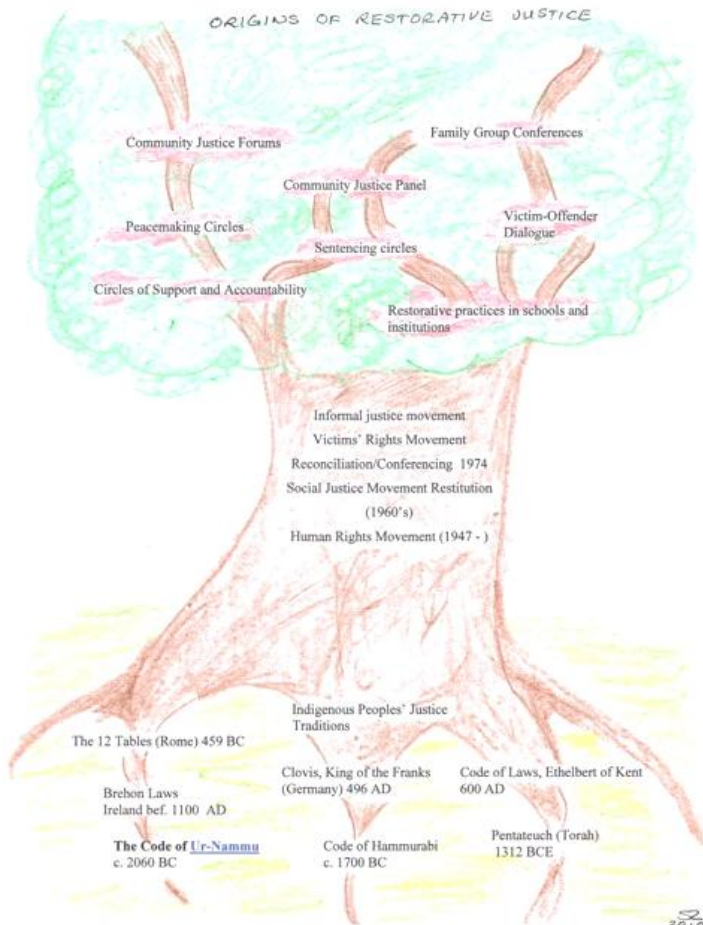


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## Introduction and Background

### Definition

Restorative Justice is founded on a vision of justice that heals and restores. The approach is based on an understanding that crime is a violation of people and relationships, and that justice is served when those most directly involved in an offence are given opportunities to redress the harm caused. The values of Restorative Justice include caring and compassion, equality, healing, responsibility, truth and honesty, inclusion, trust, safety, respect, non-judgmentalism, self-awareness, integrity, flexibility, and empathy. While definitions differ, most would agree that as an approach to justice, Restorative Justice aims to shift the focus of the justice process from punishment to restoration. This shift is accomplished by emphasizing the participation of the victim, offender and the community in addressing criminal behaviour. This shift also requires a re-examination and re-prioritizing of the principles that underlie our systems of justice. While at times it is explained as 'alternative' justice, it should be viewed as a method of working with individuals that complements our traditional justice system. Restorative Justice is an option that should be considered for all cases and all parties involved should have information about existing programs.

### History / Legislation

Restorative Justice has ancient roots in many traditions, from ancient legal practice (the Code of Ur-Nammu in 2060 BC and the Code of Hammurabi in 1760 B.C.; the 12 Tables of Rome circa 500 B.C.; the Code of Laws of Ethelbert of Kent (600 AD)); Christian spiritual traditions, to the human rights movement (1947); and the traditional justice of Indigenous nations in North America and around the world (See cover image) (Allard and Northey, 2001). Llewellyn and Howse (1999:13) describe how several related movements aimed at addressing problems in the criminal justice system are largely responsible for the rise of Restorative Justice. Some examples include the victims' rights movement which began to grow in the 1960's, various restitution programs which are now being used to address criminal matters, as well as broader social justice movements outside the criminal justice system. The rise in popularity of these related movements and others have helped pave the way for Restorative Justice.

It is also important to acknowledge the connection between Restorative Justice and the culture and practices of Indigenous peoples. Although it would not be appropriate to call models of justice and healing in Aboriginal communities Restorative Justice – they have a much broader cultural scope – the principles of these traditional healing practices are consistent with those of Restorative Justice (Roach, 2000). The first recognized case in Canada which identified methods of Restorative Justice was documented in a youth vandalism case in Elmira, Ontario, in 1974. Two prison support volunteers with the Mennonite Central Committee, Mark Yantzi (now with Correctional Service Canada (CSC) Restorative Opportunities), and Dave Worth, asked the judge for permission to arrange for two offenders to meet with the 22 owners of the properties they vandalized to see how they could repair the harm they had caused. It was from this one case that the movement began to grow and evolve across the country (Zehr, 2003).

There is already space within existing legislation to legitimate and increase the use of RJ in the *Criminal Code*, the *Youth Criminal Justice Act*, and the principles of sentencing. In the late 1980's, a significant review of the justice system was undertaken which included an examination of the principles that underlie sentencing in Canada. The result of this review was a report titled "*Taking Responsibility*" which included an emphasis on restorative principles. (These principles were formally adopted in the *Criminal Code of Canada* in 1996, and the stated objectives of sentencing include "to provide reparations for harm done to victims or to the community" and "to promote a sense of responsibility in

offenders, and acknowledgement of the harm done to victims and to the community" [*Criminal Code, Canada* ss. 718 e) and f)].) In 1995 the Canadian *Criminal Code* was amended to reflect the importance of Restorative Justice to the criminal justice system, adding [section 742.1](#) which allowed judges to impose a conditional sentence that can be served in the community. In 1997, the *Criminal Code* was amended again, altering [section 718.2](#) to read, "...all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders..." (*Criminal Code, RSC 1985, c C-46, s. 781.2(e)*).

In 1999, the Supreme Court decision that is well known as the Gladue case (a challenge to section 781.2), further set the stage for the use of Restorative Justice in the criminal justice system (Roach and Rudin, 2000). The results of this case required that judges consider Restorative Justice options during the sentencing process. In 2003, with the introduction of the *Youth Criminal Justice Act* (YCJA), agents of the justice system were given more options for responding to youth crime, including the use of Restorative Justice.

This interest has resulted in an increase in the number of programs labelled as restorative. In 1998, a Correctional Service Canada study found more than 200 Restorative Justice initiatives currently in place in Canada (Correctional Service Canada, 1998). By 2000, the Canadian delegation of the United Nations Congress on the Prevention of Crime and Treatment of Offenders claimed approximately 400 Restorative Justice programs in Canada. Programs have sprung up at the national, provincial and local levels. Restorative Justice was authorized as an "Alternative Measure" in 2012's *Youth Criminal Justice Act* which was a good step in the right direction but left the door open to provincial interpretation and programming limited by resources available within our communities.

## Current Policies

### Internationally

Restorative Justice work does not look the same all over the world, and there is a lot we can learn from the successes of other countries. Conferences from traditional Maori practices and Family Group Conferencing in New Zealand, Norway's prison system, Circles of Support and Accountability, and North American First Nation Circles are certainly well known. In South Africa, there is use of community service to address chronic prison overcrowding and as a response to the South African Truth and Reconciliation Commission. In Bangladesh, there is widespread use of a community-based, non-state dispute resolution technique known as shalish (mediation) and Pierre Allard's (a retired CSC executive who held a number of high level national positions), Just Equipping organization, continues its RJ work in Africa. In Europe, chaplains are doing faith based community reintegration; it is being used to address issues of juvenile justice; and in many counties to counteract increasing rates of crime and violence while increasing citizen confidence in justice systems. Restorative Justice is being used in the USA in school and community group conferencing and the city of Burlington Vermont uses Restorative Justice Panels. French and European legislation recently incorporated mediation-focused policies leading to a growing increase in the use of Restorative Justice.

There are many groups around the world including the well-known [International Institute for Restorative Practices](#) (IIRP). Many European countries have embraced Restorative Justice in recent years. The creation of the European Forum on Restorative Justice has produced a great deal of research and evidence to support its growth. In the United Kingdom, the Restorative Justice Council is a national body that aims to provide quality assurance, practice standards and a united voice to advocate for the use of Restorative Justice. Globally, the United Nations has come out with a comprehensive set of standards in a Restorative Justice Handbook in 2007 (see notes below in 'Evidence: Why Restorative Justice Works' section) and noted in the United Nations Compendium 2016.

## Canada

Restorative Justice has momentum in many Canadian communities, growing when the concept was at times popular, when funding was available, and with some programs (such as CSC Restorative Opportunities and Circles of Support and Accountability) having a consistent focus across the nation. On a larger scale though, RJ lacks a strong, cohesive approach in terms of accessing consistent practices across the country - restorative work in Nova Scotia does not look the same as in Vancouver. In fact, many people are actually following the underpinnings of Restorative Justice but not using this term or advertising their restorative practices.

Many associate the modern advancements in terms of research and practices within Canada to individuals from various Indigenous, Mennonite, Quaker and Amish groups as all having strongly influenced Restorative Justice over the years. There is a national body created dedicated to RJ, Canadian Restorative Justice Consortium, provincial RJ organizations, annual symposiums and RJ education specialties at Simon Fraser University BC, Humber College ON, University of PEI, etc. The Nova Scotia Restorative Justice Program (NSRJP) is seen as the most comprehensive Restorative Justice initiative in Canada, now including both youth and adults. The Nova Scotia Program has been extensively researched through the Nova Scotia Restorative Justice-Community University Research Alliance (NSRJ-CURA) building substantial evidence of the effectiveness of RJ. The recent passing of the Manitoba Restorative Justice Act in 2015 has defined RJ, set up a provincial advisory committee, and is developing a comprehensive strategy to increase the use of Restorative Justice (eg. Pre and post charge Restorative Justice). Winnipeg is in the planning stages of developing a RJ Court.

And the language is changing in Canada. In most RJ circles, the victim is 'the person who has been harmed' and offender is 'the person who has done the harm'. While the focus, principles and underpinnings are still valid, the actual term 'Restorative Justice' is being looked at as some say it implies that life can be restored to normal which is not always the case.

In the relatively short time that Restorative Justice has been part of the criminal justice landscape in Canada, it has grown to include a variety of programs and opportunities for victims, offenders, and the communities that surround them. Some of the programs are aimed at specific demographics or types of offenders, while others are available for anyone who voluntarily chooses to participate. Much of the good work, such as Queen's University's Restorative Justice Program and Ontario's mediation services, have been reduced due to funding restrictions.

Some consider Restorative Justice to be only Victim-Offender Mediation leading to apology, forgiveness, and a successful conclusion but this does not always happen and Restorative Justice principles offer the opportunity to do so much more. We need to consider an expanded view of what Restorative Justice is and how it is based in how we treat each other and the opportunities available to us to live differently. This list is certainly not exhaustive, but the following are some examples of the types of Restorative Justice programs currently being used in Canada:

- Victim-Offender Mediation
- Community Justice Forums
- Youth Justice Committees
- Family Group Conferencing
- Sentencing Circles
- Circles of Support and Accountability
- Restorative Dialogues in Schools, Churches and Prisons
- Training and Consulting on Forgiveness
- Victim and Trauma Services
- Conferences, Education and Information

Restorative Justice and traditional justice have already been proven to work together to reinforce one another. Examples here include Mental Health courts; Drug courts; Aboriginal courts; Sentencing circles; Alternative Measure and Diversion programs; youth sanctions; Family Conferencing; prison visitation; and community service programming.

Other current examples of this work include:

- CSC Restorative Opportunities
- Restorative Justice Week
- RJ groups with inmates in Beaver Creek, GVI, WI, etc.
- RJ Committees within communities
- Restorative Living Units in prisons
- Centre for RJ, Simon Fraser University BC
- Church Council on Justice and Corrections (Empathy project)
- Women in the Shadows, NB
- Canadian Families and Corrections Network (Reintegration Preparation Workbook and Visitor Resource Centres)
- Peacebuilders ON (Youth conflict programs)
- Dismas Fellowship ON (Community Reintegration)
- Community Justice Initiatives ON (Victim-Offender Mediation)
- Mi'kmaq Customary Law Program NS (Support Services)
- Collaborative Justice Program ON (Pre-sentence RJ conferencing)
- le Centre de Services de Justice Réparatrice, QB (Victim Surrogacy program)
- Nova Scotia Restorative Justice Program (NSRJP)

## Evidence: Why Restorative Justice works

The most successful Restorative Justice programs have strong networks and interactions with justice professionals (for example police officers who divert the offender; prosecutors who utilize alternative measures; judges who mandate circle sentencing; or correctional, probation or parole workers attempting to reintegrate offender back into community).

The United Nations Handbook on Restorative Justice from 2006 outlines the widely accepted benefits of a restorative approach to justice. Key points include:

- “Restorative Justice has a positive effect in reducing the frequency and the severity of re-offending.
- There are high levels of support among crime victims and in communities for offender reparation.
- Many crime victims would like the opportunity to meet with their offender.
- Many crime victims and offenders will participate in a restorative process if given the opportunity to do so.
- There is some evidence that restorative justice processes can reduce post-traumatic stress disorder among victims.
- In some jurisdictions, restorative approaches have reduced court costs and court processing time and improved service delivery.” (United Nations, 2006)

There is also increasing evidence that restorative justice saves money. Research conducted by the Washington State Institute for Public Policy found that restorative justice programs can save taxpayers \$3,320 USD per participant per year and cause an 8.7% reduction in recidivism. By way of contrast, the “*Scared Straight*” program which was found to have a 6.8% INCREASE in recidivism, and creates costs for taxpayers. This comprehensive study was recently updated (Washington State Institute for Public Policy, 2017) and the results have consistently shown a cost savings.

Findings from the [National Survey of Victims' Views](#) indicate that more than half of victims ‘would prefer a system that dealt shorter prison sentences and invested more resources in prevention and rehabilitation programs. This is true even among survivors of serious violent crime.’

## Recommendations

The work of justice happens not within the system but also within communities. Recognizing that there could be many recommendations for restorative options that do not involve a courtroom, or increase restorative courtrooms (e.g. Gladue sentencing reports, Restorative Justice courts, etc.), in consulting with others within the correctional context (post sentence) there are a number of ***options to explore***:

### Restorative Prisons

- Expand ***Correctional Service Canada Restorative Justice*** Division:

The Restorative Justice Sector is a critical piece for Correctional Service Canada and well placed under the Community and Engagement division but more support in terms of staff to assist in the creation and support of programming and initiatives across the country. There would be a lot of benefit to widening the scope beyond CSC Restorative Opportunities, RJ Week and the Ron Wiebe Award to encourage linkages between policy, research, and a Canada-wide framework. The funding portfolios of Youth Justice, Aboriginal Initiatives and Crime Prevention need to be expanded to Adult Justice as it is extremely difficult to engage the public for sustainable funding for inmate work. Another suggestion here would be the creation of a Restorative Justice Community Advisory Circle, asking non-governmental agencies to dialogue with CSC RJ division to ensure we walk forward in a participatory, inclusive manner.

- Programs that ***organize dialogue between incarcerated individuals and their victims***:

***Correctional Service Canada Restorative Opportunities*** is a solid program with strong evidence of its success. However, the program needs more publicity, opportunities, and funding within our institutions and communities so people can request participation. Further work should be allowed for restoring the harm that has been done in terms of communication and repair beyond mediation to include work based on Restorative Justice practices and principles such as victim-impact programming, Family Group Decision Making, re-entry circles, etc.

- ***Expand inmate programs around conflict resolution, alternatives to violence and those that build awareness and empathy for victims of crime***. How can we ask people to do something differently without showing them how? Remember that many of our inmates are victims themselves and can come to an awareness of what they, their direct victims and their families and communities have gone through as a result of their crimes. Examples here include work such as Church Council on Justice and Corrections' Empathy project, Prison visitation programs, and Canadian Families and Corrections Network's Reintegration resources.

- ***Strengthen the position of families within the prison*** as a valuable asset to reintegration deserving respect, encouragement, and support. Easy to achieve suggestions include family-friendly visiting areas, parenting work, relationship information, and bridging our inmates with community programming and resources, such as health, finances, child growth, and other aspects of living that have nothing to do with prison. This helps to create strong, positive bonds to strengthen the family and offer education on relationships and factors affecting families as inmates reintegrate.

- ***Promote research and programming involving surrogate victims*** (victims of crime who are not the victim of the person they are meeting): The Centre de Service de Justice Réparatrice in Quebec has been offering these programs which allow the experiences of victims to be shared and for prisoners to hear the stories. It also offers an opportunity to reflect together on how crime impacts those involved.



As Daniel Van Ness notes “*an interesting side-benefit of these programs is that not only do prisoner attitudes change, so do those of the victims, as they come to know the prisoners*” (Van Ness, 2005)

➤ **More research in Canada on Restorative Justice in general and initiatives such as CSC Restorative Living Units (RJU)**, a prison or prison unit that is run based on the principles of Restorative Justice, and using Restorative Justice as a philosophy informing all of the activities.

➤ **Include Restorative Justice in all CSC staff training** as they are responsible for institutional programming, referring inmates to CSC Restorative Opportunities and dealing with visitations.

## Restorative Communities / Families

Our communities are only as strong as our families within them. Crime is a violation of relationships and our community and families need to be engaged to build relationships through ideas, initiatives, programming and resources to assist in dealing with issues before, during and after conflict.

➤ **More emphasis needs to be on prevention and reintegration in addition to security when we consider public safety.** Conflict resolution, non-violent communication programming, RJ dialogues in schools, churches, communities and within families needs to be promoted. Family group conferencing, Circles of Support and Accountability, Restoring Families are all valuable work to be advanced with a great cost savings for imprisonment and intergenerational crime.

➤ **Expand the definition of a victim and ensure victims have easy access to services.** Consider families who are not recognized as victims of crime, communities who are not given a voice in our justice system, those whose charges were dropped in a courtroom plea deal who are denied victim services, exonerees, and victims of domestic violence who are paying their own victim surcharges as their partners are in jail.

➤ **Government is encouraged to walk with existing communities, taking a supportive rather than a leadership role.** There are many organizations doing important, restorative work in our communities. We do not need to reinvent the wheel but to fall in line with valuable, evidence-based work.

➤ All governments need to closely **examine the front-runners in our country** – the Manitoba Restorative Justice Act, the Nova Scotia Restorative Justice program, and the numerous community based restorative justice agencies in order to move toward following success.

➤ **Public Safety Canada needs to create a Restorative Justice national framework** in all aspects of its work to create a consistent approach across Canada.

## Conclusion

As a trailblazer in the modern Restorative Justice movement, Canada is in a unique position. The importance of restorative justice is reflected in our *Criminal Code*, the *Youth Criminal Justice Act* and judges are required to consider its use during the sentencing process. There is mounting evidence to support the expansion of a restorative approach.

The path forward needs three things – drive, opportunity and funding. It seems we are at a point in our history where we have the drive. Government, victims, offenders, communities and families all want to move forward along this path. Restorative Justice is in the Mandate Letters from the Prime Minister to our Ministers. A Criminal Justice Review is underway. Provision of sufficient and



stable funding to implement sanctions for realistic alternatives to imprisonment is a recommendation of the recent Truth and Reconciliation Report. Restorative Justice is being brought to the Canadian consciousness through news and media of cases such as the Dental students at Dalhousie University. Current work is being done in the field with very little funding and more opportunities will open as financial means are given to both evidence based ideas and new initiatives. This is an opportunity for Canada to build on our successes in our place as a leader in Restorative Justice.

## Questions for Discussion

- What do you think of Restorative Justice? Can it work alongside traditional justice in Canada to be 'an off ramp in a revolving door of corrections'?
- What do you think of the title 'Restorative Justice'? Is it always restorative?
- Some would say 'true' RJ always includes victim, offender and community representation at the table. Is not having a victim a barrier? What about surrogate victims? Is it appropriate to ask a victim of homicide to stand in for another? What about victims of the state? Is it appropriate to have the state representing the community when, at times, the state has been attributed with harming the community (E.g. Residential Schools)?
- And what is a victim? Some would say this is only the 'direct' victim of the crime. What about those whose charges were dropped in favour of a plea deal? What about offenders who are victims? What about family members who are secondary victims of the consequences of the crime? Or family members that have to pay the victim surcharge because the person who owes it is in jail (they might be the 'direct' victim)?
- What are some innovation options for RJ in an institutional setting?
- What are some of the challenges RJ can overcome? Will it save court and police dollars, lower recidivism and increase successful offender reintegration?
- When there is an increase to 'cops, courts and corrections' should there be a corresponding increase to communities and social services to be ready to support them?

## Additional Resources

- United Nations Handbook on Restorative Justice:  
[https://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf)
- The Empathy Project (The Church Council on Justice and Corrections):  
<http://ccjc.ca/current-projects/>
- Current UN Compendium:  
<https://www.unodc.org/documents/justice-and-prison-reform/Compendium-Ebook.pdf>
- European Forum:  
<http://www.euforumrj.org>
- Canadian Resource Centre for Victims of Crime:  
<https://crcvc.ca/docs/restjust.pdf>
- Canadian Restorative Justice Consortium:  
<http://crjc.ca>
- Centre de Service de Justice Réparatrice:  
[http://www.csjr.org/wp-content/uploads/2012/06/CRossi\\_RDV\\_Humanite\\_retrouvee\\_2012.pdf](http://www.csjr.org/wp-content/uploads/2012/06/CRossi_RDV_Humanite_retrouvee_2012.pdf)
- The Sycamore Tree Project (Prison Fellowship International):  
<http://www.prisonfellowship.org.uk/what-we-do/sycamore-tree/>

- 'Families as Direct Victims of Crime' Research (Canadian Families and Corrections Network)  
<http://cfcn-rcafd.org>
- CCJC Infographic Series: <http://ccjc.ca/restorative-justice-week/>

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