



# Introduction to Restorative Justice

Some of you may have already been introduced to restorative justice. As a result of dissatisfaction with the way Justice has been delivered in Canada, many communities have looked for alternatives to the adversarial justice process. In many of our communities, Restorative Justice has become a priority for police. It is part of the Community Policing philosophy. Historically, restorative justice has been used by all Indigenous peoples. New Zealand was the first to include restorative processes in law when dealing with youth. It is now included in the Youth Criminal Justice Act in Canada to deal with criminal offences.

In Restorative Justice, dialogue and taking responsibility for one's behaviour allows us to focus on problem-solving and offender accountability. The Restorative Justice philosophy allows for community healing by bringing together the victim, offender, supporters and other members of the community who have been harmed directly, or indirectly, by an offender's behaviour.

In the upcoming workshop, you will learn about the philosophy behind Restorative Justice, the affect an offender's unacceptable behaviour has on victims and their supporters, on their own families and supporters, as well as on others in the community. You will develop some introductory facilitation skills which will allow you to facilitate circles and become an advocate of Restorative Justice.

## ORIGINS OF RESTORATIVE JUSTICE

Community- and victim-based justice is not a new, but rather a return to an historical way of dealing with conflict. It is the court system that is relatively new. Family group gatherings (conferences) have been used for centuries by many aboriginal cultural groups, clans, etc. around the world. Aboriginal peoples of Canada have historically used circle gatherings to deal with issues in their communities and deal with community problems.

During the 1970's there was a movement to protect offenders' rights and to find alternatives to incarceration as a result of more understanding about criminal behaviour which was explained by social scientists to be a result of social conditions. Processes such as mediation started to be used to deal with civil and family conflicts.

In Canada, the first victim-offender mediation took place in 1974 with 2 offenders who were charged with vandalism. They met with their victims to come up with a restitution agreement. From this incident, some Christian and Jewish faiths promoted forgiveness and reparation as they developed their restorative practices.

In the 1990's, with the Aboriginal communities being over-represented in correctional centres, traditional methods of conflict resolution involving the community and holistic solutions, such as sentencing circles, also began to be used. Recognition of the importance to alternatives to incarceration, the need to address the special needs of aboriginal offenders, and to reduce relying on sending people to jail as punishment (R. v Gladue), plus the acknowledgement of the importance of restorative justice in our society in a Speech from the Throne in 1999, the acceptance of the practice and principles of restorative justice evolved.

The first structured family group conferences (FGC) were held in New Zealand. The CJF or Community Justice Forum which is the RCMP model has been adapted from the Maori traditions for working together as a family to

repair the harm done by a family member. The persons affected by an offender's unacceptable actions were brought together in the community to meet with the offender and supporters. Police officers requested that a Family Group Conference (FGC) be conducted by the Social Welfare Department. The police and social worker would facilitate the conference. The FGC process was legislated as law for dealing with youth offenders in New Zealand in 1989.

In the early 1990's, the Australians heard about the successes in New Zealand and travelled there to observe some conferences. They took back what they learned and adapted the New Zealand process to meet their needs. Australia used the process to deal with behaviour problems in schools as well as for criminal matters. They are also responsible for the development of the script which we use today.

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## Introduction

If we were to start from scratch and build an entirely new criminal justice system, should it resemble our current system? Presently, the criminal justice system is far from perfect. In fact, we go out of our way to encourage the accused party to deny guilt, even when guilty. We exclude the injured party — the victim. We focus more on how evidence was gathered than we do about what that evidence means. The current criminal justice system is one designed by lawyers, for lawyers and the result is that victims and offenders are often bystanders in the proceedings.

During the past 30 years, a restorative justice movement has emerged in Canada. It is a movement that finds the current justice system inadequate in terms of dealing with offenders, victims and communities in the aftermath of crime. The current criminal justice system is seen as retributive, concentrating solely on fixing blame and guilt. Restorative justice asserts that victims are forgotten entities in the current justice process and should have a greater role in determining the outcome of their case. Restorative Justice (RJ) is not a program, but a way of looking at crime. It can be defined as a response to crime that focuses on restoring the losses suffered by victims, holding offenders accountable for the harm they have caused, and building peace within communities.

We have begun to see a litany of criminal justice programs that try to apply various principles of restorative justice. These programs should involve the voluntary participation of the victim of the offence, the offender and members of the community. Those affected directly by the crime may come together for discussions about it and its impact on their lives. The process requires wrongdoers to recognize the harm they have caused and to accept responsibility for their actions. Wrongdoers must also make reparation to the victims and the community.

## Principles of restorative justice

Restorative programs are often characterized by four key values:

- Encounter: Create opportunities for victims, offenders and community members who want to do so to meet to discuss the crime and its aftermath.
- Amends: Expect offenders to take steps to repair the harm they have caused.
- Reintegration: Seek to restore victims and offenders as whole, contributing members of society.
- Inclusion: Provide opportunities for parties with a stake in a specific crime to participate in its resolution.

Some further principles of restorative justice:

- Recognition that crime is a violation of one person by another.

- Recognition that crime is harmful to personal relationships and to communities.

The focus is on problem solving and restoration of harmony. Restitution and reconciliation are used as a means of restoration. The community acts as a facilitator in the restorative process.

The holistic context of an offence is taken into consideration, including moral, social, economic, political and religious considerations.

## **Restorative Justice in Canada**

In 1996, the sentencing principles in the Criminal Code were amended to encourage the use of community-based sentencing and focus on restorative elements such as the need to promote a sense of responsibility in offenders and for them to acknowledge and make reparation for the harm they have done to their victims and to the community. In fact, paragraph 718.2(e) of the Criminal Code, states that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders." In the Gladue case, the Supreme Court of Canada rejected the view that a restorative approach is a more, lenient approach to crime, or that a sentence focusing on restorative justice is a lighter sentence. Restoring harmony involves determining sentences that respond to the needs of the victim, the community, and the offender.

Advocates of restorative justice believe that it is in the best interests of society to support offenders in turning away from crime and learning to behave in socially acceptable ways. Restorative programs are believed to encourage offenders to feel and express remorse, to recognize the harm they have done to their victims, and to accept responsibility for their actions.

## **Religious Roots**

Some of the earliest restorative justice pioneers were from faith communities such as the Mennonites. They drew from their faith tradition and the Bible the notion that justice had everything to do with healing and worked on making a people whole. They believed that justice was all about making things right with God and with one another.

Nowadays, many restorative justice programs are still rooted in religious or faith-based principles of reconciliation, restoration, and healing. Some people argue that restorative justice, with its spiritual roots and values, is a more morally and emotionally satisfying model for criminal justice than the current state-centered, retributive model.

Forgiveness and restoration are viewed as fundamental to how we should respond to human wrongdoing. With its emphasis on making things right and restoring balance and harmony, restorative justice touches the foundational beliefs of the major world faiths. Promoters of RJ must be careful about linking it too closely with faith and religion. Some victims may feel ill at ease dealing with a criminal justice philosophy so fundamentally tied to faith-based principles. At the same time, others have found the principles of forgiveness, reconciliation and restoration very rewarding in their journey toward healing.

While forgiveness may be appropriate for some victims and it may result naturally for some participants in RJ programs, it should not be the goal. Victims must not be pressured to forgive an offender. The burden on the victim is heavy enough without being made to worry about forgiveness. If there is pressure to forgive and at the end of the process the victim is unable to do so, this may be unnecessarily interpreted as a failure.

## **Cost-saving Issues**

A significant amount of funding is required to develop and sustain restorative justice programs. At the same time, there is a substantial push for government to create more restorative programs throughout Canada because some believe that such programs will reduce the long-term costs of incarceration.

The purpose of a RJ program must never be to cut costs. If a program is set up to save the government money, it may not be honouring the principles of RJ.

## **The limitations of RJ**

There will always be a need for the traditional justice system, as some cases are simply not appropriate for RJ programs. Remember that restorative justice can only take place when:

An offender admits guilt, accepts responsibility for his/her actions and agrees to participate in the program;

The victim of the crime freely agrees to participate in the program and without feeling pressured to do so; and

Trained facilitators are available in the community and a restorative program is in place. There are offenders who are not appropriate candidates for such programs, as well as victims and their families who do not want to have a role in restorative programs. Even if an offender participates in a RJ program, he/she may still be dangerous and therefore must still be sent to prison. Also, a person who has been wrongfully charged with an offence must have an opportunity to prove his/her innocence in a court of law. Thus, restorative justice programs are not appropriate in every situation.