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## **Restorative Justice in Canada: what victims should know**

- Prepared by the Canadian Resource Centre for Victims of Crime –

## **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.

The following is a list of principles comparing the focus of the current criminal justice system with a restorative system:

<b>Old Paradigm: Retributive</b>	<b>New Paradigm: Restorative</b>
Focus on establishing blame and guilt	Focus on problem solving, liabilities and obligations, focus on the future.
Stigma of crime permanent.	Stigma of crime removable.
No encouragement for repentance and forgiveness.	Possibilities for repentance and forgiveness.
Dependence upon proxy professionals.	Direct involvement by participants.
Action directed from state to offender: Victim ignored - Offender passive.	Victim and offender's roles recognized in both problem and solution: Victim rights/needs recognized; Offender encouraged to take responsibility.
Offender accountability defined as taking punishment.	Offender accountability defined as understanding impact of action and helping decide how to make things right.
Offence defined in purely legal terms - devoid of moral, social, economic, political dimensions.	Offence understood in whole context - moral, social, economic, political.
"Debt" owed to state and society.	Debts/liability to victim recognized.
Response focused on offender's past behavior.	Response focused on harmful consequences of offender's behavior.
Imposition of pain to punish and deter/prevent.	Restitution as a means of restoring both parties; reconciliation/restoration as a goal.
Conflict seen as individual vs. state - interpersonal, conflictual nature of crime obscured, repressed.	Crime recognized as interpersonal conflict.
Community represented abstractly by the state.	Community as facilitator.

### **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.

### **Types of Restorative Justice Programs**

Most restorative justice programs have some common elements. The following list details some of the different types of restorative programs available throughout Canada, as provided by the Correctional Service of Canada Dispute Resolution Unit.

It is important to remember that most programs require the voluntary participation of the offender and that they accept responsibility for their actions. Some programs require the participation of victims. It is also important to note that programs can take place at different stages of the criminal justice process. Some programs may require the offender to plead guilty before proceeding with the program. Others may take place after charges have been laid. Some initiatives take place after conviction but before sentencing occurs (pre-sentence programs), while others take place after an offender has been sentenced (post-sentence programs).

It is important to note that not all programs apply all the principles of RJ. Some may not require victim participation and instead apply other principles. That does not make the program futile, but it is important to understand when assessing a program.

Circles of Support and Accountability are groups of volunteers, often from the faith communities, that form a "covenant" with a released high-risk sex offender (who has served his entire sentence) to accept the Circle's help and advice, to pursue a predetermined course of treatment and to act responsibly in the community. For its part, the Circle helps provide a healthy environment for the ex-offender by advocating with various systems, dialoging the ex-offender about his attitudes and behaviours, and mediating concerns with the community. The victim's participation is not required.

Peacemaking Circles are rooted in Aboriginal experience and tradition, and are based on the belief that the primary responsibility for addressing the problems of crime lies in the community and not just with those directly impacted by the crime and their immediate families. Peacemaking circles, be they healing circles or community circles or sentencing circles, also have at their core, the belief that it is important to address not only the presenting criminal problem but also to build community. These circles focus on trying to uncover the underlying problems, and to restore balance where possible. Discussions in these types of circles often explore wider issues of local crime and prevention issues, going beyond just the situation at hand.

Healing circles are ceremonies intended to bring conflict to a close, allow the participants to express their feelings, and indicate that the offender and victim have undergone personal healing.

In Sentencing Circles, the victim, offender, family, and community members, meet with a judge, lawyers, police, and others to recommend to the judge what type of sentence an offender should receive. The victim and the community have the opportunity to express themselves, address the offender, and may also take part in developing and implementing a plan relating to the offender's sentence.

Community-assisted hearings, or releasing circles, are a type of Parole Board of Canada hearing for aboriginal offenders and involve aboriginal community members. The process is similar to a parole hearing in that it occurs within the prison. It differs from a traditional hearing in that all of the participants, including members of the board, the offender, his parole officer, his support person, aboriginal elders from the community, the hearing assistant and the victims (if they are present), sit in a circle for the purposes of the hearing.

It is important to note that the victim's role within the circle can vary quite substantially from one province to another. In British Columbia, community-assisted hearings and releasing circles have been taking place for a number of years. All participants in the circle are able to speak freely, and thus victims who are involved are not limited to reading from a prepared victim impact statement. They can discuss the impact of the crime directly with the members of the circle, including the offender.

Unfortunately, provinces other than BC often do not have as much experience with releasing circles and thus the victim's role may be substantially restricted in comparison. Victims in Ontario for example, may be required to sit outside the circle as observers. Or, if they do enter the circle as participants, they must read directly from their victim impact statement and cannot speak freely. Thus, the circle is not true in the sense that all participants are equal.

Community Conferencing is a broader term being used in Canada for a practice called Family Group Conferencing. It is rooted in Maori culture in New Zealand where, like in other parts of the world, the indigenous population is over represented in the court and prison system. The Maori concept directly involves the offender's family in the process of holding the offender accountable, in teaching individual responsibility and in addressing the harm done. It was introduced to the juvenile justice system in New Zealand as an alternative to youth court and later expanded to Australia, North America and other countries.

In Canada, this model has been adapted to include not only the notion of family involvement but also the participation of both the offender's and the victim's supporters who may or may not be family. The focus of conferencing circles is to repair the harm done by an offence and to minimize the likelihood of future harm. This is accomplished through dialogue geared to increasing understanding between participants and is conducted in a structured circle setting guided by a trained facilitator or convener.

In Community Justice Forums, mediators or facilitators help accused persons and their families to meet with victims, their supporters, police, and others to discuss and resolve the incident. In Canada, the RCMP has been training officers and community members in using this method. Most initiatives have focused on young offenders, but some communities are using this model with adults.

Victim Offender Mediation programs (VOMP) started in Canada 25 years ago and have proven extremely beneficial in assisting victims and offenders find a sense of satisfaction, closure and healing in the aftermath of crime. Victim-offender mediation is a process that prepares interested victims and offenders for an opportunity to meet in a safe and structured setting and with the assistance of a trained mediator. During these meetings, victims often tell the offender about the crime's physical, emotional, and financial impact on their lives, receive answers to lingering questions about the crime and the offender, and participate directly in developing options for trying to make things right. The offender is afforded opportunities to make apologies, provide information and to develop reparative plans and gain insight for personal growth. These processes are sometimes prepared for and/or facilitated using written or video correspondence. In the last decade, new expertise has been developed in mediating cases of serious crime.

It is important to note that participation by the victim is voluntary. The offender's participation is usually characterized as voluntary as well, although we must be careful that the offender's participation is not to avoid more onerous outcomes that would otherwise be imposed. Unlike binding arbitration, no specific outcome is imposed by the mediator. Instead, the mediator's role is to facilitate interaction between the victim and offender in which each assumes a proactive role in achieving an outcome that is perceived as fair by both. Unlike the traditional criminal justice system, VOMP's involve active involvement by the victim and the offender, giving them the opportunity to mutually rectify the harm done to the victim in a process that promotes dialogue between them.

Depending on what stage of the case the mediation takes place, different outcomes will likely result. For instance, a meeting may take place at some point during the trial process or after the offender has spent many years in prison. The terms of the agreed reparation (e.g., restitution, in-kind services, etc.) are reduced to writing, along with any payment and monitoring schedules.

#### Healing Lodges

Healing Lodges are a new way of delivering corrections for Aboriginal offenders serving a federal sentence. They are intended to better respond to the needs of the Aboriginal community within the institutions. Healing Lodges reflect the physical space and programs of the Aboriginal culture. The needs of the offenders under federal sentence are addressed through Aboriginal teachings, ceremonies, contact with Elders and children and interaction with nature. Program delivery is premised on individualized plans, a holistic approach, an interactive relationship with the community, and a focus on

release preparation. The Healing Lodges operate from a unique perspective, placing a high value on spiritual leadership as well as role modeling through life experiences of staff. Victims and the community are not a part of this process.

#### Surrogate Victim/Offender Restorative Justice Dialogue

A victim or an offender may choose to meet with someone who committed a similar crime or who was similarly victimized, instead of meeting with the specific offender or victim in his or her case. The surrogate victim/offender dialogue has proven beneficial to many victims who want to experience a restorative meeting, but who for whatever reason, cannot bring themselves to meet the offender in their case. Surrogate victim/offender dialogues may also be helpful in preparing victims and offenders for an anticipated meeting at some point in the future. It may also help offenders who want to participate in such a program but the victim is unable or does not want to take part.

#### **Restorative Justice for Young Offenders**

Youth crime and how to deal effectively and appropriately with it is a contentious issue in Canada. The movement towards restorative justice for youth began with the revelation that Canada imprisoned more youth than any other Western country including the United States. This was problematic for many people within the criminal justice system who believe that youths could and should be better served. Thus, we have seen a strong movement toward the use of restorative approaches for dealing with young offenders, in the *Youth Criminal Justice Act*, which replaced the *Young Offender's Act*. The use of measures outside the court process is believed to encourage accountability, as well as reduce youth imprisonment.

Sometimes, the police and the court system decide that criminal court proceedings are not in the best interests of the youth or society. In such cases, the youth may be diverted or referred to an alternative or extrajudicial measures program wherein an appropriate penalty is determined. This provides an opportunity for victims to participate in decisions related to the measures selected and to receive reparation. Extrajudicial measures encourage families and the community to participate in design and implementation of measures.

Most restorative programs for youth are limited to first-time, non-violent offenders (although new programs and studies are analyzing the benefits of RJ and violent crime). Commonly referred to as alternative or extrajudicial measures, they may involve programs such as community service, restitution to the victim, volunteering for a non-profit organization, attending a wilderness camp that allows youths access to counselling and teaches life skills, public speaking, attending substance abuse or aggression programs, and even reconciliation programs where the victim and offender discuss the crime and its aftermath.

Restorative programs for youth can be applied either before or after a youth has been charged. Once a youth has agreed to participate, an agreement may be struck. If the program is pre-sentence or post-sentence and the youth does not comply with the arrangements made during the restorative process, the case can be referred back to the youth court to be dealt with in the traditional manner.

#### Youth Justice Committees



Youth Justice Committees are held as a way to include restorative justice principles in the youth criminal justice process. Community members meet with victims, young people alleged to have committed non-violent offences and their parents to negotiate an appropriate way for the young person to make amends for his or her actions. The committees deal with pre-charge referrals from police (extrajudicial measures) and post-charge referrals from the Crown (extrajudicial sanctions) to give advice on the appropriate extra-judicial measures to be used in respect to a young person. These committees ensure that community support is available to the young person by arranging for the use of services from within the community and enlisting members of the community to provide short-term mentoring and supervision. Committees also help coordinate the interaction of a child protection agency with the youth criminal justice system.

### Restorative Conferences

A Restorative Conference consists of a group of people who are convened to give information in accordance with section 19 of the YCJA. Section 19 provides stipulations on who may call conferences and the rules which guide conference structure. Conferences provide an opportunity for a wider range of perspectives, more creative solutions, better coordination of services and increased involvement of the victim and other community members. The conferences involve meetings between offenders, victims and community members. They have an emphasis on restorative justice and victim compensation for injury caused by the offender. Restorative processes may include: family group conferences, community accountability panels, peer mediation, sentencing circles, victim-offender reconciliation, youth justice committees, and inter-agency case conferences. The purpose is to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences, review of sentences and reintegrational plans.

### Types of programs for young offenders:

Pre-charge programs occur after a youth may have been caught committing a crime, but the police have not charged him/her. There may be an agreement struck in which the police do not charge the youth if he or she agrees to take part in a pre-charge program. In other instances, the police may caution the youth and recommend to his/her parents that they participate in a pre-charge restorative program.

Post-charge programs occur after a youth has been formally charged with a crime, but before court procedures begin.

Post-sentence programs occur following the imposition of a disposition (sentence) by a youth court. A judge may recommend that a youth participate in a certain program as part of the sentence or in addition to their sentence.

### **Number of RJ Programs in Canada**

According to the Canadian Inventory of Restorative Justice Programs the following programs are available for youths and adults:

- 4 National Programs,
- 15 programs in Ontario,
- 4 in Nova Scotia/PEI,
- 3 in the Yukon,

- 30 in British Columbia,
- 8 programs in Alberta,
- 4 in Newfoundland/Quebec, 1 in the Northwest Territories,
- 1 in Nunavut/Yukon, and
- 2 two programs in Manitoba/Saskatchewan.

Please visit <http://www.csc-scc.gc.ca/text/rj/crg-eng.shtml> for more information about a program in your area.

### **Considering the rights of victims in restorative justice**

Good restorative justice programs have well-trained facilitators who are sensitive to the needs of victims, who know the community in which the crime took place and who understand the dynamics of the criminal justice system. If you are considering taking part in a restorative program, make certain that it considers your safety, provides you with all of the information you require, allows you to choose the path you wish to follow, allows you to tell your story, validates your loss as a victim and considers restitution for you.

The following is a checklist for restorative justice professionals to ensure that their programs are indeed meeting the needs of victims. Victims of crime can also use this checklist to evaluate a RJ program and ensure that it is meeting their needs.

#### **SAFETY:**

- Is the safety of victims the program's highest priority?
- What safety measures does your program have in place to ensure the victim's safety before, during and after the process?
- Are victims asked if they feel safe, and what would make them feel safer?

#### **INFORMATION:**

- Are victims given a comprehensive explanation of the events to take place?
- If victims need help with referrals, do you tell them how to advocate for themselves and help with the process if needed?

#### **CHOICE:**

- Does your program inform victims of their options for varying levels/degrees of participation?
- Does your program offer the victim the opportunity to have an advocate, probation officer or other support person present?
- Does your program amend its normal practices to meet the special needs of a victim?

#### **TESTIMONY:**

- What procedures are in place in your program to ensure that there is always an appropriate environment for victims to tell their stories?
- If a victim chooses not to participate, are there other options for the victim to provide testimony? Are those options described in writing and given to victim?
- Is there an opportunity provided for the victim to ask questions of the offender?
- Does your program offer victims assistance in this process?

#### **VALIDATION:**

- Does the perpetrator get the clear message, "What you did was solely your responsibility and it was not okay to do that"?
- Does the victim get the clear message, "What was done to you was wrong; it was not your fault; you are justified in feeling afraid, angry and unforgiving"?

**RESTITUTION:**

- Do you consider restitution in every case?
- Do you ask victims if there are any other ways the offender can repay, that would be more beneficial or healing than monetary compensation?

**How can victims benefit from restorative justice programs?**

Restorative justice programs can be beneficial in that victims can express their thoughts, feelings and emotions about the crime and the harm arising from it. Such programs offer a variety of settings and circumstances through which victims, offenders and communities can address and repair the harm caused in a particular case. Since the goal of the process is repairing harm and restoring relationships victims are given an important voice in making things right. Many victims have expressed high levels of satisfaction with the justice system after having participated in such programs. Involvement may also help victims heal emotionally in the aftermath of the crime, as well as reduce the fear of the offender and further criminal victimization.

Victims should however be aware that restorative programs are time consuming and emotionally draining. For some victims, even the idea of meeting the offender can be overwhelming. Victims may also suffer further distress if they feel at all pressured to participate in such programs.

**Restorative justice for serious, violent crime**

Mark S. Umbreit, Ph.D., is a world-renown facilitator of Victim Offender Mediation. In his research, Umbreit has found that the victim offender mediation process humanizes the criminal justice experience for both victim and offender; holds offenders directly accountable to the people they victimized; allows for more active involvement of crime victims and community member (as volunteer mediators) in the justice process and suppresses further criminal behaviour in offenders.

Umbreit believes that many of the principles of restorative justice can be applied in crimes of severe violence, including murder. He, and other researchers in this field, would even suggest that the deepest healing impact of restorative justice is to be found in addressing and responding to such violent crime.

In his research for the Center for Restorative Justice and Peacemaking at the University of Minnesota, Umbreit has found that an increasing number of victims of sexual assault, attempted homicide, and survivors of murder victims are requesting the opportunity to meet the offender to express the full impact of the crime upon their life, to get answers to many questions they have and to gain a greater sense of closure so that they can move on with their lives. In most cases this occurs many years after the crime occurred and the actual mediation/dialogue session is typically held in a secure institution where the offender is located.

In the mid-1980's, only a handful of such cases in scattered locations throughout the United States were provided with the opportunity for a mediated dialogue. Umbreit notes, "As we approach the end of the century, Victim Services Units in six states are at

various levels of developing a statewide protocol for allowing such an encounter between a victim/survivor of a severely violent crime and the offender. In Texas, there has been a waiting list of more than 300 victims of severe violence, including many parents of murdered children, who have requested a meeting with the offender through the Victim Offender Mediation/Dialogue Program of the Victim Services Unit, Texas Department of Criminal Justice. A growing number of victims of severe violence in Canada and Europe have also expressed interest in a mediated dialogue session with the offender. The Canadian Ministry of Justice has for many years supported the development of these services by the Victim Offender Mediation Program of the Fraser Area Community Justice Initiatives in Langley, British Columbia.”

Umbreit believes that many people within the victim rights movement are skeptical of restorative justice, even though his research has found that the movement is entirely victim-driven – crime victims themselves initiate the process.

Umbreit is careful to acknowledge that far more advanced training of mediators and preparation of the parties is required in cases involving sexual assault, attempted homicide and murder. There are only a couple of such programs in Canada. In Langley, British Columbia, Dave Gustafson developed the Fraser Region Community Justice Initiatives Association – which fosters peacemaking and resolution of conflict in the community through the development and application of mediation and conciliation. They offer a day treatment program, a victim offender mediation program and a victim offender reconciliation program. In Ottawa, the Collaborative Justice Program uses Restorative Justice techniques to demonstrate how a comprehensive restorative approach in cases of serious crime can deliver a more satisfying justice to victims, wrongdoers and the community by giving priority to their needs for support, information, safety, accountability, reparation and reintegration. They utilize a variety of restorative tools in a holistic approach to each individual situation. A coordinator works with all those impacted by an offence to determine the most appropriate course of action. The Collaborative Justice Program has been dealing with serious crime like armed robbery and impaired driving causing death for multiple years now.

### **Potential problems with restorative justice**

#### Perception of being soft on crime

Critics of RJ often equate it with being ‘soft on crime’ or ‘an easy way to avoid prison.’ Victims and their advocates have voiced concern that some programs, particularly those conducted at the beginning of the criminal justice process result in the offender avoiding a jail term and avoiding jail should not be the goal of any RJ program. In some cases, it is appropriate for the victim, the community and the offender to come up with a sentence that does not include prison. In other cases, despite having participated in a RJ program, it may still be necessary for an offender to be sent to prison because of the nature of the offence, his past record, and his risk to re-offend.

As for being ‘soft on crime,’ many offenders who have participated in these programs, particularly those where they have met the victim, say it was tougher than the punishment they would normally receive. Having to account personally for breaking into someone’s home, assaulting someone or murdering someone’s child can be much more difficult than facing a judge and nameless jury.

### Possibilities for remorse, repentance and forgiveness

While the principles of restorative justice are sound, they are not necessarily appropriate for every case. Some victims, especially those of violent offences may not feel that forgiveness, repentance and remorse are appropriate or even possible. Not all victims wish to participate likewise, not all offenders are remorseful for their actions.

For many victims and survivors of violent crime, punishment and incapacitation may be viewed as a necessary component of the criminal justice process. That is not to say that possibilities for restorative justice are completely lost, just that they may be unwanted for the time being. These strong feelings should be respected.

### Pressure on victims

Victims of crime should never feel compelled to take part in the restorative process. Some victim advocates assert that there is a danger that victims may feel pressured into taking part. For some victims, even the thought of meeting the offender may be very distressing. Certainly, it would be ideal if all cases could be settled using a holistic perspective that is inclusive to all parties and satisfactory to all parties, but criminal justice professionals must understand that this option is not always possible or appropriate.

Victims should also be prepared for frustration and disappointment should the offender in their case be uninterested or unwilling to participate in a restorative program. Some offenders are simply not willing to accept responsibility for their actions or to show remorse. This may be devastating to a victim who thought they might finally be able to receive answers to their lingering questions about the crime.

Some victims and their advocates have expressed concern that programs tend to focus on the offender and do not recognize the needs of victims. This is largely because victims and their advocates are often not involved in the design and implementation of restorative programs. Finally, victims and their families might also feel burdened by inconvenient meetings that are time-consuming.

### Appropriateness in cases of sexual assault and family violence

Many advocates for women - particularly aboriginal women - have raised concerns about the use of restorative approaches in their communities, especially in cases of sexual assault or family violence.

The idea of restoration may be suspect in situations where the offender holds power or influence over the victim because the victim is specially vulnerable through age, economic dependency, mental or emotional capacity, or because of the nature of the offence (such as spousal assault or sexual offences). The safety of the victim is to be taken very seriously and may be compromised by such a meeting or dialogue.

Similarly, the public expects the justice system to clearly denounce serious and violent crimes, and the use of restorative processes might be seen as compromising that message. In reality, most restorative programs simply do not believe it is appropriate and thus do not offer programs for cases of sexual assault and family violence.

### Effects on offenders

Some restorative processes may have disadvantages for offenders. Although programs are to ensure that participation is voluntary, like victims, offenders may also feel pressured to take part in a program. As a result, they may choose not to seek legal advice or feel they have to admit guilt even if they believe they are innocent. In some cases, restorative processes might even result in tougher consequences than a court would impose. To be effective, restorative justice must respond to concerns about public safety while also respecting the rights of the accused to state their innocence and to have a fair trial.

### Training and Standards

One of the concerns of many RJ practitioners and promoters is the rapid growth of RJ programs and the need to ensure that those running the programs (i.e. mediators) are properly trained. Someone who is not properly trained could do significant harm to a victim. As more government money becomes available for these programs, governments must ensure those running the programs are properly trained and applying the principles of RJ.

### Misuse of RJ

As more and more governments see the benefits of RJ programs (cost savings), they will fund more and more programs. The difficulty for RJ practitioners will be ensuring the many new programs stay true to the principles of RJ and do not succumb to government pressure to deal with more offenders faster and at less cost. RJ is not about getting offenders out on parole sooner or avoiding prison altogether.

### **Do victims have to participate in restorative justice?**

No. A victim's participation is entirely voluntary. When considering whether to participate or not, victims should be provided with as much information as possible about the process, possible outcomes, his or her role, the role of the offender and any other participants, as well as other options. Such programs are intended to prevent the further victimization of crime victims.

Victims of crime should proceed through the criminal justice system in the manner they are most comfortable. While not appropriate for every case, victims who have an interest in pursuing restorative programs, have every right to do so. Restorative justice programs certainly do have many benefits for victims of crime. They have been proven to involve victims, repair the harm done to victims and their families and, for the most part, have left victims highly satisfied with the result of their case. Other research has found that restorative justice helps victims with emotional healing and lessens their fears of the offender and about revictimization.

If you think that restorative justice may be beneficial to you, speak to your local victim service providers, Crown Attorney, police or your provincial or federal correctional service about this option and they may be able to put you in touch with a program in your area.

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