

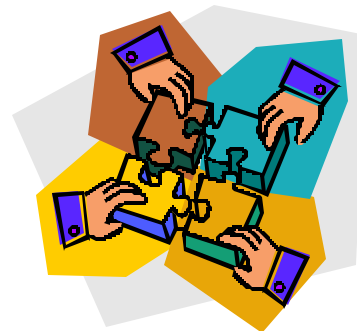


**British Columbia
Association for
Community Living**

RESTORATIVE JUSTICE

And People with Developmental Disabilities

A booklet for family members,
advocates and Community Living
service providers



Acknowledgment

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What is restorative justice?

Restorative justice is a philosophy that looks upon crime as a violation of people and relationships rather than the breaking of laws.

It recognizes that harms:

- create obligations on the part of the one who harmed to put things right
- people who are most affected by the crime are the key stakeholders in making sure that harms are repaired
- stakeholders need to attempt to restore balance and harmony in the community

Restorative justice involves a shift in paradigm: from one that determines guilt and imposes punishment, to one that focuses on the harm done and how individuals and relationships are affected by it, and how the wrong could be righted.

It recognizes the community's role to achieve peace by building strong, inclusive, and balanced relationships.

"Restorative justice is fundamentally different from retributive justice. It is justice that puts energy into the future, not into what is past. It focuses on what needs to be healed, what needs to be repaid, what needs to be learned in the wake of crime. It looks at what needs to be strengthened if such things are not to happen again."

- Susan Sharpe, Restorative Justice: A Vision for Healing and Change, 1998

Restorative Justice processes:

- are flexible and are tailored to meet the individual's needs
- create an opportunity that allows a person with a developmental disability to understand the wrong that he or she has done and to feel remorse in a healing way

- enable the person with a developmental disability and their supporters to engage in meaningful dialogue and be part of finding ways to repair the harm that he or she has caused
- take into account the unique circumstances of the individual which may have affected his behaviour, e.g. family issues, cognitive capacity, etc.
- address the needs of those harmed in a more personal way (which is especially important if the person harmed has a developmental disability)
- also recognize the effect and address the needs of the support person(s) of an individual with a developmental disability affected by harm
- build communities in the course of finding resolutions to conflicts

Principles behind the processes

Restorative justice processes aim to:

- restore the harm that has been done
- repair relationships
- address the needs of the offender and the victim(s)
- empower the community to address future harms

Restorative justice is ***not*** about deciding punishment; in fact punishment has no role in a restorative process. Punishment can be viewed as wilfully imposing a harm upon another person, and restorative justice is about healing harms.

Restorative justice processes create respectful, safe environments where forgiveness can sometimes happen, but forgiveness is not in itself the goal of restorative justice processes.

Participating in a restorative justice process is ***voluntary*** for all participants.

Before the process could start, the person who caused the harm must **accept responsibility** for their part in it.

For the restorative justice process to have a chance of success, all participants **must understand the process** and **must feel safe** in expressing their needs, thoughts and feelings.

The person(s) harmed must also be free to not speak if they choose not to. Everyone involved must be able to withdraw their participation at any time.

There are different approaches to restorative justice, but they all have common goals: to put decision-making back in the hands of those affected by a crime, repair the harm done, make justice more healing, and reduce the likelihood of re-offending.

Support is very important

When one or more of the parties involved is a person with a developmental disability, it is very important that that person is well supported *before, during* and *after* the restorative justice process, whatever approach it may be.

Support can be provided by a trusted family member, friend, and/or caregiver being on hand to:

- lend moral support and help make the person feel safe and comfortable
- assist in facilitating communication with the individual with a developmental disability, and help him or her understand the proceedings when necessary
- make sure needed accommodations to the person's disability are provided
- assist other participants in the process to understand the capacity and behaviours of the person with a developmental disability
- advocate for the rights of the person with a developmental disability, if he or she needs help in this regard

An individual can have as many family members or friends providing support as they wish, but a good restorative justice facilitator should ensure that there is a balance in the number of people supporting the person harmed as well as the person who

caused the harm (even in cases where only one of them has a developmental disability). This can be challenging when there are many individuals harmed.

Commonalities between restorative justice and community living

Community living advocates and restorative justice practitioners came together at a series of roundtables in 2004 and 2005, and have come up with values and principles that are common to both restorative justice and Community Living.

These include:

- Respect, love and peace
- Promoting inclusion and minimizing isolation
- Creating responses based on an individual's needs and abilities
- Individual education, empowerment and transformation
- Building community and recognizing it's role in supporting individuals

What are Some Restorative Justice Practices?

There are different types of voluntary restorative justice approaches. The most common practices are victim-offender mediation, community conferencing and community peacemaking circles.

Victim-Offender Mediation

Victim-Offender Mediation is a process that encourages face-to-face meetings between those affected by the action (the person harmed and the person who harmed) so that they can talk about their feelings, reach an understanding of each other's thoughts, actions and feelings, and, together, find ways to repair the harm.

The hope is that eventually participants are able to put the matter behind them with the help of a non-judgemental third party, called a mediator.

The mediator also prepares the participants for the dialogue through separate discussions with them beforehand. With the person who harmed, for example, the mediator will encourage him or her to talk about his or her thoughts, motivations and feelings leading up to the time of the harm. Interviews with the people in participant's support network, i.e. family, friends, etc. are also carried out. Mediators may not proceed to a face-to-face encounter if the person responsible for the harm will not take responsibility for their actions for example.

Follow-up with the person who caused the harm and the person harmed is also very important to see how they are doing and to know if the agreements are carried out. It is important to know if they are indeed on the road to reconciliation. This task can be done by the mediator or any of the support persons who participated in the process, usually a support person of the person who caused the harm and/ or the person harmed.

Community Conferencing

Community Conferencing is a process that is based on the idea that a person's behaviour is influenced by what he perceives as approval or disapproval in the eyes of someone close to him that he respects - usually a parent.

The process widens the dialogue between the person who caused the harm and the person harmed by including their respective family members and/or friends.

If any or all participants have a developmental disability, separate preparatory meetings are very important. It is essential that they understand the purpose of the conference, what the process will be, and what the intended outcomes are. This is true for all participating family members and friends as well.

As with all restorative justice processes, all participants must first feel safe before the conference could begin. Remember, the process must be completely voluntary.

An independent third party, called a facilitator, is usually asked to facilitate the discussions. It is the facilitator's responsibility to make sure that everyone gets a chance to say what they want the others to hear and that the discussions stay on track, focused on the event where harm was caused. To achieve this, a conference format or structure is normally prepared by the facilitator beforehand, but it is not rigidly controlled, as participants should be free to express their thoughts and feelings.

A facilitator's role is limited to facilitating discussions; he or she does not contribute to the content of the discussions or building the agreement between parties.

Following the conference, agreements reached by the participants are written down on a piece of paper that everyone signs. This document outlines the actions that participants plan to take to repair the harm, as well as the actions supporters will take to help him or her achieve this goal. Restoration may be a part of this agreement; participation in counselling, educational opportunities or some restrictions may also be applicable.

Monitoring of the agreed-upon actions, done in a supportive way, is an important part of the process. This helps to facilitate reconciliation and enables the parties involved in the harm or affected by it to put the incident behind them and move on with their lives.

A successful restorative process also helps to empower the community to address future conflicts, by further understanding root causes of conflict in their community and how they might be productively addressed.

Community Peacemaking Circles

Community Peacemaking Circles is a restorative justice process that has its roots in Aboriginal practices.

Circles are based on the belief that harm caused to another is a symptom of a deeper problem that involves not just the person who harmed and was harmed, but the whole community as well. It is a holistic approach to conflict resolution that not only seeks accountability from the person who harmed and restitution for the person harmed, but also to address the behaviours that led to the harm in an effort to prevent a reoccurrence.

In this view, the community also assumes responsibility for the harmful behaviour because they “allowed” the person to lose his or her way. It aims to restore balance and harmony in the inter-relatedness of relationships within a community by exploring and addressing the underlying causes of harm done. They involve the people who are directly affected by the harmful behaviour, the friends and families of each, community members, and spiritual advisors.

If the circle is a sentencing circle that has been approved by the court, the judge and other court officials also participate - but in a different role from that they traditionally play. No one ‘presides’ over a circle, but one or two “circle keepers” are usually chosen to be guardians of the process, helping to ensure that the circle stays true to its purpose. These circle-keepers are also responsible for the preparation and follow-up with those involved.

The circle process is a messy one, because human conflicts are typically messy. Circles, by design, avoid using a cookie-cutter approach since doing so would undermine the circle’s potential to address the complexities that underlie the harm done.

Each circle process is different because each case is unique. However, all circles typically involve four stages:

Stage 1: Suitability—is a circle the best process to use for the type of harm done?

Stage 2: Preparation—what must the different parties do before coming together?

Stage 3: Consensus agreement—when all parties join the peacemaking circle, what process best meets the needs of everyone?

Stage 4: Follow-up—maintaining accountability; how are agreements carried out, what happens if an agreement is broken?

When participants sit in a circle and take turns speaking using a “talking piece” (e.g. an object that inspires reverence, such as a feather or ceremonial stick that is passed from one person to the next) - everyone else listens.

Through the conduct of peacemaking circles (or a series of them), people affected by the harm explore ways to restore the relationships affected, and how to support the participants in the future, thereby, taking steps to restore balance in community relationships.

Individually Designed Processes

Very often, facilitators with a great deal of experience will develop or design a process based on skills and practices from each of these models. These individualized processes are guided by the needs and abilities of participants, and can lead to more satisfying outcomes. These models are sometimes viewed as ‘tools’ to be used when appropriately dictated by the needs of those involved.

FAQs

Can individuals with developmental disabilities meaningfully participate in a restorative process?

Many people can. It is up to the restorative justice practitioner, the individual with the developmental disability, and the people who support him or her to assess whether a restorative intervention is appropriate.

If it is decided that meaningful participation of the individual is possible and desirable, it is very important that they have the

supports needed to help them express their thoughts and feelings as well as understand what is being said.

The role of the individual's support person is critical, whether a parent, friend, or caregiver. The challenge on the part of the restorative justice practitioner, on the other hand, is to decide which process would be most suitable to use, and what accommodations need to be in place to ensure that the person with a developmental disability is able to participate meaningfully in the restorative process.

Is restorative justice for minor offences only?

Not necessarily. The restorative justice process could be applied to any type of offence. However, the public tends to be more receptive when the situation involves a non-violent, non-repeat offences or less-serious crime.

The opportunity for learning exists with all offences, and the capacity for healing and learning is dependant far more on the attitudes and capacities of the participants than the nature of the offence. Restorative processes are currently being successfully used for ALL levels of offences in Canada and world-wide, although with higher-level offences they are used carefully and in parallel to the current legal system.

Is restorative justice used for young persons and/or first-time offenders only?

No. Restorative justice processes are equally-suited for youth and adults, are not for first-time offenders only, and can be used in many diverse situations.

Typically, however, restorative justice processes involving youth are reserved for less-serious offences. According to the *Youth Criminal Justice Act*, extrajudicial measures, which include going through a restorative justice process:

- should be used in all cases where they would be adequate to hold the young person accountable,

- are presumed to be adequate to hold first-time, non-violent offenders accountable, and
- may be used if the young person has previously been dealt with by extrajudicial measures or has been found guilty of an offence.

Can anyone facilitate a restorative process?

No. It is important that any person who facilitates a restorative justice process be adequately trained to do so.

One of the fundamental principles of restorative justice is to avoid re-victimization. And because the RJ process is often a challenging one, facilitators must possess specialized mediating skills, experience and a broad knowledge of the Canadian Criminal Justice System practices for the process to be effective, and safe. Usually, practitioners work in teams, offering one another support, training and guidance as well.

When might you consider restorative approaches to resolve harms?

Restorative justice may be used to resolve harms in situations:

- **When there is an identifiable victim**

Restorative justice is a process for persons, not institutions.

For example, a retail store is not a person and, therefore, cannot come to the table to converse with a shoplifter. However, a manager or employee of that store can. These individuals can make the restorative process very effective by focusing on how the incident affected them personally (e.g., working environment, responsibilities, and customer relations).

Restorative approaches are not appropriate where a crime, as defined by law, is against the state rather than a person (e.g., drug possession, illegal gambling)

- **When the participants are willing to participate**

The person who has been harmed must be a completely voluntary participant, so as not to deepen the harm he or she has already experienced. Coercion runs counter to an important principle of restorative justice - that justice should help victims heal, not harm them.

There may be apprehension about meeting with the person who harmed them, and this can be a natural outcome of harm caused. To achieve effective participation, this anxiety must not outweigh the hope of a positive outcome.

- **After the person who has harmed has accepted responsibility for the crime**

It is essential for that the person who caused the harm to admit doing the harming action and accept responsibility for the harm done for the restorative process to succeed. There must be a basic acknowledgement on the part of the participant that he or she alone holds the responsibility for his or her own actions and the obligations created from the harms caused.

The capacity to accept responsibility for the obligation is assessed by the facilitator prior to planning a face-to-face encounter with the person(s) harmed.

What can you expect from a restorative process?

- Fairness, support and concern for all participants
- Community involvement in the process
- Opportunities for open communication between all parties
- Opportunities to accept responsibility to fulfill obligations created by the harm

What things do you need to consider?

- **Encouraging participation without creating pressure**

Coercion of the people affected to participate runs counter to the principles of restorative justice; namely, that justice should

help those harmed, those who harmed and the community heal. People who have been harmed may have strong reasons for not participating in the process and those reasons should be honoured.

- **Knowing whether a case is ready to go forward**

Knowing when and if the time is right to bring people together is a challenge. Willing participation of both parties does not necessarily mean the situation is right or safe for the process to work.

Participants' sense of security must be taken into consideration and their willingness to hear one another. The willingness to accept responsibility for the harm caused must also be considered.

All participants' understanding and commitment to the use of the restorative process must be considered, and can be affected by many factors including the harm caused, the pre-existing relationship, and the capacity for support and change that exists.

- **Balancing numbers and processes**

If there are many people affected by an incident of harm, it is often difficult to find a balance that accommodates everyone involved. It is important that a balance be struck, however, in order to make the process both healing and satisfying.

- **Ensuring fairness to all participants**

Restorative approaches do not pressure a participant to agree to an outcome that they feel is unfair. Feelings of unfairness lead to broken agreements and, often, re-victimization.

- **Being aware of potential for harm/bad outcome**

Although the majority of restorative justice processes are successful, some are not. A participant, or support person may leave the process feeling re-victimized or unsatisfied with the outcome. It is important for facilitators, participants and advocates to anticipate and think through all the possible

outcomes of the restorative process, good and bad, and design an appropriate process accordingly.

- **Holding victim involvement as central**

Restorative justice processes should be essentially victim-driven. As such, the victim's wishes must be accommodated, to the greatest extent possible, in such decisions as when and where to meet, who else is invited, and in putting in place measures to ensure safety and comfort for all participants.

- **Importance of support teams**

A support team member should be present for both each participant. Support is of paramount importance to allow the participant to feel comfortable and safe in the process and to be fully engaged in the restorative process.

Benefits of restorative approaches are also often experienced by families and other supporters, as they increase their understanding of the needs and capacities of the person with a developmental disability.

- **Setting realistic goals**

The restorative justice process is not a magic bullet. The process is meant to lead to healing, and, thus, the goals of the process should be easily and readily achievable.

- **Importance of agreement regarding level of accountability**

Because of their developmental disabilities, caregivers and family members may not always agree on level of accountability and responsibility a person may have. In this situation, the facilitator must help everyone come to agreement on the level of responsibility before involving the person who has been harmed.

These facilitated discussions can be very helpful to the relationships between families, advocates and caregivers of people with developmental disabilities, even if a restorative process is deemed to be inappropriate in the end.

Why collaborate with a restorative justice organization?

Open and collaborative relationships are important for a strong restorative justice program and can significantly affect a program's operation, focus and success. An information network between restorative justice programs, local police, lawyers and judges, and reintegration programs is of paramount importance.

Other relationships must also exist that go beyond information sharing. These relationships may involve community leaders, funders or politicians who offer involvement because of their belief in and commitment to the program.

Community Living has complementary goals and activities with restorative justice organizations and can better serve individuals with developmental disabilities who are involved in harms through this collaboration.

What resources do you have in your community?

- Are victim assistance workers trained in or aware of restorative justice processes?
- Do restorative justice facilitators have training in trauma and recovery, and are they aware of the unique needs of people with developmental disabilities?
- Are your community policing stations interested in supporting restorative justice?
- Does the regional mental health centre have skills in resolving conflict in a healing way?
- Is there a community justice association? Is there potential to start one?
- Is there a way to involve volunteers?

Resources

Internet

British Columbia Association for Community Living

www.bcaccl.org

Justice for All www.justiceforall.ca

Centre for Restorative Justice www.sfu.ca/cfrj

Restorative Justice Online www.restorativejustice.org

Mpower www.sfu.ca/empower (for youth)

Books

The Little Book of Restorative Justice

by Howard Zehr

The Little Book of Circle Processes: A New/Old Approach to Peacemaking

by Kay Pranis

Restorative Justice: A Vision for Healing and Change

by Susan Sharpe

The Little Book of Trauma Healing: When Violence Strikes and Community Security Is Threatened

by Carolyn Yoder

Returning To the Teachings

by Rupert Ross

The Curious Incident of the Dog in the Night

by Mark Haddon

Peacemaking Circles: From Crime to Community

by Kay Pranis, Barry Stuart, Mark Wedge

Restorative Justice: Healing the Foundations of Everyday Life

by Dennis Sullivan, Larry Tifft

Videos

A Healing River: An invitation to explore restorative justice value and principles (2004) by Heartspeak Productions.

Communities and the Challenge of Conflict: New Perspectives on Restorative Justice (2000) by the Law Commission of Canada (free)

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