

Restorative Justice

**A position paper of the
Probation Officers Association of Ontario
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Preface

The purpose of this paper is to identify the role Probation Officers should play in the Restorative Justice process. The Probation Officers Association of Ontario has been involved in issues of professional interest to Probation Officers for over 50 years. An ongoing goal of the Association is to maintain a high level of integrity in our profession throughout periods of significant change and new trends which impact upon our work. The collective skills and expertise of Probation Officers enable us to adapt to changing times, and contribute to developing areas such as Restorative Justice.

Introduction

One of the most significant recent developments in managing and responding to crime is the increasing use of Restorative Justice processes. In contrast to the current justice system with its perceived emphasis on offender punishment, rehabilitation and enforcement, Restorative Justice represents another model of responding to crime through the active involvement of victims of crime, the offender and the community. Restorative Justice draws upon recent justice reform movements including community corrections, victim advocacy, and community policing. The principles are consistent with the rich heritage of indigenous traditions, including Canadian First Nations people, Aborigines in Australia, and the Maori in New Zealand. The larger world community via the United Nations Declaration of Basic Principles of Justice has endorsed the Restorative Justice process for Victims of Crime. The Department of Justice Canada has recognized and endorsed a growing number of Restorative Justice initiatives across the country. In Ontario, Restorative Justice practices have been actively utilized in the Aboriginal Justice system as Sentencing Circles. Restorative Justice principles have been used by various communities in response to the need for an alternative justice system. The purpose of restorative justice is to have more meaningful consequences, reintegration of offender into the community, to provide information and support to victims, offer victim empathy and closure, and to minimize the involvement of individuals in the criminal justice system (both offenders and victims).

The Youth Criminal Justice Act Section 19 addresses the fact that conferences may be convened. A conference is defined as a group of people convened or called together to give advice to, or assist, someone named as a decision-maker under the YCJA.

Nature and Principles of Restorative Justice

Restorative Justice approaches crime as an injury or wrong done to another person rather than solely as a matter of breaking the law or offending against the state. Accordingly it is concerned not only with determining appropriate punishments for criminal behavior but also with reparation and actions that attempt to repair the damage caused by the offense. Attempting to repair the harm can take a variety of methods, including addressing the damage done verbally, emotionally, materially or symbolically. Restorative Justice encourages the victim and the offender to play active roles in resolving the conflict through discussion and negotiation. Community, justice and legal professionals become facilitators in a system that encourages offender accountability, full participation of both victim and offender, in efforts to repair the damage that has been done. Restorative Justice is more than just a process or another program; it is a philosophy (worldview) a method of looking at offending behavior (crime) and a response to this behavior based on certain principles.

One of the rationales for creating a Restorative Justice system is to move out of the more formal atmosphere of the court and into a less adversarial more communal setting where parties have more control and may not be as threatened or intimidated. The underlying premise is that there will be less involvement for lawyers, judges and less use of valuable court time.

Accountability by inclusion of an impartial party assists in ensuring that the offences which proceed by way of a Restorative Justice process are deemed appropriate. Examples of such offences are: property offences, theft, possession, mischief, causing a disturbance or assaults of a less serious nature. Adhering to precise guidelines, not open to loose interpretation, is beneficial in terms of determining that appropriate offences are addressed through appropriate processes (for example, defining what constitutes a violent vs. a non-violent offence). Ensuring these guidelines are in place at the outset will prevent offender advocate organizations from loosely interpreting the guidelines in a subjective manner so as to expand their client base hence increasing their profit margins. Such activity is both unethical and biased against the victims of crime whose needs must remain fundamentally important to any Restorative Justice model.

Explanation

The Association is concerned that in the rush to provide Restorative Justice programs and obtain funding there will be agencies whose goals and philosophies may be in conflict with the program goals. Without proper accountability mechanisms there may be opportunities taken where agencies are offering sentencing recommendations that lead directly to programs that they

administer. This apprehension is not simply a perceived fear, it has been, and continues to be, a reality in Ontario.

Probation Officers are Public Sector workers who have no vested interest in any one program. Probation Officers use whatever means are available to skillfully guide an offender to successful completion of his sentence. Thus Probation Officers are ideally situated to be the gatekeepers of an effective, even-handed Restorative Justice model in Ontario.

At the time of their inception Sentencing Circles consisted of victims, victim supporters, offenders, offender supporters, judges, crowns, defense lawyers, police officers, court workers and community members. This group came together to develop by consensus an appropriate plan that addresses the concerns of all interested parties. If the goal is to expedite and simplify the formal process, this group can be reduced somewhat, but must maintain a connection to the formalized Court process. Probation and Parole Officers are well suited as impartial, yet knowledgeable members of the Court to assist with such processes.

Restorative Justice can take many forms, for example: Victim Offender Mediation meetings; Family or community group conferencing; Peacemaking or Sentencing Circles. Solutions can include restitution, an outright financial settlement that directly addresses loss, or Community Service to address an offence committed against a community. It can be as simple as an apology or as complex as is necessary to address a particular situation or set of circumstances.

It is important that the use of Restorative Justice be the result of an informed decision. The victim should not feel in any way pressured into participating. Restorative Justice should not be used at the Pre-Sentence stage with a goal to negotiate a lesser sentence. In the event that a more serious offence is being considered for Restorative Justice it may be more appropriate to deal with the Restorative Justice component at the Post Sentence stage. This is already being done in the federal system where the victim comes to the institution to participate, and there is no question that it is being done to affect sentencing but rather to deal primarily with the victim's issues and secondarily with the offender's need to "right the wrong or harm done".

The Association's position is that Restorative Justice first and foremost should be of benefit to the victim. If the victim is not interested, the process should go no further. An ideal Restorative Justice model should be formalized, accountable, flexible and creative, and without financial gain for anyone involved.

Probation and Parole Officers have years of expertise in balancing offender – victim issues and rehabilitation vs public safety issues, on a daily basis. They are regularly in contact with police, Courts, lawyers and the community. More

recently the role of Probation and Parole Officers has been further enhanced. An important part of the role now is to address victim's concerns and victim safety. Walking the thin line between enforcement, addressing victim's issues and facilitating offender rehabilitation, is a balancing act which has become more complex than ever. Probation Officers have successfully juggled these multifaceted roles serving client, victim, the Justice system and their communities for many years. POAO acknowledges the emergence of the Restorative Justice process, and strongly believes that Probation Officers can play an important role in implementing and overseeing this alternative system. We look forward to having Probation Officers' expertise utilized in Restorative Justice processes.

RESOURCES

Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment, Mark S. Umbreit, 1998, Western Criminology Review

Restorative Justice: A National Consultation Paper, May 2000 Department of Justice Canada

The Effectiveness of Restorative Justice Practices: A Meta-Analysis, Department of Justice Canada

Principles of Restorative Justice, Department of Justice Canada

[Youth Criminal Justice Act](#)