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Establishing a Framework for the Use of Restorative Justice in Criminal Matters in Canada

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By

David Daubney

General Counsel

Sentencing Reform Team

Department of Justice Canada

Recognizing the value of grass roots initiatives to use restorative approaches in the Canadian criminal justice system.

- “Taking Responsibility” report of the House of Commons Justice Committee
- Correction Population Growth exercise.

Providing a legislative base for Restorative Justice.

- Criminal Code:
 - Restorative sentencing principles;
 - Principle of restraint in the use of imprisonment;
 - Entry points for the application of Restorative Justice:
 - Diversion, Sentencing, Post-sentencing (correctional) and parole.

Providing a legislative base for Restorative Justice.

- Criminal Code: (cont'd)
 - Statutory tools for the application of restorative approaches:
 - Alternative Measures, probation, conditional sentences and restitution.
 - Models:
 - Community justice committees, victim-offender mediation, sentencing circles, healing circles community conference, victim-offender reconciliation programs and restorative parole hearings.

Providing a legislative base for Restorative Justice.

- Youth Criminal Justice Act:
 - Restorative principles;
 - Greater use of extrajudicial measures;
 - Greater use of police warnings and cautions, and cautions by prosecutors;
 - Referrals to community agencies and counselling;
 - Encouragement of conferencing;

Providing a legislative base for Restorative Justice.

- Youth Criminal Justice Act: (Cont'd)
 - If sentencing use least restrictive alternative;
 - Custody be reserved primarily for violent and repeat offenders;
 - A number of sentencing alternatives focusing on rehabilitation.

Canadian Statement of Values, Principles and Procedural Safeguards.

- This Statement was developed by Justice Canada following extensive consultation with its provincial and territorial partners.
- The Principles and Safeguards are based on the United Nations Declaration of Basic Principles on the use of Restorative Justice Programmes in Criminal Matters.

Canadian Statement of Values, Principles and Procedural Safeguards.

- What is a Restorative Justice Process?
 - Participants have a stake in a particular offence;
 - Support and voluntary participation;
 - Assistance of a fair and impartial facilitator;
 - Discussion of the circumstances surrounding an offence.
 - Examples of models often used in Canada:
 - Conferencing, sentencing and healing circles and victim-offender mediation.

Canadian Statement of Values, Principles and Procedural Safeguards.

- Purpose of a Restorative Justice Process:
 - Understand the underlying causes of the incident and its effects on those who have been harmed, and address the needs of the parties for healing and reparation.

Canadian Statement of Values, Principles and Procedural Safeguards.

- Basic Principles and procedural Safeguards
 - Participation of victim and offender should be based on their free, voluntary and informed consent. Consent may be withdrawn at any stage;
 - The essential facts of the offence must be accepted by victim and offender. Offenders should take responsibility for the offence.
 - Sufficient evidence to proceed with a charge. The prosecution of the offence must not be barred at law;

Canadian Statement of Values, Principles and Procedural Safeguards.

- Basic Principles and procedural Safeguards –
Cont'd
 - The right of each party to seek legal advice at all stages;
 - Referrals to a restorative justice process can occur at all stages of the criminal justice system. Referrals should take into account pertinent prosecution policies;
 - A restorative justice process must take account of the safety and security of parties and any power imbalances between victim and offender,
 - Particular attention should be given to **implied or explicit threats to the safety of either party, and continuing relationship between the victim and the offender.**

Canadian Statement of Values, Principles and Procedural Safeguards.

- Basic Principles and procedural Safeguards –
Cont'd
 - Agreements must be made voluntarily and contain only reasonable, proportionate and clear terms;
 - The failure to reach or to complete a restorative justice agreement must not be used in any subsequent criminal proceedings to justify a more severe sentence than would otherwise have been imposed on the offender;
 - A restorative justice program should be evaluated regularly in order to ensure that it continues to operate on sound principles and to meet its stated goals.

Restorative Justice Program Guidelines

- These Guidelines are intended to be aspirational and not prescriptive in nature.
- They are intended to reflect Best Practices in Restorative Justice;
- They are intended to be applied in a way appropriate to the context of each community.

Restorative Justice Program Guidelines

- Intention to fully involve the victim, the offender and the community in the process, and demonstration of the capacity in the program or the community to support the victim and the offender before, during and after the conference.
- Guidelines encourage the safe and effective use of restorative justice processes.
- The referral must be consistent with the provisions of the criminal law:
 - Right to counsel, authority to make referrals, privacy protections, proportionate accountability, withdrawal of consent and Alternative Measures.

Restorative Justice Program Guidelines

- Program Development
 - Each program should develop and articulate its own vision, goals and objectives.
 - At the initial planning stage, a program would benefit from the input of a diverse cross-section of the community and justice stakeholders. Of particular importance is the need to encourage balance among victim, community and offender perspectives in the development and operation of the program. The access of any party to the program should not be limited in a discriminatory fashion.

Restorative Justice Program Guidelines

- Program Development – Cont'd
 - Each program should be developed and maintained through close working relationships and consultation with provincial and territorial officials responsible for restorative justice and local criminal justice officials and social service agencies. Collaborative relationships should be maintained with community and justice stakeholders.

Restorative Justice Program Guidelines

- Program Facilitation
 - Restorative justice processes must be facilitated by fair and respected third parties known as “facilitators”.
 - Facilitators may be recruited from all sectors of society and should possess an understanding of the local cultures and communities in which they are working.
 - The training of facilitators should provide the following skills and knowledge:
 - Values and principles of restorative justice, restorative justice processes, skill set of conflict resolution, how to effectively work with victims and with offenders, how to recognize and deal with issues of power imbalance ...

Restorative Justice Program Guidelines

- Program Operation
 - Programs should develop ethical standards and protocols to guide their operation.
 - All cases should include careful preparation and follow-up with both victims and offenders. Efforts should be made to identify and attend to the needs of victims and offenders, and where necessary, to connect individuals to support services which can meet their needs.
 - Efficient data collection practices should be developed at the outset.

Restorative Justice Program Guidelines

- Program Operation
 - It is suggested that each program consider implementing an outreach and public education strategy.
 - Ongoing professional and volunteer recruitment, training, support and development will be a priority of a successful program.

Obstacles

- Public opinion that soft on crime;
- Insufficient buy-in and from victims;
- Lack of strong political support;
- Skepticism from prosecutors and some police; and
- Inadequate resources.

Responding to Obstacles

- Public education;
- Criminal justice system education;
- Leveraging the considerable amount of police support in dealing with public and victims; and
- Evaluation and research.