

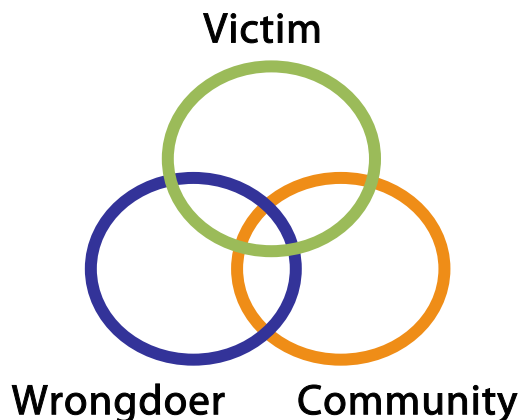
Ontario Justice Education Network

Restorative Justice in the Criminal Context



WHAT IS RESTORATIVE JUSTICE?

Restorative justice is based on the principle that criminal behaviour harms not only the victim(s) of crime, but also the community and the wrongdoer(s) as well. Restorative justice responds to crime by addressing the harm caused to victims, holding wrongdoers accountable for their actions, and restoring relationships with the community. From a restorative justice perspective, criminal behaviour is a violation committed against one individual by another and as a result, reparation is owed to the victim by the wrongdoer. The goals of restorative justice are to restore the losses suffered by victims of crime; repair the relationship between victims and wrongdoers; and reintegrate wrongdoers into the community. The diagram below illustrates the nature of restorative justice and the interconnections that exist between the parties involved in the process.



Restorative justice focuses on the interconnected relationship between victims of crime, wrongdoers, and the community. It emphasizes the involvement of all three stakeholders in repairing the harm caused by crime.

WHAT ARE THE OBJECTIVES OF RESTORATIVE JUSTICE?

- To help wrongdoers understand the effects of their crimes and help them to take responsibility for their actions.
- To reduce the likelihood of re-offending by reintegrating wrongdoers back into the community.
- To offer an alternative to conventional approaches to sentencing.
- To involve community members in responding to and reducing crime, as well as offer community support to victims and wrongdoers.

WHAT ARE THE BENEFITS OF RESTORATIVE JUSTICE?

Restorative justice views criminal behaviour holistically and can benefit all parties involved.

Victims

Victims of crime have the opportunity to confront wrongdoers and address the harm caused to them. In this way, victims play a key role in the justice process. Victims are also able to strengthen their ties to the community through the support provided by community members, as well as their family and friends. Families of victims benefit by knowing why their family members were victimized, and knowing that wrongdoers have taken responsibility, including steps to repair the harm which they have caused.

Wrongdoers

Wrongdoers have the opportunity to acknowledge the harm they have caused to victims. They benefit from reconciling with the victim and taking steps to repair the damage caused. Wrongdoers are also able to deal with underlying behavioural problems or social circumstances that may have caused the harm to occur in the first place. For example, wrongdoers may attend Alcoholics Anonymous meetings or anger management classes. With such community support, wrongdoers have the opportunity to take responsibility for their actions and lower their risk of re-offending.

Community

Restorative justice recognizes the importance of community members and volunteers in responding to and reducing crime. Community members are empowered because they become a part of the justice process. The community may understand the wrongdoer's situation better and as a result can offer help with rehabilitation. The sense of safety within the community increases because programs focus on the reparation and prevention of crime, rather than on the punishment of it. The public also benefits from the reduced cost of restorative justice programs compared to conventional approaches. Since many restorative justice programs are run by volunteers (i.e. judges, lawyers, mediators, community, families of victims, etc.), they are less expensive than the court process, and may be more accessible to the public.

Justice System

Through restorative justice programs, victims, wrongdoers, and community members collaboratively resolve their disputes, which alleviates some of the stress on the court system and reduces the costs involved.



CONVENTIONAL APPROACHES TO JUSTICE VS. RESTORATIVE JUSTICE

Conventional Approaches	Restorative Justice
<ul style="list-style-type: none"> • Crime is a violation against the state and Canadian laws. • Justice is achieved through the adversarial and hierarchical court system, pitting the wrongdoer against the state. • Focus is on individual rights and responsibility. • Punishment can repair the harm caused by crime. • Focus is on punishing the wrongdoer and sentencing often results in jail time. 	<ul style="list-style-type: none"> • Crime is a violation against victims and communities . • Justice is achieved through conversation between the wrongdoer and victim, where community members are given a key role . • Focus is on ensuring stability between victims, wrongdoers, and the community. • Wrongdoers must repair the damage caused to victims and communities. • Focus is on restoring relationships and preventing further harm from occurring.

WHEN IS RESTORATIVE JUSTICE NOT APPROPRIATE?

Restorative Justice may not be appropriate when:

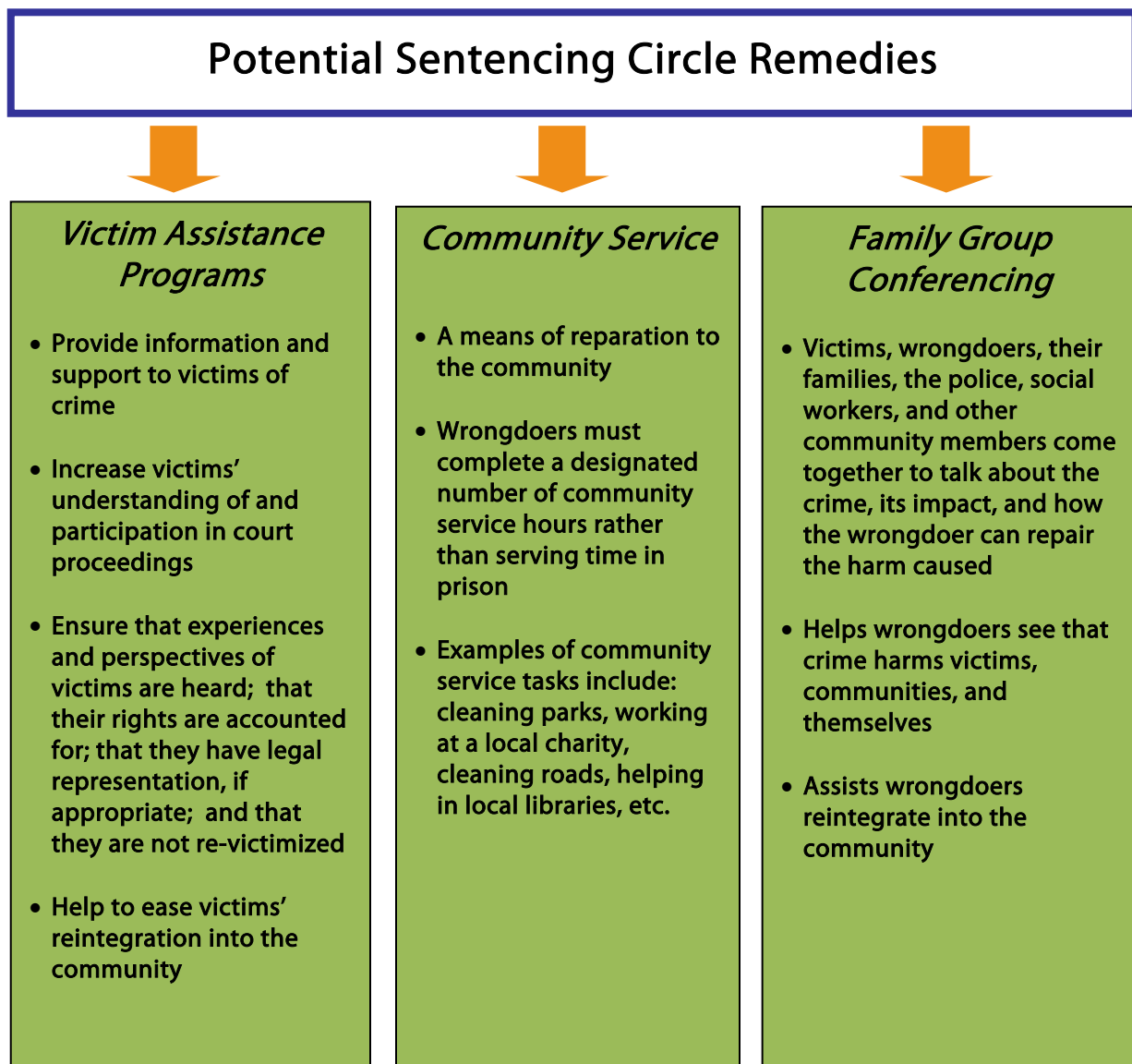
- The wrongdoer refuses to take responsibility for the crime
- The Crown does not consent to sentencing through restorative justice
- The victim of the crime is unknown or is unwilling to participate
- The wrongdoer's community is unwilling to support the process
- The legal rights of the wrongdoer might be at risk
- There are no trained facilitators in the community to assist, or no respected community members willing to participate
- A term of incarceration in excess of two years is a likely possible sentence

RESTORATIVE JUSTICE AND ABORIGINAL JUSTICE

Many of the values and principals central to justice processes in Aboriginal communities have formed the foundation of modern restorative justice practices, including sentencing circles. The practice of healing crime peacefully, and with community involvement, is grounded in the traditions of many Aboriginal communities. Although overlap exists, it is important to recognize the distinctions between these models of justice. Aboriginal justice processes incorporate First Nation-specific cultural traditions and practices. First Nations groups define what system of justice should be used in their particular community.

Sentencing Circles

Sentencing circles were historically central to many of Canada's First Nation's justice systems and remain an important part of the sentencing process today. They provide victims, wrongdoers, their families, and community members with the opportunity to discuss the crime, the impact it has had on each person, and collectively decide on an appropriate sentence for the wrongdoer. Once the group has reached an agreement on the sentence, the chairperson of the circle will make a recommendation to the judge who heard the trial. Sentencing circles are recognized under the *Youth Criminal Justice Act* as a positive way to sentence young wrongdoers in certain circumstances. Some possible remedies (outcomes) that may result from a sentencing circle include: Victim Assistance programs, Community Service, and Family Group Conferencing. Ideally, the sentence would include elements of all three types of remedies so that the needs of all of the parties involved will be addressed.



SNAPSHOTS OF RESTORATIVE JUSTICE IN PRACTICE

Nova Scotia Restorative Justice Program

The *Nova Scotia Restorative Justice Program* (NSRJP) was implemented in 1999 and is an example of one of Canada's unique restorative justice programs. The NSRJP is a partnership between the Nova Scotia government and communities around the province, and works with youth ages 12-17, victims of crime, and communities from twelve separate locations throughout Nova Scotia. The goal of the program is to make restorative justice the preferred response to crime in Nova Scotia. The government provides the necessary legal framework while the community ensures that the needs and demands of community members are met. Its goal is to use a process that holds offenders accountable for the harm they have caused in a meaningful way. The process aims to repair the harm done and provide a chance for the victim to heal. The NSRJP advocates using this form of restorative justice in nearly all offences, with the exception of sexual assault or spousal/partner violence cases. The NSRJP becomes involved in a case upon referral from a judge, police officer, Crown prosecutor, or by Corrections services. For more information please visit: www.nsrj-cura.ca

Peacebuilders International

Peacebuilders International is an organization that facilitates youth sentencing circles, and is committed to building sustainable peace around the world. In Canada, this organization uses a version of sentencing circles, which they refer to as "Peacemaking Circles", to help youth who have been charged under the *Youth Criminal Justice Act*. In the process, two trained facilitators (who are usually lawyers, healthcare professionals, elders, and other volunteers), the wrongdoers, the victims, and any other members of the community who want to help, are present at the meetings. Everyone shares their experiences, and are encouraged to be open-minded and to work toward a common goal to remedy the problem. The program primarily assists youth with making life decisions and taking responsibility for their actions. These youth circles help to reduce the risk of gang involvement and re-offending within particular communities. For more information please visit: www.peacebuilders.ca



CASE STUDY

Forty-two year old Dmitry was crossing the street at a pedestrian crosswalk when he was struck by a car that ran a red light. He was left with a broken leg and a dislocated shoulder as a result of the collision. Dmitry was forced to take several weeks off of work to recover, for which he was not paid. Following the accident, Dmitry became depressed and experienced severe anxiety when crossing busy streets.

A seventeen-year old woman named Charlotte was charged with dangerous operation of a motor vehicle under s. 249(1) of the *Criminal Code*. In court, Charlotte pleaded guilty to the offence. The judge suggested using a restorative justice approach to sentencing that would allow both parties to discuss their views of the crime and the impact it had on them. Dmitry and Charlotte agreed to take part in a youth sentencing circle where, in the presence of trained facilitators, family members, and other community members, they discussed how and why the crime occurred and how both of their lives had been affected by it. Dmitry expressed to Charlotte that her careless actions caused his whole life to change in a matter of moments. He told her how his injuries had forced him to leave work without pay and how he was struggling with expensive physiotherapy bills for his leg. He also described the emotional trauma that the incident had caused and how he now feels anxious and scared when crossing the street. Charlotte listened attentively to everything that Dmitry said and felt sorry for her actions. She explained that she was speeding because she was running late for a job interview and that she was not paying full attention to the lights, but she realized that she should have been. She explained her actions, admitted that they were wrong, took responsibility for them, and apologized to Dmitry for the negative effect they had on his life. The circle collectively agreed that Charlotte would do fifty hours of community service at a local hospital, as well as pay for half of Dmitry's physiotherapy visits for the next six months. Charlotte also agreed to attend a defensive driving course to help ensure that this would not happen again.

Discussion Questions

1. What happened to Dmitry? What impact do you think the incident had on his life?
2. What crime was Charlotte charged with? What impact do you think that crime would have had on her life had the judge not suggested restorative justice? Give two examples of sentences that could have resulted.
3. Why do you think the judge suggested using a restorative justice youth circle as an alternative to sentencing in this case? Do you think this was a good suggestion? Why or why not?
4. What is the importance of letting Dmitry have a chance to be heard in the youth circle process?

5. What is the significance of allowing Charlotte to claim responsibility for the harm she has caused and discuss how she felt about the crime?
6. What do you think the role of the facilitator was in the process?
7. Why do you think that it was important to have family members and community members present at the meetings?
8. Do you think the sentence decided upon was fair and appropriate? Why or why not? Would you suggest an alternate sentence if you were involved in the sentencing circle?

Information for this resource has been drawn from the following sources:

- *Nova Scotia Restorative Justice Community University Research Alliance* - www.nsrj-cura.ca
- *Peacebuilders International* - www.peacebuilders.com
- *Restorative Justice* - www.restorativejustice.org
- *Simon Fraser University, Centre for Restorative Justice* - www.sfu.ca
- *Restorative Justice Fact Sheet*. Department of Justice, Policy Centre for Victim Services - <http://www.justice.gc.ca/eng/pi/pcvi-cpcv/res-rep.html>

For more information about restorative justice theory and restorative justice in other contexts, please see the following resources, available for free download from the *Resources* section of the OJEN website, www.ojen.ca:

- Restorative and Other Models of Justice – Professor Bruce P. Archibold
- Overview of Restorative Justice
- Peace Circles in Schools