

**Submission to the BC Justice Review:
Restorative Justice**

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Thank you for providing an open and inclusive opportunity to submit to the BC Justice Review. This is an important time for BC to reassess our criminal justice system and take concrete action steps to improve our responses to crime. This submission addresses Mr. Geoff Cowper's three stated areas of inquiry in terms of restorative justice – when, what, and who. A case example of a pilot project in Vancouver is provided at the end.

Restorative Justice is now a globally recognized approach to crime and justice. Canada was a leading country in bringing restorative justice forward for endorsement by the United Nations.

Restorative justice is a values-based approach to conflict in which all affected parties are invited to discuss what happened, what the impact was, and what needs to be done to make things right. Participation is voluntary and the goals include offender responsibility, victim healing and community building. Currently, restorative processes include mediation, conferencing and peacemaking circles.

Restorative justice complements the criminal justice system, as each of these two approaches has their own distinct purpose, approach and strengths, as well as limitations.

1. When to Use Restorative Justice?

The first area of inquiry for the review is when should restorative justice be used? Mr. Cowper asks: *“Is police-based diversion the right stage for RJ assessment or Crown-based diversion?”*

Restorative justice is used within communities, schools, organizations and throughout the justice system, with referrals coming from the community, police, crown and judges. It is also used within prisons. Ideally, we should use restorative justice at all these levels.

Restorative justice offers a powerful tool that the police need. Police use their discretion to determine when to proceed with arrest and forward cases to crown counsel for possible prosecution. However, their options are limited if they do not forward a case to the crown; for example, they could provide a warning. There are cases that could benefit from a restorative intervention that, for a variety of reasons, are not able to proceed with formal charges.

Similarly, Crown prosecutors could benefit from having another option at their disposal. Rather than processing a case through to the courts or just closing a file, it would be helpful if they considered which cases could benefit from a restorative intervention. This could occur pre- or post-charge.

The courts also have very limited responses at their disposal for cases – basically a fine, probation, community service or prison. Restorative justice provides an additional avenue to bring about successful resolution of a case. A referral from the courts can be pre-sentencing or part of sentencing; a restorative outcome could contribute to or replace court ordered sanctions.

Rather than a win-lose conclusion from a legal adversarial battle between defense and prosecutors, restorative justice aims for a win-win result through collaboration. A restorative process is able to be very creative in outcomes in order to meet the needs of all parties. The response is tailored to the offender and situation and all participants, including the victim, have a say in constructing an appropriate agreement for making amends and for resolution. Retired judge Barry Stuart encapsulated it best by saying: communities are better at sentencing than courts.

The criminal justice system is designed to uphold due process, establish legal guilt or innocence, and punish those deemed guilty. Those who deny their participation in a crime or plead not guilty need to proceed through the justice system.

Restorative justice, on the other hand, is set up as a voluntary process to hold offenders accountable in a meaningful way, support victim healing, build community and ensure all parties have a voice in a facilitated process for resolution. Offenders must admit they participated in wrong-doing in order to go through a restorative system. Note that it is not about legal guilt or innocence; restorative justice is not concerned with the legal evidence or proving anything. It is simply an option presented to offenders who wish to take responsibility and make amends. It is also an option which includes victims as participants, if they choose.

No legislative changes are required to implement and utilize restorative justice. Canadian law already obligates justice officials to consider alternative and extrajudicial measures, especially for youth and Aboriginal offenders. Restorative justice is well equipped to also fulfill the goals of sentencing as outlined in the Criminal Code of Canada (section 718) and Youth Criminal Justice Act. This is powerfully illustrated in a new educational video aptly entitled “Restorative Justice: It is the Law” (Heartspeak Productions).

In an ideal situation, restorative justice would be the first response to crime. The criminal justice system would be a back-up for those cases that could not be successfully resolved with a restorative approach. New Zealand, for example, takes this approach with all young offenders going to family group conferencing. A police officer is in attendance as a representative of the state. They were the first country in the world to legislate restorative justice (1989).

2. What Cases?

Mr. Cowper's second area of inquiry asks: "*What cases should we apply RJ principles to?*"

Restorative justice has been used successfully for all kinds of crimes, from vandalism to murder.

For lower level criminal behaviour, the community, police or crown can make referrals. For very serious crimes, it is usually up to the crown or judges to make such decisions. For the most serious of offenses, this would typically be done in conjunction with imprisonment. It is important to note that imprisonment is problematic and in itself contributes to further violence and re-offending; restorative justice should also be considered as an approach for how we incarcerate offenders.

In answering the question what cases should go through restorative justice, what matters most is the willingness of the offender to take responsibility.

In the initial set-up stages of a restorative justice program, one option is to start with lower level offences. This allows people to get to know restorative justice and build confidence in its processes and outcomes.

Some communities have chosen instead to focus on pressing issues for them. Hollow Water comes to mind; the core pressing issue was sexual abuse so they started by focusing on this crime and successfully worked with crown counsel for referrals.

The evidence shows that restorative justice is actually most effective with more serious crimes. Two internationally respected researchers conclude:

"The evidence on RJ is far more extensive, and positive, than it has been for many other policies that have been rolled out nationally. RJ is ready to be put to far broader use."
(Sherman and Strang, 2007:4)

Restorative practitioners, community members and representatives of the justice system need to come together to collaboratively work out which cases are best suited for referrals to restorative justice.

3. Who & Costs?

The final area of inquiry asks where should resources come from and where should they go to?

Restorative justice is a community-based approach to crime. Partnerships need to be created between communities, organizations, restorative experts and justice officials. Relationships can

be formalized where appropriate, for example through memorandums of understanding for referrals from the local police, crown, courts and prisons.

What is required in BC is political commitment and funding. Municipal and provincial governments should provide funding for restorative initiatives and programs.

Some municipalities do provide funding from their budgets for local restorative programs. The amounts provided vary, from very little to moderate.

Currently, the BC provincial government provides extremely limited funding for restorative justice. The Ministry of Justice supports Community Accountability Programs (CAP), created many years ago, that offers each restorative justice program the opportunity to apply for up to \$2,500/year. Clearly this small amount is grossly insufficient to cover the required costs of running a restorative program. Given the existence of this infrastructure though, it would be easy for the provincial government to divert funding into this so programs could have access to much more reasonable amounts for staff, training, and operational costs.

It is appropriate and reasonable to ask municipal, provincial and federal governments to commit a portion of their budgets to restorative justice. They are currently spending billions of dollars on the criminal justice system each year; in 2008 a study estimated the total to be about \$15 billion in Canada. Governments need to consider diverting a small yet reasonable percentage of that current expenditure, such as 5-10%, for restorative justice.

Evidence shows that restorative justice is more cost effective than criminal justice. A UK study found £9 savings for every £1 spent on restorative justice. The Restorative Justice Council and Victim Support presented the British government with this evidence stating that providing restorative justice in 70,000 cases involving adult offenders would result in £185 million cashable cost savings over two years, through reductions in re-offending alone.

An independent expert analysis of the economic benefits of restorative justice, The Matrix Report, found that restorative justice would likely lead to a net benefit of over £1 billion over ten years. The report states that diverting young offenders to a pre-court restorative justice program would produce a life time savings of almost £275 million (£7,050 per offender). The cost of implementing the scheme could be paid back in the first year.

The question inevitably becomes where should money more specifically come from to invest in restorative justice? I believe one of the most viable and suitable options for BC is traffic fine revenue. The provincial government now returns 100% of that revenue to BC municipalities, which results in about \$210 million dollars. This money is to be used for local policing and community-based public safety programs. So this is a perfect fit for restorative justice. If government would commit 5-10% of that annual revenue for restorative justice, this would provide about 10-20 million dollars a year.

This money is desperately needed for training, staffing, coordination of volunteers and services, evaluations, and operational costs of restorative initiatives. It would also result in excellent returns on investment.

The evidence for the effectiveness of restorative justice is clear. Overall, research shows that using restorative justice results in the following:

- reduced re-offending
- offenders are more likely to fulfill agreements of payment of restitution and take responsibility
- victims experience reduced post traumatic stress symptoms as well as less fear, anger, hurt and vengefulness
- victims and community members feel safer in their communities
- parties who participate in a restorative process report high satisfaction
- cost savings when compared to criminal justice proceedings

With the plethora of evidence showing the increased effectiveness and cost savings possible with a restorative response, the question posed back to the BC Justice Review and to all levels of government is: *“How can we afford not to implement restorative justice?”*

A Case Example – Vancouver

Vancouver does not have a restorative justice program. At recent gatherings, including dialogues with guest Dr. Theo Gavrielides from the UK in May 2012, there were suggestions of launching pilot projects. As described below, a three year initiative was done in Vancouver.

In 2006, I was contracted by the Vancouver Police Department to explore the possibility and feasibility of a restorative justice program in collaboration with a Community Policing Centre; funding came from a grant from the BC Ministry of Children and Family Development.

In brief, a partnership was formed with the Hastings Sunrise Community Policing Centre (HSCPC) and a two-year consultation and capacity building process then took place. A steering committee of nine individuals was created to oversee the initiative. Community members and police representatives were given restorative justice and peacemaking circle training. New partnerships were formed between the VPD, HSCPC, Thunderbird Community Centre, Vancouver Parks and Recreation, The Hut (a not-for-profit in Skeena Terrace with BC Housing), and Vancouver Victim Services. An MOU was created with the VPD for case referrals.

This initiative established that there is a clear need, interest and support for a restorative justice program in Vancouver. Many people endorsed the initiative. The only thing required to proceed with an actual program was funding. This is when the project stalled and ultimately had to be put on hold.

Grant applications to a variety of sources were submitted for funding without success. The City of Vancouver declined funding requests. The provincial government only offered \$2,500 through their CAP program, which is clearly insufficient to operate a restorative program.

This pilot project was a great learning experience, as well as disheartening when it came to financial sustainability. This project laid the ground work for the implementation of a restorative program. There is great capacity and potential for Vancouver to benefit from restorative justice, however, this must be supported by political will and financial commitment.

The bottom-line is: we need adequate funding for restorative justice to further develop in Vancouver and throughout the province.

It is interesting to observe the steps other jurisdictions are taking to move forward with improving their justice approaches. For example, Hull in the UK is making great strides in becoming the world's first restorative city. In Nova Scotia, the Department of Justice has become a leader in restorative justice, establishing partnerships between government and the community in delivering restorative justice across the province. As of January 2012, the Nova Scotia Human Rights Commission has adopted a restorative justice approach for resolving human rights disputes.

What would British Columbia like to become known for?

Are we ready to become innovative and far more effective in our justice approaches?

Thank you again for this opportunity to share my thoughts and insights. I am happy to further discuss this submission and to participate in dialogues with stakeholders and other interested parties.

Respectfully submitted,
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