



# **Aboriginal Women and Restorative Justice**

## **An Issue Paper**

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## **Background**

Restorative justice systems are based on the idea that when there is conflict between individuals, the victim, the offender, and the community share the responsibility for identifying what needs to be done. The ultimate goal is for healing and reconciliation to occur between the three parties.

There are many differences between the retributive legal process and that of restorative justice. The Canadian justice system is based on the notion of retribution, which is a punishment-based approach to justice. In the retributive process crime is defined through the concepts such as lawbreaking and guilt. Justice systems are used to determine blame and administer correction in a rules-based process that primarily involves only the offender and the state.<sup>1</sup>

In contrast, the restorative justice approaches view crime as a violation of people and the relationships between them. The underlying premise is that crime and conflict inflict harm, and that individuals must accept responsibility for repairing that harm. In this system, the notion of justice involves the victim, the offender, and the community in a search for solutions that promote reconciliation and healing.<sup>2</sup> Restorative justice systems are based on a balanced approach that strives to meet the needs of all three parties while creating obligations to make things right between the parties.

Restorative justice should not be used in every situation. In situations where the offender has power or influence over the victim it is inappropriate to attempt to use restorative justice approaches. Similarly, if the victim is vulnerable because of their age (extreme youth or extreme old age), because of economic dependency on the offender, or because of reduced mental or emotional capacity it is also inappropriate to use these approaches. Finally, the nature of some offences makes them unsuitable for this approach: these offences include spousal assault, sexual offences, or other offences that result in serious personal harm.

## **Best Practices Example #1**

In 1995, the government of Saskatchewan began to develop a Restorative Justice strategy. This strategy focused on introducing alternative measure for youth and adults, and on developing community justice programs with First Nations, Tribal Councils and Aboriginal community-based organizations.

This work has resulted in the creation of on and off reserve programs for youth and adults. The principles underlying this restorative justice initiative have been an emphasis on community partnership and the belief that the integrity of the program is maintained by its being delivered by the individuals who live in the

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<sup>1</sup> Zehr, 1990, p.181

<sup>2</sup> ibid

communities that they serve. Agencies, First Nations and Tribal Councils have contracts to partner with Sask Justice to provide province-wide access to community-based alternative measures for youth and adults. Joint operations committees have been established to ensure that the needs of victims, youth, adults and the community are met. In addition to developing common data collection, evaluation and reporting procedures, the Federation of Saskatchewan Indian Nations, the RCMP, and Sask Justice have worked together to offer a community-based training program that is status and race blind.

To date, 70 of the 72 First Nations in the province of Saskatchewan are involved in delivering community justice programs under this initiative. These programs are tailored to meet the unique needs of each of their communities and draw on their community cultural practices.

## **Best Practices Example #2**

Carrier Sekani Family Services (CSFS) and the member bands it serves recognized the need for the implementation of a community based family dispute resolution program. CSFS implemented a Family Law Alternative Dispute Resolution Research project with the support of the Law Foundation of BC. This project was designed for Carrier and Sekani people who have come into contact with the family court process. CSFS ensured that the community's voice and wishes directed the development of the project and resulted in a product that reinforces community values and principles.

Community members agreed that a family dispute resolution program would aid in the creation of a healthy community by focusing on restoring relationships with the land, with an individual's own spirit and with an individual's family and community. Community dispute resolution initiatives are seen to be a key element of healing and self-determination. This research project reaffirmed that the Carrier and Sekani society maintains a complex social and legal order where standards for the care and protection of children are well entrenched in traditional governing systems. The research project articulated established Carrier and Sekani laws relevant to the care of children for the purpose of establishing a framework in which disputes regarding the care of children will be resolved using Carrier and Sekani laws and values in a culturally appropriate manner. In recognition of the diversity of members, the program was designed to respect the values of its participants. The use and types of ritual and cultural structures is dependent on the community and families involved. The core Carrier and Sekani principles, however, are maintained at all times in the model.

## **Policy and Implementation**

It is important to note that restorative justice approaches are not exactly the same as First Nations justice systems. While there are some similarities and overlaps between the two there are also many differences.

First Nations justice systems are grounded in the values and principles shared by the members of the community, which may vary from Nation to Nation. These values and principles can be very different from those that underpin restorative justice processes unless a specific effort has been made to premise the restorative justice system on First Nation models. The structure, linkages, and accountability that inform First Nations justice systems can be quite different from those that underpin restorative justice processes. First Nations justice systems are also grounded in the fundamental right of First Nations to self-determination. In contrast, restorative justice processes revert to the Canadian system in cases of failures or for situations that are deemed to be outside the scope of restorative justice.

Despite these differences between the two, restorative justice processes are commonly perceived to be a beneficial alternative to the Canadian justice systems that fundamentally disadvantage Aboriginal people. This is in part because these processes, while not identical to First Nations justice systems, are at least closer in their approach, and therefore provide a more familiar and better suited approach for Aboriginal people. A second reason that restorative justice approaches are an alternative that should continue be explored is that they are more likely to result in personal rehabilitation and to prevent recidivism and criminalization of the individual compared to the likely results of the Canadian legal system.

A caution in the use of restorative justice approaches is linked to the desire of the public to see the legal system clearly denounce and punish crime. Some individuals may see the use of restorative processes as inappropriate, 'soft' or inequitable treatment, in that they are available to some individuals but not to all. There is a need to ensure that communications around restorative justice approaches clearly demonstrates the benefits of these approaches including their preventative and rehabilitative outcomes.

## **Recommendations**

1. That Aboriginal communities be supported for the continued implementation and expansion of collaborative and cooperative Restorative Justice approaches, where this is appropriate and supported by the Aboriginal community.

2. That continued communication and education strategies be used to inform the general public of the aims and benefits of using Restorative Justice approaches.

## **Bibliography**

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