



## VALUES AND PRINCIPLES OF RESTORATIVE JUSTICE IN CRIMINAL MATTERS

### PURPOSE OF THIS STATEMENT

#### Recognizing:

1. the significant growth of Restorative Justice initiatives across Canada;
2. that, based on traditional communal culture and values, some Aboriginal people historically utilized a concept of justice akin to what we now refer to as Restorative Justice, and the fact that the evolution of their experience will continue to shape Restorative Justice in both Aboriginal and other communities;
3. that Restorative Justice also resonates with the commitments and practices of many faith communities across Canada;
4. Canada's leadership role internationally in the 2002 adoption by the United Nations of a resolution on the Declaration of Basic Principles on the use of Restorative Justice Programmes in Criminal Matters, and its on-going commitment to the United Nations Declaration of Basic Principles of Justice for Victims of Crime; and
5. that restorative approaches can be used in many areas of society, such as schools, workplaces, and neighbourhoods.

Justice Canada presents the Statement in order to further dialogue on the development of a national consensus on fundamental values and principles and a consistent framework for the use of Restorative Justice processes in criminal matters.

### PHILOSOPHY AND VALUES OF RESTORATIVE JUSTICE

Restorative Justice is a way of viewing justice that puts the emphasis on repairing harm caused by conflict and crime. In this approach crime is understood as a violation of people and relationships and a disruption of the peace of the community. It is not simply an offence against the state. Restorative justice is collaborative and inclusive. It involves the participation of victims, offenders and the community affected by the crime in finding solutions that seek to repair harm and promote harmony.

The underlying values of a restorative justice approach are based on respect for the dignity of everyone affected by the crime. Priority is given to addressing the human needs of participants and empowering them to communicate their thoughts and feelings in an open and honest way. The goal is to build understanding, to encourage accountability and to provide an opportunity for healing. A restorative justice process encourages the offender to take responsibility for their harmful behaviour in a meaningful way, to gain insight into the causes and effects of that behaviour on others, to change that behaviour and to be



accepted back into the community. The process gives the victim a forum to ask questions, receive answers, gain understanding, explain the impact of the crime on them and contribute to the outcome of the process. The process may result in the victim receiving an apology, restitution, services or some other form of reparation. It creates a safe environment in which the victim can seek closure. Restorative justice processes have the potential to provide the community with an opportunity to articulate its values and expectations, to understand the underlying causes of crime and to determine what can be done to repair the damage caused. In doing so, it could contribute to community well-being and potentially reduce future crimes.

### **WHAT IS A RESTORATIVE JUSTICE PROCESS?**

A Restorative justice process is one in which the parties with a stake in a particular offence, (the victim, the offender, and community members), are supported and voluntarily participate, with the assistance of a fair and impartial facilitator, (in Aboriginal communities, this may be an elder) in a discussion of the circumstances surrounding an offence. The purpose is to understand its underlying causes and the effects on those who have been harmed, and address the needs of the parties for healing and reparation. Although restorative justice processes take various forms, the models used most often in Canada are conferencing, sentencing and healing circles and victim-offender mediation

### **BASIC PRINCIPLES AND PROCEDURAL SAFEGUARDS RELATING TO THE USE OF RESTORATIVE JUSTICE**

1. Participation of a victim and offender in a restorative justice process should be based on their free, voluntary and informed consent. Each party should receive a clear explanation of what the process might involve and the possible consequences of their decision to participate. Consent to participate may be withdrawn at any stage.
2. The victim and offender must accept as true the essential facts of the offence, and the offender must accept responsibility for the offence.
3. The facts must provide sufficient evidence to proceed with a charge, and the prosecution of the offence must not be barred at law.
4. The right of each party to seek legal advice before and at all stages of the process should be recognized.
5. Referrals to a restorative justice process can occur at all stages of the criminal justice system, from pre-charge diversion through to post-sentencing and post-release from



custody in appropriate cases, and taking into account relevant prosecution policies.

6. Referrals to and conduct of a restorative justice process must take account of the safety and security of the parties and any power imbalances between victim and offender, with respect to either person's age, maturity, race, gender, intellectual capacity, position in the community or other factors. In particular, implied or explicit threats to the safety of either party, and whether there is a continuing relationship between the parties must be of paramount concern.
7. It is intended that all discussions within the restorative justice process, other than those conducted in public, be confidential, unless:
  - i. the parties agree otherwise;
  - ii. their disclosure to authorities is required by law; or,
  - iii. the discussions reveal an actual or potential threat to human life or safety.These discussions may not be used in any subsequent legal process other than in the circumstances described above.
8. The admission of responsibility by the offender for the offence is an essential part of the restorative justice process, and cannot be used as evidence against the offender in any subsequent legal process.
9. All agreements must be made voluntarily and contain only reasonable, proportionate and clear terms.
10. 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.
11. 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.

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