Restorative Justice (RJ) is an approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for those directly affected by crime – victims, offenders and communities – to identify and address their needs in the aftermath of a crime. RJ is intended to support healing, reintegration, the prevention of future harm, and reparation, if possible.¹

RJ processes provide opportunities for victims, offenders, and communities affected by a crime to communicate about the causes, circumstances, and impact of that crime, and to address their related needs. These processes are guided by skilled RJ facilitators² and can take different forms³ depending on the community, program, case, participants, or circumstances.

Differences between RJ and Mainstream Criminal Justice
Advocates of RJ make clear distinctions between the mainstream criminal justice system (CJS) that is sometimes described as a “retributive” system and restorative justice.

<table>
<thead>
<tr>
<th>Retributive Justice</th>
<th>Restorative Justice</th>
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</thead>
<tbody>
<tr>
<td>crime is a violation of the law and the state</td>
<td>crime is an act against another person and the community;</td>
</tr>
<tr>
<td>Justice requires the state to determine blame (guilt) and impose pain (punishment)</td>
<td>violations create obligations;</td>
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<tr>
<td>Punishment is believed to be effective:</td>
<td>Justice involves victims, offenders and community members in an effort to consider individual and social dimensions of responsibility; and</td>
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<tr>
<td>-threats of punishment deter crime</td>
<td>• Central focus: victim needs and offender responsibility for repairing harm⁴</td>
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<tr>
<td>-punishment changes behavior</td>
<td></td>
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</tbody>
</table>

² People who facilitate RJ processes may have titles such as facilitator, mediator, Circle Keeper, practitioner, community justice worker, or case worker. In Indigenous communities, Elders or knowledge Keepers also act as facilitators.
³ RJ programs may use different types of RJ process models. The models most often used in the Canadian criminal justice system are restorative conferences, victim-offender mediation, and restorative circles.
Types of Restorative Justice Programs

A restorative justice program or process is guided by restorative principles and may involve the participation of the parties, offender, victim and community (or a variation thereof) through some form of communication between them. It involves the participation of those most affected by crime (victim, offender, and the community) in a process to discuss and repair the harm. This process is guided by a facilitator who takes the unique dynamics and circumstances of each situation into consideration.

The most commonly used restorative justice process in the Canadian criminal justice sector are restorative conferences. Conferences may take many forms and are based on the circumstances of the parties involved, but most often, they involve a trained facilitator who meets with the parties including support people, family members and/or community agencies who support the victim and/or offender.

There are also many other programs that are based on or incorporate restorative principles. These can include rehabilitation or reintegration programs that provide support or services to either the offender, the community or the victim, but do not necessarily involve communication between those affected. Programs based on the restorative principles of collaboration, accountability, respect, voluntariness, reparation, and safety can provide support and services to either party.

There is good evidence that offenders benefit from programs that incorporate RJ principles. Even when victims do not participate, offenders can take part in programs that use community/reparative boards or victim impact panels where community members serve as proxies for the victim. There are also victim-offender programs where victims meet with offenders who committed a crime similar to the one that they experienced but not the specific people who offended against them.

Some experts make a distinction between diversionary RJ programs that tend to be more offender-centred and are intended to provide an alternative to traditional justice system and therapeutic RJ programs that are primarily aimed at helping victims heal.

RJ programs (as described above) usually involve direct communication between the victim and offender, such as victim-offender mediation, community reparative boards, family group conferencing, and circle sentencing. Alternatives to face-to-face meetings can include indirect contact (e.g., shuttle mediation, letter writing, shared videotapes).

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For example, victim-offender mediation (VOM) includes a face-to-face meeting of the victim, offender and members of the community. Each party is given an opportunity to explain how the crime affected them. Following careful preparation with parties involved, a mediator helps the participants understand the ramifications and then the participants discuss the steps needed to make amends and/or reparation.\(^{10}\)

In Chilliwack (BC), a Community Justice Forum (CJF) includes the offender, the offender’s supporters, the victim, the victim’s supporters, possibly the investigating officer as well as anyone else who has been affected or harmed by the incident.\(^{11}\) In Peel (ON), Youth Justice Committees involve trained community members who meet with persons harmed (victims), the accused young people and their parents or caregivers to negotiate an appropriate way for the young person to make amends for his or her actions.\(^{12}\)

In 2019, the Federal-Provincial-Territorial Working Group on Restorative Justice released a report on RJ programs across the country. Although the authors warn readers to use these numbers with caution since a number of jurisdictions did not provide data, the information is interesting:

- in 2017-18, in the reporting jurisdictions, there were 33,601 offenders referred to RJ programs in Canada;
- in 13,008 of these cases, victims were invited to participate;
- 2,992 victims participated in RJ processes;
- most (62.7%) of the offenders referred to RJ programs were youth (aged 12 to 17);
- 13,868 offenders participated in an RJ process;
- of these 13,868 offenders, 7,760 offenders communicated with victims;
- 4,878 offenders participated in RJ processes without victim involvement.\(^{13}\)

For a program to be considered restorative, offenders must take responsibility for their action. All participation is voluntary and anyone can withdraw at any time. While programs seek to support all people involved, special efforts are often directed toward ensuring that victims are supported in order to feel as safe and respected as possible.


\(^{12}\) Associated Youth Services of Peel. N.d. “Youth Justice Committee (YJC).” [Accessed 31 October 2018]

Benefits for Victims

Studies suggest that victims of crime often benefit from participating in restorative justice programs or processes. A meta-analysis by Strang et al. in 2013 showed that victims who participate in RJ processes express higher satisfaction with the handling of their case than those who do not go through a RJ process. Victims have reported psychological benefits such as decreased fear and anxiety about new victimization, decreased anger, increased sympathy towards the offender, and in some cases, a decrease in post-traumatic stress symptoms (PTSS). There is little research on whether the benefits are long-term.

A survey conducted in New Zealand in 2016 found the following:

- A large majority (84%) of victims were satisfied with the restorative justice conference they attended;
- More than three-quarters (80%) said they were satisfied with their overall experience of RJ, before, during and after the conference, and 81% said they would recommend RJ to others in a similar situation;
- Almost two thirds (64%) reported that the RJ meeting made them feel better.

Victims have different reasons for participating. One victim explained that prior to participating in the RJ process, she feared running into the offender in their community. According to Restorative Justice Victoria, a community justice program that serves Victoria (BC), victims identify the following reasons for participating in an RJ process:

- They may have questions for the offender;
- They want the offender to understand the impact their actions have had on themselves, their family, and others;
- They may want restitution to cover damages or losses that they have experienced as a result of the offence;
- They may feel that speaking directly with the offender can provide them with a sense of closure that allows them to move on from the effects of the offence;

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• They may be aware that these kinds of interactions with the offender likely would not be available to them in court;
• They may recognize the opportunity to help an offender understand the reasons behind their actions and engage in corrective learning.20

Not all victims experience the same benefits. A 2011 study from New Zealand found that a minority of victims surveyed felt that the offender was not genuinely remorseful or fully engaged with the process.21 Some victims have negative experiences because they have been given unrealistic expectations or are unprepared for the meeting with the offender.22 In a study conducted by Heather Strang, she found that it was essential that the offender accept responsibility. In cases where this did not occur, the victims were left not only dissatisfied, but also re-victimized. For RJ practitioners, these findings reinforce the importance of offender screening and voluntary participation.23 They also emphasize the importance of preparation before and follow-up after RJ interventions.

It should be noted that there are differing opinions on the appropriateness of RJ for offences such as domestic violence and other forms of gender-based violence. Some critics have expressed concern that if RJ is too focused on rehabilitating offenders, it leaves victims vulnerable to re-victimization.24

Benefits for Offenders
A large multisite study of victim-offender mediation (VOM) programs with juvenile offenders found that 81% of offenders who met with victims successfully completed their restitution obligation compared to 58% of similar offenders who did not participate in mediation.25 In addition, the same study showed that recidivism rates were lower among offenders who participated in VOM than among offenders who did not participate (18 % vs 27%); furthermore, participating offenders’ subsequent crimes tended to be less serious.26

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26 Ibid.
In a 2005 Canadian study, 95% percent of offenders and 78.7% of victims who participated in an RJ process felt that justice had been served in their case.\(^{27}\) According to the survey, 87.8% of offenders and 86.3% of victims said that they would choose a RJ approach again if they became involved in criminal proceedings in the future\(^{28}\).

In Canada, the government has made RJ a priority as part of a review of justice practices aimed at improving the system and reducing the overrepresentation of Indigenous peoples and vulnerable people in the criminal justice system.\(^{29}\) However, there are a wide range of programs and policies that incorporate RJ principles into their work, and experts do not always agree which ones meet a strict definition of RJ.

Studies have shown that participants in such programs may re-offend less often than similar offenders who go through the mainstream justice system.

- Two separate meta-analyses published in 2005 and 2006, found that participating in a program that incorporated RJ principles resulted in a 7% reduction in offender recidivism.\(^{30}\)
- A study on the combination of RJ principles and effective offender treatment showed a reduction in offender recidivism of 31%, whereas RJ programs on average, were associated with a 7% reduction in offender recidivism.\(^{31}\)
- An evaluation of a program in Winnipeg that used RJ principles showed that participants in the program had lower recidivism rates than the matched group of participants on probation. In the first follow-up year, offenders in the program had a recidivism rate of 15% compared to 28% for the probation group; the second year, 28% for RJ compared to 54% for the probation group; third year, 35% for RJ compared to 66%.\(^{32}\)

Advocates for RJ say that recidivism should not be the only measure of success since RJ has other goals, such as repairing harm (especially to victims) and encouraging offenders to respect the law and their community. It is noteworthy that part of the success of offenders in RJ


\(^{28}\) Ibid.


programs may be a result of self-selection bias – that is whatever motivates people to participate may contribute to the results.  

In a US study, youth referred to RJ programs for “other” crimes (e.g., minor traffic offences) did not fare as well as those referred for property or violent crimes. The researchers suggested that RJ practitioners re-consider whether RJ is appropriate for apparently victimless crimes such as underage smoking or traffic violations. The appropriateness of using scarce resources for “minor” or “less serious” types of offences is an important policy question to consider in Canada as well.

One study found that a community service program that included RJ principles (e.g., linking work assignments to the harm caused in the community) was more effective at reducing recidivism than was a simple financial penalty (fine) for first time offenders who had been caught driving under the influence.

Although RJ is often seen as most appropriate for non-violent crimes, some experts have argued that the reverse may be true – that RJ may have a greater impact on people affected by violent crime. Lawrence Sherman and Heather Strong report that RJ seems to work best when it is used for offences that have a clearly identifiable victim, especially if the victim can be invited to meet with the offender. It has also been suggested that the non-adversarial approach of RJ may foster feelings of empathy and remorse in offenders.

Referral to RJ programs

Offenders can be referred to RJ programs at several stages in the criminal justice process. Police can divert at-risk people to programs before they are charged with an offence. Crown prosecutors can divert people into programs at the post-charge/pre-conviction stage or post-conviction; judges can refer cases to RJ at the post-conviction/pre-sentence stage; and Correctional Services or Victims Services can offer programming at post-sentencing even if an offender is serving a sentence.

35 Ibid.
37 Ibid.
In a 2019 scan of programs in various jurisdictions across Canada, the stage of referral was reported in only 57.2% of cases. Of those cases where the stage of referral was known, the majority (98%) of cases were referred at pre-charge (46.7%) or post-charge (51.6%).

Youth participation in restorative justice

The Youth Criminal Justice Act, which is the law that governs Canada’s youth justice system, encourages a comprehensive approach that diverts offenders to alternative measures or extrajudicial sanction programs as a means of holding youth accountable whenever appropriate.

- In 2009/10, at least 21,500 young offenders were referred to programs that used RJ principles.
- In 2017-18, 62.7% of offenders referred to RJ programs were youth (aged 12 to 17).

The Youth Criminal Justice Act (YCJA) includes several provisions that are consistent with restorative justice principles and practices including s.3 (Principles), s.5 (objectives of extrajudicial measures), s.19 (Conferences), and s.42 (Youth sentences).

The website of the Department of Justice Canada provides information on several programs that are grounded in RJ principles. For example, the Youth Circles Project was a diversion program designed to provide access to RJ to youth aged 12 to 17 who were suspected of being involved with gangs. It ran from December 2006 to March 2009. About 72 youth were referred; 44 of them completed the project. The main Circle brought together the offender, the victim, their families and the Circle staff, with the goal of making the Circle a safe space where the participants could share feelings and move towards a resolution acceptable to everyone. The post-project evaluation demonstrated that the youth participants were less likely to be sentenced to pre-trial detention and that youth participants demonstrated greater problem-solving and conflict resolution skills after completing the program.

In a study of 352 youth referred to an RJ program in the Upper Midwest (United States) between 1999 and 2005, the researchers found that youth referred to a program based on RJ principles remained offense-free an average of 10.5 months longer than youth referred to traditional processing. This study examined several variations of RJ programs for juvenile offenders, including direct mediation, indirect forms of victim/offender mediation accomplished without direct victim/offender contact, the use of community panels (i.e., with community representatives when no direct victim was available), and a group who received only minimal interaction with RJ staff. The youth in this study who were 14 and younger when they were referred to the program remained offense-free an average of 18.3 months longer than a group of comparison youth who went through the usual criminal justice process.

41 Ibid.
42 Ibid.
45 Ibid.
46 Ibid.
A study of 125 youth in a VOM program in Tennessee reported that 19.8% of youth in the VOM program re-offended compared to a randomly selected comparison group where 33.1% of participants re-offended.47

Indigenous people and restorative justice

Indigenous communities in Canada have a long history of using restorative justice approaches that are rooted in their culture, history and Indigenous legal traditions. While RJ programs are not limited to Indigenous participants and should not be confused with Indigenous legal traditions,48 many of the programs in Canada that use RJ approaches are Indigenous-led programs serving Indigenous people and communities.

For example, the 197 community-based justice programs supported by the Indigenous Justice Program (which is a federally-led initiative delivered in partnership with all 13 provinces and territories) use processes grounded in the principles of restorative justice and other Indigenous legal traditions in their work with Indigenous victims and offenders.49 There is evidence that IJP supported programs reduce reoffending and contribute to healthier and safer communities. A 2016 recidivism study done as part of the Indigenous Justice Program’s (formerly Aboriginal Justice Strategy) most recent evaluation found that program participants were less likely to reoffend than a comparison group of individuals who were referred to an IJP funded program, but did not participate.50

Conclusion

Advocates argue that RJ offers an alternative approach to dealing with crime that may be more humane and effective. Benefits to victims include an opportunity to be heard and understood. RJ may help them heal and deal with their fear and trauma. Benefits to offenders may include an opportunity to understand the impact of the action on their victims and community. They may be motivated to seek help and avoid further offending.

Further research would help practitioners develop best practices and identify when RJ would be most applicable.

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