

Honourable Beverley Browne – Wîyasôw Iskweêw - Restorative Justice Committee Pilot Project



Provincial Court
of Alberta



Court of Queen's
Bench of Alberta

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About the pilot project

The restorative justice pilot project is a court-annexed program with the goal of referring appropriate matters that are before the courts to a restorative justice process.

The first phase of the project will only involve criminal matters, but it is hoped that later phases will expand restorative practices into family and civil matters as well.

For the criminal pilot project, the Committee has agreed upon a set of referral guidelines to provide some context to justice system participants about what restorative justice is, some of its benefits, and how referrals can be made. In a nutshell, any individual charged with a criminal offence who accepts responsibility for the harm caused, may be eligible for a referral to a restorative justice process. This could occur at any point from post-charge to pre-sentencing.

The Committee organizing this project include judges from the Court of Queen's Bench and Provincial Court, crown prosecutors, defence counsel, Indigenous groups, victims' rights groups, restorative justice practitioners, policing agencies, and many other stakeholders in the community.

Why this initiative was started

Indigenous wisdom, restorative practices, and traditional law have been used for centuries to effectively address harm caused by crime by integrating a holistic and communal approach. It is the intent of this pilot project to learn from and honour these traditional values, more recently referred to as restorative justice, and meaningfully incorporate them into today's criminal justice system.

This approach to crime involves a recognition that there are multiple pathways to justice and that justice is defined in different ways for different people. Studies of other jurisdictions that have incorporated restorative justice into their justice system report timely access to justice, increased satisfaction with the outcomes, lower rates of recidivism, and cost savings to the judicial system overall.



How Restorative Justice Works

What is restorative justice?

In the criminal law context, restorative justice is an approach to justice that involves the victim, the offender and other members of the community who may have been impacted by the crime. It may take on many different forms, and in some cases, may be focused only on the offender (known as transformative justice). A restorative justice approach seeks to repair the adverse effects of crime in a manner that addresses the root causes of crime. It seeks to address the needs of the victim, the meaningful accountability of offenders and other members of the community who have been impacted by the offense, in order to create healthier and safer futures for all those affected.

Principle of restorative justice

The underlying principle of restorative justice is the understanding that crime causes harm to people and relationships and affects the community. Three beliefs flow from this:

- Those who have caused harm have a responsibility to repair that harm;
- Those who have been harmed are central in deciding what is needed to repair it; and
- Communities have a role to play in supporting victims and offenders and addressing the root causes of crime.

Practice of restorative justice

For the purpose of this pilot, restorative justice may be practiced through any process in which the victim and the offender together with the help of others, such as an elder, or a restorative justice facilitator, work to address how the harm that has occurred may be repaired. Some of the processes to be used in this pilot are: community conferencing, restorative dialogue, or peacemaking/sentencing circles. Lawyers and judges do not generally participate in the restorative justice process, although in some rare cases, if invited by the service provider and they agree, they may be part of a sentencing circle.

While recognizing that the origins of restorative justice are grounded in Indigenous practice and law, its principles and framework for healing the harm that arises from a crime can be applied to non-Indigenous justice system participants. Both Indigenous-specific agencies and non-Indigenous agencies will participate in this project. However, agencies may choose to accept or refuse any individual referred to their program, depending on their criteria.

Any Indigenous person participating in a restorative justice process will have a say in the agency to be used and the specific cultural practices to be employed.

What is the legislative authority of restorative justice?

The use of restorative justice in criminal matters is supported through both federal and provincial legislation. For adults, section 717 of the *Criminal Code* authorizes the diversion of matters from the formal criminal justice system by the use of alternative measures. Restorative justice falls under this category. For alternative measures to be used, the offender needs to accept responsibility for the offence and the referrals must not interfere with the protection of society.

Where an accused pleads guilty, or is found guilty of an offence, section 718 articulates several relevant objectives of sentencing, including:

- (e) that sentencing should provide reparations for harm done to victims or the community, and
- (f) that a sentence should promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

Restorative justice is also referenced in section 8 of the *Alberta Police Act* and the federal *Victims Bill of Rights*.

Scope of pilot project

For the purpose of the pilot and subject to limitations in the prosecution Referral Guidelines, all matters coming before the criminal courts are eligible and may be considered for a restorative justice process. The use of restorative justice may happen at all stages of the criminal justice system (from pre-charge to post-sentencing). However, for the purpose of this pilot project, the focus is on matters that are already before the Court, i.e., post-charge to pre-sentencing.

The Committee will maintain a roster of Restorative Justice service providers that will be shared with the public and used by parties to determine appropriate service providers given the circumstances of the case and the parties involved.

General criteria for considering the use of restorative justice in a particular case

- The offender acknowledges responsibility;
- The facts of the offence are agreed upon by all;
- There is voluntary, informed consent by all participating parties; and
- The process is without prejudice and all information shared is confidential, meaning that it can never be used in any legal proceeding.

If a matter is determined to be appropriate for restorative justice, counsel will advise the Court and the file will be adjourned to a later date for follow-up after completion of the process.

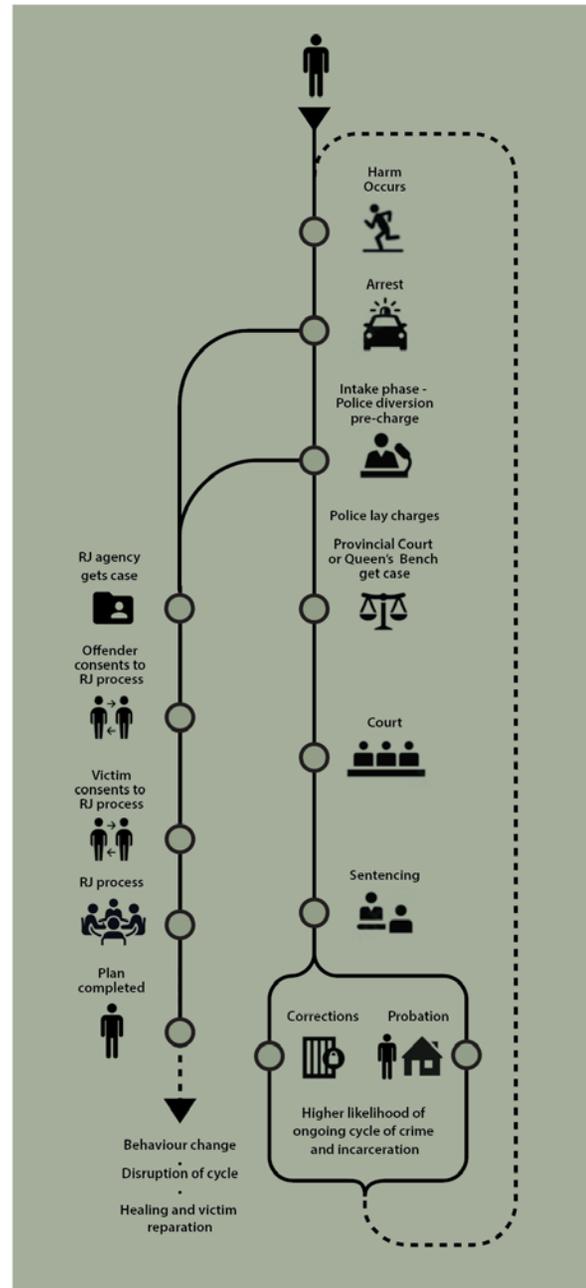
Agreements

Any agreement reached between the victim and the offender must be entered into voluntarily by both parties. The agreement will contain clear terms, meet the needs of the parties, and be reasonable and realistic. The agreement will be monitored by the service provider until complete.

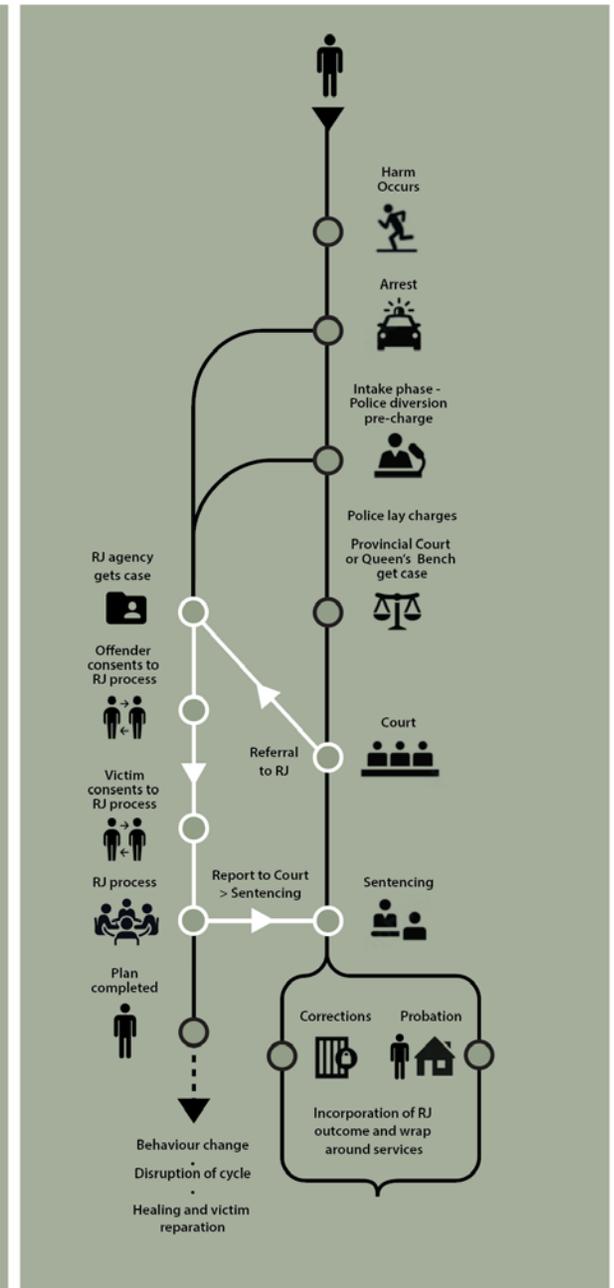
If an offender is on release conditions pending the outcome of the restorative justice process, those conditions will remain in effect. If the process results in a probation order, those terms remain in effect throughout any terms of the agreement. Any breach of terms or conditions may result in further criminal proceedings.

The service provider will provide a written update to counsel that can be shared with the sentencing judge and, if appropriate, may make submissions in court. The judge retains the discretion to determine the ultimate sentence and is not required to incorporate any of the suggestions made into the final sentencing decision.

If an agreement is not reached, then the matter goes back to court. In this case, nothing that was said or done in the restorative justice process can be used in court.



Legal system



Court-annexed restorative justice process

Where and when

Referrals to restorative justice will be made to one of the agencies identified on the roster.

There is no expectation that service providers take on any referral. They will be at liberty to determine if a case is appropriate for their community or agency. Agencies may determine after interviewing the victim and offender that the matter is not suitable for an RJ process.

In cases where referrals are made for more serious criminal matters, these may have to be referred to specific programs or service providers who are trained to adjudicate such matters. Referrals will be limited to communities with existing programs.

Post-pilot

An evaluation of the referrals to restorative justice and the outcomes will be conducted so as to determine whether to expand the program in the future and how to improve it.

Myths and facts

Myth: Restorative justice = Indigenous Courts

FACT: Indigenous courts may involve a component of restorative justice (e.g., peacemaking, healing plan). However, Indigenous courts are narrower in scope and offer services for Indigenous offenders in bail and sentencing hearings only where such courts exist (currently in Calgary and Edmonton). Restorative justice is an alternative approach to dealing with crime at any stage of the process for all offenders of any background and geographical location and in any court in the province.

Myth: Restorative justice is soft on punishment

FACT: Offenders often report that facing their victims in a restorative justice process is harder than a traditional trial. They must answer hard questions and take full responsibility for their actions, taking into consideration the impacts on the victim, family, and the broader community. When combined with appropriate probationary conditions, restorative justice may “impose a greater burden on the offender than a custodial sentence” (*R v Gladue*, [1999] 1 SCR 688 at para 72).

The goal is to understand the root cause of the crime so that a judge is able to craft a sentence or outcome that more appropriately redresses the harm caused with the long-term view of reducing recidivism while restoring relationships. The outcome is often more meaningful to offenders as it is community-based and provides greater potential for personal rehabilitation and reintegration into the community than strictly a Court-based sanction. Victims report greater satisfaction and a sense of closure as they have a say in the outcome and they gain an understanding of the factors that led to the crime.

Myth: Restorative justice is a “get out of jail free card”

FACT: Restorative justice is not synonymous with diversion or a withdrawal of charges. The purpose of a restorative justice process is to redress the harm in a more meaningful manner, which allows all those effected to be heard. Its purpose is not intended to lead to a more lenient sentence. When restorative justice is used, the victim has more input in the outcomes than they would in the traditional court system, and more options from which to choose.

Myth: Restorative justice requires the victim to forgive the offender

FACT: Although forgiveness and reconciliation can be by-products of the process, they are never a goal or expectation. Victims choose all aspects of their involvement, and they are never required to meet with, befriend, or repair relations with their offenders.

Myth: Restorative justice is only appropriate for minor offences

FACT: Restorative justice can be used for any type of crime, and has been successful in cases of assault, sexual offenses, and murder. Research shows a decrease in recidivism is most pronounced when restorative justice is used for serious offences. The restorative justice process is led by professionals only in tandem with the mainstream justice system after the offender accepts responsibility, pleads guilty, or is found guilty. It can be part of or exclusive of sentencing, or even years after the court case is over. When restorative justice is used in more serious cases (e.g. sexualized violence), only highly trained practitioners should participate.

As with other programs where charges are diverted from the formal court process to specialized processes outside Court, participation in restorative justice requires offenders to accept responsibility for their offences. What this looks like depends on the stage at which the referral to restorative justice is made. In some cases, for example, where there is a pre-charge referral, the referral will proceed on the basis of an oral or written statement from the offender, acknowledging the offences and the harm caused. Once the restorative process has been concluded, the matter is at an end.

In other matters, such as those already before the court, a guilty plea or finding of guilt will be required. For these cases, the court process will be adjourned to allow time for the restorative justice process to take place. Once that concludes, the matter returns to court where a report is made to the judge about the outcome of the restorative justice process and the formal legal proceedings will be concluded.

Myth: Restorative justice is not a justice system matter

FACT: This restorative justice project is a court-annexed program. The roster will include only government-funded service providers who report to their funders regularly and have a proven track-record for adhering to restorative justice principles and practices. While the Courts will not supervise the service providers nor dictate how the work will be performed, by only including agencies that meet certain criteria, quality assurance is expected. Service providers take direct referrals from the justice system for criminal matters and are accountable to various referring agencies through protocol and procedural agreements, for the outcomes of the process. This is well established in youth criminal justice matters. Specialized training in restorative justice and knowledge of the criminal justice system is necessary to provide this service.