

Restorative Justice and Policing In Canada

Bringing the Community Into Focus

Research and Evaluation

This project was undertaken by an external, independent researcher to explore, and provide information about, an issue or topic. Opinions expressed are those of the author and do not necessarily reflect those of the Royal Canadian Mounted Police or the Government of Canada.

by

Margaret Shaw
and
Frederick Jané
Department of Sociology & Anthropology,
Concordia University, Montréal, Québec

Research and Evaluation Branch
Community, Contract and Aboriginal Policing Services Directorate
Royal Canadian Mounted Police
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Executive Summary

Introduction

A widespread movement to develop alternative ways of delivering justice in society is taking place across a broad range of countries. Most commonly referred to as Restorative Justice, or Community Justice, the movement has recently become the subject of increasing interest from governments and sectors of the justice system, including the police.

Canada has been well represented in the development of restorative justice in terms of past practice and recent innovation. As part of the re-orientation of policing to community policing, the RCMP and the OPP as well as other police forces and components of the Canadian justice system have recently begun to embrace a much more active role in

restorative justice. As key components of the justice system, the police have a central gate-keeping role through their exercise of discretionary decision-making. For many the current justice system is seen as failing to reduce crime and to attend to the needs of victims, offenders or the community, but while many claims have been made about the ability of restorative justice to address these issues, there has also been criticism about its limitations, and concern about the wholesale adoption of restorative practices particularly by the police.

The purpose of this report is to set these initiatives in the context of the development of restorative justice practices in Canada and elsewhere. It considers the historical development of restorative justice ideas, the underlying philosophy and goals of the movement and the characteristics of the main practices; the development of restorative practices in Canada and current initiatives; the benefits and limitations of restorative justice; and some of the wider issues concerning the role of the police in the use of restorative justice, particularly at the pre-charge stage.

Section I outlines what restorative justice is in terms of principles, aims and underlying assumptions.

Section II considers the historical development of restorative justice approaches internationally.

Section III provides an overview of the development of restorative justice in Canada.

Section IV considers the main benefits and limitations and development issues.

Section V considers the challenges for the police and communities in Canada.

What is Restorative Justice?

Restorative justice can be seen as a set of principles which guide agencies and practitioners rather than a particular practice. It offers alternative ways of thinking about crime by emphasizing the harm crime does to the community, and how the community rather than the state can respond to crime in more satisfactory ways. It may incorporate a variety of approaches applied at various stages of the criminal justice process: pre-charge, pre-sentence, sentencing, and post release. A distinction is often made between the current system of retributive justice which sees crime as a violation of the state and emphasises guilt and the punishment of the offender, and restorative justice which places an emphasis on all those involved in an offence - victims, offenders and the community - and seeks to reconcile, restore and repair relationships and situations.

The guiding principles of restorative justice include: making room for the personal involvement of victims and offenders (and their families and communities) in crime events; seeing crime problems in their social context; using a forward-looking, problem-solving approach; and flexibility of practice. The objectives include: providing for the emotional, material and financial needs of victims and those affected by a crime; trying to prevent re-offending through reintegrating offenders into their community; enabling offenders to take active responsibility for their actions; developing the capacity of the community to deal with the effects of crime as well as its prevention; avoiding more costly legal responses to crime. Underlying assumptions are that crime derives in part from social conditions and relationships in communities, and that partnerships between community organizations, citizens and justice agencies are essential components for dealing with crime (Marshall, 1998).

Restorative justice is seen as a new paradigm or a different way of doing justice which brings victims and communities into justice decision-making in a more meaningful way,

encourages greater offender responsibility, is more effective than punishment or treatment programmes, can help to consolidate or re-build communities, and is less costly. It should no longer be seen as an interesting addition to the range of formal sanctions, but as an alternative which will change the way justice is delivered. Practice based on restorative principles now encompasses many parts of North America, Europe and Australia and New Zealand. There are parallel developments in dispute resolution well beyond the justice system. Many proponents stress that restorative justice is not a set of techniques or programmes but a philosophical approach, but four major initiatives are usually associated with the movement: victim-offender reconciliation programmes; community, neighbourhood or youth justice panels; sentencing circles and family group or community accountability conferencing.

Origins and Development of Restorative Justice

Three developmental phases are usually identified: i) practices in early European and Western societies, and Aboriginal and other non-Western societies; ii) the revival of interest in restorative justice in the 1970's; iii) the recent focus on the community role in restorative justice in the 1990's.

i) Early dispute resolution in Western societies appears to have made extensive use of negotiated settlements and reparation - paying back for damage done - often on a private or community basis to restore the balance between victims, offenders and their community. Similar approaches are still found in some traditional and non-Western societies. From 11th - 19th century in most Western countries the state gradually took over responsibility for dispute resolution on behalf of victims and the community, prosecuting offenders and punishing them for breaches of state law, retribution replacing a negotiated settlement.

ii) The revival of interest in restorative justice is usually identified with concerns about victims' and citizens' exclusion from justice. Christie (1977) for example argued that conflicts are property, and urged the development of small neighbourhood courts reducing the exclusive reliance on professional justice personnel. The Mennonite community also urged the use of non-conflictual mediation and reparation for justice disputes, and was responsible for developing the first victim-offender mediation programmes or VORP (initially in Elmira, Ontario in 1974). The model spread rapidly, in various forms, through Canada and the USA, and to European countries from the mid 1970's. The VORP involves face-to-face meetings between victim and offender, facilitated by a trained mediator, to discuss the events and their effects and reach an agreed outcome. They are usually used post-charge or as alternative measures, and often with young offenders. Community and neighbourhood justice centres also began to appear from the 1970's in a number of countries, using mediation techniques to deal with civil and criminal cases.

High levels of satisfaction among victims and offenders with the outcome of VORP programmes have been common, but practice suggests that their use has been sporadic, referral limited, and often restricted to very minor cases or without a victim being present. Nevertheless, networks of mediation training and contact centres have been established in a number of countries, and considerable experience consolidated over the past 25 years.

iii) In 1990's a much more developed philosophy of restorative justice has emerged (eg, Zehr, 1990; Braithwaite, 1989) clearly associated with mounting dissatisfaction with the formal justice system, increasing retributive sentencing, fear of crime, overcrowded court schedules and institutions, and increasing costs. This community phase places much greater stress on the role of the community, on the wider circle of people involved in an offence,

aims to work with more difficult cases, and advocates partnerships. Sentencing circles and family group conferencing are the primary examples associated with this phase. In a number of countries entire states and provinces plan to re-direct their correctional system towards a restorative justice model.

Family group conferencing originated in New Zealand in the mid 1980's, using traditional Maori dispute resolution techniques with young offenders. Family and friends of victims and offenders are brought together with a facilitator (a social worker) to discuss the event, its consequences and reach an agreement on restitution and the reintegration of the offender back into the community. Now legislated throughout New Zealand as part of an overall diversionary approach for young offenders, conferencing has been developed in a number of Australian states. A model which uses police referral and coordination of conferences at the pre-charge stage has been particularly well publicized, and forms the basis of much of the rapid expansion of conferencing techniques now taking place in North America and Europe.

It is argued that the offender, in discussing the emotional, physical, social and financial consequences of an event with those directly affected, experiences shaming, an apology almost always results, and the process of re-integration of the offender can then begin with the development of an agreed plan which will be over-seen by participants at the conference. The experience is seen as powerful and not a 'soft' option. Conferencing has been used at various stages of the justice process, is targeted at serious offences or those in which informal diversion and cautioning have not worked. Claims for successful completion and participant satisfaction are high (although less so for victims) and considerable cost savings have resulted from the diversion of young offenders away from the courts and institutions. Criticism of conferencing has focussed on the role of the police in police-led schemes, the lack of attention to victim needs, possible coercion of offenders and victims, gender and cultural appropriateness, and issues of due process and accountability.

The Canadian Experience: The Evolution of Restorative Justice in Canada

Canada has played a major role in restorative justice since the 1970's having been the site of the first VORP, and has developed extensive experience in mediation and reconciliation over the past 25 years. A number of VORPs were established, often by voluntary non-profit organizations, as alternative measures for young offenders, and subsequently for adults, as well as post-charge or as alternatives to prison. A network of community organizations undertaking the promotion of information and training has also been established. As in other countries, however, early experience found referrals to VORPs have often been limited and inappropriate, victim attendance low and with too little focus on victim needs, and there has been some evidence of 'net-widening'.

More recently legislative changes encouraging greater use of diversion for young offenders and adults, greater recognition of the need to consider alternative justice for Aboriginal peoples, the growth of victim concerns, and the movement towards community policing have all contributed towards a more receptive climate.

Sentencing circles have emerged as one of the main responses to the need for localized, community-responsive justice for Aboriginal peoples. They are seen as utilizing the traditional philosophy and principles found in Aboriginal communities which emphasise peacemaking, mediation and consensus-building, as well as respect for alternative views and equality of voices. Used in the Yukon since the 1980's they have become more widely used across Canada in Aboriginal communities in the 1990's, primarily in rural communities, but some urban circles have been completed. Sentencing circles include the judge, victim,

offender, family or supporters, elders and other justice and community representatives. The circle makes sentencing recommendations to the judge who may accept or reject them. Local justice committees are often involved and community members responsible for ensuring sentences are carried out.

Criticism of circle sentencing includes the lack of formal guidelines, procedural safeguards and due process, inequalities in sentencing, the realities of traditional practice, the extent of community involvement and its relative strengths and ability to support sentencing decisions, the definition of a community, and power imbalances within communities and circle decision-making. In particular, there has been criticism of the use of circles in the case of intimate sexual and physical abuse, and the 'equality' or protection afforded the victims.

The development of community policing has been seen as representing a profound shift in methods of intervention and crime prevention. Brodeur (1994) outlines the five major characteristics of community policing as: an expanded police mandate, a pro-active approach, the establishment of partnerships with the community, decentralization, and 'softer' policing using persuasion and communication rather than force. Community policing has expanded considerably in Canada over the past 10 years, and both the RCMP and the OPP have adopted it as a service philosophy. In principle, it is compatible with much of the philosophy of restorative justice with its emphasis on communication, localized problem-solving, and community partnerships.

Spurred on by fiscal constraints, public concerns with crime levels, and dissatisfaction with the formal justice system, restorative justice has become the 'New Wave' in Canada. Renewed focus on youth justice committees and diversion for young offenders, and the legislation of adult diversion have all facilitated this movement, as has the enthusiasm generated by conferencing approaches. Voluntary, local organizations and police services are developing conferencing eg. in schools. A series of national and provincial conferences and initiatives have endorsed the overall philosophy. The federal and some provincial governments are developing strategies or exploring the scope for restorative approaches eg. the Department of Justice, Correctional Service Canada, National Parole Board, BC, Nova Scotia, and Ontario. A number of compendiums and accounts of projects have recently been produced which show the range and variety of projects established on restorative principles, and at all stages of the justice system, as well as guides to establishing restorative-based projects.

In Ontario the OPP is actively exploring the scope for developing community justice, encouraging individual projects and well as broader service commitment and training. The provincial government has explored the scope for formal and informal diversion over the past six years, and some project goals overlap with restorative justice. Community justice committees are currently being encouraged by the provincial government as well as conferencing at the pre-charge and subsequent stages. In Toronto an Aboriginal community council has demonstrated the scope for community-based sentencing decisions in an urban setting. A 1998 survey by the OPP indicates that a number of conferences, sentencing circles, justice committees and mediation programmes have been initiated since 1993 within OPP detachments, municipal and First Nations police services, apart from other community justice projects. Many of those projects clearly based on restorative principles are in First Nations policing areas.

The RCMP has endorsed restorative justice within its community policing philosophy since 1995, as part of a diversionary and community devolution strategy. Conferencing forms a

major component in the form of Community Justice Forums. The first conferencing project was initiated in 1995 in Sparwood, BC. Systematic training in conferencing techniques (a three day session) was initially provided in 1997 by those responsible for establishing police-led conferencing in Australia. The RCMP is currently providing training for police and citizens in conferencing techniques across Canada, and in association with the Department of Justice, as well as initiating conferencing projects in a number of communities across the country. All RCMP divisions now have a trainer and a resource guide have been produced.

Restorative justice has become a much broader and more complex concept in Canada in the 1990's with an international presence, a wider range of approaches and a strong community focus, and one in which the police now sees themselves as playing a much more central role.

The Benefits and Limitations of Restorative Justice and Development Issues.

Restorative justice initiatives have demonstrated a range of benefits the formal justice system does not offer: for individual victims and offenders a more meaningful and satisfactory way of dealing with the impacts of an offence and generally high levels of satisfaction; for justice personnel, swifter justice, greater personal involvement and satisfaction, and considerable cost savings; for communities a more flexible approach and opportunities for greater involvement in justice decisions. The limitations include problems relating to individual rights, overemphasis on offenders and neglect of victims, overall goals, community and organizational commitment, and funding. Many are common to all forms of restorative justice.

Earlier practice and experience is a guide to the avoidance of many future problems, but eight major issues need to be considered in the development of restorative and community justice: net-widening; defining community; power imbalances; philosophy, goals and terminology; legislative impediments; justice issues; costs, benefits and funding, and evaluation.

Net-widening: a problem inherent in all, and a major criticism of many diversionary programmes or alternative sanctions. Minor offenders are drawn into the formal justice system and receive sanctions designed for more serious cases, or alternative sanctions are added-on to existing ones.

Defining the community: the term community is a vague one and has been used indiscriminately. Not all communities are clearly definable, or capable of sustaining or engaging in restorative justice projects, nor are those engaging in partnerships necessarily representative of all groups in a community. Engaging the community in restorative justice should not be seen as a 'quick fix' for crime prevention, some community problems cannot be dealt with without broader policy and longer-term input.

Power imbalances: those in positions of power in a community may not necessarily endorse restorative principles. Gender, cultural and minority concerns need to be included in developing restorative practice - eg. in individual circles or conferences - as well as broader planning or on-going partnerships. By virtue of their roles, justice professionals and others in positions of authority need to guard against abusing their power, particularly over young people.

Philosophy, goals and terminology: these are linked together and need to be clearly articulated to avoid the 'incorporation' of programmes and movement away from restorative

principles, and to retain a balance between the interests of victims, offenders and community members. Incompatibility between the goals of partners, often imbedded in past training or working practices, requires particular attention.

Structural and legislative barriers: these may restrict the essential flexibility and vision of restorative approaches, or prevent their application to the more serious cases which stand to gain most from such approaches.

Justice issues: lack of due process, of clear definitions, vague procedures, and disparities in outcomes eg. in circle sentencing, conferencing and informal diversion, have all be criticised, although admitting involvement in an offence is an essential safeguard. Injustices may also result if the most isolated and marginal offenders are excluded from restorative approaches.

Costs and benefits: costs should not be allowed to drive initiatives and projects involving justice personnel cannot be sustained without specific additional funding, while community organizations need on-going not short-term funding. Calculating the costs and benefits of restorative justice initiatives will present 'formidable conceptual and practical problems' (Knapp, 1992). They should include hidden and direct costs and savings, and some of the benefits may be difficult to quantify, costs will vary with the location and size etc. of projects. Tackling more serious cases may be more cost-effective than less serious ones. Restorative justice projects, especially at the pre-charge stage, will have cost savings but support services must still be maintained.

Evaluation: the lack of evaluation of restorative justice projects has been a major complaint. Evaluation provides assessment of how far programme goals are being met, substantiation of claims for effectiveness, and accountability to communities and funders. Evaluation needs to be integral to the development of projects and involve those closely associated with them. It should examine the process and implementation of projects as well as outcomes, including case selection, participant involvement and satisfaction, agreements reached, community involvement, completion of agreements etc. Projects need to be well planned, monitoring set in place, and implementation assessed, since poor implementation may sink viable ideas. Assessment of impact may consider immediate and medium term outcomes, or longer term outcomes including re-offending, and comparative costs and benefits with the formal justice system. Data should be qualitative and quantitative. All evaluative processes require adequate staffing and funding.

Challenges for the Police and Communities in Canada.

For the police to take on a major role in restorative justice in their communities and re-think the delivery of justice, will require more than increasing the scope for diversion or providing brief training sessions in specific techniques. It will require a shifting of power from the police to communities. Most police services in Canada are experiencing considerable change in terms of orientation, reorganization and downsizing. Restorative justice presents a number of challenges linked with community policing with which it shares some core values: problem solving rather than blame fixing, shared responsibility with the community, concern with underlying problems and reintegration, the localization of initiatives and operations, and consensus building using mediation and communication rather than confrontation.

While there appears to be compatibility, the adoption of a community policing model is no guarantee that a restorative justice philosophy will be fully accepted or implemented without problems within a police service. There would also appear to be considerable

variation across Canadian police services in the extent of implementation of community policing. If restorative justice is to be developed in a substantive way it must have a significant impact on policing at all levels of policy and practice, and at management and local levels. Establishing formal protocols and procedures and training will not be sufficient, however. Police occupational culture which guides daily practice is often cited as a major factor inhibiting change. Primarily transmitted through stories and anecdotes, it is argued that giving police 'different stories to tell' (because of their closer involvement in justice decision-making) will facilitate a shift towards restorative justice (and community policing).

Training eg. in conferencing is still an important component, but it is essential that it takes account of the organizational context within which projects are to be developed. Stability of personnel is also crucial for the development of community partnerships and good programmes. The policing environment, its population, economic, social and crime characteristics, public attitudes towards crime and the police, and minority concerns will all require particular attention. They will influence the extent to which community partners are willing to enter into partnerships with the police.

Police involvement in conferencing, and the speed of its development has been the subject of concern in Canada and elsewhere. Apart from the difficulties of effecting change within policing, there has been criticism of police coordination and facilitation of conferencing, the extent to which victim and offender interests can be balanced, and attendance non-coercive, and the impact of mistrust of the police particularly among minorities. Independent facilitators, and shared decision-making in the selection of cases are recommended, as well as particular attention to cultural and gender factors and victim needs. Multi-agency and community partnerships appear to be the best way of avoiding many of the problems inherent in restorative justice and diversionary programmes but require considerable police attention to sharing power.

Thus while the police are well placed to develop restorative justice because of their discretionary role as gatekeepers to the justice system, the current push to expand diversion, and because they are well placed to develop community partnerships, it may be much harder for them to do so appropriately and effectively than others. More than any other agency or community group, the police face much stronger pulls and expectations, both internally and externally, towards a retributive offender-based justice system. There is, therefore, a much greater need for the police to develop broad-based community partnerships, to have strong support at all service levels, to establish clear principles, goals and protocols, and for careful planning, implementation and evaluation.



To obtain an electronic copy of the complete report (PDF), please send a request by **e-mail** to the Research and Evaluation Section (Community, Contract and Aboriginal Policing Services) of the RCMP.