

Presentation to Special Committee on Reforming the Police Act

The Vancouver Island Region Restorative Justice Association (VIRRJA) represents 18 independent restorative justice programs on Vancouver Island, the Sunshine Coast and the Gulf Islands. We appreciate the invitation from the Special Committee to meet with you and make recommendations for improving the administration of justice in BC.

We commend the government for undertaking this review of policing and related justice issues. It is inevitable that as conditions and attitudes in society change, the administration of justice must also evolve. An example is our response to addiction and the use of illegal drugs; what was formerly viewed as a criminal problem is now understood to be a health issue, and the goal is harm reduction.

The many articulate and passionate submissions that have already been made to the Committee are a further indication of the importance of this issue to First Nations, government agencies, advocacy groups and individuals.

Restorative Justice is an alternative judicial measure that is well established as part of our legal system. It is endorsed by provincial and federal governments for good reason. It is a practice and philosophy whose goals are accountability, repair and healing as the best responses to harmful acts. It encourages offenders to take responsibility for their behaviour and reduces recidivism. It gives victims the opportunity to be part of the process and determine what they will need to heal. It reduces the growing backlog and financial burden on police and courts. And it contributes to making our communities safer.

We also believe that by improving access to restorative justice, BC and Canada will be meeting their obligations under the Convention on the Rights of the Child (CRC) and the United Nations Declaration on the Rights of Indigenous People (UNDRIP). Together these international agreements form an interlocking web of commitments. We will come back to the details of the UN agreements in a moment.

Although restorative justice has a proven track record and conforms to Canadian law and international agreements, implementation has been slow. The Youth Criminal Justice Act requires police officers to consider the use of extrajudicial measures such as restorative justice before deciding to recommend charges. Nevertheless, there is no documentation required to track whether this has been

done, and what the reasons for not using restorative justice may have been. To bring the process in line with the Youth Criminal Justice Act, we propose:

Recommendation 1: Every Police Officer, on apprehending a suspect and having carried out their investigation, shall be required to provide a clear, evidence-based reason if they are not referring the file to the local restorative justice program. Absent such a rationale, the file ought to be referred to restorative justice for disposition. There should be a specific space provided on the Report to Crown Counsel where the rationale is clearly visible to any reader.

In support of Recommendation 1, the Police Act should:

Recommendation 2: Require every serving officer to undertake restorative justice awareness training, with regular refreshers every 2-4 years, to ensure that the officer is aware of the range of files their local program is competent and trained to handle. The training needs to undermine the presumptions held by many officers that restorative justice cannot handle certain offences, certain age groups, or an individual with underlying issues involving mental health, alcohol, drugs, poverty, homelessness, etc.

Recommendation 3: Where it is not the local practice to have an officer attend every resolution conference, part of the training required in Recommendation 2 should include attendance at a resolution conference as an observer to ensure familiarity with how restorative justice works, its benefits for both Complainants and Respondents, and the positive outcomes for the community.

These recommendations will improve the delivery of restorative justice, but equally important is that people who are victims or responsible for crimes understand their rights and options. If all citizens were informed about human rights and able to consider using restorative approaches to conflict and crime, we could move beyond the current quagmire in which we find ourselves: one in which police and related Ministries have become “gatekeepers”. Currently, the restorative justice community struggles to convince the “gatekeepers” to increase their use of restorative justice, and most of the people who are involved in conflict and crime remain unaware that restorative approaches, and the benefits they provide, are available to them.

The UN Convention on the Rights of the Child (CRC) established an international framework for protecting the rights of children. Article 40 of the Convention requires States to develop and use effective alternative mechanisms to formal criminal proceedings that respect human rights and procedural safeguards and are

child and gender sensitive. These alternatives include diversion, restorative justice processes, mediation and community-based programmes, including treatment programmes for children with substance abuse problems. ¹

“Since the adoption of the Convention in 1989, considerable progress has been achieved at the local, national, regional and global levels in the development of legislation, policies and methodologies to promote the implementation” of these rights. ² Having taken these steps, it remains a challenge to translate the provisions in the treaties and legislation into changes in the day to day workings of the justice system. This may be because the older paradigm of criminal trials and incarceration is deeply entrenched in the education and training of justice professionals. It also may reflect the reality that the majority of people involved in conflict and criminal incidents are unaware that alternatives such as restorative justice exist.

Fundamental to the implementation of these alternatives is that people should be allowed to participate in decisions that affect their lives. Article 12 of the UNCRC says,

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.³

Since criminal procedures are certainly a matter affecting children, children would seem to have the right to request dealing with the matter in a restorative way. The Committee on the Rights of the Child provides its interpretation of the content of human rights provisions through its General Comments. These help legislators, lawyers and advocates understand the underlying meaning of the provisions. In 2007, the Committee stated,

“The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific

¹ In this regard, see also the report by the Special Representative of the Secretary-General on Violence Against Children, *Promoting Restorative Justice for Children, 2013*.

² *UN Committee on the Rights of the Child, General Comment No. 12, 2009*.

³ *Article 12, UNCRC*.

wishes or preferences he/she may have in this regard should be given due weight.”⁴

This suggests that the Convention entitles children to be informed about restorative alternatives that exist to legal proceedings. The Committee was more explicit in its General Comment in 2009, stating,

“The realization of the right of the child to express her or his views requires that the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child.”⁵

We all have the opportunity to support Canada's Human Rights obligations under international law by informing persons accused of committing offenses about restorative justice.

In Canada, the Victim's Bill of Rights (VBR), 2015, amends the Corrections and Conditional Release Act. The Federal Ombudsman for Victims of Crime had this to say about the changes,

“Under the VBR, CSC (Correctional Service of Canada) will now be required to inform victims about restorative justice opportunities. Impact: Victims cannot access the services or programs afforded them if they are not aware they exist. Requiring victims to be informed of these opportunities will benefit victims by providing them with information about the choices available to them.”⁶

Canada has an obligation to educate justice professionals, such as police, crown counsel, and judges, who then should uphold the human rights Canada has agreed to at international law. In addition, the Youth Criminal Justice Act incorporates these principles by promoting “responsibility”, “rehabilitation”, “reintegration”, “timeliness”, “encourage the repair of harm done to victims and the community”, and “where appropriate, involvement of parents, extended family, community, and social or other agencies”. Restorative justice clearly incorporates these principles.

⁴ UN Committee on the Rights of the Child, *General Comments No. 10, 2007, paragraph 45.*

⁵ UN Committee on the Rights of the Child, *General Comments, No. 12, 2009, paragraph 25.*

⁶ *A Cornerstone for Change: A Response to Bill C-32, The Victims Bill of Rights Act, from the Federal Ombudsman for Victims of Crime, 2014.*

If agencies were to agree that they have a responsibility to inform victims and persons accused of crimes that restorative approaches exist, they would have to be educated in the principles and concepts. Once trained and committed, they would be conforming to the principles underlying the above mentioned rights. Indeed, Paragraph 97 of the 2007 General Comments states,

“It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of the CRC in general...It should include information on...the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings.”⁷

Compliance with this responsibility could include handing a card to someone with the phone number of the local program and saying, “if you are interested in finding out about restorative justice, there are people here who can answer questions.” Even better would be if the police obtained permission from the parties to give their contact information to the local victims services officer and local restorative justice program. They could in turn reach out and provide information and support if desired. This would not imply that the agency endorsed the use of restorative justice as an alternative to charges in that particular situation, but it would empower individuals, who, with greater awareness, might choose to pursue a restorative path on their own.

There are some inherent problems in having justice agencies solely responsible for making decisions about the use of restorative justice. Foremost is the potential for coercion when someone is given the “choice” of restorative justice or criminal charges. People may choose restorative justice to avoid the negative consequences of charges, rather than because it is “the right thing to do.”

Depending on the the procedures and policies of different agencies, restorative justice may also be offered because it involves less paper work or because it will save the agency money in terms of court costs, etc. Finally, restorative justice may be offered in cases where police or crown counsel feel there is little chance for a successful prosecution. This is against the rules, but as we know, situations are rarely black and white, and it does happen. Work needs to be done to address these issues.

⁷ UN Committee on the Rights of the Child, *General Comments 2007, paragraph 97.*

Finally, there are legal and procedural changes that would bring Canada more closely into compliance with our obligations under international treaties.

Recommendation 4: Clarify the changes that were made to the Victims Bill of Rights to make certain that all victims are automatically informed about the opportunity that exists for restorative justice. Extend this policy to those accused of committing crimes.

Funding

Most restorative justice programs are community based, staffed and managed by volunteers. Besides facilitating referrals, these programs are responsible for recruiting and training volunteers, developing programs, including school based programs, building partnerships with community organizations, fund raising, maintaining program awareness in their communities, and keeping abreast of current research and innovation in the field.

Programs that are designated Community Accountability Programs (CAP) by the Ministry of Public Safety and Solicitor General receive a small (\$4000) annual grant. Any funding beyond this minimum requires applying for short term grants.

The Prosecution Service has now established a process for entering into MOUs with programs so that more serious cases can be referred by Crown Counsel. These cases will require higher levels of training and more secure procedures for protecting confidential information. Crown Counsel has made it clear they will not be providing funding for their referrals. Clearly there needs to be sufficient stable funding to insure that this work is done effectively.

Recommendation 5: The Provincial government should initiate a discussion with representatives from the restorative justice community to determine what level of financial support is needed to ensure that the service that is provided meets the highest possible standards.

Although there is no specific reference to Restorative Justice in UNDRIP, it is clearly stated in Article 17 and elsewhere that Indigenous peoples are entitled to all the rights established under international and domestic law. In this way, UNDRIP obligates Canada and BC to fulfill their obligations under CRC and the YCJA.

Article 32.2 of UNDRIP requires States to consult with Indigenous peoples in order to obtain their free, prior and informed consent over projects affecting their

lands and resources. In some cases where disputes have arisen over projects, governments and corporations have obtained court injunctions to prohibit protests. Disobeying these injunctions has led to confrontations, injuries, arrests, trauma for protesters and police and a lessening of respect for the rule of law. Using restorative justice to deal with these cases could lead to more positive outcomes. (See letter from Jan Slakov to Prosecution Service) <https://www.rjssi.org/about-5>

Recommendation 6: Representatives from the restorative justice community should work with the Prosecution Service to develop a policy for using restorative justice for violations of court injunctions resulting from protests over First Nation sovereignty and the environmental impacts of projects.

Thank you very much for the opportunity to share our concerns and recommendations.

Respectfully submitted,

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Vancouver Island Region Restorative Justice Association