

## **Regret and Retribution: Why Canada Must Reimplement Restorative Justice as Its Response to Crime**

“If you make a mistake, I need you to be honest about it.”

“You must apologize for your actions, and understand that they hurt other people too.”

Beginning from infancy, it has been ingrained into the minds of youth—from parents and teachers alike—that owning up to one’s actions, while expressing regret for the repercussions, is the ideal method of confronting our mistakes and oversights. For instance, a young child left unattended decides to unleash their creativity all over the walls of a freshly painted home. In permanent marker. Sure, in their perspective, it was convenient! However, for the parent who had arrived in the room to see the walls decorated in an array of incompatible colours and discordant designs, it becomes another hassle in their day to repaint the walls and scold their child. In this scenario, it is unlikely that the parent would determine a punishment for the child without consulting with them first, asking for their tell of events and hearing their reasonings.

Moreover, wouldn’t a child be much more likely to learn their lesson if given the chance to speak with their parent, as opposed to simply receiving a time-out with no chance to explain themselves? The child would be given an opportunity to understand the time and effort that would have to be spent on repainting the wall, while speaking for themselves in the process of accepting their missteps and the punishment received. In fact, there is also benefit for the parent in the long run, considering that the child could choose to help repair the damage themselves or offer solutions for the future, such as using scrap papers or notebooks next time.

Although it may seem like a simplistic view of the concept, similar principles apply to the Canadian justice systems, and our approach to handling criminal cases. Whether it be childish mischief or larger-scale offenses, I am of the opinion that the chance for offenders to consult with victims and their families, should they desire such, must be available. Since restorative justice not only benefits the offender throughout their lives but also the victims in their journey of healing, as well as the overall Canadian society, it should be implemented more frequently in serious crimes involving people and property.

Restorative justice focuses on mending the harm that crime has caused while holding perpetrators accountable. It allows victims to contact their perpetrator in order to express the real impact of the crime. Restorative justice has been a feature of Canada’s criminal justice system for more than four decades, and it is backed up by federal law, policies, and services.<sup>[1]</sup> If a case proceeds to court, Restorative Justice takes place after the offender has been convicted, and it can happen while the perpetrator is in prison. During the conflict resolution conference, there is a meeting between the victim and the offender with two trained Restorative Justice facilitators. Both sides may be accompanied by supporters, such as a friend who was also harmed by the crime.<sup>[2]</sup>

The facilitator encourages dialogue between the individuals, about the incident and how it affected them. Sometimes, their role is to assist the participants in reaching an agreement on the conclusion. This lists the measures the offender can take to make things right or address the harm they have caused. Everything in the resulting agreement will need to be agreed upon by both parties, as it always is in a restorative process.<sup>[2]</sup>

Firstly, the process protects the offenders; providing them with an opportunity to rectify the situation and grow into recovered Canadian citizens.<sup>[3]</sup> Restorative justice has a high success rate in decreasing repeat offenses, also referred to as recidivism rates. The chance of reentering the prison system for similar risk crime is considerably lowered when communities reintegrate their residents after harm has been mended by the individual (following the restoration conference). Restorative justice interventions were linked to a 3% reduction in recidivism on average, according to 46 research studies examining approximately 23,000 participants.<sup>[4]</sup> What was most intrinsically correlated to reduced reoffending was providing some sort of reparation for victims from the convicted.<sup>[4]</sup> It helps the offender to emotionally comprehend the impact of their previous acts on the victims and their families, allowing the offender to see their crimes from a new viewpoint not available in other ways of justice in Canada's present legal system.<sup>[3]</sup>

In Winnipeg, another assessment of a restorative justice programme was done. The participants were compared to a subgroup of probationers who did not engage in the restorative justice initiative but had similar crimes and previous convictions. The offenders who took part in the programme had a lower rate of recidivism than a comparison group of probationers. The disparities in recidivism rates across the groups were wider with each year of follow-up. The restorative justice offenders had a recidivism rate of 15% in the first year, compared to 38% for the probation group. The respective percentages were 28% and 54% in the second year, and 35% and 66% in the third year.<sup>[4]</sup> Overall, these rates are influencers in the security and improved well-being of entire communities and Canadian society.

It's an excellent illustration of how restorative justice not only helps victims in recovery and reconciliation, but also how it enables criminals to get back on track to become law-abiding, honourable members of society.<sup>[2]</sup> It provides individuals with potentials that they may not have had in the past, as seen in the living conditions of certain underrepresented or marginalized communities—such as Black and Indigenous communities. In fact, as of 2021, approximately one-third of Canadian convicts within the incarceration system are Indigenous. According to recent numbers revealed by a federal investigator, Indigenous people account for more than 30% of inmates in Canadian jails, despite accounting for only 5% of our country's population.<sup>[3]</sup> This is largely due to socio-economic marginalization, and a lack of adequate funding and action taken to tackle the issue of inequitable incomes in these regions when compared to non-Indigenous provinces. It becomes a risk factor for the community, in terms of susceptibility to increased criminal arrests in the area. Restorative justice allows for these people to seek the help they may not have had access to otherwise, and therefore break the intergenerational cycle of incarceration amongst the populations.

In deciding which system of justice to employ, certain variables causing these crimes against a person or property, such as the fact that many crimes are committed while under the influence, must also be considered. According to a study conducted by the Canadian Centre on Substance Abuse and

Addiction in collaboration with Kai Pernanen Ph.D., Marie-Marthe Cousineau Ph.D., Serge Brochu Ph.D., and Fu Sun Ph.D., all of whom are researchers or professors of Comparative Criminology or Substance Abuse, "slightly more than half of inmates in federal prison (53 percent in a Correctional Service of Canada study and 52 percent in the federal prisons of Québec and Ontario) reported the use of illicit drugs during the six months immediately prior to their last arrest."<sup>[7]</sup>

30% outlined the use of illicit substances at least once a week. "Inmates in both federal and provincial prisons scored higher on psychometric scales measuring alcohol and drug dependency when compared with the general population...approximately one in twelve federal inmates (8%) were assessed to be dependent both on drugs and alcohol."<sup>[7]</sup> Even while in the system, many criminals are denied access to the treatment and aid they need to cope with pre-existing addictions even while in prison, some as a result of fundamental risk factors from their early surroundings. Restorative justice is by no means a "get out of prison free card," but it does allow criminals to seek necessary consultation and guidance, while accepting responsibility for their acts in a manner that other ways of obtaining justice for the crime do not.

Secondly, as one can imagine, there are multiple benefits dedicated to the victim and their recovery that can arise from restorative justice practices. Returning to the earlier analogy of the child who had drawn on the wall, it becomes the parent's main priority to equip the child with a principle that would follow them throughout their entire life—when one has made a mistake, the best thing to do for those affected is to sincerely apologize and offer a solution. The same goes for victims of serious crime and their families. As proven by the analysis of accumulated data in Canada, more than 85% of sufferers have reported higher levels of satisfaction post-conference with the convicted individuals.<sup>[5]</sup>

Victim satisfaction is strong when it comes to restorative justice. Many people can reclaim what has been taken from them, whether it is payment, other possessions, or their sense of overall wellness (in the form of safety and peace). They're increasingly willing and able to move on from the occurrence and resume their daily life. Compared to traditional criminal justice, it gives victims a greater sense of satisfaction that justice has been served.<sup>[5]</sup> In addition, the desire for vengeance is a commonly-known motivation for criminal activity and violence. This issue has mostly been studied in ethnographic studies of teenage offenders and community disputes in sociological research. Restorative conference dialogue has been shown to lower crime victims' post-traumatic stress symptoms, as well as their desire for violent retribution against their perpetrators.<sup>[8]</sup>

There is an empowerment that can be attributed to the feelings of involvement in the process, when victims are provided with the chance to have a secure and mediated conversation with the individual who has wronged them. Participants are granted the right to convey how they were affected, ask questions, and specify what they require the perpetrator to do to take accountability and truly apologize.<sup>[6]</sup> For example, if someone damages a store's property or business operations, they might undertake community service as a form of retribution as well as an expression of remorse for the incident. By offering them a voice in an often uncaring, impassive system, victims' concerns are heard and addressed.<sup>[1]</sup>

Furthermore, this approach to criminal justice also benefits Canadian society's safety and prosperity. By reason that it is accredited with lower recidivism rates, restorative justice encourages citizens to make their neighbourhoods better places to live, and a safer environment.<sup>[2]</sup> Offenders are also represented; rather than being helped, some may be harmed in jail. Over 20% of convicts in federal and provincial jails exhibit violent tendencies, yet they are nonetheless housed in "gen-pop" institutions, endangering the safety of others. Those aggressive inclinations in certain people will be reduced via rehabilitation programs and the connection they will form with those previously harmed by their actions. Community justice centres not only improve a region's well-being, but they also encourage more engaged citizenship. Volunteering has been shown to strengthen and unite communities. A stronger sense of community emerges from the community justice centres for restorative justice cases.

Another advantage of this strategy is its cost-effectiveness. By increasing the number of cases settled at the local level with community and victim engagement, the restorative approach to crime saves the government money, and thereby taxpaying dollars. In contrast to the criminal justice system, the restorative justice process is faster, allowing offenders to make more substantial changes in their life quickly.<sup>[4]</sup> It provides timely settlements, and when a settlement is granted in the form of monetary compensation, it helps victims to recover more quickly and bounce back in contributing to society. The percentage of compliance or completion for restorative justice is very high. People who have committed crimes are more likely to follow through on commitments that they helped to create in a mutual and non-coercive manner, of their own volition.

Restorative justice is not a new philosophy to seek justice. It is simply one that has been taken out of commission. Now, as new studies and data analyses emerge pointing to the numerous benefits that this method possesses, the need for a catalyst event from within the Canadian judiciary system to reintroduce this approach has become more and more apparent. It is not a method that should be used in all cases. It is one that can, rather, serve as an economic conservation tactic for minor cases, or those in which both parties request this alternative. They should always be given the right to this option, and it should be more explicitly stated to the individuals pertaining to a case as such.

In fact, the policies regarding restorative justice and its ability to be applied to criminal cases are rarely used by prosecutors, judges, correctional officials, etc. Put simply, they exist, but are not often practiced due to a lack of awareness of their existence. Prison and detainment is the solution that has been adopted in our justice systems as the approach to healing and bettering the individuals and in general society, when in actuality, it likely is not truly helping the victims heal, nor is it providing the convict of the second chance they need to head back into the world as responsible citizens. It has come to the point where we are overusing prison as our response to criminal activity, and mutually halting their potentials as citizens of Canada after recovery.

Our current approach to justice insists that a criminal case is the only means to address crime. It dehumanizes the victims and their families, deeming them the byproduct of a person's misconduct. Through this process, although in some cases, it allows for the victims and their families to feel satisfied, it likely does not achieve the same result we would all, in our human nature, desire--an apology. However, we live in a country where there is likely no interaction between the offender and the victims from the moment the convict is arrested to the courtroom, in view of the fact that defendants are

encouraged to keep silent in fear of harming their case. In a country like Canada, we must be able to adopt restorative justice into mainstream criminal case operations.

If we wish to preach honesty as the best policy to our children and the future generations, urging that the only way to remain honourable is through apology and retribution, we as a nation must find a way to allow these principles to continue through all walks of life, including those vulnerable on both sides of a criminal trial.

## Bibliography

1. TEDxTalks. "How Restorative Justice Could End Mass Incarceration | Shannon Sliva | TEDxMileHigh." *YouTube*, YouTube, 18 July 2019, <https://www.youtube.com/watch?v=wPA-p6UUDl4>.
2. "What Is Restorative Justice?" *Why Me?*, 17 Feb. 2022, <https://why-me.org/what-is-restorative-justice/>.
3. "Benefits of Restorative Justice." *Community Justice Network of Vermont*, 2 July 2015, <http://cjni.vt.org/about-us/benefits-of-restorative-justice/>.
4. Canada, Public Safety. "Restorative Justice and Recidivism." *Public Safety Canada*, 3 Dec. 2015, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/jstc-rcdvs/index-en.aspx#:~:text=At%20the%20first%20year%2C%20the,where%2035%25%20and%2066%25>.
5. Government of Canada, Department of Justice. "Restorative Justice." *Government of Canada, Department of Justice, Electronic Communications*, 10 Dec. 2021, <https://www.justice.gc.ca/eng/cj-jp/rj-jr/index.html#:~:text=Restorative%20Justice%3A,to%20address%20their%20related%20needs>.
6. "Lesson 6: Benefits of Restorative Justice." *Restorative Justice*, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-6-benefits-of-restorative-justice/#sthash.Ooq5BseP.B9bvGTk9.dpbs>.
7. "Proportions of Crimes Associated with ... - Prod.ccsa.ca." *CSSA*, <https://prod.ccsa.ca/sites/default/files/2019-04/ccsa-009105-2002.pdf>.
8. "[Published in: Discourse Studies 23(1 ... - Esther Pascual." *SAGE Journals*, <http://estherpascual.com/wp-content/uploads/2021/01/Review-of-Rhetorical-Minds-Pascual.pdf>.