



ALBERTA FRAMEWORK FOR THE PRACTICE OF RESTORATIVE JUSTICE IN CRIMINAL MATTERS



ACKNOWLEDGING THE JOURNEY TO THIS FRAMEWORK

Early in 2019 Alberta Restorative Justice Association's (ARJA) Board of Directors made a commitment to develop a framework of Restorative Justice (RJ) guidelines for the practice of Restorative Justice in Criminal Matters. After a thorough assessment of best practices gathered from a review of RJ literature, the board reflected on the following questions before moving forward:

- *What do we (ARJA) want? (to do with these RJ practice principles)*
- *Are we ALL speaking the same language?*
- *Who are we creating this for?*
- *What are we going to do with it? (practitioner- practice framework/organization standards)*

Our answers to these questions were:

- Ensure that Indigenous peoples are properly consulted and incorporate their values and inputs
- Develop a glossary of understanding
- Create a framework of principles (possibly more than one) to ensure that we meet the needs and definitions of Indigenous communities and Western understanding
- Incorporate into the framework guiding ethics that stand behind the principles
- Categorize key RJ practice points into facilitation (skills), organizational (structure, policy, practice) or strategic partnerships
- Ensure the framework is flexible to accommodate each Alberta community and its culture
- Create this framework for the provincial RJ stakeholders, facilitators, and organizations

ARJA recognized the importance of sharing the principles and practice standards we had settled upon with our provincial stakeholders. We decided to hold two virtual consultations in July of 2020, asking participants to complete extensive surveys and participate in discussion. For those who were unable to make the virtual consultations, they were able to submit their feedback via the survey. All feedback was compiled to be utilized as resource documents for the creation of the *Alberta Framework for the Practice of Restorative Justice in Criminal Matters* and the *Outline for Facilitator Training in the Practice of Restorative Justice in Criminal Matters*. An RFP for the creation of these two documents went out in October 2020 and ADR International Group Inc was the contractor selected.

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PURPOSE OF THE ALBERTA FRAMEWORK

This framework was created and is intended as a resource to support the practice of Restorative Justice (RJ) in Criminal Matters in Alberta.

The Aim of this Framework

- Document a shared understanding of restorative justice as a principle-based relational approach to justice, rather than simply a set of practices and tools.
- Establish a shared understanding of restorative justice to build confidence among constituent parts of the system.
- Identify and articulate a shared set of goals and objectives for the practice of restorative justice and its implementation.
- Be useful to all restorative justice programs whether they are operated in an Alberta community or within the provincial or federal justice system in Alberta.

This Framework Recognizes

- The diversity of community members accessing restorative justice programs, as well as the required diversity in how restorative justice services are delivered;
- The various ways restorative justice is used in our communities and within the Alberta Criminal Justice system.
- Indigenous wisdom and traditional law have been used for centuries to effectively address harm caused by crime in their Nations; and that the core values from those processes, are echoed in restorative justice.
- Use of RJ within the criminal justice system is enabled by provisions in the *Criminal Code*, the *Youth Criminal Justice Act*, the *Canadian Victims Bill of Rights*, the *Corrections and Conditional Release Act*, and by federal, provincial, and territorial government policies.
- The *Alberta Police Act*, under the duties of the Director of Law Enforcement includes a provision under Section 8. (2) (b) *developing and promoting crime prevention and restorative justice programs*;
- RJ is an effective response to crime. RJ is used in cases involving young persons and adults, first-time offenders, and repeat offenders, and crimes ranging from minor to serious;
- RJ values are consistent with and have been informed by the beliefs and practices of many faith communities and cultural groups in Canada.
- Canada led and supported the adoption of four resolutions on restorative justice at the United Nations Commission on Crime Prevention and Criminal Justice (1999, 2002, 2016, and 2018), including the *United Nations Declaration of Basic Principles on the use of RJ Programmes in Criminal Matters*.
- Canada endorses the United Nations' *Declaration of Basic Principles of Justice for Victims of Crime and the abuse of power*, and the *Canadian Statement of Basic Principles of Justice for Victims of Crime* and is committed to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (adopted by the General Assembly on Thursday, 13 September 2007).

GLOSSARY OF TERMS

This is the Glossary of Terms for this purpose of this Framework, which is specific to the *use of restorative justice in criminal matters*. They are not intended as *legal* definitions.

RESTORATIVE JUSTICE A non-adversarial, non-retributive approach to justice that emphasizes healing to victims, the meaningful accountability of offenders, and the involvement of citizens in creating healthier, safer communities.

RJ PROCESSES Processes that provide opportunities for victims, offenders, and communities affected by a crime to be in dialogue with each other about the causes, circumstances, and impact of that crime, and to address their related needs. These processes are guided by skilled RJ facilitators and can take different forms depending on the community, program, case, participants, or circumstances.

Models of RJ Processes	Known as	Diagram of process ¹
Indirect dialogue	Facilitated exchange of letters, videos, emails between victims and offenders	
Facilitated dialogue between victims and offenders	Victim Offender Dialogue, Victim Offender Restorative Dialogue	
Facilitated dialogue between victims, offenders, supporters, and government officials	Community conferencing	
Facilitated dialogue between victims, offenders, supporters, community members, and/or government officials	Peacemaking circles, sentencing circles	
Directed dialogue between victims, offenders, and other parties	This may take place in any of the above models	

RJ PROGRAM A program that provides RJ services/processes (see examples under RJ Processes) according to the definition of RJ. There are other programs that incorporate some restorative values and principles in providing support and services to offenders, victims, or communities, but do not involve opportunities for communication between those affected by a crime or work to repair the harm caused. These programs would not be considered RJ programs.

VICTIM This can also be referred to as the ‘person or persons harmed’ as the result of a crime. Harm can be physical, emotional, psychological, or financial. This includes primary or direct victims, as well as secondary victims and indirect victims. Organizations that have been affected may sometimes be considered victims. **Indirect victim:** A person who is a family member of or who is emotionally close to

¹ UN Handbook on Restorative Justice Programmes (2006) page 67

the direct victim. An indirect victim has been harmed because of the harm done to the direct victim.

Secondary victim: A person who is harmed as a direct result of witnessing a crime or the aftermath of a crime.

OFFENDER This can also be referred to as the ‘person, or persons, responsible for causing harm’. This can be physical, emotional, psychological, or financial harm to at least one other person, as the result of having committed a crime, whether they have been charged or convicted of that crime.

COMMUNITY A group of people living in the same geographical area, or a group with a shared culture, identity, or occupation. A community member who participates in a RJ process could be:

- a person who represents the community to discuss the impact of the crime on the community, who will explore the community’s role and responsibility to address the root causes of crime, and help to reintegrate victims and offenders; or
- a person who is not directly related to the crime but who is nonetheless affected by it (e.g., immediate neighbours, others who encountered the victim, and friends and family of the offender).

SUPPORT PERSON A person who provides emotional or physical support to a victim or offender who is participating in a RJ process. This can include, but is not limited to:

- family and friends of the victim or offender who were not personally harmed by the offence
- spiritual or cultural leaders
- professionals such as counsellors, social workers, and others who provide services to victims and/or offenders

INDIGENOUS FOUNDATIONS OF RESTORATIVE JUSTICE

The *Alberta Framework for the Practice of Restorative Justice in Criminal Matters* acknowledges that restorative justice echoes what has been traditional justice in Indigenous cultures around the world.

Our hope is that the Framework is inclusive enough to create space for Indigenous wisdom and ways of repairing harm restoratively to continue to be practiced, without colonial interference or cultural appropriation of sacred ceremonies.

This Framework recognizes the need for Indigenous teachings to be taught by Indigenous people or people deeply respected by Indigenous communities as appropriate people to share teachings. This Framework also recognizes that Indigenous victims and offenders have a right to request, and have available to them, the option of participating in a culturally appropriate RJ process, whenever possible.

CULTURALLY DIVERSE PRACTICE OF RESTORATIVE JUSTICE

The *Alberta Framework for the Practice of Restorative Justice in Criminal Matters* hopes to be inclusive enough to create space for recognition of culturally diverse practice of restorative justice.

The Framework exists to simply establish common terminology, definitions, touchstones, principles, and guidelines that can easily be met by any restorative justice program working to provide culturally diverse processes to meet the needs of victims and offenders.

RESTORATIVE JUSTICE PHILOSOPHY

“Restorative Justice calls for a more healing stance from which to carry out justice.”

– Susan Sharpe

Restorative Justice

Restorative Justice is a non-adversarial, non-retributive approach to justice that emphasizes healing in victims, the meaningful accountability of offenders, and the involvement of citizens in creating healthier, safer communities.

Restorative Justice Philosophy

This philosophy is based on the understanding that crime causes harm to people and relationships and affects the community. That being said, there are three pillars of this philosophy that need to be in place in any RJ process that ensures a safe and inclusive environment where all voices involved are heard.

BELIEF

- 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.
- Communities have a role to play in supporting victims and offenders, and addressing the root causes of crime.

FOCUS

- The harm done to victims and the needs that victims have because of that harm.
- The needs and responsibilities of offenders.
- The needs and responsibilities of the community.

FAITHFUL TO ITS PURPOSE

- Ensures preparation and safety for all participants.
- Ensures voluntary participation by all participants.
- Facilitates dialogue among the persons involved.
- Strives for reintegration into community.
- Ensures restorative justice outcomes do not cause harm.
- Addresses adequate resources for reparation.

PRINCIPLES OF RESTORATIVE JUSTICE

For programs and processes to be recognized as Restorative Justice, these Principles must inform all decisions and be demonstrated when program staff and volunteers interact with each other, stakeholders, and the parties.

- ❖ **RELATIONALLY FOCUSED** Attention is given to interconnection, and seeks to understand and promote just relations between individuals, groups, and communities. Restorative justice ensures that relationships harmed by crime are addressed.
- ❖ **RESPECTFUL** Histories, contexts and the cause of harm and its impacts, are always considered. It treats all participants (victims, offenders, and community members) with dignity, compassion, and equal regard.
- ❖ **SAFE** Attends to the physical, emotional, cultural, and spiritual safety and well-being of all participants. Participation in RJ should not result in further harm to any participant.
- ❖ **VOLUNTARY** Participation of victims, offenders, and community members must be voluntary, and based on free, informed, and ongoing consent.
- ❖ **FOCUSED ON REPARATION** Acknowledging and repairing the physical, emotional, and financial harm caused by crime, as required to meet the needs of those affected. RJ provides opportunities for understanding, healing, and change and aims to contribute to the restoration and reintegration of victims and offenders.
- ❖ **INCLUSIVE AND PARTICIPATORY** It is culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants. RJ fosters and supports the meaningful participation of those affected; which includes victims, offenders, and at times their friends, families, and members of their community.
- ❖ **RESPONSIVE** Restorative Justice responds to the local context, is flexible in practice, accessible, and builds efficient and effective processes informed by data and knowledge.
- ❖ **FOCUSED ON PROMOTING INDIVIDUAL AND COLLECTIVE ACCOUNTABILITY AND RESPONSIBILITY** It assists those who have caused harm to acknowledge and take responsibility for harm and reparation.
- ❖ **COLLABORATIVE AND NON-ADVERSARIAL** Parties to the process, system, and community partners are to collaborate with one another. This enables participants to communicate openly and honestly and to have an active role in determining how to address their needs, as they see them.
- ❖ **FORWARD FOCUSED** RJ is not punitive, but educative in that its focus is on problem solving, being preventative and being proactive.

CONSIDERATIONS FOR THE PRACTICE OF RESTORATIVE JUSTICE WITHIN THE CRIMINAL JUSTICE SYSTEM

Legal Considerations

Referrals to RJ programs must be consistent with laws, including provisions in the [Criminal Code of Canada](#), the [Province of Alberta Youth Criminal Justice Act](#), the [Canadian Victims Bill of Rights](#), and the [Government of Canada Corrections and Conditional Release Act](#).

Crown Prosecutors can use their discretion to make referrals to RJ using Criminal of of Canada Sec 717 (3) thereby 'Addressing an offender's conduct through measures outside of the traditional court process is commonly known as "diversion"'.¹ Any accepting of responsibility made by a person alleged to have committed an offence as a condition to participate in Alternate Measures is not admissible as evidence against that person in any civil or criminal proceedings.

Each person has the right to consult with legal counsel before they agree to participate in a RJ process and during all stages of the process.

Other Considerations

In addition to legal considerations, practitioners should also consider the following:

- Restorative processes will be used only with the free and voluntary consent of the parties, and thus cannot be mandated. The parties must be able to withdraw such consent at any time during the process. Agreements need to be arrived at voluntarily by the parties and contain only reasonable and proportionate obligations.
- Referrals to RJ programs can happen at all stages of the criminal justice system, from before a charge is laid to after a sentence is completed.
- Referrals to RJ programs must consider the interests of victims, offenders, and communities, and their willingness and readiness to participate.
- Before agreeing to participate in restorative processes, the parties must be fully informed of their rights, the nature of the process and the possible consequences of their decision.
- Offenders must be willing to accept responsibility for their actions and for the harm caused to victims and communities. They must also be willing and able to take steps to address the impacts of the harm, to the extent possible.
- Referrals to RJ programs must be voluntary and consider the safety of victims, offenders, and communities. Decisions about referrals will consider the nature of the offence, any threats to the safety of any person (implicit or explicit), and the nature of the relationship between participants.
- The choice to not participate or to discontinue participation in a RJ process, the absence of an agreement, and/or the failure to reach or to complete an agreement must not be used to justify a more severe sanction or sentence than would have otherwise been imposed had there not been a RJ process.

GUIDELINES FOR DELIVERY OF RESTORATIVE JUSTICE SERVICES

These guidelines reflect a principled approach to the practice of RJ in criminal matters. They are meant to encourage good practice and provide a basis for RJ programs and facilitators to assess how their practice aligns with the principles.

Guidelines for Developing and Operating RJ Programs

- Programs will develop and adhere to a vision, mission, goals, and objectives that are consistent with the Principles and Guidelines for RJ Practice in Criminal Matters.²
- At the initial planning stage, program developers will seek input from a variety of community and justice stakeholders, including those that provide services to victims and/or offenders.
- Programs will develop standards and protocols based on the Principles and Guidelines for RJ Practice in Criminal Matters and create oversight procedures to ensure they are adhered to.
- Programs will work towards effective, collaborative relationships with relevant governments, criminal justice professionals, law enforcement, and communities.
- Programs should assess facilitators, staff, and volunteers on an ongoing basis and ensure they are well-prepared and supported.
- Programs will have safety policies and procedures in place to ensure the safety of participants as well as staff and volunteers.
- Programs will create a record keeping system to keep a record of each case, and collect data on RJ referrals, participants, and processes. Relevant privacy legislation¹ and legislation related to document retention must be adhered to.³
- Programs will ensure ethical standards and codes of conduct are demonstrated by their facilitators.
- Community members on RJ boards and RJ advisory committees play an important role in ensuring a high standard of restorative justice service delivery.
- Program monitoring and evaluation by funders and RJ programs is critical to ensure practice and programs are built and maintained in alignment with the principles of restorative justice.
- Programs will create and maintain policies on governance, administration, accountability, reporting, staffing, and training.

² Federal Provincial Territorial Ministers Responsible for Justice and Public Safety. (2019) *Principles and Guidelines for Restorative Justice in Criminal Matters*

³ PIPPA Government of Alberta. (2020). *Personal Information Protection Act*. <https://www.alberta.ca/personal-information-protection-act.aspx> & FOIP Government of Alberta. (2020). *FOIP - Freedom of Information and Protection of Privacy: Alberta's FOIP Regulation* (servicealberta.ca)

GUIDELINES FOR MANAGING AND FACILITATING RESTORATIVE JUSTICE CASES

Below you will find guidelines for managing case intake, case preparation, the process as well as follow-up.

Intake

- Programs will conduct adequate intake to ensure referral is suitable for a restorative justice process.
- Significant effort will be made to contact victims in a sensitive manner and to provide all potential participants - victims, offenders, and community members - with information that enables them to make a free and informed decision about whether to participate in RJ.
- Participants will be offered the opportunity to participate in a facilitated RJ process that is safe, respectful, and meaningful.
- Cases will start and conclude in a timely way, while respecting the needs of participants.

Preparation

- All cases will include careful preparation with all victims, offenders, and community members who will be involved, and will not proceed until the facilitator is confident the parties are fully prepared.
- Victims and offenders can invite support people to be included throughout the process. Support people will undergo preparation along with the party.
- Recognizing the importance of building trust between facilitators and participants, facilitators need to be allowed to withdraw from a case if they feel they are unable to facilitate

Process

- RJ processes will be flexible and tailored to meet the specific needs of participants, including needs related to safety and power imbalances.
- Discussions and information shared within a RJ process needs to be kept confidential, within some limitations. Participants should be informed about any limitations, including:
 - participants agreeing otherwise
 - discussions that were previously held in public or were part of a court process, or
 - where disclosure is required by law (e.g. Discussions reveal a threat to the life or safety of a person).
- At all stages of the process, efforts will be made to identify the needs of victims and offenders, and to connect them to existing support services, as necessary.
- Any agreements reached between the victim and offender, will be entered into voluntarily, will contain clear terms, and be monitored until completed. They will not be punitive in nature. Participants need to agree that the terms meet their needs and are reasonable and realistic.

Follow-up

All cases should include an evaluation process for victims and offenders to provide their views about their experience of the RJ process.

GUIDELINES FOR EDUCATION AND TRAINING OF FACILITATORS

The purpose of this section is to identify the minimum recognized standards that reputable trainers and organizations ensure are met to have their education and training seen as credible by Court Justice Services and Law Enforcement stakeholders. These minimum standards also exist to ensure parties participating in a restorative justice process can trust that their participation will not cause further harm.

Knowledge & Skills

Facilitators must possess the knowledge, skills, and attributes needed for the kinds of cases they facilitate.

- Knowledge of RJ philosophy, principles and practice guidelines
- Knowledge of legal safeguards for RJ in criminal matters
- Basic understanding of the impact of crime and trauma on victims and the common resulting needs
- Basic understanding of the root causes of crime and issues commonly faced by offenders
- Basic understanding of the criminal justice system and the services and supports available for victims and offenders
- Ability to assess appropriateness of referral to participate in an RJ process
- Ability to appropriately prepare participants and assess readiness
- Facilitation skills
- Interpersonal and communication skills
- Ability to recognize and deal with power imbalances and any other imbalances between participants
- Ability to explore the needs of participants, including spiritual and cultural needs, and adapt processes to meet those needs
- Commitment to performing their duties in an impartial manner, based on the facts of the case and on the needs and wishes of the parties. They will always respect the dignity of the parties and ensure that the parties act with respect towards each other.

Environment & Context

Facilitators will be responsible for providing a safe and appropriate environment during intake, preparation and during the restorative process.

- Compassion and the ability to demonstrate good judgment and concern for the needs of all participants in RJ processes.
- Cultural sensitivity and taking care to understand the host culture, environment, and local traditions.
- Understanding of the history and effects of colonization in Canada when providing services with those impacted by colonization.
- Teachings must be given in a manner that reflects understanding and a willingness to start from a place of cultural relevance. Teachings aim to impart education and skills that can more readily be absorbed and used in informed practice.

- Facilitators will be recruited from a variety of backgrounds that reflect the community they provide services.
- Facilitators shall receive initial and ongoing education and training in facilitating RJ processes used in the RJ Program where they work or volunteer. See Glossary of Terms under RJ processes for examples of the types of processes they may be trained to facilitate.

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