

PRINCIPLES AND  
GUIDELINES FOR  
RESTORATIVE JUSTICE  
PRACTICE IN  
CRIMINAL MATTERS



# Principles and Guidelines for Restorative Justice Practice in Criminal Matters (2018)

## Purpose

Recognizing that:

- Restorative justice (RJ) has been used to some extent in the criminal justice system in Canada for over 40 years, and there are hundreds of RJ programs across Canada operating at different stages of the system
- The 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
- 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
- Many RJ programs have learned from Indigenous legal traditions, which have been used by Indigenous peoples for thousands of years to resolve disputes
- 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 *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*

Canadian principles and guidelines for RJ in criminal matters were first published in 2004 following an extensive national engagement process. They have been updated with input from RJ programs, facilitators, and volunteers; experts and academics; Indigenous organizations; victims' organizations; criminal justice professionals; and government officials from across the country.

These *Principles and Guidelines for RJ Practice in Criminal Matters* are intended as a resource to support the practice of RJ<sup>1</sup>. They are meant to help RJ programs and facilitators reflect on and enhance their practice. Governments and criminal justice professionals may also consider how to

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<sup>1</sup> Though a restorative approach is also being used in other matters such as school, workplace or community conflict, and child protection cases, the *Principles and Guidelines for RJ Practice in Criminal Matters* focus on RJ in criminal matters only.



support RJ programs in applying these principles and guidelines and how to incorporate them into relevant policies in a way that is appropriate to their contexts and priorities.<sup>2</sup>

It should be noted that RJ is practiced and understood in different ways across Canada and that different terms are used to refer to various elements of RJ practices. While this document does not specify all these elements, it is meant to be read inclusively.

## **About RJ**

In relation to the criminal justice system, RJ can be defined as an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime.

Accordingly, RJ processes provide opportunities for victims, offenders, and communities affected by a crime to communicate about the causes, circumstances, and impact of that crime, and to address their related needs. These processes are guided by skilled RJ facilitators<sup>3</sup> and can take different forms<sup>4</sup> depending on the community, program, case, participants, or circumstances.

See Annex A for definitions of certain terms used in this document, and Annex B for a description of the roles of participants and stakeholders in RJ.

## **RJ Philosophy**

RJ is based upon the understanding that crime causes harm to people and relationships and also affects the community.

It is built upon the belief that:

- 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

The focus is on:

- the harm done to victims and the needs that victims have as a result of that harm
- the needs and responsibilities of offenders
- the needs and responsibilities of the community

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<sup>2</sup> Each federal, provincial and territorial government may decide how to apply the principles and guidelines to the various kinds of restorative justice programs they fund, provide, or support.

<sup>3</sup> Those who facilitate RJ processes may have titles such as facilitator, mediator, Circle Keeper, practitioner, community justice worker, or case worker. In Indigenous communities, Elders or Knowledge Keepers also act as facilitators.

<sup>4</sup> RJ programs may use different types of RJ process models. The models most often used in the Canadian criminal justice system are restorative conferences, victim-offender mediation, and restorative circles. This document is not intended to be prescriptive about the model.



The goals are to:

- repair harm
- encourage accountability
- foster communication and build understanding
- provide an opportunity for the healing and reintegration of all involved

## Principles for RJ Practice

Though RJ is done in different ways across the country, the practice is guided by basic principles, including:

**Reparation:** Focus on acknowledging and repairing the physical, emotional, and financial harm caused by crime and meeting the needs of those affected.

**Respect:** Treat all participants with dignity, compassion, and equal consideration.

**Voluntariness:** Ensure the participation of victims, offenders, and community members is voluntary, and based on free, informed, and ongoing consent.

**Inclusion:** Foster and support the meaningful participation of those affected, including victims, offenders, their friends, their families, and their communities.

**Empowerment:** Enable participants to communicate openly and honestly and to have an active role in determining how to address their needs, as they see them.

**Safety:** Attend 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.

**Accountability:** Assist those who have caused harm to acknowledge and take responsibility for harm and reparation.


**Transformation:** Provide opportunities for understanding, healing, and change, and contribute to the restoration and reintegration of victims and offenders.

## Legal Safeguards for RJ Practice

RJ processes can occur as part of the criminal justice system or in addition to it. They can also be used to divert cases out of that system.<sup>5</sup>

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<sup>5</sup> Some victims, offenders, and communities may be interested in the use of RJ without any involvement of the criminal justice system. This document does not address using restorative justice in these circumstances.



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. What and who are referred, and when and how a referral is made, depends on the relevant federal, provincial, and territorial legislation and policies, and the protocols of existing RJ programs.


The following legal safeguards apply when using RJ in the criminal justice system.

1. Referrals to RJ programs must be consistent with laws, including provisions in the *Criminal Code*, the *Youth Criminal Justice Act*, the *Canadian Victims Bill of Rights*, and the *Corrections and Conditional Release Act*.
2. Referrals to RJ programs must consider the interests of victims, offenders, and communities, and their willingness to participate<sup>6</sup>.
  - 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.
3. Referrals to RJ programs must consider the safety of victims, offenders, and communities. Decisions about referrals must take into account:
  - the nature of the offence
  - any threats to the safety of any person (implied or explicit)
  - the nature of the relationship between participants
  - the likelihood of a continuing relationship between participants<sup>7</sup>
4. 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.
5. The fact that offenders must take responsibility for their actions to participate in a RJ process does not necessarily require that they plead guilty in court.
6. The acceptance of responsibility for the purpose of participating in RJ should not be used as evidence against offenders in any criminal proceeding that may follow.

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<sup>6</sup> There are many reasons why victims may choose not to participate in a RJ process and why it may not be appropriate for community members to participate.

<sup>7</sup> This document is not meant to encourage or discourage the use of RJ in cases of intimate partner violence and abuse. Given the unique dynamics in these cases related to victim safety and the impact that the relationships may have on children and others, specialized factors would need to be considered.

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7. The choice not to participate, the absence of an agreement<sup>8</sup>, 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 RJ Practice**

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 practitioners to assess how their practice aligns with the principles. While most of these guidelines represent a minimum standard, others are aspirational because they require greater funding, capacity, and/or resources.

### **Guidelines for developing and operating RJ programs**

1. Programs should develop 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, programs should seek input from a variety of community and justice stakeholders, including those that provide services to victims and/or offenders.
3. Programs should develop standards and protocols based on the *Principles and Guidelines for RJ Practice in Criminal Matters*. Among other things, they should address:
  - criteria and procedures for referrals
  - case management (accepting, managing, facilitating, providing follow-up, and closing cases)
  - engaging and involving victims, offenders, and community members
  - criteria and procedures for developing and monitoring agreements, where applicable
  - confidentiality, access to information and privacy, and record-keeping
  - working with volunteers, if relevant
  - collaboration and information sharing with relevant governments, criminal justice professionals and communities
4. Programs should work towards effective, collaborative relationships with relevant governments, criminal justice professionals, and communities.
5. Programs should assess facilitators, staff, and volunteers on an ongoing basis and ensure they are well-prepared and supported.

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<sup>8</sup> Many RJ processes lead to an agreement between participants about what offenders agree to do to repair the harm caused and/or prevent further harm. This agreement, sometimes called a resolution agreement or restoration plan, may be shared with criminal justice stakeholders. Not all RJ processes lead to an agreement.



6. Programs should keep a record of each case and collect data on RJ referrals, participants, and processes. Recordkeeping and data collection must respect confidentiality, privacy and information sharing legislation, and any court orders. The information collected will depend on the program's priorities and funding agreements.

#### *Aspirational Guideline*

7. Programs should establish an advisory committee or board including criminal justice professionals as well as members who represent the diversity of the communities they serve. It is particularly important to consider victim, offender, community, and government perspectives to help ensure that the program is inclusive and accommodating.
8. Programs should have policies on governance, administration, accountability, reporting, staffing, and training.
9. Programs should have an evaluation framework with clear goals and procedures. These should be understood by staff, facilitators, and any volunteers. The results of evaluations should inform their work and contribute to the development of evidence-based practice.
10. Programs should consider doing public awareness activities.

#### **Guidelines for selecting and training RJ facilitators**

11. Facilitators should be compassionate and demonstrate good judgment and concern for the needs of all participants in RJ processes.
12. Facilitators should be recruited from a variety of backgrounds and should understand the local cultures and communities in which they are working. They should also understand the history and effects of colonization in Canada.
13. Facilitators should receive initial and ongoing education and training in facilitating RJ processes.
14. Facilitators should be competent in regards to the knowledge, skills, and attributes needed for the kinds of cases they facilitate. At a minimum, facilitators' knowledge and skills should include:
  - the philosophy and principles of RJ
  - legal safeguards for RJ in criminal matters
  - RJ practice guidelines
  - facilitation skills
  - interpersonal and communication skills
  - the impact of crime and trauma on victims and the needs they commonly identify
  - how to recognize and deal with power imbalances and any other imbalances between participants



- how to explore the needs of participants, including spiritual and cultural needs, and adapt processes to meet those needs
- a basic understanding of the root causes of crime and issues commonly faced by offenders
- a basic understanding of the criminal justice system and the services and supports available for victims and offenders

### **Guidelines for managing and facilitating RJ cases**

15. Significant effort should 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.
  - All participants should have a clear understanding of what the process might involve and how the outcomes may be different from other processes.
  - Participants should not be pressured or coerced into participating, and should have the option to withdraw at any time.
16. Participants should also be offered the opportunity to participate in RJ in a way that is safe, respectful and meaningful.
  - Victims should be given the opportunity to express how they have been affected by the crime and to identify what can be done to repair the harm caused. Involvement could range from providing input to the facilitator or appointing a representative, to participating in a face-to-face dialogue or a circle process.
  - Offenders should be supported in their attempts to take responsibility for their actions and to be active participants in a process to repair the harm done. This process should also acknowledge the factors that may have contributed to their criminal offending.
  - Community members should be encouraged to participate in a meaningful way, to provide a broader perspective about the impact of the crimes and to contribute to achieving restorative goals.
17. RJ processes should be flexible and tailored to meet the specific needs of participants, including needs related to safety and power imbalances<sup>9</sup>. Participants should be offered choices and have input throughout the process.
18. All cases should include careful preparation with all victims, offenders, and community members who will be involved. Preparation should include the ongoing assessment of whether participants are ready for the RJ process and whether that process will meet their needs.
19. Cases should include opportunities for participants to communicate with each other with the help of facilitators. This can be done in different ways including written or video

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<sup>9</sup> Consideration should be given to power imbalances between participants due to age, maturity, cultural background, gender, religious or spiritual views, intellectual capacity, position of authority, and sexual orientation.





correspondence, relaying messages through the facilitator, and face-to-face meetings. Any face-to-face meetings should take place at a mutually acceptable and accessible location and a time that is convenient to all participants.

20. Discussions and information shared within a RJ process should be confidential, within some limitations. Participants should be informed about any limitations, including:
  - participants agree otherwise
  - discussions were held in public or as part of a court process
  - disclosure is required by law (e.g. discussions reveal an actual or potential threat to the life or safety of any person)
21. At all stages of the process, efforts should be made to identify the needs of victims and offenders, and to connect them to existing support services as necessary. This could include, but is not limited to, counseling, addictions treatment, mental health programs, and victim services.
22. Participants should have access to support people throughout the process. The role of support people and their level of involvement in the process should be discussed and agreed upon by participants.
23. Recognizing the importance of building trust between facilitators and participants, facilitators should be allowed to withdraw from a case if they feel they are unable to facilitate. In such cases, participants should be informed in a timely way and, where possible, efforts should be made to continue the process with another facilitator. Facilitators should also have the option to end the process if they believe that participation will cause further harm to any of the participants.
24. Cases should start and conclude in a timely way, while respecting the needs of participants.
25. Any agreement should be made voluntarily by participants, contain clear terms, and be monitored until completed. It should not be punitive. Participants should agree that the terms meet their needs and are reasonable and realistic.
  - Participating victims and relevant criminal justice professionals should be updated on offenders' progress in meeting the terms.
  - Any changes to the agreement should be made with input from participating victims, offenders, and relevant community members.




### *Aspirational Guidelines*

26. All cases should include follow-up with victims and offenders to discuss their views about what happened during the RJ process. Follow-up should also determine if they still have unmet needs related to the process and, if so, what could be done to address those needs.
27. Consideration should be given to assigning multiple facilitators to a case, based on the needs of participants and the facilitator, the complexity of the case, and/or the seriousness of the crime, in particular with power-based crimes<sup>10</sup>. Each facilitator's role should be clear and their skills, experience, and personal characteristics should be complementary and suited to the case.

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<sup>10</sup> Power-based crimes are primarily motivated by the assertion of power, control and/or intimidation in order to harm another person. This includes intimate partner violence, sexual assault, stalking, and other uses of force, threat, intimidation or harassment.



## ANNEX A – Definitions

These definitions relate to the use of these terms in the *Principles and Guidelines for Restorative Justice Practice in Criminal Matters*. They are not intended as legal definitions.

**Victim:** An individual who has been personally harmed as the result of a crime. Harm can be physical, emotional, 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 the direct victim. An indirect victim has been harmed as a result 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:** An individual or organization who has caused physical, emotional, or financial harm to at least one other person as the result of having committed a crime, whether or not 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 and 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.

**RJ program:** A program that provides RJ services/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.



## **ANNEX B – Roles of Participants and Stakeholders in Restorative Justice**

**Victims:** Victims who participate in RJ can tell offenders how the crime affected them, express their views and needs, ask questions about what happened, and identify what could be done to address the harm they suffered. Participation in RJ makes it more likely that victims will receive some form of reparation from offenders and may provide victims with a degree of healing and satisfaction.

**Offenders:** Offenders who participate in RJ must be willing to take responsibility for their actions and be accountable to the people they have harmed. They have an opportunity to understand the impact of their actions and address the harm they caused in a way that is meaningful to victims and affected communities, yet not shaming to the offender. Some RJ processes result in an agreement about what offenders will do to repair harm and address victims' needs. Participation in RJ may also provide a degree of healing for offenders and encourage them to address factors that may have contributed to the crime.

**Communities:** Participation in RJ empowers communities to play a role in responding to crime. It provides an opportunity for community members to have their own needs met, to assist victims and offenders, and to help them reintegrate into the community. It can also enable communities to talk about their values, the issues that cause crime, the impact of crime on communities, their concerns about community safety, and their responsibility in addressing these matters. This contributes to communities' safety and wellbeing, builds their capacity to address their own justice issues, and reduces reoffending.

**RJ facilitators:** RJ facilitators create conditions that enable participants to communicate about what happened in an open and honest way, to discuss how it affected them, and to identify what can be done to address the harm caused and to meet their needs. The facilitator's role is to establish and maintain a safe, sensitive, and respectful environment where participants feel safe to identify and express their thoughts, feelings, and needs; work with participants to design a process that can meet those needs; prepare victims, offenders, their supporters, and community members to participate in the process; and conduct any necessary assessments. Facilitators are there to guide the process and to ensure that it does not cause further harm.

**Criminal justice professionals:** Criminal justice professionals such as police, lawyers, judges, probation and parole officers, victim service workers, and others who work directly with victims and offenders have an important role in supporting and facilitating the use of RJ programs. They can provide information about RJ to victims and offenders, advise on legal options and safeguards, refer people to RJ programs, and sometimes participate in RJ processes.

**Governments:** The federal government is responsible for criminal law, while provincial and territorial governments are responsible for the administration of justice. Municipalities and Indigenous governments are responsible for the governance of their communities. Together, they



provide the framework for the use of RJ programs. RJ provides an opportunity for governments, criminal justice agencies, and communities to work together to understand and address the root causes of crime, reduce crime, and provide a better justice experience. This is also an important step towards creating a culturally relevant and responsive justice system for Indigenous people.

Governments can help RJ programs by providing resources, supporting training, promoting awareness of RJ, and working with communities and stakeholders to develop RJ principles, policies, protocols and guidelines. In the context of Indigenous communities, it is desirable that RJ programs be designed and delivered by Indigenous governments, communities, and organizations for Indigenous people.