



Framework for Restorative Justice Practices in Conflict and Crime

2022

Justice and Public Safety

New Brunswick
Nouveau Brunswick

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Table of contents

Acknowledgements	1
Purpose of the New Brunswick Framework	2
Glossary of Terms	3
1.0 Overview of Restorative Justice	4
1.1 Definition of Restorative Justice.....	4
1.2 Acknowledgement of Indigenous Roots in Restorative Justice	5
1.3 Approaches to Restorative Justice.....	5
1.3.1 Trauma-Informed Approach	5
1.3.2 Culturally Grounded Approach.....	7
1.3.3 Victim-Centered Approach	8
1.3.4 Indigenous Justice Approach.....	10
1.4 Benefits of Restorative Justice: Participant- and Society-Centred Lens	11
2.0 New Brunswick Restorative Justice Guiding Principles	13
3.0 Legislation and Policy	16
4.0 When To Use Restorative Justice	17
4.1 When Should Restorative Justice be Considered in Criminal Matters?.....	17
4.2 When is Diversion and Restorative Justice an Eligible Option in New Brunswick’s Justice System?	18
5.0 Main Types of Restorative Justice Processes	21
6.0 Roles, Responsibilities and Expectations	24
6.1 Restorative Justice Facilitators	24
6.2 Diversion Coordinators & Community Program Officers	25
6.3 Victim Services	26
6.4 Law Enforcement Agencies	26
6.5 Public Prosecution Services.....	27
7.0 Guidelines for Communities: Effective Development, Delivery and Facilitation of Restorative Justice Services	28
7.1 Guidelines for Developing and Delivering Restorative Justice Programs	28
7.2 Guidelines for Facilitating Restorative Justice Processes.....	29
8.0 Conclusion	33
References	34

Acknowledgements

There have been many invaluable voices and perspectives that have fed into the development of this Framework. First and foremost, this Framework is a tool to create dialogue and seek meaningful resolution on issues of social conflict. As such, it was created in collaboration and partnership with a diverse intersectional team from across the province, including Indigenous leaders, government partners, community-based organizations, law enforcement agencies, public prosecution services, victim-serving agencies, and others.

More specifically, representation on the New Brunswick Restorative Justice Working Group includes: Department of Justice and Public Safety, Correctional Service of Canada, St. Mary's First Nation, Elsipogtog Restorative Justice Program, Tobique First Nation, Pabineau First Nation, Woodstock First Nation, RCMP Community Program Officers from across the province, a variety of municipal police forces, John Howard Society, University of New Brunswick's Restorative Justice Society, Child and Youth Advocate, trained Restorative Justice facilitators, Crown Prosecutors, Sexual Violence New Brunswick, and Youth in Transition House.

It must be noted that, in addition to the Diversion and Restorative Justice programs run by the Province of New Brunswick, there are a variety of community-based organizations and agencies that facilitate Restorative Justice processes and promote restorative principles. By engaging and learning from such varied and indispensable perspectives, we shall also strive to enhance provincial consistency and unity moving forward.

Purpose of the New Brunswick Framework

The New Brunswick Framework was developed and is intended as a resource to support Restorative Justice (RJ) practices in conflict and crime in the province. The intended audience of this Framework is all criminal justice professionals, provincial stakeholders, community partners, and the public.

The Framework shall serve as a guiding document that creates a shared understanding of Restorative Justice principles province-wide, and outlines the shared set of goals, outcomes, and objectives. It is of vital importance to share the principles and practice standards we have collaboratively decided upon to ensure provincial consistency and collective confidence moving forward.

Rather than simply prescribing specific tools, the Framework identifies a plethora of Restorative Justice processes, models, and practices available for effective implementation of RJ. It is our intent that the Framework be accessible and useful to all individuals, communities, or agencies within New Brunswick, and shall be inclusive and flexible in practice.

Ultimately, this Framework serves to guide the implementation and operation of Restorative Justice programs and processes within New Brunswick.

Glossary of Terms

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

Diversion refers to the broad range of programs available to address offending behavior of both adults and youth, which include Extrajudicial Measures, Extrajudicial Sanctions, Alternative Measures, and Restorative Justice.

Restorative Justice refers to both a philosophy and a non-adversarial and non-retributive approach to conflict and crime. It emphasizes healing in persons harmed, the meaningful accountability and reconciliation of persons responsible for causing harm, and the involvement of community members.

Restorative Justice Process(es) provides opportunities for persons harmed, persons responsible for causing harm, and communities affected by conflict or 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 trained Restorative Justice facilitators and can take a variety of forms, including: community justice forums, restorative conferences, victim-offender mediation, restorative circles, and sentencing circles.

Person or Persons Harmed refers to the victim of the conflict or crime. Harm suffered can be physical, emotional, psychological, or financial. It must be noted that this includes primary or direct victims, as well as secondary and indirect victims, and that organizations that have been affected may also be considered victims.

Person or Persons Responsible for Causing Harm refers to the offender of the conflict or crime. Harm can be physical, emotional, psychological, or financial against at least one other person, as a result of the person responsible initiating conflict or committing a crime.

Community Member refers to a grouping of individuals living in the same geographical area, or a grouping of individuals with a shared identity, culture, or occupation. Community members' participation in restorative processes could include a person who represents the community to discuss the impact of the conflict or crime on the community, who will consider the community's role in addressing root causes of crime, and who will help to reintegrate the persons harmed and persons responsible for causing harm.

Participant(s) refers to all parties that take part in a Restorative Justice process, including persons harmed, persons responsible for causing harm, and community members.

1.0 Overview of Restorative Justice

Restorative Justice (RJ), as an additional, complementary, or alternative response to the Criminal Justice System (CJS), has been a part of Canada's CJS for over 40 years. The recent push to increase RJ usage across the country has effectively illustrated RJ's ability to transform the CJS, including its ability to rebuild and strengthen relationships between individuals and communities. It is crucial to note that there is not a single pre-determined Restorative Justice model that exists, but rather, there are core elements and key principles that must underpin all Restorative Justice processes. These will be explicitly outlined and explored in Section 2.

This framework serves to guide the implementation and operation of Restorative Justice programs and processes within New Brunswick, encompassing referral of both young persons and adults.

1.1 DEFINITION OF RESTORATIVE JUSTICE

Restorative Justice is routinely understood differently by different people, with no universal consensus on what it should look like. However, in its most general form, Restorative Justice can be understood as both a philosophy and a non-adversarial and non-retributive approach to conflict and crime. It emphasizes healing in persons harmed, the meaningful accountability and reconciliation of persons responsible for causing harm, and the involvement of community members in creating healthier, safer, and stronger communities. In practice, these processes are molded to the individual characteristics and specific needs of a community. RJ seeks to repair harm and address the underlying circumstances that contributed to the crime by providing an opportunity for those who have caused harm, those who have been harmed, and appropriate community supports to communicate, address their needs, and collaboratively participate in the resolution.

In 2016, the Canadian Federal, Provincial, Territorial (FPT) Working Group on RJ took a major step forward in achieving definitional consensus regarding RJ in the criminal justice sector, which is:

"An approach to justice that focuses on addressing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for those directly affected by crime – victims, offenders and communities – to identify and address their needs in the aftermath of a crime. RJ supports healing, reintegration, the prevention of future harm, and reparation, if possible" (Canada, Jurisdictional Scan, 2019).

At its core, RJ is built on the underlying beliefs that those who have caused harm have a responsibility to repair that harm, that the voices of those who have been harmed are central in the relationship-repairing process, and that communities have a support role to play in addressing root causes of crime. RJ processes provide opportunities for all participants affected by conflict or crime to openly communicate the causes, circumstances and impacts of crime. This will help address their related needs in a space that accounts for the safety and wellbeing – physical, cultural, emotional, and spiritual – of all participants.

RJ provides a holistic, principle-based, human-centered, and trauma-informed approach to addressing the localized needs of communities, including particular attention to Indigenous people and traditionally marginalized populations that have long been overrepresented throughout Canada's criminal justice system. This alternative form of justice thereby seeks to reduce the overrepresentation of such marginalized populations in the criminal justice system and seeks to increase timely, fair, and equitable access to justice.

The New Brunswick Framework is grounded in the belief that when all relevant participants are involved in restorative processes, they are empowered to gain a better understanding of the root causes behind a crime.

This ultimately moves communities towards healing, mutual understanding, and an improved sense of safety and closure.

1.2 ACKNOWLEDGEMENT OF INDIGENOUS ROOTS IN RESTORATIVE JUSTICE

The New Brunswick Framework for Restorative Justice Practices in Conflict and Crime acknowledges that Restorative Justice is drawn from and developed out of Indigenous principles and processes, both in Canada and around the world. In New Brunswick, the wisdom and guidance of the Wolastoquey, Mi'kmaq and Peskotomuhkati peoples and traditions in particular are recognized.

We also recognize the leadership of our New Brunswick communities in building Restorative Justice programs. In operation since 2000, the Elsipogtog Restorative Justice Program is nationally recognized for its approach to Restorative Justice and for its ability to meet the community's needs to create culturally appropriate services. The Elsipogtog Restorative Justice Program has been designed, developed, implemented, and continues to be carried out by the community, for the community, and places a holistic emphasis on engaging all affected community members and restoring relationships.

Our intent is that the Framework shall be inclusive and flexible in practice, to ensure space is held for Indigenous wisdom and knowledge in repairing harm to continue to be practiced. The Restorative Justice processes in the province of New Brunswick shall strive to complement and support the commitment to honour Indigenous teachings, customary law, and Indigenous justice. To this end, we will maintain connections and ongoing collaboration with First Nations communities and representatives.

1.3 APPROACHES TO RESTORATIVE JUSTICE

There are certain fundamental approaches to Restorative Justice that must be implemented within New Brunswick to ensure that processes are holistic, inclusive, and culturally relevant. These approaches, or pillars of support, include:

- Trauma-informed
- Culturally grounded
- Victim-centered
- Indigenous justice

These pillars intersect to provide a foundational support that ensures that Restorative Justice in New Brunswick *meets the participants where there are*, as opposed to going through a system that is not as adaptive, flexible, and inclusive. Ultimately, this ensures community restoration, resiliency, and lowered rates of recontact.

1.3.1 TRAUMA-INFORMED APPROACH

Trauma-informed care requires making a shift from asking, “What is wrong with this person?” to “What has happened to this person?” (Harris and Fallot, 2001).

Defining Trauma

- Trauma is formed from any experience that causes intense physical and/or psychological stress. It can be caused by one or several events, which threatens or harms an individual and has serious negative effects on someone's physical, emotional, social, and spiritual well-being (Rockville, 2014).

- Trauma is complex and varies regarding the dimensions of traumatic experiences. These dimensions are dependent on the developmental stage of the individual during exposure and the social context in which the event takes place in. Adverse community environments can cause such traumatic experiences to be much harder to deal with (Rockville, 2014).
- It is important to note that trauma can be generationally embodied – passed down between generations.

Understanding What Constitutes a Trauma-Informed Approach

A trauma-informed approach emphasizes the need to create safe opportunities for individuals to rebuild a sense of positive self-control and empowerment. The five principles of trauma-informed practices that are incorporated into all aspects of this work are:

- 1) Realizing the widespread impact of trauma in our society;
- 2) Recognizing the signs and symptoms of trauma;
- 3) Responding by fully integrating and collaborating the participants' perspective;
- 4) Resisting re-traumatization, and;
- 5) Reaching an environment of safety and trust (Institute on Trauma and Trauma-Informed Care, 2015).

Trauma-Informed Approaches and Youth

The most important aspect of a trauma-informed approach with young persons requires a paradigm shift away from looking at what is 'broken' to instead, looking at what is possible. The servicing of youth faced with traumatic experiences traditionally does not consider the positive characteristics and aspects of these youth. This tendency reinforces the negative attributes and reinforces traumatic experiences, causing such youth to rely on their survival skills.

Additionally, the traditional approach de-emphasizes the developmental skills of these youth. Moving forward, it is crucial that those involved with youth who have caused harm help ensure that these youth can activate their developmental capacities.

The ultimate goal in working with traumatized youth is to get the youth to actively engage in present experiences. This means getting the youth to build the capacity to first survive and tolerate moments of overwhelming distress and arousal, followed by having the capacity to reflect upon and make meaning of such moments. To achieve this, there are several targets that should be addressed with the youth, which includes:

- a) Exploring the young person's history of connection; work to build comfort and safety in relationship.
- b) Engaging around the goals of connection: why might relationships be meaningful for this young person?
- c) Identifying resources for safe connection.
- d) Creating opportunities via structures that support it.
- e) Engaging curiosity about effective skills; help young persons become relationship detectives.

Trauma-Informed Approaches and Restorative Justice

Restorative Justice processes can offer an environment where youth, with the support of family, friends or a support person, can be accommodated in terms of their level of development. This allows them to avoid further trauma through exposure to a difficult and unfriendly adversarial traditional criminal justice process that may otherwise occur. The successes of such an approach is dependant on the extent to which the young person is participating voluntarily, is adequately prepared, and is supported along the way.

Persons harmed and persons responsible for causing harm who take part in restorative processes are often reintroduced to the traumatic experiences. It once again places these individuals in a vulnerable position, a position that critics believe to be unnecessary (Morris, 2002). The argument being that continuing the relationship between the participants may lead to further hostility, resentment, and reoffending. However, when executed correctly with the appropriate individuals and trained facilitators, Restorative Justice can help all participants deal with the traumatic experience and alleviate the traumatic effects of the conflict or crime.

While the potential benefits of Restorative Justice in cases of intimate/domestic partner violence, child abuse, and gender-based crimes is well documented, it is important to remain conscious of the sometimes-deep traumatic impact that the crime has had on the victims. The appropriateness and format of Restorative Justice will be determined on a case-by-case basis depending on the conflict and/or crime at hand.

1.3.2 CULTURALLY GROUNDED APPROACH

The New Brunswick Framework recognizes that Restorative Justice programs should be designed and delivered by individual communities and organizations to better meet the diverse cultural needs of community members. The Framework exists to create an inclusive environment and establish consistency and commonality province-wide – with regards to principles and guidelines – that can easily be met by any community-based Restorative Justice program. It allows for flexibility in application, based on the cultural- and community-specific needs.

The *United Nations Office on Drugs and Crime (UNODC) Handbook (2020)* emphasizes that cultural differences must be taken into consideration when referring cases to a Restorative Justice process. It is important to note that Restorative Justice is not contingent upon a shared cultural consensus of restoration, but rather, such processes can allow participants to come to an appropriate compromise to the issue in question. Such a compromise should be a product of negotiation and should not be achieved at the expense of another. The dialogical nature of Restorative Justice allows cultural values and traditions to be incorporated naturally into the decision-making process.

The UNODC Handbook (2020) identifies several strategies that can be used to meaningfully account for participants' cultures, such as "using facilitators with the same ethnicity as participants, ensuring that facilitators are aware of and know how to accommodate participants' cultural practices, or ensuring that participants are aware of cultural differences and how these may or may not be accommodated" (p. 51). Most importantly, the victims' preference will take priority to ensure that the power imbalances between the parties are not ignored when addressing cultural differences.

Cross-Cultural Pitfalls

There are several common pitfalls that can stem from Restorative Justice processes that involve different cultures. Differences that exist amongst different cultures or within a culture itself have the potential to lead to miscommunication, misunderstanding, or, at absolute worst, the revictimization of the victim. To properly

address power imbalances and restore potential cultural misunderstandings, the recognition and general maintenance of participants' cultural needs is critical (Umbreit and Coates, 2000; Choi and Severson, 2018).

Each culture's conceptualization of justice may vary dramatically, and diverse worldviews often clash and may threaten to undermine attempts at repairing harm. Therefore, it is vital that a restorative process incorporates each party's notion of justice and considers the unique characteristics of the participants' identities to arrive at an agreement (Llewellyn and House. 1999).

There is also significant danger in overgeneralizing or overlooking differences that exist within a culture. Such differences can include race, socioeconomic status, ethnicity, gender, religion, sexual orientation, and rural or urban residence. The successful completion of a Restorative Justice process is dependent on justice workers taking the time to understand intra-cultural differences between parties.

Additionally, miscommunication as the result of these cultural differences can be caused by variances in communication styles, such as: proximity of participants, body movements, paralanguage (vocal cues), and density of language. It is important for justice workers to be knowledgeable of these differences and help participants navigate through a wide variety of communication styles.

Role of Restorative Justice Facilitators in Ensuring a Culturally Grounded Approach

Facilitators play a central role in ensuring that a Restorative Justice process is culturally grounded. The *UNODC Handbook (2020)* states that facilitators should be trained to identify whether participants would like certain cultural practices or needs to be accommodated within the Restorative Justice process, and should be trained to work in situations where the participants are not all from the same cultural background. Possible strategies available to facilitators to achieve positive and culturally inclusive outcomes include:

- Seeking advice from cultural advisers or elders;
- Working with facilitators of the same ethnicity as the participants;
- Assessing the language proficiency and needs of the participants, and using an interpreter if needed;
- Holding meetings in a culturally significant venue;
- Ensuring that participants are aware of their cultural differences and how these may or may not be accommodated.

Lastly, there are three important aspects of cultural competence: knowledge, skills, and values. Cultural competence is dependent on the continual acquisition of knowledge, the development of new and more advanced skills, and an ongoing self-evaluation of progress (Choi and Severson, 2018). These traits will allow a Restorative Justice facilitator to be flexible and meet the individual cultural needs of participants.

1.3.3 VICTIM-CENTERED APPROACH

As stipulated in the *Canadian Victims Bill of Rights*, every victim of a crime has a right to access a series of programs and services, including Restorative Justice programs. As the research and understanding regarding victimization expands, a victim-centered approach in restorative processes concerns assurances that the priority is on the victim's safety and security, and on safeguarding against policies and practices that may inadvertently re-victimize or traumatize victims.

Therefore, it is imperative that the practice of Restorative Justice in New Brunswick is ingrained with the principles of a victim-centered approach, which deeply aligns with the above-mentioned trauma-informed approaches.

For Restorative Justice processes to work both for and within the capacity of the victim, the first steps must be evaluating the impact that the crime had on the victim and determining what tools may be needed to best facilitate the process. The fundamental principle of a victim-centred approach is that it is victim led – facilitators and other professionals who take part in the Restorative Justice process are then responsible to create understanding and manage expectations of the process. This includes outlining what the restorative process can and cannot accomplish, asking the victim what their needs and expectations are, and allowing the victim to proceed in a safe, secure, and comfortable manner. Following those initial steps, a victim-centred approach to restorative processes would aid in the facilitation of referrals to support services for the victim, if they are eligible and interested. A victim-centred approach would also consider how the other approaches (outlined in this framework) intersect with the individual needs of the victim.

By promoting Restorative Justice processes for the benefit of victims, meaningful measures shall be put in place to evaluate their participation and overall satisfaction. These common measures include:

- Determining what are the victim’s perceptions of “fairness” and “justice”?
- Changes to victims’ trauma-related symptoms
- Effective victim interactions with facilitators
- Adaptations to the level of fear, anger, and stigmatization before and after the Restorative Justice process
- Determining if the agreed-upon resolution was achieved during the process, and if not, how did this impact the victim?
- Determining if the victim was given the appropriate means of support during the process.

Keeping the restorative processes grounded in these measures will assure that such processes are being conducted in the most effective and appropriate way to facilitate victim healing. Undoubtedly, this may not work in the same way for every victim of conflict or crime. However, it is essential to note that when restorative processes are utilized as the default for dealing with conflict and crime, research supports that this is an opportunity for the victim to be brought into a safe, mediated space to articulate the full impact of the victimization they were subjected to. This empowers victims by giving them voice and choice. When a victim heals, a community heals – and community health is crucial for maintaining prosperous and resilient communities.

Working with Victims of Conflict and Crime

When working with victims of conflict or crime, there may be preconceived notions on how they ought to react, interact, and operate in relation to the criminal justice system and the Restorative Justice process. For practitioners and persons working with victims on the frontline, there exists an imagery of the ‘perfect victim of crime’ that – in an ideal world – should:

- Cooperate with authorities;
- Be from a certain economic bracket;
- Be upstanding citizens;
- Not suffer from addictions;
- Be either overly emotional or not emotional at all.

However, in the words of Anita Hill, “we know that there is no perfect victim. It’s a myth we create to excuse doing nothing about the problem” (CNN Politics, 2021). In order to adopt an effective victim-centered lens, there must be an acceptance and understanding that just as there is no perfect perpetrator of crime, there is also no perfect victim of crime. Often, participants in restorative processes possess dual identities, in which current victims have previously been involved in conflict or crime, and have histories with abuse, neglect and/or trauma. There is no perfect victim, and no clear-cut victim-perpetrator binary. By understanding and accepting this complexity, it provides important context for addressing and restoring such relationships.

Accounting for the diversity and complexities of each victim can help to better facilitate a Restorative Justice process, which can lead to more successful outcomes. One crucial standalone that can be very important to recognize while working with victims of conflict and crime concerns coping skills. Due to their experiences and traumas, some victims may develop or live with addictions. In order to properly utilize the victim-centred approach in a harm reduction capacity, practitioners must educate themselves on the appropriate ways to work with clients who suffer from addictions. The key to effectively implementing harm reduction strategies is to check unconscious biases and avoid judgment, while maintaining healthy and safe boundaries for all participants. An example of a harm reduction strategy would be that while a car can be a deadly weapon, ensuring someone is wearing a seatbelt lessens the impact of harm. The same can be said for those living with addictions, and there are many community groups and supports that can help a facilitator assist a victim with their “seatbelt”. In understanding this component, Restorative Justice facilitators should implement the following skills and techniques in their practices:

- Effective use of active listening, reflection, and clarification skills;
- Demonstration of accepting and respectful attitudes towards victims;
- Awareness of social perceptions and stigma regarding substance use, and;
- Sufficient knowledge of victimization, trauma, and its linkages with substance use.

1.3.4 INDIGENOUS JUSTICE APPROACH

Restorative Justice, as stated above, is both a philosophy and a non-adversarial and non-retributive approach to conflict and crime, which emphasizes healing in persons harmed, the meaningful accountability of persons responsible for causing harm, and the involvement of community members. Such processes are in line with Indigenous views of justice, are drawn from Indigenous principles and processes, and have roots in longstanding Indigenous traditions. As articulated in *Justice Canada’s 2016 Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada*:

“most, if not all, Indigenous legal traditions contain principles and mechanisms that can be described as promoting community healing, reconciliation, and the reintegration of the offender” (p. 3).

There are several unique elements of Indigenous justice that ought to be used in Restorative Justice processes. This includes the ‘healing circle’ format, which aims to engage all participants to develop consensus on how best to repair the harm caused. The restorative models most frequently used by Indigenous communities are sentencing circles, releasing circles, and healing circles, which are based upon the cultural traditions and practices of certain Indigenous communities. Additionally, there are various features of Indigenous justice and customary law that differ from mainstream Restorative Justice approaches, but that represent an opportunity for cross-cultural dialogue between Indigenous and Western partners. This primarily includes how Indigenous justice often uses proactive and/or preventative strategies mediated through kinship networks and how they place a high importance on spirituality (Justice Canada, 2016).

Such cross-cultural dialogue and opportunity for learning between Indigenous communities and Western society can best be shared through the Two-Eyed Seeing approach, or *'Etuaptmumk'*. Two-Eyed Seeing is the guiding principle introduced by Albert Marshall that emphasizes the need to *"see from one eye with the strengths of Indigenous ways of knowing, and to see from the other eye with the strengths of Western ways of knowing, and to use both of these eyes together, for the benefit of all"* (Bartlett, Marshall, and Marshall, 2012, p. 335). With regards to Restorative Justice in New Brunswick, the approach of Two-Eyed Seeing will be implemented to ensure that restorative processes uphold the integrity of concepts and practices in Indigenous justice, and to allow for all parties to learn from each others' experiences and perspectives.

1.4 BENEFITS OF RESTORATIVE JUSTICE: PARTICIPANT- AND SOCIETY-CENTRED LENS

From a participant-centred lens, the key benefits of restorative processes to persons responsible for causing harm include:

- Higher levels of overall wellbeing and satisfaction of persons responsible for causing harm
- Persons responsible for causing harm report increased levels of support as they build and sustain personal accountability
- Persons responsible for causing harm report increased understanding of the impact of their actions on others
- Reduce recontact rates with traditional criminal justice system
- Increased rates of agreement completion from persons responsible for causing harm
- Improved feelings of safety and connectedness to their communities
- Diversionary measures such as Restorative Justice processes also avoid criminal charges resulting in a record, reserve the formal justice system for those who require it most, and provide more timely intervention.

Victim-Centred Lens

From a participant-centred lens, the key benefits of restorative processes to persons harmed include:

- Higher levels of overall wellbeing and satisfaction of victims
- Improved confidence in the justice system
- Empowers victims to share their experiences and feelings in a safe, mediated space
- Facilitates victim healing
- Victims have the opportunity to meaningfully engage, contribute to the process and outcome, and understand the person responsible for causing harms' motives and/or actions
- Restores a sense of safety, stability, and trust in people and communities

At their core, Restorative Justice processes empower victims by giving them a voice. It allows them the chance to have their stories heard and to communicate their experiences, the impacts of the conflict and their needs moving forward with the person who caused them harm (Centre for Justice and Reconciliation). This knowledge and understanding surrounding the benefits of Restorative Justice through a victim-centred lens will aid in providing safe, productive, and healing spaces in the planning of RJ sessions, and lead to more positive – and restorative – outcomes.

Society-Centred Lens

In addition to the many benefits of restorative processes to participants, including empowering all participants, facilitating closure and healing and increasing the overall wellbeing and satisfaction of both persons harmed and persons responsible for causing harm, the many societal benefits of Restorative Justice include: timeliness of restorative processes; reduction of criminal court process times and financial strains on the justice system; reduction in recidivism/recontact rates; enhancing community reintegration by restoring or establishing bonds; and ultimately, the creation of safer, healthier and more connected communities (RCMP and Government of Canada, 2010).

2.0 New Brunswick Restorative Justice Guiding Principles

As Restorative Justice is not a specific model, but rather a set of principles that must be flexibly applied to a variety of communities, Restorative Justice processes in New Brunswick are committed to a principle-based approach to justice. Principles are the values which should be kept at the forefront when implementing and accelerating the use of Restorative Justice. The principles outlined must protect the inherent flexibility of Restorative Justice processes, while also providing clear guidance on the use of these processes in a safe and appropriate way. The eight fundamental principles that have been identified must always underpin Restorative Justice practice in New Brunswick.

The following principles shall guide the development, governance, and implementation of Restorative Justice within the province:

1) Voluntary

- Participation of all parties must be voluntary and based on informed and ongoing consent;
- All processes are arrived at voluntarily by all parties involved.

2) Holistic

- Consider personal and cultural histories and contexts;
- Consider the causes of harm and its impacts;
- Utilize wrap-around and integrative approach – ensure understanding of physical, emotional, mental, cultural, and spiritual needs of all parties involved

3) Meaningful accountability and responsibility

- Focus on promoting individual and collective accountability and responsibility;
- Assist in acknowledging, understanding, and expressing harm caused (physical, mental, emotional and/or financial) and taking responsibility for reparation

4) Inclusivity

- Ensure processes are culturally-grounded and trauma-informed;
- Promote open, honest, respectful and safe communication between all parties;
- Attentive to the safety and well-being of all parties, including physical, cultural, emotional, and spiritual safety

5) Collaborative and participatory

- Facilitators shall set the tone and ensure all parties foster collaboration in the process, the system and community partners, in restorative and reintegrative ways;
- All parties shall treat one another with dignity, compassion and equality;
- Parties play an active role in determining appropriate reparations

6) Relational and reconciliatory

- Focus on building and sustaining interconnection within and between communities;
- Promote equality, just relations and reconciliation between individuals, groups and communities;
- Acknowledge the longstanding oppression, inequity, and complex histories of marginalized groups, while seeking to address the systemic issues of such groups – to the best of our abilities – through culturally-grounded and trauma-informed approaches

7) Flexible and responsive

- Responsive to the local context and flexible in practice;
- Tailored to meet the cultural, emotional, spiritual and health needs of all parties to the best of our abilities, taking into consideration systems of oppression, such as racism, homophobia and gendered oppression;
- Accessible, equitable and effective processes (informed by contemporary data and knowledge)

8) Forward-focused

- Educative and rehabilitation-focused, rather than punitive approach;
- Focus is on problem-solving, being preventative and being proactive;
- Implement a holistic approach for assessing and addressing the ongoing needs and vulnerabilities of both persons responsible for causing harm and persons harmed

Goals, Outcomes and Objectives

The province of New Brunswick is committed to shared collaboration by public safety and justice system stakeholders, and partner stakeholders from both government and community spheres, in support of Restorative Justice.

It must be noted that there is no one way that restorative processes should be delivered; rather,

“the essence of Restorative Justice is not the adoption of one form rather than another; it is the adoption of any form which reflects restorative values, and which aims to achieve restorative processes, outcomes and objectives” (Morris, 2002, p.600).

In line with the nationally agreed-upon goals for Restorative Justice (2018), the ultimate goals, outcomes, and objectives of implementing Restorative Justice processes in New Brunswick are:

- Provide responsible, human-centred justice that considers root causes and seeks meaningful outcomes;
- Respond to the needs of individuals and communities affected by conflict and crime, with particular attention to minimizing victimization and re-victimization;
- Reduce the cycle of harm and injustice, and reduce over-representation of vulnerable populations in the traditional criminal justice system;
- Increase access to justice, by means of creating a more effective, timely, inclusive and equitable justice system;

- Reduce recontact rates;
- Increase public confidence and accountability in the administration of justice province-wide, and;
- Build, support and maintain healthy, safe, and strong communities.

3.0 Legislation and Policy

The use of Restorative Justice processes within the Criminal Justice System is enabled by provisions in the [Criminal Code](#), and the [Youth Criminal Justice Act \(YCJA\)](#). For example, Section 717 of the Criminal Code provides that alternative measures may be used if the offender accepts responsibility for the offence. Section 718 articulates several objectives, including (e) that sentencing should provide reparations for harm done to victims or to the community; and (f) that a sentence should promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or to the community. Additionally, with regards to Indigenous offenders, Section 718.2 (e) in the Criminal Code states,

“all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.”

The Youth Criminal Justice Act (2003) includes Restorative Justice principles, and strongly emphasizes offender accountability, rehabilitation, and reintegration. Particularly, Section 19 of the YCJA describes how and when conferences, including restorative conferences, may be convened.

Additionally, reference is made to Restorative Justice in the [Canadian Victims Bill of Rights Act](#) and the [Corrections and Conditional Release Act](#). In both acts, victims have a right to receive information about Restorative Justice if they request it. Restorative Justice is also referenced by various federal, provincial, and territorial government policies.

In New Brunswick, section 4 of the *Provincial Offences Procedure for Young Persons Act* outlines youth eligibility for extrajudicial sanctions and restorative processes, and the *Adult Diversion Schedule of Offences* outlines divertible offences for adult offenders.

Overall, Restorative Justice can be used in cases involving youth and adults, first-time offenders, repeat offenders, and crimes ranging from minor to serious.

4.0 When to Use Restorative Justice

Restorative Justice processes can be used at various points within the criminal justice process, and should be considered in all eligible and/or appropriate cases.

4.1 WHEN SHOULD RESTORATIVE JUSTICE BE CONSIDERED IN CRIMINAL MATTERS?

The *UNODC Handbook (2020)* addresses where Restorative Justice currently exists within the criminal justice system. The *UNODC Handbook (2020)* states that Restorative Justice programs complement – rather than replace – the existing criminal justice system, acting as a parallel alternative justice system. While these can be used at any stage of the criminal justice process, there are four specific points in which a Restorative Justice process can be successfully initiated:

- 1) At the police level (pre-charge);
- 2) At the prosecution level (post-charge, but usually before a trial);
- 3) At the court level (either at the pre-trial or sentencing stages), and;
- 4) Corrections (as an alternative to incarceration, as part of or in addition to a non-custodial sentence, during incarceration, or upon release from prison).

In addition to the youth and adult Diversion eligibility requirements (detailed below), a range of factors must be considered when determining whether a case is appropriate for a Restorative Justice process. These factors include:

- The type of offence;
- The determination that someone has been harmed, and the recognition that there is a need to repair that harm;
- The person responsible for causing harm taking responsibility for their actions;
- The willingness of both the person harmed and the person responsible for causing harm to participate (by various means), and;
- Participants' suitability, including their maturity and ability to participate effectively and in a voluntary capacity.

The key factors that support a referral to Restorative Justice processes, as outlined by the *Nova Scotia Restorative Justice Program*, include:

- Opportunity for more culturally appropriate, meaningful, and effective justice process;
- Reduction of harm for direct parties (trauma-informed);
- Potential for victim participation;
- Enhanced opportunity for access to justice for affected communities - increased confidence in the administration of justice;
- Opportunity to better understand root causes/systemic issues connected to the parties or offence;
- Reduce over-representation in justice system for individuals from vulnerable and marginalized groups, and;
- Access to better supports and wrap-around responses to parties' needs.

As evidenced above, many matters of conflict and crime should be diverted to Restorative Justice processes by appropriate referral sources. If the file is then assessed and deemed ineligible, it shall proceed through conventional court processes.

In addition to Restorative Justice being used in criminal matters, restorative processes can be considered within community-based, school-based, and institution-based scenarios, where appropriate and when involving trained facilitators. The growth of these programs will be dependent on the needs of specific communities.

4.2 WHEN IS DIVERSION AND RESTORATIVE JUSTICE AN ELIGIBLE OPTION IN NEW BRUNSWICK'S JUSTICE SYSTEM?

In New Brunswick, the Diversion mandate is to provide “the right services to the right people at the right time through individualized, collaborative, community-based and stakeholder-supported alternatives to the traditional criminal justice system” (Diversion Model, 2021). The term Diversion is used to describe the broad range of programs available to address offending behavior, which include: **Extrajudicial Measures, Extrajudicial Sanctions, Alternative Measures, and Restorative Justice**. While it is the focus of this framework, Restorative Justice is merely one such available process to divert individuals and achieve healing in an alternative way.

For youth, in addition to Restorative Justice processes, Extrajudicial Measures (EJM) and Extrajudicial Sanctions (EJS) are available through the New Brunswick Diversion program.

- **Extrajudicial Measures (EJM)** As per section 6 of the *Youth Criminal Justice Act*, before starting any judicial proceedings or taking any other measures, a police officer shall consider whether an Extrajudicial Measure (EJM) – taking no further action, verbal warning, police caution, referral to a community program or agency – would be sufficient to hold a youth accountable given the circumstance and seriousness of the offence. No requirement for the youth to accept responsibility for the act for EJM.
- **Extrajudicial Sanctions (EJS)** As per section 10 of the *Youth Criminal Justice Act*, Extrajudicial Sanctions (EJS) may be used to deal with a young person alleged to have committed an offence when a police officer determines that the young person cannot be sufficiently held accountable by an EJM, but is satisfied that sanctions would be appropriate, having regard to the needs of the young person and the interests of society.

For adults, in addition to Restorative Justice processes, Alternative Measures (AM) is available through the NB Diversion program.

- **Alternative Measures (AM)** As per section 717 of the Criminal Code, Alternative Measures may be used to deal with an adult alleged to have committed an offence when the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim.

In New Brunswick, Diversion is the default for young people involved with the law, and Restorative Justice should be considered in all eligible cases. Offences eligible for Diversion – and thereby Restorative Justice – are outlined in New Brunswick's Youth and Adult Diversion Schedule of Offences. Restorative processes are then used at the discretion of Diversion Coordinators and RCMP Community Program Officers (CPOs). This professional discretion allows them to determine appropriate accountability measures, and to move towards effectively and restoratively repairing the harm between the person harmed, person responsible for causing harm, and/or community. Accordingly, Diversion Coordinators and CPOs should assume responsibility for the

logistical planning of restorative processes – as well as the monitoring of the agreement for completion – but must use trained, third-party volunteer facilitators available in their respective communities to serve as facilitators of these processes in order to maintain neutrality.

Youth Eligibility

Based on the New Brunswick Youth Diversion Model and section 10 of the *Youth Criminal Justice Act*, the use of Extrajudicial Sanctions – including restorative processes – for young persons is acceptable when:

- a) The person is 12-17 years old;
- b) Sufficient evidence exists that an offence has been committed;
- c) The offence is included on the province's Youth Schedule of Offences;
- d) The young person takes responsibility for the act that forms the basis of the offence;
- e) The young person and the parent/legal guardian must freely consent to participate, which includes participation in screening and assessment processes associated with the EJS program;
- f) Before consenting to be subject to the sanction, the youth must be advised of his/her right to be represented by counsel and be given a reasonable opportunity to consult with counsel, and;
- g) It is first determined that the young person cannot be sufficiently held accountable by an EJM and it is determined that sanctions would be appropriate, having regard to the needs of the young person and the interests of society.

It is also crucial to note that:

- There is no limit to the number of times a youth can be referred to EJS.
- EJS may be used if the young person has previously been dealt with by EJM or EJS, or has been found guilty of an offence.
- Youth with addictions, emotional-behaviour issues, mental health concerns, or intellectual disabilities can be considered for the EJS program.

Extrajudicial Sanctions shall not be used if the young person:

- a) Denies participation or involvement in the commission of the offence, or;
- b) Expresses a wish to have any charge dealt with by a youth court.

Adult Eligibility

Adults are also eligible to be diverted from the Criminal Justice System. Based on the New Brunswick Adult Diversion Model and section 717 of the Criminal Code of Canada, the use of alternative measures – including restorative processes – for adults is acceptable when:

- a) The person is 18 years of age or older;
- b) Sufficient evidence exists that an offence has been committed to proceed with the prosecution, and the prosecution of the offence must not be barred by law;

- c) The offence is on the province's Adult Schedule of Offences;
- d) The adult takes responsibility for the act that forms the basis of the offence;
- e) Participation is in the best interest of the person alleged to have committed the offence AND not counter to the best interest of the victim and society;
- f) Before consenting to be subject to Alternative Measures, the adult must be advised of his/her right to be represented by counsel and be given a reasonable opportunity to consult with counsel, and;
- g) The adult must freely consent to participate, which includes participation in screening and assessment processes associated with the AM program.

It is also crucial to note that:

- There is no limit to the number of times an adult can be referred to AM.
- Subject to Crown Approval, clients facing a pending charge are eligible for Diversion.
- A young offender record does not preclude eligibility for Diversion as an adult.
- Adults with addictions, emotional-behavioural issues, mental health concerns, or intellectual disabilities can be considered for the AM program.

Alternatives Measures shall not be used if the adult:

- a) Denies participation or involvement in the commission of the offence, or;
- b) Expresses a wish to have any charge dealt with by a traditional court.

5.0 Main Types of Restorative Justice Processes

Restorative Justice is a flexible approach to dealing with conflict and crime, which can be adapted to unique communities and designed to complement the traditional criminal justice system. Therefore, how Restorative Justice is practiced can vary greatly, and may use a wide variety of process models. As outlined in the *UNODC Handbook (2020)*, the models most often used in the Canadian criminal justice system are **community justice forums, restorative conferences, victim-offender mediation, restorative circles, and sentencing circles**. A holistic approach to the implementation of Restorative Justice programs shall provide a range of such processes, designed for referrals from various points within the criminal justice process.

Community Justice Forums

Community Justice Forums (CJF) are a restorative process, grounded in the philosophy and principles of RJ, that have shown great successes in many communities across Canada. CJFs provide a safe environment in which a person responsible for causing harm, a person harmed and their supports, along with relevant community members and appropriate professionals, are brought together under the guidance of trained facilitators to discuss the impacts of the event that has taken place. All participation must be voluntary, and the process must be initiated by the person responsible for causing harm who has taken responsibility for the offence.

The success of CJFs is grounded in the belief that *reintegrative shame* has the potential to positively change behaviour. It is crucial to note that reintegrative shame differs greatly from stigmatizing shame, and rather than directing the shame to the individual, reintegrative shame is the social disapproval of the act rather than the person involved. It is respectful, value-based, and event-focused. Whereas stigmatizing shame does not offer hope of reconciliation between the participants, reintegrative shame in CJFs provide an opportunity for the person responsible for causing harm to take responsibility for their actions, repair harm and effectively reintegrate within the family and/or community structures.

Additionally, CJFs are restorative processes that prioritize victim participation and healing, which enable victims to tell their stories, to be heard and to have their questions answered. It is essential that victims be offered ample support through this process, including the option to designate a person to represent them and to receive information on their behalf, utilize proxy victims, have indirect communication facilitated with the person who caused harm (by means of letter writing or video sharing), or various other methods. Victims may choose to participate in the forum in either direct or indirect means.

Restorative Conferences – Family Group and/or Community Conferences

Restorative conferences can act as an alternative to the traditional court system by providing similar opportunities to the public to denounce specific behaviour. The process is initiated when a judge calls a case conference (with or without the judge's attendance) to bring the person responsible from causing harm, the person harmed, community members and all of their supports together to discuss the matter and generate broad information for the judge to consider. Norman Bossé states that case conferences "are aimed at providing better opportunities to youth for rehabilitation, victim-offender reconciliation, accountability and restitution."

Case conferences typically take the form of Family Group Conferences or Community Conferences and are made up of the following steps:

- 1) Referral received – the coordinator assesses the referral;
- 2) Initial contact made – participants are informed of the process;
- 3) Pre-conference – conference suitability is assessed;
- 4) Conference – the conference participants determine conference outcomes, and;
- 5) Post-Conference – conference agreements are monitored, where applicable. A conference report is then provided to the appropriate authority.

Victim-Offender Mediation

Victim-Offender Mediation (VOM) has led to successful resolutions and restorative outcomes in both property-related offences and crimes against a person. VOM programs offer a direct or indirect process, wherein the person harmed and the person responsible for causing harm engage in a discussion of the conflict or crime and its impact. This discussion is facilitated by a trained third-party facilitator, either in a face-to-face meeting or through other indirect means. VOM is more likely to meet its objectives if participants can meet face-to-face and express their feelings directly to each other, and develop a new understanding of the situation, including root causes and what led to it. This will help lead the involved parties toward an agreement and bring closure to the situation. There are four basic requirements that must be satisfied before the VOM model can be used:

- 1) The person responsible for causing harm must accept responsibility for the harm done;
- 2) The person harmed and the person responsible for causing harm agree on the basic facts of the case as a basis for their participation in the mediation;
- 3) Both the person harmed and the person responsible for causing harm must understand the process and be willing to participate;
- 4) Both the person harmed and the person responsible for causing harm must consider it safe to be involved in the process.

Additionally, victims are given maximum input throughout the mediation process to shape a resolution. Resolutions can take the form of compensation for the victim's losses and/or different forms of apology.

Restorative Circles

Restorative circles originated and are most commonly used in Indigenous communities worldwide. They embody Indigenous belief systems and instill Indigenous principles, such as: interconnectedness, equality, and continuity. However, they have been and can be used within a variety of communities, for diverse circumstances. Restorative circles are made up of four important stages:

- 1) Determining whether the specific case is suitable for a circle process;
- 2) Preparing the parties who will be involved in the circle;
- 3) Seeking a consensual agreement in the circle;

- 4) Providing follow-up and ensuring the person responsible for causing harm adheres to the agreement.

In some instances, there may be more than one circle, beginning with the person responsible for causing harm and supportive persons, then a similar circle for the person(s) harmed and supportive persons, and later a circle for all parties to participate together.

Sentencing Circles

Sentencing circles can take place inside or outside of the court process, and with or without the participation of the judge and counsel. The sentencing judge is not bound by the advice received from the circle, but the circle can be a valuable source of information for the Court at the time of sentencing. It is important that all parties rely on protocols that govern what information is before the circle and how the results of the circle are to be reported to the court. This will ensure care is taken towards those involved and that the circle does not become a place where persons harmed are re-victimized. Also, it is crucial to make sure that those who participate, particularly as voices of the community, reflect the values the circle is trying to embody.

The goal of sentencing circles is to heal all those affected and to facilitate the rehabilitation and social reintegration of the persons responsible for causing harm by mending the social relationships between the individual and members of the community. This is achieved through the offering of flexible solutions that are responsive to the circumstances of each person responsible for causing harm, requirements of each case, and the capacity of the community. Sentencing circles are traditionally made up of a five-step process, which includes:

- 1) Application by the person responsible for causing harm to participate in the circle process;
- 2) A healing circle for the person harmed;
- 3) A healing circle for the person responsible for causing harm;
- 4) A sentencing circle to develop consensus on the elements of a sentencing plan;
- 5) Follow-up circles to monitor the progress of the person responsible for causing harm and to provide them with continued support after the sentence has been pronounced.

6.0 Roles, Responsibilities and Expectations

Criminal justice professionals, such as law enforcement, judges, lawyers, probation officers, victim service workers, and others who work directly with persons harmed and persons responsible for causing harm, play an important role in supporting and implementing the use of Restorative Justice programs. Key roles they can serve include providing information about RJ to all participants, advising on legal options and safeguards, referring people to RJ programs, and when appropriate, participating in RJ processes (CICS, 2018).

6.1 RESTORATIVE JUSTICE FACILITATORS

Restorative Justice facilitators perform a crucial role within the Restorative Justice process, and high-quality facilitators are integral to an effective and successful RJ process. The trained, volunteer RJ facilitators create conditions that allow participants to tell their stories in an open, honest and safe manner, to discuss the impacts of the event, and to identify what can be done to appropriately address the harm caused and meet their needs.

RJ facilitators ought to be third-party trained volunteer facilitators available in their respective communities to maintain neutrality. RJ facilitators should act in accordance with the restorative values and principles listed above (section 2), and establish and maintain a safe, sensitive, and respectful environment that upholds the safety and dignity of all participants. Additionally, RJ facilitators ensure that a Restorative Justice process is culturally grounded, trauma-informed, victim-centred and considers issues from a Two-Eyed Seeing approach. This requires the recruitment of facilitators from a variety of backgrounds and from all sections of society, with appropriate gender and cultural balance, each of which possess the sensitivities, characteristics and capacities that are essential for qualified facilitators. Facilitators should display good understanding of local cultures and communities in which they are working.

RJ facilitators are required to work directly with participants to ensure the process meets their needs, to prepare all relevant parties for the process, and to conduct all necessary administrative tasks. In summary, facilitators are present to guide the process and ensure that it does not cause further harm.

In New Brunswick, RJ volunteer facilitators undergo the mandatory Restorative Justice Facilitator Training. Upon completion of the training, the volunteer facilitator must gain practical experience by means of their involvement in at least five (5) forums/circles with trained RJ facilitators, including aiding in co-facilitation. Upon completion of the mandatory training and practical experience component, the volunteer shall then be fully certified as a facilitator and able to complete forums/circles in the province. Continuous education and advanced training shall also be required on an ongoing basis.

Essential Knowledge and Skills of Restorative Justice Facilitators

Outlined below are the knowledge, skills, and minimum accepted standards that must be met by trained RJ volunteer facilitators within New Brunswick. These standards, as outlined in the Federal Government's Principles and Guidelines for Restorative Justice Practice in Criminal Matters (2018) and many subsequent provincial frameworks, such as the Alberta Framework (2021), exist to ensure the trained facilitators are reputable and credible, and to ensure all parties participating in a Restorative Justice process can trust that their participation will not cause further harm. The principles and guidelines include:

- Knowledge of Restorative Justice philosophy, principles, and practice guidelines
- Knowledge of criminal justice system, and appropriate legal safeguards for Restorative Justice in criminal matters (YCJA Sections 4-12)
- Understanding of local culture and community, including relevant community services and organizations available for persons harmed and persons responsible for causing harm
- Ability to maintain and uphold participant confidentiality
- Knowledge of issues related to persons harmed and persons responsible for causing harm
- Highly developed interpersonal and communication skills
- Highly developed ability to manage strong emotions and mediate conflict
- Ability to deal with diversity (culture, gender, class, etc.)

Essential Characteristics and Personal Qualities of Restorative Justice Facilitators

- Compassion and good judgment
- Cultural sensitivity
- Honesty and openness
- Integrity and self-awareness
- Professionalism
- Impartiality and the ability to be objective
- Respect and dignity for all people

6.2 DIVERSION COORDINATORS / COMMUNITY PROGRAM OFFICERS

Within the Department of Justice and Public Safety, our intent is to foster a greater knowledge of Restorative Justice principles and practices amongst Diversion Coordinators and RCMP Community Program Officers (CPOs). Ultimately, we shall seek to identify, develop, and maintain a Restorative Justice ‘niche’ to support enhanced Restorative Justice initiatives and processes throughout New Brunswick over the long-term.

Diversion Coordinators and CPOs will address both Diversion and Restorative Justice needs for clients involved with Justice and Public Safety Diversion programs, and will receive associated training opportunities.

Diversion Coordinators/CPOs are responsible for determining the eligibility and appropriateness of use of Restorative Justice processes on a case-by-case basis, and for administering all required intake assessments for potential Diversion and Restorative Justice clients. The Diversion Coordinators/CPOs will assume responsibility for the logistical planning of the restorative process, refer appropriate files to trained, third-party volunteer RJ facilitators, assist and support the crucial work performed by the RJ facilitators, and conduct all follow-up work with Diversion clients following the conclusion of the circle/forum. This includes monitoring of the agreement, and reporting on completion/incompletion of such agreements. Ultimately, based on the results of the intake assessments and screening measures, the Diversion Coordinators/CPOs will serve as the decision-maker on the appropriateness of use of restorative processes, provide necessary logistical and administrative support in restorative processes, and will enhance capacity for increased referrals and service delivery.

6.3 VICTIM SERVICES

The New Brunswick Victim Services Program offers a range of support services to all victims of crime who have reported an incident to police. Provincial frontline staff, referred to as Victim Services Coordinators (VSCs), primary role is to ensure that victims are informed of their rights as set out in the Canadian Victims Bill of Rights, and ensure victims receive a continuum of services as their cases proceed through the criminal justice system.

For the purposes of receiving assistance through the Victim Services Program, a victim is:

- A direct victim of crime;
- A person(s) who is legally responsible for a direct victim of crime who is ill or incapacitated;
- A parent or guardian acting on behalf of a child victim of crime; and
- An immediate family member (being the spouse, common-law partner, child, or parent of the direct victim of crime).

Victims can respond to trauma in different ways, and therefore require varying support services. Victim Services are available to all victims of crime in New Brunswick, which can include: ongoing case management, information about the criminal justice process, compensation, referrals to counselling, and court support services.

With regards to Restorative Justice processes specifically, a Victim Services Coordinator can assist with:

- Increasing victim awareness of availability of Restorative Justice processes;
- Providing information to victims and explaining Restorative Justice processes – Information must be presented to victims to enable them to make a free and informed decision on whether they would like to participate in a facilitated RJ process;
- Liaising with the Diversion Coordinator/CPO and RJ Facilitator, and;
- Providing support to victims throughout Restorative Justice processes.

6.4 LAW ENFORCEMENT AGENCIES

Law enforcement agencies play a significant role in the Restorative Justice process. Law enforcement members that are relevant to RJ processes include: the Investigating Officers, Senior Police Officers, Senior Readers, and Community Program Officers (CPOs). These individuals must first consider if there is sufficient evidence that an offence has been committed. If yes, then the use of Extrajudicial Measures (EJM) – which include taking no further action, verbal warnings, police cautions, or referral to a community program/agency – should be prioritized. If deemed not appropriate for EJM, these members will collaboratively determine whether a file is sent to a Diversion program or a charge is laid. It is for this reason that law enforcement members have the responsibility to ensure they are fully aware and properly educated on when and what files should be diverted.

The expectation of investigating officers is that they always consider Diversion as the default, especially when investigating a youth file. If a file has been diverted away from the traditional criminal justice process and toward a RJ program, the investigating officer may be asked to participate in a RJ forum. This participation can illustrate to the client that the system is working with them and for them, rather than against them. Officer involvement in restorative processes is important as it reinforces to the client that the officers – and justice system at large – deeply value the client's well-being and community restoration.

A Senior Reader/CPO hold equally important responsibilities, as they are the initial gate keepers for when a file can be directed toward an RJ program. They may consult with the Crown for additional support in determining the eligibility of a file. At the post-charge stage, the Senior Reader/CPO must receive approval from the Crown for specific offences to be diverted.

6.5 PUBLIC PROSECUTION SERVICES

Crown Prosecutors are directly involved in determining whether a file is diverted or not. They may be asked to consult with Senior Police Officers and/or Defence Counsel to determine the appropriate level of intervention for the client and eligibility for Diversion. As a result, a Crown Prosecutor has a significant responsibility in deciding whether a file is diverted away from the traditional court system.

This process can occur at multiple stages of the criminal justice process, such as: pre-charge, post-charge, pre-plea, post-plea, pre-trial, or on the trial date.

In the case where the file is a post-charge referral, the Crown will be notified of whether the client has successfully completed the accountability measures (which could include Restorative Justice approaches) determined by the Diversion process. If successfully completed, the Crown will request the charge be withdrawn. If it is not successfully completed, it will be referred back to Public Prosecution to process through appropriate court processes.

7.0 Guidelines for Communities: Effective Development, Delivery and Facilitation of Restorative Justice Services

To effectively provide Restorative Justice services in New Brunswick, the following guidelines for development, delivery and facilitation of restorative processes should be considered. These guidelines intend to reflect a principle-based, relational, and holistic approach to developing, delivering, and facilitating Restorative Justice programs and services.

7.1 GUIDELINES FOR DEVELOPING AND DELIVERING RESTORATIVE JUSTICE PROGRAMS

These guidelines are aligned with the Canadian Intergovernmental Conference Secretariat's *Principles and Guidelines for Restorative Justice Practice in Criminal Matters (2018)*, and are intended to promote and encourage best practice and to provide a common basis for diverse RJ programs, facilitators and communities across the province. These guidelines will allow communities to assess how their practice aligns with the principles outlined and agreed-upon within the framework.

Restorative Justice programs should develop a vision, mission, goals, and objectives that are consistent with the *New Brunswick Restorative Justice Framework: Use of Restorative Justice Practices in Conflict and Crime*.

In the initial planning stages, RJ programs should consult with a variety of community and justice stakeholders, including but not limited to those that provide services to persons harmed and/or persons responsible for causing harm.

RJ programs should be aligned with the principles outlined in the *New Brunswick Framework for Restorative Justice Practices in Conflict and Crime*, and develop standards and protocols based on nationally-approved standards. Such standards and protocols should address, at minimum:

- Referral criteria and procedure;
- Case management (accepting, managing, facilitating, providing follow-up, and closing cases);
- Effectively engaging and involving persons harmed, persons responsible for causing harm, and community members;
- Confidentiality, access to information and privacy, and record-keeping;
- Working with volunteers (if applicable);
- Collaboration and information-sharing with relevant governments, criminal justice professionals and communities;
- Additionally, appropriate oversight procedures should be created to ensure that such standards are adhered to.

RJ programs should work towards building effective, collaborative relationships with relevant governments, criminal justice professionals, and community members.

RJ programs should assess facilitators, staff, and volunteers on an ongoing basis and ensure they are adequately trained, well-prepared and consistently supported.

RJ programs should have safety policies and procedures in place to ensure the safety of all participants.

RJ programs should create a record keeping system to keep a record of each case, and collect data on RJ referrals, participants, and processes. Such data collection must respect confidentiality, privacy and information-sharing legislation, and any court orders. Such data will be shared with the provincial Restorative Justice Program.

RJ programs should ensure all facilitators are appropriately trained and demonstrate ethical standards and codes of conduct.

RJ programs should create and maintain policies on governance, administration, accountability, reporting, staffing, and training.

7.2 GUIDELINES FOR FACILITATING RESTORATIVE JUSTICE PROCESSES

The essential knowledge, skills, characteristics, and personal qualities of Restorative Justice facilitators have been outlined above (Section 6.1). The information presented below includes general facilitation guidelines for RJ programs, as well as specific guidelines for managing case intake, case preparation, the facilitation process, as well as follow-up (CICS, 2018; Alberta Framework, 2021; BC Crime Prevention Information Series, 2010).

General Guidelines

All possible efforts should be made to contact all participants and deliver the processes in a timely and equitable manner.

Participation in a Restorative Justice process should be entirely voluntary, and participants should have the option to withdraw at any time in the process.

The Restorative Justice processes should consider all personal and cultural histories and contexts, and acknowledge the factors that have contributed to the conflict and/or crime.

Restorative Justice processes must be flexibly applied and tailored to meet the specific needs of participants and communities.

Participants should be offered choices and have input throughout the process.

Intake

First and foremost, programs must conduct adequate intake to ensure referral is suitable for a Restorative Justice process (*for more information, refer to Section 4*).

Information must be presented to all potential participants – persons harmed, persons responsible for causing harm, community members – to enable them to make a free and informed decision on whether they would like

to participate in a facilitated RJ process. All participants should have a clear understanding of what the process might involve. Victim Services shall be engaged to ensure that victims, in particular, are contacted in a sensitive manner.

Participants will be offered the opportunity to participate in a facilitated RJ process that upholds their safety and integrity. The needs of all participants will be respected throughout the process.

This includes flexibility of approach in victim participation. 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.

Cases will start and conclude in a timely manner.

Preparation

All cases must include careful and sensitive preparation with all participants involved – persons harmed, persons responsible for causing harm, and community members. Cases will not proceed to facilitation until the coordinator and/or facilitator is confident the parties are fully prepared.

Support persons may be invited to participate throughout the process for both persons harmed and persons responsible for causing harm. Such individuals will undergo preparation along with the relevant party. The role of support people and their level of involvement in the process should be discussed and agreed upon by participants.

In the preparation process, trust must be built between facilitators and participants. If at any point in the preparation stage the *facilitator* feels unable to participate for any reason, they must be allowed to withdraw from the case.

Facilitation Process

RJ processes will be applied flexibly, tailored to meet the specific needs of participants. This includes needs related to all forms of safety and power imbalances.

All processes should include opportunities for participants to communicate with each other (with the help of facilitators). There is a wide variety of ways this can be done, including written or video 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.

All information discussed within a RJ process must be kept confidential. However, there are certain limitations to confidentiality, which participants should be informed about, including:

- Participants agreeing otherwise
- Discussions that were previously held in public, or were part of a court process
- Where disclosure is required by law (e.g. discussions reveal a threat to the life or safety of an individual)

Co-Facilitation Model – It is best practice that a co-facilitation model (assigning multiple facilitators to a case) be utilized when appropriate, based on the needs of participants and the facilitator, the complexity of the case, and/or the nature of the crime. The use of a co-facilitation model enhances the safety and control of the forum. In co-facilitation models, the role of each facilitator should be clear, and their skills, experience, and personal characteristics should be complementary and suited to the case.

The needs of persons harmed and persons responsible for causing harm must be identified on an ongoing basis, at all stages of the RJ processes. Efforts should be made to connect participants to existing support services, as necessary.

Any agreements reached between participants must be entered into voluntarily, must contain clear terms, and must not be punitive in nature. Participants must agree that the terms of the agreement meet their needs and be reasonable and achievable.

Follow-Up

All cases should include an evaluation process, for both persons harmed and persons responsible for causing harm, to provide their views about their experience of the RJ process. This follow-up would include discussion of their views and opinions of the RJ process and would determine if they still have unmet needs related to the process (and if so, what could be done to address those needs).

8.0 Conclusion

As explored and illustrated throughout this *Framework*, Restorative Justice is a holistic, principle-based, trauma-informed, and relational approach to justice that emphasizes healing in persons harmed, the meaningful accountability of persons responsible for causing harm, and the involvement of community members.

As Restorative Justice is a flexible approach to dealing with conflict and crime, with a wide variety of process models, the implementation of restorative process can be adapted to reflect the values and needs of unique communities. The main process models include community justice forums, restorative conferences, victim-offender mediation, restorative circles, and sentencing circles, and can be initiated from various points and referral sources within the criminal justice process.

Provincial stakeholders, criminal justice professionals, and community partners within New Brunswick have key roles to play in accelerating and amplifying the promotion and operation of Restorative Justice processes in the province.

By shifting from system-centered to human-centered approach to justice, and revising and reframing the traditional criminal justice system through a more restorative lens, we will effectively build healthier, safer, and stronger communities across New Brunswick.

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