

## What Is a Restorative Justice Process?

Restorative justice involves individuals who have a stake in a particular offence, including the victim, the offender, and community members. Participants take part voluntarily and are supported by a fair and impartial facilitator, who in Aboriginal communities is usually an Elder.



The participants engage in a discussion of the circumstances surrounding an offence. The purpose of the discussion is to understand the underlying causes of the event and the effects on those who have been harmed. As well, the process addresses the needs of the parties for healing and reparation. The models used most often in Canada are conferencing, sentencing, and healing circles and victim-offender mediation.

## Basic Principles of Restorative Justice

1. Participation of a victim and offender in a restorative justice process should be based on her or his free, voluntary, and informed consent. Each party should receive a clear explanation of what the process might involve and the possible consequences of deciding to participate. Consent to participate may be withdrawn at any stage.
2. The victim and offender must accept as true the essential facts of the offence, and the offender must accept responsibility for the offence.
3. The facts must provide sufficient evidence to proceed with a charge, and the prosecution of the offence must not be barred at law.
4. The offender has the right to seek legal advice before and at all stages of the process.
5. Referrals to a restorative process can occur at all stages of the criminal justice system, from pre-charge diversion through to post-sentencing and post-release from custody in appropriate cases, and taking into account relevant prosecution policies.
6. Referrals to and conduct of a restorative process must take account of the safety and security of the parties and any power imbalances between victim and

offender, with respect to either person's age, maturity, gender, intellectual capacity, position in the community, or other factors. In particular, implied or explicit threats to the safety of either party, and whether there is a continuing relationship between the parties, must be of paramount concern.

7. All discussions within the restorative process, other than those conducted in public, must remain confidential, unless agreed to the contrary by the victim and offender, and may not be used in any subsequent legal process.
8. The admission of responsibility by the offender for the offence is an essential part of the restorative process, and cannot be used as evidence against the offender in any subsequent legal process.
9. All agreements must be made voluntarily and contain only reasonable, proportionate, and clear terms.
10. The failure to reach or to complete a restorative agreement must not be used in any subsequent criminal proceedings to justify a more severe sentence than would otherwise have been imposed on the offender.
11. A restorative justice program should be evaluated regularly to ensure that it continues to operate on sound principles and to meet its stated goals.



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*National Consultation on Basic Principles for Restorative Justice in Canada.*

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