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Restorative Justice Primer



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*For the purposes of this report and organization, the term *Aboriginal, Indigenous* or *First Nations* will refer specifically to the rights on Inuit clients unless stated otherwise.

Section 718.2(e) of the Criminal Code of Canada states:

718.2 A court that imposes a sentence shall also take into consideration the following principle(s):

(e) 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.

It was later noted that section 718.2(e) applies to all aboriginal people wherever they reside: on- or off-reserve, in a large city or a rural area.

WHAT IS RESTORATIVE JUSTICE?

Restorative Justice ensures that Indigenous offenders have the opportunity to exercise their rights under **Section 718.2(e) of the Criminal Code of Canada**.

The premise behind the provision is for the criminal justice system to find alternatives to punitive sentencing of Indigenous offenders. This is to mitigate the astronomically high incarceration rates of Indigenous offenders and to reduce the recidivism rates.

Restorative Justice (RJ) focuses on the person that has committed an offence being accountable for their actions. This is done through working towards healing with the victim(s) of the offence and the community as a whole.

The benefits of a RJ program are that it offers people that have offended, the opportunity gain understanding, accept responsibility for their actions, understand the harm caused, hear how their behaviour affected others and participate in determining how to repair the harm.

Victims and communities are also given equal opportunity to tell their story, be certain the offender understands the impact, find answers to questions, hold the offender accountable and if possible, identify what can be done to repair the harm.

Being able to go through the Restorative Justice process is made possible through the Bill C-41 sentencing amendments. The ability to consider and allow RJ practices at sentencing was established through the sentencing reforms outlined in Bill C-41, which expanded sentencing options to include such practices—by addressing the special circumstances of Aboriginal offenders—through section 718.2(e) of the Criminal Code.

GOALS OF RESTORATIVE JUSTICE

The main goals of RJ are:

- To identify/work with Inuit that are at risk or are in conflict with the law.
- Assist with navigating through every step of the court and diversion process.
- Ensure that resources and supports are culturally specific/focused.
- Present alternatives to incarceration involving healing.
- Reducing the chances of an individual from re-offending.

It is the belief that these goals can be met through conversations between victim and offender and holding the offender accountable to their actions.

This being achieved through working with offender, victim and the community to heal and bring harmony to all involved in a meaningful way.

To meet these goals all work done with Tungasuvvingat Inuit's RJ program follows the **8 Inuit Qaujimagatuqangit (IQ) guiding principles**:

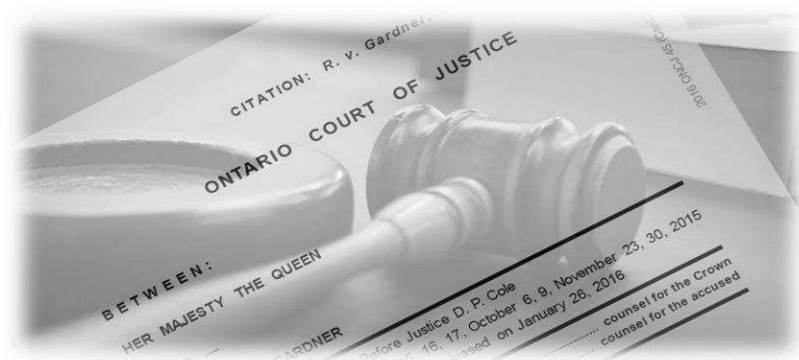
- **Inuuqatigiitsiarniq**- Respecting others, relationships and caring for people.
- **Tunnganarniq**- Fostering good spirit by being open, welcoming and inclusive.
- **Pijitsirniq**- Serving and providing for family and/or community.
- **Aajiqatigiinni**- Decision making through discussion and consensus.
- **Pilimmaksarniq**- Development of skills through practice, effort and action.
- **Piliriqatigiinni/lkajuqtigiingniq**- Working together for a common cause.
- **Qanuqtuurniq**- Being innovative and resourceful
- **Avatittinnik Kamatsiarniq**- Respect and care for the land, animals and the environment.

HISTORY OF RESTORATIVE JUSTICE

The following historical perspective was retrieved from the Government of Canada Department of Justice websites section on The Effects of Restorative Justice Programming:

- A more community- and victim-based system of justice is not a new phenomenon, but rather a resurgence of a historically prevalent approach to crime and conflict. Zehr (1985)
- During the 1970s there was a movement among prisoners' advocates and academics to protect the rights of offenders, to restrict the use of incarceration and to improve the conditions within institutions. This was driven by an increasing understanding within the social sciences that criminal behaviour was, in a large part, a result of adverse social conditions.
- Processes such as mediation, arbitration and negotiation became more common in civil and family law. Moreover, there was an increasing demand on the justice system to offer a more substantive voice and to provide a more formalised role for victims in the criminal justice process.

- In 1974, the first victim-offender mediation program occurred in Canada. Since that time, a number of similar programs have been developed throughout Canada and internationally.
- Certain principles of restorative justice, such as forgiveness and reparation, are fundamental concepts within Judaic and Christian faiths and, as such, these communities also began to actively promote and implement restorative practices.
- The roots of restorative justice models also stem from traditional Aboriginal methods of conflict resolution that rely on community involvement and the implementation of holistic solutions.
- The continued overrepresentation of Aboriginal peoples in correctional institutions in Canada has led to demands for more traditional approaches, such as sentencing circles, for Aboriginal offenders.
- Statutory recognition of the importance of alternatives to incarceration came with the proclamation of Bill C-41. Second, the importance of addressing the special needs of aboriginal offenders and reducing reliance on incarceration was noted by the Supreme Court of Canada in R. v. Gladue. Third, the 1999 federal Speech from the Throne contained an explicit acknowledgement of the importance of restorative justice in Canadian society.



Supreme Court of Canada:

Canada:

the highest level of court in Canada and the final court of appeals in the Canadian Justice System.

Staggering Rates of Indigenous Offenders in Prison



The **Supreme Court of Canada** recognized the overrepresentation of Indigenous people in the Canadian judicial system and set out to rectify this.

The courts also recognized that the number of Indigenous people being sent to jail has been increasing over the last several decades. According to Statistics Canada in 2006-2007, Indigenous people represented 3.8% of the Canadian population, but they formed 20% of the adult federal inmate population.

By 2017, Indigenous people made up 4.1% of the Canadian population, but they formed 28% of the federal inmate population. The rates are even higher when looked at provincially, and have been trending upwards for over 20 years.

These rates are dramatically different than the rest of the non-Indigenous Canadian population.



Tungasuvvingat Inuit represents Inuit clientele only

The people of the Canadian Arctic are known as the Inuit. Inuit means 'the people', singularly, Inuk means 'the person'.

Restorative Justice Eligibility

All Inuit are eligible to access Restorative Justice. If you self-identify as Inuk (meaning if you think of yourself as **Inuit** descent), you have specific rights under the Criminal Code section 718.2(e) known as Restorative Justice rights. Additionally, the offender must accept responsibility for his/her wrongdoing and the offender must be willing to actively participate in the Restorative Process.

Eligibility to access to the Restorative Justice program at Tungasuvvingat Inuit applies to all Inuit regardless of:

- Residency in the North or South.
- Age, the program works with both youth and adults.
- Whether they were raised by Inuit parents or not.
- Adoption within the Inuit community or with Southern families.
- Or raised in a foster home or group home in the North or South.

Accessing the Restorative Justice Program for Diversion (Pre-Charge/Post-Charge/Pre-conviction) does have some additional eligibility criteria that exclude certain offences from being accepted. The offences that are ineligible for diversionary restorative justice are:

- Sexual assaults;
- Spousal abuse;
- Child abuse matters; and
- Other offences which Prosecution policies restrict for Diversion.

Tungasuvvingat Inuit **DOES NOT** require you to show proof of Inuit beneficiary status under the four Inuit Land Claims Agreements.



How is Restorative Justice different than the traditional system?

The traditional justice system seeks punishment for the wrongdoing committed by an individual, without the voice of the offender or victim when people are given sentences.

Restorative Justice on the other hand seeks to provide a voice and ability for both the victim and offender to participate in finding resolution in a meaningful way. This in turn brings the offender back into the community with he/she taking responsibility for the harm caused to the victim(s) instead of further pushing them away. Through this process of accountability and healing, this allows for both the victim and offender to express their thoughts and feelings regarding the harm that was done.

There are multiple services throughout the Ottawa area that offer similar services tailored to Indigenous Peoples. These services can be reached through references at T.I. or through an internet search of social service providers.

When/how can a person access the Restorative Justice Program?

There are **4 main** ways that an individual can be referred to the Restorative Justice Program, through contact with **Criminal Justice System**. The more serious your offence, the more likely an individual will be referred later in the process. These are:

1. Police (Pre-charge)
2. Crown (Post-charge/Pre-conviction)
3. Courts (Post-conviction/Pre-sentence)
4. Corrections (Post-sentence/Pre-integration)

If an individual is not yet in contact with the law they can be referred via **Community/Self-Referral**. There are **2 ways** this can occur:

1. Be identified by the community/the Restorative Justice Committee as being at risk. (Community Referral).
2. Requesting yourself to enter into the restorative process (Self-Referral).

Pre-charge: Before charges have been laid by the police

Post-charge/Pre-conviction: After charges have been laid by the police, but before an individual has actually been found guilty of a crime

Post-conviction/Pre-sentence: After an individual has been found guilty of an offence but before sentencing has occurred

Post-sentence/Pre-integration: After an individual has been sentenced but before they have been fully released back into the community

Restorative Justice Committee: group made up of community members elders and individuals that support the Inuit community in Ottawa.

Tungasuvvingat Inuit (TI): an Ottawa based, not-for-profit organization that seeks to provide social support, cultural activities, counselling and crisis intervention to meet the rapidly growing needs of Inuit in Ontario

What do the police and courts need in order to apply Diversion through Restorative Justice?

For the police or judge to consider diverting cases to the Restorative Justice Program at Tungasuvvingat Inuit, you will first need to meet the eligibility criteria found on **p.4** of this document.

From this point you will need to accept responsibility for the offence committed. Once this has occurred the Police or Crown will be able to decide to divert your case through the Restorative Justice Program.

The Police and Judge need to be kept updated about the start and progress through the Restorative Process, as it can take multiple meetings to create a proper healing and wellness plan. Additional time will also be needed to show the referral source that an individual is able to follow-through and successfully complete the program.

As each case is different there is understanding that for certain clients this can take some time. The updates and information surrounding progress will help them to clearly see efforts being made and ideally withdraw the charges or suspend sentencing.

What does the Restorative Process look like through T.I.?

The Restorative Justice Victim/Offender Conferencing model looks to repair harms through mediation between the offender and the victim(s) of an offence.

After a referral is made from either the Criminal Justice system or Community/Self-Referral, an individual must:

- Setup a meeting with the Restorative Justice Liaison and complete a comprehensive intake.
- A conferencing facilitator from the RJ committee will be assigned to begin preparing for the conferencing.
- The victim (if one is identified) is contacted and the opportunity for them to take part in the process is offered as well as supports through the program and T.I.
- The RJ Committee sets up meetings separately with the offender and anyone harmed by the offence to discuss what occurred and moreover eventually what resolution looks like for victim, offender and anyone else involved.

- After multiple individual meetings with all parties involved, including support people, all parties are brought together with their supports (this can include elders, workers etc.) as well as members of the committee and the Restorative Practices Liaison. Everyone is given the opportunity to voice how the offence affected them and are guided to resolution.
- Recommendations, are then made, a healing and wellness plan is formulated, written signed by everyone then presented to the courts.

Throughout the whole Restorative Process both victims and offenders are provided with supports such as but not limited to access to elders, counselling, and other Inuit specific programming internally through T.I. as well as through community resources.

Furthermore, if the victim chooses not to participate in the process this does not mean that the process ends. At that point the program works toward resolution from the perspective of the offender, as to how they can repair the harms done with a comprehensive healing and wellness plan presented to the courts.

Who can help me through the Court and Restorative Process?

Tungasuvvingat Inuit (TI) has an entire team dedicated to providing assistance through the court process.

The **Pisiksik Justice Department (PJD)** consist of:

- **Manager**
- **Restorative Justice Liaison**
- **Restorative Justice Caseworker**
- **2 Gladue Writers**
- **Probation & Parole Caseworker**



If a lawyer is needed, PJD can assist with identifying legal resources.

Pisiksik Justice Department (PJD)
Department of TI that houses Gladue and Restorative Justice programs, as well as any other programs that assist Inuit in conflict with the law.

Gladue Writer
Responsible for writing the Gladue Reports and letters and supporting clients after the writing has been completed

The main contacts for the Pisiksik Justice Department are:

Restorative Justice Diversion Program

Nadine Okalik
Restorative Justice Liaison
Cell: 343-550-6649
Email: nokalik@tontario.ca

Heather Loudon
Restorative Justice Caseworker
Cell: 613-407-6181
Email: hloudon@tontario.ca

Gladue Program

Michel Belledent
Gladue Writer
Cell: 613-406-7805
Email: mbelledent@tontario.ca

Nesreen Hammoud
Gladue Writer
Cell: 343-540-9521
Email: nhammoud@tontario.ca

Probation & Parole Program

Dennis Nakoolak
Probation Caseworker
Cell: 343-540-9049
Email: dnakoolak@tontario.ca

Legal Aid: Provides legal services for financially-eligible, low income Ontarians in the following areas: domestic violence, family law, immigration/refugee law and criminal law

Duty Counsel: private bar or Legal Aid Ontario lawyers who can give immediate, legal assistance to low-income people who appear in court without a lawyer

Tungasuvvingat Inuit does not and cannot provide legal advice

It is ideal for an offender to obtain a lawyer to represent them at a bail hearing, especially if they have been charged with a serious offence.

Contact **Legal Aid** immediately to find out if the offender qualifies for a **free lawyer**. If an offender does not qualify for a free lawyer, most courts in Ontario have duty counsel.

Legal Aid Ottawa:
73 Albert Street Ground Floor
Telephone: 613-238-7931 Extension:
Toll-free: 1-877-314-0933
Fax: 1-613-238-3410
TTY (Telephone device for the hearing impaired)
TTY local: 416-598-8867
TTY Toll-free: 1-866-641-8867

The **Duty Counsel** at the Ottawa Courthouse on Elgin Street can answer questions and provide legal advice on, or before the day of court.

For more information, contact Duty Counsel at:

161 Elgin Street 2nd floor
Ottawa
K2P 2K1
Telephone: 613-238-7931
Toll-free: 1-800-668-8258

Reference/Statistics

All stats referenced in this document are from Statistics Canada and the Government of Canada website. All relevant material and supporting documents can be found at:

www.statscan.gc.ca
www.justice.gc.ca