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COVID-19 and Restorative Justice¹

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Abstract

This paper discusses values and practices of restorative justice (RJ) during COVID-19. It looks at RJ values such as respect, responsibility, relationships, interconnectedness, and creativity, and considers ways to apply them during the pandemic. It describes how organizations in Saskatchewan and elsewhere are adapting their restorative processes and beginning to use videoconferencing to connect with victims and offenders and hold virtual circles. Online platforms offer an important opportunity to conduct RJ at this time of physical distancing and public health restrictions, although virtual processes come with challenges regarding access to justice and respectful communication. There is a need for discussions with Indigenous peoples and restorative justice organizations regarding the potential benefits and challenges of online processes and other technologies. There is also a need for robust research which compares face-to-face, online, and indirect restorative processes. This leads to thoughts about the potential for virtual communities and about healing from the collective trauma related to COVID-19, as well as recommendations for federal and provincial governments and community-based RJ organizations.

Keywords: restorative justice, COVID-19, restorative justice values, restorative justice processes, videoconferencing, online.

¹ This article does not reflect the views of the Government of Saskatchewan and the Ministries of Justice Attorney General and Corrections, Policing and Public Safety.

Introduction

COVID-19 is creating unprecedented shifts in many aspects of our lives, including the justice system (El Maarouf, Belghazi, & El Maarouf, 2020; Webel & Freeman, 2020). The past few months have been a time of tremendous uncertainty given rapidly changing public health restrictions, the closure of government offices, businesses, and borders, increased unemployment, and declines in economic activity. These factors have led to anxiety and collective trauma (Watson, Bacigalupe, Daneshpour, Han, & Parra-Cardona, 2020). The pandemic seems to have influenced Canadians' perceptions of public safety, with reported changes in the amount and kinds of crimes committed (Statistics Canada, 2020a), as well as changes in how justice institutions are operating. Organizations that offer restorative justice (RJ) have also been impacted. This paper aims to describe how COVID-19 is affecting restorative practices; inform scholars, practitioners, and justice professionals about these developments; discuss the importance of restorative values; and provide ideas to enhance restorative practices during and after the pandemic.

After acknowledging the limitations of the available literature, this paper provides a brief introduction to RJ and discusses restorative values conducive to addressing the challenges of the pandemic. Respect, responsibility, relationships, interconnectedness, and creativity can play an important role in meeting the needs of victims and offenders and building virtual communities. RJ practitioners are considering how to enable respectful communications during online processes; reaching out to support others, which demonstrates interconnectedness; and developing creative ways to adapt ceremonies and hold virtual circles. Next, this paper explains how RJ is offered in Saskatchewan, Canada, explores the impact of COVID-19 on RJ organizations, and discusses the existing literature and ideas from practitioners in Saskatchewan, British Columbia, and other locations regarding changing RJ practices. Considering challenges and opportunities in the context of the pandemic leads to questions for future research, thoughts about the potential for virtual communities and about truth and reconciliation processes to support healing from collective trauma, and recommendations for federal and provincial governments and RJ organizations.

Limitations

This paper draws primarily on previously published literature, online materials regarding RJ programs, and available information about RJ and COVID-19. A rigorous mixed method including qualitative and quantitative measures would offer a more comprehensive understanding about the impact of COVID-19 on RJ organizations, mediators, clients, and communities. While time precluded such an approach, the authors drew on their knowledge of RJ practice in Saskatchewan and ideas from some RJ programs to describe how they are adapting and offer suggestions that can enhance current and future practices.

Restorative Justice

The term “restorative justice” was first used in 1977 by Albert Eglash in an article titled “Beyond Restitution: Creative Restitution,” and was further developed by Howard Zehr in his seminal work “Changing Lenses” (Llewellyn & Howse, 1998, p. 4). In the West, RJ was “rekindled” through the development of a Victim-Offender Reconciliation Program in 1974 in Kitchener–Waterloo, Ontario (Braithwaite, 1999, p. 2). Victims’ associations, prison abolition movements, and social justice organizations have contributed to the growth of the RJ field (Cormier, 2002; Van Ness & Strong, 2010). Today, RJ programs are prevalent in many countries. This includes victim-offender mediation programs in Canada and the United States; family group conferencing in New Zealand; community justice forums in Australia; *jirga*, a community-based justice system in Pakistan and Afghanistan; and *salish*, a community-based mediation approach in Bangladesh (Asadullah, 2020; Braithwaite, 2004; Elliott, 2011; Hand, Hankes, & House, 2012; Morrison, 2006; Roy, 2005; Yousufzai & Gohar, 2005).

Scholars have debated the role of RJ within state-based criminal justice systems. Some argue RJ can play a pivotal role in bringing justice for victims, offenders, and community members (Elliott, 2011; Llewellyn & Howse, 1998; Zehr, 2005). Others are critical about the potential for RJ within the existing justice system (Blad, 2015; Bonafé-Schmitt, 2013; Daly, 2016; Johnstone, 2017; Woolford

& Ratner, 2010). To them, RJ has become “another tool” that focuses on case backlogs and savings without fundamentally changing the retributive structure of the criminal justice system (Blad, 2015, p. 3). There are also important critiques about the discourse of community in RJ and how this relates to the criminal justice system. For example, Maglione (2017) reviewed policies and statutes in England and Wales and argues they “embrace an ideal image of community: innocent, local, alternative to ‘state’ and ‘society’, weak but resilient, fusions, genderless/colorless” (p. 465). Maglione identifies a number of issues with this discourse, such as how communities can be exclusionary. In Canada, Carol LaPrairie (2005) authored an important paper titled “Community Justice or Just Communities?” which discusses how Indigenous communities, like many other communities, can have diverse values and be socially and economically stratified. These topics are beyond the scope of this paper, however, we assume that the values discussed below can contribute to building communities and nurturing virtual RJ practices.

The importance of justice services offered by Indigenous peoples has been highlighted by numerous commissions and inquiries, most recently the *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019). The Call for Justice 5.11 in the *Final Report* is, “We call upon all governments to increase accessibility to meaningful and culturally appropriate justice practices by expanding RJ programs and Indigenous Peoples’ courts.” The relationship between RJ and Indigenous justice is complex, and scholars have questioned whether RJ is rooted in or reflects the cultural practices of Indigenous communities (Moyle & Tauri, 2016; Tauri, 2009; Tauri & Morris, 1997). Moreover, Cunneen (1997) challenged the cultural appropriateness of RJ with Indigenous ethos and epistemology. Nonetheless, the involvement of Indigenous peoples must be acknowledged in Canada, where Indigenous justice programs operate in every province and territory (Tomporowski, 2014). Many of these initiatives are co-funded by federal and provincial/territorial governments through the Indigenous Justice Program, which supports community-based Indigenous-led justice practice that provide alternatives to the mainstream justice system

(Justice Canada, n.d.). These programs offer diversion, pre-sentencing options, sentencing alternatives, victim support, and offender reintegration. An evaluation notes these programs are “grounded in the principles of RJ and Indigenous Legal Traditions” (Justice Canada, 2016, p. i).

Daly (2016) argues that “[r]estorative justice is not easily defined” and may have varied meanings and practices in different settings (p. 56). Following a consultation undertaken by the Canadian Restorative Justice Consortium, RJ has been defined as “an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime” (Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety, 2018). For the purpose of this article, RJ should be understood as including a wide range of programs, processes and practices. This includes services offered by non-profit organizations, Indigenous justice programs that choose to describe themselves as offering RJ, youth justice committees and community justice committees that use restorative principles and practices, and programs offered by some government ministries (Tompsonski, Buck, Borgen, & Binder, 2011).

There are a number of RJ processes used in Canada, such as victim-offender mediation, family group conferencing, and several kinds of circles (Asadullah & Morrison, 2021; Tomporowski, 2014; Tomporowski et al., 2011). Restorative processes tend to emphasize face-to-face communication between the victim and the accused, but can involve indirect forms of communication such as exchanging letters or pre-recorded videos. RJ can also be applied to minor crimes, serious violent offences, and large-scale human rights violations such as genocide and war crimes (Asadullah, 2016; Clamp, 2014). Given this diversity, it is not surprising that RJ practitioners have various job titles such as caseworker, community justice worker, mediator, and facilitator (Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety, 2018). For the sake of simplicity, this article will refer to RJ practitioners as “mediators.”

Notwithstanding the diversity in how RJ is defined and operationalized, advocates, theorists, and practitioners support values and principles that guide its practice and application (Sharpe, 2010). These values, which help distinguish between restorative and non-restorative practices, are the “essence” and “impulse” of RJ programs (Pranis, 2007, p. 60). Some of the most commonly expressed restorative values include respect, accountability, trust, inclusive participation, equality, truth-telling, active listening, responsibility, empathy, fairness, compassion, relationships, empowerment, collaboration, healing, interconnectedness, holism, creativity, dignity, and transformation (Clamp, 2014; Morrison, 2006; Pranis, 2007; Umbreit & Armour, 2011; Van Ness & Strong, 2010; Zehr, 2005). The following section discusses some important values and their relevance to the challenges of COVID-19.

Salient RJ Values

Values and principles play an instrumental role in guiding RJ practices (Bidois, 2016). Braithwaite (2002) discusses three types of restorative values: constraining, maximizing, and emergent. Constraining values such as non-domination, empowerment, and respectful listening are procedural safeguards that “must be honoured and enforced” in RJ processes (Braithwaite, 2002, p. 571). Braithwaite (2002) encourages RJ practitioners to maximize values such as restoration of communities and relationships, and argues that emergent values such as forgiveness and mercy cannot be conditions for RJ, although they may emerge during successful RJ processes. This paper highlights constraining values such as respect and responsibility and maximizing values such as relationships and interconnectedness. It also focuses on creativity, which is particularly relevant during the pandemic.

1. Respect

Respect for victims, offenders, community members, and all participants is one of the most articulated restorative values (Morrison, 2006; Pranis, 2007; Zehr, 2002). Justice cannot be restorative in the absence of respect for all stakeholders (Zehr, 2002), and feeling respected and heard is a fundamental human need

(Morrison, 2006; Pranis, 2007). RJ's community-based approach offers respectful dialogue that empowers people while upholding their dignity and increasing trust and confidence in the process (Umbreit & Armour, 2011). Mutual respect sets the foundation for discussions between victims and offenders, and fosters working relationships between RJ organizations, justice agencies, and human service organizations.

The increasing use of videoconferencing during COVID-19 presents unique challenges regarding respectful communication and how to include each person in a meaningful way. First, it is important for mediators to ask whether victims and offenders are willing to participate in an online process. Some may be comfortable with this approach, which might result in better engagement with youth (Millington & Watson, 2020). Others may need preparation meetings to use the technology effectively (Millington & Watson, 2020). Starting the process with an online check-in and having people hold a talking piece to indicate it is their turn to speak are some ways to provide a respectful online space, so all participants are heard and have a chance to say what is important to them. In this way, restorative justice programs can still continue to serve victims and accused while adjusting to this new situation (Sasson, 2020).

One advantage of videoconferencing is that participants can see each other's facial expressions and body language. The mediator can also see and assess how they are being impacted, unlike telephone calls or when the victim and offender exchange letters (B. Schenk, personal communication, May 25, 2020). Yet it remains to be seen how online processes affect active listening and communication. It may be harder to read body language and engage in open, honest conversation without eye contact, particularly if the video is blurry (Millington & Watson, 2020). Silence can be particularly awkward during online processes, since people assume the internet connection is lost (Marder, 2020), or because "there is a perceived pressure to keep talking or to come in too early with a follow up comment" (Millington & Watson, 2020, p. 11). There is also the risk participants will be distracted by pop-up messages and scrolling feeds, rather than paying attention to the speaker.

2. Responsibility

Crime and wrongdoing create an obligation not only for the offender but also for the community (Zehr, 2002). Taking responsibility helps communities overcome the “911 mentality” in which they depend on law enforcement agencies rather than becoming involved in addressing local issues (cited in Pawlychka, 2010, p. 31). Nicholl (1999, p. 153) is convinced crime prevention cannot be a “monopoly” of the police. The burden of responsibility to maintain safety and security goes beyond the police, courts, and correctional facilities. It must involve citizens, civil society organizations, businesses, religious institutions, and all levels of government.

While the concept of taking responsibility is expected of accused persons and offenders who participate in RJ, it also applies to mediators and RJ organizations. As will be further discussed, they are embodying the notion of responsibility by adapting their services to meet the needs of victims, offenders, and those who are vulnerable and isolated (Catholic Mobilizing Network, 2020; Pranis, 2020; Mennonite Central Committee Saskatchewan, 2020).

3. Relationships

Since crime is a violation of relationships, restoring them is one of RJ’s salient features (Llewellyn & Howse, 1998). RJ is a relational approach that focuses on addressing harms at the interpersonal, institutional, and systemic levels (Llewellyn & Llewellyn, 2020). Morrison (2006) explains this by saying RJ “empowers individuals and communities through building healthy relationships, where fellow citizens support each other while holding each other accountable for behavior” (p. 373). This not only includes victims and offenders, but it also encompasses “the larger web of relationships” such as their relatives and friends (Pranis, 2007, p. 59).

Embodying relational worldviews can contribute to empathy and healing, which is particularly important at a time when many Canadians report their mental health is “somewhat worse” or “much worse” since physical distancing began (Statistics Canada, 2020b). RJ organizations have commented about how important relationships

are to their staff and volunteers as well as those they serve (Catholic Mobilizing Network, 2020; Mennonite Central Committee Saskatchewan, 2020). They are using both old and new technology to reach out to victims, offenders, family, community members, and each other at a time when it is difficult to meet in person.

4. Interconnectedness

Since every individual is considered an integral part of the community, RJ promotes a communal bond and encourages people to take collective responsibility for restoring broken relationships (Toews & Zehr, 2003). This can re-establish a sense of belonging and attachment for victims and offenders (Umbreit & Armour, 2011). The value of interconnectedness is important among many groups of Indigenous peoples (Pranis, 2007). Similarly, the Zulu concept of *ubuntu*, commonly translated as “I am because you are” or “my humanity is tied up with your humanity,” affirms the value of interconnectedness (Llewellyn & Howse, 1998). In South African tradition, “*ubuntu* is the capacity to express compassion, justice, reciprocity, dignity, harmony, and humanity in the interests of building, maintaining and strengthening the community” (Canadian International Development Agency, 2004, p. 1).

Relationships and interconnectedness can foster empathy and strengthen community. It is important for RJ organizations and criminal justice agencies to stay in contact, discuss issues, share perspectives and experiences, and work collaboratively to address the needs of victims, accused persons, sentenced offenders, their families, and their communities. Virtual processes offer valuable opportunities to continue working together while respecting public health restrictions which affect the ability to meet in person.

5. Creativity

Creativity has been the core of RJ since its inception. The Elmira case of 1974 and the subsequent creation of the Victim-Offender Reconciliation Program were the results of creativity by an employee from the Mennonite Central Committee, probation officers, and a judge (Kelly, 2006). RJ practices such as sentencing circles (Stuart,

1996) and Circles of Support and Accountability are also the result of innovative thinking (Tompsonski, 2014). More recently, the establishment of the Restorative Research, Innovation and Education Lab, which is located in Halifax, Nova Scotia, is an example of creativity and innovation (Tutton, 2020). According to Cameron (2006), “RJ’s strength is...that it is practice-led. This gives it a dynamism and creativity” (p. vii). This dynamism is apparent in how RJ organizations are developing new processes during the pandemic.

RJ in Saskatchewan

Saskatchewan has a province-wide RJ initiative offered primarily by First Nations, Tribal Councils, and non-profit community-based organizations (Government of Saskatchewan, n.d.) As of November 2020, the provincial Ministry of Justice funds 20 community-based organizations that offer RJ, and contracts 33 fee-for-service mediators who resolve referrals in other parts of the province. Additionally, the Ministry supports four community justice committees in rural areas, four school-based RJ programs, and Circles of Support and Accountability, which support medium- and high-risk offenders who have been released into the community (Tompsonski et al., 2011). There are also several other groups and organizations which offer or support RJ in Saskatchewan but do not necessarily receive funding through the Ministry of Justice.

In Saskatchewan, criminal matters involving adult accused are usually referred to RJ through the alternative measures provisions of the *Criminal Code*, while criminal matters involving youth are referred under the extrajudicial sanctions provisions of the *Youth Criminal Justice Act* (Government of Saskatchewan, 2013a). Police officers, courtworkers, mediators, community justice workers, and prosecutors identify potential referrals, which must be authorized by the Crown prosecutor. Provincial alternative measures and extrajudicial sanctions policies outline eligibility criteria and excluded offences (Government of Saskatchewan, 2013a).

Saskatchewan’s RJ initiative includes an ongoing training program and a database that has collected information about the referrals for two decades. There are approximately 3,500 referrals annually, and

over 100,000 criminal matters have been referred in the province since 1997–98 (Government of Saskatchewan, n.d.). A 2015–16 report indicates there were 3,689 referrals that year (2,478 adult and 1,211 youth) (Government of Saskatchewan, 2016). Approximately 90% of referrals were post-charge. The four most commonly referred offences included theft under \$5,000, mischief under \$5,000, assault, and possession of narcotics. Seventy-seven per cent (77%) of the referrals resulted in an agreement about what the accused would do to address the harm caused, and 95% of the agreements were fully or partially completed. The agreements included conditions such as diverting the accused to human service agencies for counselling, addictions treatment, anger management, or other therapeutic programs; paying restitution to the victim; completing community service hours; and making charitable donations (Government of Saskatchewan, 2016).

Impact of COVID-19 on RJ Agencies

COVID-19 has had a major impact on the justice system in Saskatchewan, as it has across Canada and in countries around the world. Police services, prosecutions, courts, and corrections had to determine how to provide services in ways that would protect the safety of all involved. On March 15, 2020, the Saskatchewan Court of Appeal, the Court of Queen’s Bench for Saskatchewan, and the Provincial Court of Saskatchewan issued a joint statement regarding the steps they were taking in response to their unique operational needs during the pandemic (Courts of Saskatchewan, 2020a). On March 22, 2020, the Provincial Court issued another notice indicating all non-custody trials, preliminary hearings, and criminal matters on the non-custody docket would be adjourned until after May 31, 2020 (Courts of Saskatchewan, 2020b). Since the kinds of charges most commonly referred to alternative measures and extrajudicial sanctions in Saskatchewan are heard in Provincial Court, this meant that matters which might normally have been resolved with RJ were adjourned between March and June 1, 2020, at which point many of the restrictions in the Provincial Court were lifted (Courts of Saskatchewan, 2020c). On March 24, 2020, the Ministry informed funded community-based agencies that the number of RJ referrals

would likely be reduced due to these and other changes related to the pandemic.

While data about the number of referrals in spring 2020 is not yet available, information is emerging about how RJ agencies are dealing with the pandemic. In May 2020, Mennonite Central Committee Saskatchewan hosted a webinar called “Protecting Togetherness: Working in Relationship during COVID-19” which featured Micah Mission, Parkland Restorative Justice, and Circles of Support and Accountability South Saskatchewan. These organizations provide services such as inmate visitation and offender reintegration. The presenters discussed the impact of the pandemic on the public, their organizations, volunteers, and those they work with. They commented that many people feel frustrated and confused, yet they are also finding innovative ways to help each other. They discussed their inability to enter prisons or to have face-to-face meetings between offenders and volunteers. Like many offenders, as well as victims and members of the public, RJ staff and volunteers may be experiencing a resurgence of trauma-related feelings regarding past incidents. Additionally, offenders involved with these organizations may be unable to access programming while in prison or in the community due to health restrictions (Mennonite Central Committee Saskatchewan, 2020).

Despite these challenges, these three organizations have found ways to adapt. Some Circles of Support and Accountability, for example, are holding virtual meetings and using phone calls and Skype so volunteers can meet with offenders. Since prison visitation was temporarily suspended, Parkland Restorative Justice provided tips to their volunteers regarding letter writing. RJ organizations in other countries are also experimenting with different ways of working. The Catholic Mobilizing Network (2020) offered a webinar titled “Five Lessons from Restorative Justice: In the time of COVID-19.” The presenter drew upon her experience with online circles to discuss five themes. First, she suggested circles open and close with a ceremony such as reading a poem or having a song or moment of silence. Second, she discussed the importance of starting with a check-in to identify concerns, questions, and feelings. A third theme was being wholly present and listening while suspending judgement, which

connects to the discussion about respectful communications earlier in this paper. Mediators often ask participants to pass a talking piece around the circle, which signifies that whoever holds the talking piece speaks and others listen without interrupting (Pranis, 2020). Although it is not possible to pass a physical talking piece during a virtual circle, the group could establish a speaking order and ensure it is followed so each person has an opportunity to talk (Pranis, 2020). Fourth, the webinar considered the link between social and economic marginalization, oppression, harm, and violence. The presenter suggested communities have a responsibility for their members, and individuals could consider what role they play in addressing these issues, which reflects the values of responsibility, relationships, and interconnectedness. Finally, the webinar suggested that restorative processes provide a place to reflect upon the experience of trauma.

A number of other RJ organizations are including ceremonies and opening and closing circles during virtual gatherings. Erika Sasson, the Director of Restorative Practices at the Center for Court Innovation in New York City, shared her experience in this regard:

We are all in a lot of Zoom meetings these days. But a virtual circle is meant to be different, even if it uses the same technology.

One way we accomplish this is through ceremony. By lighting candles and doing breathing exercises, we help participants tune out whatever else is happening in their lives at the moment and focus on the conversation.

Creating virtual circles is obviously not ideal, but there are some silver linings. The technology allows you to see everyone's faces up close, which means that sometimes the process can actually be more intimate than an in-person meeting. (Sasson, 2020, paras. 20–22)

Opportunities and Challenges

Since RJ has relied primarily on face-to-face processes (Pranis, 2020), one of the most practical questions is how the pandemic will

affect the ability to conduct meetings and peacemaking circles. Some of the steps in facilitating a case, such as reviewing files, can be undertaken by the mediator alone. Others could occur by phone or videoconference, such as interviewing the victim and accused, letting them know what to expect during the restorative encounter, and following up with them afterward. Generally, however, the restorative process ideally involves some kind of mediated encounter between the victim, the accused or offender, and perhaps others such as family, friends, neighbours, and justice officials.

The process of enabling victims and offenders to exchange letters and video recordings could provide valuable insights for RJ practices during and after the pandemic (D. Gustafson, personal communication, May 20, 2020). RJ organizations such as Community Justice Initiatives in Langley, British Columbia, have enabled victims and offenders to exchange letters and recorded statements for many years. If the victim wants to participate in an RJ process but is unwilling to meet the offender in person, or if the offender is currently on remand or is in a correctional facility, it may not be possible to hold a face-to-face meeting. In such situations, exchanging video recordings or letters can enable participants to share information, ask and answer questions, and discuss whether it is possible for the offender to make any amends. This kind of indirect communication provides time for each participant to consider what they want to say and reflect on the other person's statements before responding. The mediator can review the letters or video recordings in advance to ensure the tone is not bullying, threatening, or otherwise inappropriate. Another advantage to recorded video is that the viewer can see facial expressions and body languages. On the other hand, neither letters nor recorded statements enable the victim and offender to experience the immediacy of conversation. Online technology and videoconferencing offer exciting possibilities for this kind of in-the-moment experience.

RJ organizations are embracing videoconferencing platforms such as Zoom, Cisco Webex and Skype (Catholic Mobilizing Network, 2020; Pranis, 2020). Initial results from one case in British Columbia suggest it may be possible to use videoconferencing even in serious violent crimes. In spring 2020, Community Justice Initiatives

arranged a number of restorative encounters between members of the Reeder family, whose son Matthew was killed in 2018, and Miles Halverson, who pleaded guilty to manslaughter. Mr. Halverson was in prison, and the victim-offender dialogue was conducted via videoconferencing (D. Gustafson, personal communication, July 29, 2020). This victim-offender dialogue occurred through the Collaborative Sentencing Project, a pre-sentence RJ initiative in which the judge receives a report that includes recommendations from the participants regarding the potential sentence. In an interview with CBC News, Dr. Reeder discussed the Collaborating Sentencing Project. He said, “I think the opportunity to encounter Matthew's attacker face-to-face, and in a sense, heart-to-heart, was a hopeful thing for us” (Popyk, July 2020). On July 24, 2020, Mr. Justice David A. Crerar imposed a prison sentence of five years and six months less time served.

Turning to other matters, online technology raises a number of advantages and challenges regarding access to justice. Although online processes may allow some rural residents to participate in RJ processes, there is also a risk that reliance on this technology could exacerbate access to justice challenges if programs are only available through the internet or to those with high-speed bandwidth.

Sasson (2020, para. 23) suggests, “Virtual circles also eliminate the need for the headaches of transportation. It’s just an hour, and you can do it from wherever you are.” When the pandemic is over, online processes could continue to enable people to participate in RJ programs, particularly those who live in different communities. However, there are numerous barriers. In July 2020, Dr. Ian Marder and the Estonian Social Insurance Board arranged for 30 people from 17 countries to discuss RJ and COVID-19. The discussion indicated that “access to technology — e.g., WiFi, smart phones and phone credit — remained the key barrier to participation” (Marder, 2020, para. 7). It should never be assumed that everyone can participate in online restorative processes, particularly when slow internet access and lack of cell phone and internet coverage are issues in many rural, remote, and northern communities (Ruimy, 2018). Moreover, the staff and volunteers in RJ organizations and the victims and accused do not necessarily have internet packages (Millington & Watson,

2020) or access to cell phones and computers. For example, offenders on probation or parole must abide by the conditions of their release, which can include restrictions regarding internet access (Mennonite Central Committee Saskatchewan, 2020).

There are also challenges regarding training, privacy, confidentiality, security, and record keeping. As previously discussed, people may need training to participate effectively in online RJ processes. Millington & Watson (2020) have a number of suggestions about how to prepare participants for virtual circles, such as checking what kind of device they will use; holding preparatory meetings so they can practice using the technology; and having an administrator who can undertake tasks such as muting and spotlighting people during the meeting.

Given the sensitive and sometimes emotional nature of discussions during RJ processes, it is important to consider privacy and confidentiality. It can be difficult to find a private space for confidential conversations if family members are present or if there are other distractions (Marder, 2020; Mennonite Central Committee Saskatchewan, 2020). Mediators should ask whether it is safe for the virtual process to occur and whether anyone else is present, and establish ground rules to ensure participants agree they will not record the meeting or post anything confidential online (Millington & Watson, 2020). RJ organizations also need to consider how to ensure online processes are secure and records are stored in a way that they cannot be accessed by others if the mediator is working at home.

Safety is another important consideration (Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety, 2018). Participating online reduces the potential for exposure to COVID-19, which supports health and personal safety. RJ organizations that wish to conduct face-to-face processes will need to safeguard their staff, volunteers, and participants while respecting public health regulations. Assuming they have office spaces large enough to hold in-person meetings with physical distancing, participants could sit a few metres apart, although such a seating arrangement might not be conducive to emotional conversations, and it might not be possible to pass a talking piece.

Participating in online processes during RJ, psychotherapy, or counselling can provide a sense of being a safe distance from others, which may provide a false sense of security (Marder, 2020). Mediators should remain vigilant about the potential for harm and re-victimization, including trauma that could inadvertently result if people participate in RJ processes without adequate personal or professional supports. It may be difficult to access therapeutic services, particularly if agencies that offer counselling, anger management, or addictions treatment are not available or not operating at full capacity. These kinds of services may be especially necessary if participants are dealing with significant trauma or experiencing additional stress related to the pandemic. In such situations, mediators might want to consider whether it is wise to proceed if supports are unavailable.

The experience of COVID-19 illustrates the importance of a relational approach. Many people have reported a profound sense of social isolation while they are unable to meet with family, friends, and colleagues. For example, 52% of participants in an online crowdsourced survey conducted by Statistics Canada (2020b) reported their mental health was “somewhat worse” or “much worse” since physical distancing began. In addition to the personal impact of isolation, mediators were unable to walk into their coworkers’ offices, meet with clients and justice professionals, or attend court. As discussed in the webinars offered by Mennonite Central Committee Saskatchewan and Catholic Mobilizing Network, mediators and volunteers fell back on letters and phone calls or learned new technology such as videoconferencing. The existing literature suggests online technology may be able to assist mediators and other groups with networking and supporting each other. Marder (2020) reports that virtual circles have been used in Wales, England, and Italy to support teachers, social workers, and other professionals during the pandemic. In England, “listening hubs” have been established for local government staff, and online training occurred with “restorative inquiry questions to help people access the emotional load they are carrying” (Marder, 2020, para. 2). These experiences suggest online platforms may have a role in building virtual communities that draw upon restorative values and practices.

Those communities could continue after the pandemic, enabling mediators and volunteers to continue enhancing their practice and mentoring each other.

Initial Recommendations

The situation regarding the pandemic continues to evolve, and we do not know what changes will have taken root by the time it is over. Despite the challenges, COVID-19 provides an opportunity to rethink the provision of both criminal justice services and RJ programs. In this period of innovation and uncertainty, we would like to share some recommendations for consideration by governments and RJ organizations.

1) The Federal Government

It is timely for the federal government to consider how to further support RJ. In addition to the Indigenous Justice Program, the federal government offers Restorative Opportunities, which enables victims to communicate with offenders who are serving a federal sentence (Correctional Service Canada, n.d.). The Department of Justice Canada has held a knowledge exchange and developed an online directory of RJ agencies, and several federal departments are supporting data collection and evaluation.

During the pandemic, the federal government could host a gathering of RJ and Indigenous organizations to discuss the benefits and challenges of online processes, or fund pilot projects to test innovative models. Additionally, the federal government could support mediators in learning from each other and from RJ initiatives around the globe through conferences and exchange programs. Such events would occur virtually for the time being but could continue in-person when the pandemic ends.

2) Provincial Governments

Provincial governments could convene a virtual gathering where Indigenous organizations, RJ groups, and criminal justice agencies discuss their experiences and ideas regarding the impact of the pandemic on their services and communities. This could foster

mutual connections and enable them to discuss collaborative responses. One important topic is whether there is a need for guidelines regarding virtual RJ programs, what would be included in such guidelines, and the process for developing them. These discussions could lead to future steps such as assisting RJ organizations to acquire the necessary technology, training, and expertise. These conversations could enable attendees to learn about emerging community-based practices and explore the potential for innovative processes that address challenges such as case backlogs and the need for trauma-informed, culturally sensitive programs.

3) Community-based RJ Organizations

RJ organizations may wish to document their challenges and experiences during COVID-19 to identify lessons learned and promising practices. They could partner with tech companies and app developers to see if there are other creative ways to use technology during restorative processes. The technology needs to be accessible, secure, and easy to use.

Given the importance of a relational approach, restorative organizations could reach out to staff, volunteers, and clients through regular virtual check-ins. Additionally, they might want to host virtual town hall meetings regarding responses to crime and victimization in order to remain locally grounded and connected during and after the pandemic. They could also reach out to justice system agencies to share their ideas about how to address emerging community needs. Given their experience with facilitating respectful conversations on difficult topics, RJ organizations may be in a good position to facilitate dialogues on challenging topics such as the over-representation of Indigenous peoples and racialized groups in the justice system.

Future Research

One of the interesting questions raised by this paper is “why RJ practitioners tend to believe that online and telephone engagement are necessarily inferior to face-to-face work” (Marder, 2020, para. 8). It would be valuable to compare the benefits, challenges, and outcomes

of restorative processes conducted face-to-face, online, and through indirect methods of communication. It would be vital to ground this research in discussions with RJ agencies and Indigenous organizations. Additionally, when data is available regarding referrals to RJ and crime statistics during the pandemic, it would be important to consider whether and how changes in crime and victimization impact the use of RJ.

An international comparative study exploring a restorative approach to address collective trauma associated with COVID-19 could result in important data regarding healing and new approaches. Claudia Mazzucato from the Università Cattolica del Sacro Cuore of Milan, Italy, has called for a Truth and Reconciliation Commission (TRC) to heal COVID-19 wounds (Mazzucato, 2020). Marder (2020) describes a series of circles in the Lombardy region of Italy where medical professionals, people who had been hospitalized or whose family members had passed away during the pandemic, and others could tell their stories. Future research could explore the structure of a TRC and its potential to address the collective trauma resulting from COVID-19 and other societal challenges.

Final Thoughts

In Saskatchewan and elsewhere, COVID-19 has led RJ organizations to experiment with new ways of providing restorative justice services while supporting clients, community members, and each other. After testing various platforms with a mock RJ process, consulting RJ programs and practitioners, conducting interviews, and consulting with partners and RJ ambassadors who had lived experience with RJ processes, Millington & Watson (2020) conclude that videoconferencing may not be suitable for all cases, but “it is clear that practitioners are starting to see the potential for its use” (p. 21). Videoconferencing may offer important opportunities to RJ programs at this time of physical distancing, although this comes with challenges regarding access to justice and questions about matters such as active listening, empathic presence, and compassionate communication.

While COVID-19 has created significant disruption, it also provides a

historic opportunity to think differently about the justice system, reviewing assumptions formerly considered sacrosanct (Delaney, 2020). It is hoped that the current crisis will be a catalyst for innovation and creativity (Standage, 2020), which could lead to greater integration and interconnectedness (Llewellyn & Llewellyn, 2020) between and among RJ organizations, criminal justice agencies, and other social systems. The values of respect, relationships, responsibility, interconnectedness, and creativity offer guidance and a roadmap (Van Ness & Strong, 2010) at a time when people and organizations are striving to adapt their practices, offer virtual circles, and develop new ways of working together. Rather than simply a ‘new normal’, this could lead to a ‘better normal’ for RJ organizations and the people and communities they serve.

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