

## MEMORIAL PRESENTS

THE 38<sup>TH</sup> IN A SERIES DEVELOPED FROM PUBLIC ENGAGEMENT INITIATIVES SPONSORED BY THE LESLIE HARRIS CENTRE OF REGIONAL POLICY AND DEVELOPMENT.

## LIVING JUSTLY

## HOW RESTORATIVE JUSTICE NURTURES OUR COMMUNITIES

BY DR DOROTHY VAANDERING

**R**estorative justice (rj) has been part of the Newfoundland and Labrador cultural landscape for several decades. Its features are perhaps not as dramatic as the rocky shorelines, undulating barrens, or tumbling ocean, yet like trailing partridgeberry groundcover that is easily overlooked from a distance, it is reliably present.

The recent Dalhousie University Dental School Facebook incident in which male dental students posted misogynistic comments about their female counterparts brought rj to the foreground in Nova Scotia, across the country, and around the globe. Despite the fact that rj has been implemented comprehensively in NS into various aspects of society and has garnered significant traction over the past 15 years, the decision by the university and most of those directly involved to use an rj process to address the harm done has created heated discussions about its appropriateness. A petition signed by more than 50,000 people, irate on-line news response comments, and a formal complaint launched by several DAL faculty members overwhelmed the voices of those calling for calm and clarity of thought. However, as time progresses and DAL administration and students involved remain unwavering in their decision, people are beginning to ask, “What exactly is rj?”

A recent article in the *Cape Breton Independent*, responding to this question accurately states, “The short answer is that there is no short answer.”<sup>1</sup> Since the mid-1970s, when the global rj movement got its start in Kitchener, Ontario as an alternative response

to crime, proponents have identified how it is really a new/old approach that is rooted in ancient indigenous and spiritual traditions.<sup>2</sup> The challenge in defining it comes because, unlike the rules and regulation of the criminal code that can be documented, rj practices are embedded in principles of living, “a way of being” that values relationship. Thus, rj requires that we reconsider our assumptions about the term “justice”.<sup>3</sup>

In our current judicial context, justice emphasizes law, obedience to the law, and punishment when crime is committed. Rj, like social justice, identifies justice as promoting the well-being, interconnectedness, and worth of all. In so doing rj is first and foremost about *living* justly, proactively creating and nurturing healthy relational communities where people commit to interacting in a manner that upholds the dignity of all. Then, when harm does occur, because the impact is felt broadly the focus turns to the needs of those harmed and to how those causing harm can respond and repair the brokenness so that everyone can again become functioning contributors within the communities of which they are a part. Instead of asking “What rules were broken? Who did it? What do they deserve?” rj asks “Who has been hurt? What are their needs? Who is obliged to address the needs and put right the harms?”<sup>4</sup>

### Who has been hurt?

This is a difficult shift to make. When people are used to addressing harm and wrongdoing with punishment and they are first introduced to rj, it is common to try to implement the *practice* of restorative justice apart from a

relational community context. This causes confusion as is evident in the negative responses to the DAL incident.

In reviewing rj in NL, this broader perspective on justice and its emphasis on communities becomes noticeable.

Joan Pennell and Gale Burford began NL's formal engagement with rj in the early 1990s with their rigorous research in the field of social work examining the effectiveness of Family Group Conferencing (FGC) in situations of child welfare and domestic violence. FGC is an rj approach that puts the family at the centre and empowers it to make plans with regards to its young relatives and to receive support from public agencies and community groups in carrying out these plans.<sup>5</sup> It is not a strategy for mediating conflicts between those who abuse and those they abuse, or a means to keep those who harm from being held accountable, nor is its purpose to keep nuclear families together at all costs.<sup>6</sup> Their research, which continues today,<sup>7</sup> found that in families that participated in FGC reports of abuse and neglect declined by half in comparison to families who did not. At its heart, FGC, when implemented holistically, recognizes that for change to occur responsibility must remain primarily with those concerned, while public and community agencies surround them with necessary support.

From 1994-2009, Community Mediation Services (CMS), a non-profit organization under the auspices of Mennonite Central Community and individual sponsorship, was "the most active Alternative Dispute Resolution advocate in Newfoundland and Labrador ... a non-profit agency whose mission is to promote collaborative conflict resolution and rj as ways to create safe and healthy communities where diversity is respected and relationships are valued."<sup>8</sup> Along with a committed board of directors and various part-time and volunteer employees, Scott and Melody Morton-Ninomiya were hired and shared a full-time executive director position for five years. At its height CMS provided extensive facilitator training for 22 people who worked to help communities, families, and neighbours resolve conflicts; implemented a three-month pilot project with the Royal Newfoundland Constabulary that saw 73 cases successfully addressed outside of court; created and introduced a peer mediation program to schools across NL; and supported organizations working with prisoners such as Turnings and Circles of Support and Accountability (COSA).

Concurrently, drawing on their historic engagement with relational worldviews, Miawpukek First Nation (Conne River) formalized its engagement with restorative justice in their justice system and documented it in their self-government agreement with the federal government.<sup>9</sup>

While Miawpukek continues to engage with rj formally, FCG and CMS initiatives are not as evident. As is often the case with introducing new approaches into traditional structures, sustainability is difficult.

### **This is a moral universe**

Currently, a project that is paying close attention to sustainability factors is being introduced to educators through Memorial University's Faculty of Education. *Relationships First-Rj in Education* stresses personal core values and interconnected communities as foundational for addressing the impact of harm when it occurs. Educators learn how a holistic rj framework supports them in all their school-based relationships: with self, other adults, students, curriculum, pedagogy, and the institution. This has led to the formation of a consortium of individuals and organizations that are explicitly addressing the disconnected experiences youth and adults encounter in our society, by using rj.<sup>10</sup>

These experiences in social work, community, court, and education contexts illustrate how rj is comprehensive and versatile because it is grounded in a philosophy that upholds the dignity and interconnectedness of all human beings. For rj to take hold, this foundation must be acknowledged explicitly along with an understanding that adversarial approaches predominantly encourage us to view people as objects. Western thought is currently steeped in liberal, individualistic mindsets that encourage a 'survival of the fittest' capitalist stance where people are valued primarily for what they contribute to the economy, not for who they are. In contrast, most people inherently crave knowing that they belong and are cared for unconditionally by others. In our better moments we acknowledge that to thrive we need to work for everyone's well-being, but as soon as we risk losing what we have personally, we become protective and choose selfishly.

It is human to struggle between selfish ambition and collective good. Desmond Tutu articulated this tension in 2005 when he said (I believe this motivates many of us to get up in the morning): "This is a moral universe, which means that, despite all the evidence

**Western thought currently values people for what they contribute to the economy**

that seems to be to the contrary, there is no way that evil and injustice and oppression and lies can have the last word.”<sup>11</sup>

In many ways, our population’s resilience in the face of adversity embodies this hope; they know it is family and community ties that keep them strong. As such, NL is poised for understanding and implementing rj in a profound and sustainable manner. Yet, this reputation is scarred by protective individualism where communities are regularly fractured by family breakdown, sexual and physical abuse, an excess of children in under-funded and under-resourced care systems, an over-extended judicial system and deplorable prison and after-prison conditions, alienating school experiences leading to excessive suspension, expulsion, and drop-out rates, bullying, work-place harassment, homelessness, drug and alcohol addiction, etc. Though there are noble efforts in place addressing these concerns, rarely do they succeed at nurturing the interconnected relational qualities of the broader communities that can support the healing of those harmed. Rj, implemented carefully, can contribute more fully to this.

What exactly would this look like? The following summary and brief description of an rj process that is intended to provide a glimpse into how a community committed to the well-being of all can function when hurt; it also illustrates how, even when people might be entrenched in an individualistic mindset, participation can begin to nurture communities that value interconnectedness. The cultural change required to create communities that are committed to comprehensive well-being is immense and can only occur gradually. Proactive and responsive actions need to occur simultaneously for maximum growth.

To review: “rj acknowledges justice as honouring the worth of all and is enacted through relationship.” Then “when something occurs that affects the well-being of some, a *space* is provided for dialogue whereby the dignity of all involved and affected can be restored so that each can once again become a contributing member of the community of which they are a part.”<sup>12</sup>

### **Sharing answers, taking responsibility**

What does this space for dialogue include? As you read the following description, consider how rj principles are embodied and how variations of this process can be implemented in your own contexts.

- Harm is caused, experienced, and reported;
- Competent, trained facilitators are appointed to engage with the case;
- Those experiencing harm indicate their desire to participate in a restorative conference;
- Those causing the harm are asked to acknowledge their involvement in the incident (levels of involvement or admission of guilt can vary);
- If they acknowledge responsibility and/or involvement they are invited to meet with those harmed;
- The facilitators meet separately, in person, with each one involved to:
  - Describe and clarify the process till the participant is satisfied.
  - Pose the questions they will be asked to respond to during the meeting. Participants are asked to share their answers with the facilitator in this pre-conference meeting so the facilitator is aware of the details. This allows the participant to rehearse what they want to say and to be reminded, if necessary, to stay focussed on telling their personal story rather than slipping into statements that blame.
  - Share how the questions posed to each person in the circle meeting are intended to draw out each person’s story—past, present, and future—and will include variations of the following: What happened? What were you thinking/feeling at the time? What are you thinking/feeling now? What impact has this had on you/others? What is the hardest thing for you? What do you need [to do] for the harm to be repaired? When stories are heard in the conference, the multi-faceted aspects of the event becomes clearer so an effective response can be created.
  - Be alert to and discern any interpersonal dynamics that indicate there might be a power imbalance that could result in further harm either during or after the meeting. If there is a risk of further harm, the meeting will not happen or will be postponed until counselling ensures all participants will be safe during and after the meeting.


**What happened?  
What were you  
thinking? What  
are you feeling  
now?**

- Ask who else they feel has been affected that would benefit from or contribute to the meeting. These people will be invited to attend and if agreeable will also have a pre-conference meeting.
- Ask if they wish to have a person (a spouse, partner, friend, parent, relative, colleague) present to support them during the meeting time. This is strongly encouraged so they have someone to help them process their thoughts before, during, and after the experience. Whoever is suggested is invited and will also meet with facilitators before the meeting. (At times this person is identified before the pre-conference meeting and the two meet with the facilitators together.);
- After all the individual meetings are held, facilitators deliberate on the details, consider if others impacted or involved peripherally should be invited based on what they have heard, and make plans for a meeting time and place that will be amenable to all involved. Final details are given to all participants so everyone is fully aware of who will be present;
- The meeting space is consciously arranged by the facilitators with a chair for each person set up in a circle. Those directly involved, with their supporters, sit on either side of the facilitators; those less affected complete the circle sitting between the two groups;
- The facilitators begin the meeting with a welcome, introductions, a summary of the purpose of the meeting, and a reminder of the process. Questions are posed first to those who have caused the harm, then to those who experienced the harm, and finally to those affected in various other ways so that the details and impact of the event are heard by all. Opportunity is given for people to respond to each other with questions and comments after everyone has had an initial chance to share their stories. Final rounds of discussion allow participants to indicate what they require for the harm be repaired; facilitators note what is said; those primarily responsible are asked what they can do or need in order to make restitution. Others can also offer solutions.

A written contract is created reflecting what was agreed upon by the group and signed by everyone;

- The meeting ends with an informal time of interaction and refreshments.

The process at every stage is intentionally inclusive and respectful of each individual and the collective. The resolution, along with indications of support and accountability, arise from the interconnectedness within the group.

Though this article cannot delve into the nuances of every step or the variables in every situation, by outlining the foundational and practical components of rj, the reliable presence of rj as present in NLs cultural groundcover has hopefully become more visible.<sup>13</sup> 

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1 Moira Donovan, "Greater focus on restorative justice because of Dalhousie case," *Cape Breton Independent*, NB, February 6, 2015.

2 Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, (Waterloo: Herald Press, 2005).

3 Dorothy Vaandering, "A Faithful Compass: Rethinking the Term Restorative Justice to Find Clarity," *Contemporary Justice Review*, 14:3 (2011): 307.

4 Zehr, (2005).

5 J Pennell and G Burford, *Family Group Decision Making: New Roles for 'Old' Partners in Resolving Family Violence: Implementation Report* (Vols. I-II). St John's, Newfoundland, Canada: Memorial University of Newfoundland, School of Social Work.

6 J Pennell & G Burford, "Widening the Circle: The Family Group Decision Making Project," *Journal of Child & Youth Care*, 9 (1994): 1-12.

7 James Ptacek and Loretta Frederick, *Restorative Justice and Intimate Partner Violence*, VAWnet: National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence (January, 2009).

8 Andrew Wadden, *Community Mediation Services Report, NL Branch*, (2009).

9 Miawpukek First Nation Self-Government Agreement-in-Principle (Chapters 14-26), retrieved from: <http://www.aadnc-aandc.gc.ca/eng/1402323086876/1402323130308>.

10 Dorothy Vaandering, *Synergy Session: Relationships First: Rethinking the Formation of School Culture*, retrieved from <http://www.mun.ca/harriscentre/policy/synergysessions/2014f/>.

11 Desmond Tutu, *God has a Dream*. (New York: Doubleday, 2005).

12 Vaandering, 2011.

13 Resources describing the principles and practices of rj in various contexts are readily available electronically and in print. For further information please contact the author at [dvaandering@mun.ca](mailto:dvaandering@mun.ca).