

Athabasca University  Master of Arts - Integrated Studies

RESTORATIVE JUSTICE: A VIABLE ALTERNATIVE FOR  
INCARCERATED ABORIGINAL PEOPLES IN CANADA?

By

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## Abstract

Today's Canadian criminal justice system is becoming more punitive and research in Restorative Justice is needed in order to bring in new programs to help inmates. In particular, Aboriginal peoples are not responding well to the Canadian "punitive" model of justice because punishment within Indigenous communities has historically been different than traditional Canadian sentencing. Unfortunately, the proportion of Aboriginal peoples that are incarcerated compared to the percentage Aboriginal peoples represent in the Canadian population is concerning. A Restorative Justice program can potentially help Aboriginal offenders avoid the "revolving door of justice" by participating in a Restorative Justice program as an alternative to sentencing. This paper establishes whether the Restorative Justice program is a viable alternative for incarcerated Aboriginal peoples in Canada through the interpretation of research that has been completed. The results of this paper are that the Restorative Justice program has had positive outcomes but additional research is required to judge how well the program has performed and how well Aboriginal offenders have reintegrated into society.

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## **Purpose**

Research has shown that Aboriginal peoples in Canada are over-represented in Provincial and Federal Institutions because the traditional criminal justice system does not meet the needs of Aboriginal offenders and the Indigenous community's alternative justice (restorative justice) programs do not always work to provide the best options for offenders in this category.

Research also demonstrates that many Aboriginal peoples who are incarcerated suffer from alcohol and drug abuse, lack of proper facilities on their reserves (i.e. clean water, proper housing, access to education) and unfortunately many of these problems plague next generations. These difficulties can directly be attributed to colonization and its ongoing effects on Aboriginal peoples. Other problems can also be linked to the Government of Canada's failure to uphold treaties made with some Indigenous peoples. It is in this context that after many years, the Federal Government has come up with an initiative that can potentially reduce the likelihood of recidivism for Aboriginal peoples after prison called "Restorative Justice." The purpose of this work is to establish whether Restorative Justice is a viable alternative for incarcerated Aboriginal peoples in Canada.

The Aboriginal population has been defined to include Aboriginal people, North American Indian, Metis, Inuit, or anyone whose cultural heritage is defined by more than one group or who is registered as Treaty Indian or of an Indian band (Brozowski, Taylor-Butts & Johnson, 2006). The term "Aboriginal" will be used in this paper as it is referred to and entrenched within the Canadian Constitution. For clarity, Aboriginal peoples include Metis, Inuit and Indians.

The 2001 Census stated that 976,000 people in Canada self-identified as Aboriginal people. Of this group, 609,000 (62%) are North American Indian, 292,000 (30%) are Metis,

45,000 (5%) are Inuit and 30,000 are more than one cultural group, or are Registered Treaty Indians (Brozowski, Taylor-Butts & Johnson, 2006). The Aboriginal peoples in this group represent 3.3% of Canada's entire population, and this figure is expected to grow to 4.1% by the year 2017. Although, these statistics can be skewed considering that not everyone fills out census forms, and therefore statistics do not always accurately portray that which is being studied.

When an Aboriginal person is sentenced, he/she has the option to participate in a Restorative Justice Program. The Restorative Justice Program (Plett) is a program based on healing through the community. For the purposes of this paper, Canadian Restorative Justice Programs are programs that are culturally suited for Aboriginal peoples - in particular programming that includes cultural teachings and ceremonies such as sentencing circles and sweat lodges.

### **The Colonization of Aboriginal Peoples**

Aboriginal peoples have been subject to constant colonial pressure in Canada over the years. In a general sense, colonization of a people means that the cultural heritage of the subordinate group is denied or suppressed. Even in this century, Aboriginal people "continue to be marginalized and oppressed by the systemic structures that represent and reinforce Western ideologies" (Yuen & Pedlar 548). The Royal Commission on Aboriginal Peoples (1991) was a Commission which examined and guided Aboriginal life in Canada in the late 1990's. This colonizing process created a type of apartheid system which was said to have created "psychic reserves in the hearts and minds of tens of thousands of Aboriginal people" (Knopf 33).

### **Canadian-Aboriginal Relations**

It has been noted that at the turn of the century, the Aboriginal people were the most impoverished in Canada. They were "afflicted by large-scale poverty, residential school traumas,

low education levels, high incarceration and suicide rates, family violence, poor health, and almost epidemic diabetes, alcoholism, and substance addiction” (Knopf 5). Aboriginal peoples are four times more likely to live below the poverty line as non-Aboriginals, and their unemployment rates are almost double that of non-Aboriginal peoples. The Canadian Criminal Code section 718.2 (e) states that “all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders” (“Criminal Code of Canada”) therefore it is required that a consideration as to the background of Aboriginal offenders be made during the sentencing of Aboriginal offenders. It is believed by Adjin-Tettey (2007) that over representation of Aboriginal offenders is a result of “the legacies of colonization, [including] the denigration and outlawing of Aboriginal traditions and norms” (Adjin-Tettey 2007). The use of restorative sentencing should be reviewed in light of the victim’s interests and those of the offenders. Furthermore, Aboriginal women have had concerns regarding “potential marginalization in a regime that seemingly considers culture, community interests, and harmony in determining fit sentences in response to their victimization” (Adjin-Tettey 2007). Some courts are actively seeking ways to address the injustice of over representation of Aboriginal offenders by modifying and reversing sentencing in this group by using section 718.2 (e) for example.

Aboriginal peoples are incarcerated in numbers five to six times greater than the Canadian national average of non-Aboriginal peoples being incarcerated, with 80 percent in the Northwest Territories and 50 percent in the Prairie Promises (Knopf 5). Urban Aboriginal peoples prosecuted for criminal activity are 4.5 times more likely than non-Aboriginal offenders in Calgary and 12 times higher in Regina and Saskatoon (Knopf 5).

## **Alternative Programs**

It seems that there are many definitions of the term “Restorative Justice.” On the one hand there is the State definition that interprets the term as “one way to respond to a criminal act. Restorative justice puts the emphasis on the wrong done to a person as well as on the wrong done to the community. It recognizes that crime is both a violation of relationships between specific people and an offence against everyone - the state” (“Restorative Justice”). This definition is straightforward but it does not encompass the essence of Restorative Justice. According to Eric Gilman, a Restorative Justice researcher at Simon Fraser University, “Restorative Justice is not about specific programs or a specific process. It is a philosophy, a set of principles and values. If Restorative Justice is to have practical application these values need to become the foundation and guiding principles for how a community and its justice system understand every aspect of their response to crime” (Gilman 2). It is the interaction between the victim, offender and community that make this program unique. According to Gilman, traditional prison systems focus on the punishment of the offender (i.e. sitting in a cell with limited access to the outside world) which doesn’t rehabilitate the offender (Gilman 1). Restorative Justice is an alternative to the traditional prison system.

## **Aboriginal Overrepresentation in the Canadian Criminal Justice System**

In Canada, an example of overrepresentation in the criminal justice system of Aboriginal peoples has been seen in Nova Scotia and New Brunswick (but not in Prince Edward Island and Quebec). In Nova Scotia and New Brunswick the over representation “is 1/5 to two times higher than would be expected given the size of their respective provincial Aboriginal populations” (Milward 101). Statistically, “this disproportionately is 5 times, in Alberta 9 times, in Saskatchewan 10 times, in Ontario 9 times, and in Manitoba, it is 7 times higher than expected”

(Milward 101). The Aboriginal population has increased in the Federal prison population from 11% in 1991 and 1992 to upwards of 17% by the year 1998/1999 (Milward 101).

Canada's *Criminal Code* incorporates sentencing objectives which include the universal goal to deter offenders and others from committing crimes. Section 718(a) provides that sentences should "denounce criminal conduct" (Milward 103). Thus deterrence has two purposes: punishing offenders to prevent them from further criminal activity and finding ways to get criminals to respond to restorative justice efforts. Unfortunately, Western criminal justice systems and their guiding principles do not always seem to work with and in Indigenous communities.

It has been stated that Indigenous laws (laws that are specific to Aboriginal Peoples) consist of "commonly held customs transmitted through exemplary living and oral teaching from generation to generation" (Milward 104), and Aboriginal offenders reveal legal tradition based on shared kinship and ecological integrity" (Milward 104). These Indigenous laws provide how Aboriginal peoples resolve problems in their communities, and the laws try to deal with Indigenous offenders in a constructive way which is "more in keeping with Indigenous traditions, and thereby make the use of imprisonment in large part unnecessary" (Milward 104).

According to Milward, The Royal Commission on Aboriginal Peoples provides that – the over incarceration of Indigenous people occurs because of "colonial subjugation of Indigenous people" (Milward 104). During colonization Indigenous people were dislocated and endured poverty, this put them in the position of being oppressed and broke down the traditional value systems in many Indigenous communities.

Many Nations experienced a social breakdown and many people developed a low self-esteem as a result (Milward 105). This contradicted to the issue of the Indigenous peoples being



controlled within the criminal justice system and being susceptible to “the suffocating mantle of a legal system imposed through colonization” (Milward 105). One way to counter these negative attitudes is to utilize the Hollow Water Healing Circle Program, which emphasizes healing in the Manitoba Indigenous community. Also, many criminal justice theories promote the offender in conjunction with the court system to work with people “with a stake in a conflict craft the resolution themselves by agreement” (Milward 107). This process of Restorative Justice allows the victim to also participate in the process to find a satisfactory resolution to the conflict.

### **The Criticisms of Restorative Justice**

The Restorative Justice program has been criticized as not able to manage and recognize the unequal power seen among the participants to this process. Restorative Justice “strives to create a less adversarial process and [puts] less emphasis on formal rules” (Milward 107). Some theorists see the Restorative Justice program as unfair to the community since some sentencing gives Indigenous offenders more power in the resolution of conflicts, and offers alternatives which may include avoiding incarceration entirely (Milward 107). Some Restorative Justice programs require an apology from the abuser and forgiveness from the victim, but the offender may be in a position to continue the abuse if the relationship is not monitored.

Other criticism’s of the system include the concern that “Indigenous justice initiatives often reflect prior imbalance between genders” (Milward 108). In this situation, the concern arises that “male Indigenous leaders pursue community-based sanctions to the frequent benefit of male Indigenous offenders who commit crimes against Indigenous women” (Milward 108). Milward analyzed that Inuk accused in the northern regions of Canada used sentencing circles as “a quick way out of jail” (Milward 108). When these softer sentences make the victim’s harm minimized, it leads “to a sense that causing harm will not lead to meaningful sanctions”

(Milward 108). Milward suggests using methods that are traditional to Aboriginal Peoples. For example, some Indigenous societies require conflicts among victims and criminals to be resolved with the “presentation of material gifts to the victim, or the victim’s kin, as reparation for the offense” (Milward 109). By accepting the gifts the conflict is considered resolved and the harmony in the community is considered restored (Milward 109). Milward found that this system worked because “the offender brought shame to the clan and become accountable to the clan borders” (Milward 108).

### **The Pros and Cons of Restorative Justice**

There are other theorists such as Dickson-Gilmore and La Prairie who believe the Restorative Justice program is not as well suited to Aboriginal peoples. Dickson-Gilmore and La Prairie have written: “... Restorative Justice is essentially a modern restatement of traditional values (Gilmore, Jane Dickson and La Prairie, 2005). In this context, the authors note an irony writing that many Western criminal justice systems are drawing on Canadian traditional values and practices in developing Restorative Justice reforms and approaches. On the other hand, there are those that strictly adhere to the concept of Restorative Justice programs, and believe it to be a viable alternative to typical imprisonment such as Braithewaite. He has written that these specific programs in Restorative Justice were an asset to alternative sentencing. These include: victim offender (Braithewaite 54), healing circles (Braithewaite 25), family group conferences (Braithewaite 49), restorative probation (Braithewaite, pg 149), reparation boards on the Vermont model (Braithewaite 58), Chinese Bang Jiao programs (Braithewaite 20), and exit conferences (Braithewaite 17).

The basis of Restorative Justice is to help the offenders and redress the wrongs they have committed. The Restorative Justice Program “creates common ground which accommodates the

goals of many constituencies and provides a collective focus for Aboriginal peoples” (“Restorative Justice”). One of the programs within Restorative Justice, the Sentencing Circle, includes members of the Aboriginal offender's community, such as the Chief, Elders, Band Councilors, the victim or his/her family, police, prosecution and defense counsel which all gather and then recommend an appropriate sentence (“Department of Justice Canada”). Aboriginal offenders are able to request being sentenced by a sentencing circle instead of a trial judge. The idea of Restorative Justice works to recognize the personal and interpersonal nature of the crime to engage the victim and the offender in the healing process and to restore the crimes to the law abiding society once again (“Department of Justice Canada”). The first step is that the offender admits to the crime, hears from the victim, and learns to be sensitive to the pain that the victim feels after the crime has been committed (“Department of Justice Canada”). As a result, the process usually ends with both the offender and the victim actually agreeing as to the proper reparations which will be necessary for the offender to make amends which may include making damage payments, going to counseling or having to perform community service (Carter). In most cases, the offender signs a contract and the victim helps with drafting the contract for reparation for the crime committed against him or her (Carter).

### **Restorative and Punitive Models**

There are contrasts between restorative and punitive models of criminal justice reform. The Indigenous communities have worked to achieve autonomy and an increased level of control over the application of criminal justice within Indigenous communities. In this way, the Indigenous communities can work to find viable solutions to the problem of Indigenous incarceration. Indigenous communities have sought to find internal solutions to problems with criminal offenders. If the community seeks to use Indigenous traditional punishment methods to

incarceration it is possible to add these alternatives to restorative solutions (Milward 101). There is traditionally an issue with the balance of power within the Restorative Justice system. It is an issue when Indigenous justice involves “a lopsided emphasis on offender healing.” (Milward 101).

Some programs defer corporal sanctions for use as alternatives to deferring criminal activity. Some theorists believe these sanctions are less humane punishment than incarceration. The alternatives offer the dual concepts of deterrence and retribution, and also have the benefit of greater cultural meaning. Any change in Aboriginal community justice systems will need to include permission from the leadership of the community for approving the changes (Milward 101). The community recognizes that there are some people who are more vulnerable than others, such as women who have been victims of sexual or domestic assault.

In the Restorative Justice system, the Aboriginal offenders are forced to focus on his/her actions and how it affects the community. Restorative Justice is then viewed as a road to healing, for both the victim and the offender. The idea of Restorative Justice includes the belief that the community will be involved in the offenders’ rehabilitation. This shifts the focus from punishing the offender to finding alternatives to punishment and reconciliation at the community level. In this new system, the victim is able to discuss the specifics of the crime and begin the process of healing for the victim for the victim as well as the offender.

### **Statistics**

There has been research on the topic of Restorative Justice and how the Canadian Restorative Justice programming initiatives have worked thus far. Many researchers feel that Restorative Justice programming has not been fulfilling its purpose of rehabilitating individuals and other researchers feel that compared to “General programs” in prison, that the Restorative

Justice program has notably reduced the chances of recidivism for Aboriginal inmates. These general programs include working for payment (i.e., .10 Cents an hour in prison) or, group therapy sessions (“Correctional Service of Canada”). Through Cormier’s, it was established that Restorative Justice met many goals including meeting the needs of victims, rehabilitating/reintegrating the offender, reducing recidivism, and reducing pressure on the criminal justice system which are all goals in this program (Cormier). Additionally, Cormier’s work seems to establish that it is his understanding that the program has been a success. He wrote of this:

“These researchers found that victims and offenders who participated in mediation were more likely to be satisfied with the manner in which the justice system responded to their case than offenders and victims who were referred to but never participated in mediation. Satisfaction with the outcome of the mediation was very high among victims (89%) and offenders (91%)” (Cormier).”

The Restorative Justice program is becoming popular in Canada with the Canadian Department of Justice stating there are: four National Programs, fifteen programs in Ontario, four in Nova Scotia/PEI, three in the Yukon, thirty in British Columbia, eight programs in Alberta, four in Newfoundland/Quebec, one in the Northwest Territories, one in Nanuvut and two programs in Manitoba/Saskatchewan (Department of Justice 10).

In their article, “Victimization and offending among the Aboriginal population in Canada,” the authors Brozowski, Taylor-Butts and Johnson noted that there were several statistics in relation to Aboriginal offenders including:

“Aboriginal people are more likely to be accused of homicide (10 times more likely) and more likely to be an actual victim of a homicide than non-

Aboriginals... There are 11.2 accused persons per 100,000 Aboriginal population compared to 1.1 accused persons per 100,000 non-Aboriginals)...8.8 per 100,000 is the average homicide rate for Aboriginal people compared to 1.3 per 100,000 for non-Aboriginals...Crime rates on the reserve are three times higher than crime rates in the rest of Canadian regions (28,900 per 100,000 population on reserve compared to 8,500 per 100,000 population in the rest of Canada).” (Brozowski, Taylor-Butts & Johnson 2006).

There are a couple of factors which may account for this over representation of Aboriginal peoples within the criminal justice system in Canada. One reason is that the Aboriginal offenders are experiencing discrimination when being sentenced for crimes. Another reason is less than half (48%) of the Aboriginal people have not completed high school (Brozowski, Taylor-Butts & Johnson 2006). Perhaps, as the Restorative Justice program becomes more widely used, hopefully more researchers will have more findings on the successes or failures of the program.

### **Restorative Justice in the Context of Aboriginal Issues**

The preceding statistical research demonstrates the need for research on Restorative Justice for and by Aboriginal peoples. The judicial system that is currently in place is not working for Aboriginal peoples and current research demonstrates that Aboriginal peoples particularly in Western Canada need to have programs suited to meet Aboriginal peoples’ needs. Further research in the area of Restorative Justice needs to clearly delineate what needs to be restored. In order to do this, research into the understanding and construction of Aboriginal identities and experiences and understandings of justice are essential. Martel and Brassard discuss Aboriginal identity in a way which is meaningful: “Being Aboriginal means different

things to different people, and one's self-identification as Aboriginal is dependent, among other things, on gender, band belonging, constitutional 'Indian' status, urbanization levels, or contact with whitestream criminal justice"(Martel and Brassard 350). Therefore any new research in Restorative Justice that can be completed should include these notions of Aboriginal identity and would hopefully start to transform the Canadian Justice system to better accommodate different cultures.

### **Differences between Indigenous Justice and Restorative Justice**

Some Indigenous justice punishments (punishments within Indigenous communities) have been seen as harsher than Restorative Justice sanctions which often use banishment from the clan as a punishment after an offense (Milward 110). Other sanctions include flogging, killing the offender, whipping or Spirit Dancing (Milward 110). Spirit Dancing includes "being confined to a long house for four days where the offender is subjected to several treatments including deprivation of food but not water, dunking underwater, whipping with cedar branches, and being lifted up several times while the others dug their fingers into his sides and bit him" (Milward 110). Thus the difference between Indigenous Justice and Restorative justice is that the latter uses current laws and contemporary forms of justice, while Indigenous justice frequently uses traditional belief systems.

### **Traditional Sanctions**

Some Indigenous communities have considered resurrecting traditional sanctions and corporal punishment such as "permanent harm (i.e. mutilation) or execution, as alternatives to incarceration" (Milward 115). But these sanctions go against the traditional system of justice.

Furthermore, many Indigenous women have not been able to maintain a balance of power when it came to sanctions. Researcher Diane Bell states "Aboriginal women felt that it was

absolutely necessary to establish separate consultation processes for both men and women since the women had less power in the communities and were especially vulnerable as the frequent victims of crimes committed by Aboriginal males” (Milward 115). In the case of domestic violence, the use of Indigenous justice has been often replaced by more Canadian traditional justice to deter the offender from re-offending.

### **The Canadian Constitution**

Aboriginal peoples have had difficulties maintaining their rights under the Canadian Constitution “which includes rights that are integral to their cultures and treaty rights” (Milward 288). For example, the doctrine of judicial notice “allows a judge to make a finding of fact without evidentiary proof provided by the parties” (Milward 288). In this case judicial notice works to find facts that are considered distinctive in certain local regions.

### **Victims and Restorative Justice**

Reparation justice has been said to “reject the notion of collective responsibility, deny linkages between the relative socioeconomic status of aggrieved racial minority groups and past injustices, and cling to limiting doctrines that deny remedies for acts and omissions that were lawful centuries ago” (Bradford 6). For this reason reparations represent a way to bring justice and a resolution of peace for the victims and the community.

Furthermore, the clan system is an important part of the life of Indigenous people and helping the community to cope as well as helping the offender recognize the pain the victim has suffered.

Chief Tom Porter says of clans,

“The clans are extremely important, and in fact without the clans we would have almost nothing as a society of people. Like the human body, the bones are what give the body



structure and the ability to function, so the clans serve the same purpose.” (Gray-Kanatiish 37).

The clan system reminds the people of the clan that their actions affect the entire community and the balance of the group depends on everyone obeying the laws of the group (Gray-Kanatiish, 37). This notion is in place for some alternative sanctions in Restorative Justice where issues are discussed in groups collectively.

Additionally, while some Canadian provinces are comfortable using Restorative Justice practices, there are some areas such as Quebec that do not use Restorative Justice to the same extent as the other provinces. In this case “Quebec has perhaps felt less of a need to move toward restorative justice because diversion programs and alternative measures were already firmly established” (Gaudreault 2).

Restorative Justice is considered “a more positive and constructive approach to restoring ties between the victim of an offense, the person who committed the offense and the community as a whole” (Gaudreault 3). It offers healing values, the ideas of the community on how to punish the offender, an opportunity for the parties to initiate a respectful dialogue, forgiveness of the parties, accountability for their actions and a feeling of fraternity (“(Gaudreault 2).

Restorative Justice programs have thus been presented “as an alternative to the adversarial system of justice, and an antidote to punitive policies”(Gaudreault 2). A complaint of some victims who use this system is that they are given a lesser role in this process. When the victims within this system use “meditation, family conferences or some other practice, too many victims are relegated to the role of facilitator or intermediary or used as a pretext for pursuing an educational initiative for offenders” (Gaudreault 3). Also some victims are not ready

psychologically to manage going through the process after having been the victim of a criminal attack.

Another key point in determining the appropriateness of Restorative Justice is that the victims usually are not the parties requesting restorative actions, but rather the social services agencies of the offenders usually request alternatives to incarceration for the offender (Gaudreault 5). The programs that work with offenders must also be sensitive to the needs of the victims. The program administrators need to: “accurately assess the offenders motivation and ability to commit to that type of process; ...understand the phases of criminal victimization, post-traumatic stress and the way victims work through their loss and grief” (Gaudreault 5).

There are some victims who prefer not to meet with their offenders at any time, and they refuse to participate in a Restorative Justice meeting or program. Depending on the type of crime and punishment, the victim may decide to never meet with their offenders since they(the victims) “feel it is not worth the trouble and question the outcome of a meeting” (Gaudreault 6). This is not an unreasonable response since victims can feel angry, upset or psychologically harmed after an offense, and may have not completed all stages of the healing process in time to be prepared to participate in the restorative justice meeting. It can be said that many offenders do not make an emotional commitment to heal and use the restorative process for other purposes, which Gaudreault has identified as: “avoiding punishment, casting themselves in a better light, playing down their faults, even taking pride in their relationship with the victim” (Gaudreault 7).

Restorative justice is also “a response to crime that focuses on restoring the losses suffered by victims, holding offenders accountable for the harm they have caused, and building peace within communities” (Department of Justice 2). Restorative justice works to remove the stigma of guilt surrounding the crime and focuses on the future. It allows forgiveness on all sides

and the repentance of the offender. In 1996 the *Criminal Code* was amended to utilize and encourage community-based sentencing alternatives (Department of Justice 4). Some Indigenous communities supported Restorative Justice programs because they offered alternatives to incarceration. Some of the supported Restorative Justice programs are “rooted in religious or faith-based principles of reconciliation, restoration and healing” (Department of Justice 4).

While the goals and achievements are laudable, the Department of Justice in Canada (2011) states that there are some limitations of Restorative Justice programs. These programs can only be effective in certain situations when: An offender admits guilt, accepts responsibility for his/her actions and agrees to participate in the program; The victim of the crime freely agrees to participate in the program and without feeling pressure to do so; and Trained facilitators are available in the community and a restorative program is in place (Department of Justice 4). When the Circles of Support and Accountability (a part of the Restorative Justice program) are used, they help “provide a healthy environment for the ex-offender by advocating with various systems, dialoguing the ex-offender about its attitudes and behaviors, and mediating concerns with the community” (Department of Justice 5).

Another form of Restorative Justice used by some Indigenous communities are Peacekeeping Circles. Peacemaking Circles are used in some Aboriginal traditional resolution programs and proponents of the same believe “that it is important to address not only the presenting criminal problem but also to build the community” (Department of Justice 6). These are similar to Healing Circles which bring conflicts to a close by “allow[ing] the participants to express their feelings, and indicate that the offender and victim have undergone personal healing” (Department of Justice 6). With Sentencing Circles, “the victim, offender, family, and

community members, meet with a judge, lawyers, police, and others to recommend to the judge what type of sentence an offender should receive” (Department of Justice 6).

Two further examples of Restorative Justice are community-assisted hearings and Releasing Circles. The community-assisted hearings and Releasing Circles “are a type of Parole Board of Canada hearing for Aboriginal offenders and involve Aboriginal offenders and involve Aboriginal community members” (Department of Justice 6).

Finally, other Restorative Justice programs currently utilized include: Community Conferencing, Family Group Conferencing, victim Offender Meditation, Healing Lodges, and Surrogate Victim/Offender Restorative Justice Dialogue (Department of Justice 6).

The role of the victim may vary from one region to the next region (or province to province). In British Columbia, the community-assisted hearings are popular and have been taking place for many years (Department of Justice 6). But in provinces outside of this area, such as in Ontario, victims “may be required to sit outside the circle as observers” (Department of Justice 6). The victims and the offenders may be men or women in either situation, and when women are offenders, they are often treated differently in the Canadian prison system. It is important for the Aboriginal women in the Canadian prison system to have the same access to alternative forms of justice as the Aboriginal men have access to within the same correctional system.

Aboriginal women in some Canadian prisons are permitted to participate in traditional Restorative Justice and alternative programs. For example, Healing lodges allow the women to develop a sense of their identity and resist the feeling of oppression in prison (“Correctional Service of Canada”). In part as a result of these programs, the identity of some Aboriginal women participants has “evolved from pain and shame to pride and connection with cultural

values and traditions (Yuen & Pedlar 547). Aboriginal women in Canadian federal prisons who participate in cultural programs during their leisure time experience a new understanding of the Aboriginal cultural roots and traditions (Yuen & Pedlar 547). It is important for Restorative Justice to keep changing with the needs of those who use the program both male and female, and dependent on the needs of people in specific regions as well.

For example, in Saskatchewan there have been changes that include Restorative Justice. The criminal justice system in Saskatchewan is working to include justice reform in its programs for criminal offenders. The new system offers a higher level of social and cultural inclusion for a single system which provides “access for all citizens to a peaceful dispute settlement through law” (Turpel-Lafond 293).

In addition, Bill C-41 (LS 416-E) was a sentencing reform bill which was passed by Parliament in 1995. The new sentencing option which allows conditional sentencing is said to reduce the incarceration rate for non-violent offenders (Hartnagel 487). Alternatives to prison include the judge allowing an offender who is sentenced up to two years or less the choice to serve a day in jail or community service – along with a conditional sentence order (Hartnagel 488). These conditional orders have been shown to “reduce Canada’s high incarceration rate for non-violent offenders” (Hartnagel 488). Some critics of this system believe that conditional sentencing works to undermine proportional sentences and that the community will take this form of sentencing less seriously than traditional sentencing methods.

Furthermore, there are many problems noted in Aboriginal rural and urban communities which may have some bearing on over-representation of, or participation by Aboriginal peoples in the Canadian criminal justice system. Some analysts believe that if the underlying problems of poverty and hopelessness are resolved, the issue of offenders in high proportion would also be

solved (Todd 168). For Restorative Justice to work effectively, it must review the components of the geography and logic of healing justice available in Canadian communities. The theory behind this type of healing justice is that “particular environmental conditions lead to particular human behavior” (Sawatsky 75). These methods may seem unconventional but Restorative justice strategies do not always follow a logical route to a traditional punishment.

### **Reparations**

Reparation remedies are a common remedy to redress a wrong done by one individual to another (Bradford 1). Reparations are meant to reverse historical injustices (Bradford 1). Some theorists believe that “monetary reparations would frustrate the reacquisition of the American Indian capacity to self-determine on ancestral lands” (Bradford 1). People who are hesitant to support allowing reparations cite conflicts with: “unresolvable debates over the nature of minority disenfranchisement, the adequacy of civil rights legislation, the constitutionality of group entitlements, the ideal racial distribution of socioeconomic power, and the appropriate channel to pilot between the pursuit of racial justice and the preservation of social peace” (Bradford 2).

Reparations aid to redress the wrong and Restorative Justice works to redress the violation of the victim’s rights. The criminals are not the focus in this type of justice paradigm, where the intention is to restore “both victims and offenders through restoration in the form of money or services” (Meyer 44). Victims have an opportunity to come together with offenders in victim-offender mediation sessions. Restorative Justice works to restore the victims, the offenders and the community as they work together to find solutions together in each case.

## **Conclusion**

The research question, “Restorative Justice: A viable Alternative for Incarcerated Aboriginal peoples In Canada?” is meant to determine whether this alternative program will work for Aboriginal peoples who have been incarcerated. By interpretation of other researcher’s work, I hoped to find the answer that would argue for or against the program. From the research that has been completed thus far, it seems that Aboriginal Restorative Justice is a positive approach to sentencing in Canada.

The Canadian Justice System has been traditionally inadequate for Aboriginal peoples living on or off the reserve in Canada. Social policy has begun several initiatives to encourage a Restorative Justice system for Aboriginal people in Canada. These collaborative efforts include: improving the Aboriginal justice system, appointing Aboriginal court workers, increasing accessibility to the justice system with Aboriginal legal aid programs, introducing fine options and intermediate sanctions in sentencing, and cultural sensitivity training for justice system officials (Clairmont 1996).

There are large costs associated with managing offenders from Aboriginal communities. The new alternatives to prison sentencing as included in the policy / program include: fine options, community service orders, diversion and other measures to find alternative for Aboriginal offenders (Clairmont 1996). Through the interpretation of other researcher’s work, I hoped to find answers to whether the Restorative Justice program works. From the research I have completed, it seems that the various alternative sentencing programs do provide alternatives to traditional (prison) punishment for Indigenous offenders, but many of the systems are outwardly ineffective for the sake of the victims of the crimes. These alternatives offer a method in managing offenders while also maintaining lower costs within the programs. Restorative

Justice may not aid every single Aboriginal person who has been incarcerated, but it provides an alternative to traditional sentencing that can be built through communication between the Canadian government and Aboriginal communities. When this collaborative effort is made, the communities and corrective justice systems can work together on task force teams to find real solutions to offending which has occurred inside and outside of the Aboriginal community.



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