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# Restorative justice:
# a changing community response

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**Abstract**

Our purpose herein is to demonstrate how restorative justice continues to unfold globally and we explain how the use of a restorative justice ideology and intervention leads to a common alternative, not only in criminal justice institutions, but also within social agencies, such as elementary schools, and the related social support systems. We draw attention to this emerging trend via current research and resources that enable us to put forward a definition, theoretical background and list the characteristic traits of this alternative mode of life consequence. Finally, we argue that the use of restorative justice in schools is a focus that is really a paradigm shift within the landscape of the educational enterprise.

**Keywords:** School discipline, Student conduct, Restorative Justice

## Introduction

In several countries such as New Zealand, Australia, Chile, Canada, and Brazil the use of restorative justice ideology and intervention has developed to become a common alternative not only in the criminal justice institutions, but also within social agencies such as elementary and secondary schools, and the social support systems (McCluskey, Lloyd, Stead, Kane, Riddell, & Weedon, 2008). To draw attention to this emerging trend we define restorative justice, its theoretical background and list the characteristic traits of this changing alternative mode of life consequence. The use of restorative justice in schools is a focus that is presented as a paradigm shift within the landscape of the educational enterprise.

Historically within education there have been numerous theories and strategies applied in order to deal with student misbehaviour, classroom management and school climate (Lockhart, & Zammit, 2005). Within Canada, specifically Ontario, we report that up until February 2008, we were legislated to enforce a "zero tolerance" policy in our schools (Ontario

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Ministry of education, 2007), as there were mandatory suspensions and expulsions for certain infractions of the policy. In February 2008, the Ontario provincial government amended the Safe Schools Act and everything changed. No longer were we dealing in absolutes and fact; we were dealing in all shades of gray within context. Suspensions and expulsions were no longer mandatory and administrators now had to consider a number of factors prior to suspending. Included in these factors was whether or not progressive discipline has been used.

Progressive discipline is a whole-school approach that utilizes a continuum of interventions, supports, and consequences to address inappropriate student behaviour and to build upon strategies that promote positive behaviours described above. When inappropriate behaviour occurs, disciplinary measures should be applied within a framework that shifts the focus from one that is solely punitive to one that is both corrective and supportive. Schools should utilize a range of interventions, supports, and consequences that include learning opportunities for reinforcing positive behaviour while helping students to make good choices. (Memorandum, 2007)

With this Ontario provincial government shift in philosophy when it came to student discipline, school boards and administrators had to look for new ways to work with all students. One of the options that existed was the application of a restorative justice way of life within the framework of school discipline.

*Restorative Justice Defined*

When a student commits a wrongdoing within a school community or within the greater community, how is it handled? Does the punishment fit the crime? "The criminal justice system is concerned about holding offenders accountable, but that means making sure offenders get the punishment they deserve. Very little in the process encourages offenders to understand the consequences of their actions or to empathize with victims" (Zehr, 2002, p. 16). Is there another way to deal with the wrongdoing? There are many different ways to define restorative justice. Zehr (2002) defines restorative justice as "a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible" (p. 36). Lockhart and Zammit (2005) suggest:

It is a valued-based approach to responding to wrongdoing and conflict, with a balanced focus on the offender, victim, and community. Restorative justice focuses on transforming wrongdoing by healing the harm, particularly to relationships, that is created by the harmful behavior. (p. 7)

The guiding questions when using a restorative approach, either formally or informally include the following:

1. Who has been hurt?

2. What are their needs?

3. Whose obligations are they?

4. What are the causes?

5. Who has a "stake" in this?

6. What is the appropriate process to involve stakeholders in an effort to put things right? (Stutzman Amstutz & Mullet, 2005, p. 14)

The common theme between the two definitions is that restorative justice brings the person who created the harm together with the person or persons who were impacted by the harm. This is in stark contrast to what, historically, we would do in an Ontario school setting - through a suspension or an expulsion, we would remove the student that caused the harm to the school community and, at no time, would we ever give the victim a voice. By changing this focus, restorative justice brings the person who committed the harm closer to the community by allowing them to make reparation for the harm caused.

When we look at things with reparation in mind, we gain a better appreciation for the problem that exists with the traditional punitive model. Zehr (1995) reports clearly via lists within a pragmatic chart under the heading "Understandings of Crime", it is also very relevant to an educational setting. He breaks it down into a comparison chart between a "retributive lens" and "restorative lens".

Retributive Lens

Crime defined by violation of rules (i.e., broken rules)

Harms defined abstractly

Interpersonal dimensions irrelevant

Conflictual nature of crime obscured

Wounds of offender peripheral

Offense defined in technical, legal terms

Restorative Lens

Crime defined by harm to people and relationships (i.e., broken relationships)

Harms defined concretely

Crime seen as categorically different from other harms

State as victim

State and offender seen as primary parties

Victims' needs and rights ignored

Crime recognized as related to other harms and conflicts

People and relationships as victims

Victim and offender seen as primary parties

Victims' needs and rights central

Interpersonal dimensions central

Conflictual nature of crime recognized

Wounds of offender important

Offense understood in full context: moral, social, economic, political. (p. 184-185)

In order to apply this chart to an educational setting, one would only have to change the word "crime" to "incident". When an incident occurs, the restorative model allows for all of the stakeholders in the school community, on both the side of the victim and that of the offender, to be treated equally and fairly, and for their feelings and opinions to be openly communicated. Thus the relationships that are necessary for students, teaching staff, administrators, support staff, and parents to be able to work together in the future are then more easily repaired. The retributive model forces distance between the offender and the victim, and between them and the school community. The restorative model forces all parties to bridge the distance created during an incident and allow for healing to begin.

*Theoretical Background: Restorative Justice*

When reviewing current literature, the origins of this mode surface in a unique and surprising manner. Most researchers may conclude that most of the principles of restorative justice come naturally to some people. For example, if a child of mine threw a rock and hit a neighbor's window, how would I react? Instinctively, I would march them over to the

neighbor's house, have them apologize, explain the actions, and have them let the neighbor know how they intend to pay for the broken window. In addition, they would have to earn my trust back prior to letting them out of the house again. This seems to match closely with the definitions of restorative justice that have been previously stated. Surprisingly, the formal concept of restorative justice came out of victim-offender reconciliation in New Zealand. The key moment came in 1989 when the Children, Young Persons and their Families Act came to pass and they began using a modified Maori circle in juvenile court. What they found was that by using this alternative program many court trials were averted and settled. In addition, those that were most affected by the crime - the victims - were involved in the process. In 1991, the program was then brought to Australia and a program was developed in the city of Wagga Wagga. By 1994, formal conferencing began to spread into other sectors of society, including education (Lockhart & Zammit, 2005, p. 49).

*Canada*

In Canada, there have been a number of different models of restorative justice. The aboriginal people have used healing circles within their community. In 1974, initiatives from the Mennonite Church in the Kitchener-Waterloo region started the first victim/offender mediation program. There have also been Family Group Conferencing models, originating from the New Zealand model, which started happening in 1981. One of the largest programs in Canada, the Manitoba Mediation Services, handles up to 400 mediations per year (Lockhart & Zammit, 2005, p. 49-50).

Although New Zealand started to incorporate restorative justice into its school communities in 1994, Canada has had a much slower start. Lynn Zammit and Art Lockhart created the first school board training for the Toronto District School Board, based on the New Zealand Family Group Conferencing model, in 1995 (Lockhart & Zammit, 2005, p. 50). There have been numerous workshops and professional development sessions put on by various school boards to introduce this concept to both administrators and staff. In June 2008, the Near North District School Board situated in Northern Ontario fully trained all administrators to become restorative justice facilitators. The shift in provincial legislation has helped to put this philosophy in the spotlight in the education field. The authors were fortunate enough to attend the International Institute for Restorative Practices World Conference on October 22nd – 24th, 2008 in Toronto, Ontario. We were amazed that I was able to network with educational colleagues from around the world and, in particular, around the province and see how they are shaping their own philosophies around the new legislation.

*Community*

In all of our research concerning restorative justice, and the philosophy behind it, the central theme is always community. Wachtel (1997) defined community succinctly:

Community is not a place. Rather, it is a feeling, a perception. When people see themselves as belonging to a community, they feel connected. They have a sense of ownership and responsibility. They feel they have a say in how things are run and a stake in the outcome. (p. 193)

When there is friction or conflict within that community, which is inevitable, a restorative approach tries to use that conflict as learning and a healing experience. This concept of community is not without critique.

Restorative justice approaches to community safety and non-social behaviours, as argued in the literature, rejuvenate the notion that the 'community' has a very real interest in what is

happening to its members. However there can be a pronounced naivety or romanticism about 'community' within much restorative justice literature. (Verity & King, 2008, p. 474)

This can be viewed as exclusion and a challenge to the process that is often common with right wing political groups. An example of this would be the Ontario zero tolerance Safe Schools Act which simply punished and did not educate which emanated from within the Ontario Progressive Conservative political party of the 1990's.

Central to the community ideology is variable of relationships. We now know that "strong institutions that develop genuine positive relationships within the nexus that sustains individual and collective life seem essential to our capacity to build a civil society" (Morrison, Blood & Thorsborne, 2005, p. 336). Using the restorative philosophy, built on relationships, contributes to the shift away from punitive and moves towards the supportive. "What have more recently emerged is the recognition that restorative practice also needs to be proactive, immersing the school community in a pedagogy that values relationships and a curriculum that values social and emotional learning" (Morrison et al., 2005, p. 338). As an educational system, I often think that relationships take a back seat to the curriculum. Biffis and Lockhart (2008) add,

it's the students, staff, parents and friends who make each day worthwhile. Imagine the smiles, the hugs, the camaraderie to achieve common goals; rising to challenges, overcoming obstacles and setting new directions. That's the feel good stuff and it's the feel good stuff that forms the very heart of all relationships. (p.19)

We believe that if you put the relationship ahead of the curricula, the entire curriculum will positively balance within a healthy climate.

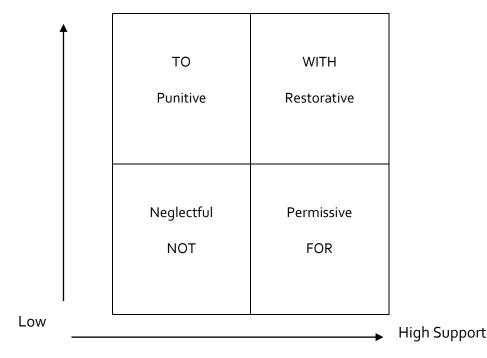*Global Paradigm Shift in Education*

Restorative justice has been implemented within many countries and is now embedded into many schools globally. The unfolding of this mode is very much dependent upon the leadership of the country, Ministry of Education and school board or district and ultimately, the administration of the particular school. In 2004, the Australian Research Centre conducted a study of 18 primary and secondary Australian schools as they implemented a restorative justice philosophy. For a number of schools, they used conferencing, classroom circles, or formal community circles. Shaw (2007) explains,

For some teachers and administrators, the use of restorative practices represented a fundamental shift in thinking about school justice and discipline. The application of restorative practices may threaten some teachers with a perceived loss of power and control, particularly within frameworks that involve compliance with school rules regulated by punishment regimes and conferred power of teachers. However, the experience of participants suggested that punishments based on a high control, low support paradigm are less effective in changing negative behavior. (p. 131)

This is a major change in philosophy for some people.

The Social Discipline Window:

High Control

|  | TO | WITH |
|---|---|---|
|  | Punitive | Restorative |
|  | Neglectful | Permissive |
|  | NOT | FOR |

Low               High Support

(O'Connell, Wachtel & Wachtel, 1999, p.78)

The impact on the educational setting seems clear. You would want to work in the "WITH" quadrant, high in supporting the student as well as high in control. Having said that, the will to be punitive or punish is still prevalent within our schools. "Formal restorative justice does not take any account of the historical and embedded power relations between teacher and pupil, adult and child, school and home. It cannot address the very particular risks for both sides if this power balance is challenged" (McCluskey et al., 2008 p. 206-207). This becomes particularly problematic if you are trying to introduce a restorative justice approach in a school that has a history of punishment.

Moreover, restorative justice philosophy and the embedded interventions are founded on the belief that misconduct is a fracture in a relationship; it demonstrates a disconnection and should not merely be described as a contravention of guidelines, code, rules or laws of the land (Morrison et al., 2005). We embrace the notion that the very purpose of restorative justice practice is to restore and mend the fracture within the strained or provisionally dysfunctional relationship which has been damaged by the misbehaviour or crime. All behaviour has a purpose. Indeed, restorative practices comprise an assortment of recognized (informal) and casual (informal) interventions (McCluskey et al., 2008). Our recognized interventions are often referred to as stakeholder conferences connecting the victim and offender with families/ guardians and other school/community support agencies.

The requirement to oversee and mediate the process cannot be overemphasized since we were trained as restorative justice conference facilitators who watch and listen for both positive and problematic overt and covert interpersonal signals. As conference facilitators we act to support, facilitate and guide the course of action. We must remind ourselves that we are there to mend a relationship, to repair a fracture, and act ethically. Trust, respect, integrity and due care are common traits noted within the process or act, as it ensures both

psychological and physical safety of the participants. We aim to assist the stakeholders to appreciate and understand who, and to what extent, individuals have been both effected and affected. We act in this manner to develop a space for compassion, empathy and understanding. The result is almost always a resolution accord that mends, repairs, and deconstructs damage caused.

School health, culture and climate often will have a direct impact on whether or not implementing a restorative justice approach will be successful. If the entire discipline structure has been historically based on an increasing level of punitive consequences that eventually lead to the student leaving the school community, it would be a huge shift for that particular school. When you walk into a school, you can pick up on the school climate and its culture via clues quite quickly. Morrison et al. (2005) explained,

These cultural cues include: how management speaks to, and about, staff; how staff speak to, and about, students and parents; the patterns of communication within staff meetings and what is said immediately after meeting; how criticism and disagreement are handled (p. 339).

Positive modeling and engaging teachers in the restorative process is one way to move the school climate along the restorative continuum. School culture change will not happen overnight. The frustrating thing is that we are all at the mercy of the next government regulation, legislation or curricular change. In Ontario, if and when the government changes, we might be back playing with a new set of rules, policies and curricula that revisits traditional punitive measures.

## Summary

There is sufficient support from around the world to suggest that the use of restorative justice philosophies will continue to grow in our Canadian educational system. Having said that, it is certainly not the fix all answer to the way students act at school. Moreover, "a restorative approach is a philosophy or framework that can guide us as we design programs and make decisions within our particular settings" (Stutzman, Amstutz & Mullet, 2005, p. 4). The personal style of the administrator or teacher will always come into play in dealing with the relationships in the educational setting. We believe the new legislation makes it incumbent on school boards and administrators to work towards a supportive environment for our students. Making that happen is very difficult. Embedding some of the key restorative approaches, from the continuum, into the school policy will help move it along. For some schools, this may mean significant change. Another threat to this movement is sustainability. Will some teachers see this as a "new" initiative that will go away in a few years? "Restorative justice is not a map, but the principles of restorative justice can be seen as a compass pointing a direction. We believe, at a minimum, restorative justice is an invitation for dialogue and exploration" (Zehr, 2002, p. 10). As we mentioned earlier, we believe that many great teachers instinctively build relationships and interact with students in a restorative way. By their daily interactions, they inspire and motivate students to unexpected levels. For many students, that may be the only positive interaction they have with an adult in their life. As educators, we have a profound impact on students' lives and that is reinforced in every interaction we have with them. At a recent conference, we heard an educational leader speak about community. She asked the group to think of the worst student in your school. Then picture that student ten years from now and he or she is your next door neighbor. Would you do anything to intervene with this student now? Should that intervention be a punitive one or an intervention with a foundation of support?
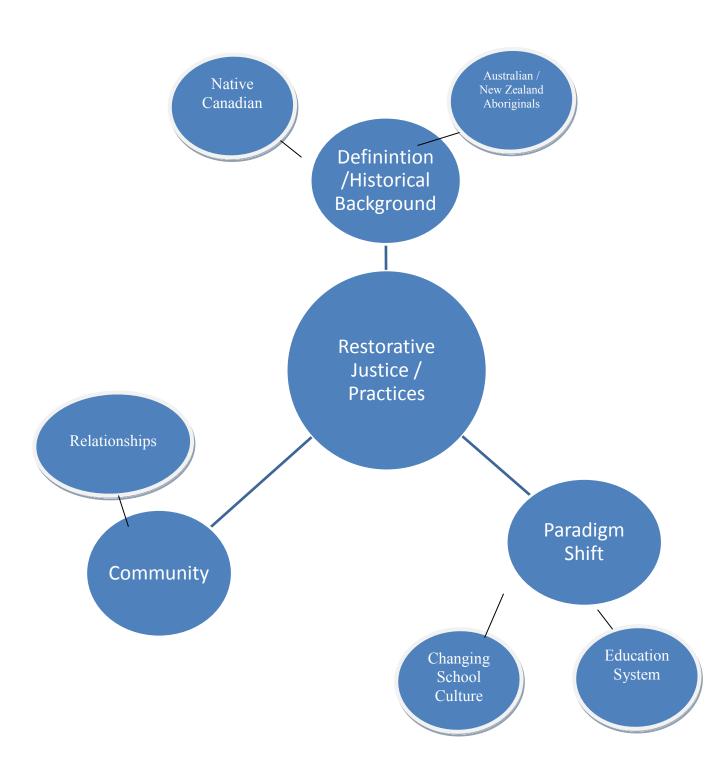
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# APPENDIX

Native Canadian

Australian / New Zealand Aboriginals

Definintion /Historical Background

Restorative Justice / Practices

Relationships

Community

Paradigm Shift

Changing School Culture

Education System

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