

The Challenge of Alternatives to the Death Penalty

Thank you for the invitation to speak today about the Canadian experience of the death penalty and of restorative justice.

The last execution in Canada took place in 1962. In 1976, our Parliament abolished capital punishment and, a decade later, defeated an attempt to bring it back. Supporters of the death penalty said that they lost that battle on the radio talk shows and in church basements across the country, where evidence that the death penalty doesn't work as a deterrent, that it is used disproportionately against the poor and marginalized, and that innocent people have been put to death, turned public opinion. Slogans such as "Don't kill for me!" and "Why kill people who kill people to show that killing people is wrong?" laid bare the contradictions in state executions.

The most profound argument against capital punishment in 1976 was made by Prime Minister Pierre Trudeau. "*Are we, as a society, so lacking in respect for ourselves, so lacking in hope for human betterment, so socially bankrupt that we are ready to accept state vengeance as our penal philosophy?*" The death penalty is the ultimate expression of retributive justice. By using it, the state abandons hope in human betterment and forfeits the moral authority to call its citizens to a higher standard -- respect for every human life.

Many in Canada have been seeking a response to crime, including murder, that reflects this higher standard and which also recognizes that our knowledge about the causes of violence and crime has evolved significantly. Trauma, mental illness, child sexual abuse, fetal alcohol syndrome, drug and alcohol abuse, cognitive impairment and social circumstances such as racism and poverty, weren't remotely understood when current justice policy was developed. Retributive justice, with its focus on convicting and punishing the offender, isn't designed for these realities or is proving ineffective in reducing rates of re-offending. To develop and sustain healthy individuals and communities, we now know that we must create a variety of measures aimed at crime prevention, mental health, social support, economic sustainability and education.

We also need a more effective way of addressing crime. For 40 years, people inside and outside the justice system have raised significant questions about the retributive approach. Is crime not more than breaking a law? Who was harmed by the crime? Where do they fit into the justice process? Does punishment meet the needs of victims? What are their needs? How can the harm be repaired, to the extent possible? Is punishment the same as accountability? Can it believably be asserted that punishment helps the offender to change?

From these questions, restorative justice has emerged as a new "paradigm", a new way of responding to crime. "*Restorative justice is an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.*" (Cormier, 2000)

Rooted in a belief in the inherent worth and potential of every person and in Indigenous traditional and community justice, restorative processes such as victim-offender mediation, sentencing circles or community justice circles are built on principles of inclusion, voluntary participation, truth-telling, safety, accountability, reparation, and the prevention of further offending. Those most impacted by a crime are brought into the centre of the justice process and empowered to address their own needs. The UN Economic and Social Council adopted the *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* in 2002, and only weeks ago passed a resolution asking the Secretary General to canvass Member States on their progress in implementing these principles.

Several restorative programs in Canada deal with violent crime. The Victim-Offender Mediation Program in British Columbia and the Restorative Opportunities program of Correctional Services Canada facilitate engagement between incarcerated offenders and family members of their victims in serious cases, including homicide. The Collaborative Justice Project at the Ottawa courthouse helps victims, and offenders who are willing to be accountable, work together at the pre-sentence stage to develop a resolution plan for the judge at sentencing. The resolution plan often includes non-custodial reparation and treatment elements. In CoSA (Circles of Support and Accountability), volunteers support sex offenders in their reintegration into the community.

To be sure, these programs are still “add-ons” to our justice system and have yet to radically change how that system works. But they stand as witness to a different way of thinking about and dealing with the harm done between people. And this restorative approach is making real headway in “peer mediation” programs in schools and in the workplace where people are learning to approach conflict constructively.

Through such programs, we know that victims need the harm done to them, whether physical, emotional, psychological, financial or spiritual, to be taken seriously and validated. They need real support to heal from the pain and loss of control they have experienced. Otherwise, they are left with only the severity of the sentence as evidence that society recognizes their suffering, - and so they fight for a voice in the sentencing process.

Needs can take many forms. Some victims need practical or symbolic amends that have meaning for them. For others, it is enough to get answers to their questions (Why did you do this? What really happened?); or to know that the offender is addressing the root causes of his offending; or to express the pain and the impact of the crime on their lives and families to him; or to be reassured that they will be safe in the future.

I facilitated a restorative engagement between a mother, whose son was bludgeoned to death, and the offender. She had received a letter from him and kept it in a plastic bag because she wouldn't touch anything that came from the hands of her son's killer. She requested a restorative process because she wanted answers from him to questions she had borne for a decade. I facilitated two meetings between them. At the end of the second, she took his hands in hers and offered him forgiveness. It was a profound act, enabled by a process that allowed her to become “un-stuck”. The next Sunday in church, she was able to say the phrase in the Lord's Prayer, “Forgive us our trespasses as we forgive those who trespass against us”, words she had not been able to speak in the years since her son's murder. Restorative justice gave this woman the opportunity to engage directly with the offender around her needs.

Offenders too can find healing through restorative processes. The offender had the opportunity to be fully accountable to her and to own and commit to dealing with his drug issues. As a result, she was able to support his release and reintegration, rather than oppose it.

Not all restorative processes end in forgiveness or reconciliation. Not all involve face to face meetings. There is no formula or “one size fits all” template. Guided by key restorative principles of inclusion, empowerment and healing, victims and offenders are able to meet their unique needs, to regain a measure of control, and move ahead with their lives.

Restorative justice brings a fundamentally different approach to dealing with crime, one that does not lack in hope for human betterment, one that dares believe that no one is beyond redemption while he or she yet lives, an approach fundamentally at odds with the death penalty.