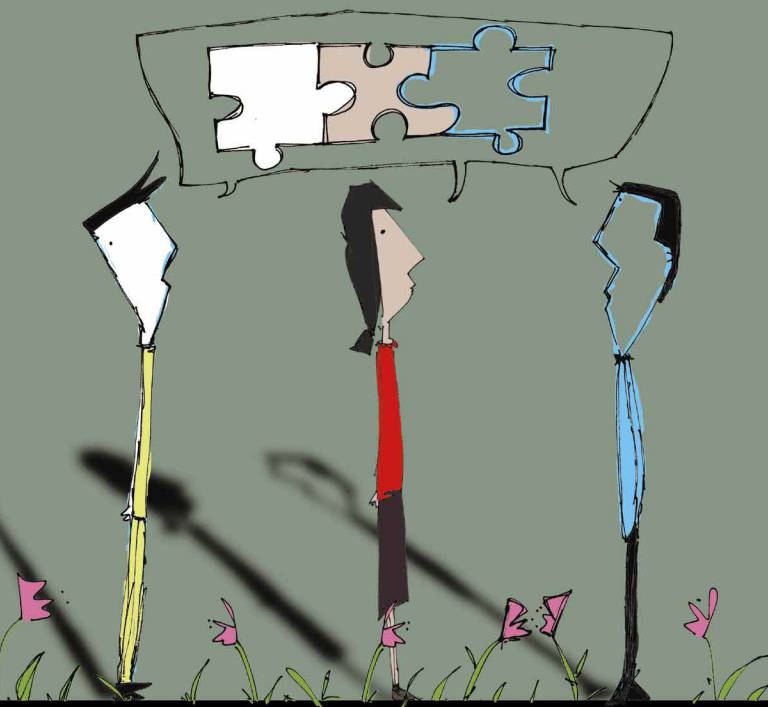


towards participatory justice

A Focus on People
and Relationships



LAW COMMISSION OF CANADA
COMMISSION DU DROIT DU CANADA

Learning from Conflict

Conflict is an enduring feature of our lives. We experience it in our families, at work, at school, all around us, all the time.

Conflict can cause pain and loss. It can damage people and property, sometimes irreparably. It also has the potential to destroy relationships. But conflict can also have positive effects. By working to resolve conflict, we can learn to appreciate and understand the interests and concerns of others. As a community, how we resolve conflict helps us define the values that underpin the rules and regulations that guide our lives.

As individuals and as a society, we can adopt a number of strategies to resolve conflict: some are healthy; others are not. Frequently, we turn to the courts to resolve our disputes. However, courts and tribunals are sometimes perceived as unresponsive to the needs of people in conflict; disputes are framed in legal language that does not always reflect how individuals experience them; remedies often do not provide adequate redress; and the process can be time-consuming, costly and confusing.

The adversarial framework, a dominant feature of Canadian law, is increasingly seen as lacking flexibility. Our adjudicative system, although committed to principled and just outcomes, often fails to meet the needs of the parties involved in the conflict or the best interests of the larger community. Participatory justice offers a valuable alternative.

The Commission's report, *Transforming Relationships Through Participatory Justice*, is the culmination of its consultation and research. It examines Canada's current experience of participatory justice, offers guiding principles for designing and evaluating participatory justice processes, and sets out recommendations for achieving a culture of participatory justice.

This brochure presents some of the key points contained in the Law Commission of Canada's Report to Parliament:

Transforming Relationships Through Participatory Justice



Law Commission
of Canada

Commission du droit
du Canada

Canada 

Participatory Justice — Providing Options

Participatory justice is an approach that engages everyone affected by conflict in finding a satisfactory resolution. The concept of participatory justice encompasses restorative justice in the criminal justice system and consensus-based justice in the civil and administrative justice systems. Both approaches are attempts to rethink how conflicts are framed, rethink our assumptions about who is properly a party to a dispute, and rethink how we ought to respond to conflicts.

Restorative justice processes focus on redressing the harm to the victims, holding offenders accountable for their actions and engaging the community in the conflict resolution process.

Some restorative justice processes in use in Canada include: victim–offender mediation, victim–offender reconciliation programs, community and family group conferencing, sentencing circles and community boards or panels.

Consensus-based justice refers to innovative methods of resolving non-criminal conflicts. Some consensus-based justice processes operating in Canada include: community mediation, court-connected mediation, judge-led conciliation and settlement conferencing, and collaborative family lawyering.

The goal, in all instances, is to provide non-adversarial ways for parties to resolve disputes.

Participatory Justice in Action

A central premise of participatory justice is that every conflict—its circumstances, its players, and its impact—is unique. Participatory processes do not strive for a uniform set of rules as a means to achieve fairness.

While participatory processes may not be applicable to all types of conflicts, the Commission suggests that a dialogue-based, consensus-seeking approach may be an appropriate tool in a wider range of conflict settings than has been used to date.

Participatory justice requires that parties participate voluntarily and have sufficient capacity to engage fully in dialogue and negotiation. It is most important that every participatory justice process be designed to reflect local conditions and individual circumstances.

Recommendations

The Commission believes that participatory processes are a positive development for our justice system. Participatory initiatives—both community and court-based, operating in civil and criminal settings—offer a wide range of benefits for both individuals and their communities.

The 17 recommendations set out by the Commission are about how governments, justice officials, community groups and other agencies and individuals working in the conflict resolution field can develop a culture of participatory justice. They are divided into three sections: **Developing Fair Participatory Processes, A Proactive Role for Governments, and Fostering a Participatory Culture.**

A Common Foundation

Three key considerations are the hallmark of participatory justice. These are:

Conception of Harm: Harm arises from the impact of a conflict on others as individuals and as community members. Participatory justice aims at exploring the context and impact of harm.

Conception of Justice: Participatory justice approaches reject the idea that to be just, an outcome must only be consistent with pre-existing rules. Instead, they presume that in almost every case the solution to the conflict is integrative rather than winner takes all.

Focus on Relationships: While we often assume that there cannot be any kind of future relationship between the parties to a conflict, participatory justice is open to this possibility. The goal is to transform relationships in healthy and meaningful ways.

Hence, a fundamental feature of participatory justice is that it seeks transformation through the voluntary participation of the parties involved in the conflict.

Developing Fair Participatory Processes

The Law Commission of Canada believes that it is appropriate for all orders of government and for community agencies to consider developing new programs with an integrated approach to dispute resolution, whether criminal or civil, and to enhance those that already exist.

While such development is desirable, the Commission recommends that participatory justice processes follow certain guiding principles, which are detailed in its report, and some of which are discussed below. They reflect the animating spirit of a participatory approach and the best of current Canadian practices.

In the Commission's view, participatory justice processes should foster **early intervention**, which is more likely to de-escalate conflict quickly. They should also be **accessible and user-friendly**. They should strive to ensure that all parties are **participating voluntarily** and that they will not be coerced into agreeing to a possibly unfair outcome. To that end, **careful preparation** is essential to minimize the risk that vulnerable groups will be disempowered in an informal process. It is critical that any alternative be fully responsive to the relationships of power between disputants and the wider community or the state.

Confidentiality is often critical to ensuring **fair outcomes**. Furthermore, to be meaningful to all participants, these processes must result in outcomes that are **relevant and realistic**, while remaining **flexible and responsive**.

Reducing the **cost of conflicts**—financial and social—is clearly a desirable objective; therefore the Commission is most conscious that any process that would add to the burden of disputants or to that of the state is not acceptable.

Fostering a Participatory Culture

Government involvement is unquestionably important and sends a clear message. However, further steps can be taken by many other actors in the justice system and in civil society to promote the use of participatory justice. Much of the success of this approach hinges on the development of a culture of participatory justice, a culture that would invite people to seek mutually satisfactory solutions to their conflicts rather than engage in a face-to-face legal battle from which only one party is likely to emerge victorious.

The Commission views research and evaluation as key to enhancing participatory processes and their outcomes. This includes identifying best practices and articulating underlying values and principles.

The Commission wishes to encourage all Canadians to reflect upon the potential of participatory justice.

A Proactive Role for Governments

The Commission believes that governments should adopt a proactive role to facilitate the development of participatory conflict resolution initiatives. The challenge is for governments to find a way to support these processes without limiting their innovative potential.

The report discusses the various roles governments can play in providing participatory justice, including:

- As providers, playing a leadership role in promoting the use of participatory processes;
- As coordinators in areas such as funding, training, networking, research, evaluation and standard setting;
- As regulators, acting as gatekeepers for the development and maintenance of programs.

The Commission has formulated a number of other recommendations, including:

- That governments establish meaningful partnerships with existing centres of research and excellence—organizations with knowledge base and experience in participatory justice—and with local communities interested in participatory justice;
- That governments facilitate the co-ordination of participatory conflict resolution initiatives by providing resources to existing centres of excellence;
- That governments encourage centres of excellence to work in partnership with communities to develop best practices in participatory justice;
- That governments, working in partnership with centres of excellence and local communities, co-ordinate and regulate conflict resolution programs.

Conclusion

Participatory justice processes provide an alternative method of conflict resolution that can heal harm and transform relationships. They also allow citizens to participate in the decisions that affect their lives.

While participatory justice processes are not a panacea that will solve all the ills that affect our society, they offer the possibility of countering some of the weaknesses in our adversarial legal system and of strengthening our potential to resolve conflict in respectful and honourable ways.

**The complete text of
Transforming Relationships Through Participatory Justice
is available on the Commission's web site at
www.lcc.gc.ca**

You are invited to forward your comments or questions to:

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**The Law Commission of Canada and
The National Film Board of Canada**
have partnered to produce a DVD entitled

Community Mediation

Community Mediation illustrates the mediation process and incorporates the findings of the Commission's research and consultations, as well as material from several contributors to its report.

This DVD, directed by Stéphane Drolet, examines each of the steps linked to the implementation of pilot projects in Longueuil and Sherbrooke, Quebec. The result is an excellent reference work that presents a number of areas to be explored by those involved in this type of intervention.

For information on how to obtain a copy of ***Community Mediation***, contact the **Law Commission of Canada** or the **National Film Board of Canada**.

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