



*Manitoba
Department of Justice
Public Prosecutions*

Guideline No. 5: COM: 1.1

Policy Directive

Subject: Restorative Justice and Diversion

Date: May 2015

POLICY STATEMENT

The Restorative Justice Act emphasizes Manitoba's commitment to address certain criminal matters through resolutions that promote healing, reparation and re-integration into the community. Further, the *Act* recognizes that criminal behaviours are often directly related to addictions, mental illness or cognitive impairment and that public safety can be enhanced by addressing these issues.

Restorative justice is defined in *The Restorative Justice Act* as “an approach to addressing unlawful conduct outside the traditional criminal prosecution process”. A restorative justice approach asks what harm has been done and how that harm can be repaired. Restorative justice can involve a variety of different outcomes including having the offender work with the victim or the community to make amends, paying financial compensation or attending treatment programs with the goal of reducing the likelihood of re-offending.

A restorative justice approach to unlawful conduct may be utilized at any stage of the criminal process. Matters can be diverted out of the criminal justice system altogether before or after charges are laid. Alternatively, restorative approaches can form part of a traditional prosecution resulting ultimately in a stay of proceedings or the mitigation of sentence.

Under *The Restorative Justice Act* the accused or the victim may request that the matter be dealt with through restorative justice. The ultimate decision as to whether a case is properly dealt with using restorative approaches rests with the Crown Attorney. In determining whether a restorative justice approach is appropriate, Crowns should be mindful of the need to protect public safety but should also recognize that addressing underlying causes of crime such as addictions and mental illness will often promote public safety.

PRINCIPLES:

- All offences are potentially eligible for restorative approaches (for example, a homicide by a person suffering with dementia could be diverted to the mental health system). However, restorative approaches for crimes involving significant violence or crimes that are otherwise very serious would be rare and would

normally only be appropriate post-conviction as part of an overall sentencing plan.

- Matters cannot be prosecuted unless as a first step there is a reasonable likelihood of conviction (see the policy on Laying Charges, May 2015). If this threshold is met, then in determining whether there is a public interest in proceeding with criminal charges, Crown Attorneys should consider whether diversion out of the system or a restorative justice approach is an appropriate outcome. An accused with a criminal record, even for a related offence, is not necessarily an inappropriate candidate for a restorative justice approach. However, the more extensive the accused's history of criminal activity, the less likely it is that such an approach will be appropriate.
- Restorative justice approaches are generally only appropriate if the accused is prepared to admit his or her responsibility for the offence. In some cases this may not be necessary if the accused is prepared to admit a need to obtain help to deal with personal issues such as an addiction and is not challenging the allegations. Certain programs may require the accused to admit responsibility. The admission cannot be used against the accused if it is necessary to ultimately proceed with a prosecution.
- In determining whether a restorative justice approach is appropriate, consideration must be given to the special status of aboriginal people as set out in the *Youth Criminal Justice Act* [s. 38(2) (d)], the *Criminal Code* [s. 718.2(e)], appellate decisions such as *R. v. Gladue* and the recommendations of the Aboriginal Justice Inquiry and the Aboriginal Justice Implementation Commission.
- Where required by either the provincial or federal *Victims' Bill of Rights* or the YCJA (s. 12), the Crown Attorney should speak to the victim regarding the referral of the case to a restorative justice program. The victim's input, while not determinative of whether referral will occur, must be considered. If the victim is not an identifiable individual (e.g. a large corporation), it may not be possible to determine the effect of the particular offence on the victim or to elicit the personal views of the victim regarding that particular offence. In those cases, the Crown Attorney should have regard to all the circumstances in deciding whether consultation with the victim is appropriate.

RATIONALE:

The province has recognized through *The Restorative Justice Act* that there can be many effective and appropriate responses by the justice system to criminal conduct. Rehabilitation has always been an important principle of criminal sentencing. Diverting matters out of the system or utilizing non-traditional approaches that stress healing or reparation to resolve matters within the system is consistent with this goal. If the accused agrees to accept responsibility for his or her action and to participate in a restorative justice program, there could be greater benefit for the accused, the victim and the

community than would be expected by proceeding through the more traditional criminal prosecution system.