

# **THE NOVA SCOTIA RESTORATIVE JUSTICE INITIATIVE:**

## **A SYSTEM-LEVEL APPROACH**

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## INTRODUCTION

Restorative justice as a social movement within the criminal justice system has had both a long history and a checkered past (Viano, 2000). The criminal justice system in its present guise (i.e., structures and processes) has developed over the past two centuries, at least in part, in reaction to practices advocated in restorative justice. The restorative justice movement of the 1970s was largely discredited by academic research and criminal justice system practitioners as being ineffective, inefficient and of limited value for larger goals of justice. A major circumstance associated with this judgment was that restorative justice practices, such as diversion and mediation, were of limited scope (e.g., minor offenses, restricted to special population segments) and largely marginalized by system equilibrating forces within the criminal justice system.

For a number of reasons (continuing push factors associated with the costs and alleged rehabilitative ineffectiveness of the criminal justice system and pull factors associated with the victims movement, aboriginal justice movement and the revitalized moral entrepreneurship of progressives and/or religiously committed advocates) the restorative justice movement has become very influential over the past decade. It remains to be seen what impact it will have on the criminal justice system. There are some reasons to think that the impact will be substantial this time. The restorative justice movement appears to be more theoretically firmed up now, more internationally-rooted, more focused on holistic, system-level change, and to have much stronger support among senior governmental officials and justice personnel. There is a widespread appreciation that "entering the mainstream" requires the recognition of restorative justice as a basic premise of how the criminal justice system is to function (Clairmont, 2000). While much restorative justice is still directed at young offenders and low-end offenses, it is acknowledged that only when it emerges as an important factor in how adults and serious offenses are treated, will marginalization be overcome, even as restorative justice would apply to young offenders.

The social constructions of restorative justice (RJ) and the criminal justice system (CJS) that have accompanied RJ's recent revitalization, despite the greater grounding and realism of its advocates, remain largely edenic and binary in character. RJ is depicted in positive ideal-type terms and contrasted to the CJS which is depicted also ideal-typically but with much emphasis on its negative features. In this regard the RJ social constructionism has striking similarities to those social constructions associated with the community-based policing movement (which subsequently became marginalized in policing), and to the aboriginal justice movement (which, thus far anyway, has made very modest inroads in how natives receive justice). Moreover, there is little discussion of the appropriateness of diverse RJ strategies for different kind of offenses and offender-victim situations nor studies of how the black box of the RJ intervention actually works. Another area of shortcoming is lack of discussion or analysis concerning strategies to effect a system-wide usage of RJ principles in the CJS (e.g., how to get RJ used more at CJS levels subsequent to the laying of charges). If RJ is not to experience the same fate as it did in the 1970s, there has to be more sophisticated, empirically-based conceptualization, more strategic reflection and

vigorous effort to have the RJ permeate all levels of the justice system. It should be recognized that there are serious alternatives to RJ, certainly in dealing with young offenders. Intense supervision, whether of a rehabilitative supportive or a punitive, monitoring sort, is advocated by many researchers and CJS practitioners. In these models, most young offenders presumably can be dealt with through letters of caution or low investment strategies while the intense supervision would be directed at the serious and repeat offenders. It is not clear where the RJ approach would fit in these models.

The Nova Scotia Restorative Justice (NSRJ) initiative has been directed at system-level change. It seeks to have restorative justice permeate all levels of the CJS and be applicable in one form or another to all offenders and all offenses (Nova Scotia Department of Justice, 1998). Its experiences may be quite valuable in indicating how successful the current restorative justice movement may be.

## **EVALUATION STRATEGIES AND METHODOLOGIES**

The evaluators developed a logic model-based research design for assessing the NSRJ initiatives. Objectives, indicators and standards for significance were detailed in the context of the presumed underlying causal relationships. In developing this research design the two major points of reference were the NSRJ program guide published by the Nova Scotia Department of Justice and the increasingly large RJ research literature. Hypotheses were advanced for the different roles (e.g., offender, victim), the RJ session dynamics and the organizational structures of NSRJ. Comparisons were undertaken of the views and experiences of offenders and victims, and their supporters, involved in RJ, with counterparts associated with the AM program and others involved in the court processing of youth cases. Specific methodologies included exit surveys with RJ and AM session participants, follow-up phone interviews with all participants willing to be interviewed, and contacting through mail and interviewing by telephone participants in court cases. Yearly interviewing of a large panel of CJS personnel and community leaders in the justice field was an important part of the evaluation. Organizational and workload changes were closely examined at both the agencies and the NSRJ programming levels. The evaluators also participated in the development of a new and comprehensive data management system for all RJ cases. The evaluation was deemed to be a formative evaluation, feeding back findings and offering recommendations concerning the evolution of the NSRJ initiative to those directing the initiative.

## **NSRJ: CONTEXT AND BACKGROUND**

After almost two years of pre-implementation preparation, the Nova Scotia Restorative Justice Initiative (NSRJ) became operational in November 1999. Its immediate stimulus had been the moral entrepreneurial activity of a well-placed, defence lawyer advocate who mobilized senior politicians and senior officials in the criminal justice system to consider the adoption of restorative justice in Nova Scotia. Beyond longstanding, personal commitment to the restorative justice approach, his

actions had been influenced by provincial public reaction (mostly critical) to the use of conditional sentencing in a few high-profile criminal cases.

The social movement proved to be successful. Not only were these leaders persuaded to actively pursue the restorative justice approach but the initiative found much favour among the non-profit community agencies which had been, for years, delivering alternative measures (AM) and related programs for young offenders on behalf of the Department of Justice. The seven regionally-specific agencies typically were eager to move beyond the AM template which largely restricted them to handling summary offenses and provincial statute violations among first-time offenders, and which limited their contact with offenders, not to speak of victims and others.

Adopting restorative justice was seen as "adding value" to the alternative measures programming by involving and responding to offenders, victims and other community members much more, with hypothesized benefits accruing to all parties. Increasing public confidence in the criminal justice system was also highlighted as an objective. While there was no explicit emphasis on down-loading or off-loading or reducing costs vis-a-vis the conventional criminal justice system, it was expected that the workload of the latter would be reduced. From the very beginning the NSRJ project was articulated as a system-level initiative, getting the restorative justice philosophy or approach more prominently featured in Nova Scotia's criminal justice system (see below Clairmont, 1999). It was not focused on a specific offence, type of offender, region, segment of the population, or restorative justice technique. Rather, the challenge was to have restorative justice applicable for all offenses and offenders in the province and operative at all levels of the justice system.

## **PROJECT OUTCOMES/IMPACTS AND INDICATORS**

The NSRJ's outcomes and indicators, and their causal linkages, are detailed in the logic model provided in the project evaluation (see below Clairmont, 2001). It was anticipated that there would be "value added" in terms of more satisfaction, reduced recidivism and greater pro-social behaviour on the part of the offender, more satisfaction and confidence in the justice system on the part of victims and community members, and a greater level of community involvement and sense of ownership in dealing with crime and related social problems. Presumably, these outcomes would be effected by the greater agency contact with and involvement of the above parties in conjunction with the utilization of the full range of restorative justice techniques, a combination which would produce, presumably, more transparent responsibility-taking and accountability, stronger social networks and better problem-solving (including referrals to other local agencies) than could be achieved through either the alternative measures (AM) program or the conventional justice system.

It was expected that the NSRJ would be implemented in phases, first for cases involving young offenders in four of the seven regions delivering AM, but, within three years, for all offenses everywhere in Nova Scotia. Agencies were to receive referrals from any of the four levels of the criminal justice system - police, crown prosecutors,

judges, and correctional officials. Offenses were differentiated partly by the level of the justice system at which they could be referred (e.g., sexual assault and spousal/partner violence could only be referred at the post-conviction, judge level) and it was anticipated that different restorative justice techniques might be utilized for different types of referrals.

From the very beginning it was understood that for the NSRJ to be successful, as articulated, there would have to be much collaboration among the official role players at all levels in the criminal justice system; otherwise, the agencies delivering the restorative justice programming would get few and/or limited types of referrals and hardly move beyond the AM template. It was also clear that the hopefully more demanding caseload meant that there would have to be significant governmental investment in making resources (personnel, equipment), training and co-ordination available to the newly-designated RJ agencies which depended significantly on volunteers to deliver the services, just as they had in their AM period. A third vital requisite for the NSRJ was the development of an appropriate data management system to track referrals and non-referrals, offender and victim characteristics and involvement, agency activity, referral processing and outcomes, and provide the basis for agency reports and other documents and comparisons.

## **KEY PARTNERS AND MAJOR PROJECT ELEMENTS**

The three key partners in the NSRJ initiative have been the federal and provincial governments and the NGO restorative justice agencies (formerly the AM agencies). For three years of its existence, the NSRJ budget was cost-shared between the National Crime Prevention Centre and the Nova Scotia Department of Justice. This funding arrangement included pre-implementation preparation and the implementation period up to April 2001. Since the latter date the NSRJ project has been funded entirely by the province. The local NGO agencies, the service providers, have contributed their organizations which included staff, many volunteers and a community-based board of directors. The NSRJ initiative has been directed by a full-time co-ordinator operating under the direction of a broadly-based steering committee. In addition, working groups were constituted for each of the four levels of the justice system and it was their task to develop protocols for the project (e.g., types of offenses to be dealt with, referral processes, forms) and to vett these suggestions through the steering committee and the local agencies. The local RJ agencies were also required to establish areal working groups, drawn from justice system personnel, stakeholder interests and other community agencies, to advise on possible protocols and advance the NSRJ project in their region. The local agencies were provided with funds to enable them to second their executive directors to the task of pre-implementation planning. Other resources later were made available to the agencies for additional staff, training and publicity. Co-ordination of the entire project and training/orientation to police, crowns, judges and corrections officials at the field-level, were provided through the office of the restorative justice co-ordinator.

There were several key elements of the NSRJ apart from its organizational

structure and the considerable investment in pre-implementation planning, training and agencies' capacity. As part of the NSRJ initiative, police were empowered to issue formal letters of caution to young offenders and their parents/guardians for certain offenses, essentially the type of offenses that had been characteristically referred to the AM agencies in the past. This strategy could well facilitate the value-added objective of NSRJ in that it might encourage police to refer more serious offenses and repeat offenders to the now RJ agencies. It could possibly also reduce the likelihood of the classic problem of "net-widening" frequently associated with alternative justice practices. Another important element of NSRJ was the presumption of restorative justice at the police level. For the vast majority of offenses police dealt with, they were required to fill out, and send to the Department of Justice, a special checklist on the incident, and where they were neither issuing a caution nor referring the case to the RJ agencies, they were required to provide a written reason on the checklist form for not doing so. Within the past year, this presumption of restorative justice has become the practice also at the corrections level, for all new probation files being opened. A crucial element of the NSRJ project was that all agency referrals had to come from one of the four levels of the justice system and the offender, but not the victim, exercised de facto a veto. Protocol required too that the offender had to take responsibility if his/her case was to be cautioned or referred. In other words, there was to be no random assignment of cases to the restorative justice and court streams; rather, there was to be both self-selection by the accused and discretion exercised by the referring agents. Of course, cases not referred at one level could possibly be referred at another, subsequent level of the justice system. The most significant element of the NSRJ initiative was that it was pitched at the justice system as a whole and was articulated as a philosophy applicable, in different ways perhaps, at all times (see below, Archibald, 2001).

## **INTERIM PROCESS EVALUATION**

The NSRJ project has been implemented largely as planned. The extensive preparation paid off. There have been no major snafus and, for young offenders, the NSRJ initiative has passed through its targeted phases and is now province-wide. The agencies' capacity appears more than adequate to deal effectively with the amount and type of referrals they have received. After significant delay, the restorative justice information system is now operational and it provides a wealth of data and efficient recording of case information on all aspects of NSRJ. The implementation process has come up short on two fronts. Within a few months of being launched in November 1999, under pressure from women-based victim advocacy groups, the Department of Justice withdrew the option of sexual assault and spousal/partner violence being referred to RJ at any level (post-plea, post-conviction etc) to the RJ agencies. This moratorium remains in effect. Also, the extension of NSRJ to adult offenders and cases appears to have been put on hold. Consequently, NSRJ is not as system-wide as anticipated.

The NSRJ initiative was not a grass-roots movement propelled by a sense of partnership and ownership on the part of field-level CJS personnel or community stakeholders. Accordingly, a major implementation concern was the provision of training/orientation to police, crown prosecutors, judges, and corrections officials, and

the dissemination of RJ ideas to community leaders and the public at large. While a considerable effort was expended in these regards, limited resources meant limited contact with specific role players. The implementation of NSRJ, not surprisingly, has been perhaps slower than desired with respect to securing the collaboration of (and referrals from) crown prosecutors, judges and corrections officials. Recent resumption of the NSRJ steering committee and local working groups, largely dormant after the NSRJ became operational, has targeted this issue. There have also been some problems in obtaining police collaboration in completing the required checklists (especially where they are proceeding to lay charges) and in moving beyond the AM template in the types of cases they will refer to the RJ agencies. This police reluctance exacerbates the referral shortfall at the subsequent levels of justice and limits the RJ agencies' exposure to more serious offenders and offenses. For the RJ agencies, the process of evolving from the AM session format (an accountability session where the only roles represented are offender, offender supporter and facilitator) to the more demanding and powerful RJ format (see below, McCold, 2001), where there is also a victim and community presence, has been slow and challenging. Still, the RJ format is being increasingly implemented and the agencies are all committed to that end.

## **INTERIM OUTCOMES EVALUATION**

Perhaps the most important outcome of the NSRJ initiative to date is that it has become institutionalized in Nova Scotia and is now a provincial program under Court Services Division, not a project temporarily housed in Research Policy and Planning. It has thus been a successful endeavour by the federal, provincial and NGO partnership noted above. Evaluation results (Clairmont, 2001) indicate that the RJ agencies are spending more time and providing more services to offenders and victims and have greater victim participation than they had in their AM era. Not surprisingly (see Latimer, 2001), exit surveys and follow-up interviews with RJ session participants indicate a high level of satisfaction with the process and outcomes of the RJ intervention, a level much greater than victims and offenders in the court sample comparison, though not appreciably different from participants in the AM comparison. The court comparison results are not especially significant given the self-selection and discretionary factors directing RJ referrals and the types of offenses and offenders being referred. Evaluation data indicate that while the direction of change is as anticipated, the offense and offender profiles of RJ referrals are much more similar to the AM template than to the court docket. The AM comparison also must be qualified since many of the RJ sessions - but again a decreasing percentage over the past two years - have had the AM format (i.e., accountability sessions), so one could hardly expect profound differences in participants' assessments. The NSRJ program has also mobilized more community resources and generated more public discussion of justice matters. The evaluation has found too that, at least in its first year of operation, the NSRJ has reduced the caseload of the provincial criminal courts by roughly five percent. It is unclear at this time how significant the NSRJ program has been in reducing recidivism and increasing pro-social behaviour on the part of young offenders but the data are now in place to examine that issue thoroughly.

RJ caseload and referral patterns clearly point to the chief challenge for NSRJ, namely bringing the restorative justice approach into the mainstream and central concerns of the CJS. For a variety of reasons (e.g., RJ protocol, police subculture, police views of the capacity of the RJ agencies etc), police referrals continue to be low-end offenses. Strategies have to be developed to encourage police referral of more serious offenders and offenses; these would include better agency feedback to officers, involving the police more in RJ sessions, nurturing the RJ enthusiasts among the police, and perhaps more agency discussion with the police on how RJ strategies could effectively deal with repeat offenders. The key though, to a more significant RJ presence in the CJS, would appear to be more collaboration at levels subsequent to police, especially crown prosecutors and corrections officials, areas of the CJS commonly less engaged in RJ initiatives (Archibald, 2001; Hund, 1999). Judges may be less crucial since they tend to see their role as reacting to crown and defence motions, but nevertheless judges elsewhere have pioneered such RJ practices as circle sentencing. Interview data from the CJS panel indicate the problems for NSRJ in getting beyond the police level. These data suggest the metaphor of a wall since CJS personnel, beyond police, generally reported themselves as not being especially pivotal to the NSRJ initiative. They had a limited vision of RJ, seeing it as an alternative rather than a complement to the CJS, a limited exposure to RJ principles and best practices, and a sense that the RJ agencies had limited capacity and would or could only handle quite minor infractions. Some strategies for breaking through this "wall" can be advanced, such as more orientation by NSRJ staff, finding "champions for RJ" at different levels of the CJS, building on "spaces" where these personnel are open to RJ practices and so forth. Clearly all such strategies require more investment in the NSRJ program. More investment, too, appears to be required at the community level where influentials there generally did not depict themselves as collaborators in the NSRJ initiative nor knowledgeable about how it might advance beyond the AM template. If the RJ approach is to expand, and be effective, beyond the traditional AM focus on minor youth property crime, it will have to have the support of these leaders as well, and currently they are sceptical and require convincing.

## **CONCLUSION**

Overall, the NSRJ has been a successful program. It is now an accepted element of the Nova Scotia criminal justice system. There is a significant, effective capacity for providing at least basic-level restorative justice throughout the province. The direction of change on all relevant issues - participant involvement and satisfaction, agency capacity, provincial coordination, the presumption of restorative justice among police and corrections (capturing respectively, perhaps, the diversion and healing dimensions of restorative justice), use of the RJ session format - has been in the anticipated direction. Still, the value-added has been modest and unless there is much greater collaboration with CJS personnel and community stakeholders, it will likely remain so. Difficult challenges for the NSRJ program will come if it has to deal more with serious offenders and offenses, with adults and perhaps with sexual assaults and family violence of all sorts. Then the adequacies of the RJ strategies, the agencies' capacity, and their collaborative links with other community service providers will be more

severely tested. There remains a widespread scepticism among field-level justice system personnel and community leaders that the NSRJ could meet those challenges but, at the same time, there is much support for the program as presently implemented.

The NSRJ initiative illustrates well the importance of effective partnerships and pre-implementation planning. Because of these factors, it has been successfully put into operation and is poised to achieve its objectives more fully in the future. The initiative also illustrates the importance of moral entrepreneurship. On the one hand, early persuasive advocacy was effective in mobilizing the elites in Nova Scotia's criminal justice system. On the other hand, more champions are needed now, perhaps more at the field-level of the criminal justice system (police, crowns, judges and corrections officials), if NSRJ is to advance significantly beyond the AM template. The NSRJ initiative was not a modest proposal. It aimed at changing the "philosophical" basis of the criminal justice system in Nova Scotia. This is a complex, continuous task and most such movements (e.g., community-based policing) usually end up being swallowed by system equilibrating forces and thus marginalized, instances of, as-it-were, a theoretical/philosophical elephant and a programmatic mouse. There are some signs that such system forces are containing and marginalizing NSRJ, limiting it to youth, and to low end offenses. At the same time, there are some signs that NSRJ is making slow but steady penetration of the Nova Scotian CJS (e.g., it is institutionalized, the presumptive 'option' now for corrections as well as policing, and a revitalized steering committee with strong administrative leadership and the presence of the deputy minister of Justice is focusing on facilitating its growth in the CJS). The challenge to escape marginality requires continuing significant provincial co-ordination and leadership since the Department of Justice, more than the regional non-profit RJ agencies, has the authority to influence the justice stakeholders.

The NSRJ initiative has been a top-down initiative. There has not been a sense of ownership among the major justice role players at the field level nor among organized community groupings active in justice matters. More effort has to be expended effecting the collaboration of these players, some of whom have seen the initiative as a threat rather than as an opportunity to jointly advance common goals. Much work remains to be done developing these kinds of partnerships. In addition, there has to be more discussion among the RJ agencies, and with the above stakeholders, concerning the RJ approach; in particular, there needs to be more attention paid to the diversity of RJ strategies and how RJ agencies can respond to more serious matters and thereby gain the confidence of these parties. There is much more to be achieved. Still, NSRJ has achieved much already.

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