

# AVENUES TO JUSTICE

Restorative &  
Transformative Justice  
for Sexual Violence

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## EXECUTIVE SUMMARY

This report explores the barriers and availability of restorative and transformative justice (RJ/TJ) options for sexual violence in Canada. Over the last several decades, many mainstream feminists and anti-violence organizations have been wary of the ability of RJ/TJ to adequately respond to sexual violence. More recently, there has been a growing interest on the part of feminist organizations, such as LEAF, to embrace RJ/TJ as a legitimate avenue of justice for survivors of sexual violence.

RJ/TJ has been developed and used for decades in diverse communities across Canada including among Indigenous, Black, and other racialized communities, Mennonites, sex workers, and the 2SLGBTQIA+ community. It is also critical to acknowledge and advance Call to Action 50 in the Truth and Reconciliation Commission of Canada report which calls for Indigenous law revitalization for First Nations, Métis, and Inuit communities, some of whom rely on restorative legal traditions.

This report is based on interviews with subject matter experts from across Canada. Interviews were conducted throughout 2022 to 2023. A legal analysis of section 717 of the *Criminal Code* was completed as well as a thorough review of relevant academic and grey literature. The findings of this report will advance LEAF's work to ensure that survivors of sexual violence have access to justice within the criminal legal system and outside of it, if they so choose. As demonstrated throughout the report, while there are promising projects and practices emerging across the country, many legal actors are still unaware of the availability of alternatives and are often limited by state-mandated moratoriums on restorative justice for sexual assault charges. Furthermore, there are significant resource constraints for both RJ/TJ not-for-profit organizations and grassroots RJ/TJ practitioners that limit the availability of RJ/TJ for survivors.

## LEGAL BARRIERS TO ACCESSING RJ/TJ

There are several legal barriers that limit the availability of RJ/TJ for sexual violence. The two most critical addressed in the report are:

- While section 717 of the *Criminal Code* allows for Crown Attorneys to divert cases into alternative measures programs, many provinces have implemented moratoriums on sexual violence cases under this provision. This report argues that the moratoriums need to be critically revisited and revised for a more nuanced and permissive approach that will allow survivors to access RJ/TJ if they desire. Any potential revisions to the moratoriums need to be done in full collaboration with diverse feminist and social justice organizations across sectors.

- Information shared during RJ/TJ must be protected to ensure the safe participation of those involved in the process. For example, people who cause harm may be concerned that admitting to their actions and taking accountability could potentially put them at risk of criminalization. Alternately, survivors could face a defamation action if the person who caused harm denies the allegations. To encourage all parties to meaningfully engage, RJ/TJ needs to have legal protection against use of what occurs in these processes in other legal proceedings.

## NON-LEGAL BARRIERS TO ACCESSING RJ/TJ

There are several non-legal barriers that prevent the availability of RJ/TJ options for survivors of sexual violence. One of the pressing issues is attitudes about RJ/TJ as appropriate for sexual violence among the public, the legal community, and anti-violence advocates. For the last several years, there has been growing concern about the criminal legal system's response to sexual violence resulting in a desire to examine the possibility of RJ/TJ and whether it is more in alignment with the justice needs of survivors. The major barriers identified from this research were public perception and anti-violence sector attitudes towards RJ/TJ for sexual violence, the urgent need for critical resources for survivors of sexual violence, the creation of resources for people who cause harm, and capacity building among RJ/TJ practitioners.

Historically, there has been a strained relationship with competing perspectives about the applicability of RJ/TJ to cases of sexual violence. Interviews with key informants highlighted that there has been an ideological shift about RJ/TJ in recent years within the feminist anti-violence movement. Key informants, while hopeful about this shift away from carceral solutions for sexual violence, identified that there was still a lot of work to be done for it to be a safe and accessible option for all survivors. Interviewees also noted that mainstream RJ practitioners and organizations can also enhance their learning about the specific nuances of sexual violence and ensuring that their RJ practices are trauma-informed and safe for survivors of sexual violence.



Significant resource constraints on organizations that offer RJ/TJ as well as anti-violence organizations are another barrier. For survivors to be able to meaningfully engage in RJ/TJ, they require access to resources such as shelters and housing, counselling, and childcare. Such resources need to be accessible, culturally relevant, and have low barriers to access. Resource constraints are further pronounced in rural, remote and First Nations communities. Moreover, key informants noted that even when people who cause harm would like to engage in an RJ/TJ process, there are very few organizations that will work with people who have caused harm. This is a major gap in services that needs to be addressed to meaningfully provide avenues of justice for survivors as well as for the prevention of sexual violence in the future.

## CAMPUS SEXUAL VIOLENCE

*Interviews with key informants revealed that there is a growing interest for RJ/TJ options for sexual violence on campus. Overall, experts reported that campus sexual violence policies tend to be overly complicated and confusing for survivors. Most often, the only available option for resolution is by making a formal report and participating in an investigation. Key informants found that these investigations were often harmful and rarely resulted in consequences for the person who caused harm. While most of interviewees were hopeful that RJ/TJ could be a viable option on campus, especially for students who experience intersecting forms of marginalization, most also raised concerns about how university administrators were approaching RJ/TJ. There is an urgent need for improved supports on campus both for survivors and people who cause harm.*

# RECOMMENDATIONS

## 1 *Re-evaluation of Moratoriums*

The Office of the Attorney General in each province and territory should review and re-evaluate any moratoriums prohibiting or limiting RJ/TJ for sexual violence with the goal of ending the moratoriums in criminal proceedings. This review needs to be done in collaboration with diverse anti-violence advocates and activists and RJ/TJ experts with an aim towards expanding the justice options available for survivors.

## 2 *Increased and Committed Funding for RJ/TJ*

Provincial/territorial and federal governments must establish long-term and sustainable funding for RJ/TJ programs specific for sexual violence. Such funding needs to also include ongoing supports such as counselling services or other culturally appropriate modalities of healing for survivors and people who cause harm.

## 3 *Increased funding to enhance Independent Legal Advice programs for survivors and the launch of similar programs in all provinces and territories*

Provinces across Canada have launched Independent Legal Advice (ILA) programs that provide survivors of sexual violence to access legal advice free of cost and these must be expanded, better funded, and made permanent (if still only in pilot form). ILA is critical for survivors to make educated decisions on how they want to proceed following sexual violence or to provide guidance on their involvement in the formal legal system. Access to ILA should also provide survivors with information about engaging in RJ/TJ and making informed decisions about their involvement in an RJ/TJ process.

We also recommend that provinces and territories that do not currently have ILA programs for survivors create them. ILA programs need to be developed in collaboration with anti-violence organizations that can oversee the program as well as provide guidance on the appointment of approved legal counsel.

## 4 *Protections for Participants and their Disclosures in RJ/TJ Processes*

Further research into law reform opportunities is needed to better understand the limitations of protections for participants and their disclosures in RJ/TJ processes.

For all parties to be able to meaningfully participate in RJ/TJ, there must be protections built into these processes. For the person who caused harm, this means ensuring that anything disclosed during RJ/TJ cannot be used in other legal proceedings. For the survivor, this could mean prevention of defamation lawsuits by the person who caused harm. Any admissions made by an accused who participates in an AM under section 717 of the *Criminal Code* are legally prohibited from being used in other civil or criminal proceedings. However, not all RJ/TJ processes are connected to the section 717 regime, leaving practitioners to engage in piecemeal and legally untested forms of confidentiality agreements to protect their participants.

## 5 **Creation of a Directory of Service Providers**

There is a great need for comprehensive and updated directories of RJ/TJ service providers in each province to help reduce information silos between practitioners in the field. The specifics of who should maintain such a directory should be at the discretion of the provinces, based on regional needs and capacity. However, Nova Scotia offers a workable model as they have a provincially run office that organizes and coordinates restorative justice resources across the province.

## 6 **Public and specialized education about RJ/TJ**

The creation of sustainable funding streams from all levels of government and funding bodies for RJ/TJ and anti-violence organizations to provide public and targeted education on RJ/TJ. Provinces should also provide funding for public education campaigns aimed at survivors and other victims of crime to ensure that they are aware of RJ/TJ opportunities as is guaranteed by the *Canadian Victims Bill of Rights*. Such funding should also be extended to fund sector specific education and training including provincial corrections, police services, and others who may work with survivors such as social workers, post-secondary administrators and medical professionals.

Specialized education is also needed for legal professionals. Provincial law societies should ensure their members have access to continuing legal education about RJ/TJ for sexual violence. RJ/TJ could also be embedded into law school curriculums. Ensuring that the legal community has numerous opportunities to learn more about RJ/TJ can help to develop their comfort instructing clients and enhance knowledge of local resources.

## 7 **Access to Basic Social Supports for Survivors**

All levels of government must ensure that survivors of sexual violence have access to safe and affordable housing, counselling, and social supports. This is an urgent basic need for many survivors, especially for those facing intersecting forms of marginalization and those in northern and rural communities. While justice is an important need, survival needs will generally take precedence and prevent survivors from being able to engage in any attempt to access redress.

