

Bridging Justices: A Critical Exploration of Moratoriums on Restorative and Transformative Justice for Sexual Harm in Ontario

Summary



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**Toronto
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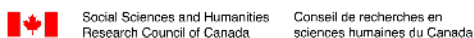
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Community Justice Initiatives (CJI): CJI is a not-for-profit organization based in Kitchener-Waterloo, Ontario. CJI facilitates restorative justice for a wide array of conflicts and harms. The Revive program specifically supports restorative processes for sexual harm. CJI is one of the few organizations in Canada that provides restorative justice facilitation for sexual harm and supports both survivors and people who have caused sexual harm.

Women's Legal Education and Action Fund (LEAF): LEAF is a national charitable organization that works towards ensuring the law guarantees substantive equality for all women, girls, trans, and non-binary people. LEAF has played a significant role in advancing the law of sexual assault in Canada through a feminist and equality lens. LEAF has been involved in nearly every significant change to the law of sexual assault in its 40 years of existence, including intervening in almost all precedent-setting Supreme Court of Canada cases to ensure that the Court gives full protection to complainants' rights to equality, privacy, and dignity.

Funding and Ethics Approval

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This study has been approved by the Trent University Research Ethics Board and the Toronto Metropolitan University Research Ethics Board.

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Executive Summary

We conducted a one-year study to examine the perspectives of Ontario staff and volunteers within the gender-based violence (GBV) sector about access to restorative justice for sexual harm. This study builds on the 2023 [Avenues to Justice Report](#) that concluded provincial and territorial policies limiting or prohibiting diversion under [s.717 of the Criminal Code](#) should be reevaluated. Ontario [Crown policy D.4](#) prohibits the use of s.717 for all sexual offences, which includes restorative justice. **The key finding of this research is that there is support among the GBV sector in Ontario to revise the Crown policy. We call on the Province of Ontario to also allocate additional funding to restorative justice options for sexual harm.** Ensuring survivors of sexual harm has an array of options that will enhance survivor-centered justice and contribute to overall community safety.

What is Restorative Justice?

The United Nations defines “restorative processes” as “any process in which the victim and the offender, and where appropriate, any other individuals or community members affected by a crime, participate together in the resolution of matters arising from the crime, generally with the help of a facilitator.”¹

Community Justice Initiatives (CJI) Revive Program offers several RJ options for sexual harm. CJI offers **Facilitated Dialogues**, which are:

- Survivor-initiated
- Led by a trained facilitator who works with all parties independently (this includes the person who caused harm, the survivor, and others involved such as community or family)
- The minimum threshold for participation is that the person who caused harm recognizes that they caused harm.
- The facilitator assists all the parties to work towards reparation.

¹ United Nations Economic and Social Council. (2002). *Basic principles on the use of restorative justice programmes in criminal matters*. United Nations.
<https://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>

- This may result in a face-to-face meeting between the parties, but it may also occur in other ways such as letter writing, text messages, or a phone call. It is also possible that the parties may never come face-to-face.

Scope of the Problem

The current Crown policy disregards the autonomy that should be given to survivors, as it removes their ability to choose the form of justice that best suits their needs. To date, the [Toronto Star](#) has reported three women in Ontario had to engage in significant self-advocacy to access restorative justice options after criminal charges were laid because of this policy. Survivors should be provided with the option to pursue restorative justice, if this is the option they prefer.

The policy prohibiting the use of s.717 was introduced in the 1990s in response to concerns from the GBV sector. Since then, there have been changes in perspectives and attitudes towards restorative justice for sexual harm, but the policy has not been revisited in nearly 30 years.²

Research Methods

The recommendations are informed by a mixed methods study which included:

- One-on-one semi-structured interviews (n=35)
- Survey (n=155)
- Focus groups (n=26)
- Community gathering (n=~50)

The participants represented a diverse range of volunteers and staff within the GBV sector in regard to geographical location, organization type, roles, and population served. The participants themselves were diverse with respect to social location, and many self-identify as survivors.

² Burnett, T. & Gray, M. (2023) *Avenues to Justice: Restorative and Transformative Justice for Sexual Harm*. LEAF. <https://www.leaf.ca/project/avenues-to-justice>

Policy Alternatives

Decades of academic research has demonstrated that participation in a criminal trial as a complainant/witness is often re-traumatizing and exacerbates the trauma originally endured from the assault. Restorative justice provides an alternative route to accountability, reparation, and healing. Our research demonstrates that there is strong support for enhancing restorative justice options for sexual harm among GBV sector staff and volunteers.

Select Research Findings from the Survey

- 86% support expanding RJ/TJ options for GBV.
- 89% either strongly or somewhat agree that all survivors should have RJ/TJ options made available to them.
- 78% said they would refer others to RJ/TJ options if they were available in the community and offered by trained practitioners.
- 71% agreed or strongly agreed that RJ/TJ options could prevent future offending

Potential Cost Savings

An added benefit is the cost savings that RJ can offer. Currently, CJI is able to work with 20 individuals or 10 cases in one year at a cost of **\$100,00.00** per year. This cost is significantly less than the cost of a criminal sexual assault trial.

Policy Recommendations

1. Amend Crown Policy D.4 to Allow Diversion Under s.717 for Sexual Offences

We recommend revising or eliminating Crown Policy Manual Directive D.4, which currently prohibits the use of s.717 diversion for sexual offences. Diversion under s.717 must be survivor-initiated. The policy revision must be undertaken in collaboration with a diverse group of stakeholders, specifically those with experience working in the GBV sector and restorative justice.

2. Expanding Education on Restorative Justice

The province should invest in broad educational campaigns to inform survivors, the public, and the GBV sector about **non-criminal legal and community-based options** for responding to sexual harm. This includes raising awareness of RJ/TJ as valid and survivor-centered alternatives to the criminal legal system. Specialized education and training on RJ should also be available for lawyers, judges, and those working within the GBV sector.

We call on provinces to provide **long-term, sustainable funding** to build capacity within the GBV sector. This funding should support:

- Education and training on RJ/TJ frameworks and practices
- Community-based initiatives that offer survivor-centered alternatives to criminal legal processes.

3. Province-Wide Community Consultation on RJ/TJ Implementation

We recommend a comprehensive provincial consultation to explore how RJ/TJ options for sexual harm can be ethically and effectively operationalized in Ontario. This process should include:

- Determining **jurisdictional authority and oversight**
- Debating whether and how RJ/TJ processes should be **formally credentialed**
- Identifying methods to **embed cultural specificity and responsiveness**

4. Fund and Launch 4 RJ/TJ Pilot Sites for Sexual Harm

Ontario should fund and support the creation of a minimum of four pilot sites that offer focused RJ for sexual offences. Ideally, Crown Attorneys can refer cases to these pilot sites. CJI will hold the contract, select the three additional pilot sites in collaboration with community partners representing a wide range of communities, ensure quality control, reporting responsibilities, and project evaluation.

Pilot programs will be community-led and shaped by survivor input that will be tailored to the needs of specific populations that face varying forms of marginalization.

CJI is uniquely positioned because of their unique experience providing restorative justice options for over 40 years. Moreover, CJI has over 30 years of experience facilitating

restorative processes for sexual harm. The organization has a strong connection to the GBV and RJ sectors. CJI has experience with accepting court referrals for other types of offences. Funding will be used to fund training for facilitators, partnership development with community, government, and academic partners, service delivery and evaluation.

5. Support Indigenous Sovereignty and Legal Revitalization

The Province of Ontario must meaningfully implement the **Truth and Reconciliation Commission (2015) Calls to Action** and the **National Inquiry into Missing and Murdered Indigenous Women and Girls (2019) Calls for Justice**. This includes:

- Supporting Indigenous sovereignty in justice processes
- Investing in the revitalization of Indigenous legal orders, including community-based responses to sexual violence