

Restorative and transformative justice (RJ/TJ) in Ontario:



A necessary option for survivors of sexual assault

The criminal legal system often fails to meet the needs of survivors of sexual assault. As such, there is a demand for more options to address sexual assault, including access to restorative and transformative justice (RJ/TJ) processes. In order to ensure more survivors can get the justice they deserve, the Women's Legal Education and Action Fund (LEAF) is calling on the Ontario government to:

- 1 Amend Crown Policy D4** to allow survivors of sexual harm to access RJ/TJ processes.
- 2 Establish long-term and sustainable funding** for RJ/TJ programs specific to sexual violence.

We will be releasing our full set of recommendations in an upcoming report, *Bridging Justices: A Critical Exploration of Moratoriums on Restorative and Transformative Justice for Sexual Harm in Ontario*.

At a glance: Survivors and the current system

Since 1999, the rate of sexual assault in Canada has not decreased, while other crime rates have.¹

Less than 6% of sexual assaults in Canada are reported to the police, with fewer going all the way to a trial.²

Many survivors have said that the process of reporting an incident of sexual violence and engaging in the legal system is **re-traumatizing** and does not offer them what they want or need after being assaulted.

2 out of 3 survivors reported not being confident in the police, court processes, and the criminal justice system.³ Experiences can be even worse for survivors who face structural marginalization.

Another avenue: Restorative and transformative justice

Restorative and transformative justice (RJ/TJ) is an approach to justice that *seeks to repair harm* by bringing together the person who was hurt and the person who hurt them to discuss what happened and what must be done in the aftermath of the harm.

The three main goals of RJ/TJ are:



Healing the harm a survivor has experienced



Holding the person who caused harm accountable for their actions



Preventing future harm or violence

In practice, RJ/TJ can look like:

Victim-offender mediation or reconciliation

Community Justice Committees

Healing circles

Restorative conferencing

Victim impact panels

RJ/TJ can provide a meaningful way for survivors to promote their own healing and centre their own experience while allowing those who caused harm to understand, acknowledge, and take responsibility for the harm.

1. <https://justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/apr01.html>, <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2022001/article/00013-eng.pdf>
2. <https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2024051-eng.htm>
3. <https://www.justice.gc.ca/eng/rp-pr/cj-cj/victim/rd6-rr6/p3.html>

Fast facts: RJ/TJ in Canada

Section 717 of the Criminal Code **allows** for Crown Attorneys to divert cases into an alternative measures program.

64% of Canadians say that restorative justice should be available to all victims and perpetrators of crime if both parties consent and the perpetrator admits their guilt.⁴

Canada has had RJ/TJ practices in place for many decades. Since 1999, Nova Scotia has had one of the oldest, most comprehensive RJ/TJ programs in the country.

RJ/TJ programs exist in British Columbia for some forms of sexual violence, and a pilot project that includes programs for sexual violence was recently launched in Alberta.

RJ/TJ for sexual assault survivors in Ontario

Despite the demand for RJ/TJ by survivors of sexual assault, there is a moratorium on the use of RJ/TJ processes for cases involving sexual assault in Ontario that was implemented in the 1990s.

This moratorium was never intended to be permanent, but to allow more time to ensure processes were safe for survivors.

FAQ

Do Canadians want RJ/TJ?

62% of Canadians feel that restorative justice could provide victims of crime with a more satisfying, meaningful experience than the criminal justice system.⁵

Is RJ/TJ “soft on crime”?

Only 5% of sexual assaults are reported to police, and only a fraction result in charges and convictions. By including RJ/TJ as an option that survivors can pursue, there will be more opportunities for perpetrators to be held accountable. In fact, perpetrators often report that facing their victims in a restorative justice process is harder than a traditional trial.⁶

Isn't RJ/TJ only appropriate for minor offences?

RJ/TJ has been successful in cases of assault, sexual offenses, and murder. Research shows a decrease in recidivism is most pronounced when restorative justice is used for serious offences.⁷

CASE STUDY: RJ/TJ IN PRACTICE

Content warning: rape

In 2016, author and activist Marlee Liss was allegedly raped. She reported what happened to the police and went through a preliminary inquiry. However, these experiences were extremely traumatizing, and Liss decided she no longer wanted to participate in a trial process. Instead, she strongly advocated for a restorative approach to be used in her case.

Despite initial pushback, a Crown attorney put the case on pause and arranged a restorative process with an external agency. There, Liss got to hear her rapist take accountability in a private room and apologize to her directly. He also underwent months of therapy. By the time the program was complete, Liss was confident he wouldn't re-offend.

*This is an exceptional case given Ontario's moratorium on the use of RJ/TJ processes for cases involving sexual assault. **The Crown who organized this process was later formally disciplined for their actions.***

To ensure more survivors can attain justice, the Ontario government must:

- 1. Remove sexual offences** from the list of offences ineligible for community justice programs in section D4 of the Prosecution Manual; and
- 2. Establish long-term and sustainable funding** for RJ/TJ programs specific to sexual violence.

Facilitated dialogue, which is the foundation of RJ/TJ, aligns directly with Ontario's policy goals around victim-centred justice, violence prevention, and mental health; and reflects Indigenous and community-informed alternatives to carceral responses.

For more information on RJ/TJ, please see *Avenues to Justice: Restorative and Transformative Justice for Sexual Violence*.

4. <https://www.justice.gc.ca/eng/tp-pr/jr/rg-rco/2018/mar08.pdf>

5. *Ibid.*

6. <https://rjalbertacourts.ca/wp-content/uploads/2023/10/RJ-Brochure-EN.pdf>

7. *Ibid.*