

RESTORATIVE COLLABORATION: THE NOVA SCOTIA RESTORATIVE JUSTICE PROGRAM

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It is a pleasure to be with you at this 12th World Conference of the IIRP to share news of the Nova Scotia Restorative Justice program and the current research being done in relation to it. It is particularly exciting to make this presentation because it affords me the opportunity to whet your appetites and pique your collective interest in Nova Scotia and the work we are doing in advance of the joint conference that we are hosting with the IIRP in Halifax, Nova Scotia, in June 2011 (for those of you who already feel compelled to take note of this conference, it is on June 15–17, 2011).



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The Nova Scotia Restorative Justice Program

For those of you who may not know, Nova Scotia is located on the east coast of Canada. It is a small province with a population of approximately one million people. Nova Scotia is known for its seafood, Celtic music (fiddling and bagpipes abound) and the hospitality of its people — but I want to suggest to you that it should also be known for

its restorative justice program, which is the most developed and comprehensive program in Canada and among the leaders in the world.

The Nova Scotia Restorative Justice (NSRJ) program was conceived in 1997. It began as a pilot program in 1999 in four communities and by November 2001 extended to the whole province. Now an established program for over eight years, it receives about \$1.5 million in funding under the annual budget of the province's department of justice. The currently funded program is oriented to 12- to 17-year-old youth in conflict with the law and those they have harmed.

From the outset, the program has espoused the aim of becoming a comprehensive alternative to the mainstream punitive and/or rehabilitative criminal justice system for both youth and adult offenders. It was intended to be rolled out in four phases: pilot youth application, full youth application, pilot adult application, and, finally, full application to adults. The program has realized its first two goals and as I will elaborate in a moment, is moving toward the next phase. The NSRJ program is committed in principle to goals which embody a broadly conceived restorative theory of justice¹ with potentially far-reaching implications not only for wrongdoers, victims and their families, but also for communities.

The Nova Scotia program is accessible across the province to all young people between the ages of 12 and 17. Young people can be referred at all stages of the criminal justice process: by police, prosecutors, judges and corrections officials. Young people are eligible for referral at different stages depending on the nature of the offence with which they have been charged. The program handles 1600 cases per year across the province. Sixty percent of cases are referred by police as they enter the system. Thirty-five percent are referred before they go to trial by the prosecutors. Courts and corrections only account for five percent of referrals to the program. This number is low but has been climbing steadily as judges become more familiar with restorative justice and the program.

The only exception to eligibility for referral is in the case of gendered violence. There is currently a moratorium on the referral of such cases until such time as concerns related to safety and security can be addressed. Work is ongoing to explore with women's organizations and researchers what this might entail.

The program underwent an extensive evaluation of its first five years, conducted by Dr. Donald Clairmont of Dalhousie University. It also has recently undergone a comprehensive internal government program review. The results of both were very positive, both in terms of the satisfaction of participants and the effect of the program on re-contact rates with the criminal justice system.

The program is currently at a critical stage in terms of its further development. It now has significant experience dealing with young people in conflict with the law. Out of this experience the program has recognized the need to deepen and expand the reach of restorative practice. Through a collaborative effort all those involved in the operation of the program worked to develop best practice standards to guide and shape the program at an operational level. The program also reviewed and revised all of the operational protocols for the program in light of lessons learned during the first five years.

Those working within the program have also recognized that the holistic approach to justice entailed by restorative justice forces attention upon the divisions and operational silos within government and the ways in which they impede the work of restorative justice. The potential for restorative principles and practices to be effective outside of the criminal justice realm (in which the program currently operates) has also been recognized. Recognition of these issues and potentialities has led to a number of pilot programs and innovations. There are currently pilot programs to address the needs of children under the age of 12 who have engaged in dangerous or harmful behavior. (These children fall outside the jurisdiction of the criminal law in Canada.) Other pilot projects have applied restorative justice to discipline matters in schools. Pilot projects have also undertaken community development and mobilization work. Finally, the program is contemplating moving to the next planned stage of development, a pilot program targeting adults. The holistic approach and integrated nature of restorative justice theory and practice has begun to receive more general recognition, as the restorative justice program figured prominently in two recent integrated government strategies aimed at children and youth and crime prevention respectively.

One of the things that makes the Nova Scotia program noteworthy, and which can be credited, I think, for much of its success thus far, is

the partnership between government and community that rests at the core of the program and its operations. The program did not arise from a “grassroots” initiative, but rather in response to frustration among a key cross-section of criminal justice system stakeholders about the inadequacy of the mainstream system’s response to crime. It was clear that the traditional criminal justice system was not meeting the needs of offenders, victims and various communities throughout the province. Canada’s high levels of incarceration, burgeoning criminal justice system costs and public scepticism about the efficacy of the criminal justice system were all present in the minds of strategically placed policymakers, legal practitioners, correctional officials, victims’ services personnel and academics in Nova Scotia. The Nova Scotia program was thus established by government. This runs contrary to some of the folklore of restorative justice that suggests it is only legitimate when it emerges from the grassroots and positions itself outside of government, and, indeed, often in opposition to it. Nova Scotia, however, forged a different path, one that is, perhaps, more natural and fitting for the Canadian context. Our history has not been one of revolution and resistance to government but, rather, one in which government has played the facilitator and ally in the achievement of community goals.

The experience of the Nova Scotia program challenges the assumption that for restorative justice to be community based, it must not involve the state in any central way. Indeed, the story of the Nova Scotia program is one of collaboration and partnership between government and community that has grown and deepened over time. While the government established the program and has continuing oversight of the program in terms of funding and setting practice standards, the program is animated and implemented by community agencies located throughout the province. These community agencies are nonprofits governed by community boards and operate within a service-provider agreement with the government with respect to the restorative justice program. However, the relationship between government and community is much more collaborative — one of partnership — than the service-provider model might at first suggest. The agencies have come to play a major role in the governance and development of the program. They are represented on the management committee for the program, developed the practices standards for the program through an inclusive

collaborative process and have taken the lead in the development of pilot projects related to the program.

The collaborative spirit in which the program operates is actually reflective of restorative values and commitments. Through its development and operation, the restorative justice program in Nova Scotia has opened new possibilities for the relationship between state and community in meeting the needs of individuals, groups and communities.

Research, Reflection and Development

This collaborative relationship between government and community served as the basis for an innovative research initiative focused on the institutionalization of restorative justice. Restorative justice has received some significant attention from academic researchers over the last several years. However, much of this research has been conducted by academics who treated restorative justice programs and practitioners as subjects of research. The Nova Scotia Restorative Justice Community University Research Alliance (NSRJ-CURA) is a collaborative research alliance involving community, government and university partners. This five-year research initiative is focused on research related to the institutionalization of restorative justice and takes the experience of the Nova Scotia Restorative Justice program as a focal point. The research pursues five related themes: 1) translation of principles into practice, 2) community, 3) diversity and equity, 4) gender and 5) conceptualizing and measuring success.

These themes intersect through a series of 19 projects that take up particular issues related to the challenges of institutionalization in the Nova Scotian context. These projects explore and examine:

- A Critical Race Approach to Restorative Justice: The African Nova Scotian Context
- Community Capacity Building in Nova Scotia's Restorative Justice Program
- Community in Restorative Justice
- Due Process for Offenders and Victims in Restorative Justice
- Francophone/Acadian Communities and Nova Scotia Restorative Justice
- Conceptualizing and Measuring Success in Restorative Justice
- Professionalization and Restorative Justice

- Restorative Justice and Government Compartmentalization of Funding and Services
- Reception and Integration of Restorative Justice by the Criminal Justice System
- Restorative Justice in Diverse Multicultural Contexts
- Restorative Justice in Urban and Rural Contexts
- Restorative Justice Principles and Practice
- Connections and Relationships between Restorative Justice Programs in Nova Scotia
- Restorative Justice, Gender and Violence: Exploring the Issues
- Short- and Long-Term Mental Health Outcomes of Participants in NSRJ
- Understanding Access and Outcomes
- Decision Making and Discretion
- Understanding Public Opinion
- Restorative Justice: A Play

Over five years of NSRJ experience with thousands of cases, recently the subject of empirical evaluation² has led to a considerable rethinking of restorative justice theory and practice in relation to governing policies, standards for program implementation and responses to controversial issues. Structuring quality restorative processes, ensuring equality in program service delivery, controlling tendencies toward bureaucratization, balancing offender and victim concerns and encouraging restorative community development are the kinds of issues which have all been central to the program's evolution. Through its various research projects, the Nova Scotia Restorative Justice Community University Research Alliance is exploring the significance of the Nova Scotia experience to date for sustaining restorative justice beyond the pilot project or nascent stages, where a vision of community-based justice is institutionalized in collaboration with the state.

The NSRJ-CURA research is concerned with both empirical and conceptual research. With access to a significant amount of program data collected over the past eight years since the program was fully implemented, the researchers are gaining insights into how the program is being accessed and used and into its outcomes. The research will also compare outcomes with those gained through the criminal

justice system and further combine this information with health data to explore more deeply the implications of restorative justice processes for health outcomes. Out of this exploration and analysis of existing data, researchers are considering current and possible measures for the program in terms of their conceptual appropriateness and from a methodological perspective.

In addition to the empirical-based research, the NSRJ-CURA researchers are also concerned with conceptual and theoretical issues. For example, one project offers a critical race perspective and analysis of restorative justice and another explores the relationship of restorative justice theory with feminist theory in the context of gendered violence. One of the major projects within the NSRJ-CURA (and one for which I am the lead researcher) takes as its central focus the articulation and development of restorative justice as a relational theory of justice. I want to say a few words in closing about this project, in particular, since it has direct bearing on the relationship between restorative justice and restorative practices and thus will be of interest to those gathered here as they consider our common commitments and goals.

This project builds upon my work over the last decade, through which I have developed an account of restorative justice as a theory of justice – a *relational* theory of justice.³ This account roots restorative justice in a deeper understanding of human beings and the world as relational. It takes connection and relationship over separation and independence as the basic starting point for thinking about justice and about the other ideas and conceptions that are foundational to our social and political life. This conceptual framework for understanding restorative justice as a relational theory of justice connects it with the broader conceptual shift to a relational worldview. In doing so, it addresses some of the debates and issues emerging within the restorative movement.

Some have suggested restorative justice ought to be broadly conceived as a “way of life” because it holds insights for how to live. Some have sought to recognize these broader insights but insist that as we move out of the justice context we should focus on “restorative practice/practices” as the larger category. These discussions and debates are trying, I think, to reflect the same insight that restorative justice and restorative practices — insofar as they seek to reflect a relational

understanding of people and the world — have broader implications that we need to consider. However, the larger movement or umbrella is, I suggest, relational theory or a relational worldview. It is this that should shape our understanding and approach to justice (as one fundamental principle that profoundly affects our lives together), but also other ideas, concepts, structures and institutions — from education to health care, the environment and the economy. Out of this project a book detailing restorative justice as a relational theory will be produced. We are also producing in connection with this project an edited collection involving some of the leading relational theory scholars. These scholars articulate and develop relational conceptions of justice, equality, autonomy, identity, conscience, memory and judgment and consider the difference these conceptions make when applied.

I welcome the opportunity to speak with you all further about the Nova Scotia Restorative Justice Program, the NSRJ-CURA, and/or relational theory. If you wish further background information on the Nova Scotia program, I have brought copies of a paper written by myself and Bruce Archibald.⁴ The paper is also available along with much more information about the NSRJ-CURA research on our website www.nsrj-cura.ca.⁵

I look forward to sharing the results of our various research projects with you when we meet for the NSRJ-CURA/IIRP Conference in Halifax in June 2011.

Endnotes

- ¹ For a full presentation of restorative justice as a theory of justice, and not simply a collection of dispute resolution techniques, see Jennifer J. Llewellyn and Robert Howse, *Restorative Justice: A Conceptual Framework*, Law Commission of Canada, 1998. Also available at: http://www.nsrj-cura.ca/nsrj-cura/mediabank/File/RJ_-_A_Conceptual_Framework_-_Law_Commission_of_Canada_1_199.pdf
- ² See Don Clairmont, *The Nova Scotia Restorative Justice Initiative: Final Evaluation Report*, Pilot Research, Bedford, Nova Scotia, December 2005, which compares the results of an initial set of 2440 exit interviews from the years 1999 to 2001 with a further sample of 3899 interviews collected in the period from 2002 to 2004. For further discussion of these results, see generally Don Clairmont, “Penetrating

the Walls: Implementing a System-Wide Restorative Justice Approach in the Justice System,” in Elizabeth Elliott and Robert M. Gordon, eds., *New Directions in Restorative Justice: Issues, Practice and Evaluation* (Cullompton, Devon: Willan Publishing, 2005), pp. 245–265.

- ³ Llewellyn and Howse, see endnote 1 above. Also see: Jennifer J. Llewellyn, “Dealing with the Legacy of Native Residential School Abuse: Litigation, ADR, and Restorative Justice” (2002) 52, *University of Toronto Law Journal* 253–300; Jennifer Llewellyn, “Restorative Justice in Transitions and Beyond: The Justice Potential of Truth Telling Mechanisms for Post-Peace Accord Societies,” in T. Borer, ed., *Telling The Truths: Truth Telling and Peace Building in Post-Conflict Societies* (Notre Dame Press, 2006), pp. 83–114; Jennifer Llewellyn, “Doing Justice: New Directions in Restorative Justice,” in R. Murphy, ed., *Doing Justice: Dispute Resolution in the Courts and Beyond* (Ottawa: Canadian Institute for the Administration of Justice, 2007); Jocelyn Downie & Jennifer Llewellyn, “Relational Theory & Health Law and Policy” in *Health Law Journal Special Edition* (2008) 193–210; Jennifer Llewellyn, “Bridging the Gap between Truth and Reconciliation: Restorative Justice and the Indian Residential School Truth and Reconciliation Commission,” in M. Brant-Castellano, L. Archibald, M. DeGagne, eds., *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (Ottawa: Aboriginal Healing Foundation, 2008); Jennifer Llewellyn, “Truth and Reconciliation Commissions: Restorative Justice in Response to Abuse and Violence,” in G. Johnstone & D. Van Ness, eds., *Handbook of Restorative Justice* (Devon, UK: Willan Publishing, 2007).
- ⁴ Bruce Archibald and Jennifer Llewellyn, “The Challenges of Institutionalizing Comprehensive Restorative Justice: Theory and Practice in Nova Scotia,” (2006) 29, *Dalhousie Law Journal* 297.
- ⁵ For paper go to: http://www.nsrj-cura.ca/nsrj-cura/mediabank/File/Archibald_and_Llewellyn_Article_2007-11-14.pdf

