



### Restorative Justice, the Community, and Charitable Organizations

#### Restorative Justice

The John Howard Society of Alberta has been reviewing developments in Restorative Justice (RJ) since the publication of its paper in 1997, available on the JHSA website. When this paper was published, the literature on RJ was fairly limited; now it can be described as voluminous. There are books, collections of papers, numerous articles, college and university courses, and several websites describing various aspects of RJ.

For readers unfamiliar with the term, *Restorative Justice is a framework for understanding and responding to crime that balances the rights and concerns of crime victims, offenders and the community* (Levinson). These three elements: crime victims, offenders and the community are generally regarded as the chief components of RJ (Zahr).

Based on our review of the literature, we believe that a fourth component in the RJ framework needs to be more clearly addressed, namely, the function and role of government (the state).

#### Offenders and Victims

There is considerable research on what should be done with offenders - whether they should be incarcerated, rehabilitated, receive special programming, released as early as possible to live in the community, among many other options.

In a forthcoming paper on Restorative Justice that will soon be available on our website, we trace the evolution of victims in the criminal justice system. Contrary to the conventional view, concerns about victims and their exclusion from the criminal justice process have a long history. We present five stages in their evolution:

- First Stage: Ancient and Historical - Until the 14<sup>th</sup> century, victims traditionally negotiated some type of “restitution” directly from an offender. This practice changed as local feudal power was merged under a central authority, the king. As English common law developed, “restitution” on a very limited basis was provided to crime victims. These developments contributed towards the foundations of the current law on restitution in Canada (Virgo).
- Second Stage: c1875-1954 - The first criminologists initially studied the criminal. Then their focus shifted to crime as a legal entity. Criminals and their crimes were subsequently viewed as more complex, and included the interactions of various parties e.g. the victim and offender, as well as contemporary values and norms in society.
- Third Stage: 1955-1972 – English penal reformers promoted the idea that victims deserved more effective remedies than the traditional action provided through the law on torts. In the 1960s the first legislation offering recompense for victims came into effect in New Zealand, followed by England, California, New York, and Saskatchewan.
- Fourth Stage: 1973-1997 - The modern roots of Restorative Justice began to evolve during this period. The Law Reform Commission of Canada and cost-sharing agreements between the Federal Government and the Provinces and Territories confirmed the need for criminal injury compensation programs. International conferences and symposia on “victimology” brought greater attention to the circumstances of victims of crime. Within Canada, court-based victim-offender mediation programs were introduced in Kitchener, Ontario, and later in Winnipeg. A flurry of activity followed in the 1980s and 1990s including the passage of a series of bills in Parliament and provincial legislatures regarding victims and their rights.

## Restorative Justice... con't.

• Fifth Stage: 1998 – the present – The interests of crime victims has become an integral part of federal, provincial and territorial, law enforcement, judicial, and other components of criminal justice.

### **“The Community”**

While approaches and protocols for dealing with offenders and victims have been well established, the role of “the community” has been given far less attention (McCold). What do we mean by “the community”? How does “the community” fit into the RJ framework? What are the needs of communities arising from criminal conflict? How can “community” be utilized in a society - and especially a society as pluralistic as Canada? Above all, what is the role of charitable and non-profit organizations within “the community” component of RJ?

Nils Christie’s seminal paper in the literature on RJ, “Crime as property,” published in 1977, set the tone for debates about “the community.” He argued that a criminal act is an injury to personal relationships. This injury is the “property” of those involved, namely, the victim, the offender and the community. According to Christie, the criminal justice system has “stolen” this property from local communities. Hence, the argument that the state, represented by the courts, functions as a barrier and prevents offenders and victims from discussing, resolving and making restitution for circumstances that led to the criminal act.

In his paper *Restorative Justice: The Role of the Community* (1995), Paul McCold describes the community’s needs and responsibilities. He argues that communities need:

- A sense of justice when criminal conflict occurs;
- The power to resolve conflicts;
- The ability to re-establish peaceful relationships and reintegrate the victim and the offender;
- A sense of safety and hopefulness;
- Concrete actions to prevent the reoccurrence of similar conflicts.

McCold also describes a number of promising models that can be utilized to achieve these objectives.

But how can citizens become engaged in resolving criminal conflict in their community, Raymond Shonholtz asks, when contemporary justice only occurs *after* an incident has violated a criminal statute? How is “the community” to act when the criminal justice system becomes very actively involved, for example, in instances of extreme violence? Shonholtz points out that the focus of prevention is distinctly outside of our current legal system. Are public policies sufficiently developed for the creation of *citizen-based community justice*?

Roger Cotterell (1997) offers some clarification regarding the role of government. He states that since law is intended to have application throughout society, it must be reconfigured in more pluralistic terms. This will help to re-conceptualize the law in several new ways. He advances the argument that postmodern “society” is viewed as “a vast, endlessly shifting diversity of interests, values, projects and commitments of individuals, expressed and pursued through multiple, transient memberships of collectivities of many different kinds” (Cotterell 77). This view of society is really a description of *political society* - “a territorially defined area of social interaction regulated by a specific political system.” This concept of society then becomes unwittingly connected with the state and the functions of the

state. Borrowing from Anthony Cohen’s work, *The Symbolic Construction of Community* (London: Routledge, 1985), Cotterell prefers to think of “community” not as a social structure but as “a web of understanding about the nature of social relations” (78). Community, the legal concept of community, viewed in this way is much more compatible with the “community” described by advocates of RJ.

These remarks suggest that much more work is required to outline the functions of “community” and its responsibilities within the context of Restorative Justice. As far as the role of charitable organizations and non-profit societies is concerned, our work in this regard has only begun.

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## **Staff Update**

We are pleased to announce the appointment of Bev Tweedle as Office Manager/Executive Assistant of the John Howard Society of Alberta. Bev joined the office in November 2003, stepping into the vacancy created by the departure of Sharon Wilson. Bev came to JHSA from the Elizabeth Fry Society of Edmonton and brings, in addition to her considerable office and administration skills and experience, a Diploma in Social Work, and experience as a case worker in the human services field.





## The Charitable Dilemma – Part 1

*[In this, the first of a series of commentaries, Brad Odsen, Executive Director of the John Howard Society of Alberta examines an issue impacting charitable organizations across Canada, with particular relevance to those in the human services business, including the John Howard Societies in Alberta.]*

“Do more with less!” The mantra of business and all orders of government for a little better than the last decade. But those in the charitable sector have been doing more with less for at least the last 25 years. At times, it seems that every year there is a need to do more, and every year there is less available with which to do it.

“Accountability!” Something that has been, many would argue, paid lip service for some time now, in both business and government, but recent scandals, in business and government, in Canada and beyond, have meant that this is now starting to become a reality for business and government. But again, it’s been a requirement for the charitable sector for at least the 25 years – and it is becoming ever more stringent. Whereas funders of charitable activities expected, in the past, at the very least an Annual Report on how charities were using the funding, it is now more and more common that semi-annual and even quarterly Reports are the norm, and more and more demands are being made for objective measures of the outcomes of the funded program(s).

Yet it is becoming increasingly difficult for charitable organizations to access on-going funding for general operational and administrative uses. Whether the funding source is an order of government, a Foundation, or a “government spin-off” (such as proceeds from gaming activities in Alberta), it is more and more the case that it is for a fixed term, for a very specific purpose, and that very tight constraints are placed on the uses to which funds can be put – and this typically includes the provision that funds cannot be used to contribute to administration of the organization (or only a small portion can be used for administration and even then, there are frequently severe limitations on which “administrative” costs are eligible).

For human service organizations like the John Howard Societies, the effective provision of services requires the use of professional staff; in many instances, the use of professionally-qualified staff is a legislative or contractual requirement. The administration/management of an organization employing professional and support staff must in turn, necessarily have a certain minimum level of professional qualification or experience in human resources management – and that “minimum level” continues to rise.. Similarly, the administration/management of the organization must have the skills to write project proposals, prepare budgets, manage the fiscal resources of the organization, prepare reports on funded activities, conduct evaluations of funded activities, deal with government officials and other funders, businesses, the media, and the public.

Oh, and they must also implement the Board policies and, in essence, manage the organization in a prudent, effective, and efficient manner. Few charitable organizations have the resources to employ individuals, let alone departments, for all of these administrative/managerial functions.

While the sources of funding become more and more “term specific” and “project specific”, and as the evaluating, accounting, and reporting requirements of the funding sources continue to grow, the availability of the resources necessary to properly do this increased (administrative) work continues to decline.

“Do more with less indeed!”

And there is another aspect of the now predominant funding practices that is equally as dangerous for charitable organizations; as these organizations become more and more dependent on short term and project funds for their continued survival, they necessarily have to become more and more “creative” in matching possible funding to their core Mission and Values. A necessary consequence of this is that funding availability and policies can, and frequently do, affect the Missions of charitable organizations.

I do not believe the various funders intend this as a consequence of their funding policies; I do not believe that this is a “policy driver” for these funding organizations. Each funder sets policy guiding how funds will be made available, and for what purposes, that are important to it and within its mandate.

But I am convinced that a cumulative outcome of this is that many charitable organizations are put in the position of finding themselves straying further and further away from their primary *raison d’etre* out of the necessity of accessing funding to continue to survive.

**It’s past the time for those that support the concept of a healthy and vital charitable sector to re-visit their funding policies and carefully consider whether those policies currently in place are, in the long term, strengthening or weakening the sector.**

Having said that however, it’s important to acknowledge that the John Howard Society of Alberta has been extremely fortunate (in comparison with many other charitable organizations) in that it has received, and continues to receive, generous support from the Alberta Law Foundation, the Government of Alberta, and the Government of Canada that does recognize the importance of the Society’s Mission and Ends, and the need for the administration required to fulfill the Mission and achieve the Ends.

# The John Howard Society of Alberta

## Annual General Meeting 2004

The Society's Annual General Meeting will be held Saturday, June 19<sup>th</sup>, 2004  
at the Edmonton John Howard Society located at:  
10526 Jasper Avenue, Edmonton, AB  
from 3:30 p.m. to 5:00 p.m.

We welcome everyone to attend.  
Hope to see you there!

*RSVP Bev Tweedle @ (780) 423-4878 by June 11<sup>th</sup>, 2004*

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*The John Howard Society of Alberta is an agency composed of citizens in Alberta who are interested in criminal justice reform and preventing crime in our communities. We recognize that dealing with crime is the responsibility of the community as well as public agencies.*

*we gratefully accept donations to help offset the costs of our efforts in criminal justice reform and crime prevention. Donations are income tax deductible.*

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**ISSN 1192-4381**