

# The Collaborative Justice Model

*Putting people at the centre  
of our response to criminal behaviour*

## USER GUIDE

**Public Safety Canada**  
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## **Acknowledgements**

This User Guide was prepared for Public Safety Canada by James Scott, a co-creator of the Collaborative Justice Project (CJP) and its' founding Coordinator from 1998-2003. Other members of the Project creation team were Lorraine Berzins, Sheila Arthurs, Andrejs Berzins, Rick Prashaw, Robert Cormier and the late Renate Mohr. The Project was sponsored by the Church Council on Justice and Corrections (CCJC).

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## **Notes**

1. After almost a decade of operation, the Collaborative Justice Project changed its name to Collaborative Justice Program: Restorative Justice Ottawa. In this User Guide, the terms Project and Program are used interchangeably. Both are also known as "CJP".
2. In the case stories contained in this Guide, with the exception of the Tessier-DuBois account, the names and identifying characteristics have been changed to respect the confidentiality of the participants.
3. The terms "accused" and "offender" are used in this guide to denote the person charged with the offense. Generally the term "accused" is used prior to a plea being entered.
4. More information can be found on CJP at [www.collaborativejustice.ca](http://www.collaborativejustice.ca)

***“All of our humanity is dependent upon  
recognizing the humanity in others.”***

Desmond Tutu

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## 1. Introduction

**T**he Collaborative Justice Project (CJP) was an innovative pilot project designed to determine whether a restorative approach in cases where serious criminal charges (see Pg. 5) had been laid could deliver more satisfying justice to victims, the accused and the community. CJP was unique in that it ran parallel to, and in conjunction with, the criminal justice system. This **User Guide** has been developed to assist communities and organizations across Canada replicate this successful Collaborative Justice model.

The **User Guide** includes information on setting up, implementing and sustaining a Collaborative Justice Project/Program. The Collaborative Justice model (CJM) does not use a cookie-cutter or formulaic approach. While the methodology employed in each case is similar, the needs and decisions of the participants themselves determine the process and the outcome. Each case is unique. Each participant brings a different experience and set of needs.

As important as the nuts and bolts of the model may be, however, it is the critical underpinnings of values and principles that ensure that the model operates with consistency and integrity, and does no further harm. Staff, sponsors and community supporters of any new project should be thoroughly grounded in these principles. Adherence to the First Principles below keeps the project honest and ensures that staff do not impose their own needs and agenda, no matter how well intentioned, on the participants. As restorative justice practitioner Peter Adler put it: “What we do as facilitators is help other people have difficult conversations”.

A commitment to First Principles also serves as a guide and touchstone when decision points and challenges arise in the unique circumstances, personalities and evolution of a case. First Principles in the Collaborative Justice model include:

- **Respect** for the dignity of everyone touched by the crime
- **Safety** in ensuring that the process does/allows no further harm
- **Inclusion** of the victim, the accused and affected community members
- A **participant-driven process**, where staff assist the parties to identify needs and options, and the parties make their own choices about how to move forward
- **Voluntary participation** throughout
- Staff **impartiality**, or being “dually partial” to both parties without judgement
- **Boundaries** based on clarity about the purpose of the project and the role of staff
- **Accompaniment and facilitation**, rather than advice-giving
- **Truth telling and accountability**
- **Confidentiality**, sharing information only as agreed to by the participants
- **Self-care** including awareness of vicarious trauma.

## 2. The Restorative Framework

Since the 1980's, there has been a growing awareness in Canada and throughout the world that the adversarial criminal justice system is rarely able to provide a meaningful response to the harm that occurs as the result of a crime. Voices from within the system and from the community at large have increasingly expressed concern that: the current justice system is remote from the lives of all the people affected by a crime; there is an inadequate and unsatisfying role for victims in the justice process; the sentence of the court rarely has relevance for the offender, the victim(s) or the community; the justice process does not address the root causes of crime; and, that the criminal justice system is unable to provide communities with a sense of safety.

The “offender focused” nature of the criminal justice process excludes, for the most part, a role for those victimized except as witnesses against the accused. Inadequate information about the process and a role limited to their usefulness in securing a conviction against the accused can leave victims with a feeling of secondary victimization by the system itself. Their specific needs are rarely identified or addressed. Accountability is not to them. As a result, victims are often left with only the severity of the sentence as the yardstick by which to judge how seriously society takes the harm done to them.

Fundamental concerns about the retributive approach to justice were crystalized in the 1990 book, *Changing Lenses*, by American criminal justice advocate Howard Zehr who called for a paradigm shift in the way society understands and responds to crime. Rather than viewing crime principally as breaking a law and focusing on establishing guilt and assigning punishment, Zehr maintains that it would be more meaningful to understand crime as harm done to persons and to ask, “who has been harmed?” and “what needs to be done to repair the harm?”. This restorative justice paradigm places the emphasis on identifying and repairing the impacts of the “relational” violation of a crime on the victim, the community and even on the offender him/herself.

By putting people and their realities at the centre of the process, the restorative approach moves beyond the narrow legal issues considered by the court in convicting and sentencing, and seeks to identify and address the full range of needs that arise for people when their lives are affected by a crime in order that they can recover to the extent possible. Restorative justice focuses on such questions as:

- What does the victim need in order to begin the journey towards recovery?
- How can the offender be helped to understand and acknowledge the harm to the victim?
- What would meaningful accountability by the offender look like?
- How can the offender be involved in repairing the harm?
- How can the community assist in repairing the harm and/or addressing root causes of crime?

One of the clearest and most comprehensive definitions of restorative justice was developed in 2002 by Dr. Robert B. Cormier of the Department of the Solicitor General Canada in *Restorative Justice: Directions and Principles – Developments in Canada*:

*“Restorative justice is an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.”*

Restorative justice is based on the values of equality, inclusion, truth-telling, accountability, voluntary participation, safety, empowerment, confidentiality, reparation and healing. Similar initiatives based on these values have also been called reparative justice, collaborative or transformative justice.

Various restorative programs and models have emerged in Canada and internationally over the past four decades. They include victim-offender mediation, family group conferencing, sentencing circles, police-based community justice forums, reparative boards, restorative conferencing, community conferencing and healing circles. Restorative programs are in use at the pre-charge, pre- and post-sentence and post-release stages of the Canadian justice system. Restorative initiatives are also being applied in school and workplace conflicts.

The Collaborative Justice Project (CJP) was envisioned in 1997 in a political climate that, while acknowledging the value of emerging restorative programs, viewed them as applicable only to youth or minor first time offences, cases that could be diverted out of the formal system. Believing that where more serious harm has been done, a harm-based response is most necessary, the Project was designed to demonstrate how a comprehensive restorative approach in adult cases of serious crime at the pre-sentence stage of the criminal justice process could safely deliver more satisfying justice to victims, the accused and the community.

CJP is based on the belief that those affected by a crime are capable of identifying their own needs and acting collaboratively to address them when they are included, treated with respect, and provided with the information, support and tools to do so. Victims can regain a voice and a sense of empowerment and control which are often casualties of criminal victimization. Those responsible for harm can gain insight into the impact of their behaviour on the victim and the community, can develop deeper victim empathy, examine the root causes of their behaviour, and recover dignity through the opportunity to express an apology and participate in crafting a reparation plan. Community members can identify social impacts, witness meaningful accountability, and support healthy resolutions that contribute to safer communities.

A process designed to enable safe, collaborative engagement can assist participants to achieve their goals, get answers to their questions, address their emotional needs and craft a concrete reparation plan. These factors contribute to recovery and to the prevention of future crime.

The Collaborative Justice Project was implemented as a 2½-year pilot project in the Judicial District of Ottawa-Carleton on September 1, 1998, supported by the Ottawa Crown Attorney's office, Solicitor General Canada, Justice Canada, Correctional Services Canada and the National Crime Prevention Centre. Its parent body was the Church Council on Justice and Corrections (CCJC), a national, ecumenical, bilingual charitable organization mandated to assist churches and communities to reflect on and more deeply engage issues in the field of criminal justice.

The CJP process offered victims, accused persons and affected community members **support, accompaniment and information** as well as opportunities for **engagement, accountability and reparation** through which they could work together to recover from and repair, to the extent possible, the harm caused by the crime. Cases accepted by CJP were processed on a parallel track to the justice system and then re-converged at the time of sentencing. Rather than employ a single format, such as face-to-face meetings, the CJP utilized a variety of tools and formats to assist clients to engage collaboratively (directly or indirectly) to name and address their needs. Where a Resolution Agreement resulted, the parties could submit it to the court for consideration at the time of sentencing.

CJP has found that the courts have been willing to receive Resolution Agreements and to include components in the sentence because a Resolution Agreement has the input and support of the victim and the offender, has more relevance for them in terms of accountability and reparation than a punitive sentence alone, and serves the overall purposes of sentencing. In 1996, the Criminal Code of Canada was amended to include two additional purposes: to provide reparations for the harm done to victims or to the community; and, to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community (s.718, CCC). The court often utilized minimum or intermediate custodial sanctions so that the offender could live out accountability to the terms of the Agreement.

Project funding was extended for 3 years in part to gather sufficient cases for formal evaluation. In 2005, Public Safety and Emergency Preparedness Canada conducted an evaluation (*Evaluation of the Collaborative Justice Project: A Restorative Justice Program for Serious Crime*) to determine whether a restorative approach could be applied in cases of serious crime, and whether the Project was successfully meeting its mandate and program goals. The evaluation found: *"When compared to the traditional criminal justice system, the restorative approach appears to provide added value and benefit to both victims and offenders."* (<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/cllbrtv-jstc-prjct/index-en.aspx>)

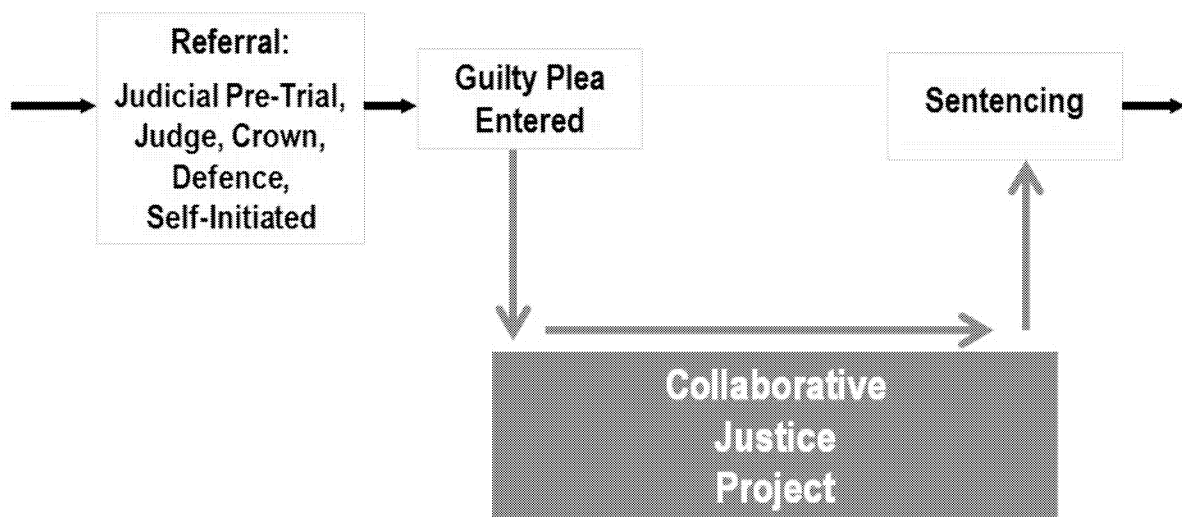
CJP also took part in a Public Safety Canada study on *Restorative Justice's Impact on Participants' Psychological and Physical Health* in 2009. (<http://restorativejustice.org/rj-library/restorative-justices-impact-on-participants-psychological-and-physical-health/9907/#sthash.ufr2dnrw.dpbs>)

The Collaborative Justice Project has operated for 20 years, eventually changing its name to the Collaborative Justice Program: Restorative Justice Ottawa. It was incorporated in April 2011 and subsequently received a registered charitable number. Go to [www.collaborativejustice.ca](http://www.collaborativejustice.ca)

### 3. The Collaborative Justice Model

The Collaborative Justice model (CJM) offers a restorative option for people affected by a serious crime at the pre-sentence stage of the criminal justice process. The goal is to enable participants to recover as much as possible from what has happened. This may be achieved, in whole or in part, by opportunities for engagement to: share information; describe impacts; offer or receive an apology; offer or receive commitments on reparation or restitution; follow through on treatment for underlying issues; and, provide reassurances regarding future safety and reoffending. The judicial process is suspended until the CJP process is completed and a report on outcomes is submitted to the court at the time of sentencing.

#### Traditional Court Process



**Criteria:** “Serious crime” is understood to include offences such as robbery, break and enter, assault causing bodily harm, assault with a weapon, aggravated assault, weapons offences, arson, fraud over \$5000, and driving offences that involve death or bodily harm. The Collaborative Justice model is applicable to both adult and youth cases where the seriousness of the criminal behaviour means that the accused is facing a custodial sentence.

It is also important to emphasize what the Collaborative Justice model is NOT:

- i. It is not diversion. Offenders are charged, enter a guilty plea and are sentenced.
- ii. It is not a sentencing project. Participants do not develop sentencing recommendations or plans. However, when the process results in a Resolution Agreement between the parties, they may agree to forward it to the court for consideration at sentencing.
- iii. Participation does not preclude a custodial sentence.

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*"I acted for a young man charged with dangerous driving causing death. The deceased was a young woman riding her bike. This type of case usually leads to a highly adversarial and difficult trial often with unsatisfactory results to everyone. In this particular case, the accused was prepared to accept responsibility and became involved with the Project. The Project contacted the parents of the deceased to invite them to become involved and to see what could be done to meet their needs. The restorative work was so successful that the parents of the deceased supported the accused at the time of sentencing. In fact the parents made an emotional written plea on behalf of the accused requesting that he not only remain out of custody but that he not lose his driver's license. Tears literally came to my eyes as I saw the accused and the deceased's parents sitting together and leaving together. I am certain that proceeding in this fashion allowed all parties to have some closure and to continue their life without bitterness, anger and much less pain."*

*Justice Norm Boxall  
(former defence lawyer)*

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Cases are accepted where all three criteria are met:

- The crime is serious (as defined above)
- The accused is willing to take responsibility and make amends
- An identifiable victim is willing to participate.

A case is not accepted, is referred elsewhere or discontinued when:

- The accused does not meet the criteria
- A victim does not wish to participate
- There is subsequent offending by the accused while in CJP
- The case is more appropriate for another agency
- There are co-accused who are at large or going to trial.

The Collaborative Justice model is built on the restorative principles of equality, inclusion, impartiality, voluntary participation, safety for all, participant-driven, truth-telling and accountability, confidentiality as negotiated, reparation and recovery. These principles are the basis for the ground rules that create a safe place for caseworkers and participants to develop a meaningful process for each case.

**Ground rules:** The process is **voluntary** for the victim, the accused and affected community members, and remains so throughout. For the accused, participation is *without prejudice* in that no additional or more severe sanction will be applied by the justice system if the accused chooses not to participate or decides to withdraw during the process. In addition, no statement made by the accused during the CJP process will be used against him/her in the prosecution of the case. This agreement, undertaken between the Crown Attorney's office, Defence Counsel and CJP, serves the victim by creating a context in which the accused can tell the truth and accept responsibility for the harm that he/she has done.

Withdrawal in the midst of the CJP process by either the victim or the accused can have significantly negative emotional impacts on the other. It can undermine the credibility of the accused's remorse and acceptance of responsibility in the eyes of the victim who may feel twice-victimized due to disappointed expectations. Similar negative impacts can be experienced by the accused on the withdrawal of the victim. Careful assessment and preparation of the participants by the caseworker will almost always avoid this outcome.

The process is **confidential**. The content of conversations between the caseworker and one participant is not to be shared with the other participant without permission. It is normally the case that participants will agree that the caseworker may relay some information to the

other party to begin communication, to clarify a key issue or to build trust. The role of the caseworker is not to speak for the parties but to convey agreed upon information so that the participants can prepare for engagement with each other. Any outcome from the process, such as a Resolution Agreement, is shared with the court only if the parties agree. Respecting confidentiality is fundamental to building trust between the participants and the caseworker.

The process is **impartial**. Caseworkers treat each participant with **equality, dignity** and **respect**. The primary task of the caseworker is to create a safe context in which the participants can do their recovery work. This means **assessing** the appropriateness of a referred case according to the criteria, **minimizing** physical and psychological risks, **accompanying** participants throughout the CJP and court processes, **providing** information and tools to enable the victim and the accused to identify their differing needs and how they may address them, **exploring and facilitating** engagement options as appropriate, and **offering** follow up support. For many participants, it may be the first time they have been involved with the criminal justice system or been invited to reflect on their needs and have a voice in how those needs are met.

The process is **participant-driven**. With the support and assistance of the caseworker, the parties determine how the process is to unfold including the pace and timing, the means of engagement to address their needs, the elements included in a Resolution Agreement, and whether or not anything is submitted to the court. The Collaborative Justice model does not have a set formula, script or process. It is responsive, customized and interactive offering a variety of tools to the participants. These tools include information sharing between the parties by the caseworker, letter exchanges, videotaped interviews, or face-to-face meetings. More than one of these tools may be used as an incremental confidence-building step in advance of more direct engagement options.

**Benefits:** For victims, the collaborative process offers support and accompaniment, and provides opportunities to describe the impact of the crime on their lives, learn more about the offence and the accused, receive an apology, assess whether the accused is remorseful, have a voice in the criminal justice process, identify what they need for meaningful accountability and reparation, access community resources and/or receive reassurance about future offending.

The accused benefits from the opportunity to take responsibility for the harm they have done, learn about its impacts on others, explore the circumstances and causes of the offence, offer an apology and practical or symbolic reparation, identify their own needs for healing, and provide commitments about future offending. An offender with a long history of serious charges and custodial sentences said of the CJP process that this was the first time in more than 20 years that he felt truly accountable for what he had done.

Community participants fall into two categories: (1) those affected by a crime (i.e., extended family members, neighbours or co-workers), and, (2) volunteers. "Secondary" victims can benefit from involvement in ways similar to victims. Community volunteers not connected with the case can benefit from learning more about the justice system and the needs of those caught up in it, bringing community concerns and interests into the process, and by identifying

ways in which the community can support victims and offenders towards recovery. In the CJP, volunteers also sit on the Advisory Circle and offer administrative assistance to the Program.

Good Practice: The goal of the Collaborative Justice process is to empower the participants for accountability, reparation and recovery, to the extent possible. As noted in the Introduction, adherence by the staff of CJP to the First Principles of restorative justice and to the ground rules that embody them is critical to ensuring that participants benefit from their involvement. It is to be expected that not every case will follow the same path, result in a Resolution Agreement or live out the potential that caseworkers may see. Yet “good practice” requires that caseworkers respect the views, needs and decisions of the participants.

Where restorative justice programs earn criticism for bias or even creating harm, it usually arises from participants feeling that they have been pressured to engage in processes that they are not comfortable with (such as face-to-face meetings), or to conform to timelines that serve the interests of the “system” rather than the participants, or to meet the needs or agenda of the caseworker/program over their own. In particular, when victims are left feeling manipulated to serve the interests of the accused or vice versa, bad practice is inevitably the outcome. Where a program’s focus is on one specific mechanism or process into which all participants are funneled rather than on the unique needs of the people it is trying to serve, bad practice will occur. Where caseworkers believe that they know best what would be good for the participants in terms of process (i.e., face-to-face meeting) or outcome (i.e., forgiveness), it is a violation of First Principles and may well result in more harm being done.

Although the Collaborative Justice Project was developed out of, and sponsored by, a coalition of Christian churches, staff remain mindful that, in serving the public, participants may or may not share religious faith. In fact, for many people religious institutions and programs can be a barrier to involvement or trust. In practice, the CJP has operated as a secular program and does not introduce prayer or religious elements into its processes.

A word about forgiveness: Given that some current restorative practice emerged from faith traditions, it is not unusual for the public to infer that restorative programs aim to achieve forgiveness between victim and offender. Yet, many victims do not want to be pressured to forgive. Some victims identify forgiveness as one of their goals while for others, it is not a consideration. In the CJP, forgiveness is viewed as a possible, but not necessary, by-product of a healthy process in which participants themselves identify what they need as outcomes. When forgiveness is demanded or expected by either the accused or the caseworker, undue pressure is placed on the victim, and an external agenda on the parties.

In addition, forgiveness is a complex concept. Some see forgiveness as implying that the harm no longer matters. Victims do not want to send that message. Others see forgiveness as an act of personal “letting go”, freeing the victim as much as the offender to move forward with their lives. For some, the issue is about forgiving themselves. When a healthy and participant-driven process results in forgiveness, organically and often unexpectedly, it can be profoundly healing but it is not something to be expected or imposed.

## 4. Setting Up a Collaborative Justice Project

**W**hat needs to be put in place to implement a Collaborative Justice model? This section offers an overview of the advance work that should be attended to in order to successfully create a Collaborative Justice Project/Program.

Before a project becomes operational and ready to accept referrals or undertake casework, relationships and an infrastructure must be created. This may require a number of months of planning, relationship-building, recruiting, training, protocol development, logistical negotiation and fundraising. Time spent on the following components in advance of the implementation of the Project will ensure critical infrastructure and support.

### **A. Support in the Courthouse**

In order to have cases referred and have access to the criminal justice process generally, the sponsoring community organization must build key relationships and partnerships within the courthouse. This requires that the sponsoring agency have a credible reputation and a solid proposal to put forward. In 1998, the Collaborative Justice Project was sponsored by the Church Council on Justice and Corrections (CCJC), a national organization created in 1974 with a history of reflection and education on the restorative justice paradigm. CCJC also had strong connections with the Crown Attorney's office in the Ottawa Courthouse.

With the support of the Crown Attorney and start-up funding, CCJC arranged for a staff person to do advance work at the Courthouse for 8 months prior to September 1998 building relationships and seeking support for a collaborative justice initiative for serious criminal offences. This advance work is necessary because building awareness and confidence in the courthouse *can be slow*. For many who work there, this means a shift in the culture. Crown Attorneys are accustomed to working in a traditionally adversarial system. Defence Counsel are accustomed to legal strategies that minimize the consequences for their clients and may be uninterested in an approach that requires admitting responsibility and a process where the lawyer is not present.

Victim serving agencies may suspect that the Collaborative Justice model is biased towards reducing a custodial sentence, yet their advice and support for victims can be very important. Police and Probation officers may have trouble seeing the links between the CJP and their work.

**One cannot over-emphasize the critical role played by the Crown Attorney.** Without support from the Crown, no Collaborative Justice Project can be possible. The Crown Attorney is the gatekeeper to the criminal justice system and his/her support is critical in opening doors and getting a hearing from justice officials for whom applying a restorative process in serious crimes can be both unprecedented and potentially risky. Attempts to replicate the Collaborative Justice model in two other cities did not succeed in part due to a lack of support by the Crown Attorney.

Former Ottawa Crown Attorney Andrejs Berzins offers the following suggested approaches and strategies to gain the support of Crown Attorneys:

1. Crown Attorneys tend to be risk adverse when it comes to trying novel approaches but are more likely to use a program such as CJP if they know they have the permission to do so from the highest level of their own administration. The endorsement of the CJP by the Attorney General, his/her Deputies and Directors, communicated to all prosecutors working in the field, could be very effective in garnering their support.
2. Prosecutors will also be more likely to use the program if they know that it is supported by the police and by the judiciary. Well-informed police officers can bring to the attention of prosecutors cases which they feel would be appropriate to consider for CJP. Likewise, judges conducting pre-trial hearings can identify to the Crown and Defence Counsel specific cases for the program.
3. Experience has shown that once individual prosecutors have been personally involved in a case that has gone through the CJP they usually becomes supporters and advocates of the program. These prosecutors, particularly if they are experienced and well-respected by their colleagues, should be used to lead the implementation and to champion the program. They are likely to have a positive influence on their colleagues.
4. When convincing prosecutors to use the CJP one should emphasize its proven benefits to VICTIMS. It is hard to disagree with a program that can lead to greater victim satisfaction.
5. Victims who have gone through the process and are satisfied with their experience can be approached to speak to prosecutors about the benefits of CJP, if they are willing. This could possibly be done at Crown Attorneys' conferences. Collect and disseminate "success stories" to prosecutors.
6. It must be stressed to the 'nay-sayers' that CJP does not have to be used in ALL cases, but only for those where everyone believes it is an appropriate process to be tried.
7. Emphasize that CJP is totally voluntary. No one will be forced to participate.
8. Stress that CJP is meant to supplement the current system, not to replace it.
9. Emphasize that the use of CJP is not synonymous with being "soft on crime". Referring a case to CJP does not preclude a prosecutor from eventually seeking an appropriate custodial sentence.
10. Prosecutors would be helped by having clear guidelines, directives, and examples of the type of cases to refer. Lack of referral of cases is one of the biggest challenges to having a successful program.
11. CJP caseworkers can be engaged to systematically screening new files coming into the Crown Attorney's office and to draw to the attention of the Crowns any cases they feel would be particularly suited for the program.

Gaining the support of the Crown Attorney's office is a pivotal first step in creating a Collaborative Justice Project. The Crown Attorney then becomes the key actor in recruiting the support of other justice officials, particularly Judges and Defence Counsel. In addition to the advocacy of the Crown's office, the advance staff for CJP took initiative directly with the Judiciary and the Defence

Bar by developing information sheets for distribution to their members. (A sample **Notice to Defence Bar** is at **Appendix III**.) The distribution of the information sheets was followed up by a request for meetings with Judges and members of the Defence Bar either individually or as a group (i.e., at the annual meeting of the Defence Bar).

What assisted these discussions were clear criteria for accepting a case:

- the criminal offence is serious in nature
- the agreement of the Crown's office
- the agreement of the Defence Counsel for the accused
- the willingness to accept responsibility by the accused.

Advance work will also need to be done by CJP advance staff in advocating for the cooperation of other justice system officials, including Youth and Adult Probation services, Victim Services, the Police, and Diversion and other alternate measures programs. In our experience, it was important to be able to indicate how the Collaborative Justice process would complement and enhance the criminal justice process rather than compete or interfere with it. It was helpful to establish a "liaison" or advocate within each area of the justice process to assist in developing support and an awareness of the Project among their colleagues.

The establishment of CJP was made somewhat easier by the fact that, for several years, there had been a Dispute Resolution Centre in the Ottawa courthouse dealing with less serious cases. With support from the Crown Attorney's office and several Judges and Defence Counsel, the Collaborative Justice Project accepted its first case referral.

### **B. Funding**

The Church Council on Justice and Corrections sought start-up funding for a "pilot project demonstrating a restorative approach in serious criminal cases" from a number of sources including foundations and relevant government departments.

Short term funding was secured from the Ontario Trillium Foundation, Correctional Services Canada, Justice Canada, the Department of the Solicitor General Canada, the National Crime Prevention Centre and later from the Youth Justice Renewal Initiative and the Ministry of Correctional Services of Ontario. The Project also received "in-kind" support in the form of office space, furniture and telephone from the Ottawa Crown Attorney's office. Since 2005, CJP has also been funded for youth cases by the Ontario Ministry of Children and Youth Services.

As a registered charity, the Collaborative Justice Program also accepts individual donations to support its operation. Secure funding remains an ongoing challenge.

### **C. Steering Committee**

A Steering Committee was created to manage the Project. The eight members included representatives from the CJP staff, the Crown's office, the sponsoring body (CCJC) as well as a community volunteer. The role of the Steering Committee was oversight of policy and protocol

development, project implementation and management, and outcome accountability. The Committee initially met bi-weekly.

With a member of the Crown Attorney's office on the Committee, issues that arose related to procedure, access and courthouse relationships were sorted out quickly. For example, in the early days the Steering Committee explored various possibilities for case selection (i.e., judicial pre-trials, judicial referral, meeting with Defence Counsel, bail court, etc.) and which would work best. The Committee also regularly reviewed (and periodically refined) the criteria for accepting cases and the range of offenses CJP would accept. CJP eventually added youth cases and post-sentence cases to its mandate.

The Steering Committee received regular reports from the staff on cases in progress and provided advice and support with respect to the unique issues and questions that arose. The Committee was also involved in fundraising strategies and proposal development.

#### **D. Staffing**

Staffing is central to the successful implementation of the Project. Most importantly, caseworkers need "a heart for this work". Even well-intentioned, trained staff may not have the innate skills to thrive in a process that relies heavily on instinct, intuition and First Principles rather than a formulaic template when working with hurting people and their range of strong feelings and often undefined needs. If a restorative approach is about "humanizing" the system, the ability to connect with people about difficult issues and to build trust are more important qualities than programmatic expertise. Having "a heart for this work" is not easily defined. It can be revealed in the excitement that a potential candidate exhibits in contemplating restorative work or the problem-solving creativity that demonstrates that they "get it".

Clarity about the role and limitations of casework is also critical from the outset. Caseworkers are not therapists. Their role is not to analyse, "fix", or impose "solutions". Caseworkers are facilitators who "help other people have difficult conversations" around a particular incident, by providing the support, information, options and tools that participants need to shape their own healing path. Casework boundaries must be clearly understood from the outset because the field of restorative justice often draws people who have an impulse to be "helpers".

Code of Ethics: To emphasize the centrality of restorative values and principles, the Collaborative Justice Program has developed a written code of ethics which is found at **Appendix IV** of this guide. CJP expects its staff, volunteers, students, advisors, even its bookkeeper to sign and adhere to the ***Expectations and Oath of Confidentiality*** so that everyone connected with the Program understands the importance of confidentiality and ethical practice. These values are to be lived out as well in the way the staff treat each other.

Staffing Model: The original CJP staff included a Coordinator, an Advance Court Liaison, and a caseworker. All were full-time. The staff members were accountable to the Coordinator who was accountable to the Steering Committee for the work.

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*"I had occasion to participate in this program as a victim of a property crime. Although skeptical at first, I was impressed with the objectives and administration of the program, and more particularly, the end result.*

*Specifically, the offender acknowledged and accepted responsibility for his actions, proposed a program of restitution and has established specific life and career goals. He has now become a productive member of society rather than a burden on the public purse, as he was not incarcerated."*

From a letter to Premier Michael Harris by a participant in the Collaborative Justice Project

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The Advance Court Liaison spent 9 months at the Courthouse prior to the implementation of CJP building relationships with court personnel, holding educational meetings, developing promotional material, and arranging logistical details. Once CJP was up and running, the advance court liaison function was replaced by a Community Outreach Worker.

The designated Community Outreach Worker was essential in building relationships and understanding in the wider community and social service agencies about the new Program. (See Sub-section H below)

The CJP has operated with a staff of as many as four (two full-time and two ½ time) and as few as two. The staff has often been supplemented by criminology students on work placements. Turnover among staff at the Project has been very low.

Initial Competencies: All members of the Collaborative Justice Project team were required to have prior basic training and/or experience in mediation, conflict resolution and restorative justice. Candidates needed to demonstrate strong interpersonal skills, active listening, a willingness to be part of a team, ability to work in a self-motivated environment, and a commitment to a restorative justice approach. Familiarity with the criminal justice system was also an asset.

The original Coordinator had a background in restorative justice, conflict resolution and community advocacy. The caseworker had a legal background as well as advanced training in restorative justice and conflict resolution. His legal training was very helpful in assisting other staff to learn about the internal workings of the criminal justice system. The Community Outreach Worker had significant experience in a community agency serving an at-risk population.

Of the four caseworkers who have worked with CJP subsequently, two have had legal and conflict resolution training and wished to work in a non-adversarial environment. One had a background in social work and another in criminology.

On-the-job Training: Since the Collaborative Justice Project was a pilot project demonstrating a new methodology based on principles rather than a pre-set formula or program, much had to be learned "on-the-job". Staff developed a thorough understanding of the Collaborative Justice model through on-site orientation training and in weekly staff case conferences where cases were reviewed and next steps discussed through the lenses of collaborative methodology and First Principles.

Usually one caseworker was designated as the lead in each case supported and mentored by one-on-one discussions with the Coordinator, case conferences, and guidance from the Steering Committee or Advisory Circle. Where a caseworker was new or a case complex, two caseworkers might work together. Given the small and collaborative nature of the staff, each caseworker had daily support and opportunities for consultation.

Workload: The Coordinator spent approximately half-time on project administration and management, and half-time on casework. The caseworker spent about 3/4 time on cases and the rest on administration (meetings of the staff, Steering Committee and Advisory Circle), and on networking, outreach and public education initiatives in the courthouse and the community.

CJP's experience is that each full-time caseworker can carry approximately 10 cases at a time, depending on the complexity of the case and the number of participants related to it. Casework involves on-site visits as well as telephone calls and meetings in the Courthouse office. Even having considerable support, caseworkers need to be self-motivated. Since each case unfolds over a number of months, caseworkers need to be able to keep track of and advance work on several fronts at the same time.

Volunteers: CJP utilized community volunteers in various capacities. Recruited through community agencies and word of mouth, volunteers occasionally acted as support persons for the victim or the accused, were representatives of the larger community in circle conferences, and sat on administrative bodies such as the Steering Committee and Advisory Circle. Using community volunteers as support persons had limited success however, as few victims or accused persons welcomed the support of well-meaning strangers.

The Collaborative Justice Project has also served as a training placement for students in Criminology programs and benefitted from their volunteer time.

#### **E. Logistics**

CJP required office space in the Courthouse so that the Project was visible and accessible. A presence in the Courthouse also aids in relationship-building with justice officials and Courthouse staff. The office must offer privacy for confidential conversations. Office furniture and equipment, telephone and internet access are also necessary. Services such as photocopying were provided by the Crown Attorney's office as in-kind support.

The Project also required access to a larger space for meetings of the Advisory Circle and for victim-offender-community circle conferences. In order to accommodate the availability of participants, this meeting space had to be accessible in the evenings and on weekends.

#### **F. Advisory Circle**

The Collaborative Justice Project utilized an Advisory Circle of 15 individuals representing a variety of perspectives and expertise from within the criminal justice system and from the community at large to bring a broader vision and multi-disciplinary dimension to the work. The Advisory Circle

met monthly to review cases, provide advice to the staff on issues arising in a particular case, ensure an integrated approach to case development, offer wisdom in understanding and responding to cultural diversity, and facilitate access to professional and community services.

Members were invited to join as individuals who could offer an important “perspective” from their field of expertise rather than as formal representatives. The Advisory Circle initially sought volunteers from the following areas of experience: Crown Attorney’s office, Defence Counsel, police, probation, victim-serving agencies, Aboriginal-serving agencies (e.g., the Aboriginal Community Justice Committee), social work, addictions, mental health, women’s equality, community health, and immigration. It was decided early on that the judiciary should not participate on the Advisory Circle as it is inappropriate for Judges to discuss individual cases.

It was a challenge for some individuals to devote significant volunteer time to the Advisory Circle, and membership changed over the years. Other members have served consistently throughout CJP’s life. For 20 years, the Advisory Circle has proven to be an invaluable asset in supporting staff and bringing a wealth of experience to bear on challenging questions arising from cases, such as:

- How best to approach victims when the referral comes from Defence Counsel
- Whether to accept cases where there is a concurrent or prospective civil lawsuit
- Whether to accept cases where there are new charges after those CJP is dealing with
- Whether or not to accept cases of domestic violence or sexual offending
- Whether to accept post-sentence cases
- How to deal with a case where the accused is willing to accept responsibility for the harm done but not plead guilty to the specific charges he feels are inaccurate
- What criteria should staff use in deciding to discontinue a case when the accused is not following through.

#### **G. Promotional Material**

Written background information describing the Project for use in meetings with courthouse personnel such as Judges, Defence Counsel, the Crown Attorney’s office, Police and Probation offices, and the staff of Victim Services should be created early and updated regularly as the Project/Program refines its criteria.

Promotional material designed to let the public know about the Project and its services also should be developed (See sample **Pamphlet/Brochure, Appendices I and II**) so that the community can learn about the Project, understand what it offers, and be clear about referral criteria. Beyond public education, this will reduce the chance of ineligible applicants.

In considering the design and content of a promotional material such as a pamphlet, new projects might note the changes in the updated version of the CJP pamphlet (**Appendix II**) from the original version (**Appendix I**). Modifications such as the use of colour, a second person rather than third person conversational style, and user-friendly phrasing make the pamphlet more accessible to the public, and speak directly to a reader who may be a victim or accused.

## **H. Community Relationships**

During its initial two years, the Collaborative Justice Project utilized a Community Outreach Worker to initiate contact and build relationships with agencies already working with those in conflict with the law, such as the John Howard and Elizabeth Fry Societies, and Youth Justice Services Networks, and with victim serving agencies such as Victim Witness Assistance Programs. The purpose of these connections was to provide information on the existence and purpose of the Collaborative Justice Project and to explore areas of mutual support and collaboration. The staff of CJP wanted to be aware of as many community resources as possible, and to have relationships with them, so as to be in a position to assist victims and accused persons to access the information and services that would be appropriate to their needs.

Equally important is outreach to other restorative justice organizations and community conflict resolution agencies such as community mediation and restorative justice networks that may exist in the community. These relationships can be a source of support and information.

A third area that presents the opportunity for relationship, education and collaboration is community centres and cultural or professional associations. These relationships may develop in the course of casework rather than in advance but they can lay the groundwork for community support for victims and offenders as well as for volunteer hours for the Project.

Building these relationships can sometimes be challenging. When new programs or initiatives emerge, there can be concerns about mandate infringement, misunderstandings or partial understanding of restorative justice, or difficulty in seeing the relevance to their work. Taking the initiative in establishing early connections promotes good will, understanding and potentially referral possibilities.

***“The concentration of power and influence in the hands of professionals to identify and determine solutions to problems of individuals and communities has not served social justice interests because it undermines democracy and encourages dependency”.***

Kay Pranis

## 5. Case Methodology

**T**he collaborative justice process focuses on the impacts on and needs of the participants. It is labour-intensive with casework normally taking between 3-9 months. The judicial process is suspended until the CJP process is completed and a report on outcomes is submitted to the court at the time of sentencing.

### Process Overview

Once a case is referred to the Project, a caseworker meets with the accused to explain the process and the criteria for participation, as well as to assess suitability. The Crown and Defence Counsel will have agreed on a plea and the Crown will have an initial sentencing position. In some cases, the accused may be willing to accept responsibility for harm done but not to plead guilty to specific charges which the accused feels are inaccurate. This needs to be negotiated and a plea entered before CJP begins in order to minimize secondary victimization (i.e., the accused changing his/her mind midway through). Since the accused has agreed to enter a plea before knowing whether the victim will participate, the plea stands whether the victim participates or not.

Satisfied that the accused meets the criteria, is sincere in accepting responsibility and understands the collaborative process, the caseworker will then contact the victim to describe the services and goals of the Project, and invite participation. If the victim is interested, the case will proceed.

The caseworker's role is to ensure the safety of each participant and to assist them to identify and address their needs for personal **support, information** and **resolution**. Other affected family or community members may also be identified and invited to participate in the CJP process.

Over several months, the caseworker meets regularly with the accused to discuss **accountability** (i.e., explore who was harmed, the nature of the harm done, and the steps that the accused could take to repair it). The accused is also encouraged to explore the underlying causes of his/her criminal behaviour. The caseworker will also meet a number of times with the victim(s) to discuss the impacts of the crime, and their needs for support, accountability and reparation.

The caseworker assists the participants to explore the various collaborative options or tools available for them to address their needs. These include written correspondence, information relayed through the caseworker, video interviews and face to face meetings in a circle conference or mediation format. Some options can be used as a precursor to others (i.e., written correspondence as a confidence-building measure in advance of a face to face meeting). Each option requires time and preparation.

If a Resolution Agreement is developed and agreed to as a result of this collaborative work, it can be submitted to the Court for consideration at the time of sentencing. Following sentencing, caseworkers will be in touch with the parties to debrief their experience, to encourage the completion of any remaining elements of the Resolution Agreement and to provide additional short-term support as requested.

The original process of the Collaborative Justice Project is depicted on the following 2 charts.

Collaborative Justice Project - Methodological Flow Chart

	First Contact	Personal Visit	Subsequent Contact	Implementation of Resolution Option	Follow Up
<b>VICTIM</b>	<ul style="list-style-type: none"> <li>- letter of intro from crown</li> <li>- initial phone call to: <ul style="list-style-type: none"> <li>- identify ourselves &amp; project</li> <li>- identify what we offer to them and the accused</li> <li>- provide initial information and commit to ongoing information, if desired</li> <li>- explore existing support</li> <li>- assist them to name needs</li> <li>- who else has been harmed?</li> <li>- identify available resources</li> <li>- offer to make initial call to services</li> </ul> </li> <li>- explore interest in support circle</li> <li>- explore safety needs</li> <li>- request personal meeting, if appropriate</li> <li>- support person at meeting?</li> <li>- provide contact name &amp; #</li> </ul>	<ul style="list-style-type: none"> <li>- check-in on support and needs</li> <li>- discuss add'l support needs</li> <li>- identify and offer resources</li> <li>- discuss building support circle</li> <li>- explain Advisory Circle</li> <li>- explain staff role</li> <li>- discuss strategy to involve others who have been harmed</li> <li>- explore add'l info needs</li> <li>- discuss what victim would like to see happen</li> <li>- explore openness to having info shared with accused</li> <li>- identify potential resolution options (eg. V/O meeting, conferencing, video, letter, court, etc)</li> <li>- revisit safety needs</li> <li>- discuss nature of subsequent contact</li> </ul>	<ul style="list-style-type: none"> <li>Visits or telephone conversations</li> <li>- regular check-in on needs</li> <li>- ongoing information update</li> <li>- development of circle of support, if appropriate</li> <li>- further exploration or planning of resolution options, if appropriate</li> <li>- involvement of Advisory Circle as appropriate</li> <li>- circle of support meets to offer support, identify emerging needs, develop ongoing support strategy and discuss resolution options</li> </ul>	<ul style="list-style-type: none"> <li>Possibilities: <ul style="list-style-type: none"> <li>- conferencing</li> <li>- mediation</li> <li>- letters between victim and accused</li> <li>- video tapes, etc.</li> <li>- proceed with court process</li> </ul> </li> <li>- involvement of the circle of support?</li> <li>- resolution agreement with provision for monitoring as appropriate</li> <li>- convey results of the resolution process to court process</li> <li>- in the case of the failure of alternate resolution process, the case reverts to the courts</li> </ul>	<ul style="list-style-type: none"> <li>- regular check-in re needs</li> <li>- plan for ongoing safety and healing</li> <li>- check on openness to healing/resolution options post-sentence if not previously used</li> <li>- follow-up of resolution agreement, as appropriate</li> <li>- evaluation of our service</li> </ul>
<b>ACCUSED</b>	<ul style="list-style-type: none"> <li>- initial contact from defense</li> <li>- initial call or meeting to: <ul style="list-style-type: none"> <li>- identify ourselves and project</li> <li>- identify what we offer them and the victim (non-legal)</li> </ul> </li> <li>- questions as above plus: <ul style="list-style-type: none"> <li>- ask if they are interested in hearing what the victim feels</li> <li>- existing support (ie JHS, etc?)</li> <li>- acceptance of responsibility?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>As above plus the following: <ul style="list-style-type: none"> <li>- share impact of harm on the victim if the victim has agreed</li> <li>- discuss accountability and the opportunity for remorse</li> <li>- explore openness to conveying remorse to victim in some way</li> <li>- discuss strategies to assist those who may be afraid</li> <li>- explore resolution options</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>As above plus the following: <ul style="list-style-type: none"> <li>- what are their ideas for reparation?</li> <li>- do they have ideas about root causes?</li> <li>- explore what is needed to help address these issues</li> <li>- circle of support works on needs and related to resolution plan</li> <li>- what is needed to put reparation in play?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>As above <ul style="list-style-type: none"> <li>- creative reparation strategies which address victim and community concerns (could be case specific or symbolic)</li> <li>- monitoring and support mechanisms put in place</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>As above plus the following: <ul style="list-style-type: none"> <li>- possibility of community healing circle/process</li> <li>- plan for ongoing prevention</li> <li>- consider communications plan for larger community</li> </ul> </li> </ul>

***“(CJP) helped both parties, both parties to heal, or to understand the other person.”***

Collaborative Justice Project participant

	First Contact	Potential Roles	Subsequent Involvement	Implementation of Resolution Option	Follow Up
<b>COMMUNITY</b>	- identify "communities" of the victim and accused	1. those directly affected - sit on circle of support - involved in information meeting or healing circle? - one-on-one support and information	- assist in identifying of their own as well as v/o needs - regular check-in ("accompanying") - develop ongoing support plan - identification of needed resources and plan to address needs - collaboration on resolution options, if appropriate - collaboration with Advisory Circle	- oversight and potential participation in option - ongoing support - possible revisions or additions to plan	- ongoing support - monitor implementation of resolution agreement - plan for ongoing safety and healing - evaluation of project's service
Support	1. those directly affected 2. the larger community 3. the Advisory Circle				
Information	- questions: - what are their needs? - what role might they play? - what would they like to see happen? - is there a community justice committee or particular groups that should be contacted?	2. the larger community - community info meeting - other means of providing info to larger community? - community healing circle	- possible dialogue between circles of support and larger community	- action on crime prevention or on causes of crime	
Accountability					
Reparation					
Reintegration					
Safety		3. Advisory Circle - review support and resource needs for each case through staff and circle of support plan - provides liaison to professional assistance through resource network	- ongoing monitoring and assistance - appropriate communication with cjs - communication with support circles	- ongoing monitoring and assistance - appropriate communication with cjs - communication with support circles	- information about any resolution agreement - feedback from evaluation

## PROFESSIONALS

1. **Criminal Justice Professionals:** Those related to the case (i.e. Crown, defense, judiciary, police, probation, etc.) will have ongoing involvement through liaison with Project staff. They will be involved in screening, access, consultation and ramifications of outcomes

2. **Advisory Circle:** The Circle will be comprised of representatives of the following areas: Project Steering Committee, Crown, Defense, Police, Judiciary, Social Work, Mental Health, Education, Addictions, Public Health, Women's Equality, Multi-cultural, Probation, etc.

3. **Resource Network:** There will be a pool of resource persons from a variety of disciplines who can be called on by the Advisory Circle to provide services in any particular case.

These original process charts have been included because the methodology has changed very little over time. Minor revisions which are noted in the process sections below have been made as the model gained experience.

The major change in methodology from this "concept" chart is that the CJP process begins with the accused rather than the victim, since referrals most often come from within the criminal justice system itself and because the offender must be willing to take responsibility prior to the victim being approached. The spectrum of areas addressed with each participant however is the same.

## **Referral Process**

The referral process can be initiated by the Crown Attorney's office, by Defence Counsel, or by Police Officers, Probation Officers, Judges, individuals or through a Judicial Pre-trial. In the early days, most cases were referred to CJP at a Judicial Pre-trial (JPT). A JPT is a meeting of a Judge, a Crown and a series of Defence Counsel (representing different cases) to discuss how a case is likely to proceed (e.g., whether the accused will plead guilty, is seeking a plea bargain or will go to trial). CJP caseworkers were permitted by the Judge to sit in on Judicial Pre-trials and, where a Defence Counsel indicated that an accused was remorseful and willing to plead guilty, the caseworker raised the option of a referral to the Collaborative Justice Project. If the accused agreed, the Crown Attorney would send a formal letter to the Defence Counsel outlining the criteria and ground rules of the referral. A sample of an early referral letter is at **Appendix V**.

Later, CJP developed a **Referral Form/Memorandum of Understanding** (See **Referral Form in Appendix VI**) which is signed by the referring Crown Attorney, the Defence Counsel and CJP.

It is important to note that the Crown Attorney will adopt an initial sentencing position *independent* of knowing whether the parties will participate in the Project but agrees to remain open to re-assessing that position in light of what may emerge from the CJP process.

Referral to the Collaborative Justice Program is without prejudice. Since by its very nature, CJP encourages and enables communication between the participants, the parties agree that no information shared between them will be used against the accused in prosecution. In addition, because the collaborative justice process is voluntary, the court is not to draw negative implications or impose consequences on the accused if he/she chooses to withdraw from the CJP process at any point. These ground rules are set out in the Referral Form. In its 20 years of experience, the CJP has never had an issue concerning adherence to these ground rules.

Over time, the Collaborative Justice Program has encountered a number of questions related to referrals and has made the following policy decisions:

- CJP accepts cases where the accused has participated previously and has re-offended.
- CJP accepts cases of sexual assault on a case by case basis (See page 47).
- CJP accepts post-sentence cases.
- CJP does not accept a case where the victim does not wish to participate.
- CJP is cautious in accepting cases where there is a concurrent or prospective civil lawsuit.
- CJP does not accept cases where a co-accused is still at large or is going to trial. Information passed between the victim and offender could "contaminate" the parties as witnesses in the other case. In addition, there can be safety concerns for victims.
- Cases where new charges subsequent to those CJP is dealing with have been laid related to prior incidents are accepted if victims are willing.
- Cases where new offences are committed during the CJP process raise questions about the offender's credibility and are unlikely to proceed unless the victim knows and wants to continue for their own reasons.

In addition, a case may not be accepted or be referred elsewhere when it is more appropriate for another service. Since the inception of the Collaborative Justice Project, the Ottawa Crown Attorney's office has held to a policy of not referring cases of domestic violence to the Program due to concerns about the unique dynamics of such cases and the need for additional safeguards. CJP staff believe that a restorative approach can be used in cases of domestic abuse and if the position of the Crown Attorney should change, CJP would be willing to explore what additional training and safeguards might be required in order that these cases could be accepted.

The initial Project was designed to work with adult cases. Once it was established, CJP began to accept youth cases as well. The methodology is the same and experience has shown that there is no difference in working with adult or youth cases with respect to the process with the parties. CJP also expanded its mandate to include post-sentence cases where the main difference is the absence of a sentencing component.

### **Working with the Accused**

Once a referral has been accepted, the **Case Checklist** (See **Appendix VII**) becomes a useful tool.

CJP caseworkers recognize that each accused person is different and their reasons for participating in the Collaborative Justice process vary. Some (often first-timers) feel remorse and a desire to make amends. The Project offers an avenue to accomplish this where the criminal justice system does not. Others (often those with a criminal history) have had a change in life situation such as a new relationship, a job or the birth of a child that has become an incentive to change the direction of their lives (e.g., "I do not want my child to grow up with a criminal for a father."). A few of the accused mistakenly believe that the Collaborative Justice process will be an easier road or offers an escape from a punitive or custodial sentence.

In working with accused persons, it is important to bear in mind that many offenders have been victimized during their lives. The caseworker may never know about this history but should assume that there is a complex, larger context behind the offending behaviour even as they are working with the parties to healthily resolve a specific incident.

**Initial Meeting:** After the referral is made, the caseworker meets with the accused before the victim is contacted. This allows for an assessment of the appropriateness and willingness of the accused to participate in CJP before the victim is contacted and expectations are raised.

When meeting with the accused for the first time, the caseworker has a number of goals:

- To explain the ground rules, process and the role of the caseworker
- To answer questions
- To listen to the accused tell his/her story
- To discuss accountability for the harm done and assess the sincerity of the accused
- To explain voluntary participation for both accused and the victim (see Pg.6)
- To explore safety concerns and options for personal support.

- To explain the content of the **Participation Agreement** (See **Appendix IX**). The accused may wish to discuss the Agreement with their lawyer or family before signing.
- To obtain permission to share key information with the victim(s).
- To commit to letting the accused know whether or not the victim will participate.

The initial assessment of the suitability of the accused is based on his/her acceptance of responsibility for the harm done and willingness to be accountable to the victim, and his/her acceptance of the CJP criteria and ground rules. In the first meeting with the accused, the caseworker must be satisfied that these conditions are met to a sufficient degree that inviting the victim into the process will not involve the risk of further harm. A second “introductory” meeting with the accused may be necessary before these concerns are satisfactorily addressed and the victim contacted. Where the caseworker is not able to reach a place of confidence or trust in the motives or behaviour of the accused, the caseworker may decide not to proceed with the case.

Notwithstanding the need for the caseworker to reach a minimum level of comfort with the motives and attitude of the accused before agreeing to proceed, it is not reasonable to expect that the accused will have a full appreciation of accountability, victim empathy or the impacts of the harm done. Some do, but it is the CJP process itself and especially engagement with the victim that often fosters a deepening of awareness and remorse. A sense of accountability in the accused can grow over time as the impact of the harm done is explored with him/her.

A primary responsibility of the caseworker is ongoing assessment of the sincerity and “good faith” of the accused in order to minimize the risk of further harm to the victim. A number of “**sincerity indicators**” are helpful such as body language, listening for consistency in describing his/her actions, listening for language which indicates the accused is owning his/her behaviour (“I did this” rather than “Then this happened”), expressions of remorse and/or victim empathy, follow through on intermediate steps agreed to in the process, and by listening to the caseworker’s own “gut instinct”. Intermediate steps include diligence in attending appointments on time, completing “homework” on the impacts of the harm done or reparative possibilities, reflection and openness on the root causes of the criminal behaviour, following through with counselling or other therapeutic commitments, and sensitivity and accountability in any written correspondence with the victim. Such sincerity indicators assist the caseworker in determining when the accused may be ready to engage with the victim.

**Subsequent Meetings:** In subsequent meetings with the accused, the caseworker will:

- Discuss the details of the offense (listening for ownership of responsibility)
- Discuss the accused’s awareness of the impacts of his/her behaviour through an exploration of:
  - *Who was harmed?* (It is often an eye-opening experience for the accused to be asked to list the range of people who were impacted by the crime. This could include direct victim(s), family members of both victim and accused, secondary victims and community members.)

- *What kinds of harm have been done?* (Here the caseworker will explore with the accused the physical, emotional, psychological, financial and even spiritual harm that may have been done to each of those who have been impacted.)
- Discuss what personal support the accused has among friends or family
- Conduct an ongoing assessment of the sincerity of the accused in taking responsibility
- Discuss his/her awareness of the root causes of their criminal behaviour. While the CJP process is not therapeutic, where the accused identifies the need for assistance with such issues as addictions or anger etc., the caseworker may discuss the wisdom of seeking services in the community and may, through CJP's contacts/relationships with community agencies, connect the accused with appropriate service providers.
- Discuss what accountability could look like in terms of practical or symbolic reparation (i.e., what could the accused offer to show that he/she has thought about it?)
- Discuss options for engagement with the victim(s) and others who have been affected.

Throughout the process, the caseworker remains committed to a caring and impartial, or dually partial, role avoiding language that labels, stigmatizes, stereotypes and judges, using open ended questions that allow the accused to speak for themselves about their own needs and experience, and fully explaining options so the accused can make informed choices.

On rare occasions, the caseworker may have to decide whether to discontinue a case when the accused is not following through on commitments. Lack of follow through should be named and explored to determine whether it is due to insincerity or dysfunction. If the accused has limited ability, smaller commitments may be helpful. Disclosure to the victim(s) will limit unrealistic expectations and prevent secondary victimization. Credibility before the court is also a concern.

Following an engagement process between the victim and the accused, the caseworker will follow up with the accused to debrief and discuss next steps. If a Resolution Agreement has been developed, the discussion will include a plan to implement the commitments made to the victim as well as the next steps in placing the Agreement before the court, if appropriate.

The caseworker will contact the offender periodically after sentencing for support and accountability (where obligations under the Resolution Agreement have yet to be completed).

A word about personal support: A restorative justice approach puts people at the centre of the equation and focuses on the human impacts and needs that result from criminal behaviour. It is therefore appropriate that CJP caseworkers show concern for what the accused is going through by encouraging him/her to identify and recruit a support person who can accompany them throughout the process. Dealing with criminal charges can involve feelings of anxiety and shame. Working within a collaborative process where one is accountable directly to the victim can add to the stress. Too many accused persons try to deal with their situation alone.

Caseworkers encourage the accused to identify someone who they would be comfortable with as a non-judgemental support person during the collaborative process, someone who would

check in regularly to see how they are doing, extend a listening ear and perhaps accompany them to a face-to-face meeting with the victim. The support role is not highly structured.

Support persons can be drawn from family, friends, a faith community, a community agency or another circle of contacts. Sometimes a professional counselor can support the accused and debrief with them on the meaning of their experience. Caseworkers should offer to meet with the support person to discuss the CJP process and the nature of the support role.

### **Working with the Victim**

Each victim and his/her needs are unique. Generally however, victims identify needs that are combinations or variations of: the need for information (about the crime, the accused and/or the criminal justice process), the need for the harm to be taken seriously, the need for accountability and apology, the need for the offender to understand the impact of the harm on the victim's life, the need for practical or symbolic reparation, the need for reassurance that the offending will stop, and the need to feel safe.

Some needs are very specific, such as the desire to ask: "Why did you do that to me?" Or the wish to tell the accused: "This is how you affected my life. I want you to understand this".

In the current justice system, the opportunities for victim involvement are limited. If a victim was present at the time of the crime, he/she may be called as a witness against the accused. Victims can submit impact statements at sentencing. Restitution and "no contact" orders are often included as conditions of probation. Recently the rights of victims of crime were expanded and codified when Parliament passed the Canadian Victims' Bill of Rights in 2015.

Nevertheless, victims too often are left with few answers and with little but the severity of the sentence to indicate that society takes seriously the harm done to them. The hurt, anger or trauma from what has happened to them and the resulting sense of loss of control over their lives goes unaddressed. Resources for victim services are limited so that accessing basic information about the criminal justice system or victim assistance is difficult. In the Ottawa Courthouse, for example, the Victim Services office only had resources to provide assistance to families of murder victims and to victims of domestic and sexual offending. For victims of other crimes, there was no one to attend to their needs, provide information or assist them to regain a measure of control.

It is no surprise then that contact from the Collaborative Justice Program can be unexpected and "out of the blue". Unless a victim has initiated the referral process, he/she is not likely to be aware of the Collaborative Justice Program. Yet, the initial contact with the victim is one of the most challenging aspects of the CJP process. Since a case may be referred to CJP many months after the incident occurred, the caseworker doesn't know whether the victim would welcome a call that offers them information and options for involvement or whether they have "moved" on and do not wish to have the memory re-opened.

The openness of a victim to participate may well be determined by how they experience the first interaction with CJP. Over the years, CJP has tried a number of strategies to maximize sensitivity in making the initial contact with a victim. Where a victim-serving agency has been involved, that agency has sometimes been willing to convey information about CJP to the victim or to brief the CJP caseworker about the victim prior to contact. Similarly, where a Crown Attorney is in touch with the victim, the Crown has been able to shed some light on the victim or make an initial contact on behalf of CJP.

While these approaches by “officials” of the justice system can be less disconcerting than a “cold call” from a caseworker, CJP has been concerned that contact with a victim by other actors on CJP’s behalf may not fully convey the nuances of the Program. CJP prefers to speak for itself in outlining the criteria, process and potential benefits of the collaborative model.

It is CJP’s current practice to contact the victim directly by telephone. In the event that the caseworker is unsuccessful in contacting the victim by phone, a letter with information about the Program is sent to the victim with an invitation to contact CJP (See **Sample Letter to Victims in Appendix VIII**). The letter is followed up by another phone call.

Experience has revealed that the majority of victims respond positively to a call from the Program whether or not they decide to participate. The call itself provides information about the case, the willingness of the accused to take responsibility, and the nature of the CJP process. The invitation for involvement in and of itself can let them know that they are not forgotten or invisible. This is sometimes all victims need.

Victims who are considering participation in CJP occasionally need reassurance that they are not being invited into a process primarily for the benefit of the accused. This suspicion can arise when they learn that the caseworker has already been in touch with the accused. It is critical that victims are reassured about the impartiality of the caseworker, CJP’s commitment to a participant-driven process, and the criterion of accountability for the accused to participate.

Even with a very sensitive approach, for some victims the timing is not right. The severity of the impact may have left them angry, cynical, even vindictive. The thought of engaging with the one who did such harm is beyond what they can conceive of or wish at that moment. It may be sufficient to let them know that CJP also offers post-sentence services. On very few occasions, a victim has been upset to be contacted at all. In one such case, a bank teller had been so traumatized by an armed robbery that she had quit her job and remained at home, afraid to go outside. She was angry at being contacted by the CJP caseworker who could do nothing except express regret and apologize.

The level of participation of victims who decide to engage in the Collaborative Justice process varies based on their needs. Some wish only support and information. Others want to collaborate on a reparation plan to go to sentencing. Still others may seek assistance with personal recovery but do not want input into the legal process.

Initial Meeting: Once the victim has agreed to participate or to consider participating, an initial meeting is arranged at which the caseworker:

- Answers questions about the Program criteria, ground rules and process
- Describes the role of the caseworker
- Listens to the victim's story and the impact on their life
- Discusses who else was harmed
- Discusses the content of the **Participation Agreement (See Appendix IX)**
- Identifies the victim's personal support person, other support needs and safety concerns
- Begins a conversation about the victim's needs
- Assesses the victim's suitability for CJP against the ground rules and victim's goals
- Seeks permission to tell the accused that the victim is willing to participate and to share key information
- Arranges the next meeting.

As with the accused, the caseworker is responsible to assess the suitability of the victim in terms of the sincerity of their intentions. The aim of the restorative process is to support recovery for both parties while ensuring their safety. In working with a victim, the caseworker must be mindful of indicators that suggest that what the victim wants is not compatible with these goals. For example, it would be a concern if a victim was not interested in identifying and addressing their own needs but wanted detailed information about where the accused resided. If a victim is evasive, untruthful or unconcerned with the ground rules of CJP, the caseworker should be cautious in moving ahead with any plans for engagement with the accused until additional meetings with the victim have provided clarity about their sincerity and goals.

The participation of both the victim and the accused is built on the trust relationship that they each have developed with the caseworker. In the same vein, it is the confidence that the parties are acting "in good faith" that provides the safeguard for the caseworker to move forward. Diligence in keeping appointments, follow through on agreed upon "homework", and positive goals compatible with a restorative approach are intermediate measures that will assist a caseworker assess whether a victim is "not yet ready" or is "not being sincere".

Subsequent meetings: In subsequent meetings with the victim, the caseworker would:

- Discuss personal support needs and resources such as victim serving agencies who can provide a referral function for victims who need more professional assistance.
- Report back on any interaction with the accused
- Explore more deeply the impacts of the harm done (immediate and longer term) - *physical? emotional? financial? spiritual (i.e., why did God allow this to happen to me?)*
- Explore the victim's needs for answers and accountability
- Explore what meaningful reparation might look like
- Discuss options for engagement with the accused
- Discuss possible involvement of others who have been affected (secondary victims)
- Agree on next steps and what can be shared with the accused.

In sharing information about the victim or the accused with the other, the caseworker must be careful not to speak for the person but only to convey the information necessary to build confidence and move the process forward. Speaking for one party robs that person of the right to tell their own “story” or experience in their own words, denies the other party the opportunity to hear, assess and respond to the first person’s telling of the story, inserts an interpretive filter into the conversation, risks imposing the caseworker’s misinterpretation or personal agenda, and can be construed as violating impartiality.

The caseworker will discuss with the victim the various options that could be used as a means of direct engagement between the victim and accused, and outline the advantages and limitations of each one (see below). Without pushing any particular tool, caseworkers can provide examples of what they have witnessed in using various options over the years and make suggestions about what options might seem to best fit the victim’s needs.

Following any engagement process between the victim and the accused, caseworkers would follow up with the victim to debrief. If there has been a Resolution Agreement, the victim may wish to have updates on the implementation of commitments made to them as well as information about sentencing. They may also wish to have a check-in for support in the following months.

## **Options and Tools for Engagement**

Caseworkers have a variety of tools with which to support and assist the victim and the accused, and possibly other affected persons, in their collaborative interaction. These include information sharing by the caseworker, written correspondence, the use of video interviews, and face-to-face meetings such as circle conferences or mediation-style facilitated dialogues.

Face-to-face meetings are often the most dramatic of the engagement options and offer a very personal encounter for all involved. (CJP has developed a video depiction of a face-to-face meeting which is available on their website.) Those who choose the face-to-face option see it as the best vehicle for meeting their needs to: ask direct questions and get information about the accused; hear the accused take responsibility for his/her behaviour and judge whether he/she is telling the truth; receive an apology and determine whether the remorse is genuine; assess whether the accused cares about the harm he/she has done and understands the impact it has had on the victim’s life; discuss reparation needs and collaborate on a Resolution Agreement; and/or receive and assess the trustworthiness of the accused’s reassurances about not reoffending.

The experience of CJP has been that many victims do not choose to meet with the accused. The reasons include anxiety or fear, time restrictions or the limited or specific needs that are better met through another option. The CJM offers the caseworker a “toolbox” of options to assist the participants to tailor their interaction to meet their needs rather than “shoehorn” them into only one format.

A word about preparation: The successful use of any of these tools, particularly face-to-face meetings, depends on the quality of the preparation undertaken with the victim and with the accused. **The importance of preparation cannot be over-emphasized.** Preparation includes building trustful relationships between the caseworker and the victim, and between the caseworker and the accused. It involves the careful exploration of what the victim needs for recovery, and of the accused's understanding of and response to accountability. Preparation does not mean rehearsing or coaching the participants on what they should say but rather helping them clarify their feelings and needs so that they can speak clearly for themselves. Active preparation is the caseworker's best tool for assessing when the participants are ready to engage directly with one another. Experience has shown that insufficient or inadequate preparation is the usual explanation for processes that don't go well.

1. **Information sharing through the caseworker:** As outlined above, in each case the caseworker is in direct contact with the participants individually to share basic information back and forth between them as a confidence-building measure. In cases where the needs of the victim are very specific and limited (i.e., the answer to a particular question such as, "what did you do with the bracelet you stole?"), information sharing can be sufficient to provide what the victim seeks and there may be no direct interaction with the accused. However, in the majority of CJP cases, information sharing through the caseworker is the mechanism most comfortable for the parties and it is used even to develop a Resolution Agreement. In some cases, it is paired with written correspondence between the parties as well.

*Benefits:* Information sharing through the caseworker as a tool for collaboration addresses any anxiety or fear that the victim may have about engaging directly with the accused, limits the time commitment to the process, and can be useful in addressing specific needs. However, it is limited in addressing the array of feelings and needs that some victims have as a result of the harm done to them.

2. **Written correspondence:** CJP uses one-way or two-way correspondence between the participants in combination with information sharing through the caseworker or as a confidence-building step in advance of a face-to-face meeting. Correspondence provides a victim with a means to ask questions or describe the impacts of the crime on their lives in their own words. The response from the accused gives a victim a sense of the accused and of his/her willingness to take responsibility for the harm done in his/her own words. All correspondence is passed through the caseworker who vets it to ensure that it contains nothing hurtful (intentional or unintentional) and to prevent personal addresses from being shared.

*Benefits:* Written correspondence is useful in cases where the victim does not want to meet the accused face-to-face but does want some direct communication. It provides the opportunity for the accused to respond to the victim's questions, offer an apology, express remorse and indicate a willingness to make amends. The terms of a Resolution Agreement can also be negotiated through a letter exchange. Written correspondence is also very useful as an intermediate step to more direct interaction, such as a video statement or a face-to-face meeting, because it builds confidence by giving each party an initial sense of the other.

3. **Videotaped Statement:** Videotaping the answers to questions or an apology can be an effective mechanism for non-threatening direct communication between the victim and the accused. As with written correspondence, this tool can be used in a stand-alone role or as a prelude to a face-to-face meeting. A videotaped statement allows the viewer to see the other party and assess body language, tone and sincerity. It can be one way (i.e., the accused answering questions sent by the victim), or a two-way conversation in installments. The video interview is arranged and conducted by the caseworker. In one CJP case, the accused who was a youth, wrote a song for the victim and performed it, which she found very touching.

*Benefits:* Videotaping allows one party (or both) to see the other and experience a form of direct engagement, even in installments. It enables direct interaction where long distances preclude a face-to-face meeting. A videotaped statement can give the victim a real sense of the accused and his/her level of remorse. It can also be a prelude to a face-to-face meeting.

4. **Face-to-face meetings:** Direct engagement between the participants can be the most powerful form of interaction. It is also the option that requires the most preparation by the caseworker who must rely on experience and “gut instinct” to know when the participants are ready to engage a productive way. It takes courage to participate in a face-to-face meeting and the participants have to trust their relationship with the caseworker. CJP does not “push” face-to-face meetings. However, in exploring the various options for interaction available to the parties, caseworkers will point out the benefits of meeting and provide examples from past experience in order to counter a victim’s natural reluctance to meet with an accused.

Meetings can take the form of a facilitated dialogue between the victim and the accused, with or without support persons, or a full circle conference involving the victim and the accused with family members and support persons, other affected parties and community representatives. Where a victim and accused person decide that a face-to-face meeting is the appropriate option, the caseworker will discuss with them the **Agreement to Participate** (See **Appendix X**) and ensure that they clearly understand the ground rules.

*Benefits:* Face-to-face meetings often alter initial impressions, deepen understanding and empathy, sharpen awareness of the human impacts of criminal behaviour, enable creative collaboration on concrete resolution elements, and provide reassurances for the future.

In preparation for a meeting, caseworkers should attend to:

- an appropriate meeting space with no undue time pressures or interruptions
- clarity about the order in which the parties arrive, and where they wait
- name tags and refreshments
- Agreement to Participate forms
- the seating arrangement
- the facilitation role and process
- the introduction (**Introduction to Circle Process, Appendix XI**)
- notetaking and the mechanics of crafting a Resolution Agreement, if agreed.

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*"The evaluation being conducted by the Corrections Research unit in the Department of the Solicitor General is demonstrating that victims and offenders who participated in the Collaborative Justice Project had significant needs met through the process and were very satisfied with the process and the outcomes. One of the strengths of the CJP is that it operates in a manner that is respectful of the rights, needs and interests of the parties, and the process unfolds entirely on that basis.*

*CJP is breaking new ground in extending the application of restorative justice beyond its current widespread application as a diversion measure in cases of less serious offending. In my opinion this will have implications for the future of restorative justice in Canada but also other countries where restorative justice is gaining in prominence."*

Dr. Robert Cormier

Former Deputy Director  
General, Corrections Research  
Solicitor General Canada

2003

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It has been the practice of the CJP to suggest a few moments of silence after the circle introduction is complete and before the circle begins. This is introduced as a time of "centering" when participants are encouraged to breathe deeply and to be fully present to the space and to the others. It is an invitation to bring our whole selves to this process, physically, emotionally, intellectually and spiritually.

In preparing for a meeting or circle, it is important to clarify with the participants in advance, particularly the victim, whether they wish to be in the room first or arrive last, whether they feel safer sitting near the door, and how they want to be introduced. Since a face-to-face meeting is highly anxiety-producing for most people, discussing these questions not only allows the participants a voice in all aspects of the process, it also assures them that the caseworker is paying attention to the details that help participants feel oriented and safe.

It has been the practice of CJP to use two staff to facilitate a circle conference. Circles can be emotionally charged, especially before they get underway. There can be a large number of people, including several with the victim, several with the accused, as well as community members. It is challenging for one person to manage the process and stay on top of the interpersonal dynamics at the same time. In the CJP model, one facilitator manages the process, maintaining eye contact with the speaker, guiding the circle process and asking clarifying questions. The other facilitator watches the body language of the individuals in the group, keeps track of issues raised that are to be addressed later in the process, is available to accompany anyone who temporarily leaves the circle, and can intervene as necessary to clarify misunderstandings or confirm agreements.

In a circle conference, the conversation usually goes around in a clockwise manner so the seating arrangement is important. One approach is to have the accused person and his/her support person sit to left of the facilitator so that he/she has an early opportunity to take responsibility for the harm and offer an apology. Another approach is to begin by having the victim describe the impact of the crime. A decision about which way to begin comes from discussions with the victim and the accused, and from the experience of the caseworker. It may be seen as important for the victim to first hear accountability from the accused before speaking. On the other hand, it may be important for the accused to hear about the impact of the harm done first to deepen his/her understanding before an apology is offered. Careful thought by the caseworker is required to know which approach will be most helpful.

CJP has not generally used a “talking piece” to designate who has the floor. However, CJP does use a disciplined process, proceeding around the circle in order and prohibiting interruptions. The facilitator may ask clarifying questions of the speaker before moving to the next person.

The Collaborative Justice model uses a format of four rounds for the circle process. The first round is for introductions, the second is to hear about what happened, and the third focuses on the immediate and longer term impacts. The facilitator may alter the strict circle process at this point to allow clarifying questions or encourage elaboration. In the fourth round, participants gather ideas about what needs to be done. Ideas are then considered with particular attention to what the victim has identified as meaningful and what can be crafted into a Resolution Agreement. Community members help ensure that the plan is realistic and proportional.

Experience has shown that the key to a successful circle conference or restorative meeting is advance work with the participants, not to coach them as to what to say but to assist them to clarify their thinking about what they want to say and what they need from the process.

## **Resolution Agreements**

A Resolution Agreement between the parties usually contains one or more of the following elements (See **Sample of Resolution Agreement in Appendix XII**):

- a brief background on the case and collaborative justice process
- acknowledgement that the accused has taken responsibility for the harm done and made an apology (verbally or in writing)
- a commitment by the accused of practical reparation such as restitution and/or symbolic reparation such as voluntary community service
- commitments by the accused to seek treatment for addictions or anger management, attend school or maintain employment
- a recognition of assurances made by the accused not to harm the victim or re-offend in the future
- an agreement about how and whether they are going to acknowledge or greet each other if they should run into each other on the street in the future. This agreement may include a recommendation regarding a “no-contact” order. (Sentences often include no-contact orders unless the participants in CJP request that this not be done. A face-to-face meeting can result in a level of comfort between the victim and the accused whereby they do not consider such a no-contact order necessary).

Resolution Agreements should respond to the specific needs of the victim. They must also be realistic in terms of the ability of the accused to fulfil them and proportional to the harm that was done. Restitution for direct financial loss or to address a need that has arisen from the harm is a concrete form of reparation. Reparation in the form of time and energy may be a commitment to a certain number of public speaking events or volunteer service in the community with a disadvantaged group particularly meaningful to the victim. An accused who delivered a plant to a victim whom she had assaulted in order to bring some beauty into the ugliness she had created is an example of a symbolic gesture.

Here are some unique examples of outcomes:

- In a Break and Enter case, the victim, a young mother, was so emotionally impacted that she became unable to care for her son as she had before. The offender offered to pay for the child's karate lessons to help get them "back to life".
- In a Dangerous Driving case, parents stood up in court at sentencing and told the Judge that they considered the offender a role model for their kids because, by his participation in the CJP process, he showed them what to do when you make a mistake.
- In a Driving Death case, the offender and the victim's son spoke together at local high schools, where the victim stated that if their story could help even one other person not fall into either of their shoes, his father will not have died for nothing.
- A victim, dealing with the injuries and trauma resulting from a seemingly unprovoked assault, learned that the offender was trying to steal her car in order to commit suicide. She had lost her own son to suicide less than a year prior to the incident. She found the CJP process helped her see the accused in an entirely different light, and feel an urgency to help him, not punish him.

Besides meaningful reparation, victims are often concerned that the accused is in treatment or therapy for the root causes of the harmful behaviour. Having suffered at the hands of the accused, victims are determined that no one in the future go through what they have gone through. Commitments to complete treatment programs are often the Resolution Agreement elements that are incorporated into a sentence.

Where a Resolution Agreement is developed collaboratively between the participants, much has been accomplished on a human level even before the Agreement is submitted to the court for consideration at sentencing. The accused has accepted an obligation to the victim to fulfill the elements of the Agreement whether they are part of the sentence or not.

At the initial referral of a case to the Collaborative Justice Project, the Crown Attorney agreed to review his/her original sentencing position once the CJP process was complete in order to take into account the outcome of that process. This is important to avoid a kind of "double jeopardy" where the accused agrees to the terms of a Resolution Agreement with the victim, and then gets the same sentence that they would have received from the court if they had not participated in CJP. In order to maintain the principle of proportionality in sentencing, the Crown Attorney revises the sentencing recommendation. The sentencing Judge also takes seriously the work put into the Agreement by both the victim and the offender, and often includes elements of the Agreement into the sentence.

Where a custodial sentence is to be imposed, CJP may ask for additional time before incarceration to allow for the restitution to be paid or other commitments lived out. Conditional sentences also allow the accused to fulfill the elements of the Agreement. When restitution or other elements have not been completed prior to incarceration, it is generally made a probation order which Probation Officers follow up.

In the experience of CJP, it is rarely the case that a victim does not want to send something to the court. However, since a Resolution Agreement is a possible but not mandatory outcome, it may not result in every case. In recent practice, the term Resolution Agreement has been broadened to include a report back to the referring official containing a synopsis of what happened, including the terms of an Agreement or an indication of the victim's satisfaction that nothing more needs to be done for them. In effect, the court is informed that the Collaborative Justice process has taken place and is completed.

The lack of a Resolution Agreement with reparation elements is not to be construed by the Judge, the Crown Attorney or Defence Counsel as implying that the process was unsuccessful. It may simply mean that the parties agreed that no further reparation is needed or that the victim prefers not to put an Agreement before the court. Sometimes, in spite of the efforts of the parties, an Agreement cannot be reached. Where efforts have been in good faith, the court is informed that the CJP process is complete and there is not a Resolution Agreement. Where the accused has not been seen to be participating in good faith and the process has been discontinued, the court is informed in neutral wording that the case did not meet the criteria of the Program.

Even where an Agreement is not reached, it is often the case that participants have met other needs or accomplished other goals through the collaborative process. In the very rare instance where a process has broken down, participants have reported that they still felt they took away something positive.

## **Record Keeping**

Detailed case notes should be maintained by the caseworker of every interaction related to any party involved in a case. Case notes are confidential. Although not verbatim, accurate and complete case notes assist the caseworker to refresh his/her memory before the next meeting with the participants regarding previous conversations, follow up tasks to be undertaken, and issues still needing to be explored. Case notes also constitute protection for the caseworkers in establishing a historical record of the progress of a case should a question or disagreement arise about what was said or agreed. Case notes are also important for staff case conferences and Advisory Circles where the challenges and strategies of individual cases are discussed.

Some restorative programs do not keep case notes for fear of having them subpoenaed by the court. CJP has guarded against this eventuality by developing a case **Referral Form** where the confidentiality of CJP information is agreed to by the Crown and Defence. This has not been a problem on the 20-year history of CJP. CJP automatically shreds its case notes after seven years.

CJP also keeps the minutes of Steering Committee meetings, financial records, statistical records of case numbers and outcomes, and records of public education and community events in which staff and volunteers participate. These statistical and anecdotal records document the history of the program and are useful for year-end reports to sponsors and funding organizations. Informal notes are kept of Advisory Circle advice on cases.

## 6. Case Experience

Over the years, several participants of the Collaborative Justice Program have agreed to allow their experiences to be written up for illustrative purposes, usually with their identities protected. The following case stories reflect the variety of offences and the range of outcomes that have been part of the experience of the Collaborative Justice Program.

***“We are not responsible for what breaks us, but we can be responsible for what puts us back together again”.***

Desmond Tutu

### 1. Impaired Driving Causing Death

The accused, Yves Tessier, was driving the wrong way on a multi-lane, divided highway, entering by the off ramp. After travelling two kilometres in the wrong direction, narrowly missing several vehicles, he collided with John DuBois, killing him [REDACTED]

Tessier had over three times the legal limit of alcohol in his blood and was charged with impaired driving causing death and criminal negligence causing death.

Satisfied that Tessier met the criteria, the CJP caseworker met with Scott DuBois, the adult son of the victim [REDACTED] DuBois wanted something good to come out of the tragedy. He felt that Tessier might speak to people about drinking and driving, or even go with him to speak to groups. However, DuBois believed that Tessier would not be willing or able to speak publicly, so he didn't expect this to happen. DuBois wanted to meet with Tessier to learn who he was and whether he would drink and drive again. [REDACTED]

The caseworker met with Tessier regularly over six months to discuss his alcohol problem, how he had ended up in this situation, whom he had harmed and what he might do to assist with a healing process. [REDACTED]

Similarly, staff met with DuBois to support him and his family, to explore what he needed from the process, and to prepare for a possible meeting with Tessier. Staff conveyed information between the two so that each had a better understanding of the other's situation and needs.

This story and the impact of the mediation are captured in the interviews on a Law Commission of Canada video called, **“Communities and the Challenge of Conflict – Perspectives on Restorative Justice”**. Tessier was interviewed at the Rideau Correctional Facility. Below is the video transcript of their comments:

**Tessier:** *Before this accident, I had the occasional drink but, in the six months prior now that I look back, I drank more and more and I didn't realize that I was going out of control.*

**DuBois:** *Yves had consumed enough alcohol I think to be four times over the legal limit and in his confused state drove the wrong way down the Queensway.*

**Tessier:** *I was going opposite to the traffic and I would have missed a few other vehicles including a tractor-trailer and ended up dead on with Mr. John DuBois.*

**DuBois:** *The accident was immediately fatal to my father*

**Tessier:** *One can spend all kinds of time in jail but, until you look at people right in the face, that is the only time you are really going to see what you've done. It was very hard but I was also relieved when that first meeting we had was done. I felt very relieved because I actually faced these people, because I didn't know how it was going to go.*

**DuBois:** *We met actually in an office with Jonathan, the caseworker, who was arbitrating, mediating effectively. Yves was already there when I walked in and, of course, you have developed a preconceived idea of what the person must be like. And Yves wasn't anything like what I expected. I was struck initially by the fact he was just a regular guy.*

**Tessier:** *I said to myself back then that, even if there was anybody in the family that wanted to beat me up with their fists, I would have let them because there was nothing I could do to change that and I deserved it.....Nothing I could do.*

**DuBois:** *He had, naturally, difficulty meeting my gaze, which again is not surprising, I guess in the circumstances. He was petrified of this meeting and, I give him credit for that, it had to be probably one of the hardest things he actually did.*

**Tessier:** *I think I also mentioned to him that if I could, I would give my own life to have his father back....I couldn't do that.*

**DuBois:** *To see that the man is affected. It's not just a question of, is this a person who just doesn't care, he actually genuinely felt what he had done and I think that's probably one of the biggest things for the victim's side of things, that there is a recognition by the person. It makes them human.*

**Tessier:** *For me, it was the only thing that I could give back to this family for what I have taken, a father, a grandfather, a husband, and maybe I could let them tell me how much they were hurt, or were hurting. I thought that it would help them if they could tell me*

*that. It wasn't an easy task for me to do but it was the only thing I could do. I can't bring the gentleman back.*

**DuBois:** *Those that embrace the system and get the most from the system, the restorative aspects, are those that forgive. You have to forgive.*

**Tessier:** *The only person I didn't get forgiveness from yet is me. I am the only one that hasn't forgiven myself yet. That I know of....."*

While the accused had previously indicated that he felt unable to speak publicly about what had occurred, after the meeting with the victim, he agreed to do so with him.

Tessier received a sentence of two years less a day, served in Provincial Jail. The Crown Attorney's original position of three to five years was mitigated in light of the work done by the accused and the victim's son and their interest in continuing such work.

During the following year, there was periodic contact between Tessier and DuBois. Arrangements were made for Tessier to be released periodically on the temporary absence day passes to speak publicly with Dubois about impaired driving and their personal experiences. Together, they addressed high school classes where the students were deeply moved.

One high school teacher who heard their presentation said: *"One of the more common comments was the surprise at the complete lack of any need for retribution on the part of Mr. DuBois. The students and myself were really quite amazed that Mr. DuBois truly wants some good to come out of this terrible situation, and does not view Mr. Tessier as an evil person, but as someone who did something wrong, and who has nothing to gain or to offer society by going to prison".*

## **2. Robbery and Assault with a Weapon**

James was a 17-year-old boy charged with robbery after he held up a taxi cab driver while holding a knife to his throat. James was soon apprehended and the cab driver's wallet was retrieved. The case was referred to the Collaborative Justice Program through a Judicial Pre-Trial with Judge, Defence Counsel and Crown all agreeing that this was an appropriate referral.

James' mother was very distraught about this "out of character" behaviour of her son. She required support to cope with the fact that her son had become involved in the criminal justice system. James expressed remorse and responsibility. CJP contacted the victim and, although somewhat skeptical, he agreed to participate. The victim is a young immigrant who was deeply harmed by the robbery. Initially, he wanted nothing from the accused. He did, however, want to convey to the accused how the robbery had affected him, (i.e., his increased fear, his growing bias against teenagers and what the loss of his immigration card would have meant to him). The caseworker relayed this information to James who seemed to understand better the issues the victim was dealing with. He offered to write a letter of apology.

The victim seemed somewhat surprised at the level of sincerity expressed by James. The victim began to share more of what this experience had meant to him and admitted that, due to his fear, he had missed work and about \$800 in lost wages in the week following the robbery. James (and his mother) agreed that the victim should not lose any money as a result of something James had done. James agreed to make monthly payments to pay off this debt. CJP continued to work with James regarding the root causes of his behaviour and to assist him in recognizing the impact his behaviour had not only on the victim and his family but to James and his family as well. He started school and soon found part-time work. James' mother reported that their relationship improved a great deal and that he was much more co-operative at home. CJP also worked with the victim regarding employment issues.

Although the victim and accused never met, a resolution agreement was developed that included the restitution and the letter of apology. This agreement was presented to court at James' sentencing as part of the information gathered to assist the judge. James was sentenced to two years' probation with strict conditions. One condition was to continue making the restitution payment to the victim. Both parties felt that the sentence was fair and satisfactory.

### **3. Possession of Stolen Property and Dangerous Driving**

Kyle attempted to receive payment for stolen merchandise at a pawnshop. The police were waiting for him there, and a car chase ensued during which Kyle's vehicle collided with another car. Upon arrest, it was discovered that he had possession of several other pieces of stolen property. As a result Kyle faced numerous serious charges. At the time, Kyle was on parole and had a long criminal record. The Crown's initial sentencing position was for 18-24 months in jail.

Kyle was in custody when the process began and dealing with a serious drug addiction which he "fed" through theft. He had previously served time at both provincial and federal institutions.

There were six victims involved who were contacted by CJP. All agreed to participate and information was exchanged between them and Kyle in which he answered all their questions. Five victims met with Kyle to talk about what happened, why it happened and what Kyle could do about it. The sixth was kept informed by letter.

Kyle pled guilty to several charges and was released to a residential drug treatment program under strict conditions. One victim who met with Kyle was a community planner. They agreed that Kyle would write down his crime prevention ideas for inclusion in an article that the planner was writing for a professional journal.

Kyle also met with four other victims in a Circle Conference. Kyle took responsibility for his offences, apologized to each one and committed to a reparation plan. The plan included partial restitution, continued drug treatment, developing a personal plan with short and long term goals, and community speaking about drug abuse. The circle participants asked for a 3-month delay in sentencing so Kyle could complete some elements of the plan. At that time, they reconvened to develop a final collective recommendation to the court.

Kyle did well in drug treatment. He sent a letter of apology to the sixth victim and participated in several public speaking events. In view of the Resolution Proposal reached by the parties, the Crown Attorney and Defence Counsel recommended a 15-18 month conditional sentence. Kyle received a 15-month Conditional sentence (a jail sentence served in the community under strict conditions) followed by 2-years' Probation. He completed his sentence and is doing well.

#### **4. Break and Enter, Possession, Theft**

Daniel, a young offender, became involved with CJP after he was charged with 16 counts involving a number of Break and Enters, Possession of Property Under, Theft Under, Possession/Use of Credit Card, Loiter at Night on Other Person's Property, and Fail to Comply. Daniel had a long criminal history so upon arrest he was sent to a closed custody facility prior to sentencing.

The Crown's initial position was for 10 months closed custody, followed by two months open custody, followed by Probation. This would be on top of any time already served.

The caseworker met with Daniel and began the process of exploring the causes and consequences of his behaviour. Daniel seemed to take responsibility and was remorseful. Apparently all of the charges stemmed from one evening when he became very intoxicated at a school dance. On his way home, he decided to break into some houses. Being very drunk, it didn't take long for the police to catch up with him, still with the property on his person.

The victims in the case were contacted by the caseworker who then met with each of them to discuss the impact this event on their lives. Two asked for a letter of apology from Daniel. Another victim asked to relay messages to Daniel. She wanted to tell Daniel that it was her child's property that was stolen: CD's and birthday money. Consequently, the child felt personally targeted and was afraid even at home. Daniel was very surprised by this story and deeply affected as he hadn't thought that his actions would harm a child. Daniel wished to do something for the child to show that he hadn't meant to any harm. Unfortunately the family chose not to participate any further in the Project, fearing further retaliation.

Another victim had seen Daniel in the upstairs hallway of his home in the darkness and thought he was an adult. His family has been very frightened ever since. When he learned that Daniel was 15 years old at the time and very intoxicated, although he chose not to go any further in the process, the victim felt much better understanding that it was a young boy, who was remorseful, and this helped him to better cope with the crime.

Daniel wrote his two letters of apology. Daniel was able to put himself in the position of the victims and understand what the impact of his actions had been. The letter to one victim was relayed and he was very touched by its' content. He felt that Daniel showed promise in the literary arts and showed real insight into his own behaviour. He asked that Daniel be told that the victim feels better and to wish Daniel well in the future. Daniel was very surprised that someone he had harmed would actually wish him well.

The victim receiving the second letter was also moved by the letter and began to develop an almost parental concern for Daniel and his future. She asked permission to respond to Daniel's letter with a letter of her own. Permission was granted and she wrote the letter.

Although this case did not involve a meeting between Daniel and the victims, and there was no resolution agreement, it was extremely helpful to all the parties. The victims received the information and support that helped them to cope with what had happened. Daniel learned about the impacts of his actions in a way that allowed the victims to become 'real' for him. Daniel also learned that despite the harm, he could repair it to some extent.

Daniel was sentenced to time served (136 days), two months of Open Custody and probation.

## **5. Violent Assault**

Two men posing as customers attacked a man who runs a small business out of his home, breaking his ribs and tying him up in the basement. Besides his physical injuries, the trauma affected his personality and marriage, and he suffered financial loss from time off work and installing a security system. He was living in fear, losing sleep and suspicious of strangers. A circle conference resulted in a resolution agreement that included \$10,000 in restitution and the assurance from the two accused that they meant him no further harm. That assurance was the most significant element of the agreement for the victim. His wife later reported that, as a result of this assurance, his personality had reverted back to his old self.

## **6. Bank Robbery**

On August 7, 1999, the Ottawa Citizen published the following story: *A desperate young man who robbed the same bank three times in three months was spared jail this week as a judge decided he was a "lost soul looking for help" who could be better rehabilitated outside the prison system. In the next breath, Justice Robert Desmarais applauded the new justice project (CJP) that brought together the young man, his mother and a manager and teller from the bank to talk about the robbery and the impact it had. "It's a valuable and worthwhile experience," said Judge Desmarais. "It put a real face on the victims involved."*

*The Crown had asked for a custodial sentence of two years but Justice Desmarais ended up giving him an 18-month conditional sentence to be served in the community with conditions that he pay back the bank, attend school, do 160 hours of community service and keep a curfew of 11 p.m. for six months. The bank manager testified on the young man's behalf at the sentencing and both the manager and a bank teller were in court to support him.*

## 7. Observations and Learnings

**B**y definition a “pilot project” is an experiment to demonstrate a theory or a model. The Collaborative Justice Project successfully modeled a restorative approach in offenses at the serious end of the criminal justice spectrum. The lived experience of implementing the Project raised a number of observations and learnings that continue to inform the practice of the Program today. Additional learnings became visible through the evaluative process.

### About Case Experiences

Each and every case offers experiential learnings. A few observations that CJP took away from the cases described above include:

- Victims often want something good to come out of horrendous experiences and have ideas about what would constitute meaningful reparation for them.
- When victims see sincere remorse in the accused, they are often less concerned with punishment than with meaningful consequences.
- A face-to-face encounter between a victim and an accused can change preconceived notions and stereotypes about the “other”, humanizing them.
- Victims often need the accused to understand the severity of the impact that the crime has had on them. This can be an unanticipated learning experience for the accused. The impact of a crime can be experienced differently by various victims.
- Family members of both the victim and the accused are often “secondary victims” whose needs can be addressed in a comprehensive restorative approach.
- Meaningful recovery, including a Resolution Agreement, can be achieved even where the parties do not want to meet face-to-face.
- Accountability to one’s victim includes addressing the root cause of the offense.
- Conditional sentences can be useful in permitting offenders to complete their commitments to the victim under a Resolution Agreement.
- Fear can be a barrier to face-to-face meetings. A caseworker, convinced that face-to-face engagement would address the fear, may be tempted to push harder for a meeting. However, to honour the participant-driven principle of CJP and respect the wishes of the participants, caseworkers must refrain from feeling that they “know best” and live with the disappointment of what they may see as a lost opportunity.
- Information sharing, accountability and genuine remorse can be powerful elements of recovery with or without a formal Resolution Agreement.
- Reassurances of no further harm, although only verbal, can be powerful in addressing the fears of victims that it will happen again.
- Officials in the criminal justice system appreciate that a restorative justice process can “put a real face on the victims involved”.
- People who have been victimized can demonstrate a surprising level of support for the accused when their needs are acknowledged and addressed, and they feel that accountability and remorse are sincere and meaningful.

## **About the Collaborative Justice Model**

After two decades of experience, the principles, approach and process of the Collaborative Justice model have proven themselves to be fundamentally sound. However, as has been previously noted in this Guide, a number of process and policy questions have arisen from casework experiences that have refined the case methodology. Here are additional observations:

- The Collaborative Justice model requires the voluntary participation of both the victim(s) and the accused in order for a case to be accepted. There are programs within the spectrum of restorative practice which utilize “surrogate” victims. Such programs are often post-sentence and offer opportunities for victims to process the harm done to them with another offender when their own offender is unwilling or unable to participate, and for offenders to deepen their sense of accountability and victim empathy. CJP works at the pre-sentence stage offering a process by which those directly affected by a crime can participate in resolving it at both a personal and court level.
- On referrals, the Crown Attorney and Defence Counsel must have reached an agreement on a guilty plea before CJP will accept a case. This safeguards the victim by ensuring that there is no danger of the accused changing his/her mind or making a favourable outcome of the CJP process a condition of pleading guilty. CJP is not open to a case where the accused wants CJP to canvass the victim about his/her willingness to participate before agreeing to a plea.
- It is sometimes said that “a restorative approach is not appropriate for every case”. Those associated with CJP dispute that notion, believing that every case would benefit from a restorative approach that pays attention to the harm done through crime. Participation is limited only by the criteria for acceptance (i.e., accountability) and the willingness of the affected parties to participate.
- Several Ottawa Judges have applauded CJP’s role in bringing the victim into the criminal justice process. One judge said, “I commend CJP for their constructive and innovative approach to the sentencing process because, contrary to what was the situation before, at the very least it gives the victims a meaningful, real and significant role in what was previously an alien process which abstracted the victims very often, entirely, and concentrated exclusively on the perpetrator of the offence”.
- The 2005 evaluation concluded that “there was little change over the course of the program, evidenced by no significant changes in offender remorse, victim fear levels, attitudes towards the criminal justice system and opinions of the importance of restorative goals”. This finding concurred with CJP’s experience. There is little change in offender remorse because accused persons who choose to participate in a collaborative process tend to already feel remorseful. Victims who choose to participate in CJP often have manageable fears (or no fear) and have a desire for more from the criminal justice process in terms of voice and accountability than a punitive sentence alone can deliver.

- During the first four years of the CJP (between Sept 1998 and Dec 2002), CJP staff contacted 230 offenders and 446 victims. Of those individuals contacted, 44.8% (N = 103) of offenders and 38.8% (N = 173) of victims chose to participate in the CJP process. Almost 60% of offenders were first-time offenders and assessed as low to medium risk to reoffend at the outset of the program.
- The 2005 evaluation of the CJP found that victims who participated in the program, when compared to victims who experienced the traditional criminal justice process, expressed significantly higher levels of satisfaction as well as perceptions of fairness, their opinion being considered, offender accountability, and justice being served. Offenders who participated in the CJP also had lower recidivism rates compared to a match control group who went through the traditional system.
- The evaluation showed that CJP processes had positive impacts on both victims' and offenders' overall wellbeing, as well as psychological and physical health. Interestingly, participants demonstrated high levels of perceived social support at the outset of the CJP process and this remained stable at the completion of the process.
- The majority of accused persons who participated in CJP, although having committed a serious offence, were not identified as serious offenders in terms of criminal history. First time offenders were more likely to be open to participation in a restorative process that required accountability, remorse and reparation than those who were repeat offenders. However, it was noted that repeat offenders who did participate in CJP were often those who had experienced a recent life-changing event, such as the birth of a child, which had prompted a desire for a shift in the direction of their lives.
- The approach and process used by CJP with serious offenders (i.e., high risk offenders as determined by a risk assessment instrument or lengthy serious criminal history) is essentially the same as that used with first-time offenders, given that caseworkers strive to be diligent in ensuring safety for the participants and sincere accountability in every case. However, with repeat or high-risk offenders, caseworkers will take more time to explore the accused's motivations for change, his/her understanding of impacts and accountability, and their responsibility for addressing root causes. It is important for there to be full transparency with the victim regarding the criminal history of the accused and confidence in the sincerity of his/her remorse before a face-to-face meeting would be considered.
- In many CJP cases, the imposition of a Conditional sentence rather than incarceration permitted the offender to live out the terms of the Resolution Agreement. This produced both satisfaction for the victim and cost savings to the system.
- Experience results in the methodology and values becoming ingrained and "second nature" so that caseworkers deliver consistent and ethically based service to those whose lives have been significantly impacted by criminal behaviour.

- CJP does not often use the term “success” about its work, leaving that to be defined by participants who feel that the process has aided them in addressing some of the issues and human impacts that have arisen for them as a result of crime. CJP is also cautious about using case examples which highlight dramatic outcomes as normative. For caseworkers, satisfaction comes from feedback from victims or accused persons that indicates that they have experienced some relief from their pain, fear, anger or anxiety by participating in CJP, or that they have been empowered by the process to regain some control in their lives. The growth of support for CJP in the Courthouse indicates that this restorative program is meeting a need.

### **About those who have been Victimized**

The key challenge in working with those who have been victims of crime is how to approach them sensitively and effectively. Most are hurting, know little about the criminal justice process, have had little or no contact with criminal justice officials except the police, are not generally offered support services, and are rarely notified of the outcome of a case. They may be experiencing high levels of anger, fear, trauma, even hatred. How do we engage those who could benefit most from the restorative process when the very strength of their feelings acts as a disincentive to any interaction with the accused? What does it mean to participate in a restorative approach when the harm done is so severe that no practical reparation is possible?

Here are some things to keep in mind in working with those who have been victimized:

- Every victim is unique and brings to the process their own views, needs and ideas. Even where the harm is very serious, victims often have similar needs for information, answers, and to be heard about impacts. It can be very important in the approach to victims to emphasize that the collaborative justice process is participant-driven, that their needs are central, and that nothing happens without their agreement.
- Two people victimized by the same crime may be impacted in markedly different ways and have different needs arising from the experience. In a bank robbery case, one of two tellers was eager to meet with the offender to challenge him on his behaviour while the other found herself unable to return to work and was angry at CJP for contacting her.
- A common reason victims participate in a restorative process is their concern to prevent the crime from happening again - to themselves or to others. Their own suffering is given meaning if, by making the offender face the gravity of the impact of his/her behaviour, victims can be reassured that the offender will not create future victims.
- It is not uncommon for victims to initially suspect that the collaborative justice process is intended for the benefit of the offender. In a win/lose system, any benefit to the offender can be seen as a loss to the victim, especially in a context of limited victim support services where they can feel that no one is focused solely on the seriousness of

the harm done to them. Such suspicions are allayed only by the faithfulness of caseworkers to the ground rules they have set out, by the experience of victims having their needs and voice taken seriously, and by a demonstration of sincere accountability by the offender. Resolution Agreements need to be substantive, relevant and responsive to real victim needs.

- There are challenges around timing. People have “individual timetables” and may be ready for a restorative process at various stages of their journey. It may be a year or more after the offence that the case is referred to CJP. By that time, victims may be at a stage where they do not want to look back because they have put the incident behind them. For others, it may still be too soon for them to think about interacting with the person who caused them such harm. Yet there is a limited time frame between plea and sentence. To respond to this reality, CJP began to also accept post-sentence cases.

### **About those who have been Accused**

Working with accused persons also has its challenges and opportunities.

- The majority of offenders who participated in the collaborative justice process were involved in person-based offences. Thus the dynamics that led to the offence are often complicated. While not excusing the criminal behaviour, the accused may feel that the criminal plea, conviction and sentence do not tell the whole story. He/she may feel only partially responsible due to a history of conflict in the relationship or an escalation contributed to by both sides. The collaborative process allows for those views to be heard and for some responsibility to be accepted by the victim, if appropriate.
- Our societal view of justice is often a somewhat simplistic dichotomy of good and bad, guilt or innocence. Yet research and experience have taught that life is rarely so simple. Many offenders have been victimized in their own lives and carry anger, resentment, even rage. While caseworkers are not therapists, it is helpful for them to approach their work with the knowledge that many offenders bear the wounds of adverse childhood experiences and trauma. While not reducing personal responsibility, these complexities are common and can contribute to the criminal behaviour in the specific incident with which the caseworkers are dealing. In exploring with the accused his/her understanding of the root causes of their behaviour and how to address those causes, some of this history may come out. A referral to a professional therapist may be appropriate.
- It can be a challenge to assess whether an accused is sincere in accepting responsibility and is acting in good faith throughout the collaborative justice process. This assessment is a primary responsibility of the caseworker in every case. Since CJP is dealing with serious cases, where a custodial sentence is a real possibility, there can be a danger that the accused person is just “playing the game”, saying whatever he/she thinks the caseworker or victim wants to hear in hopes of a more favourable sentence. This puts both the safety of the victim and the integrity of the Program at risk. Caseworkers must

be ever vigilant about this, utilizing their experience and the “sincerity indicators” identified under Working with the Accused in Section 5 of this Guide.

## **About the Criminal Justice System**

In many ways, the focus, values and approach of the Collaborative Justice model are antithetical to the current criminal justice system. So it is a major shift for criminal justice professionals to understand, embrace and make room for a restorative model in their midst. Many of those professionals acknowledge the limitations of the criminal justice system to deal with the impacts of crime. Many feel frustration that the system is not capable of a more holistic approach that includes the victim and the community, yet it can be difficult to see how a restorative program can fit into the adversarial system. The challenge to address this is ongoing and should not be underestimated.

- There is a steep learning curve for Crown Attorneys, Judges, Police Officers and Defence Counsel who may be deeply invested in an adversarial model, or initially assume that Collaborative Justice is a diversion project, or that it is an offender-oriented program so they are reluctant to refer the most serious cases or to refer a case where the accused has a significant criminal record.
- While claiming to hold offenders accountable, the current criminal justice system with its emphasis on punishment effectively discourages people from taking responsibility at every turn. An offender who had a ten-year record of interactions with the criminal justice system said at the completion of his experience with the Project that it was the first time that he had ever been held accountable for his actions. How can we create incentives for the accused to take responsibility for serious harm in a context where the overwhelming incentive is to avoid responsibility in order to avoid punishment?
- Accused persons rely on their lawyers to advise them. Defence considerations include legal strategy and potential outcomes as much as accountability. Given possible loss of liberty and other types of punishment, Defence Counsel have a duty to explore with their clients all possible defences. In the justice system, the Crown must prove the charges beyond a reasonable doubt, so a defence strategy may have nothing to do with actual guilt or innocence, but rather with whether guilt can be proven or whether proper procedures were followed. The CJP approach that emphasizes accountability may conflict with a defence in law.
- The experience of CJP has confirmed that an integrated, holistic system of victim support is needed. Information and support should be routinely provided to every victim. Victim serving agencies and support services should be aware of and involved in local restorative justice programs that may be helpful for their clients.
- To avoid “net widening”, the Collaborative Justice Program does not accept cases for which the Crown feels there is no reasonable prospect of conviction.

## 8. Ongoing Challenges

A number of the challenges encountered in implementing and sustaining the Collaborative Justice Program, identified earlier in this Guide, have resulted in clarifications or minor revisions to the protocols or methodology of the model. Some issues remain a challenge.

1. Sexual or Domestic violence: Initially, cases involving domestic or sexual abuse were not referred to CJP. At the time, some held the view that a restorative approach was inappropriate in domestic or sexual abuse cases because such cases involved unique dynamics related to power imbalance and control. Processes based on principles of equality and voluntariness that facilitated engagement between the victim and the offender (where a power imbalance existed) were seen to be vulnerable to coercion by those with power and put victims at further risk. This risk is particularly at play where the parties have an ongoing relationship out of choice or necessity. Restorative processes did not always have clear protocols to ensure safety for the victim.

A number of restorative justice programs in Canada and in other countries now work with domestic abuse and/or sexual violence offences. They have developed protocols and safeguards to address the dynamics of these unique situations. While the Crown Attorney does not refer domestic violence cases to CJP, sexual assault cases are referred and considered on a case by case basis. Acceptance depends on the nature of the offence, on the nature of the relationship and the willingness of the accused to accept responsibility. These cases are often taken to the Advisory Circle for advice.

Recognizing the complex nature of such cases, it is likely wise for any new Collaborative Justice Program to refrain from accepting cases of domestic violence or sexual offending until: 1) there is substantial experience with the collaborative justice model in other cases; 2) research is undertaken to identify the protocols and safeguards used for these types of cases in other programs or countries (i.e., Australia); and, 3) caseworkers have received specialized training.

2. Culturally Diverse Clientele: A critical issue for any new Collaborative Justice Program is relating to the increasingly diverse cultural make-up of the communities which serve. Victims, accused persons and affected community members will bring with them different cultural backgrounds, experiences, views of police and the criminal justice system, and traditions with respect to resolving conflict. They may have different first languages.

For instance, there is a difference between the European and Indigenous worldviews. What impact or difference might that make in how CJP understands and works with Indigenous clients? What appropriate resources in the community might be accessed? What guidance from the Indigenous community should be sought and from whom? Such questions could and should be asked in working with members of any cultural group.

Limited program funding does not permit the employment of a fully diverse CJP staff. However, intentional diversity in the composition of the Advisory Circle, together with outreach and relationship-building with community groups and agencies that represent culturally diverse populations, and cultural sensitivity training for all CJP staff are important ways to begin to address this need. Police services often have community liaison officers who could also be consulted.

3. Independence of CJP: Implementing a non-adversarial program within an adversarial criminal justice system can prove difficult, especially in maintaining the integrity and independence of the model, and resisting pressures to meet the “system’s” needs.

The Collaborative Justice Program always had the support and cooperation of the Crown Attorney’s office and of other officials within the system. This included flexibility regarding timelines so that the collaborative process could evolve appropriately. Caseworkers in a restorative pre-sentence youth program in another province however, were instructed by the Crown’s office to have resolution agreements back to the court within two weeks!

The Collaborative Justice model is a different *paradigm* of justice. It is important to remember that restorative justice practitioners are the “experts” in the principles and processes of that paradigm. Criminal justice officials can be forgiven for not understanding how restorative justice works, with its emphasis on a voluntary and participant-driven process, but RJ practitioners must remain steadfastly faithful to the integrity of the model, and use such misunderstandings as a “teachable moments”.

4. Public Perceptions: A longstanding misconception about restorative justice in the public mind is the view that, with its emphasis on reparation rather than punishment, restorative justice is “soft on crime”, coddling the offender with minimal consequences. Even some Defence Counsel have been known to advise clients to participate in the Collaborative Justice process because “it will go easier for them” at sentencing.

Society has been schooled in the retributive model. Victims can feel that any potential benefit to the offender is a loss to themselves or evidence that the system is not taking seriously the harm done to them, especially in a context of limited victim support services. Victims groups have often been at the forefront of those calling into question the restorative justice approach and practice.

Those who have first-hand experience with a restorative process, as offenders, victims or practitioners, know that this misconception is far from the truth. Offenders who have faced their victims say that the sense of accountability is more real and more meaningful than what they have experienced through a punitive sentence alone. Victims, often surprised to be invited to have a say, find reassurance that the harm done to them is being taken seriously, feel validated in having a voice to describe what the impacts have been in their lives, and empowered by collaborating on reparations that are relevant to them.

This deeply rooted public misconception has been addressed by CJP staff in hundreds of community events and national conferences, and in printed material and media interviews. This has included dialogue with victim groups which has increased CJP's sensitivity to victims and resulted in victims' advocates affirming CJP as "good practice".

In its public education efforts, CJP is aware of the danger of using only "nirvana" stories (i.e., stories with dramatic outcomes) to illustrate what can happen through a restorative process. They are not truly representative and can create equally untrue misconceptions and unrealistic expectations.

5. Sustainable Funding: Pilot projects are often created with project funding which is short term and intended to get a new initiative up and running. Occasionally the project funding is renewed for an additional period of time but it is always with the hope that a successful pilot project will attract sustainable funding eventually. Sadly, this has not been the experience for many pilot projects even when they have demonstrated "successful" results. Scarce non-governmental funding sources exist.

The Collaborative Justice Program has survived for two decades on a combination of contribution agreements from the Ontario Ministry of Children and Youth Services (which is only funds work on youth cases), grants programs, freewill donations and fundraising efforts such as staff-organized galas and auctions. On occasion, in cases unrelated to CJP, a donation to the Program has been ordered as part of the sentence by a Judge or has been agreed to as a condition of sentencing by the Crown and Defence.

Uncertain, unpredictable or fluctuating funding has a significantly negative impact on a Program's capacity to accept and process cases, and to live up to its potential as a substantive model of restorative justice at work.

## 9. Going the Distance

**W**hat is needed for long term sustainability? The Collaborative Justice Project/Program is entering its 20<sup>th</sup> year. While funding has been lean for some of those years, the Program has continued to provide a valuable service to victims and accused persons and to build on the trust it has earned from many in the criminal justice system and beyond. Several factors have contributed to this longevity.

### 1. Good Practice

Faithfulness to First Principles has contributed to quality service and a reputation for integrity. It only takes one case of “poor” practice to undermine the credibility of CJP throughout the courthouse and create scepticism about its value. This is particularly true when dealing with cases of complexity, significant harm and high emotion. Participants as well as justice officials must be able to trust that caseworkers will employ an ethical approach in each case. The presence of long term staff members has contributed to this consistency.

### 2. Strong Relationships

CJP has built credibility and strong relationships within the Courthouse evidenced by these letters of support for CJP’s fundraising efforts.

*“Collaborative Justice complements the traditional criminal justice system. Where the criminal justice system holds the accused accountable to the State, CJP holds the accused accountable to his or her victim, fostering a process that repairs harm done to victims. The service offered by CJP is essential, since it assists victims who would not receive support otherwise. ... The Program’s success across the full range of criminal cases – from least to most serious - strengthens the Crown’s conviction that Collaborative Justice deserves the strong support it receives from the Bench, Bar, and Police.”*  
**Crown Attorney Hilary McCormick**  
(2009)

“Expertise and professionalism are cornerstones of CJP’s success, which has been building experience in restorative justice for over a decade in the provincial courthouse. CJP has carefully created a process that is holistic, reparative, and confidential. Defence Counsel Association members regularly use the services of Collaborative Justice. They feel that the process employed by the Program has been designed to allow a safe and honest resolution discussion to occur between accused and complainants. Defence Counsel are well acquainted with the staff at Collaborative Justice, whom they trust to handle their clientele with sensitivity and integrity.”

**Mark Ertel, President, Defence Counsel Assoc. of Ottawa** (2009)

“I am a long-time and outspoken proponent of restorative justice. I am delighted to recommend Ottawa’s only restorative justice organization, the Collaborative Justice Program, to you for financial consideration.

I consider the approach to be a tougher and smarter way of tackling crime. Client satisfaction among victims and offenders and community is much higher with restorative justice and, in my experience, the recidivism rate of offenders is much lower. Offenders tend not to re-offend as

much as they would in mainstream justice because, for the first time, they are held accountable for their actions.

The Collaborative Justice Program needs sustaining community partners – which is why I reach out to you. The work it accomplishes directly affects our community. We cannot afford to lose this program.” **Former Ottawa Police Chief Vern White**

### **3. Public Visibility**

Since its inception, staff members and volunteers of the Collaborative Justice Project/Program have responded to literally hundreds of requests to speak at public events, participate in media and researcher interviews and conduct workshops. This has provided the opportunity to educate a variety of audiences about the restorative approach in general and the work of the Collaborative Justice Program specifically. It has also broadened the base of support for CJP in the community. Examples of the variety of public education venues and vehicles include:

- University, college and high school classes in law and criminology
- Individual student interviews and student placements
- Media interviews for print, television and radio,
- Church publications and congregational workshops
- Workshops for Judges, the Defence Bar, Crown Attorneys, Parole/Probation Officers
- Victimology conferences and meetings of victim advocacy groups
- Youth Justice conferences and agencies
- Community agencies and associations
- Restorative justice and criminal justice conferences
- International visitors including students, academics and keynote speakers

While CJP welcomes interest and requests from the media as a valuable avenue for public education and visibility, the confidential nature of the process means that interviews must be general in nature describing the restorative approach and the history and methodology of the Collaborative Justice Program. Journalists however are looking for a “real-life” story as a human interest hook. Very few participants of CJP wish to go public, no matter how satisfied they are with the outcome. Several filmmakers have even asked to film a case from beginning to end. CJP declines such requests as compromising the confidentiality and authenticity of the process.

### **4. Networking**

The Collaborative Justice Program has been an active member and co-chaired the National Capital Region Restorative Justice Week Planning Committee for several years before it evolved into the Ottawa Restorative Justice Network. CJP in partnership with the Church Council on Justice and Corrections organized and co-hosted the National Restorative Justice Symposium in Ottawa in 2017.

## 10. Other Resources and Programs

Listed below are a few of the many restorative justice resources available and recommended. Currently over 400 restorative programs, organizations and networks operate across Canada.

### On Restorative Justice

- i. Books by **Howard Zehr** including *Changing Lenses* (1990) and *Little Book on Restorative Justice* (2003). By googling Howard Zehr, one can access speeches, video clips and resources by the “grandfather” of restorative justice.
- ii. Books by **Rupert Ross** including *Returning to the Teachings* (1996), and *Indigenous Healing: Exploring Traditional Paths* (2014). Ross is a former Canadian Crown Attorney.
- iii. The work of **Kay Pranis**, especially *Peacemaking Circles: From Crime to Community*. Kay Pranis is a trainer and writer on Peacemaking Circles and restorative justice. She served as the Restorative Justice Planner for the Minnesota Department of Corrections from 1994 to 2003. More information on her work is at [www.livingjusticepress.org/](http://www.livingjusticepress.org/)
- iv. The **United Nations** Basic Principles on the Use of Restorative Justice Programs in Criminal Matters: [www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf](http://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf)
- v. **Church Council on Justice and Corrections (CCJC):** [www.ccjc.ca](http://www.ccjc.ca)  
The Church Council is a national, ecumenical, bilingual charitable organization mandated to assist churches and communities to reflect on and more deeply engage issues in the field of criminal justice. Their website lists a number of resources on restorative justice at [www.ccjc.ca/restorative-justice/restorative-justice-resources/](http://www.ccjc.ca/restorative-justice/restorative-justice-resources/)

### On Restorative Justice Programs

- i. **Collaborative Justice Program (CJP):** [www.collaborativejustice.ca](http://www.collaborativejustice.ca)  
For more information about the Collaborative Justice Program or to be in touch with the staff regarding questions or concerns about implementing the collaborative model, please visit the CJP website. Though the Program’s priority will always be the more serious cases, CJP has evolved over its’ 20-year history to accept post-charge/pre-sentence cases, adult and youth, regardless of level of seriousness.
- ii. **Community Justice Initiatives Association (CJI):** [www.cjibc.org](http://www.cjibc.org)  
Community Justice Initiatives is a community-based non-profit society located in Langley, British Columbia, Canada. The organization has over 30 years’ experience providing conflict resolution services in such settings as the criminal justice system, organizations, schools, businesses and for private individuals. Well-known for its post-sentence work, in 2017 CJI implemented a pre-sentence Collaborative

Sentencing Project to provide a satisfying experience of justice for the people involved in, and affected by, a crime. Collaborative Sentencing provides opportunities for direct and indirect communication between victims, accused persons, and criminal justice personnel.

- iii. **Restorative Opportunities Program:** [www.csc-scc.gc.ca/restorative-justice](http://www.csc-scc.gc.ca/restorative-justice)  
Restorative Opportunities (RO) is a Correctional Service of Canada (CSC) program that offers people who have been harmed by a crime, either directly or indirectly, a chance to communicate with the offender who caused the harm. RO is a post-sentence program in which participation is voluntary for everyone concerned. The program explores opportunities to use various victim-offender mediation models that best suit the needs of the participants, as defined by the participants, with the help of a professional mediator.
- iv. **Justice Canada (DoJ):** [www.justice.gc.ca/eng/cj-jp/rj-jr/index.html](http://www.justice.gc.ca/eng/cj-jp/rj-jr/index.html)  
The Department of Justice lists a number of resources related to restorative justice including a locator for restorative justice programs across Canada.
- v. **Public Safety Canada (PS):** [www.publicsafety.gc.ca](http://www.publicsafety.gc.ca)  
A “restorative justice” search of the Public Safety Canada website produces a number of helpful articles, publications, studies and reports including the 2005 and 2009 evaluations referred to above.
- vi. **Centre for Justice and Reconciliation:** [www.restorativejustice.org](http://www.restorativejustice.org)  
A program of Prison Fellowship International, the Centre helps PFI’s 125 national affiliates advance timeless principles of justice and reconciliation in their criminal justice systems. Convinced that restorative justice is an important contemporary expression of those principles, the Centre sees its mission to develop and promote restorative justice in criminal justice systems around the world.

### **RJ Network Websites**

- i. **Ottawa Restorative Justice Network (ORJN):** [www.orjn.ca](http://www.orjn.ca)  
ORJN is a network of individuals and organizations strengthening the use of Restorative Justice (RJ) in response to the harm caused by crime and conflict in the Ottawa area. Similar local networks may be present in your area.
- ii. **Smart Justice Network of Canada (SJNC):** [www.smartjustice.ca](http://www.smartjustice.ca)  
The Smart Justice Network of Canada is a non-partisan network of volunteers from different sectors, walks of life and communities across Canada who are working together to promote responsible, fair, humane, efficient and financially smart ways of responding to criminal and social justice challenges. To join the Smart Justice Network media summary distribution list, contact [info@smartjustice.ca](mailto:info@smartjustice.ca)

## 11. Appendices

**T**he following appendices are samples of pamphlets, forms, letters or checklists that have been referenced in this User Guide. Some of these documents were created and used in the early stages of the Collaborative Justice Project as it was being established, and have subsequently been updated or replaced under the current Collaborative Justice Program.

- I. Project pamphlet (2003)
- II. Program pamphlet (2017)
- III. Notice to Defence Bar
- IV. Expectations and Oath of Confidentiality
- V. Sample Crown Referral Letter to Defence
- VI. Case Referral form
- VII. Case Checklist
- VIII. Sample Letter to Victims
- IX. Participation Agreement
- X. Agreement to Participate in a Restorative Meeting
- XI. Introduction to Circle Process
- XII. Sample Resolution Agreement

## **Appendix I**

### **Collaborative Justice Project Pamphlet (2003)**

*(Page 1)*

#### **Do the victim and the accused have to meet?**

**No.** The needs and wishes of the parties themselves determine what takes place. The parties may wish to meet in order to express feelings, ask questions, give or receive apologies, or determine what can be done to address the harm. Otherwise contact is made through the Project staff.

#### **How are participants referred to the Project?**

Individuals, judges, crown or defence counsel, police or probation officers can refer victims or accused persons to the Collaborative Justice Project.

#### **Will participation with the Project affect the sentence that the accused person will receive?**

Sentencing remains the role and responsibility of the judge.

Where the victim and offender develop a resolution agreement, it can be submitted to the court for consideration by the judge in passing sentence.

#### **Collaborative Justice Project**

Provincial Courthouse  
161 Elgin Street  
Ottawa, Ontario  
K2P 2K1

#### **For more information contact:**

name  
Co-ordinator  
(613) 000-0000  
Email:

name  
Caseworker  
(613) 000-0000  
Email:

**Fax: (613) 239-1214**

---

# **C**ollaborative **J**ustice **P**roject

**Assisting those affected by  
serious crime through a  
restorative approach**

---

10/04

## (Page 2)

### What is the Collaborative Justice Project?

Crime harms people and relationships. We believe that people affected by crime need support and information. They may be concerned that someone takes responsibility for the harm done. They may also wish to see the harm repaired, to the extent possible. The current justice system is often unable to provide for this range of needs.

CJP offers individual support to those affected by crime as the criminal justice process unfolds. It also provides opportunities for them and their families, if they desire, to work together on healing and resolution.

Participation in the Project is voluntary.

### Who funds the Collaborative Justice Project?

The Project is a community project of the Church Council on Justice and Corrections. It is financially supported by the Ottawa Crown Attorney's office, the Ministry of the Solicitor General, Correctional Services Canada, Justice Canada, the National Crime Prevention Centre and the Trillium Foundation.

### How are victims served by the Project?

The Collaborative Justice Project offers support to victims of serious crime in the following ways:

- the opportunity to talk to someone who cares about their experience, to express emotions and describe the impact of the crime.
- information about the charges, the accused person and the criminal court process.
- referrals to appropriate community resources, if desired.
- support and assistance in addressing safety concerns.
- an opportunity to learn of the admission of responsibility on the part of the offender.
- an opportunity to identify what is needed for reparation. What do they need in order to feel that the harm done to them has been addressed?
- an opportunity to provide input to the court through a resolution proposal regarding the sentence.

**It is our belief that, when victims are involved in a self-directed process where their feelings and needs are considered and respected, there is a greater opportunity for personal healing and closure.**

### How are accused persons assisted?

In accepting responsibility for his/her criminal behaviour, the accused person is expected to:

- explore who has been harmed (the primary victim and other family and community members who have been affected);
- learn about the impact of the harm on the lives of those affected;
- suggest ways they can contribute to repairing the harm they have caused;
- identify and address the personal issues that contributed to the criminal behaviour;
- commit to a resolution agreement if one is negotiated with the victim(s).

### What are the criteria for the Project?

*We work with adult or youth cases where:*

- *the crime is serious;*
- *and the victim is interested in receiving assistance from the Project;*
- *and the accused has accepted responsibility for the harm done and has a desire to make amends.*

## Appendix II

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### Collaborative Justice Program Pamphlet (2017)

(Page 1)

#### What are the Criteria for the Program?

We work with adult or youth cases where:

- the victim is willing to receive support and participate in a reparative process;
- and the accused has accepted responsibility for the harm done and has a desire to make amends.

#### How can I be referred to CJP?

Call the CJP staff directly or ask to be connected with the Program through the Crown Attorney or Defence Counsel.

#### What happens to the charges?

CJP does not have control over the outcome of a case, but can provide input through the Resolution Agreement. In less serious cases, the outcome will be determined through discussions between Crown and Defence. In more serious cases, sentencing remains the domain of the Judge.

#### Collaborative Justice Program: Restorative Justice Ottawa (CJP)

Provincial Courthouse  
c/o Crown Attorney's Office  
161 Elgin Street  
Ottawa, Ontario K2P 2K1

[www.collaborativejustice.ca](http://www.collaborativejustice.ca)

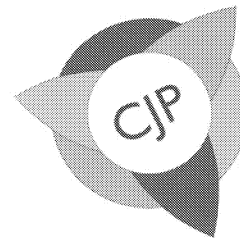
Please visit us on the 1<sup>st</sup> floor,  
across from Courtroom #12.

Kimberly Mann  
Executive Director  
(613) 239-1173  
[kim@cjpottawa.ca](mailto:kim@cjpottawa.ca)

Amber Montgomery  
Caseworker  
[amber@cjpottawa.ca](mailto:amber@cjpottawa.ca)

Fax: (613) 239-1508

Please consider donating to the  
Collaborative Justice Program  
through [Canadahelps.org](http://Canadahelps.org).  
Charitable Number:  
817816200RR0001



**Collaborative  
Justice  
Program:  
Restorative  
Justice Ottawa**

*Inspiring  
communities to  
respond to crime  
with accountability,  
dialogue and  
compassion*

(Page 2)

### What is the Collaborative Justice Program?

CJP is a restorative justice program that accepts youth and adult cases, by offering individual support to those affected by crime as the criminal justice process unfolds. The Program provides opportunities for all parties, if they desire, to work together on healing and resolution.

Participation in the Program is voluntary for both victims and offenders/accused persons. **The process only proceeds when both parties choose to participate.**

### Who Supports CJP?

CJP is a charitable non-profit organization that receives financial support from the Ontario Ministry of Children and Youth Services and in-kind support from the Ottawa Crown Attorney's office. CJP also accepts charitable donations.



### Have You Been Victimized By A Crime?

- Have you wished for more information regarding the criminal justice process and about the offender?
- Do you have needs for reparation including an apology?
- Do you wish to describe the impact of this incident on your life to the person who committed this crime?
- Do you want to meet the offender to see if they are truly remorseful?

### Have You Been Charged With A Crime?

- Do you feel badly that others were negatively affected by your actions?
- Would you like to have the opportunity to apologize?
- Would you like some assistance in addressing the root causes of your behaviour?
- Are you ready to take responsibility for your actions but don't know the next step?
- Do you want to meet with the victims to apologize in person?

### If Your Answer Is "Yes", Then Here Is How CJP Can Assist You

#### For Victims:

- You may wish to ask questions of the offender and describe the effect this event has had on you.
- You may need us to refer you to community resources to assist in your recovery.

#### For Accused:

- You may wish to describe the events that led you to commit the criminal act.
- We can help you identify and expect that you will address the personal issues that contributed to your criminal behaviour.

#### For Both Parties:

- We can accompany you through the criminal justice process.
- We can exchange information between both parties.
- You will have the opportunity to collaborate on a Resolution Agreement to address the harm. We can facilitate a meeting between you and the other party should that be what both parties choose.

## **Appendix III**

### **Collaborative Justice Project**

Courthouse, 161 Elgin Street, Ottawa, Ont., K2P 2K1

#### **Notice to the Defence Bar**

The Collaborative Justice Project is a new program operating in association with the Crown Attorney's office. Focussing on adult cases which are serious in nature and would normally result in a term of imprisonment, the Project offers unique opportunities to those who have been affected by the crime including victims, the accused and members of the community. A precondition for participation by the accused is a willingness to accept responsibility for the harm that has been done.

First, the Project offers support, information and assistance, beyond what the current system is able to provide, to all parties in order that they can identify and address the wide variety of needs and issues that can arise as a result of crime.

Second, the Project offers an opportunity for the accused, the victim and members of the community to participate in a process which could result in a collaborative resolution plan. The process will emphasize accountability, reparation, healing and closure.

Should such a resolution plan be developed, it may result in a joint position on sentencing or mitigate the sentence that would otherwise be sought by the Crown. The process is confidential so that nothing is reported to the court without the agreement of all parties.

As this is a demonstration project, only a limited number of cases will be accepted from among those that qualify. More information is available from the office of the Collaborative Justice Project outside Courtroom #4 or by contacting *Name and Phone number*.

Should you have clients that you feel would both qualify and benefit from participation in the Project, please feel free to contact us.



# Collaborative Justice Program

## Appendix IV

### ***Expectations and Oath of Confidentiality***

#### **Collaborative Justice Program Values and Principles**

- Respect
- Neutrality
- Acceptance
- Non-judgement
- Empathy
- Compassion
- Confidentiality
- Self-direction
- Equality
- Inclusion
- Safety
- Truth-telling
- Accountability
- Participant-Driven
- Constructive
- Fairness
- Without Prejudice
- Voluntary Participation

➤ While performing the duties assigned to me as a CJP Staff or Volunteer or Student or Advisor, I understand that I will have access to confidential information. I agree that information will not be disclosed to any unauthorized person in a manner that would identify the participants.

➤ I understand that under some circumstances I may share confidential information with authorized personnel. These may include Crown, Defence, and Duty Counsel. Before sharing information I will seek the guidance of the CJP Staff.

➤ Exceptions to Confidentiality are:

- where required under the law
- a medical emergency
- a question of immediate, grave danger to the subject or to others
- recent or ongoing child abuse
- recent or ongoing abuse of a dependent adult

➤ I accept that as a CJP Staff, Advisor, Volunteer or Student, I represent the Program and will treat clients and all other CJP personnel in a professional manner that is reflective of CJP's values and principles.

**CJP Staff/Volunteer/Student/Advisor**

**CJP Staff Witness**

Name (Print) \_\_\_\_\_

Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix V

### **Sample Crown referral letter to Defence Counsel (on Crown letterhead)**

date

addressee

address

Re: case

Dear :

As discussed by telephone with you by the Project staff, we are considering this case for the **Collaborative Justice Project**, which is associated with my office.

The Collaborative Justice Project offers assistance to those who have been affected by criminal activity, including victims, the accused and community members, in order to identify and address the wide variety of needs and issues that can arise as a result of this experience.

The Project also offers opportunities for the parties directly involved to participate in the development of resolution options that meaningfully address the harm that has been done. The victims would be contacted, offered support and canvassed for their willingness to participate in developing a resolution plan together with the accused and representatives of the Project.

A precondition for participation by the accused in the Project is the willingness to accept responsibility for the harm that has been done. The Project is voluntary, confidential and without prejudice should a mutually acceptable resolution plan not be achieved. Nothing said by the accused during this process will be introduced by the Crown to the court as evidence at a trial or sentencing hearing without the accused's consent.

Should a mutually acceptable resolution plan be developed, it may result in a joint position on sentence or mitigate the sentence which would otherwise be sought by the Crown. There is no guarantee; however, that incarceration will not be part of the Crown's sentencing submission.

If your client is interested in participating in the Project, and you agree that the Project staff have direct access to your client, please notify the coordinator at 000-000-0000.

Yours truly,

Name  
Crown Attorney

## Appendix VI

### Case Referral Form and MOU



## Collaborative Justice Program

### Referral Form/Memorandum of Understanding (MOU)

Name: \_\_\_\_\_

Scope ID #: \_\_\_\_\_ Info. #: \_\_\_\_\_ Occurr. #: \_\_\_\_\_

The Accused, through his/her Defence Counsel, and the Crown enter this MOU in good faith. The parties have resolved the outstanding charges. There will be no trial or other proceeding involving a determination of the Accused's guilt, absent exceptional circumstances. A pre-condition for participation by the accused in the Program is the willingness to accept responsibility for the harm done.

Both parties understand that by referring this matter to CJP, they represent that they are aware of, and fully understand, that the process involves the sharing of information between the Accused, Victim, and other involved parties, on a *without prejudice* basis ;

Both parties agree not to subpoena CJP personnel should the matter proceed to trial, nor will the CJP file, including all notes and records created by CJP personnel, be sought for production.

Both parties will agree to vary release conditions to allow communication between the parties through the CJP process.

Signed:

_____	_____
Referring Crown Attorney	Date

_____	_____
Defence Counsel	Date

_____	_____
Collaborative Justice Program	Date

## Appendix VII

### CASE CHECKLIST

**Referral –**

Name/Date: \_\_\_\_\_

Caseworker: \_\_\_\_\_

Info. # \_\_\_\_\_ Occur. # \_\_\_\_\_

**Offender:**

Address:

Phone:

Email:

**Defence:**

Phone:

Fax:

Email:

**Victim:**

Address:

Phone:

Email:

**Victim:**

Address:

Phone:

Email:

**Crown Attorney:**

Sentencing position:

**Investigating Officer:** \_\_\_\_\_

Checklist
Participation agreement?
Referral forms (MOU)?
Evaluations (MCYS)?
Evaluations (Carleton)?
Statistics?
Mailing list?

**Outcome:**

## Appendix VIII

### Sample letter to a Victim



## Collaborative Justice Program

Date

Name

Street Address

Ottawa, Ontario Postal Code

Dear Mr. -----,

I understand that on *date* you were violently assaulted and robbed by several men. Although I do not know the ongoing impact on you, I expect that this was a frightening and painful experience. The Collaborative Justice Program is a program associated with the Crown Attorney's office that offers an avenue of support, assistance and participation for those affected by a criminal offence.

People often have a variety of needs as a result of crime. These may include needs for basic information, accountability, acknowledgement of the harm done, or for a voice in the proceedings. The current criminal justice system generally has not provided for these needs. For victims especially, the opportunity to let the accused know the impact of the harm on their life, to express concerns about re-offending or personal safety, to know that the accused is taking responsibility for the harm, or to obtain reparation can be very important for personal healing.

The Collaborative Justice Program plays a unique role in the justice system by working with all parties to address these needs. Participation is completely voluntary. However, in order to participate, the accused must take responsibility for the criminal behaviour and be willing to make efforts to repair the harm. In your case, the accused has entered a guilty plea and has expressed the desire to participate in the Project in order to make amends to you.

I am writing to inform you of our program and invite you to think about how the Program might assist you. I am including a pamphlet with more information. I will call you in the near future to explore your interest or, if you prefer, please contact me at your convenience.

Sincerely,

Name

phone number

## Appendix IX



# Collaborative Justice Program

### PARTICIPATION AGREEMENT

I, \_\_\_\_\_ wish to participate in the Collaborative Justice Program (CJP). A staff person has explained the goals, criteria and limitations of the Program and has given me some written material. I understand that participating in the CJP is voluntary and I may choose to withdraw at any time.

As a participant in the Collaborative Justice Program, I agree to the following terms:

1. I agree to take responsibility for the harm that I caused and to enter a guilty plea (except in pre-charge or diversion cases) as agreed by my lawyer and the Crown Attorney, if I have not already done so.
2. I agree to disclose all information that is relevant to the incident to which these charges against me apply:  
\_\_\_\_\_  
\_\_\_\_\_ on (date) \_\_\_\_\_
3. I agree to disclose my criminal record. I also agree to disclose any involvement with the police that occurs after my case is accepted.
4. I understand that the work of the Program is strictly confidential. However, I authorize the Program staff to share information with the individuals harmed by me unless I specifically indicate otherwise. CJP staff may keep my Defence Counsel updated as to the progress of the case.

Exceptions to Confidentiality are:

- Immediate, grave danger to the subject or to others
  - Recent or ongoing abuse of a child or dependent adult
5. This process is 'without prejudice'. In other words, I understand that no statement made by me, through the course of my participation in the Collaborative Justice Program may be later used against me.
  6. I agree to be truthful and sincere in all my dealings with the victim(s) of my actions and with Program staff. I agree to work towards repairing the harm I have caused.
  7. I agree not to subpoena CJP personnel nor will the CJP file, including all notes and records created by CJP personnel, be sought for production under any circumstances. I understand that both the Crown and Defence Counsels have also agreed to this.
  8. I understand that, unless a resolution agreement satisfactory to all parties is reached, no information from the Program will be provided to the court or referral source without my consent.

I have read and understand the contents of this form.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of CJP Staff: \_\_\_\_\_

## **Appendix X**



# Collaborative Justice Program

## **Restorative Meeting**

### **Agreement to Participate**

I, (*print name*) \_\_\_\_\_ agree to participate in this Restorative Meeting facilitated by representatives of the Collaborative Justice Program.

In doing so, I understand and agree to the following terms:

- The process is voluntary. I agree to participate in the process in good faith. I understand that any party may terminate the process at any point, but I agree that before doing so I will indicate to the other party my reasons and allow them to respond.
- The process is confidential. I understand that all information conveyed by any party during the conference shall be considered confidential unless the parties agree otherwise.
- The process is without prejudice. It is agreed that no information disclosed during this process will be used in any way by anyone in any future proceedings without the agreement of all parties. No participant will ask other parties including the facilitator to testify for any purpose with respect to information disclosed during this process.
- The process is designed to facilitate understanding. I agree to share all information that will help the process be open and productive. I agree to abide by the procedural ground rules as outlined by the facilitator. I understand that the role of the facilitator is not to make decisions or represent anyone but to act as a neutral party.
- The process provides the opportunity for resolution and closure. I agree to abide by any mutual agreement that results from this process.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

---

Collaborative Justice Program: Restorative Justice Ottawa  
Courthouse, c/o Crown Attorney's Office, 161 Elgin Street, Ottawa, ON K2P 2K1  
Telephone: (613) 239-1136 Fax: (613) 239-1508 Email: [cjpamber@storm.ca](mailto:cjpamber@storm.ca)  
[www.collaborativejustice.ca](http://www.collaborativejustice.ca) Charitable Number: 81781 6200 RR0001

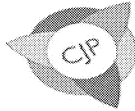
## **Appendix XI**

### **Introduction to Circle Process**

- 1. Welcome**
  - affirmation of the courage and openness to participate
- 2. Purpose of the Project and of the Circle**
  - opportunity to speak together about what happened
  - to learn about the impact and consequences of the behaviour
  - to talk about what needs to be done to repair the harm done.
- 3. Principles of the Circle**
  - respect (equality, dignity, etc.)
  - collective process (each person has a piece of the picture and no decision will be made without the agreement of all)
  - holistic (physical, emotional, rational and spiritual selves)
- 4. Ground rules**
  - honesty (speak from the heart, vulnerability)
  - confidentiality and note-taking (safety)
  - no interruptions or verbal abuse (listening as work)
  - Circle process: 4 rounds + questions for clarity
- 5. Role of Facilitators**
  - Neutral parties who manage a facilitated conversation
- 6. Logistics**
  - timeframe, washrooms, breaks, etc.
- 7. Common Agreement**
  - What is it? Where does it go? How does it affect the case?
- 8. Agreement to Participate Form (Handout)**
- 9. Silent Reflection**

## Appendix XII

### Sample Resolution Agreement



Collaborative Justice Program

September 26, 2017

Defence Counsel

Assistant Crown Attorney

**RE: R. vs. T., Information #, Scope ID #**

Dear Counsel

This case was referred to the Collaborative Justice Program in June 2017 and was added to our waiting list. T. was charged after his involvement in an incident on March 4, 2017.

In August, I met with T. to describe the reparative process of the Collaborative Justice Program (CJP). T. agreed to participate and was accepted into the Program. Together, we began our discussions regarding the causes and consequences of his behaviour.

I spoke with the victim, F., and explained the CJP process. F. also agreed to participate and we began our discussions about how this incident has affected his life and what he felt could be done to address the resulting harm.

**Although the parties have chosen not to meet, the following Resolution Agreement outlines how T. and F. have chosen to resolve the situation between them and what they would like to share with the court at this time.**

#### **Resolution Agreement**

1. Through the CJP Caseworker, T. and F. exchanged information about the incident and what led to it. T. shared the circumstances that led to his actions that night.
2. F. and T. each shared the impact that this event has had on their lives.
3. T. relayed an apology through the Caseworker and F. accepted his apology. He stated that he understands how young people can make mistakes and he expressed his forgiveness for T. T. stated that it is amazing that F. was able to set aside his anger and forgive him. He is very grateful to him for this.
4. F. expressed his regret for pressing charges against T. and stated that he hopes that the charge against him will be withdrawn. He does not want this incident to hinder his future. T. appreciates that F. still considers him a person who deserves kindness despite his behaviour that night.

---

Collaborative Justice Program: Restorative Justice Ottawa  
Courthouse, c/o Crown Attorney's Office, 161 Elgin Street, Ottawa, ON K2P 2K1  
Telephone: (613) 239-1173 Fax: (613) 239-1508 Email: [kim@cjpottawa.ca](mailto:kim@cjpottawa.ca)  
[www.collaborativejustice.ca](http://www.collaborativejustice.ca) Charitable Number: 81781 6200 RR0001



## Collaborative Justice Program

5. F. offered his help to T. in the future and hopes that he will be able to move forward without worrying about this incident any longer. T. is thankful for this offer of assistance and stated that if F. ever needs anything, he could definitely reach out to him through CJP.
6. T. hopes that this experience does not hinder F.'s career and future; he wishes him the best and is thankful that they have come to an understanding and can now both move on.

This concludes our work with this case.

Sincerely

  
Executive Director

---

Collaborative Justice Program: Restorative Justice Ottawa  
Courthouse, c/o Crown Attorney's Office, 161 Elgin Street, Ottawa, ON K2P 2K1  
Telephone: (613) 239-1173 Fax: (613) 239-1508 Email: [kim@cjpottawa.ca](mailto:kim@cjpottawa.ca)  
[www.collaborativejustice.ca](http://www.collaborativejustice.ca) Charitable Number: 81781 6200 RR0001