

# Report from the Working Group on Restorative Initiatives for Sexual Violence

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Presented to the sexual violence response advisory  
council executive steering committee

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# Executive Summary

In January 2016, the University of Alberta released its Report on the University of Alberta's Response to Sexual Assault. One of the recommendations in that report was to examine the possibility of using Restorative Justice (RJ) to address incidents of sexual assault. As a result, the Restorative Initiatives for Sexual Violence (RISV) Working Group (a sub-group of the Sexual Assault Recommendation Implementation Committee, or SARIC) was convened. In part, Recommendation #27 of that report was a recognition that criminal and disciplinary systems have been either ineffective or counterproductive in meeting the needs of victim-survivors. In the era of #MeToo, the potential shortfalls of these discipline systems, and the risks of relying on a single institutional response, have become even more pronounced.

The University of Alberta's Institutional Strategic Plan, For the Public Good, is meant to "empower and enable each member of the University of Alberta to build, experience, excel, engage and sustain."<sup>1</sup> Existing discipline processes, on many levels, fail victim-survivors in that they focus on the relationship between the offender and the institution; they do not allow for victim-survivors to engage and find closure. As a result, the values articulated in the ISP are not reflected for many of those

who have experienced sexual violence. The disempowerment of victim-survivors inherent in discipline processes provide limited opportunity for them to build, excel engage, or sustain.

After more than a year of study and careful deliberation, the RISV group recommends that the University invest in Restorative Justice as an option for victim-survivors. While it is by no means the answer in every case, it provides a different kind of resolution - one that gives voice and choice to the victim-survivor, and foregrounds the victim-survivor's needs rather than the offence. RJ provides an alternative to primarily punitive systems in that it requires accountability to those harmed rather than to the institution; it places the onus on the person responsible to recognize the harm they caused and take steps to repair it.

For all its promise, it must be recognized that poorly applied RJ has the potential to cause further harm. The RISV group has carefully considered the parameters for the use of RJ in cases of sexual violence, its place in University of Alberta structure and policy, and what is expected of RJ facilitators in cases of sexual violence. Recommendations are outlined on pages 27-31.

## Glossary of Terms

The terms below are defined for the purposes of this report only:

### Restorative Justice (RJ) for sexual violence

A collaborative approach to addressing harm, involving a trained facilitator, the people with a legitimate stake in the situation, and a focus on accountability and repairing the harm. These principles give rise to a wide range of potential processes, which can be designed to meet the needs of those harmed by sexual violence.

### Discipline/Disciplinary processes

An internal University process involving a complaint, investigation, findings by a decision-maker and possibly sanctions.

### Victim-survivor

A person who has experienced sexual violence. Recognizing that a single term cannot capture the experience of all, this term is the one currently used in sexual violence literature.

### Person harmed

In RJ, a person having experienced negative consequences as a result of sexual violence.

### Complainant

A person who has made a complaint in a University discipline process.

### Offender/Perpetrator/Accused

A person who has committed sexual violence.

### Person responsible

In RJ, a person who has caused harm through sexual violence.

### Respondent

In a discipline process, the person under allegation in a complaint of sexual violence.

### Disclosure

From the University of Alberta Sexual Violence Policy as "A verbal or written report or account by any person to a member of the University community that they may have experienced sexual violence."

### Complaint

From the University of Alberta Sexual Violence Policy: "Usually a written report or statement alleging sexual violence misconduct made to a University official under University processes for the purpose of initiating an investigation and resolution process."

<sup>1</sup> [www.ualberta.ca/strategic-plan](http://www.ualberta.ca/strategic-plan)

# Introduction

In January 2016, the University of Alberta released a report, entitled, "[Review of the University of Alberta's Response to Sexual Assault](#)." The report identified areas of strength, gaps, opportunities and capacity in six broad areas relating to sexual violence: Education/Prevention, Support, Policy, Tracking/Reporting, Communications, and Formal Complaints. The report detailed 46 recommendations, including the following:

*27. That a group consisting of Student Conduct and Accountability, Office of General Counsel, Sexual Assault Centre, UAPS, Residence Services, Faculty and Staff Relations, and other interested parties set parameters for the use of Restorative Justice in addressing sexual violence, and identify any necessary policy changes and training to be implemented.*

As a result, the Restorative Initiatives for Sexual Violence (RISV) Working Group was constituted. The group consisted of members from the following areas:

- Student Conduct and Accountability (Chris Hackett and Deborah Eerkes, co-chairs)
- Sexual Assault Centre (Sam Pearson, Director)
- Residence Life (Janice Johnson, Assistant Dean of Students, Residence)
- University of Alberta Protective Services (UAPS) (Sgt. Graham McCartney, Investigative Services Division)
- Office of the Dean of Students (Sarah Wolgemuth, Assistant Dean of Students, Student Life)
- Faculty and Staff Relations (Jeremy Wilhelm, Faculty and Staff Relations Officer)
- Helping Individuals At Risk (HIAR - Parker Leflar, HIAR Coordinator)
- RJ Facilitator from the community, who works within the criminal justice system (Alan Edwards, RJ Practitioner, The Restorative Opportunities Program)

In addition, the group consulted with the Office of General Counsel on legal issues.

Meetings were held monthly, starting in February 2017. Each member of the group brought specific expertise to the table. In order for all members of the group to be able to appropriately consider the many complex issues, it was necessary to ensure a basic level of knowledge across all of those areas. Therefore, the first nine meetings were organized around learning. Members of the group presented on their areas of expertise

— fundamentals of RJ (RJ), threat assessment, understanding sexual violence, and RJ as a victim-centred approach to addressing sexual violence. In addition, the group participated in webinars, read research papers, reports, white papers, books, and articles, all in an effort to understand the many complexities of RJ, of sexual violence and of institutionalization of RJ programs. A copy of the meeting schedule and activities is included in Appendix 1.

In the subsequent series of meetings, the group concentrated on setting parameters for the use of RJ in sexual violence, identifying any necessary policy changes, and laying out minimum and optimum requirements for facilitators.

While the RSIV group studied a wide range of sources in an effort to learn as much as possible about RJ as a potential response to sexual violence, this report, its definitions, and recommendations are intended to address the specific needs, resources, and systems at the University of Alberta.

## Current University of Alberta processes for responding to sexual violence

The University is required to provide a safe and harassment-free working, learning, and living environment. To achieve that goal, it has in place policies, procedures, and processes to receive and resolve complaints<sup>2</sup>. In the case of a finding of violation, sanctions can be imposed. While discipline systems act to "punish" negative behaviour, it also aims to prevent future similar behaviour and create a safer environment.

Currently, the University offers disciplinary processes for each of its constituencies. For staff and faculty, this process forms part of the Collective Agreements (NASA and AASUA<sup>3</sup>, respectively). For undergraduate and graduate students, the discipline process is encoded in the Code of Student Behaviour. Other relevant processes include the Graduate Student Assistantship collective agreement (for employment-related conduct) and the Post-Doctoral Fellow Discipline Procedure.

A robust disciplinary process, complete with procedural fairness for those alleged to have committed sexual violence and the ability to impose sanctions or discipline when the individual has been found (after a full investigation) to have committed an offence, is crucial. It is especially important when the respondent disputes the allegations. Disciplinary processes aim to provide a safe and harassment-free working, learning, and living environment by either shaping the behaviour of the

<sup>2</sup> Under the new Sexual Violence Policy, a Complaint is defined as "Usually a written report or statement alleging sexual violence misconduct made to a University official under University processes for the purpose of initiating an investigation and resolution process."

<sup>3</sup> The AASUA also negotiates collective agreements for Librarians, Academic Teaching Staff, Administrative & Professional Officers (APOs), Faculty Service Officers (FSOs), Trust/Research Academic Staff (TRAS), and Temporary APO, each with a process for discipline.

respondent or removing them from the community. Given that disciplinary processes are focused specifically on the behaviour and rights of the respondent, the complainant is treated mainly as a witness, and does not have a significant role in shaping the procedure or outcome.

Most of the disciplinary processes, with the exception of those relating to temporary staff, offer Alternative Dispute Resolution (ADR) as an option, either pre-complaint, or as a result of the complaint being routed to ADR by the Provost. It should be noted that ADR has often been interpreted to mean mediation or other conflict resolution, but it could be argued that ADR might be interpreted more broadly to refer to any facilitated resolution option outside of procedures in the collective agreements and discipline policies. The Code of Student Behaviour makes an oblique reference to alternatives to discipline in section 30.5.2(3): "If the procedures in 30.5.2(2) have failed to bring resolution or the Complainant chooses to initiate a formal complaint, the Complainant must deliver a written and signed statement explaining the alleged violation of the Code...".

## Sexual Violence Policy suite

In addition to the encoded procedures for disciplinary action, the new Sexual Violence Policy suite (SV Policy), approved by the Board of Governors in June 2017, makes an explicit commitment to a victim-survivor centred response wherever possible, and provides additional rights for complainants under the various disciplinary processes.

The SV Policy also includes an information document entitled [Options, Resources and Services for Those who have Experienced Sexual Violence](#). In particular, this document identifies a range of options available for those who choose to disclose or make a complaint under one of the above processes. The options include everything from taking no action, to getting personal support or medical attention, seeking modifications or interim measures (also defined terms under the SV Policy), safety planning, and assistance making a complaint. It should be noted that the list of options precludes mediation as a response to sexual violence. (See section on page 9 for a discussion on mediation vs. RJ).

## What we know about sexual violence on campus

### Campus sexual assault

Sexual assault is a major issue facing Canadian youth, students in particular. The General Social Survey on Canadian's Safety

(Victimization) found that, of all sexual assaults in Canada, almost half of them (47%) were committed against women aged 15 to 24<sup>4</sup>. Further to that, approximately 41% of sexual assaults were reported by students and, of these incidents, 90% were committed against women<sup>5</sup>. Similarly, a study done in 2001 found that 1 in 5 students at the University of Alberta had an unwanted sexual experience at some point in their lives.<sup>6</sup>

Although sexual assault is such a prevalent experience for students, much of what our society believes about it—how frequently this act of violence occurs, who commits it, who it happens to, why it happens, and how someone should be expected to respond to it—is inaccurate. For instance, our society continues to perpetuate the idea that sexual assault most often occurs at the hands of a stranger, even though this flies in the face of self-reported data. As an example, the University of Alberta study mentioned above found that, of the 1 in 5 students who had an unwanted sexual experience, 92% of them knew the person who sexually assaulted them.

For the purposes of this report, it is important to keep the following core facts about sexual assault in mind<sup>7</sup>:

1. Sexual assault is common;
2. Lying about experiences of sexual assault is rare;
3. Sexual assault usually happens between people who know each other;
4. Choosing to use offending behaviours is the only cause of sexual assault; and
5. Making a complaint is often not a desirable option for victim-survivors.

While the research cited above focuses predominantly on sexual assault, experiences of sexual violence fall along a continuum. In addition to sexual assault, sexual violence<sup>8</sup> includes sexual harassment, stalking, indecent exposure, voyeurism, distribution of intimate images, inducing intoxication, impairment or incapacity for the purpose of making another person vulnerable to non-consensual sexual activity, and other analogous conduct.

### Victim-survivors' needs

Victim-survivors of sexual violence experience varying degrees of trauma in various different ways, and have highly individualized needs when it comes to whether or how they want it addressed<sup>9</sup>. Given that acts of sexual violence are fundamentally about asserting power and control over another individual, all victim-survivors deserve access to resources and options that seek to put power and control back in their hands.

<sup>4</sup> Statistics Canada. (2017). *Self-reported sexual assault in Canada, 2014*. (Statistics Canada, Catalogue No. 85-002-X). Ottawa, ON: Statistics Canada.

<sup>5</sup> *Ibid.*

<sup>6</sup> LoVerso, T. (2001). "A Survey of Unwanted Sexual Experiences Among University of Alberta Students", University of Alberta Sexual Assault Centre.

<sup>7</sup> Samantha Pearson, "Understanding Sexual Violence" presentation to RISV, 24 November 2017.

<sup>8</sup> As defined in the University of Alberta Sexual Violence Policy suite.

<sup>9</sup> For one important study showing a wide range of survivor-victim expectations, needs, and outcomes see Mary P. Koss, "The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes." *Journal of Interpersonal Violence*, June 2014.

Unfortunately, though widely used, disciplinary and criminal processes rarely address victim-survivors' needs, particularly the need to be in control of their own healing process.

This is reflected in the very low number of complaints against students made to University of Alberta Protective Services (13 in 2017), compared to the number of individuals seeking support from the University of Alberta Sexual Assault Centre (204 in the same time period). Furthermore, McGlynn and Westmarland examined a series of studies and concluded that "victim-survivors' understanding of justice were neither driven by, nor reflective of, conventional criminal justice."<sup>10</sup> It is likely that this conclusion applies to the University's internal discipline processes as well. In fact, some victim-survivors are seeking ways to safely confront the issue themselves or within their community and, without necessarily knowing the terminology, have been asking for restorative options.

### **Who are the offenders?**

Widely accepted research claims that most perpetrators of sexual assault on campus are serial predators.<sup>11</sup> If this were true, it would be irresponsible to offer RJ because the risk to safety would be far too great. However, David Lisak's research has come under increasing scrutiny, including his research methodology and use of data<sup>12</sup>. His claim that 90% of rapists commit an average of 6 rapes each has been all but debunked. Experience<sup>13</sup> within the University reveals that those who commit sexual violence are as varied as those who experience it. While predators do exist, there are some who come forward seeking help because they think they might have committed sexual violence, some who initially admit responsibility but recant at some point, some who refuse to engage with University officials due to legal jeopardy, and others.

As the issue of sexual violence receives more attention, there is evidence of a desire among those who have engaged in sexual violence to receive support and education as part of their personal endeavour to rectify the harm they have caused. It should be noted that as an educational institution with an obligation to support student and employee well-being, it is reasonable to provide a path to repairing harm for this group as well.

### **The University community**

The University of Alberta is a community of communities, comprising of a variety of cultures, ethnicities, religions, and genders. The reality is that not all communities within

the University have equal access to (or desire to access) disciplinary processes. Barriers to disclosing are equally diverse and may come from religious, cultural, or social strictures, as well as personal preferences. Similarly, University responses to sexual violence need to be sensitive to the needs of individuals within those communities as well as the communities themselves.

For a member of the University community to be able to fully engage in University life, they must feel safe and valued, and be treated with dignity. Unfortunately, when a victim-survivor seeks justice through our disciplinary processes, they are considered more as a witness than someone who may have experienced a life-altering event. Their ability to fully function and excel in their roles - whether student, staff or faculty - may be severely hampered by not being able to address the harm they experienced and seek the resolution they need.

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<sup>10</sup> McGlynn and Westmarland, "Kaleidoscopic Justice: Sexual Violence and Victim-survivors' Perceptions of Justice." *Social and Legal Studies*, 2018.

<sup>11</sup> Lisak, David, and Paul M. Miller, "Repeat Rape and Multiple Offending among Undetected Rapists." *Violence and Victims*, Vol. 17. No.1, 2002. <https://www.davidlisak.com/wp-content/uploads/pdf/RepeatRapeinUndetectedRapists.pdf> Accessed 13 August 2018.

<sup>12</sup> Coker (2016) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2932481](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2932481) Accessed July 13, 2018.

<sup>13</sup> University of Alberta Sexual Assault Centre, Residence Services, Protective Services and Student Conduct and Accountability. For a recent study that shows that, while serial predators on college campuses exist, they are not responsible for the majority of sexual violence on those campuses, see Swartout, Koss, and White, "Trajectory analysis of the campus serial rapist assumption." *JAMA Pediatr*, 2015.

# What is Restorative Justice

For the purpose of this report, we use the term RJ to mean a collaborative approach to addressing harm, involving a trained facilitator, the people with a legitimate stake in the situation, and a focus on accountability and repairing the harm. “Restorative justice requires, at minimum, that we address victims’ harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders, and communities in this process.”<sup>14</sup> Other organizations, institutions, or practitioners may use terms like restorative practices, deliberative justice or transformative justice to describe processes using similar underlying principles.

Howard Zehr, a leading expert in RJ, identifies the three basic principles that make a response restorative:

1. Violations of people and interpersonal relationships lead to the central question “Who has been hurt?”
2. Violations create obligations, leading to the question, “what are their needs?” and
3. The central obligation is to put right the wrongs, leading to the question, “whose obligations are these?”

Restorative justice occurs around the world, from very local (families, schools) to national processes. While the forms of RJ contemplated in post-secondary institutions may take different shapes, it is important to acknowledge that what we understand as RJ is deeply rooted in indigenous societies. The circles used by the Inuit in the Canadian North and the conferencing practiced by the Maori in New Zealand are particularly illuminating for our own practices<sup>15</sup>. Whatever form RJ takes, the basic elements and principles highlighted above are shared across the range of restorative options.

Just as there is variance in the terminology used to describe it, the practice itself may take many different forms depending on the needs of those who have been harmed. The most recognizable form of RJ may be the face-to-face meeting, but there are countless other ways to achieve similar goals. See the chart below for some general examples of processes that reflect a restorative approach:

<b>For victim-survivors</b>	<b>For offenders</b>	<b>Communities of Care &amp; Reconciliation</b>
Peace circles	Peace circles	Peace circles
Family group conferencing	Family group conferencing	Family group conferencing
Community conferencing	Community conferencing	Community conferencing
Victim restitution	Circles of Support and Accountability (CoSA)	Circles of Support and Accountability (CoSA)
Victim-offender mediation	Victim restitution	Victim circles of support
Victim circles of support	Victim-offender mediation	Victimless conferences
Victim services	Victimless conferences	Offender family services
Crime compensation	Related community service	Family centred / community social work
	Reparative boards	
	Youth aid panels	
	Victim sensitivity training	

Rather than insisting on a single RJ process like a face-to-face meeting, which may be effective or desirable in only a small number of situations, a victim-survivor centred approach demands that we examine all options. There is significant value in exploring a wide range of restorative responses with the victim-survivor, not least of which is empowering them to choose processes to suit their specific needs.

## How does RJ compare to disciplinary processes?

The recommendation to consider RJ as a response to sexual violence in the January 2016 report originally arose from

pleas from the community for better ways to provide justice for victim-survivors of sexual assault. Many groups—including victim-survivor support services (both on campus and throughout the province); LGBTQ+, Indigenous, and racialized communities; and many others—believe that the current disciplinary processes disadvantage, ignore, retraumatize, and/or abuse victims of sexual violence. Many have identified the need for an alternative that takes into account the victim-survivors themselves, rather than just the rights of the accused.

In other words, they believe that it is possible to envision a form of justice in which victim-survivors are “protagonists,

<sup>14</sup> Zehr, Howard. *The Little Book of Restorative Justice: Revised and Updated (Justice and Peacebuilding)* (Kindle Locations 362-364). Good Books. Kindle Edition.

<sup>15</sup> Karp, Koss, Story and Williamson. *Campus PRISM webinar, February 2018.*

rather than peripheral actors.”<sup>16</sup> Additionally, concerns about the effectiveness of criminal or disciplinary policy responses to sexual violence continue to grow across North America. Karasek noted, “We cannot fire, expel or jail our way out of [the sexual violence] crisis. We need solutions at the scale of the problem that prioritize both justice and healing, not one at the expense of the other.”<sup>17</sup>

It would follow, then, that all efforts should be taken to redistribute that power and control back into the hands of the victim-survivor whenever possible.

The chart below illustrates some of the main comparisons between disciplinary processes and RJ:

This is particularly important, as noted earlier in the report, when you consider the fact that sexual violence is an act in which someone’s power and control have been taken away.

	<b>Disciplinary Process</b>	<b>RJ</b>
What triggers a process?	Complaint under relevant policy/procedure.	Survivor requests RJ.
How is guilt assessed?	University decision-maker decides whether a policy violation occurred on a balance of probabilities.	Person responsible must acknowledge causing harm.
Investigation/Finding	Necessary in order to impose sanctions.	Not necessary; require only agreement by the parties to participate in good faith.
Procedures	Fixed, must be followed.	Flexible, responsive to the needs of the person harmed.
Procedural Fairness	Required: Procedural fairness for a respondent is a legal requirement when a sanction is a possible outcome.	Inherent: Multi-partial <sup>18</sup> facilitation ensures substantive fairness for all parties. In particular, active involvement and voice in process provides fairness to victim-survivors.
Role of Accused/Person Responsible	Right to be silent or challenge evidence and witnesses, makes submissions, speak to impact of sanction. May decline to participate. Some may speak through a representative.	Voluntary participation, listens, speaks honestly, participates in restorative resolution.
Role of Survivor/Harmed Party	Witness; entitled to speak to impact and sanction, and to know outcome.	Steers process, identifies needs, participates in restorative resolution.
Who decides what happens?	Relevant University authority.	Participants in the RJ process.
How is the community considered and/or involved?	Safety of community may be taken into account in making decision re: sanction.	Community can participate by supporting the victim-survivor, holding responsible person accountable and has the opportunity to identify community issues that contributed to the behaviour.
What is the outcome?	Possible sanction imposed as a result of policy violation.	Resolution decided by participants based on the needs of those harmed.

<sup>16</sup> Herman, Judith Lewis. “Justice from the Victim’s Perspective.” *Violence Against Women*, May 1, 2005. <http://journals.sagepub.com/doi/abs/10.1177/1077801205274450> Accessed 13 August 2018.

<sup>17</sup> Sofie Karasek, “#InMyWords: why America needs a social movement for survivors’ justice.” Keynote address, *Ending Gender-Based Violence conference*, University of Michigan, 3 May 2018.

<sup>18</sup> Rather than being impartial (like a mediator or an adjudicator) a Restorative Justice facilitator must be “multi-partial”, or take steps to ensure each participant is equally heard, understood and supported.



There are a number of advantages built into disciplinary processes. First, it is the University itself that conducts an investigation, makes a finding on whether or not a policy violation took place, and imposes sanctions. This is especially necessary in cases in which the respondent disputes the allegation. Second, as a result of a finding, the University can remove or restrict the involvement of those deemed to be a danger to the community. Third, robust procedural fairness protections are built into disciplinary processes, and external judicial and quasi-judicial reviews act as a check on University decisions.

On the other hand, disciplinary processes do not promote personal accountability and, in fact, the adversarial nature can discourage respondents from admitting responsibility. Furthermore, disciplinary processes privilege procedure over people and are not equipped to address negatively impacted relationships between those involved and the community more broadly. Because of the procedural fairness requirements, it is very difficult, if not impossible, to adapt the process to meet the needs of the complainant and is therefore unlikely to address the harm they experienced. The adversarial nature of disciplinary processes can also increase the chance of revictimization for complainants during quasi-judicial hearings.

Other disadvantages of the disciplinary process include:

- Potential backlash or retaliation against complainants when sanctions are applied by the University (something over which a complainant has no control).
- Sanctions may have limited impact on future behaviour, particularly because of the focus on procedural fairness for the accused rather than impact on others.
- The perception that sanctions will be overly severe prevents many victim-survivors from coming forward when they would prefer a more moderate or customized response.
- Disciplinary processes are limited in their ability to identify and address systemic factors that may have allowed, engendered, or contributed to the behaviour.

Some have expressed concerns that RJ is just “justice lite,” or the product of well-intentioned individuals who, in their desire to do good, do not treat the offences with the gravity they deserve. This is a view partly shaped by the assumption that punishing crime<sup>19</sup> is the only acceptable response and that not doing so is an abdication of responsibility on the part of the University. It should be noted that the view advocated by these critics does not provide an option that centres around

the needs of the victim-survivor. There may be some merit to the critique, however, in that it is crucial not to let good intentions cloud one’s vision, and to examine every possible unintended consequence of our structures and processes.

Sexual violence is a matter that must certainly be taken seriously, and RJ does so. Being directly confronted with the effects of one’s actions on others is a difficult process, and one that takes work and commitment.<sup>20</sup> It has been observed that, for the person responsible, simply allowing a disciplinary process to unfold and accepting the sanction is actually the easier route. It is precisely for that reason that RJ can be so effective in cases of serious incidents (genocide, homicide, sexual assault). Additionally, victim-survivors may be able to achieve the validation, acknowledgment, and closure they are routinely denied through disciplinary, criminal or civil processes. This is important to keep in mind in post-secondary contexts, where RJ use is typically limited to minor incidents in which a failure to resolve the issue is considered low-risk.

## Mediation vs. RJ

It is often the case that RJ is confused with mediation, or conflated with other dispute resolution processes. It is important to distinguish them, however, for the following reasons:

Mediation is a conflict resolution technique which involves a mediator and the parties to a dispute. It presumes that the dispute is the result of both parties contributing to a misunderstanding or conflict. The ideal outcome is a negotiated compromise in which the parties are able to settle on a mutually acceptable resolution, based on meeting the interests of all parties.

In contrast, RJ addresses behaviour by holding people responsible for the harm they have caused. It rests on a foundation of accountability, in which the person who caused harm acknowledges that they have done so and recognizes their obligations arising from that harm. It provides a framework for those harmed to articulate the negative effects of the behaviour on them and what they need to make it right. Those affected, potentially including members of the community, determine together what actions must be taken to address the harm.

Sexual violence is not a conflict. The inherent problem in using mediation to address sexual violence is that it ignores the fact that one party bears all of the responsibility for the harm experienced by others and almost inevitably results in some amount of victim blaming. As Zehr noted, people who have

<sup>19</sup> Coker (2016) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2932481](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2932481) Accessed July 13, 2018.

<sup>20</sup> See Appendix A of the *Restorative Justice Process at Dalhousie University, Open statement from the Participants*. Llewellyn, Maclsaac and MacKay, 2015.

endured serious harm at the hands of another will likely find the neutral language of Mediation offensive. Additionally, the failure to acknowledge the obligations created by that harm means mediation is unlikely to be effective,<sup>21</sup> and very possibly re-traumatizing, especially in cases of sexual violence. For this reason, mediation should not be used in cases of sexual violence. A skilled facilitator knows the difference between mediation and RJ, and ensures that the focus remains squarely on the harm.

## Concerns and critiques around RJ

A number of concerns and critiques arise in response to the use of RJ generally, and its use in situations involving sexual violence in particular:

### *RJ is detrimental to victim-survivors*

Some advocates fear that victim-survivors will be pressured to participate in an RJ process, or to accept resolutions that are either not in their interest or are actively harmful.

The mistaken notion that RJ is designed to rehabilitate the offender only exacerbates this fear. This is a reasonable concern, and one that must be kept in the forefront of the facilitators' minds when designing any RJ process. Ultimately, RJ at the University of Alberta must be compliant with the Sexual Violence Policy, that is, grounded in the needs of the victim-survivor.

Additionally, some fear that those who have committed sexual violence will use RJ to manipulate the survivor or the University, or to avoid consequences. This concern is precisely why RJ requires extensive preparation with the participants before a process can begin. Part of the facilitators' responsibility is to assess their motives for participating in order to prevent further harm.

### *RJ is detrimental to the accused*

Conversely, there is the fear that the person responsible would be pressured to accept inappropriate resolutions. This may be a risk with untrained or unskilled facilitators, who allow the process to consider retribution rather than repairing harms. The focus must remain squarely on addressing harms, and steer away from purely punitive or other inappropriate suggestions if it is to be successful. Facilitators must challenge participants to carefully consider and articulate how a proposed resolution addresses the harms experienced by the victim-survivor.

An additional concern might be that a survivor could use RJ as a way to make false allegations, presuming a lower burden of proof. Given that there is no finding of fact by a

decision-maker, there is no burden of proof in RJ. Rather, it requires an acknowledgment by the person responsible that they did engage in sexual violence against another person. A false allegation could not pass this fundamental test.

### *RJ is too costly*

Closely related is the concern that training facilitators can be prohibitively expensive. It is important to note that lengthy and complex legalistic processes can also be prohibitively expensive. While RJ may divert some cases away from complaints (and potentially reduce legal costs associated with disciplinary processes) there is no way at this point to quantify potential savings. The University must not consider RJ to be a cheaper alternative to the existing disciplinary processes. If the University is to offer RJ as an option, it should do so because of the positive impact that it can have on the University community, and it must be willing to invest in appropriate facilitator training, or alternatively outsourcing to external skilled and trained facilitators.

Rather than focusing on the expense of training, the University would be better served by considering ways to mitigate costs. One way of addressing this concern is to consider the use of RJ in areas outside of sexual violence, so that highly trained facilitators are available for student conduct, staff and faculty issues and concerns about toxic environments, as well as incidents of sexual violence. Bringing trainers onto campus rather than sending potential facilitators away for training would bring significant savings and provide the opportunity to train more facilitators. Another possible approach is to identify levels of training to ensure that facilitators' training is commensurate with the issue at hand. Finally, some of the necessary training can be provided internally, such as that provided by the Sexual Assault Centre on understanding sexual assault, or for no cost, such as the training in trauma-informed responses offered by End Violence Against Women International Online Training Institute.<sup>22</sup>

### *The community is not ready for RJ*

Finally, researchers have expressed concerns over RJ falling flat in the face of an unprepared community. Daly (2002)<sup>23</sup> argues that a truly robust system should prepare the community for potential involvement in RJ. Its effectiveness could be limited in communities without shared values, or those who are unfamiliar with the principles of RJ. Attempting to introduce RJ into a community that is unprepared can result in poorly designed and applied processes, inappropriate use of RJ, and potential legal concerns. This speaks to the need for intentional community engagement when considering the use of RJ in general, and especially when contemplating RJ for sexual violence.

<sup>21</sup> Zehr, Howard, "Restorative Justice, Mediation and ADR," 2010. <https://emu.edu/now/restorative-justice/2010/08/13/restorative-justice-mediation-and-adr/> Accessed 13 August 2018.

<sup>22</sup> [www.evawintl.org](http://www.evawintl.org) Accessed 13 August 2018.

<sup>23</sup> Daly, Kathleen. "Mind the Gap: Restorative Justice in Theory and Practice," in Andrew von Hirsch, Julian Roberts, Anthony E. Bottoms, Kent Roach, and Mara Schiff (eds.) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Hart Publishing, 2002. Accessed 13 August 2018.

Preparing a community for RJ is crucial - it provides a common language of harms and repairs; it emphasizes accountability and community; it cements the notion that one's actions affect those around them, creating obligations to both consider the impact on others before acting and address any harm caused by those actions. To illustrate this point, University of Alberta Residences have experienced a culture shift since 2012 when they began using RJ. Their understanding of misconduct has moved from a focus on individual acts to a focus on the impact of those acts on the community. While our Residences do not address sexual violence with RJ, they stand as a positive example of the kind of culture change RJ can bring about.

## Advantages of using RJ for sexual violence

### *Alignment with institutional values*

The Institutional Strategic Plan, "For the Public Good," is intended as a roadmap for living our stated values in every University program, initiative, policy and decision. It creates the framework for members of the University community to build, experience, excel, engage and sustain, and identifies fundamental values, including **equality** and the **dignity of all persons, excellence, diversity, inclusivity and equity**.

In particular, Objective 19 of the ISP aims to "*Prioritize and sustain student, faculty and staff health, wellness and safety by delivering proactive, relevant, responsive, and accessible services and initiatives.*"

Current disciplinary processes can work to the exclusion of victim-survivors of sexual violence, further disempowering them, impeding their recovery and hindering rather than supporting wellness. Similarly, those who have engaged in sexual violence and want to address the harm they caused may not be served by a disciplinary or criminal process that excludes and disregards the needs of the victim-survivor.

Conversely, RJ provides an inclusive, collaborative way to address and repair harm, aligning directly with University of Alberta values. To offer an RJ option for those who desire it is to prioritize and sustain their health and wellness.

### *Survivor focus*

*Subject to the limitations set out in section 6 of this policy, those who experience sexual violence will be considered the primary decision-maker in matters pertaining to themselves. As such, [survivors] can determine whether, to whom and what to disclose, and whether to make a complaint within the University and/or an external law enforcement agency.*  
- University of Alberta Sexual Violence Policy, section 4b

As noted above, the Policy commits to sexual violence responses that centre around the needs of the victim-survivor. While the various disciplinary processes offer one way to

address sexual violence, they are limited in their scope and underutilized by victim-survivors. One of the many reasons for that is the manner in which disciplinary processes focus on the accused. Because the institution could impose severe consequences on the respondent, legal requirements for procedural fairness rights necessarily take centre stage.

Unfortunately, victim-survivors can be forgotten or retraumatized in an adversarial disciplinary process. Because of the procedural fairness requirements, these disciplinary processes are by their very nature not centred on the needs of the victim-survivor. The best we can offer victim-survivors in a disciplinary process is the choice of whether or not to make a complaint, to provide supports during the process, and to soften the most extreme forms of challenge or cross-examination.

By contrast, with RJ's spotlight squarely on addressing harms, the victim-survivor's experience and needs, and the responsible person's obligation to address those needs, become the centre of attention. In other words, victim-survivors have a direct say in the resolution and can veto any suggestions that don't meet their needs.

RJ is one of the only responses the University could provide that is not focused on the offender. A skilled facilitator uses multipartial facilitation, establishing an environment in which all participants are equally heard, understood and supported, while at the same time ensuring the centrality of the needs of the victim-survivor, in keeping with the University's commitment to a survivor-centred response.

### *Procedural Flexibility*

The flexibility inherent in RJ foregrounds the needs of victim-survivors by providing them with real choices throughout the process. It is important to note that the goal of RJ is not to hold a face-to-face meeting; the goal is to put the focus on the harm. A victim-survivor can be given voice and choice in designing the process, and deciding what they need in order to be able to move on. This can manifest in a wide variety of processes. Some examples include (not an exhaustive list):

- A face-to-face meeting;
- A face-to-face meeting, but with a proxy standing in for the survivor;
- Meeting by video-conference;
- "Shuttle" RJ, in which the facilitator speaks to each participant separately and conveys the desired messages between them; or
- An exchange of letters or videos between the participants identifying and addressing the harm caused by an act of sexual violence.

Even within a face-to-face meeting, there is much opportunity for flexibility. For example, the survivor could decide whether or not to attend a meeting in person, when and where that meeting would occur, what the goal(s) of that meeting would be, the order in which the participants speak, and many other procedural questions. The ability to be the principal architect in the creation of the justice process empowers the survivor to define what they need and how those needs might be met.

### **Adaptability**

Because RJ works on the basis of principles rather than procedures, it is adaptable to almost any situation, cultural group(s), or context. This means an RJ process can be tailored to address the specific needs of its participants to make it meaningful to them. It provides the opportunity to explain cultural understanding, experiences outside of the conventional, or even to build new community norms. Most importantly, RJ is one of the few institutional responses that can incorporate an intersectional approach to justice, taking into consideration the impacts of marginalization on the basis of culture, ethnicity, indigeneity, geographical location, gender identity, sexual orientation, ability, and other factors that significantly affect how one experiences the world. RJ offers an opportunity to address the effects and influence of oppression on instances of sexual violence.

Finally, because RJ is not required to be a complaint-based response, it offers a way to resolve harms that do not rise to the level of a policy violation, or those situations in which the University is not able to respond to a complaint due to jurisdictional or time constraints. For example, RJ could address an incident of sexual violence that occurred between two students at a private residence (outside of the University's jurisdiction), or an incident with a staff member that occurred outside of the time limitations set out in a Collective Agreement, providing all the parties agree to participate.

### **Accountability**

Punishing a person who violates our laws or policies is often considered a way of holding that person accountable. However, under the University's current disciplinary processes, the institution stands in for the victim-survivor throughout that process, and imposes a punishment as a consequence of violating the rules of the institution. In this conceptualization of accountability, by receiving some sort of policy sanction or criminal sentence, an offender pays their debt to the institution or society. In the University context, this means that disciplinary processes hold the offender accountable to *the institution*. While this is what some victim-survivors need or want, others do not equate punishment with justice and instead seek validation, explanation, reparation, voice, and choice.

RJ, on the other hand, centres on accountability to *the*

*individuals and community who were harmed*. It is based on the belief that accountability means taking responsibility for the consequences of one's actions and their impact on others. It means admitting wrongdoing, recognizing the effect one's actions have on others (harm caused), taking steps to make things right (or addressing the needs arising from the harm) and ensuring that it does not happen again (building trust). Disciplinary processes do not require any of these elements, whereas RJ depends on them. Consequently, for those victim-survivors who do not desire punishment and who seek to be represented in the accountability process, RJ may more closely align with their vision of justice.

### **Community involvement**

Sexual violence does not happen in a vacuum. By actively involving the community, RJ makes it possible to identify any systemic, structural, or environmental factors that encourage or contribute to negative behaviour. For example, consider a scenario where a social group comes to understand that many of their norms are conducive to sexual violence and need to be addressed. Ideally, in this situation the community would be provided with a mechanism to address those factors, creating stronger, more resilient community relationships, as well as providing benefits for the victim-survivor, and potentially preventing future sexual violence. In addition, there may be a role for community members in holding the person responsible accountable, supporting them in meeting any commitments made through an RJ process.

A wide range of RJ processes to address community harm are available. Some examples include:

- A community circle to address the effects of a misogynistic or homophobic environment;
- A restorative circle or similar process to address the effects of an incident of sexual violence on the surrounding community (e.g. factions formed as a result of an allegation of sexual violence);
- A healing circle for victim-survivors;
- A Circle of Support and Accountability (CoSA<sup>24</sup>) to help reintegrate an individual who has committed sexual violence into a community after a separation (suspension, leave, incarceration);
- A truth and reconciliation commission to address systemic or environmental factors that may contribute to sexual violence or rape culture.
- Restorative language can also be used in educational efforts, such as consent and/or bystander intervention education in a student community.

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<sup>24</sup> See [cosacanada.com](http://cosacanada.com) for more information. Accessed 13 August 2018

In each of these options, facilitators assist participants to focus on harm, work to identify the obligation to repair (or prevent) that harm, and determine how, when, and by whom those obligations would be met.

### **Ability to address secondary harm**

RJ recognizes that sexual violence is not simply an individual matter, but one that affects families, friends, and others within the victim-survivor's circle. Zehr identified the potential participants in a restorative process (in addition to those who caused the harm) as those who have been directly harmed, those who have been secondarily harmed, and the community or communities affected by the harm.<sup>25</sup> All of these harms are relevant but perhaps not in the same way or to the same degree.

Just as *who* can be affected by sexual violence varies depending on the situation, *the ways in which they are affected* can vary as well. For instance, a social group may become polarized after an incident of sexual violence occurs in their midst, causing significant rifts in social circles and potential feelings of isolation/loss of community. Alternatively, a social group might come to realize that the norms within that group are conducive to sexual violence and need to be changed. This is a process that demands tremendous self-reflection and community dialogue in addition to the rigours of daily life. A victim-survivor may also be subject to additional harm after disclosing an experience of sexual violence within their circle. This might include receiving a negative reaction from loved ones for reporting (or not reporting) the incident, for disrupting the family/community, or any number of other reasons. RJ offers ways to address all of the harms around sexual violence, whether or not the incident itself is resolved restoratively.

### **Goals of RJ**

The goal of RJ is to address the needs arising from harm to individuals or a community. It requires that those who cause harm take responsibility for their actions, and that they take steps to address that harm by committing to either concrete or symbolic repairs. Empathy and creativity are essential to restorative resolution. In other words, the person who caused harm must carefully listen to others about how they were affected, what they need as a result, contribute to discussions about ways to meet those needs, and then act to repair the harm.

Under those circumstances, it is very possible that RJ could result in reduced recidivism. Understanding how one's actions affect others and that one is responsible for those effects can

be a powerful deterrent to repeating a harmful behaviour. However, because this framing puts the focus back on the notions of "offense" and "the offender," reducing recidivism cannot be the primary goal of RJ.

There is a common assumption that RJ should result in an apology. This is not necessarily the case and, in fact, some victim-survivors do not enter RJ with the aim of receiving an apology.<sup>26</sup> Additionally, some express fear that victim-survivors will be pressured into forgiving those who perpetrated sexual violence against them through RJ. It must be clearly stated that forgiveness is not a goal of RJ. In some cases the person harmed may decide to forgive, but a process grounded in the needs of the victim-survivor means that expecting forgiveness from the person harmed would be highly inappropriate.

Rather than predicting or expecting any specific result (apology, forgiveness, reduced recidivism), RJ offers the possibility for a resolution specific to the needs of the victim-survivor, whatever they might be.

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<sup>25</sup> Zehr, *op cit*, pp. 37-38.

<sup>26</sup> Koss, Mary. "The RESTORE Program of Restorative Justice for Victims of Sex Crimes: Vision, Process and Outcomes." *Journal of Interpersonal Violence*, Vol. 29(9), 2014.

# Restorative Justice on Campus

## Intersection between Complaints and RJ

RJ can be a stand-alone response, or be used prior to, concurrently, or after a disciplinary (or criminal) process. Considerations about when and under what circumstances RJ is used would shape the process. For example:

- A student may be suspended and evicted for an incident of sexual violence in residence. The victim-survivor may have outstanding questions that need answering in order to feel comfortable with that person rejoining the University community at the end of the suspension. RJ may help answer those questions, including, “*why did that person choose me?*” and It can also result in agreement about boundaries and commitments for the responsible person’s return.
- A person accused of sexual violence is charged criminally but the Crown decides not to proceed to trial. The survivor could request RJ to address the harm caused by the incident and seek some form of closure.

As discussed previously, the focus and aims of RJ and disciplinary processes differ significantly. Disciplinary (and criminal) processes address the respondent’s offence and that person’s relationship to the institution or society more generally, while RJ addresses the needs of the victim-survivor, and aims to strengthen the community. This means that both can occur independently or be complementary. In fact, if a victim-survivor is satisfied with a Restorative resolution, any decision maker in a concurrent discipline process has the discretion to take that into account when determining sanction.

On the other hand, the reverse is not necessarily true for RJ. Because the goals do not intersect with those of the disciplinary processes, the outcome of a University or criminal process will not likely affect RJ. There may be some overlap, but RJ must remain squarely focused on addressing the specific harm to those affected by an incident, and not the sanctions imposed in a different process.

## Confidentiality

Few considerations are more important than confidentiality. Participants in an RJ process must be assured that whatever is said within an RJ process remains confidential. Successful RJ processes rely on openness, honesty, and the ability to be vulnerable. The potential benefits of this kind of communication are significant: RJ could lead to meaningful accountability for those responsible; and for the person harmed, real resolution in the form of addressing the victim-survivor’s specific needs, is possible.

The risk of concurrent or future disciplinary charges, whether or not the RJ process is successful, however, could have a chilling effect on participation in RJ. A responsible person would be rightly cautious in what they say in the context of an RJ process if there was any possibility it could be used as evidence that they committed an offence under University policy.

If the harm also rises to the level of a criminal offence, the jeopardy for the person responsible is much greater. Canada has no statute of limitations for sexual offences, meaning that a complaint to the police could happen at any time in the future, even if no complaint was brought forward when RJ was pursued. In order to make RJ possible in these situations, serious consideration must be given to whether and how records are kept. There may be opportunities in the form of an agreement with the Crown (either general or case-specific) that participation in RJ would be confidential and not used against a person. It should also be explicitly recognized that acknowledging responsibility for causing harm is not the same as an admission of guilt to policy or criminal violations.

In general, the assurance of confidentiality sets the groundwork for honest and open discussion. RJ is a voluntary process in which the participants should sign a confidentiality agreement before engaging, ensuring that anything learned through RJ will not be communicated elsewhere. At the beginning of any process, participants are informed about how their personal information is to be used, making the process FOIPP-compliant as well. Record-keeping should be carefully thought through and limited to the confidentiality forms and any written agreement generated.

## Safety Considerations

The University is responsible for ensuring a safe working and learning environment and therefore must also take steps before and throughout RJ processes to identify and reduce safety risks related to violence or suicide. Safety must be taken into consideration for all participants in an RJ process, including the victim-survivor, the person responsible, support people, and affected community members participating in any RJ response. Safety considerations include conducting assessments to identify, analyze, and manage the risk of violence or suicide.

## Violence risk

Violence risk assessment is conducted by gathering information about an individual’s words and behaviours; it is not intended to predict violence, but to identify violence risk factors and corresponding management strategies to address

or mitigate those risk factors. Violence in this sense refers to “actual, attempted, or threatened infliction of bodily harm on another person”<sup>27</sup>. Risk-enhancing factors to consider in terms of safety for participants in RJ responses include a history of violence (including and in addition to the incident that prompts an RJ response), recent or current thoughts or fantasies of violence, threats of violence, and concerns about the manageability of these risk factors. In addition, risk factors for sexual violence include a history of sexual violence, psychological adjustment, mental disorder, social adjustment and manageability.<sup>28</sup> Collecting sufficient information to make a preliminary assessment regarding safety in RJ responses to sexual violence calls for due diligence.

If any of the above risk-enhancing categories appears to be present, a more thorough inquiry into the nature of the specific risk factors may be warranted. In cases where the presence of risk factors is unmanageable or beyond the scope of facilitators and/or the university to manage, RJ should not be used.

## Suicide risk

Assessing suicide risk in a non-clinical environment relies on professional judgment informed by suicide awareness and prevention training, along with experience in suicide intervention. Suicide risk assessment determines the presence of factors such as whether an individual is having thoughts of suicide, the likelihood that an individual will act on those thoughts of suicide, and whether the individual has a plan to die by suicide, and the means or a timeline to enact that plan. The goal of suicide risk assessment is to enable the implementation of intervention strategies. Suicide intervention strategies, informed by a suicide risk assessment, can be utilized to increase an individual’s safety in the moment and connect them to further resources, such as counselling or emergency services, as needed and appropriate.

Both violence risk and suicide risk should be monitored, identified, analyzed and managed throughout an RJ response. Facilitators should gather information, analyze and assess the information in relation to known risk factors, and develop strategies to maintain or increase safety for all participants. In addition, facilitators should take into consideration the level of violence risk and suicide risk present in preparing for the process, while recognizing that these risks can be dynamic or emergent throughout RJ, and therefore must be ongoing considerations.

## Facilitation

The importance of skilled facilitators cannot be overstated. It is the facilitators who meet with the parties ahead of time (often

on multiple occasions) to prepare them for the process, ensure expectations are realistic, assess readiness to participate, and ensure the process is safe for all participants. Facilitators set the tone for RJ and, in the case of sexual violence, they must ensure that the process is victim-survivor centred, trauma-informed, and congruent with the principles of RJ. The facilitator must work with the person harmed to determine both the content and the process of the RJ dialogue. In addition, the facilitator must “maximize the empowerment of the survivor and build a relationship without leading, guiding, pulling, pushing, advising, suggesting, cajoling or coercing.”<sup>29</sup>

Facilitators should ground their practice in current research about the effects of trauma (Wilson, Lonsway & Archambault; Ahrens, et al), the needs of victim-survivors (Koss, Herman; Van Camp & Wemmers; Andrews, Brewin, Rose & Kirk; McGlynn, Westmarland, & Godden) and best practices in RJ facilitation (Choi; Koss; Keenan; Llewellyn & Philpott). They should also keep abreast of current literature and practices in these areas as they evolve.

Given the complexities of RJ for sexual violence, a co-facilitation (usually gender-balanced) model is advisable, allowing facilitators to support each other, capitalizing on their strengths and differences to provide support for all parties involved. Facilitators need to be experienced, skilled, highly trained in both RJ and dealing with trauma, well-versed in gender and power dynamics, and committed to the principles and philosophy of RJ.

In order to be most effective, RJ facilitators need institutional support. Because the expectations for the facilitators are so significant, they should take advantage of experts available to assist as needed with process design, trauma management, risk assessment, process debrief, program assessment and other elements. Members of the RISV group, and others with expertise across a range of areas, are available to support facilitators.

Sexual violence is an umbrella term for a wide range of behaviours. While the University must be prepared to deal with the far end of the spectrum, we can also expect instances in which resolution is less complex, and even some cases in which the harm does not rise to the level of a policy violation. In such cases, while the facilitator must be trained in trauma-informed RJ facilitation, this may be an area where less experienced facilitators can build capacity. Co-facilitation also allows less experienced facilitators to learn from those with more experience in some of the more serious cases, providing a model for sustainability.

<sup>27</sup> Douglas, K. S., S.D. Hart, C.D. Webster, & H. Belfrage. (2013). *HCR-20V3: Assessing Risk of Violence – User Guide*. Burnaby, Canada: Mental Health, Law, and Policy Institute, Simon Fraser University.

<sup>28</sup> Hart, Stephen D., P. Randall Kropp, D. Richard Laws, et al. *The Risk for Sexual Violence Protocol (RSVP): Structured Professional Guidelines for Assessing Risk of Sexual Violence*. Burnaby, Canada: Mental Health, Law, and Policy Institute, Simon Fraser University.

<sup>29</sup> Alan Edwards, “Restorative Justice in Cases of Serious Crime”, presentation to RISV working group on 25 August 2017.

Addressing the complexities of sexual violence relies on trained, skilled, and experienced facilitators. RJ processes that proceed with unskilled or inadequately trained facilitators could create a climate that harms the victim-survivor even further, does not offer meaningful accountability to the person responsible, and provides no other benefit to the community. Therefore, RJ should not be offered on campus unless the University is confident in the calibre of its facilitators.

## Risks and Opportunities

Current disciplinary processes are necessary in some cases and must be maintained. However, calls for more sophisticated and inclusive options must not be ignored, particularly when all eyes are on University campuses to be progressive and proactive. RJ has great potential to be one of those options.

In a world where social media is ubiquitous and movements like #MeToo abound, there is risk in new initiatives but, in fact, the University faces greater risk in maintaining the status quo. Already, a crowd-sourced spreadsheet<sup>30</sup> naming universities across North America for their substandard responses to sexual violence has been circulating. To rely on current systems and processes alone is to risk serious reputational damage.

Additionally, while it may not be possible to quantify the cost of sexual violence to an institution, we know the human toll is considerable.<sup>31</sup> Sexual violence can result in victim-survivors not being able to continue in their academic pursuits. It creates hostile environments, fosters fear, frustration and trauma. It contributes to poor mental and physical health. It can lead to disengagement, dissociation and even suicide.

A university can mitigate these effects by providing a range of services and supports, including our Sexual Assault Centre, the SV Policy's commitment to supporting survivors, and even its disciplinary systems. Adding RJ to the suite of options for victim-survivors represents the opportunity to provide a cutting-edge response to sexual violence and position the University of Alberta as a leader among Canadian post-secondary institutions.

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<sup>30</sup> <https://theprofessorisin.com/2017/12/01/a-crowdsourced-survey-of-sexual-harassment-in-the-academy/> Accessed 13 August 2018.

<sup>31</sup> University of Alberta Sexual Assault Centre: "[Common Reactions to Sexual Assault](#)." Accessed 13 August 2018.



# Recommendations

For many reasons outlined above, RJ may be the only option a victim-survivor is willing to consider. On the other hand, RJ is not the right response in every case. The University should carefully consider the expressed needs of the victim-survivor and make every attempt to design an option that might at least partially meet those needs. RJ has great potential as part of a suite of options to address sexual violence.

Given the unique characteristics of sexual violence victimization, RJ promises to be a powerful way to meet the needs of a survivor; it offers the potential for victim-survivors to be able to put the effects of an incident of sexual violence behind them and enjoy full participation in the University community. For the person responsible, RJ can offer a path to meaningful accountability. Like all process, however, RJ also has the potential to do further harm without careful planning and assessment. In order for it to fulfill its potential, the RISV working group recommends the following:

## General

***Recommendation: The University should offer RJ as an option for victim-survivors in cases of sexual violence.***

Given the limitations of current disciplinary systems and demands for a wider range of options for survivors, the University should invest in RJ as a necessary service in its suite of responses to sexual violence. This investment could be in the form of providing internal resources or connecting the University community with external facilitators.

***Recommendation: The University should consider offering RJ in other areas.***

RJ has been considered for use in student conduct, human resources, laboratories, departments and faculties. The University could maximize any investment in training RJ facilitators by increasing the areas in which RJ is offered. While not all facilitators would have to be trained up to the standards of those addressing sexual violence, a broader RJ mandate would expand the possible pool of facilitators and ensure program sustainability.

Additionally, using RJ more broadly would make restorative language more familiar and help prepare the community to be able to consider it as a legitimate option for serious or egregious situations. Restorative language can also shape educational efforts (consent education, ethics training), staff meetings, and conflict situations in a way that makes the community conversant with the language of harm, responsibility and restorative outcomes.

***Recommendation: Any RJ program or pilot should include both assessment and research.***

An RJ initiative should be subject to ongoing program evaluation, ensuring that it remains true to the principles and values of RJ and to the academic mission of the University. In addition, partnering with a researcher would lend credibility to an RJ program and enhance real-time evaluation. Furthermore, it would ensure that any RJ efforts remained tied to evidence-based practice.

## Parameters for use

***Recommendation: Any RJ response to an incident of sexual violence must be initiated by the survivor.***

In order for the process to be victim-survivor centred and trauma informed, the victim-survivor must initiate the process by requesting RJ, without pressure or persuasion. A victim-survivor should be provided with all options and a full understanding of the implications of each in order to be able to make an informed choice.

A request for RJ from a person who has committed sexual violence should not trigger communication with the victim-survivor. It would be highly inappropriate (and would naturally exert pressure on the victim-survivor) for the University to approach them with a request to participate in RJ. Alternatives based on restorative principles may be available in these cases.

***Recommendation: The responsible person must acknowledge their actions and give fully-informed consent to participate.***

Unless participation is fully voluntary, it is unlikely to be successful and may, in fact, lead to more harm. Once a victim-survivor requests RJ, the facilitator should reach out to the person responsible to discuss the possibility of participating in RJ. That discussion must include a full description of what RJ is, how it works, what would be required in order to participate, possible implications of choosing to do so, and what supports would be available throughout the process. Any participation of a responsible person necessitates an acknowledgement that they caused harm and a willingness to participate in good faith.

***Recommendation: The university should identify, assess and manage safety for the participants and the process.***

While the University has committed to a survivor-centred approach, it cannot abdicate its responsibility to provide a safe environment for all. Full threat assessment is likely not possible; however, the University should engage in an initial evaluation, including checking with HIAR, UAPS, and the Dean of Students (for students), HR (for employees), or Faculty and

Staff Relations (for academic personnel) to ascertain whether there might be any indicators of risk to safety (emotional, psychological or physical) or the process.

Because ongoing violence creates an unsafe environment, it should be established that any violence has stopped before considering the use of RJ. Further evaluation, if needed, could be undertaken in the form of an interview with the person responsible, as part of the RJ preparation. In addition, both the person harmed and person responsible should be assessed for risk of self-harm or suicide.

***Recommendation: The University should put measures in place to create a supportive environment for all participants.***

Discussions about safety must include the ability for all participants in RJ to feel supported throughout the process. The University should ensure that adequate supports in the form of advice and counseling for both parties. Those involved will not be able to fully participate unless they feel safe in doing so. Other assurances (see recommendations on confidentiality, process considerations and safety considerations) must also be in place in order to create a safe and supportive environment in which RJ can take place.

***Recommendation: Any RJ process should be designed and customized, in consultation with the survivor, to prioritize the survivor's needs.***

We recognize that sexual violence is an offence in which victims have had their power taken away. While the University cannot cede total control of a process to the victim-survivor, there are important choices that they can and should be able to make. These decisions might include<sup>32</sup>, for example:

- What form the RJ will take;
- Whether a meeting will occur, and if so:
- Whether to be present at the meeting or use a proxy or video conferencing;
- Time and date of the meeting;
- Who should (and who should not) attend that meeting, bearing in mind the need to support all parties;
- What questions should be asked, and in what order;
- The order in which the participants speak;
- Input into the resolution, and the right to reject it if they remain unsatisfied.

The use of scripts, or any other practice that might limit the flexibility to customize the process, should be avoided in cases of sexual violence. Additionally, facilitators should consider the wide range of RJ processes possible in order to meet the needs of the victim-survivor.

***Recommendation: RJ should include a reverse caution: "Nothing said in the course of RJ will be used against you in any other University process."***

RJ relies on openness, honesty and the ability to be vulnerable. Transparency about confidentiality benefits all parties to RJ. For the person harmed, it can clarify expectations and contribute to a feeling of safety. A person responsible would rightly be cautious about what they divulged in RJ if they feared that their words could be used against them in an administrative or criminal investigation. The University should make clear that no statements from within RJ, starting from the time a facilitator contacts the person responsible, will be used in any internal disciplinary process.

When the risk of concurrent or future criminal charges exists, this question becomes more complicated. The University should explore ways to address this issue, including record keeping practices, or agreements with the Crown that RJ is to be confidential. Especially when jeopardy in an administrative, civil or criminal process might be a factor, there should be no negative inference drawn by any decision maker in those processes as a result of an individual declining to participate in RJ. It should also be made clear that entering into RJ requires taking responsibility for causing harm; it does not require or entail admitting to a policy or criminal violation.

***Recommendation: RJ should be available to any member of the University community, whether or not the other party is also a member of the University community.***

If a member of the community discloses that an experience of sexual violence is interfering with their ability to fully participate in University life and makes a request for RJ, the University should endeavour to provide it in some form, regardless of where or when the sexual violence occurred, or whether or not the other party is a member of the University community. We recognize that safety assessment and internal support may not be available in the case of an external individual, or there may be other barriers to RJ in those cases. Facilitators should be clear about limitations and, where possible, offer alternatives based on restorative principles. In these cases, the University should draw on or collaborate with community organizations, taking into account capacity, the needs of the community and any legal obligations arising from the disclosure/request.

***Place in policy and systemic response***

***Recommendation: RJ should be initiated on request, not by a complaint.***

University of Alberta complaint processes should only ever be used to initiate an investigation for possible charges and sanctions. Nothing more than a disclosure and an expressed desire by the victim-survivor to enter RJ should be required

<sup>32</sup> Mary Koss, Webinar Campus PRISM webinar: Promoting restorative initiative for sexual misconduct on college campuses, Q & A - The RESTORE conference model perspective. 15 February 2018.

in order to offer RJ. It is important to note that engaging University discipline processes does not preclude a victim-survivor from using RJ.

***Recommendation: RJ should not be tied to any University disciplinary processes, but act as a stand-alone option.***

In order for RJ to be a realistic option for victim-survivors, it should be offered and operate independently from any disciplinary process. While it may occur concurrently with other processes, it should not rely on them in any way. The goal should be to create an environment in which RJ is an accessible and viable option, structured in a way to ensure the victim-survivor has influence over the process.

***Recommendation: The University should avoid creating policies or procedures around RJ.***

The University should offer RJ as a service, not a mechanism for enforcement. Like many other services, the provision of RJ should be designed by the experts (in this case, the facilitators). In order to be as flexible as possible and therefore responsive to the needs of victim-survivors, RJ should not be restricted by prescriptive policies and procedures. However, it is recommended that a centralized body or office oversees the establishment of common restorative principles, training of facilitators and the application of RJ on a case-by-case basis.

While facilitators may have a role in following up with participants and supporting the fulfillment of agreed repairs, RJ is purely voluntary, including voluntary compliance with any agreements arising from restorative processes. The University should not have a role in enforcing Restorative resolutions. A participant who is not satisfied that agreements are being honoured has the option of making a complaint about the original incident through a University disciplinary or criminal process. In a discipline process, the decision maker has the discretion to consider that the agreement from a RJ process was undertaken and not met as a factor in determining sanction.

## **Facilitation**

***Recommendation: Anyone facilitating RJ in an incident of sexual violence must be adequately trained.***

Facilitators in sexual violence cases must have, at a minimum, training in sexual violence, the effects of trauma, and restorative justice facilitation for sexual violence. In addition, they must have training or background in suicide prevention and violence risk assessment. As the seriousness of the incident (and therefore risk of additional harm) becomes greater, the experience and skill level of the facilitators must also increase. Ideally, the University would train a group of potential facilitators by bringing trainers in from more than

one source to ensure a well-rounded understanding of the many ways RJ can be structured.

At the very least, training and/or advice should be sought from the Promoting Restorative Initiatives for Sexual Misconduct (PRISM) on college campuses project.<sup>33</sup>

***Recommendation: Wherever appropriate, RJ to address sexual violence should involve a co-facilitation model.***

Given the complexity and emotional difficulty of sexual violence cases, co-facilitators can provide mutual support as well as more comprehensive support to participants. In addition, each facilitator brings a set of unique skills and abilities to their facilitation. Those with complementary skills could be paired to ensure the best experience for the participants.

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<sup>33</sup> [www.skidmore.edu/campusrj/prism.php](http://www.skidmore.edu/campusrj/prism.php) Accessed 13 August 2018.

# Appendix 1 - RISV Working Group Meeting Schedule

## Tasks:

1. Learning about the issues
2. Setting parameters for the use of RJ in sexual violence
3. Identifying policy changes
4. Identifying training needs

<b>Meeting Date</b>	<b>Task</b>	<b>Preparation</b>	<b>Presentation or Discussion</b>
24 February 2017	Introduction	Howard Zehr, "Little Book of Restorative Justice"	Introductory session
24 March 2017	Learning	PRISM Webinar	What might this look like at the UofA?
28 April 2017	Refocus discussion	Burning Bridges video (on own or prior to meeting)	<ul style="list-style-type: none"> <li>• Report recommendation</li> <li>• Definitions</li> <li>• Common understandings</li> </ul>
26 May 2017	Learning	Donna Coker "Crime Logic, Campus Sexual Assault, and Restorative Justice."	How do universities view/respond to sexual violence?
<i>Suggested summer 2017 reading</i>		<ol style="list-style-type: none"> <li>1. Vince Mercer &amp; Karin Sten Madsen "Doing restorative justice in cases of sexual violence: a practice guide." - European Commission Directorate-General Justice (discussing at August meeting)</li> <li>2. Mary P. Koss, "The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes," Journal of Interpersonal Violence, 2014, Vol. 29(9) 1623-1660. (discussed at December meeting)</li> <li>3. Dalhousie University, "<a href="#">Report from the Restorative Justice Process at the Faculty of Dentistry</a>," 2015 (discussing at September meeting)</li> <li>4. Dalhousie University, "<a href="#">Report of the Task Force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry</a>," 2015 (discussing at September meeting)</li> <li>5. Optional: Jon Krakauer Missoula: Rape and the Justice System in a College Town (Not available on Google Drive)</li> </ol>	
25 August 2017	Learning	Vince Mercer & Karin Sten Madsen "Doing restorative justice in cases of sexual violence: a practice guide." - European Commission Directorate-General Justice.	<ul style="list-style-type: none"> <li>• Alan Edwards - presentation on restorative justice in the criminal justice system</li> <li>• See folder for PowerPoint</li> </ul>
22 September 2017	CANCELLED		
27 October 2017	Learning	N/A	Graham McCartney - presentation on risk assessment

<b>Meeting Date</b>	<b>Task</b>	<b>Preparation</b>	<b>Presentation or Discussion</b>
24 November 2017	Learning	Rebecca Campbell webinar " <a href="#">The Neurobiology of Sexual Assault</a> " (On own or before meeting in Triffo Hall 1-09)	Sam Pearson and Parker Leflar - presentation on myths and misconceptions about sexual assault
26 January 2018	Learning	<ul style="list-style-type: none"> <li>• Dalhousie University, "<a href="#">Report from the Restorative Justice Process at the Faculty of Dentistry</a>," 2015</li> <li>• Dalhousie University, "<a href="#">Report of the Task Force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry</a>," 2015</li> <li>• Rebecca Campbell webinar "<a href="#">The Neurobiology of Sexual Assault</a>" (On own or before meeting)</li> </ul>	Interaction between sexual violence and community in an academic environment
23 February 2018	Setting parameters for the use of RJ in sexual violence	Mary P. Koss, "The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes," <i>Journal of Interpersonal Violence</i> , 2014, Vol. 29(9) 1623–1660.	Brainstorm what conditions might be necessary in order to proceed with an RJ process
23 March 2018	Setting parameters for the use of RJ in sexual violence	Read draft parameters for use generated from the previous discussion	Review the draft text. Discussion on facilitators.
27 April 2018	Identifying policy framework	Review Article 14/16 and Graduate Assistant collective agreements, Code of Student Behaviour and PDF discipline process, as well as Residence processes (in meeting)	Jeremy Wilhelm - presentation on due process issues related to administrative processes, esp. collective agreements - Staff and Graduate Assistant collective agreements <ul style="list-style-type: none"> <li>• How can RJ fit in?</li> <li>• Where are the barriers?</li> <li>• What policy changes might be necessary</li> </ul>
25 May 2018	Draft Report review	Read draft report distributed in advance of meeting	<ul style="list-style-type: none"> <li>• What barriers still exist?</li> <li>• How can we address those?</li> </ul>
Summer 2018	Report review	Read and respond electronically to draft report available online in early July. Report will be finalized electronically, taking into account comments from members of the group.	

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*[Note: Some links may require institutional subscriptions.]*

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