

# A RESTORATIVE APPROACH

*The Saskatchewan Human Rights Code (the Code)* asserts that, as a matter of public policy and law, “every person is free and equal in dignity and rights.”

In everyday life, discrimination not only contravenes this fundamental principle, it can also cause harm that requires an appropriate response. Where possible, the Saskatchewan Human Rights Commission advocates the use of a restorative approach.

The Saskatchewan Human Rights Commission (SHRC) is mandated to receive complaints of discrimination and to help find resolution for those complaints that infringe upon the *Code*.

Where possible, the SHRC endorses the use of a restorative approach to resolving complaints of discrimination or harassment.

## Restorative Justice and Human Rights

Well-established principles of restorative justice

- require that actions be taken which:
- repair harm,
- resolve conflict, and
- restore relationships between the harmed, those who have caused harm, and the community.

Restorative justice principles are frequently, and effectively, used to deal with youth, Aboriginal, and criminal justice matters. In most of these situations, the desired resolution is not about punishment but, rather, about finding solutions that repair the harm that has been done. The focus, however, is broader than just helping the individual or group who experienced the harm.

A restorative approach recognizes that harm is not only experienced by individuals and communities, but also by the person who caused the harm.

This approach has demonstrated results in dealing with many difficult issues.

## Discrimination and Harassment

From a discrimination and harassment perspective, a restorative approach is often about repairing an individual or group’s relationship with another individual, group, and, sometimes, a community.

There is recognition that those experiencing the harm and those who caused the harm have a stake in trying to repair the damaged relationship for the future good of their community or communities.

There must be mutual agreement on the part of all of the implicated stakeholders to participate in a restorative process. This requires the individual or group who was harmed to recount their experience, but it also provides an opportunity to have their experience acknowledged and validated.

Moreover, it is an opportunity for them to ask for the reparation and resolution that they find meaningful.

At the same time, those who caused the harm are required to fully participate in the restorative process. They must listen to those who have been affected, accept that their actions created the harm, and commit to actions designed to repair or restore the harm they have done.

## The Restorative Process in Action

In practice, acknowledging what has been done, and a commitment to repair what has done, are achieved through face-to-face meetings attended by the implicated parties in a mediated setting. An independent, unbiased, and impartial third party mediator (or co-mediators) set the ground rules for interaction, moderate the discussion where necessary, and facilitate the discussion in order to achieve a mutually agreeable resolution.

Open dialogue between the parties is essential. Typically, the individual or group that has been harmed voices their experience first, outlines their perspective, and expresses what they believe could help fix the situation. In turn, those who caused the harm explain their involvement, acknowledge their actions, and commit to make amends.

In all cases, the participants themselves determine the outcome or outcomes of the restorative justice process. The mediator, or mediators, remains neutral in his or her position, but acts decisively when moving the parties towards an outcome. Resolution may take the form of an apology, a commitment to make reparations, policy changes, or other actions aimed at restoring relationships.

## Systemic Restorative Justice

A restorative approach to discrimination and harassment is about repairing harm and, where possible, repairing relationships between people. As described above, this might require a restorative mediation for a specific situation.

When harm or difficulty goes beyond a single situation, however, a systemic approach might be necessary. A systemic restorative approach recognizes that there are interconnected groups of people who have a common interest in preventing discrimination and harassment in their interconnected groups and, also, in their separate communities. Some groups may have directly experienced discrimination and harassment, while others may have only indirect awareness.

This approach can leverage the investment in a restorative process that benefits one group, directly, and in turn apply the lessons learned and restorative actions to the benefit of other groups. That is, a single situation can be used to inform, improve, and fix a similar problem for others who might be affected by a concern, complaint, or issue.

For further reference:

- Leivad, A. (2012). *Restorative justice: Theories and practices of moral imagination*. El Paso: LFB Scholarly Pub., 2012.
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- Llewellyn, J. J., & Downie, J. G. (2012). *Being relational: Reflections on relational theory and health law*. Vancouver, BC: UBC Press, c2012.