

Restorative Justice's Applicability in the Alberta Child Welfare System

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Introduction

Many criticisms have been made about Child Services failing to protect children (Pennell & Burford, 2000). Alberta Child Services must address these criticisms to ensure that all individuals impacted by the harms receive the care and treatment they require. Alberta Child Services “needs to consider new options, including strategies that would promote a collaborative effort of the family, community, and government” (Pennell & Burford, 2000, p. 131). The author will argue that the principles of restorative justice would benefit Child Services in Alberta, and therefore these principles should be implemented within the Alberta Child Services System.

The Current Child Services System in Alberta

The Alberta Child Services system aims to ensure that all children in Alberta have access to healthy families and communities. It claims to achieve this by focusing on early intervention, promoting child development and delivering support and services to children, youth, and impacted families (Child Services, 2021). Child services in Alberta can respond to family concerns in many ways and every effort is made to keep children safely in their homes instead of relocating them (How child intervention works, 2021). Child Services attempts to help families in multiple ways including (but not limited to): providing education to parents/guardians on how to keep their children safe, working with immediate and extended family, cultural connections and community partners and others to address concerns, and through developing safety plans for families and their children (How child intervention works, 2021).

How child intervention works (2021) states that 90% of the time, Child Services can provide support to a referred family over the phone or with a visit to the families' home. A single visit to a referred household or phone call cannot provide or address in depth the long-lasting systematic changes needed to provide a positive change in a household dynamic. The decisions

made by Child Services in Alberta are made by the institution and without the input of the significant individuals in a child's life. The outcomes and decisions could negatively affect the child and some of the child's unproblematic significant others may not agree with the plan of action. When dealing with any abusive or negligent situation, especially one involving children, every situation must be fully addressed in-depth with the input of all of the significant individuals of that person's life to provide the most accurate context and beneficial solutions. Restorative justice is a theoretical practice that could be implemented in Alberta Child Services to ensure that all the child's significant individuals' input is taken into consideration and influences the outcome of the decision made for the child's well-being.

Theoretical Principles of Restorative Justice

Restorative justice offers a different way to approach legal issues. Restorative justice is a relational theory of justice that focuses on understanding the relationships between individuals and focuses its attention on the harm inflicted on individuals and their unique relationships (Llewellyn, 2011). Llewellyn (2011) explains that a relational theory of justice makes individuals consider the fact that a relationship exists between what can be traditionally defined by the criminal justice system as 'victim' and 'offender'. This relationship between the victim and the offender should be first addressed regarding the restorative justice process. When justice is understood relationally, it addresses the connections between individuals and aims at realizing what conditions are necessary for the relationship to promote well-being.

This process differs from the traditional retributive process that the current Canadian Justice System employs. Instead of using punishments as a consequence, Llewellyn (2011) explains that relational justice aims to restore equality in the context of the relationships involved. Within the child welfare system, each individual partaking in a restorative justice

program would first have to have established equality of the relationships involved through mutual respect, concern, and dignity before they can further examine the harm that had incurred on their relationships. This includes the individual at fault willingly accepting responsibility for the harm they have caused. For justice to be relational and for restorative justice to begin, these principles must be employed regarding individuals' relationships with the others' involved.

Conflict as Property

Conflict can arise between individuals and the relationship they have with one another. While the term conflict is often associated with negative consequences, some theorists argue the opposite and that it is a necessary component that individuals should utilize and safeguard. Christie (1977) argues that conflict is comparable to property and that conflict is stolen by professionals (such as lawyers) who alienate the actual owners and victims of that conflict. The victim becomes a nonentity, and the offender becomes a thing. Conflicts can be helpful as they represent a potential for active participation and an opportunity for social-norm clarification (Christie, 1977). If a victim has ownership over their own conflict they also fully participate in their case. The victim can describe their losses and receive a chance to talk to the offender. The opportunity for norm clarification allows for a continued discussion of what is and what is not permissible in society and explains each case (Christie, 1977).

In the case of the Child Welfare System, individuals undergoing the process have their conflict stolen from them. It is not the individuals directly involved in the discussion and decision process. Instead, it is an institution that makes the decision. The child and other individuals become alienated from the process and active participation. The individual who was considered problematic does not receive social norm clarification as to what or why they did or

did not do was harmful. Restorative justice is a process that allows for individuals to keep their conflict and allows for both active participation and norm clarification.

The Advantages of Restorative Justice

There are many advantages associated with using a restorative justice approach. Levad (2011) argues that one of the advantages is that restorative justice can address multiple levels of conflict including interpersonal and family quarrels. Restorative justice is associated with a shift away from the current criminal and juvenile justice systems and its predominant usage of retributive and rehabilitative justice models which are viewed as the issue with the current criminal justice systems (Levad, 2011). Restorative justice attempts to do more than punish offenders. Levad (2011) explains that restorative attempts to address the conflicts and empower individuals to participate in a process and eventually come to a consensus on the best way to repair the harm done by the conflict.

Liebmann (2007) explains that in restorative justice, victim support and healing are prioritized, and offenders willingly admit guilt and take ownership of their actions and the harm they have caused. Restorative justice promotes an environment of understanding and healing while also correcting the harm done. These unique advantages of restorative justice are applicable to the Alberta Social Services system. During the restorative justice program, offenders look at how to avoid offending once again in the future, and the community comes together to reintegrate and support all people who have been affected by the harm done.

Components of Restorative Justice

Some principles and values make up the restorative justice process. Van Ness (2011) argues that there are three principles of restorative justice:

1. Justice requires that victims, offenders, and communities impacted by the crime restored.
2. Victims, offenders, and communities should be given opportunities to participate in the restorative justice process as early as possible.
3. The government is responsible for preserving order while the community establishes peace.

There are four values outlined by Van Ness (2011) related to the first two principles of restorative justice; encounter, amends, reintegration, and inclusion. These four values aim to address the purpose and participants during the restorative justice process.

The first value Van Ness (2011) outlines is encounter. Within the encounter between anyone who has been affected by the crime, Van Ness (2011) outlines key elements to ensure that it is successful. The first is the meeting, which should occur in person whenever possible, although a surrogate can be used if necessary. The second is the narrative, where individuals talk about how the harm has affected them and how to address the harm. The third is emotion, which is viewed as contributing to the restorative justice process and the understanding of the impact of the crime. The fourth is understanding, where the parties involved attempt to come to understand how the crime affected each other and how to mend the harm done. The fifth and final element is an agreement, where after the parties have explored the impact that the crime has made, they attempt to come to a practical consensual agreement between all parties on how to mend the harm and move forward.

The second value Van Ness (2011) outlines is amends. This value applies to the individual in the wrong and outlines four key elements that can help an individual make amends for their crime in a tangible way. The first key element of amends outlined by Van Ness (2011)

is the apology. The individual must offer a genuine and non-coerced apology in the wrong to the victim. The second key element is changed behaviour in which the wrongdoer makes meaningful changes within their own life, such as receiving counselling. The third is restitution in which the wrongdoer pays the victim back in some way, such as through a monetary amount, returning any property stolen, or providing in-kind services. The fourth key element is generosity in which the individual in the wrong agrees to go above and beyond restitution, for example, volunteering for an organization the victim cherishes.

The third value Van Ness (2011) outlines is reintegration. Reintegration is necessary for both the offender and the victim, as both could have become stigmatized by the community. The first key element of reintegration outlined by Van Ness (2011) is respect. When either individual rejoins their community once again they should be as equals instead of a lesser class individual. The second is material assistance. For example, if an individual experienced a robbery, they may need help repairing the physical damage done. The third key element is moral and spiritual direction as anyone affected by the crime may be experiencing emotional, moral, or spiritual crisis and require aid in that respect.

The fourth and final value outlined by Van Ness (2011) is inclusion. Van Ness (2011) argues that inclusion is the most important restorative value as this gives the victim, offender, and affected community to participate in the restorative justice process. The first key element is the invitation in which all affected parties are invited to join and participate in the justice process. The second key element is the acknowledgement of interests in which individuals are invited to pursue their interests as part of the process. The third key element is the acceptance of alternative approaches in which individuals remain open-minded to alternative methods of encounters and amends, such as mediation, conferencing, and apologies.

These components, values, and elements make up how a successful restorative justice program can use and apply to handle all forms of crime.

Restorative Justice in the Family Group Decision Making Project

The Family Group Decision Making Project began in Newfoundland and Labrador and demonstrated the applicability of using a restorative justice method such as family group decision making (FGDM) (Pennell & Burford, 2000). Family group decision making used immediate family and non-immediate family members, friends, and another close supports to decide the steps that should be taken to stop maltreatment (Pennell & Burford, 2000). Pennell & Burford (2000) explain that the conferences, on average, had 13 participants, 2 of whom were professionals (such as social workers, police, health services). The project's goal was to ensure that addressing the full range of violence that had occurred remained the family group's property rather than become the property of the professionals.

Pennell & Burford (2000) outlined the five stages used to navigate FGDM which all resemble and utilize the components, values, and elements outlined above by Van Ness (2011). In the first step outlined by Pennell & Burford (2000), the project coordinators would receive letters of referral from potential program candidates and decide on who qualifies. The second step was organizing the family conference in which organizers would ensure that all the relevant individuals would be invited to join the FGDM in a neutral place.

In the third stage, the participants of the FGDM would meet and the conference would begin. In this stage Van Ness (2011) outlined elements begin to be used including the meeting, agreement by the parties, the respect shown to all parties, assistance provided to any party that needs it, and inclusion of all the and communication between parties. During the third stage outlined by Pennell & Burford (2000) the conference would be opened through a unique method

that is respected by the entire family and its' participants (such as through prayer). The coordinator would then review the rules, purpose, and process of the FGDM and then service providers would give information regarding the case. The family members would be left alone to discuss and develop a plan of action to address the harm. After this was complete the coordinator would return and ensure that the plan of action was clear, comprehensive, and included mechanisms for monitoring and evaluation.

During the fourth stage Pennell & Burford (2000) outlined an agency worker would approve the plan if it met and addressed all areas of concern and fell within budget guidelines. Here, as outlined by Van Ness (2011), there could be an apology given by the individual at fault and a change in their future behaviour as well as restitution given to the individual harmed. The plan was implemented in the fifth stage outlined by Pennell & Burford (2000). The plan could include addictions treatment, childcare, counselling, and more.

Significant findings reported in the FGDM conferences by Pennell & Burford (1997) included enhanced family unity, improved care for children, reduced drinking (alcohol) problems and decreased family violence. Abuse and neglect reduced overall, and families showed a decrease in substantiated child abuse and neglect, emergency response to crises, and women and wife abuse indicators. There was also an increase in indicators that family members were safe at home. These findings in a Canadian provincial context illustrate the applicability of restorative justice methods and FGDM conferences that could be applied to Alberta Child Services.

Conclusion

The research performed by Pennell & Burford (1997) in Newfoundland and Labrador illustrates the applicability and success of restorative justice within Canadian Society. Utilizing new and innovative methods within Child Services systems has resulted in positive outcomes for

those involved. Integrating restorative justice methods, such as Family Group Decision Making, would allow families to address the harm done, rebuild and repair relationships and allow for the individual harmed and the individual at fault to have ownership over their conflict. This would allow both individuals and their significant others to come to a solution that addresses the harm, provides healing for the individual harmed, and allows for the individual at fault to mend the harm and move forward with the support of a greater community. Therefore, restorative justice methods such as Family Group Decision Making should be integrated into the Alberta Child Services system to address and improve the criticisms made that Alberta Child Services fails to protect children.

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