

The Restorative Justice Act: An Enhancement to Justice in Manitoba?

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I. INTRODUCTION

During the last few decades, many have begun to question the established model of criminal justice in place in Manitoba. This criminal justice system is largely centered on the traditional courtroom setting, and is focused on convicting and sentencing guilty parties. Critics point to a number of problems or variables that may lessen the effectiveness of these traditional methods of administering the justice system. These criticisms have assisted in the development of new ways of thinking, including the emergence of a restorative justice model.

As part of this restorative justice movement, the Government of Manitoba recently passed legislation to promote the incorporation of restorative justice into the province's justice system. This paper will analyse this new *Restorative Justice Act*, as well as speculate on what effect the Act could have in Manitoba.¹ The paper will begin with an explanation of restorative justice conceptually, as well as a brief history of restorative justice in Manitoba and Canada. I will review relevant press releases and newspaper articles about the incoming Act. The paper will then consider the Act itself, and look to the particular sections to outline what the government has put forward. Thereafter, a detailed chronology of the legislative process will be outlined. Finally, this paper will consider the possible outcomes arising from the Act's enactment. I will take a comparative approach in this regard, and examine the restorative justice frameworks in another jurisdiction, Nova Scotia, to see what possibilities could exist for Manitoba's restorative justice system in the future.

¹ Bill 60, *The Restorative Justice Act*, 3rd Sess, 40th Leg, Manitoba, 2014 (assented to 12 June 2014), SM 2014, c 26 [Bill 60].

Ultimately, this paper argues that while possibilities for an enhancement of the restorative justice model in Manitoba are present and attainable, this legislation establishes only a limited enabling process for that evolution, rather than charting a clear course for that progression.

II. WHAT IS RESTORATIVE JUSTICE?

Restorative justice, at its heart, seeks to engage three parties: the offender, the victim, and the community.² This means that the formal judicial system is not a key party in this process; indeed, advocates of restorative justice often utilize language that restorative justice “resists mainstream state authority.”³ Fundamentally, restorative justice emphasizes a focus on the underlying causes of criminal behaviour, and aims to reintegrate the offender into the community and “make things right” with the victim.⁴

It is said that restorative justice possesses a “fundamental optimism” that offenders are capable of changing their behaviour.⁵ Research has suggested that such processes create lower recidivism rates and higher satisfaction among victims and offenders than the traditional justice system, in addition to being quicker and less expensive.⁶ This suggests that such programs can be highly successful. However, restorative justice practices can only properly proceed when the following conditions are satisfied: the offenders must agree to participate in the process having admitted guilt and accepted responsibility for their actions; victims must willingly agree to participate; and proper programs and facilitators must exist.⁷ These practices aim to further the four key values of restorative

² Patty Rosher, “Restorative justice can ease the pain at Dalhousie”, *Winnipeg Free Press* (23 December 2014) online: < www.winnipegfreepress.com >.

³ Katherine Beaty Chiste, “The Origins of Modern Restorative Justice: Five Examples from the English-Speaking World” (2013) 46:1 UBC L Rev 33 at 37.

⁴ Bruce Archibald & Jennifer Llewellyn, “The Challenges of Institutionalizing Comprehensive Restorative Justice: Theory and Practice in Nova Scotia” (Fall 2006) 29:2 Dalhousie LJ 297 at 306.

⁵ David Milward & Debra Parkes, “A Review of the Current Legal Landscape: Gladue: Beyond Myth and Towards Implementation in Manitoba”(2011) 35:1 Man LJ 84 at 101.

⁶ Rosher, *supra* note 2.

⁷ “Restorative Justice in Canada: what victims should know”, Canadian Resource Centre for Victims of Crime (March 2011) online:

justice: creating opportunities for victims, offenders, and communities to meet and discuss specific incidents of crime; offenders taking steps to remedy the harm caused; reintegrating both offenders and victims into their communities; and allowing for the participation of various stakeholders.⁸

III. RESTORATIVE JUSTICE IN CANADA AND MANITOBA

Restorative justice has roots in Canada and Manitoba that pre-date *The Restorative Justice Act*. Indeed, some have noted that, before European contact, many Aboriginal communities practiced what could now be classified as restorative justice.⁹ In the twenty-first century, restorative justice has taken many forms across Canada, as will be outlined below.

In the context of Canada's Aboriginal peoples, several judgments have heralded the courts' growing interest in alternative sentencing measures. One landmark case was *R v Gladue*.¹⁰ In *Gladue*, the majority of the Supreme Court of Canada wrote:

Section 718.2(e) requires the sentencing judge to explore reasonable alternatives to incarceration in the case of all aboriginal offenders. Obviously, if an aboriginal community has a program or tradition of alternative sanctions, and support and supervision are available to the offender, it may be easier to find and impose an alternative sentence. However, even if community support is not available, every effort should be made in appropriate circumstances to find a sensitive and helpful alternative.¹¹

Statements such as these are particularly important given the over-representation of Aboriginal peoples in custody in Canada. For example, one study found that, over the course of a decade, Aboriginal people represented 17 percent to 19 percent of adult admissions to federal penitentiaries, while constituting only three percent of the total population of Canada; another study found that 69 percent of those

<<http://www.crcvc.ca/docs/restjust.pdf>> [CRCVC] at 5.

⁸ *Ibid* at 2.

⁹ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol 59B (22 May 2014) at 2849 (Hon Andrew Swan).

¹⁰ *R v Gladue*, [1999] 1 SCR 688, 171 DLR (4th) 385 [*Gladue*].

¹¹ *Ibid* at para 92 [emphasis added].

admitted to provincial jail in Manitoba 2007–2008 were Aboriginal.¹² *Gladue* entailed the Supreme Court of Canada attempting to address this very problem, noting that:

Section 718.2(e) is not simply a codification of existing jurisprudence. It is remedial in nature. Its purpose is to ameliorate the serious problem of overrepresentation of aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing.¹³

Gladue also suggested that sentencing for Aboriginal offenders must encompass a “different methodology,” and consider the systemic factors that brought the Aboriginal offender before the court.¹⁴ The Supreme Court of Canada encouraged the application of restorative justice concepts to Aboriginal sentencing, and refused the suggestion that a restorative approach is a more lenient approach, declaring instead that it should be seen as restoring harmony between the victim, the offender, and their community.¹⁵ In short, the Court both endorsed and urged the justice system to consider restorative justice principles when sentencing Aboriginal offenders.

Some legislative basis for restorative justice exists in Canada at the federal level. The application of restorative justice principles in the context of federal offenses can be authorized by a provincial attorney general “who deems such a program of ‘alternative measures’ (under the *Criminal Code*¹⁶) or ‘extra-judicial sanctions’ (under the *Youth Criminal Justice Act*¹⁷) to be ‘not inconsistent with the protection of society.’”¹⁸ Chiste, among others, has suggested that restorative justice was formally inserted into the *Criminal Code* in 1996 with the addition of two new sentencing objectives: section 718 (e), reparation to the victim and community, and, section 718 (f), promoting a sense of responsibility in offenders in relation to the harm

¹² Milward & Parkes, *supra* note 5 at 84. It is worth noting that these are post-*Gladue* statistics, which suggests that, unfortunately, the *Gladue* case has not resolved these issues surrounding incarceration.

¹³ *Gladue*, *supra* note 10 at para 93.

¹⁴ Milward & Parkes, *supra* note 5 at 87.

¹⁵ CRCVC, *supra* note 7 at 4. See also *Gladue*, *supra* note 10 at paras 65 and 72.

¹⁶ RSC 1985, c C46.

¹⁷ SC 2002, c 1

¹⁸ Archibald & Llewellyn, *supra* note 4 at 313.

done to the victim and community.¹⁹ At the same time, “alternative measures” were created, whereby first time offenders—youth or adult—could “plead guilty, participate in reparative activities, and avoid a trial and criminal record.”²⁰ To make use of *Criminal Code*-sanctioned restorative justice, the offender must accept responsibility for the act, there must be sufficient evidence to prosecute the offence, the offence must not be barred at law, and the provincial attorney general must have authorized the use of the program.²¹ Additionally, the federal government has more recently moved to extend to victims of crime the right to information about services and programs available to them as victims, explicitly including restorative justice programs.²²

In Manitoba, there are currently several existing restorative justice programs, often operated by non-profit organizations. At the time that Bill 60 was first proposed, the government identified several existing programs, such as Mediation Services, Restorative Resolutions, community justice committees, and Onashowewin Justice Circle, “a community-based, non-profit organization dedicated to establishing restorative and holistic approaches to achieving justice.”²³ Mediation services, for example, receives nearly 500 referrals per year and conducts a mediation session between victim and offender with the aim of developing an agreement between them in order to “put things right.”²⁴ Restorative Resolutions, a program run by the John Howard Society of Manitoba, also provides this type of mediation and builds sentencing plans for adult

¹⁹ Chiste, *supra* note 3 at 52 – 53.

²⁰ *Ibid.*

²¹ Barbara Tomporowski et al, “Restorative Justice: Past, Present, and Future – Reflections on the Past, Present, and Future of Restorative Justice in Canada” (2011) 48:4 *Alta L Rev* 815 at 820.

²² Bill C-32, *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*, 2nd Sess, 41st Parl, 2014, cl 6 (as passed by the House of Commons 23 February 2015).

²³ Manitoba, News Release, “Manitoba Proposes Legislation That Would Create Framework To Expand Community-Based Justice Programs: Minister Swan” (23 April 2014), online: <news.gov.mb.ca/news> [“Manitoba Proposes Legislation”].

²⁴ “Restorative Action Centre”, Mediation Services, online: <mediationserviceswpg.ca/programs/restorative-action-centre/>.

offenders.²⁵ There are over sixty justice committees in communities throughout Manitoba.²⁶

IV. THE GOVERNMENT'S PLAN

Manitoba Minister of Justice Andrew Swan first introduced Bill 60, *The Restorative Justice Act*, on April 23, 2014.²⁷ In a Government of Manitoba press release, the Bill was described as intended to “enhance restorative justice and community-based solutions as part of a balanced approach to increasing public safety and reducing crime.”²⁸ This press release quoted Minister Swan, who said:

Restorative justice in the community can result in better outcomes, lower reoffence rates and greater confidence of victims ... In appropriate cases, the most effective way to change the offender's behaviour and make amends to the people affected by crime is through restorative justice processes. Manitoba is already a leader in North America, but this new legislation will enhance and expand our restorative justice program.²⁹

This statement reflects the Manitoba government's belief in the benefits of restorative justice. The press release also included an acknowledgement that Manitoba's justice system already included a number of restorative justice options, such as those mentioned above.³⁰ The government articulated the goal of Bill 60 somewhat vaguely:

The Restorative Justice Act would provide a framework to further develop restorative justice programs and increase their use for adult and youth offenders across the province, the minister said. The act would also establish a Restorative Justice Advisory Council, which would provide advice and

²⁵ “Restorative Resolutions”, The John Howard Society of Manitoba (2013), online: <www.johnhoward.mb.ca/wp/programs-services/restorativeresolutions/>; see also Tomporowski et al, *supra* note 21 at 821.

²⁶ Manitoba, Manitoba Justice, “Safer Communities: Community Justice” (2015), online: <www.gov.mb.ca/justice/safe/communityjustice.html>.

²⁷ Manitoba, *Legislative Assembly, Debates and Proceedings*, 40th Leg, 3rd Sess, Vol 47 (23 April 2014) at 2143-2144.

²⁸ “Manitoba Proposes Legislation”, *supra* note 23.

²⁹ *Ibid*.

³⁰ *Ibid*.

expertise to the minister about the development of effective restorative justice programs.³¹

A small number of newspaper articles reported on this Bill at this early stage, but wrote little more than the words of this press release. A *Winnipeg Free Press* article added: "The proposed legislation notes that restorative justice could be especially useful in cases involving offenders with mental health conditions, addictions or other behavioural issues."³² A national charity organization, Victims of Violence, took note of the Bill as well. Victims of Violence aims to provide victims' perspectives to governments, the media, and communities, and also conducts research on issues relating to victims of violent crime.³³ In its newsletter, an article was published about Bill 60, which noted that the Manitoba government hopes to create efficiencies in the justice system through the expansion of restorative justice opportunities: "The diversion of some cases away from the court system frees up resources to be used for those cases which are more pressing to public safety and would also assist in reducing overcrowding in correctional facilities."³⁴ This content was largely a reiteration of the government's initial press release.³⁵

V. THE LEGISLATION

I will now proceed with a consideration of the content of Bill 60. This Bill is not a lengthy or overly detailed document. As noted above, Bill 60 was intended to establish a "framework" for expanding restorative justice.³⁶ In pursuit of this goal, the Bill establishes a few specific structural and policy obligations for the Department of Justice. The Bill provides four main directives regarding restorative justice goals, and it also defines "restorative justice" as the following:

³¹ *Ibid.*

³² "Restorative justice legislation expected this spring", *Winnipeg Free Press* (23 April 2014) online: <www.winnipegfreepress.com>.

³³ "About Us", Victims of Violence (2015), online: <www.victimsofviolence.on.ca/>.

³⁴ "Manitoba Embraces an Alternative Approach to Dealing with Victims and Offenders" (July/August 2014) 4:6 *Victim Matters* 1 at 9, online: <www.victimsofviolence.on.ca/>.

³⁵ "Manitoba Proposes Legislation", *supra* note 23.

³⁶ *Ibid.*

restorative justice is an approach to addressing unlawful conduct outside the traditional criminal prosecution process that involves one or both of the following:

- (a) providing an opportunity for the offender and the victim of the unlawful conduct or other community representatives to seek a resolution that repairs the harm caused by the unlawful conduct and allows the offender to make amends to the victim or the wider community;
- (b) requiring the offender to obtain treatment or counselling to address underlying mental health conditions, addictions or other behavioural issues.³⁷

This same clause also specifies how the offender may be required to participate in the process, and notes that these processes may occur both before and after the offender is charged with an offence.³⁸

In its directives, Bill 60 authorizes the Department of Justice to develop restorative justice programs that fit within the parameters of section 717 of the *Criminal Code* or section 10 of the *Youth Criminal Justice Act*.³⁹ While Bill 60 only indicates that the department “may” create new programs, this section nevertheless provides new opportunities for restorative justice programs to be implemented in Manitoba.⁴⁰

A second directive of Bill 60 requires the provincial justice department to develop policies about the use of restorative justice programs.⁴¹ These policies must consider how a victim or offender would request the resolution of their circumstances by utilizing such programming.⁴²

A third directive of Bill 60 created the Manitoba Restorative Justice Advisory Council, and defined its role.⁴³ The council itself is to include senior members of the department as well as five to nine qualified individuals appointed by the Minister.⁴⁴ The Bill states that this Council

³⁷ Bill 60, *supra* note 1, cl 2(1).

³⁸ *Ibid*, cls 2(2), 2(3).

³⁹ Bill 60, *supra* note 1, cl 4; *Criminal Code*, *supra* note 16, s 717; *Youth Criminal Justice Act*, *supra* note 17, s 10.

⁴⁰ Bill 60, *supra* note 1, cl 4.

⁴¹ *Ibid*, cl 5(1).

⁴² *Ibid*, cl 5(2).

⁴³ *Ibid*, cls 6(1) – 7(3).

⁴⁴ *Ibid*, cl 6(2).

will conduct studies for the Minister upon request, and provide advice and recommendations regarding restorative justice programs, specifically with respect to design, content, implementation, delivery, monitoring program effectiveness, and justice department policies.⁴⁵ It therefore appears that the Council will ultimately serve as the primary body for managing restorative justice programming, though decision-making power rests with the Minister.

Fourthly, this Bill amended *The Victims' Bill of Rights*.⁴⁶ Bill 60 added references to restorative justice in several clauses of the *Victims' Bill of Rights* where no mention of it previously existed.⁴⁷ These amendments were likely meant to encourage victim involvement in restorative justice proceedings.

VI. THE ACT PASSES THROUGH THE MANITOBA LEGISLATURE

When Minister Swan first introduced Bill 60 in April 2014, he provided only brief introductory remarks.⁴⁸ The Minister informed the Legislative Assembly that this Bill would provide a framework for the further development of restorative justice in Manitoba, and that it would enable more cases to be resolved outside of the traditional court process, thereby freeing up court resources.⁴⁹ Minister Swan emphasized the impact this could have on victims of crime in saying that “restorative justice repairs the harm that’s caused by criminal actions while allowing the community and the victim, where the victim wishes, to hold the offender responsible for his or her actions and to seek a resolution that affords healing, reparation and reintegration.”⁵⁰

⁴⁵ *Ibid*, cls 7(1) – 7(3).

⁴⁶ *The Victims' Bill of Rights*, SM 1998, c 44; Bill 60, *supra* note 1, s 8(1).

⁴⁷ Bill 60, *supra* note 1, cls 8(2) – 8(4).

⁴⁸ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, No 47 (23 April 2014) at 2143-2144 (Hon Andrew Swan).

⁴⁹ *Ibid* at 2144.

⁵⁰ *Ibid*.

More extensive remarks were made during the Bill's second reading, which occurred on May 22, 2014.⁵¹ On this occasion, Minister Swan acknowledged support for restorative justice throughout Aboriginal communities, faith communities, and among victims of crime.⁵² He said that he intends to "work with our police and our Crown attorneys to have them provide the best information early on to encourage victims of crime in appropriate cases to consider restorative justice", but that "no victim will be forced to participate in a restorative justice process against their will."⁵³ Minister Swan also remarked "that Manitoba will be the first jurisdiction in Canada with a stand-alone bill in support of these restorative justice principles, and we will continue to be the leader at finding better ways to deal with people who find themselves in our criminal justice system."⁵⁴

In response, members of the opposition commended the principles of restorative justice, but criticized the effectiveness of the proposed Bill. Progressive Conservative (PC) Member Mr. Kelvin Goertzen noted that the previous PC Government had initiated funding for Mediation Services, one of the major restorative justice initiatives in Manitoba.⁵⁵ Mr. Goertzen did not provide any direct criticism of Bill and only commented on the potential for significant change:

So my concern isn't with the bill or the intention of the bill; my concern is whether or not it will actually effect any meaningful change, because that seems to me that meaningful change when it comes to mediation or restorative justice will come from a culture of understanding within the Department of Justice and not by legislation.⁵⁶

Dr. Jon Gerrard, speaking for the Liberal Party, noted the efforts of the federal Liberal government in developing the *Youth Criminal Justice Act* in 2003, and criticized the Manitoba government for taking over 14 years

⁵¹ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, No 59B (22 May 2014).

⁵² *Ibid* at 2849-2850.

⁵³ *Ibid* at 2851.

⁵⁴ *Ibid*.

⁵⁵ *Ibid*..

⁵⁶ *Ibid* at 2852.

to propose this legislation.⁵⁷ Regarding the Bill itself, Dr. Gerrard spoke of several “significant shortcomings,” including the absence of a means of monitoring the effects of restorative justice programming, a lack of reference to “cultural sensitivity” in the Bill, and no assurance of Aboriginal representation on the Restorative Justice Advisory Council.⁵⁸

After passing second reading, Bill 60 was considered at the Standing Committee on Justice on June 3, 2014.⁵⁹ Only one person spoke during the public consultation phase, and these remarks entailed no specific suggestions regarding the Bill.⁶⁰ Mr. Goertzen again spoke when the Committee considered the Bill. He stressed his concerns about measuring the impact of programming:

I do have a concern that we, perhaps, don't measure the impact of restorative justice enough and ensure that the success—and I believe that that would be good—comparative to other recidivism rights [sic] in the system, good success measured by restorative justice, and I'd like to see that done.⁶¹

On this note, Mr. Goertzen proposed that an additional sub-clause be added to the second clause of Bill 60, and worded as follows:

The Minister must publish quarterly recidivism rates

2(4) The minister must publish quarterly recidivism rates that indicate the proportion of participants in restorative justice programs who have been charged with a new criminal offence within two years of completing a restorative justice order, expressed as a percentage of the total number of participants.⁶²

Mr. Goertzen argued that such measurements could identify which programs worked well and which did not.⁶³ Minister Swan responded that he supported this general idea, but not this specific amendment, and he

⁵⁷ *Ibid* at 2853.

⁵⁸ *Ibid* at 2853.

⁵⁹ Manitoba, Legislative Assembly, Standing Committee on Justice, 40th Leg, 3rd Sess, Vol LXVI, No 2 (3 June 2014).

⁶⁰ *Ibid* at 46 (Ken Guilford).

⁶¹ *Ibid* at 55 (Kelvin Goertzen).

⁶² *Ibid*.

⁶³ *Ibid*.

suggested that the Advisory Council could address this issue.⁶⁴ Minister Swan noted that it is possible for someone to proceed through a restorative justice program without being charged with an offence; Mr. Goertzen's proposed amendment would not account for this fact, and therefore a more effective means for measuring recidivism would need to be developed.⁶⁵

Mr. Goertzen's amendment was defeated by a margin of six in favour and four against.⁶⁶ This appears to have been determined on partisan lines, as the Committee, excluding its chair, was composed of six NDP members and four PC members.⁶⁷ The remainder of the Bill's clauses were passed without issue.⁶⁸

When Bill 60 returned to the Legislative Assembly for its third reading on June 11, 2014, the debate was substantially similar to that of the second reading.⁶⁹ Notwithstanding the position of the opposition members in Committee, the Official Opposition indicated its willingness to support the Bill.⁷⁰ Bill 60 ultimately passed third reading.⁷¹

On the whole, the progress of Bill 60 through the Legislative Assembly was largely uncontroversial, and all parties expressed their support for the restorative justice model. Indeed, each party attempted to draw attention to its previous support of similar legislation. Opposition members merely questioned how Bill 60 would be implemented and later assessed.

VII. POSSIBILITIES IN IMPLEMENTATION: COMPARATIVE CONSIDERATIONS

When this paper was completed, *The Restorative Justice Act* had been passed by the legislature but had not yet come into force.⁷² Additionally,

⁶⁴ *Ibid* at 55-56.

⁶⁵ *Ibid*.

⁶⁶ *Ibid* at 56.

⁶⁷ *Ibid* at 17.

⁶⁸ *Ibid* at 56.

⁶⁹ Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, No 70 (11 June 2014) at 3334-3337.

⁷⁰ *Ibid* at 3337 (Kelvin Goertzen).

⁷¹ *Ibid*.

⁷² Manitoba, Legislative Assembly, "Bills Dealt With in the House: Third Session,

the Advisory Council does not appear to have been formed, nor has the Department of Justice published any additional restorative justice policies. For present purposes, one can only speculate about how this Act will shape restorative justice in Manitoba.

The Restorative Justice Act, however, brought principles into Manitoba law that are found in many other jurisdictions. For example, there is a fairly extensive restorative justice framework in place in Nova Scotia. This paper will therefore consider the restorative justice framework in Nova Scotia, a jurisdiction whose restorative justice program is "by all accounts the most comprehensive in Canada,"⁷³ and the possibilities it suggests for Manitoba in the future.

The Nova Scotia model was introduced in 1999.⁷⁴ The program is chiefly oriented towards young offenders between the ages of 12 and 17 years old, although the RCMP also employs programming for adult matters.⁷⁵ The program is intended to be community-based with state supervision specifically focussed on basic procedural matters, while facilitation is dealt with primarily by independent organizations within the community, with the exception of restorative justice forums organized by the RCMP and "circle sentencing" managed by judges.⁷⁶ The program operates based on four main goals: reducing recidivism, increasing victim satisfaction, strengthening communities, and increasing public confidence in the justice system.⁷⁷ These four goals are supplemented by four objectives: providing victims and communities with a voice and an opportunity to participate, repairing the harm done by the offence, reintegrating the offender, and holding the offender accountable in a meaningful way.⁷⁸

Fortieth Legislature 2013-2014", online: < web2.gov.mb.ca/bills/40-3/billstatus.en.pdf> at 10.

⁷³ Archibald & Llewellyn, *supra* note 4 at 297.

⁷⁴ *Ibid* at 298.

⁷⁵ *Ibid* at 299.

⁷⁶ *Ibid* at 310.

⁷⁷ Nova Scotia, Department of Justice, "Restorative Justice Program Protocol" (October 2007), online: <novascotia.ca/just/rj/documents/Restorative%20Justice%20Protocol%20Eng%20Web.pdf> [Protocol] at 1.

⁷⁸ *Ibid* at 1-2.

Probably the most significant aspect of the Nova Scotia system is the degree to which it is coordinated and managed by provincial government policies. This becomes clear upon reading the “Restorative Justice Program Protocol,” the program’s governing policy document.⁷⁹ While its focus is on youth, such a comprehensive system may provide a sound model for Manitoba. Like in Manitoba, most restorative justice programs in Nova Scotia are administered by non-profits. The Nova Scotia Protocol establishes clear guidelines for how these agencies should operate, which Manitoba’s Advisory Council may wish to emulate.

The Nova Scotia Protocol explicitly requires that “all agreements are monitored on an ongoing basis by contacting the young person, the victim and collateral contacts as required in order to support successful completion of the terms contained in the agreement.”⁸⁰ This requirement not only empowers agencies to maintain an ongoing relationship with the relevant parties, but also requires them to do so. Additionally, it is the responsibility of the agency to review any violation of the agreement or dissatisfaction with it and take appropriate action.⁸¹ The agency must also ensure formal notice is distributed to all relevant stakeholders when the restorative justice agreement has been satisfied, or when a young offender fails to comply.⁸² Case management and service delivery are subject to a “Provincial Practice Standards” policy, which every agency is expected to adhere to, and adapt to if policies change.⁸³

The Protocol also establishes a number of rules relating to the eligibility and supervision of program volunteers. Specifically, volunteers in the provision of restorative justice programming must be at least 19 years of age, successfully pass a screening process, and successfully complete a training process set out in the “Provincial Practice Standards.”⁸⁴ Lastly, the agencies must establish a “volunteer monitoring process,” which includes ongoing training and re-screening, and accountability frameworks.⁸⁵ These requirements are overseen by a

⁷⁹ *Ibid* at 1.

⁸⁰ *Ibid* at 16.

⁸¹ *Ibid*.

⁸² *Ibid*.

⁸³ *Ibid* at 18.

⁸⁴ *Ibid* at 18.

⁸⁵ *Ibid* at 19.

coordinator who works in the Department of Justice to develop provincial best practice standards and learning materials.⁸⁶ These volunteer standards, while onerous, are “critical to the operation of the program and ultimately to assessing whether restorative justice is meeting its goals.”⁸⁷ Academics have called these practices “innovative and significant.”⁸⁸

Finally, the Nova Scotia Protocol includes specific policies for police cautions. This pre-charge referral process sets out a scheme whereby a peace officer can submit a case for restorative justice even where the matter is minor enough to avoid a formal charge.⁸⁹ This process includes a “Restorative Justice Checklist,” which can be filled out and submitted to an agency as a referral; the agency can then assess the case and either accept it or issue a “Notice of Reconsideration” through a set procedure.⁹⁰

All of these aspects of the Nova Scotia system could be adapted to programming in Manitoba as part of the expansion framework contemplated by *The Restorative Justice Act*. Such adaptations would likely be well received in Manitoba. A series of town hall meetings conducted by the Manitoba Bar Association in 2010 and 2011 found that stakeholders indicated a desire to see funding for restorative justice aimed at such goals as “coordinating restorative justice services across the province,” “providing training to community members,” and “educating Crown and defence lawyers as well as police in the principles of restorative justice.”⁹¹ Following Nova Scotia’s example could help fulfill these aspirations. For one, the Nova Scotia system also appears to be highly coordinated throughout that province. If this could be achieved in Manitoba, public confidence in both the provincial justice system and the principles of restorative justice could be enhanced. Furthermore, if Manitoba implemented a similar pre-charge referral program, this might take significant pressure off Manitoba courts, particularly those dealing with

⁸⁶ Archibald & Llewellyn, *supra* note 4 at 322.

⁸⁷ *Ibid.*

⁸⁸ *Ibid* at 323.

⁸⁹ Protocol, *supra* note 77 at 6.

⁹⁰ *Ibid.*

⁹¹ “Town Hall Meetings on Access to Justice: Report and Summary”, The Manitoba Bar Association (2011), online: <[cba-mb.ca/getattachment/About-The-CBA/Advocacy/MBA-Town-Hall-Meetings-on-Access-to-Justice-Final-Report-and-Summary\(1\).pdf.aspx](http://cba-mb.ca/getattachment/About-The-CBA/Advocacy/MBA-Town-Hall-Meetings-on-Access-to-Justice-Final-Report-and-Summary(1).pdf.aspx)> at 12.

minor charges. In sum, the Manitoba government could greatly benefit from adopting an approach to restorative justice programming similar to that of Nova Scotia.

VIII. CONCLUSION

This paper has reviewed the legislative process of *The Restorative Justice Act* and considered the possible implications of its implementation in Manitoba. The Act provides some broad directives, which include the creation of a Restorative Justice Advisory Council, and enabling the justice department to make new policies about restorative justice programs. While the Act received broad-based support in the Legislative Assembly, it is unclear what its effects will be. Whether the positive example set by Nova Scotia will be considered in Manitoba is yet to be determined, and will depend upon future advisory councils, ministers, and other relevant stakeholders, such as police officers, lawyers, and community members. It remains to be seen whether *The Restorative Justice Act* will have the impact the government intended.