

## AMENDMENTS TO BYLAW 14614 PUBLIC PLACES BYLAW - RESTORATIVE JUSTICE PRACTICES

### RECOMMENDATION

That the February 7, 2023, Community Services report CS00751, be received for information.

|   |  |   |                                 |
|---|--|---|---------------------------------|
| <b>Requested Council Action</b>   | Information only   |   |                                 |
| <b>ConnectEdmonton's Guiding Principle</b>                                | <b>ConnectEdmonton Strategic Goals</b>   |   |                                 |
| <b>CONNECTED</b><br>This unifies our work to achieve our strategic goals. | <b>Healthy City</b>  |   |                                 |
| <b>City Plan Values</b>   | LIVE   |   |                                 |
| <b>City Plan Big City Move(s)</b>   | Inclusive and compassionate  | <b>Relationship to Council's Strategic Priorities</b> | Community safety and well-being |
| <b>Corporate Business Plan</b>  | Serving Edmontonians   |   |                                 |
| <b>Council Policy, Program or Project Relationships</b>                   | <ul style="list-style-type: none"> <li>Public Places Bylaw 14614</li> <li>Community Safety and Well-Being</li> </ul> |   |                                 |
| <b>Related Council Discussions</b>  | <ul style="list-style-type: none"> <li>Public Spaces Bylaws review</li> </ul>  |   |                                 |

### Previous Council/Committee Action

At the April 6, 2021, City Council meeting, the following motion was passed:

That Administration work with the Anti-Racism Advisory Committee to review and recommend changes to the anti-bullying provisions (8.1 and 8.2) in Bylaw 14614, Public Places Bylaw:

1. To include in its offences any acts of harassment based on race, religion, sexual orientation or gender identity;
2. To use restorative justice practices in response to any of these offences.

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### **Executive Summary**

- Bylaw 14614 - Public Places, was amended in 2021 to clarify that communicating acts of harassment based on race, religion, sexual orientation or gender identity shall include forms of non-verbal communication such as gestures or symbols.
- Communities continue to identify opportunities to address systemic issues within the context of the criminal or quasi-criminal justice system.
- Administration, via focus groups, assessed community interest in using restorative justice practices as an alternative to retributive justice in the context of harassment-based offences.
- The need to address broader societal issues and better support all individuals in Edmonton is clear.
- Community insight identified the need for further exploration and engagement in this space should further action be considered.

### **REPORT**

In November 2021, Section 8 of Bylaw 14614 - Public Places, was amended to provide clarity that harassment in public places may include using either verbal and/or non-verbal forms of communicating acts of harassment based on race, religion, sexual orientation or gender identity (Community and Public Services report CS00779).

Further to that amendment, Administration began exploring the use of restorative justice practices to address harassment-based offences.

The Canadian criminal justice system has historically focused on retributive justice, where undesired behaviour is punished. As one alternative, restorative justice is described as a system of criminal justice focusing on the rehabilitation through reconciliation with victims and the community at large. A number of cultures, both currently and historically, including some Indigenous and First Nations groups throughout Canada, have practiced forms of restorative justice as part of a healthy society, as complete healing requires the rebuilding of relationships.

At its core, restorative justice serves as an alternative to retributive justice in resolving the harm caused by conflict or crime while promoting meaningful solutions to all participants. Restorative justice is a voluntary process that seeks to address the victims' needs while addressing the harm of the individual's behaviour.

The following provides an overview and the core tenets of restorative justice:

- Participation is voluntary.
- All participants are treated with respect.
- Victims are engaged.
- Individuals are encouraged to take accountability, accept responsibility and make amends as determined by consensus.
- Physical, psychological and spiritual safety and security is of paramount importance and is upheld.
- Participation is inclusive, meaningful, and seeks to repair harm.

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Justice in and of itself is complex and subjective. It takes time and effort to right the wrongs that have affected not only the victim but the community and the offender as well.

Restorative justice takes effort and has sometimes been criticized for not functioning in all cases. The high level of restoration can only occur if all participants are willing and able to put in an effort for reconciliation.

### **Advantages and Disadvantages**

Although the list is not exhaustive or specific to anti-harassment provisions (sections 8.1 and 8.2) in Bylaw 14614, Administration has identified the following advantages to applying restorative justice in general:

1. Decrease in repeat offending - though results vary widely, there appears to be evidence that some decrease in reoffence occurs when restorative justice is applied.
2. Victim satisfaction - compared to traditional court systems, victims tend to express higher satisfaction with both the process and outcomes.
3. Offender satisfaction - compared to traditional court systems, offenders tend to express higher levels of satisfaction. This finding comes with the caveat that where restitution decisions are harsher, offenders are less likely to express satisfaction.
4. Empowering victims and their communities whereby community involvement helps create more resilient and connected communities.

The following challenges and disadvantages have been identified:

1. Restorative justice requires all parties to agree to be involved - while Administration can direct officers to engage in restorative justice, those who perpetrate negative behaviours and those who are impacted by those behaviours must be willing to participate in the process for it to be viable.
2. Restorative justice requires that the offender admit wrongdoing and acceptance of the victim to participate - in traditional court processes admitting guilt is routinely advised against by representative lawyers. This theme regularly appears in popular culture and may be exacerbated by a lack of trust in law enforcement.
3. Fully restorative justice requires community involvement - selection and involvement of that community would be dependent on the restorative justice provider.
4. Restorative justice processes may be difficult to execute after a violation ticket has been written - offering cancellation or withdrawal of court proceedings does not necessarily coincide with the voluntary nature of restorative justice practices.
5. Identifying who will offer the services on a case-by-case basis and who will be in charge of that facilitation.
6. Additionally, once a violation ticket has been written, the individual charged with the offence may proceed through the provincially-mandated legal system, for example by paying the ticket voluntarily, which would lead to closing of the file and loss of opportunity for restorative justice, or failing to appear which could lead to automatic conviction and imposition of a fine. The provincially-prescribed process complicates the City's ability to follow up with and divert offenders who may benefit most from restorative justice approaches.

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7. The complex boundaries and/or thresholds as to what is considered a bylaw offence versus a criminal offence (hate-motivated or bias-motivated crime). Restorative justice efforts are better suited for other orders of government, who have more involvement in judicial processes.
8. Restorative justice processes may heighten the risk of a) retraumatization of the victim b) new trauma for the victim and c) renewed anger and hostility by the parties involved.
9. In cases where the parties are unknown to one another, the use of restorative justice can be characterized as having greater complexity and being more resource intensive.

## **COMMUNITY INSIGHT**

Due to internal Administrative capacity constraints, Administration began engagement on this motion in late 2022. Administration conducted two focus groups in September 2022 to inquire about the potential for restorative justice options with regards to harassment-related bylaw offences within the City of Edmonton. The engagement was City-led, with representatives from expert teams, members of the Anti-Racism Advisory Committee and the public in attendance. While Administration strived to reach diverse and impacted communities, uptake on the topic was limited. The same questions and overview were provided to participants in order to uncover individual understanding of the practices along with concerns in any future state application. While the answers varied widely, some themes emerged:

1. The majority of participants requested more information on what the implementation of restorative justice practices would look like in the context of harassment-based bylaw situations before committing to a favourable or unfavourable opinion.
2. Understanding of restorative justice practices varied from expert to layperson.
3. Most participants seemed to have some understanding of the principles of restorative justice, however, many advised that they had never seen or been involved with formal applications.
4. Some concerns were raised that this process, especially in light of hate-motivated harassment, may demand too much emotional labour from the victims.
5. A number of participants stated that restorative justice seemed like a plausible alternative to retributive justice for harassment cases; specifically to enable dialogue about discrimination with Edmontonians.
6. Cultural practices were important, however, identity markers like race, gender, sexual orientation, and previous experiences with harassment are also significant elements that could influence the involvement of various parties in a future restorative justice practice.
7. Culturally-trained facilitators and/or mediators play a crucial role in the success of the restorative process to guarantee trust of all parties. Fears and concerns about revictimization and retraumatization were consistent.
8. Trauma triggers vary person by person, even for persons from similar backgrounds, thus future implementation would need to consider protocols that are culturally appropriate along with a system that is tailored to affected individuals and their communities.
9. Questions about the overall operations, case-by-case application, management, capacity and facilitation of the services were raised several times.
10. Participants were clear that more education, engagement and public awareness is required regarding restorative justice practices.

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11. Any services or implementation must be victim-centric and community empowered.
12. Formal engagement with diverse groups and community leaders would be necessary once a proof of concept was established.

Administration consulted with Women's Advocacy Voice of Edmonton (WAVE) Committee and the Government of Alberta's Hate Crime Liaison, however, any future conversations about restorative justice would require additional insight from other Council advisory committees, persons with lived experience as members of impacted communities and other interested persons. As part of developing the 2021 harassment amendments to Bylaw 14614, Administration received insight from other committees, including WAVE, in order to inform those regulatory changes. However, it's important to note that those amendments currently fall under the retributive justice framework.

Administration attempted to engage other stakeholder groups and other Council Advisory committees in order to further inform the report. Many requests went unanswered. Should implementation of restorative justice practices at the City be required, a broader approach and insight from key community stakeholders would be needed.

### **Future considerations for community insight**

The feedback collected through the community engagement to support this report was mixed and inconclusive about using restorative justice within sections 8.1 and 8.2 of Bylaw 14614. Should restorative justice options be further explored, future engagement must be undertaken in a safe space in order to avoid any revictimization of willing participants. Administration would require formal engagement with cultural interpreters and a trauma-informed team to support the respondents. Ignoring a holistic approach to requisite services and insight could have negative consequences.

Throughout the engagement opportunities it became apparent that other local, provincial, federal and other organizations are either developing or evaluating similar practices specifically amongst affected cultural communities. If directed to move forward with this initiative, Administration would formally engage other groups actively involved in such endeavours including the Government of Alberta, the Edmonton Indigenous Court, and the justice system at large. Administration's role within this space remains unclear, as the overall administration of justice remains largely a provincial responsibility.

In 2020, the provincial government created a Restorative Justice Committee and is currently running the Wiyasôw Iskweêw Restorative Justice pilot project in the Provincial Court of Alberta and the Court of King's Bench of Alberta. Administration is paying close attention to that project for potential integration with City of Edmonton processes. Given this more systemic implementation of restorative justice, it is recommended that a stand alone system for restorative justice not be created for use within Bylaw 14614.

The Public Spaces Bylaws Review work being currently undertaken by Administration will take a more holistic review of enforcement practices from a community safety and equity lens to ensure clear and consistent application of practices as well as look for possible enforcement alternatives, which may include restorative justice practices where appropriate. Further engagement with the community will be conducted as part of the Public Spaces Bylaws Review work.

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### **GBA+**

The City of Edmonton uses GBA+ to help make evidence-based decisions, challenge assumptions, and adjust programs, services and spaces in order to offer enhanced life experiences while learning from diverse communities and their experiences.

Incidents of harassment based on protected grounds disproportionately impacts people from diverse and marginalized communities and backgrounds and often go under or unreported.

Although not exhaustive as it relates to implementing a restorative justice program, Administration identified the following through research and community insight:

- Cultural practices are critical and that previous experience with harassment plays an integral role that may very well influence the engagement of all parties in such a process.
- The need for culturally-trained facilitators are required for any success in this space.
- Such an approach raised fears and concerns about revictimization and retraumatization.
- The need for culturally appropriate protocols that are victim-centric and tailored to those that have been impacted along with their communities.
- Additional engagement, education and community awareness is required to inform future decision making.

Administration must continue to actively engage people through the different intersectional lenses that may represent them and define their experiences with harassment in Edmonton. Additional engagement will be used when considering future conversations regarding jurisdictional responsibilities as it relates to any future state restorative justice programming.