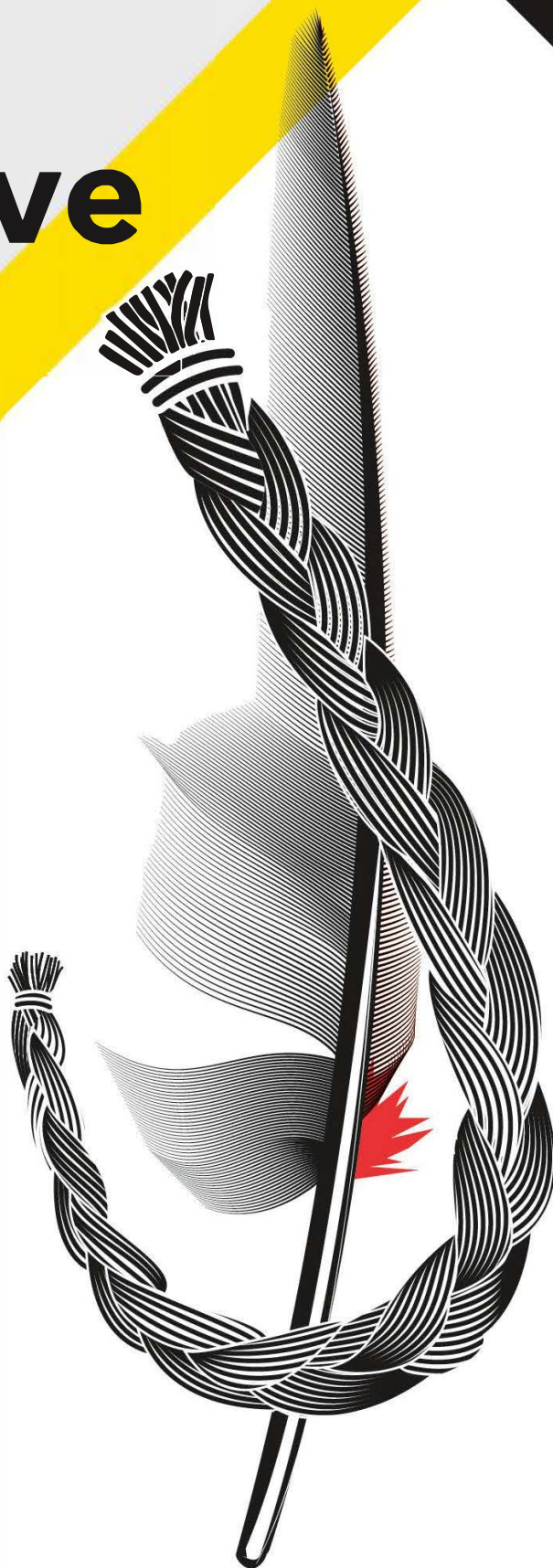


TRAINING TOOLKIT

Restorative Justice



Nokiiwin
TRIBAL COUNCIL

 **The Law
Foundation
of Ontario**
Advancing access to justice

 **Ontario**
MINISTRY OF THE
ATTORNEY GENERAL



ABOUT RESTORATIVE JUSTICE AND THE TOOLKIT

The Restorative Justice toolkit was created to support Nokiiwin member First Nations in practicing the Anishinaabe principle of Mino-Bimaadiziwin – a feeling of spiritual, physical, emotional, and mental balance – that is at the heart of Indigenous conceptions of wellness. The goal of Restorative Justice is to empower the whole community in resolving conflict, restoring, and strengthening relationships, and helping individuals on their path to healing and wellness. The toolkit is specifically written for community justice workers, justice committees, health and social workers justice portfolio holders, and leadership who wish to start a Restorative Justice Program for criminal diversion in their community. The material will be helpful for Band Councillors, staff, and managers to increase their knowledge about the Restorative Justice processes.

The Restorative Justice toolkit is the product of a partnership between the Fort William First Nation Restorative Justice Program and Nokiiwin Tribal Council's Access to Justice department, who together held a Restorative Justice Training Conference that took place on December 3 and 4, 2019 in Thunder Bay, Ontario. Miigwech to the Nokiiwin Justice Advisory Steering Committee members who provided guidance and direction for this endeavour: Yvette Metansinine and Densie Bottle (Animbiigoo Zaagi'igan Anishinaabek), Lillian Calder (Bingwi Neyaashi Anishinaabek), Maryann Mickelson (Biinjitiwaabik Zaaging Anishinaabek), Renee Pervais (Fort William First Nation), Louis Kwissiwa and Rosalind Andrews (Netmizaaggamig Nishnaabeg).



WHAT IS RESTORATIVE JUSTICE?

Restorative Justice is an approach that views crime and conflict principally as harm done to people and relationships. It strives to provide support and safe opportunities for the voluntary participation and communication between those affected (victims, offenders, and community) in an effort to encourage accountability, reparation, and movement towards understanding, feelings of satisfaction, healing, safety and a sense of closure. Restorative Justice integrates culturally appropriate practices embracing the Circle and Healing & Wellness Plan, removing the individual from the Euro-Canadian judiciary system and giving them the opportunity to make the necessary changes with the support of the community. The program focuses on a system of accountability, making amends, and healing. The program engages



community members, including Elders, Youth, Traditional resource people, victims of crime and the person who has caused harm, in a culturally appropriate and community led holistic approach. The focus is on pre- and post-charge diversion which includes alternative dispute resolution circles, pre- and post-charge programs utilizing elders and Traditional resources, aftercare, reintegration support and referral process for participants to existing services in addition to those developed in the community. The program supports the revitalization of Indigenous legal practices while providing support and alternative paths forward to those in pre- and post-charge situations.

"We all have a responsibility to push for change, to create our own system that reflects our teachings and that reflects a good way of life."

Marlene Pierre, FWFN



HOW IS RESTORATIVE JUSTICE APPLIED?

Restorative Justice is an approach that seeks to determine and acknowledge who has been hurt, what their needs are, and how these needs can be addressed. Restorative Justice uses processes that are collaborative and inclusive to all parties affected- victim, offender, and community.

Restorative Justice processes include but are not limited to:

- Victim-Offender Mediation
- Circle Processes
- Alternative Dispute Resolution

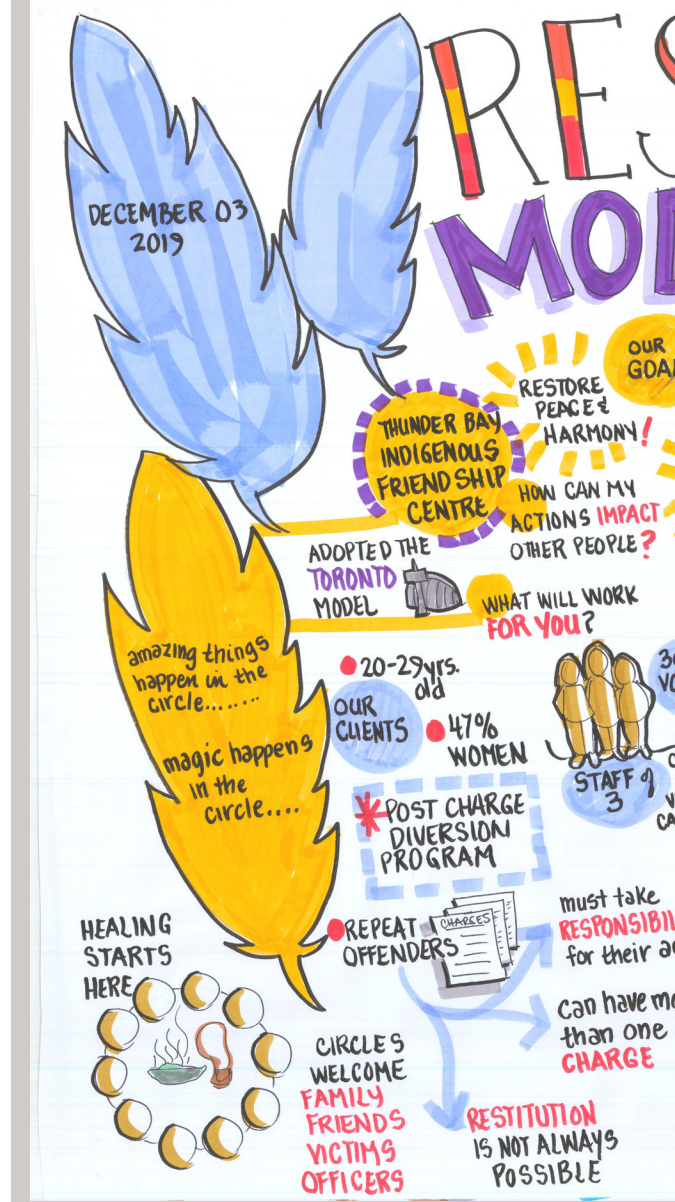


THE DIVERSION PROCESS

When an accused person wishes to participate in a diversion process, the Crown works with community justice workers to determine whether the individual meets the criteria for diversion. If the individual is eligible, the individual will meet with the community justice worker to learn about the diversion process and what will be expected of them. If the accused decides to participate in the diversion program, they will meet with the community justice worker to discuss the charges. The community justice worker will communicate with the victim to allow opportunity for input. The community justice worker will then confirm the diversion with the Crown. The community Restorative

A DIVERSION SUCCESS STORY

One participant shared her personal success story. She participated in the diversion process as part of her husband's circle. Her husband was a person dealing with addiction and was away from the family for months at a time. She called the police many times, mainly in concern for his safety while driving. She informed the police that he was driving with no insurance and expired stickers. As a result of being charged, he went through treatment for the third time. When he came home he had to face the reality of the charges. At traffic court they met with a lawyer and were put in touch with a representative from his community's Restorative Justice Program. A plan was put in place for her husband; many people were part of the circle. It was a powerful experience because the participants shared how they felt everyone had a say. All her husband's charges were dropped. This helped out the family financially. He is one year sober today, has his license back, has bought a vehicle, and has restored his relationship with his children. She said "meegwetch" to the people who put this system of restorative justice in place for her people. This system understands that there is a much deeper reason for people's actions.



Justice program will facilitate the diversion process (circle, healing plan, and follow up) and will report back to the Crown. If the accused successfully completes their healing plan, the charges will be dropped. If the individual is unsuccessful, the matter returns to court and proceeds in the western manner.

The process used in Thunder Bay, as described above, is similar to most programs across the province. For some individuals, diversion does not work; however, the connections made with the community and supports established continue to have an impact on the individual's healing journey.





THE Importance



BLANKET CEREMONY

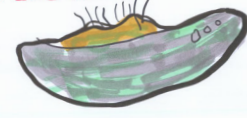
- after 1 moon, on a hill, near water
- presentation to creator
- naming



ELDERS KEEP THE CEREMONIES STRONG... especially for the CHILDREN

THE ROLE of the ELDER

TO ENSURE THE TRANSFER OF KNOWLEDGE



ENTER FROM THE EAST



BE RESPECTFUL OF THE TERRITORY YOU ARE IN & FOLLOW THEIR LEAD



remembering GIFTS

calling our ANCESTORS to JOIN US

provide a sense of BELONGING...

Elders SHARED STORIES about the land... Legends taught children lessons

• ELDERS REMINDED MEN of their RESPONSIBILITIES

• ELDERS may be HEALERS

• ELDERS have spent a LONG TIME gathering KNOWLEDGE about Life



7 RITES of PASSAGE CEREMONIES

children learn by WATCHING

Grounding us from the BEGINNING ...in the womb...

OF CEREMONY



WE COME FROM ABOVE....

ANY PLACE CAN BE YOUR LODGE

THE SEVEN GRANDFATHER TEACHINGS

TO SHOW THE CONDUCT OF LIVING

*RESPECT

FOR OURSELVES & OTHERS

WE WOULD NEVER BELITTLE SOMEONE WEAKER

WHEN SOMEONE IS DOING GOOD RAISE THEM UP

OUR SONGS
OUR DRUMS
OUR LIFE
come from ABOVE

MAKE OUR CHILDREN STRONG

WE KEEP GOING FORWARD

EVERYONE NEEDS TO KNOW WHERE WE COME FROM



WHAT CHARGES QUALIFY FOR RESTORATIVE JUSTICE?

PRE-CHARGE:

- Theft
- Assault
- Break and Enter
- Breaches
- Bullying

POST CHARGE:

- Less than \$5000.00
- Theft Under, S.334(b);
- Assault
- Take Motor Vehicle Without Consent, S.335 (1);
- False Pretenses Under, S. 362 (2);
- False Statement Under, S.362;
- Break & Enter, S.348;
- Assault, S. 266;
- Mischief Under, S. 430 (4); and
- Cause Disturbance, S. 175

When the crown prosecutor receives a case involving an individual that identifies as Indigenous, whether status or non-status, living on or off reserve, the crown must then decide whether the case qualifies for diversion to Restorative Justice or remain in the Euro-Canadian justice system. If an accused's charges qualify for diversion, the individual has the opportunity to proceed through the Restorative Justice process. Crown prosecutors are given direction from the Ministry of the Attorney General about what charges can and cannot be diverted. The most serious charges, for example, murder, gun violence, kidnapping, child pornography, and human trafficking, cannot be diverted. For youth, the list of charges that cannot be diverted is similar; however, exceptions can be made at the discretion of the Crown. Some charges are presumptively ineligible for diversion: meaning certain charges are often ineligible for diversion to Restorative Justice, but may be considered for diversion under certain circumstances. One such example is intimate partner violence and criminal harassment, where the crown and judge look at the circumstances involved in the incident and determine qualification for diversion.

The Community Justice Programs Directive, which contains a full list of charges that cannot be diverted or are presumptively ineligible, as well as directives related to Indigenous People, youth and victims are included in Appendix B and can be found in the Crown Prosecution Manual, available online at: https://files.ontario.ca/books/crown_prosecution_manual_english_1.pdf

Any charge that is not on this list is eligible to be diverted. Having a criminal record does not disqualify someone from diversion.



WHO CAN MAKE A REFERRAL TO THE RESTORATIVE JUSTICE PROGRAM?

- Individuals can self-refer
- Parents
- Community Resource Workers
- Chief and Council
- Principal/Teachers
- Probation Officers
- Community Legal Workers
- Duty Counsel
- Crown Attorneys
- Judges

THE CIRCLE PROCESS

In the circle, we are truth (Debwewin) tellers, we speak our truths. Our elders encourage young people to become not only hearers and speakers of truth, but to become people of integrity, deceiving neither themselves nor others as they grow in the wisdom of our ways.

CONFIDENTIALITY

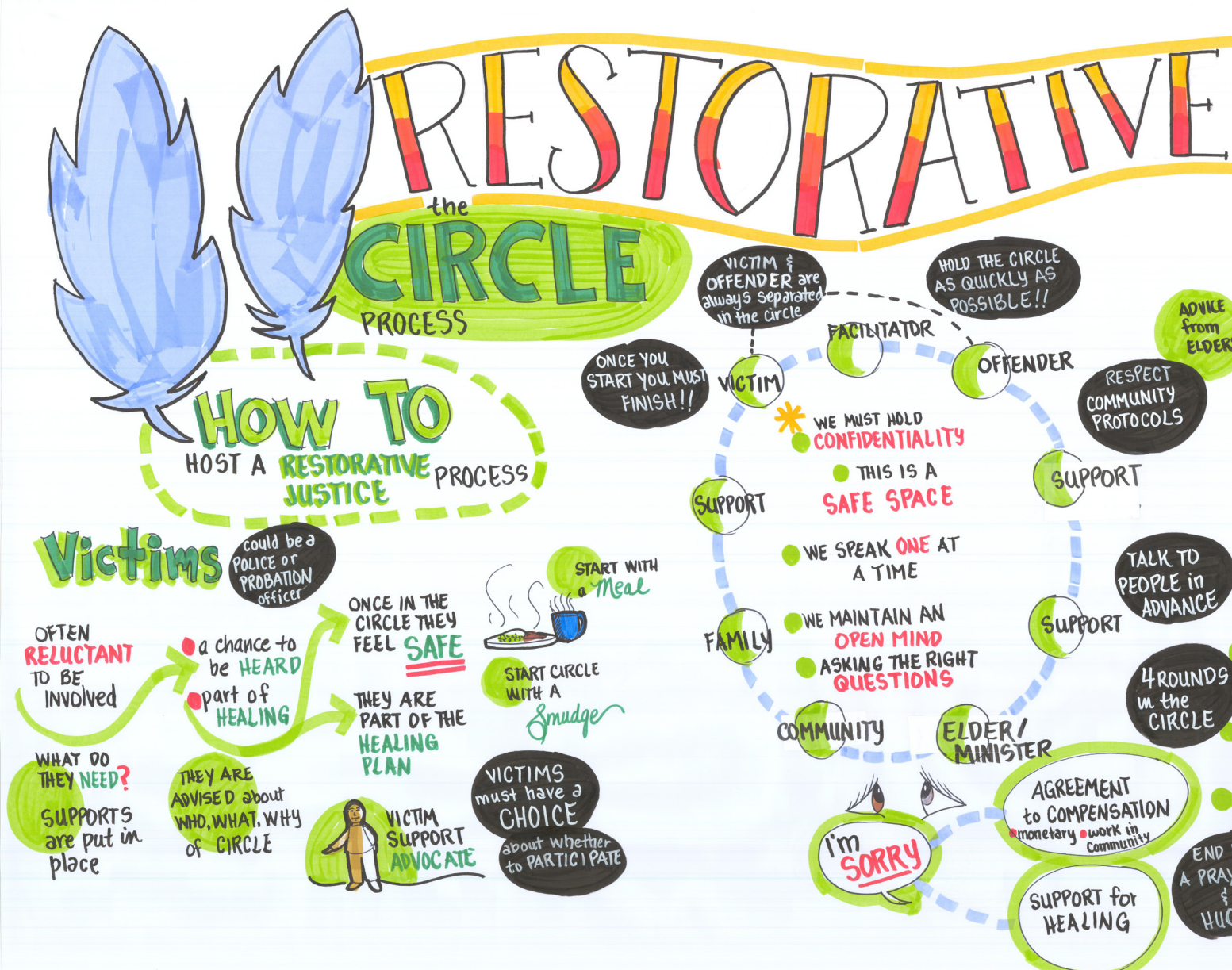
Circles are confidential – what is said, heard, and seen in the circle stays in the circle. Participants sign a circle confidentiality agreement prior to the start of one. Who Participates?

Participation in the circle is voluntary for both the offender and the victim. The community justice worker prepares both the offender and victim before the circle takes place to explain the process and to identify supports who will participate in the circle.

Supports for both the offender and the victim are family, friends, community resource workers, and spiritual support persons. A victim support worker can be asked participate and if none is available in the community. If a victim chooses not to participate, a victim surrogate (someone who experienced a similar harm) can be asked to join the circle or a victim impact statement can be read to all participants. Justice personnel such as police and probation officers can also be invited to attend.

An Elder can have a vital role in the circle by opening the circle in prayer, conducting ceremony and sharing teachings that highlight the sacredness of the circle.





Circles are kind and gentle, the participants are not there to judge the person who caused harm. We want to know who was affected, how they were affected, and how we can restore relations. Everyone has equal seating in the circle, equal opportunity to speak and to be heard, and to make consensual decision-making.

"The highest wisdom of all is the wisdom of love (Zaagidwin), compassion for all regardless of whether others feel it is deserved or not. It is the wisdom of love that both protects, heals, and provides safe space for victims as well as brings the possibility of restoration for those who have caused harm; because the wisdom of love also knows that those who have hurt others have also first been victims."

After prayer and ceremony, everyone around the circle is invited to speak.

Round 1

Introductions are made around the circle and why they are here. It is important that only one person talks at a time in a circle. A sacred item, such as a Feather or a Talking Stick is often used.

Justice TRAINING



Round 2

The offender is given the opportunity to talk about what happened. Restorative questions are asked, such as:

What happened?

What were you thinking of at the time?

What have you thought about since?

Who has been affected by what you have done?

In what way have they been affected?

What do you think you need to do to make things right?

The victim is also given equal opportunity to speak next. Questions are asked, such as:

What did you think when you realized what had happened?

What impact has this incident had on you and others?

What has been the hardest thing for you?

What do you think needs to happen to make things right?



Round 3

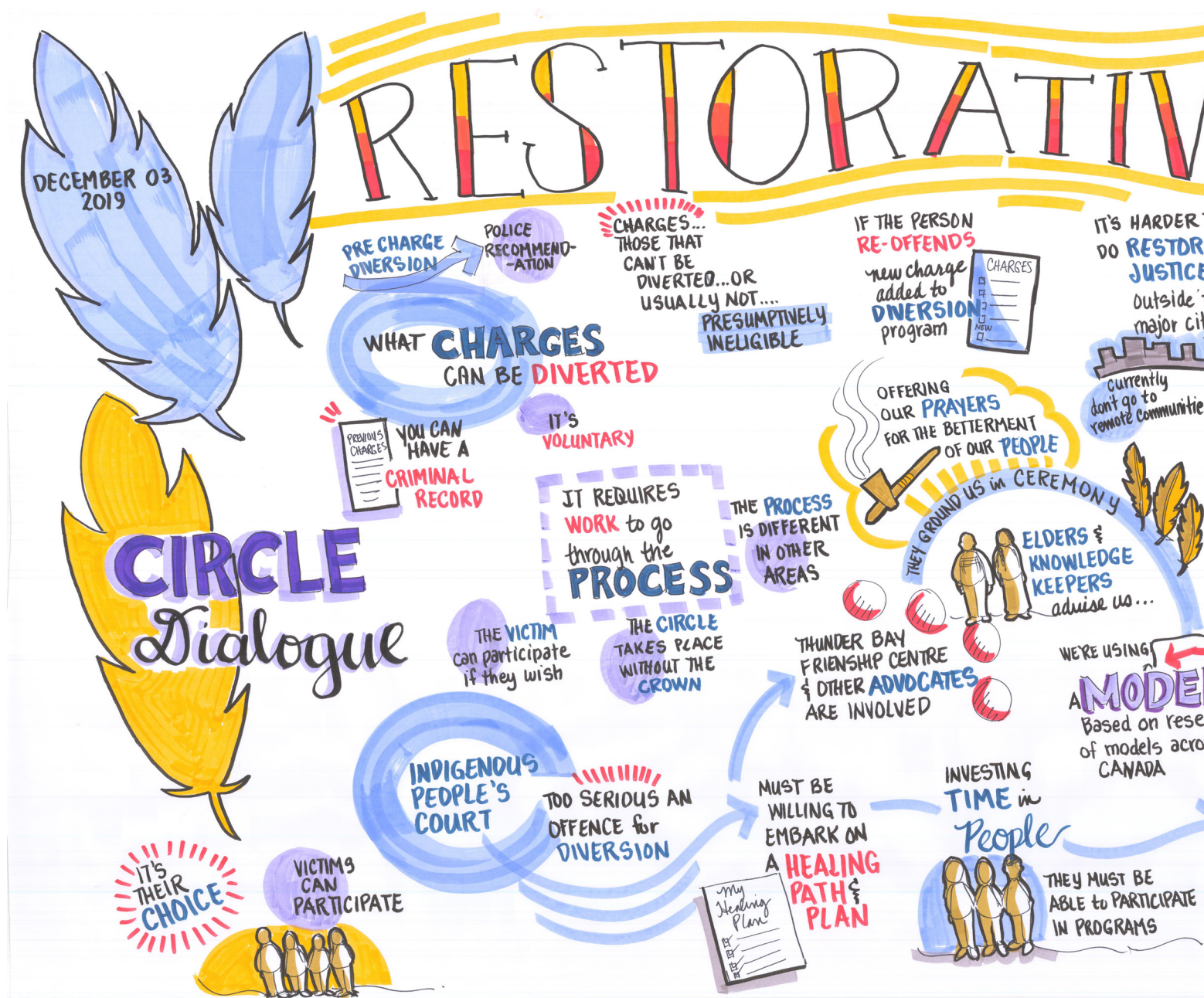
Everyone is given a chance to share their support and to offer recommendations about what the offender can do to make things right. The goal is to develop meaningful recommendations that will satisfy the victim's needs as well as help the offender in their path toward healing. Often, two to three recommendations are made. The offender will voluntarily agree to recommendations that can be realistically accomplished.

Round 4

Final words and closing prayer.

The community justice worker will draw up the Healing and Wellness Plan for the offender to sign. Follow up circles are valuable to assess progress and to determine whether adjustments to the Healing and Wellness Plan are needed.

The offender remains in contact with the community justice worker following through with the plan. When it is completed, a progress report to the Crown is completed by the community justice worker.



Whenever we do something good,
you can call that restorative justice
because we are reclaiming and
practicing what is right and what
Creator gave us in the teachings.

– Elder Marlene Pierre, Fort William First Nation



Nokiiwin Tribal Council Restorative Justice Program is committed to working with communities to provide support as they develop their own restorative justice programs. A report of the Restorative Justice Training Conference held on December 3-4, 2020 is available for download on our website at

WWW.NOKIIWIN.COM



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