

Turks and Caicos Islands

Supreme Court Ordinance

## Restorative Justice Rules, 2022

Legal Notice 29 of 2022

Legislation as at 14 April 2022

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# Turks and Caicos Islands

## Supreme Court Ordinance

### Restorative Justice Rules, 2022

#### Legal Notice 29 of 2022

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Assented to on 14 April 2022

Commenced on 1 June 2022

*[This is the version of this document from 14 April 2022.]*

MADE by the Chief Justice under section 16 of the Supreme Court Ordinance and sections 73A and 74 of the Criminal Procedure Ordinance.

#### 1. Citation and commencement

These Rules may be cited as the Restorative Justice Rules 2022, and shall come into operation on 1 June 2022.

#### 2. Interpretation

In these Rules—

"**Committee**" means the Restorative Justice Committee established under rule 4;

"**court**" means the Magistrate's Court or the Supreme Court;

"**guardian**" means a person who is for the time being in charge of, or has control over a juvenile or person under any disability, including mental incapacity;

"**juvenile**" means a person who is under the age of sixteen years;

"**offender**" means a person including a juvenile, who has been convicted of an offence by a court of competent jurisdiction, and includes a person who pleads guilty to the offence and is convicted of that offence;

"**participant**" means—

- (a) a victim and offender, as well as any person affected or impacted by a crime committed, who submits voluntarily to the restorative justice process;

- (b) an attorney of a person specified in paragraph (a), where applicable, and includes an attorney holding a watching brief; and

"**participants**" shall be construed accordingly;

"**Practitioner's Bundle**" means a summary of the information of the case, including any statement of the offender, witnesses and the victim, which is put together by the Restorative Justice Administrator, from the file of the court, the Prosecution or the police;

"**referral order**" means an order of the court directing a participant to attend a restorative justice session;

"**Restorative Justice Administrator**" means an official appointed by the Chief Justice to be responsible for the management of the restorative justice process;

"**Restorative Justice Practitioner**" means a person who is certified as Restorative Justice Practitioner, and is approved by the Committee and placed on the Roster;

"**restorative justice process**" means the process that brings a victim and offender into communication for the purpose of repairing the harm caused by the offender and finding a positive way forward;

"**Roster**" means the Roster of Restorative Justice Practitioners;

"**session**" means a restorative justice session held between participants and a Restorative Justice Practitioner in the restorative justice process;

"**victim**" means a person against whom a crime has been committed, including a juvenile.

### 3. Application

These Rules shall not apply to—

- (a) drug offences;
- (b) immigration offences, human trafficking and slavery;
- (c) money laundering offences; and
- (d) any other proceedings in the Magistrate's Court or the Supreme Court in respect of any offence which may be identified by the Director of Public Prosecutions not to be suitable for recourse to restorative justice.

### 4. Establishment of Restorative Justice Committee

- (1) There is established the Restorative Justice Committee, which shall be composed of—
  - (a) a Judge of the Supreme Court, who shall be the Chairperson;
  - (b) the Chief Magistrate;
  - (c) the Registrar of the Supreme Court;
  - (d) the President of the Bar Council; and
  - (e) a mental health practitioner.
- (2) The Committee shall meet as often as is necessary for the discharge of its duties, but in any case, at least every two months.
- (3) The members of the Committee shall not be liable to any person for any act or omission in connection with the performance of their duties, except to the extent such limitation of liability is prohibited by law.

## 5. Duties of the Committee

- (1) The Committee shall be responsible for—
  - (a) monitoring the implementation of matters relating to restorative justice;
  - (b) consideration of applications for approval of a restorative justice practitioner as a Restorative Justice Practitioner; and
  - (c) compiling the list of restorative justice practitioners approved as Restorative Justice Practitioners and placed on the Roster.
- (2) The Committee shall determine, in consultation with the Chief Justice, the fee payable, if any, to a Restorative Justice Practitioner for successful mediation of referred cases.
- (3) The Committee shall analyse the statistics and evaluation forms received from the Restorative Justice Administrator, and make recommendations to the Chief Justice for improved service.
- (4) The Committee shall from time to time, assess the effectiveness of the restorative justice process and make recommendations to the Chief Justice for changes and additions that may improve the process.
- (5) The Committee shall submit a report of its work to the Chief Justice every six months.

## 6. Restorative Justice Administrator

- (1) The ADR Administrator appointed by the Chief Justice under the Court-Connected Mediation Rules 2021, will also be responsible for the management of the mechanism of restorative justice in the Islands, and shall in that capacity operate as, and be referred to as the Restorative Justice Administrator.
- (2) The Restorative Justice Administrator may be assisted by a person who may be appointed as Deputy Administrator in any of the islands.
- (3) The Restorative Justice Administrator shall—
  - (a) be responsible for the scheduling of a session in accordance with these Rules;
  - (b) be responsible for the management of the Roster and the selection of a Restorative Justice Practitioner for each session;
  - (c) schedule the date a session will take place;
  - (d) prepare a Practitioner's Bundle;
  - (e) be responsible for creating an opportunity for a safe dialogue between participants by—
    - (i) identifying what needs to be put in place to enable a restorative justice process to take place, including acquiring any information that will help in the assessment of the risk of harm during the restorative justice process;
    - (ii) where necessary, providing for an interpreter, including sign language;
    - (iii) where necessary, arranging for psychological evaluation or support, having regard to the emotional impact of the crime on the victim, or the emotional state of the victim;
    - (iv) determining the mode of a session;
    - (v) working with a social worker assigned for each case by the court to determine how consent will be considered and secured from a parent or guardian where the potential participant is a child or person under a disability;
    - (vi) discussing confidentiality with the participants and advise on the level of confidentiality especially where minors are concerned;

- (vii) advising how information about participants and the process will be recorded and with whom it may be shared where the victim may wish to write or speak publicly about their experience, especially where a minor is concerned;
- (f) make available to a participant and attorney, the Restorative Justice Consent Form set out in Form 3, and the Confidentiality Form where appropriate, in Form 4, of the Schedule; and assist an unrepresented participant with the forms as necessary;
- (g) set out the summary of the case, including the crime committed, the stage of the criminal process, whether before or after conviction, the plea of guilt simpliciter or with qualification, as well as the focus of a session;
- (h) assist a Restorative Justice Practitioner to set out the Notice of Outcome of Session Form in accordance with Form 7 set out in the Schedule;
- (i) require a participant and attorney, as applicable, to complete the evaluation form set out in Forms 11 and 12 of the Schedule;
- (j) set out the hours of work done by each Restorative Justice Practitioner and keep a ledger on cases settled, including on a pro bono basis;
- (k) coordinate meetings among the Restorative Justice Practitioners to enable them to exchange views, experiences and learn from one another;
- (l) prepare monthly restorative justice statistics and submit as returns in accordance with Form 13 set out in the Schedule, and forward the returns with the evaluation forms to the Committee;
- (m) forward monthly restorative justice statistics to the Chief Justice.

## 7. Application for training Restorative Justice Practitioner

- (1) A person who wishes to be trained as a Restorative Justice Practitioner shall apply to the Registrar of the Supreme Court in Form 1 set out in the Schedule.
- (2) The application may be submitted in person or by email at [courtADR@gov.tc](mailto:courtADR@gov.tc).

## 8. Application for approval as Restorative Justice Practitioner

- (1) A person who is trained and certified as a Restorative Justice Practitioner shall not practise as a Restorative Justice Practitioner without undergoing the approval process under this rule
- (2) A person who is trained and certified by the University of West Indies, as equipped to provide service as a Restorative Justice Practitioner may apply to the Registrar of the Supreme Court to be approved as a Restorative Justice Practitioner.
- (3) An application made under subrule (2) shall be in Form 1 set out in the Schedule, and may be submitted in person or by email at [courtADR@gov.tc](mailto:courtADR@gov.tc).
- (4) An application made under subrule (2) shall be accompanied by proof that the person—
  - (a) has satisfactorily completed the training for restorative justice practitioners and has been certified by the University of West Indies;
  - (b) is a fit and proper person; and
  - (c) does not hold a criminal conviction involving fraud or other dishonesty; provided that an applicant who has been convicted of an offence may not be disqualified if the conviction is more than ten years old.
- (5) An application shall be placed before the Committee for consideration, and the Committee may grant the application or refuse it.

- (6) The Committee shall approve an application of a person who has completed training and is certified by the University of West Indies, to be a Restorative Justice Practitioner if the Committee is satisfied that the person satisfies the requirements.
- (7) Where the Committee decides to refuse the application, written reasons shall be provided by the Chairperson within one month of the refusal.
- (8) A person who is approved by the Committee to be a Restorative Justice Practitioner shall be placed on the Roster.
- (9) A Restorative Justice Practitioner must make known his availability to the Restorative Justice Administrator for case assignment.
- (10) A Restorative Justice Practitioner shall be engaged as a neutral third party to promote reconciliation between the victim and offender of crime.
- (11) A Restorative Justice Practitioner may advertise his services, but shall not make false claims about the restorative justice process, or his qualifications and abilities to assure specific outcomes.

## **9. Roster of Certified Restorative Justice Practitioners**

- (1) There shall be kept at the Supreme Court Registry, Magistrate's Court Registry, and in the office of the Restorative Justice Administrator, a roster known as the Roster of Certified Restorative Justice Practitioners.
- (2) The Roster shall be compiled from the list of persons who have been approved as Restorative Justice Practitioners, and shall be published in the Gazette every quarter of the year.
- (3) The Roster shall contain the following—
  - (a) name of Restorative Justice Practitioner and professional designation;
  - (b) date approved and placed on the dates; and
  - (c) times of availability of each Restorative Justice Practitioner on the Roster to conduct a session.
- (4) The schedule of availability shall be updated weekly at the Supreme Court Registry with copies kept by the Restorative Justice Administrator for the day-to-day operation of the Roster.
- (5) If a Restorative Justice Practitioner has been charged with or convicted of an offence, he shall immediately bring this to the attention of the Restorative Justice Administrator who in turn shall bring this to the attention of the Committee without delay.
- (6) A certificate of conviction issued by the Court shall be sufficient evidence of the Restorative Justice Practitioner's conviction for an offence.
- (7) On receipt of information that a Restorative Justice Practitioner has been charged or convicted of an offence, the Committee may call upon him to show cause why he should not be removed from the Roster.
- (8) If a conviction is ten years old or more, it shall not affect the eligibility of a person to serve as a Restorative Justice Practitioner, and the person shall not be removed from the Roster.

## **10. Restorative justice process**

- (1) A participant may be referred to the restorative justice process by a Judge or Magistrate.
- (2) In making the referral, the following matters may be considered, and the referral order shall reflect the matters to be considered for compliance by the Restorative Justice Administrator—
  - (a) that both a victim and offender have consented to the process;

- (b) the communication skills of a participant, and consideration may be given to the use of an interpreter, or a person with sign language skill where available;
- (c) the age of a participant, as a juvenile may need to be accompanied;
- (d) disability or ill health of any participant, including any mental health issues;
- (e) the level of violence involved in the harm, if any, which may make an in-person session unsuitable;
- (f) prior offending history relating to any participant;
- (g) substance abuse history relating to any participant;
- (h) power relationships between any of the participants, or between any participant and the Restorative Justice Practitioner;
- (i) any ongoing emotional impact of the original incident or harm likely to affect the restorative justice process or any participant, or the emotional state of a participant, which may require psychological counselling, support or evaluation.

## 11. Referral by court

- (1) A referral order to the restorative justice process may be made by a Judge or Magistrate in Form 2 set out in the Schedule.
- (2) A referral may be made where—
  - (a) the offender has pleaded guilty, is remorseful and has consented to be a part of the restorative justice process, and the victim has consented to the restorative justice process for reconciliation, including receiving reparation;
  - (b) the court has found the offender guilty and before sentence is passed, to aid in determining the appropriateness of a sentence;
  - (c) where the court has found the offender guilty and considers that reparation may be necessary to the healing of the victim;
  - (d) where the court has found the offender guilty and considers, having regard to the nature of the crime, the relationship between the victim and offender, and the disruption of the community to which both belong, and that a victim-offender reconciliation may be necessary for the community to heal from the adverse effects of the crime committed; or
  - (e) where the offender is a juvenile.

## 12. Duties of Restorative Justice Administrator after referral

- (1) After a referral order is made, the file on which the order is placed, shall be taken up by the Restorative Justice Administrator who shall—
  - (a) allocate a restorative justice number to the file;
  - (b) obtain a signature of each participant, and attorney where applicable, on a Restorative Justice Consent in Form 3 set out in the Schedule;
  - (c) request that the participants choose their Restorative Justice Practitioner from the Roster, and two alternative Restorative Justice Practitioners, in Form 5 set out in the Schedule;
  - (d) assign a Restorative Justice Practitioner for the participants where they are unable or unwilling to agree on one;
  - (e) assign a date for the session and give notice in Form 6 set out in the Schedule;
  - (f) direct the participants to a venue to participate in an in person or remote session; and



- (g) provide the participants with a link for remote proceedings, as applicable.
- (2) A session shall be held no later than fourteen days of the referral order, unless otherwise ordered by the Judge or Magistrate, on application by any participant, or the Restorative Justice Practitioner.
- (3) A session may be adjourned from day-to-day as necessary, but an adjournment must be avoided as much as possible.
- (4) The Restorative Justice Practitioner shall, after the participants' attendance at a session, report the outcome of the session to the court which made the referral, by filing a Notice of Outcome of Session Form in Form 7 set out in the Schedule.
- (5) Where the matter is settled, the court shall adopt the recommendations of the Restorative Justice Practitioner—
  - (a) regarding an order for reparation; or
  - (b) to sentencing.

### 13. Determination of suitability of restorative justice process

- (1) A Restorative Justice Practitioner working with the Restorative Justice Administrator shall determine the suitability of the restorative justice process even after the court has made the referral order.
- (2) To make a determination in terms of subrule (1), the Restorative Justice Administrator, in consultation with the Restorative Justice Practitioner may arrange for the attendance of—
  - (a) a parent or guardian, where the victim or offender is a juvenile or person under a disability;
  - (b) a mental health practitioner;
  - (c) a social worker; or
  - (d) any other person whose input or evaluation of the impact of the crime on the victim or the community, may be relevant to reconciliation.
- (3) The Restorative Justice Administrator and the Restorative Justice Practitioner shall make a determination by—
  - (a) providing a description of what actually happens during a session, including the roles and responsibilities of those who will be involved, in particular, the victim must be provided with as much information as possible, in order to give an informed consent to the process;
  - (b) testing the ability of the offender to give an accurate description of the offence to gain insight into the empathy the offender has for the offence.
- (4) An assessment that an offender has no insight into the offence and its impact may disqualify the case to be taken through the restorative justice process.
- (5) Following the preparatory process in subrules (2) and (3), the participants shall sign the Consent Form.
- (6) Where the Restorative Justice Administrator and the Restorative Justice Practitioner have determined the case may go through a restorative justice process, a session may be held.

### 14. Session

- (1) A session may be held in person, remotely by using electronic means, or in a hybrid manner, as the Restorative Justice Administrator may determine.
- (2) A session may be held remotely where it is unsafe or inappropriate in the context of the case, or where the participants are unwilling to meet in person.

- (3) Before a session, a victim may send a victim impact statement to the Restorative Justice Administrator who shall submit it together with the Practitioner's Bundle to the Restorative Justice Practitioner.
- (4) Where any or all of the participants have failed to meet the pre-session requirements within the stipulated time, the Restorative Justice Administrator shall, at least two days before a session, inform the assigned Restorative Justice Practitioner, and schedule with the agreement of the Restorative Justice Practitioner, a session on another date.
- (5) Before each session, a Restorative Justice Practitioner shall—
  - (a) prepare a script to guide the process before a session;
  - (b) explain the restorative justice process, its purpose and potential benefits, to manage the participant's expectations of the process;
  - (c) conduct the session which may be in person, remote by or in a hybrid manner.
- (6) A participant shall not pay any fees for the restorative process.

### **15. Failure to attend session**

- (1) Where a participant fails to attend a session, the Restorative Justice Practitioner shall make a report to the referring court in Form 8 set out in the Schedule.
- (2) If it is the offender who fails to attend, and he is in custody, the reason for the non-attendance may be ascertained by the Restorative Justice Practitioner.
- (3) If the offender refuses to attend a session, the court may comment on this and take it into consideration in passing sentence.
- (4) The Court shall not insist that a victim attend a session, or that failure to attend should be to the benefit of the offender in the sentence to be passed for the commission of the offence.
- (5) Where both the victim and offender fail to attend a session, the Judge or Magistrate who has conduct of the case shall proceed with the sentencing without making a comment on the failure of the offender to attend the session.
- (6) A victim who has consented to attend a session may withdraw his consent in Form 9 set out in the Schedule, and state his reasons for withdrawal.
- (7) Upon receipt of the withdrawal form from a victim, the Restorative Justice Administrator shall inform the offender immediately and thereafter, inform the referring court no more than three days after receipt of that form.

### **16. Protections of Restorative Justice Practitioner**

- (1) A Restorative Justice Practitioner shall not be liable to any person for any act or omission in connection with the session, except to the extent such limitation of liability is prohibited by law.
- (2) A Restorative Justice Practitioner shall not be called as a witness to give evidence of any matter which occurred at any stage of the restorative justice process or any confidential information which came to his knowledge during the process.

### **17. Payment of Restorative Justice Practitioners**

- (1) A Restorative Justice Practitioner who is not a public officer, may be entitled to be paid on a fee basis for a session as recommended by the Committee and approved by the Chief Justice.
- (2) The Committee shall determine if any fee shall be paid to a public officer who performs this additional service as a Restorative Justice Practitioner.

## 18. Outcome of restorative justice process

- (1) Upon the conclusion of a session, the outcome, shall be set out in Form 7 set out in the Schedule.
- (2) Any agreement including agreement to reparations may be set out by the Restorative Justice Practitioner in the Terms of Settlement Form 10 set out in the Schedule.
- (3) The signed terms of settlement shall be *prima facie* evidence of the outcome of a session and shall be considered by the court in its orders, including sentencing.

## 19. Complaints

- (1) A complaint against a Restorative Justice Practitioner shall be submitted to the Restorative Justice Administrator, who shall forward it to the Committee.
- (2) A complaint founded on matters relating to a session, shall not be brought against a Restorative Justice Practitioner after a period of two weeks following a session.
- (3) The Committee may extend the time to bring a complaint, upon representation being made to it, stating the reasons for the delay in bringing the complaint.
- (4) The Committee shall investigate the complaint, observing the rules of natural justice.
- (5) The Committee shall inform the Restorative Justice Practitioner of the complaint and request him to respond orally, or in writing within a period of fourteen days.
- (6) If the Restorative Justice Practitioner fails to respond within fourteen days of receipt of the complaint and request for response, the allegations shall be deemed admitted.

## 20. Investigation process and sanctions

- (1) The Committee shall investigate a complaint in accordance with Part II of the Code of Conduct and Disciplinary Rules for Mediators.
- (2) Where a complaint is found to have merit, the Committee shall recommend a sanction in accordance with Part II of the Code of Conduct and Disciplinary Rules for Mediators.
- (3) The Chief Justice, if satisfied that the outcome of the complaint is justified, shall approve the sanction recommended and forward the approval to the Committee for implementation.
- (4) On receipt of approval of the recommended sanction from the Chief Justice, the Committee shall impose the sanction on the Restorative Justice Practitioner.
- (5) Where the Restorative Justice Practitioner is a public officer, discipline shall be in consultation with the institution from which the Restorative Justice Practitioner is drawn.

## 21. Confidentiality

- (1) The Restorative Justice Administrator, Restorative Justice Practitioner, a member of the Committee or any person assisting the Committee, working or assisting in the restorative justice process, shall observe and preserve the confidentiality of all matters coming before them in the course of their work, and the requirement for confidentiality shall subsist even after the termination of the member's or person's term of office or mandate.
- (2) The Restorative Justice Administrator, Restorative Justice Practitioner, a member of the Committee or a person to whom confidential information is revealed through working with the Committee or in the restorative justice process shall not disclose that information to any person, unless—
  - (a) he is required to do so under any law or for purposes of any judicial proceedings;
  - (b) the information is used for academic purposes; or

- (c) where the information relates to the proceedings and outcome, the Committee determines that it can be disclosed.
- (3) A member or person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for a term of three months, or to both.

## 22. Evaluation of the restorative justice process

- (1) The Restorative Justice Administrator shall keep an Evaluation Form in Form 11 set out in the Schedule, which shall be completed by the participants, and where applicable, by the attorney in Form 12 set out in the Schedule.
- (2) The completed Evaluation Form shall be forwarded by the Restorative Justice Administrator to the Committee, which shall analyse it to identify any areas of weakness, in order to inform improvements to the service.
- (3) The Evaluation Form must be completed by all participants and their attorneys, where applicable.

## 23. Addresses

- (1) All mail deliverable physically in all matters pertaining to restorative justice shall be sent to the Restorative Justice Restorative Administrator, Registry of the Supreme Court.
- (2) All electronic Communication shall be to [courtADR@gov.tc](mailto:courtADR@gov.tc).

## Schedule

### Forms

#### Form 1 (Rules 7(1) and 8(3))

##### *Application to be trained as a Restorative Justice Practitioner or to be approved as a Restorative Justice Practitioner*

Please take notice that:

1. I, \_\_\_\_\_ the undersigned, apply: *(Please check as applicable)*
- to be trained as a Restorative Justice Practitioner
  - to be approved as a Roster of Restorative Justice Practitioners.

I confirm that:

(For Applicants for Training)

- I shall attend the Restorative Justice Training which is offered by the Judiciary of Turks and Caicos Islands free of charge.

(For approval as Restorative Justice Practitioner)

- that I have completed the Restorative Justice Training offered for the Judiciary of Turks and Caicos Islands by the University of West Indies;
- that I am a fit and proper person to work as a Restorative Justice Practitioner in the Judiciary of the Turks and Caicos Islands;
- that I do not hold a criminal conviction involving fraud or other dishonesty; or hold a conviction which is less than ten years

- That as much as practicable, I shall take up an assignment by the Restorative Justice Administrator to conduct mediation, and notify the Restorative Justice Administrator of my availability.
- that I shall disclose any interest I have in a case that may be potentially assigned to me.
- that I shall use my best endeavours to help participants settle their disputes without partiality.
- that I shall abide by the Code of Conduct and Disciplinary Rules for Mediators.

Name \_\_\_\_\_

Residential Address \_\_\_\_\_

Postal Address \_\_\_\_\_

Telephone/Email Address \_\_\_\_\_

Signed: \_\_\_\_\_ Date \_\_\_\_\_

## Form 2 (Rule 11(1))

### *Victim Offender Restorative Justice referral order*

Between

***Regina***

***Versus***

***(Defendant)***

Order

Made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Upon this matter coming on before: the Judge or Magistrate

AND UPON THE COURT being of the opinion that the offender be made to repair the harm caused by his criminal act'

THE PARTICIPANTS having been provided with information regarding Restorative Justice

AND THE PARTICIPANTS having consented to refer the matter to the restorative process

IT IS ORDERED THAT:

- (1) The participants to these proceedings attend a session with a Restorative Justice Practitioner selected by them or at their direction from the Roster of Restorative Justice Practitioners (as well as two Alternates), within seven days of today's date.
- (2) If the participants fail to select a Restorative Justice Practitioner or cannot agree upon a mutually acceptable Restorative Justice Practitioner, within five days of this Order, the Restorative Justice Administrator shall select a Restorative Justice Practitioner from the Roster of Restorative Justice Practitioners, in consultation with the participants where applicable.
- (3) The participants shall sign a Restorative Justice Consent Form.
- (4) Where the participants with full knowledge, agree that the matter be kept confidential in whole or in part, the participants shall sign a Confidentiality Form before the Restorative Justice Administrator to prohibit wholly or in part, disclosure of the matters subjected to the restorative justice process.
- (5) The victim(s) may send to the Restorative Justice Administrator, a victim impact statement.

- (6) A person within the community who is affected by the criminal act may also send to the Restorative Justice Administrator a statement of the harm caused, felt or experienced by him or any member of the community to which he belongs as a result of the criminal act, at least three days before the commencement of a session.
- (7) Where the referral follows a plea of guilt, or where the court has found the offender guilty proceedings may be adjourned for the session to take place, and for the Restorative Justice Practitioner to provide the Restorative Justice Administrator with a report which shall be forwarded to the court to aid in the process of sentencing and/or reparation/ restitution.
- (8) If an offender fails to attend the session without reasonable notice, or unreasonably terminates the session, a report shall be made to the Court by the Restorative Justice Administrator through the Registrar; it may be the subject of comment by the court in the sentencing procedure.

\_\_\_\_\_  
Registrar/Magistrate/Judge

### **Form 3 (Rules 6(3)(f) and 12(1)(b))**

#### ***Restorative Justice consent form***

***Regina***

***Versus***

***Defendant***

RESTORATIVE JUSTICE FILE NO \_\_\_\_\_

REFERRING COURT \_\_\_\_\_

DATE OF REFERRAL \_\_\_\_\_

CASE TITLE \_\_\_\_\_

The Restorative Justice Administrator having explained to the participants and their Attorneys, as applicable, the nature of the restorative justice process. The participants to this action confirm their voluntary consent to the restorative justice process.

Proposed Date of Session \_\_\_\_\_

Restorative Justice Practitioner Agreed on by the Participants \_\_\_\_\_

CONSENT GIVEN BY:

Victim/Parent/Guardian/Committee

Name and Signature:

1. \_\_\_\_\_

2. \_\_\_\_\_

Offender/Parent/Guardian

Name and Signature:

1. \_\_\_\_\_

2. \_\_\_\_\_  
 Declared this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_  
 After the content had been read over/interpreted to \_\_\_\_\_  
 Which he seemed to understand before signing/making of mark  
 \_\_\_\_\_  
 Restorative Justice Administrator

### **Form 4 (Rule 6(3)(f))**

#### ***Confidentiality form***

***Regina***

***Versus***

***Defendant***

The Parties will participate in a restorative justice session to be conducted in accordance with the Restorative Justice Rules.

The parties agree that:

- (a) statements made in the session shall not be disclosed to any person outside the restorative justice process except as permitted under the Rules, or as may be permitted by the other participant, or failing that, by the Restorative Justice Committee to which an application for the purpose may be made in writing.
- (b) the notes, records and recollections of the Restorative Justice Practitioner conducting the session are confidential and may not be used for any purpose.
- (c) in pursuance of paragraph (b) where a session is completed, all notes taken by the Restorative Justice Practitioner shall be destroyed in the presence of the participants.
- (d) no recordings or capture of information by electronic devices shall be allowed in any session;

Dated: \_\_\_\_\_

Victim \_\_\_\_\_

Defendant \_\_\_\_\_

To: The Restorative Justice Administrator

### **Form 5 (Rule 12 (1)(c))**

#### ***Notice of selection of Restorative Justice Practitioner***

***Regina***

***Versus***

***Defendant***

PLEASE TAKE NOTICE that the participants have selected \_\_\_\_\_ as Restorative Justice Practitioner, and \_\_\_\_\_ and \_\_\_\_\_ as an Alternate from the Restorative Justice Practitioners.

Dated: \_\_\_\_\_

1. VICTIM/PARENT GUARDIAN

2. ATTORNEY(S)

(Name Address Telephone Number Email)

1 \_\_\_\_\_

2 \_\_\_\_\_

DEFENDANT /PARENT/GUARDIAN

ATTORNEY

(Name Address Telephone Number Email)

1 \_\_\_\_\_

2 \_\_\_\_\_

To: Restorative Justice Administrator

### **Form 6 (Rule 12(1)(e))**

#### ***Notice of Scheduled Restorative Justice Session***

***Regina***

***Versus***

***(Defendant)***

Notice of Scheduled Restorative Justice Session

TAKE NOTICE that \_\_\_\_\_ has been selected as Restorative Justice Practitioner for a restorative justice session in the above-mentioned case. The session is scheduled to take place on the \_\_\_\_\_ day of \_\_\_\_\_ from \_\_\_\_\_ am/pm to \_\_\_\_\_ am/p at \_\_\_\_\_

You should plan to remain throughout the scheduled time.

Dated:

Signed: \_\_\_\_\_

Restorative Justice Administrator

(Name, address, telephone number, email)

To: The Restorative Justice Practitioner (Name, address, telephone number, email)

And To: The Participants

(Names, addresses, telephone numbers, email addresses)

### **Form 7 (Rules 6(3)(h), 12(4) and 18(1))**

#### ***Notice of outcome of session***

***Regina***



***Versus***  
***(Defendant)***

TAKE NOTICE that a restorative justice session was scheduled or conducted in this proceedings on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

(Please check all applicable boxes)

- The restorative justice session was successful. Resulting in a degree of reconciliation
- The terms of the Settlement Agreement including reparations are annexed hereto
- The participants requested an extension of the time for the restorative process/ agreed to meet for further a further session.
- The participants failed to settle.

Reasons:

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Restorative Justice Practitioner

(Name, address, telephone number, email)

Signed: \_\_\_\_\_

Restorative Justice Administrator

To: The Registrar

**Form 8 (Rule 15(1))**

***Certificate of non-compliance***

***Regina***

***Versus***

***(Defendant)***

PLEASE TAKE NOTICE that

VICTIM

1. The Victim(s) failed to attend the restorative justice session.
2. The Victim(s) or their representative opted out of the session after it started.
3. The Victim terminated the session without giving just reasons.

DERFENDANT

1. The Defendant or his representative opted out of the session after it started.

2. The Defendant terminated the restorative justice session without just cause or without providing reasons.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Restorative Justice Practitioner

(Name, address, telephone number, email)

To: The Restorative Justice Administrator

And to: The Registrar

### **Form 9 (Rule 15(6))**

#### ***Withdrawal from Restorative Justice Session***

***Regina***

***Versus***

***(Defendant)***

Please take notice that I, \_\_\_\_\_ hereby apply to withdraw from the Restorative Justice Session scheduled to take place between the participants on \_\_\_\_\_ Before \_\_\_\_\_ (Restorative Justice Practitioner)

My reasons for withdrawal are as follows:

\_\_\_\_\_  
\_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

To the Restorative Justice Administrator

And To: The Registrar

### **Form 10 (Rule 18(2))**

#### ***Terms of settlement form***

***Regina***

***Versus***

***(Defendant)***

PLEASE TAKE NOTICE that the participants herein have settled their dispute

DATE OF SETTLEMENT \_\_\_\_\_

REFERRING COURT \_\_\_\_\_

TERMS OF SETTLEMENT

\_\_\_\_\_

## REPARATIONS (IF ANY)

\_\_\_\_\_

## VICTIM(S)

Name and Signature of:

1 \_\_\_\_\_

2. Attorney(s)

\_\_\_\_\_

## DEFENDANT(S)

Name and Signature of:

1 \_\_\_\_\_

2. \_\_\_\_\_

Dated:

Signed: \_\_\_\_\_

Restorative Justice Practitioner

(Name, address, telephone number, email)

To: The Restorative Justice Administrator

And to: The Registrar

**Form 11 (Rules 6(3(i) and 22(1))*****Evaluation form for participants******Regina******Versus******(Defendant)***

Please fill out this form after the restorative justice session and return it to the Restorative Justice Administrator.

All responses to this questionnaire are strictly confidential.

Name of the Restorative Justice Practitioner \_\_\_\_\_

Date of the Restorative Justice Session: \_\_\_\_\_

Please circle as appropriate:-

Victim \_\_\_\_ Defendant \_\_\_\_ Other \_\_\_\_

1. Were you represented by an Attorney in this case? Yes \_\_\_\_ No \_\_\_\_

2. Were you satisfied with the terms of the Settlement Agreement Yes \_\_\_\_ No \_\_\_\_

3. Do you think that the Restorative Justice Practitioner did everything he could to bring about a Settlement Agreement? Yes \_\_\_\_ No \_\_\_\_

Was your session conducted in person or remotely (electronic), or in hybrid manner?

\_\_\_\_\_

Were you satisfied with the mode of the restorative justice process (in person/remote/hybrid) Yes \_\_\_\_ No \_\_\_\_

Were you satisfied with facilities and surroundings? Yes \_\_\_\_ No \_\_\_\_

If NO, please identify any areas of dissatisfaction:

\_\_\_\_\_

4. Did the Administrator/Restorative Justice Practitioner explain the restorative justice process clearly so that you knew what to expect during the session. Yes \_\_\_\_ No \_\_\_\_
5. Did the Restorative Justice Practitioner ask appropriate questions to determine the harm, impact of the crime on the victim, victim's family and/or community? Yes \_\_\_\_ No \_\_\_\_
6. Did the Restorative Justice Practitioner treat all participants with fairness? Yes \_\_\_\_ No \_\_\_\_
7. Overall, were you satisfied with the session? \_\_\_\_\_

### **Form 12 (Rules 6(3(i) and 22(1))**

#### ***Evaluation form for attorneys***

***Regina***

***Versus***

***(Defendant)***

Please fill out this form after the restorative justice session and return it to the RESTORATIVE JUSTICE Administrator on completion of the restorative justice session.

All responses to this questionnaire are strictly confidential.

Name of the Restorative Justice Practitioner

\_\_\_\_\_

Are you representing:

1. the Victim(s)
2. The Defendant(s)

Date of the Restorative Justice Session \_\_\_\_\_

Outcome: settled - a degree of reconciliation effected Yes \_\_\_\_ No \_\_\_\_

Settled: Reparations agreed Yes \_\_\_\_ No \_\_\_\_

Not settled Reason(s) \_\_\_\_\_

Were you satisfied with the Restorative Justice Practitioner's level of participation Yes \_\_\_\_ No \_\_\_\_

Did the Restorative Justice Administrator and Restorative Justice Practitioner explain the restorative justice process to the participants adequately Yes \_\_\_\_ No \_\_\_\_

4. Did the Restorative Justice Practitioner manage expectation Yes \_\_\_\_ No \_\_\_\_

*[Please note: numbering as in original.]*

5. Overall, were you are satisfied that the Restorative Justice Practitioner was impartial and treated both sides with fairness?

Did you consider the restorative justice process appropriate for the crime Yes \_\_\_\_ No \_\_\_\_

6. Do you think the assignment of this case to the restorative justice process will produce the desired result of healing and reconciliation and/or restoration?

7. Were you satisfied with the way the Restorative Justice Administrator performed his functions to provide for a safe and effective session? Yes \_\_\_\_ No \_\_\_\_

If No, please tell us what should have been done:

### Form 13 (Rule 6(3)(1))

#### *Monthly return form*

Month _____ Year _____						
Date	Names of Restorative Justice Practitioners	No. of cases pending for Restorative Justice during the period	Number of sessions conducted	No. of sessions with positive outcome	No. of cases in which reparations ordered	No. of cases requiring experts (mental health practitioners)

Name \_\_\_\_\_

Signature \_\_\_\_\_

Restorative Justice Administrator

To: The Chief Justice

And To: The Restorative Justice Committee

### Explanatory note

*(This Note is not part of the Rules)*

**WHEREAS** section 74 empowers the Chief Justice to make Rules for the effective application and implementation of the Criminal Procedure Ordinance.

**WHEREAS** section 73A of the Criminal Procedure (Amendment) Ordinance 2021, vests the power in the Chief Justice to create a mechanism for alternative dispute resolution.

**AND WHEREAS**, the overriding objective of the Criminal Procedure Rules is to deal with cases justly, which includes the duty of the court to promote settlement or reconciliation wherever possible.

**AND THEREORE** the Chief Justice makes these Rules under section 16 of the Supreme Court Ordinance and sections 73A and 74 of the Criminal Procedure Ordinance, for the introduction of the Restorative Justice Process to promote Victim-Offender Reconciliation in criminal cases in the Courts of the Turks and Caicos Islands.