

Dialogue on Restorative Justice and Women

Who Are Victims of Violence

A Discussion Paper in preparation for the Restorative Justice and
Violence Against Women Workshop: January 15, 2002

Justice Options for Women Project started in 1999 because some community members and organizations were concerned that restorative justice approaches would be used in cases where women had been victims of violence without enough consideration of the needs of women and consultation with the community. A Steering Committee for the project said at that time - we need to ensure women have options within the justice system, and not just focus on restorative justice.

The Justice Options for Women, Phase One study asked women who were victims of violence about their perspectives, needs and issues in relation to justice. The women interviewed said they needed: access to help to stop the abuse, financial security, prevention of violence, safety for their children, ability to have some control over the process, safety for themselves, to maintain family relationships, respect, the abuser to be held accountable, support in making changes and breaking the cycle of abuse, and information and education.

Women and justice system representatives acknowledged that the system alone cannot keep women safe. The study made four recommendations:

- ongoing support for women to access justice and other services
- communities and families to take violence against women seriously
- mechanism to deal with the total justice system and hold the system accountable
- financial support for victims to leave and start over.¹

Many of the concerns identified by the women interviewed were also shared by community advocates, police and government staff. Most acknowledged that while there are improvements, there is no one answer to understanding and preventing women abuse.

With a clearer understanding of these needs and concerns Justice Options Phase Two, *Restorative Justice and Women Who Are Victims of Violence*, wants to better understand the problems and benefits of restorative justice approaches for women, while emphasizing important points. The purpose of the discussion paper and workshop is to:

- Ensure that violence against women continues to be a criminal matter seriously addressed by the justice system
- Ensure that the needs of women who are victims of violence are addressed in any activities about restorative justice
- Learn together and dialogue on issues of restorative justice and violence against women.

This Phase of Justice Options for Women focuses on criminal areas and does not address family law issues. We recognize that some restorative processes like mediation are used in family law areas and that there are many issues that need to be addressed when there has been abuse in relationships. What we learn from this Phase can contribute to ongoing discussions in family law areas.



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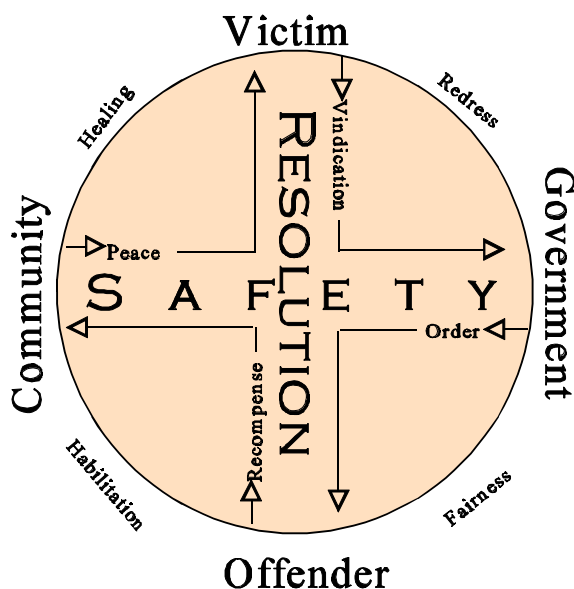
Dialogue Needed

There is a tension in discussions about restorative justice and violence against women. At one end of the spectrum are those who say restorative approaches should never be used when women are victims of violence. At the other end of the spectrum are those who say that restorative approaches should be used in all types of crime, no matter how serious the crime or the relationship of victim and abuser. People's views are across the spectrum. Some are outside the spectrum all together because people lack knowledge or are confused about restorative justice. There are two key reasons why dialogue is needed:

1. Women need information on which they can make informed choices. Women need to better understand the risks and benefits of justice and restorative processes and be supported in making choices for themselves and their children
2. Justice and community interveners need to better understand the dynamics of woman abuse and restorative justice so that they may ensure policies and procedures do not revictimize women, and so that they may adequately inform women about processes and their choices.

Restorative Justice

Unlike the justice system that has two parties active in court - an offender, represented by a defence attorney, and the state, represented by the Crown attorney, a restorative model has four parties: victim, offender, community and government. The diagram shows the roles of each of the players in achieving justice². The victim's role is to describe the impact of the offence and what might be needed to assist with healing. The offender's role is to accept responsibility for harmful actions and to make amends. The community's role is to make safety and peace, with a responsibility to the victim to assist with healing and to the offender to support rehabilitation. The government's role is to assist in providing safety by maintaining order in the community. Government's role also includes ensuring fairness to the offender and redress for the victim.



Values of Restorative Justice

Restorative justice is based on a set of values or guiding principles. Some of the values include:

- meaningful, and voluntary participation of the victim, the offender and the affected family or community in a face to face meeting to get information, express feelings, develop understanding and arrive at an agreement.
- the offender attempting to repair the harm done to the extent possible, as an action symbolic of taking responsibility for the harm done
- when a crime occurs, both the victim and the offender can experience alienation from the family or community; value is placed on reconnecting both into community life as whole, contributing, and productive persons.

Types of Restorative Processes

Restorative justice is a way of “looking at” the problem of crime, rather than a specific program. Programs that are restorative include: mediation, family group conferencing, community justice forums, and circle sentencing. Restorative justice processes can be used at any phase of the criminal justice system. They require the voluntary participation of the victim. The offender must accept responsibility for the actions and agree to participate.

Victim-Offender Mediation

A person trained in the process of mediation meets with the victim and offender to increase understanding about the impact of the crime and to negotiate an agreement.

Family Group Conferencing

A facilitator meets with the victim, offender, affected

family and friends, and service providers, to increase understanding about the impact of the harm and to support the extended family in making a plan for safety and healing.

Community Justice Forums

A facilitator meets with the victim, offender, family, and community to increase understanding about the impact of the harm done and to make a plan for healing the harm and holding the offender accountable. Community Justice Forums are most often used with young offenders.

Circle Sentencing

A facilitator meets with the victim, offender and broader community to consider the impact of the crime on the victim and community and recommend an appropriate sentence to the judge. Some Circles are for the purpose of healing rather than sentencing. Circles are often held in Aboriginal communities.

Alternative Measures are options to formal criminal processes that are based in law and are guided by policy. Alternative Measures can be, but are not necessarily, restorative. The Prince Edward Island Alternative Measures Policy is usually a pre-charge process, amended in 1998 to include Community Justice Forums.

Violence Against Women

Women are victims of violence when they are hurt physically, sexually assaulted, emotionally abused, threatened, when someone takes or damages their property. Physical violence is punching, kicking, biting, shoving, or injury with a weapon; sexual assault is rape or any forced sex act; threatening is someone saying they will harm or kill or following a person when told to stop; taking or damaging property can include stealing money or things, destroying things, and hurting or killing pets. Emotional abuse is criticism, name-calling and put-downs, alone or in front of friends, which attacks self-esteem.

Women are usually harmed by people they know. Women who are sexually assaulted usually know the person who hurt them. Women who are married or living common-law are sometimes hurt by their partner. Sometimes a friend, teacher, parent or other relative may harm them. Occasionally, a woman

doesn't know the person who harms her.

Some women are more vulnerable to abuse because of characteristics like age (younger or older), disability, language or cultural differences. It is important to keep these differences in mind when thinking about women who are victims of violence.

Woman abuse in relationships includes a cycle of violence with escalation, abusive incident, and cooling down that can result in apology and "making-up". Without intervention to stop the abuse, there is a pattern of abusive incidents being more frequent and the "making-up" period shorter.

Revictimization of Women

While not every woman who has experienced abuse will be impacted in the same way, there are some commonalities that could contribute to re-victimization of a woman during justice or restorative justice approaches.

Here are a few examples. A woman may:

- blame herself, take responsibility for the abuse
- feel shame and humiliation that this is happening
- fear that she or her family will experience more violence, or possibly be killed for telling someone about the abuse or asserting her needs
- be socially isolated, either by her partner or by the nature of the offense, and lack support networks of friends or family.

If the offender was the woman's intimate partner, she may, for example:

- have learned during her relationship with the offender to give in and pacify her abuser in hopes of avoiding further abuse
- be financially dependant on the offender
- tend to be passive rather than assertive in her interpersonal relationships
- have low self-esteem
- tend to minimize the violence as a way of coping with the pain in her life.

Men who abuse their partners also tend to have some common characteristics which raise concerns about the potential for restorative approaches re-victimizing women. For example, abusers may:

- deny responsibility for their actions
- blame the victim
- denigrate the victim (privately and publicly)
- minimize or deny the abuse.

Concerns about Restorative Justice and Violence Against Women

A recent study examining issues of restorative justice and violence against women identified concerns about restorative justice³. They include -

- lack of consultation about restorative justice with women's and victim's groups
- women victims feel pressured to participate and do not get enough information on which to make a choice about participating or not
- power dynamics of abuse are not addressed, making the process unbalanced and putting women at risk
- programs are being transferred to the community without resources made available
- restorative justice initiatives don't sufficiently denounce domestic and sexual violence, and
- lack of training for facilitators, standards and evaluation mean the issues are not recognized.

Other concerns raised by victim advocates include:

- because men who abuse their partners often deny or minimize the abuse or blame the victim, restorative justice may be inappropriate in cases of family violence
- abusive men are often very manipulative and facilitators are not trained to recognize this
- programs do not effectively deal with issues of safety and risk
- participating in restorative justice processes that address "relationship issues" can foster inappropriate feelings of responsibility in the victims
- appropriately trained and culturally appropriate support persons may not be available to women
- primary focus is on offenders and not victims
- programs and standards are not often regulated, monitored or evaluated
- confusion resulting from lack of knowledge about restorative processes and woman abuse by justice personnel.

Revictimization of Women in Restorative Processes

Some women have reported feeling revictimized by their participation in restorative processes. For example, in a report by the Pauktuutit Inuit Women's Association, the story of an Inuit woman, the victim of domestic violence who participated in a sentencing circle is told:

"She does not speak unless the judge calls upon her to do so, an indication of the measure of control held over her by her husband, who also sits in the circle. Of the many participants in the circle, only three have any supportive relationship to the victim ... The sentence that is created requires that the victim and accused attend counselling together, a proposal put forward by the accused. ... the judge strongly suggests to the victim that this would be a positive step, assuming the victim would speak out should the abuse continue. She hears the suggestion as an order and feels compelled to comply, though it is unlikely that she will speak out about further abuse. She has been silenced not only by fear of her husband but by a process that should have given her voice."⁴

Potential Benefits of Restorative Justice for Women Who Are Victims of Abuse

There have been many criticisms of the current justice system by women's advocates. A report by the Provincial Association Against Family Violence, Newfoundland and Labrador reports that "Victims have concerns about not being part of the process and sometimes feel like they are on trial instead of the person who has committed the crime. This has been particularly true for women who are victims of abuse and violence. The system is often very confusing and overwhelming."⁵

Research into the experience of victims has found that "contact between the victim and the administration of criminal justice has been primarily a source of revictimization, frustration, disappointment and annoyance rather than a contribution to the solution to the victim's problems."⁶ Many victims' advocates suggest that victim's needs are not met in a criminal proceeding whose objectives often have very little to do with the actual harm done to the victim and that this process does not encourage the offender to truly take responsibility for his actions.⁷ In some cases, women who have participated in a restorative process report satisfaction. One B.C.

woman, who was a victim of rape over 20 years ago, stated in a video that she has healed more in the few years since participating in a restorative process and hearing her attacker admit that he was guilty, after having been found not guilty in court, than she had done in the 18 years since the rape.⁸

While there are strong concerns being raised, one Canadian researcher found that the majority of victim's advocates interviewed "are not necessarily opposed to restorative justice initiatives *per se*. Rather, they are opposed to these initiatives as they are presently developed and applied. Many of the women consulted during this research stated that they had serious concerns with present restorative justice initiatives but that they would like to see them implemented in the future, after careful research and consultation has been carried out."⁹

Those who support the use of restorative justice in cases of violence against women note the following potential benefits:¹⁰

- opportunity that the victim has to speak and be listened to without judgement can assist in healing
- initiatives are designed to allow healing processes to occur
- an opportunity to involve the victim's family and community in helping to prevent future violence and to support the victim
- immigrant women who fear jeopardizing Canadian status or police involvement may feel more comfortable in a process which does not involve the police
- women who do not speak the language have an opportunity to involve community members from their own culture as facilitators or supporters
- the offender is held accountable for his actions and for the harm done and has an opportunity to hear from the victim how his actions impacted on her

Key Issues to Consider

Shared goals of justice and restorative processes are to end abuse, keep women safe, and hold offenders accountable. Restorative processes also want to aid victims in healing, offenders in habilitation, and communities in restoring balance. There are many issues to consider in addressing woman abuse, especially using restorative processes.

Improving the Justice System

The risk of revictimization of women through criminal justice processes is well documented. There is a risk that the flaws of criminal justice processes will be repeated in restorative processes. It is important that needed improvements in the justice system are made, and the problems not passed on to alternatives.¹¹

Goals of Restorative Processes

The primary goals of restorative justice interventions must be clear. When the goals focus on the offender, or cost-savings for the system, risks to the victim increase. A New Zealand study recommends that the primary goals of any intervention in domestic violence situations must be the safety and autonomy of victims over any other outcomes including reconciliation or conciliation of the parties.¹²

Processes with primary goals that are victim focused will include preparation of the victim to ensure the process is voluntary.

Informed Consent

Some women feel pressured by justice personnel, family or an abusive partner to participate in restorative processes. It is essential that participation in restorative processes be voluntary.

Informed consent means that women have a full description of the purpose and process of an intervention and are aware that participation is a choice at every stage of the process. A victim must be made aware that she can stop the process at any time. The consequences and alternatives should be clearly outlined. This is best done by a victim support person.

When the Offender is Known to the Victim

Most reports recommend extreme caution in restorative approaches when the offender is known to the victim.¹³ There are two key issues: feeling of safety and autonomy on the part of the victim, and the ability of the offender to manipulate not only the victim, but the process facilitator.

Reports recommend that mediation, which typically has the goal of negotiating an agreement, is not appropriate in cases of domestic violence or sexual abuse when there is a relationship of some duration.¹⁴

Timing

Restorative processes that are victim focussed take place when the victim is ready. This will mean preparation for the victim so that she may choose if and when to participate. Timing with criminal justice processes may not fit the timing of the victim.

Offender Accountability

While restorative processes showed promise in short-term follow-up, longer-term follow-up resulted in less victim satisfaction. This was related to the lack of follow-through by offenders, and lack of monitoring by anyone.¹⁵

Offender accountability and follow-through, including monitoring by authority is often lacking in restorative processes.

Training

The dynamics of woman abuse are such that without deep understanding of the social and gender dynamics, facilitators of restorative processes inadvertently perpetuate the environment of abuse. Training of facilitators must include gender-based analysis of issues and historical, social, economic, and culturally context of woman abuse.

Some Questions to Think About

1. Is it possible to ensure safety in restorative justice processes (mediation, family group conferencing, community justice forums, circles) for women who have been affected by a violent offence, such as sexual assault or spousal assault?
2. What would be required to ensure such safety?
3. If safety can be achieved, what community resources and expertise would be necessary to prepare women and their abusers for such face to face encounters, to facilitate the encounters and to provide for follow through on any agreements that might be reached?
4. If safety can be achieved, how should the justice system be changed in order to allow for appropriate

restorative justice processes for women who have been victims of violence?¹⁶

5. How can the needs of women who are victims of violence be met? How can the justice system meet these needs? How can restorative processes like mediation, conferencing, and circles, meet these needs. (See needs identified by women, page 1, paragraph 2)

Endnotes

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