

Acknowledgements

The wise guidance of the Advisory Committee initially steered the Justice Options for Women Who Are Victims of Violence Project away from a focus on restorative justice options to justice options in general during Phase One. Their commitment to ensuring justice options as the foundation for the safety of women and children reflects the work of communities and governments in the past twenty-five years to make “public” the abuse of women and children. Restorative justice does need to be addressed, both from the concern that restorative justice risks making woman abuse “private” and for the potential to support women who are victims of violence. This should not detract from the continuing efforts needed in the justice system.

Over 40 women from across Prince Edward Island who had experienced violence participated in Phase One. These women’s voices, included in this report, express their frustration and anger, courage and tenacity, their appreciation for respectfully offered assistance, their concerns about restorative justice and their hopes for options to the justice system. Most of these women are mothers who expressed great concern for their children, now and in the future.

Advisory Committee:

Members of the Advisory Committee met regularly with project staff to provide guidance

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Summary Report

Justice Options for Women Project started in 1999 when 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. The Steering Committee for the project said at that time - we need to work on ensuring justice options for women and children before focussing specifically on restorative justice. While restorative justice does need to be addressed, both from the concern that restorative justice risks making woman abuse “private” and for the potential to support women who are victims of violence, restorative justice options should not detract from the continuing efforts needed in the justice system.

The Project

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. Many of the concerns identified by the women interviewed were also shared by community advocates, police and justice staff. Most acknowledged that while there are improvements, there is no one answer to understanding and preventing women abuse. Women and justice system representatives acknowledged that the system alone cannot keep women safe.

The Phase One 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

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

The Process

Focus groups, workshops and most meetings of the Justice Options Project followed an interest-based approach to problem-solving. The interest-based process is an accepted approach to problem-solving and conflict resolution in a variety of settings including mediation, and organizational problem-solving. While the process is well documented, the use of the interest-based process in a comprehensive, system-wide, community-wide approach is unique. The

process was used to ensure that everyone's voice was heard and that the project participants had the information necessary to consider how best to meet the needs of women who are victims of violence.

Literature Review

The growing body of literature on restorative justice, and restorative justice and violence against women, contributes to understanding the complexity of the subject. Most reports are descriptive or reflective about experiences with restorative justice, rather than research or evaluation reports.

Similar to our discussions, reflections and consultations, the literature contributed to our understanding, but does not convey a direction on how restorative justice can meet the needs of women who are victims of violence.

Needs of Women

The women who participated in Phase One identified their needs and concerns:

- Help to stop the abuse
- Financial security
- Prevention of violence
- Their children's safety
- The 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/breaking the cycle of abuse
- Information/education

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 using restorative processes, including:

- Improving the Justice System
- Goals of Restorative Processes
- Informed Consent
- When the Offender is Known to the Victim
- Timing
- Offender Accountability
- Training

Conclusions

- 1** The principles of restorative justice have value and can contribute to healing the harm to victims, the rehabilitation of offenders, and community safety.
- 2** As with the justice system, women's needs and safety must always be the top priority for any restorative processes.
- 3** For women who have been abused in a significant relationship, a face-to-face meeting with the offender is likely not advisable, unless initiated by the victim and with a highly skilled facilitator trained in the dynamics of woman abuse.
- 4** When women are victims of violence and their self-worth may be jeopardized, as in woman abuse and sexual assault, restorative processes must be victim-initiated.
- 5** For women who are victims of sexual assault by strangers or acquaintances, the option of victim-offender mediation should be available for those who request it.
- 6** Women need justice options which have restorative values, but do not require a face-to-face meeting with the offender.

Recommendations

- 1** We recommend a policy that in situations of domestic violence any alternative to the justice system, including Restorative Justice or Alternative Measures, be post-charge only. This policy would be consistent with current police policy of laying charges in domestic violence cases when reasonable and probable grounds exist.
- 2** We recommend making available victim/offender mediation with clear policy guidelines and highly skilled mediators when women victims of sexual abuse request a face-to-face meeting with the offender.
- 3** We recommend reviewing and considering the adaptation of the Yukon Domestic Violence Treatment Option for woman abuse in relationships.
- 4** We recommend that, as the Family Law Section develops and mediation approaches are expanded, policies which address woman abuse be implemented
- 5** We recommend continuing dialogue on restorative justice and women who are victims of violence for the purposes of:
 - ✓ clarifying how to appropriately involve family and community members in resolution of situations of woman abuse and sexual assault; and
 - ✓ developing clear guidelines for a facilitated approach for those situations where the victim requests a face-to-face meeting with the abuser.

Introduction

The Problem

Justice Options for Women Phase One identified the need to develop community options to help women stay safe and to support women in naming the abuse, and in denouncing the behaviour of the abuser.

In Justice Options Phase Two we considered the question of whether restorative justice appropriately implemented can help to address the crimes of family violence and sexual abuse of women. Is it possible to ensure women's safety in processes that involve the offender? Are there benefits to women who are victims of violence?

We wanted to explore if a policy framework for appropriate use of restorative justice options could ensure that women who are victims of violence are not revictimized, that violence against women is not decriminalized, and that roles of the justice system, community, victim and offender were realistic.

Problems with access to justice for women who are victims of violence are well documented in court decisions, national and local reports. The dynamics and history of violence against women are such that justice processes have the potential to revictimize the victim more than in other types of offenses. A better understanding of the issues of justice generally for women who are victims of violence, and of restorative justice in particular is important. As options such as restorative justice are introduced into or parallel to the justice system, it is important that proponents have a solid understanding of the dynamics and impact of violence against women. It is equally important that victims, victim advocates and community have a solid understanding of justice options including restorative approaches. Encouraging a community dialogue about the issues of violence against women and the impact on and of restorative justice, in the context of justice options for women victims of violence, is a necessary next step in the development of safe and effective responses to violence against women in Prince Edward Island.

The Project

On November 17, 1999 as part of Restorative Justice Week, a workshop entitled "Gender Issues in Restorative Justice" was sponsored by the Advisory Council on the Status of Women. Sixteen people representing the Restorative Justice Committee, the Evangeline Community Consultative Group, Community Legal Information Association, the PEI Rape and Sexual Assault Crisis Centre, the Advisory Council on the Status of Women, the Inter-Ministerial Women's Secretariat, Pownal House - Family Services Agency, religious community, and individuals attended the workshop. People dialogued about issues of violence against women and concerns about women's access to justice and restorative justice. A recommendation of the workshop participants was that this dialogue continue.

During Phase One of Justice Options for Women, project staff met with community groups, women who had been victims of violence, justice and other mandated professionals, and community advocates. We also held a provincial workshop for women who had participated in

local focus groups and a provincial workshop bringing together women, community groups, justice and other professionals. Women, community and justice system representatives acknowledged that the system alone cannot keep women safe.

Justice Option - Phase One Project made four recommendations:

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

During Phase Two of Justice Options for Women we focussed on Restorative Justice and Women Who are Victims of Violence. Project staff conducted a literature review, prepared a discussion paper and facilitated a Dialogue on Restorative Justice for Women Who Are Victims of Violence. The format of the workshop was presentations and dialogue, and participants included women victims of violence, community advocates, justice representatives and staff of other government departments.

This report builds on Justice Options for Women Phase One and reports on the Conclusions and Recommendations from Phase Two - Restorative Justice.

Limitations

For the purposes of this project, “woman abuse” is a broad term used to describe violence against women. It includes the relationship of the victim to the offender - women who are victims of violence in partner relationships, women who are victims of violence in other family relationships, and women who are victims of violence by strangers or acquaintances. It also includes the type of abuse - physical abuse or threats, emotional abuse or control, and sexual abuse; each type of abuse having many descriptions. Within the definition of “women” are also the characteristics of women by age, culture, sexual orientation and ability.

Considering the complexity of abuse, and the different characteristics of women and their needs, we use generalizations for developing common understandings for program and policy development but these are usually not helpful to, nor inclusive of every woman.

Most survivors of woman abuse who participated in the Justice Options projects were victims of abuse by a partner, although some were victims of sexual abuse by another family member or acquaintance. Most survivors were women in their 30s, 40s or 50s, and did not include older women, younger women, Aboriginal women or cultures other than Acadian.

At the very least in considering the different needs of women in relation to restorative justice we must begin with two distinctions:

- women who are victims of violence in a partner relationship, and
- women who are sexually abused by an acquaintance or stranger.

¹ Dodd, Julie Devon and Lund, Kirstin. *Justice Options for Women - Phase One Report*. PEI June 2001

The Process

Focus groups, workshops and most meetings of the Justice Options Project followed an interest-based approach to problem-solving. The interest-based process is an accepted approach to problem-solving and conflict resolution in a variety of contexts including mediation, and organizational problem-solving. While the process is well documented, the use of the interest-based process in a comprehensive, system-wide, community-wide approach is unique. The process was used to ensure that everyone's voice was heard and that the project participants had the information necessary to consider how best to meet the needs of women who are victims of violence.

The focus groups, meetings, and workshops followed one or more steps in the interest-based process:

Step 1 Set a Positive Environment

Step 2 Identify the Problems

- What are the perspectives of the various groups

Step 3 Identify & Explore Interests

- What are the underlying needs, concerns, values and fears of the various groups

Step 4 Identify the Issues

- What are the issues that need to be addressed

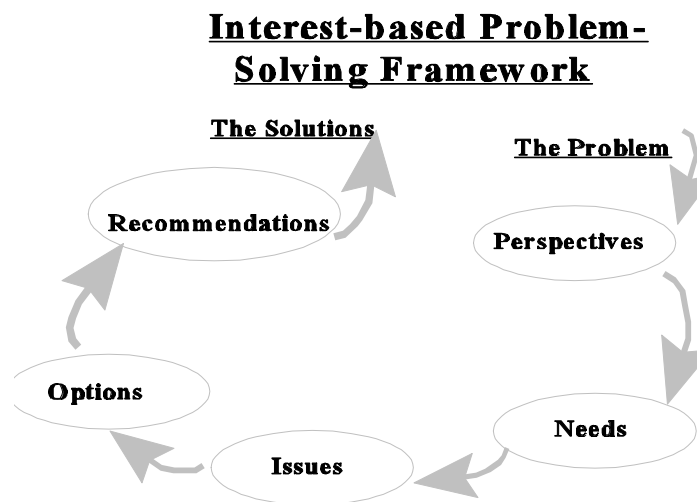
Step 5 Generate Creative Options

- How can the issues be addressed

Step 6 Verify and Close the Agreement

- What will we do and how will we know we are making progress

Phase One identified the perspectives, needs and issues of justice for women who are victims of violence. Phase Two focussed on the issue of women in the context of restorative justice, with an emphasis on safety, and policy options.



Woman Abuse in Prince Edward Island

In Prince Edward Island between 1980 and 2001 hundreds of recommendations related to woman abuse have been made by organizations, research reports, projects, consultations, and committees. Most are recommendations on justice issues and public education, and some address financial, emotional and social support, and one makes recommendations specific to restorative justice for victims of crime.

The two decades of recommendations to improve Prince Edward Island's response to woman abuse, especially within families, highlights the need to address:

- justice and other government systems
- supportive community services, and
- general public attitudes.

The priority recommendations synthesized from previous reports are:

1. Increased public awareness of both legislation and dynamics of domestic violence
2. Justice system workers need further education regarding both legislation and family dynamics
3. Quality assurance program for entire justice system to monitor responses to domestic violence cases
4. Emergency financial assistance to escape and cover legal costs
5. Victims need special assistance at court (private space, and use of new technologies)²

Victims of Crime Roundtable

The Prince Edward Island Victims of Crime Roundtable³ held in October, 2000, made several recommendations specific to Restorative Justice -

1. That policies and guidelines be developed that meet the needs of the victim
2. That victims be fully informed of the options and repercussions of restorative justice
3. That restorative justice be an option only when victim criteria are taken into account, e.g. fear of offender, risk, fear of process, imbalance of power, absence of support
4. That training be provided to those facilitating processes
5. That there be a clinical assessment of offender's suitability for restorative justice process in certain high risk cases, ie. violence against women
6. That Victim Services must be available for cases involving violence against women
7. That restorative justice be a complement to the Criminal Justice System not necessarily an alternative

² Berglund, Dorothy & Devon Dodd, Julie *Recommendations Concerning Family Violence on Prince Edward Island: 1989-2001*. DRAFT / PEI (2001)

³ Nicholson, Anne, *Report on the Victims of Crime Roundtable*. PEI 2000

Further, the Victims of Crime Roundtable made specific recommendations regarding Victims of Sexual Abuse -

8. That the special needs of victims of sexual abuse be recognized and documented
9. That legislative changes be implemented
10. That people in the legal system be made aware and sensitive to the unique issues of victims of sexual abuse
11. That the myths, stereotypes, and hidden biases be addressed
12. That there be efforts made to improve the understanding of memory loss and related issues in the legal system
13. That changes be made to address the kind of evidence required to prove a sexual crime “beyond a reasonable doubt”
14. That there be improved community resources to make it easier for expert witnesses to be accessed
15. That there be a continued effort to address the concerns of survivors
16. That video testimony be permitted in court
17. That there be a support person for victims throughout the legal process
18. That an accused representing himself should not be allowed to cross-examine the victim

Brief History of Family Violence Work on PEI ⁴

Like most provinces, there has been a lot of activity in Prince Edward Island in the past two decades. For example:

- “Domestic Violence: The Tip of the Iceberg”, report prepared by Jean Dixon for the PEI Department of Justice (1980)
- One Parent Family Association sponsored the project to set up Anderson House (1980)
- National declaration of family violence as a costly crime requiring government’s leadership in an effort to effectively respond (1981)
- Anderson House opened (1981)
- Standing Parliamentary Committee on Health, Welfare and Social Affairs made recommendations including that “wife battering should be treated as criminal activity, not only by legislators, as is the case now, but by all those who enforce the law” (1982)
- Bill C-27 encourage the police to lay charges in wife assault cases (1982)
- PEI Minister of Justice requested that all police forces institute a policy of laying charges in all cases of domestic violence where there are reasonable and probable grounds to believe that an assault has taken place (1983)
- PEI Rape / Sexual Assault Crisis Centre opened (1983)
- Turning Point, a program for men who abuse their partners was formed (1984)
- Letters to Chief of Police and Commanding Officer of RCMP by the PEI Minister of Justice encouraging police chiefs to update their officers regarding charging policy and also to remove the offender from the home instead of the victims (1985)
- Victim Services operating province-wide (1989)
- Interministerial Committee on Family Violence was formed (1989) followed by consultation on family violence in six locations across PEI, resulting in a report “Islanders

⁴ Prepared from notes by Anne Nicholson, Family Violence and the Justice System Response (2000) and Jan Devine, Circle of Prevention Project (1998)

- Talk About Family Violence” that included recommendations (1991)
- “Sexual Offences Against Children and Youth on PEI” published by PEI Rape / Sexual Assault Crisis Centre (1990)
- Inquiry into Police and Department of Justice Policies and Procedures in Cases of Inter-Spousal and Intra-Family Violence Conducted by the Honorable Charles R. McQuaid (1991)
- Partners for Prevention Family Violence Prevention Conference, and Final Report (1994)
- “Report on Domestic Violence Legislation” by Yvonne Bradshaw for Victim Services Advisory Committee (1995)
- Child Sexual Abuse Rural Intervention Model Final Report (1995)
- Premiers Action Committee on Family Violence Prevention Appointed to address five-year strategy (1995)
- Premiers Action Committee on Family Violence Prevention allocated new funds to Transition House Association and PEI Rape / Sexual Assault Crisis Centre to increase services (1996)
- Victims of Family Violence Act proclaimed (1996)
- Turning Point Program offered groups in western and eastern PEI for the first time (1997)
- Mediation and Family Violence Resource Manual produced by the Woman Abuse and Mediation Ad-Hoc Committee (1998)

Overview of the Literature

The growing body of literature on restorative justice and restorative justice and violence against women⁵ contributes to understanding the complexity of the subject. Most reports are descriptive or reflective about experiences with restorative justice, rather than research or evaluation reports.

Some reports point out the problems with the current justice system. For example; many reports highlight that the process overlooks the victim, overlooks the community, and is adversarial.⁶ Many reports list approaches that are restorative; for example: victim/offender mediation, family group conferencing, community justice forums, sentencing circles. While most reports agree on the limitations of the current justice system in meeting the needs of victims, there is not agreement on what constitutes restorative programs. For example,

“Restorative justice has been inaccurately equated with mediation in the U.S. This is understandable since victim-offender mediation is a common restorative justice intervention. However, the mediation model and restorative justice are distinct in their practices and objectives. In addition, the restorative justice movement has generated interventions other than mediation (e.g. family group conferencing or sentencing circles). These extend ownership of crime prevention beyond the victim and offender to concerned community members.”⁷

One conference presentation reported on the success of an integrated restorative approach to family violence in Australia. A family support agency in a small rural city developed into a collaborative community project on how to best respond to family violence.

“What has emerged is the development of an integrated family violence model . . . there are two parallel pathways, one for men and boys, the other for women and girls. Using a communitarian approach, the model involves the victim and perpetrator, their family and significant others, initially in the relevant pathway, and later in a restorative conference following appropriate assessments.

. . . The model requires insight and skills in three key areas:

- working with men and boys (global picture regarding men and masculinity, understanding men that use family violence, cultural context, traditional approaches, result and effects, training on community development framework for men, community education targeting men, men’s support groups, and mentoring programs for men and boys)
- working with women and girls (working with girls around family violence, expanding the community net for women and girls affected by violence, women’s support program, mentoring program for women and girls)

⁵ Over 60 documents were categorized and reviewed. These are included in the bibliography and on the Justice Options website - www.isn.net/~tha/justiceoptions

⁶ Church Council on Justice and Corrections. [Satisfying Justice](#).

⁷ Presser, Lois and Gaarder, Emily. “Can Restorative Justice Reduce Battering? Some Preliminary Considerations.

- facilitation of restorative conferences (facilitator training and female / male facilitation teams).”⁸

A small number of documents report on evaluation of restorative justice approaches and particularly on victim and/or offender satisfaction.

“Studies reveal that most victims who have participated in restorative justice programs are satisfied with the experience. However, when compared to offenders, victims tend to be less satisfied. Moreover when compared to victims whose cases were handled in the traditional criminal justice system, there is no clear evidence to conclude that restorative programs enhance victims satisfaction.

. . . . There has been no systematic study of victims’ needs and how restorative justice programs can best meet those needs.”

Further, victim satisfaction soon after restorative processes was greater than in longer-term follow-up due to lack of follow-through by offenders, and monitoring by anyone.”⁹

There is a significant amount of restorative justice activity in Canada and Atlantic Canada¹⁰, and there are reports that describe restorative justice programs and sometimes challenge restorative justice practices when women are victims of violence. A Law Commission of Canada report¹¹, promoting restorative justice, outlines the history, benefits and challenges of restorative justice, but does not mention violence against women and the use of restorative justice in cases of sexual assault and wife battering.

Some of the literature deepens understanding about restorative justice philosophy and the problems encountered by women who are victims of violence. For example:

“Restorative justice focuses on involving victims in the justice process and addressing the harm they sustained. It includes (a) civil proceedings, (b) victim-offender reparation through mediation, and (c) communitarian approaches. Experts consider communitarian justice the most promising of the restorative justice models to challenge the dominant retributive system. By giving up the overriding concern with incarceration, communitarian justice appears capable of producing a better balance between parties. In contrast, civil justice suffers from the problems with victim blaming and secondary traumatization..... Further, mediation presents a different but equally serious set of concerns when applied to rape and battering. Its conceptual foundation fails to acknowledge the structural

⁸ O’Connell, Terry. “An Integrated Restorative Approach to Family Violence”. Restorative and Community Justice: Inspiring the Future Conference, Winchester, England. March 2001

⁹ Ibid

¹⁰ Atlantic Community Justice Project, Atlantic Coordinating Committee on Crime Prevention and Community Safety, 1999.

¹¹ Law Commission of Canada. Transformative Justice 1999

inequalities between parties Women may find themselves negotiating for their safety instead of for their autonomy. Mediation also frames the issues as a conflict between victim and perpetrator, leaving unaddressed the harm violence against women inflicts on their loved ones as well as on the broader society.”¹²

Some of the literature raises fundamental questions about restorative processes such as voluntary victim participation and what is “community”.

Similar to our discussions, reflections and consultations, the literature contributed to our understanding, but does not convey a direction on how restorative justice can meet the needs of women who are victims of violence.

The literature reviewed for Justice Options included:

- Articles in books and periodicals
- Presentations at conferences
- Reports on conferences and consultations
- Reports available from government
- Articles posted on the Internet
- Reports of case law.

The literature can be categorized in many ways, and generally covers:

- Restorative Justice Policy
- Restorative Justice Programs
- Restorative Justice and the Criminal Justice System
- Restorative Justice and Violence Against Women
- Restorative Justice and Aboriginal Communities

The literature review contributed to the *Discussion Paper - Dialogue on Restorative Justice for Women Who Are Victims of Violence* (January 2002) by identifying issues of restorative justice and violence against women. It also contributed to knowledge and understanding of project staff in the focus and structure of project activities. This final report of the Justice Options for Women - Phase Two project, benefits from the reflective writings and evaluation reports of others who are seeking the fit of restorative justice with the current justice system, and particularly its relevance to women who are victims of violence.

¹² Ross, Mary P. “Blame, Shame, and Community: Justice Responses to Violence Against Women”. APA Annual Convention. August 2000, Washington DC

Perspectives of Women Who Are Victims of Violence and the Justice System

Perspectives are the lenses through which people begin to look at issues. The perspectives of women, justice system representatives and community advocates identified in Justice Options - Phase One, offer a starting point on the process of understanding. While these perspectives are not specific to restorative justice, they emphasize some of the frustrations from different perspectives about woman abuse and the justice system.

Women's Perspectives

In Phase One we asked women about their perspectives with regard to justice options and violence against women. These perspectives do not represent the voices of all women, only those women who participated in the project. Specifically, very few or none of the project participants were Aboriginal women, survivors of sexual assault by strangers, newcomers to Canada or senior women. As well, we did not strive for consensus during the project's focus groups or workshops.

During the focus groups held with women, we heard from many their stories of feeling re-victimized by various justice options. Following are some examples:

Women feel re-victimized by the system...

- when the family law system takes years to come to a resolution and a woman has to go on social assistance because her partner won't pay support until he's ordered to and until that order is enforced
- when an abuser controls the family's money and can afford to file motion after motion to thwart her efforts to get her share and she can't afford to pay a lawyer to respond and so she gives in
- when she finally gets an order from the court and feels like things might start to get on track for her family and he refuses to follow the order and no-one will enforce it until she pays more money to a lawyer
- when the courts make an order for the abuser to have access with his children and he emotionally abuses them and she doesn't have any support to protect them
- when a stay away order is not enforced and an abuser can continue to enter the spouse's home, intimidate her in her hospital room and continue to harass her subtly with no repercussions
- when a woman is not eligible for legal aid and she is forced to return to the abuse until she can afford to leave
- when a woman has an order stating that she has sole possession of the family home but the utility company won't let her change the utilities into her own name without her husband's consent
- when the police don't have the power to do anything to help a woman who fears her husband until he actually hurts her
- when she is treated like an "hysterical woman" and told to "calm down" instead of listened to
- when she doesn't understand that mediation is voluntary and feels forced to participate and intimidated into giving up her rights
- when she isn't believed or is told that she is exaggerating

- when a service-provider doesn't understand the cycle of violence and blames her for staying so long or going back
- when many of the services being provided, like mediation and parenting courses, are deemed "not appropriate for situations of abuse" but no substitutes are offered
- when service-providers don't understand how abusers can manipulate and they say "well, he seems more reasonable than she does"

Professionals with Mandated Authority

The majority of professionals who gave their perspectives were justice system representatives including police, Crown and probation. One child welfare supervisor also participated.

Justice System Staff sometimes feel caught between their mandated authority and the needs of the victim . . .

- there is a problem with no-contact orders when there are continual requests from the victim for contact with the offender - if contact isn't arranged through probation office or child protection, people go underground and meet without permission; the offender then has more control and the potential for abuse increases
- there is a conflict between public interest vs. victim needs/rights - this happens when there are issues such as: safety for children in the home, disclosure if Crown meets with witness/victim prior to trial, and with concern for the victim when a judge's finding is not guilty and the victim gets the message that the "accused has won"
- with a legal mandate to ensure children's safety, the reality is that children's safety takes priority over victim needs; when the victim can't ensure children's safety by protecting them from the abuser, the safety of the children must take priority
- justice system is a band-aid solution - afterward people are back to square-one, the problem isn't solved; people need parenting skills, life-skills, communication skills

Justice System can't meet the needs of victims . . .

- people need assistance police can't provide; RCMP bound by Privacy Act and cannot pass name along to Victim Services without the victim's permission and people get lost in the shuffle; need an informed decision about services - victims lack comprehension about system/services especially when in crisis; some victims are hostile
- there is no safety shield to put around the victim; victim can feel a false sense of safety; justice/social service system has its shortcoming with victims in need; need a "team approach" and evaluation process; everyone working has to support each other and remain objective - keep realistic confidence in the system/process; criticism to victim about other services takes foundation of support away - need to follow a process for feedback and accountability
- complex issue needs individual responses but the law and policy is black and white; policies and guidelines with zero tolerance may be good, but it's difficult to put into

practice what is black and white such as no contact orders of courts and disclosure

- violence against women is within the context of societal issues and social perception; need to pay attention to research and evidence; we have more resources than we did five or ten years ago, how do we make the best use of the resources that exist

Community Advocates

The perspectives voiced by community organizations represented during the project include:

Need more focus on prevention . . .

- focus on prevention by intervening with children; family abuse is complex and breaking the cycle must focus on children who are victims; intervention/counselling is needed so they do not continue the cycle of abuse in adult behaviours; until parties accept the end of the relationship there is a need to work with both parties to learn some skills in resolving conflicts
- need more individualized response because of problems of complexity and variation in cycle of violence; dilemma at front-end of protecting the victim yet providing her with choices; every case is different and domestic violence is complex, along a spectrum ranging from those who want abuser to get help and want to continue the relationship to those who no longer want the relationship and need protection
- service providers can take women's upset responses personally and start blaming the victim - it's not the victim, it's the dynamic; need to not oversimplify and not use a blanket approach

Justice system doesn't meet needs of vulnerable victims . . .

- senior/older victims never go to court - they are institutionalized; women victims are more vulnerable than older men because they have depended on their husbands for financial responsibilities, when widowed they can be victimized by family taking everything; abuse can lead to death; women won't tell and ask for help - no money, no transportation, if children are abusing them, they feel ashamed because they brought the children up
- women with intellectual disabilities need to deal with their fear of the system before they can have access to justice; level of abuse of women with intellectual disabilities is very high - grew up in institutions/foster care where they didn't have control; big fear of justice system - grew up hearing they were not smart and they would not be believed
- for women who are sexually abused there are not a lot of justice options - gathering of proof/evidence ends up revictimizing the victim; need care with restorative options, may not be in best interest of victim to meet with offender; need to find ways to support each other by working collaboratively including giving each other feedback

Women lack access to justice . . .

- need access to legal advice; it's a complex issue and a very slow process of working with

women; at the same time we need to speed up some legal processes

Women who are Victims of Sexual Assault and Abuse

During the Justice Options project there was little public involvement of women who had been sexually abused by a stranger or acquaintance. Many of the perspectives of women, justice system and community advocates apply to women have been sexually abused by a stranger. However, it is important to recognize that the perspectives and needs of this group of women is less visible, and less represented than women victims of violence in relationships.

Interests

Interests are those things underlying perspectives that are most important to people. Interests include values, needs, concerns, and fears. If we consider what is most important to people when we attempt to solve problems the potential increases for solutions that have positive outcomes.

In Manitoba, for example, the Family Violence court and zero tolerance police policy was developed to open up the means through which abused women could attempt to bring changes to their lives. The result, however, expressed by women who participated in a study found that their involvement with the police and the court produced considerable frustration.

“Not only was the system inadequate in meeting women’s needs, but at times, it also produced significant consequences for the women.”¹³

Women who are Victims of Family Violence

The women who participated in Phase One identified their needs and concerns:

- Help to stop the abuse
- Financial security
- Prevention of violence
- Their children’s safety
- The 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/breaking the cycle of abuse
- Information/education

Women Need Help to Stop the Abuse

Women need access to timely and respectful processes and resources which will support them to break the cycle of abuse. They need to be able to trust that these processes and resources keep them and their children safe from further abuse. The women who participated in the focus groups were more likely to access help if:

- she knew that she would be respected by the people and processes she looked to for help
- it was affordable
- it was available in her community or transportation was available
- accessing the service/process didn’t require that she give up other supports, her job, etc.
- it was in a language she spoke and understood well
- it was simple to understand (plain language, few and uncomplicated steps to follow)
- accessing the assistance didn’t put her in further danger of being abused

¹³ Minaker, Joanne C. “Evaluating Criminal Justice Responses to Intimate Abuse through the Lens of Women’s Needs” Canadian Journal of Women and the Law vol 13, No 1, 2001

Women Need Financial Security

For the women who participated in the focus groups, financial security means:

- being able to support their children without drastically changing the lifestyle that they are accustomed to
- that the abuser takes his share of the responsibility for supporting the children
- enough money to ensure that the children have suitable child care, if the mother has to work
- a dwelling that is hers and the children's with no control exercised over it by her partner
- to keep her share of the assets that she has worked to build
- transportation

Women Need Prevention of Violence

In the experience of the women who participated in the focus groups, a lot of frustration came from the emphasis that the system seems to place on reaction as opposed to prevention. By prevention, women mean:

- service providers taking responsibility and intervening early/asking questions when they suspect abuse
- quick responses to violent crisis
- making sure that men get treatment to change behaviour
- service providers taking action to help before a crime is committed

Women Need Safety for their Children

When we asked women what their needs were one of the areas that was discussed most was the need to keep their children safe and the need for support in doing that. When they used the word, "safe", the women meant many different things:

- safe from all abuse by the abusive partner - not just the forms that are criminal offenses
- safe from harming themselves, emotionally or physically
- safe from growing up to have difficulties coping
- safe from drastic changes in lifestyle
- safe from confusion about what is happening between their parents

Women Need To Have Some Control Over The Process

The focus group participants indicated that they need to have ways to hold service providers accountable if they are not treated with respect or if they are given inaccurate information. The women's voices on system accountability are included in the next section.

Women Need Safety for Themselves

When talking about their own safety as a need, the women participating in the focus groups indicated that, in addition to requiring assistance in staying safe from criminal behaviour, they need:

- protection from subtle harassment
- a safe place to live
- processes which do not give the abuser further opportunity to control, abuse and intimidate her into giving up her rights

- to be able to count on enforcement of decisions made
- the victim's safety and preventing further abuse to be the main priorities in sentencing
- safety from threats of violence against other family members

Women Need To Maintain Family Relationships

Some women said that one of the reasons they hesitated in telling someone about the abuse was their need to maintain family relationships. One woman was being abused by her brother-in-law and didn't want to hurt or lose the support of his wife, her sister.

Women Need Respect

Women told stories of the responses that they received from the justice system, from social services, from community organizations and from others in positions to help. The responses that helped were from compassionate people who understood the dynamics of abuse and who listened to them and believed them. The responses that did not help, not surprisingly, were from the service providers who did not listen, did not believe them and who told the woman in so many words, "it's your fault" or "it's not as big a deal as you are making it out to be".

In terms of respect, women want:

- to be listened to
- to be believed
- not to be judged or told it's her fault
- some indication in the sentencing that the court takes her abuse seriously
- compassion
- to feel valued as a person/client
- confidentiality

Women Need The Abuser to Be Held Accountable

Participants in the focus groups felt strongly that sentences need to send the message that violence against women is a serious crime.

Women Need Support in Making Changes to Break the Cycle of Abuse

In addition to support from family and having someone they trust to tell about the abuse, women identified the following as helpful in breaking the cycle of abuse:

- taking action before the violence occurs, when indicators are there and a woman asks for help
- recognizing the difficulties of joint custody when there is violence and making safe orders
- providing counselling/information to women
- keeping the abuser out of the victim's home
- helping her to protect her children and provide counselling support for the children
- service providers to recognize and understand the cycle so you can better help her
- ensuring that response times and the justice process is quick
- enforcing decisions, rather than leaving it up to the woman
- empowering her to make her own choices
- not asking women to make the decision to charge her spouse
- providing 24 hour services (crisis may not occur between 8 and 4 on a weekday)
- providing someone to take care of women whose abuser is their caregiver

- not overwhelming the woman by complicated processes or by making her repeat her story over and over
- being open to talking about abuse and let clients know that
- being compassionate

Women Need Information/Education

Information and education was a need women identified, not just for themselves, but for others, as well. Women themselves need information about:

- what constitutes an abusive/healthy relationship
- where to go for help
- how to protect themselves financially (from the start) in a relationship
- ideas for preventing stranger abuse
- parenting education for families in crisis
- that its not her fault
- clear information about options
- what options are available if the orders made don't work

The abuser needs:

- understanding about the impact of his behaviour on his victims, including the children

Police, judges, social workers, lawyers need education about:

- how to properly use the present legislation
- the cycle and dynamics of abuse
- how to work with an abuser
- how to be compassionate and non-judgmental
- how to support a woman who has been abused

Family and general public need education about :

- the cycle and dynamics of abuse

Government

Representatives of the justice system and child protection who have mandated authority to provide services identified the following needs:

- staff well informed about woman abuse issues
- effective/integrated services that meet the needs of women
- effective ways to increase women's safety (risk assessment, monitoring of orders)
- to take violence against women seriously and take care that options outside the current system do not decriminalize violence against women
- the public to perceive that the system is taking violence against women seriously
- to ensure that service providers are not putting women in danger by sending them underground when they enforce no-contact orders against the wishes of the victim
- to understand why victims are not reporting and seeking help

Community

Representatives of community organizations who provide services or advocate for victims of violence identified the following needs:

- victims to easily access services
- family law as a system of support
- people (victims/others) knowing what is available (outreach, more ways of getting information out)
- truth, honesty and openness in helper relationships
- service providers to understand women's background (e.g. women with intellectual disabilities) and root causes including power imbalances
- personal accountability of all helpers
- to know why women aren't reporting violence, especially sexual abuse, and to facilitate a feeling of safety in doing so

Women who are Victims of Sexual Assault and Abuse

While women victims of sexual abuse were not vocal during the Justice Options project, their needs are outlined in the literature. For example:

- an explanation of why the crime occurred - to know - "why me?"
- recognition by the offender of what he has done, and acknowledgement of responsibility for that harm
- to know what's happening in the justice process
- public acknowledgement that wrong has been done
- help with the emotional effects of the crime
- sensitivity and respect
- a quick resolution of the case in the justice system
- to be heard and taken seriously
- to know that the offence will not be repeated
- to receive compensation for the harm and subsequent costs
- to be free of responsibility for decisions about the offender¹⁴

Hopes and Concerns Specific to Restorative Justice

Participants at the Workshop - Dialogue on Restorative Justice and Women Who Are Victims of Violence, identified their hopes and concerns about restorative justice.

Some hopes of workshop participants about restorative justice:

- women's safety
- healing and closure opportunities for women and families
- empowerment of women

¹⁴ Wright, Dr. Martin. "Even for rape?" Restorative and Community Justice: Inspiring the Future, International Conference. Winchester, England, March, 2001

- that women are safely able to express their feelings
- that violence against women is taken seriously and acknowledged as a crime
- that the offender takes responsibility for his actions
- a focus on victims needs

Some concerns of workshop participants about using restorative justice in situations of violence against women:

- in most cases the offenders do not take responsibility but blame everyone else - this is a difficulty when restorative approaches require the offender to take responsibility before participating
- there is a real risk of violence after a couple in an abusive relationship separates and safety cannot be guaranteed
- that the abuser will not be held accountable for his actions, will “get off scott-free” and reoffend
- that our current system does not have the ability to be flexible in its approach and it may be impossible to introduce this new concept into the existing system

Concerns about Restorative Justice and Violence Against Women

A recent study examining issues of restorative justice and violence against women identified concerns about restorative justice¹⁵. 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 generally deny or minimize the abuse or blame the victim, restorative justice may be inappropriate in cases of family violence where abusive men are manipulative and where 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
- many feel that the primary focus is on offenders and not victims

¹⁵ Coward, Stephanie. “Restoring Justice in Cases of Domestic and Sexual Violence: Healing Justice?” Directed Interdisciplinary Studies, Carlton University, December 2000

- 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.

Some women have reported feeling revictimized by their participation in restorative processes. For example, in a report by the Pauktuutit Inuit Women's Association¹⁶, 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.”

Concerns of Immigrant and Visible Minority Women

The National Organization of Immigrant and Visible Minority Women of Canada passed resolutions about restorative justice which begin to outline some of the interests of this group:

- women's safety
- consultation with women and service providers
- more dialogue, including information sharing, about restorative justice
- that women and children have the option to remain in their homes when there has been violence in the home
- to observe what is happening in communities that utilize restorative justice and build on it

Some of the concerns noted include:

- women remain invisible in society and we must look at the visibility of women in any attempt to look at restorative justice
- women should not be forced into community justice processes¹⁷

¹⁶ Pauktuutit Inuit Women's Association. "Inuit women and the Administration of Justice: Progress Report No. 2". Ottawa, October, 1993

¹⁷ Kim, Jeanaha & Bose, Anu. "Report of the Conference on Restorative Justice". Biennial General Meeting of the National Organization of Immigrant and Visible Minority Women of Canada. November, 2000

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

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.¹⁸ 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.¹⁹

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."²⁰

Those who support the use of restorative justice in cases of violence against women note the following potential benefits:²¹

- 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

¹⁸ Ibid

¹⁹ Video - get cite

²⁰ Coward

²¹ Presser, Lois & Gaarder, Emily. "Can Restorative Justice Reduce Battering? Some Preliminary Considerations" in Social Justice. 2000

Issues of Restorative Justice and Women Who Are Victims of Violence

There is considerable agreement in the interests expressed during the Justice Options Project and in the literature. There is agreement that women's safety is the priority. Most agree that restorative principles do contribute to different types of support for victims that can help with healing. Many are concerned that offenders can manipulate processes, thereby increasing the risk of harm for victims. Many agree that restorative processes with a face-to-face meeting with the victim and offender may not be appropriate at any stage where there has been abuse in an ongoing relationship.

Many agree that at the victim's initiative and with clear guidelines and training of facilitators, preparation of both victim and offender, and following appropriate criminal sanctions, restorative processes can benefit both victims and offenders.

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 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.²²

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.²³

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

²² Hooper, Steven & Busch, Ruth. "Domestic Violence and Restorative Justice Initiatives: The Risks of a New Panacea. WLR: Domestic Violence and the Criminal Justice Process at www.waikato.ac.nz/law/wlr/special_1996/4_hooperbusch.html

²³ Ibid

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.²⁴ 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.²⁵

Timing

Restorative processes that are victim focussed take place when the victim is ready. If timing of restorative processes are offender or system based, the risk to women's safety increases. Victim initiated processes mean preparation for the victim so that she may chose if and when to participate. Timing with criminal justice processes may not be appropriate for 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.²⁶

Offender accountability and follow-through, including monitoring need to be included 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 cultural context of woman abuse.

²⁴ Presser et al, Hooper et al

²⁵ Hooper et al

²⁶ Wemmer, Jo-Anne & Canuto, Marisa. "Victims Experience With, Expectations and Perceptions of Restorative Justice: A Critical Review of the Literature". University of Montreal. December, 2000

Options

Participants at the Dialogue on Restorative Justice and Women Who Are Victims of Violence Workshop discussed their ideas on restorative justice and woman abuse. It quickly became clear that women's safety must be first and foremost and that any processes created must be victim centred. Some ideas about what would be required to ensure the safety of women in restorative processes were discussed:

Women need to give ***Informed Consent***:

- women and service providers must be well informed about the processes available and the potential benefits and harms to victims
- it must be a fully voluntary process for victims, with enough information given to the victim for her to give informed consent

Training for Service Providers:

- people referring women to restorative processes must have excellent training in the area of violence against women and the realities of restorative processes
- facilitators of restorative processes must have excellent training and experience in
 - ▶ the power dynamics of abuse
 - ▶ the potential for manipulation of the process by abusive men
 - ▶ how to facilitate the process(es)
 - ▶ the ideals, principles and philosophy of restorative justice
 - ▶ how to screen for appropriateness
 - ▶ the difference between accepting responsibility for harm and admitting "guilt"

Each case must be ***Screened*** to determine safety risks:

- careful screening must be done by experienced and knowledgeable facilitators about the potential for harm during or as a result of a restorative process
- programs must be very selective about when restorative justice is used

Restorative Justice should be one of many ***Options*** available to women:

- restorative justice must be viewed as only one possible part of a system which includes many options
- many restorative options/processes must be available so that the most effective approaches can be used for each case
- restorative justice should not be used in place of jail or criminal sanctions, if these are the most appropriate sentence

Any restorative justice program must be ***Supported by the System***:

- it cannot be viewed by government as a money-saver - it will take resources to create a system that has the potential to help, not harm, women
- there must be resources in place to support the whole process before false hope is raised

There must be ***Support for Victims***:

- any restorative justice program must be victim focussed and ensure support for victims by people whose primary interest is victim support
- follow-up must be in place to monitor the outcome and follow-through

There must be ***Guidelines*** in place for service providers:

- there must be clear direction for service providers with clear guidelines and protocols
- survivors of abuse need to be involved in developing the processes and guidelines

Processes should encourage ***Offender Accountability***:

- there need to be processes in place for assessment, treatment and accountability of offenders
- the processes used should encourage the perpetrator to take responsibility and give the victim control over the outcome
- restorative processes should be done in a way which ensures safety of the victim and no manipulation by the perpetrator
- the offender should not be encouraged to participate by being offered possible benefits regarding the criminal offence

The ***Timing*** of the intervention must be appropriate in each case:

- restorative justice should be victim initiated and this is most likely after the conclusion of the criminal justice process and only if an offender is truly remorseful and committed to change
- restorative processes should not be used at the stage when a relationship between the offender and the victim is in flux or just ending

Conclusions and Recommendations

Conclusions

- 1** The principles of restorative justice have value and can contribute to healing the harm to victims, the rehabilitation of offenders, and community safety.
- 2** As with the justice system, women's needs and safety must always be the top priority for any restorative processes.
- 3** For women who have been abused in a significant relationship, a face-to-face meeting with the offender is likely not advisable, unless initiated by the victim and with a highly skilled facilitator trained in the dynamics of woman abuse.
- 4** When women are victims of violence and their self-worth may be jeopardized, as in woman abuse and sexual assault, restorative processes must be victim-initiated.
- 5** For women who are victims of sexual assault by strangers or acquaintances, the option of victim-offender mediation should be available for those who request it.
- 6** Women need justice options which have restorative values, but do not require a face-to-face meeting with the offender.

Recommendations

- 1** We recommend a policy that in situations of domestic violence any alternative to the justice system, including Restorative Justice or Alternative Measures, be post-charge only. This policy would be consistent with current police policy of laying charges in domestic violence cases when reasonable and probable grounds exist.
- 2** We recommend making available victim/offender mediation with clear policy guidelines and highly skilled mediators when women victims of sexual abuse request a face-to-face meeting with the offender.
- 3** We recommend reviewing and considering the adaptation of the Yukon Domestic Violence Treatment Option for woman abuse in relationships.
- 4** We recommend that, as the Family Law Section develops and mediation approaches are expanded, policies which address woman abuse be implemented
- 5** We recommend continuing dialogue on restorative justice and women who are victims of violence for the purposes of:
 - ✓ clarifying how to appropriately involve family and community members in resolution of situations of woman abuse and sexual assault; and
 - ✓ developing clear guidelines for a facilitated approach for those situations where the victim requests a face-to-face meeting with the abuser.

Bibliography

Restorative Justice and Violence Against Women Resources

Aboriginal Women's Action Network, *Research Report on the implications of rj for women and children in isolated communities in BC with documented histories of violence*, for the Law Commission of Canada, 2001.

Alberta Solicitor General, *Community Justice Policy Consultation Final Report*, May 2001

Avalon Sexual Assault Centre, *Formal Response of the Avalon Sexual Assault Centre to the N.S. Department of Justice Re: The Restorative Justice Program*, submitted to the N.S. Department of Justice, Restorative Justice Program, September, 1999

<http://www.hotpeachpages.org/paths/rjIrene.html>.

Bannenburg, Britta and Rössner, Dieter "New Developments in Restorative Justice to Handle Family Violence", date unknown

Burford, Gale and Pennell, Joan, *Family Group Decision Making: Communities Stopping Family Violence, Questions and Answers*, Health Canada, Minister of Public Works and Government Services, Canada 1998, ISBN: 0-662-26879-2, Cat. No.: H72-21/158-1998E.

http://www.hc-sc.gc.ca/hppb/familyviolence/html/decision_making/english/

Cloke, Kenneth, 'Date rape and the limits of mediation.' (1988), *Mediation Quarterly*, 21, Fall, 77-83.

Coward, Stephanie, *Restorative Justice in Cases of Domestic and Sexual Violence: Healing Justice?*, (2000, December), Directed Interdisciplinary Studies, Carleton University, Ottawa, ON, CAN.

http://www.hotpeachpages.org/paths/rj_domestic_violence.html

Davidson, Jane, *Sex Offenders Salvaged by Circles Prevents New Crimes*, *Anglican Journal*, May 2001

<http://www.anglicanjournal.com/127/05/canada08.html>

Foden, Brian, "Authorities disagree about appropriate use, but... Sentencing circles gaining acceptance from lawyers", *The Lawyers Weekly*. December 13, 1996.

Fournier, Suzanne and Barbara McLintock, "Healing - or Vicious - Circle?" *Vancouver Province*, June 19, 1998, A14.

Goolsby, Deborah Gartzke, 'Using mediation in cases of simple rape.' (1990), *Washington and Lee Law Review*, 47 (4), 1183-1214.

Gustafson, Dave, *Reclaiming Love: An Incest Survivor's Story*, The Ecology Of Justice (IC#38), Spring 1994, Page 39, Copyright (c)1994, 1997 by Context Institute

<http://www.context.org/ICLIB/IC38/Gustafsn.htm>.

Hooper, Stephen and Busch, Ruth, *Domestic Violence and Restorative Justice Initiatives: The Risks of a New Panacea*, Waikato Law Review, Taumauri School of Law, Volume 4, Issue 1, 1996, Special Issue on Domestic Violence.

http://www.waikato.ac.nz/law/wlr/special_1996/4_hooperbusch.html

Kachuk, Patricia, *Violence against Women in Relationships: An Analysis of Policies and Actions*, November 1998, The FREDA Centre for Research on Violence against Women and Children

<http://www.harbour.sfu.ca/freda/reports/policy.html>

Keats, Wendy, *A Story about Family Violence & Mediation*, M.O.V.E. Inc, Moncton, NB, CAN, date unknown

Keys, Ted, *Family Decision Meetings and Domestic Violence: Issues Affecting Practice Strategies*, Family Based Services Section, State Office for Services to Children and Families, Salem, Oregon, US

Kim, Jeanaha and Bose, Anu, *Report of the Conference on Restorative Justice, Biennial General Meeting of the National Organization of Immigrant and Visible Minority Women of Canada*, National Organization of Immigrant and Visible Minority Women of Canada, 2000

Koss, Mary P., *Blame, Shame, and Community: Justice Responses to Violence Against Women*, University of Arizona, date unknown <http://www.mincava.umn.edu/papers/koss.asp>.

MENNONITE CENTRAL COMMITTEE (MCC) Canada, *Restorative Justice in Serious And Violent Crime*, Vol. 12 No. 1, April 1993.

Nicholson, Anne, *Report of the PEI "Victims of Crime" Roundtable*, October 25-26, 2000

Pate, Kim, *This Woman's Perspective on Justice. Restorative? Retributive? How about Redistributive?*, Elizabeth Fry Society, July 1994 <http://www.elizabethfry.ca/perspect.htm>.

Pelikan, Christa, *Victim-Offender Mediation in Domestic Violence Cases: A Research Report* 2000, report for the United Nations Crime Congress: Ancillary Meeting by of the Institute for the Sociology of Law and Criminology, Vienna, Austria

Pranis, Kay, *Restorative Justice and Feminism: Common Themes*, Minnesota Department of Corrections, date unknown

Presser, Lois, & Gaarder, Emily, *“Can Restorative Justice Reduce Battering? Some Preliminary Considerations”*, (2000), *Social Justice*, 27(1), pp. 175-195

Provincial Association Against Family Violence, *Keeping and Open Mind: A Look at Gender Inclusive Analysis, Restorative Justice and Alternative Dispute Resolution*, June 1999

Provincial Association Against Family Violence, *Making it Safe: Women, Restorative Justice and Alternative Dispute Resolution*, July 2000

Provincial Association of Transition Houses Saskatchewan, *Report on PATHS' April 2000 Conference, Restorative Justice: Is it justice for battered women?*

<http://www.hotpeachpages.org/paths/rjConference.html#I>

Rubin, Pam, *Abused Women in Family Mediation: A Nova Scotia Snapshot*, Transition House Association of Nova Scotia, 2000

Saskatoon Community Mediation Services, *Report on the Consultation on Restorative Justice and Violence Against Women*, June 26, 2001.

Sauter, Matthew J., *‘Post-conviction mediation of rape cases: working within the criminal justice system to achieve well-rounded justice.’* (1993), *Journal of Dispute Resolution*, (175-192).

Stallone, D., *“Decriminalization of Violence in the Home: Mediation in Wife Battering Cases”*, *Law and Inequality* 2(2) (1984): 493-519.

Umbreit, M.S. & Greenwood, J., *Guidelines for Victim Sensitive Victim Offender Mediation "Restorative Justice Through Dialogue"*, 1997, Washington, DC: Office of Victims of Crime, US Dept. of Justice <http://ssw.che.umn.edu/rjp/Resources/Resource.htm>.

Umbreit, M.S., Bradshaw, W., Coates, R.B., *Victim Sensitive Offender Dialogue in Crimes of Severe Violence: Differing Needs, Approaches, and Implications*, (Draft) 2000. Office for Victims of Crime, U.S. Department of Justice <http://ssw.che.umn.edu/rjp/Resources/Resource.htm>

White, Judy (alias), *Restorative Justice in Cases of Domestic and Sexual Violence: The Voice of a Survivor*, April, 2000, Provincial Association of Transition House of Saskatchewan www.hotpeachpages.org/paths/rjJudy.html

Wright, Dr. Martin, *“ Even for Rape?”*, 200 <http://www.law.soton.ac.uk/bsln/rj/rjsumwri.htm>

Yantzi, Mark, *Sexual offending and restoration* (1998) Community Justice Initiatives, Kitchener, ON, CAN

Zellerer, Evelyn, *Community-Based Justice and Violence Against Women: Issues of Gender and Race*" International Journal of Comparative and Applied Criminal Justice 20 (2), 1996, pp.233-244

Restorative Justice, Mediation, General Resources

Astor, Hilary, *Position Paper on Mediation*, prepared for National Committee on Violence Against Women, Australia, December 1991

Clairmont, Don, *Restorative Justice in Nova Scotia*, ISUMA, Volume 1, Spring 2000, ISSN 1492-062X http://www.isuma.net/v01n01/clairmon/clairmon_e.shtml

FPT Working Group on Restorative Justice, *Restorative Justice in Canada: A Consultation Paper*, 2000, FPT Working Group on Restorative Justice, Department of Justice Canada <http://canada.justice.gc.ca/en/ps/voc/rjpap.html>

Goundry, Sandra A., *Restorative Justice and Criminal Justice Reform in British Columbia: Identifying Some Preliminary Questions and Concerns*, BC Association of Specialized Victim Assistance & Counselling Programs, April 30, 1998

Pavlich, George, *Deconstructing Restoration: The Promise of Restorative Justice*, University of Alberta, a presentation to the International Conference on Restorative Justice, Tübingen University, Tübingen Germany, October 1-4, 2000

Roberts, Tim, *Evaluation of the Victim Offender Mediation Project, Langley, B.C.*, Solicitor General Canada, March 1995

Rubin, Pam, *Report shows problems with mediation for victims of abuse*, Interaction, The Network for Conflict Resolution, Summer 2000 Edition, Volume 12, No, 2

The Church Council on Justice and Corrections, *Satisfying Justice: Safe Community Options*, July 1996

Umbreit, M.S., *Information on Research Findings Related to Uniquely Restorative Justice Interventions: Victim Offender Mediation & Family Group Conferencing*, St. Paul, MN: Center for Restorative Justice & Peacemaking, University of Minnesota, 1996.

<http://ssw.che.umn.edu/rjp/Resources/Findings.htm>

Wemmers, Jo-Anne and Canuto, Marisa, *Victim's Experiences With, Expectations and Perceptions of Restorative Justice: A Critical Review of Literature*, International Centre for Comparative Criminology, Université de Montréal, November 2001

Criminal Justice

Alder C & K Polk, '*Diversion and hidden sexism*', 1982, Australian and New Zealand Journal of Criminology, 15 (2):100-108.

Braithwaite, J. and Daly, K., "*Masculinities, Violence and Communitarian Control*", in T. Newburn and B. Stanko (eds), *Just Boys Doing Business*, London: Routledge, 1994 (reprinted in M. Valverde, L. MacLeod and K. Johnson eds., *Wife Assault and the Canadian Criminal Justice System*, 1995)

Canadian Statement of Basic Principle of Justice for Victims of Crime

<http://www.canada.justice.gc.ca/en/ps/voc/csbp.html>

Crump, Judy, *A Review of the Effectiveness and Viability of Domestic Violence as an Adjunct to the Formal Criminal Justice System*, Nova Scotia Department of Justice, Victims' Services Division 2001

Dodd, Julie Devon, *Circle of Prevention: Networking to Prevent Family Violence in Atlantic Canada Project Report*, 2001

Hebert, Cheryl, *Nova Scotia's New Family Court System Sets High Standards*, Interaction, The Network for Conflict Resolution, Winter 2001 Edition

John Howard Society of Alberta, *Conditional Sentences*, 2000

<http://www.johnhoward.ab.ca/PUB/A1.htm>

Kachuk, Patricia, *Sentencing Reforms and Women Survivors of Men's Violence: Why Women Should Care*, for The FREDa Centre for Research on Violence against Women and Children, Research Funded by Status of Women Canada, April 1998

<http://www.harbour.sfu.ca/freda/articles/reforms.htm>

La Prairie, Carol, *Conditional Sentence Orders by Province and Territory: September 1, 1996 - September 30, 1998*, Research and Statistics Section, Department of Justice, November 1998

Minaker, Joanne C., *Evaluating Criminal Justice Responses to Intimate Abuse Through the Lens of Women's Needs*, Canadian Journal of Women and the Law, Vol.13, No. 1, 2001

Moyer, Sharon, *Alternatives to Prosecution in Domestic Violence Cases: An Overview of the Research Literature*, Report to Department of Justice Canada, 2000

Myers, Karen, *An Overview of Corrections Research and Development Projects on Family Violence*, Ministry of the Solicitor General of Canada, Cat. No. JS4-1/1996-3E, ISBN: 0-662-24421-4, 1996

<http://www.sgc.gc.ca/epub/corr/e199603/e199603.htm>

Nicholl, Caroline G., *From Battering to Bettering: Changing the Lives of Victims of Domestic Violence and their Abusers*, (1998, August), Washington, DC: Campaign for an Effective Crime Policy.

Nicholson, Anne, *Family Violence and the Justice System Response: A Report to the Attorney General of Prince Edward Island*, March, 2000

Roberts, Julian V., Doob, Anthony N., and Marinos, Voula, *Judicial Attitudes to Conditional Terms of Imprisonment: Results of a National Survey*, Report to the Department of Justice Canada, 1999

Ross, Rupert, *Victims and Criminal Justice: Exploring the Disconnect*, a Discussion Paper prepared for Presentation at the 27th Annual Conference of the national Organization for Victim Assistance, August 22, 2001, at Edmonton, Alberta, Canada

Umbriet, Mark and Greenwood, Jean, *Criteria for Victim-Sensitive Mediation and Dialogue with Offenders*, Office for Victims of Crime, US Department of Justice, August 10, 1997

<http://ssw.che.umn.edu/rjp/Resources/Resource.htm..>

Aboriginal Women

"*Mediation around the medicine wheel*", Mediation Quarterly, vol. 10 no. 4, Summer 1993.

A Healing Circle in the Innu Community of Sheshashit, Justice as Healing, Vol. 2, No. 2 (Summer 1997) http://www.usask.ca/nativelaw/jah_sellon.html

Coker, Donna K., *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking* (47 UCLA L. REV. 1-111 (1999))

Daisley, Brad, "*Sex charge resolved by Native healing circle*", 18 Lawyers Weekly No. 10 at page 6 (July 1998) .

Griffiths, C. T. & Hamilton, R., "*Spiritual Renewal, Community Revitalization and Healing: Experience in Traditional Aboriginal Justice in Canada*", 1996, International Journal of Comparative and Applied Criminal Justice, 20(2): 289-311.

Huger, Marg, "*Native Healing helps abusers : offenders admit guilt, avoid jail terms*", Globe and Mail, 8 April 1995 pages A1 and A5.

Lee, Gloria, *Defining Traditional Healing*, academic paper prepared for a Native Studies research course with the University of Saskatchewan under the advisement of Patricia Monture-Okanee. www.usask.ca/nativelaw/jah_lee.html

Monture-Okanee, Patricia A., *Justice as Healing: Thinking About Change*, Justice as Healing: A Newsletter on Aboriginal Concepts of Justice, Native Law Centre, Summer, 1995

www.usask.ca/nativelaw/jah_okane.html

Native Counselling Services of Alberta, *A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process*, Aboriginal Corrections Policy Unit, Solicitor General Canada, 2001

Stewart, Wendy, Huntley, Audrey and Blaney, Fay, *The Implications of Restorative Justice For Aboriginal Women and Children Survivors of Violence: A Comparative Overview of Five Communities In British Columbia*, a report prepared for the Aboriginal Women's Action Network as part of their Aboriginal Women, Violence and the Law Participatory Action Research Project July 2001

The Four Circles of Hollow Water, APC 15 CA (1997), Public Works and Government Services Canada, Cat. No.: JS5-1/15-1997E, ISBN: 0-662-25629-8

Toughill, Kelly, *Judge Jim, An Inuk's compassion and understanding transform his people's view of the justice system*, The Toronto Star -- Ontario, Saturday, February 3, 2001 01, ATLANTIC CANADA BUREAU, HOPEDALE, Labrador.

Zellerer, Evelyn, *"Restorative Justice in Indigenous Communities: Critical Issues in Confronting Violence Against Women"*, International Review of Victimology Vol. 6, 1999, pp.345-358.US.

Cases

A.J. No. 1025, (R. v. Manyfingers) (Alta. Prov. Court). Provincial Court Judge Jacobson.

R. v. S. R. [1994] N.J. No. 108. Newfoundland Supreme Court - Trial Division. Judge O'Regan. Filed: March 7, 1994.

R. v. Rich (1994) 2. CNLR 143 Court of Quebec

R. v. Naappaluk (1994) 2 C.N.L.R. 143 Court of Quebec. (May 4, 1993) .

R. v. McGrath (1962), 133 C.C.C. 57 (S.C.C.).

R. v. Alaku (1993), 112 Dominion Law Reporter (4th) at page 732. Quebec Court Crim. Pen Div.).

R. v. D.N. (may also be indexed as R. v. N.(D)) [1993] Y.J. No. 193.

R. v. Joseyounen (1995) 6 W.W.R. 438 (Sask. Prov. Ct.) and [1996] 1 C.N.L.R. at page 182.

R. v. A.F. (1994) Ontario Court of Justice.

R. v. H.K.C. [1997] Saskatchewan Court of Appeal. No. 577. Written reasons: September 15, 1997.

R. v. Gladue, File No.: 26300, 1998: December 10; 1999: April 23., SCC, on appeal from the Court of Appeal for British Columbia

R. v. W. M. [1997] O.J. No. 2778. Court File No. 1892/92 Ontario Court of Justice (General Division). June 27, 1997. Judge Sedgwick.

R. v. W.B.T. (1997) Saskatchewan Court of Appeal. [1998] 2 C.N.L.R. 140. Judge Bayda.

R. v. Paul [1999] 1 C.N.L.R. 149 New Brunswick Court No. 331.