

**PROJECT**  
**WILLOW**

YWCA-CJI-CMW



**Restorative Justice  
and Gender-Based  
Violence**

**Literature Review**

**by**

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## Literature Review: Restorative justice and gender-based violence

### Introduction

Gender-based violence continues to be a significant issue for women (including trans and non-binary people) in Canada despite decades of progress with emergency and counselling services for survivors, advocacy with the Family and Criminal legal system and prevention work. Despite these efforts, there are still very significant problems that have not been resolved: one woman in Canada is killed by her intimate partner every 6 days (Roy, 2019), Indigenous women at seven times the rate of non-Indigenous women (Statistics Canada, 2018), the cost to the justice system is \$7.4 billion to deal with the aftermath of spousal violence (Government of Canada, 2021), incidents of gender-based violence continue to go under-reported (Statistics Canada, 2018) and victims continue to feel unprotected by the Criminal Legal system in Canada (The Canadian Press, 2014).

Restorative justice is a set of values and practices that supports conflict, harm and crime to be addressed by the people impacted with the support of the community. Rather than regarding justice as punishment, as in the traditional criminal legal system, Restorative justice is interested in the obligations that come from causing harm and creating opportunities for victim/survivors to have their needs met. Importantly, restorative justice also considers the wider impact of harm on families and the greater community, involving them in processes as appropriate (Zehr, 2002). Restorative justice has grown beyond its initial conception of diversion from the courts to provide victim offender mediations, to practices that include Victim Impact Panels, Victim-Offender Panels, Circles and Conferencing (Office of the Federal Ombudsman for Victims of Crime, 2017).

There is both mounting interest and continued skepticism in the role restorative justice can offer in providing safety, healing and justice for all parties impacted by gender-based violence. The following review examines the research to date on the failing of the criminal legal system to address gender-based violence and looks at ability of restorative justice to address the needs of everyone impacted. If the goal is to end gender-based violence, then we must find non-violent alternative approaches to gender-based violence then systems of state violence (Meiners, 2020).

*Interpersonal violence and the violence inflicted by the state are not opposing actors in a moral or political war. Rather the abuser or rapist and the criminal legal system are a team, the former the bad cop, and the latter the good. They speak in unison...getting rid of punishment would be a great blow to the power of the patriarchy, as well as that of white supremacy. (Meiners, 2020)*

### Gender-based Violence, Criminal Justice and Abolition

Since the feminist movement of the 1970's, the criminal justice system has been heavily relied on to address violence against women. This, despite the warnings from racialized feminists that the state will never be able to provide safety for all women. (Meiners, 2020) While the legal system can sometimes result in guilty verdicts and significant sentences for men who are the aggressors in gender-based violence, most victim advocates acknowledge that this system typically results in a secondary trauma for victim/survivors, be it from the experience of being interviewed and believed by the police, (Robyn

Doolittle), their inability to have a significant role in the court proceedings, their heightened risk of lethality when accessing the legal system, being treated insensitivity or with hostility by judges and defence attorneys, or the likelihood that their case will result in a guilty verdict (McGlynn C. D., 2017).

Authors of *The Feminist and the Sex Offender* (2020) illustrate how the racism, sexism and overall ineffectiveness of the criminal justice system will never be a tool to effectively address gender-based violence: girls spend twice as long in juvenile detention for sex offenses as boys (p. 56), the institution of community notification had no effect on rates of sex offending (pp. 51-52), commonly used instrument for assessing the risk of recidivism was accurate only 60% of the time, “not much better than a coin toss”(p. 75). This growing awareness of the ineffectivity of courts prisons and policing, is resulting in many feminists looking outside of the legal system for ways to stop violence (Hayden, 2012).

When we look at the needs of survivors for safety, healing and justice, we see that, in fact, they most often do not want their partners prosecuted (Frederick L. &, 2010). Instead, they are seeking a process that supports their active participation, voice, validation, vindication and offender accountability (Daly K. &, 2017) can be met through restorative justice. The following look into the literature review will explore to what extent their interests met through restorative justice processes.

## **Safety**

Within the feminist anti-violence sector there are concerns about using restorative justice to address gender-based violence, such as high value being placed on forgiveness or reconciliation, the lack of skill of practitioners to assess and address safety needs, it's potential to coerce victim/survivors into participation, and the lack of training and understanding that practitioners have around gendered violence (Randall, 2013), (Hayden, 2012). Additional criticisms have been that restorative justice can privatize harm and remove it from the sphere of public interest (Keenan, 2017) and that if victim's needs aren't centred, they may be further harmed by a restorative justice process (Miller, 2013). Other barriers to using restorative justice are based in misunderstandings of the terminology and definitions (Gavrielides, 2015).

Because interpersonal violence carries with it the risk of lethality for women, attention to safety for victim/survivors, must be well understood and consistently attended to. This requires that practitioners understand the dynamics of interpersonal violence, such as the subtle ways that power can be used to maintain control, that they can facilitate risk assessments and safety plans, and that the focus of the practice need not be on forgiveness or reconciliation (Randall, 2013).

However, as pointed out by in *Declarations of Truth (WomenatthecentrE, 2020)*<sup>1</sup> too much focus on safety can compromise the opportunity to empower survivors to have their healing and justice needs met. They label this approach to service provision “gatekeeping”, stating “Gatekeeper organisations have a tendency to vet and restrict opportunities for survivors, and for this project, were unwilling to support recruitment efforts, perhaps because they believed the topic would be triggering for survivors.” (p.6). Other research into victim-survivors interest in having an RJ process offered to them found that survivors were two times more likely than non-survivors to prefer a restorative service rather than going to court (Marsh, 2015). Yet, a balance is required between services that empower victim/survivors with

choice(s) and being aware of and skilled to address safety needs. Too much focus on safety for victim-survivors can perpetuate disempowerment, while too much prioritization of victim choice can lead to safety concerns (Liebmann, 2010).

No process is free of safety concerns, however, restorative justice in cases of gender-based violence can minimize risk by having processes be victim-centred, voluntary (to start and as the case moves forward), and by having facilitators who are gender appropriate, skilled, trauma-informed, aware of the dynamics of gendered violence, culturally appropriate, challenge victim blaming, social denial, and minimization of harms, be cognizant of racism and other social inequalities, facilitate risk assessments, safety planning capability to address power dynamics, (Hayden, 2012), (Randall, 2013).

It is important to remember that for victim/survivors, the criminal legal system often causes secondary trauma. For youth, a conference process can be more effective and less victimizing than a court process (Daly K. , 2006). In fact, for all 5 indicators, listed earlier: participation, voice, validation, vindication and offender accountability, conferencing scored better than court in a 2017 study on sibling sexual violence and youth conferencing (Daly K. &, 2017).

## **Healing**

Victim/survivors often want support to heal from the harm(s) they have experienced. Survivors often want to tell their story, have the harms done to them acknowledged, and sometimes, repair the relationship (Julich, 2019). Like counselling and group support, restorative justice can make meaningful and unique contributions to victim/survivors healing needs.

Being supported with careful preparation to sit in a room with one's offender can help victim/survivors regain their sense of power back. It is important that proceedings do not move too quickly to focus on offender rehabilitation (Daly K. &, 2017). Practitioner who give victim/survivors control of the pace of the preparation work result in victim/survivors having experiences of being taken seriously and treated with respect (Koss, MP). These practices can foster healing. Participants in the RESTORE program saw a decline of victim-survivors post-traumatic stress indicators from 82% at the start of the program, to 66% post-conference (Koss, 2014).

Restorative Justice work that invites survivors into the role of facilitator can result in a healing impact for those staff/volunteers as is the case in Circles of Support and Accountability (Wager, 2017).

Research that has looked at the impact of post-conviction restorative justice services has found outcomes to be healing and therapeutic (Miller, 2013). The passing of time allows for the victim/survivor to feel more ready for participate in the process and this can help mitigate the power dynamic between participants. This same research identified that a restorative justice process alone was not sufficient in the domestic violence cases it looked into.

## **Justice**

Restorative justice defines achieving justice as effectively addressing the needs, harms and obligations that harm creates (Zehr, 2002). More importantly, it allows it's participants to define what justice means to them (Hayden, 2012).

Project RESTORE, which offers dialogue support to people impacted by sexual harm, surveyed victim/survivor needs and found that:

- In 8 of the 12 cases (67%) victims-survivors wanted to have questions answered.
- In 5 of the 12 cases (42%) victims-survivors wanted to negotiate an agreement regarding future contact.
- In 6 of the 12 cases (50%) victims-survivors wanted to tell their story.
- In 5 of the 12 cases (42%) victims-survivors wanted the harm done to them to be acknowledged.
- In 5 of the 12 cases (42%) victims-survivors wanted the harm done to them to be acknowledged.
- In 3 of the 12 cases (25%) victims-survivors wanted a reparation agreement.
- In 6 of the 12 cases (50%) victims-survivors wanted the offender to demonstrate responsibility. (Jülich, 2019)

Overall, more than 90% of participants were satisfied with their preparation, the conference, and the plan to address the harm. Most said that they would recommend the program to others (Koss, 2014).

McGlynn's reserach found that in cases of sexual violence, restorative justice was effective at ensuring that victim/survivors had a voice, were granted control, treated seriously and with respect (McGlynn C. W., 2012).

The work of building accountability and meeting obligations with people who have offended begins with an admission of responsibility. Restorative justice values and practices facilitate meeting these needs. Further, it is well positioned to address the needs of offenders to meet the obligations of the harm they have caused and to support them in causing future harm, thereby creating safer communities. Youth participants in a restorative program un the UK made earlier admission their guilt (Daly K. &, 2017). In fact, when counselling and treatment is available, people who have offended are more likely to make admissions of guilt (Daly K. , 2006) Participants in a program that used Case Conference to address sexual harm illustrated this citing "between 61 and 67 per cent of all caution or conference cases resulted in a full admission by the offender compared to 19 per cent of all court cases" (Daly K. , 2006).

Models that have been successful at achieving justice with domestic violence restoratively exist internationally. In Austria, this work started in 1985 with youth and with adults starting in 1992. The process begins with court diversion, referred to a mediation team of one man and one woman. Case development is done by matching the gender of the participant and the facilitator. For the case to proceed, the victim must agree to participate, the violence has to stop and the perpetrator most take responsibility, including that they are the only one to blame. The process only moves forward with the support of the victim/survivor. Research into this model concluded that this process could help in a wide range of cases as it reinforced empowerment and freedom from fear and violence within a relationship (Pelikan, 2000).

## **Recommendations**

The following are a summary of the recommendations for addressing gender-based violence restoratively:

1. Restorative Justice services to victim/survivors of gender-based violence must be survivor-centred (McGlynn C. W., 2012).
2. Restorative Justice practitioners should work in partnership with the Violence Against Women sector (McGlynn C. W., 2012)
3. RJ practitioners should be trained and well supervised in the dynamics of interpersonal and gendered violence, as well as being cognizant of racism and other social inequalities (Randall, 2013)
4. RJ practitioners should use a two facilitators model of practice and ideally matching the genders of the participants (Hayden, 2012)
5. RJ practitioners should be trained in risk assessment and safety planning (Randall, 2013)
6. RJ practitioners must find ways to address the power imbalances that exist between the victim and offender (Miller, 2013).
7. The practice must be voluntary. Practitioners must have procedures for assessing the voluntary nature of the referral (Shapland, 2014).
8. For serious crimes, may be more appropriate as a compliment to the criminal legal process (Miller, 2013).
9. Screen for readiness for both parties (Hayden, 2012)
10. Sufficient time given to careful planning and preparation (Randall, 2013), (McGlynn C. W., 2012).
11. Practices must include the development of standards of practice and transparent, self-critical, self-evaluating, and public reporting (Randall, *Restorative Justice and Gendered Violence: From vaguely hostile skeptic to cautious convert: Why feminists should critically engage with restorative approaches to law*, 2013)

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