

Restorative approaches and gendered violence: Moving beyond is it possible?

A Discussion Paper

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Executive Summary

Restorative approaches *can* be used in gendered violence cases. This is the finding from my literature review on some restorative justice models used in intimate partner and sexual violence cases. The seed for this literature review was planted in 2014 after a two-day workshop with transition house and men's intervention program workers where we contemplated using restorative approaches in intimate partner violence cases. Going forward the participants wanted to learn more about some successful models. It is hoped that those participants, women-serving agencies and restorative justice providers considering restorative approaches for intimate partner or sexual violence will find this discussion paper useful.

This paper documents restorative models developed and evaluated in the literature between 2012-2018. There is one anomaly, which is the family group decision-making model from the early 2000's developed by Joan Pennell and Gale Burford. This model is included because it is an earlier example of a successful approach used in family violence cases in Newfoundland.

The first part of the paper introduces readers to some of the background conversations taking place in Halifax since the 2014 workshop.

There are three sections that follow.

Section One (p. 4-12) documents different types of restorative models with examples of programs from around the world. Victim offender mediation, circles, conferences, and victim impact panels are models used in intimate partner or sexual violence cases. A description of each program, how it works and who it serves are presented in narrative form and in a table format for ease of reference. Transformative justice, an alternative process used in some Afro-centric, communities of colour, and LGBTQ communities, is also discussed.

Section Two (p. 13-14) documents the concerns and cautions as well as the positive aspects of using restorative approaches with gendered violence as presented in the literature. Concerns include compromising the safety of the victim, making the victim have face-to-face contact with the offender, and compelling the victim to forgive the offender. Positive aspects include victim empowerment resulting from being listened to and heard, offenders taking responsibility, and addressing violence when victim and offender want to reconcile.

Section Three (p. 14-15) lists the issues agencies must address when establishing a restorative approach to gendered violence. These include developing principles to guide the work, hiring skilled facilitators in gendered violence and restorative justice, ensuring the protection and safety of victims, monitoring outcomes and follow-up. Agencies must also affiliate with Afro-centric, Indigenous, LGBTQ and immigrant communities. Two practice guides are mentioned which offer step by step points to set up a restorative approach for intimate partner or sexual violence. References to the documents are found in the table in Section One.

The paper has a brief conclusion and ends with two appendices and a reference list. Appendix A (p. 17-18) is a draft of the principles document the Metro Interagency Restorative Conversations Committee on Family Violence developed for a restorative approach to gendered violence. Appendix B (p. 19-20) is a further reading list of journal articles on restorative approaches and gendered violence.

Introduction

This discussion paper outlines some of the promising programs and practices gleaned from the literature that use a restorative approach to respond to intimate partner violence and sexual violence. It is hoped this document will be a useful resource guide for women-serving and restorative justice agencies who are exploring the possibility of developing a restorative approach for gendered violence.

This discussion paper evolved from conversations that have been ongoing in Halifax, Nova Scotia for the past several years. The conversations began when a small group of feminist activists started talking about whether restorative approaches could be used to respond to intimate partner violence. Eventually the group broadened to include sexual violence and restorative justice agencies. The conversations delved more deeply and reflectively into the principles of restorative approaches. Missing from the conversations, however, were examples of restorative programs that have been used in gendered violence. Funding was secured from the federal Department of Justice Policy Centre on Victims Issues to conduct a literature review to find out what programs there are around the world where restorative approaches are documented and used for gendered violence.

It has been suggested that the discussion of whether criminal justice or restorative justice is a more appropriate response for dealing with gendered violence presents a false and unnecessary dichotomy (Zosky, 2018). In most of the programs reviewed here the restorative approach is not better than but parallel to the criminal justice system. The criminal justice system can be useful to sanction an offender who does not fulfill their obligation(s) under the restorative process. Another argument suggests restorative processes shouldn't be used at all in gendered violence cases, as it jeopardizes the safety of the woman. As Mary Koss, a well-known researcher on restorative justice puts it, "No woman should be forced to meet the perpetrator, but neither should she be denied the opportunity if she desires it" (as cited in Madsen, 2006, p. 112). Finally, a restricted framing of restorative justice as solely program models can neglect approaches that use a relational lens to support well-being and positive relationships (Llewellyn, 2012). These points have been part of the ongoing dialogue in our exploration of restorative approaches and gendered violence.

A review of the literature revealed there is limited published research on restorative approaches currently being used and evaluated with gendered violence. There are many published articles on the theoretical application of restorative approaches to gendered violence, however the purpose of this review was to find rich descriptions of restorative models being used throughout the world for intimate partner and sexual violence. Research articles from peer reviewed journals were perused from 2012-2018 and seven program models were found; five programs for intimate partner violence and two programs for sexual violence. These program models were chosen because they had either been evaluated or had detailed descriptions of their processes and are found in the United States, New Zealand and Europe.

Employing the above time frame and criteria for the literature search eliminated some restorative processes that have previously been written about. One of these is the family group decision making conferencing model developed by Joan Pennell and Gale Burford in Newfoundland (2000) for child welfare and family violence cases. Another is the customary law work being done in Nova Scotia with the Mi'kmaq community. The final example is the circles of support and accountability. These will be briefly described in Section One.

Section One describes some of the restorative approaches used in gendered violence cases and provides examples of programs that have been developed and evaluated. It also includes a chart for ease of reference. The chart includes references to two documents: one is a framework document to help groups set up restorative programs for intimate partner violence; the other is a practice guide for establishing a restorative process for sexual violence. Section Two is a discussion of the concerns expressed by feminists and women-serving agencies about using restorative approaches in gendered violence as well as some of the optimism about using restorative approaches. Section Three outlines points to consider in setting up a restorative approach for intimate partner or sexual violence. There is an appendix section listing articles and documents about restorative processes and gendered violence for additional reading, along with a set of principles for restorative approaches in gendered violence developed by the Metro Interagency Restorative Conversations Committee on Family Violence.

Section I: Models of restorative approaches with examples

There are several models of restorative approaches. The four most common are: victim offender mediation; conferences also known as family group conferencing; circles; and victim impact panels. Each model is described below along with examples of programs found in the literature that use the model for intimate partner or sexual violence.

1. Victim offender mediation.

These are face to face meeting(s) between victim and offender in the presence of a mediator. They can take place pre or post sentence, as an alternative to incarceration, after incarceration or upon release from incarceration. There are two examples from the literature that use victim offender mediation. Both are used with intimate partner violence.

a. The first example is a program in Austria (Pelikan, 2010) operated by the agency Neustart. The prosecutor refers the case to the restorative justice agency post charge and upon agreement from the victim and offender to participate in the process. The cases referred are situational couple violence where the level of violence does not result in serious injury nor is there coercive control.

This victim offender mediation process is a mirror model process whereby a male and female social work mediator contacts the victim and offender. The social workers have separate conversations with the victim and offender where they ask about what happened in the violent incident, about the relationship in general, what the victim wants in terms of reparation or compensation, whether the offender is to get treatment, and whether the couple separate or remain in the relationship. After these individual conversations, the two mediators come into a room together with the victim and offender. This can happen immediately after the individual conversations or after a period of time to give the victim and offender an opportunity to reflect on their stories. This reflection period can involve the victim or offender receiving counselling or legal support.

In the mirror model session, when the two mediators, the victim and offender are in the same room, the mediators face each other, and the victim and offender sit beside them. Then the mediators tell the victim's and offender's story to each other. Once the mediators have finished, the victim and offender can clarify, explain and correct the story versions. Then the victim and offender can begin an exchange

with each other. The mediators might offer suggestions, alternatives and clarifications during the conversation between victim and offender. This rendering and questioning allow the victim and offender to reflect on their own situation and story (Pelikan, 2010).

The session with victim and offender along with the two mediators is the core element of the whole process. The session follows a design that brings into effect two main working principles of mediation: recognition and empowerment (Pelikan, 2010, p.51).

The research conducted by Pelikan (2010) found that this process led women to feel more empowered about their decision to leave the relationship. Those that stayed in the relationship stated they felt more empowered to state their demands for a life without violence and more able to handle conflicts without violence. These women also felt their abusers had changed. At least half the women had separated from the abuser. Moreover, among women who stayed in their relationship, more contacted the police when there was a re-occurrence of violence.

b. The second example of victim offender mediation is a post-sentence model used in the United States (Miller & Iovanni, 2013) and Canada by the Correctional Services of Canada Restorative Opportunities program. In this model conversations between the victim and offender usually take place years after the offence occurred. This is more of a therapeutic process as the offenders do not gain a reduction in sentence or favor for parole when agreeing to participate in the program. Since the offender doesn't gain any reduction in their sentence, their motivations to participate differ from diversionary models. In a post-sentence model, the victim gets the opportunity to question the offender about the abuse

Miller & Iovanni (2013) examine a case study of intimate partner violence. The offender received 15 years for sexually assaulting the victim. The violence was long-standing and became progressively more severe. The victim decided to participate in the post-conviction restorative dialogue with the offender eight years after his conviction. During the eight years the victim engaged in counselling, went back to school and developed support networks for herself and children.

The preparation time for the victim and offender includes many months of meeting with the mediator to prepare each for the interaction. Letter exchanges can be the first step, eventually leading to a face-to-face dialogue if so desired by the victim. In the face-to-face meeting a support person can accompany the victim and offender.

One of the key benefits of a post-sentence restorative justice model is that the victim has had time to heal, become stronger, and feel safe. In addition, the offender has had time to reflect and take responsibility for their actions. The elapsed time and lengthy preparation by the skilled facilitator are essential. Post-sentence victim offender meetings appear to have the highest level of victim satisfaction (Miller & Iovanni, 2013).

2. Conferences.

This restorative approach brings the victim, offender, service providers, supporters and family members together to discuss the impact of the harm committed and the reparation by the offender. Conferences are facilitated by skilled restorative justice practitioners. There are two examples of conferences used for sexual violence and one for intimate partner violence.

a. The first is a program called RESTORE developed in Arizona. It is no longer operational due to lack of government funding (Koss, 2014). This program was for a one-time offence of acquaintance sexual assault. Prosecutors referred offenders to RESTORE, however, the offenders could only participate once the victim had consented to process. Both the victim and offender were provided with free legal counsel to help them decide whether to participate. Finally, a risk assessment determined whether the offender was suitable for the program. In the article by Koss (2014) on the evaluation of RESTORE, there is a chart on the operational overview of the restorative process from the referral, to preparation, to conference, to final stage of accountability and reparation (p. 1628-1630).

Most of the offenders chose to participate in the program in order to apologize for their behaviour. Most victims participated to ensure that the offender wouldn't assault again and would get the help they need. The victims stated that the opportunity to express to the offender how the incident impacted them was very important. Half of the victims did not believe the sincerity of the offender's apology. Victims identified that empowerment was a positive outcome of participating in the RESTORE program and overall most of the victims reported satisfaction with the process.

In her discussion Koss (2014) suggests that the more intimate the victim and offender were, the more likely they were to be interested in the RESTORE program. There was a high consent rate from the offenders to participate in the program. This rate fell when the offender declined to take responsibility. One question Koss raises is whether the offenders' rate of taking responsibility would increase if more preparation work was done with them.

Koss (2014) points out the racial bias of the RESTORE program; African Americans and Hispanic offenders and victims were less likely to be referred than Caucasian.

b. The second example is called Project RESTORE, used in New Zealand (Julich, Buttle, Cummins & Freeborn, 2010). This model was inspired by the RESTORE pilot program in Arizona. The referrals are received from the court after a guilty plea, community, or are self-referrals from the victim or an offender who has admitted responsibility. All cases are assessed by a team comprised of a restorative justice facilitator, a victim specialist and an offender specialist, and supervised by a clinical psychologist. All three staff are highly trained: the facilitator in restorative justice processes and sexual violence; the victim and offender specialists in sexual violence counselling. The team meets weekly to discuss referrals and decide which cases will go forward to the restorative process. For cases to go forward the offender must take responsibility and agree to treatment if recommended, and the victim must be willing to participate without feeling coerced.

When these criteria have been met, the facilitator arranges separate pre-conference meeting(s) with the victim and offender and the specialists. Detailed preparation work and coaching are provided to the victim, offender and their support people to ensure they are independently prepared to go forward into the restorative conference. The restorative conference agreements are monitored by the specialists and follow-up meetings are held with the victim and offender.

Project RESTORE is a victim centered program where the victim participant's rights are emphasized. The victim specialist acts as a support and advocate for the victim throughout the process. The flexibility of the process is another important aspect to meet the changing needs and concerns of the participants. For example, if the victim changes their mind on about attending a face-to-face meeting with the offender, the victim specialist can act in their place.

c. The Family Group Decision Making model was a demonstration project in Newfoundland in the early 2000's for child welfare and family violence cases (Pennell & Burford, 2000). The program is no longer available due to lack of funding. The cases were referred by child welfare to the coordinator. Initial work such as implementing safety measures was done with family members to prepare them for the conference. The conference participants included family members and service providers, such as child welfare workers, police, teachers, or shelter workers. At the conference, information about the case was presented, and there was discussion among all those present. Then the service providers left the room leaving the family to deliberate in private and develop a plan. The service providers were invited back into the room to review the plan to ensure it was comprehensive and included monitoring and evaluation of the actions going forward. On average, the conference lasted for about five hours. In an evaluation of the project, the findings revealed increased safety for the families, increased family dialogue and that family violence was stopped (Pennell & Burford, 2000). This conference model is seen as part of an ongoing collaboration with the family to address abuse and violence.

3. Circles.

Circles are a restorative approach used with Indigenous people here in Canada to address gendered violence in a sentencing context. In Canada, circles are also used post-sentence with sex offenders who have completed their prison sentence and are returning to the community. In the following examples from the United States, circles are used with offenders and victims of intimate partner violence.

a. Restorative Circles was developed as a pilot program in Duluth, Minnesota in the early 2000's (Gaarder, 2012). It took four years of conversations among groups such as shelters, men's intervention programs, criminal justice personnel, indigenous groups, and restorative justice providers to build enough trust to consider attempting a pilot restorative justice program for intimate partner violence. The pilot program was designed for repeat offenders and offenders in same sex relationships. There are two separate circles; a support circle for the victim and a sentencing circle for the offender. Each circle has circle keepers and community volunteers. To be included in the program offenders must be referred by the courts and have taken responsibility for their violence.

The circle for the victim is intended to provide support and to offer a safe place for the victim to tell her story and determine her options. The circle for the offender is a sentencing circle to discuss the harm done to the victim and determine an appropriate restorative sentence. The sentencing circle lasts about six months and there can be some follow-up circles after that. The circle-keepers for the sentencing circle are a man and woman, and for the support circle two women. The circle-keepers introduce open ended questions and remind participants about circle guidelines. The circles meet weekly for 2 hours.

One offender who took part in the program had stopped using violence for 5 years after the sentencing circle, and two others decreased their use of violence. For the most part the victims felt supported and cared for and did not feel their safety was compromised.

The research on this circle suggests that increasing the victim's material resources and social supports should be an important focus for the restorative process. Another finding is having two separate circle processes for the victim and the offender is unique. The victim gets to have input into the offender's sentencing circle. A third finding is that the victim may use her circle to report subsequent abuse which she may not report otherwise, thus improving her safety. The circle keeper asks the victim what they want from the offender and then establishes safe ways for the offender to accomplish that or for the circle to help the victim accomplish it. The research also shows that there must be paid staff to run the

program. Using volunteers wasn't always successful. The pilot program benefitted from being connected to the legal system. If the offender failed in some of his conditions or agreements, the legal system could step in to remedy the issue. The circle program seemed to strengthen the community coordinated responses to intimate partner violence (Gaarder, 2012). This pilot program is now a permanent program operated by the organization Men as Peacemakers.

b. Another example is the Circles of Peace program in Arizona (Mills, Barocas, Ariel, 2013). This restorative process is a court referred domestic violence treatment program for offenders. The program was developed as an alternative to the batterer intervention program and follows all the required state legislation to respond to intimate partner violence. The program is used for single incidents or repeat cases of intimate partner violence and includes a circle-keeper, restorative justice provider, and the offender. Other participants include trained volunteer community members, and the offender's support person and family members. The victim could attend some of the circle sessions individually or with a support person, have a support person attend on their behalf or not attend at all. This was designed to eliminate coercion of the victim to participate. The circle is 26 weeks in duration. The intent of the circle is to develop a plan for the offender make amends to the victim, her family and the community. Since the goal of the circle is to restore, this moves beyond the aims of batterer intervention program which are to change the attitudes, beliefs and consequently the behavior of the offender.

Evaluation results of the Circles of Peace program compared to a batterer intervention program found there was no significant difference in the offender's recidivism rates. Circles of Peace are no less or more effective than batterer's intervention program's and while victims participated in about half of the Circles of Peace their safety was not compromised. This finding could be helpful to alleviate a concern that restorative approaches are a less safe option for victims (Mills et al, 2013).

c. There are specialized restorative programs for Indigenous people, particularly sentencing circles. In Manitoba, there is a restorative program for sexual violence that has been operational in Hollow Water for many years. It is called a community holistic healing circle for victims and offenders of sexual abuse. There are two separate circles, one for the victim and one for the offender. Both these circles include family members. Eventually the two circles are brought together into a larger healing circle and then move to a sentencing circle with community members and court staff present (Woolford, 2009). Several evaluations have been conducted on the program. Unique to the Hollow Water program is the requirement that the victim be willing to consider forgiving the offender. Forgiveness is a value of the Anishinabe people who believe that a person who harms is out of balance and to achieve rightness and repair the harm balance must be restored to the family, community and nation (Native Counselling Services of Alberta, 2001).

The Mi'kmaq people of Nova Scotia have developed a customary law approach to work with their people in gendered violence cases. According to the Mi'kmaq approach, everyone must be taken care of – the wrongdoer, the survivor of wrongdoings, and everyone affected (McMillan, 2011, p.163). These restorative processes are provided by the Mi'kmaq Legal Support Network (MLSN).

There are two circles for intimate partner violence: a sentencing circle, which is post-conviction, and a healing circle, which is post-sentence. Both circles are part of the domestic violence court program. The offender must acknowledge responsibility. The community must be willing to support the re-integration plan for the offender, and the victim must be interested in participating. If the victim chooses not to participate a representative can attend on their behalf. Pre-circle preparation with the victim and

offender is crucial and carried out by MLSN workers (Mi'kmaq Legal Resource Tool Guide for Customary Law Program, 2019).

d. Circles of Support and Accountability (CoSA) is a re-integration circle of support for sex-offenders who have been released back to the community at the end of their sentence. The circle of support is comprised of volunteer community members who meet with the core sex offender member via weekly circles to provide pro-social friendship support. The inner circle of volunteers has access to an advisory circle of service providers who provide expertise and advice (Wilson, Corini, McWhinnie, 2009). The circles are offender focused and have very little, if any, victim involvement. CoSA is found throughout Canada, the United States and the United Kingdom.

4. Victim impact panels.

Victim impact panels as a restorative process used for intimate partner violence. Their purpose is to increase the offender's empathy for harms caused to their victims through their use of violence and abuse. A victim impact panel is comprised of victims of intimate partner violence whom the offender does not know. These victims share their stories of how the violence and abuse from their partners impacted them.

a. In Zosky's (2018) study of the victim impact panel, there are one-time, two-hour sessions between victims and offenders convicted of intimate partner violence attending a batterer intervention program. The victims receive extensive preparation to be able to tell their story. The offenders listen to the victims and are not allowed to engage with them or ask them questions after their presentation. Afterwards the offenders break into small group discussions with trained facilitators to discuss the content of the panel.

Zosky's (2018) suggestions to improve the victim impact panel include a facilitated discussion on how the impact of violence learned from the panel could be translated to the offender's own family. Also, that a victim impact panel should never be a stand-alone event but part of a batterer intervention program so when an offender's trauma is triggered by the panel, there is counselling support to process the trauma and not place their own family at greater risk.

The evaluation of this study found that after listening to the panel, most offenders did express some remorse for the violence they perpetrated against their partner and children. Limitations to this study include lack of insight into the feelings of victims participating in the impact panel and no mention of whether the victim partners saw differences in the offenders behaviour following the panel. There is also no follow-up over time to determine any future offending (Zosky, 2018).

b. There is a program in the San Francisco area for men who are incarcerated called Resolve to Stop the Violence Program (RSVP). The RSVP program is a three-pronged approach. The first part is Manalive, a teaching program in jail where the men unlearn violent attitudes. Next there is a victim impact panel where survivors of intimate partner violence come into the jail to present to the prisoners. Lastly, there is a circle model where men process the harm they have done to their families and how they will repair that harm.

5. Transformative Justice

For some Afro-centric, Indigenous, communities of colour and LGBTQ, the approach of transformative justice seems to be more dominant in the response to sexual and intimate partner violence.

Transformative justice promotes community accountability models and support networks based on principles of care and harm reduction for person who was harmed and person who harmed (Ansfield & Coleman, 2012). The person who was harmed is provided with support and safety, and then helped to explore how they want the harm to be repaired. This could be from the individual who harmed, and the community where it occurred. Transformative justice moves beyond individual responsibility to examine how systems of oppression such as racism, patriarchy, capitalism and the prison industrial complex contribute to the harm (Kelly, 2012). Grassroots organizations such as Philly Stands Up and INCITE! Women of Colour Against Violence in the United States are two organizations that address sexual violence and intimate partner violence through transformative justice processes.

On the following two pages are charts for ease of reference that outline the programs described above, their location, referral entry points, who they work with and links to websites where available.

INTIMATE PARTNER VIOLENCE

Restorative Model	Name	Location	Target Population	Referral	Website
Victim offender mediation (VOM)	Neustart	Austria	Victim, offender	Post-charge (pre-conviction) Crown	https://www.neustart.at/
	Restorative Opportunities Program	Canada USA	Victim, offender	Post-sentence (pre-reintegration) Corrections	http://www.csc-scc.gc.ca/restorative-justice/003005-1000-eng.shtml
Conference	Family Group Decision making	Newfoundland Canada	Victim, offender, family members	Post-sentence (pre-reintegration) Corrections	n/a
Circle	Restorative Circles	Minnesota, USA	Victim, offender	Post-conviction (pre-sentence) Courts	http://www.menaspeacemakers.org/dvrc/
	Circles of Peace	Arizona, USA	Offender, victim	Post-conviction (pre-sentence) Courts	https://www.circlesofpeace.us/
	Mi'kmaq Legal Support Network	Nova Scotia, Canada	Victim, offender, family, community	Post-conviction, Post-sentence	n/a
Victim impact panel	Resolve to Stop the Violence (RSVP)	San Francisco, USA	Victim, offender	Post-sentence (pre-reintegration) Corrections	http://communityworkswest.org/program/rsvp/
	Zoksky's 2018	Oregon, USA	Victim, offender	Post sentence (pre-reintegration) Corrections	https://dvsdprogram.com/
Restorative justice for victim survivors of family violence	Victim Services, Victoria State Government 2017	Australia			PDF available on internet

SEXUAL VIOLENCE

Restorative Model	Name	Location	Target Population	Referral	Website
Conference	Project RESTORE	New Zealand	Victim, offender family & friends	Post-conviction (pre-sentence) Courts, community, victim or offender	https://projectrestore.nz/
	RESTORE pilot program	Arizona, USA	Victim, offender family & friends	Post-charge (pre-conviction) Crown	n/a
Circle	Hollow Water	Manitoba, Canada	Victim, offender, family & friends	Post-conviction (pre-sentence) Courts	https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/cst-bnft-hllw-wtr/index-en.aspx#opening6
	Circle of Support & Accountability	Canada, UK, USA	Offender	Post-sentence (pre-reintegration) Corrections	http://cosacanada.com
Transformative justice	INCITE! Philly Stands Up	USA	Victim, offender community	Self referral, community	https://incite-national.org/ https://phillystandsup.wordpress.com/
Doing restorative justice in cases of sexual violence	Mercer & Madsen 2015	Belgium			PDF available on internet

Section II: Concerns about restorative approaches in gendered violence

Much of the literature on restorative justice and gendered violence discusses the concerns of feminist advocates and practitioners about using restorative approaches in intimate partner and sexual violence. These concerns have been expressed in our own conversations at the Metro Interagency Restorative Conversations Committee on Family Violence meetings. It is useful to document some of them in this discussion paper.

- a. Safety of the victim is paramount due to the power differences between the victim and offender, particularly coercive control in intimate partner violence. (Daly, 2011).
- b. Restorative justice returns intimate partner violence to a private family matter and takes it out of the public arena which feminists argued for with pro-arrest, charge and prosecution (Dickson-Gilmore, 2014; Galverides, 2015).
- c. There is pressure on the victim to participate in victim-offender mediation sessions when she may not want to. Voluntary participation by victims is a key principle of restorative processes (Drost, 2015).
- d. The victim and the offender may be intimidated by the restorative process (Drost, 2015).
- d. There may be pressure on the victim to accept an apology. Many victims in restorative justice find apologies from the offender insincere (Drost, 2015; Koss, 2014).
- e. The impact of violence may be minimized by the restorative justice mediator due to their lack of understanding of gendered violence or by community members who have mixed loyalties and whose norms and values may support certain levels of violence (Daly, 2011; Drost, 2015).
- f. Victim-offender mediation is only a short-term intervention; there is no long-term monitoring of the offender or follow-up with the victim after the initial session (Drost, 2015).
- g. A denunciation of violence in intimate relationships is not always articulated in victim-offender mediation sessions, which can further support the offender's justification for the abuse (Drost, 2015).

Positive aspects of restorative approaches in gendered violence

Much has been written on the positive aspects of using restorative approaches for intimate partner or sexual violence. The points listed give an overview of some of the arguments that feminists and academics consider when advocating for restorative approaches to gendered violence.

- a. The criminal justice system does not meet the needs of victims (Drost, 2015; Pali & Madsen, 2011).
- b. A restorative process provides a venue for hearing and listening to the voices of women, and participation in the process can be empowering for women. (Daly, 2011; Drost, 2015; Koss, 2014).

- c. Offenders take responsibility which can be rewarding for a victim (Drost, 2015; Koss, 2014; Pali & Madsen, 2011).
- d. Victims can use the restorative process to report subsequent abuse which she may not report otherwise, thus improving her safety (Gaarder, 2015).
- e. Often the The restorative process is connected to the legal system so if the offender fails in some of his conditions or agreements the legal system can step in to remedy the issue (Gaarder, 2015).
- f. Restorative approaches can strengthen a community coordinated response to intimate partner violence (Gaarder, 2015).
- g. There is the potential to address violence when the victim and offender want to repair and continue the relationship (Daly, 2011).
- h. Therapeutic interventions in addition to restorative justice processes can have additional benefits particularly for young first-time sexual offence offenders (Daly, 2011).

Section III: Considerations when setting up a restorative approach for gendered violence

There are many issues to consider when developing a restorative approach for intimate partner or sexual violence. The issues highlight the complexity of the development process as well as the complexity of gendered violence. Although there are models that provide frameworks for a restorative approach, the following points illustrate the thoughtful work that is necessary as the model is developed and operationalized.

1. Develop a set of principles that can guide the work of the restorative approach. These principles are the foundation for the restorative approach and can be referred to when problems or concerns arise in the restorative process. See Appendix A for an example of the principles developed by the Metro Interagency Restorative Conversations Committee on Family Violence.
2. There is no one-size-fits all restorative approach for gendered violence. The examples in this document provide a range of approaches that can be considered by a community for gendered violence cases. Each model must be based on principles that are developed by the community, reflect the community, and uphold cultural values (Kelly, 2012).
3. Restorative approaches are labour-intensive and not a quick fix. We cannot impose a model on a victim, offender, and community and expect it will work in every situation. It takes time to prepare an appropriate restorative approach, to manage all the safety considerations for the victim, and to build relationships and trust among the facilitator, victim, offender, gendered violence service providers and community supports.
4. Restorative approaches are not cheap justice. Only working with the offender in gendered violence cases, ignoring or minimizing the safety needs of the victim, particularly in communities committed to

decarceration, and not monitoring the offender to ensure they follow through on their commitments to restore the harm, all contribute to meaningless justice (Dickson-Gilmore, 2014).

5. There must be a skilled facilitator in gendered violence, well-versed in abuser and abused dynamics, to ensure that victims are safe, and that the victim and offender voluntarily agree to participate in the restorative process (Julich & Bowden, 2015; Miller & Iovanni, 2013).

6. There must be a follow-up period to ensure the agreed upon outcomes from the restorative process are completed by offender and that victim is still safe (Daly, 2011; Pelikan & Hofinger, 2016).

7. Restorative practices need to be documented and evaluated (Daly 2011; Julich et al, 2010; Drost, 2015).

8. Evaluations with victims and offenders of restorative programs revealed harms were most often caused by the people delivering programs. Staff must be well trained in gendered violence, restorative processes, and complex cases so as not to cause further harm (Drost et al, 2015).

9. Restorative processes for gendered violence must be affiliated with women's advocate services, services for indigenous, LGBTQ, women of colour and immigrant women (Gaarder, 2015).

10. Legislation allowing restorative approaches for gendered violence may improve the likelihood that victims have another avenue to access justice. Some practitioners dissuade victims from accessing restorative justice services believing they will cause greater harm to the victim. Legislation on restorative approaches also enables practitioners to develop the skill and experience necessary to deal with complex cases (Keenan, Zintaag, Nolan, 2016).

11. Restorative approaches can be very effective in empowering young offenders and victims of gendered violence, especially when used in conjunction with other resources and services such as men's treatment programs, counselling for women and child welfare (Pelikan, 2010).

There are two practice guides that will assist you in developing a restorative program. The first is Restorative Justice for Victim Survivors of Family Violence (Victim Services Victoria State Government, 2017). This framework document includes principles, processes and programs for practitioners to consider when setting up a restorative approach for intimate partner or sexual violence. The second, Doing Restorative Justice in Sexual Violence Cases (Mercer & Madsen, 2015) is a practice guide for sexual violence. It sets out risks and benefits of restorative approaches, screening, referral process, case preparation and complexities. Both documents are available as PDF files on the internet.

Other articles providing useful research on the topic of gendered violence and can be found in the bibliography. This additional reading discusses in more depth and detail the points raised in this backgrounder document. See Appendix B for a list and synopsis of some of the articles.

Conclusion

As this discussion paper has attempted to illustrate, using restorative approaches with gendered violence is a complex process. A careful and nuanced approach is required to ensure the success of each program and the safety and security of victims.

As demonstrated by the examples in this document, several restorative programs have been developed successfully with positive results. These models have shown the cooperation and trust that has been built among gendered violence experts, restorative practitioners and criminal justice system providers. The results have revealed that the victim's safety has not be compromised and offenders have taken accountability and responsibility for their violence. This is good news and has promising implications-particularly for young offenders and young victims-in the prevention of future gendered violence.

Appendix A

Restorative Principles in Gendered Violence - Draft Metro Interagency Restorative Conversations Committee on Family Violence – 14 February 2019

Purpose:

These nine principles articulate the values we seek to uphold in our individual and collective responses to gendered violence. Clarity about these principles allow our communities to have greater success working together with our clients and colleagues to stop harm and repair harm.

1. Repair harm without creating harm (e.g., increasing risk)
 - a. Just outcomes involve repairing harm without creating more harm
 - b. Repair plan that restores/ recreates safety, respect, and empowerment
 - c. Relational – valuing connections between and among people; not creating more harms to relationships
 - d. Continuously exploring how systemic interventions may inadvertently create harm
2. Feminist analysis
 - a. Feminism means creating repair plans that are fair and just
 - b. Creating safety by challenging abuses of power; un-negotiated power
 - c. Recognizing that gender influences peoples’ choices to perpetrate abuse and their experiences of victimization
 - d. Not defining people according to gender stereotypes (i.e., women as simply weak, powerless, victims, vs. men as simply strong, powerful, perpetrators)
3. Responsive to/ Collaborative with clients
 - a. Consulting those who have been harmed about what just processes and just outcomes mean to them; advocating in a manner that is collaborative vs. paternalistic
 - b. Creating responses that are specific to individuals; Resisting a one-size-fits all approach (e.g., mandating apology/ forgiveness; pro-arrest, pro-charge, pro-prosecution)
 - c. Consulting with people about what they want in terms of just processes and outcomes
 - d. Acknowledging that while workers share restorative principles, their practices and interventions will be different depending on what their individual clients want
4. Trauma responsive
 - a. Recognizing that both parties involved are often dealing with histories of trauma
 - b. Recognizing that both parties may be traumatized by community/ state interventions
 - c. Earning people’s trust to collaboratively create just processes and just outcomes
 - d. Recognizing that the effects of trauma leads to binary/ dichotomous conclusions about peoples’ identities (e.g., people are either all good or all bad, all right or all wrong, all victim or all perpetrator)

5. Culturally responsive

- a. Repair plans need to be responsive to individuals, taking into account their relationship to their cultural context (e.g., gender, culture, class, sexual orientation, etc.)
- b. Curiosity about the influence various cultural contexts have on people choices
- c. Avoid assuming what is helpful for one person from a community is helpful for another person from the same community
- d. Intersectional where violence and oppression intersect with gender, race, class, age, ability, sexual orientation and colonialism

6. Community

- a. Community is collaboratively defined by those involved in the process of creating and implementing a repair plan
- b. Community is responsible for containing harm, mandating counselling, creating safety
- c. Community creates contexts to foster respectful relationships; repair harm
- d. Community addresses environmental issues that foster harm

7. Responsibility and accountability

- a. Repair plans focus on people taking responsibility for their choices; victimization does not excuse individual responsibility; people need to take responsibility for their choices even if others do not
- b. The process must be in the 'public interest', where justice needs to be done and seen to be done
- c. Repair plans must have formal and informal mechanism to monitor accountability
- d. Evaluation must be built into the restorative process

8. Skilled practitioners

- a. The more complex the cases, such as those involving trauma and high levels of irresponsibility, the more qualifications are required by the workers
- b. Workers need training in work with trauma, restorative justice, intimate partner and sexual violence; training with those who have done the harm and those who have been harmed
- c. Workers need to be involved in a community of practice; have supervision
- d. Those working with men need to earn the trust of those working with women; instilling confidence that men are effectively supported to stop harm and repair harm

9. Collaboration with Colleagues

- a. Trusting each other's commitment to our shared values, giving people the benefit of the doubt, being charitable when people or organizations make mistakes; acknowledging the difficult, complex task at hand
- b. Celebrating the diversity of practice, appreciating the multiple ways to operationalize restorative principles; not trying to find consensus about or homogenize restorative practice
- c. Respecting each other's expertise; Having humility about our own expertise
- d. Resisting the temptation to polarize the collegial conversations into good or bad people, right or wrong, us vs. them, community vs. government

Appendix B

Article

Synopsis

Pelikan, C., & Hofinger, V. (2016). An interactional approach to desistance: Expanding desistance theory based on the Austrian mediation practice in cases of partnership violence. <i>Restorative Justice</i>, 4(3), 323-344.	Starting on page 338 this article discusses & describes the VOM process in Austria and what works and what doesn't. The article includes some methods on how the RJ process works and gives a couple of case studies.
Hayden, A. (2012). Safety issues associated with using restorative justice for intimate partner violence. <i>Women's Studies Journal</i>, 26(2), 4-16.	This article does not discuss a program but gives some context on how RJ can provide safety for women, with cautions. Pages 10-15 may be most pertinent.
Dickson-Gilmore, J. (2014). Whither restorativeness? Restorative justice and the challenge of intimate violence in Aboriginal communities. <i>Canadian Journal of Criminology & Criminal Justice</i>, 56(4), 417-446.	The article outlines the issues Indigenous communities face with IPV and the problems and concerns with RJ.
Westmarland, N., Johnson, K., & McGlynn, C. (2018). Under the radar: The widespread use of 'out of court resolutions' in policing domestic violence and abuse in the United Kingdom. <i>British Journal of Criminology</i>, 58(1), 1-16.	The article discusses how the police state they are using RJ or out of court resolutions on the doorstep with IPV despite a moratorium in the UK on RJ in IPV cases. Discusses the cautions with this approach.
Wasileski, G. (2017). Prosecutors and use of restorative justice in courts: Greek case. <i>Journal of Interpersonal Violence</i>, 32(13), 1943-1966.	This article identifies the cautions for prosecutors using RJ. Training such as understanding the needs of victims, the responsibility & accountability of the offender, and the dynamics of IPV are key.
Pali, B. and Madsen, K. (2011), 'Dangerous liaisons? A feminist and restorative approach to sexual assault'. <i>Temida</i>, 49-65.	Discusses restorative dialogues being practiced in Copenhagen between victims and offenders of sexual violence.

Article

Synopsis

McGlynn, C., Westmarland, N., & Godden, N. (2012). 'I just wanted him to hear me': Sexual violence and the possibilities of restorative justice. *Journal of Law & Society*, 39(2), 213-240.

This article explores SV and RJ and how it can be used in the UK. It uses a case study to illustrate possibilities.

Pennell, J., Sanders, T., Rikard, R. V., Shepherd, J., & Starsonneck, L. (2013). Family violence, fathers, and restoring personhood. *Restorative Justice*, 1(2), 268-289.

Examines how a program operated by child welfare called Strong Fathers can be integrated into RJ processes that are safe for women and children experiencing IPV. It documents that a treatment program for abusive men can be restorative and how it meets that criteria.

Keenan, M., Zinsstag, E., & O'Nolan, C. (2016). Sexual violence and restorative practices in Belgium, Ireland and Norway: A thematic analysis of country variations. *Restorative Justice*, 4(1), 86-114.

Article may be useful as it discusses SV and RJ in 3 countries - Norway, Ireland and Belgium.

Gavrielides, T. (2015). Is restorative justice appropriate for domestic violence cases? *Revista De Asistentia Sociala*, (4), 105-121.

Summarizes a study done in the UK of programs that deliver some type of RJ and IPV. Documents the concerns but also list some programs in the UK that could lead to further exploration.

Daly, K. (2011). Conferences and gendered violence: practices, politics, and evidence. Prepared for I. Vanfraechem & E. Zinsstag (forthcoming), *Conferencing and Restorative Justice: Challenges, Developments and Debates*. Oxford: Oxford University Press.

Helpful article in that it outlines some of the different types of RJ processes used for GV and what the overall issues are.

Drost, L., Haller, B., Hofinger, V., Van Der Kooij, T., Lünemann, K., & Wolthuis, A. (2015). Restorative justice in cases of domestic violence: Best practice examples between increasing mutual understanding and awareness of specific protection needs. *Criminal Justice Programme 2013 with the European Commission Directorate-General Justice, Directorate B: Criminal Justice*.

Discusses the interviews with victims and offenders in 6 countries who participated in VOM sessions. Some interesting commentary for practitioners to consider. Highlights some of the cautions and promises as expressed by victims and offenders.

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