

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Table of Contents

1. Key Themes (to be explored)	4
2. Research Questions	6
2.1. Gender – The Larger Context.....	6
2.2. Gender Profile	6
2.3. Project Development & Implementation.....	6
2.4. Women’s Involvement in the Community Justice Project.....	7
2.5. Project Impact	7
2.6. Project Relevance	7
2.7. Data Sources and Methods.....	7
2.8. Integrated Diversity & Equality Analysis	7
3. Relevant Documents, Studies and Practices – Yukon	9
3.1. Yukon Territorial Government Documents Online	9
3.1.1. Women’s Directorate	9
3.1.2. Family Violence: A Yukon Directory of Services and Resources	13
3.1.3. Yukon Family Violence Prevention Act.....	14
3.1.4. Family Violence Survey/Report - 2002	14
3.1.5. Options, Choices, Changes - 2000	14
3.1.6. Violence Prevention Initiatives 1996-2000.....	14
3.1.7. Counting Us In: A Statistical Profile of Yukon Women -1993.....	17
3.1.8. Multiple Roles, Multiple Voices -- A Survey of Yukon women: their concerns & priorities - 1993.....	17
3.2. Aboriginal Justice Strategy (AJS) Trends – 2000	17
3.2.1. Gender of Staff	17

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

3.3. Response to Yukon Government’s Restorative Justice Consultation - Victoria Faulkner
Women’s Centre - 1999 17

4. Relevant Documents, Studies and Practices – Other Northern Territories 28

4.1. Nunavut Justice Issues – 2000 28

4.2. Inuit Women and the Nunavut Justice System – 2000 28

5. Relevant Documents, Studies and Practices – Other Canadian..... 30

5.1. Restorative Justice and Women Who Are Victims of Violence: Justice Options for Women
- Phase Two- 2002..... 30

5.2. The Criminal Justice System: Significant Challenges – 2002 32

5.3. Federal--Provincial-Territorial Meeting of Ministers - Status of Women – 2002 33

5.4. Report on Consultation-Restorative Justice/Violence Against Women – 2001 33

5.5. Aboriginal Justice Strategy (AJS) Evaluation - 2000..... 54

5.5.1. Role of Women..... 54

5.6. Aboriginal Justice Strategy (AJS) Trends – 2000 54

5.6.1. Gender of Staff 54

5.6.2. Reported Referrals Characteristics (Age and Gender)..... 55

5.7. Aboriginal Women’s Roundtable On Gender Equality - 2000..... 56

5.8. Seeking Transformative Justice For Women -2000..... 73

5.9. Restorative Justice: Is it justice for battered women?-2000..... 82

5.10. Restorative Justice in Cases of Domestic/Sexual Violence: Healing Justice? -2000 83

5.11. Making It Safe Women, Restorative Justice/Alternative Dispute Resolution -2000 84

5.12. First Nations Women as Keepers of the Culture-1999..... 99

5.13. Keeping an Open Mind: A Look at Gender Inclusive Analysis, Restorative Justice/
Alternative Dispute Resolution - 1999 106

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

5.14.	Aboriginal Women In Canada – 1998	132
5.15.	Restorative Justice/Criminal Justice – Identifying Some Preliminary Questions, Issues/ Concerns - 1998	134
5.16.	Diversity and Justice: Gender Perspectives: A Guide to Gender Equality Analysis - 1998	135
5.17.	Aboriginal Women: A Profile from the 1996 Census	158
5.18.	Healing The Relationship Between Federally Sentenced Women/Communities - 1995.....	158
5.19.	Restorative? Retributive? How about Redistributive? 1994	158
5.20.	Dancing with a Gorilla: Aboriginal Women, Justice and the Charter -1993	161
5.21.	The Effects of Formal-Legal/Traditional Interventions on Woman Abuse in a First Nations Community - 1993	162
6.	Relevant Documents, Studies and Practices – USA	163
6.1.	Perspective - 2002	163
7.	Relevant Documents, Studies and Practices – International.....	164
7.1.	Even for rape? -2001	164
7.2.	Some Thoughts on Restorative Justice/Gender in the Pacific - 2000	173

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

1. Key Themes (to be explored)

The following basic principles have been articulated for gender equality analysis:

- Gender equality analysis is an integral part of research and evaluation.
- Gender equality analysis places importance on understanding the *social context* of law, policy and programs.
- Gender equality analysis focuses on the *effects* of a law, policy or program on diverse groups.
- Gender equality analysis is based on sound data, research, and information beyond traditional sources.
- Good gender equality analysis is the product of collaboration.
- Gender equality analysis requires us to examine and question assumptions that underlie our laws and policies.
- Gender equality analysis is attentive to how personal values, experiences, and education affect research and evaluation frameworks and approaches.

The following general principles for gender equality analysis will be kept in when developing the research/review methodologies/approaches.

- **Begin wherever possible with the lives of women** and not existing legal or program categories.
 - Since the social inequalities experienced by women do not easily fit into existing legal categories, it is important not to limit one's research, but rather to expand the analytic options by striving to understand the societal realities and dynamics of inequality. In this way, the partiality or limitations of particular legal rights may become apparent.
 - **Recognize the importance of experiential knowledge** which often provides unanticipated insights and ideas about the nature of the problem and potential solutions.
 - Consultation with affected groups is one of the most direct ways to access experiential knowledge.
 - Individual stories can provide important information
 - **Include the voices of women** who are likely to be most affected, but least heard.
 - Make a careful choice of gender indicators to capture women's **options, access to justice, participation in the processes which affect them, and satisfaction with the results of the process, policy, law, program, etc.**
 - Ask yourself if the proposed indicators hold for both women and men.
 - **Recognize the insights gained from interdisciplinary approaches**, which are essential to research that incorporates the experiential knowledge of women, and to research aimed at understanding the larger social, economic, familial and political context within which law and social policy operate.
- The integration of gender equality analysis into the research and evaluation work implies **a departure from traditional research methodology**. It does not start with a premise of neutrality, nor limit its investigation to sex disaggregated data. **A gender research approach begins with women's experience as they see it. Both quantitative and qualitative information sources are required.**
- Given the historical and continuing reality of women's inequality, gender equality analysis is primarily aimed at illuminating and addressing the barriers that women continue to face in society.
- But the analysis can identify ways in which unquestioned assumptions and values embedded in our laws and policies limit men's choices and actions as well.
 - Some of the disadvantages that women experience — for example, disadvantage associated with race, ethnocultural background, poverty, or sexual abuse in childhood — are shared by many men.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

- For these reasons, laws and policies that explicitly take women's needs and priorities into account could better meet the needs and concerns of both women and men.
- More than one group of women may be affected by community justice and in some cases, their interests, needs and priorities will differ. The **different impact of community justice on these groups** must then be considered to arrive at an equitable solution.
- Is there a promise in new forms of restorative justice for women - if this becomes a **transformative justice** which not only deals with women more fairly as victims (and offenders!) but acknowledges women's particular capacities as peacemakers and mediators.
- The **struggle to have violence against women taken seriously in the criminal justice system, must be placed within the context of the continuing effort for women's equality in other areas of society**. The issue is multifaceted and includes areas such as employment equity, economic issues, health care, social security, among others. All are intertwined. Therefore, restorative justice and other criminal justice measures should never be removed from this larger lens as initiatives often are only as effective as the society in which they are placed. The work must be interconnected and continuous.
- At a practical level, many feminists may have reasons to be suspicious of and even hostile towards restorative justice. Throughout the last three decades, feminists have fought to **have sexual and domestic violence recognized as true crimes that deserve public attention and punishment**. Restorative justice has the potential to place these gains in jeopardy by allowing such crimes to be discussed in private settings where women may suffer from a power imbalance and perhaps be blamed for the crimes. Indeed, the fight to have domestic and sexual violence taken seriously by the criminal justice system has been hard and long.
- Recent research into the experience of victims has found that "**contact between the victim and the administration of criminal justice has been primarily a source of revictimization, frustration, disappointment and annoyance rather than a contribution to the solution to the victim's problems.**" ²⁰ It argues that the victim's needs are overlooked by an adversarial system in which the main purpose of proceedings is to establish guilt and attach a sentence which has little to do with the actual harm done and does not speak to true accountability. Furthermore, it is argued that the current system overlooks the community context of crime, failing to consider initiatives that could be taken in order to prevent crime in the future.
- Intriguingly, feminist writers can be found on both sides of restorative community justice and, further, those feminist writers who continue to argue for increased criminalisation and penalisation are directly at odds with feminist or pro-feminist writers who have argued that feminist values have the potential to transform the criminal justice and penal systems and to provide a more 'caring' vision of justice

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

2. Research Questions

2.1. Gender – The Larger Context
<p>What are the gender dimensions of the larger social, economic, political and familial context in which community justice operates?</p> <p>Economic: What is the percentage of women/men are below Stats Canada’s Low Income Cut-Offs (LICOs)? What is the percentage of - First Nations’ - women/men are below Stats Canada’s Low Income Cut-Offs (LICOs)? What percentage of women/men – aged sixty five and over - are below Stats Canada’s Low Income Cut-Offs (LICOs)? What percentage of women/men – with disabilities - are below Stats Canada’s Low Income Cut-Offs (LICOs)? What percentage of families are headed by lone-parent families were classified as having low incomes? How many are female? How many are male? What is the women’s/men’s labour force participation? Full time? Part-time? Multiple job holders?</p> <p>Violence How many women/men have experienced at least one incident of physical or sexual violence since the age of 16? How many women/men have experienced physical or sexual violence by a current or past partner? What percentage of women/men – that had been physically or sexually assaulted – had reported the incident to police? What percentage of women/men – that had been physically or sexually assaulted by a partner, acquaintance or relative – had reported the incident to police?</p>
Using this information what are the actual or potential effects of community justice on women?
Does community justice respect and support women’s safety, autonomy, well-being and full participation in Yukon society?
2.2. Gender Profile
Is the target group for the community justice project – women? What are the potential implications for women? How many women accounted for the referrals made to the community justice project? As an offender? As a victim?
Do the objectives of the community justice project make assumptions about the gender and social roles of women? If so, could this result in unintended impacts on women?
Could the community justice project have unequal effects on diverse groups of women, such as those are disadvantaged due to:- Poverty,- Disability-Race,-Language?
If there is an element of discretion involved in the community justice project, could this affect women or particular groups of women in an unintended way?
Do previous evaluations of similar programs or the literature suggest that gender could be an issue?
2.3. Project Development & Implementation
Were women and particular groups of women consulted in the development of this community justice project? By whom? If not, should they have been?

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

If they were consulted, did they express concerns and, if so, were these addressed?
What are the participation rates of men and women from diverse groups, such as those who are disadvantaged due to: poverty, disability, inability to speak either official language? If there are differences in participation rates, what are the implications for women and particular groups of women? Are there elements of the community justice project that pose particular barriers to participation?
2.4. Women’s Involvement in the Community Justice Project
How many women in the community justice project are involved in the negotiation, development, implementation, management and service delivery aspects?
How many women are represented among community justice staff?
How many women are represented among board members? or among First Nations’ council? or to the organization to which the community justice reports or is sponsored?
How many women were being represented among the volunteers?
How many women were involved in initiating the process for developing the community justice project?
2.5. Project Impact
What impacts has the community justice project had on men and particular groups of women?
Has the community justice project enhanced access to justice by diverse groups of women?
What is the impact of community justice on the most vulnerable group of women?
2.6. Project Relevance
Is the problem this project addresses equally relevant to men, women and particular groups of women? If not, are there any significant implications for women and particular groups of women?
2.7. Data Sources and Methods
Are data sources and methods available to get valid and reliable information on impacts on different groups of women? E.g. Community justice project; Women’s groups; Yukon Bureau of Statistics; National Justice Statistics Initiative; CCJS; Statistics Canada, etc
Is there is reason to believe that marginalized women will be differently affected by the community justice project? E.g. Specialized surveys; open-ended interviews; focus groups; case studies; participatory process
What are the limitations of the data that can be accessed in the course of the research and the time and resource constraints? E.g. Extrapolations or case studies are an option; insufficient disaggregated data
Are the assumptions driving the research approach/questions repeatedly checked?
Have participants received the research results?
2.8. Integrated Diversity & Equality Analysis
Status: What research or consultation has been done in the area of community justice?
Impacts/Outcomes: a) What are the impacts (whether intended or unintended) of community justice on individuals in, or brought into, the justice system, or on the public at large? b) Are there foreseeable specific impacts of the initiative on individuals who can be identified by membership in any of the following groups? — women — aboriginal people— religious groups— persons with disabilities — youth and children— the elderly— social assistance recipients and the poor— persons who have difficulty functioning in either official language — persons with literacy problems c) Are there foreseeable specific impacts on individuals who can be identified by membership in more than one of these groups?
Options/Modifications: a) How could community justice be modified to reduce or eliminate any identified negative impacts, or to create or accentuate positive ones? b) If these modifications were made, would there be impacts on other groups in society or on the ability of

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

community justice to achieve its purpose?
Further Research/Questions: Given what has been learned in the analysis undertaken to this point, what additional research or consultation is desirable/essential to better appreciate the impacts of community justice on diverse groups? Are there any answered questions remaining?

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

3. Relevant Documents, Studies and Practices – Yukon

3.1. Yukon Territorial Government Documents Online

3.1.1. Women's Directorate¹

- Gender-based analysis recognizes that the realities of women's and men's lives are different, and that equal opportunity does not necessarily mean equal results.
 - The results of policies and legislation need to be anticipated, and these results need to be as equitable as possible for all women and all men.
- In some cases, gender issues may be significant to the policy and play a determining role.
 - In other cases, they may be less significant and constitute a set of factors to be weighed with others.
- The Yukon Government continues to support the implementation of gender-based analysis in all government programs, policy and legislation.
- Many jurisdictions have developed tools to review existing and proposed policies from a gender perspective.
 - This ensures intended and equitable results and increases awareness at all levels of government of the importance of gender considerations.

Women's Directorate Advisory Council²

The Yukon Advisory Council on Women's Issues was established by the Honourable Margaret Joe in February, 1987 and is administrated within the budget of the Women's Directorate. Currently, the Council provides advice to the Minister Responsible for the Women's Directorate. The composition of the Council provides an opportunity for rural and urban women, aboriginal and non-aboriginal, to provide advice to government on issues of concern to Yukon women.

The Yukon Advisory Council on Women's Issues was established by the Yukon Advisory Council on Women's Issues Act, assented to May 14, 1992. The Act states that the council shall:

- develop public awareness of the issues affecting the status of women;
- promote a change of attitudes within the Yukon so that women may enjoy equality of opportunity;
- encourage discussions and expressions of opinion by Yukon residents on issues affecting the status of women;
- review policies, programs, and legislation affecting women, as directed by the Minister;
- advise the Minister with respect to such issues as the Minister may refer to the council for its consideration;
- advise the Minister with respect to such issues as the council considers advisable; and

¹ Yukon Women's Directorate, Publications <http://www.womensdirectorate.gov.yk.ca/publications.html> and Violence Prevention <http://www.womensdirectorate.gov.yk.ca/violenceprevention.html>

² <http://www.womensdirectorate.gov.yk.ca/council.html>

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- encourage organizations and groups that promote the equality of women.

The Council is made up of eight members appointed by the Minister. The members are Yukon women who represent the regions of the Yukon, Yukon First Nations, and women's organizations.

The current (2002) Council members are:

Louise Bouvier	Destruction
Irene Brekke	Bay
Amar Dhillon	Whitehorse
Jennifer Flynn	Whitehorse
Rhoda Istchenko	Dawson City
Dorothy McLachlan	Haines Junction
Jan Ogilvy	Whitehorse
Kathleen Suza	Ross River

Women's Directorate Women's Groups

Carmacks Safe Home

The Carmacks Safe Home offers support through home visits. Workers are on-call 24 hrs. They work with NAADAP, Justice and other resource people. They organize healing workshops for men and women in the community and work with women on all levels.

Phone: (867) 863-5710
Mailing Address: Box 135, Carmacks, Yukon Y0B 1C0
Contact: Johanne Maisonneuve

Dawson City Women's Shelter

The Dawson City Women's Shelter opened its doors in November, 1987. It provides confidential shelter, support and advocacy to women and children in crisis on a twenty-four hour basis. The home also provides emergency shelter to transient women and their children, and acts as an emergency foster home for the Dept. of Health and Social Services. Outreach Services include home visits, Youth Centre activities, and a weekly childcare drop-in program. All services are provided free of charge.

Phone: (867) 993-5086
Fax: (867) 993-6235
Mailing Address: Box 784, Dawson City, Yukon Y0B 1G0
Contact: Sashia Robbins

Help and Hope For Families: Watson Lake Transition Home

Help and Hope for Families Society is a home for women and children in crisis. Our home is open 24 hours a day and provides a 24 hour telephone crisis support line. By providing support groups, children's programs, advocacy, education, referral, resources, outreach and support, and promoting awareness and empowerment, we believe we will make a difference. All contact is strictly confidential.

Phone: (867) 536-7233 or (867) 536-2711
Fax: (867) 536-7770

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Mailing Address: Bag 3600, Watson Lake, Yukon Y0A 1C0

Contact: Shona Greybear

Kaushee's Place / Yukon Women's Transition Home

Offers shelter to women and their children who are dealing with the effects of abuse. In addition to a no-cost thirty day crisis level stay, Kaushee's offers independent second-stage housing in a secure environment based on Yukon housing rates. Outreach and advocacy, as well as child care, are available to women. We offer a 24-hour crisis line and a drop in outreach service. There is a room for donations available for women. Please contact Kaushee's for more information.

Phone: (867) 633-7720

Fax: (867) 668-2374

Crisis Line: 668-5733

Mailing Address: Box 4961, Whitehorse, Yukon Y1A 4S2

Contact: Barb Powick

Les EssentiElles

Began in 1995 with a mandate to improve the quality of life of francophone Yukon women while meeting their needs and representing their interests at the territorial and national levels. Another goal of this group is to create solidarity between French, English and First Nations women as well as with other Yukon and national organizations to improve women's conditions and to break the isolation faced by French women living in a minority setting. The group also provides listening and referral services to Francophone women in the Yukon.

Phone: (867) 668-2636

Fax: (867) 668-3511

Mailing Address: Box 5205, Whitehorse, Yukon Y1A 4Z1

Contact: Sandra St-Laurent and Stephanie Burchill

E-mail: elles@yknet.yk.ca

MAJEDI Safe House

The Majedi Safe House opens only when needed and can be reached care of the Margaret Thomson Healing Centre.

Phone: (867) 969-2722

Mailing Address: Healing Centre, Ross River, YOB 1S0

PSAC Regional Women's Committee

The Public Service Alliance Commission Regional Women's Committee is a women's union organization that works collectively with women on different levels within the union. They inform women and advocate for policies that affect/help women in the workplace. They bring to the fore important issues affecting women in unions, including workplace equality, harassment and violence against women. Their objective is education so that women can become more aware of what unions can do.

Phone: (867) 667-2331

Fax: (867) 633-5347

Mailing Address: 201-2285 Second Ave., Whitehorse, Yukon Y1A 1C9

Contact: Rose Berndt

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Victoria Faulkner Women's Centre

A local non-government, non-profit organization that has been offering advocacy and support for women throughout the Yukon for more than twenty years. It is staffed by a part-time coordinator and a full-time coordinator/ women's advocacy worker who is available to women for support in economic and social crises. They provide programming such as Exploring Your Anger; support groups and others, available from time to time, dependent on funding. Please contact the Centre. The Centre is directed by a coordinating collective. Drop in hours are 11 a.m. to 3:00 p.m. weekdays and the Centre is located at 503 Hanson Street, Whitehorse Y1A 1Y9.

Phone: (867) 667-2693
Fax: (867) 667-7004
Mailing Address: P.O Box 3972
Whitehorse Yukon Y1A 5M6
Contact: Liz Candline
E-mail: vfwc@yt.sympatico.ca

Women on Wings

Began in 1990 as a group for women with disabilities as a result of a Canadian conference coordinated by Disabled Women's Network (D.A.W.N.). Women on Wings is a collective of the Yukon Status of Women Council. They meet once to twice a year to discuss women's issues as they pertain to a disability community. Women on Wings is trying to bridge the gap between the able-bodied and the disabled women's community in Whitehorse.

Phone/Fax: (867) 667-2037
Mailing Address: Box 1073, Whitehorse, Yukon Y1A 5A5
E-mail: judiilk@yahoo.com
Contact: Judi Johnny, Chairperson

Women's Business Network

The Women Business Network (WBN) is a non-political voluntary organization which provides opportunities for women to establish business and personal relationships. WBN encourages the exchange of educational business related ideas and information, and promotes the development of leadership, communication and management skills.

Phone: (867) 667-7244
Mailing Address: Box 5976, Whitehorse, Yukon Y1A 5L7
Contact: Els Lundgard
Web: <http://www.yukonweb.com/business/wbn/>

Yukon College Women's Studies Program

The Women's Studies Program is a program of study that looks at the lives, contributions and experiences of women. It examines materials by and about women and places women's knowledge at the center of this process. The program cuts across a number of academic disciplines including history, literature, sociology, psychology, anthropology and social work. Students can work toward a certificate or diploma in the discipline, or take individual courses for personal interest. The program is open to both women and men.

Phone: (867) 668-8868
Fax: (867) 668-8828
Mailing Address: c/o Yukon College, Box 2799, Whitehorse, Yukon Y1A 5K4
Contact: Anne Tayler

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Yukon Aboriginal Women's Council

Since 1983, the objectives of the Society are to:

- advance the interests of women of Indian or Inuit ancestry in the Yukon including Status, Non-Status, Indians and Metis
- support and enforce the Indian Rights of the Status Indian women and the civil and human rights of all native women in the Yukon and Northern B.C.
- help Indian women increase their feeling of adequacy and their sense of responsibility through planning, developing and managing self-help projects
- encourage Indian women to assume a more positive and active part in developing skills to support their people
- promote and aid in the development and preservation of Indian culture, arts and handicrafts
- remain non-partisan in its activities and dealings with the Government and political parties of Canada

Phone: (867) 667-6162

Fax: (867) 668-7539

Mailing Address: 103-307 Jarvis Street, Whitehorse, Yukon Y1A 2H3

Contact: Norma Claggett

Yukon Status of Women Council

The Yukon Status of Women Council is an advocacy and awareness group for women's issues, both locally and nationally. The Status has been operating for over twenty years, and is a strong lobbyist for feminist political change through political activism, public awareness, and education.

Phone: (867) 667-4637

Fax: (867) 667-7004

Mailing Address: 503 Hanson Street, Whitehorse, Yukon Y1A 1Y9

Contact: Charlotte Hrenchuk

E-mail: yswc@yknet.yk.ca

The OptiMSt

The OptiMSt is one of the longest-running feminist newspapers in Canada. It has provided a voice for Yukon women for over 20 years. It is published by the Status and is issued quarterly. Subscriptions are \$7 per year.

Mailing address: Box 31011, Main St. Postal Str, 211 Main St., Whitehorse, Yukon Y1A 5P7

Contact for OptiMSt: Chris Scherbarth at (867) 393-3939

3.1.2. Family Violence: A Yukon Directory of Services and Resources³

This directory is designed to "help the helpers," but can also be valuable to anyone interested in finding resources and services that address family violence issues. The directory lists services, programs and resources

³ <http://www.womensdirectorate.gov.yk.ca/publications.html>

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

in the Yukon and is a source of current information addressing family violence in our communities. The 5th edition is now available [on-line](#) and as printed material through the Women's Directorate.

3.1.3. Yukon Family Violence Prevention Act

The Yukon Family Violence Prevention Act ([printable copy](#)) is now on-line at this web site, as is a [brochure](#) (PDF, 60 KB) describing the new Act.

3.1.4. Family Violence Survey/Report - 2002

As part of its mandate, the Women's Directorate undertakes many public information campaigns dealing with violence against women. To understand the impact and value of these campaigns, the Directorate needs baseline information in order to effectively target future campaigns. The Directorate commissioned a Family Violence Survey during the winter of 2001-02, to find out what Yukoners think and how they feel about family violence. The survey is presented here; the final report will be released in February 2002.

3.1.5. Options, Choices, Changes -2000

This is a resource for women in abusive relationships. First released in May 1999, the booklet was revised and re-issued in July, 2000. The booklet contains four sections:

1. information about woman abuse
2. information to help you make choices
3. a list of books that give more information; and
4. telephone numbers and addresses of groups that can be of help to you.

You may download the booklet as a pdf.

Violence Prevention Initiatives 1996-2000

[2000](#) | [1999](#) | [1998](#) | [1997](#) | [1996](#)

2000

- [Options, Choices, Changes](#), a resource booklet for women in abusive relations is re-issued in July.
- Based on the success of its 1999 radio production on domestic violence, the Directorate, Family Violence Prevention Unit and the Yukon Liquor Corporation again collaborated to produce a radio drama. "A Little Respect" is a five-part series for teens and their parents. It follows the lives six teenagers from various backgrounds and explores some of the issues and problems they encounter. "A Little Respect" aired in May, 2000, during Sexual Assault Prevention Month.

1999

1. The Women's Directorate, Family Violence Prevention Unit and the Yukon Liquor Corporation produced a six-episode radio drama on domestic violence that was aired on CHON during Women Abuse Prevention Month in November. Counsellors from the FVPU provided insightful commentary following each of the episodes.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

2. As in previous years, the Directorate also sponsored a Speakers' Roster of resource people who gave presentations on issues relating to domestic violence to a number of community organizations throughout the month of November
3. A three-day Circumpolar Women's Conference was held in November and brought together women from around the circumpolar north to discuss a diverse range of issues including violence against women and women's economic security.
4. The Directorate released and distributed its fifth edition of *A Yukon Directory of Services and Resources on Family Violence*.
5. In conjunction with Justice, the Directorate produced a brochure outlining the highlights of the Family Violence Prevention Act.
6. In its role as Co-Chair of the FPT Status of Women Working Group on Violence Against Women, the WD was instrumental in the development and production of *Preventing Violence Against Women: A Strategic Framework*. This document was released by Status of Women Ministers at their annual meeting in PEI in July
7. *Options, Choices, Changes*, a resource booklet for women in abusive relationships was adapted from the Nova Scotia manual, *Making Changes*, and released in the Yukon in June. The Directorate worked with local resource people from women's shelters, women's and legal organizations to make a Yukon-specific resource
8. The program, *Young Women of Grit*, took place for the third summer. This program, co-sponsored by the WD and the Youth Achievement Centre, H & SS, encourages young high-risk women to participate in an outdoor wilderness program building self esteem, learning leadership skills, dealing with conflict, and promoting personal healing. As in last year, the Directorate's STEP student participated as one of the guide/facilitators.
9. For the fourth time, the WD STEP student produced the *Youth Commotions* newsletter, highlighting youth projects funded by the Youth Investment Fund. Many of these projects focus on violence prevention and building self esteem.
10. Gender Equity Awareness Week, April 11 - 17, was held for the first time this year, a concept of the Gender Equity Implementation Committee (GEIC). The committee is comprised of representatives from Education, Yukon Teachers Association, les EssentiELLES, the Yukon College Women's Studies Program, Victoria Faulkner Women's Centre, representatives from school councils, and is chaired by the WD.
11. The WD wrote and distributed *It All Adds Up*, the reader-friendly version of the Gender Equity in Public Schools Policy.
12. The Directorate released an educational video, *In the Heat of Passion*, on the need for reform of the defense of provocation. The WD produced this video in memory of murder victim, Susan Klassen.

1998

- In its role as co-chair of the F/P/T Status of Women Violence Against Working Group, Yukon played a large role in the drafting of the *Iqaluit Declaration*, a joint statement made by Status of Women Ministers across the country in their Legislative Assemblies, on or around December 6th. The *Iqaluit Declaration* reiterates their commitment to ending violence against women and outlines their strategies to do so.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

- The Directorate and the Department of Justice were instrumental in the establishment of a part-time Women's Advocate program at the Victoria Faulkner Women's Centre. This position is staffed by a social worker who assists women who are experiencing difficulties in family, legal, social, health or economic issues.
- GEIC hired a gender equity consultant, developed an implementation plan in consultation with partners in education and established pilot projects on gender equity in four Yukon schools. The implementation plan was aimed at helping everyone -- students, staff, administrators, departmental staff, school councils/boards, parents and the community at large, to ensure safe, equitable environments in the schools. The pilot projects were held at Porter Creek Sr. Secondary, Hidden Valley, Watson Lake Secondary and St. Elias Community School.
- In November, the *Freedom from Violence: A Basic Human Right* symposium was held in conjunction with Vision TV's celebration of Human Rights. Judge Mary Ellen Turpel-Lafond was a guest speaker. The one-day symposium was organized by an inter-agency committee (representatives included the Directorate and women's organizations). Approximately 50 participants from around the Yukon attended.
- Directorate policy staff worked on inter-departmental committees to develop the government's Anti-Poverty Strategy, Youth Strategy, and Older Persons Strategy.

1997

- The Directorate sponsored Yukon Educational Theatre to tour rural Yukon communities to conduct conflict resolution workshops for elementary students throughout the Yukon.
- *Women in Leadership Conference: A Sharing of Wisdom* was co-sponsored by the Directorate, Victoria Faulkner Women's Centre, the Canadian Congress for Learning Opportunities for Women, Les EssentiELLES, Women's Business Network, Yukon College, and Dana Naya Ventures.
- The Directorate worked with the Department of Justice, Partners in Children, and others on developing a workshop for divorcing and separating parents. From these discussions, *For the Sake of the Children*, based on a Manitoba program was set up.
- The Directorate produced the 4th edition of *A Yukon Directory of Services and Resources*, a directory of family violence service providers.
- The government introduced the *Crime Prevention and Victim Services Trust Act*, which establishes a trust and a framework for its administration. The trust funds community-based projects and programs directed at crime prevention and victim services. It is one of several pieces of legislation that encourage the community to become involved in finding solutions to grave concerns such as violence against women.
- The *Family Violence Prevention Act* was introduced. This legislation focuses on the victim by offering three protective court orders that provide several ways in which victims can seek help: an Emergency Intervention Order, a Victim's Assistance Order, and a Warrant of Entry.

1996

- The *Task Force to Promote Safe Schools* report was released in May of 1996 and contained 11 recommendations which were accepted and adopted by the Department of Education.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

13. SAFE TEEN returned to Whitehorse to present workshops in four Whitehorse secondary schools, a self-defense workshop for women, a workshop for men on men's violence, and a workshop for teachers and parents. They also returned to Dawson City to present a number of workshops and public lectures.

3.1.6. Counting Us In: A Statistical Profile of Yukon Women - 1993

This document serves as a complement to Multiple Roles, Multiple Voices, a study published by the Women's Directorate and Bureau of Statistics in 1993. Multiple Roles, Multiple Voices provided a statistical overview of Yukon women and identified the concerns and priorities of women in the territory.

3.1.7. Multiple Roles, Multiple Voices -- A Survey of Yukon women: their concerns & priorities - 1993

The Women's Directorate and Yukon Bureau of Statistics completed a territory-wide survey of over 1200 Yukon women in 1993. The report includes quantitative data on Yukon women and qualitative data on their concerns and priorities. Available through the Women's Directorate.

3.2. Aboriginal Justice Strategy (AJS) Trends – 2000 ⁴

3.2.1. Gender of Staff

- By 1998-99, ten projects reported having females make up **more than 50% of their staff**. Four were in British Columbia, two in Manitoba and one in Northwest Territories, Nova Scotia, Ontario and the Yukon.
- In 1998-99, nine project reported having females **make up 100% of their staff**. Four were in British Columbia, one in Manitoba, one in Ontario, one in Nova Scotia, Northwest Territories and the Yukon.

3.3. Response to Yukon Government's Restorative Justice Consultation - Victoria Faulkner Women's Centre - 1999 ⁵

Introduction

In December 1998, the Yukon Government released a draft discussion paper on restorative justice. This paper outlined the principles upon which restorative justice in the Yukon is based: public safety, accountability, partnerships, community involvement, alternatives to incarceration and prevention of crime, healing and accessibility.

In May and June of this year, the Minister of Justice and the Commanding Officer of the RCMP held consultations in communities regarding restorative justice. In October, the report on these consultations was released.

⁴ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

⁵ Response to the Yukon Government's Restorative Justice Consultation Victoria Faulkner Women's Centre, Whitehorse, November, 1999

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

As part of the third phase of these consultations, targeted meetings are to occur. The Victoria Faulkner Women's Centre is pleased to be able to present our ideas and recommendations as part of this consultation process. We hope to see our recommendations reflected in the restorative justice strategy. We look forward to future involvement in the development and implementation of the strategy as it relates to our areas of concern.

The Victoria Faulkner Women's Centre has done a significant amount of research on issues related to women's equality and Alternative Dispute Resolution (ADR). We have also had the benefit of thoughtful input from a variety of women who have expertise in the fields of mediation, violence against women and the formal justice system. This paper reflects the input from these diverse perspectives.

Restorative Justice and ADR are broad subjects, and we are not qualified to deal with all aspects of these topics. In this paper we will confine our comments to the following areas:

Restorative Justice and Alternative Dispute Resolution

More and more attention is being focused on mediation and other types of Alternative Dispute Resolution (ADR) as alternatives to the mainstream justice system. Advocates suggest that alternative measures such as mediation, healing circles and family group conferencing are less adversarial, cheaper and more effective than litigation.

ADR processes are very attractive because they offer other ways to address some of the deficiencies within the mainstream justice system. However, there is a risk that in the rush to introduce ADR, the problems with the mainstream justice system may be duplicated or that women may further victimised by a new process (Goundry, 1998).

It is important that we focus on the work that needs to be done to improve the mainstream justice system. It is the mainstream justice system that provides the basic foundation for the exercise of our rights as Canadian citizens. Regardless of what ADR process an individual may choose, it is imperative that their access to the rights-based justice processes never be compromised. We recommend:

1. That the Yukon restorative justice principles include the fundamental notion that individuals have the right to access the rights-based justice system and that the choice to exercise this right is in no way compromised by engaging in an ADR process.

While we focus attention on ADR, we should not neglect the problems that need to be addressed within the mainstream justice system. What is needed is a clear assessment of the strengths and gaps in the mainstream justice system. This would offer a clear foundation for the development of new forms of dispute resolution. For example, the cutbacks to Legal Aid funding have meant that poor women do not have adequate access to

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

legal representation in family disputes, and custody hearings. Encouraging the use of mediation to resolve custody disputes will not address issues of access – increased funding can solve this problem.

It is also important that the problems inherent in the mainstream justice system not be duplicated in new forms of ADR. A clear understanding of the current problems with the justice system must be coupled with a clear understanding of the aims and objectives of ADR.

Definitions and Clarity

Woman abuse/spousal assault/wife assault has been used interchangeably throughout this document. For the purposes of this document it will be defined as:

...any act of gender-based violence that results in,
or is likely to result in physical, sexual or psychological
harm or suffering to women, including threats of such
acts, coercion or arbitrary deprivation or liberty
whether occurring in public or private. (Changing the Landscape: Ending the Violence ~
Achieving Equality, 1993, 5).

Gender based violence usually occurs between a victim (woman) and her husband, ex-husband, boyfriend, or ex-boyfriend (Dept. Of Justice, 1987: 2).

The term **“restorative justice”** has been used by the Yukon government to encompass all community-based justice initiatives, including circle sentencing, diversion and crime prevention. The definition is so broad, it has been difficult for individuals to focus on any particular issue. The Community Consultation Report (October 1999) illustrates this difficulty – Comments from Yukoners cover a wide range of issues, and a good proportion of the comments dealt with existing justice services such as policing, courts, victim services, probation, corrections and crime prevention.

Clear definitions are important to establishing clear objectives and measurable outcomes.

Restorative justice can be defined as a set of principles that guide people and/or a process. It is a philosophical framework which focuses on the effect crime has on the community (Zellerer, 1999).

“It offers alternative ways of thinking about crime by emphasising the harm crime does to the community, and how the community rather than the state can respond to crime in more satisfactory ways” (Shaw, & Jane, 1998: iv.).

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Restorative justice has been reintroduced to Canada in hopes of restoring control to the community in which the crime was committed (Marshall, 1998).

Restorative justice is concerned with ‘restoration’: restoration of the victim, restoration of the offender to a law-abiding life, restoration of the damage caused by crime to the community (Marshall, 1998: 3).

There must be a crime, an offender and a victim in order for “restoration” to occur. Crime prevention, worthwhile as it is, should not be characterised as a restorative justice initiative. More clarity on the definitions, purpose and expected outcomes of these community-based initiatives would assist everyone in moving forward in this area.

“Alternative Dispute Resolution” (ADR) is an umbrella term used to define "a collaborative dispute resolution process as distinct from adversarial processes involving litigation and adjudication". (Stobo, 1995, 2) Family group conferencing, mediation and community justice circles are all examples of ADR. However, that does not necessarily make them all part of the restorative justice philosophy and approach.

Some people use the term **“mediation”** to describe the processes undertaken in family group conferencing or community justice circles. We believe that it is important to clarify the meaning of mediation as “an informal, voluntary process designed to help disputing parties with roughly equal bargaining power reach their own solution through agreement. The mediation process involves the participation of a neutral third party, the mediator, who has no decision-making power in the process”. (Goundry, Peters & Currie, 1998: 17).

Unlike restorative justice, mediation does not have as its end goal the restoration of balance between individuals or within the community. The aim of mediation is to reach a mutually acceptable solution between the parties. So while mediation is a very useful alternative dispute resolution mechanism, it should not be seen as having the same goal as restorative justice.

We applaud the Yukon government for encouraging community-based approaches to reducing crime.

ADR and Woman Abuse

Over the past two decades, society has become increasingly aware of the prevalence of woman assault. In the past, wife abuse was seen as a private family matter. Slowly this thinking has been shifting towards the recognition that wife abuse is a criminal act and will not be tolerated. This shift is far from complete and we need to guard against backlashes. There is a danger that if wife assault is dealt with through ADR processes, it will be treated once again as a matter between the couple. This “de-criminalization” of woman assault can only serve to trivialize the nature of the crime.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

We have many concerns about the use of ADR to deal with criminal acts of wife assault. The literature points to the power imbalances inherent in a situation where a woman has been abused. Power imbalances and inequalities based on gender can inhibit ADR processes like mediation. (Women's Research Centre, 1995; Whittington, 1992; Maxwell, 1998; Zellerer, 1996; Zellerer 1999). Many abused women find it very difficult to articulate and represent their interests in a situation where the abusive partner is present. Abuse goes far beyond the visible bruises. The emotional control that an abuser exerts is pervasive. Women who are abused suffer low self-esteem and often blame themselves for the abuse.

Abused women also fear for their safety. Women who are encouraged to disclose all in a community justice circle may return home with their partner only to be punished with another beating. Steps need to be taken to address the safety of women before, during and after they are placed in these situations (Zellerer, 1999).

We have many reservations about any criminal incidents of woman abuse being dealt with by an ADR process. We are not convinced that a community justice circle or even a highly skilled mediator can deal with the power imbalances between the woman and her abuser. And we are not convinced that the issues related to a woman's safety are well understood, assessed and respected during ADR processes currently used in the Yukon.

Yet, in reviewing the literature, we note that some mediators believe that spousal assault cases can be mediated. Some mediators believe that by providing only one recourse for women, litigation through the court system, we are in essence disempowering the already disempowered. Mediation is therefore seen as being an alternative, another choice for women (Cameron, 1999).

Because this is a complex, yet very important area, we recommend:

2. That the RCMP carry out research to determine the appropriateness of dealing with wife assault cases through ADR. If wife assault cases are deemed appropriate for ADR, then criteria and guidelines should be developed for diversion to ensure the reduction of power imbalances and the safety of the woman.

Mediating family/civil matters

While the use of ADR may not be appropriate for dealing with criminal acts of wife abuse, the literature and current practice in Canada suggest that there may be a role for mediation in establishing the terms of a couple's separation or perhaps in establishing the terms of living safely together.

However, the literature is divided on this issue. Factors such as how mediation is carried out, the innate power imbalance in cases of family violence, and the inability for women to voluntarily decide on a process or the outcome need to be addressed to determine if mediation is even appropriate for women. (Bailey, 1989; Barsky, 1995; Benjamin, 1992; Davis, 1984, Perry, 1994). It is not acceptable for mediation models to be carried out

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

without input from women and without taking into account power imbalances that are inherent in family violence (Zellerer, 1996).

The issues related to abusive relationships are important regardless of whether family matters are dealt with through the courts or through ADR. Power imbalances and safety concerns need to be addressed.

Increasingly, Yukon women are being referred to mediation with respect to the issues of child support, maintenance and custody agreements. It is not clear at this point how many women are using these services, or how satisfied women are with the outcome of the mediation. Generally, we know that mediation can lead to a less acrimonious situation which many women desire. Mediation can give people a voice. It is less adversarial than the court system and can result in greater empowerment and personal accountability.

Before delving into the issues related to mediation and family matters, we feel that it is important to voice a concern with one of the recent trends related to custody hearings. Joint-custody or at least joint-access is the accepted practice today in child custody arrangements. The assumption is that children are better off having contact with both parents.

This assumption, places abused women in an untenable position. Women are often motivated to leave an abusive situation out of concern for the safety and well being of their children. Recent studies have shown that witnessing wife abuse creates as much harm to children as being abused themselves.

By internalising and normalising the experience of violence, especially male violence against women, children may be far more likely to engage in violent behaviour themselves and to accept violence as a way of dealing with conflict (Changing the Landscape, 1993, 39).

Once the woman leaves the abusive relationship, she is faced with having to grant her ex-partner access to the children. The woman is now put in a position where she can not control the safety and well-being of her children. For some women, this is not a situation they can tolerate – instead, they chose to remain in abusive relationships where they feel they have more control over the safety of their children.

The assumptions made in establishing custody and access arrangements need to be challenged. Arrangements should protect the safety and well being of the children and the abused woman.

Most jurisdictions that offer mediation for family matters now use a screening tool to identify whether abuse is present. A program through Family Mediation Canada in Ontario has developed a specific training course, guidelines and operating criteria for mediating situations where there is spousal abuse. The aim of this mediation process is to find agreement on the terms of living apart. Unlike traditional mediation, the mediator is not neutral – instead the mediator is a vocal advocate for non-violent solutions. Mediators are trained to do continual assessments of power dynamics, and manipulative behaviours. They are also trained to assess safety

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

risks and to take very structured steps to maximise safety. The abuse is recognised and factored into any agreements. (See appendix for more information on this program.) This is a highly skilled area of practice, but necessary to have in place if mediation is to be used to deal with separation agreements, custody arrangements and other family matters.

In the Yukon, there are no standards in place to govern practising mediators. Some individuals have attempted to practice mediation with very little training. This is a concern. However, it is interesting to note that all ten individuals on the roster maintained by Mediation Yukon have extensive course work and practical experience in the field. Eight of the ten have certificates from the B.C. Justice Institute which has standards that exceed those established by Family Mediation Canada. In the area of standards and training, we recommend:

3. That standards for training and practice be established by a professional mediators' association (or by a committee with representation from all stakeholders) in consultation with government and national mediation associations.
4. That standards for mediators include a combination of course time (through an accredited or qualified institution), practicum time and experience working as a co-mediator with a qualified, experienced mediator.
5. That if mediators are practising in the area of family mediation, they take additional training in the area of woman abuse, safety issues, child development, impact of abuse on children, and other related topics. Mediators must also have a comprehensive knowledge of other community resources so that they can refer individuals to appropriate services.
6. That if mediators are taking on family mediation cases where woman assault has been present or is present, they receive specialised training such as that offered out of Ontario through Family Medation Canada.

A basic tenet of mediation is that it is voluntary. Individuals need to be offered a choice of dealing with family matters through the courts or through mediation. “Mandatory” mediation is an oxymoron. The term “mandatory” mediation is used in other jurisdictions to refer to a process of filtering cases and canvassing whether an individual would like to use mediation. The term needs to be changed so that individuals are not misled. An individual's choice is fundamental to the mediation process. So too is an individual's right to legal information and representation. We recommend:

7. That individuals always be given a choice of whether a matter goes through court or through mediation.
8. That individuals be given information on the law and their legal rights before deciding whether or not to use mediation, and that the Yukon government explore options for providing this information to people in an equitable fashion.
9. That individuals be guaranteed access to legal counsel/advice before, during and after mediation if they choose.
10. That individuals be made aware that they can formalise an informal mediation agreement through the drafting of a formal legal contract or through court processes (e.g. a consent order).

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

In addition to the above recommendations, we believe that the use of mediation in dealing with family matters should be evaluated. We recommend:

11. That the Yukon government, in partnership with all stakeholders, design evaluation tools that will assess the effectiveness of mediation, client satisfaction, and cost-savings to the court systems. Any evaluation must consider the degree to which the mediation respects and empowers women to make choices in an environment that maximizes safety and minimizes risk.

Funding in Family/Civil Matters

Currently, Legal Aid has limited funds available to individuals seeking to resolve family matters. This has a larger impact on women than men, since women generally have lower incomes than men both in and outside of the marriage/relationship. Women's access to the justice system is hampered by the fact that Legal Aid does not have adequate funding to cover division of property matters, maintenance agreement changes, - and custody order changes for example. The threshold for Legal Aid funding is also too low. Many of the working poor do not qualify for Legal Aid. However, they can not afford the expense of legal representation.

And there is no public funding to assist people the cost of mediation. This is a serious deficiency. It means that only women with enough money can afford to use mediation. We recommend:

12. That the Yukon government increase funding to Legal Aid to pay for more civil and family matters.
13. That the Yukon government provides increased funding to Legal Aid so that the working poor have adequate access to legal representation.
14. That the Yukon government provide public funding to assist individuals who need help with the costs of mediation.
15. That the costs of mediation be borne equally between both parties.
16. That publicly-funded mediation not have a limit on the amount of time that can be spent on one case.
17. That the Yukon government provide increased funding so that the working poor have adequate access to mediation and legal representation.
18. That models of publicly-funded mediation be researched prior to the development of a publicly-funded mediation service and that key stakeholder groups such as Mediation Yukon be involved in the research and development of the service.

Use of ADR in the Yukon

This paper has largely focussed on the use of mediation for dealing with family matters. However, we recognise that there are many other forms of ADR in use today in the Yukon.

Research has indicated that at a minimum, women who are victims of crime, as well as advocates for women must be part of the development, at all stages, in the consultation and development of any and all alternative

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

dispute resolution initiatives. Creating ADR initiatives, especially community based initiatives, cannot happen at the expense of women (Zellerer, 1999). In the course of our research and discussions, we recommend:

19. That the Yukon government, in partnership with stakeholders, develop clear operating guidelines for community justice committees, including criteria for assessing and dealing with any disputes or matters where woman abuse is a factor.
20. That the Yukon government, in partnership with stakeholders, establish clear objectives and measurable outcomes for each form of ADR currently in use and for all future ADR processes that are implemented. Regular assessment of these objectives and outcomes need to be established processes.
21. That the Yukon government, in partnership with stakeholders, maintain standards and training for individuals leading community justice circles. (Note: we do not believe that the current family group conferencing training provided by the RCMP is adequate.)
22. That First Nations and aboriginal groups be provided with a forum and opportunity to establish their own standards and training for individuals running aboriginal justice circles. (We recognise that the course work and other standards associated with a mediation certification may not be entirely appropriate for First Nation communities where the justice circle may be based on different values and traditions.)
23. That community justice circles be given increased resources and training to support the development of the above standards and guidelines.
24. That the Yukon government fund independent third party evaluations of community justice projects currently being funded by the YG in order to assess the strengths and weaknesses of the programs. (Self-evaluation is useful but not enough.)
25. That if the Yukon government wants to use mediation and other forms of ADR, a clear process be established that is entirely separate from the court system. (Judges and Justices of the Peace should not be taking on the role of mediators in addition to their role as judges – these two roles are in conflict.)
26. That since more and more do-it-yourself kits are being developed as an alternative to using lawyers (e.g. divorce), that an agency be provided with additional funding to assist people to complete these kits.

Conclusions

The move towards ADR and restorative justice has great potential for addressing some of the inherent problems in the mainstream justice system. If not implemented in a thoughtful and deliberate fashion, there is a real danger that more harm than good will come of it. To date, ADR in the Yukon has occurred with limited guidelines, standards, assessment and co-ordination. Initiatives have come from the judges, communities, First Nations, and professionals. We believe that it is time to take stock of where we are at and put some order to the jumble of processes that currently exist.

This is not to say that we can not be creative and try new ways of achieving success. By all means, we should learn from our experiences and move forward. But the experimentation must be guided by current research, it must be controlled, and it must be assessed.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

We have grave concerns about the use of ADR in dealing with cases where spousal abuse is present or has been present. This topic requires more study and consideration. At the very least, individuals dealing with these cases must receive specialised training so they are equipped to assess and deal with the power imbalances and safety concerns.

Many of the recommendations we have made will require review of existing funding priorities and new investments of money. While there may be savings to the justice system in the long run, in the short term, new investments are required to establish different forms of ADR. If we don't do the groundwork now, the success of ADR could be seriously hampered. We recommend:

26. That the Yukon government make new financial and resource investments to support the recommendations we have made in this paper.
27. That an advisory committee be struck to assist the Yukon government with the development and implementation of the “restorative justice” (or “community justice”) strategy, and that this committee be comprised of representatives from various stakeholder groups, including women's groups and the Victoria Faulkner Women's Centre.

We look forward to working with the Yukon government on the development of ADR in the territory. It is a new and exciting area. We are confident that by working in partnership with women's groups, government, communities, First Nations, professionals and other community experts, we can find better ways to bring justice to the people of the Yukon.

References:

- Bailey, M.J. (1989). *Unpacking the 'Rational Alternative': A Critical Review of Family Mediation Movement Claims* in Canadian Journal of Family Law, 8, 61.
- Barsky, A. E. (1995). *Issues in the Termination of Mediation Due to Abuse* in Mediation Quarterly, 13(1), 19.
- Benjamin, M. and H. Irving (1992). *Toward a Feminist-Informed Model of Therapeutic Family Mediation* in Mediation Quarterly, 10(2), 129.
- Cameron, Ruth M.A., LL.B., C.Med. & Anne Freed, B.A. Hon. Sociology, LL.B., LL.M. in A.D.R. (1999). Family Mediation Situations: When is Mediation Appropriate. Seminar - Family Mediation Canada Presenting Topic.
- Changing the Landscape: Ending Violence~Achieving Equality (1993). Ottawa: Supply and Services Canada.
- Davis, A.M. and R. Salem (1984). *Dealing with Power Imbalances in the Mediation of Interpersonal Disputes* in Mediation Quarterly, 6, 17.
- Dept. of Justice (1999). Restorative Justice in Yukon: Community Consultation Report. Yukon.
- Dept. of Justice. (1997). Abuse is Wrong in Any Language. Canada: Canadian Cataloguing.
- Ellis, D. (1990). *Marital Conflict mediation and postseparation wife abuse* in Law and Inequality, 8(2), 317-339.
- Fuller, J. and R.M. Lyons (1997). *Mediation Guidelines* in Willamette Law Review, 13, 905-925.
- Gifford, J. (1985). *Delivering Family Conciliation and Mediation Services: The B.C. Model* in Canadian Journal of Family Law, 4, 385-402.
- Goundry, Sandra A. B.A., LL.B., Peters, Yvonne B.S.W., LL.B., and Currie, Yvonne Rosalind B.A., LL.B. (1998). Family Mediation in Canada: Implications for Women's Equality A Review of the Literature and Analysis of Data from Four Publicly Funded Canadian Mediation Programs. Canada: the Status of Women Canada.
- Goundry, Sandra A. (1997). Draft Discussion Paper: Restorative Justice and Criminal Justice Reform in B.C. - Identifying some Preliminary Questions and Issues. Vancouver B.C..
- Irving, Howard, and Michael Benjamin (1995). Family Mediation: Contemporary Issues. US: Sage Publishers.
- Marshall, T.F. (1998). Restorative Justice, An Overview. Great Missenden, Bucks.
- Maxwell, Jennifer (1998). *Power Inequality and Dissociated Coercion in the Mediation of Interpersonal and Domestic Disputes: Recognition and Response*. (under consideration for publication in Family and Conciliation Courts Review).

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- Neumann, D. (1992). *How mediation can effectively address the male and female power imbalance in divorce* in Mediation Quarterly 9, 227-239.
- Perry, L. (1994). *Mediation and Wife Abuse: A Review of the Literature* in Mediation Quarterly, 11(4), 313-332.
- Shaw, Margaret & Jane, Frederick (1998). Restorative Justice and Policing in Canada: Bringing the Community into Focus. Canada: RCMP and OPP.
- Stobo, Carolyn (1995). *An Alternative Dispute Resolution Primer and Survey of Current Government Initiatives in Ontario*, Ontario Current Paper Issue Paper, 165, Ontario Legislative Library,
- Shaffer, M. (1988). *Divorce Mediation: A feminist perspective* in University of Toronto Faculty of Law Review, 46(1), 162-200.
- Whittington, B. (1992). Mediation, Power and Gender: A Critical Review of Selected Readings. Victoria: University of Victoria.
- Women's Research Centre (1995). Listening to the thunder: Advocates talk about the battered women's movement. Vancouver: ISBN.
- Zellerer, Evelyn (1996). *Community Based Justice and Violence against Women: Issues of Gender and race* in International Journal of Comparative and applied Criminal Justice, 20(2), p.233-244.
- Zellerer, Evelyn (1999). *Restorative Justice in Indigenous Communities: Critical Issues in Confronting Violence against Women* in International Review of Victimology, 6, p. 345-358.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

4. Relevant Documents, Studies and Practices – Other Northern Territories

4.1. Nunavut Justice Issues – 2000 ⁶

- A key element to examine when addressing justice issues in the North, as with anywhere, is ensuring that the needs of women are met and that women are primary players in the implementation, delivery, and operation of justice in the community.
- This aspect of justice in the north is not addressed in this particular report because these issues are being addressed in a separate project entitled *From Hips to Hope: Inuit Women and the Nunavut Justice System* undertaken by Crnkovich, Addario and Archibald

4.2. Inuit Women and the Nunavut Justice System – 2000 ⁷

- However, reforms which meet the aspirations of Inuit for a culturally sensitive approach to justice may still fall short of delivering a satisfying experience of justice for Inuit women.
 - Specifically this will be so, if the reforms fail to consider the compounding disadvantage experienced by Inuit women and the ways in which race, gender, age, sexual orientation, geographical proximity, and mental or physical ability might converge to affect the needs of Inuit women who come into contact with the justice system.
- The NSDC recommendation to have committees deal with “more serious matters including domestic assault” is based on the NSDC conference participants’ view that “the community knows more about what is wrong than someone from the outside and can make more effective recommendations for rehabilitation and healing.”⁸
 - A credible resolution of these more serious matters by community justice committees presumes that the committee is truly reflective of the community and that participation in the resolution processes of the committee is voluntary.
 - The “voluntary” nature of a victim’s participation in a community justice initiative is questionable for many Inuit women.
- The justice committees’ methods of addressing the issues before them have been criticized by advocates of Inuit women survivors of violence.
 - This has led the same advocates to call upon the various levels of government to prevent the committees from dealing with offenses involving violence against women.
 - For example, in its publications, Pauktuutit recommends that the federal and territorial governments set guidelines, standards or criteria for both membership on these committees and for the types of cases they are able to deal with.⁹
- It is evident when these arguments are reviewed in detail that the concerns being raised by Inuit women are rooted not so much in the methods used by the committees, but rather the lack of adequate resources and ongoing training provided to these committees to perform these tasks in a manner that protects and supports the women and adequately addresses the underlying problems of the violence.
- The potential for a victim to feel pressured to participate in such a committee is great.¹⁰

⁶ Department of Justice Canada, Research and Statistics Division, by Naomi Giff, Nunavut Justice Issues: An Annotated Bibliography, March 31, 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-7a-e.pdf>

⁷ Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

⁸ NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, p. 20. . cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

⁹Pauktuutit, *Inuit Women and the Administration of Justice, Phase I and II Reports*, In particular, the organization’s presentations to a National Symposium on Offenders (the male batterer’s program) and on Bill C-41 to the Standing Committee on Justice and Legal Affairs cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

- When the community, including the accused and the victims, are given the choice between the outside Euro-Canadian justice system and their “own,” the pressure to choose their own system will be great.
- Those choosing the existing system are perceived as not supporting “their own” system.
- This has the effect of further alienating women and places pressure on them, making it difficult for them to choose the existing system.
- In Inuit communities, many people are related.
 - These family and kinship lines impact severely upon a victim if her abusive partner is related to a powerful family or leader.
 - Women and children may therefore be silenced and not believed when they speak about their abuse.
 - If they do speak out, they are often blamed.

¹⁰ Pauktuutit (1994). Inuit Women and the Administration of Justice, Phase 1 Progress Report, Number 1, p. 22. Curt Taylor Griffiths et al. (1995). Crime, Law and Justice Among Inuit in the Baffin Region, NWT, Canada. p. 206. cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

5. Relevant Documents, Studies and Practices – Other Canadian

5.1. Restorative Justice and Women Who Are Victims of Violence: Justice Options for Women - Phase Two- 2002¹¹

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.

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

¹¹ *Justice Options for Women Project* is sponsored by the Restorative Justice Network of the Conflict Resolution Cooperative of PEI Ltd. and funded by Status of Women Canada. For further information contact: Julie Devon Dodd, phone 902 628-8187 or email jdodd@isn.net, or Kirstin Lund, phone 902-569-1864 or email klund@isn.net. April, 2002

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

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 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.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

- 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.

5.2. The Criminal Justice System: Significant Challenges – 2002 ¹²

Women offenders in federal institutions.

Addressing the problems of women who are serving federal sentences has become a priority. Women represent about four percent of the total population of federal offenders and their numbers are growing. In March 2001, Correctional Service Canada reported a total of 866 women offenders in prison and under supervision in the community. It estimated that by December 2004 the number would grow to about 1,075, about 450 of them in prison.

¹² Office of the Auditor General of Canada, *The Criminal Justice System: Significant Challenges*, Chapter 4, April 2002, <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/0204ce.html>

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Two major reports have been issued on women and the criminal justice system. Correctional Service Canada told us it was aware that the Prison for Women in Kingston had long been unable to meet the unique needs of women offenders. In 1989, the Commissioner of the Department created a task force to develop a plan to address the needs of women offenders. In September 1990, *Creating Choices: The Report of the Task Force on Federally Sentenced Women* emphasized the unique needs of women offenders and stressed that fundamental changes were needed to assist women offenders in rebuilding their lives. In 1990, the federal government accepted the report's recommendations. In 1994 it issued a strategy for developing programs in the new regional facilities. It appointed a Deputy Commissioner for Women, and between 1995 and 1997 it opened new regional facilities for women offenders.

In April 1996, Madam Justice Louise Arbour issued the report, *Commission of Inquiry Into Certain Events at the Prison for Women in Kingston*. The inquiry investigated and reported on the incidents that occurred in the Prison for Women, beginning on 22 April 1994. The inquiry was initiated after a male Institutional Emergency Response Team participated in the strip search of women offenders. The Arbour report contained 14 primary recommendations on women's corrections, covering staffing by gender, use of force, Aboriginal women, segregation, accountability, and grievances. Correctional Service Canada accepted most of the report's recommendations, which included the establishment of the Deputy Commissioner for Women and female emergency response teams.

Total spending on women offenders has risen. Correctional Service Canada reports that the cost of maintaining a woman offender rose from about \$109,900 in 1997-98 to about \$115,000 in 1999-2000; at \$316, the daily cost of keeping a woman inmate in a penitentiary is much higher than the \$185 it costs to keep a male offender. Correctional Service Canada says the difference reflects the cost of providing the same level of services to a smaller number of women inmates.

5.3. Federal--Provincial-Territorial Meeting of Ministers - Status of Women – 2002¹³

Indicators on Violence Against Women

- Steps toward analyzing the nature and prevalence of violence against women will be part of the work done to develop a set of indicators on violence against women.
 - The Indicators, due for release early in 2002, will provide a quantitative measure to monitor change in the prevalence and nature of violence against women.

5.4. Report on Consultation-Restorative Justice/Violence Against Women – 2001¹⁴

I. PURPOSE

The purpose of the Consultation on Restorative Justice and Violence Against Women was:

¹³ 20th Annual Federal-Provincial-Territorial Meeting of Ministers responsible for the Status of Women
Québec, Quebec - September 19-21, 2001
http://www.scics.gc.ca/cinfo01/83073404_e.html

¹⁴ Report on the Consultation on Restorative Justice and Violence Against Women February 8 and 9, 2001 Prepared for The Consultation Participants The Department of Justice, Saskatchewan The Law Foundation Compiled by Saskatoon Community Mediation Services June 26, 2001 <http://www3.sk.sympatico.ca/mediate/FinalReport1toParticipants.htm>

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

To contribute to decision-making for the Province of Saskatchewan by continuing the dialogue about restorative justice processes and offences which involve violence against women.

To continue the dialogue by making recommendations on the first of the following questions, and, if the first question has an affirmative response, then to proceed with recommendations on the remainder of the questions.

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

II. METHOD

An Underlying hope of the consultation was to build bridges across the diversity and experience and contexts represented by the participants. The spectrum of context and experiences included women who have experienced violence and their supporters, people who work in programs based on a restorative justice philosophy, and people from First Nations and the Métis Nations.

The planning committee carefully chose a process that it hoped would promote an ethos of respect and safety. The aim was to provide an atmosphere where people could fully express their differing experiences, feelings, and opinions and thus make the consultation as rich as possible.

III. HISTORY

The consultation stemmed from a PATHS Conference in April 2000, which began a discussion for ways to continue the dialogue in regard to how the restorative justice program may be extended into offences related to violence against women. SCMS staff began to speak with representatives from the Sexual Assault Centre, Sexual Assault Services of Saskatchewan, Saskatoon Tribal Council, Interval House, PATHS, Elizabeth Fry Society, Saskatoon Family Support Centre, John Howard Society, Victims Services, Department of Justice of Saskatchewan as well as other organizations. In September, representatives of these and other groups began to meet and decided that dialogue needed to continue and that SCMS would be the appropriate agency to facilitate the consultation.

The dialogue is important for many reasons, including the fact that SCMS is working increasingly with more serious offences that may involve sexual assault and spousal abuse. It is also important for First Nations, Métis Nation, and Inuit peoples as they strive to reintegrate offenders while respecting and supporting the victims. Also, there needs to be an increasing amount of understanding between women's advocacy groups and restorative justice programs to ensure that women will not be re-victimized by the restorative justice process.

The Department of Justice of Saskatchewan is interested in community guidance with regard to the direction it takes with offences related to violence against women. These offences are currently precluded from the Sask Justice Diversion Guidelines, which govern referrals at the pre and post charge stages. Such offences may, however, be the subject of sentencing circles or extra-court community based processes.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

IV. PROFESSIONAL AND GEOGRAPHICAL PROFILE OF THE PARTICIPANTS

The organizational profile of the participants was divided into six broad categories. We realize that many organizations could fit into more than one category, but we are simply trying to give a general profile of the participants. The first group falls under Community Justice programs from which approximately fifty-four participants were represented from this category. The second category of participants was Tribal Councils, First Nation Organizations and Métis Nation Organizations; twenty-nine participants were in this category. Twenty-four participants represented women’s advocacy and support services, and four participants represented the Police. The Government had nine representatives, and there were three professionals in private practice at the consultation. Finally, three University students attended the consultation including a Master’s student and two pursuing undergraduate degrees.

Most of the participants were from Saskatchewan, approximately one hundred and thirty in total. Out of these participants, approximately fifty-three came from outside of Saskatoon and Regina. The consultation did attract participants from outside Saskatchewan as well, four participants came from Alberta, three from British Columbia, and one from each Ontario, Manitoba, and Washington.

V. SUMMARY OF THE DISCUSSION: (i) SUMMARY OF SPEAKERS’ PRESENTATIONS

Helen Smith McIntyre – “Introduction: Explanations of Terms and Practices.” (Please see Appendix A for full text.)

Restorative Justice in relation to criminal offences is a *philosophy* that reflects a belief that justice should, to the greatest degree possible, do the following:

1. Invite full participation and consensus (which means voluntary participation of victim, offender and others, who have been affected by the crime, including community and family members)
2. Heal what has been broken
3. Seek full and direct accountability
4. Reunite what has been divided
5. Strengthen the community, to prevent further harms
6. Be respectful to all involved
7. Consider the societal and personal issues underlying the crime (eg. racism, sexism, poverty)

Reference: Susan Sharpe. Restorative Justice: A Vision for Healing and Change. Edmonton: Edmonton Victim Offender Mediation Society, 1998.

Jan Turner – “Restorative Justice and Offences Related to Violence Against Women: Saskatchewan Justice – Policies, Procedures and Future Possibilities”

There is a “criminal justice continuum” that holds opportunities for victims, offenders and communities. The Adult Alternative Measures programs are only one section on the spectrum.

Currently, policy only covers criminal cases, not cases in Family Law or Civil Law. Even within Criminal Law, some offenders and offences are still excluded. Cases excluded from consideration include sexual assault, child abuse and family violence cases.

There is variation from community to community in terms of how program is carried out, but a standard is still needed that will ensure safety and respect.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

The discussion of restorative justice and violence against women is important because ways to assist women who have experienced violence to find healing are much needed and because there are a huge number of cases involving violence.

Saskatchewan Justice is not prepared to re-write the policy so that family violence cases “will flow automatically”. However, it is a priority to provide “more opportunities for healing”.

Virginia Fisher – *“Review of the Key Elements of the Restorative Justice Conference hosted by PATHS, April 14, 2000”*

On April 14, 2000, PATHS hosted a conference on restorative justice. Eighty-five delegates participated. Ten speakers, who came up in panels, addressed the questions “Should Saskatchewan Justice allow the institution of restorative justice strategies in cases of violence against women and should they do it for all of Saskatchewan or should they do it for certain communities or certain circumstances?”

The speakers were followed by an open-mike question period. Discussion centred around whether or not restorative justice should be used in cases of violence against women. People who believed the answer is “no” were speaking only for those violence cases and were not intending to say that restorative justice is not a viable option at all.

The conference participants engaged in questions and comments around the topics of community, safety, necessary resources, concerns, family, what it is like for abusers to go through restorative justice processes compared to the court system, and patriarchy.

Dory Cook – *“An Aboriginal Women’s Perspective of the Issues of Gender, Culture, Socialization and the Impact of Violence on Women”*

Dory shared the story of her personal journey as a woman who was subject to violence while growing up and also in her adult life and stories from her professional life. She began working professionally in the community in 1976 and has been working from an Aboriginal perspective for many years. She understands her work through her perspective as a victim and as a helper.

Dory works as a therapist, with men, women and children, and presently is working with people who have been through the residential school system. She uses talking circles as a healing process. She works with people individually and then she brings them together.

Dory explained that from her experience, abusive men need honesty and caring. As well, people need to understand history and imbalances of power in order to understand violence against women. Dory was desensitized to the violence because she was in it and didn’t realize it was happening until she was educated about it.

Education was stressed as a major factor so that people understand the dynamics of violence. Society does not understand the issue of violence against women. For instance, an example of violence against women occurs at Legal Aide when lawyers are not listening to women and the police are talking down to women. This is a part of the violence.

Susan Hossack – *“A White Women’s Perspective of the Issues of Gender, Culture, Socialization and the Impact of Violence on Women”*

Susan Hossack began by saying that all women are faced with sexism and systematic power imbalances. However, she added that women can experience multiple oppressions such as sexism and racism, or sexism, racism and classism, or sexism and homophobia.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Referring to an article by Tracy Muggli, she explained that gender relations are always relationships of power and that this dynamic is important to acknowledge in mediation theory and practise. A gender-neutral approach is risky because it disregards the context and effects of abuse and the reality of self-defence for women.

From her professional experiences, Susan concluded that mediation should not be happening in cases where there is domestic abuse, unless the female party is really insisting on it. Even if she insists on it and feels she knows the risks, we need to build in some safety mechanisms.

Susan's concern stems from seeing cases in which violence against women increased because of the mediation process, and the inability for abused women to speak freely in mediation for fear of retaliation from their partners. Speaking from her personal experiences, Susan added that often an abuser's public and private behaviour could be totally different, so that nobody really knows what's going on behind closed doors.

In some cases, Susan noted, women abuse men as well, but often it is about her coping with his cycle of abuse, not about her own cycle.

Helen Smith-McIntyre – *“A Personal Account of a Woman Who Has Been Impacted by Offence(s) and Her Experience of Face-to-face Meeting(s)”*

Helen Smith-McIntyre opened by explaining that her story was not about a criminal matter or about restorative justice as it relates to criminal processes, and she started into a monologue of her story.

“They said it wasn't an abusive relationship. He never hit you, they said. But what about the words?” Helen went on and wove a story of abuse by her husband. Nobody held him accountable, in spite of counselling, and she finally left him. But, before it was all over, she agreed to enter into mediation with him.

Helen's second story was of abuse by the mediator of their case. When her husband declared he was leaving and had quit his job and had no money, the mediator turned to her and said, “Looks like you have no power here.”

The third story that Helen shared was a story of abuse in her work place by two co-workers. And the story of a conflict resolution facilitator who didn't address her needs in the situation.

Helen concluded her monologue, “Wiser now. I'll choose my ways. I'll control the process. No face to face.”

Gayle McNab – *“A Personal Account of a Woman Who Has Been Impacted by Violent Offence(s) and Her Experience of Face-to-face Meeting(s)”*

Gayle McNab shared the story of how her journey of healing began when she connected with David Gustafson and Sandi Bergen at Fraser Region Community Justice Initiatives, Langley, B.C. Gayle was living with a difficult legacy due to the history of physical and sexual abuse by members of her large family.

Even though she had already had a brief introduction through her friend, Gayle's first reaction to learning about Dave's work was disbelief. At the time, harbouring a lot of hate, she believed the way to handle violent offences was to lock the offenders away. But as conversations with Dave continued, she was able to express curiosity in the stories of offenders. Eventually, with almost a year of preparation, arrangements were made for a face-to-face meeting with a group of sexual offenders. They were

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

“surrogate” offenders since it was not possible, due to some deaths, for her to meet with her own offenders.

So she went and shared “her pilgrimage from hate to hope”. Gayle highlighted the opportunities she had to stop the process and the control she was given by Dave and Sandi through information and preparation, although she acknowledged that in spite of all the preparation there were no guarantees of safety. A highlight came for her when she heard of an offender who had begun to take responsibility for his actions after hearing her speak.

Speaking to the sexual offenders has been about taking back her life and taking back power, for Gayle. Over the years of working through her own healing process, she has come to believe that she’s a “worthwhile, clean, whole person who has her own loveliness” and she has begun to shed the messages of shame and guilt and to give them back to where they belong.

Gayle is hopeful that some of these men will begin to know the harm they’ve done. She has seen some evidence of them “getting it.” As well, she recognizes that some things can’t be restored, and, in that way, restorative justice is a misnomer. Transformational justice has been suggested as an alternative term.

Gayle has also seen some of the common themes that both offenders and victims share like fear and vulnerability. She maintains both empathy for offenders and strong support for victims in terms of advocating for providing protection in every way possible. She’s struggled with the tension between these allegiances.

Gayle concluded that, although she could not say enough good about how her face-to-face meetings and processes have gone, she has many cautions. She would not recommend restorative justice processes to everybody. She is only saying that it was healing for her.

Georgina Jolibois – *“An Aboriginal Perspective of Strategies That Address the Safety of Women Impacted By Violent Offences In Preparation For and During Restorative Justice Processes”*

Georgina explained that she sees restorative justice as the responsibility of each individual to take a healing path. With choosing a healing path, she acknowledges that the choices presented are tough, and that sitting face-to-face with offenders takes courage, strength and love. It is especially difficult when the offender being faced is a family member or partner.

It is also important to deal with offenders in a restorative way, especially in Aboriginal communities, where offenders are often relatives. Both victims and offenders need to take the healing path in a community.

Georgina pointed out that although the Criminal Code of Canada is important in preventing further disharmony and pain for other minorities in Canada, it presents some challenges to taking a restorative approach. For example, police are limited in what actions they are able to take when responding to a complaint; victim’s needs are not taken into account in court proceedings; and often programs aimed at helping victims are limited by resources and may not be culturally supportive. These factors and more lead to a system that is not victim-friendly.

Responsibility for healing and to work towards a victim-friendly system lies with those who work with victims and offenders, from judges to lawyers to the agencies to the individuals to the community. For those, like Georgina, who have committed themselves to a restorative, healing approach, it is important to make allies in the system to discuss and make changes towards emotional healing, community-building, and sensitivity to culture and gender.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Georgina concluded by saying that, although taking the path of restorative justice in the judicial system may seem overwhelming, it is possible to move ahead one moment at a time. She sees hope in the increasing participation at all levels of government, organizations, and the increasing involvement of men.

(Presentation prepared by Georgina Jolibois and Konota Crane and presented on behalf of both.)

Gayle McNab – *“A White Perspective of Strategies That Address the Safety of Women Impacted By Violent Offences In Preparation For and During Restorative Justice Processes”*

Gayle began her presentation by saying, “And the thing that needs to be addressed is the harm done, not the crime done.” We need to build bridges between restorative or transformative justice and legal justice so that they can work together.

In face-to-face meetings, it is important to guard against manipulation of the victim by checking in with the victim during the dialogue and by empowering them to stop the process if that’s what they need, as well as normalizing the emotions that victims feel.

Gayle noted that forgiveness is a sensitive issue. For her, it is not about absolving the offender of responsibility or consequences. It isn’t keeping silent and it isn’t necessarily about restoring the relationship. But some victims and offenders have worked it through well enough, for example, to speak publicly about their mutual experiences.

Gayle also listed some of the needs of the victims from a group she leads that were defined by the victims themselves. Some of them included needing a public place, needing to write her agenda down beforehand, and needing a table in between. Gayle indicated that she has found that many of the group members need to be reminded to be “selfish”, to take care of themselves. For Gayle, looking at her experience of healing as a pilgrimage has been a way of meeting some of her personal needs.

Gayle went on to emphasize that although restorative approaches worked for her and although she’s seen it work for other people, she doesn’t judge any one for whom a face-to-face meeting doesn’t work. The face-to-face meetings that worked for her personally were “surrogate” situations and were different than situations where a victim meets their own offender.

Gayle concluded with references to empowerment and the importance of empowering victims to focus on their own healing and not to worry about the offender, to survive the memories, and to be free of worrying about what other people think.

Helen Smith-McIntyre – *“An Account of a Restorative Justice Based Program in Saskatchewan and Its Strategies for Providing Safety for Women If Cases Involving Increasingly Violent Offences Are Accepted”*

Helen Smith-McIntyre works for Saskatoon Community Mediation Services (SCMS) and explained that SCMS works with restorative justice, conflict resolution and mediation. SCMS offers an Adult Diversion program, a Parent-Teen Mediation program, a Community Mediation program, Mediation and Conflict Resolution Training programs, a Peer Mediation program, and works on public education projects.

Currently, within the Adult Diversion program at SCMS, the cases referred are screened by Saskatchewan Justice Diversion guidelines, and so any offences that relate to violence against women are precluded. SCMS staff routinely meet clientele who have experienced violence, but they work very hard to avoid bringing the perpetrator or abuser together. The priority is to support the women who’ve been abused and to begin the healing process. One of the dilemmas for SCMS is access to support services in the city and SCMS is looking into providing some of these services in-house.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

In terms of dealing with cases that involve violence against women, SCMS is working at further research and staff training to prepare staff to work with more serious, more violent offences, in consultation with Dave Gustafson. This work is not funded by Saskatchewan Justice and does not fall within Diversion guidelines.

Helen concluded by sharing her personal and agency perspective that if we move ahead with cases involving more violent offences then all the safety mechanisms that have been talked about here must be in place. Even then each case must be decided on a case-by-case basis in which SCMS's "calls will always be for the victim and for the victim's safety."

-
-
Wanda Gamble – *“An Account of a Restorative Justice Based Program in Saskatchewan and Its Strategies for Providing Safety for Women If Cases Involving Increasingly Violent Offences Are Accepted”*

Wanda Gamble works with Prince Albert Alternative Measures program and works mainly in the area of adult victim-offender mediation. In the program, there have not been any family violence cases, but there have been cases where family violence issues are revealed once the mediation has started. “My concern as a mediator is how do I effectively do a mediation for a common assault when there’s all these underlying issues?”

Wanda also sees a good side to mediation and gave the example of face-to-face process initiated by a woman sexually assaulted by a family member. The woman indicated her need to meet with the family member and Wanda arranged a meeting where the woman let him know everything that had been built up for a long time. Although the woman’s family member never acknowledged throughout the process that he had done anything to her, several months later the woman thanked Wanda for coordinating the face-to-face meeting for her, saying, “I was able to let go after I met with him. I do see good in that process.” Wanda added that support services were in place before, during and after the meeting.

Roxane Brass – *“An Account of a Restorative Justice Based Program in Saskatchewan and Its Strategies for Providing Safety for Women If Cases Involving Increasingly Violent Offences Are Accepted”*

Roxane Brass works with the Yorkton Tribal Justice Unit. She shared that she is a survivor of sexual abuse. She dealt with the abuse through traditional ways, not through police or legal involvement. She learned to put the onus back on the person responsible, which is what mediation does, and she has seen circles where it has done very well for the person to meet with their offender. There is honour and respect in a circle, especially for people who believe in traditional values and traditional ways, and powerful dynamics that are hard for non-spiritual people to understand. The restorative justice process is not just a restorative justice process from a First Nations perspective.

Every person has the right to speak for him or herself in a circle. When there is police involvement, the woman has no voice in the process. There are whole communities who will stand behind a Native male abuser, not because they support his abuse, but because it’s “an Indian versus the [non-restorative] system”.

Roxane explained that she disagrees with offenders having the option of going to mediation. It gives the offender, not the victim, control and may leave the victim with unresolved anger and pain. It is society’s responsibility to have a context for women to go to their communities when they are first abused instead of ignoring it until someone is killed, and education about this is very important.

When asked by an RCMP officer how to get those First Nations people who have no spirituality to go to circles, Roxane explained that the court system should be used to support the restorative system. “They

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

took our people away in cop cars to residential schools. If you have to bring them back to the circles in police cars so be it.”

What works for First Nations people does not necessarily work for everybody. First Nations people have a different spirituality, have more single-parent families, and need to teach their children to deal with their problems, “...not to separate and go somewhere else. What does that do for the next woman .. [the abusive] man lives with?” First Nations men used to be hunters and protectors, but now aren’t needed, and their struggle with low self-esteem and no pride is also part of First Nations communities. Only the stakeholders in a community can define what works for a community.

Roxane concluded by highlighting the need for more resources and funding, for fewer time-constraints, and most importantly for the processes to be victim-driven.

Bevann Fox – *“An Account of a Restorative Justice Based Program in Saskatchewan and Its Strategies for Providing Safety for Women If Cases Involving Increasingly Violent Offences Are Accepted”*

Bevann Fox works with Regina Alternative Measures Program (RAMP) and, like the previous speakers, has run into cases where there are underlying issues other than the main offence. She said she would like to see changes in the system because by the time we hear about the tragic lives of those who end up in the court system, it’s too late because they’re already grown up.

Bevann shared that four years ago her son was murdered in Saskatoon. She had to go through the whole court process, but she would have rather faced the individuals responsible. “I would have had closure maybe, working towards that. And the courtroom was awful. No respect for my son’s life. And I could see in these four individuals that they had no support.”

In the Regina Alternative Measures Program, they try to keep people out of the court system so that they don’t get a record and they are searching for ways to help their clientele by meeting regularly to discuss cases and to look for resources in the community. They keep the cultural context of each person in mind when deciding where they are going to send them.

Bevann concluded by saying, “I should be full of hate. And some people say, how could you just help people? It’s because I believe in the process of Alternative Measures for youth and for adults because I’ve seen it work. Especially in our program in Regina, ... it’s very successful.”

V. SUMMARY OF THE DISCUSSION: (ii) SUMMARY OF QUESTIONS/RESPONSES FOR/BY SPEAKERS (Please note that because the amount of material was large, the below questions and responses are only examples of what was discussed and are not intended to be comprehensive.)

Questions for Dory Cook

Question #1 for Dory: “Do you believe restorative justice is possible while keeping women safe or would you rather see it happen after legal sanctions are in place?”

- o o Dory: “I think that restorative justice is possible. But, if it is going to be, I would like to see the sanctions in place first. I would like to see the men doing their healing journey and the women doing their healing journey and bringing them together after it’s a safe time to do that. I do couple’s counselling and I bring them in for the first session just to set our boundaries up. And before we get started on the boundaries, they start talking about “She

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

did this, I did this, you did that...” and I say “That is the reason we’re going to talk about boundaries now”.

Question #2 for Dory: “Are there particular issues around violence that are specific to Aboriginal women that would make restorative justice approaches inappropriate?”

- ○ Dory: “Well, if it was done from the ideology of a white perspective. If it’s done from the Aboriginal way that would be quite possible. If their belief system and cultural sensitivity is brought into it, that’s quite possible. But I wouldn’t want to see the women or the men going into a system that doesn’t understand cultural differences and the history of the First Nations people and where the dysfunction originated from – that was the Residential School system and the colonization and assimilation process.”

Questions for Susan Hossack

Question #1 for Susan: “What kind of situation has mediation worked with in domestic disputes? Can you tell in most cases when mediation is not going to work?”

- ○ Susan: “I haven’t seen a situation where mediation has worked in a case where’s there has been domestic abuse. That’s just my experience, but that’s what I’ve seen. ...What was the second part of that? I think that in the cases that I’ve seen that she hasn’t been willing. So, that probably has a lot to do with it. And maybe the kinds of safety things that could be there and supports for her that could be there haven’t been there too. But it’s not been situations where she’s really wanted to be there, it’s been more other kinds of situations.

Question #2 for Susan: “Are you able to describe a situation where a woman who acknowledges she experiences abuse issues in her relationship did find the power balance when managed by the mediator - female or male mediator - found mediation a positive resolution?”

- ○ Susan: “No.”

Question for #3 for Susan: “Since I hold the analysis that men rape and batter in their race and class and down; when you speak from a white woman’s perspective, how do you acknowledge the privilege you hold while ensuring that the experience of Aboriginal women and women of colour is not lessened?”

- ○ Susan: “How I can speak to that is that race and class really don’t have much to do with abuse. One of the first things I did- let me qualify what I just said – when I first started working at the Family Support Centre was I went over to Wally’s program at the Alternatives and asked Wally a few questions. And one of the things I noticed in the room was a map of Saskatoon and it had been covered in pins all across the city. And I said, ‘What are all these pins charting?’ And he said, ‘Well, we decided over the years to mark down the parts of the city that the abusers have come from in our program.’ And there wasn’t a part of the city and, in fact, there probably wasn’t barely even a city block that didn’t have a pin on it. So what that told me is that it doesn’t matter what culture you’re from, what part of town you live in, how much money you have, what colour you are – there’s probably someone around the corner that’s abusive to your type of person. And that that happens across class and racial situations. It happens in all these different kinds of situations and, I believe, all around the world, in different flavours of patriarchy around the world. But it happens to women everywhere. From a personal perspective, ‘how can I as a white woman acknowledge the privilege I have while ensuring that Aboriginal women and women of colour’s experience is not lessened?’ Well, I think it’s something that I have to keep in mind all the time. I think it’s just a mindfulness. But, it’s also a mindfulness about knowing how to do therapy keeping classism in mind. Because a lot of therapy stuff is by the middle class for the middle class or lower classes. There’s a lot of that that goes on out there. And we need to keep those concepts in our mind I think and be really careful and mindful of these kinds of issues at all times when working with people. The other thing that I keep remembering, when I first started doing abuse work with women, ‘You haven’t been through this, so how can you work with this issue?’ Well, you maybe haven’t been through that exact same experience as

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

that woman's been through. For example, I may not experience racism. I have experienced racism. But, not as much as say a First Nations woman would experience racism or an immigrant woman would experience racism. But, I have experienced sexism. I have been called a "b" [b****] and names that insult my gender. And the feelings that come from those experiences are the same feelings. So, as long as I'm in touch with the feelings and knowing that none of us in this room has the same experiences. We all have different journeys and different experiences. But we are all human beings who have the same feelings. So if I can be empathic and compassionate to try to understand her feelings and validating and listening to her feelings. That's what I have to keep in mind. I won't have the same experiences as her. And, in some cases the people I work with may have more privilege than I do in some of these areas. It's about just being mindful of these different places as we go along."

- ○ Rae Hart: "I'd like to respond to Susan's last response if I could. It's fine to say that you walked into Wally's office and say that there were pins on a map denoting violence right across the city in all neighbourhoods and all classes. But to say that undermines the reality that in Aboriginal communities the violence is at a rate of about 80%. It's not that in the non-Aboriginal community. Everyone in society gets to abuse Aboriginal people, particularly women. Okay, so I just wanted to point that out."

Questions for Georgina Jolibois

Question #1 for Georgina: "Are there benefits to having domestic violence cases within the criminal justice system?"

- ○ Georgina: "Absolutely. Restorative Justice has to work at all levels. If we were working toward healing and community building and community development, it has to work at all levels. Some domestic situations where it is clearly painful, very difficult, we must not be afraid and face it and walk through it, each and every one. When I look at photographs of a woman who's just taken out to the country. Being severely... forcible confinement, assaulted and all of that. And we give her the option – the only option is to go through the court process, which brings up more pain and more hurt. We need to provide the option of healing and that's where restorative justice will work. "

Question #2 for Georgina: "And I think this is a part of the same question. Can restorative justice processes provide adequate denunciation and deterrence? The meaning of denunciation – what that means is that does it say sufficiently that the crime that the offender committed is wrong and totally unacceptable, that that behaviour is not acceptable?"

- ○ Georgina: "Certainly, responsibility and accountability is taken. It will be very hard to measure because there will be some results that are intangible, very hard to document. And so with that the approach of the tracking will be hard, but certainly from what I've experienced, when an individual takes a path to healing and accepting responsibility, guaranteed – I can say that guaranteed – that the victimization will lessen and being a part of community building occurs."

Question #3 for Georgina: "Are victim-impact statements considered a measure of restorative justice, are they making a difference and are they working?"

- ○ Georgina: "That I don't know. Maybe Jan can answer that for me. Sorry Jan I don't mean to put you on the spot. "
- ○ Jan Turner: "With the question about are victim-impact statements considered a measure of restorative justice... No, not really. It is support for all victims in the criminal justice system. And one we encourage when appropriate for all victims. Most restorative processes by the nature of the process, provide quite an opportunity for victims to provide their views of what has happened, how they've experienced it and what they need to have happen for them to heal from it. Forms or the program itself is not really used in the restorative programs because it would be a duplicate of what goes on. Are they making a difference? I'm looking at Frankie... This is a fairly new program in Saskatchewan and it's

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

one we haven't done a formal evaluation with yet but it's something that's planned for and we will be looking at how they are used in the traditional system."

Question #4 for Georgina: "How can we make changes from an Aboriginal perspective in regards to allies and crown prosecutors? And I'm not sure if that means in regards to Aboriginal allies/crown prosecutors."

- ○ Georgina: "In my lines of work, what I have done is look for people internally at all levels, be it Indian governments, Metis governments, within the crown prosecutors and other levels, look for senior policy-makers who look for people who is [sic] supportive. For change to occur within those people, they have wanted to make the change. But the approach is really crucial. I've learned through my experiences. Presenting a teaching approach. Presenting a positive approach. Being negative, being forceful will guarantee, what in my experience, what I've seen, is that the issue will not be talked about. Taking that approach. That's my opinion."

Question #5 for Georgina: "Can you expand a bit on the differences between feeling safe and being safe?"

- ○ Georgina: "Feeling safe is a personal thing. It is about how ... this is again my thinking and my feelings around this... it is about how I feel safe from morning to night going to sleep. How my feelings, my thinking, my perception... is my fear valid? It's doing reflection every day. For example, I'm afraid of the dark to go to sleep. This is just an example. And being in a safe neighbourhood, my feeling of being unsafe is invalid. There are security systems, there are people around, so there is at that level. Being safe, again, is being around people who are emotionally supportive, encouraging, validating, and being around people who are not abusive emotionally, physically, sexually, and other aspects. Emotional condescension, emotional abuse is very powerful. Every one of us in here has experienced it. Not just to us, but doing it to other people. To me personally, that's more not feeling safe, is that emotional condescension, emotional... the subtleties of getting the look, of being deliberately excluded, but with no explanation, but just getting the look. To me those things are more about feeling unsafe. Yes, there are the concrete ones. Physically getting away from the person who's physically hurting you. And there's the sexual abuse. No sexual abuse. No violence. That kind of stuff. So there are different levels. And there's another level too, the spiritual abuse. Each and every one of us belong or have some kind of faith, we may or may not. That's okay. That's an individual choice. But some of us belong to different faiths. In my line of work, I've witnessed that some different faiths follow the Bible. When there's shame, to me that's not feeling safe, because I'm feeling quite ashamed of who I am. I'm excluding myself from other people and stuff like that.

Questions for Gayle Mcnab

Question #1 for Gayle: "How would you describe forgiveness? This is a problematic issue. You said what it is not. What is it?"

- ○ Gayle: "I neglected to say what I thought it was and I'm going to read to you what I wrote down. Because I can only tell you what it is for me. For me it was giving up the responsibility to punish. I could never punish enough to make it right anyway and I got tired of dragging along all my offenders. I wanted to be free. I think I began to forgive at a point when I was about thirty. I woke up one morning and literally sat up in bed and said out loud – and you'll have to forgive my words, it's how it came out for me – was, 'They had half my life, but I'll be damned if I give them the rest.' It was about relinquishment for me. Saying I can't fix this, I can't change it, I can't change them, so I'm going to leave them to their own god, to their own shame, to their own guilt. And started, began to let go. It wasn't a one-time thing. I'm still doing it. I still grab a hold of them and throttle them in the neck, in my heart, soul or spirit or wherever that happens. It's just about me giving up my need or my

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

right or my whatever it was to take revenge on them. And all the rest of it, I can't fix. I can't change the way I feel. I can change the way I think, little by little. But it was just really about saying it happened and they're responsible and I'm not. "

Question #2 for Gayle: "When you speak of victims interacting with their offender, are you referring to utilizing mediation as an alternative to traditional sentencing or are you speaking about victim's impact where the issues of the offenders sentence is not part of the process?"

- o o Gayle: "Okay... no, I would never circumvent the legal process. I think it's there for a reason. It's not perfect, and I don't know that it's always the best option. But, no, we have laws for reasons and offenders need to face the consequences of the laws they've broken. When I talk about interacting with the offender, it's when all sorts of things have been put in place, when the law has done what it can and when this is going to be a healing process not... a face-to-face encounter is not about punishing the offender and it's about healing for the victim and possibly healing for the offender, but, no, I'm very clear on the law. The law has to take its course. So the sentence is always part of it. And that's – I'm speaking from what I believe and what I think – I don't know that everybody else thinks this way."

V. SUMMARY OF THE DISCUSSION: (iii) SUMMARY OF SMALL GROUP SESSIONS

(Please note that because the amount of material was large, the below lists are only examples of what was discussed and are not intended to be comprehensive.)

Small Group Session – 1: What were the elements/key factors around the negative outcomes? 2: What were the elements/key factors around the positive outcomes?

1: What were the elements/key factors around the negative outcomes?

- ♦ " Lack of education about Family Violence and the justice system and how it works
- ♦ " Lack of training for the mediation (RCMP, Medical, Professional People, etc.)
- ♦ " Not being ready (offender & survivor)
- ♦ " A disbelief because of no proof
- ♦ " Judgmental attitude, Lack of impartiality
- ♦ " Blaming the victim for not agreeing with the mediation
- ♦ " Does not recognize the balance of power
- ♦ " What level of physical safety measures for the victim and offender
- ♦ " Male offender (non- neutral) and male mediator (in charge)
- ♦ " Women with less assertive voice

2: What were the elements/key factors around the positive outcomes?

- ♦ " Room to opt-out at ANY stage
- ♦ " Having support people; before, during, after
- ♦ " Good training for mediators (examples - Compassion and Listening skills)
- ♦ " Checking with victim at each step
- ♦ " Readiness of the client
- ♦ " Distinguished the behaviour between the person and their behaviour
- ♦ " Has to be victim driven. Her choice, her control
- ♦ " Educating police, social workers to respond quickly etc.
- ♦ " Not focused on forgiveness, focus on safety of victim, focus on responsibility of perpetrators
- ♦ " Not meeting actual offender (surrogates)

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Small Group Session - If we were to imagine it was possible to ensure safety of women during processes based on restorative justice philosophy, what would we say are the strategies and actions that would foster keeping women safe? (from flip chart notes)

If it were possible... some strategies and actions would be:

- ♦ " support women breaking silence in community
- ♦ " understanding the impact in violence
- ♦ " victim needs a stronger voice in the process
- ♦ " court translation service in Aboriginal communities
- ♦ " financial needs to conduct evaluation
- ♦ " offender would know the impact they have on victims
- ♦ " we would work holistically within community and province
- ♦ " make changes to the criminal Justice System so that it focuses on both Aboriginal and Non-Aboriginal people
- ♦ " make Anger Management and other support programs available to victim
- ♦ " Government invest in survivor services that grow from grass roots

Some negative outcomes could be:

- ♦ " re-victimization
- ♦ " fear of hurting someone/other involved family members
- ♦ " need of more support
- ♦ " victims are involved before they are ready
- ♦ " perpetrator not held accountable, allowed to minimize etc.
- ♦ " perpetrator not done own healing or committed to
- ♦ " not connected to other resources
- ♦ " victim not supported through process
- ♦ " no after care for perpetrator

Some positive outcomes could be:

- ♦ " movement toward healing process
- ♦ " victims control the process
- ♦ " being asked what would make the victim feel safe, for example: location, support
- ♦ " perpetrator accepts responsibility before process takes place
- ♦ " timing, expected purpose to be appropriate to where victims are at in healing process
- ♦ " connected to other resources and treatment
- ♦ " address others that are affected for example children
- ♦ " power imbalances need to be acknowledged
- ♦ " perpetrators need to feel / know the purpose is to apologize and make amends
- ♦ " victim should be given opportunity to speak to judge / should have say in sentence

Day Two, February 9, 2001

Small Group Session - Are there any changes we can make that will strengthen our list from Small Group Sessions on Day One? (key elements were reported on index cards)

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Role of Support People - Counsellors, Mediators, Social Workers, Elders, Front-line Workers

- +provide specific details of process and ensure understanding
- +recognition that this process is not for everyone
- +need to be follow-up and after-care after the face-to-face meeting
- +process goes at victim's pace (move forward as ready; breaks as needed)
- +victims should be educated with options available: informed of rights, informed of choices, victim impact statements, with options of adding to them
- +perpetrator accepts responsibility before process takes place
- +screening process to make sure that survivors are well aware of their options and educate them on the process
- +mediator needs to be aware of subtlety, objectivity, and know what they are
- +time for caucus
- +the follow-up: before, during and after the whole process
- +service-provider accountability
- +victim-generated referrals
- +training: specific and focussed training for person who will mediate cases - including internship and competency evaluation
- +consideration needs to be given to the type of community the process is taking place in and therefore what people are willing and prepared to do to support the process
- +practise run without the perpetrator – role-play

Funding/Role of Elected Officials

- +generously funding healing initiatives
- +research dollars are spent on research and evaluation - enough dollars should be made available
- +the government allocates money for programs, staff agency for long term instead of on a yearly basis
- +government invested in survivor services that grow from grassroots
- +give more money to independent women's groups
- +give more money to agencies and individuals
- +affordable homes and child-care
- +alternative ideas to replace the current ADVERSARIAL criminal process
- +give victims rights not just offenders - involve them more throughout the entire process
- +change our laws to victim-survivor centred
- +putting individual needs before system needs, that is, statistics, results, budgets, and timelines

Legal

- +victim should be given opportunity to speak to the judge - victim should have a say in the sentence
- +proceed with charges without victims testimony
- +make changes to the criminal justice system so that it focuses on BOTH Aboriginal and non-Aboriginal peoples
- +police (or everyone involved) to take anti-sexist, racist, ageist, etc training
- +create a balance - control in the system re: attitudes of victim/survivor, offender; ensure a balance of power
- +prosecutors take the time to speak and meet with victims to provide information and get their input
- +court translation service in Aboriginal communities
- +assessment teams in court to decide where the offenders go
- +dealing with charges quickly
- +we should give referrals to victims services

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

+access to physical protection

Healing - Victim, Offender, Community

- +victim, family and offender need healing services apart from just the legal sanctions before restorative justice
- +address others that have been affected e.g. Children, extended family, friends/supporters
- +recognition that different people (i.e. victim and offender) may be at different stages of the healing process
- +separate healing for victim and family and offender before restorative justice begins
- +goal is not bringing people together but helping them on their healing journey
- +understand spiritual needs of everybody
- +breaking the silence (don't speak, don't trust, don't feel)
- +there would be something in place to make sure offenders are sincere
- +healing BEFORE any face-to-face encounter - for victim and offender
- +no tolerance for violence
- +lots of independence women's groups
- +to support women breaking silence in community: financially, community actions - restorative justice replacing courts is questionable

What is Restorative Justice?

- +summary: there is not a clearly defined definition of RJ and a real concern has been expressed that without this clarity you will all be moving in different directions believing we are “restorative justice”
- +adaptability of process
- +forgiveness would be better defined
- +remember safety is also a state of mind as well as environment
- +RJ is not an alternative to sentencing
- +appropriate amount of time for every case and for every stage of case
- +perpetrator needs to remain accountable - Restorative Justice not equal to lighter sentence
- +accountability to the courts
- +everyone who is involved in facilitating the “restorative justice” process has an informed feminist analysis and is fully versed on the dynamics of violence against women in their homes / sexual assault (including the cleaning staff)

Community - Training, Support, Education

Inter-Agency Co-operation

- +connected to other resources and treatment
- +survivor to have support from everyone through the whole process (including social services, judicial workers, community, correctional, police, shelters)
- +stronger connections between police, sexual assault centres, victims, victim workers, and all relevant parties (knowledge about what each service provides)
- +community support for women combined in educating police, social workers to respond quickly
- +parents, COMMUNITY organizations and individuals worked together with schools/teachers to eliminate violence and abuse
- +community support throughout to entire process
- +we need to make bigger usage and give more awareness of victims services

General Education

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- +start prevention as soon as possible (i.e. elementary schools)
- +provide education to community youth, law enforcement - Accountability is different than punishment
- +more education for professionals and victim friendly legal system
- +mandatory information on all media - regarding “Stockholm Syndrome”
- +a police force that is educated and sensitive to women’s needs and issues
- +awareness of cultural differences
- +society who respects women (TV., music, print media, movies, etc... <-all negative outlooks on women)
- +offenders would know/understand the impact their actions have on victims, families and community
- +we need to get rid of the message that the victim needs to be “fixed and cured” from agency to agency

Access to Resources

- +actual access to programs in communities and anger management - drug and alcohol
- +recognizing government organizations limitations (regulations, guidelines)
- +support in the community
- +resources, groups, shelters in rural communities

Specific Training

- +Mediation/Resolution skills be taught in the schools in the health programs
- +make anger management and other support programs available to victim
- +train youth and teachers in schools and have them accountable for their behaviours
- +judges wanted to be gender sensitive/culturally trained
- +provide training to school children on respectful vs. abusive behaviours. Train the teachers also, and have them accountable for their behaviours
- +all justice employees be trained specifically on these issues, including police, RCMP, and Social Services
- +train the mediators, justice committees, court-workers... and monitor them
- +provide domestic violence training to all people involved in restorative justice processes and in the traditional justice system

Small Group Session – Consultation Question #3: If safety can be achieved, what community/ institutional resources and expertise would be necessary: (a) to prepare women and their abusers for such face-to-face encounters, (b) to facilitate the encounters and (c) to provide for follow-through on any agreements that might be reached? (from flip-chart notes from geographic groups)

If safety can be achieved, what community/institutional resources and expertise would be necessary: (a) to prepare women and their abusers for such face-to-face encounters?

- ◆ “ complete information in advance for both
- ◆ “ create safe space and the amount of time needed to prepare
- ◆ “ increase knowledge in the community about family violence, dynamics and RJ
- ◆ “ prosecuting offenders without victim’s testimony
- ◆ “ enough counselling support and healing time
- ◆ “ trained and culturally appropriate transformative justice workers
- ◆ “ the opportunity to choose to get involved or to have a surrogate
- ◆ “ look at accountability process for men (abusers)
- ◆ “ money for victim for counselling, childcare
- ◆ “ the victim has to come to a point of being empowered and to feel free to say no and walk away.
- ◆ “ a check to ensure the victim is not being coerced

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

- ♦ .. need 24 hr – 7 day a week service with all professionals available to support
- ♦ .. determine 1st if safety can be achieved (specifically for facilitator to decide)
- ♦ .. face to face encounters may work for Aboriginal people, questionable for other races
- ♦ .. outreach workers to inform of the process and prepare for meeting
- ♦ .. workers NOT be out of traditional institution based organization (community based)
- ♦ .. general education on causes of criminal behaviour
- ♦ .. not be an add-on (specific position and funding); not supplemental
- ♦ .. physical safety insured (i.e. not police, however police services – compassionate and informed)
- ♦ .. denunciation of act by society

If safety can be achieved, what community/institutional resources and expertise would be necessary: (b) to facilitate the encounters?

- ♦ .. no abuser can go without taking responsibility
- ♦ .. well trained sensitivity mediators with in-depth knowledge and skill level in family violence RJ and mediation
- ♦ .. safe place with a high level of comfort for all participants
- ♦ .. victim / survival controlled
- ♦ .. enough / adequate \$
- ♦ .. integrated case management
- ♦ .. the 3 levels (pre, during and post) of care need to be in collaboration
- ♦ .. ensure adequate time to complete the process
- ♦ .. parties need to be aware that an agreement is not necessarily the goal
- ♦ .. surrogate offender when needed
- ♦ .. process out in the open for everyone involved.
- ♦ .. once a year follow up
- ♦ .. choice of confidence for victim
- ♦ .. clear expectations on what the victim is hoping to get out of this
- ♦ .. C.B.O.'s that work from a feminist / holistic perspective
- ♦ .. since there is a high percentage of First Nation's People the Cultural sensitivity must be acknowledged

If safety can be achieved, what community/institutional resources and expertise would be necessary: (c) to provide for follow-through on any agreements that might be reached?

- ♦ .. effective communication between RJ program and victim
- ♦ .. trained facilitator who will ensure a monitoring plan is in place
- ♦ .. helping him or her locate if separation in a domestic case
- ♦ .. follow up interview with the offender about the relapse prevention plan
- ♦ .. offender (sexual) need a circle of support when going back into the community
- ♦ .. adequate resources to monitor follow-up, for counselling, recovery programs etc.
- ♦ .. extremely high level of commitment in the caregivers, and caregivers for the caregivers
- ♦ .. peer review for the caregivers, self-examination. Accountability for caregivers.
- ♦ .. larger social issues need to be addressed
- ♦ .. meaningful community connections to attend to and care about accountability in individual cases
- ♦ .. continuity with funding, people, and philosophy
- ♦ .. communication with survivors with regards to outcomes of restorative justice measures
- ♦ .. community consultation (regular)
- ♦ .. opportunities for healing for both
- ♦ .. whoever starts working with the victim/offender must be committed to follow through

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

- ◆ “ to continue on with the commitment
- ◆ “ to have a male/female team of highly trained facilitators
- ◆ “ more complex system for the more complex cases, dangerous and high risk offenders

VI. CONCLUSIONS AND NEXT STEPS

(i) Summary of Helen’s Final Comments:

“There was one outstanding question before lunch, that I wanted to just acknowledge again. The question was, ‘Who’s pushing it? Who’s pushing mediation?’ I’m not aware that anyone is pushing it. Other people may have other awareness that I don’t have. Some of my motivation in terms of bringing us together was that I know that mediations are happening outside of the controls of Sask Justice and this sort of restorative justice based program. So I hoped we could educate in a wide spectrum of areas in the event that they are happening. I know that for us in an urban setting we have quite a different approach to this. Particularly, in the White world. And I hear the First Nations voices. That they certainly see this very differently than we do. That family is important. And that community is important. And that healing and coming to some kind of wholeness through a holistic approach is important. I still do not have the sense that anybody is pushing this in terms of violence against women and those kinds of offences and restorative justice. Now that’s me speaking. From my experience, that’s where I think we’re at. Some people have asked about a report. There will be a report about the whole process. All the things that have happened in this room in plenary have been recorded. And when we check out the quality of that then that may be available to all of you for a price. But there will be a written report that will go out to everybody. And it will include pretty well all the written information we’ve gathered and collected on flip-charts and cards and so on throughout the last few days. So we hope to make it as rich and representative of the richness here as we possibly can.”

(ii) Summary of Responses to the Evaluation Questions:

There were 56 responses out of 155 participants.

1. Rate your learning experience during this consultation:

35 out of 56 people found the consultation to be a positive experience. 12 out of 56 were neutral and 6 experienced the consultation as negative.

2. During this consultation what have you learned about “restorative justice”?

The evaluations indicate that some people were struggling to understand the principle of “restorative justice”.

3. During this consultation what have you learned about “violence against women”?

Ten people out of the 50 who responded to the question said they had learned little or nothing. All others indicated that they had a deepening awareness and some indicated more commitment to the issues.

4. How has this consultation helped you to better understand different perspectives on the issue of Restorative Justice and Offences Related to Violence Against Women?

Ten respondents felt that they had not achieved a greater level of understanding of the different perspectives. All others indicated that they had better understandings of various perspectives.

5. Was this consultation a good opportunity to make contacts with other people? How so?

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Four respondents said it was not. All others responded with a fairly resounding yes and gave examples of how they had made contacts.

6. How has the discussion at this consultation influenced your thinking in terms of using restorative justice processes in offences related to violence against women?

26 respondents gave clear answers about future directions. 18 said proceed with caution. Most cautions related to safety for women. 7 said “no” to the restorative justice process, and 1 said proceed and didn’t name caveats.

7. What was helpful for you in allowing you to participate fully (including speaking and/or listening) and in making plenary and small group sessions a safe space?

A majority of the respondents felt as though the small groups and plenary sessions were safe and respectful, and gave participants a place to express their ideas and opinions. Three respondents said they did not feel safe in the groups because they sensed hostility or felt as though they were being judged.

8. Are there ways in which you think the consultation could have been more participatory and respectful in plenary and small group sessions?

Two major suggestions were for the facilitators to be more experienced and that an added stress on respect for other people’s views may have been useful. Most respondents had small suggestions on how the process may have been smoother.

9. Is further discussion in Saskatchewan necessary? What would further discussion look like?

34 out of 56 respondents see the need for further discussion in Saskatchewan. However, most would like to see a refinement of the process and the discussion topics, as well as involve more people with a concrete background and knowledge in Restorative Justice. One respondent believed that Saskatchewan was not ready for further discussion.

Further comments, suggestions and questions:

Opinions were divided with regard to the process and logistics. The issue of racism and understandings of commonalities and differences between aboriginals and whites was raised several times.

(iii) Overall Summary of Conclusions and Next Steps:

The dialogue needs to continue and be expanded to include police, crown prosecutors and professional in private practice. The organizers were disappointed that these groups were not well represented at this consultation. This means that their voices are missing from the discussion. It also means that the community has developed some sense of awareness of the issues and that others have missed this.

With regard to participation, the organizers also wondered if the information collected from Friday afternoon was less rich and inclusive due to the fact that a number of participants left early.

The common opinions thus far seem to be:

1. that the current criminal systems are not working for women who are victims of violence,
2. that healing is important for perpetrators and victims,
3. that much more training is necessary and that many more resources are needed in order to ensure that victims are cared for in any process,
4. that women should be safe in any process which is used,

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

5. that more talking and listening needs to happen, particularly toward understanding the philosophical differences about healing, family and community between First Nations/Métis Nation and white people.

It may be in the end that we cannot agree on one process for Saskatchewan for offences related to violence against women but perhaps we can learn to better understand our differences.

Appendix A

Explanations of Terms and Practices

Consultation on Restorative Justice and Violence Against Women, February 8-9, 2001

Restorative Justice in relation to criminal offences is a *philosophy* that reflects a belief that justice should, to the greatest degree possible, do the following:

1. Invite full participation and consensus (which means voluntary participation of victim, offender and others, who have been affected by the crime, including community and family members)
2. Heal what has been broken
3. Seek full and direct accountability
4. Reunite what has been divided
5. Strengthen the community, to prevent further harms
6. Be respectful to all involved
7. Consider the societal and personal issues underlying the crime (eg. racism, sexism, poverty)

Some Models based on a Restorative Justice philosophy include:

1. Victim-Offender Mediation
 - - Usually involves the victim, the offender and a mediator
 - - May happen at any point in the criminal process
2. Sentencing Circles
 - - Usually involves the victim, the offender, their support people, family members, community members, the judge, the crown prosecutor, the police and a facilitator
 - - The purpose is to recommend a sentence for the offender
 - - Happens at the post-conviction stage in the criminal process
 - - If following Aboriginal traditions, an Elder may be present.
3. Family Group Conferences
 - - Usually involves the victim, the offender, some family members, support people and community people, the facilitator, and may involve the police
 - - May happen at any point in the criminal process
4. Community Accountability Conference
 - - Similar to #3

Diversion

Diversion means a criminal case has been diverted out of the court system to be worked through in a different way. The different way may include a process based on a restorative justice philosophy. In Saskatchewan, diversion programs are governed by guidelines and the diversion happens only at a pre-charge or post-charge stage in the criminal process. Currently, cases involving charges related to spousal or sexual assault may not be diverted out of criminal courts in Saskatchewan

Alternative Measures

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Alternative Measures could involve any of the above models but might also include practices like electronic monitoring, which is not necessarily based in restorative justice.

Outside of Criminal Courts

Mediation circles and other face-to-face processes do happen in relation to Family Law cases, Civil Court cases and in other situations outside of any court process. These settings also need to consider safety for women who have experienced violence.

Violence Against Women

Violence against women is about men wanting to have power and control over women. It includes actions of physical aggression, sexual abuse or assault, psychological control or manipulation, verbal, emotional, social or spiritual abuse. The actions may be blatant or very subtle.

5.5. Aboriginal Justice Strategy (AJS) Evaluation - 2000¹⁵

5.5.1. Role of Women

- Although there is no evidence available to determine whether women's involvement can be attributed to the AJS, it does appear that women are very involved in many projects.
 - This would include women being involved in the negotiation, development, implementation, management, and service delivery aspects, as well as being represented among staff, board members and volunteers.
 - According to several community members interviewed, it was often women who saw the need and initiated the process for developing a community-based justice project.
 - In part, it seems that women are motivated out of concern for the children in the communities; they want to break the cycle of abuse and see the children healthy.
-

5.6. Aboriginal Justice Strategy (AJS) Trends – 2000 ¹⁶

5.6.1. Gender of Staff

- Based on funding guidelines of AJS (which speaks to the meaningful involvement of women in the development and operation of community-based projects), the role of women in the programs requires attention.
 - Few projects reported upon the gender of their staff each year.
 - In 1998-99, two projects, one in British Columbia and one in the Northwest Territories reported have no female staff.
 - By 1998-99, ten projects reported having females make up more than 50% of their staff. Four were in British Columbia, two in Manitoba and one in Northwest Territories, Nova Scotia, Ontario and the Yukon.
 - In 1998-99, 9 projects reported 100% female staff.

¹⁵ Department of Justice Canada, Evaluation Division, Final Evaluation Aboriginal Justice Strategy, Technical Report, October 2000

¹⁶ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

5.6.2. Reported Referrals Characteristics (Age and Gender)

- Gender: In 1998-99 males accounted for approximately 33% more of the referrals than women.
 - The total number of male clients in 1998-99 was 1,304.
 - Female clients in the same year totaled 991.

Total Number of Projects Reporting 0% Female Staff ¹⁷

Province /Territory	Female Staff: 0%		
	1996-97	1997-98	1998-99
British Columbia			1
Saskatchewan			
Manitoba			
Ontario	1		
Quebec			
Nova Scotia			
Newfoundland			
Nunavut			
Northwest Territories		1	1
Yukon			

Total Number of Projects Reporting >50% Female Staff ¹⁸

Province /Territory	Female Staff: >50%		
	1996-97	1997-98	1998-99
British Columbia		1	4
Saskatchewan	1		
Manitoba	2	2	2
Ontario	1	1	1
Quebec			
Nova Scotia	1		1
Newfoundland			
Nunavut			
Northwest Territories			1
Yukon	1		1

Total Number of Projects Reporting 100% Female Staff ¹⁹

Province /Territory	Female Staff: 100%		
	1996-97	1997-98	1998-99
British Columbia	2		4
Saskatchewan	1		
Manitoba			1
Ontario		1	1
Quebec			
Nova Scotia			1
Newfoundland			
Nunavut			
Northwest Territories			1
Yukon	1	1	1

¹⁷ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

¹⁸ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

¹⁹ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

5.7. Aboriginal Women’s Roundtable On Gender Equality - 2000²⁰

Aboriginal Women’s Roundtable on Gender Equality

March 2000

BACKGROUND

Status of Women Canada (SWC) is the federal agency that coordinates and leads the implementation of the *Federal Plan for Gender Equality* and the *Beijing Platform for Action*. Therefore, its activities help to promote women’s full participation in the country’s social, economic, cultural and political life.

In December 1999, SWC held a national consultation on Gender Equality with Canadian women from across the country, including First Nations, Inuit and Métis women. During that consultation, the Aboriginal women requested a consultation dedicated to the needs and aspirations of Aboriginal women, avoiding competition with the mainstream process.

In an effort to address these concerns, SWC convened an *Aboriginal Women’s Roundtable on Gender Equality* in Ottawa on March 30-April 1, 2000. Prior to the meeting, organizers identified the goal and objectives of the Roundtable. These are summarized below:

Roundtable goal

- To include all Aboriginal women in decision-making in all matters affecting them and their families and to ensure their voices are heard and respected in the process.

Roundtable objectives:

- To provide a forum where First Nations, Inuit and Métis women can share their expertise on a broad range of issues.
- To foster a dialogue between Aboriginal women and the Government of Canada on key policy issues affecting Aboriginal women.
- To use the Discussion Paper as a basis for focusing attention on the principles of Aboriginal gender equality and on a consultation framework for Aboriginal women.
- To produce a document at the end of the Roundtable to be used for future consultations by Aboriginal and non-Aboriginal organizations and agencies at all levels.
- To develop a vision statement on Aboriginal women’s perspectives on equality and inclusion.

More than 35 First Nations, Métis and Inuit women from a wide range of regions, organizations and life experiences participated in the Roundtable. Also present were observers from a number of federal government departments, including Status of Women Canada, Indian and Northern Affairs Canada, Justice Canada, Canadian Heritage, Health Canada, the Privy Council Office and Human Resources Development Canada. This report incorporates the comments made by participants on a draft of the proceedings.

Status of Women Canada

1

²⁰ Status of Women Canada Aboriginal Women’s Roundtable On Gender Equality *March 30-April 1, 2000* Ottawa, Ontario Roundtable Report <http://www.swc-cfc.gc.ca/publish/table/010914-cover-e.html>

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

PROCESS

The Roundtable was held at the Odawa Native Friendship Centre in Ottawa, beginning with an opening ceremony and get-acquainted dinner on the evening of March 30th. During the opening ceremony, local Algonquin Elders said prayers; the Honourable Hedy Fry, Secretary of State (Multiculturalism) (Status of Women) spoke, as did the Honourable Anne MacLellan, Minister of Justice. The Honourable Ralph Goodale, Federal Interlocutor for Métis and Non-Status Indians was unable to attend but did send greetings, which were read aloud. Following the dinner, participants introduced themselves and talked of their reasons for attending the Roundtable and what they hoped to achieve out of it. Many appreciated the opportunity to get to know each other on a more personal level before the official meeting began. Participants then spent the next two full days frankly discussing a variety of issues and concerns related to equality and consultation. Four of the participants, two First Nations, one Métis and one Inuit, agreed to act as facilitators during the meeting.

At the start of the meeting on the first morning, local Algonquin Elders offered a prayer. After that, the chair presented the goal and objectives of the meeting, and summarized the findings of the discussion paper. Participants agreed to a mix of small group discussions and plenaries where each group would report on its deliberations.

Participants came to the Roundtable with a variety of hopes and expectations. These ranged from a desire to learn from others' insights and experiences to a wish to emerge from the meeting with a strong vision statement and a unified voice. A considerable amount of time was taken up in airing concerns about the meeting, including its spiritual bias, poor timing, lack of consultation, inappropriate language and the presence of government participants.

Some participants felt the spiritual practices used at the meeting added a particular spiritual bias. While participants welcomed the important role Elders played throughout the Roundtable, a number of them questioned honouring only selected traditions and values, since Elders from other communities were not also present.

On the issue of timing, a number of participants indicated that they would have liked more notice before the Roundtable so that they might have been better prepared.

Throughout the meeting, the women picked up on inappropriate language. For one, they did not like the over-emphasis on gender equality, because it omits Aboriginal peoples' own traditions and values. On a practical level, others faulted the organizers for not ensuring that Inuktitut simultaneous translation was available from the outset¹. One participant indicated that she could not follow the proceedings because of the lack of translation. Another was grateful that she could understand her Inuit sisters once the interpretation accommodations were made.

¹ Due to technical difficulties, simultaneous translation between English and Inuktitut was not available during the morning sessions of March 31st.

Status of Women Canada

2

Aboriginal Women's Roundtable on Gender Equality

March 2000

A range of views was expressed regarding the desirability of inviting government officials to the Roundtable. While one participant stated that she found it difficult to sit at the same table with non-Aboriginal people, others expressed their appreciation for the fact that the government representatives had come to the Roundtable to listen and to learn.

Overall, participants felt the Roundtable was positive. Several stated that they trusted the process and were grateful for the opportunity to meet one another and draw from each other's strength. Others found the discussions to be meaningful and productive, and expressed strong support for the view that this Roundtable should form the basis of an on-going consultative process between Aboriginal women and the Government of Canada.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

EQUALITY FOR ABORIGINAL WOMEN

For the First Nations, Métis and Inuit women who participated in the Roundtable, the issue of gender equality was extremely sensitive. It caused strong reactions on the part of many of those present. In short, participants agreed that the sexual discrimination that women face on a day-to-day basis cannot be separated from the twin legacies of colonialism and racism, which continue to marginalize Aboriginal peoples and devalue their cultures and traditions.

To provide a starting point for discussion, Status of Women Canada circulated a draft paper written by Madeleine Dion Stout and Greg Kipling. The paper provided some thoughts on consultations with Aboriginal peoples and gender equality. The paper suggested that Aboriginal women tend to hold discussions wherever they gather, even in less conventional areas such as churches and bingo halls. While not meant as a stereotype of Aboriginal people, some participants found the reference offensive. Other participants noted that some Aboriginal women do meet in places such as churches and bingo halls and their experiences shouldn't be discounted. What is more important, however, is the fact that many Aboriginal women do not necessarily feel comfortable meeting in 'conventional' fora such as public meetings or Band council offices for a variety of reasons, and are seeking their own ways to meet and discuss common problems and concerns. This discussion served as a powerful symbol of Aboriginal women's individual strengths, and a reminder about the need to be careful how words are used and how they can be interpreted.

Sexism and racism

Coming to terms with gender-based discrimination against First Nations, Métis and Inuit women must be done in tandem with stopping racism from non-Aboriginal Canadians and government institutions. As one participant said,

"what we're really talking about here is not gender equality, but rather racial equality. We need to obtain racial equality in our own country."

This view led some of the participants to argue that family violence in Aboriginal communities needs to be addressed within the broader context of institutionalized violence against all Aboriginal peoples, regardless of gender. Law enforcement agencies and the Canadian judicial system need to pay attention to this reality. Similarly, one woman noted that racism towards Aboriginal peoples in Quebec has become more severe since the Oka crisis of the early 1990s, resulting in untold pain and suffering for both women and men living in that province.

For their part, Inuit participants repeatedly stated that their history, identity and living conditions are distinct from those of other Aboriginal peoples, and as such they cannot accept the federal government position that they are a "supplementary Aboriginal race". Rather, as one participant

Status of Women Canada

4

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

put it, Inuit women should be treated as “separate from the First Nations and Métis in all government programs and funding, as the Inuit have their own treaty rights with the federal government”.

Inappropriateness of Western Models and Assumptions

Roundtable participants were also uncomfortable with many of the assumptions that concepts like feminism and gender equality are based on. Many felt that these words were grounded in an alien belief structure that shared little in common with the more holistic world-view of most Aboriginal people. Some suggested that the very notion of feminism is offensive, because it builds barriers between women and men while it erases or trivializes the commonalities that they share with one another. An Inuit participant asserted that ‘community well-being’ is a far more useful term than ‘feminism’ to describe women’s efforts to promote equality and justice for themselves and their children.

Many participants were also critical of the English language as a vehicle for discussing gender roles and relations in Aboriginal communities. In the words of one woman, “the first problem we face is language. Like gender equality, I can’t stand it ... Some of our languages don’t even have words for male and female. And that is the number one problem, and so long as we’re limited to that sort of language we’ll have this problem”.

Of those present, many rejected outside attempts by governments or non-Aboriginal feminists to impose labels on Aboriginal peoples. One participant was critical of the tendency to characterize Aboriginal men as ‘abusers’, and asked how inter-personal conflicts can be dealt with when women and men are already being labelled as either the victims or perpetrators of violence.

Such questions led to discussions on the extent to which women and men complement each other, and it prompted support for working in partnership **with** men rather than **against** them. This is not to say that First Nations, Métis and Inuit women are willing to accept anything less than full equality. In one woman’s words, “I don’t want to turn into a man, but I do want equal pay and equal rights. I’ve got skills he doesn’t have, and he’s got skills I don’t have”. Besides agreeing with the principle of ‘equal pay for work of equal value’, participants also stressed the importance of equality with men in such areas as hiring, training, economic development, decision making and policy development.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

Bill C-31 and Indian status

Few issues aroused greater passion than the unequal treatment First Nations women experience as a result of the *Indian Act*. In short, affected First Nations women have been able to regain Indian status following the passage of Bill C-31 in 1985, but they continue to experience discrimination. This stems from *Indian Act* provisions that effectively deny their grandchildren Indian status if and when their children marry non-Aboriginal partners. As well, many First Nations have refused to give women the right to return to their communities, or have forced their non-status children to move off-reserve upon reaching the age of majority.

Participants at the Roundtable spoke eloquently of the problems they have faced in their own lives dealing with this sort of discrimination. They ended with a clear consensus that both the federal government and the male-dominated First Nations leadership have to move quickly to address the problems that have arisen around the status issue.

Participants called upon the government to eliminate all discriminatory practices related to status determination. This includes the current demand to prove paternity from First Nations women who have children of unknown status. Several participants also argued that male leaders have to be educated if they are to take women's concerns seriously. To quote:

“Our biggest problem is our men who are our leaders. They have never lost status, so they need to be educated about this. However, the challenge is how are we going to educate them? This fight has to have the Chiefs' support. Our job is to protect the next seven generations and we can start the education process right in our own homes.”

One of the basic questions for the women was why the male leadership supports exclusionary Band membership codes. For the women, this position only serves to restrict the future growth of the status Indian population.

To address these and other concerns, the women wanted sustained funding for research, advocacy and networking in areas related to status determination and Band membership. They felt that education was particularly important in this regard. Future generations risk losing status altogether and others who may forget that their Aboriginal identity comes from within themselves rather than from a piece of paper or government-imposed label were seen to be most in need of education.

Even as the participants criticized First Nations leaders for failing to provide adequate support to those women who have lost status, at no time did they lose sight of the fact that the Canadian government bears ultimate responsibility for the present state of affairs. In the words of one participant,

“Fundamentally, the basic issue is the refusal of the government to recognize and fulfill its responsibilities”.

Status of Women Canada

6

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

Discrimination within Aboriginal communities

Still, all forms of discrimination that prevent Aboriginal women from participating fully in the economic, political and spiritual spheres of their communities were firmly condemned. As one woman said,

“It tires me sometimes to talk about gender equality when we Aboriginal women are not equal in our communities. There is still discrimination within our communities. We have to address this issue first. We need to do this for our children and grandchildren.”

Another argued that Aboriginal organizations and leaders do not always act in the best interests of community members:

“There is still a great deal of racism and nepotism within our organizations. We have to start with ourselves and have a collective voice, and to show respect for the sake of our children and each other.”

Notably, Aboriginal women living in urban areas were seen to be more likely to suffer discrimination from the general population and from their own communities. This prompted a call for activities and interventions that are broad-based enough to address the challenges facing urban Aboriginal women.

Women also wanted an independent body with a mandate to investigate human rights abuses committed against Aboriginal peoples, whether by Aboriginal or non-Aboriginal agencies and organizations. As a participant said,

“We want to push for an ombudswoman because a lot of our sisters are very isolated, because of the refusal of the *Indian Act* Chiefs to deal with the problems, and also because of the institutional racism of the so-called Royal Canadian Mounted Police and our judicial system.”

Making sure that such a body is completely independent of existing leadership bodies and structures was also stressed. A woman summed up this feeling as follows:

“We felt that existing human rights legislation is way out there and doesn't speak to our communities, so we wanted some system, some body that is at arm's length. We don't want human rights to be addressed by groups within our communities, so there's no interference from the existing leadership.”

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

Marginalization of women's organizations

One of the most important ways in which Aboriginal women's rights have been safeguarded in recent decades is through the untiring efforts of organizations like the Native Women's Association of Canada, Métis National Council of Women (MNCW) and Pauktuutit Inuit Women's Association.

Roundtable participants acknowledged the success with which these organizations have defended Aboriginal women's interests. But they also criticized the government's refusal to give women's groups the tools and resources they need to carry out their work. Some Inuit participants were particularly forceful in condemning the federal government's failure to recognize Pauktuutit as the national voice for Inuit women; to consult and to support it on an equal basis with other national organizations.

To drive home this point of inclusion, the Métis National Council of Women refuses to call the Assembly of First Nations, Métis National Council and Inuit Tapirisat of Canada, Aboriginal government organizations. They argued that the United Nations classifies them as non-governmental organizations (NGOs) and that this is what they should be called. They underlined that there are seven national Aboriginal NGOs representing a diversity of Aboriginal people in Canada.²

Whether they speak from national, regional or local levels, First Nations, Métis and Inuit women want recognition, not assimilation and integration. Further, they want core funding to continue community-based activities like research, capacity building and advocacy. They do not like the fact that women's organizations have been forced to compete with each other for limited and ad hoc funding for far too long. This is over and above their ongoing competition with men.

These tensions have had exceedingly negative effects on the morale of staff and members, and on the organizations' abilities to fulfill their respective mandates and objectives. Aboriginal women's organizations are vital precisely because they offer a means of "reflecting and speaking about [their] own concerns, instead of relying on anyone in government or other bodies to make representations on [their] behalf," as one participant explained.

² The seven Aboriginal organizations referenced include the Assembly of First Nations (AFN), Inuit Tapirisat of Canada (ITC), Métis National Council (MNC), Congress of Aboriginal Peoples (CAP), the Native Women's Association of Canada (NWAC), Pauktuutit Inuit Women's Association and the Métis National Council of Women (MNCW). Indian and Northern Affairs Canada includes Native Friendship Centres Association of Canada (NFCAC) in their list of national Aboriginal organizations.

Status of Women Canada

8

Aboriginal Women's Roundtable on Gender Equality

March 2000

In sum, the First Nations, Métis and Inuit women who participated in the Roundtable spoke honestly and forcefully on a broad range of issues related to gender and racial equality. While participants did not agree with each other on every point, they raised one recurring theme throughout the discussion: the importance of being action-oriented. The consensus was that concrete steps need to be taken immediately to address Aboriginal women's marginalization. What is *not* needed, according to the participants, is yet another government-funded report whose recommendations are acknowledged but never acted on.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

CONSULTATION WITH ABORIGINAL WOMEN

Roundtable participants were equally loud about calling for action on consultation matters. In recent decades, many commissioned studies made some effort to 'consult' with Aboriginal peoples. Despite this, participants felt that in all too many cases their recommendations have gone unheeded by governments and organizations. This was because the latter groups were intent on pursuing pre-determined agendas. For this reason, the First Nations, Métis and Inuit women at the Roundtable placed great emphasis on accountability in decision-making when it comes to discussing approaches to Aboriginal consultation.

Participation

Roundtable participants made clear that Aboriginal women's input be sought on all matters that affect them. Also, they want to be active participants from the beginning until the end of the process. In other words, women like to be given every opportunity to play a meaningful role in all aspects of consultation design and implementation. This ranges from participant selection to approval of the contents of the final report.

In this regard, a number of participants saw the merits of making more frequent use of participatory action research (PAR) tools. Organizers of consultations need to keep this in mind. As one woman argued, citing her research experience on the impact of Bill C-31 in British Columbia, PAR provides a means of adapting research to community needs, and of giving individuals a real stake in, and control over, the outcome.

Equally important in the eyes of many, was that women need special measures to support their participation in consultation exercises. In light of this, the following observation was made:

“The question that must be asked is who is invited to the table? In this regard self-esteem is often an issue. I know there's many people who would not speak in public because of low self-esteem. For this reason the government has to consider the very basic issues and barriers that prevent women from participating.”

Of particular concern were those groups of women who are most often made invisible and inaudible within conventional consultation frameworks. First Nations, Métis and Inuit women living in urban areas are such a group. As one participant stated, “we need a broad enough brush stroke that considers the urban component”. The women also identified a number of other populations that must be given equal access to decision-making and consultative fora. These include disabled women, the youth, lesbians, Elders, front-line service providers and women who “don't necessarily represent any particular group”.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

Commitment

Participants argued for a commitment by all concerned to adopt a realistic, respectful approach and avoid superficial consultation. Accordingly, sufficient notice of upcoming events is a critical first step in this regard.

By way of example, several participants were given two to three weeks to prepare for this Roundtable, making it difficult for them to consult with their own organizations or communities prior to the meeting. One woman argued,

“governments need to give us enough time to allow us prepare for meetings. I know I could have used more time to discuss the issues with Saskatchewan women”.

Similarly, Roundtable participants from remote or northern regions felt a general lack of appreciation for the vast distances they must travel to attend public meetings and gatherings. Not only is such travel time-consuming and expensive, but it is often stressful as well. It is all the more so if the journey is undertaken at the last minute. Some participants, therefore, suggested that the next meeting be held in a remote or Northern locale, in the interest of fairness. This move would also focus attention on the problems that Aboriginal peoples in these areas face.

By the same token, the Aboriginal women at the Roundtable also acknowledged that this is a time of shrinking budgets and rapidly shifting priorities and that it is sometimes impossible to provide proper notice or follow the appropriate protocols. In these cases, participants stressed that they would rather seize an opportunity as it becomes available, rather than standing by while it slips away. Referring to the lack of notice before the Roundtable, one woman said, “we don't want to serve the government, but we do want to take advantage of our time together”.

In expecting governments to commit themselves to a respectful consultation process, Aboriginal women must also be prepared to devote the time and effort necessary to achieve meaningful results. A Roundtable participant expressed this sentiment on behalf of the others by stating, “in my territory we would not quit at 4:30. We would work until the work was done”.

Communication

For First Nations, Métis and Inuit women, effective communication is critical if a consultation exercise is to be successful. This entails taking basic steps to ensure that individuals can speak to and understand each other. For this, necessary tools must be brought on-side in a timely and sensitive manner. In the context of the Roundtable, participants were disappointed that Inuktitut-English interpretation was not available from the beginning, even as they expressed their appreciation for the translation services once these were in place and working. The lack of interpretation at the outset of the meeting reflected a lack of respect — language and culture are at the heart of relations between Aboriginal women and governments and also among Aboriginal

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

women themselves. Sensitivity toward these issues and needs is key to a positive and successful consultation.

As well, the women emphasized the importance of having understandable consultation materials, such as background reports and discussion papers. From their perspective, these must appeal to the literacy levels of a cross-section of women. Since target audiences are diverse and are likely to include women with a wide range of formal educational backgrounds, this has to be kept in mind during consultations.

According to Roundtable participants, well-developed listening skills are also vital to the success of any consultation exercise. One woman put it as, "every person, every nation, every association has its own reality. How we are going to reach consensus is by listening to each other". Other participants agreed, with several arguing that respect for others and a willingness to listen to their point of view are both necessary if Aboriginal women are to find common ground amid their diversity.

In any meeting, there is potential for conflict. Given that the Roundtable itself came close to giving in to conflict, participants were especially sensitive to it. For this reason, there was considerable discussion of 'emotional triggers' and the care outsiders must take not to use words and actions that lay bare the pain and suffering Aboriginal women continue to experience. In one woman's wise words, "there are many ways in which triggers can produce reactions. What we want the government people to see is that the way words are presented can be very powerful and you have to remember that." A similar point of view was expressed by another participant, who stated,

"People are being made sick by the oppression and the appropriation of their bodies and even their brains. This makes people allergic to the hurtful words other might say, and makes them react violently."

Finally, Roundtable participants expressed a desire for two-way communication between governments and communities, and between communities themselves. In both cases, the goal is the same: to share information in an honest, respectful fashion. The outcome is also the same: 'power-with', not 'power-over'. Thus, governments must take the necessary steps to ensure that Aboriginal women's views and opinions flow upwards to senior management levels. They must also give women the necessary time and resources to share what they have learned within their communities and constituencies when they return home.

Respect

Although respect in consultation was front and centre for the participants, they also addressed this issue within larger policy frameworks. In particular, the women called upon the federal

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

government to acknowledge the full extent of its responsibility to the First Peoples of Canada. They also demanded that governments recognize that First Nations, Métis and Inuit each have their own histories and identities, and as such cannot be treated in consultation exercises as though they all formed part of a single convenient group.

Roundtable participants also felt that due respect for the diversity within Aboriginal communities was important. According to the women, consultation organizers must make a special effort to ensure that the voices of the most marginalized are both listened to and valued. Further, they must themselves remember to honour one another. Differences have to be put aside in order for answers to surface, as argued below:

“We have to recognize that although we all have our own ways, we are all earth people. We have to find answers together. I am sure there is an answer that will suit everybody; we just have to be respectful of each other.”

There was also widespread agreement among the women that consultation approaches have to be sensitive to the diversity of Aboriginal traditions and values. In other words, ways must be found to fit Elders, ceremonies and prayer into meetings and gatherings without losing sight of the other nations and cultures in the room. A number of Roundtable participants saw this as a basis for an entirely new model for consulting with Aboriginal peoples. Creative changes to the existing model are vital according to the women: “we need to get away from oppressive structures in consultation and return to a more holistic approach. We are asking for a re-alignment”.

Accountability

During the course of their deliberations, the First Nations, Métis and Inuit women voiced some cynicism towards formal consultations. They noted that the Panel on Family Violence, the Marshall Enquiry and the Royal Commission on Aboriginal Peoples are all examples of costly ventures that have done little to alter the day-to-day realities of most Aboriginal people across the country. For this reason accountability became a priority area for the women.

According to them, key principles for consultation must be adopted. This would be one way of promoting greater accountability. Principles are yardsticks against which affected individuals and communities can measure the relative success of consultations:

“We believe in principles in consultation. We believe that principles should be agreed to before the consultation starts by those who are being consulted with. And then we can go back and see if we have shown respect to those principles.”

Similarly, many of the participants voiced strong support for the notion of ‘informed consent’. Whenever a government or other body is putting a policy, program or project into effect, ‘informed consent’ must take place. This is especially true when these programs or projects are

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

likely to impact upon Aboriginal peoples. Consultation exercises must also include a capacity-building component. This is to ensure that all Aboriginal stakeholders have, at their disposal, the necessary information and tools to make well-reasoned decisions.

In this regard, the women did not merely emphasize the need for accountable consultative mechanisms. They also asked for accountable leaders and governments. Thus, they were uncompromising in their demand that the government meet all of its fiduciary and moral obligations to the Aboriginal peoples of Canada. They also emphasized the need for Aboriginal political leaders to become more accountable to community members for the decisions they make and positions they adopt. In the words of one woman, "many of the leaders say the right words in public, but at home they put down their own people. We have to find a way to reach them".

Evaluation and follow-up

The emphasis on accountability led the participants to evaluation issues. Even in the context of the Roundtable, the women expressed a strong desire to participate in the drafting of the final report, and to be involved in any follow-up activities that might be planned.

"We have some concern that there be a check to ensure that the diversity of the group is reflected in the final paper. One idea would be to get people to comment on and review the paper. Although we understand it may be hard for everyone to have input, there should be at least a selection of people involved."

The women also agreed that all decision-making and consultations need to have built-in evaluations. Where Aboriginal peoples are stakeholders, this is even more important. In any case, consultation participants and community members must be brought into the decision-making loop. One way to do this is to involve them in planning efforts. Another is to give them a continued say in the use of the information they share.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

TOWARDS A CONSULTATION FRAMEWORK

Diverse First Nations, Métis and Inuit women were brought together for the Aboriginal Women's Roundtable on Gender Equality. They came to Ottawa from all regions of the country, from many different nations, and from a wide range of professions and personal backgrounds. Despite these differences, they all shared a common commitment to the struggle for healing and justice in the face of more than 500 years of oppression, domination and colonialism.

Yet their diversity presents a particular set of challenges and difficulties. This is so for the women and those who seek their input on policies and projects. In the words of one of the Roundtable participants,

"I really appreciate the complexity of our diversity but how is this going to be reflected in the end result? There's going to be different views, and how is this going to be synthesized and be reflective of our diversity?"

Consensus is always difficult to achieve in a group with multiple interests and points of view. Therefore, it is important to identify the factors and players that can either make or break consultations.

Face-to-face Circle

There are a number of key actors and relationships that can affect the course and direction of the consultation process. When meeting face-to-face at a public meeting or gathering, there are a number of individuals whose actions and words can have a significant impact upon the proceedings. This group can include consultants, Elders, spokespeople for a particular position or organization, non-Aboriginal sympathizers and community activists. Their influence on the larger group may either be destructive or constructive.

Interface Circle

Also relevant in this regard are the government and Aboriginal organizations with their own stakes in the process and outcome. These include Indian and Northern Affairs Canada (INAC), Status of Women Canada (SWC), Privy Council Office (PCO), Assembly of First Nations (AFN), Inuit Tapirisat of Canada (ITC), Métis National Council (MNC), Native Women's Association of Canada (NWAC), Métis National Council of Women (MNCW), Pauktuutit Inuit Women's Association and Native Friendship Centres Association of Canada. They make up the 'interface circle' and are directly involved in the consultation process.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

Faceless Circle

There is a larger 'faceless circle' of groups and individuals whose influence is less immediate, but significant nonetheless. Falling into the 'faceless circle' are Aboriginal women in general, participants' constituencies and home communities, public servants, interested federal government departments, the provinces and territories, and Aboriginal men. They are not usually present at the consultations.

It is important to recognize the conflicting interests these various stakeholders represent. Also critical is how their actions and words can influence the consultation outcome.

Key Forces For Balance

Participants bring different perspectives and ideas with them to consultations. These include everything from traditions and values, to identity and interests, to meeting goals and organization agendas. Each of these acts as an anchor linking each woman to the outside world and gives her a unique perspective and vision. Rising upward from this base are the strategic directions of vision, equality and consultation. It is the boundary between creative, constructive dialogue and destructive, stagnant talk. On either side are the factors influencing the meeting's eventual outcome.

A negative outcome is likely if participants feel they are being made invisible (shut out) and inaudible (shut up), or if they are forced to 'shut down' in the face of insensitivity and disrespect.

In the latter case, women at the Roundtable reported how they avoided potential hurt by withdrawing into themselves. By doing so, they virtually 'left' the meeting even though they were still there in person. Notably, it is the scarcity of resources which often results in competition among Aboriginal organizations, thereby dividing women from each other.

By contrast, a positive outcome is achievable if participants are able to see their diversity as an opportunity rather than a threat. In addition, their deliberations must be underpinned by good leadership, meaningful participation and a strong commitment to healing. Good leaders must 'make sense' of complicated issues for other women by bringing forward new and sound insights. To do so, they must be willing to step aside while someone else does the same. Participation means to 'make do' based on what is at one's disposal at the time. Being resourceful is the way to full participation. Healing is to 'make up' differences of opinion, values and beliefs even as these collide. A Métis woman wished that the rifts among her group would have been healed prior to this meeting.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

To be successful, consultations with Aboriginal women must embody a process that is respectful, focused and inclusive. Moreover, women want these to be guided by principles that are known and accepted by all. While these principles are likely to vary somewhat according to the needs and priorities of those involved, it is nonetheless possible to identify five central pillars on which future consultations may be based.

Relationships/Resources

Roundtable participants emphasized the importance of core funding of Aboriginal women's organizations so that these can adequately represent their interests. But they also made clear that positive, respectful relationships among women are critical in any consultation exercise.

Space/Time

The women at the Roundtable called upon governments to give them more notice prior to meetings and other gatherings. They stressed the need for sensitivity to the vast distances participants must travel, and to considering alternative locations for consultation fora. Above all, women appreciated the chance to be heard, whether they expressed strong emotions or not. That they were welcomed as part of the group, no matter what they thought and how they shared this, helped them claim their rightful place at the table.

Improvisation/Planning

There is clearly a need for careful planning if a meeting involving several dozen participants is to unfold smoothly. There was broad agreement among the First Nations, Métis and Inuit women that people must be willing to seize opportunities as they arise, and be flexible enough to do the best they can with what is available to them. This does not mean accepting second-rate consultations, however. It means holding first-rate consultations given a set of circumstances and resources.

Quality/Quantity

It is desirable to consult as widely as possible before making a decision or initiating a new policy, program or project. Still, Roundtable participants strongly felt that consultation is most likely to be useful if it is meaningful, focused and forward-looking. Those who buy into this approach make for high quality consultations, yet their numbers need not be huge.

Aboriginal Women's Roundtable on Gender Equality

March 2000

Traditions/Modernity

As was stressed repeatedly over the course of the Roundtable, traditions and ceremonies play a central role in the lives of most Aboriginal peoples. At the same time, Aboriginal people are at the forefront of technological change and development. They can now make use of the Internet to overcome the remoteness of some of their communities. In a similar fashion, approaches to consultation can involve the modern and the traditional, and use prayers, talking circles and humour while also employing e-communications and air travel.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

SPECIFIC DIRECTIONS AND VISION STATEMENT

After they discussed issues related to consultation and equality, Roundtable participants identified a number of specific directions to guide future actions and interventions. They also devoted considerable energy to the task of developing a vision statement to guide future consultation exercises. Grouped by theme area, these deliberations are summarized below:

Specific Directions:

Consultation/Roundtable follow-up

- Participants be given an opportunity to review and comment on a draft of the Roundtable proceedings report prior to its publication.
- Individuals participating in any future consultation meeting be directly involved in the development of the agenda and background materials.
- Consideration be given to holding the next consultation meeting in a remote or northern locale.
- Steps be taken to ensure that language interpretation is available from the beginning of any future consultation meeting.
- Elders be given a more prominent role in future consultation meetings.
- Women Chiefs be invited to participate in any future consultation meeting.
- Participation in future consultation meetings be more open to two-spirited women, disabled women, women who have been in prison, and street women.
- Steps be taken to ensure that First Nations, Métis and Inuit women's views are adequately represented and respected in all future consultations with Aboriginal peoples.

Equality for Aboriginal women

- Aboriginal gender equality be promoted through the provision of core funding to First Nations, Métis and Inuit women's organizations.
- Initiatives to promote Aboriginal gender equality be undertaken collaboratively by First Nations, Métis and Inuit women's organizations and key federal government departments.
- On-going consultation be undertaken with First Nations, Métis and Inuit women on self-government, Bill C-31, the Corbiere decision and matrimonial property rights.
- Funds be allocated to support research by Aboriginal women's organizations on issues related to Bill C-31.
- Steps be taken by Aboriginal women's organizations to develop a strong statement on the need for absolute equality between women and men in all matters pertaining to Indian status determination.
- A campaign be developed and implemented to educate First Nations Chiefs on the problems and challenges faced by Aboriginal women affected by Bill C-31.
- Funds be allocated to document and publicize best practices which serve to foster or promote Aboriginal women's rights and well being.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Aboriginal Women's Roundtable on Gender Equality

March 2000

Equality for Aboriginal peoples

- Governments and funding bodies be sensitized to the unique needs and realities of Inuit people.
- Funds be allocated to convene an Inuit women's roundtable on issues related to consultation and gender equality.
- Targeted funds be allocated by the federal government to provide support and services to Aboriginal peoples living in urban areas.
- A national meeting of Aboriginal organizations be convened in order to develop a framework for joint action to safeguard and promote Aboriginal peoples' rights and well being.

Justice

- On-going consultation be undertaken with First Nations, Métis and Inuit women on the impact of restorative justice approaches.
- Consideration be given to establishing an Aboriginal ombudsperson's office to investigate violations of Aboriginal individuals' human rights on Aboriginal territory and elsewhere in Canada.

Traditional knowledge and spirituality

- Funds be allocated to First Nations, Métis and Inuit women's organizations to undertake research on traditional approaches to health and healing.
- Steps be taken to make greater use of traditional knowledge and spirituality with apprehended children and youth.
- Research be undertaken to explore ways of better integrating traditional approaches to governance into existing self-government structures.

General actions

- Funds be allocated to the collection and publication of submissions and testimony by Aboriginal women before the Royal Commission on Aboriginal Peoples.

Vision Statement

Although the First Nations, Métis and Inuit women attending the Roundtable did not focus on the wording of a vision statement as such, there was widespread agreement on the following key principles:

- Recognition of our children and grandchildren as First Peoples in perpetuity.
- Right of Aboriginal peoples to health and self-sustaining communities.
- Right of Aboriginal peoples to a clean environment, clean air and non-contaminated foods.

Aboriginal Women's Roundtable on Gender Equality

March 2000

Some participants undertook a drawing exercise in which they identified what they considered to be the most important features of the 'ideal' consultation exercise. Their findings are outlined below:

- There must be recognition and celebration of those who are not whole.
- Consultation participants must always try to speak from the heart.
- The diversity of perspectives must be listened to and valued, even when one does not agree with what others are saying.
- Women and men must work together for the well being of all.
- Aboriginal women must honour themselves and each other as human beings.
- Aboriginal women must always remember that they are here today because of the wisdom of their mothers and grandmothers. This wisdom must be passed down to the next seven generations.

5.8. Seeking Transformative Justice For Women -2000²¹

In the USA, late 18th century, the Quakers of Philadelphia proposed the penitentiary as an alternative to the death penalty. In their vision, lawbreakers would be confined within a peaceful place where in isolation they would do penance, and become penitent, hence a penitentiary. By the early 19th century, having seen the results of their experiment, Quakers and many others were decrying the stultifying effects of incarceration on the human spirit, for both the guards and the guarded, and the power abuses that are structurally inherent to imprisonment (PREAP, 1976). Two hundred years later, internationally, the Quakers are still prominent among the "faith communities," and the human rights activists, politicians and career professionals of every ilk, including criminal justice, who envision more practical, community-based modes of responding to unlawful behavior while addressing the reasons for it.

With reference to women's imprisonment in the Canadian context, this article discusses alternatives to retributive punishment, as posed by academics, human rights activists, officials and former prisoners. As an activist academic who consults with prisoners and former prisoners, I speak from engagement with as well as critical perspectives on this movement toward community-based justice.

My purpose here is to situate gender as a key factor in a historical movement toward prison abolition. A shift toward restorative or transformative justice, theoretically, is reintegrative in that it benefits the offender, the victim and the community. The first offenders to be diverted from prison to any new program are generally those with the least serious offences and/or those who pose no risk of committing violence; women commonly fall into this category, but, as discussed, very few community alternatives exist for them. The last section addresses some of the key issues facing women in prison, women getting out of prison, and those who serve advocacy on their behalf.

The history of prisons is the history of prison reform, but critics in the new millennium are not seeking an improved prison, but rather an end to prison through more structured community and victim involvement in problem-solving (see, for example, Umbreit, 1985; Vass, 1990; Miller, 1991; Morris, 1995, 2000; Galaway and Hudson, 1996; Considine, 1999). Currently under the rubric of "restorative justice," though with very different meanings and applications of the term (Van Ness and Strong, 1997), diverse groups are proposing more pragmatic, thoughtful and contextualized responses to crime than warehouse-imprisonment. Activist advocates are linked with and include social critics and academics concerned with the politics and practices of punishment (see, for example, Foucault, 1979; Auerbach, 1983; Lacey, 1988; Braithwaite, 1989; Reiman, 1990; Zehr, 1990; Pepinsky and Quinney, 1991; McMahon, 1992; Bianchi, 1994; Christie, 1994; Howe, 1994; Cayley, 1998; Cook and Davies, 1999).

Antithetical to the strategies of 1990s prison abolition movements, the dominant victims' rights movements of the 1990s, with strong retributive motivation, called for longer and harsher prison sentences for offenders, with the implication that all "offenders" are dangerous and irredeemable. Judges obliged as did politicians, by stripping prisons of all "frills": for example, in Canada, they slashed funds for university programs in men's prisons, even though they were a success by any measure. (Women had never had the benefit of such programs.) Whereas some administrators in both men's and women's prisons still attempt to implement constructive programs for prisoners (Faith, 1995), so they can use their time constructively and better their prospects upon release, generally prison is no longer expected to be rehabilitative. (The term "rehabilitate" has its origin in the ancient practice of casting a person naked into the wilderness to reckon with their offence; when repentant, they return to the fold fully clothed, at peace with their gods, their dignity restored.)

²¹ Karlene Faith, Ph.D. Seeking Transformative Justice For Women: Views from Canada. *Journal of International Women's Studies* Vol. 2, #1, November 2000 <http://www.bridgew.edu/DEPTS/ARTSCNCE/JIWS/nov00/index.htm>

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Prison is commonly an experience of social, physical, sensory, intellectual, sexual and material deprivation, constant tension, sleepless nights, health dysfunction, anger, despair, irritation, lethargy, fear, claustrophobia and loneliness, in a noisy state human warehouse. For women, separation from their children is often the worst of the punishment, and the children invariably suffer when their mother is incarcerated, often with lasting effects. Degrading strip searches and indiscriminate use of pepper spray are commonplace in many prisons (Faith, 1999). At their most brutal, women's prisons have been terrifying places of sexual assault and virtual enslavement by male staff (Faith, 1993: 246-54). At its best, prison is a dehumanizing place where many women nevertheless form solidarity with one another for constructive purposes, giving each other empathy, support, humor and healthy distraction.

Women in prison are not the Amazon beasts of the B-movies. Women who leave prison with their humanity intact, or expanded, give credit to the emotional support they receive from other women inside, and outside friends and family who help them survive the prison nightmare. Even at its most benign, the prison experience is not conducive to penance or rehabilitation. It is a setback to lives already set back — through racialization, histories of sexual and other violent abuse, and socio-politico-economic exclusions. Penal abolitionists seek not to reform prisons or to supplement the system with "alternatives," but rather to transform the conditions that first produce injustices and then justify selective incarceration for victims who have offended.

The Gender Factor

Hierarchical power differentials invariably produce methods and systems of criminalization and punishment which are most vigorously applied to young men. The young men under the closest surveillance are those with the least social resources, who, by virtue of their color or cultural identity, are regarded as *de facto* adversarial and therefore dangerous to the dominant classes. Marginalized groups which are perceived as generally docile, which do not intrude on public life or vie for equality or sovereignty, are left alone. Groups whose leaders organize in social and legal defense of their human rights are perceived as a political threat, and the crimes of primarily young men from those groups are punished severely. In North America early in the 1900s it was the Irish who filled the prisons and met the gallows. Half a century later, with the acceleration of mid-century civil rights movements in the U.S., Irish-Americans were among those who arrested, imprisoned and executed African Americans. In Canada in 2000, First Nations women constitute less than four percent of the national adult female population, but almost 20 percent of federally incarcerated women, and they often constitute over 80 percent of women in prairie and territorial jails. In the eastern provinces, African-heritage women are similarly overrepresented (CCJS, 1999; Faith, 1993).

In male-dominant cultures, across class, it is expected that fathers and husbands will keep track of the comings and goings of "the weaker sex." In most countries women generally comprise no more than 20 percent of convictions for illegal actions, and two to six percent of incarcerated persons. In other words, women's crimes are usually of such a minor nature (such as shoplifting, or solicitation in public) they don't call for imprisonment, unless a woman becomes chronic in her criminal habits, or commits assault or worse. I've met women who are serving virtual life sentences (almost 20 years to date) for chronic minor theft when they were very young; their original sentences were two to three years, but because they have never been able to adapt to imprisonment, and because their independent ways are interpreted as "bad attitude," they have been repeatedly turned down for parole. Partly because there are relatively few women in prison, they receive more attention in terms of surveillance, but they receive less attention in terms of resources upon which they could build a new life.

It is axiomatic that in eras when women get uppity, men renew their efforts to tame and domesticate them, through traditional, cultural, religious and legal injunction. Women who are unmanageable are demonized and masculinized as a threat to good order. This cyclical phenomenon was illustrated vividly in the USA in the post-war 1950s, with significant increases in the numbers of women confined for mental or emotional disturbance. Reactionary attitudes toward women re-surfaced in the 1970s, during a peak period in the Second Wave women's liberation movement. For every assertion by women of their equality rights, would-be patriarchy resisted with re-entrenched gendered biases and smug confidence that the Equal Rights Amendment would be

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

again defeated, and it was. In this period, paranoia about women at large exacerbated the stigma of women labeled "criminal." By the mid-1970s, as an outcome of the "feminization of poverty" and the "war on drugs," more women were being sent to prison on theft and drug charges that formerly would have put them on probation or short jail time.

The media, joining and often leading the misogyny chorale, loudly capitalized on Freda Adler's work concerning gender convergences in illegal behaviors (Adler, 1975; Faith, 1993: 60-68): With reductionist finesse, and without empirical grounding, journalists spread the warning that women's liberation would be turning out a new "liberated" breed of criminal woman, as violent as any man. These feminist amazons would be as cruel and predatory as the subjects of Cesare Lombroso, the late 19th century Italian father of criminology. He examined the skeletons of dead prostitutes to determine that women's (usually latent) criminal nature was more vile and dangerous than that of any man — which was why poor, beleaguered men had to keep unruly women under strict surveillance and control. Similar primitive theories are now being applied to "girl gangs," which is code for groups of girls who are not white (Chesney-Lind, 1997).

Presently in Canada, with a total population of approximately 30 million, about 15,000 men are federal prisoners (serving two years or more), in over 40 prisons across the country according to their levels of custody classification: minimum, medium or maximum. By contrast, only about 350 women are serving federal sentences, in one of six prisons that opened cross-country in the 1990s (CCJS, 1999: 58-9). Again by contrast, in California, a highly carceral state where the total population is likewise about 30 million, over 11,000 women are serving sentences in prisons across the state in 2000 (approaching the rate for men in Canada). Although all but 14 percent of women in federal Canadian prisons are classified minimum or medium security, given that women of all three classifications are held in each of the prisons all are subject to maximum security conditions. Also, women who are diagnosed by the institution (often erroneously) as suffering a mental health problem are classified maximum and held in segregated cells even when it is clear that they pose no threat.

In North America through the 1950s, as noted above, when women defied authority they were more often sent to a mental hospital than to prison. Whereas bad boys who broke convention were stigmatized or glorified as bad, bad girls were feared as mad. From the 1970s onward, prison populations have radically increased due to many factors, including the war on drugs, increasingly punitive courts, and the urgings of technology-driven contractors representing the burgeoning punishment industry (Christie, 1994). In Canada in 2000, women's incarcerated populations have more than tripled since 1970; in California, where many judges serve as generals in the war on drugs, they have increased almost twenty-fold, far exceeding population increases. In 1972, there were 600 women in California state prison, and now, to repeat, there are 11,000 plus. In the 1990s, and despite all the statistically-irrelevant but otherwise sensational headline cases, the rate of serious, violent crime has steadily decreased in both the United States and Canada for both men and women (CCJS, 1999: 118-26; DeKeseredy, 2000).

The populations of men's prisons have also radically increased, and women remain a distinct minority in criminal justice systems. Because most women in prison do not constitute a threat to public order or safety, and because their incarceration and the displacement of their children is costly to the state as well as in human terms, reformers have often pressed for reduction in the numbers of women incarcerated and early paroles. To that end, they urge that resources be diverted from prison construction to alternatives based on expanded community resources (see, for example, Carlen, 1990; Faith 1995). The current notion of "restorative justice" is one means by which some women could be diverted from prison into community-based programs, as an incremental means of closing prisons rather than expanding them. As employed by criminal justice agencies, however, restorative justice can also have the effects of both "net-widening," that is, extending the boundaries of criminal justice surveillance and authority, and re-entrenching women's subordination through informal conflict resolution which fails to address structural power imbalances.

Restorative Rhetoric vs. Reality

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

In Canada, isolated experiments in "restorative justice" are attempts to bypass the jail and prison systems in coming to a resolution of harm, though with many definitions of the meaning and purpose of "restorative justice" and how best to achieve it. One of the potential benefits of alternative sentencing is that it returns the challenge of problem-solving to all parties concerned. It acknowledges that offences harm real people, not just the impersonal state with the power to punish. A former Solicitor General, Andy Scott, defined restorative justice as "an approach to resolving crime that brings victims, offenders and communities together in an effort to repair the damage caused by crime" (SolGen, 1998:6).

Commonly espoused forms of restorative justice include circle sentencing (where all concerned parties ostensibly have an equal voice), community accountability boards, family conferencing, community living and mediation, all of which seek victim-offender (re)conciliation outside of but accountable to the court of law. The ultimate purpose, hence the global involvement of spiritual, aboriginal and religious groups, is reciprocal healing and the creating and strengthening of community through restitution and reparation (see, for example, Considine, 1999; Morris, 2000). As an example of community sentencing, in a First Nations community here in B.C., a young man who committed a sexual assault was banished by his elders to an unoccupied island, where he lived alone for more than a year, learning to survive in the traditional ways. The group, including the victim, must be satisfied that the offender is genuinely remorseful and ashamed, and must trust that he or she will make amends to those affected directly and also indirectly by the crime. Everyone must work together on a plan for the offender's accountability, and the victim has a significant voice in the process, not for retribution but for resolution.

As expressed at meetings I've attended, critical opposition to "restorative justice" in its newly-institutionalized forms is coming from First Nations women and from women who work with victims of violence. They observe the ways that imbalanced power relations affect mediation outcomes. Even if people are theoretically equal within the healing (or sentencing) circle, in fact they carry their respective status into the circle, and their status-laden standpoints and biases. Within the dynamic of the circle, a woman is tacitly intimidated by a man who has abused her; if he has status in the community, other people also may not challenge him. Children, similarly, would find it difficult to confront an adult abuser.

Critics of restorative justice models do not conversely defend existing criminal justice practices, or assume that justice or future safety will be served by jailing the offender (Pate, 1994; Hannah-Moffat and Shaw, 2000). But given the failure of most restorative justice models to reckon with gendered or other power relations, children, disenfranchised men, and women generally, especially women of color, could suffer even less opportunity to be heard, to resolve harms done to them, or to heal.

There is a clear need for caution in creating restorative justice alternatives to incarceration, but the basic idea — to move away from retribution and toward healing — is potentially progressive. Many penal abolitionists and most decarcerationists (also known as minimalists, who would reserve prisons for those who are demonstrably violent), tacitly support alternatives while recognizing the need to work on social inequities more generally. As Solicitor General during the 1990s, Andy Scott pointed to his Ministry's efforts to cooperate with aboriginal communities which are seeking self-government. He took particular pride in the Okimaw Ochi Healing Lodge for a maximum 30 aboriginal women and, in some cases, their children, staffed primarily by Native women. Opened in the mid-1990s, the minimum security Healing Lodge focused not on judgement of past errors but on rebuilding one's life. Located in a pastoral, wooded area in the Saskatchewan prairies, the women's small cottages are not locked, and they engage in traditional healing practices, including a sweat lodge, with the support of elder guides. A few women have been able to keep their infants and young children with them (Faith, 1995).

Predictably, because it is under the jurisdiction of Correctional Services Canada (CSC, 1997), after six years the Healing Lodge has become more institutionalized, punitive and colonized (Monture-Angus, 2000). CSC has failed to recognize the contradictions of practicing a healing philosophy within a retributive system governed by penal ideologies (Kendall, 1994). The Commissioner speaks of the value of restorative justice, and returning to

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

communities the opportunity to re-learn how to resolve conflict and repair harm. But the practice is to request and receive ever-larger portions of the federal budget for new high-tech carceral projects.

The failure of retributive justice to acknowledge socio-political and economic inequities, and the selective criminalization of members of the most socially vulnerable groups, requires new ways of thinking about crime and punishment. With Ruth Morris, a leader in the Canadian penal abolition movement, I agree that we must work toward justice that is reflective of social, economic, political and, often, personal transformation, rather than restoration. As Kim Pate says, also in agreement, "First we must achieve justice, then when things disrupt it, we may be better able to restore it" (Pate, 1994:64). Meanwhile, hope is raised at the prospect of reducing the numbers of people in prisons, applied equitably to both men and women who pose no threat of harm to others.

At Simon Fraser University, within the School of Criminology, we now have a Centre for Restorative Justice, and popular, optional courses on restorative justice alongside courses that view prisons uncritically. Some of us wanted to call ourselves the Centre for **Transformative** Justice, because restorative suggests returning a person to a former condition and it was often that former condition and a dysfunctional community that induced the illegal behavior. Transformative justice affirms that mindful, collective work, within a region or a jurisdiction but with international alliances, may incrementally transform social conditions and human relations, and build or strengthen communities. The long-range goal is prevention, rather than reaction. Yet, because government and criminal justice agencies use the term "restorative justice," as do many community groups, and because the term has entered mainstream Canadian vernacular, the decision at the Centre was to follow that convention. Already, across North America, the idea of restorative justice has been co-opted and institutionalized, while penalty is more firmly entrenched in practice.

Theoretically, and sometimes in practice (Considine, 1999), the restorative approach to decarceration seeks to divert lawbreakers away from criminal justice and toward reconciliation, with restitution to the harmed individual(s) and reparation and accountability to the entire community. As advocated by the first CSC Deputy Commissioner for Women, Nancy Stableforth, early paroles, as a means of reducing the prison population, could be accomplished with satellite apartments, private home placements, women's centres, and day reporting centres to meet parole requirements (Stableforth, 1998). This approach would be decarcerative not only through early release, but, if there were adequate community resources, it would reduce the numbers of women who are returned to prison for technical parole violations or new crimes. Access to resources generates opportunities for reconciliation, restitution, reparation and accountability.

Women who have family awaiting them are least likely to recidivate, but few women exiting prison have that security (Faith, 1993: 183-228). Until the 1970s, few women in North America who had been in prison were open about it, and people on parole were commonly forbidden contact with other former prisoners (which still happens). In that decade, the prisoners' rights movement accelerated, and gradually more women were willing to speak of their experiences, alongside politicized men who were former prisoners. By now there are networks of women in various countries who have served time and who are speaking out. Following is an account of a Canadian group that has demonstrated ways by which individuals can participate in a transformational justice process.

Strength in Sisterhood (SIS)

A support and advocacy network started modestly in 1994 on the west coast in British Columbia, with members across Canada. Known as SIS, Strength in Sisterhood, a number of women who have done time (and women and men who are allies) have been challenging women's prison practices: doing research and writing papers (Boyd and Faith, 1999; Faith, 1993, 1995; Horii, 1994, 1995, 2000; Lyons, 1996; Mayhew, 1997; Norwich, 1997), and letters to editors (Turner, 1997); testifying at federal and provincial hearings; participating in grassroots and professional forums and rallies; and, in other ways, protesting human rights abuses in prisons. SIS members (spanning three generations) have also given both moral and practical support to women in prison or newly paroled, without any agency involvement. One woman, Kris Lyons, went to court and

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

persuaded judges to release women to her supervision, instead of sending them to prison. She opened up her rented home as a temporary shelter and became someone the women could talk to, because she understood their situation from her own experience, and because she was like family, not an agent of the state.

Kris taught crafts at the prison and became a confidante to women there, and often a friend to them when they are released. She continues to give public talks, such as at the annual Prisoners' Justice Day rally, and speaks to university classes. She did the research for a parolees' housing project, gathered recycled clothing for women coming out, served as a consultant at community and government hearings, represented SIS at the 8th Round Table for Women in Prison, in California, and at many other events and conferences.

Kris's work, like everyone's with SIS, has been unpaid, consistent with the class bias communicated by the Deputy Commissioner. Stableforth asserts, "**Volunteers**, including former inmates who have successfully reintegrated with the community, can provide ... companionship and support, in addition to being positive role models" (Stableforth, 1998: 6, emphasis added). Although she recognizes the conditions of poverty to which most women on parole are subjected, she is detached from the limited resources of the volunteers themselves, the former prisoners with whom she consults. It is encouraging, however, that she recognizes the value of former prisoners in assisting women newly released, and that she stresses the importance of keeping women out of prison. At the urging of the national Elizabeth Fry association (whose Director, Kate Pate, is a highly admired de facto leader among Canadian activists, and is on the SIS Advisory Board), the Deputy Commissioner argues strongly against re-imprisonment for technical violations of parole. That she lacks the authority to enforce her position is characteristic of the tokenism offered by the Corrections branch.

Gayle Horii is another key member of SIS who is active in many ways, and in high demand as a speaker and consultant. She raised money to assist a woman on parole on the east coast (a talented writer who was seriously ill and needed a computer). Later she attended this woman's funeral, 4,000 miles away, offering her support to her friend's family. She maintains phone contact with women in jeopardy, such as women locked in isolation in a men's psychiatric prison. In the case of a French woman who was losing her mind after years in and out of segregation in an English-language prison, it was Gayle's intervention that resulted in a member of Parliament arranging the woman's transfer to a reputable hospital in Québec, where she was nurtured back to health. Gayle has outstanding knowledge of the inner workings and rules of CSC, having studied mountains of official documents beginning as a prisoner who knew the rules better than the staff. She has firsthand, keen awareness of the breaches between official policies and daily practices. Her informed eloquence has put some correctional officials on their guard, but government agencies, as well as community groups, seek her counsel.

The SIS scribe is Des Turner, an effective researcher who submits complaints to officials (c.f. 1997) and letters to editors, raising public awareness of the workings of Corrections. Retired, he visits the local women's prison, and with help from other "SISers," ensures that prisoners receive Christmas gifts. When women are given temporary absences, to visit family or prepare for release, he transports them. Through the year he organizes to educate and solicit support, and attends hearings. Eddie Rouse, the second man on our board, runs community services for former prisoners, and is a popular community speaker, researcher and regular contributor to community justice newsletters. The SIS Board includes persons who are not former prisoners, but all decisions in the group are made with a former-prisoner majority and everyone adheres to decarcerationist, abolitionist and/or transformational perspectives.

The Issues

The most conservative reason to plead for alternatives to prison is cost. Criminal justice budgets now often exceed those of education. In 1997, it cost Can. \$74,965 to confine one woman for one year in one of the six new prisons. When she is on parole, with periodic supervision, the cost goes down to \$9,145 (CSC, 1997: 12-13). Their prison work is generally domestic in nature: the kitchen, laundry, sewing room, beauty shop and so on. For this they are paid a top salary of from \$5.25 to \$6.90 per day of work in 2000. (In 2000, minimum wage in most of Canada is inadequate for basic self-sufficiency at approximately \$7.00 per hour.) Those who are unable to work (due to age, illness, disability or classification) are given an allowance of \$1.60 per day (CSC,

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

1997:29). This income is needed for basic hygiene products and other necessities, which they purchase from the prison commissary. Most items sold in prison cost more than in the "free world."

Among the issues which lead Canadian reformists and advocates to call for alternatives to prisons for women are the following: racism and lesbophobia as they affect both prisoners and guards; the inequities of plea bargaining; the net-widening of electronic monitoring; separation of mothers from children; the prison practice of over-prescribing antipsychotic drugs such as Chlorpromazine; conflicts (as well as some agreement) between the Union of Solicitor General Employees (prison guards et al.) and independent and organizational advocates for prisoners' rights; high levels of illiteracy among prisoners; women's needs for assistance in filing grievances against CSC for institutional violations; denial of phone rights on grounds that the phone could be used as a weapon; the lack of in-prison programs adequate to the diverse needs of the prisoners; the indiscriminate and excessive use of segregation; unwarranted strip searches of cells and occupants; the increasing numbers of women in prison who are HIV-positive or living with AIDS, without support; the prolonged incarceration of women who survived a perilous boat trip from China to claim refugee status.

At the urging of the Elizabeth Fry association, the government conducted a review of cases where women killed abusive spouses prior to 1990, when the Battered Women's Syndrome defense was first admitted to Canadian courts [R. v. Lavallee, 1990]. The "Self-Defence Review," submitted in 1997 (Ratushny), resulted in conditional pardons or remission of sentence for just four of 98 women who had applied. (Many were already out of prison but wanted to clear their name.) Canada was reassured that abused women don't have a license to kill.

Another issue of interest in Canada is that of cross-staffing. Most of the six Canadian prisons which have the mandate to confine federally sentenced women have a complement of men on the staff, who serve in varied capacities though not commonly in the living units, except when doing patrols during the day in the company of a female officer. The Edmonton, Alberta prison has an all-women frontline staff, as an experiment that has been indefinitely extended. And all of the women's prisons, at CSC's behest, have banned the involvement of men in strip searches. The Honourable Louise Arbour, now a justice on the Supreme Court of Canada, conducted an inquiry into wrongdoing in the notorious Prison for Women (P4W) in Kingston (1934-2000), notably gangs of men brutally strip searching women in segregation (Faith, 1999). Her findings damned the system, but she was less cautious than CSC on this issue: she recommended only that men not be involved in strip searches except in an emergency (Arbour, 1996). Of course, the very duty of the Emergency Response Team is precisely to respond to any emergency, thus the men by definition would be involved in strip-searching women (a procedure used in most prison "emergencies," real or contrived) — unless women on the staff were trained to do that work, which is what happened. In their Darth Vader outfits these women raise the unpleasant spectre of lookalike male surrogates eager to brutalize other women in the name of institutional order.

The dehumanizing elements of imprisonment spur reformers to improve prison conditions. However, prisons are punitive by definition, and no amount of tinkering with them can render them effective for rehabilitation purposes or for challenging social inequities. Some women manage to use their prison time constructively, preparing for their post-prison future, but most are killing time or regressing due to stigma and lack of resources or choices. In Canada in 1990, a Task Force on Federally Sentenced Women (TFFSW, 1990) advocated that federally sentenced women's choices be expanded by creating small minimum-security "facilities," without walls or fences, where their children could be with them in natural settings, but within close proximity to community services. These homelike places would replace the infamous stone-walled fortress Prison for Women (P4W), which, as the only federal prison, separated many women from their children by thousands of miles.

By 1997, five new regional prisons, including the Healing Lodge, had been established, beginning a transfer process from P4W to Truro, Nova Scotia; Kitchener, Ontario; Joliette, Québec; Edmonton, Alberta; and, Maple Creek, Saskatchewan. A sixth women's prison, in Burnaby, British Columbia, had opened in 1991 to accommodate both provincially and federally sentenced women, weekenders to lifers all under provincial

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

authority. In the gradual closure of P4W, women who for dubious reasons were deemed unsuitable to mix with women in the regional prisons were sent to psychiatric units in men's prisons.

On May 8, 2000 the last prisoner was transferred out of P4W. This good news would be celebrated if the new prisons were the alternatives intended by the Task Force. Instead, soon after their construction, they were transformed into maximum security prisons even though most prisoners are classified minimum or medium. A few women's feeble escape attempts at two prisons produced fences and more security hardware for all the new prisons; any small "crisis" could have justified and rationalized this reinvestment in carceral hardware rather than community services. These prisons are isolated from communities, with some women locked in maximum security isolation for disciplinary purposes, or, if deemed mentally disturbed, confined to maximum security segregation units on the grounds of four of the regional prisons.

Prisons are unable to provide the basic resources, services and encouragement which most women need if they are to find even minimal stability outside of prison. To divert funds from prison expansion to much less expensive community services would offer fiscal benefits to the state and would strengthen communities overall. Specific services could be provided to former prisoners who request: substance abuse programs; legal assistance, often needed to regain parental rights; counseling to address issues left over from childhood sexual abuse or other victimization (80 percent or more of women in Canadian prisons); spiritual gatherings with those of one's own faith; parenting classes; job training; finding a doctor or dentist when needed; assistance gaining housing, utilities, transportation; and so on.

If prisons were replaced with abundant, non-penal community resources, many fewer individuals would recidivate and many illegal behaviors would be circumvented. If former prisoners were funded to provide support in the community for women newly released, the transition from one place to the other would be significantly less traumatic for new parolees. Former prisoners are in the best position to build community with and for those whose experiences they've known. In this reasonable strategy, the state would pay former prisoners to do this work. They would accept that what happens in a community is of much more practical worth than what happens behind walls, and that what happens behind walls can have devastating effects on women lacking support systems upon release.

There is a long tradition of critical advocacy and activist resistance to imprisonment, which, except in cases of clear and present danger, does not serve anyone's interests — except those whose income is reliant on the punishment industry. Women have been an afterthought in the correctional enterprise, but women inside and out are at the forefront of a movement away from retribution and confinement and toward re-education, reparation, accountability and restitution through the acting out of community.

My appreciation to SISTER-friends Liz Elliott, Gayle Horii, Kris Lyons, Kim Pate and the late Jo-Ann Mayhew, for their direct or unwitting assistance with this article. Special gratitude to good friend Raman Mann, organizer of the seminar in New Delhi for which an earlier version of this paper was written. KF

References

- Adler, Freda (1975). *Sisters in Crime: The Rise of the New Female Criminal*. New York: McGraw-Hill (re-issued 1985, Waveland Press).
- Arbour, the Honourable Louise (Commissioner) (1996). *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Ottawa: Solicitor General.
- Auerbach, Jerold S. (1983). *Justice Without Law?* New York: Oxford University Press.
- Bianchi, Herman (1994). *Justice as Sanctuary: Toward a New System of Crime Control*. Bloomington: Indiana University Press.
- Boyd, Susan and Karlene Faith (1999). "Women, illegal drugs and prison: views from Canada," in *The International Journal of Drug Policy* 10: 195-207.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- Braithwaite, John (1989). *Crime, Shame, and Reintegration*. New York: Cambridge University Press.
- Canadian Centre for Justice Statistics (CCJS) (1999). *The Juristat Reader: A Statistical Overview of the Canadian Justice System*. Toronto: Thompson.
- Carlen, Pat (1990). *Alternatives to Women's Imprisonment*. Milton Keynes: Open University Press.
- Cayley, David (1998). *The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives*. Toronto: House of Anansi Press.
- Chesney-Lind, Meda (1997). *The Female Offender: Girls, Women and Crime*. Thousand Oaks: Sage.
- Christie, Nils (1994) (2nd ed.). *Crime Control as Industry: Towards Gulags Western-Style*. New York: Routledge.
- Consedine, Jim (1999). *Restorative Justice: Healing the Effects of Crime*. Lyttelton, NZ: Ploughshares Publications.
- Cook, Sandy and Susanne Davies (Eds.) (1999). *Harsh Punishment: International Experiences of Women's Imprisonment*. Boston: Northeastern.
- Correctional Service of Canada (CSC) (1997). "Basic Facts About Corrections in Canada." Ottawa: Solicitor General.
- DeKeseredy, Walter S. (2000). *Women, Crime and the Canadian Criminal Justice System*. Cincinnati: Anderson Publishing.
- Faith, Karlene (1999). "Transformative Justice versus Re-entrenched Correctionalism: The Canadian Experience" in S. Cook and S. Davies (Eds.), *Harsh Punishment: International Experiences of Women's Imprisonment*. Boston: Northeastern, pp. 99-122. .
- Faith, Karlene (1995). "Aboriginal Women's Healing Lodge: Challenge to Penal Correctionalism?" in *Journal of Human Justice* 6(2), Spring/Autumn: 79-104.
- Faith, Karlene (1993). *Unruly Women: The Politics of Confinement & Resistance*. Vancouver: Press Gang Publishers.
- Foucault, Michel (1979). *Discipline & Punish: The Birth of the Prison*. New York: Vintage Books.
- Galaway, Burt and Joe Hudson (Eds.) (1996). *Restorative Justice: International Perspectives*. Monsey, NY: Criminal Justice Press.
- Hannah-Moffat, Kelly and Margaret Shaw (Eds.), *An Ideal Prison? Critical Essays on Canadian Women's Imprisonment*. Halifax: Fernwood Publishing.
- Horii, Gayle (2000). "Melior est justitia vere praeveniens quam svere puniens: Better is justice which truly prevents than justice which severely punishes," in K. Hannah-Moffat and M. Shaw (Eds.), *An Ideal Prison? Critical Essays on Canadian Women's Imprisonment*. Halifax: Fernwood Publishing.
- Horii, Gayle (Dec. 31, 1995). "Twelve proposals with regard to policy which may govern the future of incarcerated women in Canada." Brief submitted to the Commission of Inquiry into Certain Events at the Prison for Women in Kingston.
- Horii, Gayle (1994). "The Art In/Of Survival," in *Journal of Prisoners on Prisons* 5(2), 10-23, 1994.
- Howe, Adrian (1994). *Punish and Critique: Towards a Feminist Analysis of Penalty*. London: Routledge.
- Kendall, Kathleen (Apr. 1994). "Therapy Behind Prison Walls: A Contradiction in Terms?" Paper prepared for Prisons 2000 conference, University of Leicester.
- Lacey, Nicola (1988). *State Punishment: Political Principles and Community Values*. London: Routledge.
- Lyons, Kris (1996). "Barriers to Equality at British Columbia's Centre for Women: Can We Slash the Gordian Knot?" in M.A. Jackson and N.I.S. Banks (Eds.), *Ten Years Later: The Charter and Equality for Women*. Burnaby: Simon Fraser University.
- Mayhew, Jo-Ann (Apr. 1997). "A Working Paper on the Status of Women Incarcerated at Nova and Springhill Institutions." Halifax: Nova Scotia Status of Women.
- McMahon, Maeve W. (1992). *The Persistent Prison? Rethinking Decarceration and Penal Reform*. Toronto: University of Toronto Press.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Miller, Jerome G. (1991). *Last One Over the Wall: The Massachusetts Experiment in Closing Reform Schools*. Columbus: Ohio University Press.

Monture-Angus, Patricia (2000). "Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women," in K. Hannah-Moffat and M. Shaw (Eds.), *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood.

Morris, Ruth (1995). *Penal Abolition: The Practical Choice*. Toronto: Canadian Scholars' Press.

Morris, Ruth (2000). *Stories of Transformative Justice*. Toronto: Canadian Scholars Press.

Norwich, Marni (Spring 1997). "When Will Prison Reform See the Light of Day?" In *Horizons*, 24-27.

Pate, Kim (1994). "This Woman's Perspective on Justice. Restorative? Retributive? How about Redistributive?" in *Journal of Prisoners on Prisons* 5(2): 60-64.

Pepinsky, Harold E. and Richard Quinney (Eds.) (1991). *Criminology as Peacemaking*. Bloomington: Indiana University Press.

Prison Research Education Action Project (PREAP) (1976). *Instead of Prisons: A Handbook for Abolitionists*. Syracuse: Safer Society Press.

R. v. Lavallee (1990), 76 C.R. (3rd) 329 (S.C.C.).

Ratushny, the Honourable Judge Lynn (1997). "Self-Defence Review." Ottawa: Solicitor General.

Solicitor General (SolGen) (Mar. 17, 1998). "Speaking Notes of the Honourable Andy Scott, Solicitor General of Canada, to the Beyond Prisons International Symposium." Kingston.

Stableforth, Nancy L. (Deputy Commissioner for Women) (Feb., 1998). "Community Strategy for Women on Conditional Release: Discussion Paper." Ottawa: Correctional Services of Canada.

Task Force on Federally Sentenced Women (TFFSW) (1990). *Creating Choices*. Ottawa: Ministry of the Solicitor General, Corrections Branch.

Turner, Des (Jan. 1997). Letter to the Honourable Herb Gray, Solicitor General, dated Nov. 6, 1996, in *Accord*, 2.

Umbreit, Mark (1985). *Crime and Reconciliation: Creative Options for Victims and Offenders*. Nashville: Abingdon Press.

Van Ness, Daniel and Karen Heetderks Strong (1997). *Restoring Justice*. Cincinnati: Anderson.

Vass, Antony A. (1990). *Alternatives to Prison: Punishment, Custody and the Community*. London: Sage.

Zehr, Howard (1990). *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press.

Endnotes

¹ Karlene Faith, Ph.D., School of Criminology, Simon Fraser University, Burnaby, B.C. V5A 1S6, (604) 684-1384, faith@sfu.ca, Fax: (604) 683-3374

5.9. Restorative Justice: Is it justice for battered women? - 2000²²

See chapter on offences.

²² Restorative Justice: Is it justice for battered women? Report on PATHS' April 2000 Conference <http://www.hotpeachpages.org/paths/riConfdoc.html>

5.10. Restorative Justice in Cases of Domestic/Sexual Violence: Healing Justice? - 2000²³

Part I: Women's Fight for Justice in the Current System

In the first place, the struggle to have violence against women taken seriously in the criminal justice system, must be placed within the context of the continuing effort for women's equality in other areas of society. The issue is multifaceted and includes areas such as employment equity, economic issues, health care, social security, among others. All are intertwined. Therefore, restorative justice and other criminal justice measures should never be removed from this larger lens as initiatives often are only as effective as the society in which they are placed. The work must be interconnected and continuous. However, it is to the smaller lens of criminal justice, and particularly crimes against women, that we now turn.

In his look at restorative justice in Canada, Kent Roach writes: At a practical level, many feminists may have reasons to be suspicious of and even hostile towards restorative justice. Throughout the last three decades, feminists have fought to have sexual and domestic violence recognized as true crimes that deserve public attention and punishment. Restorative justice has the potential to place these gains in jeopardy by allowing such crimes to be discussed in private settings where women may suffer from a power imbalance and perhaps be blamed for the crimes. ⁶ Indeed, the fight to have domestic and sexual violence taken seriously by the criminal justice system has been hard and long.

Traditionally, domestic violence was treated as a "private problem" and was either "dealt with as an annoyance, or even avoided entirely by the formal justice system." ⁷ Between 1909 and 1960, assaulting a wife was considered to be legally different from other assaults. ⁸ Instead, an offence of wife battery required a woman to prove that there had been a greater degree of bodily harm. Otherwise, a crime was not considered to have been committed. ⁹ Marital rape was not recognized as an offence in Canada until 1983. Until that time, it was presumed that "the marriage contracted endowed husbands with the unrestricted right of sexual access to their wives." ¹⁰ Despite these legal changes, there were still procedural obstacles which kept the abuse of women a private matter. For instance, in most areas, it was left up to the women to charge their abusive partners. This left these women prone to pressure, through threats or kindness, not to proceed. ¹¹ Many didn't. This led to few charges being laid by police and/or the Crown, even though both had the ability to lay charges over a woman's objections. ¹² This situation was remedied in the 1980s following pressure from women's groups. Procedural changes were made that forced police officers to arrest men in domestic violence calls if there was evidence of assault. ¹³ As well, Crown attorneys could no longer drop charges once laid, despite the wishes of the victim. ¹⁴

Eventually, action was also taken to ensure that judges took domestic violence seriously, though this proved to be more difficult as it was claimed that any directive would "interfere with an independent judiciary..." ¹⁵ However, steps were taken to sensitize judges through workshops that focused on the impact of abuse on women and the implications for society at large, women, batterers and their families, if such assaults were not taken seriously. As well, it was believed that stiffer sentences would send a message "that wife assault was a crime, that it would not be tolerated, and that abusers [sic] would be prosecuted to the full extent of the law." ¹⁶ Therefore, calls for harsher penalties were made. All of these actions worked to bring domestic violence out of the private sphere into the public domain and increase its profile in the criminal justice system. However, these advances do not necessarily ensure that the needs of battered women are seriously addressed by the current system. Braithwaite and Daly argue that most men are still not held accountable for their violent actions against women. This is due to complaints not being filed by women, evidentiary problems and police indifference, which lead to low rates of prosecution for domestic abuse cases and high rates of plea bargaining

²³ Stephanie Coward Directed Interdisciplinary Studies, Carleton University December, 2000 Restorative Justice in Cases of Domestic and Sexual Violence: Healing Justice? http://www.hotpeachpages.org/paths/rj_domestic_violence.html#IV

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

and acquittal for those cases which do go forward. ¹⁷ Besides this, there are other concerns regarding the current criminal justice system.

A report by the Provincial Association Against Family Violence (PAAFV) in Newfoundland, Keeping an Open Mind: A Look at Gender Inclusive Analysis, Restorative Justice and Alternative Dispute Resolution, reports that, "Victims have concerns about not being part of the process and sometimes feel like they are on trial instead of the person who has committed the crime. This has been particularly true for women who are victims of abuse and violence. The system is often very confusing and overwhelming." ¹⁸ It also reports that the way the current system operates tends to keep offenders in the system rather than encouraging them to stop offending. ¹⁹ The Church Council on Justice and Corrections, in its 1996 compendium of alternative justice programs, highlights these and other concerns with the criminal justice system. The Council notes that recent research into the experience of victims has found that "contact between the victim and the administration of criminal justice has been primarily a source of revictimization, frustration, disappointment and annoyance rather than a contribution to the solution to the victim's problems." ²⁰ It argues that the victim's needs are overlooked by an adversarial system in which the main purpose of proceedings is to establish guilt and attach a sentence which has little to do with the actual harm done and does not speak to true accountability. ²¹ Furthermore, it is argued that the current system overlooks the community context of crime, failing to consider initiatives that could be taken in order to prevent crime in the future. ²²

These concerns are even more prominent within the cultural context of Inuit and other Aboriginal communities. Pauktuutit Inuit Women's Association of Canada, a national, non-profit organization representing Canadian Inuit women, states that there is "...a general consensus amongst all those involved or affected that the current criminal justice system has been failing Inuit and other Aboriginal peoples across Canada." ²³ I will not expound on this particular research any further as it is well assumed within this field that this is tragically true. It becomes even more tragic within the context of Inuit and other Aboriginal women dealing with cases of violent domestic abuse and sexual assault.

Tracy Porteous, a B.C. participant in a conference on domestic violence and restorative justice sponsored by the Provincial Association of Transition Houses of Saskatchewan (PATHS), summed up some of these concerns regarding the system:

I think it's important to acknowledge, though, that I think we've also all been saying for quite some time that the system is far too adversarial, that women and others who have been victimized have been saying that they feel brutalized by the court process, that they have been revictimized in their involvement. They have been saying that they don't feel very central to a process that is very, very central and very, very personal. I think that advocates have been saying that there isn't enough staff in the current system for community services and police and crown to really be able to deal effectively [with these cases]... ²⁴

Tracy later expressed the thought that moving to an alternate vision might be appropriate, referring to restorative justice initiatives. ²⁵

5.11. Making It Safe Women, Restorative Justice/Alternative Dispute Resolution -2000²⁴

Introduction

This document is written to increase awareness about the dynamics of abuse and violence, and the ways these realities impact women participating in programs based on Alternative Dispute Resolution and Restorative

²⁴ Provincial Association Against Family Violence Newfoundland and Labrador Making It Safe Women, Restorative Justice and Alternative Dispute Resolution. This project was funded by Status of Women Canada. This handbook was printed by the Department of Justice, Government of Newfoundland and Labrador. July, 2000 <http://www.nfld.com/~paafv/>

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Justice. The information and analysis will help inform policy makers' choices in developing and implementing programs and policies that appropriately respond to women's diverse needs. We suggest guiding principles, introduce Gender Inclusive Analysis, provide discussion, and pose questions that will deepen program and policy analysis.

This work builds on *Keeping an Open Mind: A look at Gender Inclusive Analysis, Restorative Justice and Alternative Dispute Resolution* published in June 1999 by the Provincial Association Against Family Violence (PAAFV). The PAAFV is the umbrella organization for shelters and transition houses in Newfoundland and Labrador and as such, works on promoting and protecting the interests of women and children. The PAAFV is concerned about the justice system, courts, and alternatives to court because these systems impact the lives of women and children in or leaving abusive or violent relationships. Women and their service providers' concerns about alternatives to court are specifically based on:

- development of policy and programs without consulting community and women's advocacy groups, and without a gender inclusive analysis
- development and implementation of programs which minimize the context of abusive and violent relationships
- introduction of programs in haste and for cost-saving purposes with the result that women and children are put in dangerous positions and abuse and violence are decriminalized

In this document we address both processes that are considered alternatives to court and the thinking that greatly influence these processes. Our understanding of Alternative Dispute Resolution and Restorative Justice is as follows:

Alternative Dispute Resolution (ADR) is a term used to describe a number of different processes for resolving disputes. "Alternative" refers to resolving disputes without bringing them before the court. In ADR, the people with the problem name the issues that need to be discussed and work at creating a resolution. They have more control over matters than if a lawyer was negotiating for them or if a judge was making a decision about their problem. These programs are usually associated with non-criminal types of disputes. The processes include Interest Based Negotiation, Conciliation, Mediation, Facilitation, Arbitration and Court Annexed ADR.

Restorative Justice (RJ) is most commonly associated with the criminal justice system. It is not a distinct model or system – it is sometimes described as a philosophy and other times as a vision. In many respects it is like choosing to look at conflict, crime and community through a particular lens - a lens that keeps in mind the needs of the victim, the community and the offender. RJ encourages dialogue and responsibility for past behaviour while focusing on future problem solving and an understanding of the obligations created by the law. Programs based on RJ principles can include Community Justice Forums, Sentencing Circles, Healing Circles, Victim Offender Mediation and Family Group Conferencing. A restorative justice way of thinking can influence the way any alternative conflict resolution program operates – whether the program is dealing with a dispute over money or property, the misbehaviour of a young person which falls short of being reported to the police, a parent/child relationship which draws the attention of Child Welfare, or adult criminal behaviour.

In Newfoundland and Labrador programs of this type have been in existence for many years:

- Youth Diversion
- Unified Family Court Mediation Services
- Community Mediation Services.

More recent programs include:

- Small Claims Court Mediation

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- Sentencing Circles in Conne River and
- Community Justice Forums in Happy Valley–Goose Bay

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Alternatives to the courts are being explored partly because of complaints about cost and time delays. Many feel the justice system simply does not help them with their problems, and sometimes does more harm than good. More and more people are rejecting the “win-lose” approach of the courts and want to solve their problems without the formality, expense and unintelligible rules of the justice system. In criminal law, victims want a process which pays more attention to their needs and the harm that has been done to them, the community wants an end to unacceptable behaviour and governments are concerned about escalating costs. There is a growing interest in exploring new ways to deal with conflict.

However, we must also recognize that government does not have a regulatory framework for these programs, and there are no common standards for training, implementation or monitoring. In this unregulated climate, someone with one day of training can set themselves up as a mediator or facilitator. If a person is not satisfied with the service received, avenues for making a complaint are even fewer than those available in the justice system. Alternatives such as criminal adult diversion and the promotion of mandatory family mediation for resolving child custody and access, generate fear and concern that the impact of abuse and violence as a crime and as a factor in family disputes is diminished.

This document hopes to stimulate thinking, discussion and understanding. While written for policy makers and those implementing programs, we hope it is useful for those considering using an ADR or RJ based program.

- Section I outlines the guiding principles and assumptions which inform our thinking on the appropriate response to abuse and violence in programs based on Alternative Dispute Resolution and Restorative Justice.
- Section II briefly describes gender inclusive analysis (GIA) and the benefits of applying GIA to these programs.
- Section III highlights concerns regarding women in abusive and violent relationships, and raises questions that inform good policy and program development.
- Section IV offers questions that encourage analysis of the design and operation of ADR and RJ based programs in relation to the needs of women. Some of these questions appear in text boxes in prior sections and others are new. This section can be used as a workbook in policy and program development.

Section I: Guiding Principles and Assumptions

The following guiding principles and assumptions reflect the values which inform our thinking on the appropriate response to abuse and violence in programs based on Alternative Dispute Resolution and Restorative Justice. We recommend these principles inform all policy development and program implementation.

Recognition of Systemic Inequality:

- Women in our society have not yet reached equality with men and women are not all the same. Women can be further disadvantaged by age, the colour of their skin, religion, sexual orientation, race, ethnic background, disability and income. These differences must be understood and integrated into public policy.

Features of ADR and RJ Based Programs

- Any intervention by ADR and RJ based programs dealing with abuse and violence against women and children must ensure **protection from further abuse and violence.**

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- ADR and RJ based programs must work towards empowerment of women, children and other victims. Participation must be **voluntary**; overt or subtle pressure to participate must not be tolerated.
- Programs dealing with criminal behaviour must respond to the victim's needs as she defines them. High priority must be given to the **safety** of the victim and the community. It is not the victim's responsibility to create an opportunity for the offender to restore the harm done.

Appropriate Use of ADR and RJ Based programs

- ADR processes and RJ based programs are sometimes appropriate alternatives to the court system, not because they are cheaper justice, but because they suit the particular circumstances of the people involved.
- ADR and RJ based programs must be fully funded and supported by appropriate complementary services. If the community, through establishment of programs, is empowered to respond to crime and wrongdoing, it needs resources to accomplish this goal. Government must remain accountable for protecting society and providing services.
- Alternative programs cannot replace the court system nor diminish the need to improve the current system. The court is the appropriate intervention in situations when there is no cooperation between the parties, where a court ruling on a case may result in the law being changed, where the control offered by the justice system is required or where punishment by jail is required to show disfavour for criminal actions. Concerns about the court system and the demands for improvements must be addressed.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Section II:

Why Apply a Gender Inclusive Analysis?

(Adapted from Boland and Wychreschuk, 1999 and Hebert, 1998)

Gender inclusive analysis offers a mechanism by which to recognize and identify assumptions made about women and their place in society. Many of these assumptions are not accurate and must be corrected because they put women at a disadvantage economically and socially. Gender inclusive analysis ensures that the perspective of all women are incorporated into policy and programs with the aim of achieving equitable results for both men and women. Very simply, a gender inclusive analysis asks that women's needs and perspectives be taken into account, including the ways that race, age, religion, sexual orientation, colour, ethnicity, ability/disability and economic status affect these needs and perspectives.

Gender Inclusive Analysis: a tool and approach that can be used to correct biases that impact on women. It recognizes that to the extent that a policy has an impact on people, it will very likely have different impacts on women and men because they have different roles, expectations and life experiences. It identifies differences arising out of the gender division of labour, and out of unequal access to power and resources, and assumes that these differences can be changed.

Women's lives are marked by inequality. Major differences between women and men persist in many areas of life including occupational status, employment, income levels, family responsibilities, education, social status, political influence and vulnerability to violence. Differences exist among women based on their age, religion, sexual orientation, colour, race, ethnicity, ability/disability and socio-economic status. Women's needs, perspectives and values are shaped by their experiences and differ from men's. Unfairly, men's reality and understanding dominate public policy and are taken to be "the" human reality and understanding. Correcting this imbalance is the goal of gender inclusive analysis.

Women continue to encounter discrimination in the justice system - in the laws themselves, the procedures used and in accessing the system. They frequently see their experience disregarded. An illustration of this is found in court judgements on sexual assault cases, particularly with regards to whether consent was given or not. The law operates by legal categories and if our experiences do not fit into those categories, the protection of the law is limited. Often important factors about women's situations are not allowed to be stated in court. For example, in decisions about custody of children, some judges will not listen to evidence about the father's abusive behaviour towards the mother. Women also report that factors like race and disability and how these affect their circumstances are not always considered by the courts.

These same dangers also affect alternative programs. Some fear these programs present even greater possibilities for injustice and harm to vulnerable groups because they are less open to the public and have fewer accountability structures.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

As an example, Restorative Justice envisions the community taking significant responsibility for conducting programs. The creation of new positions of authority creates concern about the participation of diverse community members and how their views are included. The dynamics of communities involve relationships of power - the existence of dominant groups based on age, religion, colour, ability/disability, gender, race, socio-economic status, ethnicity, and sexual orientation; those that lead and those that are led. We cannot assume communities are healthy or safe, or are concerned with creating an equitable status for all their residents. Safeguards must be developed to prevent possible misuse of power created by the alternative programs.

Most Restorative Justice based programs claim a victim-centred approach. However, closer examination may reveal the offender's needs are primary. Victim centred means the views and experiences of victims must be evident in the design, implementation and evaluation of programs. Consultation with victims and their advocacy groups at the program planning stage will identify how best to serve them.

Much of the hope surrounding Alternate Dispute Resolution and Restorative Justice concepts is based on reorienting our thinking about conflict resolution, truly listening and creating an opportunity for mutual understanding. ADR and RJ based programs share some of the same values promoted in gender inclusive analysis. For instance, ADR promotes the notion that people in dispute should control the definition and the resolution of their problem, the assumption being that participants are more likely to honor a resolution they generate than one imposed from the outside.

To be effective, all programs must strive to be inclusive. The consideration of gender and diversity issues is essential to sound policy and program development. We have an opportunity to avoid repeating past mistakes and to create policy and programs sensitive to marginalized groups. A critical step in this process is to listen to and act on the views of all members of our society.

Has the Process for Developing the Program been Inclusive?

1. Who is involved in articulating the values, principles and goals of the program? Who is missing?
2. What processes ensure women from diverse community groups are represented?

How Are Referrals Made to the Program?

1. Who has a part in recommending a case be dealt with by the program? Who does not?
2. Who has power to veto a case referral? How is it done?
3. In criminal conflict, who defines what behaviour is considered inappropriate and subject to the program? Is it limited to actions defined by the law as criminal?

How User Friendly is the Program?

1. Have program materials been printed in languages which reflect the community composition?
2. How is program information made accessible to those with low literacy?
3. How is the quality of interpretation services ensured? Are they professionally trained to deliver this service?

Section III: Violence Against Women

Not all abusive or violent behaviour is defined as a crime by our criminal justice system. Whether it is a crime or not, violence and abuse have a profound impact and are much too prevalent. “One half of all Canadian women have experienced at least one incident of physical or sexual violence since the age of 16.” (Statistics Canada)

Is it Safe to Participate?

ADR and RJ based programs are being introduced in the context of a long history of insensitivity and lack of understanding in the courts about the dynamics of abuse and violence and power imbalances in relationships. Women and other victims of violent crimes have been marginalized by a system that does not meet their needs. Women dealing with family disputes have felt that they and their children have been put into danger by insensitive lawyers and judges. By way of example, if the abuse or violence in a relationship is not believed or understood and shared custody or visiting rights is ordered by the court, further abuse or violence can result from this contact. Many men become much more aggressive after the women have broken free from the relationship.

Definitions of Abuse

Careful planning will ensure the same insensitivity and mistakes are not repeated in alternative programs.

A recent report stated that family mediation with an abuser can result in re-victimization if proper safeguards are not present:

“Abused women reported intimidation and re-victimization in mediation regardless of the form of abuse: physical, sexual, emotional, psychological or financial. Women reported that their mediator or conciliator minimized emotional, psychological or financial abuse, or simply did not recognize certain behaviours as abusive. When women brought up the fact that their ex-partner was harassing, stalking, or otherwise continuing to abuse them during the mediation, their mediators did not terminate mediation.”

(Abused Women in Family Mediation: A Nova Scotia Snapshot, prepared in January, 2000 by the Transition House Association of Nova Scotia (THANS Report) 8)

In criminal law, women’s fears about restorative justice in part stem from recent sentence reform, particularly the use of conditional sentences for a wide range of offences including sexual offences, harassment, stalking and hate crimes. Women’s advocacy groups lobbied unsuccessfully for the exclusion of “violent” offences from the reach of these sentences. The Federal government did not impose restrictions, and in 1999 the Supreme Court of Canada upheld the use of conditional sentences for sexual assaults.

Screening for Abuse and Violence

The Mediator/Facilitator

1. Are the mediators or facilitators professionals who are knowledgeable about and have experience working with family violence?
2. What training regarding the dynamics of abusive and violent relationships and power imbalances has been completed? How much training? Hours, Days? Is this subject integrated throughout training? Is it given the same priority as other aspects of the training (procedure, ethics, etc)?
3. What are the requirements for continuing education and ongoing professional development?

The Screening Tools

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Conditional sentences mean offenders avoid jail by serving time at home under court imposed conditions – usually seen as easy punishment or no punishment at all. Although conditional sentences are not based on restorative justice principles (they were probably introduced to reduce reliance on incarceration and for cost saving reasons), their use for the above offences represents the decriminalization of abusive and violent behaviour against women. Consequently, women are very cautious about programs introduced to reduce demands on the criminal justice system. The need for vigilance when it comes to identifying the needs of women who have been subject to abuse and violence cannot be overemphasized. This issue is discussed in greater detail throughout the document.

- 1. How effective are the screening tools? Do they incorporate indicators for emotional, financial, psychological abuse and physical violence? Do they elicit information about the degree of intimidation and control in the relationship and not only the actual incidents of abuse? Adapted from Goundry et al 72-73
- 2. How much time is spent on screening or case selection? Is this limited by time? funds or other resources?

**Participation:
Voluntary or Coercive?**

Although family mediation is not mandatory by law, women are often told it is best to try mediation before going to court. This happens even when they have recently left an abusive or violent relationship and are living in a shelter for women. Women will likely hear this from legal aid lawyers and court staff. Even if women get to the courtroom there is a strong likelihood some judges, before proceeding further, will adjourn the matter and “suggest” trying mediation.

The laws on child custody and access create a strong pressure to be “cooperative” with the other parent. Participation in mediation has come to represent cooperation and in many situations is encouraged despite known abuse and violence in the relationship. Some judges and professionals believe unless there is proof of physical abuse to the children they suffer no harm. The implicit assumption – witnessing their mother being abused does not count as harm.

Women also feel internal pressure to avoid court. A woman who has left an abusive relationship and whose partner is showing remorse for his behaviour (some call it the honeymoon phase), want to believe his intentions will result in change. She may choose “not to take him to court” in order to support this belief. Of course, she may also choose an alternative process in an attempt to defuse his escalating violence.

These influences mean we must be vigilant about whether participation is truly voluntary in family mediation. Women and other victims of crime face similar pressures in criminal matters. Clearly, thorough assessment must be completed prior to participating in alternative programs. Likewise, choosing to terminate participation at any point must be acceptable and without repercussions.

- 1. How does the program make it safe for her to participate? Has the immediate danger to her, the children and all that belongs to her been truly revealed or has it been minimized?
- 2. What measures are taken for her safety **before, during** and **after** the program? Separate meetings in the case selection process? Elimination of the possibility of accidental meetings? Non-disclosure of her and the children’s whereabouts? Seating arrangements? Contact after completion of the process?
- 3. What external support and resources are provided? Involvement of support persons - advocate, health advisor? Use of legal advisor? Has adequate time been allowed to ask questions and reach decisions?
- 4. Are mandatory minimum conditions incorporated into the resolution of criminal type problems?
- 5. When no apparent physical threats exist, are equally important “safety” concerns considered? For instance, does she have fears about losing custody of her children to him or to Child Welfare?

Is Participation Voluntary?

Power Imbalance

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

As part of day-to-day life, we experience power imbalances in our partner/spousal, family, friend and employment relationships. We are constantly shifting back and forth between having more or less power in relation to those around us, with our immediate community and society as a whole. Many times it is not harmful or problematic.

However, power imbalance is a major concern when power is used to control what another person does – when it is used to intimidate and threaten – and when it results in abuse and violence. Power imbalance is a very important factor when a person has been victimized and feels little control over what is happening to them and around them. In criminal conflict, it is critical that the process intended to correct the wrongdoing does not repeat the degradation and loss of control experienced through the original offence. This is true in circumstances involving strangers or people who know each other well.

Unequal power differences may not be readily obvious. In abusive or violent relationships intimidation and manipulation is often subtle. Women who took part in the THANS research report said:

“I had a very hard time saying “no” to him. I agreed to things I regret. I was too scared to stand up for myself. (Dartmouth)” (7)

“No one knows like I do what he’s capable of. And I had never crossed him before. He banged his fingers on the table. That brought back too much...I broke down. (Digby area)” (7)

“He can just look at me and scare me; it’s hard for someone who’s had a really good life to understand that.” (10)

Most women leaving an abusive relationship will have a difficult time negotiating, on their own, a fair deal about children and property sharing. An abuser’s influence is enormous and the power imbalance severe. A woman who has been abused for years may suffer a loss of control and feelings of helplessness. She may be afraid to challenge him on anything. Without an understanding of the dynamics of abuse and violence in relationships, this lack of challenging may be misinterpreted as a willingness to compromise.

When power imbalance is recognized, many mediators claim their skills combined with balancing tools can help balance the unequal power between the parties. Power balancing techniques include ensuring legal counsel and /or a support person is present throughout the process, provision of counselling, arrangement of the seating plan in the mediation, using opportunities to meet separately with the parties, and maintaining the ability to terminate the process at any time.

- 1. Is referral to the program mandatory?
- 2. What ensures prospective parties are not pressured to engage in or continue with the program?
- 3. What overt and subtle pressures “encourage” participation in the process? What messages come from the court, social agencies, the police, family and the community?

Power Imbalance

In the Program Structure?

- 1. Is the program closely associated with other systems or institutions? Church, RCMP, court ? How might this affect the participants?
- 2. Is it possible abusers who have not been challenged are involved with program implementation? What kind of screening provides protection against their involvement?
- 3. How does the facilitator/mediator handle the power imbalance between herself and the parties?

Between the Parties?

- 1. How and when are power imbalances between the parties assessed?
- 2. How does the program respond to unequal power between the parties?
- 3. What techniques to balance power are used? Provision of legal counsel? Support person is present during the process? Seating Plan? Separate meetings? Provision of Counseling? Termination of the process when appropriate?

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Some are skeptical of this claim:

It defies the imagination to think of the skill required to empower a depressed wife with low self esteem who believes in traditional sex role ideology, fears confronting her husband, and has no occupation outside the home. Nor can the mediator significantly improve the wife's psychological and emotional state.” (Goundry et al, footnote 106, 41)

The effects of an abusive and violent relationship on a woman are far reaching. Policies and programs can demonstrate support to her by:

- acknowledging she is the best one to determine her safety
- supporting her right to self-determination
- demonstrating a commitment to her empowerment

Should ADR and RJ Based Programs Deal with Situations Involving Abuse or Violence?

Women's past experiences with courts and other social agencies raise legitimate concerns that the same insensitive and possibly dangerous handling of situations may be repeated in ADR and RJ based programs. The many different kinds of programs do not make it easy to develop one policy and provide simple answers. For example, various programs dealing with criminal matters intervene at pre-charge, post-charge, pre-sentence and post-sentence time frames. The point of entry raises different issues, possibilities and vulnerabilities for women who have been subjected to abuse or violence.

Women's advocacy groups across the country are lobbying for the exclusion of cases involving abuse and violence from family mediation and programs dealing with criminal cases. They point to the re-victimization individuals have experienced in these processes. They have seen these programs introduced without proper resources. They believe long term research is required.

- A principal recommendation of one of the few qualitative research reports on family mediation states *“...if any history of physical, sexual, emotional, psychological or financial abuse comes to the attention of a conciliator, mediator, lawyer or judge, the parties should not be considered candidates for self-representation in less-formal justice processes such as mediation.”* (THANS Report 8)
- *The “exceptional circumstances” provision (it allows regional Crown Counsel to divert certain VAWIR (violence against women in relationships) offences to alternative measures and restorative justice programs) should be eliminated in relation to VAWIR, sexual assault, child sexual abuse, criminal harassment, and hate-motivated offences until there is an opportunity to conduct all of the necessary research, analysis and evaluation of these initiatives and consult with all of the affected parties.”* (Goundry, BC Assoc iii, 1)
- *“The Canadian Association of Sexual Assault Centres is strongly opposed to the use of ADR/RJ in cases of violence against women including, but not limited to, women in violent and abusive relationships.”* (CASAC Statement on Alternative Dispute Resolution/Restorative Justice)

However, many restorative justice based programs provide services which may complement the criminal justice system and effectively function side by side. The timing of participation in the program is a significant element – as an example, a victim may choose to take part in a “reintegration” circle after the offender has served his jail time and before he returns to their community. Considerable preparation is necessary, and clearly, resources and support are required. For some women, over time and with adequate supports, family mediation may

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

provide a way to resolve difficult disputes. Is it reasonable to eliminate these options totally if they prove to serve her needs? Proponents of alternative programs and restorative justice suggest:

- we need new ways to deal with conflict in personal and community relationships
- programs need not be “instead of court” but an opportunity for participants to make steps toward taking back personal power lost through abuse and violence
- the experience is potentially transformative and empowering
- screening out inappropriate cases can be done with confidence and care

If and when options are made available for those who want a choice, it must be an informed choice and voluntary in the broadest sense. In addition, we must recognize that women in abusive and violent relationships are participants in programs even though they may not identify themselves. The shame, secrecy, intimidation and fear result in highly developed skills for hiding the abuse and violence – no screening tool will be able to pick up on all cases.

Court may be appropriate for several reasons, and programs must not be substituted where that is the more appropriate venue. Once abused women report abuse or violence (statistics suggest that only one in ten do report) they want public acknowledgment of the wrongdoing and the courts provide the strongest disapproval. Sometimes court orders provide the best option for controlling his behaviour – for instance, a court order restricting contact with children may work because the abuser fears the consequences when a court order is not honoured; an added benefit is a more effective and efficient police response when it is not followed. Despite its shortcomings, court remains the first and best choice for many women who have decided to get out of an abusive or violent relationship.

Section IV: Questions for Discussion and Analysis:

This section provides questions to stimulate discussion about the inclusion of situations involving abusive and violent relationships in ADR and RJ based programs.

Some of these appeared in the preceding sections along with a discussion on the topic. Although of equal importance, other questions do not appear elsewhere in this document because they are self-explanatory.

Community Involvement - Inclusive?

1. Who is involved in articulating the values, principles and goals of the program? Who is missing?
2. What processes ensure women from diverse community groups are represented?

How Are Referrals Made?

1. Who has a part in recommending a case be dealt with by the program? Who does not?
2. Who has power to veto a case referral? How is it done?
3. In criminal conflict, who defines what behaviour is considered inappropriate and subject to the program? Is it limited to actions defined by the law as criminal?

User Friendly?

1. Have program materials been printed in languages which reflect the community composition?
2. How is program information made accessible to those with low literacy?
3. How is the quality of interpretation services ensured? Are they professionally trained to deliver this service?

Screening for Abuse and Violence The Mediator/Facilitator

1. Are the mediators or facilitators professionals who are knowledgeable about and have experience working with family violence?

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

2. What training regarding the dynamics of abusive and violent relationships and power imbalances has been completed? How much training? Hours, Days? Is this subject integrated throughout training? Is it given the same priority as other aspects of the training (procedure, ethics, etc)?
3. What are the requirements for continuing education and ongoing professional development? How is this monitored?

The Screening Tools

1. How effective are the screening tools? Do they incorporate indicators for emotional, financial, psychological abuse and physical violence? Do they elicit information about the degree of intimidation and control in the relationship and not only the actual incidents of abuse?(Adapted from Goundry et al 72-73)
2. How much time is spent on screening or case selection? Is this limited by time? Funds or other resources?
3. How are screening tools evaluated? When was this last done? How often is it done?

Participation: Voluntary or Coercive?

1. Is referral to the program mandatory?
2. What ensures prospective parties are not pressured to engage in or continue with the program?
3. What overt and subtle pressures “encourage” participation in the process? What messages come from the court, social agencies, the police, family and the community?
4. What information is given to the woman leaving an abusive relationship about the pros and cons of using the alternative program instead of the court? By Whom? When?
5. What support is provided to assist her to make the decision?
6. Does she have ready access to legal information about her rights and the implications of using the program in relation to these rights? When is this information made available? By whom?
7. What support system is provided throughout the process?
8. What is done to ensure participation remains voluntary? What are the repercussions for choosing to terminate mediation?

Safety

1. How does the program make it safe for her to participate? Has the immediate danger to her, the children and all that belongs to her been truly revealed or has it been minimized?
2. What measures are taken for her safety **before, during** and **after** the program? Separate meetings in the case selection process? Elimination of the possibility of accidental meetings? Non-disclosure of her and the children’s whereabouts? Seating arrangements? Contact after completion of the process?
3. What external support and resources are provided? Involvement of support persons - advocate, health advisor? Use of legal advisor? Has adequate time been allowed to ask questions and reach decisions?
4. Are mandatory minimum conditions incorporated into the resolution of criminal-type problems?
5. When no apparent physical threats exist, are other equally important “safety” concerns considered? For instance, does she have fears about losing custody of her children to him or to Child Welfare?

Power Imbalance In the Program Structure?

1. Is the program closely associated with other systems or institutions? Church, RCMP, court? How might this affect the participants?
2. Is it possible abusers who have not been challenged are involved with program implementation? What kind of screening provides protection against their involvement?
3. How does the facilitator/mediator handle the power imbalance between herself and the parties?

Between the Parties?

1. How and when are power imbalances between the parties assessed?
2. How does the program respond to unequal power between the parties?
3. What techniques to balance power are used? Provision of legal counsel? Ensure support person is present during the process? Seating Plan? Separate Meetings? Provision of Counseling? Termination of the process when appropriate?

Legal Representation For Family Mediation

1. Do parties have access to legal counsel? Who pays for it?
2. Is independent legal advice available prior to, during and after the mediated agreement has been finalized?
3. Are legal and accounting /financial professionals available for consultation? To whom and on what terms?

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

For Victims of Criminal-Type Behaviour

1. How does the program ensure victims have access to adequate legal advice regarding the implications of using the program instead of the criminal justice system?

Standardization of Training, Certification and Continuing Professional Development

1. Are the mediators or facilitators professionals who are knowledgeable about and have experience working with family violence?

2. What training have the mediators or facilitators received regarding the dynamics of violent relationships and power imbalances? How much training? Hours, Days? Was this subject integrated throughout the mediation or facilitation training? Was it given the same priority as other aspects of the training (procedure, ethics, etc.)?

3. What are the requirements for continuing education and ongoing professional development? How is this monitored?

Facilitator/Mediator Accountability Family Disputes

1. Is the mediator associated with the criminal justice system? The church? How might the association affect people who are using the program?

2. What is the personal and employment history of the mediator? How might this influence the handling of the case?

3. What mechanisms are in place to allow challenges to mediator bias?

4. Does the program have an audit/review on an annual basis to determine the fairness of agreements?

5. Does the mediator assume responsibility for the safety of women and children once abuse is disclosed?

Criminal-Type Conflict:

1. Is the mediator/facilitator associated with the criminal justice system? The church? How might the association affect people who are using the program?

2. What is the personal and employment history of the mediator/facilitator? How might this influence the handling of the case?

3. What mechanisms are in place to allow challenges to mediator/facilitator bias?

The System to Register a Complaint about the Program

1. What formal complaint mechanisms allow parties to register difficulties encountered with the program or its staff during the process?

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Confidentiality Family Disputes

1. What are parties told about the limits of confidentiality? When are they informed about this?
2. What information is given to parties about possible consequences of disclosure of facts in the mediation process? Who gives this information? When?
3. What information is given to parties about how information revealed in mediation might be used if the mediation terminates without an agreement? In subsequent court proceedings?
4. How is full disclosure of financial statements ensured?

Criminal-Type Conflict

1. What are both the victim and offender told about the limits of confidentiality? When are they informed about this?
2. Are the limits of confidentiality discussed with all participants involved (eg. all those in a sentence circle)?
3. What information is given to the victim about the possible consequences of disclosure of facts to the offender and others involved? Who gives her this information?
4. What information about the implications of disclosure of facts and admissions of responsibility are given to the offender?

Record-Keeping System

What information should be included in the record-keeping system?

1. issues in dispute?
2. length of time to conclude the process?
3. number of meetings?
4. cost to the parties?
5. substance of the agreements?
6. number of clients screened out of process, and why?
7. number of unsuccessful attempts at process, and why?
8. return rate to the process?
9. number of parties who ultimately end up in court?
10. whether lawyers were involved, and if provided by legal aid?
11. who uses the process?
12. other information relevant to particular program?

(Adapted from Goundry et al, 71)

Research, Evaluation and Monitoring

1. How is the program monitored and evaluated?
2. How are results and outcomes considered?
3. Will records kept add to our understanding of the issues of concern to women?

Bibliography

- Boland, Bobbie and Wychreschuk, Elaine 1999. Keeping an Open Mind: A Look at Gender Inclusive Analysis, Restorative Justice and Alternative Dispute Resolution. Provincial Association Against Family Violence (Newfoundland and Labrador).
- Bonta, J., Wallace-Capretta, S. and, Rooney, J. 1998. Restorative Justice: An Evaluation of the Restorative Resolutions Project. Solicitor General Canada.
- Canadian International Development Agency 1999. CIDA's Policy on Gender Equality.
- CASAC Regional Representatives Committee 2000. CASAC Statement on Alternative Dispute Resolution/Restorative Justice. Canadian Association of Sexual Assault Centres.
- Correctional Service of Canada 1999. Restorative Justice Begins with You and Me Restorative Justice Week November 14-21, 1999 Resource Guide.
- Department of Justice Canada 1998. Diversity and Justice: Gender Perspectives. A guide to gender equality analysis. Ottawa.
- Department of Justice Canada 1998. Resolving Disputes: Think About Your Options. Ottawa.
- Law Commission of Canada 1999. From Restorative Justice to Transformative Justice: Discussion Paper.
- Goundry, S. A. 1998. Restorative Justice and Criminal Justice Reform in British Columbia - Identifying Some Preliminary Questions, Issues and Concerns. BC Association of Specialized Victim Assistance and Counselling Programs.
- Goundry, S.A. et al 1998. Family Mediation in Canada: Implications for Women's Equality. Status of Women Canada.
- Hebert, Cheryl 1998. guidelines for gender inclusive analysis an integrated approach to policy/program development. Women's Policy Office, Government of Newfoundland and Labrador.
- Lakeman, Lee 1999. Why the Law and Order/Restorative Justice Approach Won't Reduce Violence Against Women. Workshop Background Paper, National Forum on Equality Rights Presented by West Coast Leaf.
- Levis, Charlene C. 1998. THE SILENCE SPEAKS LOUDLY: CONSIDERING WHETHER THE VICTIM'S NEEDS CAN BE MET THROUGH CIRCLE SENTENCING. Master's Thesis, University of Northern British Columbia.
- Llewellyn, Jennifer J. and Howse, Robert 1998. Restorative Justice: A Conceptual Framework. Law Commission of Canada.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Mahon, Peggy 1999. Sharing the Talk Sharing the Work Coordinating Community Action on Violence Against Women. Women Leading Action, NS.

McGillivray, Anne, and Comaskey, Brenda 1999. Black Eyes All of the Time Intimate Violence, Aboriginal Women, and the Justice System. University of Toronto Press.

Neilson, Linda C. 2000. 'Partner Abuse, Children and Statutory Change: Cautionary Comments on Women's Access to Justice'. Windsor Yearbook on Access to Justice.

Nova Scotia Department of Justice 1998. Restorative Justice: A Program for Nova Scotia.

Provincial Strategy Against Violence 1998. Understanding Violence Against Women: A Peer Education Manual for Preventing Violence Against Women in Newfoundland and Labrador. Women's Policy Office, Government of Newfoundland and Labrador.

Status of Women Canada March 1996. Gender Based Analysis: A Guide for Policy Making. Ottawa: Status of Women Canada.

Transition House Association of Nova Scotia 2000. Abused Women in Family Mediation: A Nova Scotia Snapshot.

Victim-Offender Mediation Association. Recommended Ethical Guidelines. www.voma.org.

Women in Public Policy Project (Nova Scotia) 1999. Guidelines for a Credible and Inclusive Process for Public Policy Development, Implementation and Reform.

5.12. First Nations Women as Keepers of the Culture-1999?²⁵

Preface

This paper represents my understanding of the roles and responsibilities of First Nations Women as Keepers of the Culture. These understandings are offered with respect and without "misinterpretation or patronization". As Patricia A. Monture Okanee has written, "[a]ny inaccuracy or vagueness must become my responsibility as the one who has woven this article together."(1)

As a non-First Nations woman, I am aware of the "limits of my cultural experience and the necessity of intense and detailed sensitivity to" First Nations peoples.(2) I am also aware that many First Nations women are tired of having white women, 'interpret, empathize and sympathize with First Nations women.'(3) I believe however that I have a responsible to understand First Nations peoples as best I can, "recognizing and attempting to overcome my cultural biases".(4) This paper represents my attempt to carry out this responsibility.

1.0 Introduction

In searching for solutions to the myriad of problems (5) faced by First Nations(6) peoples, First Peoples are increasingly turning to traditional beliefs and teachings.(7) It is thought by some that First Nations women are the key to the survival of the First Peoples. Rose Auger, for example, an elder, has observed that

"... Indian people must wake up! They are asleep!... Part of this waking up means replacing women to their rightful place in society. It's been less than one hundred years that men lost touch with reality. There's no power or medicine that has all force unless it's balanced. The woman must be there also, but she has been left out! When we still had our culture, we had the balance." (8)

Starting from the presumption that First Nations women lie at the heart of this balancing and reclamation, I consider the impact of residential schools and the *Indian Act* on the ability of First Nations women to be 'keepers of the culture' today.(9) I argue that the advent of the residential school system and the imposition of the *Indian Act* have negatively impacted upon the ability of First Nations women to fulfil their role as keepers of the culture by negating the egalitarian relationship that existed amongst First Nations men and women and the importance placed on home and family life. I also suggest other factors that challenge women's role as keepers of the culture, including a form of "role strain"(10) experienced by First Nations men and the violence in First Nations communities. Given the extensive splintering of First Nations traditional ways and the violence done to the roles of First Nations women, I query whether it is possible

²⁵ Susan Haslip First Nations Women as Keepers of the Culture: A Consideration of the Roles and Responsibilities of First Nations Women <http://www.sifc.edu/Indian%20Studies/IndigenousThought/fall99/Keepers.html>

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

for First Nations women to be keepers of the culture in light of Rupert Ross' "house of card" metaphor to describe culture. I suggest that the strength and resiliency displayed by First Nations women indicates not only that culture is not as fragile as Ross' metaphor suggests, but also that "a nation is not conquered until the hearts of its women are on the grounds."

2.0 Corruption and Its Impact

2.1 Residential School System

One factor contributing to the challenge facing First Nations women as keepers of the culture is the effect of the residential school system on First Nations peoples. The residential school system was restricted to First Nations children that were specifically "uprooted from their families and communities for most of their childhood"(11) for the one hundred year period between 1867 and 1967.(12) These schools have been described as "the Canadian government's most destructive and blatant tool of cultural genocide perpetrated against Aboriginal people in Canada's 125-year history" and as a "nuclear explosion with the blast damaging some more directly than others, but with fall-out and nuclear winter affecting everyone".(13)

The residential school system presented significant challenges to First Nations women in terms of their roles and responsibilities as keepers of the culture. The residential school system was specifically designed to 'purify' First Nations children for entry into mainstream society. This 'purification' took various forms, including the severance of ties between First Nations children and their families, elders, and communities. Children were prevented from contacting their families for years, even where siblings attended the same residential schools.(14) The separation of children from their families and communities also resulted in a distancing from language, culture, teachings and spiritual beliefs.

Purification also presented itself in prohibitions against the speaking of First Nations languages and the discussion of cultural and spiritual beliefs. The erosion, which closely approximated the annihilation, of First Nations languages, cultural values and beliefs presented a significant hurdle for First Nations women in carrying out their roles and responsibilities as keepers of the culture. A further hurdle for First Nations women was challenging the indoctrination instilled in the minds of the students by residential school teachers that First Nations peoples, and thus the children and their biological families, were "pagan" and represented as an "inferior state of being".(15)

Even today, however, the non-residential school system continues to present challenges to First Nations Women. The educational system of today, for example, does not reflect the view or realities of First Nations peoples. The system, for example, continues to divide children into groups according to ages, as well as courses that are frequently divided along gender lines. These divisions however do not reflect First Nations beliefs and values.(16) It also "omits or distorts significant facts that have had a great impact upon Aboriginal peoples and have helped shaped the Canadian reality".(17) Reference to the impact of residential schools and the *Indian Act* on First Nations people is minimal.(18)

2.2 Indian Act

According to Patricia Monture Okanee, it would be "negligent" not to mention that the imposition of the *Indian Act* and its patriarchal structure was a causal factor of tremendous significance in the suppression of the role of First Nations women in First Nations Communities.(19) One impact of this suppression was to pose a challenge to First Nations women as keepers of the culture.

Hamilton and Sinclair, for example, write that the *Indian Act* served to "undermine the equality between Aboriginal men and women by means of legalized sexist and racist discrimination in legislation", (20) and compromised "the delicate balance and harmony: amongst First Nations women and men.(21) While First Nations women had previously commanded the highest respect, existing in harmony with First Nations men, and had enjoyed the right to own property and to vote, she "was reduced to a subservient role by the

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Indian Act of a foreign and patriarchal system."(22) Jamieson succinctly captures the effect of section 12(1)(b) of the *Indian Act* for women:

"... [t]he woman, on marriage, must leave her parents' home and her reserve. She may not own property on the reserve and must dispose of any property she does hold. She may be prevented from inheriting property left to her by her parents. She cannot take any further part in access to cultural and social amenities of the Indian community. And, most punitive at all, she may be prevented from returning to live with her family on the reserve, even if she is in dire need, very ill, a widow, divorced or separated. Finally, her body may not be buried on the reserve with those of her forbears."(23)

The federal government, aware that "women embod[y] the culture and language of any nation and [that] once she is gone that Nation has no chance to survive", employed the *Indian Act* in a calculated attempt to destroy First Nations peoples by cutting off First Nations women from their culture, language and Nation.(24) This calculated destruction cut to the heart of women's role as keepers of the culture.

While Bill C-31 served to amend the *Indian Act* and provided that First Nations women who had lost their status by marrying a non-First Nations man were able to regain their status, the grandchildren of these women do not automatically receive status. Thus the discrimination against First Nations women, rather than being removed has simply been suspended for two generations.(25) This is particularly problematic for women as keepers of the culture since it is a First Nations teaching that present generations have a responsibility to future generations.(26) The lack of status of future generations serves to put further distance between a current understanding of cultural values, teachings and languages and presents yet another hurdle in the form of difficulty with learning First Nations languages and cultural values associated with the specific First Nation for First Nations women as keepers of the culture.(27)

A further hurdle presented to First Nations women in their role as keepers of the culture is that a First Nations woman who marries a First Nations man is automatically transferred to his band by the Department of Indian and Northern Affairs. In the event of marital breakdown, the woman is not considered a member of her husband's band nor are the children from that relationship.(28)

2.3 Role Strain and First Nations Men

As described above, the advent of the residential school system and the imposition of the *Indian Act* have negatively impacted upon the ability of First Nations women to fulfill their role as keepers of the culture by negating the egalitarian relationship that existed amongst First Nations men and women and the importance placed on home and family life. First Nations men however have also experienced what Carol LaPrairie describes as "role strain", which she attributes to the loss of Indian male role models and the reduction of First Nations men "to a state of powerlessness and vulnerability."(29) This role strain presents its own hurdles for First Nations women as keepers of the culture.

While respecting women has historically been part of First Nations culture, First Nations men have come to adopt the attitude of some non-First Nations men. According to Paula Gunn Allen, "the colonizers' revision of our lives, values, and histories has devastated us at the most critical level of all - that of our own kinds, our own sense of who we are."(30) The mainstream media has assisted in the perpetuation of stereotypical images of women generally and First Nations women in particular.(31) Forgotten, however, is the respect and honour paid to First Nations women.(32)

2.4 Additional Roles for Women

In addition to the roles for First Nations women identified above, additional roles have been identified for First Nations women. One responsibility identified for First Nations leaders regardless of gender is the need to speak out against the abuse within their communities and the necessity that steps be taken within communities to assist the victims of abuse.(33) Elders are believed to have an essential role to play in breaking the cycle of violence.(34)

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

First Nations women also feel a responsibility for the conduct of First Nations men with respect to how the men conduct themselves generally, as well as towards women: "[s]he [First Nations woman] has to remind them [the men] of their responsibilities and she has to know when and how to correct them when they stray from those",⁽³⁵⁾ including reprimanding and removing the man if necessary. First Nations women have been prominent in designing and implementing programs that reflect First Nations models of healing both the victim and the abuser as well as developing community support for the programs.⁽³⁶⁾

The work of First Nations women in the area of healing victims and abusers is complex. The belief that "strong, healthy families make strong, healthy communities"⁽³⁷⁾ informs the desire to keep First Nations families together. There has been an increase in emphasis on First Nations safe homes and secondary housing that reflects the concern that the cultural philosophies of First Nations peoples be reflected, and in particular, that the First Nations women are entitled to "self-sufficiency, dignity, self-respect, caring and self-determination".⁽³⁸⁾

The federal government recognizes the leadership role of First Nations women in the area of family violence. First Nations Women's organizations, for example, are the primary delivery agents of the Family Violence Initiative, an initiative connected to the Aboriginal Women's Program (AWP). Under the AWP, the federal government directs funds to off-reserve communities via recognized "Aboriginal women's groups".⁽³⁹⁾ Federal government monies are directed through the Department of Indian Affairs and Northern Development for violence initiatives on reserve.

The ability of First Nations women to be healers in the area of victims of domestic violence is made more complex by the paucity of funds for shelters for abused women generally, and First Nations women in particular. In cases of domestic abuse on reservations, "most chiefs and council members are male and often exhibit bias in favour of the male partner in a domestic abuse situation".⁽⁴⁰⁾ The nature of laws concerning property are also disincentives for women to leave violent domestic situations. The federal *Indian Act* regulates the holding of reserve land, generally allotted to the male spouse. While provincial *Family Law Acts* also govern property law, the legislative doctrine of paramountcy provides that federal legislation trumps provincial legislation when the legislation purports to address the same area,⁽⁴¹⁾ leaving First Nations women with little recourse to property in the event of a marital split.

In addition, the poverty experienced by many First Nations women severely impacts upon their ability to function as keepers of the culture to future generations. Poverty frequently translates into poor health. Amongst women, for example, First Nations women have the shortest life expectancy.⁽⁴²⁾ Poverty means not only the increased likelihood of conflict with the law, low levels of education, decreased employment opportunities and lower health levels,⁽⁴³⁾ but also reduced opportunities for First Nations women to leave abusive situations.

First Nations women are also perceived as needing to become more politically involved in the Band Council system. This emphasis on involvement is not necessarily owing to a belief in gender equity on the council but rather due to women's responsibility to ensure that the women "do not lose anymore", that no more damage is done, and that the original First Nations system of government is revamped and in good working order.⁽⁴⁴⁾ First Nations women are being encouraged to "reclaim their rightful influence by greater participation in the decision-making bodies of major Aboriginal institutions now monopolized by men."⁽⁴⁵⁾ First Nations women are making progress in this area as evidenced by the fact that the women are controlling the financial boards of Caisse Populaires in the province of Quebec and have been "initiating major economic ventures in First Nations communities."⁽⁴⁶⁾ In addition, First Nations women were instrumental in the passage of Bill C-31 in 1985 and were prominent during the Mohawk Crisis in 1990.⁽⁴⁷⁾

Osenonction suggests that First Nations women also need to learn and to become educated in their own ways in order that they can acquire 'the knowledge to do what they must do and in order to have the strength to do it'.⁽⁴⁸⁾ To the extent that the reclamation of the spiritual values found in First Nations traditions and ceremonies will be achieved through "completing the circle related to the way we think and

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

perceive our life on the Earth", (49) all peoples have a responsibility and role towards respecting the earth. (50)

2.5 Fragility of Culture

The concept of First Nations women as keepers of the culture is also challenged by the very idea of the fragility of culture itself. Given the corruption done to the roles of First Nations women, not only at the hands of Europeans, but also at the hands of First Nations men, it would seem that the reclamation of culture, and the role of First Nations women as keepers of the culture would be next to impossible.

Rupert Ross writes that a culture's vulnerability is

"... much like a house of uniquely shaped cards. Take one card away and the entire structure is threatened with collapse. Insert another person's card, shaped to fit his [or her] unique house, and it may well displace more than it supports, further weakening an already shaky structure." (51)

Ross' metaphor of First Nations culture, however, while crystalline and beautiful, describes a culture that is brittle, inflexible, static and unadaptable. Yet it is due to the fact that First Nations culture is flexible and in flux that it has survived the assimilationist policies of government and the years of oppression at the hands of white society. This flexibility and flux suggests a more flexible, elastic and resilient structure than that posited by Ross. As Laser suggests,

"the survival and development of Aboriginal ways in the face of the onslaught of colonialism demonstrates their resilience, flexibility, and transcendent qualities ... no culture remains static and, if anything, Aboriginal peoples will imprint their own blend of custom... ." (52)

This longevity is no doubt owing in part to oral traditions which lie at the heart of First Nations culture and which have prevented the complete destruction and disruption of traditional ways by "adapting to the flow of the present while never relinquishing its connection to the past." (53)

3.0 Conclusion

The residential schools and the *Indian Act* have distorted the egalitarian relationship that existed amongst First Nations men and women and the importance placed on home and family life. These factors have challenged the ability of First Nations women to be 'keepers of the culture' today. The fact that First Nations women would need to carry out their responsibilities as keepers of the culture as victims of "racism, sexism and unconscionable levels of domestic violence" (54) makes this task much more difficult. The reclamation is made more problematic when one considers that the annihilation/corruption of the roles of First Nations women was not only done at the hands of Europeans but also at the hands of First Nations peoples, predominantly men. (55)

The work of rediscovering/learning the roles and responsibilities of First Nations women and of sharing this knowledge amongst First Nations peoples (56) is critical, particularly as it relates to the survival of First Nations peoples, self-determination (57) and justice systems. While it may not be possible to reclaim the very essence of the original traditions and cultures, it is essential that the effort is made by First Nations peoples to respect the role that women played in First Nations communities and to ensure that the women have their rightful place within these communities. (58) The fire that lies at the centre of First Nations beliefs will continue to burn, tended by First Nations women. (59) As Pauline Busch, President of Aboriginal Women of Manitoba has said, "[w]e, as women, have not given in totally because we know we have to continue on the path the Creator gave us to talk. And to assure that we would, the Creator placed a deep sense of responsibility in our hearts, a responsibility for the very survival of our people.

ENDNOTES

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- (1). Monture Okanee, P.A., writing in S. O'Connor, P. Monture and N. O'Connor, "Grandmothers, Mothers, and Daughters", *Canadian Woman Studies* (Summer/Fall 1989) Vol. 10, Nos. 2 & 3, pp. 38-39 at p. 38.
 - (2). *Supra* note 1.
 - (3). Skonaganleh:ra and Osenonntion, "Our World According to Osenonntion and Skonaganleh:ra", in *Canadian Woman Studies* (Summer/Fall 1989) Vol. 10, Nos. 2 & 3, pp. 7-19 at p. 7.
 - (4). *Supra* note 1.
 - (5). These difficulties include the over-involvement of First Nations people with the criminal justice system; alcoholism; poverty; violence; low health levels, decreased levels of education, and decreased employment opportunities. (Hamilton, C.A. and Sinclair, C.M., eds., *Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1: The Justice System and Aboriginal People* (Manitoba: Queen's Printer, 1991), p. 481.
 - (6). In this paper, I use the terms "First Nations" or "First Peoples when describing Turtle Island's (Canada's) original inhabitants and/or their practices. While the terms "Aboriginal", "Native" or "Indian" are often used to refer to First Nations peoples, I only use the latter three terms in this paper in the context of a direct quote. This choice was made following discussions with Professor Okanee, then of the Faculty of Law, University of Ottawa, while I was a law student and following reading Professor Monture Okanee, P.A.'s "I Know My Name: A First Nations Woman Speaks", in ed. G. Finn, *Limited Edition; voices of women, visions of feminism* (Halifax, Nova Scotia: Fernwood Publishing, 1993), p. 330.
 - (7). Canadian Council on Social Development and the Native Women's Association of Canada, *Voices of Aboriginal Women: Aboriginal Women Speak Out About Violence* (Ottawa: Canadian Council on Community Development, 1991), p. 22.
 - (8). Meili, D., *Those Who Know: Profiles of Alberta's Native Elders* (Edmonton: NeWest Press, 1991), p. 25, as cited by P.A. Monture Okanee, "Reclaiming Justice: Aboriginal Women and Justice Initiatives in the 1990s", in the *Royal Commission on Aboriginal Peoples, Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Ministry of Supply and Services Canada, 1993), pp. 105-132 at p. 120.
 - (9). I will be referring to culture in the abstract. In so doing, however, I am mindful of M. Kline's words that when culture is considered it is often done so abstractedly. Thus there is a tendency to reconstruct the concern of First Nations in maintaining the connection between each First Nations child and the heritage and culture of her particular First Nation into a concern about maintaining a connection to First Nations heritage and culture in the abstract." (M. Kline, "Child Welfare Law: 'Best Interests of the Child' Ideology and First Nations", *Osgoode Hall Law Journal* (1992) Vol. 30, No. 2, pp. 375-425 at p. 401.
 - (10). LaPrairie, C., "Native Women and Crime in Canada: A Theoretical Model" in E. Adelberg and C. Currie, eds., *Too Few to Count: Canadian Women in Conflict with the Law* (Vancouver: Press Gang Publishers, 1987), p. 107, as cited in Hamilton, C.A. and Sinclair, C.M., eds., *Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1: The Justice System and Aboriginal People*, *supra* note 6 at p. 480.
 - (11). *Supra* note 8 at p. 2.
 - (12). Cariboo Tribal Council, "Faith Misplaced: Lasting Effects of Abuse in a First Nations Community", *Canadian Journal of Native Education*, Vol. 8, No. 2, as cited in *Canadian Panel on Violence Against Women, Final Report of the Canadian Panel on Violence Against Women: Changing the Landscape: Ending Violence-Achieving Equality* viz. a viz. *Aboriginal Women* (Ottawa: Ministry of Supply and Services Canada, 1993), p. 154. See also J.R. Miller, *Shingwauk's Vision: a history of residential schools in Canada* (Toronto: University of Toronto Press, 1996).
- The removal of First Nations children from their homes and their subsequent placement in residential boarding schools was commonplace in the 1930s. (Light, B., and Roach Pierson, R., eds., *No Easy Road: Women in Canada: 1920s to 1960s* (Toronto: New Hogtown Press, 1990), p. 45. The federal government was responsible for child welfare up until the 1950s at which time this responsibility was shifted to the provinces. (Roach Pierson, et al., *Canadian Women's Issues: Volume 1, Strong Voices* (Toronto: James Lorimer and Company, 1993), p. 282.
- (13). Cariboo Tribal Council, *ibid.*
 - (14). *Supra* note 6 at p. 478.
 - (15). *Ibid.* at p. 481.
 - (16). *Supra* note 4.
 - (17). Cariboo Tribal Council, *supra* note 13 at p. 152.
 - (18). *Ibid.*
 - (19). Monture Okanee, P.A. and Turpel, M.E., *supra* note 1 at p. 266.
 - (20). *Supra* note 6 at p. 478.
 - (21). Monture Okanee, P.A. and Turpel, M.E., *supra* note 1 at p.265.
 - (22). Finn, G., ed., *supra* note 7 at p. 3.
 - (23). Jamieson, K., *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Ministry of Supply and Services Canada, 1978) p. 1.
- Section 12(1)(b) of the Indian Act has also been described as prescribing First Nations' Women's loss of nationality, right to reside where she was born, close family ties, culture and religion, right to family property and inheritance, voting rights, health services, educational rights and her right to be buried on First Nations land. (See, for example, R. Roach Pierson, et al., *supra* note 13 at p. 246.
- (24). Ennis, C., Bear, S., and Sherwood, B., pamphlet, *Native Women's Committee of NAC*, printed by Mount St. Vincent University, as cited in R. Roach Pierson, et al., *supra* note 13 at p. 246.
 - (25). Kirkness, V., "Emerging Native Woman", *Canadian Journal of Women and the Law* (1987-1988) Vol. 2, No. 2, pp. 408-415 at p. 415.
 - (26). *Ibid.*
 - (27). Holmes, J., "Bill C-31: Equality or Disparity? The Effects of the new Indian Act on Native Women" (Ottawa: Canadian Advisory Council on the Status of Women, 1987), p. 10.
 - (28). *Ibid.*
 - (29). LaPrairie, C., *supra* note 11.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- (30). Allen, P.G., *Sacred Hoop: Restoring the Feminine to Native American Tradition* (Boston: Beacon Press, 1986), pp. 192-193, as cited in Hamilton, C.A. and Sinclair, C.M., eds., supra note 6 at p. 480.
- (31). Hamilton, C.A. and Sinclair, C.M., eds., supra note 6 at p. 480.
- (32). One example of this revisioning is found in the devaluation of women's work. While prior to contact with the Europeans, First Nations men and women were valued equally, European society has historically, and continues, to devalue women and women's work. The change to traditional roles saw increasing number of First Nations men working outside of the family home. The fact that the latter work was paid work and was work outside the home, placed the value of the work, and the worker, over that of the unpaid, and undervalued, work performed by First Nations women inside the home.
- (33). Hamilton, C.A. and Sinclair, C.M., eds., supra note 6 at p. 485.
- (34). Cariboo Tribal Council, supra note 13 at p. 142.
- (35). Osennontion, supra note 4 at p. 13.
- (36). Hamilton, C.A. and Sinclair, C.M., eds., supra note 6 at p. 495.
- (37). Ibid. at p. 493.
- (38). Ibid. at p. 488.
- (39). Citizens' Participation Directorate, *Aboriginal Citizens' Programs* (Ottawa: Department of Canadian Heritage, June 1999), no page number.
- The AWP is a program offered through the Native Citizens' Program (NCP). The NCP is a program operated by the Citizen's Participation and Multiculturalism Branch of the Identity Sector of the Department of Canadian Heritage.
- (40). Supra note 6 at p. 485.
- (41). See for example, *Native Women's Association of Canada, Matriarchy and the Canadian Charter: A Discussion Paper* (Ottawa: Native Women's Association of Canada, no year), p. 5.
- (42). Supra note 4 at p. 12.
- (43). Supra note 6.
- (44). Supra note 4 at p. 14.
- (45). Supra note 42 at p. 6.
- (46). Supra note 42 at p. 6.
- (47). Ibid..
- (48). Osennontion, supra note 4 at p. 14.
- (49). Professor Okanee, supra note 7 at p. 28.
- (50). Monture Okanee, P.A., writing in S. O'Connor, P.A. Monture and N. O'Connor, supra note 2.
- (51). Ross, R., *Dancing with a Ghost: Exploring Indian Reality* (Markham: Octopus Publishing Group, 1992), p. 45.
- (52). Laser, A., as quoted by M.E. Turpel, "On the Question of Adapting the Canadian Criminal Justice System for Aboriginal Peoples: Don't Fence Me In," in the *Royal Commission on Aboriginal Peoples, Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Ministry of Supply and Services Canada, 1993) pp. 161-183 at p. 169. While this quote is made in the context of criminal law, it seems equally applicable in the context of culture more generally.
- (53). Allen, P.G., as cited in Hamilton, C.A. and Sinclair, C.M., eds., supra note 6 at p. 476.
- (54). Hamilton, C.A. and Sinclair, C.M., eds., supra note 6 at p. 475.
- (55). Monture Okanee, P.A., "Reclaiming Justice: Aboriginal Women and Justice Initiatives in the 1990s," in the *Royal Commission of Aboriginal Peoples, Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Ministry of Supply and Services Canada, 1993), pp. 105-132 at p. 115.
- (56). Monture Okanee, P.A. and Turpel, M.E., supra note 1 at p. 265.
- (57). Many First Nations women actively oppose self-determination as represented in the form of self-government for a number of reasons, including fear that their rights will be denied by their own people and because present day conceptions of self-government do not reflect traditional First Nations conceptions of government in which there was an egalitarian partnership between First Nations women and men. The fact that First Nations women are correct in their perception of the denial of their equality rights is evidenced by the fact that, generally speaking, First Nations leaders, the majority of whom are men, have not supported First Nations women in their struggle for equality.
- Prior to the coming into force of Bill C-31, for example, an interim policy instituted in July of 1980 allowed "Indian Bands" the opportunity to suspend the operation of paragraph 12(1)(b) of the Indian Act. This would have provided that a First Nations woman who married a non-First Nations man would have been able to retain Indian status for herself and her children. However, only ten percent of all the bands chose to so vote. (Holmes, J., supra note 28 at p. 1). Six Alberta bands challenged the validity of Bill C-31. The basis of the challenge was that the provisions of the amended Indian Act "den[ie]d the right of Indian bands to determine their own membership." (Ibid. at p. 21). This being the case, at least at this point in time, it is highly suspect that a significant portion of First Nations men would be prepared to support equality rights for First Nations women under self-government. (Turpel, M.E., supra note 53 at p. 164).
- (58). Supra note 4 at p. 15.
- (59). Ibid. at p. 12.
- (60). Busch, P., as cited in *Achieving Justice: Today & Tomorrow*, conference proceedings, (September 3-7, 1991, Whitehorse

5.13. Keeping an Open Mind: A Look at Gender Inclusive Analysis, Restorative Justice/ Alternative Dispute Resolution – 1999 ²⁶

Introduction

There is a trend across Canada towards using alternatives to the traditional justice system because of serious dissatisfaction with its ability to be responsive to people and their experience. This trend provides an opportunity to shift the perspective of doing justice to one of protecting and serving the people and communities who are harmed.

Various agencies and individuals in Newfoundland and Labrador are increasingly and enthusiastically promoting alternatives to the traditional court system. Words such as mediation, conditional sentences and restorative justice are now part of the vocabulary. Local and national organizations offer training courses for these processes. Practitioners advertise their services. This movement from the adversarial court system to other methods challenges us to improve conflict resolution in the justice system.

While the positive side of these alternatives is welcomed by many, those involved with women's equality recommend vigilance. At the heart of the concerns is the protection of women who have experienced violence and those who are in relationships of unequal power and control.

The Provincial Association Against Family Violence (PAAFV) is an umbrella organization of shelters and transition houses which advocates for a justice system that protects and serves people and communities. It is aware of the particular needs and perspectives of women, children and other vulnerable populations and works towards protecting their interests.

The PAAFV decided to produce a handbook for the use of policy makers and service providers who help individuals consider alternatives to court. The handbook aims to:

- create dialogue and mobilize people to inform policy and shape programs.
- introduce gender inclusive analysis to increase awareness of gender issues and articulate the best ways of serving women, children, vulnerable populations and communities.
- explain different alternative dispute resolution (ADR) processes and programs accurately and explain restorative justice philosophy.
- create a common language and understanding around the terminology.
- encourage organizations involved in ADR training programs to incorporate gender analysis into the curriculum.

I believe that the desire for justice of every human being is the source of our desire for equality. For inequality is injustice.

Madame Justice L'Heureux-Dube, "Making Equality Work", an address to the Department of Justice Canada, Ottawa, December 10, 1996.

²⁶ Provincial Association Against Family Violence, Keeping an Open Mind: A Look at Gender Inclusive Analysis, Restorative Justice, And Alternative Dispute Resolution, June, 1999, <http://www.nfld.com/~paafv/>

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

The handbook presents facts, reflection, analysis and cautions. The cautions indicate points of concern - places where safeguards to protect women must be incorporated into policy, programs and service delivery. It introduces gender analysis - a process that is particularly useful at the planning stage of developing policies and programs. Gender inclusive analysis is a tool and approach which helps makes clear the different perspectives women and men bring to program and policy development and shows the different ways they are affected. It recognizes that not all women are the same and perspectives vary according to age, sexual orientation, colour, race, ethnicity, ability/disability and socio-economic status. Gender analysis is ideally part of a more comprehensive diversity analysis that assesses the impact of laws, policies or programs on the full range of diverse groups in Canadian society.

In order to appreciate the different perspectives of men and women we present the “big picture” of our society through social and economic indicators such as poverty levels, access to decent housing, and violent crime. This information helps to clarify the difference gender makes to an individual's life experience.

Both provincial and federal governments have made commitments to the use of gender based analysis. *People, Partners and Prosperity: A Strategic Social Plan For Newfoundland and Labrador, 1998*, published by the Government of Newfoundland and Labrador states that a gender based analysis framework will be formulated for the purpose of assessment of provincial legislation, policies and programs. In 1998, the Women’s Policy Office published *Guidelines for Gender Inclusive Analysis: An Integrated Approach to Policy/Program Development*. The Government of Canada included a commitment for gender analysis of future legislation and policies with the presentation of its *Federal Plan for Gender Equality* to the Fourth United Nations World Conference on Women in Beijing in 1995.

This handbook will benefit those responsible for policy and program development, by providing them with tools for understanding gender differences and systemic inequality. It will also contribute to the work of service providers who assist individuals with decision making about alternatives to court – professional staff in shelters, transition houses, women’s centres and victim services, as well as police officers, corrections officials, advocates for offenders, lawyers, family counsellors, and social workers.

The handbook does not provide a comprehensive gender inclusive analysis of alternatives to court such as family mediation, diversion, victim offender mediation and community justice forums. This remains to be done. However, with the use of “caution boxes,” the authors direct attention to areas of concern to women. Regrettably, it was not possible to extend the analysis from the point of view of age, sexual orientation, colour, race, ethnicity, ability/disability and socio-economic status.

Another area needing further work is the issue of children who may be subject to conflict resolution processes and alternatives to court. While legislative and policy changes which address the better care of children are welcome, an analysis of the potential impact of these processes on children is needed. It is beyond the scope of this project to adequately present these concerns.

The Provincial Association Against Family Violence hopes to secure funding that will support a more in depth analysis and creation of a template to guide program planning and refining. It is hoped that Phase Two of this project will include the development of a workshop curriculum through which participants can engage in gender inclusive analysis of specific ADR processes.

Woman Positive Voices

Dom Helder Camara

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Questions about power, decision-making, violence and equality are consistently put forward by people and groups which work for women's rights. They challenge the people in power - governments - to create policies and programs that will lead to systemic equality for women. This is what we mean by "woman positive."

Lots of people work hard to reform systems. This means things get a little better than they were before. Some people are more insistent and say the systems are unjust and the only way to introduce justice is to transform the systems.

When I feed the hungry they call me a saint; when I ask why the people are hungry they call me a communist.

People who promote woman positive programs and policies raise similar questions. They keep the big picture in the forefront and challenge us to create a society where all people are equal. This handbook invites you to stay open to that voice which calls for social justice and equality. With these values we cannot stray far from public policy that serves all people well.

Trends Towards Alternatives

Most provinces now have policies and programs offering alternatives to court. Some refer to these as DR (Dispute Resolution), others use ADR (Appropriate Dispute Resolution), while still others use AD (Alternative Dispute Resolution). This terminology, along with Alternative Measures, Mediation and Restorative Justice, is the cause of considerable confusion. A glossary is provided at the end of this handbook, to define the terms used.

The Government of Newfoundland and Labrador is currently considering alternative options that will demand policy and program decisions. For example, courts dealing with family cases are discussing extension of services such as mediation and parent education, which are currently provided by the Unified Family Court in St. John's.

Another example of an upcoming change can be found in the new Child, Youth and Family Services Act (formerly the Child Welfare Act) which was passed by the House of Assembly in late 1998 and is expected to come into force in the near future. It allows both the social worker and the judge to resolve a conflict by using an alternative dispute resolution process. In other provinces, mediation has been used in these cases. The process attempts to shift the focus from proving parental fault to an emphasis on the child's welfare.

This environment of change, planning and development demands an informed public and an attentive bureaucracy. Alternatives to the current justice system are welcome because of weaknesses in the adversarial courts and judicial processes (see Section Two). However we must be careful not to create new weaknesses in the alternatives we establish. The PAAFV challenges those developing alternatives and policies to be responsive to the needs and perspectives of women, children and vulnerable populations.

This handbook has been compiled into four sections. Depending on your background and experience some sections may offer new information while the information in others may be well known to you. Since each section was designed to stand on its own, some repetition of information was necessary.

Section One introduces **The Big Picture** -- a look at sex, gender, systemic inequality and gender inclusive analysis. It also looks at the ways in which power works in a relationship.

Section Two provides **Background Information on the Canadian Legal System**. It raises important concerns about how the legal system affects individuals who use it. Alternative trends within the justice system are described. These include Alternative Measures, a program available to youth and adults to divert

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

offenders from the court and prison system and alternatives to prison such as conditional and suspended sentences.

Section Three explores **Major Influences on Alternatives**, including Restorative Justice and some programs rooted in that framework. Alternative Dispute Resolution processes are highlighted, in particular the different forms of Mediation. The concerns raised by a gender inclusive analysis are discussed.

Section Four contains information on **Programs in Newfoundland and Labrador**. Youth Diversion is widespread while the Unified Family Court mediation program is available only in St. John's. Community Mediation Services is profiled, as an organization committed to providing alternative dispute resolution processes. This is an *information only* section and does not include a gender analysis.

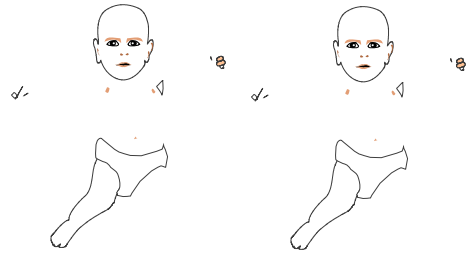
There is a **Glossary** of terms at the end of the handbook that might be useful as you use and share this information.

Principles and Assumptions

- Changes in the justice system, laws, programs and policies have an impact on people. When considering the impact it is necessary to look at the lives of women and men and not assume the impact is the same for both.
- Women in our society have not yet reached equality with men. While some individual women have achieved and even surpassed economic and social parity with their male counterparts, the vast majority have not. This handbook illustrates the impact of systemic inequality on women.
- Too few women are involved in decision making processes and leadership positions within organizations, communities, and governments. The experience of women is valuable and offers a significant contribution to these processes.
- It is important that biases in the system be identified and addressed because awareness is a critical step in correcting biases in the system. People's values and life experiences shape their perspectives and influence their policy, program and service delivery work.
- Both women and men must be involved in creating an equal society. The benefits will help us all.
- Gender inclusive analysis must become an integral part of policy and program work in order to create effective public policy that ensures the safety and equality of women and children.
- An appreciation of gender differences includes an understanding of the different needs, roles, life experiences, economic and social circumstances facing women and men. The nature of relationships between men and women is also important.
- A gender inclusive analysis appreciates that not all women are the same. Women can be disadvantaged further by age, the colour of their skin, sexual orientation, race, ethnic background, ability and disability and income. They are therefore affected differently by policies and programs.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- Mediation and other ADR processes are not appropriate problem solving practices in every situation. For example, women exiting abusive relationships are vulnerable to making agreements that are not fair and equitable and which can have negative long term consequences.
- To be effective, ADR processes have to be adequately funded and supported by complementary services such as availability of lawyers to individuals involved in family mediation. Women must know their rights before negotiating these same rights.
- ADR processes are an appropriate alternative to the court system when they suit the particular circumstances of the people involved and not because governments think it is cheaper justice.
- ADR cannot replace the court system. It is important for cases to go before the courts when conflict is escalated, when there is no cooperation or when a court ruling on a case may result in the law being changed.



Parts of the Big Picture

Sex and Gender

Section 1

There is a difference between sex and gender. A person’s sex is either male or female and is a description of the way people’s bodies are made. Gender brings in aspects of people’s life experiences, including expectations that are put on women to be feminine and men to be masculine, i.e. that it’s OK for girls to cry but not for boys.

If you take two infants of the same race, one of the main differences between them is whether they are male or female. However the expectations that are put on them have a great deal more to do with gender than with sex. These gendered assumptions are socially constructed by societies. They can vary from country to country and from culture to culture.

There are gender expectations about needs and rights, for example, that men should be paid a decent wage because they have greater needs and more family responsibilities than women. The gender expectation is that women do not have the same need for decent pay and benefits because they don’t need as much, have men to take care of them and that family needs take priority.

Systemic Inequality

It is important to give gender issues consideration because of the “big picture” that affects women in our society. It hurts women and men when governments provide programs which do not take women’s experiences and needs into account. Consider, for example, descriptive categories like

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

income, social status, poverty, benefits, education and standard of housing in our country and province. These are used to assess the health and well being of people and are called social and economic indicators. The indicators paint a picture that shows women and men are not equal. This holds true in our families, our communities, our province and our country. This is called “systemic inequality” because it is evident in many aspects of life and in government and business programs and policies. Systemic inequality cannot be corrected by simply changing one rule or practice. For example, in Canada, 80% of single parents are women and 60% of these female led families have an average income of \$12,000 less than single parent families headed by men (1995, Statistics Canada). While the female led families could truly benefit from increased income, the increase alone would not create equality.

Systemic inequality refers to the unequal living conditions, opportunities and status of women. We see it in the continued violence against women in relationships and other ways. We see it in the fact that women’s paid work and unpaid work are undervalued. While there have been some positive changes, systemic inequality persists in the “big picture”.

Gender Inclusive Analysis

When new programs or policies are developed by governments or community agencies it is important to look at them carefully and anticipate how they might affect women and men differently. When we do this “looking at” from the point of view of the “big picture” and take gender into consideration it is called a “**gender inclusive analysis**”. It assumes that we can make changes and move closer to equality for women and men. In this analysis, or taking things apart for a closer look, we uncover the things that are taken for granted, assumed to be true but not stated clearly. If we look at the “big picture” we see that women in our province do not have the same chances that men often have.

If we look at things from the point of view that equality means everybody is the same and that gender does not make a difference it is called a **gender neutral analysis**. Gender neutral analysis may not result in equality for men and women.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Social and Economic Indicators

- Women in Newfoundland and Labrador who work all year earn approximately 65% of the gross income of a male counterpart (1996 Census).
- When it comes to tax deductions women don't get credit for *caring* work. Sometimes women choose to do this work; sometimes they are expected to do the work because they are women. Women do lots of work that they don't get paid for doing, like caring for elderly family members and taking care of children. This affects women financially for their whole lives.
- Women who are senior citizens are more likely to live in poverty and to live longer – 72% of low-income Canadians aged 65 and over are women.
- For every 10 people living in a long term care institution – almost 70% are women.
- 72% of lone parent families live below the poverty line. Most lone parent families are led by women (Statistics Canada, 1995).
- In Newfoundland, the 1996 Census found that out of a total of 20,485 lone parent families with never married children at home, women led 17,240 of these households – that is, 84%.
- Women are more likely to experience violence than men.
 - * Studies show that most women are afraid to walk alone at night (The Canadian Panel on Violence Against Women).
 - * Every 6 minutes there is a sexual assault committed in Canada; 90% of the victims are female (House of Commons 1991, The War Against Women). * One half of all Canadian women have experienced at least one incident of physical or sexual violence since the age of 16. (Statistics Canada)

This means most women are very aware of the threat of violence - that it could happen to them. The same is not true for most men. While men are often physically stronger than women and might feel more confident in defending themselves, the issue is much deeper. The option of walking at night is one most men take for granted. Women cannot take that option for granted because life experience has shown women that they are more likely to be a victim of violence. And so it is clear that a woman's choice is affected by her past experiences, roles and expectations.

A society that values and works to achieve equality promotes life choices that are not limited by gender. As an example: A woman walks alone at night. If she chooses to take the risk and gets hurt she is often blamed for showing poor judgement, making bad decisions and not giving enough recognition to the realities of a women's lives in our society. She is blamed for not knowing her place, not having common sense. If we believe all citizens should be able to walk alone at night then our laws and the ways we react as a society when violence happens to women would support that basic assumption about equality.

Uncovering Gender Assumptions

The following examples show how a gender inclusive analysis uncovers the assumptions we make because of gender expectations. You may not share the views but they will help you understand how to look at issues through a gender inclusive lens.

Example 1. A decent wage

A stereotypical view:

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Men should be paid a decent wage and have benefits in order to meet their needs and care for responsibilities such as their families. Women do not have the same need for decent pay and benefits because their needs are not as great, they have men to take care of them and the family needs take priority.

Lets consider the assumptions being made about what women need and what men need based on their gender; the roles and expectations we have of them.

Assumption 1. Family needs are most important.

Discussion This assumption is commonly accepted. Family needs, when met, leads to creating healthy children and building strong communities. Few would argue with this assumption.

Assumption 2. Family needs are primarily a woman's work and concern.

Discussion This family caring work is so closely connected to being female and how a women should spend her life energy that no financial compensation, either in cash or tax credit, is necessary. Women are doing what comes naturally, what they are meant to do and what they are most happy doing. This is not always true. While it is important to support women who make the choice to work in this way, it is also important that in some way as a society we value that contribution. It is also important that women have the choice to live their lives differently. Therefore programs and policies such as home care for the elderly, child care for the young and wages should not assume a woman will take care of all the families needs.

Assumption 3. All families include a man and that he works outside the home for a decent wage.

Discussion The facts of the “big picture” tell us otherwise. They tell us that most lone parent families in this province (84%) are led by women. We also know that families consist of same sex couples, sometimes female and sometimes male. We also know that many families and children are living in poverty, that wages are often insufficient and that unemployment is a tremendous social and economic problem in this province.

Example 2. Equal access to education and opportunity

A widely held view:

Everyone has a right to an education and opportunity to get a job based on what you know how to do rather than whether you are a man or a woman.

Assumption: Men and women are equal and are treated equally.

Discussion However, women and men do not start from the same place. Men, more than women, have been fed the message that they can do things if they are willing to work for it. A young woman may have the right to an education just like her brother but it isn't that simple.

Maybe the young woman does not get encouraged to try non-traditional work, maybe she has responsibilities for younger children after school or for household chores. Maybe she has swallowed all the messages from families, communities, TV and friends that tell her a women's responsibilities and interests should be in caring for children, elderly parents and families. Maybe she has swallowed the message that the family and all its needs are her responsibility and that if she plans to do that job well then she will not have time for jobs that will require a lot of her time and energy.

It is important to appreciate the different expectations facing men and women and the different life experiences that influence the choices they make. It is clear that the roles and expectations that are defined by gender have a big impact on our lives and our ability to

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

respond to opportunity. The impact and influences of differences other than gender, such as age, ethnicity, and disability would be examined in a wider diversity analysis.

Gender Equity

Over time it became clear that “equal” did not mean women would be treated fairly. For example picture a woman on step one of a ladder. She is at step one because of the “systemic inequality” that is part of women’s experience. A man is on step five because compared to most women he has had some privilege in society because he is male. If we treated both equally and said move up two steps then the woman would be on step three and the man on step seven. Both would have been treated equally but the distance between them is the same and does not make things fair.

There is a different way of thinking about things that is called **gender equity**. It is a process of being fair to women and to men. It means that in order for men and women to be treated equally, women will need something extra, such as affirmative action and pay equity, in order to make allowances for the systemic inequality.

Historical and social disadvantages have prevented men and women from operating on a level playing field. Everybody benefits from gender equity in the long term because equity leads to equality. Gender equity is good for all of society: men, women, people who are poor, people who have a disability, people from diverse ethnic

backgrounds and sexual orientation and people of colour. It works to create social justice for all of us.

Power Imbalances in Relationship

Power and control, or power imbalances, are most commonly experienced as part of our day to day lives and relationships. However, this is not to say that power imbalances are absent from the “big picture.” In our society some people have more power and some people have less power. Adults generally have power over youth, bosses over workers, teachers over students, men over women, heterosexuals over homosexuals and so on. The people with less power are more vulnerable to violence from people in the groups with more power.

We often change sides, so we know what it is like to be powerful and have privilege and we know what it is to have less power. If we are in the less powerful position we know how important it is to have the more powerful people support us and be our allies.

Power is not always influence over a lot of people.

- Power is a part of all our social relationships including our one on one relationships
- We need power for our sense of well being and self esteem.
- Power helps us feel as if we are somebody, as if we matter and that we are appreciated by others.

When we are in relationship with somebody, we care about them, we often care about what they think of us, how they feel and what they do. Because we are in a relationship, be it good or bad, power is part of that relationship. When there is no relationship there is no power. Power is part of the social relationship and it changes with the kinds of interactions we have. It can be big issue or a not so big issue. It can be a warm, safe and nurturing power or it can be a destructive, hurtful power.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

Power in a relationship is linked to the dependence of one person on the other. In healthy relationships the power balance shifts back and forth because we are all dependent some of the time. Think of it in terms of goals and needs. If I need you to reach my goal then you have power over me for that situation.

It is sometimes helpful to sort out our thinking about this by asking :

- Who has the power?
- Who makes the decisions?
- Who has the resources (money, jobs, social contacts, community contacts, knowledge and skills)?
- Who is vulnerable to the imbalance of power? Can it lead to violence?

The issue of power in relationships is very important when you consider alternative dispute resolution processes because ADR focuses on people who share a problem sharing the resolution of the problem. When there is a power imbalance between the people who share the problem it may be difficult to engage in an equitable problem solving process and generate an equitable resolution to the problem.

Section 2

Background Information: Canadian Legal System

In Canada, our legal system is based on the British system. Criminal laws are written so that a person who commits a crime is charged with an offence against society. Even if the injury or harm caused is against a person, the justice system and the trial process holds the offender responsible for a crime against society. The importance of protecting the rights of innocent people is another hallmark of our criminal law system – some believe that this is more important than convicting guilty people.

Civil law deals with disputes between people or between people and government or companies – cases such as malpractice or failing to keep up your part of a contract. Family law is thought of as a separate system but it is a branch of civil law. Unified Family Courts permit people to deal with both family law matters and criminal law matters that affect the family in the same court.

The philosophy or way of thinking which underlies our current criminal justice system includes the following notions:

- Perception: justice must be seen to be done.
- Punishment: the process is often about what type of punishment suits the situation.
- Deterrence: the system must prevent and discourage people from offending behaviour.
- Behaviour change: because the circumstances surrounding criminal behaviour can be a contributing cause, changes to these circumstances may be necessary.
- Safety of others is important.

Federal laws are the same for all Canadians and are referred to as being in the federal jurisdiction. Provincial laws guide us in situations that the province has control over - the provincial jurisdiction. The laws are supposed to be the same for everybody, are supposed to be consistently applied and promote fairness.

Concerns Regarding the Justice System

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

For many years now people in our country and province have been critical of the justice system, and of the courts in particular. The court system is adversarial, pits one person against another and where there are two sides there must be a winner and a loser.

Other criticisms and concerns:

- Victims have concerns about not being part of the process and sometimes feel like they are on trial instead of the person who has committed the crime. This has been particularly true for women who are victims of abuse and violence. The system is often very confusing and overwhelming.
- Many people think the way the justice system operates keeps people in the system rather than encouraging them to stop committing crimes.
- Young people who commit crimes often have deeper needs that are not being met. Many feel the justice system trains them to become better at committing a crime rather than meeting the deeper needs.
- The length of time it takes for cases to move through the courts is another criticism often heard about our current justice system. Sometimes it takes years to have a case settled. If you are a separated woman waiting for your share of jointly owned property, this can cause a lot of hardship.
- Another concern is the cost of the system. In criminal law this includes not only the individual cost of a lawyer but the costs of police, courts and jails. In civil law you may have a good case but it may cost more to bring the case to court than you would receive if successful.
- Many women believe that their reality is not reflected in the laws and in the courtrooms. One example in divorce law is that if you want custody of your children the court will look at how willing you are to have the father see them even if he has not shown any interest in seeing them.

Many things could be done better:

- The justice system needs to have more of a balance between the recognition of the victim and their needs and the rights of the person charged.
- Family law has to take into account the power imbalance and abuse many women experience at the hands of their partners. The effect this has on the children has to be considered when making decisions about custody and access.
- Access to Legal Aid lawyers is very necessary but not always available. Legal Aid must be given adequate funds to meet the need for their services.
- Cases need to be dealt with more quickly by the courts in order to avoid having to wait months or years for a case to go to court.

Alternative Measures

As stated in the Introduction to this handbook there is a growing trend towards exploring alternatives to and within the traditional justice system. Alternative measures is one “within” the justice system alternative.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Alternative Measures refer to formal programs, other than court proceedings. They may come into play before a charge is laid against a person or after the charge has been laid. Alternative Measures Programs are designed to balance society's right to protection with the needs of the person in conflict with the law. Alternative measures often include some form of diversion, a way of pointing offenders in a different direction than the court. The main reason for Alternative measures is to give the justice system a way of dealing with first time offenders that will hopefully stop them from committing future offences. Alternative measures can include community volunteer work, attending a group such as anger management or a meeting between an offender and victim in mediation.

In Newfoundland and Labrador we have had a Youth Diversion Program for over twenty years. In this program the successful completion of an agreement keeps the offender out of court. The Youth Diversion Program is described in Section 4. Diversion includes:

- police having a choice not to lay charges
- informal police warnings
- informal police referrals to community based recreation services
- informal police referrals to community based individual or family intervention services
- formal referrals to authorized alternative measures programs

Caution

There is a danger that victims' rights will not be protected or taken seriously when the police have a choice about whether or not to give an informal warning or to lay a charge. The police have a lot of power in this situation. For example, dating violence is an increasing problem for young women. It is a gender issue and we must not downplay it. By using diversion with this offence, we are sending the message that dating violence is not an issue that demands serious attention.

At this point we do not have an **Adult Alternative Measures Program** in this province. Elsewhere in Canada, such programs offer adult offenders alternatives to being charged with an offence and going through the formal court system. The alternatives include programs such as victim offender mediation.

There have been other changes "within" the justice system that affect adults who have committed crimes. They should not be confused with Alternative measures which are alternatives to being charged and going to the formal justice system, that is, court. **Alternatives to prison** are implemented after the person has been convicted of a crime.

The alternatives to prison include a spectrum of punishments such as:

- conditional sentencing – where a person is sentenced to serve their time in the community rather than in prison.
- suspended sentence – where a suspended sentence is given and the person is placed on probation and if probation is breached, the suspended sentence can be revoked and another sentence can be imposed.
- community service – where a person is sentenced to provide a number of hours, weeks or months of service to a community agency. This is an attempt at paying back or settling a debt with the community.
- options like the electronic release program. Offenders are required to wear electronic

Caution

Women have seen alternatives to prison used as punishment for sexual assaults and for domestic violence. This is not good enough. This type of punishment says that these offences are not very serious since they don't warrant prison. This is especially true when the sentences are compared to those given for property offences, like break and entry, which seem to attract stiffer punishments.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

bracelets that are monitored. The offender is usually confined to a specific area such as their home. The bracelet lets the authorities know if they have moved outside the area.

This section has introduced some of the alternatives that have evolved within the traditional justice system. The next section elaborates on the major influences that impact on current alternatives and those that are being considered.

Section 3

Major Influences on Alternatives

Costs, alternative dispute resolution and restorative justice are the significant influences on the nature of the alternatives being developed.

- **Cost:** The cost of the legal system, both to individuals who are involved in actions in the legal system and to the country, are formidable. The cost of incarcerating people in prison is high - over 17 million dollars per year in Newfoundland and Labrador.
- **Alternative Dispute Resolution:** a continuum of problem solving processes seen as reducing cost and producing more satisfying resolutions and agreements.
- **Restorative Justice:** a way of looking at crime and conflict. When a program or policy is rooted in the restorative justice philosophy the dominant concerns are victim needs, community needs, and offender needs. Some programs are focused on one group's need while maintaining an interest in the other two groups' concerns. In other programs all three are well balanced. Because it is a philosophy or vision of how justice should serve victims, communities and offenders, restorative justice will influence the way a program or policy unfolds.

These latter two influences, that is ADR as a spectrum of collaborative problem solving processes and restorative justice as a vision or philosophy, overlap and appear to varying degrees in alternative options. Sometimes the alternative options are not influenced by either ADR or restorative justice and are driven primarily by cost saving. Sometimes ADR processes work from a restorative justice philosophy and sometimes they do not.

When we consider alternative programs it is important to be aware of the primary motivation and perspective supporting these alternatives.

- For some programs the major impetus is to save money, de-congest the court system or begin intervention with the lowest form of social control.
- For some other programs the interest is in meeting victim needs more effectively.
- Still others want to support offenders returning to communities.
- Some other programs are primarily interested in a process where the people who share the problem come up with the agreement themselves or find a satisfactory way to move forward.

These perspectives affect the design of the alternative program. This handbook suggests how the program design for alternative programs can be made more woman positive.

Restorative Justice

Restorative justice is not a distinct model or system of law. Sometimes it is described as a philosophy and other times as a vision. This makes it difficult to understand. In many respects it is like choosing to look at conflict, crime and community through a particular lens - a lens that keeps in mind the needs of the victim, the community

Research Framework for a Review of Community Justice in Yukon

Community Justice – Gender

and the offender. Restorative justice encourages dialogue and responsibility for past behavior while focusing on future problem solving and an understanding of the obligations created by the offence. Restorative justice views crime as a violation of one person by another, not simply a breaking of the law.

Restorative justice is based on the following assumptions:

- victims often need an opportunity to speak about their feelings.
- victims need to have power restored to them that has been taken away by the experience of an offence.
- victims need recognition of their pain and suffering.
- victims need to understand the offender's motivation for committing crime.
- offenders often feel the need to make amends.
- offenders often need to have a way back into communities so they do not forever remain outcasts.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

There are different kinds of programs based on restorative justice. Most programs in Canada deal with minor property offences while some deal with more serious crimes like assault.

Community Justice Forums are an alternative measures program based in the restorative justice way of thinking. Both the victim and the offender are asked if they want to participate. If the offender is willing to accept responsibility for the offending behaviour/action then this alternative to the court can be used. Community Justice Forums are used extensively in other provinces and territories in Canada. They are primarily motivated by an emphasis on offender accountability to community and are believed to effectively reduce recidivism.

The **Sentencing Circles** of aboriginal communities reflect core restorative justice principles. They involve the victim, demand that offenders accept responsibility for their actions, decide on ways to repair the harm done and provide an opportunity for reintegration back to the community. Sentencing Circles generally occur after the offender has been to court and has been convicted. Instead of the judge giving a sentence, the offender meets with members of the community and they decide how best he can make amends.

Some restorative justice programs focus on healing, reconciliation or victims' taking power back. In these situations the meeting of victim and offender takes place after the offender has been dealt with by the formal justice system, the courts. The offender may even be in prison. Usually these meetings happen because the victim has made the request. The victim likely feels this is an important step to getting on with her life and not letting the offender or the crime continue to influence her in such a big way.

Those who recommend restorative justice believe it encourages dialogue, a way of talking that helps people understand each other. It encourages the offender to take responsibility for past behaviour and challenges people to focus on future problem solving. In doing these things it helps create an understanding of the obligations created by the offence, how one might begin to make things right with the victim and the community. Community healing is an important part of this way of thinking. Restorative justice views crime as a violation of one person by another, not simply as a breaking of the law.

Caution

Women who are critical of programs which use restorative justice principles see a number of pitfalls. They are concerned that the process will result in the “decriminalization” of criminal acts. They fear that the offences directed to these programs will be those that they have fought long and hard to have acknowledged by the police and courts – such as wife assault, criminal harassment and uttering threats. They question whether proper steps are taken for the safety of the victims and whether the victims are pressured – subtly or otherwise – to take part. Most serious of all is the apprehension that the process will support and sustain power imbalances between the victim and offender.

Alternative Dispute Resolution

Alternative Dispute Resolution, or ADR as it is often called, is a term that includes a number of different approaches for resolving disputes. “Alternative” refers to resolving disputes without bringing them before the court.

In ADR, the people with the problem name the issues that need to be discussed and work at creating a resolution. They have more control over matters than if a lawyer was negotiating for them or if a judge was making a decision about their problems.

Some ADR programs are based in the restorative justice way of thinking. These programs are concerned about participants' reaching an understanding of the others' point of view and experience. There is an emphasis on the relationship between the people involved and a belief that the victim, community and offender must be involved in order to create an opportunity to “make things right”.

Other ADR programs do not have this concern. These programs focus on problem solving and reaching an agreement in an efficient and low cost manner. Disputes between businesses or between a client and an insurance company might fit into this category.

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

ADR includes a number of different processes that go from very informal problem solving between people to a more formal arbitration. In all situations the people involved in the dispute choose whether or not they will accept the plan or agreement.

As you move along the ADR spectrum the people with the problem give over the control of the process and the way the issues are named to the third party. For example, if two people have a problem and they work it out by themselves they have total control of the process. If they need a mediator to help them, the mediator is in charge of the process, but the people with the problem still come up with the solutions. If an arbitrator is involved, then the final decision is left to the arbitrator and the people with the problem no longer have control over the final result. The kind of ADR process used depends on the kind of conflict. We describe six types of ADR below.

Interpersonal Conflict Resolution or Interest Based Negotiation: disputing parties agree to solve their problems by talking about their concerns face to face and working together to find a resolution that is mutually acceptable. It is in this form of conflict resolution that the disputants maintain the greatest degree of control. This is in essence interest based negotiation.

Conciliation: a conciliator is a third party that encourages disputing parties to solve their problem. For example he/she may make suggestions on how to approach the other party to the conflict, help the person understand her or his underlying interests, and/or provide shuttle diplomacy (act as a go- between).

Mediation: mediation is a voluntary, cooperative problem-solving process in which a person acceptable to the disputing parties assists them in clearly defining the issues in dispute and helps them work towards a resolution that is mutually acceptable. In mediation, disputants are no longer in control of the process itself, but maintain responsibility for the resolution of their conflict. Mediation can take place with or without the assistance of lawyers.

Facilitation: Facilitation is a group process whereby the leader (s), often called a facilitator, leads a group through a process that encourages dialogue, understanding and promotes group problem solving and decision making. Family Group Decision Making, Community Justice Forums and Sentencing circles are examples of facilitation.

Arbitration: an arbitrator is a person appointed by two disputing parties to settle their dispute. In arbitration, the third party makes a judgement after hearing both sides of the dispute. Disputants no longer have decision making power.

Court annexed ADR: when one or more processes such as mediation, early neutral evaluation, mini trials and arbitration are incorporated directly into the court process.

In suitable cases court annexed ADR permits the parties to pursue these processes voluntarily. In the absence of the parties' agreement, they could be required to pursue them before returning to the court. At this point court annexed ADR is not widely available in Newfoundland and Labrador.

Concerns regarding ADR

Many advocacy groups are concerned about the implications of community based alternative dispute resolution programs. Those working towards women's equality share these concerns.

- Will ADR mean that government is not taking the full responsibility for people's rights that are protected by law?
- If communities become involved in providing alternative services, will there be adequate resources and support services? For example will women have timely access to legal aid lawyers to ensure the agreements they reach in mediation are fair and that they are not giving away rights?

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

- Will there be adequate assessment of the cases to ensure that the standards of the program are maintained or will cost cuts continue to take away support services?
- Is the government interested in ADR because ADR is better for people and communities or is the government interested because it will save money?

Mediation

Mediation is only one of the alternative dispute processes but it is the one most people will identify with ADR. It is used in many different situations as a useful problem solving process and is sometimes based in the restorative justice way of thinking. This handbook includes a significant elaboration on Mediation because it can be used in many different ways and for different purposes.

What is Mediation?

Mediation is a cooperative problem solving process. The mediator, a person acceptable to the disputing parties, helps them move through a process. During the mediation they clearly define the issues and work towards a solution that is acceptable to them.

The following overview illustrates the various standpoints or essential understandings of the premise of mediation. Given these differences, approaches and terminology might have different meanings or intentions in different contexts.

Bush and Folger (1996) suggest there are four diverging views that can be best illustrated by describing the story of the development of the particular kind of mediation.

Satisfaction story: Mediation is a tool to reduce court congestion and provide “higher quality” justice in individual cases. Because it is flexible, informal, and based on consensus, mediation can open up the full dimensions of the problems facing the parties. Mediation is not limited by legal categories or rules and can help reframe a contentious dispute as a mutual problem. It can thereby produce creative, “win-win” outcomes that can reach beyond formal rights to solve problems and satisfy the parties’ needs in a particular situation.

Social justice story: Mediation is a vehicle for organizing people and communities to obtain fairer treatment. Unaffiliated individuals are especially subject to exploitation and effective community organization can limit such exploitation and create more social justice. Because of its capacity for reframing issues and focussing on common interests, mediation can help individuals perceive a larger context in which they face a common enemy. Mediation can help strengthen the weak by helping to establish alliances among them.

Oppression story: Mediation is a covert means of social control and oppression. Because it is informal and depends on mutual approval of the process and hence the absence of both procedural and substantive rules, mediation can magnify power imbalances and open the door to coercion and manipulation by the stronger party. Mediator “neutrality” excuses the mediator from preventing this.

Transformation story: Mediation is a way to foster qualitative transformation of human interaction. Because it is informal and consensual, mediation can allow parties to define problems and goals in their own terms, thus validating the importance of those problems and goals and empowering participants who have a greater sense of self respect, self reliance and self confidence.

Caution

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

When is mediation used?

By definition mediation is used only when the parties voluntarily agree to meet to try and resolve differences. It is used in many different situations.

- We often hear about mediators being used to settle labour-management disputes.
- An insurance company may hire a mediator to help resolve a claim.
- Divorcing or separating couples trying to resolve custody, access, financial support and division of property may use mediation as a mutual problem solving process.
- Families wanting to address problems between family members such as parents and teens may chose mediation to help them.
- It can be helpful for community disputes or problems between neighbours and friends.
- Some employers will offer mediation to solve disputes between co-workers in the workplace.

There are serious concerns about mediation being used as a problem solving process when an imbalance of power and control exists. This is particularly true in situations of family violence and child custody cases. The face to face meeting provides an opportunity to continue the power and control dynamic of abusive relationships.

Mediation is also used in the criminal justice system as an option under alternative measures. Youth Diversion workers may feel it is appropriate for the young offender to meet the victim of the crime. Sometimes the victim is willing to state what they need from the offender. Victim offender mediation is not based on the assumption that both are contributing to the conflict.

Family Mediation

Caution

Research Framework for a Review of Community Justice in Yukon
Community Justice – Gender

Family mediation generally deals with issues that are subject to family law in the court system. Advocates of mediation stress that problems are best solved within the framework of the family unit. They say the family is capable of solving its own problems and this is a better choice than going to court.

Family Mediation Canada defines family mediation as a non-adversarial, cooperative decision making process in which a qualified and impartial third party, “the mediator”, attempts to help family members resolve disputes by agreement. The resolution is to be voluntary and based upon sufficient information and advice for each party. The goal of family mediation is a fair and workable agreement, not a settlement at any cost.

In St. John’s, couples who are divorcing or separating and sorting out issues of custody, access and financial matters can obtain mediation services from the Unified Family Court. The program is explained in greater detail in Section 4.

What can be mediated?

All matters arising out of the breakdown of a relationship and which would usually be negotiated by lawyers or settled by a court can be the subject of family mediation. These include custody, access, division of property, child and spousal support. However, many programs do not mediate property or financial issues without safeguards to ensure complete financial disclosure.

Mediation can trivialize family law issues by letting them be resolved in an informal way, with settlements kept private and away from the public record. Keeping family law issues in the public record is important because it increases the chance of fairness and makes sure women in particular get whatever they are entitled to by law. This is especially important for the division of property and other financial matters such as spousal support payments.

One of the fundamental values of mediation is that it is a voluntary process. Many women have felt that family mediation is forced upon them even when violence has existed in the relationship. They feel pressured – both directly and subtly – into participating. The explicit pressure happens because they need to maintain a “friendly parent” role in order to be sure to have custody and/or access to their children. On a more subtle level, it happens when mediation is unconditionally encouraged and presented as a better alternative than court.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

What are some features of family mediation?

Although family mediation shares many of the same characteristics as other forms of mediation it does have some unique considerations. A review of the descriptions of four different programs in *Family Mediation in Canada: Implications for Women's Equality* reveals some of these. It also demonstrates the range of available programs.

Access to legal counsel: Most programs give consideration to how best to integrate legal counsel with the mediation process. Some will only go as far as ensuring availability of referral information; others will strongly encourage the parties to have legal advice throughout the process or only before signing a final agreement; some will welcome the parties' lawyers to sit in during the mediation discussions; and some will not proceed to mediate financial issues unless both parties have a lawyer.

Screening mechanisms: Many, but not all family mediation services agree that mediation is not appropriate where a power imbalance or a history of abuse is detectable. In these circumstances, the St. John's Unified Family Court will exercise sensitivity but mediation is not entirely ruled out. A variety of screening tools have been developed and are used to make this determination. The training for and the screening process itself is different from program to program.

Measures to protect the safety of a client: Again, the mediation service may have established practices to minimize risk of physical or psychological harm to the mediating parties. These can include termination of the process by the mediator, different arrival and departure times and setting well defined ground rules about contact.

Confidentiality: Generally, family mediation proceeds with the understanding that it is a confidential process. If the conflict ends up in court, the discussions held in mediation are not usually revealed. Most mediators would make parties aware of this aspect of the process before proceeding.

Victim Offender Mediation

Victim offender mediation is a process which provides interested victims the opportunity to meet the offender in a safe and structured setting. The goal is to hold offenders directly accountable for their behaviour while providing important assistance and compensation to the victim. Victim offender mediation is used mostly for property crimes and is generally based in a restorative justice program.

The Victim:

- must be willing to meet with the offender.
- has an opportunity to talk about the impact of the crime on them.
- can ask the offender questions they may have.
- can also state what they want to see happen as compensation.

The Offender:

- has to hear about the impact of what they did.
- can take responsibility for their behaviour.
- can make a plan for how they can make amends.

The Mediator:

- creates a safe place for the victim to meet with the offender.
- helps the victim and offender move through a process of discussing the offence.

When are cases referred?

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

In some programs cases are referred to victim offender mediation as part of an alternative measures program. In this situation a person is charged with a crime and the case is diverted from the court and trial process to a diversion program.

In other programs cases are sent to mediation after the offender has entered a guilty plea in the court. In some programs a victim offender meeting is held after the person has served time in prison. These are often called victim offender meetings or reconciliation.

How is victim offender mediation different from other mediation?

In victim offender mediation the parties are no longer called “disputants” because one has clearly committed a criminal offence and admitted doing so. The other is clearly the victim. The issue of guilt or innocence is not mediated and victims are not expected to compromise and settle for less than they need to address their losses.

Victim offender mediation aims to promote understanding through dialogue. It creates an opportunity for victims to get power back from the situation by addressing their emotional needs and need for information. The aim is also for the offender to take responsibility for their actions - to be held accountable, to develop empathy and to make amends in so far as is possible. It is hoped this will lead to less criminal behaviour in future.

Most victim offender mediation results in a signed agreement. When victim offender mediation is used as an alternative to court and no agreement is reached, the matter returns to the court.

When is it appropriate?

Victim offender mediation is not appropriate for all crimes. In all cases it must be presented as a voluntary choice to the victim. It is appropriate when the offender accepts responsibility.

What have we learned from research about victim offender mediation?

The following research comments come from Dr. Mark Umbreit, Centre for Restorative Justice and Mediation, School of Social Work, University of Minnesota (October 1996).

- Victims of crime who meet with their offender are far more likely to be satisfied with the justice system response to their case than similar victims who go through the normal court process.
- After meeting the offender, victims are significantly less fearful of being victimized.
- Offenders who meet their victim and are held directly accountable for their behaviour are far more likely to successfully complete their restitution obligation.

Caution
Critics say that not enough research has been done about how mediation affects people, the justice system and communities. Advocates for women’s rights say that long term monitoring and evaluation must be completed. No research studies have looked at the long term impact of the service. None of the research known to the authors has included a gender inclusive analysis or women’s equality perspective.

ADR in an Environment of Systemic Inequality

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

Women can be involved in ADR in many different roles: as victim, as offender, as neighbour, as mother of a young offender, and as a separating parent. Concerns about ADR fall into five general areas:

- **The inability of the programs to identify and screen out women who have experienced violence or abuse and situations where there is unequal power and control between the parties.** If the woman is intimidated or does not feel equal in the relationship she may not be able to negotiate a fair agreement. Most of the woman positive concerns about ADR are with family mediation and with victim offender mediation in situations where violence and intimidation may be part of the relationship.
- **The capacity of these services to protect women's rights and entitlements, achieved after many years of fighting for these rights (such as the Matrimonial Property Act).** ADR is usually a private affair and not open to the public view. This can be a good thing. On the other hand it can mean that a woman's rights may not be protected. She may walk away with less than is her right to receive. This could happen because the emphasis is on the two people involved sharing the problem - on equal problem solving. On the surface that sounds fair, however gender analysis reveals that women and men do not necessarily start from the same place (See Section 1 of this handbook).
- **The lack of mediator regulatory and accountability mechanisms.** While there is an increase in alternative dispute resolution programs and specifically family mediation programs, we do not have laws or regulations which demand that mediators have credentials. This raises concerns about quality and consistency of the service.
- **The downloading of government responsibilities to communities without adequate support services.** Many programs use volunteer mediators who have been trained and are willing to do this work. Family mediation programs that are part of the court system generally use paid staff. Often volunteer mediators help individuals resolve problems and represent community commitment and involvement. This in turn keeps the cost of the ADR programs to a minimum. The costs of the legal systems in our country (courts, prisons, correctional services) are very high so this is an obvious benefit. On the other hand it is very easy for governments to take this good will and expect that volunteer programs will provide services that should be publicly funded. This is not an idle concern.
- **The impact of the privatization of government responsibility.** Over the past 10 years the government has been giving work previously done by government employees to private organizations. The postal services and Canadian parks are two such examples. This privatization, or giving work that was done by government employees to private companies, has also happened to family mediation services. While the mediators are paid staff, the work is awarded on contract to private firms. This means that making a profit will almost certainly be a higher priority than providing service.

Specific concerns about women participating in family mediation

- Does the woman feel pressured into trying mediation by her partner, or by the court? Is this a truly voluntary process?
- Is there a process through which women become informed about their rights, entitlements and the advantages and disadvantages of dispute resolution processes?
- Has the relationship been screened so as to detect a power imbalance that would affect the agreement? Has violence and abuse been ruled out?
- If the courts suggest parent education programs prior to divorce - is mediation presented in an unbiased manner or is it assumed that mediation is the best way to proceed with family matters regardless of the situation?
- In mediation for divorcing and separating couples, how is full disclosure of financial statements

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- ensured so that a woman can bargain for a fair share?
- Does the woman also have access to a lawyer before she agrees to mediation? Will the lawyer be available during the mediation and after to check the agreement to make sure she is informed of rights and entitlements and that the agreement is fair?
 - Does the fact that the courts are so slow pressure the women to choose mediation?
 - If a woman chooses to not continue with the mediation will that affect how the judge may look at the case?
 - Are the mediator's responsibilities clear? For example is the mediator responsible for making sure the agreement is fair? That the process is both fair and safe?
 - Are sufficient records kept such that we can understand the long term impact, success and cost of ADR programs?
 - How is the program being monitored and evaluated? Will the records kept add to our understanding of the issues that are of concern to women?

These last three pages incorporate views stated in S. A. Goundry et al, 1998, [Family Mediation in Canada: A Review of the Literature and Analysis of Data from Four Publicly Funded Canadian Mediation Programs](#)

Programs in Newfoundland and Labrador

Section 4

In the province of Newfoundland and Labrador, we have an alternative measures program for youth but not for adults.

Youth Diversion Program

The only long standing victim offender program in this province is the Youth Diversion Program. Youth Diversion is an alternative measures program within Community Corrections. Alternative measures are formalized community-based programs, which provide a direct alternative to judicial proceedings for some young persons. Referrals to alternative measures will normally be of a pre-charge nature whereby no charge is laid in court. The youth is alleged to have committed a crime, has not been convicted in court, but has usually admitted the offence. If the alternative measures agreement is not completed the young person is then charged in court.

Philosophy

Youth crime has its roots in family, community and in the make up of the young person. Young people and their families need to be provided with opportunities to address underlying causes of the youth's illegal behaviour. Whenever possible they also need to receive services in their home communities that will help them change their behaviour. The family and community must be part of the plan to have the young person take responsibility for their misdeeds and to support them in the future.

The model in this province is one of volunteer community management through 30 Youth Justice Committees. These Youth Justice Committees work in association with Regional Health and Community Services Boards to implement an approved provincial standard as regulated by the Department of Health and Community Services.

Diversion is an alternative to the court for many young persons between their 12th and 18th birthdays accused of a first time offence. The program generally allows the offender and the victim an opportunity to meet, in an attempt to reach a mutually agreeable solution. The youth has a positive and meaningful chance to take responsibility for their actions through a mediation process which actively integrates the concerns of the victim.

Diversion educates young offenders by helping the young person accept responsibility for the alleged offence and making him or her aware of the impact of the alleged offence.

What are the first steps?

The police are informed when a crime has been committed by a young person. They conduct an investigation, compile a report and send it to the Crown Attorney. The Crown Attorney reviews the case and decides whether or not to divert

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

the case from the courts to an alternative measures program - Youth Diversion. The Youth Justice Committee then decides whether or not the case is suitable for the program based on the criteria.

What conditions must be met for a young person to participate in diversion?

- they must admit responsibility for the alleged offence.
- there must be sufficient evidence to conclude that the offence was committed by the young person.
- the parties involved must have a clear understanding of the diversion program, and the young person must voluntarily agree to participate.

Who is involved?

A diversion worker, employed by Health and Community Services meets with the young person to explain the program. The young person's parents may be with them for the interview. If the young person agrees to participate in the program, he/she will meet with a trained volunteer mediator and sometimes with the victim of the crime. During the meeting they will try to come up with an agreement. The young person can be accompanied by his/her parents, a lawyer or a friend.

What is a Diversion Contract?

The Diversion Contract is a written document which is designed to address the harm done and restore harmony between the parties. The terms of the contract may include any or all of the following:

- a verbal or written apology.
- work for a community agency/organization.
- work for the victim.
- attendance at educational sessions.
- other terms felt to be suitable by the victim and the offender.

For information about Youth Diversion contact your local Health and Community Services Regional Office or Robin Janes, the Provincial Coordinator for Alternative Measures (709-729-5164).

Unified Family Court

The Unified Family Court (UFC) was initially established in St. John's in 1979. It was the first of its kind in Canada. It provides services for all family matters to everyone living on the Avalon and Bonavista Peninsulas.

It is a unique court because it offers a number of services in addition to the ones we associate with court. These include mediation services, preparation of home assessments, provision of supervised access, parent education programs, and support groups for children.

UFC Mediation Services

Mediators employed by Unified Family Court provide free mediation services to people living within the UFC jurisdiction. Most mediation deals with custody and access disputes. Comprehensive mediation is also available for couples who request it.

Pre-mediation Process

Before a mediation proceeds the Mediation Service schedules individual pre-mediation sessions. These sessions are intended to educate the parties about mediation, assess the situation and level of conflict, the history and nature of the abuse and/or intimidation between the parties, power imbalances and the parties' capacity, willingness and readiness to proceed with mediation.

Types of Issues appropriate for family mediation:

Issues to be mediated can include:

- with whom should the children live?
- how much time should the children spend with each parent?
- how will decisions about the children's education, health and other matters be decided?
- how should property be divided?
- how much support should be paid?

Philosophy

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

The court “believes in the ability of parents to remain empowered in the family and to make decisions both short-term and long-term which address the best interests of their children.” Mediation and other methods (pre-trial and settlement conferences) used to achieve agreements are strongly encouraged by the court. In situations of family violence, sensitivity is exercised but use of mediation is not entirely ruled out.

How do you sign up for the Mediation Service?

A person who wants to use the UFC mediation service can call the Court and make an appointment to see one of the mediators. Referrals also come from lawyers, social workers, other professionals and the court itself.

What can you expect in the mediation process?

At the beginning of the mediation process, parents can expect to meet separately with the mediator. After that, several joint sessions with the mediator may be required to make the necessary decisions about the children and/or the financial matters. The mediator acts as a facilitator and assists the parents in this decision making process.

Sometimes the children and/or new partners are involved in the sessions. This would be done only if it was considered appropriate.

Usually the final decisions made about these matters are written in a mediation agreement. The parents are encouraged to have a lawyer review the agreement before signing it.

What is the status of the agreement reached by mediation?

The agreement reached by the parents can be incorporated into their separation agreement or divorce settlement. Until changed, a signed written agreement is a legally binding agreement.

Is the mediation process confidential?

Although full disclosure is required regarding the issues of custody, access, property division and finances, what is discussed in mediation is usually treated as confidential. Mediators are obligated by law to report disclosure of child abuse to the proper authorities. Mediators will assist the individual in obtaining further assistance when disclosure of domestic violence arises. The confidentiality of the mediation process should be discussed with the mediator at the first meeting.

For information on the services provided by Unified Family Court call 709- 729-2258.

Community Mediation Services

Since 1983 there has been interest in a community based mediation service for adults in St. John’s. Community Mediation Services(CMS) was established in 1995 as a charitable organization with a voluntary Board of Directors. Since that time CMS has been providing services to St. John’s and other areas of the province.

Philosophy

CMS promotes peace and restorative justice within the community by empowering people to settle disputes using peaceful resolution processes. The organization is community based and rooted in transformative and social justice principles.

What services are provided?

With restorative justice principles forming the foundation of its work, mediation and other conflict resolution processes are offered to organizations and individuals through a co-mediation model. In St. John’s, the group has been taking referrals from the Community Policing Program, Royal Newfoundland Constabulary. If the strategy is adopted by the Department of Justice, CMS hopes to provide victim offender mediation to certain cases diverted from the court. A similar program is being considered in the Happy Valley Goose Bay area. In addition, mediation is available for people who wish to resolve disputes within community groups, organizations, workplaces and in situations involving housing issues.

Community Mediation Services offers training in Interpersonal Conflict Resolution, and Mediation Skills Levels One and Two at different locations in the province. While some of the services are provided free of charge, other programs are funded by government or other agencies.

Who are the Mediators?

Individuals with an interest in conflict resolution provide CMS services and they come from varied occupational and personal backgrounds. All mediators are volunteers and must meet qualifications established by CMS. These include successful completion of 64 hours of training, apprenticeship involving six to eight mediation sessions with experienced mediators and continuing evaluation.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

For more information call 709-729-4169

Glossary

arbitration: where a person is appointed by two disputing parties to settle their dispute.

alternative dispute resolution: an umbrella term used to refer to a variety of ways of dealing with disputes in which the people with the problem have varying degrees of control

over the naming of the issues and the process.

alternative measures: refers to formalised programs other than court proceedings which can be used before or after a criminal charge is laid.

conciliation: a conciliator is a third party who encourages and assists disputing parties to solve their problem by making suggestions, helping them understand their underlying interests, and acting as a go-between.

conflict resolution: is a very broad term referring to many forms of dispute resolution.

court-annexed ADR: processes such as mediation, early neutral evaluation, mini trials and arbitration which are incorporated directly into the court process.

custody/access assessment: custody and access assessments are not dispute resolution mechanisms but are reports, generally prepared by a social worker or family counsellor, which assist the judge in determining custody and access issues.

diversion: the process of diverting youth or adults who commit acts that could be considered criminal away from the traditional court system.

family mediation: generally considered to be mediation dealing with issues that are subject to family law in the court system.

gender equality: focuses on achieving equitable outcomes for women and men rather than treating women and men as if they are the same.

gender equity: is the process of being fair to women by compensating for historical and social disadvantages that prevent women from operating on a level playing field.

gender inclusive analysis: a tool and approach that can be used to correct biases that impact on women. It recognizes that to the extent that a policy has an impact on people, it will very likely have different impacts on women and men because they have different roles, expectations and life experiences.

gender neutral analysis: assumes that all people are affected by policies/programs in the same way or that there is a neutral impact on people as a result of a policy/program.

gender vs sex: Sex refers to the biological differences between men and women. Gender refers to the socially constructed roles and responsibilities of women and men.

interpersonal conflict resolution: when disputing parties agree to solve their problems by talking about their concerns face to face and working together to find a resolution that is mutually acceptable.

litigation or court adjudication: Most people refer to this as "going to court". A judge settles the dispute after hearing both sides, usually through their lawyers.

mediation: a voluntary problem-solving process in which a third party assists the disputing parties towards a resolution that is mutually acceptable to them.

restorative justice: a philosophical framework or way of thinking about crime and conflict rather than a distinct model or particular process. It is usually focussed on the needs of the person harmed.

victim/offender mediation: mediation which provides the victim of crime an opportunity to meet the offender in a safe and structured setting, to hold the offender directly accountable and to address the victim's needs.

Bibliography

- Bush, Robert A. Baruch and Folger, Joseph P. (1994). *The promise of mediation: Responding to conflict through empowerment and recognition*. Jossey-Bass Publishers, San Francisco.
- Day, S. and Brodsky, G. (1998). *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs*. Status of Women Canada.
- Department of Justice Canada (1998). *Diversity and Justice: Gender Perspectives. A guide to gender equality analysis*. Ottawa.
- Department of Justice Canada (1998). *Resolving Disputes: Think About Your Options*. Ottawa
- Government of Newfoundland and Labrador (June 1996). *Strategic Social Plan Consultation Paper*. St. John's: Government of Newfoundland and Labrador.
- Goundry, S.A. et al(1998). *Family Mediation in Canada: Implications for Women's Equality*. Status of Women Canada.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

Hebert, Cheryl (1998). guidelines for gender inclusive analysis: an integrated approach to policy/program development. Women's Policy Office , Government of Newfoundland and Labrador.

Newfoundland Continuing Legal Education (1996). Mediation: The Alternative for Dispute Resolution Workshop Materials. Canadian Bar Association and the Law Society of Newfoundland

Provincial Strategy Against Violence (1998). Understanding Violence Against Women: A Peer Education Manual for Preventing Violence Against Women in Newfoundland and Labrador. Women's Policy Office, Government of Newfoundland and Labrador

Status of Women Canada (March 1996). Gender Based Analysis: A Guide for Policy Making. Ottawa: Status of Women Canada.

5.14. Aboriginal Women In Canada – 1998 ²⁷

EXECUTIVE SUMMARY

Background

In May 1997, Status of Women Canada sought to undertake a review of the literature on current and emerging policy issues as they affect, and are of concern to, Canadian Aboriginal women. The results of this work are contained in this document. Included is an annotated bibliography of relevant material published over the last 10 years (i.e., 1986 to 1997), along with an in-depth literature review and synthesis. These in turn serve as the basis for:

the identification of those areas in greatest need of further research and documentation; and

the development of an integrated policy agenda in which Aboriginal women's role as key change agents is highlighted, documented and supported.

Findings

Although their numbers are relatively small in an absolute sense, Aboriginal women constitute a vibrant and highly diverse segment of Canada's population, who share a common legacy of marginalization and oppression. The Canadian state, Canadian society in general and the Aboriginal male leadership have paid scant attention to their particular needs and concerns. Given concrete expression in a wide range of social, demographic and economic indicators, this marginalization has in the last 10 to 15 years garnered increasing attention within the country's policy and research communities. A growing literature focused on the exploration of Aboriginal women's lives and cultural contexts has provided a means of addressing the myriad challenges which they face during the course of their day-to-day lives.

Significantly, these efforts have led to the publication of a number of incisive and highly original studies on particular facets of Aboriginal women's lives. Most notably, work focuses on their involvement in economic development initiatives, political participation and leadership activities, and the "political economy of everyday life". However, it must be acknowledged that this literature is also characterized by several serious flaws.

Limited set of issues addressed: Despite the heterogeneous nature of the problems and challenges facing Canadian Aboriginal women, the literature continues to be dominated by an extremely limited range of issues, specifically matters touching on health and healing, violence and abuse, and the criminal justice system.

Some groups of Aboriginal women ignored: At the same time as Inuit women and registered Indian women living on-reserve attract substantial research attention, others, including Métis women, non-status Indian women and Aboriginal women with disabilities, remain seriously underrepresented within the existing research literature.

Narrow focus: Although much of the work undertaken on Aboriginal women makes some reference to the complex and multi-faceted nature of most, if not all, of the problems currently facing this population, little effort is made to

²⁷ Status of Women Canada, Madeleine Dion Stout and Gregory D. Kipling
Aboriginal Women In Canada: Strategic Research Directions For Policy Development, March 1998 <http://www.swc-cfc.gc.ca/publish/research/abwom-e.html>

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

follow up with analyses which transcend the narrow boundaries of the problem at hand. That is to say, there is a widespread tendency in the literature to eschew holistic approaches in favour of ones which consider only one policy field at a time.

Singular, negative orientation: With surprisingly few exceptions, work dealing with Aboriginal women has tended to be highly problem-focused, and it has pathologized these women's agency and realities. This in turn has allowed little room for an understanding of the real complexities at work, and has provided little insight into the strategies that work.

As a means of addressing these flaws, along with the gaps which exist in the literature in a more general sense, a number of specific recommendations for research and policy development have been developed.

- i. That the health status of Métis women be given priority, through the collection of baseline health data, along with the identification of the most pressing program and policy needs of this population.
- ii. That research related to Aboriginal women's health through the life-course be funded as a basis for the development of health programs and policies directed specifically toward Aboriginal girls and female elders.
- iii. That research attention be devoted to the problems facing Aboriginal women with disabilities, so programs will enhance their quality of life through improved service delivery and sensitized home communities.
- iv. That the barriers to Aboriginal women's educational endeavours be researched, and that appropriate policies and programs be put into place that would make their educational experience more relevant to their life goals and contexts.
- v. That priority be given to Aboriginal women's rural-urban migration patterns and the differential experiences of First Nations, Inuit and Métis female migrants.
- vi. That longitudinal studies be designed to monitor the workplace equity and anti-harassment measures which are of key concern to working Aboriginal women.
- vii. That a comprehensive, national study be undertaken to explore how Aboriginal women's economic development activities affect their families and communities.
- viii. That violence and abuse directed specifically toward elderly Aboriginal women and Aboriginal women with disabilities be studied.
- ix. That priority be given to the task of developing "family violence" programs which are specifically oriented toward Aboriginal elders and women with disabilities.
- x. That long-term research focus on the evaluation of existing Aboriginal "family violence" educational initiatives and treatment programs.
- xi. That national research be undertaken to examine the responsiveness of the criminal justice system to issues of "family violence", in order to bring about corrective action and to facilitate the dissemination of information about innovative "family violence" programs.
- xii. That funds be allocated to continue monitoring and evaluating responses to the recommendations of the *Report of the Task Force on Federally Sentenced Women* (Canada, 1990b) and other inquiries pertaining to the criminal justice system and its treatment of Aboriginal women.
- xiii. That research explore the role Aboriginal women traditionally held in the administration of justice in Aboriginal societies in order to provide a context for Aboriginal women's place within emerging Aboriginal justice systems.
- xiv. That national research examine the experiences of Métis, Inuit and First Nations women with "family violence", sexual abuse and criminal activity.
- xv. That research explore whether Aboriginal women involved in community politics and economic development activities provide positive role models for Aboriginal girls, and give other women in the community the incentive to seek political office or start their own business ventures.
- xvi. That funds be allocated to research local Aboriginal women's organizations and their role in galvanizing community development initiatives or community-centred political activities.
- xvii. That research be undertaken to examine the role community contexts play in encouraging and facilitating Aboriginal women's representation within communities' principal administrative and executive bodies.
- xviii. That research focus on self-government consultation with Inuit and Métis women, in particular, and Aboriginal women, in general.
- xix. That additional research be conducted on the likely impacts of all facets of self-government on all Aboriginal women, including the administration of justice and the transfer of control over health services delivery.
- xx. That research be undertaken to examine the policies of other national governments on matters related to Indigenous women and how these might bear upon policy development in Canada.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- xxi. That comparative studies of Indigenous women in Canada and elsewhere be undertaken as a foundation for international bridge building and collaboration among the various Indigenous women's organizations.

Conclusion

In light of these findings and the more general observation that Aboriginal women continue to be underrepresented or ignored within the policy literature on Aboriginal peoples, there is clearly substantial scope for corrective action. This is particularly the case in relation to the development of a policy research agenda that is truly responsive to the interests and priorities of Aboriginal women themselves. Expressed as a series of recommendations, an agenda for action is outlined below.

1. Given the truncated and/or narrow focus of much of the policy-oriented literature on Aboriginal women, it is recommended that holism in research be fostered. Projects and programs would then give explicit consideration to the interplay of all relevant policy fields within their analyses.
2. Given that past research has often focused on issues which are of questionable significance to many or most Aboriginal women during the course of their daily lives, it is recommended that a remedial consultative mechanism be put in place. This would ensure that the priorities of researchers and policy makers accurately reflect those of Aboriginal women themselves.
3. As a means of critiquing and/or lending credibility to the findings of research already undertaken with Aboriginal women, it is recommended that projects which seek to document the needs and assets of such women be funded. The use of scientifically credible methodologies would allow for this.
4. Given that the literature on Canadian Aboriginal women is dominated by case studies and snapshot surveys, it is recommended that priority be given to the development and implementation of longitudinal studies. Tracking key indicators pertaining to Aboriginal women over time is a research imperative.
5. As a means of correcting long-standing problems in the distribution and availability of research findings pertaining to Canadian Aboriginal women, it is recommended that mechanisms be devised and implemented which facilitate the collection and dissemination of such research on a country-wide scale. The creation of a national data base of research activities by or about Aboriginal women would accommodate this.
6. Given the salience of the household and the community as key sites of action in Aboriginal women's daily struggle to secure the economic and social well-being of their families, it is recommended that research contributing to policy makers' understanding of these contexts be funded. Policies and programs which support Aboriginal women as individuals would necessarily follow.
7. As a means of counterbalancing the traditional disregard shown by researchers and policy makers for the real differences which exist among and within different groups of Aboriginal women, it is recommended that in-depth and sustained attention be focused on the documentation of the particular problems and challenges facing (*inter alia*) the girl child, Aboriginal women with disabilities, Métis women, lesbian and elderly Aboriginal women, and urban Aboriginal women.
8. Given that relevant government structures seek to eliminate the attitudes and conditions which have contributed to Aboriginal women's marginalization from civil society, it is recommended that means of facilitating and supporting such women's integration be identified. In this way, their decision-making capacity, in all relevant political structures, from the level of the household to that of the international arena, would be cultivated, encouraged and disciplined.

5.15. Restorative Justice/Criminal Justice – Identifying Some Preliminary Questions, Issues/Concerns – 1998²⁸

- It is evident from even a cursory review of the literature on restorative justice that there is little attention to gender as analytical constructs.

²⁸ Goundry, Sandra A., Legal Consulting and Research Services, Restorative Justice and Criminal Justice, Reform in British Columbia – Identifying Some Preliminary Questions, Issues and Concerns, Prepared for: BC Association of Specialized Victim Assistance & Counseling Programs, 30 April, 1998

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- The terminology of ‘victims’, ‘community’, and ‘offenders’ are invariably used without any kind of accompanying gender analysis.
- Moreover, restorative justice is not discussed in the literature within a contextual analysis that recognizes the systemic violence and abuse that women/children live in this society.
- At the same time as some qualified support for these initiatives was expressed, there was a host of questions, issues and concerns raised, including:
 - the lack of critical research, analysis and evaluation on restorative justice and the attendant failure to expressly include gender/diversity/equality analyses in the formulation of policy
- There are a number of ways in which a gender or equality rights analysis might serve to illuminate some of the problems with restorative programs for offences involving violence against women.
- This is important because:
 - In the abstract, it is very difficult to unpack just what it is about these principles which contemplate the restoration of relationships, holding offenders accountable, and the involvement of the community in solutions that requires a measure of caution.
- For women attempting to separate from an abusive partner and/or who may report an assault by their present or ex-partner, the potential impact of these reform principles are doubly disconcerting given that the restorative model may cover both civil and criminal justice systems.
 - Consider their potential application in the context of a post-separation ‘wife’ assault.
 - A restorative approach to the crime of ‘wife’ assault might require the offender admit his guilt, apologize to the victim, work to repair the relationship and do some community service work to make amends to the community.
 - The same woman who was the victim of the assault in her civil case, would sit opposite her abuser as an equal party ready to negotiate the details of the separation and divorce – perhaps with the assistance of a trained negotiator.
 - Consider a sexual assault case that gets referred to a victim-offender reconciliation program
 - Even the title of the program speaks volumes of what the victim can expect the agenda to be and as a corollary, what is expected from the victim.
 - Numerous questions immediately come to mind.
 - For instance, what type of support is provided to the victim to assist her in making a decision to participate or not.
 - If she does participate, what kind of ongoing support can she depend on?
- Gender analysis of the criminal justice system also reveals that many offenses are disproportionately committed either by men or women.
 - The implications for female offenders of these initiatives may be significantly different from their male counterparts.
 - In addition, there is a need for an equality rights analysis of ‘alternative measures’ as provided for in the *Criminal Code* and particularly the phrases ‘not inconsistent with the protection of society’ and ‘appropriate having regard to the needs of the (offender) and the interests of society and of the victim’.
 - It is easy to see how some interpretations of these phrases could lead to the reprivatization of offences as a ‘family problem’, blame for sexual assault could be attributed back to the victim.

5.16. Diversity and Justice: Gender Perspectives: A Guide to Gender Equality Analysis, 1998 ²⁹

Background

²⁹ Diversity and Justice: Gender Perspectives: A Guide to Gender Equality Analysis, 1998 <http://canada.justice.gc.ca/en/dept/pub/guide/guide.htm>

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- In 1995, Canada presented its *Federal Plan for Gender Equality* to the Fourth United Nations World Conference on Women in Beijing. The Federal Plan includes a commitment that future legislation and policies will include an analysis of their potential for unequal impacts on women and men and a commitment to adopt strategies that advance gender equality.
- The adoption of the Federal Plan gave new impetus to ongoing work at the Department of Justice to improve the justice system's response to the needs and concerns of women. In 1996, the Department of Justice established a Gender Equality Initiative to formalize and strengthen these efforts. The next year, the Department adopted a Policy on Gender Equality Analysis, which requires that every Justice issue be analyzed for its impact on gender equality.
- The "Diversity and Justice: Gender Perspectives: A Guide to Gender Equality Analysis" is meant to establish a common understanding and framework for gender equality analysis. It has three parts.
 - The first part explains what gender equality analysis is and why it is important.
 - The second part of the Guide describes how to do gender equality analysis at different stages of policy and program development, the provision of legal advice, litigation and dispute resolution (including criminal prosecutions at the appeal level or interventions), research, evaluation, communications and legislative drafting.
 - The last part of the Guide consists of Appendices, which provide references and resources on gender equality issues.
- Gender equality analysis is one part of a more comprehensive diversity analysis that assesses the impact of laws, policies or programs on the full range of diverse groups in Canadian society: for example, Aboriginal people, persons with disabilities, lesbians and gays and ethnocultural communities.
 - The methods outlined in this Guide can be applied to diversity analysis to ensure effective and equitable laws, policies and programs for all

What Is Gender Equality Analysis?

- Gender equality analysis is a process to help identify and remedy problems of gender inequality that may arise in policy, programs and legislation.
- It is premised on an understanding of the continuing reality of women's inequality in Canadian society, and a recognition that legal principles and rules have historically been based on values and assumptions about appropriate gender roles that may restrict women's choices and actions.
 - The object of gender equality analysis is to replace those assumptions with a consideration of the specific situations of women in all facets of society, such as the labour market, the family and the community, and thus shape laws, policies, and programs that respond to women's needs and priorities.
- The analysis has three stages:
 - learning about the gender dimensions of the larger social, economic, political and familial context in which a specific law, policy or program operates;
 - using that information to analyse the actual or potential effects of a law, policy or program on women, and to uncover implicit stereotypes or invalid assumptions about gender roles;
 - looking for law, policy or program design options that respect and support women's safety, autonomy, well-being, and full participation in Canadian society.

Why does gender equality analysis focus on women?

- Given the historical and continuing reality of women's inequality, gender equality analysis is primarily aimed at illuminating and addressing the barriers that women continue to face in society.
- But the analysis can identify ways in which unquestioned assumptions and values embedded in our laws and policies limit men's choices and actions as well.
 - Some of the disadvantages that women experience — for example, disadvantage associated with race, ethnocultural background, poverty, or sexual abuse in childhood — are shared by many men.
 - And some men are challenging gender stereotypes by taking on traditionally "female" roles in the workplace and in the family.
 - For these reasons, laws and policies that explicitly take women's needs and priorities into account could better meet the needs and concerns of both women and men.

The Starting Point — Women's Inequality

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- From childhood to old age, women's and men's life experiences and circumstances differ.
 - o As the data below illustrate, while women experience some benefits over men associated with their sex or gender (for example, longevity), the general pattern of benefits and burdens encountered by women and men is one of relative social, economic and political disadvantage for women.
 - o The general disadvantages experienced by women may be compounded by other kinds of social inequality associated with characteristics such as race, ethnocultural heritage, poverty, disability, and sexual orientation.

Economic Disadvantage

- In 1995, 57% of all adults with incomes below Statistics Canada's Low Income Cut-offs (LICOs) were women.
 - o Low income is a more acute problem for some groups of women: for example, 72% of low-income Canadians aged 65 and over are women; 33% of Aboriginal women of all ages have low incomes; and women with disabilities at all ages have lower incomes than men with disabilities.
- Four out of five lone-parent families are headed by women.
 - o In 1993, 60% of female-headed lone parent families were classified as having low incomes.
 - o In comparison, 33% of lone-parent families headed by men, and 13% of two-parent families had incomes below the LICOs.
- In 1996, women's labour force participation rate was 57.6%, compared to 72.4% for men; women were 69.1% of part-time workers, and 49% of multiple job holders.
 - o The main reason women gave for part-time employment was lack of full-time jobs.
- The average earnings of employed women are substantially lower than those of men.
 - o In 1993, women employed on a full-time, full-year basis earned 72% of their male counterparts.

Violence Against Women

- One half of all Canadian women have experienced at least one incident of physical or sexual violence since the age of 16.
 - o Twenty-nine percent of women have experienced physical or sexual violence by a current or past marital partner.
- Only 6% of the women who stated that they had been sexually assaulted had reported the incident to the police.
 - o Twenty-six percent of those who had been physically assaulted by a partner had reported the assault to the police.
 - o Twenty-two percent of the women who reported violence had never told anyone else.
- Almost 75% of the violent attacks against women are by acquaintances or relatives, compared with 37% of violent attacks against men.

Family Roles and Responsibilities

- Women continue to have primary responsibility for household management and the care of family members.
 - o In 1992, employed women with a spouse and children spent, on average, two hours more per day on domestic work activities than their spouse.
- The amount of time employed mothers devote to child care is roughly double that of employed fathers.

Under representation in Decision-Making

- Even though the educational attainment of women has increased substantially over the last decade, women are still underrepresented in many areas of decision-making. For example:
 - o women occupy only 20% of the highest-paid occupations in the corporate sector in Canada, and are underrepresented at senior management levels; in 1991,
 - o women made up only 20% of all judges and magistrates in Canada; and, in 1997,
 - o only slightly more than one-fifth of Members of Parliament were women.

Sources

- 1) Statistics Canada, *Women in Canada*, Catalogue 89-503, 1995.
- 2) Statistics Canada, "The Violence Against Women Survey", *The Daily*, p.2.
- 3) "Women bump heads on glass ceiling", Canadian Press, June 16, 1994.

Taking multiple disadvantage into account

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- Given the significant diversity amongst women, it is important to assess the various experiences of inequality in women's lives, and the multiple disadvantage that many women confront.
 - o Gender equality analysis considers the ways that social inequalities associated with characteristics such as race, ethnocultural heritage, poverty, disability, and sexual orientation may compound the problems that women experience.
 - o An inclusive analysis that investigates the situation and needs of diverse groups of women could uncover potential problems and solutions for specific communities.
- For example, although many women fear calling the police when they are assaulted by their spouse, a refugee who was victimized by police in her country of origin may be more afraid to call the police in Canada for protection.
 - o She may also face language barriers that discourage her from seeking help.
 - o Her experiences and situation as a refugee compound her vulnerability to male violence.
 - o An effective response to wife abuse must be designed to respond to the specific barriers to justice for women in this situation.

What is the link between diversity analysis and gender equality analysis?

- Gender equality analysis is ideally part of a more comprehensive diversity analysis to assess the impact of a particular law, policy or program on the full range of diverse groups in Canadian society.
 - o An inclusive analysis that considers the needs and social realities of different communities in Canadian society helps to shape more effective and equitable laws, policies and programs.
- At the request of Deputy Ministers of Justice, the Federal-Provincial-Territorial Working Group on Diversity, Equality and Justice has designed a framework for conducting a diversity analysis. The "Integrated Diversity and Equality Analysis Screen" (known as "IDEAS") can be used to assess the impact of initiatives on diverse groups. Deputy Ministers of Justice have requested that federal-provincial-territorial projects on which they are asked to make decisions be screened in advance with the IDEAS framework.

Is gender always a factor?

- In some justice questions, gender issues play an obvious and major role — for example, litigation alleging discrimination on the basis of sex. In other matters, they are a factor among others. For example, a policy on police powers to enter a dwelling home has implications for women's safety from violence. In others, they are not as apparently relevant; for example, litigation involving a construction lien. In some cases in which gender implications are not initially apparent, they become significant at a later stage so it is important to keep gender considerations "on your radar screen" throughout the work process.

What is the relationship between *Charter* analysis and gender equality analysis?

- The Department of Justice lawyers have considerable expertise in assessing whether laws, policies and programs comply with the equality guarantees and other provisions of the Canadian Charter of Rights and Freedoms. How is gender equality analysis related to Charter analysis?

Gender equality analysis has a broader scope:

- Charter analysis assesses whether the effects of a law or proposed law on women might violate the equality guarantees of the Charter, as they are currently defined and applied by the courts. The analysis determines whether the effects of a particular law meet the legal test of discrimination.
- In contrast, gender equality analysis seeks to identify and address adverse impacts that laws, policies and programs may have on diverse groups of women — whether or not they amount to discrimination in law. The goal of the analysis is to shape laws, programs and policies that are more effective, durable and fair.

You may need to do both:

- When a gender equality analysis shows that a particular proposal will have adverse impacts on some or all women, it is important to seek an assessment of the "Charter risk" created by the proposal from the Human Rights Law section of Specialized Legal Advisory Services. The Charter opinion may help to substantiate the conclusions of the gender equality analysis.
- Even when a Charter analysis concludes that the impacts of the proposal are unlikely to violate the Charter, gender equality analysis suggests that they ought to be addressed as a matter of sound policy and program design.

Why Do Gender Equality Analysis?

- There are a number of reasons for doing gender equality analysis:
 - o **Inequality is injustice.**

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- I believe that the desire for justice of every human being is the source of our desire for equality. For inequality is injustice. Madam Justice L'Heureux-Dubé "Making Equality Work", An Address to the Department of Justice Canada, Ottawa, December 10, 1996.
 - **Better decision-making.**
 - Policies, laws and programs that are based on a comprehensive and accurate assessment of the needs of all members of the Canadian public will be more effective, durable and fair, avoiding future problems and litigation.
 - **Fulfillment of the Department's mission.**
 - Gender equality analysis supports the departmental mission and professional ethical commitments to ensure a fair system of justice and promote respect for rights and freedoms.
 - **The Government's commitments.**
 - In the *Federal Plan for Gender Equality* (1995), the Government of Canada made a commitment to implement gender-based analysis across the federal government.
 - **The Department's commitments.**
 - The *Policy of the Department of Justice on Gender Equality Analysis* (Spring, 1997) requires gender equality analysis to be integrated in all of the Department's work.
 - **Canada's commitments.** Canada's domestic and international **human rights commitments** highlight the value that Canadians place on respect for human rights, equality and justice, and the importance of ensuring that legislation, government policy and programs protect and promote those values. The *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* and numerous provincial and international human rights instruments affirm and protect gender equality. (Canadian and international equality rights protections are listed in Appendix E.)
 - **The evolution of case law.** Courts are paying increased attention to the social context of law (consider, for example, the redefinition of the law of self-defence, discussed in the next section). Consequently, expertise in understanding and analysing gender issues is an **increasingly important skill** in the legal field.
 - **Wide social benefit.** The costs of continued inequality are ultimately shared by all members of society. Everyone benefits from a society that celebrates the uniqueness and respects the dignity of all of its members.
- In 1954, Marion Anderson, an American delegate to the United Nations, had this to say about discrimination: "As long as you keep a person down, a part of you has to be down there to hold him down, so it means you cannot soar as you otherwise might." Cited by Glenda Simms, former President of the Canadian Advisory Council on the Status of Women, in *Employment Equity into the 1990s and Beyond*. Presented at the Centre for Women's Studies and Feminist Research. London, January, 1991, at p. 8

Important Principles

- This section discusses some common principles underlying gender equality analysis — although, in practice, the form that the analysis takes depends on the kind of work done, the task one has been given, and the time and resources available.

Gender equality analysis is an integral part of your work.

- Ideally, gender equality analysis is a continuous part of your daily work, not a final extra step. It involves collecting qualitative and quantitative data, questioning basic assumptions, and developing an understanding of the gender equality dimensions of the justice issues you are addressing. For example, in policy development, considering gender equality issues from the outset will affect the way issues are framed, the research questions that you identify, the consultations that are carried out, the range and assessment of policy consequences, and the recommendations to decision-makers.
- Gender equality analysis can be adapted to situations in which you are providing advice under acute time constraints, or within a narrow range of options, to ensure that decision-makers have as much information as possible about the equality implications of various proposals. (At the end of many chapters of Part Two of the Guide, there is a framework for "High Speed Gender Equality Analysis".)

Gender equality analysis places importance on understanding the social context of law, policy and programs.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- Gender equality analysis is connected to a broader shift in legal reasoning towards a purposive and contextualized approach to the interpretation and application of the law. As the courts place increasing emphasis on interpreting legal rights, benefits and penalties in light of existing societal inequalities, the ability to analyse legal problems in their social context — including their gender equality dimensions — takes on a sharper importance.
- Judicial inquiry into the factual, social and psychological context within which litigation arises is not unusual. Rather, a conscious, contextual inquiry has become an accepted step towards judicial impartiality.... An understanding of the context or background essential to judging may be gained from testimony from expert witnesses in order to put the case in context: (see *R. v. Lavallee*, [1990] 1 S.C.R. 852, *R. v. Parks* (1993), 15 O.R. (3d) 324 (C.A.), and *Moge v. Moge*, [1992] 3 S.C.R. 813), from academic studies properly placed before the Court; and from the judge's personal understanding and experience of the society in which the judge lives and works. This process of enlargement is not only consistent with impartiality; it may also be seen as its essential pre-condition. L'Heureux-Dubé and McLachlin, JJ. in *R v. S. (R.D.)*, [1997] 3 S.C.R. 484, at 506–507.

Gender equality analysis focuses on the effects of a law, policy or program.

- Since few federal laws and policies now make straightforward distinctions on the basis of sex, gender equality analysis concentrates on the impact that apparently "neutral" laws, policies and programs might have on women (or some groups of women). This focus on the impact of a particular measure is consistent with the *substantive approach to equality* that has been established in Canadian law.
- The substantive approach to equality adopted by Canadian courts recognizes that treating individuals with different needs, resources and life circumstances in exactly the same way may perpetuate inequality. Instead, ensuring equal benefit of the law requires that our laws and policies respond appropriately and fairly to differences in personal characteristics, socio-economic circumstances, and life situations in order to achieve greater equality in social outcomes. It must be recognised at once...that every difference in treatment between individuals under the law will not necessarily result in inequality and, as well, that identical treatment may frequently produce serious inequality. McIntyre, J. in *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at 164

Contextualized Legal Reasoning

- The interpretation of "self-defence" in criminal law is a pre-eminent example of the way an understanding of social context can re-shape legal doctrine. In *R. v. Lavallee*, [1990] 1 S.C.R. 852, the Supreme Court of Canada took into account the reality of battered women in interpreting the law of self-defence. The case concerned a battered woman accused of murdering her abusive partner. The issue before the Supreme Court was whether a psychiatrist's assessment of the accused, supporting the self-defence claim, should have been admitted at trial.
- Writing for the majority, Madame Justice Wilson established that the legal meaning of "self-defence" must be informed by an understanding of the dynamics and impact of spousal abuse. In commenting on the relevance of expert testimony about the psychological impact of abuse to the assessment of the reasonableness of the accused's belief that the use of force was necessary, Madame Justice Wilson observed:
 - If it strains credulity to imagine what the "ordinary man" would do in the position of a battered spouse, it is probably because men do not typically find themselves in that situation. Some women do, however. The definition of what is reasonable must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical "reasonable man" (p. 874).
- Madame Justice Wilson then endorsed the admission of expert testimony to clarify and explain the dynamics and psychological impact of physical abuse, including expert evidence of the psychological impact and power imbalance in this context. In addition, the Court disapproved of the requirement that the accused must have responded to imminent danger (which had been read into the law of self-defence in earlier cases, and interpreted to mean an assault in progress) on the grounds that it was inconsistent with the power imbalance and dynamics of spousal abuse.
- In the more recent case of *Malott v. R.*, [1998] 1 S.C.R. 123, the Supreme Court of Canada cited *Lavallee* regarding the importance of a contextual legal analysis. In a concurring judgment, L'Heureux-Dubé and McLachlin, JJ. stated:
 - A crucial implication of the admissibility of expert evidence in *Lavallee* is the legal recognition that historically both the law and society may have treated women in general, and battered women in particular, unfairly. *Lavallee* accepted that the myths and stereotypes which are the products and the tools of this unfair treatment interfere with the capacity of judges and juries to justly determine a battered woman's claim of self-defence, and can only be dispelled by expert evidence designed to overcome the stereotypical thinking. (p. 140)

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

and further,

- ... the majority of the Court in Lavallee also implicitly accepted that women's experiences and perspectives may be different from the experiences and perspectives of men. It accepted that a woman's perception of what is reasonable is influenced by her gender, as well as by her individual experience, and both are relevant to the legal inquiry. This legal development was significant, because it demonstrated a willingness to look at the whole context of a woman's experience in order to inform the analysis of the particular events. (p. 141)

Gender equality analysis is based on sound data, research, and information beyond traditional legal sources — including qualitative information and consultation with affected groups.

- An analysis of the effects of a particular law, policy or program requires knowledge and appreciation of the larger social context in which it will operate. Both statistical and experiential-based information are helpful in understanding the larger social context, particularly the situations and needs of different groups of women.
- More qualitative types of information are particularly important to understand the way a problem is experienced by women in different situations, the barriers they face, and their priorities for action to deal with the problem. Some of this information can be obtained from documents — briefs, materials on the Internet, letters to the Minister, and social science research. But the richest source of information about the needs and concerns of those who may be differently affected by particular problems or proposals is direct discussion and consultation with them.
 - For example, the DisAbled Women's Network (DAWN) has documented the exceptionally high incidence of physical and sexual abuse of disabled women. Their surveys of women with disabilities reveal the additional factors — financial dependency on their abuser; dependence on their abuser for physical care; lack of accessible transportation and emergency shelters to which they can escape; risk of losing custody of their children if they leave an abusive relationship — that make it more difficult for disabled women to free themselves from an abusive situation. DAWN has developed valuable expertise in understanding and addressing violence against women from the perspective of disabled women.
- You can seek statistical and qualitative information from your client department; officers in the Policy Sector working on related issues; the Research and Statistics Division of the Department of Justice; the Office of the Senior Advisor on Gender Equality; the Diversity, Equality and Access to Justice Division in the Policy Sector; relevant literature; or the affected groups themselves and, in general, equality-seeking organizations. (Appendix F lists equality-seeking organizations; Appendix G lists important databases, studies and reports that describe and analyze current problems and issues that affect women's lives in Canada.)
- In any particular case, there will be limits on the amount of time that can be spent gathering information on the larger social, political and economic context within which a particular measure operates, and its gender-based effects. Consequently, increasing our awareness of the larger social context in which our work takes effect — which the Supreme Court of Canada has described as a "process of enlargement" — should be viewed as an ongoing professional responsibility.

Good gender equality analysis is the product of collaboration.

- It is often difficult to discern the gender impacts of a particular issue, or see how proposals could be modified to account for them. And there is always something more to learn about the experiences and needs of diverse communities in Canadian society. The best practice is to discuss — perhaps debate — your analysis with colleagues, the Gender Equality Specialists for your unit, analysts in the Diversity, Equality and Access to Justice Division in the Policy sector, and others who are in a position to share their experiences and expertise on an issue. Using these contacts can be a time-saving strategy when you are given little time to research and develop your advice.

Gender equality analysis requires us to examine and question assumptions that underlie our laws, policies and programs.

- Often, the social beliefs and standards of a different time remain embedded in law and government policy and programs. Gender equality analysis forces us to test the validity of those assumptions to ensure that our policies, laws and choice of language respond to present social realities, and do not reflect or reinforce stereotypes about appropriate gender roles.
- The more powerful we are, the less we may be able to see that the world coincides with our view precisely because we shaped it in accordance with our view. Martha Minow, *Making All the Difference*, (Cornell Univ. Press, 1990, at p. 379)

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- Similarly, in *R. v. McConnell*, [1996] 1 S.C.R. 1075, aff'g (1995), 32 Alta. L.R. (3d) (Alta. C.A.), the Supreme Court of Canada approved a contextualized approach to self-defence in the prison setting. In this case, a prison inmate argued that he had acted in self-defence in killing another prisoner who was an "enforcer" for an inmate group that had threatened him. The Supreme Court of Canada endorsed the reasoning of Conrad, J. at the Alberta Court of Appeal, which found — on the basis of expert evidence about inmate culture and the prison environment — that the accused might reasonably have believed that the use of force was necessary, although no assault was actually underway at the time he acted. The focus on the effects of a given law or policy or program also acknowledges the structural or systemic nature of inequality. Once inequality is understood as a systemic problem, then the harmful effects of a particular law or policy are no longer seen as the intentional result of individual bias, but as the outcome of rules and practices that fail to recognize the situation and needs of disadvantaged groups. Even in imposing generally applicable provisions, the government must take into account differences which in fact exist between individuals and so far as possible ensure that the provisions adopted will not have a greater impact on certain classes of persons due to irrelevant personal characteristics than on the public as a whole. In other words, to promote the objective of the more equal society, s.15(1) (of the Charter) acts as a bar to the executive enacting provisions without taking into account their possible impact on already disadvantaged classes of persons.
- Lamer, C.J.C. in *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519 at 549; adopted by unanimous Court in *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at 673.

Summary

- Gender equality analysis is about understanding women's distinct situations and experiences in Canadian society, and using this knowledge to uncover potential gender equality problems and design solutions in our daily work. The goal of gender equality analysis is to advance equality by identifying policy, program and legislative options that respect and support women's safety, autonomy, well-being, and full participation in Canadian society. Policies, laws and programs that are based on a comprehensive and accurate assessment of the needs of all members of the Canadian public will be more effective, durable and fair.
- The form that gender equality analysis will take in practice depends on the kind of work you do, the task that you are given, and the time and resources available. But there are a number of common principles behind this analysis:
 - Gender equality analysis is an integral part of your work.
 - Gender equality analysis places importance on understanding the *social context* of law, policy and programs.
 - Gender equality analysis focuses on the *effects* of a law, policy or program on diverse groups.
 - Gender equality analysis is based on sound data, research, and information beyond traditional legal sources.
 - Good gender equality analysis is the product of collaboration.
 - Gender equality analysis requires us to examine and question assumptions that underlie our laws and policies

Practical Implications

Gender Equality Analysis in Policy and Program Development

- Justice policy and program development takes place through many different and complex processes.
 - Sometimes, policy and program development responds to an evident problem or a specific legal development (for example, a court decision which requires an immediate legislative change).
 - In other cases, new policies or programs result from longer-term law reform or program renewal initiatives.
 - Increasingly, Justice policy and programs are developed as part of federal government-wide, and integrated federal-provincial-territorial initiatives.
- This chapter of the Guide sets out a series of questions and suggested actions to ensure that decision-making in policy and program design is informed by an analysis of gender equality implications of different options.
 - The analysis can be adapted to particular policy and program development contexts and time pressures.
- The basic steps to incorporating gender considerations in policy and program development are illustrated on the next page, and then described "step-by-step". At the end of this chapter, there is a checklist that you can use as an aid to your work.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- As you review and apply the ideas in this chapter of the Guide, it may be helpful to keep in mind the basic principles of gender equality analysis:
 - Gender equality analysis is an integral part of your work.
 - Gender equality analysis places importance on understanding the social context of law, policy and programs.
 - Gender equality analysis focuses on the effects of a law, policy or program on diverse groups.
 - Gender equality analysis is based on sound data, research, and information beyond traditional legal sources.
 - Good gender equality analysis is the product of collaboration.
 - Gender equality analysis requires us to examine and question assumptions that underlie our laws and policies.

**Gender Equality Analysis in Policy and Program Development:
The Big Picture**

1. Preliminary assessment of gender equality issues

- What is the objective of the policy or program?
- What are the policy or program issues at hand?
- Are the distinct social, economic, political or familial circumstances of women relevant to the issues and objectives of the policy or program?
- What additional information will you need to do a full analysis of the impacts of a policy or program on diverse groups of women?

2. More comprehensive analysis of gender equality issues

- In light of this information, assess the impacts of policy or program options on diverse groups of women.
- Does the related law, policy or program have unequal effects on women generally or on particular communities of women?

3. Identify and Assess Options

- Develop options for decision-makers that avoid adverse impacts and accommodate specific needs.

4. Advise Decision-Makers

- Outline any gender equality problems arising from the policy or program options.
- Suggest modifications to avoid adverse impacts and accommodate specific needs.
- If the policy or program options advance gender equality, assemble evidence of the social inequality that they are designed to redress to defend the policy or program in case of a challenge.

5. Follow-up

- Ensure that communication of the policy or program is gender and diversity appropriate.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- Use current mechanisms to ensure the impact of the policy or program is adequately evaluated.

**Gender Equality Analysis in Policy and Program Development:
Step-by-Step**

1. Preliminary Assessment of Gender Equality Issues

It is important to think about the gender equality dimensions of a project from the outset. The completion of a Policy Project Plan (PPP) is an early opportunity to identify the gender dimensions of project objectives, workplans, related consultations, implementation, and communications. It also provides an opportunity to assess what information you will need to fully analyze the gender equality implications of policy and program options.

- **As you make your initial assessment of facts, issues and policy or program objectives, identify potential gender equality issues that will need to be explored further and addressed as part of the project.**

Sometimes a project has clear gender dimensions (for example, developing new procedural rules governing disclosure of therapeutic records of sexual assault complainants); in other cases there is no obvious gender dimension, but you may need more information (for example, reviewing the operations and effectiveness of the Native Courtworker program). Even when gender implications are not apparent at the outset, they may become significant at a later stage, so it is important to keep them on your "radar screen".

Remember that an apparently "neutral" policy or program can have a different impact on particular social groups because of differences in needs, resources and social circumstances of members of the group. Consider the operation as well as the substance of a policy or program (for example, in practice, will all groups have equal access to remedial mechanisms contemplated in a legislative scheme?).

For help in determining the gender equality dimensions of a project:

1. refer to the sources of statistical information listed in Appendix G;
 2. do a "rough cut" of the comprehensive analysis outlined in the next stage;
 3. discuss the project with your Gender Equality Specialist or the Office of the Senior Advisor on Gender Equality.
- **In light of your initial assessment, do the issues and objectives of the project need to be redefined or revised to take gender perspectives into account?**
 - **What additional information will you need to do a full analysis of the gender impacts of the project?** You will need statistical data, more qualitative information (input from consultations with community-based organisations, for instance), and data that takes into account the diversity among women. (The Research and Evaluation chapters of the Guide may offer some guidance as to the kinds of information you could collect.)
 - **How will you obtain this information?** You could contact the Office of the Senior Advisor on Gender Equality, the Research and Statistics Division, the Diversity Equality and Access to Justice Division and the Intergovernmental and External Relations Division of the Policy Sector for assistance. (Appendix G lists important databases, studies and reports that describe and analyze current problems and issues that affect women's lives in Canada.)

2. A Comprehensive Analysis of Gender Equality Impacts

An assessment of the strengths and weaknesses of current and proposed policies or programs that respond to an

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

identified social need, and of the related body of law, are integral to the policy and program development process. The questions below aim to ensure that gender equality implications are incorporated in that assessment.

The first part of this chapter is a step-by-step analysis of the gender equality impacts of existing and proposed policies and programs; the second section aims to uncover invalid assumptions, or unacknowledged dominant norms or standards, that may be embedded in laws, policies or programs. This assessment will be based on the quantitative and qualitative information that you gathered in the first stage of the gender analysis.

Analyzing the gender equality implications of a particular issue or position requires knowledge and appreciation of the larger social context in which the measure will operate. Increasing our awareness of the social context in which our work takes effect — described as a "process of enlargement" by the Supreme Court of Canada — is an ongoing professional responsibility.

A. Assessing Impacts on Diverse Communities of Women

- What social groups, constituencies, or communities are affected by the underlying social problem or need, or the policy or program in question?**
- How are women affected by the problem, or the policy or program? Are some women differently or more acutely affected according to their:**

- economic position
- ethnocultural background
- aboriginal background
- immigration status
- sexual orientation
- physical and mental ability
- family status and responsibility for care of dependants
- age
- language
- religion
- geographical location
- or other factors?

The sources of statistical data listed in Appendix G will help you identify gender-related impacts.

- What impact will enforcement schemes associated with the policy or program have on women, and on diverse groups of women?** For example, a flat-rate fine will impose a greater penalty on those with fewer financial resources.
- Do these impacts *contribute to inequality or advance equality*? Have women's diverse needs been taken into account and accommodated? Does the scheme treat women as a whole — or all groups of women — with equal concern, respect and consideration as other groups in society?**

Whether the effects of a law, policy, or program contribute to gender inequality or, on the contrary, advance gender equality, depends on the nature of the interest involved and the circumstances of the women affected. Differences in treatment and impact create inequality when they:

- reflect and reinforce stereotypes; or
- create or reinforce disadvantage for (some) members of a group on the basis of characteristics shared by members of the group, either by imposing unequal burdens or denying equal benefits.

Remember that apparently "neutral" provisions and policies can create or contribute to inequality if members of a group are, in effect, denied equal protection or benefit of the law on the basis of a characteristic shared by members of the group. For example, in *Eldridge v. British Columbia (Attorney-General)*, [1997] 3 S.C.R. 624, the Supreme Court decided that the failure of British Columbia hospital authorities to provide sign language interpretation in hospitals violated the right of deaf persons to benefit equally from government-funded medical services.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

How can the equality interests of different groups be reconciled?

More than one group of women may be affected by an issue, and in some cases, their interests, needs and priorities will differ. The different impact of the issue on these groups must then be considered to arrive at an equitable solution.

B. Analyzing Law, Policy and Programs

What is the historical origin of the law, policy or program in question? What is its present rationale? Does the rationale, interpretation and application of the law, policy or program reflect present social realities?

Are women's concerns, perspectives, and social, economic, political or familial circumstances recognised and given appropriate weight in the law, policy or program?

Does the law or reasoning, policy framework or program design rely on or reinforce prejudices, stereotypes, or erroneous generalizations about women's (or some women's) social roles, attributes or behaviour?

Legal standards and reasoning that exclude consideration of women's life situations and experiences, or that reflect stereotypes about women rather than women's actual circumstances and situations, contribute to inequality. For example, in *Falkiner et al. v. Ontario* (1996), 94 O.A.C.109 (Ont. C.A.), Rosenberg, J., in a dissenting opinion on the constitutionality of certain provisions of the Ontarian regime for eligibility to social assistance benefits, raises the prejudices and sexual stereotypes that underpin it. He points out that inadmissibility to benefits on the ground of cohabitation with a person of the opposite sex is based on old stereotypes that the man is the financial support for the woman (p. 138). In her decision in *Malott v. R.*, [1998] 1 S.C.R. 123, L'Heureux-Dubé, J. quotes *Lavallee* as a decision where the Supreme Court of Canada stated that prejudices and stereotypes may hinder legal analysis. She gives the example of strong or socially established women, such as those in professions, who do not fit the stereotype of a victimized, battered woman and thus might not be treated fairly on allegations of self-defence.

3. Identifying and Assessing Options

If you conclude that the existing policy or program, or new options under consideration, may contribute to the inequality of some or all women, then it will be important to generate new options that avoid adverse impacts and accommodate specific needs for decision-makers to consider.

Consider the full range of options, including:

- **Administrative solutions:** guidelines, policies, interpretative provisions to guide the exercise of discretion, introduction of new discretionary powers etc.;
- **Program or project initiatives;**
- **Public education and information strategies;**
- **Partnerships with other departments, jurisdictions, non-governmental organizations (NGOs);**
- **Regulatory reform; or**
- **Law reform.**

Examine options in academic writing, suggestions from NGOs, initiatives in other jurisdictions. Canvass colleagues' ideas; seek suggestions through community consultations.

4. Advising Decision-Makers

Advice to decision-makers is provided through various formal mechanisms — through briefing notes, "decks", Memorandum to Cabinet, or submissions to Treasury Board.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- **If you conclude that existing policies or programs, or new options under consideration, may contribute to the inequality of some or all women, then:**
 - Outline the gender equality problems that you have identified. Explain why current responses are inadequate from an equality and diversity perspective. Point out that adverse impacts ought to be avoided, and specific needs accommodated: as a matter of sound policy and program design, to conform with Charter values and the spirit of Canada's human rights commitments, and to avoid future problems and litigation. (Appendix E provides a list of relevant Canadian and international instruments.)
 - Seek an assessment of the "Charter risk" of a proposal from the Human Rights Law section of Specialized Legal Advisory Services.
 - Outline the principles — including the government's commitment to gender equality — that should guide the Government's response to the issue. You could argue that the interpretation and application of laws and government policy must be inclusive and afford all persons equal concern, respect and consideration (see *Eldridge v. British Columbia (Attorney-General)*, [1997] 3 S.C.R. 624, at 667).
 - Suggest how existing policies or programs could be modified — for example, by altering the scope of existing categories, legal definitions, or program criteria — to address the equality problem.
 - Suggest ways that the objectives, means, and mechanics of proposed laws, policies or programs could be modified to avoid adverse impacts and accommodate specific needs. Other jurisdictions may offer models for effective strategies and solutions that are more consistent with equality norms.
 - Suggest how legal principles from other areas of law or other contexts could be applied to this matter to bring it in line with equality commitments. Suggest ways that human rights guarantees (including international law, Charter provisions, and other statutory protections) support a more appropriate interpretation and application of the law.
- **If you conclude that existing or proposed policies or programs advance or protect gender equality and should be maintained and defended, then:**
 - Assemble evidence that documents the social inequality that the law, policy or program is designed to redress that could be used to defend the provision or program in case of a challenge.
 - Can a statement of purpose be included in the program, statute or policy to make its equality-enhancing goal clear?
- 5. **Follow-up**
 - **What mechanisms should be put in place to ensure that the impact of new policies or programs on women is adequately evaluated?** Contact the Research and Statistics Division or the Evaluation Division of the Policy Sector for assistance.
 - **In communicating a policy or program, should gender implications be explained or highlighted? Are the language and symbols used to communicate the policy or program gender-aware and diversity appropriate? Will the communications strategy reach all affected members of the public?** Contact the Communications and Executive Services Branch of the Department or refer to the Communications chapter of the Guide for assistance.

**CHECKLIST:
INTEGRATING GENDER CONSIDERATIONS
IN POLICY AND PROGRAM DEVELOPMENT**

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

In advising decision-makers, did you:

- outline the conclusions of your gender equality analysis?
- **If you concluded that existing policies or programs, or new options under consideration, may contribute to the inequality of some or all women, did you:**
 - explain why current responses are inadequate from an equality and diversity perspective?
 - request an assessment of the "Charter risk" from the Human Rights Law section?
 - outline the principles — including the Government's commitment to gender equality — that should guide the Government's response to this issue?
 - emphasize that adverse impacts ought to be avoided, and specific needs accommodated, to conform with Charter values and the spirit of Canada's human rights commitments, as a matter of sound policy and program design, and to avoid future problems and litigation?
 - suggest how existing policies or programs could be modified — for example, by altering the scope of existing categories, legal definitions, or program criteria — to address the equality problem?
 - suggest how legal principles from other areas of law or other contexts could be applied in this area to bring it into line with equality commitments?
 - refer to more effective solutions from other jurisdictions?
- **If you concluded that the existing or proposed policies or programs advance or protect gender equality and should be maintained and defended, did you:**
 - assemble evidence of the social inequality that the law, policy or program is designed to redress that could be used to defend the policy or program in case of a challenge?
 - include a statement of purpose in the program, statute or policy to make its equality-enhancing goal clear?

In follow-up, did you:

- establish mechanisms to evaluate the impact of new policies or programs on women?
- check that the language, symbols and strategy used to communicate the government policy or program are gender-aware and diversity-appropriate?

High Speed Gender Equality Analysis

Sometimes, the practical realities of policy and program development allow little time for research into the gendered effects of a particular social problem or policy. When time is limited:

- **discuss the file with your Gender Equality Specialist and other colleagues or consult the Office of the Senior Advisor on Gender Equality to try to identify potential gendered effects; when you see that there may be potential gender impacts, flag these for decision-makers;**
- **suggest that these potential gender impacts should be explored further to avoid future problems and litigation.**

Gender Equality Analysis in Research and Statistics

- It is the aim of the Gender Equality Initiative to ensure that all policy research and evaluation programs or projects raise and address gender equality issues at each step of the process.
 - Where gender has not been identified as an issue at the inception of a policy or program, then ways should be found to incorporate a gender research objective into the implementation of the research steps or in follow-up projects and evaluations.
 - It is incumbent on researchers, to undertake gender equality analysis.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- The integration of gender equality analysis into the research and evaluation work implies a departure from traditional research methodology.
 - It does not start with a premise of neutrality, nor limit its investigation to sex disaggregated data.
 - A gender research approach begins with women's experience as they see it.
 - Both quantitative and qualitative information sources are required. (See Appendix G for a list of sources of statistical information.)
- You can affirm this commitment and find ways to ensure that gender is visible in the research agenda, even where gender is not a primary focus. It is the responsibility of the research staff/contractors to undertake gender equality analysis, regardless of time and money available.

This section provides:

- a gender analysis framework built around the policy research *process*,
 - contracting *procedures* used by the Research and Statistics Division,
 - a *high speed gender equality analysis* process for research.
- One important matter for you to keep in mind is to be frank about any limitations of the data that you have been able to access in the course of your research project, and the time and resource constraints you have been under.
 - For example, if there is insufficient disaggregated data, you will need to say so.

The following basic principles have been articulated for gender equality analysis, and are more fully explained in the Introduction to this Guide:

- Gender equality analysis is an integral part of research and evaluation.
- Gender equality analysis places importance on understanding the *social context* of law, policy and programs.
- Gender equality analysis focuses on the *effects* of a law, policy or program on diverse groups.
- Gender equality analysis is based on sound data, research, and information beyond traditional sources.
- Good gender equality analysis is the product of collaboration.
- Gender equality analysis requires us to examine and question assumptions that underlie our laws and policies.
- Gender equality analysis is attentive to how personal values, experiences, and education affect research and evaluation frameworks and approaches.

Gender Equality Analysis in Research: The Big Picture

- This diagram highlights the main steps in a research project initiative, with a focus on gender equality analysis. Research activities do not necessarily follow a linear process, as presented below.
 - **Research scope, purpose, issues, budget** *gender inclusive strategies addressed at every relevant stage*
 - What is the larger context of the issue at hand?
 - How are the social, economic, political or familial circumstances of women relevant to the issue at hand? 2.1
 - Are the approach and basic assumptions used inclusive?
 - **Research approach** identifying, choosing methods, mapping plan: **Error! Reference source not found.**
 - How do the lives of women relate to the issue at hand?
 - What is the experiential knowledge of women on the issue at hand?
 - Are the voices of women included?
 - What are the indicators that capture women's options, access to justice, participation in the processes, satisfaction with the results?
 - What are the insights from interdisciplinary approaches?
 - **Information/data gathering**
 - Are women included in the data collection process?

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- Is information disaggregated on the basis of sex?
- Are you still satisfied that the assumptions are inclusive?
- What are the relevant experiences of different members of the family?
- **Analysis:**
 - What are the options coming out of the research?
 - Do they have positive or negative impacts in relation to gender equality?
- **Research outcomes and future directions:** policy or program directions re impact on women, and other spin-offs
 - Is further research required on potential impacts?
 - Are there unanswered questions remaining?
 - Are diverse groups of women being considered?
 - What are the effects on the most disadvantaged groups of women?
 - Are the voices of women reflected?
 - Are the outcomes explained clearly?
 - Are the limitations to the data identified?
 - Are you developing action and policy results?
- **Dissemination and communications plan**
 - Have participating women received research results? 2.7
 - Is the communications plan gender-sensitive?

Gender Equality Analysis in Research:

Step by Step

- In the Research and Statistics Division, research is driven by issues identified from within the Department and by demands from outside.
 - Researchers have an important role in framing and reframing program or policy objectives to allow an assessment of potential impacts on women, i.e. environmental scanning.
 - The task includes acknowledging that men and women have different realities, and that different groups of women also have differing realities.
 - This will likely involve taking the initiative to consult with policy officers, other researchers, academics, non-government organizations and the literature.
 - Researchers can use the results/findings of their research to encourage policy development in a particular direction.
- It is important to keep in mind that there is a difference between the outcomes of the research, which support policy development, and the outcomes of the policy itself.
 - In posing the question "How will the outcomes of this research positively benefit or negatively impact on women?", the researcher can make sure the question is raised, but it is the formulation of the policy that will determine the impact.
- Does the positing of the research questions:
 - make or test **assumptions** (explicit or implicit) about the relevance of the inquiry to women's lives?
 - cause **exclusion** of women or a group of women (intentionally or unintentionally) from the process or the substance of the inquiry?
- You may want to review the chapter on Gender Equality Analysis in Policy and Program Development, since it contains framing questions which are quite helpful:
 - What factual information is provided to you?
 - What is the issue being presented? Are there potential gender equality issues that need to be addressed? (Has a needs assessment or environmental scan been undertaken?)
 - Why has the issue arisen at this time?
 - Considering the available information, how can the issues be framed?
 - Managing a research program involves:
 - consultation with interested parties about the scope and purpose of the line of inquiry;

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- the development and maintenance of relations with the interested parties, including seeking to address the interests they hold in common as well as those that are potentially in conflict, and;
- the perspective to anticipate, through the research questions, the potential strategic policy implications.
- **Research scope, purpose, issues**
 - The purpose of research is normally to:
 - identify policy or program needs within the justice system;
 - refine or improve draft legislation, policies or programs;
 - test differential impact on all groups or sub-groups affected; or
 - question original objectives or premises and the context in which they were developed.
 - Ask yourself:
 - What is the larger social, political, economic, familial and institutional context for any specific laws, policies, or program initiatives?
 - This approach will aid in clarifying the breadth and depth of the research and can help in guiding the research approach for dealing with complex and systemic social problems.
 - Is the conceptualization of the policy or program research consistent with the gender equality policy?
 - Could it be formulated to be more inclusive, specific, and gender-sensitive?
 - Have you considered who is in and who is out of the research?
 - In defining the scope of the research, take care that the historical exclusions are not repeated: for example, the impact on women of policy and legislation in the criminal justice system.
- **Research approach:**
 - The research approach includes all the activities that go into designing the way you will go about the research. In designing a research plan, it is recommended that you include the following principles. (See also the chapter on Policy and Program Development regarding assessing impacts in policy development):
 - ***begin, whenever possible, with the lives of women***, not existing legal or program categories.
 - Since the social inequalities experienced by women do not easily fit into existing legal categories, it is important not to limit one's research, but rather to expand the analytic options by striving to understand the societal realities and dynamics of inequality. In this way, the partiality or limitations of particular legal rights may become apparent.
 - ***recognize the importance of experiential knowledge*** which often provides unanticipated insights and ideas about the nature of the problem and potential solutions.
 - Consultation with affected groups is one of the most direct ways to access experiential knowledge.
 - Even individual stories can provide important information.
 - ***include the voices of women*** who are likely to be most affected, but least heard.
 - Their own voices need to be taken into account.
 - ***make a careful choice about which indicators are going to be applied***, because you want the indicators to reflect the gendered approach you are developing.
 - Quantitative performance indicators are useful.
 - Indicators which capture women's ***options, access to justice, participation in the processes which affect them, and satisfaction with the results of the process, policy, law, program, etc.***, are desirable.
 - It is helpful to ask yourself if the same proposed indicators hold for both women and men.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- ***recognize the insights gained from interdisciplinary approaches***, which are essential to research that incorporates the experiential knowledge of women, and to research aimed at understanding the larger social, economic, familial and political context within which law and social policy operate.
- To develop gender equality analysis capability, it is helpful to understand how different types of sexism bias research. Dr. Margrit Eichler develops a systematic approach to identifying, eliminating and preventing bias in research, and by corollary, in evaluation and related activity.¹ These terms are less important than the types of research errors to which they can lead.
 - Androcentricity: views the world from the male perspective, assuming that the male group represents the whole group of women or else that women are an inferior subgroup;
 - Overgeneralization/Overspecificity: occurs when a study deals with only one sex, but assumes or presents as if it were applicable to both, or when single sex terms are used when both sexes are involved;
 - Gender insensitivity: simply ignores sex as a socially important variable, fails to report on sex of respondents or subjects, and ignores differential impact of a policy or program;
 - Double standards: involves treating, measuring or interpreting identical behaviors, traits or situations, in either gender group, by different means;
 - Sex appropriateness: assigns human traits or attributes to one sex only and treats these traits as more important for the sex to which they have been assigned;
 - Familism: consists of treating the family as the smallest unit of analysis, when in fact, it is relevant in some instances that the same event or policy, program may have different effects on different members of the family;
 - Sexual dichotomism: treats the two sexes as entirely discrete social as well as biological groups, rather than as two groups with overlapping characteristics and influence on each other. This can lead to an exaggeration of both similarities and differences.
- In addition to the seven points above, developed by Dr. Eichler, keep in mind the following:
 - Lack of differentiation among women: views women as an undifferentiated group, failing to take into consideration other diversity issues, socio-economic status, age, literacy, etc.
 - The danger of this "lumping together" is that what is good for some women might not be good for others.
 - Also, as is stated in the policy chapter, attention should be given to framing the research in such a way that the interests of one group of women are not pitted against the interests of another.
- The research methods you choose can affect the nature of your findings.
 - The more structured the method, the less flexible or amenable to modification as you proceed.
 - It is important to select several research methods that suit the nature of the overall research question, and to engage colleagues, both within and outside the Department, in a dialogue about the relative merits of a particular method in the context of the specific research question.

Gathering information/data

- There are a lot of issues surrounding data-gathering.
 - The outcome of research will be affected by what information can be accessed and utilized.
 - Any limitations in the database and in what data has been collected, should be pointed out.
 - Where there is a lack of national data, extrapolations or case studies are an option.
 - Consult with colleagues when planning how best to gather data, since your collective experience may lead to unexpected sources.
- In your information and data-gathering process, ensure:
 - that women are included in the data-collection process, even when numbers are small; excluding a group may bias the research outcomes or conclusions;
 - that statistical information or data is disaggregated by sex;

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- that assumptions that may be driving your approach and the research questions themselves are repeatedly checked;
- that you look deeper than the family unit itself; different members of the same family will experience the impact of a law, policy or program differently.
 - Research tools that interpret impact on the family as homogeneous are not likely sensitive enough.
- **Analysis: identifying and assessing options, examining implications:**
 - Data is sorted and the research findings are analyzed.
 - While this is a crucial stage, it is guided by the same gender equality considerations as have been identified above, especially in #2 — research approach.
- **Research outcomes and future directions: policy or program directions regarding impact on women**
 - Does the research to date indicate **further research** is required on potential impacts?
 - Are there **unanswered questions remaining** — i.e. knowledge gaps that could affect the overall effectiveness of the policy or program?
 - Would these gaps pose a risk to implementation?
 - Would these gaps risk exposing the most vulnerable groups of women to further inequality?
 - How do the findings so far reflect the issues of **diverse groups of women**?
 - For example, would one group of women be disadvantaged in order to resolve the equality issues of another?
 - Do the findings indicate how the policy could be formulated to ensure this does not happen?
 - What further information is required, and from which sources?
 - If there is no way to avoid pitting one group of women against another, be guided in your work by the need to provide the most security or protection to the most vulnerable (multiple discrimination, compounded inequalities).
 - What would be the **effect on the most vulnerable group of women** of implementing the policy, which is based on incomplete research (in terms of understanding the full implications of the policy direction)?
 - Are the **voices of the women** who have participated in the research reflected in the findings?
 - Are the **outcomes** explained clearly, showing how they can or will impact by gender, and how these outcomes could promote gender equality?
 - **Describe the limitations of the data** you have been able to access (e.g. gaps, underrepresentation of groups), and the time and resource constraints you have been under.
 - For example, if there is insufficient disaggregated data, have you said so?
 - If the female population is too small, is it ignored or lumped into male data (especially true in area of criminal justice)? Do the findings easily translate into **action and policy results**?
- **Dissemination and communications plan**
 - Ensure that the women who participated in the policy or program research process receive the results of the inquiry.
 - Other individuals and groups likely to have a stake/interest in the results should see the results.
 - Consult the chapter on Gender Equality Analysis in Communications for further information in this regard.
- **Statistics**
 - Staff provide statistical support for policy development, statistical and methodological advice and services, and notes for Ministerial and question period briefings. They provide analysis for special projects on a cost-recovery basis.
 - In addition, they liaise with the National Justice Statistics Initiative (chaired by the Deputy Minister) and with external data suppliers (CCJS and Statistics Canada).
 - They maintain the Statistics Factbook. Statistical analysis is often requested on very short notice, and with limited resources.
 - With respect to gender issues in research, you:
 - provide quantitative data, broken down by sex where possible, and by other diversity perspectives.
 - You have a responsibility to raise the question of possible gender implications with the policy officer or other client even if it was not originally part of the research question.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- work with your client, policy officers, and research staff to highlight gender issues if these are obvious and relevant.
- ensure that the choice of indicators does not mask gender issues, for example, the exclusion of voluntary work (carried out more often by women) from a study of work.

High Speed Gender Equality Analysis

- Before beginning a full gender equality analysis, do a preliminary scan of the program, policy, or issue before you, to assess the extent to which gender equality issues are relevant. Ask the following questions:
 - What *assumptions* about women's lives (explicit or implicit) are being made or tested by the inquiry?
 - Are women or a group of women being *excluded* (intentionally or unintentionally) from the process or the substance of the inquiry?
 - What are the *impacts* (negative or positive) on women or a group of women of a particular policy or program?

Gender Equality Analysis in Evaluation

- This chapter provides guidance on integrating gender equality analysis into evaluation work.
 - This section should be read in conjunction with the Introduction to this guide, which sets out the background, rationale and principles of gender equality analysis.
- As a result of the adoption of the Department of Justice Policy on Gender Equality Analysis, gender equality analysis must be incorporated into all aspects of Department of Justice work, including evaluation. Ideally, gender equality analysis is part of a more comprehensive analysis of the impacts of policy, law or programs on diverse groups (or "diversity analysis").

Integrating Gender Equality Analysis Into The Evaluation Process
Evaluation Framework

- In accordance with departmental policy, gender equality issues will be considered during the developmental stages of a policy initiative or program. At this early stage, we can assist policy officers and program officials by reminding them of the need to consider potential differential impacts on women or groups of women. However, it is at the evaluation framework stage that we begin to play a more significant role in implementing gender equality analysis.
- As the evaluation framework is the basis for future evaluation activities, we need to devote some time and effort to thinking about the possible gender implications of the program we will eventually be evaluating.

When developing the component profile 2.2

- In analysing and presenting the logic of the program or initiative, we need to consider whether there are potential unintended impacts on women or particular groups of women.
- Ask yourself:
 - Who is the target group? Is the target group predominantly male or female? Does this have any potential implications for women?
 - Do the objectives of the program or initiative make assumptions about the social roles of women and men? If so, could this result in unintended impacts on women?
 - Could this program or initiative have unequal effects on diverse groups of women, such as those who are disadvantaged due to: poverty, disability, race, inability to speak either official language or because of their status as immigrants or refugees?
 - If there is an element of discretion involved in the policy or program, could this affect women or particular groups of women in an unintended way?

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- Do previous evaluations of similar programs or the literature suggest that gender could be an issue?
- There will be times when gender is not as relevant. However, before deciding it is not as relevant, we need to challenge our assumptions - good gender equality analysis is the product of collaboration.
- If in developing the component profile, we conclude that there are potential unintended impacts on women, we need to build them into the program logic model and the remainder of the evaluation framework. We also need to bring them to the attention of the appropriate officials, so that they can assess the need for corrective measures.

When identifying the evaluation questions and indicators

- Even if we do not identify any potential unintended impacts on women in developing the component profile, we may still want to include evaluation questions and indicators which will enable us to determine whether the program is having impacts that we did not anticipate. Here are a few broad questions we might want to consider:
 - regarding program development and implementation: 2.3
 - Were women and particular groups of women consulted in the development of this policy or program? If not, should they have been? If they were consulted, did they express concerns and, if so, were these addressed?
 - What are the participation rates of men and women from diverse groups, such as those who are disadvantaged due to: poverty, disability, inability to speak either official language? If there are differences in participation rates, what are the implications for women and particular groups of women? Are there elements of the program or its implementation that pose particular barriers to participation?
 - regarding program impact: 2.5
 - What impacts has the program had on men and particular groups of women?
 - Has the program enhanced access to justice by diverse groups of women?
 - regarding program relevance: 2.6
 - Is the problem this program or policy addresses equally relevant to men, women and particular groups of women? If not, are there any significant implications for women and particular groups of women?
 - If we determine that there is a possibility of potential unintended impacts on women or different groups of women, we need to expand the list of questions and indicators so that we will be able to tell whether these in fact occur.

When identifying the data sources and methods 2.7

- We need to make sure the data sources and methods will enable us to get valid and reliable information on impacts on different groups of women.
- We need to include women who have been affected by the program and/or representatives from equality-seeking women's groups, where this is appropriate.
- We need to pay particular attention to our methodology if there is reason to believe that marginalized women will be differently affected by the program.
 - Mainstream equality-seeking women's groups may only be able to give us anecdotal information on the program's impact on marginalized groups of women.
 - When we require information from marginalized groups of women, we need to seek out organisations which are more narrowly focused than mainstream women's groups or find ways to obtain the views of the women themselves.
 - There are certain methods which are considered more appropriate for women from marginalized groups.
 - For example, we may want to avoid a mail survey for women with limited literacy or Lickert scales for women with limited numeracy.
 - Open-ended interviews, focus groups, case studies and more participatory processes, such as empowerment evaluation, are considered more gender-sensitive and more appropriate for evaluations involving marginalized groups.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- In selecting qualitative methods, we need to be sensitive to communication issues affecting some communities or groups of women.
 - For example, focus groups may not be appropriate if there are potential self-confidence or privacy concerns.
 - They are often dominated by the loudest and most articulate participants whose interests may be different from those who do not speak.
 - In addition, we need to consider whether there may be negative impacts on certain groups of women if they participate in our evaluation (e.g., women who are victims of or vulnerable to spousal abuse).
- When conducting interviews, we need to make sure our choice of interviewer is appropriate.
 - There may be situations in which it would be inappropriate to use male interviewers (e.g., perhaps when interviewing victims of sexual assault).
 - It may also be important, both for the comfort of the respondent and for the reliability of the data, that the interviewer be of a similar ethnic or social background. (Some references to non-traditional methods are appended. Section 2 of this chapter provides a theoretical discussion of principles which should guide the articulation of our methodology.)

Mid-Term, Formative and Summative Evaluations and Performance Monitoring

- If gender equality concerns were addressed during the evaluation framework stage, then subsequent evaluation activities can be based on the approach set out in the framework document.
 - In the final report we need to discuss the findings with respect to gender equality, particularly when there have been unintended impacts on women or particular groups of women.
 - We also need to identify the implications of these findings for other programs.
- If gender equality concerns were not considered during the evaluation framework stage, then we need to go through the process described above before moving on to subsequent stages in the evaluation process.
 - In so doing, we may identify the need to change or enhance the methodology described in the framework.
 - If it is not possible to change the methodology, due to lack of resources, for example, the evaluation report should acknowledge that gender issues were not addressed and identify any aspects which could be problematic in terms of potential unintended impacts on women.

GENDER EQUALITY ANALYSIS: SOME PRINCIPLES FOR EVALUATION METHODOLOGIES

- This section presents general principles for gender equality analysis which we need to keep in mind when developing evaluation methodologies. These principles should be considered in all your work:
 - ***Begin wherever possible with the lives of women*** and not existing legal or program categories.
 - ***Recognize the importance of experiential knowledge*** which often provides unanticipated insights and ideas about the nature of the problem and potential solutions.
 - Consultation with affected groups is one of the most direct ways to access experiential knowledge.
 - ***Include the voices of women*** who are likely to be most affected, but least heard.
 - Make a careful choice of gender indicators to capture women's ***options, access to justice, participation in the processes which affect them, and satisfaction with the results of the process, policy, law, program, etc.***
 - Ask yourself if the proposed indicators hold for both women and men.
 - ***Recognize the insights gained from interdisciplinary approaches***, which are essential to research that incorporates the experiential knowledge of women, and to research aimed at understanding the larger social, economic, familial and political context within which law and social policy operate.

IDEAS: Integrated Diversity & Equality Analysis Screen & Diversity & Analysis

Purpose

- Diversity analysis flows from the rights accorded to vulnerable groups under both the Charter and the various human rights codes.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- This screening instrument is intended to support recognition of those rights by providing a way to assess the impact policy initiatives could have on groups who frequently experience disadvantage in their dealings with the justice system, whether as parties to proceedings, as witnesses, as victims or as members of the public.
 - Based on key guiding principles, it uses a few focused questions to elicit information which might otherwise not come to the attention of decision-makers.
- Diversity analysis does not attempt to determine whether an initiative should proceed; rather, it provides information on the impacts of the initiative on diverse groups.
 - For some initiatives, alternatives may be suggested to modify the impact of the initiative on diverse groups.
 - Upon completion of the analysis, decision-makers will be enabled to assess the initiative in light of its impact and determine if the initiative should proceed or be modified.

Guiding Principles

1. Diversity analysis involves an assessment of the substantive equality of the outcomes a proposed initiative would produce for diverse groups; it is not accomplished by ascertaining that the initiative would treat everyone the same.
2. Diversity analysis is most effective if applied early but should be continued throughout the policy development process.

The Instrument 2.8

To apply the diversity and equality screening instrument, the following questions should be addressed:

1. **Status**

What is the initiative; what is its purpose; what stage is it at; what research or consultation has been done; what is the target date for completion?

2. **Impacts**

a) What are the impacts (whether intended or unintended) of the initiative on individuals in, or brought into, the justice system, or on the public at large?

b) Are there foreseeable specific impacts of the initiative on individuals who can be identified by membership in any of the following groups?

- women (please see "Diversity and Justice: Gender Perspectives — A Guide to Gender Equality Analysis")
- racialized minorities
- aboriginal people
- religious groups
- persons with disabilities
- refugees
- recent immigrants
- youth and children
- the elderly
- social assistance recipients and the poor
- gays, lesbians, transgendered and bisexual persons

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- persons who have difficulty functioning in either official language
- persons with literacy problems

c) Are there foreseeable specific impacts on individuals who can be identified by membership in more than one of these groups?

3. Modifications

a) How could the initiative be modified to reduce or eliminate any identified negative impacts, or to create or accentuate positive ones?

b) If these modifications were made, would there be impacts on other groups in society or on the ability of the initiative to achieve its purpose?

4. Further Research

Given what has been learned in the analysis undertaken to this point, what additional research or consultation is desirable/essential to better appreciate the impacts of the proposal on diverse groups?

5.17. Aboriginal Women: A Profile from the 1996 Census³⁰

5.18. Healing The Relationship Between Federally Sentenced Women/Communities - 1995³¹

5.19. Restorative? Retributive? How about Redistributive? 1994³²

I want to start by situating myself for you. I am the proud mother of a 3 1/2 year old budding pro-feminist prison abolitionist. Michael teaches me about fairness, personal integrity and justice. Not a sexist, racist, non-respectful or jail-oriented mutterance or image seems to escape his ears, eyes or fails to elicit comment. He constantly reinforces my hope for our future.

My paid work is with an organization known as CAEFS. The Canadian Association of Elizabeth Fry Societies is a national voluntary women's organization whose focus is women who come into conflict with the law. The twenty-one autonomous members of our association provide a variety of services and programs with and for people, particularly women, who have been or are identified as at risk of being in conflict with the law.

Some of know each other from one of my former lives, when I worked with the John Howard Society. After more than a decade now of working with youth, men, and now women, my perspective on justice has certainly evolved.

³⁰ Aboriginal Women: A Profile from the 1996 Census http://www.ainc-inac.gc.ca/pr/sts/awp_e.html

³¹ Healing The Relationship Between Federally Sentenced Women And Communities Summary of Discussion Paper prepared by: The Church Council on Justice and Corrections for Correctional Services Canada Summary Prepared by: Federally Sentenced Women Program, Correctional Service of Canada December 1995 <http://www.csc-scc.gc.ca/text/prgrm/fsw/fsw31/toce.shtml>

³² Kim Pate Response 'This Woman's Perspective on Justice. Restorative? Retributive? How about Redistributive? 1994 <http://www.elizabethfry.ca/perspect.htm>

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

Increasingly I have concerns about some of the tinkering and tampering that has been attempted - indeed, parts of which I have been very much involved with - in the name of justice.

I am writing this, as a consequence of having been asked to speak about feminism and restorative justice. As I thought about how I would frame my comments, I first struggled with what each of those words means. What is feminism? What is restorative. What is justice? Some likely regard the concepts as consistent, whilst others might regard them as mutually exclusive.

How we interpret these notions, how effective we see the current criminal and social justice mechanisms as being, how we approach the work we do, both waged and unwaged, depends upon the lens through which we view the world. That lens is shaped by our life experience and learning. One of the single most significant factors in the framing of such learning has to do with where we are situated vis-a-vis the dominant values, morays and understandings of our society.

To my mind, it is vitally important that we recognize that involvement in the criminal justice system is more indicative of the extent to which one is marginalized than it is of one's criminality. This is no accident. Let us recall for and by whom our laws have been (and I would argue continue to be) developed and enforced. It should come as no surprise that laws developed by white, relatively well-off men, serve to preserve the dominance of that sector of our communities.

We must be careful not to merely repackage and recreate the inequities of our current systems. Even the use of such terms as "restorative" may need to be reexamined through others' lenses. Restore to what, pre-existing inequities? Hopefully not. Similarly, when we speak about justice, what do we mean? Tritely, many will proclaim that they want "justice for all!" When discussions turn to redistribution of privilege and power, too often that stance begins to waiver and reframe itself into one best described as "my justice for all."

By continuing to accept notions such as 'victims' and 'offenders' as well as by continuing to focus on "the crime," whether we use a new term such as "harm done" or any other for that matter, we continue to reinforce the status quo. We still are tending to take what are predominantly white, male and middle class mores and values, and imposing them upon other members of our community.

Similarly, when we start to utilize such phrases as "protection of the public," we feed in to the double speak which condones and encourages the legal violence that characterizes our punitive criminal justice system. Many well intentioned organizations have fed into this and other seemingly victim-oriented approaches that have been woefully co-opted into what is fundamentally a punitive political "law and order" agenda, rather than focusing upon not creating more 'victims.' I speak now most particularly of the victim-oriented assistance bureaucracies that have been built primarily on the pain of the most marginalized, and mostly these are our women and children.

The current criminal justice system and most alternatives are built upon male-based norms and rules which ignore women's realities. Instead, they tend to systematically reinforce women's dependence on and subjugation by men. By and large, men encourage and support the development of detached, autonomous and individualized conceptions of justice. This has led to a perception of rights and morality as geared to arriving at rational, objectively fair or just resolutions of moral dilemmas. Women on the other hand, as well as many marginalized men witness the rising up and challenging of our First Nations people who tend to view morality and moral problems somewhat differently. It is posited that women tend to start from a more contextual and holistic understanding of moral dilemmas and search more consistently for inclusive and non-violent means of addressing social problems - an ethic of care and support, as opposed to one of judgement and control.

Even as nongovernmental groups, we in the "criminal justice sector" - if I may describe it as that - have not done well in these respects. Rhetoric and tokenism abound, socially responsible approaches to redistributing justice, premised upon inclusive, non-violent and non-discriminatory means are noticeably lacking however. Lip service is paid to what is termed "political correctness." Whatever happened to respect and dignity? I get very frustrated when I hear people - often those men or women of relative privilege - bemoan the fact that they must be careful about what they say and to whom they say it.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

I reject the notion that the problem rests anywhere but within themselves. Comments, actions or images that do not respect and honour the dignity of any person are generally reflective of both the individual as well as systematic biases of their communities.

To characterize them as otherwise or to attempt to attack the person impacted as being too sensitive or someone who misunderstands, problematizes the wrong behaviour and deflects responsibility onto the recipient of the disrespectful action, rather than situating it with the transmitter.

So, how does this relate to feminism and what feminists have been doing about criminal justice? "Feminist" still seems to be regarded as akin to other "f" words. However, I know that the criminal justice sector has much to learn from, indeed daily benefits as a result of the work of feminism, particularly the work of community-based women in the grassroots independent women's movement.

How many of you work with or represent community-based criminal or social justice groups? How many of those groups support the abolition of prisons? CAEFS is one of, if not the only, criminal justice oriented group to have taken a clear and comprehensive stance against the continued use of incarceration. It may surprise you to learn that last year many of the national women's groups with whom we worked passed resolutions in support of the use of alternatives to incarceration. These are the same groups who publicly argue the need for "zero violence." The absolute travesty is that while criminal justice groups have not tended to support the efforts of women's groups, women's groups have done a great deal to counter the increased use of violent and ineffective interventions.

Unfortunately, too many individual men, as well as groups that support the status quo regardless of their claims-makings, are so busy campaigning for parity with privileged men that they have forgotten and further alienated women. I have not yet to hear of men campaigning for parity with women. The irony is that most activities, such as affirmative action programs for women and/or racial minority men and women, have been shown to disproportionately benefit poor, white men.

I mention all of this in order to put in context the increasingly strident demands of women's groups that men also take responsibility for and own male violence as well as the perpetuation of other forms of patriarchy and oppression. Feminists expect non-violent men to start doing their share to stop violent and/or controlling men. They also expect men to be accountable to women and women's groups.

For the last 2 1/2 years I have repeatedly faced the seemingly insurmountable roadblocks and inequities of systems, communities and individual men and women for whom it is easier to be silent and witness abuse than to bravely challenge the status quo and risk one's own safety. I have come to ever more seriously question the validity of merely removing our current criminal justice system, only to replace it with other models, particularly models that do not address the sorts of systematic biases highlighted earlier. New models with old philosophical roots will not a just society create, nor justice restore.

Now, I issue the challenge to each and every one of you to join our efforts. Let's examine how we might apply all of this to the notion of community safety. People do indeed feel unsafe, women are especially fearful. Their fear is not unwarranted. All research and experience shows that women and children are most at risk, not out in their communities, but in their homes. The greatest risk of harm is from those closest to them.

What does this mean for those of us who have devoted much time and energy to the promotion of alternatives to what we know is an ineffective and unjust system; for those of us who have looked to "restorative justice" in hopes of finding a better way to address the harm or crime in our communities? I believe we all have to approach this in two ways: namely, on a personal as well as on a professional, or more analytical level.

For a new form of justice - whether we call it restorative, transformative or some other name - to be able to "make things right" we must first do our own work. Each of us must identify, acknowledge and address our own biases. Men must promote non-violence and model anti-racists and non-sexist behaviour. They must also confront and call to account other men's sexism and violence. Women must also unfortunately continue to challenge men, whilst simultaneously supporting and affirming the rights of women and children not to be abused. White people must

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

challenge racism and other forms of discrimination every time they witness it. The list goes on. These are the first and very personal steps that we must take to redistribute existing bases of power and control.

In addition to challenging our own values and standards of behaviour, we must ensure that any new model of justice does not merely recreate or reinforce some of the most ingrained and systematic biases of the existing system. If we merely impose our values and expectations on others, we run the risk of imposing, albeit unintentionally or out of ignorance, further punitive approaches.

Many of us have attempted to implement restorative justice approaches in our communities, such prototypes as victim-offender mediation, circle sentencing or community justice panels. However, these are not always seen by the participants as more restorative and less punitive than standard court-type procedures. This is particularly true if the participants differ in gender, race, class or ethnicity from those who run or administer the programs.

This does mean we should abandon the approaches, but nor should we stubbornly cling to our own notions of what should be done. Some of the most effective approaches are those that are designed with, by and for the participants. It is far harder to perpetuate biases, intentionally or unintentionally, if you strive to include all stakeholders and actually redistribute the power and the control by ensuring that all who may be impacted, most particularly those with the least power, are full and equal participants in the process.

First we must achieve justice, then when things disrupt it, we may better be able to restore it. So, my challenge to myself as well as to you is that we continue to move forward, questioning and testing our own values and beliefs in addition to those around us. In order to truly develop a more just and peaceful community, we must open our minds and extend our experiences to include the breadth and richness of the diversity around us. Let us all work toward more creative solutions.

July, 1994

Kim Pate applies her degree in law and her innate humanity throughout her work in organizations such as CAEFS. She has singularly accomplished what no other woman I know of, who works in and among bureaucracies, has done - she speaks and writes openly about the causes of violence and champions the sovereignty of each individual inherent in the Canadian Charter of Rights and Freedoms in an unwaveringly courageous and eloquent manner.

5.20. Dancing with a Gorilla: Aboriginal Women, Justice and the Charter -1993 ³³

Nahanee addresses the basic requirements of a parallel Aboriginal justice system from a female perspective. She argues that two powerful driving forces which will shape Aboriginal criminal justice administration are: (1) the widespread victimization of women and children in Aboriginal communities, and (2) the 30-year struggle by Aboriginal women for sexual equality rights in Canada. She stresses that women have to be involved in the consultation process for a parallel Aboriginal justice system and points to their success in securing an unanimous ruling by the Federal Court of Appeal to that effect in 1992. She also cites the outrage Aboriginal women have expressed regarding the leniency of sentencing in cases of wife assault, sexual assault, and child abuse. Nahanee discusses the many reasons for under-reporting and denial by Aboriginal female victims: cultural considerations, fear of losing children, and control of service agencies by male leaders. She thrashes the so-called cultural defence occasionally used in court by Aboriginal males to excuse this kind of violence and is skeptical concerning restorative justice practices, such as the use of elders' circles, unless there is a genuine return to traditional ways and a sharing of power between men and women. The traditional system, for many Aboriginal peoples, was not patriarchal.

³³ Nahanee, T. "Dancing with a Gorilla: Aboriginal Women, Justice and the Charter" in Aboriginal Peoples and the Justice System. Ottawa: Royal Commission on Aboriginal Peoples, 1993 cited in Ministry of the Solicitor General of Canada, Don Clairmont and and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998
<http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

Nahanee is very critical of both the federal and provincial governments' failure to clarify jurisdictional issues that could ensure appropriate rights and living conditions. She directs much of the blame for the high level of victimization of Aboriginal women and children to colonialism and the residential school experience, to Christianity and its values, and to racism. In her view, progress will require clear federal initiatives and changes among the male leadership in Aboriginal communities. She notes that Aboriginal women have embraced individual rights found in the Canadian Charter because it aids their struggle for sexual equality and sexual freedom. The dominant Aboriginally-sensitive political theory has argued that sovereignty would put Indian governments outside the reach of the Charter of Rights and Freedom. Allied with that position has been the male Aboriginal leadership's argument that Aboriginal governments must be established and recognized first, then sexual equality would follow. Nahanee contends that the Charter has "turned around [Aboriginal women's] hopeless struggle". Recent federal court decisions, as well as the defeat of the Charlottetown Accord, have flowed from the Charter and require that women must have a voice in determining whatever kind of criminal justice administration develops in Aboriginal communities.

5.21. The Effects of Formal-Legal/Traditional Interventions on Woman Abuse in a First Nations Community - 1993 34

³⁴ Ellis, D. and D. Beaver. The Effects of Formal-Legal and Traditional Interventions on Woman Abuse in a First Nations Community. A Report Prepared for Health and Welfare Canada. Toronto: The LaMarsh Research Programme, York University, 1993. cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

6. Relevant Documents, Studies and Practices – USA

6.1. Perspective -2002 ³⁵

In mid-June we said good-bye to the home where our family has lived for the past seven years. Our 13-year-old son stood up during the open sharing time at our church farewell where my spouse has been pastoring and said, "Well, I'm not sure I want to in move to Akron. I feel like I've grown up in Quakertown . . ." He's had a tough time with the transition and each step of the way I've thought about how to respond to his challenging actions and his probing, persistent questions. I tried to do so in a manner consistent with the principles of restorative justice that I had just spent seven days talking about in a class I was co-teaching at Eastern Mennonite University. I wish there were easier "how-to's" but the reality is that those principles are about our relationships with each other and how we respond not only in a crisis but also in our everyday lives.

We made the move to Akron, PA where I will work in an office with my peace and justice colleagues at the Mennonite Central Committee after working from my home-in an office by myself! My husband will be pastor of the Akron Mennonite Church. As transitions go, I think ours has been pretty smooth. Yet I found myself feeling stressed and overwhelmed and went to my closet, shut the door and cried. I probably wouldn't have admitted that until I looked at a book one of my colleagues is reading about women in leadership. It points out the extent to which expectations about how to lead have been developed and mandated by men. Women, trying to "make it" in leadership roles, have learned to act like men in order to be taken seriously. Crying for a woman in leadership is not only seen as weak but often as a form of manipulation. The reality is that it is a natural human emotion that should be viewed as acceptable by both men and women. I generally wear my emotions on my sleeve and sometimes feel very frustrated by that when I have my "leadership" hat on. I feel weak and vulnerable.

Recently I have thought a lot about leadership and those involved in the field of restorative justice. I've had many discussions with friends and colleagues about why it's been a predominantly male dominated field in terms of the "gurus." I am so very grateful to the men who have wrote, talked and taught about restorative justice but have also wondered, "Why aren't the women doing the same thing?" There are certainly as many women in restorative justices who are as articulate and intelligent as these men. Obviously, that's not a question that will be answered here but an important one as we think about living out the principles we have come to believe in.

I wish there were easier "how-to's" but the reality is that those principles are about our relationships with each other and how we respond not only in a crisis but also in our everyday lives.

I appreciated Harley Eagle's opening in his article, explaining that writing is not a format he is comfortable using since he comes from an oral tradition. I read his article very differently hearing that and wondered why. I then realized it was because of his honesty in making that statement. He wasn't saying, "I have this truth that I need to share with you so you can follow it." It was his story and he allowed us to walk with him for a small part of that journey. I think, as a woman in leadership, I feel most comfortable with "sharing the story" which can be viewed as not being substantive enough. **The truth is, that's what restorative justice is about: the stories. The stories of victims and offenders and how the harm has affected them and their communities.** The stories of students trying to figure out relationships in a setting where there is intense pressure to behave in a certain way—a way they may not like but learn to live with. **We have developed principles about how to guide us in listening and responding to those stories, but it is nevertheless the story that should be at the center.**

I feel the same way about restorative justice as I did about the move. I'm excited by the possibilities and overwhelmed by the work involved.

³⁵ Lorraine Stutzman Amstutz, Director of the Office on Crime and Justice at Mennonite Central Committee U.S, Perspective, Conciliation Quarterly Vol. 20, No. 3, <http://www.restorativejustice.org/rj3/Feature/MARCH2002/Conciliation/perspective.htm>

7. Relevant Documents, Studies and Practices – International

7.1. Even for rape? -2001³⁶

This is inevitably a very sensitive subject, and especially so for a male author. I should like to say, as a preface, that I approach it because I as a man deplore what some men have done to women; that I have based the paper mainly on female authors; and that I am presenting it in collaboration with a female colleague at Mediation UK, Debby Kivimaa – hence the use of the first person plural. Indeed I do not claim that it is an original contribution; it is an attempt to open up the subject, because there are reports that a restorative approach can be very helpful to victims of rape and sexual assault, and they should not be deprived of it because of a reluctance to discuss it.

Our aim in this paper is to test the principles of restorative justice by applying them to very serious cases. We shall be considering mainly those cases where the victim and the offender are acquainted with each other, which are some nine out of ten of reported cases (45 per cent acquaintances, 43 per cent intimates, in a Home Office study of 483 cases: Harris and Grace 1999: 6). This category largely overlaps with ‘simple rape’, where there are no aggravating circumstances such as violence, several assailants, or rape of a complete stranger (Goolsby 1990: 1183). Given the well known failings of the criminal justice system, especially in regard to victims of rape, should restorative justice be considered not as a supplement but as an alternative to the system? We will not include very serious types of sexual offence, such as violent rape by a stranger, where if the man is convicted there is no question of anything but a custodial sentence, but most would agree that there should be a procedure in place for a woman to ask to make contact with him at a later stage, so that she can rid herself of her nightmares, as in the examples we shall give later. This can also increase the man’s understanding of the seriousness of what he did, which will assist the treatment programme which should be available in prison. Nor shall we consider the question of child sexual abuse, although this too can be dealt with in a restorative way (Yantzi, 1998; Church Council 1996).

Our understanding of the basic principle of restorative justice is that when one person harms another, the primary aim should be to heal. All individual victims should be offered whatever help and support they need, by community-based organizations such as Victim Support, with specialist back-up where needed (except perhaps for some crimes whose emotional impact is usually slight). Secondly, where offenders are known, if there was a relationship between them and the victim there should be an opportunity to repair it; in any case the offender should be held responsible and contribute to the reparative process, and victims should be able to discuss with them how they can make appropriate reparation. Thirdly, many offenders have needs which have to be met if they are to be able to do what is required of them by making reparation and staying out of trouble. Fourthly, the community itself, through its individual members and its collective structures, should assist this process. The final dimension is crime reduction: we should learn from what the victim and offender say about how the offence occurred, and develop a strategy for crime reduction and social reform accordingly. The ideal is to empower communities and individuals, as far as is possible, to restore peace and harmony within themselves – or to create it.

The minimalist aim of any intervention in other people’s lives is not to cause any further harm: as the Latin tag says, *primum non nocere*. Half a world away from the ancient Romans the Inuit of northern Canada had a similar insight: an informal rule that ‘punishment must not cause more problems than the initial infraction’ (Cayley 1998: 208). So the next part of our proposition is that there is ample evidence that in appropriate cases restorative justice can do what is claimed for it, provided that it is done well. This applies to all types of case, but in those where the victim is severely traumatized, such as rape and sexual assault, it is especially important. We suggest that some cases of ‘simple rape’ can be suitable; the

³⁶ Dr Martin Wright Visiting Research Fellow, School of Legal Studies, University of Sussex, and Debby Kivimaa at Mediation UK, *Even for rape? Restorative and Community Justice: Inspiring the Future*, An International Conference, Winchester, England March 28 – 31, 2001
<http://www.law.soton.ac.uk/bsln/rj/rjsumwri.htm>

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

need to empower the victim by helping her to reassert control over her own life has to be balanced against the need to protect her from re-victimization, but is jeopardized by overprotectiveness.

We will begin by considering the needs of victims, and then those of the offender and the community. We will show how the criminal justice system fails to meet these, and suggest what restorative justice offers instead. Finally we will look at possible difficulties, both in the procedures and in the conduct of mediations and conferences, and how they can be overcome.

The words 'mediation' and 'mediators' will be used generically to include conferencing and facilitators, unless otherwise stated, although as we shall show, there are important differences. In speaking of the 'community' we have in mind mainly the 'community of care', the family and other people who are concerned about the victim and to the offender. When conferencing is used, these are the people from whom the participants will be invited to take part.

Whose justice?

Restorative justice begins with victims, so let us begin by considering them. Suppose a young woman has reported that she was escorted home by a young man after a party, invited him in, and refused his suggestion that they go to bed, but that he then raped her. He admits that sexual intercourse took place, but claims that she consented.

What do victims want?

What will be the priorities of this young woman? There have been attempts to summarize what many victims want, and there is every reason to suppose that to a large extent they apply also to victims of rape and sexual assault by an acquaintance. We may expect that the young woman will want: an explanation of why the crime occurred, a recognition by the offender of what he has done, and his acknowledgement of responsibility for that harm (Gustafson, quoted by Cayley 1998: 226-7). The criminal justice process is focused only on whether the crime occurred, and does not meet the first requirement; and as we shall see, it actively discourages the other two.

A more detailed list of what victims want is given by Teresa Reynolds, policy and information manager for Victim Support (quoted by Wright 1997). Some of these can be provided by changes to the system, and there is already some progress: for example, to know what's happening in the case. Some victims want retribution, but most, in Reynolds's experience, do not. She states that victims want public acknowledgement that wrong has been done, and courts are a way of achieving this; but we would add that they allow no acknowledgement by the offender, which is central to restorative justice.

Among the other needs of victims listed by Reynolds, there are some where the system is improving, but which communities of care are better suited to provide, such as helping with the practical/emotional effects of crime and treating the victim sensitively and with respect. She also mentions providing a quick resolution of the case: it is true that the system could be speeded up, and that restorative justice always takes time to organize, and that victims' decision to participate should not be rushed; but at present the restorative justice process usually begins sooner, and thus shows everyone that something is happening, which is what matters.

Thirdly, Reynolds lists some wishes of victims that merit further discussion.

To be heard and taken seriously. In the conventional Anglo-American system, the majority of offenders plead Guilty, and the victim gets no chance to speak at all. Where the plea is Not Guilty, a victim who is also a witness is asked to answer questions that try to establish whether the accused committed the crime, but are not concerned with the victim's feelings. 'Victim statements' are due to be introduced in England and Wales in 2001, but research on pilot schemes questions whether they have clear and achievable aims (Morgan and Sanders (1999).

To know 'Why me?' This is a common wish of victims who were not acquainted with their offender, and the mediation/conferencing process is well suited to answering the question, which the conventional process does not address.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

To know that the offence will not be repeated. This cannot of course be guaranteed, but researchers have reported that after they and the offender have met, both have an understanding of each other which makes it unlikely that the offender will repeat his behaviour. As Zehr says, 'Victims often feel that safety is important. They want reassurance that this will not happen again – to them or to others.. They want to know that steps are being taken toward this end' (Zehr 1995: 28) It must be said, however, that where there was already a relationship, there is some scepticism about whether the man will make promises that he will not keep, and we consider this below. One of the advantages claimed for conferencing is that it brings together the communities of care which can not only provide support and reassurance for the victim, but also a combination of support and supervision of the offender.

To receive an apology from the offender Not all victims want this, but many do, and some also want some form of reparation from the offender as a sign of genuineness. In the conventional process, the only expression of regret is likely to be made by the defence lawyer, not the offender himself, in the context of a plea in mitigation of sentence, which lessens its credibility, to say the least, even if it is sincere.

To receive compensation This may be the tangible sign of a sincere apology, as mentioned above, or after an offence against property the victim may want the money to pay for the harm or loss. It does not however appear at the top of so many victims' priorities. In Leeds and Coventry, for example, 62 per cent of victims thought it important, whereas 90 per cent attached significance to an apology (Umbreit and Roberts 1996: 91).

To be free of responsibility for decisions about the offender. This is a point that has consistently been argued by Victim Support in the UK (for example in Victim Support 1995). But two distinctions need to be made. Firstly, it is probably the consensus in the UK that it is in the interests neither of victims nor of offenders that victims should influence the amount of punishment (see for example Ashworth 1993), but this is by no means the case in the United States. It could be a burden of anxiety for some victims and even place them at risk of retaliation, and it would make sentences even more inconsistent. Secondly, however, the same objections do not apply to reparation, where it seems entirely appropriate that victims should express a view about what they feel to be appropriate. If we are to be protective but not overprotective, victims should be empowered by being enabled to regain control. 'The fastest recovery for a victim occurs when the victim starts controlling her life again as soon as possible after the rape' Goolsby 1990: 1206-7, 1187).

Victims and criminal justice

Victims of rape and sexual assault must feel, more than most, that the criminal justice system is like a surgeon who operates but does not bind up the wound. Academic careers have been built on demonstrating how much pain it causes them. It does so in three main ways: before the court process, during the trial, and as a result of the side-effects of punishing the offender.

Before court

The first two have been well documented, and since they were exposed, substantial progress has been made in treating victims better, notably by giving them more information. But Victim Support (2001) still finds it necessary to demand, for example, that dedicated examination suites for victims of rape should be available nationwide. Rape victims in a small sample whose cases were recorded in 1993 to 1995 still found police attitudes and practices varying from 'caring and supportive' to 'amateurish' and 'a mockery' (Temkin 1999). There are still cases where the Crown Prosecution Service discontinues a case because there is insufficient evidence, or where the charge is reduced in order to persuade the accused to plead guilty.

A victim can still be treated as a cog in the machinery of justice, and punished for objecting to it: for example, a woman in Marion County, Illinois, whose alleged rapist was released without having to post bail, made a protest by failing to appear to give evidence, and was jailed for contempt of court (Evansville Courier and Express 19 February 2001).

During trial

If the case does get to court, the victim is often subjected to a demeaning cross-examination by the defending counsel. Since it is usually one person's word against the other's, the case often depends on whose evidence the jury believes, so

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

the standard defence tactic is to try to 'shake' the victim, to make her appear confused and unreliable. 'Harassment does still happen' and discrediting the complainant 'was the central strategy in the defence armoury' (Temkin 2000: 229, 231; based on interviews done in 1995-7). Counsel may also bring up the victim's previous sexual conduct; in the hope of persuading the jury that she has consented to sex previously and was therefore doing so on this occasion. This was so widely done that it was restricted in the Youth Justice and Criminal Evidence Act 1999; which is in turn being challenged in the House of Lords as contrary to the right to a fair trial (Guardian 27 March 2001). Some lawyers question whether such interrogation is even relevant: one judge told the Home Office researchers: 'It is wrong simply to say to a girl "You will go with anybody", because she may go with anybody except him' (Harris and Grace 1999: 48). For that matter, she may have gone with him previously but not wished to do so on the night in question (Cloke 1988), the situation alleged in the current House of Lords case. Lees reports examples of defence counsel who humiliated women by asking what underwear they had been wearing, about their menstrual cycles, if they had had a black boyfriend and whether or not they were on benefit (Lees 1994). As one QC told Professor Temkin, 'juries are not very good at convicting when somebody can be depicted as a slut' (Temkin 2000; Guardian, 8 March 2000). It is still possible for a senior judge, Lord Abernethy in the Scottish High Court, to maintain that rape is not rape without the use or threat of force (Independent, 27 March 2001). It has become a commonplace to say that 'The court often in effect puts the victim on trial instead of the alleged rapist' (Goolsby 1990: 1185).

After going through all this, many victims still see the defendant, whom they know to be guilty, acquitted. Daly (forthcoming), for example, shows that in South Australian juvenile courts in 1998, 72 per cent of all cases were proved, but only 33 per cent of sexual offences. In a study in England and Wales, a quarter of all cases reaching Crown Court ended in an acquittal, but half of those where the woman was over 25 years old. Many more were discontinued by police or prosecutors for various reasons, and only 6 per cent led to a conviction (Harris and Grace 1999: 12, 31, 33).

If in spite of this the defendant is convicted, the defence makes a plea in mitigation of sentence, and this gives another chance to denigrate the victim's character. According to the Victim's charter the prosecution is supposed to challenge unwarranted assertions, but this is seldom done – among other reasons, no doubt, because the prosecutor doesn't know enough about the victim to be able to deny them confidently. This is all the more serious because court proceedings are privileged, and can be fully reported by the local or even national media. As Goolsby (1990: 1195) points out, the legal profession's role should be to deal with hurt and conflict, but it fails to deal with hurt and anger, and 'By increasing hostility and polarizing the parties, the criminal justice system impairs the parties' ability to interact if future contact is necessary.'

Side-effects of punishment

Paradoxically, these problems are aggravated by the steady increase in the punishment for rape. The fear of punishment can lead the offender to blame the victim, intimidate her from giving evidence, or retaliate against her, and occasionally it leads a woman to settle an old score by making a false accusation (Wright 1996: 32-33). The then Lord Chief Justice, Lord Lane, laid down that the 'benchmark' sentence for rape, with a plea of Not Guilty and with neither aggravation nor mitigation, starts at 5 years' imprisonment (R. v. Billam, February 1986). But some lawyers and even judges think that stiffer sentences make juries less likely to convict; as one police officer commented, 'Juries think "do I really put this nice bloke from the students union unto prison for rape when, you know, they were both drunk as skunks?"' (Harris and Grace 1999: 38, 37). When the accused does not conform to the jury's stereotype of a 'monster', 'the severity of punishment required by many current rape statutes may actually work in favour of the defendant', so a lesser penalty could aid prosecutors in getting convictions (Sauter 1993: 183-4).

A case has been made for creating a separate offence of 'date rape' with a lower maximum penalty, in the hope of securing more convictions – among others by Jill Saward, herself the victim of a brutal and much publicized rape by a stranger (Daily Mail, 4 July 2000). From her own experience, Carol Sarler also criticizes women's groups who refuse to make a distinction between 'the boyfriend we fancied last night but don't to-night' and the male who dragged her into bushes and sexually assaulted her at knifepoint at the age of 10. 'Believe me', she writes, 'I'll take the inebriated boyfriend first, any time' (Observer, 9 April 2000). There are arguments against such changes in the law, however, because of the difficulty of classification, and because for some women 'date rape' cannot be brushed aside so lightly: at least one young woman, raped after her drink was spiked in a night club, later committed suicide (Guardian, 13 December 2000).

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

As always with punishment, the offender's attention is focused on the impact on himself, not of his victim: this system does not encourage him to accept responsibility. It may also discourage some victims from reporting the offence at all: where a boyfriend or acquaintance has been guilty of 'what is technically in law a rape [but] is little more than bad manners and a lack of consideration', as Ann Mallalieu QC has put it (Mail on Sunday, 26 March 1995), she may feel that he should be shown that he cannot get away with it, but that she does not want to be responsible for his being sent to prison for several years; in such a case she has the choice of making the point by reporting the offence and then refusing to give evidence, which would expose her to strong pressure from the police and the court, possibly even including the threat of imprisonment, or doing nothing. As Goolsby (1990: 1187) says, 'In crimes within relationships, victims may be reluctant to report or to press charges because the victims do not want the offender to be punished or because the victims fear hostility or retribution from the offender.' Juries may feel the same way: in the experience of Lady Mallalieu (*ibid.*), 'We are in danger of putting juries in a position where they prefer to acquit rather than risk a defendant, whom they believe to be guilty, being sent to prison for many years'. The academic Sue Lees agrees: 'The new emphasis on heavier sentences for rapists has, I believe, made it increasingly difficult [for the jury to find them guilty]' (New Statesman, 24 November 1999). Hence some victims are turning to the civil law: since it does not entail such heavy penalties, it does not require the 'beyond reasonable doubt' standard of proof; though there are other drawbacks from the victim's point of view (Sauter 1993: 184-5).

Mandatory life sentences for repeat offenders could actually make women more vulnerable by increasing the possibility of murder following a rape, in the view of the Lord Chief Justice and of Women Against Rape. At the very least, Helena Kennedy QC has argued (Times, 12 March 1996), 'rapists facing automatic life sentences have no incentive to plead guilty' but on the contrary will contest even 'the most clear-cut cases, subjecting their victims to further humiliation and trauma' (see also Natasha Walter, Guardian, 19 March 1996). Obviously this case should not be overstated, but it is to say the least likely that every increase in the benchmark sentence will decrease the proportion of defendants who are willing to spare the victim the ordeal of a trial by pleading guilty, and in view of the notoriously high acquittal rate it is rational for them to calculate that it is worth forfeiting the sentence discount for a guilty plea, in order to pursue the quite high chance of securing an acquittal and escaping punishment altogether.

The more serious the punishment, the more important it is to have safeguards against wrongful conviction; but also the greater the pressure on the accused to use or abuse those safeguards to save his skin. All in all this is not in the interests of the victim or the community: offenders are not prosecuted, or are acquitted. Politicians who determine penalties, and courts which impose them, are fond of saying that they are 'sending out a message', but the message which is received may be the wrong one: that people should not break the law because if they do they may be punished, but if they deny or minimize their responsibility they may escape.

The potential of restorative justice

The restorative message would be that people should not harm others, and if they do they should accept responsibility and do what they can to repair the harm. However, for those who are not prepared to contemplate that restorative justice could replace the conventional punitive response, it should be remembered that the restorative justice process is also possible after sentencing. In some very serious sexual assault cases victim/offender dialogue has been helpful to both, even where the offender was already serving a prison sentence. For example:

In one case of rape by a stranger in northern Wisconsin, a man stopped by, pretending to use the phone, checked out the house and then used a knife and gun to assault/rape the woman. Eventually her husband left her, and got custody of their only child; she moved to another town, and changed her name. Five years later she wanted to meet with the man. The Iowa Peace Institute (IPI) arranged it in a maximum security prison in Wisconsin. They met for about 4 hours. It went very well and she reported back that it was very helpful. The IPI were able to keep in touch with her for about a year, then she moved.

In another case a woman had been sexually assaulted by her older brother for many years. He was in prison on another charge and agreed to meet with her, even though he had always denied ever touching her and no one in the family ever acknowledged it. He was the oldest of several children, and she was the youngest. The IPI organized a meeting in the prison. The man admitted his prior acts and heard her entire story. It really helped the woman; she has since telephoned

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

the IPI to say that she is engaged to be married (big news as she had never had a successful relationship with a man) and that this past Christmas was the first time the entire family had been together for Christmas in over 20 years. (Information from Kittle, 2001)

In another one case a serial sexual offender, and probably his victims, were deemed not yet ready for a circle sentencing process; the judge felt also that the community wounds created by one man's sexual offences were 'still too raw', and imposed a prison sentence followed by probation, during which a circle could be arranged 'when the time is right' (Cayley 1998: 212-3)

What restorative justice offers victims

Returning to the case of the young woman we mentioned earlier. You are visiting her to help her consider her options. What can you say? You can explain that the prosecutor may consider that there is a less than 50/50 chance that a jury will believe her 'beyond reasonable doubt', and therefore discontinue the case. Or the young man may agree to plead guilty to a charge of attempted rape, which she may well find inadequate. Or the case may go to trial, she would have to give evidence and be cross-examined, but there would still be a high chance of an acquittal, whether because the jury was not sure, or because they considered that he was guilty but did not deserve the five-year sentence which they knew was likely. She would not have the chance to tell him the effect he had had on her, he would go away believing that he had been in the right, and possibly that she had been vindictive, so that he would not have learnt anything about relationships with the opposite sex. 'This failed communication between the victim and the offender precipitates the rape in at least some cases' (Goolsby 1990: 1183); and if failure to communicate is the problem, an approach that promotes communication rather than stifles it may well be appropriate.

In restorative justice, in contrast, both parties may learn: on hearing the man's account, the victim may understand how she had behaved in a way that the offender misinterpreted or chose to ignore. This gives an opportunity for the offender to express remorse, and if his apology is accepted, it may reduce the victim's hostility; but it can also allow her to express her intense rage, providing an outlet which can help in healing psychological wounds and regaining control of her life (Sauter 1993: 185).

On the specific subject of communication with the offender, an early British Crime Survey (when victim/offender mediation was relatively unknown) found that 52 per cent of victims who had reported various types of offence to the police said they would have accepted the chance of meeting the offender in order 'to agree a way in which the offender could make a repayment for what he had done' (with higher figures for burglary and theft, and lower for threats and robbery) (Maguire and Corbett 1987:227-231).

Thus since the offender in our example had not denied that intercourse took place, you could tell her about another option. If he agreed, she could meet him in the presence of mediators, and her community of care if she wanted it, describe what happened in her own words, and leave him in no doubt about what is and is not acceptable. If she tries to do this in the courtroom, she is liable to be told not to make a 'speech' (Lees 1994). Afterwards she would be able to meet him again, if she wanted to, without undue embarrassment. There would be no trial, and the whole thing would be over much more quickly. We are not making any assertions, but we are merely posing the question: is it not possible that some women would prefer this option, and ought it not therefore to be available to them?

Effects on men

What about the man? Is this too lenient? Restorative justice does not operate on the tough/lenient dimension; instead it asks: Is it not appropriate to encourage offenders to face what they have done and take a course of action which has benefits for the victim, just as there is a sentence discount for pleading guilty and sparing her the ordeal of a trial? As we have seen, the effect of a trial is to encourage them to deny what they have done or make excuses for it; they see the woman as the person responsible for their punishment, whereas in restorative justice they are encouraged to see her as the person they hurt. 'By increasing hostility and polarizing the parties, the criminal justice system impairs the parties' ability to interact if future contact is necessary' (Goolsby 1990: 1195). Facing a victim is certainly not more lenient than discontinuance of the trial; and it may be that the offender will have something to say from which the woman can also

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

gain a better understanding of what took place between them. For those men who recognized that they overstepped the mark, there should be an opportunity to apologize. Mediation should in any case be voluntary, although we accept that there would be some expectation that he would take part if the victim wanted it. It is in his interest to do so, because the matter is likely to be handled more quickly, and a conference can proceed without any admission of guilt by the man; he only has 'not to deny' the charges, and can opt for a trial at any time (Braithwaite and Daly 1995: 219).

As Goolsby says (1990: 1207-8), since rapists use sexuality to express anger or power, 'sexual conquest', a restorative method can help such men to deal with relationships; thus it may change some of the societal causes of rape, because it does not threaten the man and so he is more likely to be receptive to the victim's viewpoint; nor does it blame the victim.

The public interest

Does this serve the public interest? It is sometimes suggested that this approach would 'send out the wrong signals', by indicating that rape is not so serious and by not taking place in public. In the criminal justice system, in the rare cases where there is a conviction, the message is sent out that the offender is punished because he has broken the law. But this requires a public trial, and even in Britain, where the victim's name cannot be reported in the media, many victims do not wish to make a public appearance, and it is wrong to require them to do so for the sake of a notional 'message' to the public. Restorative justice respects the victim's confidentiality, and it enables her to give a different message, not to the public but to the offender: if he meets her, she will let him know that the reason his behaviour was wrong was that he hurt her. In some cases it may be appropriate to use conferencing rather than mediation; then he would have to listen and reply in front of his own relatives and hers, and they in turn would hear the more detailed message coming from the meeting. Braithwaite and Daly (1995:225-6) argue that 'traditional mediation risks a limited, privatised justice', and that a conference bringing together a 'community of concern' can deal with problems such as attempts at domination better than mediation, and certainly better than courts. But here too the victim should be able to choose whether the presence of her supporters (and therefore the offender's also), or a one-to-one meeting, with mediators, would be more helpful to her.

But how legitimate is the public interest? Just as, in the debate about sentencing, there is often a conflict between punishment and rehabilitation, so also there may be a conflict between the alleged public interest in bringing wrongdoing to light so that it is seen to be dealt with, and the interest of the woman in recovering from the experience and of the man in learning from it. If so, the interest of the participants, especially the victim, should surely come first. Denunciation and crime reduction should be tackled in other ways.

How to avoid making things worse

We have said that we must aim at the very least not to cause any further harm. What are the risks? We need to distinguish those which are inherent in the idea of communication between victims and offenders, and those which are the result of poor practice. Of the main concerns that have been expressed, some apply to mediation generally, and some especially to sensitive fields such as sexual offences. They include pushing people towards mediation when they do not want it, or at least are not ready for it; if they have embarked on mediation, pushing them towards an agreement rather than concentrate on the communication and the relationships; domination by one party, so that the other acquiesces in an agreement that does not meet her needs; and a man who appears to make an agreement but reverts to his former abusive behaviour. Many of the fears concern the possible behaviour of the man: that he will either dominate the proceedings, or will pretend to comply and make promises which he does not keep.

The first safeguard is to be clear about the aims and objectives of the offer to promote communication, and hence the criteria for success. Bush and Folger (1994) have written about 'transformative' mediation, Umbreit (1995) also calls it 'humanistic', but in both cases the emphasis is on the needs of the parties to have a dialogue and focus on their relationship, rather than on the wish of the mediators to achieve a written agreement, a 'result'. This does not necessarily imply that the relationship will continue, but it improves the chance that the parties will at least be able to pass each other in the street without embarrassment or fear. Mediation Services in Winnipeg, Manitoba, carefully refrains from naming a specific outcome, because that is for the participants to decide; its first goal is therefore 'To provide a safe

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

place for victims to take back control of their lives', rather than the more conveniently measurable and politically attractive aims of reducing reconvictions and costs, although that programme achieved good results on those dimensions too (Lajeunesse 2000). Daly agrees about the aim: a conference 'provides an opportunity for the stories of victimization to be heard', but there should be no expectation 'that participants will want to reconcile or that victims can ever forgive the offender or even that offenders will feel remorse for their actions' (Daly, forthcoming; italics hers).

This is about empowerment, and that means choice. As Morris and Gelsthorpe remind us (2000: 418), 'the availability of restorative processes does not prevent women who prefer to use the criminal justice system from doing so.' The woman should be able to choose between criminal prosecution, civil action, or mediation; thus asserting her own rights rather than passively rely on the legal system to do it for her (Goolsby 1990: 1206-7).

As regards good practice, we will select a few examples.

The overarching requirement is for training of co-ordinators and mediators to understand these principles and aims, and carry them out, so that they are reflected in both the procedures and the mediation practice itself. Training should include, for example, speakers from women's groups (Braithwaite and Daly 1995: 226)

Procedures need to include the preparation and assessment of cases, and appropriate timing. Cases where there may be a risk of harm to participants should be screened out (Sauter 1993: 188), especially where for example there are mental health concerns that are not being met by medication (Drew 2001), but also those which are appropriate should be screened in, especially where there was a relationship (Goolsby 1990: 1201). Those who visit victims to explain what mediation can offer should be carefully selected and trained. Concern has been expressed that the victim should be put under no pressure to take part in mediation or conferencing; but it is important, conversely, that those who might want to take part should be made fully aware of the opportunity, with all its likely benefits and disadvantages, so that they can make an informed choice. One form of pressure is insensitive timing: the timing should as far as possible be adapted to those of the participants, especially the victim, and not those of the system. Thought needs to be given to ways of determining the best stage, if any, of the proceedings to consider mediation: pre-charge, pre-trial or post-conviction. The visitor must be able to reassure the victim that her address will not be revealed to the offender (if he did not already know it) apply to the conventional process as much as to any restorative justice process. At some points of the restorative process victims will need support, and this is one of the aims for which Victim Support is asking for additional funding from the Home Office (Victim Support 2001: 6).

As regards techniques used by mediators in the session itself, in their conduct of the meeting, they can support the woman, challenge the man (or indeed support him if he needs it) and ensure procedural fairness, for example by holding separate sessions (Goolsby 1990: 1210). The use of two mediators, one male and one female, is probably preferable.

Although, for those who want it, a face-to-face meeting can be the most satisfactory, it should be remembered that indirect mediation ('shuttle diplomacy') is also available; for a woman who wishes to communicate with her attacker but is fearful of facing him, there should be the option of conveying messages by mediators, or of asking someone else to represent her, so that she is empowered and there is no question of disempowering her by putting pressure on her to participate (Goolsby 1990: 1212).

Another method of countering possible attempts at domination by the man is the use of conferencing rather than one-to-one victim/offender mediation, so that 'Friends and families can also provide a supportive base for [the woman's] voice to be heard or, if appropriate, [to] speak for the woman, more powerfully than any prosecutor in a criminal court'; 'Violent men may be unable to "hear" their female partners, but they are likely to find it more difficult not to hear the voices of concern from their friends, their parents, their partners' parents, their siblings and so on' (Morris and Gelsthorpe 2000: 417).

It should not be assumed that the mediation can be sufficient in itself; arrangements are needed to ensure that any agreements are kept, and to enable the offender to keep them, for example by providing sexual offender treatment programmes, or circles of support; in the case of conferencing, the offender's extended family and community members may provide the combination of supervision and support that many sexual offenders need, and can help monitoring and

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

informal enforcement after the restorative justice intervention. More than one meeting is likely to be necessary (Nicholl 2001), and the meetings themselves, however well they go, should not be expected to be enough to produce lasting change..

Conclusion

As we said at the beginning, there is no unequivocal answer that will fit every case. Daly (2000) 'can neither fully endorse nor disparage restorative justice processes in responding to sexualised violence or other gendered harms'. The case for restorative justice is made strongly yet cautiously by Cayley (1998: 219):

If contrition is possible for the offender, it is the victim's suffering above all that is likely to trigger it. If healing and reconciliation are possible for the victim, it is the humanization that occurs when an offender acknowledges and tries to atone for what he has done that is most likely to bring it about.

Our conclusion is that women have a right to choose a method which offers the possibility of alleviating their pain; the indications are that provided it is adequately resourced it can be more empowering for them than the conventional criminal justice system. But restorative justice is not only concerned with victims: what does it offer offenders? For the majority of the cases discussed in this paper, that is cases where the offender and victim already had an acquaintanceship or relationship, it enables them to understand not only that what they did was wrong because it broke the law, but why it was wrong: because it violated the woman. If the woman herself wants to tell him, it gives her the opportunity, in a way that no court trial can do; otherwise the lesson can be put across by other people on her behalf.

Finally the community should benefit when both the victim and the offender are enabled to resume their places in it, and the knowledge gained by them and other members of the community who had a part in the process can contribute to a process of public education and crime reduction.

I am grateful to Margarita Zernova for extensive comments on earlier drafts of this paper, and to all the e-mail correspondents who also provided valuable information and views.

REFERENCES

- Ashworth, Andrew (1993) 'Victim impact statements and sentencing.' *Criminal Law Review*, 498-509.
- Braithwaite, John, and Kathleen Daly (1995) 'Masculinities, violence and communication control.' In: Valverde, Mariana, Linda MacLeod and Kirsten Johnson, eds. (1995) *Wife assault and the Canadian criminal justice system: issues and policies*. University of Toronto, Centre of Criminology.
- Bush, R A Baruch, and Folger, Joseph P (1994) *The promise of mediation: responding to conflict through empowerment and recognition*. San Francisco: Jossey-Bass.
- Cayley, David (1998) *The expanding prison*. Toronto: House of Anansi Press.
- Church Council on Justice and Corrections (1996) *Satisfying justice: a compendium of initiatives, programs and legislative measures*. CCJC, 507 Bank Street, Ottawa, Ontario K2P 1Z5, Canada.
- Cloke, Kenneth (1988) 'Date rape and the limits of mediation.' *Mediation Quarterly*, 21, Fall, 77-83.
- Daly, Kathleen (forthcoming) 'Sexual assault and restorative justice.' In: Heather Strang and John Braithwaite (eds.) *Restorative justice and family violence*.
- Drew, Marcia (2001) Private communication.
- Goolsby, Deborah Gartzke (1990) 'Using mediation in cases of simple rape.' *Washington and Lee Law Review*, 47 (4), 1183-1214.
- Harris, Jessica, and Sharon Grace (1999) *A question of evidence? Investigating and prosecuting rape in the 1990s*. (HORS 196). London: Home Office.
- Kittle, Bruce (2001), personal communication. Iowa Peace Institute, 1846 Willow Blvd Lockridge, IA 52635-8009 bakittle@willinet.net

Research Framework for a Review of Community Justice in Yukon

Community Justice - Gender

- Lajeunesse, Thérèse and Associates (2000) A review and evaluation of the victim-offender mediation program at Mediation Services: final report. Place not stated.
- Lees, Sue (1994) 'Why men get away with rape.' *Guardian* 2, 16 February.
- Morgan, Rod, and Andrew Sanders (1999) *The uses of victim statements*. London: Home
- Morris, Allison, and Loraine Gelsthorpe (2000) 'Re-visioning men's violence against female partners.' *Howard Journal* 39(4), 412—428.
- Nicholl, Caroline (2001) Personal communication.
- Sauter, Matthew J (1993) 'Post-conviction mediation of rape cases: working within the criminal justice system to achieve well-rounded justice.' *Journal of Dispute Resolution*, (0), 175-192.
- Temkin, Jennifer (2000) 'Prosecuting and defending rape: perspectives from the bar.' *Journal of Law and Society*, 27 (2) June, 219-248.
- Umbreit, M, and A W Roberts (1996) *Mediation of criminal conflict in England: an assessment of services in Coventry and Leeds*. Centre for Restorative Justice and Mediation, School of Social Work, University of Minnesota, 386 McNeal Hall, 1985 Buford Avenue, St Paul MN 55108, USA
- Umbreit, Mark S (1995) *VSOD model: victim sensitive offender dialogue through mediation*. Centre for Restorative Justice and Mediation, as above.
- Victim Support (1995) *The rights of victims of crime: a policy paper*. London: Victim Support.
- Victim Support (2001) *Manifesto 2001*. London: Victim Support,
- Wright, Martin (1996) *Justice for victims and offenders: a restorative response to crime*. Winchester: Waterside Press.
- Wright, Martin (1997) "Victim/offender conferencing: the need for safeguards." Paper presented to International Conference: Restorative justice for juveniles - potentialities, risks and problems for research, Leuven, Belgium, 1997.
- Yantzi, Mark (1998) *Sexual offending and restoration*. Waterloo, ONT: Herald Press.
- Zehr, Howard (1995) *Changing lenses: a new focus for crime and justice*. 2nd ed. Scottsdale, PA: Herald Press.

7.2. Some Thoughts on Restorative Justice/Gender in the Pacific -2000³⁷

Gender and justice - domestic violence and rape

- Echoing the much earlier work of the Law Reform Commission in Papua New Guinea there has been much disturbing recent evidence from across the Southwest Pacific of the failures of both the criminal justice system and of customary law to deal with domestic violence and rape in a way which delivers both peace and justice. Here I refer primarily to some recently published research on Vanuatu and the Highlands of Papua New Guinea .
- A recent study of domestic violence in Port Vila, based on a selection of cases of women who presented to the Vanuatu Women's Centre, found that the police and the judicial system failed to deal with domestic violence - and especially with husbands' assaults on their wives - as a criminal matter .

³⁷ Jolly Margaret, Some Thoughts on Restorative Justice and Gender in the Pacific, Academy of the Social Sciences in Australia, Dialogue: Academy Newsletter, Volume 20 3/2000, http://assa.edu.au/dial_202000_thoughts.htm

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- Despite the fact that it is a criminal offence in Vanuatu law, it was still seen by police too often as a domestic or private matter and as something which should be reconciled rather than a matter of court resolution.
- This was despite the fact that all these women had expressly chosen to pursue legal solutions rather than a path of counselling or conciliation.
- Women's legal rights of 'security of person against intentional assault' and 'equality before the law' were thus negated.
- Moreover the women most likely to be assaulted were younger women between 25 and 34.
- They were at even greater risk if they had young children and if they were in paid employment, and especially if their husbands were unemployed.
- They were greatest risk if their husbands were policemen or members of the Vanuatu Mobile Force (about three and a half times the rate for other men).
- This analysis raises troubling questions about the relation between domestic violence and public violence and about those who exert the state's legitimate monopoly on force.
- In Vanuatu the decisions of kastom jifs have also often been faulted for laying undue stress on reconciliation and the harmony of the 'community' at the expense of the wronged woman .
- Similarly Sarah Garap, writing on Simbu province Papua New Guinea presents a very grim picture of customary law in the region where she lives.
 - In her view village courts do not redress wrongs against women but are 'the worst offenders in terms of the way they deal with cases involving women' .
 - She believes that village courts are intimidating to women who feel they cannot speak freely and who, when they do speak, have their voices regularly discounted.
 - In several judgements in cases of adultery she discerns a tendency to discipline the woman and not the man.
 - Moreover, in cases of sexual violence and rape there is a tendency to blame the victim.
 - In rape cases, it is often the male relatives of the woman who are compensated rather than the woman.
 - Domestic violence is often, as in Vanuatu, treated as a domestic affair rather than a criminal matter, and is thus thought undeserving of police action.
 - Again, police themselves pose a particular danger not just to their own wives but other women - female inmates have been assaulted and raped while in prison, she avers.
- Such gloomy stories of women as victims are of course not the only ones.
 - We can read some positive accounts of women as vocal agents in peace-making, about the power of women to stop conflict - in the Nebilyer Valley of Papua New Guinea as recounted by Alan Rumsey , in many regions of Bougainville, as Ruth Saovana-Spriggs has attested , and in the ongoing bloody conflicts in Fiji and the Solomons.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- There is a promise in new forms of restorative justice for Pacific women but only if this becomes a transformative justice which not only deals with women more fairly as victims (and offenders!) but acknowledges women's particular capacities as peacemakers and mediators.

Conclusion

- In conclusion then, I think there is a need to think about justice in the way Hannington Alatoa, the Ombudsman of Vanuatu has suggested: not just as justice in terms of the restorative resolution of particular conflicts but the proactive process of creating peace and harmony in a way that is wedded to a deep desire for justice, through fairness for all - men and women, old and young.
 - Such challenges for transformative justice are ever greater as people move from the seemingly more certain places of villages into the more evanescent congregations of urban settlements and where hopes for the future are continually subverted by the divisions created by social and political injustices, not just within nations but between nations.
- There are of course huge and dangerous new challenges to peace in the southwest Pacific - especially in Fiji and the Solomons at present.
 - Both conflicts entail not just the spectre of lives lost and bodies mutilated, but the that of not being able to repair these large tears in the fragile fabric of imagined communities of these new nation-states.
 - The divisions, as I understand them, are not just those of race or place, between the first people of the land and the immigrants (the Fijians versus Indo-Fijians, the people of Gaudalcanal versus those of Malaita).
 - Such ethnic divisions are also entangled with other complex differences - the transformed indigenous hierarchies of rank, seniority and gender and the introduced inequalities generated by capitalist development and new forms of education, and the very structures of the nation-state in a globalising world system.
 - These national political conflicts will likely have serious consequences not just in lives lost but in lives ruined by increased poverty, the deterioration or loss of services and resources and the heightened sense of chaos and confusion which threatens to exaggerate pre-existing differences - including those intimate familial differences between young and old, men and women.
- These larger conflicts echo at the level of the imagined communities of nations, those hard questions restorative justice must confront at the more intimate level of families and villages, where Pacific communities are more usually imagined.
 - There is a relation between justice in the narrower legal sense - of adjudicating conflicts in a way which delivers both fairness and harmony - and justice in the broader political sense of redressing inequalities.
 - But, as we all appreciate, the balance between peace and justice is often very hard to find.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

- Professor Margaret Jolly is Head, Gender Relations Centre, Research School of Pacific and Asian Studies, Australian National University.

This is an abridged version of a keynote address to conference on Conflict Management and Restorative Justice in the Pacific Islands Port Vila, Vanuatu, 19-21 June 2000. The full version will appear in conference proceedings being edited by Sinclair Dinnen for the State, Society and Governance in Melanesia Project, Research School of Pacific Studies, Australian National University.

Notes:

Dinnen, S (1998). 'Criminal justice reform in Papua New Guinea', in P Larmour (ed) *Governance and Reform in the South Pacific*, Pacific Policy Paper 23, National Centre for Development Studies, Research School of Pacific and Asian Studies, Australian National University, Canberra: 253-272; and, Dinnen, Sinclair (nd). *Concepts Paper*. Prepared for the conference on Conflict Management and Restorative Justice in the Pacific Islands, Port Vila, Vanuatu. 19-21 June 2000.

Dinnen (nd), *ibid*: 3.

Braithwaite, John (1999). 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', in *Crime and Justice: A Review of Research*, 25: 5.

Ibid: 1-3.

John Tombot, in his presentation to this conference (see above for details of forthcoming publication).

This was the clear message of papers presented at this conference by Rita Naiviti from Vanuatu and Edwina Kotoisuva from Fiji. It is also the unfortunate conclusion of other recent research.

See for example Toft, Susan (ed) (1985). *Domestic Violence in Papua New Guinea*, Law Reform Commission of Papua New Guinea Monograph 3, Law Reform Commission, Port Moresby.

Mason, Merrin (2000). 'Domestic Violence in Vanuatu', in Sinclair Dinnen and Allison Ley (eds) *Reflections on Violence in Melanesia*. Hawkins Press/Asia Pacific Press, Sydney and Canberra: 119-138; Garap, Sarah (2000). 'Struggles of women and girls - Simbu Province, Papua New Guinea', in Dinnen and Ley *ibid*: 159-171. See also, Jowitt, Anita (1999). 'Women's Access to Justice in Vanuatu' in Tess Newton (ed) *Legal Developments in the Pacific Island Region*. Proceedings of the 1999 Conference, 6-7th September, Emalus Campus, USP, Port Vila, Vanuatu: 111-118.

Mason (2000). *op cit*.

See Jolly, Margaret (1996). 'Woman Ikat Raet Long Human Raet O No?: women's rights, human rights and domestic violence in Vanuatu', in A Curthoys, H Irving and J Martin (eds) *The World Upside Down: Feminisms in the Antipodes*. *Feminist Review* 52:169-90. (Updated and expanded version in A-M Hilsdon et al (eds) (2000). *Human Rights and Gender Politics in Asia-Pacific*, Routledge, London.

Garap (2000). *op cit*:163. Rumsey, Alan (2000). 'Women as peacemakers - a case from the Nebilyer Valley, Western Highlands, Papua New Guinea', in Dinnen and Ley, *op cit*: 139-155.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Gender

Ruth Saovana-Spriggs, Ruth (2000). 'Bougainville women's role in conflict resolution in the Bougainville peace process', paper presented to conference on Conflict Management and Restorative Justice in the Pacific Islands, Port Vila, Vanuatu, 19-21 June 2000.
