



JUSTICE AND FAMILY VIOLENCE

FAMILY VIOLENCE AND SEXUAL ASSAULT

Sexual assault is a violent crime. The case law shows that Aboriginal men have claimed in child sexual abuses trials that Aboriginal culture condones deviant sexual behaviour (incest, child sexual abuse). /.../ The introduction of cultural defenses which condone incest and child sexual abuse among Aboriginal peoples has been rejected by Aboriginal women. (Teresa Nahanee, RCAP, 1993:361).

Acts of violence undermine people's dignity and wholeness. Anyone who is subjected to acts of violence, be they man, woman or child, will experience numerous consequences in life, such as fear, anger, rage, shame, thoughts of suicide, confusion. Other possible consequences are loss of faith in life, loss of generosity and loss of the ability to forgive.

What can the victims do to put an end to violence?

CRIMINALIZE SEXUAL ASSAULT OR NOT?

Sooner or later, victims of violence and sexual assault are confronted with the dilemma of whether or not to lodge a complaint against their assailant.

Before making that decision, they should compare the objectives of the criminal justice system with their own goals.

In general, it can be said that the objective of the system is, first and foremost, to establish whether or not the accused is guilty. If the person is pronounced guilty, he will be punished for his crime. Punishment is aimed at deterring crime, thereby ensuring public security.

The victim's objective is to put an end to the violence. She is looking for a rest and the utmost in security. Without this security, she cannot regain control of her life and begin to heal from the consequences of the violence she has experienced.

In fact, the question she needs to ask is the following: is the criminal justice system capable of protecting me and helping me improve my situation?

For many victims, the police's help in temporarily restraining the violent person is their only recourse. Then one day they decide to lodge an official complaint; because their life is in danger; because they cannot take it anymore; because they have had enough; or because they want to live better. The criminal justice system is often the only means offered by society and the community to neutralize the assailant and put an end to the violence. But is it the best way?

WHAT IF THE COMMUNITY SUPPORTED THE VICTIMS?

If victims of violence really felt supported by their community, they would not tolerate such violence for any length of time. If victims could rely on the moral support of a large majority within the community and on material support from people they trust, they would not remain isolated but would speak out on the violence they had suffered.

If victims were given help and access to a SECURE SPACE & TIME, they could be hostelled during times of rage and anger, fear and shame. It is natural that they need to find a way and a place to express their rage following an episode of abuse. An auspicious shelter would allow them to regain control of their life. In this manner they would avoid sinking into the powerlessness of victimization.

The experience of Rupert Ross, the Crown attorney, in Aboriginal communities showed him that victims and witnesses are often afraid to testify in court against their assailants because court is a forum of confrontation. Several of the accused were given a verdict of "not guilty", confirming their belief in their innocence. Furthermore, the victims who officially lodged a complaint were, in many cases, the ones who felt guilty and discriminated against, and even expelled from their communities. In a sense, he reckons that the criminal justice system is not a security process for victims.

AND WHAT IF THE ASSAILANTS WERE GIVEN A CLEAR MESSAGE?

In his book *Returning to the Teachings - Exploring Aboriginal Justice*, Rupert Ross, states that he was struck by the fact that traditional teachings do not consider punishment as a worthwhile option. Is it due to the victims' fear of confronting their assailants? No. Justice is regarded as a healing process for people who are a temporary threat to the community. Is it an easy escape for assailants? Not according to Ross. Traditionally the security and well-being of the community remained a priority. Inasmuch as an individual resisted healing, he could be banished from the community.

In other words, the community was looking to protect the victims and make it evident to the assailants that their behaviour was unacceptable and that they needed help calming down.

HEALING: A DEMANDING PROCESS

Through his encounters, Ross learned that traditional healing would not work with every individual. Healing is often more painful for assailants than "hiding away " in prison. Unlike the suffering due to imprisonment, the suffering due to healing comes from the person's efforts to overcome his problems and face his situation.

During this process, the person has to live with the daily shame that public knowledge of his aggression brings. At the same time, he must ask for forgiveness, not only from his victims but also from the whole community because everyone has been affected by his deeds. It is a compensatory step for everyone involved and it is demanding for all.

CHOOSING RE-HARMONIZATION BUT NOT UNDER ANY CONDITION

Insofar as there are no community resources capable of ensuring the victims' security and neutralizing the assailants, recourse to the judicial system is the only tool within the reach of victims of assault. This could represent for them an opportunity to send a clear message to their assailants and the community. These victims would be well advised to surround themselves with counsellors who could help them get prepared and accompany them to court. These counsellors could also give them much needed support when the assailant reenters into the community.

In the event that family violence and sexual abuse are widespread, it could be difficult to assemble a healthy team of mediators capable of assisting the victims. If several of them live in denial of their own problems, it is certainly not advisable, as Rupert Ross underlines, to entrust the healing of the community to them. With their own anger, rage and violence as their only qualifications, these people represent a danger to the very people they are trying to help. They are just as dangerous as a punitive justice system producing the same failures as the Canadian system.

Regardless of whatever justice system Aboriginal communities choose to implement, the priority will be in making sure that the people in charge are capable and well-balanced enough to administrate it.

DEVELOPING A HEALING VISION

Justice concerned with relationships between people leads to the following questions: when a "problem-situation" is acknowledged, what do we want to do

regarding all the people affected by this abuse? What are the resources available to handle this situation? And are they appropriate?

Answering these questions is one way in which to develop a healing vision. Ross suggests that only after the need to heal has been identified can the plans for judicial and social action be established.

Putting all one's energy into negotiating justice administration repatriation could be a bad strategy if no consideration is given to how one wants to use said justice and what approach to justice would be most beneficial.

If healing is the real priority, then the choice would be to support developing healing resources. Afterwards, a protocol of intervention could be established along with the necessary collaboration with judicial and social systems, and finally the transfer of jurisdiction needed for the healing process could be negotiated.

ASSEMBLING A HEALTHY TEAM: HOLLOW WATER'S EXAMPLE

The Ojibwa community of Hollow Water in Manitoba is now well-known for its approach to community re-harmonization which it developed and put into place in the mid-1980's¹.

As years went by, the mediators realized they needed to learn how to work together as a team with a common vision. Each one of them was doing his job with his methods and priorities. Each one of them knew the families needing help, but their actions were not coordinated as with a team.

The mediators identified four basic requirements in setting up a healthy team:

- 1) The elimination of all confidentiality restraints that prevent mediators from sharing information and allow dysfunctional "clients" to manipulate the mediators, while developing a code of ethics concerning the team's confidentiality and a strategy in disclosing abuse that respects the progress of the victims, assailants and their families but also avoids spreading rumours and the assailants' attempts at manipulation;
- 2) The elaboration of a common training profile for all team members regarding all problems encountered and needs identified instead of the continuation of different and conflicting strategies of intervention and training for different type of mediators;
- 3) The obligation for any professional from outside the community to get acquainted with, and support, the holistic approach to healing, and to openly share his expertise with all members of the team before any intervention in the community;

4) The planning of time and financial resources to maintain a continuous program of training and healing for the team in order to provide it with the strength needed to offer a secure place to members of the community, as well as to themselves.

In Hollow Water, the team attended more than 22 different training sessions on a large number of subjects: family violence, sexual abuse, suicide, nutrition, spirit and team work, communication techniques, networks, human sexuality, family counselling, dietetics, intervention in regards to alcoholism, cultural circle of life, cultural differences, etc.

They also introduced a continuous healing program for mediators. Mediators must indeed go beyond the first step of disclosing past traumas and externalizing rage, sorrow and grief. They have to at least reach the stage where they have developed a minimal ability to respect, share, be kind, honest, strong and humble. They should be able to express these feelings when working.

Rupert Ross underlines the importance that each member of the team have integrated mutual trust. Their resolute willingness to help their community brought them to share their own secrets, fears as well as their hopes. They showed a lot of courage in this process allowing them to create a secure team for themselves and others.

AN APPROPRIATE CLIMATE FOR DISCLOSURE

The experience of several Aboriginal communities tends to demonstrate that in the event that the team in charge of community healing is sincere and honest in dealing with all the people affected, then victims as well as assailants come forward for help. As far as a real SECURE SPACE & TIME exists, victims will come for help. On the other hand, the punitive approach to criminal justice seems to encourage silence while allowing the cycle of violence to be perpetuated.

OBTAINING COLLABORATION FROM THE JUSTICE SYSTEM

The intervention strategy developed in Hollow Water is, first and foremost, aimed at protecting the victim and ensuring her/his long-term safety. After a detailed interview with the victim and after steps have been taken for his/her protection, the assessment team informs the assailant of the situation and explains the healing process to him. It is after this encounter that the team notifies the RCMP and charges are laid.

To enter the healing process, the assailant must accept responsibility for the offense and plead guilty in court. The agreement to plead guilty spares the victim the trauma of testifying in court. The assailant has five days to decide whether to participate in the healing process.

Generally, assailants who plead guilty receive a suspended sentence along with a three-years probation. Assailants are required to continue their work with the healing team. Failure to follow through with the program would result in a charge of breach of probation. They would then return to court to receive their sentence.

The Hollow Water team finalized an agreementⁱⁱ with the Manitoba Crown attorney's office to have its work recognized, specify their own methods of intervention and obtain the collaboration of the justice system. This approach offers assailants a real chance to initiate their healing while ensuring the victims' protection.

TAKING RESPONSIBILITY FOR ONE'S ACTIONS

During the healing process, everyone's attention is kept on the impact words and deeds have on people. It is really the consequences of these deeds that we try to understand and heal because words and actions have harmful consequences on people if they are considered "wrong" or even "criminal". The issue is not establishing lists of right and wrong deeds but rather understanding well their impact and consequences on people.

An offender cannot know what he has done until he begins to face the suffering of others, and learn how people were affected by it. He needs to understand it first-hand and in a sensitive way with people affected by his actions. That seems to be how Hollow Water has defined the concept of "taking responsibility for your actions". It means not just acknowledging the act itself, or even mentally acknowledging the kind of harm such actions cause. Instead the process is aimed at trying to make each offender actually experience some portion of that harm. This is considered real learning; learning which has the power to profoundly change people.

SPEAKING FROM THE HEART

Does allowing the expression of everyone's feelings lead to uncontrollable outbursts of anger and accusation? After worrying about this, Rupert Ross realized that during healing circles in Hollow Water even the most intense and angry feelings could be expressed in non-violent ways when one speaks from the heart, even in cases of very violent crime.

Very few offenders remain indifferent when listening to a victim frankly describe how she suffered abuse and how she felt long after it subsided. If we judge and stereotype the offender, chances are high that he will put up a barrier to avoid being touched or he may even fight back by insulting the victim. Thus, the Hollow Water team puts special emphasis on learning how to express one's feelings without being judgmental.

SUPPORTING OFFENDERS IN THEIR HEALING

Prohibiting the judgment of others does not mean that people are prohibited from coming to conclusions about the deeds that have harmed individuals and the community. In the paper stating their position on incarceration, the Hollow Water team mentions the importance of making offenders aware of their responsibilities while supporting them.

People who offend against another... are to be viewed and related to as people who are out of balance with themselves, their family, their community and their Creator. A return to balance can best be accomplished through a process of accountability that includes support from the community to teaching and healing. The use of judgment and punishment actually works against the healing process. (Cited by Ross, 1996:171).

LONGSTANDING RELATIONSHIPS OF ABUSE

Even before victims, offenders and their respective families are brought together, the nature of the abusive relationship should be analyzed. There are certain situations where quickly bringing everyone together to defuse the situation can bring benefits to all. But, inasmuch as the offender and the victims have been involved in long-standing relationships of abuse, it could be very risky to bring everyone together. A great deal of preparation is needed in serious cases of abuse.

An abusive relationship is possible because one party took power over another. Over the years, the offender demonstrated his power to intimidate his victim and keep her silent. The circle should not be another opportunity for the offender to dominate his victim, nor for the victim to sink into her victimization. As long as the threat of abuse of power exists, the urgency for protection will prevent the victim from expressing herself honestly from her heart. She has no other choice then to protect herself from manipulation as the offender will try to ridicule her testimony. She will hide her suffering and will not be able to touch the heart of the offender through her testimony.

IMBALANCE OF POWER IN DYSFUNCTIONAL RELATIONSHIPS

The ultimate goal of healing processes is to restore balance between two people, bringing them to a state of equality. Thus, there is a need to "tear down" the offender and "build up" the victim.

TEARING DOWN THE OFFENDER

This process is aimed at depriving the offender of all lies, justifications and excuses. It is about properly re-proportioning value and meaning in everything the offender tends to minimize. Ex-offenders who have a good understanding of the dynamics of manipulation, intervene with understanding and gentleness, as well as with all the firmness of one who doesn't accept excuses anymore. Even the fact that they themselves may have been victimized does not excuse their actions. They will be greeted with compassion, but their pride prevents them from asking for help. Before meeting with their victims, they meet several times with ex-offenders and ex-victims capable of speaking openly about their experiences, with all the necessary humility to make them feel the fear, shame and suffering of each and every one of them.

The process won't be completed until this person has rebuilt himself into a whole person respecting both himself and others on a daily basis.

BUILDING UP OF THE VICTIM

This process is aimed at liberating the victim from all the offender's lies and manipulation. It is about helping her regain strength to resist such manipulation. In circles where ex-victims and ex-offenders are speaking openly about their own experiences, the victim comes to understand the dynamics of the abuse she experienced.

By their own accounts, circle guides help the victim acknowledge her attitudes which hinder her healing. This is a long process full of traps. It often begins with neutralizing the victim's power grabbing strategies that could victimize others, while using her victimization as an excuse to justify her abusive behaviour.

WHAT TO EXPECT

The Hollow Water healing team is aware that this is a long and slow process. Five to seven years can go by before an offender fulfills his obligation of reconciliation and is able to meet with his victim(s) to apologize to her (them). At the beginning there is no expectation that the offender will assume responsibility for his actions.

The team learned to recognize the slightest sign that the offender was going from denying his responsibilities to acknowledging them. Now, the team knows that a circle following traditional nonjudgmental teachings is capable of opening up hearts and succeeding with hardened personalities and "criminal elements".

FORGIVING OR NOT

Choosing the re-harmonization process does not at all mean accepting to forgive. Rather, it is making one's own way towards the possibility of forgiving. It is not just because an offender is willing to apologize that the victim is ready to hear them.

Victims must be greeted in their rage and anger. Their victimization can make them vulnerable to family and community pressures to forgive but the Hollow Water team now realizes the importance of respecting victims while they are on their path to healing. Each person will progress according to their own pace during every phase of the process. Some won't be able to forgive even if they succeed in regaining control over their lives.

MORE DENUNCIATIONS

Rupert Ross reminds us that numerous acts of violence are never reported to the police, and that among those ending up in court, some end in non-guilty verdicts, which just reinforces the invincible feeling of offenders. This represents an increased risk for women.

The present justice system does not ensure much in the way of protection for victims, women and children, and for this reason does not encourage disclosures. Attorney Rupert considers that any justice system benefiting from an increase in denunciations and openness on the part of victims, as well as an increase in community support, represents a real improvement.

Any Aboriginal healing project showing a repeat offense rate identical to or less than the actual system's success rate represents an improvement, especially since it allows offenders, victims and their families to emerge from obscurity and begin their healing.

A WORD FROM BERMA BUSHIE

When we began to talk about our own abuses and we began to open up it was the children that took up the fight. I'm always awed by the strength and courage of our children. /.../ Little children aged 3 to 12 are the ones that have the strength, the desire, the faith, and the spirit to open things up. And it was those children that came to our rescue because we had come to a place where we couldn't go any further with our community. There was too much fear, too much anger. The children came to our rescue. We opened ourselves up, even though there was just a very small number of us, about 24. Once we gave children permission to talk about what had happened to them, they ran with it. And when the stories came, they poured out.

(Berma Bushie cited in *The Four Circles of Hollow Water*, 1997: 149).

Source : 'Pour le respect de notre dignité humaine : La justice en milieu autochtone'.

¹ The Royal Commission report on Aboriginal Peoples *Bridging the Cultural Divide* presents the history of the Hollow Water team's formation as well as an outline of its intervention strategy. An excerpt of its position on incarceration is also presented (p.159-169). In the document from the Aboriginal Corrections Policy Unit, *The Four Circles of Hollow Water*, Berma Bushie, one of the team pioneers, gives an account of her personal journey and her vision of the healing process. See other references at the end of this document.

^{ii 1}The *Manitoba Department of Justice Protocol in support of the Hollow Water community approach to holistic circle healing* appears in appendix 10 of Coutu's report *Justice for and by Aboriginals*, Quebec Government, 1995.