

FORMAL RESPONSE OF THE AVALON SEXUAL ASSAULT CENTRE  
TO THE  
NOVA SCOTIA DEPARTMENT OF JUSTICE

**RE: THE RESTORATIVE JUSTICE PROGRAM**

**Submitted to the N.S. Department of Justice: Restorative Justice Program September, 1999**

---

—

In June 1998, the Nova Scotia Department of Justice introduced a new program for Nova Scotia, Restorative justice. According to the guide, crimes of sexual and domestic violence will only be referred to Restorative Justice at the post-conviction, pre-sentence entry point. In December, 1996, the Correctional Services introduced the Alternative Measures - Adult Diversion Program, post-charge, pre-trial option to criminal justice system. According to their eligibility criteria serious sexual assaults are not eligible. However, we are aware of at least one serious assault that was referred and accepted into the Adult Diversion Program.

The Avalon Sexual Assault Centre has many questions and concerns regarding the utilization of the Restorative Justice process in cases of sexual assault/abuse and domestic violence. We offer a rationale, based on our expertise in systemic violence and victim/abuser dynamics, for our belief that sexual assault crimes are incompatible with the restorative justice model in its current form. We also pose some questions and make recommendations regarding community ownership, volunteerism, informal cautions and warnings, project timing, and research/analysis.

Note: Because 95% of domestic violence is perpetrated by men against women, the term ‘she’ will identify survivors of male violence and the term ‘he’ will identify perpetrators/offenders throughout this document. Restorative justice refers to victims; in this presentation women who have encountered male violence will be identified by the term “survivor.”

The goals for the N.S. restorative justice model to “repair the harm caused by the offense, and achieve a sense of healing for the victim and the community” are laudable. For sexual assault crimes, however, restorative justice is at cross purposes with its end. In its current form, this program has the potential to seriously harm survivors who participate in the process. I will cite various principles and goals from the Nova Scotia Restorative Justice document and responded to them in a context that gives the power/abuse dynamics that characterize sexual assault/abuse and domestic violence cases their due.

### **1. Restorative justice encourages repentance and forgiveness**

We are NOT in the business of forgiving sexual assault/abuse or domestic violence. We are in the business of STOPPING it. Seeking an apology for this type of violence is NOT an appropriate societal goal. Adopting zero tolerance for sexual assault/abuse domestic violence is. Furthermore, forgiveness is NOT essential in a survivor’s healing process and, if a survivor is pressured or guilted into forgiving a perpetrator prematurely, it can sabotage her healing process.

### **2. The victim is central to the process of defining the harm and how it might be repaired**

Restorative justice claims to be victim-centered. Yet, to our knowledge, input from survivors of sexual or domestic violence was not solicited and considered in the design of these new measures. Under these new measures, if a survivor does not want her case to go to restorative justice, this may happen anyway. The survivor does not have a veto as to whether her case will proceed to a restorative justice program. In our view, the lack of consultation and current policy displaces the survivor to a position peripheral, not central, to the process of defining harm and how it might be repaired. In our view, restorative justice appears to focus on the perpetrator, not the victim. He repents for his crime and justice is restored. How can justice be restored for a survivor of sexual assault who has chosen not to participate in the restorative process?

**3. Restorative justice recognizes that victims ... need an opportunity to speak about their feelings and to have the power restored to them that has been taken away by the experience of the offense...[and] they need recognition of the pain and suffering they have endured ....**

Sexual assault survivors need to talk about their feelings, need to reclaim their power, and need to have their pain and suffering validated. The terror, humiliation and stigma that result from sexual assault, make this a long, difficult and painful process. Usually, this type of healing only occurs within the context of a safe, trusting relationship. It is unrealistic to think that a survivor will discuss what justice has casually identified as “concerns and feelings” with a perpetrator of sexual assault. It is unrealistic and dangerous to think healing will take place as a result of a such a meeting between a perpetrator and the survivor.

Survivor/perpetrator interactions that have successful therapeutic outcomes usually result only when there has been intensive, long-term preparation and a bastion of

support for the survivor. Given the limited resources of our communities and the department of justice, this preparation and support is not likely to be available. The N. S. provincial government has a long history of introducing public policies and new initiatives without community consultation and in turn, without the resources required to support these initiatives.

#### **4. [Offender] recognition of pain and suffering [inflicted on the victim]**

If a sexual assault survivor becomes emotionally and psychologically tied to a perpetrator's recognition of the pain and suffering they caused or, an apology or repentance for the act, her capacity to heal becomes incumbent on the perpetrators decision to apologize or repent, and the quality of this apology. This emotional entanglement gives power back to the perpetrator, not the survivor. Therapists work with sexual assault survivors to free them from any need for offender repentance or apology so they may reclaim their sense of empowerment independent of anything the perpetrator says or does. If, however, a survivor agrees to listen to an offender's account of his understanding of the harm inflicted on her, what happens if she is not satisfied with the account? Who evaluates this? What happens then?

#### **5. Reintegration of the offender into the community**

a) In our experience with women who have experienced crimes of sexual violence, the reintegration of sexual assault offenders into the community creates fear of re-victimization, not healing, for the survivor. A survivor's sense of safety is so deeply compromised after sexual assault they often feel too fearful to go outside, take buses, or walk alone during the day, or at night, even when the

perpetrator has been incarcerated. Knowledge that the perpetrator is at large is usually a frightening, re-victimizing experience.

- b) To involve a sexual assault survivor in a process intent on preserving the offender's integrity, and reintegrating him into the community, places responsibility on the survivor to support the perpetrator's healing. Allocating even minimal responsibility to the survivor for offender healing can all too easily become fodder for the current myth that women survivors of violence are somehow responsible for the crimes committed against them. **(The remarks about "bonnet and crinolines" made by Justice John McClung in the recent Ewanchuk case speak to the fact that, even among our courtroom judges, the myth that women survivors of violence are somehow responsible for the crimes committed against them abound. As such, policies that may potentially reinforce this mythology must be avoided.)**
- c) Finally, given recidivism rates for youth and adult crime, it seems clear that community reintegration is usually successful only if there is sustained support and intervention for offenders. **We have not seen an allocation of resources to this end. How much money will be made available, and to whom?**

## **6. Community Ownership**

- a) The N. S. Restorative Justice document states that "community ownership is essential to a successful restorative justice program. This does not mean a downloading of Government responsibilities onto communities without resources." The Avalon Sexual Assault Centre is the only sexual assault centre in Metro Halifax that provides counselling, support and advocacy for victims aged 16 years and over who have been impacted by crimes of sexual violence. Surely our expertise will be a necessary resource in sexual violence cases.

**Currently, our staff and programs are stretched to the limit. How will the Department Justice support Avalon Centre, and other community agencies who provide advocacy and support to survivors in the restorative justice program?**

**Community police, crown attorneys, correctional workers will most certainly require education and training around systemic violence and equity issues The Halifax Regional Police are currently struggling to fund sexual assault/abuse training. How will the police, crown and correctional workers be supported to adequately train their personnel in the areas of sexual abuse and assault. Who will deliver this training? How much money has been allocated for this training?**

- b) “Community ownership” might be problematic in small communities where professional and personal relationships regularly cross. Survivors of domestic violence, sexual assault, and childhood sexual abuse from small communities often explain to us that the tightly-knit nature of their communities make privacy after disclosure virtually impossible. Also, disbelieving and sometimes hostile responses to domestic/sexual assault/abuse disclosure from the police, or justice system, might mean forfeiture of a survivor’s safe membership in her home community. Given that a survivor does not have a choice as to whether her case is directed to restorative justice, how will her privacy and safety be protected? **According to the N. S. Restorative Justice document, in some geographic areas other community agencies may be utilized in the restorative justice process? What agencies will be involved? Who will monitor these agencies? To whom will they be accountable? What is the extent of their authority in terms of referring cases back to the**

**conventional system? Community based programs must have clear, consistent parameters to ensure safety and equitable treatment of all parties in this process. Have these parameters been set? If so, what are they? If not, when will they be designed?**

## **7. Volunteerism**

Volunteers will apparently facilitate meetings between sexual assault/abuse survivors and perpetrators in the restorative forum. This type of work with survivors requires extensive, specialized training and experience. The Avalon Centre does not support this forum (volunteer-facilitated or otherwise) in its current form. **If this forum goes forward, how will volunteers be trained? How will they gain experience? Who will monitor volunteers to determine their work is satisfactory, who will supervise and support them? Have funds been allocated for this? Is asking volunteers to provide professional expertise and service, *pro bono*, not an example of downloading on the community: something the Department of Justice claims restorative justice will not do?**

## **8. Underlying causes of criminal behaviour**

It is hoped that redressing the underlying causes of crime will be one secondary impact of the restorative approach. How will restorative justice redress the issues underlying violence against women: historical, systemic oppression of women, rape myths, objectification of women in the media, sex role stereotyping, views of women as sex objects?

## **9. Moratorium on information disclosed in the restorative forum**

“No admission, confession or statement by the offender made in the course of restorative justice discussion will be admissible in evidence against that person in later proceedings.” What are the implications of this in cases where similar fact evidence is at issue? Once again, restorative justice appears to focus on the interests of the perpetrator, not the protection of the survivor.

### **10. Timing and research/analysis issues**

Where is the research to substantiate your claims that this process will increase the satisfaction, specifically, of women survivors of male violence? Why has this project been implemented without this research being completed? What system will be put into place to continue to monitor survivor satisfaction with this process as it grows and changes? What if the outcome of this research determines that victims are not satisfied with the restorative justice process? What will happen then? When does justice intend to make this process available to all offenders? Does the swiftness with which this program is being implemented, despite the number of unresolved issues, reflect that it is being driven by budgetary concerns and a need to placate a public increasingly dissatisfied with the current criminal justice system? How can you reassure us this is not the case?

### **Concluding Remarks**

We find the definition of restorative justice, as you describe it, to be elusive. To define is to limit. If the definition of a program eludes us, so too, do the limits of that program. As such, restorative justice is, potentially, an elusive, slippery slope with non-existent or, at best, precarious stop-gates for its process. Clear, specific guidelines about how sexual assault/abuse and domestic violence cases will be handled in this forum do not currently exist. We were seriously alarmed when, in

response to a question regarding how sexual assault cases were going to be mediated in Phase I of this Initiative, representatives for the Department of Justice responded, “we did not anticipate them.” Does this mean they will not be mediated in Phase 1? Important details specific to sexual assault have either not been anticipated or, having been anticipated, have not yet been worked out. The Department of Justice, without fail, must anticipate crimes of sexual assault/abuse and recognize the societal, systemic violence of which they are a part. The Department of Justice, without fail, must recognize that sexual assault/abuse and domestic violence crimes have power, control and safety issues that are specific to them. Justice must take measures that are informed and practical, not philosophical, to protect the woman and children who are the primary victims of male violence.

**Recommendations:**

- 1) Recognize the incompatibility of sexual assault/abuse domestic violence crimes with restorative justice in its current form and eliminate access to this forum by offenders of same.
- 2) Slow the implementation of restorative justice until stakeholders are able to thoroughly review this process.
- 3) Conduct the necessary research (consult with survivors and community based agencies whose mandates address women and sexual/domestic violence issues) to determine if survivors of sexual and domestic violence will be satisfied with this process in its current form.

- 4) Place a hold on restorative justice for sexual assault/abuse domestic violence cases until research has been completed that supports your statements that victim satisfaction will increase as a result of this process.
- 5) Create clear, specific guidelines and an infrastructure to monitor the expanded discretionary powers of the police, crown, and corrections. Commit financially to this sustained monitoring.
- 6) Recognize the need for and commit to the education and training of all parties (police, crown, corrections, community agencies) around sexual assault/abuse domestic violence issues. Commit financially to this education and training.
- 7) Create access to due process for victim, community agency, offender complaints.

We look forward to further discussion of these issues and will offer our expertise to find constructive solutions to the issues. We appreciate that the Department of Justice recognize the need to address the decline in public confidence in the current justice system. These are complex problems with no easy solutions. However, we must state emphatically that the model of restorative justice proposed is not conducive to restoring justice for survivors who have experienced crimes of sexual violence.