

Restorative Justice:

Is it justice for battered women?

Should the Saskatchewan government allow / institute the use of Restorative Justice strategies for family violence cases throughout the province / in only certain communities / only under certain circumstances / with certain safeguards?

Report on PATHS' April 2000 Conference

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Executive Summary

(It is essential to keep in mind while reading this document that participants at this conference who expressed opposition to or concern over restorative justice initiatives were expressing their opposition or concern with respect to the use of these initiatives in cases of violence against women only, and were not expressing a general opposition to or concern with restorative justice as it is utilized in other types of cases.)

The basis of this examination is the proceedings of a conference/forum organized by the Provincial Association of Transition Houses of Saskatchewan (PATHS), and held on April 14 and 15, 2000, at the Centennial Auditorium in Saskatoon, Saskatchewan, Canada. A cross section of views ranging from highly supportive of using restorative justice strategies for family violence cases to strongly opposed were represented by conference participants (invited panel members and registrants) who drew on their expertise and experience with the justice system, with alternative or restorative justice, with women's advocacy, and with, and as, victims and offenders. Additional information was provided by two surveys: one completed by participants at conference check-in, the other, at check-out.

This report attempts to highlight key themes and responses to specific issues that emerged during the conference. It is not intended to be a chronological or full record of the proceedings, but rather, it condenses and organizes the perspectives and discussions out of an extremely rich dialogue. In an attempt to preserve the exceptional flavour and texture of the conference, heavy reliance is placed on excerpts taken directly from the discussion—on the articulate voices of people who cared ardently about the issues.

It is hoped this document accurately conveys the forum proceedings, and reflects, at least to some extent, the level of commitment, energy, and intensity that ran through and bridged the participants' diverse opinions and positions, and their common passion and struggle:

“To look at the use of restorative resolutions in cases of violence against women is to engage in a controversy. It is a difficult continuum we are all trying to find our place on, in terms of how we proceed. I don't think there are any easy answers. And though it may appear at times that we are at opposite ends of the continuum concerning this issue, we are all close in terms of what we are looking for, and that is, for the violence to stop.” **Tracy Porteous, Coordinating Consultant, BC Association of Specialized Victim Assistance & Counseling Programs**

“I had a whole paper—this is why it would work, this is why not, and last night I thought, no, that's not what I want to say. I guess all I can say is restorative justice could be a good process if it was taken very seriously and over a long period of

time. There's benefits to it, and seeing the [failures of the] justice system, I'm torn. I don't know if it should be used or it shouldn't be, but I see the pros and cons to it, and that's all I can say." **Wanda Gamble, Alternative Measures Worker, Aboriginal Women's Council of Saskatchewan**

This account of the conference:

- a) provides background and context, including information on the invited panel members, the makeup of registrants, and the forum agenda;
- b) struggles with the definition of restorative justice;
- c) critiques the current criminal justice system vis-à-vis violence against women;
- d) highlights a number of concerns while examining the discussion and debate surrounding the use of restorative justice in cases of violence against women; and
- e) summarizes the final discussion of how next to proceed in Saskatchewan.

Concerns and some agreement:

1. Need for consultation

If restorative justice is, as it claims to be, victim-centered, then the views and experiences of victims and women must be evident in the design, implementation and evaluation of programs. It is imperative that there be broad consultation with women's advocates, Aboriginal women, women of color, disabled women, sex workers, the gay and lesbian community—groups that are not in the 'halls of power' and are more vulnerable to sexual assault, relationship violence, criminal harassment, hate crimes, and the like. To date, it seems this has neither been achieved by, nor on the agenda of, many of the policy-makers, although the Saskatchewan government was applauded for apparently bucking that trend in its willingness to aid and abet consultation and to invite and seek out dissenting voices before moving ahead on this issue.

2. Safety and risk

Safety of the victim—physical, emotional, and mental—was of paramount importance for participants on both ends of the spectrum. Victim safety is a complex issue in crimes of battering and sexual assault, hence safety concerns run like a thread through all others. Controversy centered around whether restorative justice does, or even could, put women's safety first. Those who opposed restorative justice processes for reasons of safety did so because they did not accept that the safety of the process could be assured for victims who already live in very fearful and dangerous situations. Restorative justice strategies were seen by some as keeping women in high-risk situations, rather than encouraging them to seek safer options.

3. Informed choice, unencumbered participation

There was consensus among participants that women must have informed choice—there should be a process in place whereby women are advised of their rights and entitlements, and of the advantages and disadvantages of restorative justice before making a decision to participate. The necessary time must also be taken in order to provide the victim with an opportunity to fully look at the impact of the abuse and to make an informed decision on how to go forward. But whether a battered woman can ever freely choose and/or participate remained in issue.

4. Power: dynamics, imbalances, relations

Possibly the most intense focus of opposition and words of caution regarding the use of restorative justice measures in cases of battering and sexual assault against women centered on the issue of power. Violence against women is embedded in unequal power relations manifested on the societal level and in its institutions, within different groups and communities, within families, between men and women, and between offender and victim. It is the myriad inequalities in power relations that create and sustain conditions of disadvantage for women.

Women need input into the system to ensure that their abusers will not be their judges, but how can we guarantee them the selection of a meaningful community of people equally supportive of the victim and offender? How can we ensure power imbalances are not brought into the restorative justice process? How can we know for sure family and/or other dynamics are not working to protect the offender at the expense of the victim? We know that restorative justice practices will take place within sexist, patriarchal, classist and racist milieus, among others. How can we be assured that this reality will not influence or distort the restorative justice process away from the goal of relations of equality?

5. Denunciation/deterrence

To date there has been little research on the denunciatory aspect of restorative measures. Such an investigation, along with research on other claims of restorative justice, needs to take place so there is empirical data on which to base conclusions. In the end, participants agreed that restorative justice initiatives need to ensure that the process includes an appropriate denunciatory message, both to the accused and the community, so these measures will not be seen as going lightly on serious crimes. Nor can these programs offer offenders refuge from culpability and criminal sanctions. Disagreement centered on how this is best effected, and if it is actually possible within a restorative justice framework.

6. Offender focus vs. victim focus

The focus on the healing or rehabilitation of the offender was, for those in favour of restorative justice, a key benefit. They see offenders as victims themselves—victims of socialization, abuse, circumstances—who require therapy, not punishment. Other participants were worried that this viewpoint would risk further victimizing the victim, and expressed apprehension that the offender's victimization could take precedence over the wrong done to, and the needs of, the victim. It is support for those exposed to violence that counts, support to take those measures that effect change—to expose violence whenever it happens, to create the conditions where women and children can safely reveal abuse, to take court action, to do whatever is needed to make the change.

7. Definition of 'community'

Restorative justice relies heavily on the notion of 'community'—it imposes more responsibility for the causes and the effects of crime on the community, as a means to affirm and strengthen the power of community and to reclaim the community's involvement. Restorative justice proponents in cases of violence against women see this as positive, those against are not so sure. What is 'community', what is the nature of community involvement, do cohesive/appropriate communities actually exist?—these are the concerns of the latter group.

8. Community resources and volunteers

All participants agreed that a lack of technical, human and financial resources has the potential to undermine the efficacy of any community-based service. Under such circumstances, restorative justice initiatives—notwithstanding the positive intent behind them—run a very high risk of failure. Even supporters of restorative measures insisted communities must have the necessary means to provide continual support both for the victim and the offender, prior to, during, and following any process. Debate centred around whether and how this could be accomplished.

9. Guidelines, standards, training, monitoring and evaluation

There was strong agreement that clear, coherent, equality-promoting guidelines, principles and standards must define all restorative programs, and that the policy, the guidelines, the screening, and the training must be in place before moving toward these kinds of solutions for cases of violence against women. There must be tracking processes for offenders from province to province, and within provinces. There must be transparency, accountability and a monitoring and evaluation process in place.

Clearly, the concerns listed above must be addressed before current or future restorative justice programs should be considered appropriate, effective, or safe for cases of domestic and sexual violence against women. And if the process of addressing those concerns goes forward:

“We need to do it in a really thoughtful, really careful way and we need to listen to a lot of different voices and it is not going to happen overnight.” **Jan Turner, Director of Community Services Branch, Saskatchewan Justice**

“And we need to do it collectively, working in a partnership forum,” **Pauline Busch, ED, Regina Alternative Measures Program, SK**

with extensive consultation involving all stakeholders in the community, extending to Aboriginal women and all other women. And government must back the promise and the process of consultation financially.

Background to the Forum

In the mid-1990s, the Canadian Federal Government introduced the National Strategy on Community Safety and Crime Prevention: “Safer Communities, Everybody’s Responsible.”¹ It was felt that traditional retributive responses to crime—apprehension, sentencing, incarceration and rehabilitation—were not adequate:

This approach, while important, is not sufficient to prevent crime. The National Strategy is aimed at reducing crime and victimization by addressing their root causes through a social development approach. Canada 2000

In line with this federal policy evolution, Saskatchewan Justice unveiled its commitment in April 1997 to implement a ‘new’ paradigm throughout the province—a strategy with a restorative rather than a retributive emphasis. This strategy was promoted as a multi-year approach that would better address both the causes as well as the consequences of crime. Elements of the strategy included a province-wide initiative for alternative measures that would see support for community justice committees, family group conferences, victim/offender mediation, and Aboriginal community justice development. The new strategy also included the cultivation of new partnerships in the community, by the community, and for the community. This approach was reiterated by the **Honourable Chris Axworthy, Minister of Justice, Saskatchewan**, in his opening remarks to begin the second day of the forum:

“It is critical that government, communities, and organizations and people like you continue to work together to find solutions to the problems of relationship violence. Violence has no place in our community, and certainly no place in a safe community, and without question, safe communities are our top priorities. We are committed to keeping our communities safe, and we believe safe communities begin with safe homes and safe families.

There is no single formula to ensuring the success of community justice initiatives. It must be based on each community’s aspiration to become a healthy and safe place, and it cannot be just another government program. It must be a commitment and process adopted by people who see the norms expressed in our criminal laws as valuable to their own health and well-being, and who then take measures to ensure their communities respond.”

In a number of Canadian provinces, Justice Departments have moved toward the use of restorative justice strategies in cases involving domestic violence and/or sexual assault. Although

¹ Phase I, which began in 1994 and continued to 1997, ‘provided a framework for efforts to support community safety and crime prevention. This policy framework was created in consultation with 25 individual child development experts, community advocates, academics, social workers, lawyers, police officers, doctors and business people who volunteered their time to develop a plan to deal with the underlying causes of crime’ (Canada 2000). In Phase II, which began in 1998 and is to continue to 2003, the aim of the National Strategy is to reduce crime and victimization by addressing their root causes through a social development approach. It is a long-term proactive approach directed at removing those ‘personal, social and economic factors that lead some individuals to engage in criminal acts or to become victims of crime’ (Canada 2000).

in Saskatchewan these types of cases are excluded from consideration for referral to alternative measures (see first attachment), Saskatchewan Justice was motivated to revisit this position as a result of ongoing dialogue with certain quarters in the province, both government and community. It was this 're-visitation' that impelled PATHS to become involved in the debate and to plan a conference for April 14 and 15, 2001, at the Centennial Auditorium, Saskatoon, Saskatchewan, Canada, called **Restorative Justice: Is it justice for battered women?**

PATHS' position was that policy development with respect to the use of restorative justice measures in family violence cases must be informed by those who will be affected most. It was hoped the conference would:

- a) facilitate education by way of dialogue with a diverse range of people working in the field, and
- b) provide an opportunity for a cross-sector investigation of the issue by victims and victims' advocates, thereby involving them in the consultation and public policy process.

The intention was that the conference would model a specific restorative justice strategy, the community forum, to help accomplish these goals. It was also to be a working conference—all registrants are asked to commit to attending all sessions on both days, to arriving promptly for each session, to completing the Check-in and Check-out surveys (see second attachment), and to contributing to the discussion.

Invited Panel Members and Registrants

Conference brochures with registration forms were sent out to all Saskatchewan women's shelters, crisis centres and sexual assault centres, all Saskatchewan men's intervention groups, all 150 members of Saskatchewan Towards Offering Partnership Solutions to Violence, all Saskatchewan Victim Services and Community Based Justice Programs, the Saskatchewan Battered Women's Advocacy Network, the Saskatchewan Action Committee on the Status of Women, Sexual Assault Services of Saskatchewan, all Saskatchewan Tribal Councils, and Immigrant Women of Saskatchewan. The registration fee was \$35, as a token of commitment to attend. Registration information was also posted on PATHS web site, along with a call for papers, and was advertised on PAR-L, a Canadian feminist virtual mailing list.

Eighty-five of the 102 expected registrants/attendees picked up their conference packages, including the moderator, the two guest speakers, and nine of the twelve confirmed invited panel members. (Virginia Fisher, PATHS Coordinator and conference organizer, had made the final decisions with respect to whom to invite as panel members, moderator, and guest speakers.) All panel members had worked with or were interested in issues of violence against women, and four of them were from outside Saskatchewan, representing perspectives from other parts of Canada. Biographies of all confirmed invited panel members, of the host of the forum, and of the moderator and one speaker can be found as the third attachment. Missing are biographies for the Honourable Chris Axworthy, Minister of Justice, Saskatchewan, and for Jan Turner, a late addition from Saskatchewan Justice. Virginia Fisher read Judy White's brief (Judy had an

unexpected last-minute job-related commitment), and Bruce Slusar and Bevann Fox, both confirmed as panelists, failed to appear.

80 people (94% of the 85 participants) completed the Check-in survey. The following demographic information is based on data supplied by those 80 respondents:²

- 75 (94%) were female and 64 (85%) of those were from Saskatchewan
- 42 (53%) respondents reported being of non-Aboriginal ancestry
- 31 (39%) reported being First Nations and Metis (**in Saskatchewan, just under 10% of the population is First Nations and Metis**)
- 7 (9%) respondents did not answer the question on ancestry
- 33 (41%) respondents represented a community-based organization
- 19 (24%) reported representing a government department or agency
- 8 (10%) represented multiple organizations (community and/or government)
- 60 (75%) reported working with clients, 55 (92%) of those with victims of violence
- 23 (29%) reported knowing a lot about restorative justice
- 44 (55%) reporting having some knowledge of restorative justice
- 6 men, all from Saskatchewan, registered for the conference, and 2 others (Wally Roth and Bruce Slusar) were invited to be panelists; 5 of those 8 participated (and completed the Check-in Survey) and the Honourable Chris Axworthy was a guest speaker
- no representatives of immigrant women's groups attended

The Agenda

(The first three plenary sessions on April 15 were scheduled for 90 minutes each: 60 minutes divided amongst three to four panelists, then 30 minutes for discussion/questions from the floor. The fourth and final plenary incorporated all ten panel members plus Jan Turner, to provide concluding remarks of 2 to 3 minutes each, followed by discussion and questions. The entire proceedings of both days were video- and audio-taped, with three microphones at the panelists' table and two floor mikes for registrants. Registrants were asked to give their name and affiliation before speaking, but not all remembered to do so.)

April 14, 2000

Opening evening session: 7 to 9 p.m.

Welcome and opening prayer: Virginia Fisher, Forum Host, PATHS Coordinator

Opening plenary session: *What do we mean by Restorative Justice?*
Her Honour, **Judge Bria Huculak**
Saskatchewan Provincial Court

Discussion/questions

Wine and cheese reception: 9 to 11 p.m.

² Further details on the demographics can be found in the technical report (the fourth attachment).

April 15, 2000: Opening morning session: 8:45 to 9:30 a.m.

Welcome back: **Sandi LeBoeuf**, Director, Family Centre, Saskatoon Tribal Council

Opening prayer: **Inspector Lennard Busch**, Officer in Charge
Aboriginal Police and Crime Prevention and Victim
Services, RCMP Headquarters Ottawa

Opening remarks: **the Honourable Chris Axworthy**,
Minister of Justice, Saskatchewan

Current Situation: **Jan Turner**, Director of Community Services Branch,
Saskatchewan Justice

1st Plenary Session: 9:30 to 10:45 a.m.

Sandi LeBoeuf: Moderator

Norma Green: Special Projects, Correctional Service Canada

Virginia Fisher: PATHS Coordinator, for
Judy White (alias), Domestic Violence Survivor

Tracy Porteous: Coordinating Consultant, BC Association of Specialized
Victim Assistance & Counseling Programs

2nd Plenary Session: 11 a.m. to 12:30 p.m.

Sandi LeBoeuf: Moderator

Irene Smith: Executive Director, Avalon Sexual Assault Centre, Halifax, Nova Scotia

Wally Roth: Executive Director, Alternatives for Men Who are Abusive to Their
Partners, Saskatoon

Bev Poitras: Director, Restorative Justice Unit File Hills, Qu'Appelle Tribal Council

Wanda Gamble: Alternative Measures Worker, Aboriginal Women's Council of Saskatchewan, Prince
Albert

3rd Plenary Session: 1:30 to 3:15 p.m.

Sandi LeBoeuf: Moderator

Fay Blaney: Vice-President, National Action Committee on the Status of Women, and
Member, Aboriginal Women's Action Network (BC)

Pauline Busch: Executive Director, Regina Alternative Measures Program,
Saskatchewan

Anne McGillivray: Professor, Faculty of Law, University of Manitoba, Winnipeg, Manitoba
Co-author **Black Eyes All of the Time: Intimate Violence, Aboriginal Women, and the
Justice System**, Anne McGillivray and Brenda Comaskey, University of Toronto Press,
1999

Final Plenary Session: 3:30 to 5:30 p.m.

Sandi LeBoeuf: Moderator

All panel members plus Jan Turner, followed by discussion/questions

Methodology

This is primarily a qualitative investigation of content, based on data taken from transcripts and videos of the forum, which included panel members' presentations and registrants' questions and responses. Other information was available from two surveys distributed to all panel members and registrants, one to be completed at the beginning of the conference (the Check-in Survey), the other at the end (the Check-out Survey). The transcripts and videos were reviewed for passages to reveal the spectrum in perspectives and opinions, and for recurrent themes and concerns. The report attempts to reflect panelists' and registrants' views, comments, and concerns in their own words, and to give a balanced presentation of the perspectives offered during the forum. The document relies heavily on quotations to preserve the voices of those at the conference, to minimize interpretational bias, and to allow for further interpretation of the data.

What Do We Mean by Restorative Justice?

Her Honour Judge Bria Huculak, Saskatchewan Provincial Court Judge, made the opening address on the first evening of the conference. Her presentation and the responses to it introduced many of the pivotal points for further debate and discussion on justice and violence against women. **Judge Huculak** began with the broader societal context of crime, including violence against women, and introduced the notion of 'responsibility', asserting that preventing violence is a fundamental issue for which we all have responsibility:

"I'm not talking simply about offender responsibility. I'm also talking about community and societal responsibilities. When we talk about violence we have to look at what are the social, political and economic conditions that lead to a culture of violence, and we must be prepared, as a society, to address those conditions."

Then, in laying the groundwork for informed discussion, **Judge Huculak** introduced the concept of restorative justice—its evolution, underlying assumptions, and key principles:

"Restorative justice is a way of thinking, a way of behaving, and a way of measuring. It is a vision of how to do justice, but it's not just the one thing, it's not just restitution, it's not just reconciliation, it's not just community. It's a combination of all, of many factors."

Drawing on the work of author Howard Zehr, **Judge Huculak** spoke of the rationale and benefits of the restorative justice approach:

“Victims in a community have been harmed and are in need of restoration. Victims, offenders, and affected communities are the key stakeholders. Violations create obligation and liabilities. Offenders’ obligations are to make things as right as possible. The community’s obligations are to victims and offenders and to the general welfare of its members. Restorative justice seeks to heal and to put right the wrongs. The needs of the victims for information, validation, vindication, restitution, testimony, safety, and support are the starting points of restorative justice. The process of restorative justice maximizes opportunities for exchange of information, participation, dialogue and mutual consent between victim and offender. Restorative justice is meant to be a harm-centered approach, with the victim being central, however, the offender’s needs and incompetencies are also addressed, which means there have to be resources for rehabilitation, as well as for victims’ needs.” **Judge Bria Huculak**

Restorative justice can be seen as a philosophy or set of principles that guides agencies and practitioners, rather than a specific practice. Many different programs and models fall within this framework, including family group conferencing, victim/offender mediation, sentencing and healing circles, and community forums, any one of which can be used in conjunction with the court system or in its place, and can be instigated at various stages of the criminal justice process. Restorative justice offers an alternative way to think about crime, emphasizing the harm crime does to the victim and community, and how the community, rather than the state, can respond to crime. Instead of focusing only on the guilt and punishment of the offender, restorative justice places emphasis on all those involved—victim, offender, community—and seeks to reconcile, restore and repair lives and relationships.

Naturally, other participants also spoke to the definition of restorative justice and its strategies:

“Restorative justice recognizes and repairs harm to victims in communities, distinguishes between offending action and offender, heals and integrates the offender. Concerns of the victim and community are given equal status. Victims are actively involved, and the process meets the emotional needs of the victims. It requires an admission of the guilt of the offender more so than in the traditional justice system. The offender is held accountable, and is made to acknowledge responsibility for their actions, and also to have a full look at the consequences of their actions.” **Pauline Busch, ED, Regina Alternative Measures Program, SK**

“Each community is unique, and each community decides what a sentencing circle is to them. So when you say sentencing circle in one community, it doesn’t mean the same thing as in another community. If you go to Onion Lake right now in Saskatchewan, and you say sentencing circle, they’re all pre-charge. There’s no post-charge, they’re not a part of the court. If you go down to Standing Buffalo, they’re all court-driven and the judge determines with a threshold test if this is a case that can go to a sentencing circle. There, a sentencing circle is just a recommendation circle—they recommend to the judge what the sentence should be. They decide what resources they have in the community and what kind of plan they can have for that individual, and then the judge decides. They could

recommend two years in jail, ten years in jail. It depends on the community and the strengths in the community.” **Bev Poitras, Director, Restorative Justice Unit, File Hills/Qu’Appelle Tribal Council, SK**

Agreement on exactly what does and does not constitute restorative justice and its practice remained somewhat elusive, and some challenged the validity of the definitions and claims offered above. One of the major sources of diversity regarding the use of restorative justice for the resolution of crimes of domestic and sexual violence could, in fact, be attributed to the variety of definitions the participants held and their different experiences with the development and application of restorative initiatives in various parts of the country. As **Jan Turner, Director of Community Services Branch, Saskatchewan Justice**, pointed out, and conference participants confirmed, the policy backdrop, the context, and the implementation of restorative justice, especially pertaining to cases of violence against women, all vary greatly across Canada. Forum debate clearly demonstrated that restorative justice means different things to different people, and participants repeatedly made statements and cautions to that effect:

“There needs to be a lot more understanding of what restorative justice stands for before we continue this dialogue because clearly it’s something that’s not understood within the room.” **Pauline Busch**

“It becomes more and more clear to me that what restorative justice means in one community is quite different from what it means in another community. We need to be really mindful about the language being used when we are speaking to each other. We think we are talking about the same thing but indeed we are not.

We find the definition of restorative justice [in the Nova Scotia policy] to be elusive. To define it is to limit. If the definition of a program eludes us, so too do the limits of the program. As such, restorative justice is potentially elusive and slippery, with no gatekeepers. Clear, specific guidelines about sexual assault and domestic violence cases need to be identified, and they need to be done in consultation with women’s groups and women who have experienced sexual violence.” **Irene Smith, ED of the Avalon Sexual Assault Center in Halifax, Nova Scotia**

However, notwithstanding the elusiveness of definition, the following assumptions/rationale underlying restorative justice were noted:

- crime derives in part from social conditions/relations in communities
- the current justice system alone cannot offer an effective solution
- the community can significantly contribute to sentencing the offender, assisting the victim and preventing similar crime in the future, therefore a partnership between community organizations, citizens and justice agencies is an essential component for dealing with crime
- solutions to crime are not simple but must be uniquely tailored to the needs of the victim, and the offender, and the community
- punishing retributively is not sufficient to prevent crime

- exclusive reliance on jail does not serve community interests in healing its members, or in creating safe homes or neighborhoods. If anything, the milieu of the jail environment teaches citizens to repress their personal problems rather than deal with them publicly,

and the principle benefits of restorative justice were seen to be that it:

- provides for the emotional, material and financial needs of victims and those affected by crime
- tries to prevent re-offending through re-integrating offenders into their community
- encourages offenders to take active responsibility for their actions
- develops the capacity of the community to deal with the effects of crime as well as its prevention.

Often in the background of conference discourse, but never really examined directly, was the question of what it is that restorative justice would be utilized to restore in cases of violence against women:

“There are a whole lot of issues that need to be reconciled. The dialectic of restorative justice is evolving, and there are many issues yet to be addressed in that discussion. One of the primary issues: what are we trying to restore when we talk about restorative justice, and particularly, what are we trying to restore if we are talking about an abusive relationship?” **Helen Smith-McIntyre, Saskatoon Community Mediation Services**

Some of those in opposition to using restorative justice in these cases spoke as if they understood the intent to be to restore the offender/victim to some fictitious past intimate harmony. This gave them cause for concern. Proponents of restorative justice in cases of violence against women neither directly or effectively challenged this notion during the conference (although it is likely their cautions about misunderstandings were attempts to do so):

“Our elders tell us that crime is a broken relationship. That’s the same with domestic violence. Crime is a broken relationship. Whether that relationship resumes in very close relationship or a relationship where they see each other over the kids or a relationship where they never see each other again, it’s a broken relationship, and we have to repair that relationship. If we cannot repair that relationship, it’s only going to add on to more violence and more disruption.” **Bev Poitras**

A clearer statement of the matter could easily have been something like:

“Restorative justice is fundamentally concerned with restoring social relationships, with establishing or re-establishing social equality in relationships. That is, relationships in which each person’s rights to equal dignity, concern and respect are satisfied. Restoring relationships does not then necessarily mean restoring personal or intimate relationships. For example, a restorative process dealing with spousal violence would not entail the

reconstruction of an intimate relationship between the individuals but would entail their co-existence with security and equal respect within the same community.” **Restorative Justice: A conceptual framework**, Llewellyn, Jennifer J., B.A. M.A. and Howse, Robert, Associate Professor of Law, University of Toronto and Visiting Professor, University of Michigan Law School, for the Law Commission of Canada, 1998, see link at <http://www.hotpeachpages.org/paths/legal.html#Restorative>

The Criminal Justice System and Violence Against Women

Participants, both those for and against the use of alternative resolution in cases of violence against women, had a lot to say about the failings of the justice system vis-à-vis these types of cases. Although women have worked hard to have sexual and domestic violence recognized as serious offences by the criminal justice system, with the requisite public attention and punishment, and although advances have been made, these advances do not ensure that the needs of women victims are always addressed seriously and competently. In fact, the present criminal justice system is held to be largely impotent to reduce these crimes and to effectively attend to the needs of the victim, the offender, the community. There was significant agreement that:

- the criminal justice system is too adversarial. The main purpose of proceedings is to establish guilt and to hand down a sentence. The victim’s needs are overlooked and often the sentence has little to do with the actual harm done, and does not speak to accountability
- the system does not look at the community context of the crime nor at the deep-rooted issues of the offender, and thus fails to take initiatives that might prevent crime in the future
- the current system tends to keep offenders in the system rather than discourage them from re-offending
- most men are still not held accountable for their violent actions against women—only a minority of cases are reported to the police, and what too often follows from there are evidentiary lapses, police indifference, lenient sentences, low rates of prosecution, and high rates of plea-bargaining, acquittals, and stayed charges
- contact between female victims of violence and the criminal justice system is a source of re-victimization, frustration, and disappointment rather than a supportive experience. Victims often feel they are the ones on trial. They find the system confusing, demeaning and overwhelming.

“The one thing I think we can all agree on here is that the conventional court system has not served the needs of victims very well. I think everybody recognizes that, and so we’re looking for other options, ways that we can better deal with different types of anti-social behaviour and violence and things like that. We certainly are not purporting to see restorative justice being the only route that can or should be taken when dealing with domestic violence. I would never want to see a time come when a victim is given a subpoena to attend a family group conference. I don’t think anybody is in favour of that sort of thing. Right now victims are being given subpoenas to attend court and to testify and to be made out as liars by one side of the adversarial system, and I know, from being a police officer for 23 years, that sometimes a court process is more traumatic on a victim

than the actual abuse was.” **Lennard Busch, Officer in Charge, Aboriginal Police and Crime Prevention and Victim Services, RCMP Headquarters, Ottawa**

Judy White, a survivor of domestic violence motivated to contribute to the forum because she felt it was important for survivors to be heard, reviewed many of the inadequacies of the current system in her brief:

“My experience with the justice system, and the experiences of other survivors I have spoken with, sent strong messages to both the victim—me—and the offender, my partner. The message the offender received was, “You can continue to assault your wife, and you are not going to get into much trouble. The police don’t want to be bothered by your wife and may actually help you in order to make her stop complaining. The legal system works strongly in your favor.” The message I, the victim, received was, “The justice system is not here to help victims of domestic violence. Calling the police places you and your children in further danger. There is nothing you can do to help yourself without risking your own safety and the safety of your children. Even if it does end up in trial, a guilty verdict is difficult to get, and the punishment will be light.” **Judy White**

Lack of faith in the current justice system was also strongly expressed by Aboriginal participants. The criminal justice system has not served their communities well and is not effectively addressing the myriad problems in any attempt to reduce or prevent crime. Aboriginal men, and more especially Aboriginal women, are under-represented in the ‘halls of power’ and are over-represented as victims, as those seeking help, and as those being incarcerated. The following comments gave voice to the pressing need of First Nations and Metis for changes and for alternatives to the present system:

“The present justice system is alien to many First Nations people. The judge and lawyers usually fly together into a remote northern community. The people in the community don’t know the judge, and they probably don’t respect the judge. Therefore, when a judge sits in judgement and says, “You are sentenced to this or that, or you have to act this way,” I don’t think they’re going to listen. But with sentencing circles, the communities are part of it, the families are, anybody who has an involvement appears and sits there. They are all sitting there, the offender is sitting there, and his peers, people he cares about, sit there in judgment of him. That has more of an impact.” **Norma Green, Special Projects, Correctional Services of Canada**

“In this report [*Profile of Aboriginal Women in Saskatchewan*³] it talks about violence and that 8 out of 10 Aboriginal women are abused, so this is our problem. From the *Hollow Water [Manitoba]* study, they said 95% were sexually abused. Aboriginal women are five times more likely to use a shelter than non-Aboriginal women. And a *Report from the Indian and Inuit Nurses of Canada* makes the argument that widespread abuse often continues until the entire

³ Published by Saskatchewan Women’s Secretariat, November 1999

community decides to confront and eradicate the problem from within. It is we who have to do it. Regardless of what process you use, the change has to come from within the community.” **Bev Poitras**

“In one community we work with, 80% of the cases are domestic violence. Within the last two years there’s been two murders related to domestic violence. The judge came to us in the community and asked, “What can we do?” So it’s not only us as First Nations people saying the courts aren’t working, the courts are asking us what can we do, because they’re not working. This is giving us the opportunity now to ask, what can we do? We have to start dealing with the deep-rooted issues, not just the one, the slap on the face. We have to start dealing with why is he doing that? What is the issue he’s dealing with? The present justice system has caused more problems in some cases. Its track record speaks for itself. We’ve heard of many cases today where the courts are not fair to victims. One statistic last night was 11% of the cases go to court. What happens to the other 89% sitting in our communities? The state or the court becomes the voice of the victim, and this is not always the most effective or efficient way to deal with family conflict.” **Bev Poitras**

“It really hit home to me when I saw a four year old boy. His mother had brought him and his sister to the [Children’s] haven, and said there had been an incident of violence at home, and she needed time to get her stuff together. She left, and the little boy was very upset. He was very angry, and I was trying to calm him down a little bit, and I just said, “Your mom just needs a little break. She needs some time, she’s not feeling well, and needs some time.” And these were his exact words to me, and I’m not trying to be vulgar or anything. “She doesn’t need a fuckin’ break, she needs a fuckin’ slap.” And he’s five [sic] years old, and in my mind I was saying, if something doesn’t happen for this child, we’re going to be seeing him in the papers, or something’s going to happen in the future for him that’s going to be traumatic. I mean, obviously this kid has seen things, and it’s going to continue the cycle. The little girl never said a word. She just sat there with her head down like this all the time.” **Wanda Gamble, Alternative Measures Worker, Aboriginal Women’s Council of Saskatchewan**

“I’m not saying let’s go full speed ahead. It’s a question we have to look at, but in my opinion, it is by far the best thing I’ve ever seen. It’s not a perfect thing, but I’ve seen how our conventional system has failed victims. I’m a facilitator in family group counseling and I’ve done 60, many of which have been due to violence, not domestic violence but fights and assaults in schoolyards and things like that. And the healing I’ve seen happen is certainly encouraging to me because I’ve never seen healing happen in a courtroom, even when the victim’s side of an adversarial process wins. I often see the victim going away realizing there’s no healing, their fears are not being relieved, living day to day in apprehension of when the offender’s going to be back out on the street, and they don’t have the support they need to carry on.” **Lennard Busch**

“If you asked me 20 years ago about restorative justice, I would have said, throw the buggler in jail, but since then I’ve gained more experience in life and have done other things, and so my feeling is I do believe in restorative justice. In all cases, the community is a part of the solution, and they also accept responsibility, and they are accountable for the resolution of the offence. It seems that in those cases when breaches of the justice system are brought to families and communities, there is a better chance of resolution happening in a positive manner that has long term effects in the communities. What I see is we often put the focus on the offender, not on the problem. We don’t know what the problem is with this individual. What is the root of the problem? Have we looked at the background of the offender?” **Norma Green**

Though many forum participants seemed convinced the current criminal judicial system is irreparably flawed, others, believing it can be redeemed, wondered why the problems in the current justice system simply aren’t addressed, rather than moving to establish a new process:

“On behalf of survivors of domestic violence and their children, I ask that the members of this conference err on the side of caution with regard to supporting restorative justice in cases of domestic violence. Why don’t you just insist that the current system give all offenders, without exception, a very strong message that their abuse is unacceptable, that it is criminal, that it will not be tolerated, that it will be severely punished? Why don’t you just insist that the current system give every victim the message that the justice system is there to help, that calling the police will always mean increased safety, that you will not be left all on your own at trial without even the arresting officer showing up? Why not just make the current system work the way it’s supposed to? If a victim can’t feel protected and supported now, with supposedly the full force of the law and its formality behind her, how will she possibly be able to feel protected and supported without it?”
Judy White

Restorative Justice and Violence Against Women

There were those who felt restorative justice should never be used in these types of cases, those who thought benefits are possible, and those who believed very strongly that restorative justice programs would be very effective in meeting the needs of female victims of battering and sexual assault. Most participants, however, voiced serious concerns and cautions about the conditions prerequisite for the implementation of restorative justice initiatives in cases of violence against women. The underlying question was whether the non-negotiable environment of safety and equality for the victim could be assured within restorative justice processes, and if so, how:

“Removing cases of crime and violence against women out of the traditional court system into a more conciliatory process that seeks an alternative resolution might sound good, and women, especially women in abusive relationships, have been saying they are interested in some alternative processes. But current restorative literature is missing an analysis of the dynamics of gendered violence, an analysis

of violence in relationships and sexual assault, as well as an analysis of how the impact of women's socialization is connected to these issues and how this makes women more susceptible to violence and repeated violence." **Tracy Porteous, Coordinating Consultant, BC Association of Specialized Victim Assistance & Counseling Programs**

Crimes of intimate violence extend into the areas of psychology, sociology, economics, and politics in ways other offences do not, thereby introducing particular and significant dynamics into a restorative justice process, dynamics that must be anticipated and factored into the process. Issues and concerns raised during the forum that participants wanted taken into account can be grouped into the following broad themes:

1. need for consultation
2. safety and risk
3. informed choice, unencumbered participation
4. power: dynamics, imbalances, relations
5. denunciation/deterrence
6. offender focus vs. victim focus
7. definition of 'community'
8. community resources and volunteers
9. guidelines, standards, training, monitoring and evaluation

1. Consultation

In discussing the government-initiated restorative justice program in Nova Scotia, **Irene Smith** reported that although the program claims that the victim is central, no consultation took place with victims' or women's groups:

"This results in displacing the survivor to a position peripheral, not central, to the process."

In commenting on the process in B.C., **Tracy Porteous** said one of the most important issues in discussion with women's groups was the lack of informed input into the development of policy by First Nations women, and by victim-serving and women-serving equality-seeking organizations:

"To facilitate such input, it is necessary to make the funds available to these groups so they can develop their own analysis of these policies. All too often I see women's groups struggling to articulate our issues at a table that is uneven to start with."

Fay Blaney, Vice President of the National Action Committee on the Status of Women and a member of the Aboriginal Women's Action Network (BC), attested first hand to the difficulty their group had in being heard and in bringing a gender analysis to the discussion of the planning and development of the Vancouver Aboriginal Restorative Justice Project, thereby

raising the issue of the under-representation of Aboriginal women in decision making capacities not only within government and policy-making groups, but also within groups of anti-violence agencies. Fay felt strongly that restorative justice is being implemented without appropriate consultation with Aboriginal women, and she framed this as being part of a sexist, racist society in which Aboriginal women have no voice.

So who is providing leadership in developing restorative justice programs, if women working on violence issues have not felt involved in the process and also believe that women who have experienced the violence have been left out? Participants underlined the need to be extremely mindful of exactly who is setting the direction for change:

“I am fairly sceptical when it comes to restorative justice, certainly in my own province and for good reason. We need to be very cautious of this. The very people who designed the [restorative justice] programs are within the same systems where they are taking indictable offences, reducing them to summary conviction, and sending them off to adult diversion. This has happened in my province.” **Michelle Landry, Project Officer, Victim Services, Correctional Service of Canada, Ontario**

If restorative justice is, as it claims to be, victim-centered, then the views and experiences of victims and women must be evident in the design, implementation and evaluation of programs. It is imperative that there be broad consultation with women’s advocates, Aboriginal women, women of color, disabled women, sex workers, the gay and lesbian community—groups that are not in the ‘halls of power’ and are more vulnerable to sexual assault, relationship violence, criminal harassment, hate crimes, and the like. To date, it seems this has neither been achieved by, nor on the agenda of, many of the policy-makers, although the Saskatchewan government was applauded for apparently bucking that trend in its willingness to aid and abet consultation and to invite and seek out dissenting voices before moving ahead on this issue.

2. Safety, risk and re-victimization

“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 offence, and that they need recognition of the pain and the suffering they have endured. Sexual assault survivors need to talk about their feelings. They need to reclaim their power, and they need to have their pain and their suffering validated absolutely. The terror, the humiliation, the stigma that results from sexual assault makes it a long and difficult and painful process. Usually this type of healing only occurs within the context of a safe and trusting relationship. In my opinion, it is unrealistic to think a survivor will discuss what justice has casually called ‘concerns and feelings’ with the perpetrator of sexual assault. It’s unrealistic and dangerous to think healing will take place as a result of such a meeting between the perpetrator and the survivor.” **Irene Smith**

Safety of the victim—physical, emotional, and mental—was of paramount importance for participants on both ends of the spectrum. Victim safety is a complex issue in crimes of battering

and sexual assault, hence safety concerns run like a thread through all others. Controversy centered around whether restorative justice does, or even could, put women's safety first. Those who opposed restorative justice processes for reasons of safety did so because they did not accept that the safety of the process could be assured for victims who already live in very fearful and dangerous situations. Restorative justice strategies were seen by some to keep women in high-risk situations, rather than encouraging them to seek safer options:

“I felt safe because he was in jail. I knew I wouldn't be getting a licking for a while and I could walk on the street without getting scared. It felt good to know he wasn't lurking around looking for me. I felt that with him going to jail I had inner peace in myself, I didn't have to be afraid anymore.” **Survivor of domestic violence, Black Eyes All of the Time (one of 26 women of First Nations descent interviewed for the study)**

“I find the whole concept of restorative justice in family violence situations very scary. I work with a caseload entirely of domestic violence cases and I can just see so many really scary things that might happen.” **Liz McQuarrie, Saskatchewan Social Services, Regina**

“I'd put the bugger in jail, is my thought. I'm trying to be open-minded here and listen to all opinions, but we talk about the conditioning process, that this woman has become isolated, her family has been pushed away from her. These men, their mindset is that they con. You're going to get to the sentencing circle, and this guy will say anything because he's done it before. That's what he does. He did it with her, he does it with his family, with the police, and he does it with the judges. He comes off so great because that is what he has conditioned himself to do through the whole process. How are you going to know whether or not this guy's just going along with the program and in the end, his woman is going to get it for making him go through this program?” **Holly Pelletier, Support Worker, Shelwin House, Yorkton, SK**

“Reintegration of the offender into the community, in our experience, with woman who have experienced crimes of sexual assault, creates a great deal of fear and as a matter of fact, re-victimization, not healing, for the survivor. A survivor's sense of safety is so deeply compromised after a sexual assault, they often feel too fearful to go outside even when the perpetrator's been incarcerated. Knowledge that the perpetrator is at large is usually frightening and actually a very re-victimizing experience for women.” **Irene Smith**

“There would have to be good supervision where the victim didn't have to worry about being stalked or maybe killed.” **Anne McGillivray, Professor, Faculty of Law, University of Manitoba, Winnipeg, Manitoba**

“Can restorative justice work in cases of domestic violence? As a survivor of life threatening domestic violence, my reaction is to say a resounding **NO**, but to be fair I'm willing to look at both sides. There is some value in allowing the woman

to speak to the offender and express to him how he has victimized her. As well, there is a tremendous value in having the appropriate authority around the woman reinforcing that she has been the victim of a crime.

There would need to be, at a minimum, the following in place for the situation to have a positive effect for the victim: a time period away from the spouse for the woman and her children before the restorative justice meeting; counseling for the woman and her children; an understanding that the woman and children may be in danger following the meeting and will not leave with the offender, that the woman will be escorted home or to a safe shelter; the understanding that this exercise is being done for the benefit of the victim, not for the benefit of the abuser. But the case can certainly be made that the risks of using restorative justice strategies in cases of domestic violence far outweigh any benefit.” **Judy White**

3. Informed choice, unencumbered participation

There was also concern about whether women can actually have a real, informed choice when it comes to participating in restorative processes. Here the empowerment of women, or lack thereof, emerged as a key concern:

“The whole issue about violence in relationships and sexual assault is about dis-empowerment. We believe, in order for the system to be working effectively, we need to be building at every step of the way processes that work towards her empowerment. Giving her the opportunity to have some control, we think, is key.” **Tracy Porteous**

Of course, empowerment begins with the right to choose freely. Does the woman feel pressured by her partner or community, or even by the process? **Irene Smith** reported that under the current measures of the new Nova Scotia policy, a case could be referred to restorative justice regardless of the victim’s wishes.⁴ “That flies in the face of the very premise of restorative justice.”

Others maintained that real choice in the case of domestic violence is not possible. A battered woman can not truly choose, due to the power dynamics inherent in the situation. Healing and empowerment work can take several years after a victim leaves the abusive relationship. Until this period is over, participants contended, the woman simply cannot enter into processes such as mediation or restorative justice voluntarily, or participate freely:

“Participation in restorative justice while still entangled in an abusive relationship can encourage the mistaken belief by the victim that she can somehow help to change the abuser. And when is she finally not entangled?” **Judy White**

“It may not be possible for a victim of domestic violence to act with concern for herself during the restorative justice process. Victims have been conditioned to

⁴ And see *R v. Taylor* [1995] 3 C.N.L.R. 167 (Sask. Q. B.) where the trial judge reasoned that “a circle may be held even if the victim is opposed to it.”

consider only the abuser. This strategy is deeply ingrained—the survival of the victim, her children and family depend on it.” **Judy White**

On the other hand, the point was made that some women want and do choose alternative processes:

“She said, ‘Even now I would like that opportunity to tell him exactly what he did to me and how it felt. I don’t know if it’s going to repair anything, I don’t know that, but as a victim, just being able to let [him] know how it impacted me, and if he chooses not to hear it, [at least] I know I’ve said it to him. It’s a start to the healing process.’” **Wanda Gamble, quoting a survivor**

Lennard Busch’s office receives calls from victims saying they would like to report an abuser, but they want to be assured first that the situation will be dealt with in a family group conference. These wishes must be acknowledged and respected. In the end, victims should have choice and control. Every case of spousal abusive must be looked at and assessed individually—each situation is different. But information and proper support must be made available to those making choices:

“We believe we should not be approving a referral to an alternative measure unless the woman is fully consenting. And the nature and dynamics of violence against women are such that initial solicitation should take place with somebody who has some experience and some background in the area of women’s psychological socialization and the nature and dynamics of abuse. Rather than have that piece processed by a corrections person (somebody who has experience and expertise working with offenders), we think that that referral and work should be done by a women’s service or a First Nations women’s service. So that somebody can really spend some time with her over a course of perhaps a number of sessions to provide her with an opportunity to really look at the full impact of the abuse. So that she can come to a fully informed place of consent, if that’s the route she goes.” **Tracy Porteous**

There was consensus among participants that women must have informed choice—there should be a process in place whereby women are advised of their rights and entitlements, and of the advantages and disadvantages of restorative justice before making a decision to participate. The necessary time must also be taken in order to provide the victim with an opportunity to fully look at the impact of the abuse and to make an informed decision on how to go forward. But whether a battered women can ever freely choose and/or participate remained in issue. **Norma Green** insisted that “real restorative justice process cannot occur without consent—nothing happens without the survivor or the victim’s permission”, but pressure to enter mediation or other alternative processes can come from multiple sites—not only from the spouse but from the family, the community, and/or the justice system itself.

4. Power dynamics and multiple sites of power

Possibly the most intense focus of opposition and words of caution regarding the use of restorative justice measures in cases of battering and sexual assault against women centered on the issue of power. Violence against women is embedded in unequal power relations manifested on the societal level and in its institutions—within different groups and communities, within families, between men and women, between offender and victim. It is the myriad inequalities in power relations that create and sustain conditions of disadvantage for women:

“Is restorative justice single-incident oriented or, conversely, how does restorative justice fit in terms of systemic violence against women? We live in a context of violence, in a racist, sexist, classist, ageist, etc., society. So what do we do with our context when we talk about restorative justice?” **Helen Smith-McIntyre**

Issues of power are especially pertinent in restorative justice processes because these processes are meant to facilitate solutions that meet the needs of all parties involved. As **Anne McGillivray** pointed out, the challenge of restorative justice should be to restore relations of equality. Given the inherent power imbalances, however, it may be next-to-impossible to have an equal level of victim focus and input into these processes—and the consequences can very easily be further victimization. Some of the participants see these inequalities as so pervasive that restorative justice processes cannot escape them or be immune to them:

“I wanted to be clear that I agree with restorative justice in the sense that it should apply to youth, and it should apply to property crimes. Although I think the justice system has failed us terribly, when it comes to situations of violence against women, whether it’s violence in relationships or sexual assault, I do not think restorative justice is appropriate. We recognize what the socialization process is for women in the patriarchal society we live in. We know women are socialized to be passive, to not play an active role in their communities. Or even in their personal lives.” **Fay Blaney**

“Justice wants to make things easier for women to be heard after they’ve been hurt, but it’s not possible to have equal justice when the system on which the laws are built is biased in favour of one group—in this case, white upper-class privileged males. It dawned on me that we are doing essentially what women have been doing all these generations—trying to find a unique way, or another way, of getting men to stop their violence. Maybe if we did it this way, they’d stop their violence. Maybe if we talked about that, it would stop their violence. My fear is, we’re doing the same thing with the justice system. Maybe if we do restorative justice, it will stop men’s violence, maybe if we do mediation, it will stop men’s violence. We’re not challenging the system.” **Wally Roth, ED, Alternatives for Men who are Abusive to their Partners (Saskatoon)**

“Both genders get criticized and punished in various ways if they don’t follow their expected gender role training. For instance, any woman who acts too male-like is called names like ‘butch’. A man who shows his feelings is called a fag and

teased for not being tough enough. Men are told they have to be in charge, the head of the house, to wear the pants in the family. All this training leads to a belief system that supports men to dominate women at home and at work. Because there's so much support for men to be superior to women, men are expected to use controlling behaviours including physical violence to keep women in their place. Just look at how the media portrays women in comparison to men.

Men would probably welcome the chance to work things out with their partners in order to get the relationship back to where they wanted it. I'm also thinking that many women as well would be happy to go along with this new procedure because they would be hoping this might finally show their husbands they were wrong and needed to stop hurting them. Even if we could set up a process that would take these biases into account, how could we be sure these same laws wouldn't just end up benefiting men more than women? The intent of restorative justice is to restore broken relationships. Why would we want to encourage restoring relationships to one where men are expected to be dominant over women?" **Wally Roth**

The point was made that the justice system is inextricably linked to the larger structures and power relations governing even the most trivial of our everyday activities. People repeatedly spoke to the fear that issues around racism and sexism and classicism and homophobia, clearly documented and identified within the current justice system, would perpetuate through restorative justice measures into a community apparatus where there is even less ability to control it:

"There is absolutely without a doubt systemic discrimination happening within the current justice system. What guarantee do we have these same people who will be given the discretionary power of referring something to a restorative justice model are not going to operate on the same myths currently within these forces?" **Irene Smith**

Power relations are certainly critical for all women because it is primarily men who establish and maintain the ruling structures and institutions, and who overlook the needs and concerns of women. For Aboriginal women, these multiple sites of power are further complicated by the interaction of colonization, racism, culture, class and gender. This was brought out in many ways during the forum. **Fay Blaney** in particular presented a damning critique (though one disputed by some of the Saskatchewan Aboriginal women present). Fay touched on many of these levels as they affect Aboriginal women and on how they might jeopardize female victims of violence in restorative justice resolution:

"It's really important to talk about some of the systemic and institutionalized discrimination we face as Aboriginal women. I'm intending to do this so we can make our case that we do have patriarchy and we have colonization within our Aboriginal communities, not only historically, but today. It sounds wonderful on the surface that Aboriginal people are getting the right to self-government, but

underneath that is the very hard reality that Aboriginal women don't have a voice in that process. We have patriarchy in our Aboriginal communities. We have matrimonial property rights the men are wholeheartedly supporting because it benefits them. Matrimonial property rights on reserve, for those of you who don't know, mean Aboriginal women on reserve do not have equal division of assets in matrimonial breakdown.⁵

Someone this morning said women are violent too. That is true, but the fact remains, the overwhelming number of victims are women, the overwhelming number of offenders are men. It's men who batter women. We have language that's been sanitized. We talk about gender equality instead of talking about which gender is equal and which is oppressive, and we also talk about domestic violence as if it's violence in the household with one partner against the other. It's not. It's the husband beating the wife, generally speaking. Women are the victims of violence and it permeates all our laws across this country whether it's in Aboriginal communities or not. Aboriginal men are benefiting from those privileges, and they exercise those privileges, and they continue to enforce them. If you look at the structure of who are the chiefs in this country, it's abundantly clear who is in control. I know that those of us who are going to post secondary and getting three degrees like you were saying, it's Aboriginal women who are doing that, but who sits in positions of power and authority? It's men. Overwhelmingly the chiefs across this country and the presidents of the boards of directors and the executive directors, those are men. There's something terribly wrong with our system if we have women in places where we're highly powerless to decide our own futures." **Fay Blaney**

The discussion of power in formal and informal relationships went on to look at how the pressures of family and community can be very potent in a restorative context. Participants spoke about the lived environment, the psychological foundation set up for women who are abused—the basic and inherent inequality of power that exists between the battered woman and the batterer:

“My partner's family desperately wanted me to stay in the abusive relationship. They often tried to make it better by treating the children and me very well, but the reality was they were afraid of losing a relationship with their grandchildren if their son was found guilty of assault. My family, on the other hand, had different motives for not addressing our abusive situation until it was almost too late. With a deeply religious background, leaving a marriage went against all values my family held dear. Also, as the abuse progressed, my family learned to fear my partner too and had concerns for their own safety. And they witnessed first hand how working through the justice system had ended in inaction and apathy. They felt as helpless as I did to protect me and my children.

⁵ There is no legal protection for women on reserves whose marriages end in divorce. Houses are usually band-owned and it's often up to the band councilors and chiefs—mostly men—to decide which spouse can stay in the matrimonial home.

What would have happened to me if I had been offered the choice of restorative justice [in the first few years] after I left? When I was still living with so many pressing reasons to go back, not the least of which was that he was stalking me, terrifying me, to the point I thought it would be safer to go back? How could I have stood up for myself then? What would I have been able to say?" **Judy White**

And as for the utter dis-empowerment of a rape victim by a rapist:

"I heard Pauline [Busch] say in the last session that she doesn't see the day her program will ever be ready to handle cases of sexual assault." **Virginia Fisher, PATHS Coordinator and conference organizer and host**

"I guess I start by clarifying what I said about [sexual assault cases], that we'll never see the day [when we do them]. When I speak about that, I'm thinking in terms of rape." **Pauline Busch**

Shawna Lekowsky, volunteer with the Prince Albert Police Victim Services Unit, wondered about the composition of sentencing circles and community justice groups. Her concern came out of her experience with a victim who had agreed to a circle, but after going through all the preparations, found that the sentencing circle was the abuser's family,

"his entire family. It was all his cousins and relatives. I think that would be very intimidating as a victim to see none of my peers, but all of the abuser's family. You can say the hardest person to be judged by is your own family, but [on the other hand] no family wants to see something bad happen to their own."

Victims of domestic abuse, even those open to considering restorative justice as a possibility, identify these family and community pressures as a major concern. Those in [Black Eyes All of the Time](#) wanted to make absolutely sure the process is free of bias, and free of manipulation by the accused and his supporters. Many victims and their supporters have experienced just the opposite:

"where the accused (or where their abuser, let's just say, because often it didn't even make it to the level of accused) was rallying all sorts of powerful strengths around themselves to prevent that person from complaining." **Anne McGillivray**

"I see men as manipulating that system, as an easy way out. In the majority of communities it is usually relatives who sit on the sentencing committee anyway." **Survivor, [Black Eyes All of the Time](#)**

"I have recently spent time with a woman from a small community in Ontario whose husband is a prominent businessman. She told us her experience in trying to get help for her family. She has four children. Nobody, the schools, the hospitals, the courts, the police, nobody really wants to deal with this situation. There is tremendous collusion going on." **Michelle Landry**

“We have a track record in many Aboriginal communities where the communities rally together, particularly the leadership, they rally together to support and defend offenders and they don’t come to the aid of victims. I just see [restorative justice] as an extension of a system that already exists in which Aboriginal women are silenced. We have been colonized so badly. It’s a patriarchal society and it is steeped in the Indian Act, and we are steeped with it in the non-native society as well.” **Fay Blaney**

“That [manipulation] is what we are talking about. This is exactly the thing that shouldn’t happen and does, and we already know it does. We don’t want to just keep adding to the list of horror stories.” **Virginia Fisher**

Women need input into the system to ensure that their abusers will not be their judges, but how can we guarantee them the selection of a meaningful community of people equally supportive of the victim and offender? How can we ensure power imbalances are not brought into the restorative justice process? How can we know for sure family and/or other dynamics are not working to protect the offender at the expense of the victim? We know that restorative justice practices will take place within sexist, patriarchal, classist and racist milieus, among others. How can we be assured that this reality will not influence or distort the restorative justice process away from the goal of relations of equality?

“The questions that always need asking are who has the power, and who benefits? Please let’s not fail women again.” **Helen Smith-McIntyre**

5. Denunciation and deterrence

Debate took place around the denunciatory impact of restorative justice and to what extent restorative justice acts as a deterrent to crimes of violence against women. There is, apparently, little in restorative justice literature addressing the importance of creating or maintaining deterrence in cases of violence against women. Flawed though the current system may be when it comes to these cases, turning to restorative justice could be even worse. Many participants feared that implementing restorative processes for battering and sexual assault would be interpreted as a move toward the decriminalization of sexual and domestic violence, or its re-privatization, thereby reversing hard-won advances:

“It is unlikely restorative justice would be used as stronger justice than [the current system] in the eyes of either the victim or the offender. Current justice methods leading up to a court appearance already lean heavily in favour of the offender. During the judicial process, abusers do not receive the message their behaviour is unacceptable, much less criminal. Restorative strategies seem to me to leave the door wide open for even less onerous consequences for the abuser.”
Judy White

“My guess is, if restorative justice was a real threat to men, there would be lots of them here opposing it.” **Wally Roth**

Lisa Addario, Executive Director, National Associations Active in Criminal Justice, Ontario, challenged Judge Huculak’s firm endorsement of the denunciatory impact of restorative justice. The writings of Inuit women Lisa had read and her own experience of sentencing circles in Ottawa suggested otherwise. And according to Irene Smith, the intent of restorative justice works against delivering a sufficient denunciation of the crime and, in fact, jeopardizes the victim’s well being:

“Restorative justice encourages forgiveness and I want to say very clearly, we are not in the business of forgiving sexual assault and domestic violence. We are in the business of stopping it, zero tolerance. Forgiveness is not essential to the survivor in her healing process. If the survivor is pressured or guilted into forgiving a perpetrator prematurely, it can actually sabotage her healing process.”
Irene Smith

Anne McGillivray’s study documented in Black Eyes All of the Time supports the idea that victims want vindication—they want a clear and forceful denunciatory message, backed up by a sufficiently strong sentence:

“The survivors who were interviewed had a lot to say about the wrist-tap sentences their offender got. But they also felt that the threat of a prison sentence was much more of a deterrence than the possibility of attending a meeting to engage in a dialogue or an apology.” **Anne McGillivray**

“Yes, he was sentenced, but not to jail. He was just given 100 hours of community service work. He didn’t learn anything from it.

I think they should send them to jail instead of going through all that. Behind bars for what they did to people, for what they did to partners because if they send them to something like that, camps or something, they’re going to think I can do it again because he’s not behind bars for what he did.

It’s too easy, it’s too easy for them because most abusers don’t realize what kind of pain they put their partners and kids through. Restitution, or going to counselling, community service work? Too easy.” **Survivors, Black Eyes All of the Time**

Yet even in that study, there were survivors who were open to and agreed with what they saw as certain advantages of restorative justice⁶, such as a rehabilitative capacity they did not see the criminal justice system fulfilling:

⁶ “Nineteen out of the 26 women thought it [alternative measures] was worth a try. They expressed a number of concerns. Some had experienced a little form of it. Some had not experienced it at all. They wanted close supervision of the process, they wanted safety for women and children, they wanted recognition that some offences cannot be diverted and should not be diverted, either because of the type of offence or because of the seriousness and severity of the offence. It depends on how severe or to what extent the violence or abuse is. It depends on the type of abuse, whether sexual or what.” **Anne McGillivray**

“I think trying to help them would be a lot better than trying to get revenge on them or trying to do something worse to them. I don’t think they’re going to learn anything if nobody is there to help them.

Some of them have just about killed their partners. Those are the ones who should go in court and the public can see what’s going on out there. But those who are not doing bad, like not really hurting their partners should go and ask for help. Maybe those are the ones who would get better soon.

It would probably work better than the justice system. It wouldn’t spit [them out as] hard-core criminals. Someone goes in for petty crime and comes out hard-core because you know, that’s the way jail is.” **Survivors, Black Eyes All of the Time**

A common opinion underlying the view of those concerned with the non-denunciatory impact of restorative justice was that crimes such as domestic violence and sexual assault have a public/social element that precludes a ‘private’ solution approach. Gender violence is a crime, a serious crime. It is not a dispute. It is an anti-social act at a basic level that the justice system must judge and prohibit with according severity. Deterrence requires a conviction and a sentence that sends the message to others that such behaviour will not be tolerated. Society requires a strong statement in keeping with the seriousness of the offence—and incarceration may be the only way to deliver that message. Thus the importance of consistent arrest and prosecution along with adequate sentences in deterring and denouncing abuse.

Another viewpoint, though, is that arrest is not necessarily the best way to protect the woman, or to denounce and deter further abuse, or to serve the interests of the victim, the family, the community. The offender can be arrested only to be released a few hours later, coming away more angry and more violent than before. Or the offender may lose his job if sentenced and this ultimately leaves the victim and the family deprived. And prison does not generally make individuals less violent:

“Housing people in institutions, and I speak from the experience of a people who have been housed in institutions from infancy to death ... if you see the number of people in Saskatchewan currently housed in corrections, it certainly has not served as a deterrence for our communities.” **Pauline Busch**

“My husband works at Saskatchewan Penitentiary as a guard, and he says, ‘From what I see, all they learn when they’re in there is how to be a better criminal.’”
Wanda Gamble

“As for corrections [contractors], that process Tracy was talking about,⁷ we’d give anything to have something like that in our communities. As it is, we just send the guys to jail and then they come back and beat up their old lady again.” **Jackie Ballantyne, Chairperson, Victim Services, La Ronge, SK, and Mental Health Social Worker, Mamawetan Churchill River Health District**

⁷ [positions funded in B.C. to spend no more than 4 hours interviewing the woman and everyone else in the case to determine whether or not this is an appropriate referral for an alternative measure]

People arguing this viewpoint saw the involvement of community and family in the process as a positive factor in stressing denunciation. Having your peers, your family, elders and so on sit in judgment and denounce actions was held to be more effective, with more impact, than the court or a judge:

“When we do something wrong, the people who are in the best position to communicate the shamefulness of what we had done is those we love, family we love, friends we respect, those individuals who have the most influence on us.”
Norma Green, quoting John Braithwaite, Professor in the Law Program, Research School of Social Sciences, at the Australian National University

“When you have a guy who’s beating his wife and you put him in court, he doesn’t have to say anything. His lawyer speaks for him. He never has to admit he ever did anything. But if he wants to participate in a circle, he has to be prepared to be accountable for what he did and to articulate in detail what he did, and he’s not doing it in front of a judge he may never see again. He’s going to be in a circle where perhaps his buddies from work are there, his minister is there, his parents, his children, his siblings, and he has to say in front of them what he’s been doing. This has been a hidden crime, nobody knows what’s been going on. When he [finally has to tell], the chance of these people condemning his behaviour, people he cares about and wants respect from, condemning his behaviour, certainly has a lot more potential of changing that pattern of behaviour than a judge saying, well, six months probation or two months in jail.” **Lennard Busch**

“In the responses from the 2,000-plus men we’ve seen in our program so far, the majority of the men would rather be punished than be held accountable. The men would sooner go to jail, get it over with, and then say to everyone, “I’ve done my time, leave me alone,” than be held accountable for their behaviour. That’s been a very shocking surprise we received from the men. It shocked me when I first realised that’s what men really wanted.” **Wally Roth**

It seems, then, that arriving at true accountability on the part of the offender, not just a jail term, is key to affecting change in attitudes and behaviour:

“Under the current justice system, these men get such short sentences that violent men don’t mind serving time. They know the sentences are not measuring up to what the crime is.” **Wally Roth**

Though confident of the power of communities to denounce violence, **Judge Huculak** did admit that to date there has been little research on the denunciatory aspect of restorative measures. Such an investigation, along with research on other claims of restorative justice, needs to take place so there are empirical data on which to base conclusions. In the end, participants agreed that restorative justice initiatives need to ensure that the process includes an appropriate denunciatory message, both to the accused and the community, so these measures will not be seen as going lightly on serious crimes. Nor can these programs offer offenders refuge from

culpability and criminal sanctions. Disagreement centered on how this is best effected, and if it is actually possible within a restorative justice framework.

6. Offender focus vs. victim focus

Another point of debate was the focus of restorative justice measures. As **Judge Bria Huculak** defined it, restorative justice is supposed to meet the needs of the victim, the offender and the community. But **Virginia Fisher** challenged this:

“Last night, you heard [Judge Huculak] say it is a myth that restorative justice is for the offender. However, I think a lot of people were wondering why she thought it was a myth, because a lot of us, I think, see it as a reality.”

Many other participants agreed that too much emphasis is focused on the offender, while the needs of the victim and others impacted by the crime are overlooked. In referring to the development of restorative justice, **Michelle Landry** remarked that certainly initially, the focus was on the offender, and restorative justice had little use for the victim:

“Yes, I think you are right. Traditionally, restorative justice—in the way it has evolved—has not really attended to the victim’s needs and rights. The focus has largely been, and it is an important focus, to stop the offending behaviour. Victims talk about why they are really not interested in restorative justice, and [proponents] of restorative justice have had to acknowledge that people involved in instituting so called restorative justice programs have really not done a good job in giving victims prominence. The people who’ve instituted these programs have largely been people who’ve worked with offenders, so there’s been a real imbalance which we need to address. For example, the John Howard Society has done wonderful work but they are, as far as I’m concerned, identified as working with offenders, right, and allied with offenders, so how comfortable are victims really, going to the John Howard to have them do an assessment? There’s no sense there of neutrality.” **Michelle Landry**

The focus on the healing or rehabilitation of the offender was, for those in favour of restorative justice, a key benefit. While other participants were worried this would be at the risk of further victimizing the victim, those arguing for restorative justice see offenders as victims themselves—victims of socialization, abuse, circumstances—who require therapy, not punishment:

“We have to get to the core. Why does a person offend? I think everybody knows we all like to be in control of our lives, and I think, how do we empower people to know they can take control of their lives? I’m thinking of the men as well. Especially the men and what has happened to them as children. I mean, were they abused, did they grow up in a household where there was all types of abuse happening? And it is common and what usually happens is two unhappy people, unwell people, find each other. They’ll find *somebody who is willing to be abused*

and manipulated, so there is a *co-dependency* role here too⁸.” **Norma Green**

“Our elders tell us that hurt people hurt people. This means that a program for the abuser and the abused must be available for a restorative approach to domestic violence.” **Bev Poitras**

But the negative side to this approach diminishes the abuser’s responsibility. It removes agency from men’s violent behaviour and trivializes abuse against women:

“I am dismayed by how many times I’ve heard about us needing to consider the complex background of the offender. I am telling you, survivors also have complex backgrounds. Violence is a choice.” **Kathi Cridland, Saskatoon Sexual Assault & Information Centre**

Other participants expressed apprehension that the offender’s victimization could take precedence over the wrong done to, and the needs of, the victim. It is support for those exposed to violence that counts, support to take those measures that effect change—to expose violence whenever it happens, to create the conditions where women and children can safely reveal abuse, to take court action, to do whatever is needed to make the change.

Closely connected with the misgivings over offender focus was the suspicion of developing an approach that would make a victim part of an aggressor’s treatment or would reduce the offense of domestic abuse to a ‘couple’s’ problem:

“To involve sexual assault survivors in a process intent on preserving the offender’s integrity and reintegrating him into the community places a tremendous responsibility on the survivor to support the perpetrator’s healing. We all need to be significantly concerned by that. Allocating even the minimum responsibility to the survivor for the offender’s healing can all too easily support the common myth that women survivors of violence are somehow responsible for the crimes committed against them. I think that’s a real danger of the restorative justice program when they talk about restoring the relationship to where it was previously.” **Irene Smith**

And the use of a mediation approach in the context that spousal abuse or sexual assault is merely a disagreement can be extremely dangerous. The violence and abuse itself has created such a power imbalance that to ensure that the process is actually restoring victim equality would be very difficult. From the victim’s perspective, would alternative processes to criminal justice indeed be more effective than simply having adequate victim support services within the existing system?

⁸ Italics added. The words in italics were included here to show how even those who know better can say things that could be construed as victim-blaming. This underlines the concerns about the amount of training and understanding of the dynamics of these crimes required of those who will be the gatekeepers, administrators, and workers in restorative justice programs.

“Victim input, victim safety, vindication, and victim satisfaction are what [survivors in the study] wanted. These are promises the justice system has made that it has not yet kept. I think this is what diversion would have to actually keep as a promise if it were going to work for women.” **Anne McGillivray**

7. Definition of ‘community’

Restorative justice relies heavily on the notion of ‘community’—it imposes more responsibility for the causes and the effects of crime on the community than does the current criminal justice system, as a means to affirm and strengthen the power of community and to reclaim the community’s involvement. Restorative justice proponents in cases of violence against women see this as positive, those against are not so sure. What is ‘community’, what is the nature of community involvement, do cohesive/appropriate communities actually exist?—these are the concerns of the latter group. Division on this issue amongst participants fell along cultural lines—Aboriginal/non-Aboriginal—although there were important voices of dissent within each group. This division is understandable when the dynamics of community-making and identity are considered. The ‘community’ conceived of during the conference, implicitly and explicitly, looked to be closely-knit with relational ties not only between the disputants, but between everyone involved in the resolution process. Any solutions reached by the process would be enforced by social pressure from a collective body involved in most aspects of the lives of the offender and the victim. There was also the notion that members of a ‘community’ share some prevailing idea of mores and a common notion of what constitutes justice. Critics, though, doubted that many of today’s fragmented centres of population, urban or otherwise, bear much resemblance to this notion of community (if any ever did), situated as they are in a highly mobile society where people may or may not know each other, may or may not share the same set of values, may or may not have any social cohesion, may or may not even be just:

“I have a question about appropriating other people’s culture. When I look at my own culture there are some problems we have. When I turn on the television and we’re more concerned about the NASDAQ than we are about what is happening with children starving in other parts of the world, I think we have a very long way to go before we can do restorative justice. We can’t even restore our communities. I think of things like living in urban areas in this province and in Canada where we don’t even learn who our neighbours are. It is very hard for me to trust that we could take a process like this and make it work.” **Ken Crawford, STOPS to Violence, SK**

“The comment about appropriating people’s cultures I think is a very important one. Certainly in Nova Scotia they’re saying we’re going to do this community kind of response in terms of restorative justice, but I don’t know who my community is. I think that is a fair question. Can we indeed take a model such as you’re suggesting and plunk it down in my community?” **Irene Smith**

“I don’t wholly agree that shaming can be an effective tool today in the society we live in. In traditional society, if there was shaming, you were in a closed community in which it was effective, but in today’s society, you can go anywhere

and everywhere. And I don't think we are at a place where we think violence is an abnormal thing. Aboriginal communities have rates of violence of 80% and higher. [This is what is normal.] Violence is an everyday thing in our lives and so we are not ashamed of it anymore and neither are our elders. Our elders are also the perpetrators of that violence. I don't have confidence in that community, to ask that community to be the one to talk about shaming. Why would we call in a community that's been socialized in that way to tell what is acceptable and what is shameful?" **Fay Blaney**

It was also pointed out that community is intimately linked with, and a product of, power relations. Communities are not homogenous. Power inequities within the community can easily corrupt and misuse a program:

"My concern is around the question of community. First of all, Aboriginal communities don't look anything like the traditional communities that existed a long time ago. Second of all, I think we've misinterpreted what those communities used to do around issues of justice and we're basing those things on romantic notions. Emma LaRocque⁹ talks about the ways Aboriginal peoples dealt with issues of violence [traditionally] and it was certainly not always restorative justice. So I have a big problem with the notion of using communities in that way. We have examples in B.C. of the Access to Justice Program where they were going to put a sexual assault offender through an Aboriginal spiritual system and the elders said that was highly inappropriate, that is not what our spiritual ceremonies are for. Yet there is political interference in the process. That particular offender happened to have male relatives in positions of power who insisted restorative justice be used." **Fay Blaney**

Proponents of restorative justice argued that a 'community' is not necessarily a geographical entity or a grouping of close relations, but can be a locus of 'care' capable of developing anywhere:

"We have to look at how we define community as well. Community of care as opposed to the town of such-and-such." **Lennard Busch**

"Community—a community can be developed anywhere. I don't think a community should be isolated to just a certain group of people. Community can be developed anywhere. In our First Nation communities, we're just starting to build that community networking and the supports in it, and I think that can happen anywhere. The other thing that elders say about restoring community and sharing values of other people, they say, you take the best of every culture that you know about or that you study, or that you hear about, and you leave the bad. They say that about our own community, our own culture, and our own traditions. Take the good and leave the bad." **Bev Poitras**

⁹ (in *Re-examining Culturally Appropriate Models in Criminal Justice Applications, Aboriginal Treaty Right in Canada: Essays on Law, Equality and Respect for Difference*, edited by Michael Asch, UBC Press, 1997)

8. Community resources and volunteers

All participants agreed that a lack of resources—technical, human and financial—has the potential to undermine the efficacy of any community-based service. Under such circumstances, restorative justice initiatives—notwithstanding the positive intent behind them—run a very high risk of failure. Even supporters of restorative measures insisted communities must have the necessary means to provide continual support both for the victim and the offender, prior to, during, and following any process. Debate centred around how and whether this could be accomplished.

The possibility was raised that the justice system was actually using restorative justice as a means of diverting cases of family violence and sexual assault away from the justice system as a cost saving measure and because family violence was not taken seriously by the criminal justice system. **Lisa Addario** doubted that such motivation at the political level for these programs—to decarcerate and ultimately save money—will lead to effective restorative justice initiatives:

“Ultimately there should be little or no cost saving. Money diverted from the justice system should be transferred into the community in order to provide sufficient program support for restorative processes.”

But will this transfer happen?

“Given the history of Nova Scotia when it comes to allocating resources to the community to respond to the various public policies and programs they have implemented, it is very unrealistic [to trust] that sufficient resources will be allocated for groups like Avalon Centre to provide the kind of support and counselling women need. We have not seen and we certainly do not believe sufficient resources will be allocated to ensure there is money to assist the offender in reintegrating into the community.” **Irene Smith**

And in Saskatchewan:

“We’ve had 1,400 people [a year] come through mental health since we went into the health district. And just about as many through addictions. We have referrals from prosecutions, victim services, and probation officers. [Mostly] it has to do with domestic violence and sexual abuse cases, either primary perpetrators or secondary victims. Basically we have victim services and we have four mental health counsellors for an area a quarter of Saskatchewan that begins just outside P.A., and extends north [from there almost] to the NWT and east to the Manitoba border. We don’t have enough to do what we need to do back home.” **Jackie Ballantyne**

Within this discussion of resources, concern arose over the appropriateness of utilizing and depending on the services of volunteers for restorative initiatives. Many were concerned volunteers might not possess the necessary background and training to facilitate these processes. As well, the use of volunteers and unpaid professionals downloads the responsibility of

resourcing these functions from government to community:

“Within the restorative justice model in Nova Scotia, they’re proposing it be volunteers who engage in a facilitated meeting with the perpetrator and the woman who has survived sexual violence or domestic violence. I have serious concerns about volunteers facilitating that kind of a meeting, and again, if government are suggesting they are not downloading to the community, isn’t asking volunteers to do pro-bono work exactly that? It takes a great deal of training and understanding about the dynamics of sexual violence and domestic violence to be able to facilitate those kinds of meetings.” **Irene Smith**

Are volunteers resources? How are resources to be measured and by whom?

“Communities need the resources for the circle of support in order to provide the follow-up and the after-care. Communities know what they can deal with. Many of the communities we go into when we start our restorative justice initiatives to speak to them about what restorative justice is, they have to determine what resources they have. Many of the resources they do have, they say, well we don’t have any money for them. I’m saying, don’t look at it as money. What kind of resources do you have in your community that are not financial? What kind of elders do you have in your community, what kind of men do you have in your community who were abusers, who are free and are coming out now to speak about it? What kind of resources do you have in your churches? What kind of resources do you have in your First Nations? And they talk about their family support system, their alcohol programs, their parent aids, and their foster-care people in their community. These are all resources. We should never stop a program of healing just because we don’t have any money. There are processes in our community that are very effective, but you’ve got to search them out and find them, and not be stopped by saying we have no money.

Community justice forums and alternative healing treatments are excellent forms for providing a network of support for the women, and making sure the offender knows their behaviour is visible and now widely known. Awareness that someone is watching sometimes can change behaviour. Now I’m not saying that it does in all [cases], but sometimes it can. People can change with proper techniques, support, and skill development. There’s developing skilled counsel in our communities in First Nations traditional values of love, respect, honesty, trust, and family, traditional roles and the restoration of our spiritual teachings.” **Bev Poitras**

9. Guidelines, standards, training, monitoring and evaluation

“There needs to be funding. There needs to be screening, really clear screening and training and guidelines, and standards, and monitoring, and a tracking system in place. And all of these things in place before going down the road.” **Tracy Porteous**

There was strong agreement that clear, coherent, equality-promoting guidelines, principles and standards must define all restorative programs, and that the policy, the guidelines, the screening, and the training must be in place before moving toward these kinds of solutions for cases of violence against women. There must be tracking processes for offenders from province to province, and within provinces.¹⁰ There must be transparency, accountability and a monitoring and evaluation process in place.

Bev Poitras, who ultimately supports the use of restorative justice strategies for family violence, qualifies her support by saying:

“Under certain circumstances. Each case is unique and should be evaluated by the Crown as to the appropriateness of the case for alternative measures. There must be certain safeguards in place, a process of including contemporary and traditional assessment of the situation, the support for the victim and the offender, and acknowledgement of improper balances in the relationship, the seriousness of the assault, and the length of time this has been happening.”

The reality is though, that even in Saskatchewan where offences of domestic violence supposedly fall outside the realm of restorative resolutions, some cases are being dealt with in the ‘gray area’. Who is making the decisions about these cases, and on what basis, under what criteria, and on what information? According to whose standards is it to be determined that an adequate and appropriate safety and support system and other necessary resources are in place? Should these standards and processes vary from community to community? In the sense that restorative resolutions are seen to be community-owned and community-driven, province-wide standards for cases like these may be very difficult, and contentious, to arrive at, to implement, and to monitor.

¹⁰ Without such a tracking system, if, once an offender successfully completes an alternative measure, he has no criminal record, an individual could commit a crime of sexual violence in one jurisdiction, be provided with an alternative measure, then travel to another jurisdiction and commit the same crime there and it will look like a first offence. Studies underline the high rates of recidivism involving cases of violence against women—any alternative program must have standards in place to ensure provinces can track offender behaviour from place to place.

Concluding Session

For the final session of the conference, all invited speakers were asked to make a short summation, and to speak to the question of how to proceed—to give concrete recommendations on how to move forward with Saskatchewan Justice on this issue. Discussion and questions followed.

During the opening session of the conference, **Judge Huculak** acknowledged that:

“restorative justice is not a panacea for violence [against women]. It is not an answer to criminal conduct. It can be part of a solution, but only part of a bigger solution.”

Even so, to a large extent discourse during the conference, as in most debate, was driven and shaped by dichotomies. During the concluding session, there was an important call towards bridging these dichotomies in a constructive manner. Many participants voiced the need to move beyond a mindset of ‘either/or’. The futility of approaching this issue as an ‘either/or’ or a ‘for-or-against’ proposition was stressed in various ways.

First, the reality that a restorative justice ‘system’ will not soon supplant the current criminal justice system was recognized even by those firmly in favour of introducing restorative process in cases of violence against women. The requisite supports are not yet in place and restorative resolutions are not suitable or successful for all cases. There was wide agreement, therefore, that we must remain vigilant about the current justice system. It must be held accountable and its flaws not forgotten. Many participants advocated pressure for improvements and innovation in the administration of criminal justice in the province, with a focus on the woman as victim/witness and on the child as victim/witness, and on the responsibility of Saskatchewan Justice to treat these cases appropriately:

“The current justice system is not going to go away. It has to be made to work in a more subtle, more sophisticated, more careful, more victim-centered way. Part of that means getting victims’ voices into the justice process in a far clearer, far better way than is now being done. We have to hold our justice system accountable for its failure to pay attention to women as women and children as children. We know a lot about what could be done to start making those things work much better.” **Anne McGillivray**

“The either/or dichotomy is a set-up, and we, whichever community, cannot allow ourselves to be forced to choose between a ‘more’ or a ‘less’ inadequate approach.” **Wally Roth**

Second, most attendees, both those emphatically in favour of restorative solutions and those with a very cautious stance, spoke about the use of restorative justice in conjunction with the criminal system. During the conference there was a wide range of suggestions about how and at what stage the two could and should be combined and under what conditions either one should be used:

“For example, the horrendous story we heard from Judy that was read into the record today talked about how over a period of time it got worse and worse and worse, and it seemed nothing could be done. Maybe that type of case certainly would not be appropriate at the later stages to deal with in a circle. By that time, it’s far gone and that guy should be locked up and never be near anybody ever again as far as I’m concerned. But at some point there was a time when perhaps he could have been brought into a circle. They could have asked, “Why are you doing this and what are your needs, why do you feel you have to dominate somebody, why do you think violence is an answer to your own pain, your own suffering?” And I think at that point, there really might have been a chance to turn things around. Now there’s no guarantee that any system we use is going to work 100% of the time. There are always going to be people saying, look at that, that didn’t work, so let’s ditch the whole process. But I don’t think that’s the answer.”

Lennard Busch

“My comment is not either/or, but together, if they were to do the jail time with some of the restorative justice processes taking place in the jails. They [already] have abuse programs currently available. Then after [coming back] into the community, the reintegration circles and the healing circles could take place.”

Unnamed female participant

“It’s scary to sit here and listen to you people. I know you guys are great, that you’re all going toward the same direction. But you’re trying to say, well this other direction, I don’t think it will work. But that other direction may work. And that other direction has angles that come back to you people. It just doesn’t go one way all the time. A sentencing circle is a very sacred thing. When you get to that one point, into the sentencing circle, you have to deserve it, earn it, get it. It doesn’t just appear because you’re Indian and want one. So even when you’re at that sentencing circle, the people within that circle can say this guy is not ready, this guy is ‘BSing’ us, back to the courts. Then it’ll go back to where you guys want to deal with it and that’s where it should go, because when you get there, you have to deserve it. Please keep your options open because all we are is an option out of incarceration. Because when a guy gets out he’s coming back and we have to deal with him at home.” **Hector Gaudry, Director, Restorative Justice Program, One Arrow First Nation, SK**

Third, transcending the discourse of ‘either/or’ is the victim’s right to choose and the unconditional need to respect this from both sides:

“Coming from Europe and from the war, I learned how to value choices. I think it’s very dangerous to close doors, and that we are not in power to make decisions for somebody else, and we have to be very careful when we make some kind of decisions that we, we can’t decide for everybody. For this process, I’m seeing court system, I see justice and community working together in solving this, but I also see lots of other support systems [like] what I am seeing now in place.” **Mila Vanovic, Saskatoon Community Mediation Services, ex-Yugoslavian lawyer**

“I think we have to be careful about not getting into the mindset of either/or. Like restorative justice versus the criminal justice system. Restorative justice is new, and there certainly is a will to make the criminal justice system more sensitive to the needs of victims and everyone who it engages. I envision that at some point we will have a system that will better meet the needs of all people who are affected by behaviour. You know, victims, offenders, and their family groups or the community. There has to be something in it because otherwise there wouldn't be so many people excited about it. Right now, what we're doing here is exploring. Where can we go with this? Where should we go? What should the timelines be? What has to be put in place? One size does not fit all. We're not trying to make everything fit everybody the same. It's a process that has to be community owned and driven, but it has to be government supported, and there has to be that sober second thought [around] government guidelines such as you in Saskatchewan provide as we move forward.” **Lennard Busch**

Another sentiment expressed throughout the conference, and reaffirmed during the closing comments, was that neither model addresses key changes needed to stop violence against women. The broader context, the systemic and structural factors behind women's disadvantageous status must be attended to if government and society truly intend to solve this problem. There is a need for preventative action—for wide-spread parenting skills training and relationship skills information, for a sustained focus on children and on anti-violence programs. Both sides acknowledged that childhood and children have to be a number-one priority in all our communities:

“Had someone successfully helped these women in childhood their lives would have been very, very different.” **Anne McGillivray, speaking of the 26 First Nations women in her study documented in Black Eyes All of the Time**

The prevalence of violence and discrimination against women in our society—a society with violent, racist, sexist, ageist, classicist, and homophobic facets—must be acknowledged. Action must be taken by each of us and on every level. Without a fundamental shift, change will not occur. In this context, **Anne McGillivray** raised the issue of human rights. She stressed that the subject of rights was a resounding issue for women survivors in her study and that this notion must be central to any initiative within restorative justice and within the existing criminal system:

“Until I learned I had rights as a human being and as a woman, I just accepted whatever my partners gave to me.” **Survivor, Black Eyes All of the Time**

Lisa Addario voiced another caution against polarizing, dichotomous positions. She addressed the important misconception that if one doesn't support restorative justice, then one must necessarily support a law-and-order agenda. She made the point that the women's movement in Canada has consistently rejected restorative justice measures in cases of violence against women and sexual assault, but that at the same time, it has also rejected harsher penalties and stiffer sentences:

“Rejecting restorative justice does not mean you want to lock an offender up for ever and ever. We all need to be supportive of a progressive analysis because there is a climate out there willing to swing back the pendulum. We must continue to be vigilant about the other alternative—a judicial system that has been sexist and racist and held a lot of myths when it comes to women.”

Jan Turner affirmed this need for a unified progressive stance. “How do you even talk about restorative justice in this particular climate where people want everything tougher, tougher, tougher?”

Firm agreement existed about the need for continuing dialogue in forums like this conference and among different groups:

“The most crucial thing I would like to see come from this conference is that we keep the lines of communication open, that we don’t close the doors amongst ourselves. If we are going to offer a balanced approach to future issues, we need to do it collectively, working together in a partnership forum.” **Pauline Busch**

Consultation was considered the keystone for any further steps by the government along this road—extensive consultation involving all stakeholders in the community, extending to Aboriginal women and all other women. There is an obvious need for capacity building especially within the Aboriginal women’s movement, which would entail the space for dialogue and familiarization with the issues, and the means to carry out their own analysis before arriving at the consultation table. Supporting Aboriginal women and other groups of women in this way means providing core funding. In short, the government must back the promise and the process of consultation financially:

“This would be a much more respectful place to begin in terms of respecting women and respecting others so you do not end up making mistakes and having to backtrack.” **Tracy Porteous**

“I want to add my voice to those that have already been raised with regard to continuing the dialogue. We need to keep talking, and my hope is that Saskatchewan Justice will continue talking with us, and will listen, and will in as many ways possible, enable and empower all the voices to be heard.” **Helen Smith-McIntyre**

So, where do we want to go?

“When we talk about restorative justice as a vision, let’s challenge ourselves to have a vision of a system where it is so safe, so honest and so productive in terms of results for the victim that we will now see 90% of women instead of 11% of women coming forward and asking for help and pressing for justice.” **Alice Jack, Lloydminster Interval House, SK/AB**

And how do we get there?

Jan Turner's comments on the position of Saskatchewan Justice, and on its proposed process, contained many of the elements that must be considered, along with a significant pledge around process:

“There are questions that are raised. There are questions that are raised in communities, in many of the isolated communities about why these matters can't go in, and as one of the gatekeepers, I want to take this conversation very seriously, and I don't want it to just happen somewhere and we turn a blind eye. I don't want it driven by a policy no one's ever talked about. I want it driven if it's going to change, and I'm not saying it is going to change, but if it's going to change, we need to do it in a really thoughtful, really careful way, and we need to listen to a lot of different voices, and it's not going to happen overnight. We need to keep having sessions like this, lots of discussions. All of us in the room do. We all go back to our communities, where we live, where we work in programs, many of us, not me, but many of the people in the room talk to clients who come in every day with views on this as well.” **Jan Turner**

Several participants underlined the need for more awareness and education regarding restorative justice. Some felt there had been an unbalanced view presented of restorative justice processes as they occur in Saskatchewan or that participants simply did not know what occurs in a sentencing circle:

“So, to the people here who are talking about circles, I say, learn about a circle first and what can happen. Yes, in some circumstances, circles cannot be used, but through talking to elders in the community, and people that work in the community, you'll know if it's appropriate or not.” **Jackie Ballantyne**

Both sides, those in favour of and those critical of the use of restorative justice in cases of violence against women, recognized the need for education around restorative justice processes.

It must also be acknowledged by those in favour of restorative justice processes in violence cases that the caution and scepticism expressed by others is legitimate. Much of this originates from actual experience. The logistics of having a foolproof process in place is a sobering challenge. **Bev Poitras** made the case for a pilot demonstration as a possible way to move forward, especially in the current situation where adequate services and supports are already lacking in many parts of the province. Another potential strategy would be to research what competencies currently exist for restorative justice processes in communities and to seek ways to cultivate and enhance those competencies. Those with certain competencies could act as mentors for other individuals and/or communities:

“Should the government allow or institute the use of restorative justice strategies for family violence throughout the province./ in only certain communities? If the trained mediators and resources are available, with the support for the family, then why not try something different? Communities that recognize this is a major problem have to be prepared. They have to have strong resources willing to

participate, and they have to have started on their own healing journey. These communities would be ideal as pilot projects or areas where we can start something in restorative justice.” **Bev Poitras**

But it also had to be acknowledged that by no means are any communities ready today to assume the responsibility of adopting restorative resolutions for these offences. Many of those cautious of, or opposed to, the use of restorative justice with these types of offences are so because standard processes do not exist. Before going down the restorative route in cases of violence against women, there must be very clear policy, guidelines, screening processes, standards and training in place, along with a monitoring and evaluation procedure.

All of the above—continuing dialogue, full consultation, the establishment of competencies, policy, guidelines, training, action and demonstration—all require resources. The government cannot download responsibilities to communities without the adequate support services in place. The ideal may be that restorative justice is community owned and driven, but it must be supported by the provincial level of government to the full extent required. There must also be continued and increased funding for programs dealing with violence against women and for women’s services. Resources for restorative justice should not compete with, nor take away from, women’s programs.

And, if it is actually possible, how soon could we be ready?

“At this time I don’t feel our programs are ready to handle cases of domestic abuse. There is still much work to do in order for our programs to even consider taking domestic cases. Is it a process that can be open to all areas of the province? Again, I must say no. I grew up in an isolated community with very limited resources to this day. We don’t even have running water in our community, let alone professionals specifically trained to handle cases of abuse.

What needs to be done before we feel we are ready to take domestic cases is a lot of work. If we work very intensively preparing for the next two years We need to have the people built within our programs, not ones we borrow from elsewhere. We need to have those family therapists on site, we need to have people who have the background. We, ourselves, we’re mediators, we’re facilitators, we’re not counselors, and we’re very cautious about crossing that line we set for ourselves, not to go and pretend that as a facilitator I can see beyond the issue in front of me here and begin to dig into very deep-rooted issues. We’re very cautious about that. These are some of the things that need to be explored, and they need to be explored by professionals built into the programs.

I know from a personal point of view where I’ve began to work on my own childhood sexual abuse since 1986, I’m nowhere near finished. I still have a very long journey, and for me to think I can look at other women and say, “We’re going to fix you up and send you on your way, girl, no more problems.” I’m not prepared to do that. I’m not prepared to be that callous.

I also believe very strongly that restorative justice does have the ability to address many of those [issues] given the right resources, given the right people being part of that process. In fact, I would put the restorative justice process before the court system. I have seen nothing that gives me confidence in our present court system. I have seen plenty that gives me confidence in restorative justice. When I think back to the case of my sister, I think the safety of a community justice forum would have served her much better.” **Pauline Busch**

Finally, **Sandi LeBoeuf, Director, Family Centre, Saskatoon Tribal Council**, and the conference moderator, closed the forum with a succinct and inclusive summation of the overarching perspectives presented throughout the conference and the closing session:

“One of the things I learned a long, long time ago is that God has three answers for us. ‘Yes’, ‘No’, and ‘Wait’. Sometimes it is the ‘waiting’ that is the most difficult. There are many things we agree on as a group and there are many things we disagree on. There have been emphatic ‘no’s’ and emphatic ‘yes’s’. Regarding the key question the forum was to address, I realized the people emphatically saying ‘no’ were saying, “No, there must be services in place. There must be other things happening.” The people saying ‘yes’ were saying, “Yes, but with conditions that the services and supports are in place.” So, from this perspective, we are working on this together. Everyone I listened to today basically agreed the justice system has failed the woman living in a violent situation. We need to take a good strong look at that situation. I recognized a split in people’s views on how to deal with the issue. All people said, continue the dialogue, include government and justice. We may not be ready yet, but if we go that route, Aboriginal women and all women need to be consulted about the process. We cannot close doors. We need to keep doors and the lines of communication open. Finally, we need to take action. We cannot sit back and simply allow things to happen. We need demonstration of what the possible process could be. We have diverse backgrounds in this room. As a community we need to work together. We all came together with the same purpose, the same thought in mind. We may have differences in opinion as to how best to deal with that, but we all have the same concerns. The justice system is not working. What are our alternatives?”