

Restorative Justice in Nova Scotia: Women's Experience and Recommendations for Positive Policy Development and Implementation

Report and Recommendations

March, 2003

Pamela Rubin

Primary Author,

***Working in Association with the Management Committee of
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Independent Research Funded by

Status of Women Canada's Women's Program

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The insights and recommendations enumerated here were made strong by Policy Forum participants who spoke with a unified voice on these issues. Organizations who dedicated precious staff time to participation include:

Antigonish Women's Resource Centre
Avalon Sexual Assault Centre
Autumn House
Bryony House
Cape Breton Transition House Association
Central Nova Women's Resource Centre
Chrysalis House
Citizens Against Spousal Abuse
Congress of Black Women
Coverdale Court Services
Elizabeth Fry Society Mainland Nova Scotia
Elizabeth Fry Society Cape Breton
FemJEPP
Harbour House
Juniper House
Lea Place Women's Centre
Leaside Society
Mi'kmaq Family Healing Centres

Naomi Society
Nova Scotia Association of Women and the Law
Pictou County Women's Resource Centre
Second Story Women's Centre
Tearmann House
Third Place
Tri-County Women's Centre
Women's Place Resource Centre

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Author and Coordinating Researcher

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I. Summary

1. **Restorative justice literature and women's access to justice**

Restorative justice processes have been contemplated as a potential improvement on the failures of the existing criminal justice system to deal with violence against women, and as a potential source of empowerment for women. These analyses tend to downplay systemic discrimination's role in these failures, to ignore family and community roles in the reinforcement of male control of women, and to take an "it can't get worse" approach to justifying unproven interventions through restorative justice. The complex realities of abuse, sex offences and discrimination against women which may impact restorative justice processes, when they are acknowledged, are often seen as remediable through power-balancing techniques and pre-process preparation.

However, equity-oriented analysis of restorative justice (such as Richard Delgado's, from which the articulation of themes in this paragraph is drawn) combines both internal and external critiques of restorative justice. Internal concerns include

- that victims could be disserved by pressuring them to forgive offenders before they are psychologically ready to do so;
- that [facilitators] may intimate that victims are being obstructionist or emotionally immature if they refuse to put aside anger or distrust;
- that a victim who already blames herself may magnify that self-blame, particularly if the offender is an acquaintance or intimate partner;
- that not every victim will welcome the power of judgement over the offender.

External critiques cite larger, systemic problems with restorative justice that are inevitable in the context of societal inequality, particularly as it is reflected in the larger justice system. For example (again as outlined by Delgado):

- restorative justice attempts to restore the parties to the *status quo ante*, which, however, may be marked by radical inequality
- a short encounter with a victim is unlikely to effect internal transformation (especially in the context of societal power imbalance);
- the existence of a number of factors leading to offender cynicism about the process;
- informality harbours risks for women, blacks, and members of other outgroups;
- mediation is apt to compound existing power and status differentials;
- definitional problems regarding the term "the community;"
- the erasure of the public dimension of criminal prosecution.

Some proponents of restorative justice in general have recognized that it provides no guarantee of effecting social justice goals and may be ineffective or harmful in the face of inequality.

Feminist and other equity theory dealing with crime and violence may be at odds with assumptions implicit in restorative justice approaches and processes. A part of the social context that does not fit well with restorative justice rhetoric about “community ownership” is community and family knowledge or complicity in violence against women. Another inconsistency is restorative justice’s generally incident-based rather than systemic approach to issues.

There has been a paucity of narrative research with women regarding issues presented through restorative justice. The few existing studies point to serious risks. Possible limited benefits for certain women have also been identified (although not enough work to establish clear typology for these latter cases has taken place.) None of these studies include the perspectives of women in conflict with the law.

In restorative justice program evaluation, there has been a lack of gender-based analysis. Valuable information on outcomes for women involved in restorative justice processes either has not been gathered, or has not been subject to analyses that would illuminate differential impacts for women. Analysis of evaluation and meta-analytical approaches has revealed methodological concerns, generally. Some evaluative reporting may obscure or even distort women’s experiences.

Research on victims’ experience with restorative justice has some import for gender analysis although gender data may not have been disaggregated, with many victims’s concerns echoing those reported by the women involved in this research.

2. **Project Design**

Project inception

In 1998, the Nova Scotia Department of Justice issued *Restorative Justice: A Proposal for Nova Scotia*, outlining its plans for the most ambitious institutionalization of restorative justice anywhere in Canada. Included among eligible offences were to be both sex offences and spousal/partner assaults.

In 2001, women’s equality-seeking organizations received funding from Status of Women Canada’s Women’s Program to conduct qualitative feminist, participatory narrative research that would begin to address the concerns of women’s equality-seeking organizations by gathering women’s experiences and perspectives on restorative justice and helping to bring them to the policy table. This project is called *Restorative Justice in Nova Scotia: Women’s Experience and Recommendations for Positive Policy Development and Implementation*.

A management committee was formed to provide leadership for the project, consisting of women’s equality-seeking organizations serving women most likely to be directly affected by the Nova Scotia Restorative Justice Initiative (NSRJI). The management committee included

representatives from Avalon Sexual Assault Centre, the Elizabeth Fry Society of Mainland Nova Scotia, Nova Scotia Association of Women and the Law (local chapter of National Association of Women and the Law), Transition House Association of Nova Scotia, and Women's Centres CONNECT. (This committee now also includes the Elizabeth Fry Society of Cape Breton.)

Research design

Originally, the management committee had hoped mainly to speak directly to women who had participated in restorative justice. To that end, research participants were sought through ads, flyers, informally through women's services providers, and through the RCMP and Nova Scotia Department of Justice. Advertising and informal routes yielded only one participant who wished to discuss her restorative justice experience. Mac McIvor of the RCMP reported that no cases involving woman abuse or sexual assault had been handled through the RCMP program, to his knowledge, and reported doing a search of computer records by field for offences in these categories. After several earlier submissions, an application for assistance in a new, preferred format was submitted to the Nova Scotia Department of Justice in February 2002. Although the Department's Restorative Justice Coordinator made genuine efforts to complete a research agreement, unknown factors in the Department's evaluation of the application prevented the project from receiving permission to contact restorative justice participants in a timely manner. The project had to abandon its submission in order to complete the work according to our project timeline agreed upon with the funder.

In the absence of the Nova Scotia Department of Justice's timely support for reaching restorative justice participants, the project committee chose to use focus groups and interviews with women to gather a prospective reaction to NSRJI and restorative justice. A collaboratively designed research plan sought to gather two key perspectives from women most likely to be directly affected (survivors of male violence; and women in conflict or formerly in conflict with the law):

- what was women's response to NSRJI goals, objectives and protocols
- what was women's vision for restorative justice; what did women see as restorative of the harms they had experienced.

Target groups for individual interviews were broadened to include women who had experienced adult diversion or other alternative measures either as survivors of a criminalized male assailant's crimes, or as women in conflict with the law.

A feminist, participatory, narrative approach was chosen, consistent with Women's Program's goals, in order to allow women to share their own views and experiences in their own words.

Data gathering and analysis

23 individual interviews were conducted with criminalized women who had gone through adult diversion or other forms of alternative measures. Individual interviews were conducted

with 2 women who were survivors of male violence, and whose assailant went through adult diversion in one case, and restorative justice in the other. These interviews were conducted in a semi-structured but open-ended way.

A total of 125 women participated in project focus groups. Eleven focus groups were held for survivors of male violence and their service providers, involving a total of 80 women. These focus groups were held in Halifax (3, including one specifically for immigrant women), Annapolis Valley, Yarmouth, Bridgewater, New Glasgow, Sydney, Amherst, Waycobah (exclusively for Native women) and the Strait area. One focus group was held for Black women active on woman abuse issues in the New Glasgow area, which involved 8 women. Four focus groups were held for criminalized women and their service providers involving a total of 33 women. These focus groups were held in Truro at the Nova Institution for Women (2), in Halifax and in Sydney. One focus group was held in Halifax for non-offending mothers of children who had been sexually assaulted and a service provider, involving 4 women.

Notes and transcripts of interviews with criminalized women and all focus groups were reviewed inductively, and emergent themes listed. Comments were coded by theme and electronically sorted. Sorted data was reviewed to identify themes of primary and secondary emphasis.

Research results were considered at a Policy Forum for Nova Scotia women's equality seeking organizations. Additional data, recommendations and future research directions were identified by these groups.

B. Systemic adverse trends impacting NSRJI

Many women identified significant problems in the existing criminal justice system that could be viewed as arising in part from systemic patterns of discrimination or direct discrimination by justice professionals. These are of concern as there is nothing in place to prevent the carry-over of these problems into restorative justice. Also, the ability of restorative justice to achieve its goals is limited by the extent to which the justice context in which it is operating is perpetuating discrimination.

Trivialisation of abuse

Many women with experience of the criminal justice system described the ongoing trivialisation of woman abuse. Women described how this occurred because of individual discretion and attitudes exercised by justice professionals. Women also challenged institutional inertia and dysfunctionality in the justice system as a whole regarding violence against women.

Women described the difficulty they faced in having charges laid in the first place due to a trivialisation of the assaults, and the characterization of some offences as "minor" and trivialising attitudes to abuse, including the incongruity of the nature of eventual charges laid and the seriousness of abuse.

Women raised concerns that the same justice professionals trivializing abuse in the existing system would be making decisions under NSRJI that similarly would tend to minimize abuse.

Concerns were also raised about the trivialising message sent to abusers through the use of restorative justice processes for sentencing, particularly those already skilled in avoiding and manipulating legal consequences of abuse.

For a few women, concerns specifically centred around a model lacking punitive emphasis for these crimes, and a model emphasizing a consensus that included the abuser. Others felt the private, volunteer-based model was trivialising.

Victim-blaming and revictimization

Many women described their experiences of revictimization or abuse by justice professionals in the system even as they sought help and safety from abuse. Frequently cited was a victim-blaming stance by justice professionals, often accompanied by the threat that if a woman continued to seek help she would be subject to investigation by community services and the loss of her children.

Women also described being treated as if they deserved assaults.

Several women described facing criminalization because of the involvement of police after they had been abused.

Women expressed concerns that patterns of victim-blaming would be brought into community justice forums dealing with male violence towards women.

Restorative justice for women in conflict with the law was also seen to potentially have a victim-blaming aspect that would not promote healing. Women raised concerns about being forced to “take responsibility” for crimes in order to participate in restorative justice, where the criminalized acts such as drug use and prostitution and shoplifting were part of survival strategies or compelled by an abuser. One service provider brought up the issue of an abused woman criminalized for assault against her abuser, entering into a justice forum with her abuser of perhaps many years in the “victim” role.

Referrals and eligibility criteria

Many women raised concerns about whether restorative justice would be made available as an option to criminalized women in the same way it was available to men. Women reported their feelings that female prostitutes and drug addicts, as well as women in conflict with the law due to violent events, were treated more judgementally than men in comparable situations.

One aspect of this issue is the consideration of the impact of women’s appearance in the formation of judgements about them.

Women expressed concerns about sexism in its own right, as well as compound discrimination faced by women in conflict with the law.

Women consistently raised racism as a concern and the possibility of it affecting the referral process to restorative justice.

They also emphasized that racism, classism, prejudice regarding mental disability and other biases may be more prevalent in some communities than in others, and were concerned about restorative justice’s community-based model and equal access across the province.

Women in conflict with the law and their service providers also described concerns about access to restorative justice. This can have unique impacts on women, as they may be being coerced to give information about an abuser or about a male who exercises power and control in their life.

Women in conflict with the law supported a non-discretionary model of referrals.

Positive aspects of the existing criminal justice system

Women felt the symbolic role of the court and police was important. Women emphasized the important role the formality of the courtroom and the power of the judge and other court personnel played in their and the abuser's experience. Some women also cited improvements over the years in police response and support for police intervention.

Women in this research repeatedly cited safety for themselves and their children as most important for healing to take place. Although many women cited the existing system's failure to provide for their safety, some women did point to successes.

Some women felt that if the existing justice system were working as it should, there was nothing wrong with the existing processes. Success was a matter of training and commitment of those in authority locally. Some women expressed their relief that the trial and sentencing could proceed quickly with minimal participation from them.

Women in conflict with the law who were interviewed because they had experience of adult diversion or other alternative measures were generally supportive of existing programs. These programs were valued proportionate to the extent they helped women deal with underlying causes of their road to criminalization, such as abuse, drug addiction, poverty, and systemic discrimination, including internalized misogyny and economic stresses. This support for adult diversion or alternative measures was contingent upon these issues being identified and programs existing in the community to address them, for which referrals were made, which often did not happen. Women also valued programs that allowed them to avoid what they described as the dangerous and embittering experience of prison, which they viewed as destructive for both themselves and their children.

Other reasons for support for adult diversion and alternative measures that were cited less often included avoiding the exacerbation of physical or mental illness through the stress of court appearances, and feeling like part of the community.

Many women described the community organizations serving criminalized women, such as the Elizabeth Fry Societies and Coverdale, as crucial to their referral to adult diversion, and as providing the best services in their experience of adult diversion or alternative measures. Many regarded their connection to these organizations during these programs as key factors in their healing.

Positive comments regarding NSRJI

As discussed in the previous section, women in conflict with the law were positive about existing alternative measures that did not include imprisonment and connected

them with help for dealing with abuse, drug addiction, poverty and other issues underlying their crimes. To the extent that NSJRI would also provide this, it could be inferred that criminalized women were supportive of it. Others explicitly felt criminalized women should have a chance to participate in restorative justice. (Please see section on referrals and eligibility for more discussion.) Participants in the Black women's focus group in New Glasgow were also strongly supportive of restorative justice measures generally, though not necessarily specifically with regard to woman abuse.

A few women were positive about the idea of a community justice fora with their abuser/assailant, under certain conditions.

1. Women's safety and NSRJI

The primary concern of women who might be involved in community justice fora as survivors was safety and security, for themselves, for their children, and for survivor-supportive participants. This is what women spent the majority of the time discussing, in every focus group examining survivors' perspectives on restorative justice and woman abuse. Safety fears involved the periods before, during and after community justice fora, and in some cases were very long term (e.g. abusers' attitudes toward her involvement in sentencing, upon release). Women nevertheless did not feel that victim surrogates were an appropriate response to these concerns, feeling that no one else should speak for them, or that the presence of a surrogate could communicate a survivor's intimidation to her abuser/assailant.

Failure to provide physical safety in existing system

Failure to provide security within the existing system is a major concern for women. The existing problems in this regard shaped women's views of whether participation in community justice forums could ever be safe for them.

Physical safety and NSRJI

Women described grave safety concerns involved with any meeting with their abuser. Safety concerns extended to children, and supportive family or community members.

Women expressed fears about the time period between conviction or a guilty plea, and sentencing, whether conventionally or through restorative justice.

Psychological safety

Women expressed very explicitly how community forum participation with an abuser would be psychologically negative for them, endangering hard-won recovery from abuse.

Safety, security and sentencing involvement for survivors of male violence

Many women stated that fears for their and others' physical safety, and the triggering of patterns of fear and intimidation that had been programmed into them by the abuser would

prevent them from participating at all or participating genuinely in anything like a community justice forum for sentencing purposes.

Many women stated that for their and others' safety and healing, what was most needed was a period of custody for the abuser, but this was exactly the recommendation they felt they could never make in a community justice forum, because of danger and intimidation.

Women felt that custodial sentencing should be the responsibility of judges. Women felt that as long as sentencing was coming from women survivors, it would be discounted and any message to the abuser would be lost.

Confidentiality

Confidentiality was a prime concern of women who had survived abuse crimes. Women, particularly those from smaller communities, had no confidence that they would emerge from restorative justice processes with confidentiality, which they viewed as a key component of their dignity and both physical and psychological security.

Women's needs for confidentiality in discussing their experience may not fit well with restorative justice processes as contemplated in the NSRJI. These needs could include anonymity, limited exposure of family members, or restricting their sharing of experience to other women who had also been through abuse. Confidentiality issues were also linked to issues around women's healing needs. Women also were concerned about abusers learning personal information about them in restorative justice sessions once they had fled the relationship.

Voluntariness

In focus groups on restorative justice, Native women who had experienced abuse identified pressures to "drop charges" and felt analogous pressures would be placed on them to participate in restorative justice regarding crimes by abusers. These pressures were identified as coming from both prosecutors and RCMP. This is a troubling approach in itself, and further problematic in the ineffectiveness of Framework for Action policies in changing prosecution or RCMP approaches to Native women victims of violence.

Black women identified pressures from their community leaders and other community members to use non-justice-system approaches to deal with abuse. They also anticipated likely pressures from spouses' family members to deal with abuse in a way perceived as less likely to result in incarceration, such as restorative justice. One focus group participant felt family members would be able to use children to pressure abused women into participating in restorative justice.

Focus groups dealing with criminalized women's issues identified potentially coercive pressures related to restorative justice, such as a woman's responsibility to her children to get out of the system as quickly as possible (and avoid any risk of incarceration through pleading not guilty), even if it means being unjustly "accountable" for crimes against her abuser, and facing him in a forum.

Women as primary or sole caregivers: implications for NSRJI

Women still are usually the primary caregivers for children, and often the sole caregiver. Women also shoulder an unequal burden for other “caring” responsibilities such as elder-care or health needs of the family. Justice measures that impact differently on caregivers necessarily impact differently on women as a group.

Women participating in interviews and focus groups identified many issues arising in their justice experience related to their caregiver roles, and raised implications regarding NSRJI.

Many women were concerned that the same ignorance regarding children and abuse that they faced with justice and social services personnel in the past would be replicated in the restorative justice context. They also saw the resolution of “family” law matters as integral to overall justice.

Women were also concerned that restorative justice might not contemplate their children as “official victims” of the woman abuse or relate to their needs.

A special focus group was held in Halifax for women who were non-offending parents. These women emphasized the problems associated with the simultaneity of criminal processes and family processes which were not congruent. These women were also concerned that the breadth of impact on their entire family would not be met in community justice fora that focused on the abuser and the survivor only, and didn’t consider healing needs of non-offending mothers and siblings.

Just as further contact in a community justice forum may not meet the healing needs of women who have experienced abuse, so did women identify that further contact with abusers was not among the healing needs of children. In fact, women indicated that children’s healing was dependent on feeling safe from further contact

Women were also concerned about children’s perception of their mother’s involvement in the sentencing of abusive partners.

Women in conflict with the law made clear the primacy of their relationships with their children, and how the impact of incarceration on families was not currently considered in the justice system. Women and their service providers also identified women’s caregiving responsibilities as potential obstacles to fulfilling conditions agreed to in restorative justice fora.

E. The Role of Community

Definition of “community”

Nova Scotia’s Department of Justice has largely relied on a community justice model for the administration of its Nova Scotia Restorative Justice Initiative. The definition of “community” for restorative justice purposes is a crucial question that may determine the course of justice in these processes.

Most women participating in the research responded that their community were those to whom they could turn for support. Many reported feelings of isolation from community when this was defined as all people in a certain geographic area.

For many women, community shrank and changed radically after criminalization and/or after surviving abuse. Survivors of male violence reported victim-blaming, and their shock and

despair when trusted community members directed this at them, and supported the abuser or assailant. Women reported feeling that after becoming involved in criminalized ways of living, their real community was made up of only those closest to them, often other people on the street or in conflict with the law. Women also indicated that transition houses, sexual assault centres, women's centres, Elizabeth Fry and Coverdale became an essential part of community for them subsequent to events leading them into criminal justice system processes either as survivors or criminalized people.

Some women felt dislocated and unsure of what community really meant.

Some women were also concerned about defining community in such a way, for the purposes of community justice, that only privileged members of the larger community would be invited to participate, and that women with the most experience of women's access to justice would be excluded.

Policy forum participants identified further concerns regarding "community." With regard to women in conflict with the law, policy forum participants questioned where the real difference between a community- vs. state- oriented approach to justice determinations might lay. They cited the apparent lack of coordination of existing Justice policies and procedures with import to the community as signalling a lack of priority for true community involvement. They also cited the lack of recognition of needs of women in NSRJI as indicative of lack of connection to what has already been identified by communities around Nova Scotia; i.e. the need for women's services.

Policy forum participants questioned whether true community principles and practices were involved in defining the community's role in NSRJI. There was deep concern that a definition of community was operative in NSRJI without input from women seeking to access justice, or from the equality-seeking women's organizations providing services to them. Although the NSRJI uses the language of "community," it is actually centred on outcomes for the justice system itself and for the person who is in conflict with the law, without apparent consideration for the often special circumstances of the women who are in conflict with the law.

Community attitudes and awareness levels

Many women were extremely concerned about community attitudes and lack of understanding of woman abuse and women's criminalization, and community competence to administer justice for women. In their view, this could take the form of simple ignorance of and indifference to abuse; victim-blaming; partiality toward the abuser; stereotyping based on race, mental disability, sexual orientation or other personal characteristics; and reflexive condemnation of women in conflict with the law. Many of the aspects of systemic discrimination women described as existing within the justice system were seen as writ large in the broader community.

Women spoke about how little change had taken place with community attitudes toward abuse in various areas or communities of Nova Scotia and how local communities had demonstrated indifference to abuse education and to women and their families.

Women talked about the judging and blaming they experienced from the community in general. They also spoke about their doubts that anyone who had not been through criminalization or abuse could truly understand their situations.

Women also reported how abusers would involve family and community in continuing the abuse. Women emphasized that abusers may be influential, well-connected community members, and that this was a factor that could impact justice especially in smaller communities.

Community commitment/reciprocity in playing an active role

Criminalized women viewed the community justice process as likely to be centred on the person in conflict with the law providing restoration of harm and fulfilling conditions imposed in community justice fora. These women wondered about what could be expected from communities, what conditions would community be fulfilling? Many women interviewed pointed to their experience of child abuse, woman abuse, disability, and/or poverty as being very significant in their going down the road to criminalization. They pointed to the lack of community caring or resources available to help them deal with these experiences. Many women felt that living on the street and being subject to criminalization were linked with general community indifference. As survivors rather than “offenders,” many raised the possibility of community justice as a reciprocal commitment between community and a woman in conflict with the law.

Community resources

In order to take on a role of reciprocal commitment, of being a “community of care” in a larger sense than just a woman’s immediate existing supports, communities must have the resources do so.

Women reported their experience of not being able to access enough resources relevant to breaking the cycle of criminalization unless they went outside the province or were imprisoned.

An obvious linkage for restorative justice-related community involvement in support for woman survivors of abuse and/or criminalization are women’s equality-seeking organizations. But women’s service providers were very leery of new expectations that would be placed on them because of restorative justice, and anticipated under-resourcing of restorative justice responsibilities in their already existing situation of under-resourcing.

Training and status of local community justice service providers

Many women were critical of the idea that justice processes aimed at the aftermath of male violence towards women were to be handled by volunteers. This applied to both volunteer support people and volunteer facilitators. Reasons for this concern regarding volunteer facilitators included concerns about the training and understanding regarding abuse issues, as well as the operation of community dynamics, particularly in smaller or insular communities. Concerns regarding the use of volunteer support people for women centred on the lack of status

of volunteers within the justice system, and the already existing demands on women serving abused women at the women's centres, transition houses and elsewhere.

Some women saw women who had been in conflict with the law as the best facilitators and support people for restorative justice forums for criminalized women. However, they felt their knowledge and experience should be valued through being paid.

Women who had fled abusive situations were well aware of the cycle of violence and the power dynamics of abuse. They were very concerned that without the kind of expertise held by transition house staff and others with direct counselling experience with women and children, situations would not be clearly understood and would be mishandled by volunteers who received training that was brief (relative to professionals working in the area of abuse).

Safety was a prime concern, and volunteers' accountability for safety. Concerns also extended to the volunteers' safety.

Some women expressed concern that volunteers from small communities where an abuser was well known or from a prominent family would be partial to him. Other survivors of violence were concerned about the status of volunteer support people in restorative justice processes and the under-resourcing of existing support for women.

Women and their service providers expressed the view that the use of volunteers was a means of cost-cutting and charging community volunteers with functions that rightly belonged with paid justice professionals.

Women addressing the possibility of justice forums facilitated by RCMP officers were uniformly critical of the idea. This was due to their disappointment regarding the trivialisation of abuse by officers, officers' willingness to charge victimized women with assault of the abusive partner and a misogynistic attitude that women described concerning certain individual officers.

The role of a police officer as referrer/facilitator of restorative justice involving women has potential to greatly reinforce existing systemic discrimination against women at the time of ordinary police action and to reinforce power imbalances between men and women in the context of abuse. Women's response to the possibility of police officers as facilitators was uniformly and strongly negative.

F. Unintended legal consequences of participation in NSRJI

Women identified potential negative legal consequences of participating in restorative justice fora.

Women were concerned about adverse consequences of not fulfilling the conditions, imposed through fora, through no fault of their own. Federally sentenced women decried this possibility and cited the imposition of pre-parole requirements that they were kept from fulfilling in a timely way or altogether.

Women were also not confident that statements in community justice fora would not be used as admissions or as sources of information for other proceedings.

Service providers raised caution about the loss of similar fact evidence if discussions in community justice fora or re-abuse in fora are to be removed from the pool of evidence. They were also concerned that abuse survivors who chose not to participate would be seen as unforgiving or uncooperative and that this might affect family law determinations around their parenting.

G. Women's vision for restoring the harm of abuse and/or criminalization

In focus groups and in individual interviews, women were asked what was needed to restore the harm they had experienced due to abuse or criminalization. Putting aside reaction to NSRJI or to other alternative measures, women were asked to share their vision of what a restorative justice program serving women's needs would look like. Women's responses centred around five themes:

- Woman-centredness and the undermining of systemic discrimination
- Support for women's services and other community resources
- Economic independence and restitution
- Better physical security measures for survivors of male violence
- Community education and activism

Woman-centredness and the undermining of systemic discrimination

Women viewed as basic, to any program that was to be truly restorative for women, the involvement of women most directly affected, in planning and development. Many saw room for improvement regarding inclusiveness.

Survivors of male violence called for a shift from focus on the abuser, to a focus on abuse survivors' needs, including criminalized survivors.

Women also regarded as crucial to justice, the addressing of systemic discrimination in the justice system and in society generally. Education on abuse and women's equality issues was needed, in women's view, for all justice system professionals. Women cited outdated and insensitive remarks, actions and attitudes of police, lawyers, judges and other justice system professionals throughout discussions. They felt that mandatory education on abuse, women's equality and cultural sensitivity for judges in particular was needed, who, women felt, would not educate themselves on these issues unless compelled.

Some women called for greater female representation among police, lawyers and especially judges.

Some wished to explore the idea of specialized family violence courts where justice professionals involved would have had substantial training on abuse issues.

Women also expressed how excellent it would be if women who had been in similar situations of criminalization were the facilitators of restorative justice. They regarded this approach as a straightforward way to make processes women-centred, and to have people with real expertise in women's experience involved.

Support for women's services and other community resources

When asked what a restorative justice program of their own design would include, women uniformly included increased women's services in community. Many women's ideas were as simple as a self-help group that could meet regularly, but women did not have the available resources to do even this without support in many instances.

Criminalized women also emphasized the availability of help for addictions in the community as absolutely key to ending their cycle of criminalization.

Economic independence and restitution

Women spoke about how abuse was linked to economic obstacles of many sorts. Most women exiting abusive relationships suffer economic loss in extricating themselves and have substantial hurdles to a stable livelihood. Criminalized women also face substantial obstacles to stable livelihoods. It is not surprising that many women identified economic help as primary to restoring the harm they have experienced. Women spoke about how inadequate resources were in women's prisons for job training and education. In particular they decried being told to work on jobs ostensibly for job training but that involved no real world job skills being acquired, and being cut off from using computers and other equipment that they understood would help them with job readiness.

Women also spoke about how lack of income did not allow them to access services or programs because they did not have transportation or childcare.

Better physical security measures for survivors of male violence

A crucial prerequisite to restoring harm is to establish women's safety. Women recommended a number of possible measures to prevent further woman abuse:

- custodial sentencing for crimes involving violence against women
- stricter and better-enforced no-contact provisions for abusive men, including no contact involved with child visitation. (Women should not be criminalized for contact with the abuser subject to such orders, however.)
- forced change of residence for abusers
- follow-up with survivors to monitor their fears
- greater availability of silent alarms for survivors, both personal and for houses
- presumption against bail in cases of abuse or stalking

Community education and activism

Women agreed that part of restoring the harm caused by abuse and/or criminalization was community education. This would not only be restorative in relation to particular women, but would be transformative for the community altogether. Other women extended the wish for community education to community activism. Some criminalized women discussed community openness toward federally sentenced women, which was thwarted by prison administration. They

felt communities should have a greater ability to extend resources to prisoners if communities chose to do so.

Recommendations and Future Directions

Recommendations

While recognizing that creating a woman-centred alternative model of restorative justice for Nova Scotia could not be dealt with within the time constraints of the Policy Forum, nevertheless women's organizations participating in the Policy Forum agreed on the following key recommendations, which are reproduced here as they were presented to the Nova Scotia Minister of Justice during the Department of Justice Listening Day subsequent to the Policy Forum:

- *First, that the organizations that are here today, do not reject Restorative Justice principles. However, the Nova Scotia Restorative Justice Initiative and the RCMP Restorative Justice Program, as currently configured, are unacceptable.*
- *Second, that the women who have participated in this conference are committed to a further process of consideration of these complex issues emerging from the research and emerging from our discussions in the last two days; [and] are committed to the development of a different model for achieving Justice goals for women that incorporates Restorative Justice principles. And we recommend that the RCMP, the Nova Scotia Department of Justice and its contracting agencies participate with us in a long-term inclusive policy development process.*
- *As that goes forward, we recommend that the moratorium on the referral of sex offenses and spousal and partner violence continue, and further that compliance with the moratorium be monitored through this period through more effective mechanisms, and that the establishment of more effective monitoring mechanisms for the moratorium be part of our first inclusive work together.*

Update: In March of 2003, the first meeting of a joint working group including Department of Justice representatives and representatives of women's equality-seeking organizations from the Management Committee of Restorative Justice in Nova Scotia: Women's Experience and Recommendations for Positive Policy Development project will take place. On the agenda will be moving forward together to provide community education on the moratorium on the referral of cases involving partner violence or sex offences, and the monitoring of that moratorium, as well as to consider the longer term issues of inclusiveness of diverse women in the policy process concerning restorative justice and an examination of whether and how restorative justice might increase women's access to justice in Nova Scotia in a form different from that currently configured.

Future Directions

While recognizing that substantive, detailed recommendations from women's organizations for a revised NSRJI must await the application of further resources, Policy Forum participants did have conclusions to share regarding improving the policy development process

itself, and in questioning some of the underlying views and assumptions present in NSRJI and Nova Scotia Department of Justice and RCMP approaches to date:

- Policy makers need greater understanding of women's experience of community and its dynamic nature in the face of criminal justice system involvement in women's lives. How this understanding shapes the definition of "community" should be a threshold consideration in the creation of community justice initiatives. This determination of the meaning of community should be shaped by women and women's equality-seeking organizations active in Nova Scotia communities who are valued participants in a policy process.
- Systemic and direct discrimination in the existing justice system must be frankly understood as the context in which restorative justice efforts will be taking place. Facially neutral restorative justice policies and protocols should be more thoroughly analyzed for gender and other discriminatory adverse impacts and the reinforcement of any institutionalized policies, practices and power dynamics that systemically reinforce discrimination.
- The inclusion of women most directly affected and the organizations who serve them in policy development processes is a starting point for the incorporation of social justice knowledge into restorative justice initiatives.
- The failure of NSRJI and the RCMP program to acknowledge and incorporate into planning, women's physical and psychological safety issues is one of the most significant omissions rendering these programs unacceptable. This failure has significant implications for the program's goals of voluntariness, confidentiality and regarding the training and status of restorative justice service providers.
- Those responsible for restorative justice planning have failed to consider possible impacts on women's services. Restorative justice processes were seen as likely to raise demands for women's support services. Women's organizations from across the province are experiencing difficulty in maintaining even existing levels of services. Further, small rural communities have special needs that do not appear to have been contemplated.
- Better analysis of the actual costs of restorative justice is necessary prior to further planning, including analysis of the impact of downloading justice system responsibilities onto community organizations and whether cost savings, if any, will be allocated to community organizations.
- In furtherance of independent research and the exchange of ideas on restorative justice, research data collected by government should be made available to the public in a reasonable and timely manner.

II. Promises, silence and caution: Restorative justice literature and women's access to justice.

1. Restorative justice and impact for women

Restorative justice principles and models have been contemplated in the literature regarding their impact on pre-existing inequities, for a variety of groups.¹ Some proponents of restorative justice and some researchers contemplate restorative justice processes as a potential improvement on the failures of the existing criminal justice system to deal with violence against women, and as a potential source of empowerment for women². Some analyses tend to downplay systemic discrimination's role in these failures, to ignore family and community roles in the reinforcement of male control of women, and to take an "it can't get worse" approach to justifying unproven interventions through restorative justice. The complex realities of abuse, sex offences and discrimination against women which may impact restorative justice processes, when they are acknowledged, are often seen as remediable through power-balancing techniques and pre-process preparation.

However, other analyses (especially equity-oriented and feminist analyses) of restorative justice principles and models have been published since at least the 1980's outlining prospective

1 Gehm, John R., 1998. "Victim Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks" *Western Criminology Review*, 1(1); Delgado, Richard. (1988) "Law and Social Inquiry," 13 *Journal of the American Bar Association* 150; Mack, K. (1995) "Alternative Dispute Resolution and Access to Justice for Women" 17 *Adelaide Law Review* 124.; Price, Marty. (1997) "Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders", Victim-Offender Reconciliation Program Information and Resource Centre, located on the internet at <http://www.vorp.com/articles/crime.html>, at p. 3; of particular interest is Montgomery's discussion of the potential for social disparities to impact referral rates in Montgomery, Andrew N., 1997. *Alternative Measures in Nova Scotia: A Comprehensive Review*, Report of the Nova Scotia Department of Justice.

2 See, for example, Bethel, Charles and Singer, Linda, (1982) "Mediation: A New Remedy for Cases of Domestic Violence, 7(1) *Vermont Law Review* 15; Martin, Dianne L. (1998) "Retribution Revisited: A Reconsideration of Feminist Law Reform Strategies" 36(1) *Osgoode Hall Law Journal* 151; Presser, Lois & Gaarder, Emily, (2000) "Can restorative justice reduce battering? Some preliminary considerations," 27 (1) *Social Justice* 175.

concerns that very much affirm the continuing relevance of unanswered questions regarding impact on women, such as those raised by Avalon Centre in November 1999 regarding the Nova Scotia Restorative Justice Initiative³. Outlined below is one such critique of restorative justice, expressed in Richard Delgado's 2000 article in the Stanford Law Review⁴. It is cited at length here because, unlike some of the literature, it combines both internal and external critiques of restorative justice, while also placing restorative justice in the context of other historical models of justice. In terms of Delgado's internal critique, that is, restorative justice's ability to meet its own goals, his cautions include:

- possibly disserving victims by pressuring them to forgive offenders before they are psychologically ready to do so;
- that [facilitators] may intimate that victims are being obstructionist or emotionally immature if they refuse to put aside anger or distrust;
- that a victim who already blames herself may magnify that self-blame, particularly if the offender is an acquaintance or intimate partner;
- that not every victim will welcome the power of judgement over the offender.

Delgado's external critique cites larger, systemic problems with restorative justice in the following points of interest:

- restorative justice attempts to restore the parties to the *status quo ante*. But what if that status quo is marked by radical inequality?;
- a short encounter with a victim is unlikely to effect internal transformation (especially in the context of societal power imbalance);

3 Astor, Hillary. 1994. "Swimming Against the Tide: Keeping Violent Men Out of Mediation" in *Women, Male Violence and the Law*. Julie Stubbs (ed.), Institute of Criminology, Sydney Australia; Baylis, C. "The Appropriateness of Conciliation/Mediation for Sexual Harassment Complaints in New Zealand" (1997) 27 Victoria University of Wellington Law Review 585; Coward, Stephanie, "Restorative Justice in Cases of Domestic and Sexual Violence: Healing Justice?" Directed interdisciplinary study, Carleton University, December 2000, at http://www.hotpeachpages.org/paths/rj_domestic_violence.html; Grillo, T., (1991) "The Mediation Alternative: Process Dangers for Women" 100 Yale Law J. 1545; Lerman, L.G., (1984) "Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women" 7 Harvard Women's Law Journal 57; Provincial Association Against Family Violence, Newfoundland and Labrador, Making it Safe: Women, Restorative Justice and Alternative Dispute Resolution, St. John's, Newfoundland, July, 2000; Rowe, K., "Limits of the Neighborhood Justice Center: Why Domestic Violence Cases Should Not Be Mediated", Emory Law Journal, Volume 34, Numbers 3 and 4, 1985.

4 Delgado, Richard (2000) "Prosecuting Violence: A Colloquy on Race, Community and Justice, subtitled Goodbye to Hammurabi: Analyzing the Atavistic Appeal of Restorative Justice," 52 Stanford Law Review 751.

- the existence of a number of factors leading to offender cynicism about the process;
- informality harbours risks for women, blacks, and members of other outgroups;
- mediation⁵ is apt to compound existing power and status differentials;
- definitional problems regarding the term “the community;”
- the erasure of the public dimension of criminal prosecution.

Andre Imbrogno, using the example of “domestic violence,” cites various problems associated or potentially associated with using alternative non-judicial processes to address matters of public concern⁶:

- the substitution of a therapeutic model for justice goals
- reduction of public oversight and public discussion of domestic violence issues
- hindering the development and vindication of abused women’s legal rights
- disregard of power imbalance between abuser and abused, and the abused’s lack of capacity to negotiate freely, and a failure to understand that the abuser’s presentation in a professional setting rather than the home context can be very different, leading to mistaken mediator approaches
- absence of key ingredients for successful mediation in abuser
- the need for remedies that are fundamentally inconsistent with a mediated consensus; e.g. only the justice system has the power to provide protection from violence and security for abused women and her children.
- use of the process by abusers to continue control/abuse
- reinforcement of the “sanctity” of the nuclear family by diverting these cases from public justice processes, thereby displacing state intervention which would deprive “the patriarch of his authority within the family unit.”

Indeed, even strong proponents of restorative justice such as John Braithwaite, acknowledge that there is no inevitability that restorative justice will support social justice aims⁷. For example, Braithwaite cites cases where indigenous elders empowered by restorative justice programs used

5 Delgado refers to mediation, but for our research the concern is equally applicable to community justice fora and family group conferencing, among other processes.

6 Imbrogno, Andre, (1999) “Using ADR to Address Issues of Public Concern: Can ADR Become an Instrument of Social Oppression,” 14:3 Ohio State Journal of Dispute Resolution 855.

7 Braithwaite, John (2000) “Shame and Criminal Justice” July 2000 Canadian Journal of Criminology 281.

their power to protect male abusers in their community and cites elders who wished to use restorative justice conferences to enforce arranged marriages⁸.

Feminist theory dealing with crime and violence may be at odds with assumptions implicit in restorative justice approaches and processes. These implicit assumptions have been listed by Julie Stubbs⁹ and can include that crimes are discrete and are to be approached on an incident basis, that those committing crimes and those experiencing crimes are unknown to each other, that victims were random targets of violence, that the result of the violence was unknown to the perpetrator and that the offence is not likely to be repeated. As Stubbs remarks, "Incident-based theoretical approaches to domestic violence which focus narrowly on physical harm and on discrete episodes of violence foster an individualistic analysis of violence..., may ignore the social context of domestic violence and may exacerbate the social entrapment of women."¹⁰

A part of the social context of domestic violence that does not fit well with restorative justice rhetoric is that of community and family knowledge or complicity in violence against women. Much has been made in restorative justice literature of the inappropriate "takeover" by the "state" of justice concerns which are properly the sphere of the community of harm. In the case of male violence toward women, however, families and communities are often aware of the violence long before the state, and take no steps to challenge or intervene. As Donna Coker points out¹¹, the family and the community in fact can be primary supports for male control of women. Coker goes on to identify major weaknesses in the restorative justice literature: that it offers no clear theory for dealing with crimes, like violence against women in relationships, where majoritarian opposition to the crime is weak or compromised; and that restorative justice generally "under-theorizes" crime and provides no theoretical basis for fundamentally similar approaches and processes applied to very different crimes. Without a sound theoretical basis for approaching gendered harms, how can it "impugn the normative supports for boys' and men's violence toward girls and women," as Kathleen Daly asks in her consideration of sexual assault and restorative justice¹².

8 Braithwaite, John, (2000) "Restorative Justice and Social Justice" 63 Saskatchewan Law Review 185

9 "Violence and Women's Safety: Feminist Challenges to Restorative Justice" in *Restorative Justice and Family Violence*, John Braithwaite and Heather Strang, eds. (Cambridge University Press, 2002).

10 Ibid., at 43.

11 "Transformative Justice: Anti-Subordination Processes in Cases of Restorative Justice" in Braithwaite and Strang, *supra*.

12 "Sexual Assault and Restorative Justice," in Braithwaite and Strang, *supra*.

In a specifically Canadian context, women have outlined concerns with restorative justice models and implementation. For example, in 1998 Sandra Goundry prepared for the BC Association of Specialized Victim Assistance & Counselling Programs a very thorough overview of British Columbia's restorative justice policies¹³. Key concerns include:

- the lack of consultation with victim service providers and women's equality-seeking groups at the initial stages of policy development
- the lack of available information in the early stages
- the absence of victim service providers and women's equality-seeking groups at key decision-making tables
- the lack of critical research, analysis and evaluation on restorative justice and attendant failure to include gender/diversity/equality analyses in policy formulation
- the potential for the policy phrase "exceptional circumstances" to be abused by expanded diversion policies and budgetary considerations to allow otherwise screened-out cases of violence against women and children to proceed through restorative justice processes
- the failure to acknowledge the need for provincial standards, appropriate training and a central monitoring system to track restorative/diversion agreements

Restorative justice and violence against women were considered nationally by individuals and groups meeting in Saskatchewan in 2000, at the Provincial Association of Transition Houses annual conference. The following key themes were identified there¹⁴:

- need for consultation
- safety, risk and revictimization [through participation in restorative justice]
- informed choice and unencumbered participation
- power:dynamics, imbalances, relations
- denunciation/deterrence

13 Goundry, Sandra (1998), "Restorative Justice and Criminal Justice Reform in British Columbia: Identifying Some Preliminary Questions and Concerns," prepared for the BC Association of Specialized Victim Assistance & Counselling Programs. See also Kachuk, Patricia, (1998) "Violence Against Women in Relationships: An Analysis of Policies and Actions" (Prepared for the FREDa Centre for Research on Violence Against Women and Children) <http://www.harbour.sfu.ca/freda/reports/policy.htm>; Pauktuutit Inuit Women's Association, Inuit Women and the Administration of Justice: Progress Report No. 2, Ottawa, Ontario, October 4, 1993 and Pauktuutit Inuit Women's Association, *Setting Standards First*, Ottawa, Ontario, N.D.

14 Restorative Justice: Is it Justice for Battered Women?: Report on PATHS' April 2000 Conference. [Http://www.hotpeachpages.org/paths/rjConference.html](http://www.hotpeachpages.org/paths/rjConference.html)

- offender focus vs. victim focus
- definition of “community”
- community resources and volunteers
- guidelines, standards, training, monitoring and evaluation

In Prince Edward Island, Julie Devon Dodd and Kirstin Lund facilitated a dialogue on restorative justice involving “women victims of violence, community advocates, justice representatives and staff of other government departments.”⁰ Based on this dialogue, Devon Dodd and Lund conclude among other things, that, while the principles of restorative justice have value, “for women who have been abused in a significant relationship, a face-to-face meeting with the offender is likely not advisable, unless initiated by the victim and with a highly skilled facilitator trained in the dynamics of woman abuse;” and that “women need justice options which have restorative values but do not require a face-to-face meeting with the offender.”¹⁶,

Most literature concerning restorative justice and gendered harms is *prospective* in nature, outlining potential benefits or drawbacks to the application of restorative justice to such offences as male-perpetrated sex offences and partner abuse offences. There has been a very small amount of published research regarding the actual experience of participants in restorative justice processes for these offences¹⁷, and in particular a paucity of women’s narrative accounts.

What has the occasional published research¹⁸ with women’s narrative indicated? In large part, many of the concerns prospectively enumerated by feminist and other analysts regarding

0 ¹⁵ Devon Dodd and Lund, *Restorative Justice and Women Who Are Victims of Violence: Justice Options for Women - Phase Two* (2002), at 2.

16 Ibid., at 25

17 While not reporting on processes targeting only offences involving violence against women, it is relevant to note here the work of Joan Pennell and Gale Burford regarding family group conferencing in three culturally disparate sites in Newfoundland and Labrador. Their evaluative work reports a reduction in indicators of child maltreatment and domestic violence. Please see Pennell, J and Burford, J, (2000) “Family Group Decision-Making: Protecting Children and Women”, *Child Welfare*, 79, 2: 131-158. Pennell and Burford further explore feminist praxis as the basis for these reported results in “Feminist Praxis: Making Family Group Conferencing Work” in Strang and Braithwaite, *Restorative Justice and Family Violence*, *supra*. Informants in Newfoundland and Labrador have pointed to the unusually well-resourced nature of these pilot projects that contributed to their worth as templates for family group conferencing (Conversations with this researcher, February 2003).

18 While not published research, it is relevant to mention here an address to Belgian prison governors regarding the speaker’s encounter with two victims of a serial rapist: Gustafson, D. (1997) “Victim offender mediation within a restorative justice framework: Toward a justice

gendered harms materialized for women. In Canada, Aboriginal women have voiced concerns about the high rates of sex offences and woman abuse in their communities, and whether local justice initiatives can adequately handle these crimes¹⁹. When narrative research has been carried out addressing a variety of justice alternative processes, Aboriginal women's experience has been reflective of the prospective concerns²⁰.

Outside of Canada, narrative research has been conducted in at least two jurisdictions focusing on women who have survived gendered harms and participated in a restorative justice process.

One early study carried out in the United States used interviews with victims of domestic violence to assess feelings of satisfaction and fairness in relation to mediation, finding high satisfaction rates²¹. This study however, has been subject to an extensive critique by Kelly

which heals.”, cited in Wemmers, J. & Canuto, M. (2002) *Victims' Experiences with, Expectations and Perceptions of Restorative Justice: A Critical Review of the Literature*. Department of Justice Canada, Policy Centre for Victim Issues. Therein, Gustafson notes the healing effect vis a vis post-traumatic stress disorder reported to him by these two women arising from meeting the serial rapist responsible for their assaults through a victim-offender mediation program dealing with serious crimes in Langley, B.C. It should be noted that these meetings were completely victim initiated.

19 Griffiths, C.T. & Hamilton R. (1996) “Spiritual Renewal, Community Revitalization and Healing. Experience in Traditional Aboriginal Justice in Canada.” *International Journal of Comparative and Applied Criminal Justice*, 20(2): 289-311

20 See, for example, Crnkovich, Mary, (1995) “The Role of the Victim in the Criminal Justice System - Circle Sentencing in Inuit Communities” (prepared for the Canadian Institute for the Administration of Justice Conference in Banff Alberta, October 11-14, 1995) (Crnkovich examines the political pressures Inuit women find themselves under to accept community justice fora for crimes of violence against women. She details the problems related to her by Inuit women themselves with the approach, and questions the meaning of “community” as its been applied in this context, examining sexism in present self-government, isolation, and family relations and how these impact justice in this situation.); Plett, Irene, “Restorative Justice in Urban Aboriginal Communities,” 1999, 30 pp. <http://www.law.ualberta.ca/centres/civilj/full-text/restorative.htm>; Charlene Levis (1998) “Circle Sentencing: The Silence Speaks Loudly: Considering Whether the Victims' Needs Can Be Met Through Circle Sentencing,” Submitted in Partial Fulfilment of the Requirements for the Degree of Masters of Arts in Gender Studies to the University of Northern British Columbia.

21 Bethel, C., & Singer, L. (1982) Mediation: A new remedy for cases of domestic violence. 6(2) *Vermont Law Review* 15

Rowe²². Rowe cites that defined selection criteria for the program were restrictive, and mediation would not be recommended through a community-based Citizen's Complaint Center if:

- the victim suffered injury;
- a gun was used to threaten the victim;
- the violent behaviour was repetitive; OR
- there did not appear to be sufficient parity of bargaining power between parties.

Rowe, therefore, warns against generalized conclusions about mediation and domestic violence based on this highly limited group. She also questions the measure of success of the program even within this group of highly screened assailants, as violence recurred in 25% of the cases²³. One might further consider whether the fourth criterion could *ever* be met in any cases of intimate partner violence.

More recently, Christa Pelikan has gathered narrative data regarding victim/offender mediation (VOM) in Austria²⁴. Pelikan concludes that VOM in domestic violence cases only

22 (1985) "The Limits of the Neighborhood Justice Center: Why Domestic Violence Cases Should Not Be Mediated," 34 Emory Law Journal 855

23 Other elements of Rowe's critique are echoed in the concerns of Nova Scotia women in this research:

1. Inappropriateness of handling as a "dispute" rather than crime
2. Mediation's emphasis on relationship and compromise
3. Vulnerability of less powerful party, particular without presence of judge to impose and enforce conditions unpalatable to batterers
4. Women may make inappropriate or unfair compromises in their life to avoid abuse (i.e. going to mother's house with children on pay day because that is when battering is likely to occur, etc.)
5. Patterns of learned helplessness in battered women and inappropriateness of mediation in these cases
6. Difficulty in negotiation due to fear, unwillingness to antagonize spouse
7. Non-mutual nature of spousal abuse: refusal of mediator to assign blame allows batterer to avoid responsibility, focus shifts to women's behaviour "causing" the abuse
8. Batterers are not acting in reasonable ways during incidents; unlikely that agreements made while reasonable will help as tension builds in the cycle of violence
9. Mediation generally would take place during a conciliation phase in the cycle of violence, leading to simplistic mediation solutions

24 Pelikan, Christa (Institute for the Sociology of Law and Criminology, Vienna), (2000) "Victim-Offender-Mediation in Domestic Violence Cases - A research Report," United Nations Crime Congress: Ancillary Meeting, Vienna, Austria, 2000 (12 pp.)
http://www.restorativejustice.org/conference/UN/RJ_UN_CPelikan.htm.

rarely results in the reformation of the perpetrator; and that VOM nevertheless offers the potential for reinforcing processes of empowerment and liberation already underway for certain female victims. These conclusions are based on observing 30 VOM sessions, repeated in-depth interviews with male and female partners, and interviews with mediators. Pelikan cites a minority of examples from within her research group where VOM was part of the “spiral of empowerment” for women, assisted by other agencies, supports and inner resources.

Nevertheless, circumstances where Pelikan identifies VOM as likely to be futile include:

lack of resources for additional interventions; and
a high degree of social and economic dependency of the woman.

Pelikan also asserts that each case must be evaluated and planned on a highly individual basis before referral to VOM, and that the research had not yielded a true typology of cases likely to benefit from VOM that would allow dispensing with individual in-depth assessment and interactive service planning.

While narrative research examining restorative justice and survivors of gendered harms can be said to be scarce, restorative justice-oriented narrative research with women in conflict with the law appears to be completely absent.

Without coming to grips with women’s experience in a feminist, narrative, participatory way, there are risks inherent for the implementation of any restorative justice program as a whole. As described by Bazemore²⁵, such omission was responsible for the discrediting of entire programs, as women and the community lost confidence in restorative justice based on perceived incompetence in relation to sex offences or other gendered harms.

25 Bazemore, Gordon (Florida Atlantic University) and Griffiths, Curt Taylor (Simon Fraser University), “Conferences, Circles, Boards, & Mediations: Scouting the “New Wave” of Community Justice Decisionmaking Approaches,” 1997, 10 pp.

<http://www.cjprimer.com/circles.htm>: “Unfortunately, the failure to address these critical points has led to situations in which community justice initiatives undertaken by Aboriginal bands have been first criticized by Aboriginal women, and then discredited in their entirety.” See also C. Barnett (P.C. J.), “Circle Sentencing/Alternative Sentencing” [1995] 3 C.N.L.R. 1 at 4:

“...the judges, lawyers and bureaucrats who so enthusiastically jumped aboard the bandwagon failed to understand that the project really did not have a broad base of support within the communities where it was supposed to “improve the quality of the delivery of justice.” The project was dominated by a few men from the Native communities and it fell into well-deserved disrepute when it was used to allow their relatives to escape punishment for sexual offences.”

(Quoted in Aboriginal Action Network’s 2001 *Literature Review: Implications of Restorative Justice in Cases of Violence Against Aboriginal Women and Children*, where AWAN concludes with regard to restorative justice that “Aboriginal women in general have reason to remain concerned.)

More general research

Although little research has been devoted to women's experience of restorative justice in the aftermath of male violence and abuse, some relevant points arise in more general research involving victims, which are echoed with concern in this research in the statements of Nova Scotia women:

- Most victims are not interested in face to face meetings with those who committed crimes against them²⁶;
- Victims may actively reject or have little interest in the more active role in criminal justice claimed for them by restorative justice advocates²⁷;
- A minority of victims have reported feeling coerced to participate in ostensibly voluntary programs, or to accept agreements²⁸;
- Follow-up and monitoring have been a source of concern and disappointment to victims²⁹;

26 Bazemore, G. (1999). Crime victims, restorative justice and the juvenile court: Exploring victim needs and involvement in the response to youth crime. 6 *International Review of Victimology* 295; Kilching, M. (1991). Interests of the victim and public prosecution. In G. Kaiser, H. Kury, & H-J Albrecht (eds.) *Victims and Criminal Justice*, 52(1) Max Planck Institute for Foreign and International Penal Law 30; Maguire, M. & Corbett, C. (1987) *The effects of crime and the work of victim support schemes*. Aldershot, Eng.: Aldershot, Gower Publishing Co.

27 Roach, K. (1999) *Due process and victims' rights*. Toronto: University of Toronto Press; Umbreit, M. (1995) Mediation of criminal conflict: An assessment of programs in four Canadian provinces. [Available online at <http://ssw.che.umn.edu/rjp>]; Kilching, *supra*.

28 Umbreit, M. (1994) *Victim Meets Offender: The impact of restorative justice and mediation*. Monsey: Criminal Justice Press; Chatterjee, J. (1999) *Rapport sur l'évaluation de l'initiative justice réparatrice de la GRC: Degré de satisfaction des participants aux forum de justice communautaire*. Gendarmerie royale du Canada. .

29 Strang, H., (2000) "Victims and restorative justice: The Canberra reintegrative shaming experiment" (Unpublished doctoral dissertation, Australian National University, cited in Wemmers, J. & Canuto, M. (2002) *Victims' Experiences with, Expectations and Perceptions of Restorative Justice: A Critical Review of the Literatur*; Marshall, T. & Merry, S. (1990) *Crime and accountability: Victim/Offender Mediation in Practice*. London: Her Majesty's Stationary Office.

- A significant minority of victim participants have reported feeling worse after participation in family group conferences for youth crime, with those victims whose offences had the greatest impact on them most likely to feel worse³⁰;
- Victims who declined to participate often cited fear as a reason³¹;
- Victims have been least satisfied with the outcome of participation compared to other groups such as youth in conflict with the law and their families, and police officers³².

B. Problems in restorative justice evaluations

Evaluations of restorative justice programming have been marked by various methodological concerns. With regard to claims regarding victim satisfaction, a critical review of the literature published by Justice Canada stated:

30 Morris, A., Maxwell, G., & Robertson, J. (1993). Giving victims a voice: A New Zealand experiment. 32(4) *Howard Journal of Criminal Justice* 301.

31 Morris, et al, *supra*; Maguire & Corbett, *supra*.

32 Morris, et al., *supra*.

While advocates of restorative justice claim that it enhances victim satisfaction with the justice system...the research reviewed here does not confirm this assertion. Most studies employ weak experimental designs that do not allow the researchers to draw causal inferences. Therefore, any observed differences in victim satisfaction cannot be attributed to mediation. This error is sometimes made by researchers...and policy makers, the effects of which can be harmful to the development of effective criminal justice policies.³³

Analysts have identified a number of specific methodological problems in Canadian restorative justice evaluations, including the meta-analysis of groups of evaluations. Identified problems have included:

- failure to provide information about response rate to questionnaires³⁴;
- failure to determine whether mediators were selective in their distribution of questionnaires³⁵;
- failure to provide information on the time lapse between data collection and participation in restorative justice³⁶;
- absence of research that examines longer terms effects for victims³⁷;
- the presence of self-selection bias affecting claims for lowered recidivism³⁸;
- generally limited information on important variables such as type of offence and relationships between offenders, and failure to use specific reporting practices when presenting outco

34 Cited by Wemmers and Canuto, with reference to Chatterjee, J. (1999) *Rapport sur l'évaluation de l'initiative justice réparatrice de la GRC: Degré de satisfaction des participants aux forum de justice communautaire*. Gendarmerie royale du Canada.

35 *Ibid.*

36 *Ibid.*

37 Latimer, J., Dowden, C., & Muise, D. (2001) *The Effectiveness of Restorative Justice Practices: A Meta-Analysis* (Research and Statistics Division, Department of Justice Canada) at 20.

38 *Ibid.*, at 17

39 *Ibid.*, at 19. See also Latimer, J. & Kleinknecht, S. (2000) *The Effects of Restorative Justice Programming: A Review of the Empirical Research Literature RR2000-16e* (Research and Statistics Division, Department of Justice Canada) at 17.

Specifically, with regard to impact on women, there has been a lack of gender-based analysis of these programs. Valuable information on outcomes for women involved in restorative justice processes either has not been gathered, or has not been subject to analyses that would illuminate differential impacts for women.

Some evaluative reporting may obscure or even distort women's experiences. For example, Manitoba's Hollow Water program is often informally cited by restorative justice proponents as a success in the handling of sexual abuse cases⁴⁰, and also has been formally cited as such⁴¹. However, as the Nova Scotia Department of Justice Victim's Services Division reports⁴², "[r]esearch evidence suggests otherwise" citing findings that only 28% of victims reported the sentencing circles as a positive experience⁴³. Emma LaRoque⁴⁴ with regard to Hollow Water has reported:

40 In telephone and meetings with this researcher over the course of this project.

41 Ministry of the Solicitor General of Canada (1997) *The Four Circles of Hollow Water*. Aboriginal Peoples Collection. Catalogue No. JS5-1/15-1997E. Ottawa: Public Works and Government Services.

42 "A Review of the Effectiveness and Viability of Domestic Violence Interventions as an Adjunct to the Formal Criminal Justice System" (June 2001) at 37.

43 C. LaPrairie, "The 'New' Justice: Some Implications for Aboriginal Communities" (1998) 1 *Can. J. Of Criminology* 8.

44 In "Re-examining Culturally Appropriate Models" in Asch, M. (Ed.) *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (1998) University of British Columbia Press, at 210.

I have received many calls from concerned people expressing the view that Hollow Water is a travesty of justice and a cruel disregard for human dignity. In particular Native women expressed shock, disgust and outrage..All those Native women who called asked to remain anonymous because they too did not feel free to publicly challenge Hollow Water.

On this basis, at least one analyst wonders if the evaluative “success” of initiatives like Hollow Water has in part relied on the silence of Aboriginal women⁴⁵.

Evaluation that is inclusive of women’s experience must include gathering of women’s narratives. Asking restorative justice participants for simple numerical assessments cannot adequately capture, and may distort, women’s experiences. An example cited by Rowe is the assumption that non-reporting means that no violence subsequent to alternative interventions occurred - a misinterpretation that is easily clarified through the gathering of women’s narratives.

The gathering of narratives from among women most most directly affected by restorative justice (in this research, survivors of male violence and women in conflict with the law) is something that can only occur in a situation of trust. Women with these experiences are leery of telling their story yet again, especially if the researcher is perceived as connected to the justice system, or other government bureaucracies or systems. With this in mind, independent research by women’s organizations known and trusted by women should be highly valued, making the omission of such research from evaluations a significant gap.

45 Charlene Lewis, “Circle Sentencing: The Silence Speaks Loudly”, excerpt of a Master’s Thesis, published electronically at <http://www.hotpeachpages.org/paths/rj.Charlene.pdf>.

For a fuller discussion of restorative justice evaluations and aboriginal women’s interests please see Aboriginal Women’s Action Network, *Literature Review: Implications of Restorative Justice in Cases of Violence Against Aboriginal Women and Children*, 2001.

III. Project Design

A. Project inception

Since the 1990's, Canadian jurisdictions responsible for the administration of criminal justice have increasingly turned to restorative justice principles and processes.

In 1998, the Nova Scotia Department of Justice issued *Restorative Justice: A Proposal for Nova Scotia*, outlining its plans for the most ambitious institutionalization of restorative justice anywhere in Canada. Included among eligible offences were to be both sex offences and spousal/partner assaults.

Women's equality-seeking organizations responded with great concern centering on the following:

- that input from survivors of sexual assault or woman abuse was not solicited or considered in the design of the program to determine appropriate practices or goals.
- that it was unclear how the proposed initiative will achieve its goal of addressing the underlying causes of violence against women.
- that no Nova Scotia research had taken place to support the Department's claim that the restorative justice process would be effective in addressing violence against women.
- that the proposed initiative did not take into account the safety, power and control issues specific to sexual assault and woman abuse.
- that plans for "community ownership" of restorative justice measures could mean in practice the domination of the process by the Department of Justice.

In 2001, women's equality-seeking organizations received funding from Status of Women Canada's Women's Program to conduct qualitative feminist, participatory narrative research that would begin to address the concerns above by gathering women's experiences and perspectives on restorative justice and helping to bring them to the policy table. This project, *Restorative Justice in Nova Scotia: Women's Experience and Recommendations for Positive Policy Development and Implementation*, is consonant with the Women's Program's areas of focus on the elimination of systemic violence against women and the girl child, including focus on the judicial treatment of violence against women, and achieving social justice through improving women's access to and treatment within the justice system.

A management committee was formed to provide leadership for the project, consisting of women's equality-seeking organizations serving women most likely to be directly affected by the Nova Scotia Restorative Justice Initiative (NSRJI). The management committee includes representatives from Avalon Sexual Assault Centre, the Elizabeth Fry Society of Mainland Nova Scotia, Nova Scotia Association of Women and the Law (local chapter of National Association of Women and the Law), Transition House Association of Nova Scotia, and Women's Centres CONNECT.

1.

Research design

Originally, the project committee had hoped to speak directly to women who had participated in restorative justice. To that end, research participants were sought through ads, flyers, informally through women's services providers, and through the RCMP and Nova Scotia Department of Justice. Advertising and informal routes yielded only one participant who wished to discuss her restorative justice experience. Mac McIvor of the RCMP reported that no cases involving woman abuse or sexual assault had been handled through the RCMP program, to his knowledge, and reported doing a search of computer records by field for offences in these categories. After several earlier submissions, an application for assistance in a new, preferred format was submitted to the Nova Scotia Department of Justice in February 2002. Although the Department's Restorative Justice Coordinator made genuine efforts to complete a research agreement, unknown factors in the Department's evaluation of the application prevented the project from receiving permission to contact restorative justice participants in a timely manner. The project had to abandon its submission in order to complete the work according to our project timeline agreed upon with the funder.

In the absence of the Nova Scotia Department of Justice's timely support for reaching restorative justice participants, the project committee chose to use focus groups and interviews with women to gather a prospective reaction to NSRJI and restorative justice. A collaboratively designed research plan sought to gather two key perspectives from women most likely to be directly affected (survivors of male violence; and women in conflict with the law):

- what was women's response to NSRJI goals, objectives and protocols
- what was women's vision for restorative justice; what did women see as restorative of the harms they had experienced.

As well, target groups for individual interviews were broadened to include women who had experienced adult diversion or other alternative measures either as survivors of a criminalized male assailant's crimes, or as women in conflict with the law.

A feminist, participatory, narrative approach was chosen, consistent with Women's Program's goals, in order to allow women to share their own views and experiences in their own words. What is the meaning of feminist, participatory, narrative research and why has that approach been chosen here? Indeed, why is it held to be essential for women's equality-seeking organizations in their participation in the creation and implementation of restorative justice policy?

Feminism is not a unitary phenomenon and the encapsulation of a definition of "feminist research" has been elusive for scholars. Among the principles of feminist research, those operative in this project include:

- that research by, for and about women is uniquely valuable⁴⁶;
- that discussions of women's experience grounded in a personal context instruct more successfully regarding the complex dynamics of women's experience than abstract qualitative data⁴⁷;
- that woman-centred policy analysis is necessary to reveal and counteract the subtle and not-so-subtle persistence of males and male-centred models as the reference point for policy development and studies⁴⁸;

This project also shares the assumption with some feminist scholars that scientific, positivist-inspired social research without explicit consideration of the multi-faceted identities of members of outgroups, such as women, is of limited, secondary importance compared to feminist and other equity-conscious research in policy analysis⁴⁹.

Narrative research did not originate with feminist research, and has a long history within such disciplines as anthropology and sociology. The feminist research principles outlined above are, however, particularly consistent with narrative approaches. By documenting women's representation of our own reality through narrative, we are adding to the larger collectivity of women. Narrative research inherently grounds inquiry in the personal. Narrative research also often reveals that artificial academic divisions of knowledge overlap, similar to the transformative effect feminist research may seek to have in synthesizing experiences relevant to multiple disciplines or institutions⁵⁰.

46 For more discussion of basic underpinnings of early feminist approaches, see for example, Boxer, Marilyn (1982) "For and About Women: The Theory and Practice of Women's Studies in the United States" 7 Signs 651.

47 For fuller discussion see Stanley, L. and Wise, S., "Back into the Personal," in *Theories of Women's Studies*, Gloria Bowles and Renate Duelli Klein, eds. (1983, Routledge, New York)

48 For further discussion, please see Burt, Sandra, "The Several Worlds of Policy Analysis: Traditional Approaches and Feminist Critiques" in *Changing Methods: Feminists Transforming Practice*, Sandra Burt and Lorraine Code, eds. (Ontario, Broadview Press: 1995).

49 For fuller discussion please see Sandra Harding, ed., *Feminism and Methodology: Social Science Issues* (Indiana University Press: 1987), and Mary Margaret Fonow and Judith A. Cook, *Beyond Methodology: Feminist Scholarship as Lived Research* (Indiana University Press: 1991).

50 For a fuller discussion of the symbiosis of feminist and narrative research approaches, please see Sherna Berger Gluck and Daphne Patai, *Women's Words: The Feminist Practice of Oral History* (Routledge, New York and London: 1991).

Participatory research is also uniquely suited to research involving outgroups such as women. As part of the rejection of positivist, scientific approaches, feminist research often involves the rejection of conventional subject/object divisions⁵¹. Such an approach is well-suited to participatory research, i.e. research that involves working alongside marginalized and oppressed groups targeted for “research,” recognizing the information and understanding these groups already have, and seeking to collectively strengthen knowledge, respect and change-oriented skills through the research process. In participatory research, questions emerge from groups themselves, who are active rather than passive in the construction and conduct of the research. This leads to a passionate involvement rather than the impartial detachment valued for research by the positivist paradigm. As described by Maguire⁵², in researching with outgroups, participatory research ideally leads to the empowering of the participants through shared knowledge and action geared to change on structural and personal levels. These approaches are reflected in *Restorative Justice in Nova Scotia: Women’s Experience and Recommendations for Positive Policy Development and Implementation* in the collective development of research questions, instruments and analysis tools with representatives of participant groups and individual participants themselves, and the ongoing supervision of the project by organizations representing target groups.

2. Data gathering and analysis

In total, 23 individual interviews were conducted with women in conflict with the law who had gone through adult diversion or other forms of alternative measures. Individual interviews were conducted with 2 women who were survivors of male violence, and whose assailant went through adult diversion in one case, and restorative justice in the other. These interviews were conducted in an open-ended way. Interview guides were used with women in conflict with the law (see Appendix A) and with the 2 survivors of male violence interviewed (see Appendix B). Interviews for women in conflict with the law were recorded using handwritten notes, on the advice of women’s service providers. Interviews with survivors of male violence whose assailant had been through adult diversion or restorative justice were taped and transcribed. The project’s coordinating researcher received advice and assistance in her development of the research plan and instruments from Dr. Meredith Ralston, Chair of Women’s Studies, Mount Saint Vincent University, and advice regarding her development of a data analysis approach from Dr. Cynthia Matheson, also of Mount Saint Vincent University (both professors acting in their private capacities.)

51 See discussion of this rejection in Lorraine Code, *What Can She Know?: Feminist Theory and the Construction of Knowledge* (Cornell University Press: 1991)

52 Maguire, P. (1987) *Doing Participatory Research: A Feminist Approach*. Amherst, MA: Centre for International Education.

A total of 125 women participated in project focus groups. Eleven focus groups were held for survivors of male violence and their service providers, involving a total of 80 women. These focus groups were held in Halifax (3, including one specifically for immigrant women), Annapolis Valley, Yarmouth, Bridgewater, New Glasgow, Sydney, Amherst, Waycobah (exclusively for Native women) and the Strait area. One focus group was held for Black women active on woman abuse issues in the New Glasgow area, which involved 8 women. Four focus groups were held for women in conflict with the law and their service providers involving a total of 33 women. These focus groups were held in Truro at the Nova Institution for Women (2), in Halifax and in Sydney. One focus group was held in Halifax for non-offending mothers of children who had been sexually assaulted and a service provider, involving four women. (Please see Appendix C for focus group outlines.) The Halifax focus group for women in conflict with the law and their service providers, as well as the Waycobah focus group were recorded through handwritten notes, at the preference of participants. All other focus groups were taped and transcribed.

Community facilitators were paid to work with the coordinating researcher of the project, on each focus group. These facilitators were women drawn from the target community for a particular focus group. Their responsibilities included identifying and inviting participants, set-up for the focus group, and participation and facilitation during the focus group. Their work was invaluable in involving women who ordinarily might not participate in a focus group discussing male violence or conflict with the law, and for ensuring that the perspectives of women from their community were appreciated by the coordinating researcher.

Notes and transcripts of:

- a. interviews with women in conflict with the law; and
- b. all focus groups

were reviewed inductively, and emergent themes listed. Comments were coded by theme and electronically sorted. Sorted data was quantitatively reviewed to identify themes of primary and secondary emphasis.

The two interviews with survivors of male violence whose assailant participated in restorative justice or adult diversion are included in their entirety to provide a holistic counterpoint of women's experience to the prospective comments yielded by the focus groups for women survivors toward restorative justice. (These accounts have been edited for continuity, to eliminate repetitions and to eliminate potentially identifying information)

3. Policy Forum

In keeping with the participatory approach of this project, research participants and non-governmental women's equality-seeking organizations serving women involved in criminal

justice processes were invited to attend a two-day Policy Forum to review the research, and make associated recommendations based on it. The following organizations participated:

Antigonish Women's Resource Centre
Avalon Sexual Assault Centre
Autumn House
Bryony House
Cape Breton Transition House Association
Central Nova Women's Resource Centre
Chrysalis House
Citizens Against Spousal Abuse
Congress of Black Women
Coverdale Court Services
Elizabeth Fry Society Mainland Nova Scotia
Elizabeth Fry Society Cape Breton
FemJEPP
Harbour House
Juniper House
Lea Place Women's Centre
Leaside Society
Mi'kmaq Family Healing Centres
Naomi Society
Nova Scotia Association of Women and the Law
Pictou County Women's Resource Centre
Second Story Women's Centre
Tearmann House
Third Place
Tri-County Women's Centre
Women's Place Resource Centre

Participants were able to discuss the research data in plenary and small group sessions. They brought insights based on many decades of experience of the criminal justice system and serving women involved with it due to male violence or conflict with the law. Their perspectives determined the unanimous recommendations included in this report.

IV. Women's response to the NSRJI and other alternative measures

1. Direct and systemic discrimination and the existing justice system: implications for NSRJI

For much of European and post-colonial North American legal history, direct discrimination against women through the action of criminal justice was openly imbedded in criminal law. For centuries, women were subject to differential treatment for criminalized acts, and this differential treatment and criminalization itself often had to do with women's deviance from subordinate roles to men, or to particular dominant classes of men, such as slave owners or religious authorities.

Women survivors of male violence had little or no recourse to justice, as women were generally regarded as the chattels of men and rightly subject to their violent control. This very longstanding cultural and legal tradition only began to be reversed in the mid-19th century, as women fought for legal autonomy. Slow progress was made in Canada throughout the 20th century, resulting in the criminalization of such acts of woman abuse as marital rape, and the unconstitutionality of laws discriminating against women.

That Canadian criminal justice, practically speaking, is a different world for women than it is for men is a well-documented phenomenon⁵³. Despite legal moves toward women's equality, individual direct discrimination is by no means extinct, as women's comments for this research indicate. More insidiously, the hangover of centuries of cultural subordination of women is adverse impact and systemic discrimination. Colleen Sheppard has described these forms of discrimination:

53 See, *inter alia*, Josée Bouchard, Susan B. Boyd and Elizabeth Sheehy *Canadian Feminist Literature on law: An Annotated Bibliography/Recherches Feministes en Droit au Canada: Une Bibliographie Annotée* (University of Toronto Press, 1998); Christine Boyle, Marie-Anne Bertrand, Celine Lamontagne and Rebecca Shamai, *A Feminist Review of Criminal Law* (Status of Women Canada, 1986); Diana Ginn (1995), "Wife Assault, the Justice System and Professional Responsibility," 33(4) *Alberta Law Review* 908; K. Jamieson, *Indian Women and the Law in Canada: Citizen Minus* (Ottawa, 1979); Kim Pate, *50 Years of Canada's International Commitment to Human Rights: Millstones in Correcting Corrections for Federally Sentenced Women* (Canadian Association of Elizabeth Fry Societies, 1998); Susannah Rowley and Christine Boyle "Domestic Violence and Sexual Assault: Reflection on the Meaning of Bias" in Kathleen Mahoney and Sheilah Martin, eds., *Equality and Judicial Neutrality* (Carswell, 1987).

Adverse impact discrimination occurs when the application of an apparently neutral law or policy has a disproportionate and harmful impact on individuals from particular social groups. The unequal effects of a facially neutral law or policy need not have been intended to discriminate against individuals based on their group affiliation(s). It is the effect of the law or policy, not its intent, that determines whether or not discrimination has occurred

* * *

[S]ystemic discrimination...includes any institutionalized practices or policies that disadvantage members of certain groups. Systemic discrimination is usually associated with adverse impact discrimination embedded within institutional practices and policies.

* * *

Equity strategies for remedying adverse effect discrimination should begin with an assessment of seemingly “neutral” laws, policies or practices that have disparate harmful effects. In certain groups...Although existing institutional practices and policies do not appear discriminatory, they are often premised on an unstated norm that privileges individuals from historically advantaged groups. This systemic bias embedded in the status quo needs to be identified, named, documented and challenged.⁵⁴

54 Sheppard, Colleen, *Litigating the Relationship Between Equity and Equality*, (Ontario Law Reform Commission: Toronto, 1993), at 11.

In addition to the discrimination women suffer as a class, women of diverse groups and communities suffer the effects of compound discrimination. Compound discrimination is more than the sum of its parts. It is more than, for example, simply sexism plus racism. It is a complex of interactions arising from multiple patterns of discrimination and subordination over time that oppress women bearing various labels in unique ways, and in different ways than men of the same groups or community.

This research does not represent the diversity of women living in Nova Scotia. In particular, it does not fully explore women's experience of racism and other forms of compound discrimination in the justice system. The project recognized in its research plan that it could not fully address the impact of compound discrimination on women, or fully canvas all the diverse voices of women in Nova Scotia. Nevertheless, the effects of forms of discrimination other than gender alone were discussed by women in individual interviews, in focus groups in general, and in 3 focus groups specifically for Black women, immigrant women and Native women, with regard to concerns about the justice system and NSRJI.

(1) Systemic adverse trends
impacting NSRJI

As Status of Women Canada's Women's Program describes systemic discrimination with relation to violence against women:

[w]omen's unequal situation makes them more vulnerable to male violence, whether it takes the form of physical or psychological abuse or sexual exploitation. Violence against women and the girl child is rooted in attitudinal, structural and systemic gender-based inequalities. It occurs in many kinds of social relationships and contexts, and cuts across all racial, social, cultural, economic, political and religious boundaries⁵⁵.

55 See Status of Women Canada Women's Program Areas of Focus, found at <http://www.swc-cfc.gc.ca/wmnprog/guidtx2e.html>

Many women identified significant problems in the existing criminal justice system that could be viewed as arising in part from systemic patterns of discrimination or direct discrimination by justice professionals. These are of concern as there is nothing in place to prevent the carry-over of these problems into restorative justice. Also, the ability of restorative justice to achieve its goals is limited by the extent to which the justice context in which it is operating is perpetuating discrimination.

Policies such as the Framework for Action Against Family Violence⁵⁶ have the implicit goal of undoing historic discriminatory habit patterns in the justice system that adversely impact women survivors of male abuse and assault. However, as Russell and Ginn report in their 2001 Review⁵⁷ of this policy, justice professionals' understanding, will and practice concerning even the Framework for Action are inconsistent, and have not been without further adverse impact on women, particularly in the area of inappropriate charging and prosecution of abused women.

Although systemic discrimination may have many strands, only the themes emerging from interviews and focus groups in this project are discussed here. These include the trivialization of abuse, a pervasive attitude of victim-blaming, and the possibility of discriminatory referral practices affecting access to restorative justice for women in conflict with the law. (Although not discussed in this section, two other themes emerging from women's discussions are associated with systemic discrimination, and are discussed elsewhere in this report:

- the failure to provide safety for abused women is a systemic failure with implications for NSRJL.
- lack of community awareness and understanding, including community hostility to women who have experienced or take measures to counter male violence and/or criminalization.)

i)

trivialisation of abuse

Many women with experience of the criminal justice system described the ongoing trivialisation of woman abuse. Women described how this occurred because of individual discretion and attitudes exercised by justice professionals. Women also challenged institutional inertia and dysfunctionality in the justice system as a whole regarding violence against women:

56 Nova Scotia Department of Justice, Public Prosecution Service, Family Violence Prevention Initiative, Department of Community Services, *The Framework for Action Against Family Violence*, (Halifax, 1995).

57 Framework for Action Against Family Violence 2001 Review, Dawn Russell, Diana Ginn, May 31, 2001

I don't agree with [restorative justice] at all. I think it is time the system takes beatings and deaths of women seriously. It is time. - Sydney

I think that by taking it out of the courtroom, [it's saying] it's not a crime, let's deal with it in a nice way so that everyone is happy. And it is a crime. And if it is softened, what is going to happen? - Halifax

Women described the difficulty they faced in having charges laid in the first place due to a trivialisation of the assaults, and the characterization of some offences as “minor:”

He started when I finally said, “I'm not going back to you...” That's when he went completely [crazy]...he hit me with snowballs, he fired a car against me, he smacked me with gloves in the face. And I was trying to tell [the police] and they are like, “OK, whatever, lady.” That was the attitude they gave to me. - Strait Area

There are no degrees to [sexual] victimization or rape - Halifax

Women pointed out existing systemic tendencies toward minimization:

I think what happens, when things go to court, if they even get there, is that they're minimized so much already because you are just dealing with the one charge. [It] is so hard to get to court for abuse. - Strait area

The point is not that it is not a crime, but that the system itself does not recognize it as a crime...it's just a family affair. - Immigrant women's focus group

Sexual abuse...that should never ever get [to restorative justice]. Because in my experience, when sexual abuse is before the courts, there is one charge or two charges in front but there are so many abuses they don't know about. - Strait area

and trivialising attitudes to abuse:

The court date kept changing, there was no regard concerning my life. The court thought it was funny...Even the judge thought it was funny, laughed, and then kept moving the court date. Then when the tribal police quit I lost the charges against [the abuser] after the RCMP took over. - Waycobah

An officer came to my house, and my little guy, who was probably nine at the time...this officer comes to my door, and they are standing in the back by the tree house and my little nine-year old started saying “He beats me, he beats my mother” and [the officer] said “Well, it can't be that bad, look at this fine tree house you have.” - rural NS

The last time I was at the police station, the officer said to me that my husband feels right bad, because the neighbors are going to know that the police were involved. That's too bad isn't it? I

should have asked them how embarrassed they think he'll feel when the neighbors see the police come for the last time. - Sydney

One rural woman recalled an attempt to run her off the road by an enraged ex-partner with a history of violence, while her child was in the car with her, and the incongruity of the eventual charges laid:

I was in my car and I had the cell phone and it was beeping because the batteries were going dead...he chased me...I called Transition House, because I knew I didn't have much time to call, so I called them and told them A. was chasing me on the L- H- Road, call the police.

So the police caught up with us...A. had a rage about him that I had never seen before, it was terrifying...I couldn't hold the steering wheel or open the window, I was afraid to get out of my car, that he was watching me or would shoot me...it was about 45 minutes before the police could get me out of the car. They stayed with us for a while. A. was charged and pleaded guilty.

[Other participant]: Guilty to what?

Reckless driving.

Women raised concerns that the same justice professionals trivializing abuse in the existing system would be making decisions under NSRJI that similarly would tend to minimize abuse. Further, some women evinced their own minimizing of woman abuse and assault (e.g. “*I know that my husband only grabbed me by the throat...*”)

Concerns were also raised about the trivialising message sent to abusers through the use of restorative justice processes for sentencing, particularly those already skilled in avoiding and manipulating legal consequences of abuse:

[Restorative justice] just sends a message to him and to me, again, that [after it was] treated as a joke the first time around, and then to go through [restorative justice] yet again you feel like it was not... serious. To me, it's just giving them one more chance to get away with what they have already gotten away with. It is just prolonging and making it easier for them. - Amherst
[T]hey don't comply with the education or with the programs they are supposed to go in....Because they have a choice, they just kind of slide through...Sending a man to anger management, big deal! - Bridgewater

I think it should be in a courtroom that is more formal, so that he could get the message - Halifax

I find it hard to believe that [this is appropriate] when someone almost killed somebody or if your husband is beating you...I mean, any abusers would say, “That is a great deal, I'm going to take that deal, I'll do that.” - Bridgewater

Concerns for a few women specifically centred around a model lacking punitive emphasis for these crimes, and a model emphasizing a consensus that included the abuser:

Let's say they get the conviction. I don't see why [the abuser] should have the say, "OK, I'll do this." Why would they get a choice? If you're guilty you shouldn't get a choice of your punishment. - Yarmouth

Praying [justice] will get done because you sit in a room with three or four other people? There is nothing to that...no justice. I think they should be punished. - Bridgewater

Others felt the private, volunteer-based model was trivialising:

OK, we'll send you to the back room, and we'll get this one and that one and grab some volunteers on the way, and we'll have you in the back room, and decide to give you 6 months, 7 months, 8 months or a year probation...it sounds very primitive. It reminds me of something you would hear them doing in the 1930's because they knew no better. It would almost be like taking the great strides [against abuse], what they have done in the last 20 years...and sticking us back into this...It shouldn't be left to the victim, the support person, and the facilitator in the back of some church hall. - Strait area

There will be too many people shovelled into this so courts don't have to deal with this. - Waycobah

One more time all they are doing is setting the man free, to walk the streets, to wait for the [forum], in a little corner room, where his lawyer...maybe my mother and maybe his step-father are going to meet up and decide what should be done with him because he beat his wife and kids? That doesn't sound even humane to me. - Strait area

ii) victim-
blaming and revictimization

Many women described their experiences of revictimization or abuse by justice professionals in the system even as they sought help and safety from abuse. Frequently cited was a victim-blaming stance by justice professionals, often accompanied by the threat that if a woman continued to seek help she would be subject to investigation by community services and the loss of her children:

They sent two police officers out after he [abuser] threatened to slash me. I explained what was going on, that he was stalking around the property, my mother and stepfather had seen him with a hammer. I said to the police this is my home, I want him out of here, he is not acting right. He was using drugs at the time.

The police said, "It's a gray area." [The officer] said, "You have a relationship with him, you have 3 children together, he lives here, there is not much we can do." I said, "He does not live here, this is my home, I'll show you the lease, and I want him out." Then they said, "I can't do anything and if there are too many more calls, you'll have your kids taken away."

- rural Nova Scotia

I was at the police station, ringing the doorbell, covered in blood, and I told them he had taken my son out of my home...They [police] said, "Well, we could call social services on you." - town in rural area, central Nova Scotia

I tried to tell them [police], tried to make them understand. But they would not listen to me whatsoever. The male officer kept saying, "You're going to lose your kids." I was screaming in the hospital, "Please, officer, just leave me alone." - rural Nova Scotia

Women also described being treated as if they deserved assaults:

When the cruiser came, it was a Suburban, after my husband had assaulted me that morning. I did have a gentleman friend in the house. My husband was not living in the house. The officer said, "What did you expect?." He said, "You were sleeping with another man in your house." The other officer was not in the Suburban, so I got totally intimidated by this officer. - Strait area

Several women described facing criminalization because of the involvement of police after they had been abused:

He had already injured me when I was arrested. He called 911 and told them I was injuring myself, that I fell between two piles of wood and broke my nose and cheekbone. I was arrested because I wasn't supposed to have no contact with him. I was arrested on the spot because he said I was the one who caused the damage to myself, to get him in trouble. The doctor in the emergency room asked the police if they were out of their mind. - north/central Nova Scotia

When I fled the house, I had to say "I'm sorry for running away" to him... Finally, he pretended I beat him up and I was charged. Now I'm not even allowed to go in my own house to get anything. He's making up charges because he's hitting me. - Waycobah
This has been happening, I'm seeing it more and more where the woman is victimized in this way after all the years of abuse. I'm seeing it a lot. - service provider, Waycobah

These women who work as guards, when I was sent there [jail], they were just wild because they knew what had happened. One woman guard who was in the van said, "I am so sick and tired of looking after women like her...it shouldn't be her in here." They knew I was assaulted; I was black and blue. They showered me before they put me in the cell. I had black bruises and a boot print... right across my back...He beat me up two weeks after that. I never even phoned the police - rural Nova Scotia

Women expressed concerns that patterns of victim-blaming would be brought into community justice forums dealing with male violence towards women:

It's horrible because I can only go through my own experience. It was spousal abuse, and to have everyone coming into my work, pressuring me, and that was from the community, high-up leaders [pressuring not to pursue the case against the abuser]. And going through that, I remember having to go out and tell people, "Don't come back here no more, today." So this is what we would get into here. It is almost revictimizing the woman all over again, making the woman feel as if she is the bad person. And the person who committed the crime is the good person. - Black women's focus group, New Glasgow

It's not going to work because we are going to be made to be the bad person in the end. - Amherst

Women are considered responsible for their situation. If they hadn't let themselves be in the situation, "it" wouldn't have happened. Victim blaming is the situation in society generally and in courtrooms. - Halifax

Restorative justice for women in conflict with the law was also seen to potentially have a victim-blaming aspect that would not promote healing. Women raised concerns about women being forced to "take responsibility" for crimes in order to participate in restorative justice, where the criminalized acts such as drug use and prostitution and shoplifting were part of survival strategies or compelled by an abuser:

What about the woman? What about restorative justice where they say you have to take responsibility? What if the woman's ass is kicked, and she is bleeding and brutalized and her spouse says to her, "You get your ass out on that street, and get me some money for my drugs or I'm going to kill you." And she knows he means it. So she has to say, "Yeah, OK, I did this" in a justice forum? - Truro

We used to see basically two kinds of shoplifting - women with self-esteem problems and those who made a little money from it. In the 1990's we started to see women who were stealing food for their family, the very basic needs and we see this more and more. Who is responsible here? - service provider, Sydney

I say, who is the victim, the trick or the prostitute? The law gets blurry to me about who's the victim really. - Truro

One service provider brought up the issue of an abused woman criminalized for assault against her abuser, entering into a justice forum with her abuser of perhaps many years in the "victim" role. "How are they going to handle that," she asked, "because it is going to come up." Other women stated:

Participant 1: Can you imagine having to tell a woman who had been in a long term abusive relationship, who finally fought back, self-defending, and that as a result of her charge, as a result of her coming into restorative justice, she has to go take an anger management course?
Participant 2: She finally had the courage to fight back.

- Sydney

c. referrals and eligibility criteria

Wherever discretionary choices exist, so does the possibility of prohibited discriminatory choices. Many women raised concerns about whether restorative justice would be made available as an option to women in conflict with the law in the same way it was available to men in conflict with the law. That women's experience of conflict with the law and criminal justice is different from men's is well documented. For example, at this writing, the Canadian Human Rights Commission was conducting special investigatory work regarding the discriminatory lack of services, status and programming, among other impacts, experienced by federally sentenced women. To what extent will patterns of discrimination cut off access to restorative justice programming for women in conflict with the law? As one woman inquired, "It is a select few that are going to get it, right?"

Women talked about being stigmatized as especially "bad" human beings because events and behaviour that brought them into conflict with the law did not fit into common expectations of what "nice" women did, and hence they would not be offered alternatives such as restorative justice. Would women not fitting societal norms of behaviour for women be discriminated against as less likely to benefit from restorative justice? Women reported their feelings that female prostitutes and drug addicts, as well as women in conflict with the law due to violent events, were treated more judgementally than men in comparable situations.

One aspect of this issue is the consideration of the impact of women's appearance in the formation of judgements about them. One woman reported not being treated for drug addiction, because her doctor stated, "You're too pretty to be a drug addict." Conversely, women raised as a query in the Halifax focus group for women in conflict with the law whether women who do not fit dominant standards for mainstream heterosexist attractiveness will be treated as if they were more reprehensible, more "hardened" and less likely to benefit from alternative measures, such as restorative justice, and thus not as readily referred? One woman already had experienced rough treatment from police, and felt it had to do with appearance and sexual orientation. Other women stated:

Participant 1: From the experiences that I have on the streets, and there have been quite a few, cops tend to label people and they judge. They view many of us as worthless and...uneducated. They wouldn't bring us to [restorative justice] as opposed to, say, a prissy little young pretty shoplifter. That's what I can see.

Participant 2: She hit it right on the head. That is exactly what's happening. - Truro

Women expressed concerns about sexism in its own right, as well as compound discrimination faced by women in conflict with the law. Women consistently raised racism as a concern and the possibility of it affecting the referral process to restorative justice:

Participant 1: Who refers to diversion? What about police making a difficult arrest with people they don't like? Will they go out of their way to recommend [restorative justice]? How can prejudice be avoided? Racism is a factor.

Participant 2: People are not being referred because of behaviour or race.

- Halifax

Stereotyping...the courts and the prosecutors are so used to putting people in these categories, that [restorative justice] is going to be a very difficult thing to initiate. - Truro

They also emphasized that racism, classism and other biases may be more prevalent in some communities than in others, and were concerned about restorative justice's community-based model and equal access across the province:

Restorative justice means many things to many people. And who [this town] might consider for restorative justice is not what the Halifax community would consider [for] restorative justice. There needs to be uniform [access] across the board...They say, "No, we need to preserve the flavour of each community." But what I am referring to is that everyone should have a shot at it. - Cape Breton

I am concerned that only the "good" kids will get referred, meaning well off. I know my family, there were six of us kids from the wrong neighborhood, you could say. Would we get referred? My father wasn't a bank manager. - Sydney

Service providers for women in conflict with the law also raised concerns as to whether women with mental health issues would be referred to and able to benefit from the restorative justice alternative as currently configured.

Women in conflict with the law and their service providers also described concerns about access to restorative justice being used as a way to pressure women into providing information to system professionals. That is, would police and public prosecutors use the carrot of referral to restorative justice as a way to coerce women into providing information about co-accused or others in conflict with the law? One woman reported that this had already occurred in one instance known to her involving another woman with respect to adult diversion. Is willingness to provide information regarding other cases in the justice system a legitimate discretionary factor in restorative justice under NSRJI? This can have unique impacts on women, as they may be being coerced to give information about an abuser or about a male who exercises power and control in their life.

Women supported a non-discretionary model of referrals:

Participant 1: They all put you in the same category that they put you in before, because you are dealing with the same people who have an attitude towards gays and prostitutes. You are not going to change the 20-year on-the-street cops' attitudes and tell them, "this is how you have to see things now." This isn't going to happen; I don't believe it.

Participant 2: Say you had certain circumstances around whatever you were charged with. It wouldn't be up to [the police officer] to say, "She's a street person, I don't like the looks of her, she was a bitch..." or whatever, and "I'm not recommending her." He gets the sole power to do that? Maybe you can take that away from him.

- Truro

(2) Positive aspects of the
existing criminal justice system

Restorative justice is sometimes informally promoted on the basis that the existing criminal justice system serves women so poorly, that no harm could ensue by trying something new to resolve the aftermath of violence against women. Indeed, in this project's research, many women have identified ongoing shortcomings of the existing criminal justice system in dealing with women in conflict with the law, and with women's experience of male violence and abuse.

However, some women have also identified positive aspects of their experience with the criminal justice system, particularly with new training and protocols to deal with abuse, and with existing adult diversion for women in conflict with the law. It is important to recognize these successes, and ensure that they are not lost amid efforts to implement new models.

i)
measures against abusers

Women felt the symbolic role of the court and police was important:

I think you need to be told by authority that what you have done is wrong. - Bridgewater
Women emphasized the important role the formality of the courtroom and the power of the judge and other court personnel played in their and the abuser's experience. One transition house staff person spoke about an abuser threatening his victim with gestures in the courtroom, making the motion of holding a gun to her head and pulling the trigger:

I saw it, and one of the sheriffs saw it and she said, "Did you see that?" The judge was still in the courtroom, he hadn't left yet, he turned around. It was caught. If the sheriff hadn't seen that, we would have had the woman crushed. - Strait area

Some women also cited improvements over the years in police response and support for police intervention:

Participant 1: My ex-husband, years ago, he beat me. [The police] wouldn't pass my doorstep, unless he stepped out, because they were not allowed to come in and do anything about it...and now they can come right in.

Participant 2: It was the same in my case.

- Sydney

Women in this research repeatedly cited safety for themselves and their children as most important for healing to take place. Although many women cited the existing system's failure to provide for their safety, some women did point to successes:

My children at school couldn't do a lot of things that come naturally to most children. I knew what I had to do and I was willing to do it...these groups gave me the self-esteem I needed to get...going and then when the courts put a stop to him...Yes. What I needed and what I got from the justice system was an end to contact...he's dealing with his own issues of anger. Without their father being there...it has changed my children's attitude...like walking up the street [unafraid]...[the courts] did help me by putting the stops to him coming to the house. - New Glasgow

Some women felt that if the existing justice system were working as it should, there was nothing wrong with the existing processes. Success was a matter of training and commitment of those in authority locally, as expressed by a staff person serving abused women:

I think it really makes a difference when the person in charge cares and understands and makes it happen. When we had Staff Sergeant X. here, everything was working really well. When officers didn't follow the protocols, there were consequences, job consequences for them, and we really saw a difference in how these cases were handled and how women were treated. Sergeant X. was transferred, and now things have fallen apart a bit again.

Another staff person serving women in conflict with the law valued the sophistication and everyday knowledge of judges in her area regarding what women were going through in the justice system:

I believe that if [the existing system] actually worked the way it should, it could work. I truly do. We are very fortunate in this community, that we have judges, at least from our standpoint, who are advocates for women in conflict with the law. They are actually interested in finding out what they can do to help and what is out there. They don't see black and white. When they look around at family violence issues they don't see black and white either, I'm sure they see what is going on. They are devastated for women charged with perjury or who have warrants issued because they didn't show up [for the abuser's trial]. The judges here know what is going on.

Some women expressed their relief that the trial and sentencing could proceed quickly with minimal participation from them:

The trial part and all that, it just happened fast enough for me. I didn't have to be there, my kids didn't have to do anything. The video statements worked fine. - Non-offending parents group, Halifax

I'm quite happy with it the way it is, to be quite honest. You go to court, the judge handles it and you go away. - Amherst

He was charged and he was found guilty. It was an immediate thing. - Strait area

ii)

alternative measures and adult diversion for women in conflict with the

Women in conflict with the law who were interviewed because they had experience of adult diversion or other alternative measures were generally supportive of existing programs. These programs were valued proportionate to the extent they helped women deal with underlying causes of their road to criminalization, such as abuse, drug addiction, poverty, and systemic discrimination, including internalized misogyny and economic stresses. (This support for adult diversion or alternative measures was contingent upon these issues being identified and programs existing in the community to address them for which referrals were made, which often did not happen.⁵⁸) Women also valued programs that allowed them to avoid what they described as the dangerous and embittering experience of prison, which they viewed as destructive for both themselves and their children. Remarks included:

I get stressed from my eating disorder...I have a sheer terror of being poverty-stricken. I got so obsessed with saving money that I was stealing instead of paying for items...The Stop-Lifting program gave me a greater insight into why I was doing it, and some solutions on how to stop it. This was significant in my personal healing. - Halifax

My infant son had been hospitalized with respiratory problems...On the day he returned home to me, I watched as other people walked by with children enjoying a walk and fresh air. My finances had not allowed me to purchase a stroller, so I carried my son to a department store, put him in a stroller and left the store. I even knew I would be caught...Adult diversion put me in touch with an agency and people I can now contact when I need support. I was happy...to learn that the police, probation and E Fry staff really are concerned about people. Everyone looked at me as an individual, not as a "shoplifter." I'm sure that many people don't know what services are available, maybe a lot of people with charges. - Cape Breton

58 Programs that only emphasized restitution were not similarly valued. One woman who felt she did not benefit from a restitution-only approach told her story of being coerced into prostitution by an abusive partner, beginning to use illegal drugs and becoming an addict. All her crimes were drug-related, yet she describes that no one "ever once suggested that I seek drug treatment."

About ten years ago I was charged with shoplifting and had to spend 2 weeks in a halfway house. The judge said this would teach me a lesson, but it still did not help me with my problems. The problem I had with stealing was still there. Now I'm learning what my problems are, and what I have to do to keep from stealing. - Cape Breton

Other reasons for support for adult diversion and alternative measures that were cited less often included avoiding the exacerbation of physical or mental illness through the stress of court appearances, and feeling like part of the community.

Many women described the community organizations serving women in conflict with the law, such as the Elizabeth Fry Societies and Coverdale, as crucial to their referral to adult diversion, and as providing the best services in their experience of adult diversion or alternative measures. Many regarded their connection to these organizations during these programs as key factors in their healing:

Until I faced a charge and found people like the staff at E Fry, I thought I only had my boyfriend to rely on. I have learned there are people who really do understand and who genuinely care. I didn't go into the details of my life with the person putting on this [alternative] program. I have gone into a lot of detail with the E Fry staff member accompanying me through all this. I am getting referrals from E Fry to help me deal with... issues I have. I also feel as though I have new friends because of E Fry. - Cape Breton

Sexual, mental and physical abuse led to my drug use. It was someone in my family who abused me, my uncle. I never told anyone. Then I was raped by a stranger. I used drugs to self-medicate. I started using drugs when I was fifteen. The theft arose because of my drug addiction...I ended up in Kingston Prison and I still wear the scars from that. I've seen hangings, slashings, violence, people doing things I never thought I'd see. I just buried it and never dealt with it, and I torture myself with drugs in order to not feel. I am striving someday to be normal, be part of the normal community...E Fry is my family. - Halifax

It was through E Fry after adult diversion that I became aware of programs that would address my personal issues, help me understand the nature of these criminal acts, why I committed them and what I could do about them. - Halifax

(3)

NSRJI

Positive comments regarding

As discussed in the previous section, women in conflict with the law were positive about existing alternative measures that did not include imprisonment and connected them with help for dealing with abuse, drug addiction, poverty and other issues underlying crimes. To the extent that NSJRI would also provide this, it could be inferred that women in conflict with the law were supportive of it. Others explicitly felt women in conflict with the law should have a chance to participate in restorative justice. (Please see section on referrals and eligibility for more discussion.) Participants in the Black women's focus group in New Glasgow were also strongly supportive of restorative justice measures generally, though not necessarily specifically with regard to woman abuse.

A few women were positive about the idea of a community justice forum with their abuser/assailant. Out of approximately 200 pages of transcripts of focus groups convened for women who were subject to male violence, the positive comments regarding community justice fora are listed here in their entirety:

With restorative justice there would at least be a chance to speak out on what happened. - Waycobah

To be anonymous, but to have the input...I've got a life sentence [because of fear of abuse], I wish he could. - Yarmouth

I would like an opportunity to be in a forum if I could feel safe...if I could have [transition staff member] and two cops, and I got to pick the cops! - Yarmouth

At least he has said he has accepted responsibility and he has said it to people. Then he can't turn around and say he lied, just to... - Yarmouth

I'm not scared of him now because I have confidence from counsellors, going to the groups [at the Women's Centre and Mental Health]. So I'm not scared of him right now. ...I would rather confront somebody...I think getting those four or five people would be a great idea. - New Glasgow

Maybe if I had to face him and tell him what he did, I would have been able to handle it a lot better....I would have liked to sit down and say, "Hey, look, do you know what you are doing? - New Glasgow

That the abuser would understand and realize that he did wrong. That would give me more satisfaction, him admitting that he did wrong first. And knowing that hopefully he will take the steps to get better. - New Glasgow

Because we don't want a situation where we go into court, this should be taken into consideration. - Immigrant woman, Halifax

Men know that, "OK, I can punch you, and even if you take me to court, so what. Nothing big is going to happen." But "If I punch you and the community calls a meeting and then I will have to go to counselling, and then I'll have to give money for compensation..." - Immigrant woman, Halifax

I certainly would do that [community justice forum]. And the reason I would is that it would give me a voice. I found that the court system was all geared toward my husband, and I would love to have a voice....And I would hope these death threats and his denial and anger could be helped in some way, if it is brought out in the open forum...Maybe the end result could be that for the first time he could see himself as an abuser. And perhaps he might be interested...and then my life would be better as well. - Halifax

All such remarks are included here so there is no conjecture about whether and what supportive statements about NSRJI were included or excluded in this report. Bear in mind that only a few comments out of a greater pool for each of all the other themes are included in this report, such that these comments in support of NSRJI are proportionally overrepresented in this paper.

2. Women's safety and NSRJI

The primary concern of women who might be involved in community justice fora as survivors was safety and security, for themselves, for their children, and for survivor-supportive participants. This is what women spent the majority of the time discussing, in every focus group examining survivors' perspectives on restorative justice and woman abuse. Safety fears involved the periods before, during and after community justice fora, and in some cases were very long term (e.g. abusers' attitudes toward her involvement in sentencing, upon release). Women nevertheless did not feel that victim surrogates were an appropriate response to these concerns, feeling that no one else should speak for them, or that the presence of a surrogate could communicate a survivor's intimidation to her abuser/assailant.

Safety concerns abided in two overlapping realms: physical safety, and the endangerment of psychological integrity. Most women described fears of direct physical attacks during, before and/or after community justice fora. Many women also described the psychological impact of seeing an abuser again as triggering patterns of fear and despair and jeopardizing them psychologically, undermining gains that may have taken years of therapy or other self-work to achieve, such as disentangling her self-worth from the attitude and views of the abuser.

Unfortunately, the *Interim Nova Scotia Restorative Justice Initiative: Year One Evaluation Report*⁵⁹ conflates the need for freedom from violence or contact with the abuser with a punitive attitude. Regarding women's organizations' critiques, Donald Clairmont states, "Punishment and security trump healing and risk..." In this project's focus groups, women did not speak in support of custodial sentencing, for example, out of a need for vengeance or in support of a strictly punitive model of "corrections." Rather than expressing a dichotomy between security and healing, safety was regarded as a basic element *crucial to* women's healing. Freedom from imminent death or assault (that may only be obtainable through custodial sentencing of the abuser) is an important condition for women who would like to explore some of the other things necessary for long term freedom from abuse, such as independent livelihood, housing and self-worth. The prioritizing of security is a practical and realistic response to the oppression caused by the threat of violence from an abuser, not necessarily an affirmation of punitive justice models.

59 Clairmont, Donald, *Interim Nova Scotia Restorative Justice Initiative: Year One Evaluation Report*, Department of Justice Canada (2001) at 103.

(1)
safety in existing system

Failure to provide physical

Failure to provide security within the existing system is a major concern for women. The existing problems in this regard shaped women's views of whether participation in community justice forums could ever be safe for them.

I actually think the town cops are afraid of him. - Amherst

I had the peace bond. I called the police when I knew he [abuser] was coming down. They told me that unless he showed up on my doorstep and threatened to kill me or did something to me, I could not get the police down there. I said, "I'll call you when I have a gunshot wound in my head." Because that was exactly what was going down. He was crazy, he could care less, he gave up his job, he gave up everything to come down and get me and my two kids. Law means nothing to these guys, he would give up his life to kill me. - Bridgewater

During the trial he was out on bail, making death threats, threatening the children. The end result was that he moved into the house I was living in, changed the locks and the police didn't care. - Halifax

When I got [assaulted and stalked], the police told me to get the hell out of the province...They didn't offer me anything else. - Bridgewater

(2)
Physical safety and NSRJI

Women described grave safety concerns involved with any meeting with their abuser:

I wouldn't feel safe in a circle. I'd need security, 2 bodyguards, a fence, plexiglas... - Waycobah

You keep running in order to stay safe and now they are saying they want you to face him in the same room? - Bridgewater

I have been gone eight years and I still can't talk to my husband...he still scares me to death. I couldn't do it, this many years later. I live 1200 miles away from him. - Bridgewater

When somebody finally said [to us], "This has got to stop, you have got to tell him, 'this is what you've done, you've broken my nose, you've broken my collar bone'," he just looked at me and said, "You're dead when we're out of here. I'll get you when we're alone." - Sydney

I had a hard time standing in a courtroom with my husband, [even] knowing there were police everywhere. Because police don't mean anything to him. There was a judge, a bail bondsman, there were tons of people there. I was scared to death..It doesn't matter how much they smile and wave while they are there. It's what he's going to do afterwards. I felt fear in a courtroom, never mind going into a room where I've got nobody to look out for me. - Bridgewater

I went to my house to get some clothes and my husband went absolutely crazy. We had two cops...who met us there at my home. There was a person there from Juniper [House] with me. He went crazy. "There is the one that took my wife away," he said. - Yarmouth

There is no way [restorative justice] is going to protect me. I don't feel protected unless he is in jail. One way or another he is going to come and get me. I feel this every day of my life. - Strait area

I would fear for my safety. It seems to trigger his physically abusive behaviour when he sees me. - Halifax

Participant: A lot of them, even if they were convicted, if they went to that forum, would be going with a lot of anger.

Facilitator: What does that anger mean for you?

Participant: Possible death.

- Yarmouth

[A community justice forum] is not going to change their mind. When I walk out of the building and they see me walking down the street, after I just said what he had done, in front of..I'm history, I'd be dead. - New Glasgow

If I do this, I am dead. - Sydney

Our courthouse isn't safe now and they want it to be in a...hall? It's not safe. We can't afford it; women are going to get killed working out the kinks in restorative justice. - Strait area

Safety concerns extended to children, and supportive family or community members:

[The abuser] threatened me in the courtroom. My son was ready to stop...I had to walk away. - Waycobah

I wouldn't take another soul, helper or friend with me to help me...why would you bring a good person into it, a person he can retaliate against? - Bridgewater

You're not just endangering one person; you're endangering four people...family members, a whole scope of people. - Sydney

Neighbors are terrified that he will retaliate. - Halifax

Elders may be afraid of him. One elder already had this; there can be a backlash...How is the abuser going to be monitored? - Waycobah

Women expressed fears about the time period between conviction or a guilty plea, and sentencing, whether conventionally or through restorative justice:

Where are they in those 90 days? 90 more days he is free to come and find you. - Strait area

They should be put in jail until the trial...now he's walking around and he punched me again. - Waycobah

(3)

Psychological safety

Women expressed how community forum participation with an abuser would be psychologically negative for them, endangering hard-won recovery from abuse:

If you've been abused or raped the worst thing you could do is say I have to face my rapist. - Bridgewater

How could you think straight when the person who had instilled so much fear in you...for years and years and years, I can't do it. All of that would come back. Even if just little bits and pieces come out, it would be so unnerving, that you couldn't think straight. They know us, they know the triggers...it would be that look, the look, the dead cold look. I would just have to see that and think, "I'm in trouble." I would want to run out of the room...they have their looks or their hand motions, you know? - Amherst

The grief you felt way back when it was done, it is still the same. No matter how many years have passed, if the trigger is there, it comes. You get over a scraped knee when you are a kid. You don't just get over abuse. - Strait area

I would be terrified. I would not speak my mind or speak the truth. - Sydney

Participant 1: It takes people a long time to actually leave. It doesn't start off...with beating you. There is always a period of learning how to control you, and demeaning you, and bringing you down before they beat you. Then you take all those years, and take all that time to leave, and you come to a place like this [transition house support group] to heal for a couple of years, some of us more. There is an awful lot of stuff you have to do to prepare yourself to get out. And then you have to go into [a community justice forum] after 1-3 months? You are nowhere near prepared mentally, physically to stand up against that guy.

Participant 2: It took me 13 years to come here and tell these people.

Participant 3: So how can you walk in there and all of a sudden the programming...it takes years to get rid of the programming.

- Bridgewater

I'm thinking of my personal experience, I could not have gone through that process [community justice forum]. Anyone outside...could not have known what those triggers were inside me.

Facilitator: Triggers?

A look you see, prior to being victimized.

- Valley

People who have been abused and their parents can suffer trauma and have flashbacks. Seeing the perpetrator can trigger this. - Halifax

What if he starts giving me “the stare” - it is a big problem. I wouldn’t feel I could say anything. This process could be a mental, a mind game, it can be part of the abuse. - Waycobah

Participant 1: It’s been two years this January since I left my husband. If he was to walk in the room right now, I would have a heart attack. The fear is still there. If I was to meet with him...I would be that little stupid, low self-esteem, stuttering, pathetic...

Participant 2: Yep. Because no matter how long you are gone, if I get on the phone with mine, I still revert back to where I was.

- Bridgewater

I had to sit through a discovery session with my ex-husband. Just sitting there for five hours my whole body was numb. I get this kind of shock sensation; it is a physical shock thing; I go into post traumatic stress. Just sitting there...It took me days to get over this process. - Halifax

It has been 12 years since I left my ex-partner. Just talking that little bit tonight, I could feel that tension in my shoulders. When [another participant] showed me her shaking hands, I could feel mine starting to shake...even after 12 years if you put me in a room with a couple of people and he could look at me...I don’t think I could cope with that...No my heart couldn’t take it, my heart would beat fast. - Amherst

My daughter says, “I never have to see him again, right? I never have to see him?” She is always saying that to me. - non-offending parents group, Halifax

(4) Safety, security and
sentencing involvement for survivors of male violence

Many women stated that fears for their and others’ physical safety, and the triggering of patterns of fear and intimidation that had been programmed into them by the abuser would prevent them from participating at all or participating genuinely in anything like a community justice forum for sentencing purposes:

I would rather have the court send a message to my partner that his behaviour was unsociable, unacceptable, than to sit in a small room and try...because then it’s me...and I don’t want to be there. I don’t even want to be in court. But to be there in a small room and being responsible for helping to determine the outcome, to me, is about the worst place I could possibly imagine. - Amherst

That’s the very reason why the police took it out of your hands to arrest your husband on domestic violence because women weren’t doing it...Because too many women say, “Oh, I

changed my mind.”...they are too scared. Now the police say, “Fine, we are going to take that over.” You go and put a woman next to her husband and say, “Now you tell me dear, what would you like for him?” After 20 years of being beat? - Bridgewater

One woman described the pressures her federally sentenced abusive husband was able to exert regarding her agreement to support his parole application. She described how justice professionals approached her multiple times regarding her position, and the fear she felt. Instead of forthrightly saying she could not be part of the abuser’s support system when he was released, she was avoiding responding. She felt involvement in a restorative justice sentencing process would be analogously subject to pressure and fear.

Many women stated that for their and others’ safety and healing, what was most needed was a period of custody for the abuser:

I think I would be sitting there with my head down...and I don’t know what I would say. I want him to do time because I know if he is on probation I would be scared to death. - Black women’s focus group, New Glasgow

But this was exactly the recommendation they felt they could never make in a community justice forum, because of danger and intimidation:

Please. I’d be real scared if he found out that I suggested that that he [be jailed] for several months. Forget it, I couldn’t do it. - Amherst

You spend your whole life in fear of this person. You have been controlled by this person. You are now sitting across a table from this person, and you are going to tell this person you are sending him to jail? You are lucky if you could tell this person you wanted to go to the bathroom. - Bridgewater

For a woman to say, “Yep, I’m recommending that...this person be taken into custody.” And that person gets two years. That’s 2 years that he has to sit, thinking about [revenge]. - Valley

Women felt that custodial sentencing should be the responsibility of judges:

[It] puts the responsibility on you to say, “This is what I want.” I think the judge should say, “This is what I think.” ... We are not the law. To put that kind of responsibility on the victim and say, “What would you like for him?” ...Why should we [have to] say, “I want you to do time, you are doing 3 to 5.” - Bridgewater

Instead of me having to fight to keep him off me, let the law say he can’t be there...it’s much easier when it’s the judge who’s the one telling him he has to go to jail. - Amherst

Women felt that as long as sentencing was coming from them, it would be discounted and any message to the abuser would be lost:

It's another way for them not to take responsibility. He would say, "I wouldn't have gotten that if it wasn't for her"...like, "She did this," not like, "I did something wrong so the law made me do this because it was wrong behaviour." No, he would say, "That's my wife..." - Bridgewater

(5)

Confidentiality

Confidentiality was a prime concern of women who had survived abuse crimes. Women, particularly those from smaller communities, had no confidence that they would emerge from restorative justice processes with confidentiality, which they viewed as a key component of their dignity and both physical and psychological security.

Women's needs for confidentiality in discussing their experience may not fit well with restorative justice processes as contemplated in the NSRJI. These needs could include anonymity, limited exposure of family members, or restricting their sharing of experience to other women who had also been through abuse:

It [would be] a total airing of dirty laundry...like living in a fishbowl. I would not want that. It's hard enough to come in here [Harbour House] and tell your stories in confidence, and this is just among people who have all been through it. I don't want to have to stand in a room with a bunch of people who have never been through it. - Bridgewater

I don't like the fact that your family could be there. You don't want all of your family knowing what is going on in your home. - Immigrant focus group, Halifax

Small towns gossip as it is...I can't imagine us having to go there and bring the community in, even if it's only a couple of people. - Bridgewater

Especially in a small community, everybody knows everybody else. So if your husband or boyfriend...is well known in the community, he's a great guy, everyone loves him...all of a sudden you're going to say, "he hit me?" It's them up against you. People have grown up with these [mediator] ministers who they have known. I don't think it should be anyone's responsibility but the law. - Bridgewater

Confidentiality issues were also linked to issues around women's healing needs:

OK, it's very difficult for a woman to come to terms with the fact...we tend to say "How did I allow this to happen to me?"...like "I'm stupid, this shouldn't have happened to me."...It is hard to stand up in front of someone and say, "I was physically abused." I think it would be just more humiliation and pain. - Sydney

Knowing that this particular guy raped her and then to sit down and talk about it?...That would make her feel like everyone knows what's going on, and people would say something like, "She must have done something to lead him on." Then they all talk. And you think, "Who can I trust now?"...Confidentiality, it is just another word. People don't realize what confidentiality means. - Black women's focus group, New Glasgow

Women also were concerned about abusers learning personal information about them in restorative justice sessions⁶⁰ once they had fled the relationship:

One small oversight can make a difference to somebody. Like women having addresses on the Peace Bond, and a copy is given to him, and she moved to try to get away from him. - Halifax

(6)

Voluntariness

What is necessary for truly voluntary participation for women who have experienced male violence and for women in conflict with the law? The THANS 2000 report on family mediation in Nova Scotia identified subtle and not-so-subtle coercive factors that channelled abused women toward a decision to participate in mediation. These included pressures applied by lawyers, judges, court staff and social workers who often had a good deal of control over women's lives⁶¹.

In focus groups on restorative justice, Native women who had experienced abuse identified pressures to "drop charges" and felt analogous pressures would be placed on them to participate in restorative justice regarding crimes by abusers. These pressures were identified as coming from both prosecutors and RCMP. This is a troubling approach in itself, and further problematic in the ineffectiveness of Framework for Action policies in changing prosecution or RCMP approaches to Native women victims of violence. Can these same actors now be expected to sensitively offer women choices when it comes to the restorative justice measures?

Black women identified pressures from their community leaders and other community members to use non-justice-system approaches to deal with abuse. They also anticipated likely pressures from spouses' family members to deal with abuse in a way perceived as less likely to result in incarceration, such as restorative justice. One focus group participant felt family members would be able to use children to pressure abused women into participating in restorative justice.

Focus groups identified potentially coercive pressures related to restorative justice and women in conflict with the law. One service provider from Cape Breton stated:

60 It should be noted that abused women participating in the 2000 THANS report, *Abused Women in Family Mediation: A Nova Scotia Snapshot* identified mediators' and judges lack of understanding of the safety and power imbalance issues regarding confidentiality of such information as telephone numbers, addresses, and bank account numbers.

61 For some proponents of mediation in cases of "domestic violence" the existence of substantial external coercive pressures, including "retaliation from the other party" are compatible with the ostensibly voluntary nature of such programming. (See Bethel & Singer, *supra* at 19). A definition of voluntariness is a threshold issue that has not been extensively considered in the literature, nor in NSRJI.

There is something more insidious that we haven't looked at...Most of our women plead guilty, in order to get...it over with. So, if it means I am going to go home to my kids at the end of the day, I'm going to say that I am guilty. Even if it means I have to face my husband who has abused me, I am going to say [I am guilty] because if I'm away from those kids he is going to get them.

This service provider makes two important points. First, that women who could present a defense often will nevertheless enter a guilty plea, in order to conclude the process swiftly. Restorative justice could potentially become simply a clearinghouse for women who wish to exit the system quickly, regardless of innocence. Second, this service provider refers to a situation where an abused woman has been criminalized by her abuser's false accusations or inappropriately by police and prosecutors (in the absence of primary aggressor analysis, for example.) This service provider highlights that such a woman's responsibility to her children to get out of the system as quickly as possible (and avoid any risk of incarceration through pleading not guilty) is a coercive pressure to accept restorative justice, even if it means being unjustly "accountable" for crimes against her abuser, and facing him in a forum.

Another participant described the impact of mandatory minimum sentences on the integrity of restorative justice participation:

In restorative justice, women are just going to do what they do in the courts...if you look at self-defense [with a killing of an abusive] partner, we can go through the self-defense [argument in court] but if you lose you are going to get 25 years. Or you can do a [plea] to 2nd degree murder or manslaughter and do 10.

3. Women as primary or sole caregivers: implications for NSRJI

Women still are usually the primary caregivers for children, and often the sole caregiver. Women also shoulder an unequal burden for other "caring" responsibilities such as elder-care or health needs of the family. Justice measures that impact differently on caregivers necessarily impact differently on women as a group. One woman described women's role as primary or sole caregiver as making women more vulnerable to criminalization:

The woman is the nurturer...Sometimes people have to look at that and say, "Is that why she's in trouble? Is it because she is considered the nurturer, the person who looks after the children, [the] person who is responsible...did that put her into the situation?...if I'm stuck in a situation where I can't look after my child ['s needs] and I go to Sobeys and I put a few things in my pocket and I get caught, it is because of the situation I am in...me responsible. In how we feel responsible for our children, I think that is a big thing. How many men want custody, how many men feel responsible for them? - Sydney

Women participating in interviews and focus groups identified many issues arising in their justice experience related to their caregiver roles, and raised implications regarding NSRJI.

Many women were concerned that the same ignorance regarding children and abuse that they faced with justice and social services personnel in the past would be replicated in the restorative justice context. They also saw the resolution of “family” law matters as integral to overall justice:

If they are going to rehabilitate [abusers] why do those men have our children? ...Social Services told me to my face that my children were at a greater risk when they were with me than with him, because I was his “sore spot,” that if he were going to flip out and those children were going to get hurt, it was probably going to be because they were in my care and he was coming for me and they would be caught in the [abuse]. The counsellors here [transition house] went down to Social Services with me, and I got my children right after. But why did I have to go through that? If I didn't have [transition house staff's] support, where would I have been? Where would those children be? - Amherst

The police always take out the woman, not the man. You only get the house if you have custody of the kids; a judge has no jurisdiction regarding a house on the reserve. The chief and the council determine but they always put it back on the judge and it goes back and forth. - Waycobah

The judge believes that [the abusive ex-partner] should be part of the child's life no matter what. I've seen this child, 8, 10 go to court and say that he didn't want anything to do with him and he was afraid of him...The judge recommended...to reconcile their relationship...The child had witnessed a lot of ...violence, had seen his mother hurt. - Yarmouth

[Regarding encouragement from social services to continue the relationship with the abuser]: [I] lived another two years of hell. They convinced him that we were doing the right thing, because after all, that was his Dad. And he was going to change and we were going to be this happy little family that we always wanted to be. - Amherst

Participant 1: He was checking up on me every 45 minutes. He was coming back home all the time, just making sure I was home, he was a little crazy. I called [community services staff] and she told me, “you have two choices, you either stay home and we will take your children and we will put them in foster care or you go to [the transition house]..I didn't want to go back [to the transition house] because that's why he was angry in the first place.

Participant 2: So my fear is in restorative justice, is the Children's Aid worker going to be outside the church hall when this woman cannot put enough punishment on this man, and she is going to be judged because she is judged now. Women are judged because of the abuse; that is a fact.

Participant 3: They did that to me. They were coming and taking my son, because they told me I endangered his life. I didn't do anything to my son, he [the abuser] did. He [abuser] was there and they told me they could come into my house and take my son.- Strait area

Women were also concerned that restorative justice might not contemplate their children as “official victims” of the woman abuse or relate to their needs:

My son is six years old, and I went out on a date last summer. My son said, "I want to go so I can protect you." I worry so much about my children [having witnessed abuse]. - Amherst

The kids notice it too, as much as you try to hide it. My 4-year-old said, "Mommy's sad again." I didn't realize I was that obvious, until I read that little book we had and cried at the doctor's office. God, is she worried about me? - Halifax

In cases of child sexual abuse, women are most usually the non-offending parents. A special focus group was held in Halifax for women who were non-offending parents. These women emphasized the problems associated with the simultaneity of criminal processes and family processes which were not congruent:

My daughter made a disclosure to me...her father said that I was making this known to get back at him...this has been without a doubt the most painful thing...the divorce situation...I feel powerless for my children.

What about retaliation against me [because of the abuse investigation]? Every time I have to be around the [family law] mediation situation with my ex-husband or he was visiting my child in the [health care facility], he cornered me in the hallway, and was making threats.

These women were also concerned that the breadth of impact on their entire family would not be met in community justice fora that focused on the abuser and the survivor only, and didn't consider healing needs of non-offending mothers and siblings:

I feel like he has ruined my life. Not just directly assaulting my daughter but it goes on and on. It's something my [other daughter] witnessed, something my other two children know about, my oldest son is feeling really guilty because he was babysitting for me...so it's not just the direct victims. It's all my family, all my kids.

Just as further contact in a community justice forum may not meet the healing needs of women who have experienced abuse, so did women identify that further contact with abusers was not among the healing needs of children. In fact, women indicated that children's healing was dependent on feeling safe from further contact:

The court [stopped access visits]...[The abusive ex-partner] did have a big impact on them emotionally...Now where he doesn't come to the home that part is starting to heal itself. - New Glasgow

Women were also concerned about children's perception of their mother's involvement in the sentencing of abusive partners:

Participant 1: I think it is good that women are able to say, "This is what I think should happen," but my thought is scary, because then he can actually say, "Well your mother did really put me in jail." Instead of the judge or lawyer and it is really more true.

Participant 2: Or, "I'm only doing this because your mother made me." That really scares me where it involves the family and the children. If you are in court and you take the stand and the judge passes judgement...even though women still get the "Oh, your mother put me here" you know it's not true...But if you sit there and say this is what I want to have happen, then that is a strong message and if he did say that to the children...it's hard to get around it.

Participant 3: I think it's because of the years and years of hearing little things., like the kids coming home after the weekend saying, "We know you put Daddy in jail Mum."...Because that is what they see. - Halifax

Women in conflict with the law made clear the primacy of their relationships with their children, and how the impact of incarceration on families was not currently considered in the justice system:

Women in prison lose everything. They lose their children and almost never get them back. Children feel deserted. - Sydney

You can't cut women off from their families - that should be the supreme priority for restorative justice. - Truro

We get out of here for the most part more bitter than when we went in. So are your children when you get out. They are mad. - Truro

Two days before I went to court, I had my baby. I went to the judge and told him I had a drug dependency agent, I was going to get myself clean...I got sentenced to [over 3 years]. He never said, "Who's going to look after your daughter?"...The family judge said "we are going to give you a couple of weeks to find someone who can take your baby. If not she is up for adoption." So I had to come back [to the institution] and fight to make a phone call, for one of my family members to take my baby. - Truro

The majority of us are mothers. If you do something the first thing they threaten is [contact with] your children. - Truro

The child welfare system must be included in restorative justice. - Halifax

Women in conflict with the law and their service providers also identified women's caregiving responsibilities as potential obstacles to fulfilling conditions agreed to in restorative justice fora:

Women would call up because they had to do community service and say there is no way I can get there, I have three children. - Sydney

4. The role of community

Nova Scotia’s Department of Justice has largely relied on a community justice model for the administration of its Nova Scotia Restorative Justice Initiative. But what is the definition of “community” for its purposes? Does it mean the community at large? The community of those in conflict with the law? The community of those who have suffered abuse? Does it mean the legal community, or the community comprised of those who have the leisure to volunteer or the qualifications to get a job at a community justice agency? Does it mean community in terms of the family and friends of those involved with the criminal justice system? Does it mean community as in a group of individuals joined by common historic and cultural roots, perhaps insular within the larger Nova Scotia population? Does it mean a geographic location? Who will define community?

i)

“Community” as defined by women who have experienced abuse and/or criminalization

Women participating in this research were asked what community meant to them. Most women responded that their community was those to whom they could turn for support. Many reported feelings of isolation from community when this was defined as all people in a certain geographic area.

When I think of community in Amherst, community would be people who are very close to me, and supportive of me. But they are not going to be the people considered “community” by the [restorative justice] program...It is probably going to be a group of volunteers who don’t really know me. - Amherst

Participant 1: My community is people in the area I work in. I have to say I feel quite isolated. People don’t understand or appreciate...

Participant 2: The community I live in often feels very isolated. I have lived there for almost eight years and still nobody knows my name.

- Valley

For many women, community shrank and changed radically after criminalization and/or after surviving abuse. Survivors of male violence reported victim-blaming, and their shock and despair when trusted community members directed this at them, and supported the abuser or assailant. Women reported feeling that, after becoming involved in criminalized ways of living, their real community was made up of only those closest to them, often other people on the street or in conflict with the law. Women also indicated that transition houses, sexual assault centres, women’s centres, Elizabeth Fry and Coverdale became an essential part of community for them subsequent to events leading them into criminal justice system processes either as survivors or criminalized people.

I can go to Victim Services, and I have the people from Transition House, I have this support group, that is it. - Sydney

My community is my faculty advisor, the women's groups that I am involved with and my family. My home community is very judgemental...Some people are very unforgiving. - Cape Breton

I have family. And I have friends. But my only support persons, they too have been in conflict with the law- ex-cons, incarcerated, you know what I mean? - Truro

Community means a group of people who are not isolated from each other but share responsibilities, help and respect each other...Elizabeth Fry and Matrix are where I turn to for support and friendship. - Halifax

Women talked about how, upon criminalization or after suffering woman abuse, what they had thought was their "community" could quickly become hostile to them, particularly in more insular communities. This was particularly emphasized for women who had experienced sexual assault or abuse, or who were non-offending parents of children who were sexually abused by male partners:

When sex abuse is disclosed you are up against the whole community by yourself. And everyone is related to you! - Waycobah

I was devastated when [my religious community] supported the abuser. They blamed me for reporting my child's disclosures to Children's Aid. They believed his story about my being crazy. I was suddenly alone and abandoned during the investigation. I no longer felt welcome among what was my community of over 20 years. - Halifax

Some women felt dislocated and unsure of what community really meant:

My question is, "what is a community in North America?" - Immigrant woman

My family? I haven't spoken to my family in five years. - Waycobah

My neighbors, people around me that I could call together and say, "Okay, this is a problem I have." But I don't know anyone, so where do I start from? - Immigrant woman

Some women were also concerned about defining community in such a way that, for the purposes of community justice, only privileged members of the larger community would be invited to participate, and that women with the most experience of women's access to justice would be excluded:

What does the participation of ordinary community lay members mean? Community services says they have ordinary community lay members who sit on the Appeals Board. These people have never known a day of poverty. They are usually in high-ranking positions and they have no

idea...but they are “ordinary lay community people.” I think that what [government] is actually saying...is don’t bring in the women’s community because they are too radical, don’t bring in the poverty rights people...because they are advocates. - Sydney

(2)

awareness levels

Community attitudes and

Many women were extremely concerned about community attitudes and lack of understanding of woman abuse and women’s criminalization, and community competence to administer justice for women. In their view, this could take the form of simple ignorance of and indifference to abuse; victim-blaming; partiality toward the abuser; stereotyping based on race, disability, sexual orientation or other personal characteristics; and reflexive condemnation of women in conflict with the law. Many of the aspects of systemic discrimination women described as existing within the justice system were seen as writ large in the broader community.

Women spoke about how little change had taken place with community attitudes toward abuse in various areas or communities of Nova Scotia:

[T]hey may not be totally up to speed here with the rest of the world...domestic violence is an accepted form of life. It is something the community doesn’t look down upon...it is just part of normal everyday life in a lot of communities. - Bridgewater

[regarding sex roles of men and women] When I first came here to Nova Scotia with my husband 14 years ago, I, really, in my lifetime I thought I had been taken back 50 years. - Yarmouth

I’m an African, a feminist. One of the problems I have in relation to this whole issue [of woman abuse] is “It’s our culture.”...It’s so repressive. Just because it’s been the tradition so long, you can’t speak. These things have to change [but] a lot of people would go, “Oh, its because she’s in North America.” - Immigrant woman, Halifax

Local communities had demonstrated indifference to abuse education and to women and their families:

He abused my son, and it’s no secret. He was off a whole week from school he was beaten so badly. Not just once but twice. Social Services has all the information - it was checked out, they verified dates, confirmed stories. They know it is true, and they know the children are in his care. I had a son going to school, going to teachers, going to mental health workers, telling...but nobody did a thing.... - Amherst

Ten years of the Mic Mac Family Treatment Centre but the community doesn’t respond. The elders are set in their ways. - Waycobah

You get justifications, because you are...always “wrong”...we need to educate the community on stuff about abuse; I don’t think they are aware enough to help you. - Bridgewater

One woman spoke about neighborhood indifference and blaming regarding woman abuse and its connection to the road her children went down toward criminalization:

I have had so-called friends say after the fact that they knew it... So...you tell me he abused his [former] girlfriend after I gave birth to my second son?... Some people look on your situation from afar...they don’t know what is going on...you are pointed out as a bad parent. There is no change in my neighbors. My neighborhood would say it’s fine...They all stick together, they are all family-oriented...I would like community support...for them to know in actual fact that it’s not your kids that are bad but that they have had a lot of exposure [to woman abuse] over quite a few years. - Black women’s focus group, New Glasgow

Women talked about the judging and blaming they experienced from the community in general. They also spoke about their doubts that anyone who had not been through criminalization or abuse could truly understand their situations:

They don’t know my story, they don’t know anything about me. But they may have seen a black eye or a bruise...They say, “Oh, that poor girl.” These people don’t know anything about me, but they judge me because they have seen things...because I have a good job [it’s] “Why did you live this way, why did you put up with this for so many years?” They don’t know me, they don’t know what I have gone through because most of them who haven’t gone through it don’t understand it. So if you bring the community in it would only give them more...It’s like running through the community naked, “This is who I am.” I don’t think I could do it. - Bridgewater

Unless they have been abused they don’t hear you. People don’t want to ever think [about it]. It’s like...cancer. I don’t want to know about cancer until....my sister has cancer, [then] I want to know... Every woman thinks, “It can’t happen to me.” - Yarmouth

They don’t understand what the problem is. They are not being abused. You know how really difficult it is to get the community all together and talk about woman abuse....the community I live in...they look at me and they think I’m a nice person but they think, “Oh, she’s the one who made him do that.” - Halifax

Women also reported how abusers would involve family and community in continuing the abuse:

Community support? They are all just as bad as he is. He doesn’t get at me through himself. I have to worry [here]. We’ve been physically attacked in public by his friends...he has others do his dirty work for him...He had my phone cut off, my power cut off. He called people on me. I can get my phone and power hooked back up...but when I am walking down the street and my children are being called names...And my mother-in-law is going around saying I am spending all this

money. I'm on Social Assistance and she is threatening to call and to have all my money cut off. These are her grandkids... - Amherst

His son and his friends got out of his car and screamed obscenities at me and my child while we were at [a public recreation location]. - Bridgewater

I'm walking into a store and all they do is lie about you, saying, "He shouldn't be where he is at [prison]." And, "You are up here spending all his money." - Amherst

The gentlemen, the husbands, the boyfriends...they are very influential. They can go out and tell their buddies, "she did this, she deserved that, do you know what she did to me? She was sleeping with so and so." That's what they can do. They've done it to you all their lives. They have manipulated you, they have brainwashed you...and they can do it to other people as well. - Bridgewater

Women also emphasized the fact that abusers may be influential, well-connected community members, and that this was a factor that could impact justice especially in smaller communities:

One time out of ten it is going to be a man who has influence in this town, or has money or has connections in this town. Then he gets convicted of beating his wife. Then they go to this restorative thing, and they look at him for his full life...most [abusers] are...charismatic people. They have good friends and that's the way it is. - Bridgewater

On behalf of policy forum participants, the working group on community definition stated:

Community attitudes and awareness levels will ultimately inform and determine the success of any Restorative Justice process. Women involved in the research pointed out that many of the aspects of systemic discrimination, which exist within the justice system, also exist within the broader communities. Women describe the ignorance of and indifference to woman abuse and women's poverty. This results in woman blaming, partiality toward the abuser, and stereotyping based on gender, race, disability, sexual orientation, age and physical presentation, and overall, a condemnation of women who experience abuse and poverty.

In order for a Restorative Justice model to work for women, it must be situated in a community which is well educated to issues of woman abuse, poverty and systemic discrimination and which demonstrates the will and the ability to address these issues. When woman abuse and poverty are not addressed, there are significant and negative consequences, not only for the individuals involved, but for the community at large. As well, the community must be well informed about the existing larger justice system before it can be reasonably expected to achieve these goals.

This is not the case in our communities at the present time, as has been clearly documented by many studies conducted in our province, the most recent being Dean Dawn Russell's report. In fact the justice community itself is sometimes perceived as perpetuating policies and procedures which fail to address the root causes of woman abuse and discrimination and their subsequent solutions...We have a high level of tolerance in our communities, in our province, in our country, for violence against women, and for the state of poverty in which many women live.

(3) Community
commitment/reciprocity in playing an active role

Women viewed the community justice process as likely to be centred on the person in conflict with the law providing restoration of harm and fulfilling conditions imposed in community justice fora. These women wondered about what could be expected from communities, what conditions would community be fulfilling? Many women interviewed pointed to their experience of child abuse, woman abuse, disability, and/or poverty as being very significant in their going down the road to criminalization because of prostitution, drug offences and shoplifting. They pointed to the lack of community caring or resources available to help them deal with these experiences. Many women felt that living on the street and being subject to criminalization was linked with general community indifference. As survivors rather than “offenders,” many raised the possibility of community justice as a reciprocal commitment between community and a woman in conflict with the law.

Participant 1: So they monitor both sides for compliance?...As well as the offenders agreeing with this, it should be both sides...because the offender may be doing...and the community may not.

Participant 2: The community is agreeing with this and they are not keeping up their end.

Participant 3: Which has been the history. There are women who are getting out there in the community and there is nothing [for them].

Participant 1: Why aren't they doing it? And who holds them accountable for that?

Participant 2: Exactly. Nobody. Somebody should.

Participant 3: Maybe that needs to be part of it, right?

- Truro

They can't teach you about accountability if the role model in front of your eyes is not. - Truro

(4) Community
resources

In order to take on a role of reciprocal commitment, of being a “community of care” in a larger sense than just a woman’s immediate existing supports, communities must have the resources to do so:

If there are no programs in the community, do you think restorative justice can work? - Truro

Women reported their experience of not being able to access any resources relevant to breaking the cycle of criminalization unless they went outside the province or were imprisoned:

I started doing time when I was 17 and I am now 34 years old. I feel confident that when I walk out these doors this time I think I finally have enough skills and enough awareness that I am in control of the choices I make and my behaviour and what I do with my future. I never had the knowledge of that 10 years ago, even 6 years ago. Six years ago I started learning that kind of stuff...after two sentences, I think I finally have enough skill and knowhow to get out there and not come back.

Facilitator: Where did you get that?

I got it in jail. But...why can't we get it out there before we even make it into jail?...Instead of throwing them in jail? Do you see what I mean?

- Truro

There has to be more alternatives to jail [for] services for those who need and want to change. Addictions programs, anger management. I'm concerned that women think they have to go to jail to get what they need...Things are available in the federal that are not in the provincial. You have to get 2 years plus a day to get programs. Women will ask for more time to get programs...out there [in community] is a need to have programs. - Halifax

Here is an example of the attitude toward addictions...they refused to fund any [intensive treatment] for addictions. And they know the need is so high. I had to go out of province. I had absolutely no contact with anyone I knew, no contact with my family. I had to go to another province to get intense therapy for my addiction. I have been an addict all my life, since I was 10 years old. I had to go out of the province to get any help. - Truro

How can you address it if there is nowhere to address it? - Truro

Others pointed out how community resources that did exist in the community failed to meet women's needs and how that inadequacy was a factor in women's continuing criminalization:

I was released and I was still doing good; I was working and everything else...They wanted me to go to [community facility]. I told them I didn't want to go there because I didn't feel safe. Every Tom, Dick and Harry is coming off the street...I was there; there were other women using drugs there, which I knew was not a good place for me. So I called my boss the next day, I went home and I left my clothes there. I would have gone back if they had moved me into another room but there were no other rooms. [This woman was reincarcerated for violation of release conditions] If I had stayed there and used, they would have let me back into society. But I didn't want to use. - Truro

There is no female-only halfway house in the entire Atlantic region. Halifax has a basement section in a men's facility. - Halifax

Look at the areas where they place the halfway houses. There are people with serious addictions who are really trying to work on it, and they are thrown out into the hood where the drugs are coming in your window. - Truro

I'm saying that more women are coming to Federal because they believe that this is where their programs are. - Truro

An obvious linkage for restorative justice-related community involvement in support for woman survivors of abuse and/or criminalization are women's equality-seeking organizations. But women's service providers were very leery of new expectations that would be placed on them because of restorative justice, and anticipated under-resourcing of restorative justice responsibilities in their already existing situation of under-resourcing:

Participant 1: It's just downloading.

Participant 2: Again.

- Sydney

So if we were resourced properly and we could do it the way we are talking here - so the research is done properly, in the way that meets the needs of the community and the women, then yes it would be something we would look at. But we certainly wouldn't get involved in one of those government, "Here is \$10,000 bucks, see what you can do with it." - women's service provider

And then in this community, there is North Sydney and Glace Bay and New Waterford but there is no transportation system. So most of the services that women would access are located directly in the Sydney area. So if you start looking at the women who are in Mabou and in Baddeck and in Ingonish...if we look at some follow up service, how do they get there? Who watches their children? Where does the money come from? - Sydney

What are they trying to do? Trying to say that this [restorative justice] is good for the victim? When they are taking away all these little [support] groups [at transition house]. The government is not giving enough funding for women's groups and then they say this is for the victim. - Bridgewater

(5) Training and status of
local community justice service providers

Many women were critical of the idea that justice processes aimed at the aftermath of male violence towards women were to be handled by volunteers. This applied to both volunteer support people and volunteer facilitators. Reasons for this concern regarding volunteer facilitators included concerns about the training and understanding regarding abuse issues, as well as the operation of community dynamics, particularly in smaller or insular communities. Concerns regarding the use of volunteer

support people for women centred on the lack of status of volunteers within the justice system, and the already existing demands on women serving abused women at the women's centres, transition houses and elsewhere.

Some women saw women who had been in conflict with the law as the best facilitators and support people for restorative justice forums for women involved in restorative justice because of their conflict with the law. However, they felt their knowledge and experience should be valued through being paid.

Women who had fled abusive situations were well aware of the cycle of violence and the power dynamics of abuse. They were very concerned that without the kind of expertise held by transition house staff and others with direct counselling experience with women and children, situations would not be clearly understood and would be mishandled by volunteers who received training that was brief (relative to professionals working in the area of abuse)⁶²:

What scares me here is volunteers. Who is going to train those volunteers? Where do they come from? I worry about the volunteers. - Strait area

A volunteer? No. Not a volunteer anywhere. It should be someone who has some experience...Even if it's the MP of the area I wouldn't feel comfortable. But someone who knows [about the cycle of violence] - the honeymoon stage where they [abusers] express remorse and everything. S. [transition house staff] knows the procedure... - Yarmouth

This leaves well-meaning facilitators who come and volunteer. They aren't going to be trained because they aren't going to tell them. And they are going to put people in danger. - Strait area

62 Volunteers are likely to be drawn from among a pool of community members who are proponents of restorative justice, and may see gendered harms through their lens of belief in the efficacy of restorative justice. Such concerns as expressed by women in this report are affirmed by statements such as the following from one such proponent:

“ [Quoting another source:] ‘Failed communication between the victim and offender precipitates the rape in at least some cases.’ ...and if failure to communicate is the problem, an approach that promotes communication rather than stifles it may well be appropriate...In restorative justice...both parties may learn: on hearing the man's account, *the victim may understand how she behaved in a way that the offender misinterpreted...*” [emphasis added]

from Wright, Martin (2001) “Even for Rape?” (summary of a presentation given at Restorative and Community Justice: Inspiring the Future: An International Conference, March 28-31, 2001, Winchester, England)
<http://www.law.soton.ac.uk/bsln/rj/rjsumwri.htm>

Safety was a prime concern, and volunteers' accountability for safety:

Going back to the safety issue...in terms of people who are going to be sitting in those forums, it should be paid personnel, because I think that there are ethics that come with that [and] there is a safety issue for the victim. The person is paid to be there, so they have been trained...I think that is really important. - Annapolis Valley

Concerns also extended to the volunteers' safety:

In the early days, before [transition house] we used volunteers, and I had huge concerns for the volunteers' safety. There was recognition of them in the community they [the volunteers] lived in, the abuser could know where this person lived, he might have access to their children, he might be able to stalk them, harass them. My experience of what used to happen to me at [transition house] with volunteers helping with transportation...they have no privacy...I [as a volunteer] was called at home, they [abusers] would arrive on my doorstep, they knew where I lived. It was very dangerous; it wasn't safe at all. - Long-time rural transition house staff

Just think about the liability and the issues around the facilitation. I don't know how many volunteers would want to take that on. - Sydney

Some women expressed concern that volunteers from small communities where an abuser was well known or from a prominent family would be partial to him:

When I think of community in Amherst, community would be people who are very close to me. But they are not going to be the people considered community by the [restorative justice] program. It is probably going to be a group of volunteers or whatever who don't really know me. That would be kind of scary, that this is the person facilitating who for all I know is in my partner's back pocket. - Amherst

I think that sometimes in volunteer situations, there will be prejudgements that could occur. We know that in rural communities, things are not always confidential. - Annapolis Valley

Other survivors of violence were concerned about the status of volunteer support people in restorative justice processes and the under-resourcing of existing support for women:

A volunteer person is not looked at in the same way in the court system...as to what that person could go in and say, "I am employed with such and such."...For that person to be able to say, "I am with Family Court...you can not put me out because this is this woman's right...to have an advocate with her." And their whole tone changes, their whole attitude changes toward that woman when she is able to say, "I have an advocate with me." - Black women's focus group, New Glasgow

Women in conflict with the law, survivors of abuse, and their service providers expressed the view that the use of volunteers was a means of cost-cutting and charging community volunteers with functions that rightly belonged with paid justice professionals:

I don't think any facilitator should be volunteer. You're dealing with [women's] lives here - I think it needs to be handled by...a paid position. Their [the NSDoJ's] idea of being community-based is that they don't have to work on any money.
- Sydney

Women addressing the possibility of justice forums facilitated by RCMP officers were uniformly critical of the idea. This was due to their disappointment regarding the trivialisation of abuse by officers, officers' willingness to charge victimized women with assault of the abusive partner and a misogynistic attitude that women described concerning certain individual officers. One woman charged with shoplifting, describes the distress she felt when, in an adult diversion process, she was expected to provide "thanks" to her arresting officer for his involvement in her adult diversion:

He went out of his way to traumatize me throughout this ordeal, and I will pursue action against him when I have fulfilled my obligations. When he arrived at the store he was very verbally abusive and made sure to raise his voice to the point of yelling so other customers could hear. He was rough with me and forced me to get into the patrol car and go to the police station for photos and fingerprints. (I've learned since that most people are given a notice to appear for photos and prints; they aren't forced into the patrol car.) During this whole time I was crying a great deal, and the officer told me, "Shut up or I'll cuff you." I was then taken to an interview room and kept there for some time, crying, before the officer came to tell me there was no one available to take my photos or prints, and that I would have to come back in the morning. I...said that I couldn't come back in the morning because I had no transportation. He said I would come back or I would be arrested...I then got angry and said "You dragged me here against my will for photos and prints. Get someone to do them now or get me your boss." He then left me alone and returned with another officer who said that I could leave and just drop in on my way to my court appearance in a couple of weeks...After, I met with E Fry and my lawyer and I understood that after my initial court appearance, my lawyer could appear on my behalf to update the court on my progress in the program...That same police officer came to remind me of my court date and when I said my lawyer would be appearing on my behalf, he said that I had better be there or he would come to my house and take me to court in handcuffs...□ [I w]as unable to reach my lawyer so I called E Fry who then called the staff sergeant...who advised that I follow the directions of my lawyer and that he would speak to the officer...I've always worried about what would have happened without E Fry...The biggest problem I had [fulfilling my conditions] was writing a thank you letter to the police department.

Another woman described what she saw as a police officer's abetting of her abusive ex-partner's actions in what she believed to be contravention of a judicial order:

The officer showed up at my front door with my ex, and told me my ex was here to pick up his things. I said [ex-partner] was not supposed be here...[the officer] told me to just lock myself in the bathroom while my ex got a few things. I asked them to wait a minute and I closed the door and called my Dad on the cell phone. He came right over, and they [officer and ex-partner] walked back to the patrol car and drove off...

The role of a police officer as referrer/facilitator of restorative justice involving women has potential to greatly reinforce existing systemic discrimination against women at the time of ordinary police action and to reinforce power imbalances between men and women in the context of abuse. Women's response to the possibility of police officers as facilitators was uniformly and strongly negative. During the Policy Forum, one participant described that:

A moratorium is supposed to be in place in Nova Scotia. But incidents in our communities suggest that this is not necessarily being honoured. For example, a recent case in Pictou County, where I am from, at a post conviction, pre-sentence stage, the Crown and RCMP took a woman survivor of violence into a room before sentencing to encourage her to enter into a Restorative Justice process, for what is clearly a...sexual assault.

6. Rural and small community challenges

Remarks regarding the special challenges for women in smaller or rural communities have been interspersed throughout this paper along with other remarks on particular topics. The special challenges women associated with these communities are highlighted here:

- abuser is from the town and the survivor is not:

He is from town and I am not. He has lots of friends. - Yarmouth

- confidentiality challenges:

Small towns gossip...it's just too much for everyone to know...I can't imagine us having to go there and bring the community in... - Bridgewater

- abuser is well-liked, well-connected in small community

He's a great guy...a...champion hockey player, right? - Bridgewater

Through his work, a high position...Where would they get these people who would be on this community forum group? How do you get them, and they know certain people and they're nudge-nudge, wink-wink. - Cape Breton

- transience and over-burdening of justice professionals:

One Crown attorney is really tied up [with a trial], one is working on a [special project] in Halifax... We haven't had a legal aid lawyer. I said "Hey, you need a legal aid lawyer." And he said, Oh, he joined the Justice Advocate position." So he's gone...and [another] mainstay of the Crown's office passed away...[The quality of policing] depends on who your officers are and that changes. We have some excellent, but that changes. - Strait Area

- lesser awareness of abuse issues:

Show them what is right and what is wrong. In some of the smaller communities, a lot of [abusers] don't ever see that. - Bridgewater

- lack of access to services and programs
- lack of privacy for women's support staff

5. Unintended legal consequences of participation in NSRJI

Women identified potential negative legal consequences of participating in restorative justice fora.

Women were concerned about adverse consequences of not fulfilling the conditions, imposed through fora, through no fault of their own. Federally sentenced women decried this possibility and cited the imposition of pre-parole requirements that they were kept from fulfilling in a timely way or altogether:

There should be a time-frame, that if it's with your sentence that that criteria has to be fulfilled, that they can't wait until the last month [of your sentence before offering programs that need to be taken]. They tell you, "You still have to do this here, so we have bumped your parole date further down the road." - Truro

This sounds potentially dangerous, that let's say you go through one of these forums, you make some agreement about conditions you are going to comply with, but they are impossible...because there are no programs out there. Meanwhile, on top of it, not complying gets used against you later. - Truro

I'm more than willing to address any issue they say I have to address. But you've got to meet me halfway...they say, "address this issue" but there is nowhere to address it and then they get in your face for not addressing it. - Truro

Women were also not confident that statements in community justice fora would not be used as admissions or as sources of information for other proceedings:

Participant 1: The Department of Justice will say we are not looking for an admission of guilt. We are looking for an acceptance of responsibility.

Participant 2: What's the difference?

Participant 1: Yeah

- Sydney

Service providers raised caution about the loss of similar fact evidence if discussions in community justice fora or re-abuse in fora are to be removed from the pool of evidence. They were also concerned that abuse survivors who chose not to participate would be seen as unforgiving or uncooperative and that this might affect family law determinations around their parenting.

6. Conclusion: Community justice forums and women's healing needs:

Women's concerns have been canvassed in the above sections. Many women emphasized directly that participation in a community justice forum with their abuser had nothing to do with their healing needs:

You conjure up all this energy and all this strength, and you say, "Listen, I need help, [abuse] is happening." Then you need help, because you are weak. They have taken everything you have. You have done this [left him], you stood up again to him, which you had not done for years, and you said "Help me." ...What kind of help are you getting by sitting across the table from him? - Bridgewater

I can sit here and talk because I know that basically everyone has some part of the same story. I do not want to sit with community members and almost feel like I have to justify my being there. I think we have a hard time justifying taking the guilt, the blame away as it is. We don't need any more. - Sydney

The church has already taken a stand on restorative justice. So the women from the church communities are already in bigger than the wider community...Because the churches are saying, "Restorative justice is good, you need to forgive before your healing process can go on." ...It might not necessarily be for the good of the victim, but what the church stood for. - Black women's focus group, New Glasgow

[Speaking in Spanish]: There are times when women don't want to see their husbands anymore. There are many offenses that we women forgive. And there are some that we can't. That's what I think. - Immigrant woman, Halifax

Until you are really strong enough, [a forum meeting] is almost like you are still giving him part of that control. Send us to counselling and we'll heal quicker than sticking us in a room and looking him in the eye. - Strait area

Give us time to heal. Let us decide when it is right for us to face our abuser again. When the victim is ready for it, not when the justice system has their volunteers... - New Glasgow

We've already heard the empty apologies. An apology is not what you want...You just want to get away from them and out of your life. - Bridgewater

I think you get to a point where you get strong...enough to go to the authorities, you are strong enough to ask for help and you tell somebody what has been going on...but...every time you have to see him you get weaker. - Bridgewater

Women in conflict with the law identified positive aspects of alternative measures, primarily avoiding the brutalization of incarceration, and being given opportunities to address abuse and addiction related needs. However, many were dubious or critical of the “victim-offender” nucleus of community justice fora, and the real worth of a face to face meeting with victims. They highlighted the experiences of being victimized of many women who come into conflict with the law and wondered whether the model as configured would be able to address their needs for restoration of harm:

I think a more holistic approach has to be taken. I think that is a lot of the reason that women offend. They are not getting their needs met and that is the key issue. - service provider, Sydney

I sometimes identify myself with the disability of mental illness...I find that I am often in a position where I feel I need to defend or explain this to others. Because it is not a physical illness or visible, many people do not understand the consequences of having this illness, including the legal system. I get a lot of “just do” this and I will be fine. - Halifax

I'm not clear what is in it for me, other than educating the public or meeting my victims and telling them, “Oh, I'm so sorry.” Am I going to be able to change then? - Truro

I think their whole thing is that once you get it off your chest, you will feel better and you'll heal....I think it would have to include a follow-up. That's why I'm really cynical when it comes to restorative justice. “Now we're going to send you to heal.” That's my concern. Government is great for coming up with these things...they never have the services in place to make it work - Sydney

One woman described, as a part of her alternative measures process, a meeting with social services staff she had greatly inconvenienced because of her offence, in which the staff person directed a great deal of anger at her. She felt this accomplished nothing, and only made her feel more despair, which was ironic, she felt, because her offence was connected to her feelings of stress.

Those advocating mediation and justice forum models of restorative justice for woman abuse and sexual assault crimes may fail to differentiate victims' experience of gendered harms and other crimes, particularly property crimes. As discussed earlier regarding evaluations, much reporting of "victims'" experience of or satisfaction with restorative justice is not specific. At least one proponent of restorative justice for sexual assault explicitly assumes that all crime victims want the same things, and that the dynamics of crime and contrition and healing work in the same way for sexual assault as they may for, say, property crime⁶³. For example, regarding remorse on the part of the assailant: "If contrition is possible for the offender, it is the victim's suffering above all that is likely to trigger it." To the contrary, what Nova Scotia women's service providers have indicated is that for some men, their victims' suffering is exciting or indicative of their continued control, and part of the impetus to continue to victimize. Other Nova Scotia service providers working with violent males have indicated that they are unaware of evidence showing a connection between empathy and reduced recidivism, with regard to sex offenses⁶⁴. The same author makes the broad statement (without citation) concerning victims that: "If healing and reconciliation are possible for the victim, it is the humanization that occurs when the offender acknowledges and tries to atone for what he has done that is most likely to bring it about." Women in this research dismissed reconciliation with their abuser or assailant as necessary for their healing, and described how further interaction could endanger healing that had already taken place. To apply broad assumptions about generalized "victims," "reconciliation" and "healing" to women survivors of male violence, and to woman-abusers, is imprudent and possibly dangerous.

Embedded in the community justice forum model of the NSRJI is the assumption that victims' meeting with persons in conflict with the law, survivors' meeting with their abuser are positive, transformative experiences that are associated with healing. The basis for this assumption is not made clear in the NSRJI vision document. Women in this research raise many concerns about NSRJI from which a negative outcome for such face to face meetings or involvement in dispositions might be anticipated. And, further, many women explicitly rejected the notion that community justice fora as currently configured would promote their healing.

63 Wright, Martin (2001) "Even for Rape?" (summary of a presentation given at Restorative and Community Justice: Inspiring the Future: An International Conference, March 28-31, 2001, Winchester, England) at <http://www.law.soton.ac.uk/bsln/rj/rjsumwri.htm>

64 These observations are based on service providers' phone calls and meetings with the researcher during the drafting of this report.

V. Stories from two survivors of male violence whose assailants participated in non-traditional measures

As described in the section on project design, these two survivors' stories are included holistically as an experiential reference for the contemplation of the prospective concerns voiced by women in the previous section.

A. N's story

N's sexual assailant participated in adult diversion⁶⁵. Initially charged with indictable sexual assault, those responsible for Adult Diversion rejected the case's referral on that basis. The charge was later reduced to a summary offence sexual assault, and referred back to Adult Diversion staff, who no longer were allowed the discretion to refuse it:

"We moved from the area where we were because of the incident...Once we got here and we got safe, I went down and talked with a constable. They did go down and I had a phone call from him after that. He said the accused had confessed, and that he would be charged with sexual assault...I was wondering what was happening and I got a call from a constable saying that one of the crown attorneys down there would not take the case...

"So I called the same day to the crown and said this person [was in a position of trust vis a vis my mental health]. He was [a prominent community member and part of a community group against family violence]. What about his confession?...He had already been taken through the [private institution in which assailant held a position of trust's disciplinary] system because I took him there first and they had all this information I gave them. He lost his credentials because of that at that time...I sent a registered letter...requesting reasons from the crown attorney's office [as to the decision] not to proceed with the charge. I never received any correspondence from the crown at that time. The police said the crown would not prosecute. I could change that and say the police would not lay charges; I could not get any answers.

"Eventually I received letters...saying the case was reassigned. I had a phone call with the constable asking if I was willing to do a videotape statement. I said yes...so I did my interview. My husband also did a video statement. And also [another third party] D did video statements...[The assailant] was [charged]...

65 This case occurred before the change to Adult Diversion policy that now excludes sexual assault charges.

"Then a month later there was a plea date for election and plea...He pleaded not guilty, the trial date was set. Then we were subpoenaed for trial, my husband and I. Then we got a call, I think it was that day. I was called by the constable and asked if I had a problem with this man [getting] Adult Diversion...And I said, "What is Adult Diversion?" He tried to explain that it is something like what the youth get...I came right against it and said, "This is a sexual assault case." I said "because it also means that he gets no criminal record." And he needs to have that, you know, to stop. That's...how I felt...

"Then I got Victim Services to send me a brochure on Adult Diversion so I could see more of what they had to say, which of course made me even stronger in my belief. Then I talked with the crown attorney, told them how much I was against it. Somewhere between the police conversation and the crown, they thought that I had agreed. No, I wasn't, I wanted to make myself very clear...[in the brochure it referred to] contact with victim and offender, mediation - I totally 100% disagreed with that because who would put [an assailant] in with the victim? That is the most unethical thing, the most inhumane thing anyone could ever do to a victim - to put them with the offender in a mediation hearing...

"I wrote to the head crown in the area...He told me the case was being reviewed by two other crowns and one [was in favor of] Adult Diversion and one [was in favor of] trial. [The head crown] still had to meet with [assailant] and his lawyer and [then the Crowns] would come to a decision...Then [my husband and I] received a letter saying we would not have to attend court because he was being given Adult Diversion...[The constable had said it would not be going to Adult Diversion] due to [the assailant's] being a person in a position of authority and considering that this was a serious sexual assault...then a new Crown was assigned. She didn't think that the guy, the predator would get Adult Diversion...but because the Crown had already opened the door to that, they opened it for things like conditional discharge...So then I get a letter saying he was accepted into Adult Diversion...

"I talked to the [local] office and they said they had to take the case because head office made that decision...We talked and I told him I would not be attending the hearing. I said I would write a letter and that could be read at the hearing. There was nothing for my needs through this whole process to be honest. I wasn't offered any safety to attend the hearing and at this time I was being stalked by the assailant's [teen-age] son. [N described harassment which was reported to police, who took no action at the time of the Adult Diversion process, to N's knowledge. After the conclusion of the Adult Diversion process, N's recounts a violent incident involving this boy, again reporting her fears because he was following her, to which the police responded with a verbal warning to the youth, in N's recollection.]...

"I then received a letter [on what the assailant had to do for Adult Diversion.] [N describes what she considered a shamefully trivial disposition]...

"It is actually an amazing story because I didn't believe something could actually go so terribly wrong like this...I told the [Adult Diversion people] exactly how I felt. I was actually crying [because of the trivial nature of the disposition.] [Adult Diversion staff] said, "He has begged for forgiveness through the whole thing." I said, "That's nothing new; he begged for forgiveness the day he assaulted me." The Police knew that. The guy has been very, "Oh, I'm so sorry." Who isn't when they get caught?...They tried to

encourage me to come to the meeting. I told them, I said, "Do you realize the danger?"...So when I got down and told them where I stood they never asked again about my being there...They actually agreed with me that this was not an appropriate case but they had to take it because Head Office said so...

"They do their assessment and then they give them community work, referrals, education...What are you going to educate him on, he was already there [for the assault]. Restitution, charitable donation, I made it very clear I was not interested in any of that...They shouldn't be taking sexual assault cases because [someone] could get hurt in a process like that...They are not set up for that situation...This is not just that someone stole from you and took your car, this is your body, you have to live with this for the rest of your life...

"I got a letter saying he had completed Adult Diversion. After, he was the same as he was, he got his credentials back because of the Adult Diversion [according to the accreditors]. He can still [professionally engage with] women and children...He had no restrictions...He can go anywhere he wants; we had to move...

"He knew all the crowns; he knew the system; he knew how to work the system...This man is walking around like nothing ever happened, basically...

"I refused to go to the meeting because I had already gone through it [within a private institution]. I wasn't going to go through it again. No, [it was not] a healing experience...

"They never looked at the ramifications of what was happening for my family or any of that. It was really hard for my [child]. [Because we had to move to an apartment] my child had to grieve the loss of her pets. We had to leave and...we are still renting..We had to give up her dog. Everything was so quick because we could not live in that kind of circumstance [in the community of the assault.] Then there was my husband...we have all changed. We refuse to let this man destroy our life, but we do have our daily things we have to live by because of one person's decision to violate another. And then to be violated again by the justice system. So, as for healing we are all on our own, whereas his family has support from [local institutions in community of assault].

"I don't remember help from anyone except [women's organization]. Victim Services tried to be there a little bit but because of the time limit for therapy, and all that...They should know that anyone who has been abused will shut up for a little while but there was no allowance even in their department because of the time limit. They said, "You can fight this; there is an appeal process." And I said, "Forget it. I'm so tired of writing letters."

1.

R's story

"My experience was with youth restorative justice...

"The incident was basically...[my son] was charged with mischief. It started out that he was out of control, smashing up things in the home. I felt afraid and felt threatened. I called the police and asked them to come down. They were very reluctant...They said that he was at an age, a limbo age where they can't deal with him as an adult, and he is too big and too old to be dealt with as a child...

“They came and they asked me numerous times was I sure I really wanted to have him charged. They asked that a lot, 3 or 4 times. Before that, I had been in touch with people from Family and Children’s Services. They felt I should stick to my guns and make him be responsible, right? So, reluctantly, I charged him...That night he was charged and arrested by police, and I picked him up at the police station...I was informed at the time that [restorative justice] would proceed whether or not I was involved....I was under the impression that this would proceed to restorative justice whether or not I had any input...So I kind of felt left out at that point. After being told, you know, that they ask for your input and then they tell you regardless of whether or not you do it, they are going to proceed...I didn’t really feel comfortable... I [decided I] wanted to participate, so I did. I went to mediation. It was myself, my son, and two people from restorative justice. At that meeting we basically talked about the incident that happened and tried to work through it. I thought it was more or less to save my son from having a criminal record...It was through the community justice agency...”

“The benefits were explained basically...I would hold my son accountable for his actions and also the end result, that it would not be on his criminal record...I was not prepared [by the Agency] at all. I had to prepare myself. All I was told was the date, the time and the place...”

“I brought my son with me, he was living with me at that time. We met with the two representatives. I think they represented...the panel. At that point, after introductions were over, we sat at a table, and they kind of explained the process...At this meeting my son would accept responsibility for his actions and we would proceed with a plan of restitution and that would be followed by a verbal apology or written apology. Possibly he would express his views in a poem, a picture. It also came down to possibly working for me for an hour or two to work off the damage that was done in a monetary value way. And also the option was put to me for some sort of anger management counselling, so it was the latter one that I chose...”

“Then we set up a schedule of how long they felt he should attend anger management. Basically they told him...that that would be the end of it, and that basically it would be over with...They made arrangements. Rather, they said about making arrangements. I had to call up and make the counselling appointments myself for my son. At that time I think we had agreed that he would attend for like a dozen meetings...so for once a week or once every two weeks we went to see a counsellor. There were 3 or 4 meetings and at that time the counsellor felt my son didn’t have to return anymore...”

“In the restorative justice session I was afraid of being held responsible. Or I felt guilty for letting this proceed to the point it did. Actually, just being there, right? I wasn’t able to express this...”

“I was also concerned for my own safety, more or less my own property, maybe not my own physical safety. I had concerns about my [other children’s] safety...before, during and after the restorative justice session...I had expressed this with the [anger management] counsellor at the time...no one from restorative justice asked if I had safety concerns...”

“My son, I felt like his opinion was I was making him do something that he didn’t want to do. He didn’t acknowledge any sense of responsibility...”

“So that was it. I did hear back from one of the representatives and I informed her that we went into counselling and it was the counsellor’s view [that he was done]...It

was quite a while, about 3 or 4 months afterwards [that the representative contacted me]. I found the whole process quite drawn out. It took almost a year from the time of the incident until we actually had our meeting...

“[Restorative justice] wanted to deal with this situation, and maybe they were more lenient than they should have been. Because I think they could have...if counselling wasn't an option...I thought there was some type of forced counselling for youth of that type, having a lot of problems; I am concerned he didn't get enough counselling...

“[The offense] was extremely terrifying. And well, you feel a sense of loss. Not just for things that are broken and can be replaced but for my son. He was so worked up, such an angry young man. He felt he had to lash out at people closest to him...

“I had hoped that by me participating he could have worked through his anger and that it wouldn't happen again, but that didn't happen...Eventually he decided to go live with his father for 3 or 4 months and then there was [another incident of violence]. At that point he and his [sibling] were brought back to my residence. I had another incident then [involving the youth violently attacking his sibling]. At that point I called the police. They came and again the police officer told me they didn't have anywhere to deal with these things. I said, “He doesn't want to stay here” but they said there wasn't a place for violent young offenders [in the community]...I was told by the police officer that they were tired of coming down and doing this...

“In the [restorative justice session] they didn't delve into any history...I found it very disappointing...[R. described a history of severe, violent woman abuse by her ex-husband (her son's father) resulting finally in a custodial sentence]...I think restorative justice should have taken a different approach...there needs to be something put in place or we are going to have a whole other generation growing up to be abusers.”

VI. Women's vision for restoring the harm of abuse and or criminalization

In focus groups and in individual interviews, women were asked what was needed to restore the harm they had experienced due to abuse or criminalization. Putting aside reaction to NSRJI or to other alternative measures, women were asked to share their vision of what a restorative justice program serving women's needs would look like. Women's responses centred around five themes:

- Woman-centredness and the undermining of systemic discrimination
- Support for women's services and other community resources
- Economic independence and restitution
- Better physical security measures for survivors of male violence
- Community education and activism

1. Woman-centredness and the undermining of systemic discrimination

Women viewed as basic, to any program that was to be truly restorative for women, the involvement of women most directly affected, in planning and development. Many saw room for improvement regarding inclusiveness:

I think that if government actually listened, and put together a holistic program...the key...is for government to listen to what is being said. I love these focus groups, I love to go on and on...about what I think should happen. But I don't believe anyone ever listens...I think it gets written up and it goes to somebody's desk...and there is a pile. - Sydney

Participant 1: When you're looking at restorative justice from a women's perspective, you are dealing with a whole different thing than men. Women commit crimes for different reasons and a lot of them are associated with abuse. The vicious cycle goes on and on.

Participant 2: And then addiction gets thrown in the circle.

Participant 3: If you work the streets to help supplement income...

Participant 2: The woman is the victim all the way around.

Participant 1: They need to stop and listen to what you have to say because you have got something to teach them.

- Truro

They should stop looking at everything else...putting in a very complicated, confusing system into the whole framework that is already a mess. They have to start talking to the victims who have gone through the system. - Strait

This [research] isn't funded by the provincial government, so they don't really care. It is funded by Status of Women Canada...I don't really know what their role is in the

government. It's their way to buy me off. I'm just afraid that you will spend all this time coming up with really good ideas and it will just be thrown on someone's desk. - Sydney

They [policy makers] are listening, but they are not hearing what women have to say. - Yarmouth

If women don't have the input on the way they are handled- I'm talking about women, us. Women, us. To me...the way it would be run is that it would not protect us the way we need to be protected... - Sydney

Survivors of male violence called for a shift from focus on the abuser, to a focus on abuse survivors' needs, including criminalized survivors:

I think that our system is now geared to putting all the emphasis and our money and resources on the abuser...I think there has to be a balance. - Halifax

It's got to be woman-centred, period. In the case of restorative justice for abuse, we are not just looking at the abuser and his needs, we are looking at her needs and restoring... - Sydney

It's completely different for women. Women are involved for different reasons. Women are victimized. Over 80% [of women in conflict with the law have been] subjected to sexual and/or emotional abuse. - Halifax

Women also regarded as crucial to justice, the addressing of systemic discrimination in the justice system and in society generally:

I don't believe that I am lesser than men, but I believe it is a male dominant world, that you always have to fight for everything you want...we have to go back into the courts and fight to have our rights protected again, after going through it already...men are still the rulers. The women are still less than a man. This here [justice system and NSRJI] just reinforces it. - Bridgewater

Law enforcement has to start recognizing this problem. Just like a victim had to recognize that she had a serious problem with abuse, the law does not recognize that they have a problem in a community, in a town, in a province. They do not recognize how serious it is. It is critical... - Yarmouth

A lot of times we don't look at what the root cause is...There is a lot of prejudice in Halifax. - Immigrant woman

[T]he way we are brought up, both men and women have one foot down under when they start out, because men are brought up to be the overseer, or the boss. The woman is brought up in most cases to be subservient...This is where education comes in... We at least can recognize these problems. - We can recognize the big effect. - Sydney

Society's message: You should be with a man. - Halifax

We should be looking at the reason they are called abusers. What is going on in our world that there are so many of them? - Bridgewater

Education on abuse and women's equality issues was needed, in women's view, for all justice system professionals. Women cited outdated and insensitive remarks, actions and attitudes of police, lawyers, judges and other justice system professionals throughout discussions. They felt that mandatory education on abuse, women's equality and cultural sensitivity for judges in particular was needed, who, women felt, would not educate themselves on these issues unless compelled.

Some women called for greater female representation among police, lawyers and especially judges.

Some wished to explore the idea of specialized family violence courts where justice professionals involved would have had substantial training on abuse issues:

I know there was talk about having, I think in London, Ontario...Family Violence Courts. So it is a court system specifically for family violence issues. To me that makes a lot of sense. Because then safety would be a major issue; there would be special space set up properly; there would be security in place. There would be understanding, education and specific judges trained and aware of the issues. I think that would be a really, really good thing. - service provider, Halifax

Women also expressed how excellent it would be if women who had been in similar situations of criminalization were the facilitators of restorative justice. They regarded this approach as a straightforward way to make processes women-centred, and to have people with real expertise in women's experience involved.

2. Support for women's services and other community resources

Lack of community services negatively impacted women's expectations of restorative justice. When asked what a restorative justice program of their own design would include, women uniformly included increased women's services in community. Many women's ideas were as simple as a self-help group that could meet regularly, but women did not have the available resources to do even this without support in many instances.

We need more support for Transition House. We need more of this kind of thing [focus group]... - Amherst

We need a support group with other women on call, women who went through it...a counsellor here for on call support for women. - Waycobah

We need self-esteem, a place like this, Harbour House, where we can tell our stories, sit in a room with others...a support program of some sort, to help in finding a job, or to deal with an illness. You need a lot of information to know how to take care of yourself [after abuse]. - Bridgewater

Comraderie, shelter, services that Black women can use. - Black women's focus group, New Glasgow

Give us more front line workers [at women's organizations]. Instead of spending all this money to stick another poker in the fire, fix what has been nickled and dimed in the last ten years. - Strait area

I'd say the women's centre here is an excellent spot for support. It gives a wide variety ...There has never been a time when I have called and I was put off. It's really support, knowing you are important and that your feelings were important. - New Glasgow

Psychological support. Someone to confide in, someone to talk to. That does not exist for refugee women. - Immigrant women's focus group, Halifax

[Women's advocates] are what women need more and more. And you can't do it with the level of funding government is putting out today. - Black women's focus group, New Glasgow

Instead of trying to reinvent another agency to deal with this, there are agencies there that know the issues: Transition House, Women's Centre... - Elizabeth Fry staff, Cape Breton

If they can make Harbour House stronger, and if they don't have to cut back...Instead of taking away year after year, but giving and allowing things, to have groups like this - Bridgewater

Women in conflict with the law also emphasized the availability of help for addictions in the community as absolutely key to ending their cycle of criminalization.

B. Economic independence and restitution

Women spoke about how abuse was linked to economic obstacles of many sorts. For example, women spoke of how abusive partners cut off employment chances:

They would say, "Oh god, you don't want to hire her. Do you know what an idiot her husband is? He'll be in here all the time, you don't want to deal with that. If we have to fire her or let her go, we are going to have an irate nut on our hands." So they'll avoid that all together and hire the next person. - Amherst

I called from home and said my boyfriend beat me and I'm in bed and can't move. And you are fired...because you wouldn't get that time, you would lose your job. - Bridgewater

Most women exiting abusive relationships suffer economic loss in extricating themselves and have substantial hurdles to a stable livelihood. Women in conflict with the law also face substantial obstacles to stable livelihoods. It is not surprising that many women identified economic help as primary to restoring the harm they have experienced:

Financial compensation. Yes. But not from him. - Halifax

She has nothing, she leaves her house and everything behind...Put her in Harbour House for six weeks and then what are you going to do with her?...It's a constant day to day struggle of poverty. I'm thankful that welfare has helped me until I am able to get a job. But it sucks. It's the day to day constant poverty...how am I going to make \$20 buy \$100 of groceries? A lot of women won't leave their husbands because of...financial reasons. That's why we stay. - Bridgewater

If all of us women who left here from the institution into society [found] jobs, the only ones here would be the lifers, that's it. - Truro

When I moved into a seniors building, all Juniper House could give me were some dishes, sheets and towels. And I had two other friends I knew in Nova Scotia. One gave me a card table...the other gave me pots and pans. That's what I lived with for 4 or 5 months. I had to break into my own [former] home and steal some of my own stuff...He wouldn't even allow me clothes... I had to steal my own clothes [from former residence]. - Yarmouth

She lost her home, lost her vehicle. I'm not on social assistance because [the abusive ex-partner] has a job. If I had let him go away to jail, I would have lost..the truck, everything. That's not fair, especially for the children. Why should they lose their home, lose their vehicle? You should not have to trade your security... - New Glasgow

That is one of the reasons why we are not able to do anything at all in our situation, because we are not stable [financially]. We are immigrant women. - Immigrant women's focus group, Halifax

[It would help] to make it a little bit easier for us to get some kind of assistance, when the only person working in the home is removed from the house. With 4 children it was really difficult. I kept having to defend myself, always explaining what was going on. If they made it a little easier that way, it would help. - Sydney

You are trying to do the right thing, like getting a job. What if you can't get a job, and you have to turn to social assistance, but they are denying it. And you have no choice to resort to [criminalized survival strategies]. And they are saying your ticket is to send you to jail?...You become the victim. - Truro

Women need to be rewarded for leaving a bad situation. - Black women's group, New Glasgow

Federally-sentenced women spoke about how inadequate resources were within women's prisons for job training and education. In particular they decried being told to work on jobs ostensibly for job training but that involved no real world job skills being acquired, and being cut off from using computers and other equipment that they understood would help them with job readiness. For example:

I get stuff out of the closet and pass it to the person. That is the only skill I am getting. I'm taking deodorant and tampons and passing them to the other inmates. That's all I get to do. - Truro

In Maintenance they have all those tools down there. The women could be trained to use them; they can't touch them. - Truro

Women also spoke about how lack of income did not allow them to access services or programs because they did not have transportation or childcare.

C. Better physical security measures for survivors of male violence

A crucial prerequisite to restoring harm is to establish women's safety. Women recommended a number of possible measures to prevent further woman abuse:

- custodial sentencing for crimes involving violence against women
- stricter and better-enforced no-contact provisions for abusive men, including no contact involved with child visitation. (Women cautioned that women should not be criminalized for contact with the abuser subject to such orders, however.)
- forced change of residence for abusers
- follow-up with survivors to monitor their fears
- greater availability of silent alarms for survivors, both personal and for houses
- presumption against bail in cases of abuse or stalking

1. Community education and activism

Women agreed that part of restoring the harm caused by abuse and/or criminalization was community education. This would not only be restorative in relation to particular women, but would be transformative for the community altogether:

I agree with education...It's very important to educate everyone on abuse...It should start at the beginning of the school system. - Yarmouth

I think one thing that should be done is prevention....starting with teens, educating children... Proactive, not reactive. - Bridgewater

Education about cultural differences from community to community. - Black women's group, New Glasgow

I think you really have to look at education a lot...first of all you have to provide...education for women. Then when they know, they can turn for help...Education for our daughters...It depends what you teach them as little girls, that is how they will act. - Immigrant woman, Halifax

More education for the school system and the community...There are so many myths out there. That's one of the problems. - Valley

I think we should all go out and tell the world, then they'll really know what is going on. - Truro

Other women extended the wish for community education to community activism:

It is so terribly important for communities to rise up and do something. - Yarmouth

Some women discussed community openness toward federally sentenced women, which was thwarted by prison administrators. They felt communities should have a greater ability to extend resources to prisoners if communities chose to do so.

VII. Recommendations

Research results were released in the form of a discussion paper to a Policy Forum attended by research participants and leading equality-seeking women's organizations across the province. This discussion paper formed the basis for discussions which were also informed by the Policy Forum participants' many years of experience in the justice system and/or providing services to women accessing the justice system.

During the Policy Forum, four working groups were formed to deal with issues arising out of the research concerning the definition of community, systemic discrimination, women's safety, and community capacities. In the course of these discussions, participants soon concluded that the creation of substantive, detailed recommendations concerning restorative justice's impact on women and NSRJI vision, policies and protocols required more than two days of collective work.

While recognizing that creating a woman-centred alternative model of restorative justice for Nova Scotia could not be dealt with within the time constraints of the Policy Forum, nevertheless women's organizations participating in the Policy Forum agreed on the following key recommendations, which are reproduced here as they were presented to the Nova Scotia Minister of Justice during the Department of Justice Listening Day subsequent to the Policy Forum:

- *First, that the organizations that are here today, do not reject Restorative Justice principles. However, the Nova Scotia Restorative Justice Initiative and the RCMP Restorative Justice Program, as currently configured, are unacceptable.*
- *Second, that the women who have participated in this conference are committed to a further process of consideration of these complex issues emerging from the research and emerging from our discussions in the last two days; [and] are committed to the development of a different model for achieving Justice goals for women that incorporates Restorative Justice principles. And we recommend that the RCMP, the Nova Scotia Department of Justice and its contracting agencies participate with us in a long-term inclusive policy development process.*
- *As that goes forward, we recommend that the moratorium on the referral of sex offenses and spousal and partner violence continue, and further that compliance with the moratorium be monitored through this period through more effective mechanisms, and that the establishment of more effective monitoring mechanisms for the moratorium be part of our first inclusive work together.*

Update: In March of 2003, the first meeting of a joint working group including Department of Justice representatives and representatives of women's equality-seeking organizations from the Management Committee of *Restorative Justice in Nova Scotia: Women's Experience and Recommendations for Positive Policy Development* project will

take place. On the agenda will be moving forward together to provide community education on the moratorium on the referral of cases involving partner violence or sex offences, and the monitoring of that moratorium, as well as to consider the longer term issues of inclusiveness of diverse women in the policy process concerning restorative justice and an examination of whether and how restorative justice might increase women's access to justice in Nova Scotia in a form different from that currently configured.

VIII. Future Directions

A. Improving the policy development process

As discussed in the Recommendations section above, Policy Forum participants felt that it was impossible within the space of the 2-day policy forum to make detailed recommendations to improve NSRJI and the Nova Scotia Department of Justice's procedures and protocols in relation to it. Therefore, while recognizing that substantive, detailed recommendations from women's organizations for a revised NSRJI must await the application of further resources, Policy Forum participants did have conclusions to share regarding improving the policy development process itself, and in questioning some of the underlying views and assumptions present in NSRJI and Nova Scotia Department of Justice approaches to date. These are presented below, and are abstracted from presentations made by working groups to the Nova Scotia Department of Justice Listening Day participants⁶⁶.

1. Definition of community

If restoring harm relates not only to individuals but to "community", as indicated in much restorative justice literature, the definition of "community" for restorative justice purposes is a crucial question that may determine the course of justice in these processes. It is regarded by women's equality seeking organizations in Nova Scotia as a threshold question. Policy forum participants agreed that the intention to restore harm to both individuals and the community begs the questions, "Who and what is the community, and who decides this? Policy forum participants considered this question at length, and working group participants were delegated the task of presenting on this matter to the Department of Justice Listening Day⁶⁷.

With regard to women in conflict with the law, policy forum participants questioned where the real difference between a community- vs. state- oriented approach to justice determinations might lay. They cited the apparent lack of coordination of existing Justice policies and procedures with import to the community as signalling a lack of priority for true community involvement. They also cited the lack of recognition of needs of women in NSRJI as indicative of lack of connection to what has already been identified by communities around Nova Scotia; i.e. the need for women's services.

⁶⁶ Transcripts of full presentations for the Listening Day are available through contacting this researcher, or by request through Avalon Sexual Assault Centre.

⁶⁷ Ideas and comments cited in this section are drawn from the presentation of Mary DeWolfe to Department of Justice Listening Day participants, on behalf of both the community definition working group and the entirety of the policy forum participants.

Policy forum participants questioned whether true community principles and practices were involved in defining the community's role in NSRJI. There was deep concern that a definition of community was operative in NSRJI without input from women seeking to access justice, or from the equality-seeking women's organizations providing services to them. In the working group's analysis, although NSRJI uses the language of "community," it is actually centered on outcomes for the justice system itself and for the person who is in conflict with the law, without apparent consideration for the often special circumstances of the women who are in conflict with the law.

The Policy Forum identified the following with relation to what community may mean for women:

Geography: Recognizing the distinctiveness of rural, semi-rural and urban populations.

Family and friends: Knowing the importance of connection and the real pain women experience when those relationships are in jeopardy.

Culture and language: Understanding and respecting the uniqueness of cultural, racial and linguistic minority groups.

Class: Being sensitive to predominating existing biases, which favour those who enjoy positions of power and privilege.

Common interest in experience: Which requires us to recognize that community cannot necessarily be defined within the context of physical place.

The Policy Forum pointed to the dynamic nature of "community" for women seeking justice: Once women have committed a crime or have had a crime committed against them, their community changes. They may be ostracized, they may be abandoned by their families and friends. They may need to physically remove themselves from their community of origin. Whether the woman has committed a crime or has had a crime committed against her, her community support shrinks and changes significantly. Women experience community differently prior to and after public disclosure of a crime with which they are involved, whether as someone committing or experiencing the crime. Women may experience hostility from individuals and the community at large who once seemed to be supportive.

As the working group further pointed out, crimes of sexual violence and woman abuse often result in division among community members. This division can be particularly intense if the person who has committed the crime holds special status within the community. This may be particularly so in small rural and/or cultural communities. Within these communities, maintaining confidentiality can become very difficult.

Policy makers need greater understanding of women's experience of community and its dynamic nature in the face of criminal justice system involvement in women's

lives. How this understanding shapes the definition of “community” should be a threshold consideration in the creation of community justice initiatives. This determination of the meaning of community should be shaped by women and women’s equality-seeking organizations active in Nova Scotia communities who are valued participants in a policy process.

2. Systemic discrimination and the integration of social justice understanding and restorative justice planning

Some advocates of restorative justice recognize that its success can only be built on a strong foundation established through social justice movements, such as feminist and anti-racist equity efforts. In Canada, concerns about restoration to a racist, sexist status quo through restorative justice processes have allowed for limited support for restorative justice even among those who generally reject punitive models of justice⁶⁸.

Policy Forum participants⁶⁹ agreed that individual women are expected to take responsibility for resolving obstacles arising from sexist, racist and class-based inequities. When they are unable to rectify these situations for themselves, they are often deemed unworthy of help and support. This is particularly so for women in conflict with the law, the most disenfranchised of whom are from visible or invisible minority communities. That the majority of women still do not have economic security, aggravates and increases the potential for further abuse and possibly even criminalized activity. It is the experience of service providers in Nova Scotia⁰ that women who commit crimes often have a history of abuse and poverty and that women often commit crimes out of desperation and real need.

How do these realities mesh with existing restorative justice mechanisms whereby so-called “offenders” are “accountable” for crimes which are survival strategies of women on the losing end of inequality? This question must explicitly be addressed in the policy development processes associated with new restorative justice initiatives.

68 See for example, Kim Pate, (1994) “Response: This Woman’s Perspective on Justice. Restorative? Retributive? How about Redistributive?” at <http://www.elizabethfry.ca/perspect.htm>

69 Ideas and conclusions in this section are largely abstracted from the Listening Day presentations of Darlene MacEachern and Mary DeWolfe on behalf of the Policy Forum. Full texts of these presentations are available through contacting this research or by request through Avalon Sexual Assault Centre.

0 ⁷⁰Based on multiple discussions with staff of Elizabeth Fry Society Mainland Nova Scotia and Elizabeth Fry Society of Cape Breton

Systemic and direct discrimination in the existing justice system must be frankly understood as the context in which restorative justice efforts will be taking place. As stated at the Listening Day, Policy Forum participants indicated that we must recognize that involvement in the criminal justice system is more indicative of the extent to which a woman is marginalized than of one's inherent "criminality." Policy Forum participants held up the example of the impact of discrimination in existing alternative measures programs. They accordingly rejected discretionary referrals for crimes, and asserted that mandatory referrals for those who meet stated eligibility criteria should be the practice. They also expressed concern that communities whose members are already disproportionately represented among those in conflict with the law would be further adversely affected by net-widening caused by prejudice and the presence of restorative justice options⁷¹.

Policy Forum participants stated that inclusion of women most directly affected and the organizations who serve them in policy development processes is a starting point for the incorporation of social justice knowledge into restorative justice initiatives. Appearances of inclusion and words in vision documents are not enough, however. Policy Forum participants made reference to the new vision for provincially sentenced women which was produced in an inclusive way through a Nova Scotia task force and gathered in the document entitled "Blueprint for Change"⁷². It reflected holistic, women-centered, women-only program services and reintegration strategies. However, it was not taken seriously by actual decision-makers, resulting in the super maximum-security provincial jail which is further brutalizing and isolating women who are primarily dealing with serious abuse, trauma, addictions, mental health and capacity issues.

Policy Forum participants confirmed the likelihood of women failing to complete restorative justice agreements involving restitution, in the same way that women were now unable to pay fines which are part of existing alternative measures. The structuring of restorative justice with restitution components must be planned in light of women's poverty and unequal access to economic resources, and in light of current failures in alternative measures⁷³.

71 Darlene MacEachern offered the example from within the Cape Breton community of targeted communities experiencing referral of youths to restorative justice for minor matters,

72 *Blueprint for Change: Report of the Solicitor General's Special Committee on Provincially Incarcerated Women* (Province of Nova Scotia, 1992).

73 See Landau, *infra*, regarding the disproportionately high ratio of women to men among those who fail to successfully complete diversion agreements.

Actual experience working on issues with women in conflict with the law is essential experience for those charged with creating restorative justice measures. Policy participants pointed out that unintended adverse consequences which reinforced women's jeopardy and powerlessness were the likely outcome otherwise. For example, policy forum participants pointed out that if restorative justice referrals were to be used as a bargaining tool to extract information from women in conflict with the law regarding other accused persons, restorative justice participation may label women as "rats" or "snitches" with accompanying dangers.

3. Women's safety⁷⁴

Much of the basis for Policy Forum participants' rejection of the NSRJI as currently configured is connected to its failure to recognize and grapple with the degree of ongoing danger that women face from abusive partners and from sexual assailants. Participants affirmed that safety was essential for women's healing needs, and that by ignoring women's safety issues, NSRJI as currently configured cannot possibly address women's healing.

Policy forum participants concerns involved both physical and psychological safety issues, and reported that the community justice forums as currently configured ran counter to women's healing processes:

As currently configured in Nova Scotia, the Restorative Justice process demonstrates a lack of understanding around the issues of woman abuse and the cycle of violence. It reinforces the power imbalances and puts women at greater risk for further harm, with the potential for further re-victimization. Restorative Justice [as currently configured in Nova Scotia] minimizes the importance of women's physical and psychological safety and increases the possibility of re-victimization during the process. Statistics show that domestic violence increases, post separation.

[As currently configured in Nova Scotia] Restorative Justice would increase the potential for violence in these cases. We have many concerns. The concerns we are addressing today are:

- Women's physical safety, including but not limited to the location of the forums, and the lack of security people present;
- Women's psychological safety: We question what kinds of emotional support she will be given and how this will impact upon her healing process. Placing a woman in a situation where she is face to face with her abuser increases harm to her. This process raises expectations around women's willingness to interact with her abuser and a woman's readiness to fully participate in Restorative Justice options.

Policy Forum participants pointed to the likely magnification of community prejudices and pressures on women who had experienced abuse. They anticipated that these could take the form of pressure to participate, pressure to "forgive," or pressure to

⁷⁴ Ideas and comments summarized in this section are based on the presentation of Shirley Oickle to Department of Justice Listening Day Participants on behalf of the entire Policy Forum and its working group on women's safety.

agree to what are in fact exculpatory disposition plans. They indicated that this pressure can come from her emotional involvement with the abuser, concerns from her children, his family, and the community. Participants also raised concerns about what would happen when a consensus was not reached, and what safeguards would be in place to prevent a backlash against an assaulted woman who did not agree to what might otherwise have been the consensus disposition.

Policy Forum participants stated that the failure to acknowledge and deal with these issues in NSRJI vitiates any truly voluntary nature of women's participation in its processes.

Policy Forum participants also pointed to the high value for women of confidentiality in restorative justice fora. They indicated concern about the ability of those responsible for restorative justice to understand the reasons women need confidentiality and to enforce confidentiality effectively. The working group on women's safety also discussed and presented again on unintended adverse consequences of participating in restorative justice processes particularly if confidentiality were breached. These adverse effects might include the use of information in family law or child apprehension or other community services-related proceedings, the unclear status of statements made in restorative justice fora that amounted to admissions, similar fact evidence, fresh evidence or other information that could impact trials or appeals related to the crime in question or other crimes.

Participants were also concerned about the potential lack of congruence between the approaches of Framework for Action Against Family Violence and NSRJI. They were concerned that NSRJI would erode modest gains in addressing violence against women that were achieved in the current system.

(1) capacities⁷⁵ Community

Policy forum participants cited with concern that those responsible for restorative justice planning had failed to consider possible impacts on women's services. Restorative justice processes were seen as likely to raise demands for women's support services. Women's organizations from across the province are experiencing difficulty in maintaining even existing levels of services. Participants identified the example of the current lack of services in many areas has in fact led women to seek federal sentences in order to access the help they need to make changes in their lives. Also identified were victim experiences related to Adult Diversion that required support services extending through three years or more. These anticipated services include liaison with justice

75 Ideas and comments in this section are mainly derived from the presentation of Bernadette MacDonald to the Department of Justice Listening Day on behalf of all Policy Forum participants and the community capacity working group.

system professionals, emotional support, information referrals, documentation, and monitoring the abuser's compliance. Participants were not sure what additional resources may be needed, associated with the use of victim surrogates. Participants would also expect additional demands for advocacy, in addition to our current efforts with criminal court, legal aid, family court and other community services. Participants also raised that adequate security during restorative justice processes is also a resource issue.

Who would be delivering these services was of great concern to Policy Forum participants. Volunteers were seen as inadequate to handle cases involving violence against women because of the high standards of training and professionalism that are necessary to work effectively in this area. Concerns were raised about the difficulty volunteers may have understanding woman abuse dynamics and the possibility that they may end up reinforcing community prejudices and misconceptions. Participants identified instances where volunteers had not understood the difference between facilitation and mediation. They raised questions concerning the absence of accountability of volunteers and consideration for liability issues, as well as lack of planning for volunteers' safety.

Training for those in the restorative justice system was identified as something that must take place before the beginning of service delivery. Participants were concerned that population-based training to create a diverse and culturally sensitive human resource pool for justice be affirmed as a priority. There was also concern about the removal of these services from the formal justice system where training can be resourced and their transplantation into the community where training resources were not available.

Small rural communities have special needs that do not appear to have been contemplated. Issues of overloading at the community level may be greater for small communities. Concerns also arise about impartiality of community members with relation to matters dealt with through community justice. For example, if the man facing a forum to deal with the aftermath of his abuse of his family members, is also the owner of the only plant in town, how will community members' participation be affected? Confidentiality is also of greater concern in smaller communities. Bernadette MacDonald summed up some of the challenges:

We are concerned about the risks to the facilitators, to the forum participants and to the advocate's support people. As the outcome of the process becomes known, those who feel their voice was not heard, may express an even further lack of trust in the criminal Justice system. In our experience, small communities can be quite insular and very divisive. It is unlikely that 'one size fits all' programming can work.

(2)

Cost savings⁷⁶

Policy forum participants were concerned that no analysis was available prior to planning to determine what cost savings could be effected by a move to restorative justice programming. Participants were concerned that cost savings were to be realized simply

76 *Ibid.*

by downloading justice responsibilities into the community. Alternatively, participants noted that in British Columbia, the government recently announced its intent to save money by lessening the consequences of criminal behaviour.

The only cost savings (other than through down-loading or B.C.-style abdication of responsibility) Policy Forum participants could anticipate lay in the area of recidivism reduction. However, women in conflict with the law have shared over and over again that if they are to make changes in their behavior, they need supportive community programming that addresses their needs. Participants noted this implied more, not less demand for services and, accordingly higher costs.

Finally, women's organizations queried whether any justice system cost savings would go back to communities, an issue which has not been contemplated openly yet with regard to NSRJI.

B. Research directions

There is a dearth of research that gathers the experiences of women with restorative justice, particularly for women in conflict with the law. This needs to be remedied before the contemplation of comprehensive restorative justice programming goes any further. Built in to all evaluations of restorative justice programming should be evaluation of differential gender impacts that includes women's narratives. Reporting of outcomes should be specific as to the types of offences involved, the genders and relationships of those involved in restorative justice processes as an entirety, and the gender and relationships of those participating in research about the processes in question. Further, research processes that are woman-friendly and equity sensitive should be employed during evaluations.

Vision, policy and procedural documents making up the written heart of existing restorative justice initiatives also need to be held up to gender scrutiny. (New initiatives should be incorporating this work into their drafting phase.). The facially neutral NSRJI should be more thoroughly analyzed for gender and other discriminatory adverse impacts and the reinforcement of any institutionalized policies, practices and power dynamics that systemically reinforce discrimination. This analysis should include the identification, documentation and challenging of discriminative norms, including those associated with compound discrimination in all its complexity.

Beyond a general imperative to include gender analysis in the analysis and evaluation of restorative justice programming, research directions for specific issues involving restorative justice and gendered harms or women's conflict with the law are suggested below:

- Data should be tracked as to the demographic profiles of those referred and not referred to restorative justice for all offences. This information should include sex, perceived sexual orientation, community of residence, community of origin, ethnic origin, first language, income level and disability, at least.
- Restorative justice programming may seek to treat offences involving violence against women differentially, depending on whether the assault is characterized as “minor” or “serious.” In Nova Scotia, prior to their exclusion from Adult Diversion, sexual assaults were differentially treated on this basis using the criterion of the Crown’s decision to categorize an offence as summary or indictable. As N’s story illustrates, the use of this single criterion inadequately addresses women’s needs and is vulnerable to manipulation. Further, categorization by offence can obscure the actual severity of events which may not be congruent with charges eventually laid. Prior to the consideration of the inclusion of offences involving violence against women in any restorative justice initiatives, research should take place, involving women survivors and their service providers, police and Crowns, delineating their characterizations of crimes involving violence against women as indictable or summary offences, and as common, sexual or aggravated assaults. Further, information should be gathered in Nova Scotia assessing the congruency of the nature and severity of violence against a woman or women in a particular incident and the type of offence the abuser/s were charged with.
- In order to assess needed training, an awareness “inventory” for justice professionals who are to be involved in restorative justice, whereby levels of understanding of woman abuse and equity issues could be known should be undertaken. To what extent do justice professionals understand the dynamics of abuse and sexual assault? To what extent are they able to identify and reject myths about woman abuse and sexual assault? To what extent do they understand how women in conflict from the law differ as a group from men, and to what extent are they aware of the equality issues impacting women’s experience in the criminal justice system? In the justice system as a whole? Does this level of awareness vary significantly among Nova Scotian communities? Prior knowledge of the awareness levels of justice professionals is essential to any consideration of the implementation of restorative justice.
- What challenges are women likely to face in fulfilling agreements and conditions arising out of restorative justice processes? As women in this research have indicated, poverty, primary or sole responsibility for children, or lack of community infrastructure such as public transportation are conditions adversely affecting women’s ability to fulfil conditions associated with diversion or other alternative measures in Nova Scotia. Women’s and children’s greater poverty and women’s greater responsibility for children, as contrasted with men, would seem likely to magnify these obstacles for women, and to create a disparate adverse effect on women’s ability to fulfil restorative justice conditions, as contrasted with men’s. In a recent evaluation of post-charge diversion conducted by the Department of Justice Canada, two thirds of those who did not have charges withdrawn due to additional convictions within the follow-up period, failures to appear in court or failures to comply with diversion agreements were women, a far

greater proportion than in the entire sample.⁷⁷ What is causing this disproportionate failure rate for women? Why may diversion programs not be working for women in the same way as they are for men? This valuable information should be gathered through narrative research with women who fail to complete diversion programs successfully.

- While not discussed in focus groups, the view judges, social workers and others might take of a woman's declining to participate is an issue that bears further research. Is she likely to be considered uncooperative, evasive of accountability and subject to harsher treatment? A canvassing of justice professionals' attitudes would be helpful in designing measures to safeguard the voluntariness of restorative justice.
- What have been the unintended legal consequences of restorative justice programming? How have individuals' cases been affected? How have groups been affected? For example, will the existence of a restorative justice option increase the likelihood that women will simply plead guilty to charges in order to exit the system as rapidly as possible, and with as little risk to their status as their children's caregivers as possible? Systems should monitor for the possible elevation of inappropriate guilty pleas among women after the introduction of restorative justice measures.
- Positives within the existing system for women need to be identified in order to model and incorporate them into restorative justice planning. Such identification is necessary to avoid losing existing benefits through the implementation of new models.
- The effectiveness of confidentiality guarantees in the restorative justice context needs to be assessed, both over the short term and the long term.
- Women's views of what community is, and how that changes after experiencing male violence or criminalization should be further researched in a way that prioritizes the gathering of diversity of experience.
- Research should be undertaken to assess community attitudes and awareness levels regarding woman abuse, women's criminalization and women's equality in diverse communities in Nova Scotia, prior to the design or implementation of community justice services in that community.
- Circumstances prevailing in rural and insular communities in Nova Scotia affecting women should be identified through narrative research with women for inclusion in restorative justice planning.
- Research identifying the differential impact of justice system measures on Nova Scotia women who are primary or sole caregivers for dependent family members should be undertaken in order to inform restorative justice planning.

77 Landau, T. (2002) *An Evaluation of Post-Charge Diversion: Final Report* (Research and Statistics Division, Department of Justice Canada)

Finally, in furtherance of independent research and the exchange of ideas on restorative justice, research data collected by government should be made available to the public in a reasonable and timely manner.

APPENDIX A
INTERVIEW GUIDE FOR WOMEN IN CONFLICT WITH THE LAW

Age

Are you: Single
 Separated/Divorced
 Widowed
 Living w/partner

Do you have children? If yes, how many children? Ages? Do your children reside with you?

What is your means of income?

Do you identify yourself as belonging to a group that experiences discrimination based on race, ethnic origin, disability, sexual orientation or other personal characteristics - please describe.

What were you charged with or what specific events led to your coming to the attention of the criminal justice system?

What alternative justice process did you participate in?

Did you have legal counsel? Did they play a role in access or completion of alternative judicial processes?

Was your lawyer:
 Paid for by you?
 Paid for by Legal Aid?

Was legal representation beneficial?

Who recommended your alternative judicial process?

Lawyer
Crown Prosecutor
Judge
Arresting Officer
Elizabeth Fry Society Staff
Coverdale
Self
Other

How was the program explained? Did you understand it and feel able to ask questions?

Explained by whom: Police Officer
 Elizabeth Fry Society
 Coverdale

Lawyer
Other

How many court appearances were you required to make before completion of the program?

Describe the programs/processes you completed in the course of the alternative judicial process.

Did you complete any of the following:

- Victim/offender mediation
- Family group conference
- Community justice forum

What are/were the conditions arising out of or associated with your alternative process:

Community

- Letter of apology
- Restitution to victim
- Agreement regarding future activities
- Thank you letter to referring officer
- Charitable donation
- Program referrals
- Program completions
- Commitments from the community to you?
- Other

Did you have difficulty completing the conditions/program agreement?

If yes, in what way?

If no, what enabled you to complete without difficulty?

What is your feeling about requests victims may have had of you? What is your feeling overall about victim involvement in your case?

Do you feel this process, overall, was the best approach for you? Please explain.

Are there personal issues or life factors you feel brought you down the road to conflict with the law? Why? (Please describe.)

Did you find that this process played a part in your personal healing? Please explain.

Did facilitators of the alternative justice process understand the personal issues and life factors in your case? How were these addressed in the alternative judicial process?

How did other justice professionals (judge, police, defence lawyer, Crown) view personal issues and life factors in your case?

How do you feel this process best serves or could best serve the interests of the community?

What does the word “community” mean to you?

Who would make up your “community of care” or supportive community? Who do you turn to for support now?

Do you feel rehabilitation is more effective if the community takes a committed approach to direct work with the person in conflict with the law? Please explain.

Are there any ways this alternative process could serve you better? Please explain.

What programs do you feel you need to address your personal issues/life factors, in addition to or as part of the alternative justice process?

Have you experienced any special challenges, unfairness or discrimination during your journey through the criminal justice system? Why do you think you were treated the way you were? Please describe for the events leading up to and during the alternative justice process. Please describe for past or subsequent charges not handled through alternative justice processes.

APPENDIX B

SURVIVORS OF MALE VIOLENCE INTERVIEW GUIDE

What kind of RJ processes were you involved with?

Deciding whether to participate or not?

Victim/offender mediation?

Family group conferencing?

Community justice forum?

Other?

How did you make your decision to participate/continue to participate in RJ? Was it fully voluntary and informed?

Who approached you initially about RJ?

How were its potential benefits and/or drawbacks explained?

How were you prepared by the community justice agency for participation?

Did your family/community influence your decision to participate? How?

Did the person in conflict with the law influence your decision to participate?

How?

Did the family/community of the person in conflict with the law influence your decision to participate? How?

Did anyone in the justice system influence your decision to participate? How?

Please describe what happened in the RJ processes you participated in, including any agreements or conditions affecting you or the person in conflict with the law.

What safety planning/action was the agency responsible for? What time period did it cover?

What support people were present for you? How were they chosen/recruited?

Were you able to participate freely in the manner you wished?

How well did the person in conflict with the law comply with any conditions/agreements arising out of the RJ process?

What was community follow through on any commitments made in the RJ process?

What were your hopes about RJ? How did you express these hopes? Were these realized? How? What role did RJ process staff and volunteers play in realizing your hopes?

Was this a healing process for you? Describe.

Was this a supportive process for you? Describe.

How did the RJ process help repair the harm you experienced?

Did the RJ process result in the prevention of further violence/offences against you? Against others? How?

Did the person in conflict with the law get help they needed to change? Describe.

If no to any questions above, is there anything that could have happened differently that might have benefitted you? the community? the person in conflict with the law?

What were your fears about RJ? How did you express these concerns? How were they handled by staff or volunteers involved with the RJ process? Did things you feared would happen occur?

Did you have safety concerns for yourself/family members/supporters before/during/after RJ processes? (These may be psychological or physical safety issues). If so were these related to the RJ process itself?

Describe the attitude, statements, and /or behaviour of the the person in conflict with the law during and immediately before/after the RJ process? (If abusive, victim-blaming, put-downs, threatening or intimidating): How was this handled by the community justice facilitator?

Did you have concerns about manipulation of the process by the person in conflict with the law? Did this occur? If so, describe.

For fears that were not realized, was this the result of planning or intervention by anyone involved in the RJ process? Please describe.

Were community justice staff/volunteers involved in the RJ process knowledgeable about abuse?

Were they supportive of you?

What words would you use to characterize your experience of RJ processes?

If you have experience with the conventional criminal justice system because of male violence you have experienced, please compare it to your experience of RJ.

Overall, were you satisfied or dissatisfied with the RJ process? What were the most important elements leading to your satisfaction or dissatisfaction?

APPENDIX C

Focus group outline 1

1. Description of project and Restorative Justice goals and processes, focus group purposes (20 min.)
2. Participants are asked, based on their own experiences with the justice system, to identify issues that abused women are likely to face concerning restorative justice (40 mins.)
3. Break (10 mins.)
4. Participants are asked to discuss what "community" means to them, what community could do to restore harm?(30 mins)
5. Final comments from each participant individually. (20 mins).

Focus group outline 2

1. Description of project and Restorative Justice goals and processes, focus group purposes (20 min.)
2. Participants are asked: What is different for criminalized women in the Justice system and what does that mean for restorative justice? Identifying issues. (40 mins)
3. Break (10 mins.)
4. Participants are asked to discuss what "community" means to them, what community could do to restore harm? (30 mins)
5. Final comments from each participant individually. (20 mins).