

# **Domestic Violence and Restorative Justice:** **Advancing the Dialogue**

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Interest in domestic violence work has been growing for many years in the restorative justice movement, particularly on an academic level. Resources and discussions that connected restorative justice and domestic violence were very few five years ago, but that is changing. Publications such as the collection Restorative Justice and Family Violence (ed. by Strang and Braithwaite), the multi-year consultations between restorative justice advocates, domestic violence workers and victims in the Canadian provinces of Saskatchewan and Prince Edward Island, and the prevalence of domestic violence discussions at restorative justice conferences, are all reflections of this movement's interest in exploring what restorative justice may have to offer, if anything, in cases of domestic violence.

Yet, evidence of actual work in restorative processes with victims of domestic violence and their offenders has been scarce. Several possible scenarios may account for this. First, most restorative justice practitioners realize something of the seriousness and high risks of working in this area, but perhaps lack the resources to properly address themselves to the task, and therefore do not accept domestic violence cases. Second, interested practitioners may be constrained by legal or other gatekeepers who see more risk than benefit in 'opening the door' to referring domestic violence cases to restorative justice programs. Third, it is clear that some of the work that is going on in this area has caused great harm (Busch, 2002; Coward, 2000) and this may cause some practitioners to want to close the door completely, understandably enough. Another scenario is that interested programs and practitioners may desire someone else's 'road map' to use as a guide on their own journey into this area.

The Victim Offender Mediation (VOM) program of the Mediation and Restorative Justice Centre (MRJC) in Edmonton, Alberta, Canada has been conducting restorative dialogue sessions with domestic violence victims and offenders since 1998. We believe that sharing our experience may be beneficial to other interested practitioners, and may have discursive value, as restorative justice practitioners interact with domestic violence workers.

A word about language usage in this paper may be beneficial. The overwhelming majority of our cases to date have involved female victims and male offenders, and our grounding in domestic violence theory and practice is consistent with this gendered imbalance. Certainly, we recognize (and have worked with) male victims and female offenders and recognize the seriousness of those situations as well; still, in this paper, when we refer to "victims", we mean female victims, and by "offenders" we mean male offenders. Second, most of our cases in MRJC's VOM program fall into the category of family violence, so when we refer to domestic violence, we are referring specifically to spousal or partner assault and whatever other abusive behaviours may be related to that violence.

Also, it is important for us to clarify the nature of the cases we have worked on. When we have brought together victims and offenders for restorative dialogue sessions, it has been in those cases where, after thorough screening and case development, we feel confident that:

- The victim's participation is well-informed and genuinely voluntary,
- The victim has the desire, strength, and feeling of safety to represent her own needs and talk honestly and in depth about her experience of his abusive behaviours, and also feels safe terminating the sessions (thereby sending the case back to court) if she is not hearing sufficient remorse or responsibility-taking from her partner,
- The victim feels safe, physically and emotionally, outside of the sessions, and
- The offender is taking meaningful responsibility for his actions, is showing remorse, wants to be able to make different choices in any similar situations in the future, and is open to hearing about her experience of his actions and the impacts those actions have had on her.

### ***Philosophical Priorities***

Restorative justice as a framework for working with victims and offenders in the aftermath of crime has been adopted in a variety of processes and contexts over the years. Although many of the key components of this framework share basic commonalities, the various ways restorative justice is practiced makes it important for each program to clearly articulate its priorities. Below are some of the central tenets informing the restorative justice approach we take in cases of domestic violence. These include a focus on harm, participant safety, offender accountability, opportunities for dialogue, and restoration.

Restorative justice begins with a focus on the harm inflicted and experienced by individuals in the wake of crime. Often this harm is seen as resulting from a particular incident. An assumption of a single incidence of violence within an intimate relationship, however, posits significant concern, given the pattern of abuse that so often exists in relationships where violence has been committed. In cases involving domestic violence, we believe exploring any history of abuse experienced in the relationship, and whether there is ongoing abuse, creates a deeper understanding of the nature and extent of violence in the relationship. A fuller understanding of the relationship in this regard provides a context for assisting participants in identifying and exploring possible patterns of abuse and their impacts. This knowledge can be important in increasing awareness and safety.

Participant safety is a key concern in the practice of restorative justice work. Given that harm has already been experienced, we recognize the risk of further harm ensuing in a dialogue about these painful experiences. We also recognize the reality that women experiencing violence in intimate relationships are at increased risk of further violence (Assessing Violence Against Women: A Statistical Profile 2002). Maximizing safety in our work includes many steps throughout a restorative process, the most important of

which is continuing to be in dialogue with the victim about her sense of safety. Once we better understand her safety concerns, we can work with the victim and connect her with relevant community resources to develop plans.

Responsibility of an offender for his choices, actions and consequences of his actions cannot be overstated as a necessary component of the restorative justice work we have done in cases of domestic violence. The distinction between acknowledgement of violence occurring and responsibility for that violence is significant. Responsibility goes further than acknowledgment in recognizing that the choices made to perpetrate violence were wrong and should not have happened. Without meaningful responsibility being taken by the offender for their harmful actions, a dialogue seriously risks causing further harm and is not likely to be conducive to positive changes in the offender's behaviour.

Creating opportunities for those most impacted by harm to engage in dialogue about the violence and the impacts that have resulted is also a consistent theme within restorative justice philosophy. For victims of domestic violence, having a safe space to tell their story, be heard and validated can be a very powerful experience. For some victims, telling their story directly to the person who harmed them and having the opportunity to ask questions and express emotions can be very meaningful, particularly when combined with hearing an offender take responsibility for his harmful actions. As Kay Pranis writes, "A very important value in restorative justice is that of empowering unheard voices. That is most often and most powerfully accomplished through personal narratives. Listening respectfully to someone's story is a way of giving them power – a positive kind of power." (Pranis, 2002). While the opportunity to participate in a restorative justice process may be an important step in any participants' journey, it is important to keep in perspective that it is only one small point on a much larger journey. Choices and actions are also made prior and subsequent to any restorative intervention, and these will all impact the dynamics of ongoing relationships.

Some of the positive outcomes experienced through restorative approaches have included reconciliation, forgiveness, closure and restoration. These outcomes can be very important for participants, and are some of the healing experiences restorative justice seeks to foster in its work. The danger lies in creating any expectation or promise of these outcomes for participants. They are not outcomes to be manufactured in individuals, rather processes themselves that occur over time and are defined and unfold differently for each person. Because there are no guarantees for how a dialogue may develop or what unexpected emotions may arise, practitioners can only work with participants to identify their needs, reality check around their expectations and assist them in making an informed decision about how to proceed.

It is important to note that the concept of restoration as it relates to our work in domestic violence cases does not aim to restore individuals to a "pre-assault state", the risk of which could be effectively placing people back in circumstances that resulted in violence. Instead, as Llewellyn and Howse say, restoration can be described as the creation or re-creation of relationships of meaningful social equality (Llewellyn and Howse, 1999).

## *Situating Domestic Violence*

Like restorative justice practitioners, domestic violence workers vary widely as to the theory and practice of their work. For example, workers who believe that violence occurs because the abuser has an anger problem will approach domestic violence work with priorities and beliefs markedly different from someone who believes that violence is the result of substance addiction.

Some approaches assert that domestic violence is rooted in dynamics that both parties participate in creating (Systems Theory), and therefore see abuse as a “relationship problem”. Other approaches emphasize the communication component of abuse, claiming that abuse arises out of poor interpersonal communication skills. This view is consistent with the commonly held view that violence is an expression of conflict (witness domestic violence screening models with names such as the Conflict Tactics Scale and the Conflict Assessment Protocol, as well as the common term “high-conflict cases” used to describe relationships where abuse is present).

Still others see abusers as being powerless to control their violence (Grace Therapy) and in need of what amounts to addiction-recovery treatment. Other interpretations of the causes of abusive behaviour emphasize diverse elements such as personality disorders, poor anger control, or childhood exposure to violence, while a common “folk wisdom” belief sees abuse as arising out of women’s nagging.

The sociopolitical or feminist perspective on domestic violence, as articulated by (among many others) Duluth’s Domestic Abuse Intervention Project (DAIP), forms the core of our understanding of our work in this field. This perspective views abusive actions as arising out of a set of beliefs that are informed by patriarchal values and traditions. Abuse is seen as a deliberate strategy to gain power and control in a relationship. Abusive actions, therefore, arise out of an abuser’s choice, not out of an uncontrollable impulse. One consequence of this set of beliefs is that an abuser is solely responsible for his abusive behaviours. Another consequence is the recognition that violence is not an expression of escalated conflict; the motives that inform participation in conflict are distinct from the motives that inform the choice to be violent. Abusive actions can and do arise in conflict situations, and they occur also in the absence of conflict.

The Power and Control Wheel, developed by over 200 abused women brought together in Duluth in the early 1980’s, is a way of articulating the interrelatedness of a wide variety of abusive behaviors. The Wheel identifies that abuse can occur emotionally, verbally, financially, sexually, socially (through isolation), by using the children, and/or by “crazy-making”; abusers seldom employ only one ‘spoke’ on the Wheel in their efforts to exert power and control.

What we have seen in our work to date, and what has been advanced by others, particularly from within the Narrative Therapy community (Jenkins, 1990; Augusta-Scott 2001), is that this approach does not account for the full reality of abusive men’s actions or of women victims’ experiences. One lesson from our casework, contrary to DAIP thinking, is that domestic violence cases exist on a continuum, with single and highly uncharacteristic assaults on the one end, to ongoing and multiple patterns of abuse on the other. This spectrum recognizes that power and control are not motivating factors in

every case; they arise in increasing presence and complexity as one moves along the continuum. Our casework to date has focused on the “less complex” end of this continuum.

Like restorative justice, domestic violence work needs to be rooted in a clear set of values and principles. This provides necessary guideposts while moving through the complexities of this work, whether the ‘work’ is casework, research, training, or simply dialogue about domestic violence.

The set of values we use, regardless of where a case exists on the continuum, are: victim safety, victim choice, offender accountability, and system accountability (by which we mean that legal and support interventions are effective, informed, mutually supportive and mutually accountable). In addition, we recognize two fundamental principles in our domestic violence work: that we must treat each case concretely, not abstractly (Pence, 1999; Daly, 2002) and recognize that each case holds the potential for grave harm.

Victim safety and victim choice are, in the sociopolitical perspective, widely recognized as dominant values (Busch, 2002). Regardless of whether or not the legal system is being effective or whether or not the offender is being held accountable, the victim should be safe from harm and should be able to make choices about her circumstance.

Unfortunately, safety and choice are values that can easily come into conflict with each other. When these values clash, practitioners tend to make one of two choices. Either they prioritize victim safety over victim choice, and make decisions which, while addressing safety, also risk replicating the disempowerment and coercion that are features of the abusive relationship. Or, the practitioner will honour the victim’s choices, a priority which may have tragic consequences. There are no easy solutions to this dilemma. A thoroughly informed reading of the situation, with the full involvement of the victim and possibly other stakeholders, offers perhaps the best hope of honouring both victim safety and victim choice in those situations where they are competing values.

Since domestic violence communities are not monolithic and the different theories about the causes, effects, and treatment of domestic violence result in radically different practices, restorative justice practitioners may benefit from being exposed to a variety of approaches. As this exposure unfolds, practitioners need to keep certain concerns in mind, namely whether a given approach is in any way victim-blaming, whether and how offenders are held fully accountable for their actions, how victim safety is prioritized, and how research supports the claims of the theory.

### ***Challenges to Restorative Justice***

Consonant with the sociopolitical approach to domestic violence, the primary concern in our work is safety, both physical and emotional. By “safety”, we clearly mean the victim and offender’s safety, and we are also concerned about the safety of the couple’s children (if any) and the safety of the offender’s possible future partners.

For restorative justice practitioners, “concern for safety” has a ring of self-evidence to it. Yet, in the context of working on domestic violence cases, the scope of that concern challenges on both a practical how-to level and also on a fundamental philosophical level.

Philosophically, restorative justice has been criticized for lacking an informed and detailed analysis of gendered harms (Stubbs, 2002; Daly, 2002). The core principles of restorative justice, with respect to causing harm, present global statements that harm is wrong and should not occur. What is absent from much of restorative justice literature is an analysis of the contextual specificity of domestic violence, an analysis that reflects the links between patriarchal traditions/beliefs/structures and the experience of women who are either in or have survived intimate relationships marked by abuse. Such an analysis would help increase women's safety by assisting practitioners to understand what they are seeing and the risks related to the choices that they and the participants face.

In the absence of this analysis, practitioners can fall into any number of traps. Dorothy Della Noce points out, whether or not a practitioner is conscious of the theories (or worldviews) that shape his/her practice, "there's always a theory" (Della Noce, 1999). This means that, faced with a case of domestic violence, practitioners would interpret the case in front of them unanchored by supporting frameworks for understanding. Unwittingly or not, practitioners may support the offender's minimizing the violence, interpreting it as conflict or a "communication problem", or make any number of other errors, which detract from seeing violence and abuse as the issues. These errors serve to undermine the victim's experience and put her safety at heightened risk.

Training is another challenge for restorative justice practitioners. There is a strong need for those interested in this field to access quality training in the realities and complexities of domestic violence, in the dynamics of power and control, in the particularities of domestic trauma, and in the difficulties of inviting abusive men to be accountable for their actions. In addition, training and learning need to be ongoing. Programs will have difficult choices to make about moving into the area of domestic violence work, given the already confined budgets of most restorative justice programs and the finite volunteer/staff time available for training and maintaining existing programs.

Appropriate training also challenges restorative justice practitioners to move far beyond the incident-focus typical of restorative interventions (Daly; Busch; Coker; Stubbs, all 2002). Instead, effective responses to domestic violence require that practitioners, both in case development and in the dialogue session, explore the trends, patterns, and circumstances of his abusive behaviours. To accomplish this, an extensive screening model is highly recommended (Girdner, 1990; Zutter, 2002), and should not only be congruent with the principles of victim safety and offender accountability, but also reflect the wide variety of ways that abuse can be inflicted and experienced.

With respect to case development sessions, taking the required time to screen properly and prepare participants for a dialogue is essential. These private meetings assess victim safety and offender responsibility, as well as screening out cases inappropriate for restorative dialogue. The build-up to a dialogue encounter may require several lengthy meetings over a period of time. Similarly, the dialogue sessions are frequently two to three sessions, very few are single sessions, and some have run from five to eight sessions. The dilemma this presents has to do with how programs may struggle with cases that extend over months and require multiple sessions: might a program need to reduce the number of cases it takes, because the domestic violence cases take longer? If a program is paid on a per-case basis, how will taking longer on domestic violence files affect this? Does a program have volunteers who will make a priority of longer-term

cases? At MRJC, we have had to limit the number of domestic violence cases at any one time due to the fact that there are very few of us who are trained to be involved in them.

Another philosophical challenge to restorative justice as it approaches domestic violence work has to do with community. A central component of restorative justice theory is a belief in community's inherent knowledge about how best to handle crime and harm. The dilemma for matters involving domestic violence, however, is that communities have not historically known best in this area, nor have they understood the complexities of domestic violence. "Folk wisdom" about abuse often predominates on a community level and reinforces myths about the causes of and treatment for domestic violence. The consequence of this "wisdom" has typically been victim blaming and minimization of abuse. Restorative justice practitioners must recognize the complicit role the community can play by its either ignoring or condoning domestic violence. The challenge for practitioners is to help participants discern whether their relevant communities are similarly complicit or may be true sources of support.

This reality is related to the long, ongoing struggle of the feminist movement to have domestic violence taken seriously as a public and criminal concern, not as a "private matter". As one part of this struggle, objections have been raised about any movement of domestic violence out of the public domain (i.e. Court) into private processes (especially, but not only, mediation). It is feared that the moral weight of public censure will be lost in this move (Cobb, 1997; Hudson, 2002; Perry, 1994) and that the secrecy of the sessions will, based on the experience of too many abused women in court-connected mediation (and, to a lesser extent, restorative justice processes), result in state-sanctioned revictimization, followed by more abuse. At MRJC, we have routinely heard from victims and offenders that they strongly prefer private, VOM-style meetings rather than involving friends, family, and neighbours. After thorough discussions, separately with victim and offender, participants have with rare exception elected to have sessions attended only by the two of them and the co-mediators. The concern about privatizing continues to be the subject of much discussion among us along with members of the domestic violence community, but to this point, our priority has been to honour the wishes of the victims we work with.

Whether or not participants become involved in mediation-type settings, conferences, or circles, the realities of domestic violence suggest that practitioners may need to recast their understanding of "power balancing". One criticism of mediators and restorative practitioners involves seeing power and power balancing as factors relevant only to in-session interactions. In the case of domestic violence, power dynamics in the room are very important, but usually less so than the dynamics of what is going on between the couple outside the sessions. What subtle or overt coercions might she be experiencing in the lead-up to an "open, honest dialogue"? What price might she pay after a session for what she has said or been perceived to be implying? Our work sees power dynamics treated, not as subtext, but as an issue for full discussion in case development as well as in the dialogue sessions.

The domestic violence community has posed difficult questions and challenges to restorative justice practitioners and programs. Restorative justice programs generally seem to lack credibility in the eyes of domestic violence communities, for a number of reasons. Among them is a perception that in restorative justice, community wisdom is

valued over current research and information coming out of the domestic violence community. Lack of resources or interest in making domestic violence training a requirement for staff and volunteers working in this area also deepens the fear of domestic violence workers that careless and dangerous assumptions are being made about women's realities and safety. Volunteers are often doing much of the work in many restorative justice programs, which raises several questions. How many volunteers have the time and commitment to work on domestic violence cases? What resources can programs realistically allocate to ongoing training for volunteers? Who is ultimately responsible if volunteers make inappropriate choices? This is not to say that volunteers are less able to do this work than staff, simply that there are realistic parameters on the time and resources volunteers may have to devote to restorative justice work. Programs and referring agencies need to discuss what responsibility they bear for ensuring that volunteers, if they are utilized in this area, are properly prepared for the work they are being asked to do.

Credibility needs to be earned on three levels: the theoretical approach, the program standards, and the individual practitioner training, skill and integrity. It is important to demonstrate to members of the domestic violence community how restorative justice work reflects a gendered analysis of violence. Recognizing the vast experience and knowledge domestic violence practitioners have gained working with victims of violence, and being flexible enough to adapt restorative interventions to honour that experience, can help to build the meaningful relationships that are so valuable in developing well-informed practice.

We believe that the creation and maintenance of dialogue with domestic violence workers is vital to our effectiveness and our credibility in this work. Ongoing dialogue about the nature, difficulties, and possibilities of each community's work is what helps keep our work informed, thorough, current, and is instrumental in providing needed support services for both victim and offender. A healthy, mutually supportive relationship with the domestic violence community may help meet restorative justice practitioner needs such as training, access to resources and research, and consultation support. And, like the domestic violence area, restorative justice is dynamic and ever changing, and it would benefit the domestic violence community to be aware not only of what our work is about, but also how our work is evolving.

### ***In Summary***

It has been our experience that restorative justice has much to offer victims and offenders of domestic violence, in certain cases and if certain conditions are met. We have found that this work is never easy, and what we have shared here are some of the learnings and challenges we have encountered along the way. Our experience leads us to conclude that if restorative justice is to be taken seriously as a valuable intervention in cases of domestic violence, it will only be as a result of informed practitioners demonstrating their thorough understanding of the risks (and also the benefits) involved in doing this work. This includes the ability to take meaningful steps to maximize victim safety and choice, and create opportunities for offenders to reflect on their actions and make new choices.

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