

CAN RESTORATIVE JUSTICE RESTORE THE FAMILY?

Examining the restorative justice movement in domestic violence

Escalating verbal and emotional abuse erupted into sexual and violent physical abuse at the hands of her partner. Charges were laid and the man was sentenced to three years in prison where he participated in a life-changing program that addressed his violent behaviour. The woman, compelled by her need to face her past and her concern for the future of their son, requested a face-to-face meeting through a victim-offender mediator. At the meeting, the woman questioned her abuser at length about his behaviour and the changes he had undergone. For his part, the man took full responsibility for his crime, and reassured her that she had done nothing wrong to bring on the assault. The woman verbalized her forgiveness, and they discussed how they would parent their child. Both the man and woman agreed that mediation was the best thing that had happened between them.¹

by PETER JON MITCHELL

The victim-offender mediation or conferencing model incorporates values espoused by the restorative justice movement. Howard Zehr, a pioneer in the field, has defined restorative justice as “a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”² While these values have been applied successfully to property and juvenile cases, limited attempts have been made to address the crime of domestic violence from the restorative justice prospective. A question to ask ourselves is whether or not an alternative justice approach that emphasizes the identification of harms, meaningful accountability and healing in a community atmosphere, could serve as a tool in restoring families and marriages where domestic violence has taken place.

DOMESTIC VIOLENCE IN CANADA

Family violence continues to be a serious concern in Canada. Research suggests that only 28 per cent of victims of domestic violence contact police.³ A recent Statistics Canada study that examined a decade of police reports found that 81 per cent of abusers were reported to police only once within a 10 year period. Researchers hypothesize that many victims are silently enduring continued abuse after initial contact with police.⁴ A growing body of research asserts that children who are exposed to domestic violence are at risk for long-term, negative consequences. Parents develop significantly more negative views toward infants who are born into families where domestic violence is present.⁵ Consequently, these attitudes can lead to the abuse and neglect of children. Despite the risk of enduring ill affects, children remain the forgotten victims of domestic violence.

THE CANADIAN JUSTICE SYSTEM AND DOMESTIC VIOLENCE

The story at the beginning illustrates the ideal outcome when restorative justice values are applied to cases of domestic violence. In practice, the concept is very controversial. At the heart of the debate lies the criticism that restorative justice philosophies place a disproportionate focus on offenders. Conversely, domestic violence scholars and practitioners advocate for a victim-centred approach in justice initiatives. Many domestic violence scholars share concerns regarding the implementation of restorative justice values in cases of family violence. They argue that restorative justice values, apart from the current justice system, would put victims in greater harm.

The Canadian justice system has made significant contributions to the understanding of domestic violence in Canada. The *Criminal Code* defines and denounces inappropriate behaviour in domestic relationships. Clear boundaries are set around constraint and due process is protected under the current system of justice. The system provides practical applications that protect victims, with moderate success, through measures that include the mandatory charging of offenders and emergency protection orders.

The current system of justice also has its shortcomings. The court system does little to adequately address the root causes of family violence. Victims rarely have the opportunity to share their experience free from the duress of adversarial tactics. A report from the Provincial Association Against Family Violence in Newfoundland suggests that the current legal system can be confusing and overwhelming for victims, sometimes leaving them to feel as if they were the person on trial. Too often un-

der the traditional justice system, children who witness adult-to-adult violence are silent victims.⁶ Some scholars have criticized the current model for its inability to protect children from re-victimization.⁷

RESTORATIVE JUSTICE VALUES – CONSIDERING A HYBRID APPROACH

A hybrid approach blending restorative justice values with the strengths of the traditional justice system could provide benefits to victims, children and offenders. Models based on restorative justice values can include, but are not limited to, forms of mediation and conferencing. The process would require willing participants, including offenders who are ready to take responsibility for their criminal behaviour and who seek to make restitution. Victims must be fully aware of the process and feel confident about ceasing the procedure if they feel uncomfortable or threatened. For these reasons, cases would require thorough screening and preparatory work by knowledgeable practitioners. It is fully conceivable that many cases of domestic violence would be inappropriate for this process.

Proponents of restorative justice argue that activities such as mediation or family conferencing allow victims to confront their abusers in a controlled setting. Unlike the traditional court setting, victims have the freedom to share their story on their own terms. This empowering experience can assist victims in the healing process. Empowering victims is beneficial for children as well. Studies have shown that some victims of domestic violence are overly permissive as parents after domestic violence, while others can be too harsh or even abusive.⁸ Restoring a sense of empowerment among victims strengthens the potential for a healthier parental relationship. Offenders who take responsibility for their crimes have the opportunity to make personal apologies to their victims.⁹ This process opens the way for further dialogue, allowing personal healing for victims and offenders. This may bring closure to some relationships or even provide an opportunity to repair marriages, though this may not be healthy in every case.

CRITICISMS OF THE RESTORATIVE JUSTICE APPROACH

Scholars and practitioners who advocate for victims have voiced legitimate apprehensions regarding the use of restorative justice values within the context of family violence. The journey to recognize domestic violence as serious criminal behaviour in Canadian society has been a substantial accomplishment. Some critics have argued that justice systems that endorse restorative justice values as an alternative to the traditional system could move the victims' rights movement backward by softening the underlying understanding of domestic violence as a crime.¹⁰

The intimate connection between victims and offenders in domestic violent crime should raise a cautionary flag when considering implementation of restorative justice initiatives. Some offenders continue to wield power over victims of domestic crime even after an arrest. Many critics fear that victims will be re-victimized through the mediation process, especially

at the hands of under prepared facilitators. Critics have argued that restorative justice values must focus on victims in order to prevent the risk of further abuse through the process.

CONSIDERATIONS FOR POLICY MAKERS

Developing a hybrid justice approach for certain cases of domestic violence provides some intriguing possibilities for the rehabilitation and restoration of families. Consideration of how a hybrid model might include the needs of children in the justice process would be a valuable exploration. The viability of a hybrid model remains to be determined as considerable cautions require careful evaluation. Further research would benefit from the consideration of the following questions:

- How might children of domestic violence be assisted through justice initiatives?
- What do victims require from the justice system?
- How could a hybrid model address the tension between retribution and rehabilitation?
- How should the community interface with intimate relationships destroyed by violence?
- What other forms might restorative justice values take in regard to domestic violence cases?
- How might a hybrid model meet current challenges in the justice system concerning cases of domestic violence?

The implementation of restorative justice values in cases of domestic violence remains controversial. Cautious exploration may contribute to the continued evaluation of the current model of justice and promote healthy policy discussions. The current system enshrines the criminality of domestic violence and due process; however, it also has its shortcomings and falls short in meeting the needs of victims and their children. A hybrid approach could begin to address these needs in some cases of domestic violence. Recognizing the inherent risks, ongoing examination of restorative justice values in domestic violence cases is worth consideration as outcomes could benefit marriages and families in the future.

endnotes

- 1 Atlantic Community Justice Project, Stories File, Community Legal Information Association of PEI, Charlottetown, PEI, N.D., pp. 11-12
- 2 Zehr, Howard. (2002). *The little book of restorative justice*. Intercourse: Good Books.
- 3 The Canadian Centre for Justice Statistics. (2006). *Family violence in Canada: A statistical profile 2006*. p.6. [Electronic version]. Retrieved from <http://www.statcan.ca/english/freepub/85-224-XIE/85-224-XIE2006000.pdf>
- 4 IBID.
- 5 Hayes, J., Trocmé, N., & Jenney, A. (2006). As cited in Alaggia, R., & Vine, C. (Eds.), *Cruel but not unusual: Violence in Canadian Families*. Waterloo: Wilfrid Laurier University Press.
- 6 Provincial Association Against Family Violence. (1999, June) *Keeping an open mind: A look at gender inclusive analysis, restorative justice and alternative dispute resolution*. St. John's, Newfoundland. p.24. [Electronic version]. Retrieved from <http://www.thanl.org/pdf/OPENMIND.pdf>
- 7 Maloney, L., Reddoch, G. (2003, June 1) *Restorative justice and family violence: A community-based effort to move from theory to practice*. 6TH International Conference on Restorative Justice. p.6. [Electronic version]. Retrieved from <http://www.sfu.ca/cfrestorativejustice/fulltext/maloney.pdf>
- 8 Hayes, J., Trocmé, N., & Jenney, A. (2006). As cited in Alaggia, R., & Vine, C. (Eds.), *Cruel but not unusual: Violence in Canadian Families*. Waterloo: Wilfrid Laurier University Press.
- 9 It should be noted that while offering an apology is an important element of relational repair and closure, it can also be employed by offenders as a tool of abuse contributing to a cycle of violence.
- 10 Stubbs, J., (2004). Restorative justice, domestic violence and family violence. *Australian domestic and family violence clearing house; Issues Paper 9*. p.4. [Electronic version]. Retrieved from http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issues_Paper_9.pdf