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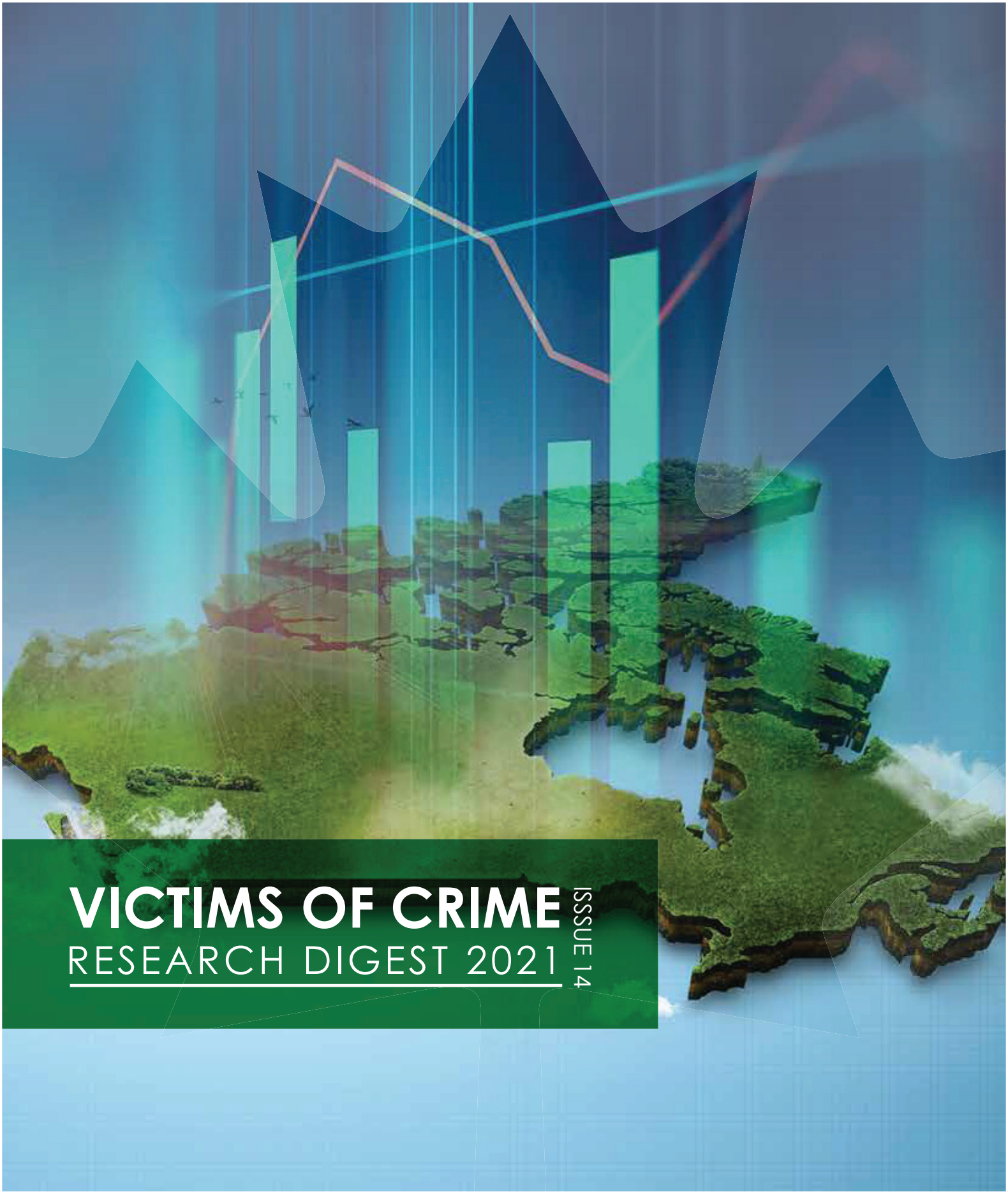

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We invite your comments and suggestions for future issues of Victims of Crime Research Digest. We may be contacted at rsd.drs@justice.gc.ca.

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Introduction

Welcome to Issue No. 14 of the *Victims of Crime Research Digest!* The current theme of National Victims and Survivors Week, **The Power of Collaboration**, recognizes the important role that partnership plays in continuing progress. We know that as a country, we have made significant advances within the criminal justice system and victim services field to increase collaboration and better respond to victims' needs. We also know that enhanced, multi-disciplinary coordination and partnerships are essential to increasing and strengthening the supports available to victims.

All research requires collaboration on some level, such as between researchers and participants or those with relevant data. We are pleased to present several articles that highlight collaboration in the context of supporting victims of crime. Justice Canada Researcher Shanna Hickey provides a summary of what we know about Child on Parent Violence and Aggression, a complex form of family violence that demands multi-sectoral, coordinated responses. There are two articles on restorative justice and gender-based violence. In the first article, Justice Canada Senior Researcher Jane Evans provides a summary of research in this area. In the second, the Ending Violence Association of British Columbia (EVA BC), along with Just Outcomes Inc., report on workshops held in the fall of 2020 that brought together restorative justice and gender-based violence practitioners and advocates to examine research gaps and collaboration opportunities. In the last two articles, criminal lawyer Kanchan Dhanjal and Justice Canada Principal Researcher Susan McDonald summarize case law on restitution since 2015, and Justice Canada Senior Researcher Cherami Wichmann summarizes a report by Professor Ben Roebuck and others on male survivors of intimate partner violence that was originally prepared for the Office of the Federal Ombudsman for Victims of Crime. While the final two articles do not explicitly focus on collaboration, they are based on a concept of criminal justice as a collaborative undertaking that must engage and involve victims and survivors.

As always, we hope you enjoy the *Digest* and look forward to connecting in person once again in the not-too-distant future. Note that in 2022, we hope to return to publishing print copies.

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Child to Parent Violence and Aggression: An Introduction

By Shanna Hickey and Susan McDonald[1]

Introduction

Understanding and awareness of the various dynamics at play in family violence have evolved significantly over the past four to five decades (Barnett, Miller-Perrin and Perrin 2010). As terms such as "wife assault," "woman abuse" and "battered women" became common in the late 1960s and 1970s, the first women's shelters were established at a very grassroots level. The federal Badgley Commission in the early 80s (Committee on Sexual Offences against Children and Youth 1984) brought child abuse into the spotlight for Canadians, as adults testified to the abuse they had experienced at the hands of family members or trusted adults. In 1983, dramatic amendments to the *Criminal Code* replaced the offence of rape with three levels of sexual assault (Roberts and Gebotys 1992). More recently, the abuse of seniors by family members — often their principal caregivers — has also been recognized. Growing numbers of researchers and professionals (see Weegar 2017) now recognize other forms of family violence, such as Child to Parent Violence and Aggression (CPVA). While CPVA has always existed, greater understanding, research and advocacy has helped to pull it out of the shadows and into discussions about prevention and interventions.

This short article provides an introduction to CPVA by examining research from Canada and other countries, as well and Canadian statistics on family violence and the complexity of the COVID-19 pandemic. It concludes with outstanding questions for Canadian researchers, policy analysts and the general public to consider.

Terminology

Child to Parent Violence and Aggression (CPVA) is also known as adolescent–to–parent violence (APV), child to parent violence (CPV), adolescent violence in the home (AVITH), and adolescent to parent violence and abuse (APVA) (Bonnick n.d.; Selwyn and Meakings 2015; Thorley and Coates 2018). CPVA, the most widely used term, is used in the remainder of this article.[2] It can be defined as a pattern (as opposed to a one-off incident) of violence and aggression by children and adolescents which causes parents, caregivers, siblings or other families members to experience fear, loss of control or altered behaviours in order to avoid further violence or altercations (Adopt4Life 2020; Selwyn and Meakings 2015; Thorley and Coates 2018).

Little research has been done on CPVA in Canada. In the UK, where there is a greater level of general awareness of CPVA, a fair amount of research has been done, including a 2018 survey and an ongoing evaluation of programs to determine which interventions work.

What do we know about CPVA?

Researchers and experts have yet to agree on a definition of CPVA, in part because it affects families with many different backgrounds and needs, including adoptive families, families of origin, special

[1] The authors would like to acknowledge the knowledge translation work of the Mental Health Commission of Canada, which helped highlight CPVA and its prevalence in Canada.

[2] Note that not all studies discussed used the terminology CPVA; however, for consistency in this article, the term CPVA is used.

guardians, children with Special Educational Needs and Disability (SEND), and children with complex trauma histories (Adopt4Life 2020). Behaviours that are common in CPVA include: coercive control; domination; intimidation; physical, verbal, psychological or financial threats to gain power; and physical and verbal assaults (Selwyn and Meakings 2015; Thorley and Coates 2018). The inclusion of intent in the definition is contentious as many parents and caregivers argue the complexity of underlying mental health and special needs prevents their child from having an intent to harm (Adopt4Life 2020).

The causes of CPVA point to a complex relationship with trauma and UK researchers argue that understanding a child's relationship with Adverse Childhood Experiences (ACEs) is critical (Thorley and Coates 2018). Researchers have noted that children may have witnessed or experienced domestic violence; may have had pre-natal exposure to, or are currently using, substances; may be involved in the criminal justice system; and may have difficulties at school (Bonnick n.d.; Cottrell 2001; Thorley and Coates 2018). Researchers have also found that children with SEND are overlooked in the CPVA literature, but often have many of the relational complexities of CPVA (Thorley and Coates 2018). Furthermore, researchers are curious about the long-term impacts of having a complex or tumultuous sibling relationship (Thorley and Coates 2018).

There has also been discussion in the literature of the gendered nature of CPVA, akin to "mother abuse" (Cottrell 2001; Selwyn and Meakings 2015). There are several ways in which gender dynamics can play out. One example is that children who witness intimate partner violence against women may learn that such violence is acceptable or may be hostile toward their mother for not protecting herself from abuse (Selwyn and Meakings 2015). Researchers have indicated that the statistical trends cannot be fully understood without more data, but some postulate that girls' violence is less likely to be reported than boys' violence (Selwyn and Meakings 2015). Another possible explanation of the lower numbers of female child perpetrators is that police are more likely to pursue action when a male child perpetrates violence against his mother rather than a female child (Selwyn and Meakings 2015). This research has yet to explore similar power dynamics with non-binary or transgender children, parents and caregivers.

CPVA tends to inspire feelings of guilt, shame and isolation in parents. Parents' social supports, friends and family members begin to dwindle as they become less willing to engage in chaotic family dynamics, pass judgment or experience burnout (Selwyn and Dibben 2017). Parents often wait long periods — even years — before reaching out for help and few know where to get help. If not the police, to whom do they turn? In a UK study, three-quarters (75%) of parents surveyed reported that professionals lacked the expertise needed to help with CPVA and overall, that parents felt blamed for what was happening when they sought supports (Selwyn and Dibben 2017). Child protection investigations can compromise parents' employment, especially if they work in social services or as psychologists, psychiatrists, teachers or coaches (Selwyn and Dibben 2017). A May 2020 Huffington Post describes the phenomenon, including the immense challenges faced by parents and available resources (Treleaven 2020).

Canadian Statistics

Statistics Canada published its latest family violence statistical profile in March 2021 (Conroy 2021). The profile provides data from police-reported incidents of family violence in 2019. The latest profile notes that in 2019, out of 399,846 victims of police-reported violence in Canada, 102,316 — approximately one-quarter (26%) — were victimized by a family member. Two-thirds (67%) of family violence victims were female.

The perpetrators of police-reported incidents were most often the current spouse (31%) or a parent (20%), followed by a former spouse (13%), a sibling (11%) or a child (11%). A larger proportion of female victims than male victims experienced violence from a current or former spouse (51% versus 29%,

respectively), while male victims were more likely than female victims to experience violence by someone other than a spouse (71% versus 49%, respectively).

While the proportions of child and sibling perpetrators (11% and 11%) are less than those of current or former spouses (31% and 13%, respectively), they are significant and warrant attention.

Although few empirical studies have been completed in Canada to date, the following Statistics Canada table illustrates decreasing numbers of police-reported violent offences committed by youth aged 12–17 years against biological parents, legal caretakers, and other immediate family members, such as biological, step, half, foster and adopted siblings.

Table 1: Incidents of police-reported violent offences by youth, by select accused to victim relationships, for Canada, 2009 to 2019[3]

	Relationship of the Accused to the Victim					
Year	**Child[4]**		**Other immediate family[5]**		**Total**	
	Number	**Rate**	**Number**	**Rate**	**Number**	**Rate**
2009	2,806	8.4	1,904	5.7	4,710	14.1
2010	2,393	7.1	1,840	5.5	4,233	12.6
2011	2,364	6.9	1,768	5.2	4,132	12.1
2012	2,399	7.0	1,733	5.0	4,132	12.0
2013	2,191	6.3	1,519	4.4	3,710	10.7
2014	2,074	5.9	1,405	4.0	3,479	9.9
2015	1,846	5.2	1,358	3.8	3,204	9.1
2016	1,824	5.1	1,368	3.8	3,192	8.9
2017	1,847	5.1	1,420	3.9	3,267	9.0
2018	1,818	5.0	1,398	3.8	3,216	8.8
2019	1,629	4.4	1,297	3.5	2,926	7.9

Source: Uniform Crime Reporting Survey, Statistics Canada.

[3] Includes victims where at least one accused was identified and whose age was between 12 and 17 years old. One incident may involve multiple victims. Violent offences refers to the most serious violation against the victim. Rates are calculated per 100,000 population. Data were not available by gender.

[4] Child refers to the natural offspring of the victim, or that the victim has legal care and custody (i.e., foster child, adopted child) whose age was between 12 and 17 years old. Children under the age of 12 cannot be charged with a criminal offence.

[5] Other immediate family refers to the natural brother or sister of the victim or step/half/foster/adopted family brother or sister whose age was between 12 and 17 years old. Children under the age of 12 cannot be charged with a criminal offence.

The numbers show a steady decline from 2009, when the total rate was 14.1 victims per 100,000 population, to 2019, when the total rate was 7.9 victims per 100,000 population. Throughout the past ten years, the number of parent victims has been higher than the number of other immediate family member victims.

To explain the 10-year downward trends in police-reported incidents, Canadian researchers wonder whether aspects of the larger context have changed. For example, are more services available to families so they do not need to call the police? Have attitudes changed about the value of reporting incidents to police? Has the violence decreased in the past decade? And if so, why? Further research is needed to fully understand this trend.

Canadian Research

In 2001, Canadian researcher Barbara Cottrell from Nova Scotia published a short overview of parent abuse, its effects and contributing factors, the involvement of the criminal justice system and helpful ways to move forward.

Cottrell notes in her report that parents in Canada are legally responsible to provide for their children until they are 19 years old. CPVA complicates this responsibility, especially should police become involved. Cottrell further notes that many parents hesitate to contact police for fear that assault charges will be laid either against a child or themselves (for acting in self-defence). Some parents report that police involvement led their child to become more angry and resentful, and some parents felt a loss of control after contacting the criminal justice system. As with other studies (Meier 2018; Selwyn and Meakings 2015), the report notes that some parents felt guilt, fear and isolation and needed support to reassume a compassionate and kind leadership role in their families.

In 2017, Crime Prevention Ottawa published a summary report by Kelly Weegar, a PhD candidate in Psychology at the University of Ottawa, detailing current research about a trend of rising incidents of family violence among non-spousal family members.[6] The report mentions CPVA alongside non-spousal family violence, sibling violence, parent violence, and homicides. Weegar (2017) notes factors that increase the risk of CPVA include exposure to family violence; a weak bond with parents; adolescent depression; substance abuse; and power-assertive parenting practices (Calvete, Orue and Gamez-Guadix 2013; Ibabe, Jaureguizar and Bentler 2013; Ibabe and Bentler 2016).

Another essential aspect of CPVA to consider and understand within the Canadian context is the higher rates of family violence in Indigenous communities compared to non-Indigenous communities. Systemic injustices created and perpetuated by federal policies, programs and laws led many First Nations, Métis and Inuit children and families to experience abuses and intergenerational trauma. It will be important to examine the links between colonization and CPVA in the Canadian context.

[6] Weegar (2017, 3) looks at national data on homicides and notes that non-spousal family homicides increased from 73 to 99 in Canada from 2014 to 2015 (17.7% and 22.0% of all solved homicides each year, respectively), whereas the number of homicides involving a current or former intimate partner declined (20.8% in 2014 and 18.4% in 2015. Source: Statistics Canada 2016).

Research from other countries

Australia

In 2019–2020, Family Safety Victoria and the Centre for Excellence in Child and Family Welfare completed a project on CPVA. The project explored youth violence in the home through an online survey, a focus group and a symposium (Centre for Excellence in Child and Family Welfare 2020). Results of this study confirm a lack of evaluated programs in the field that target adolescents who use violence in their homes, as well as a shift in language: service providers no longer use the word "perpetrator" to describe young people who use violence (Ibid.). The study identified gaps in existing research, including: how to work effectively with adolescents with a disability who are violent in the home; which services to access for support to assist young people; and early interventions (Ibid.). Challenges for service providers included: information sharing across sectors; knowing when and which services to refer; a lack of service supports for children under age 12; and inclusive programming for Indigenous families, same-sex partners and those from diverse backgrounds (Ibid.). The study also highlighted a number of effective strategies: boundaries and consequences for behaviour; accountability; respite for parents and caregivers; addressing shame and blame for all family members; and exploring how young people feel about violence.

United Kingdom

In 2013, United Kingdom researchers Selwyn, Wijedasa and Meakings surveyed parents who had adopted children between April 2002 and March 2004, collecting information from a total of 390 families with 689 adopted children. Following the survey, researchers interviewed 35 parents who had experienced an adoption disruption[7] and 35 who had described family life as "very difficult." Also included in the study were: 12 adoption managers who had supported and responded to requests for help; 10 social workers who had placed or assessed the placement that had been disrupted; and 12 children who had experienced a disruption. Findings indicated that gender was not a factor in adoption disruption.[8] Authors noted that a similar number of boys and girls were adopted each year, and that neither gender nor ethnicity were associated with greater risk of disruption. Age, however, was a factor: children who experienced an adoption disruption were older on average when they entered into care than those with intact adoptions (three years old versus one year old, respectively). In addition, teenaged adoptees were 10 times more likely to experience disrupted adoption than younger children.

Selwyn and Meakings (2015) completed two additional studies for the Department for Education and one specifically for the Government of Wales.[9] Using national data,[10] the researchers found that disruption occurs relatively infrequently (roughly 3% of all adoptions in both England and Wales). Following the methodology of their previous work, the researchers selected and interviewed 20 Welsh

[7] Adoption disruption was defined as a child who had been adopted out of care and who had left their adoptive family before the age of 18 years old.

[8] This part of the research focused on children who had an adoption disruption vs. those who did not (intact). Data used was collected from the national survey of adoption managers and other sources (which is listed in the methods section). Data was only available for 1/3 of the sample, therefore some data is missing for some children and looked at children between 1998 and 2002 while other data ranged from 2000 to 2012.

[9] Selwyn J., Meakings S. (2015) Beyond the Adoption Order (Wales): Discord and Disruption, Report to the Welsh Government.

[10] The data supplied was collected annually from every local authority from a dataset known as the SSDA903. This dataset tracks children's care careers in terms of placements and changes of legal status.

adoptive families (10 who had experienced disruption and 10 who had described parenting as "very challenging").

Parents had mixed experiences with professionals; some felt that the professionals had contributed to parents' sense of shame and blame, while others felt they had received good support. Families who felt better supported by a team noted that it usually consisted of multidisciplinary support including social workers, psychologists, mentors and sometimes even occupational therapists or educational psychologists (Selwyn and Meakings 2015). Further, families reported that social workers who consistently took their child's side failed to recognize the power and control dynamics already dominating the family relationships. Researchers also found that parents whose child "left home" were statistically more likely to feel blamed by professionals in comparison to parents whose child was still at home.

Between November 2016 and March 2018, Selwyn, Magnus and Mitchell (2019) evaluated three interventions in the London area: three-day training for professionals; a one-day workshop for adoptive parents; and an 8-week group program for adoptive parents. The goals of these interventions were to understand CPVA and to teach skills of non-violent resistance and therapeutic parenting.

At the three-day training, participants included 16 women and three men; all were therapists, social workers, consultants, nurses or educators. Half of the professionals had several families struggling with CPVA. After training, professionals expressed confidence in helping parents and/or children change the ways of thinking that contribute to CPVA; in assessment, interviewing; and giving parents the skills to deal with CPVA.

The one-day workshop involved 48 adoptive parents. Of these, 22 (46%) completed a questionnaire before and after the workshop. Between them, these 22 parents had adopted 13 girls and nine boys who ranged in age from six to 20 years, with the average age being 11 years. After the workshop, parents reported greater confidence in their parenting skills and that their knowledge of CPVA had improved either "quite a lot" or "very much."

The group program involved eight weekly three-hour sessions and attracted 64 families. Of these, 57 (89%) completed a questionnaire at the beginning of the program and 49 families (77%) completed a second questionnaire at the end of the program. Researchers also conducted follow-up telephone interviews with eight parents. Most participants (n=34, or 60%) were seeking support for their sons and 40% reported their child had a physical, neuro-developmental or emotional/behavioural difficulty.[11] Many families also received additional telephone support either from another parental adopter consult or from PAC-UK[12] while participating in the parenting group. Out of those who responded to the second survey, all, but one parent, found the supports they received "a bit useful" or "very useful" with 88% stating it was "very useful." In addition, 72% of the parents responding reported increased parental presence in their child's life due to learning strategies from the course. When asked which parenting strategies had been most useful, 94% reported de-escalation techniques. After the training, almost all parents (98%) reported they were confident that they could meet their adoptive children's needs, which was an improvement for 26 parents who had reported differently during the pre-training questionnaire.

In a 2020 article in the *Journal of Interpersonal Violence,* O'Toole et al. present the results from a qualitative study exploring perspectives of CPVA among practitioners in the United Kingdom. In the study, 25 practitioners in diverse fields (e.g., youth justice, police, charities) participated in four focus

[11] Examples included: learning difficulties, autism spectrum disorder, attachment issues and asthma.
[12] PAC-UK is the United Kingdom's largest independent Adoption Support Agency. For more information see www.pac-uk.org

groups. Three key themes emerged: the need for consistent definitions of CPVA; the need for professionals to have a better understanding of CPVA risk factors; and the need to identify effective responses to CPVA given that current reporting methods were considered ineffective and potentially harmful to families. Importantly, the study called for a coordinated, multi-agency CPVA strategy.

Another qualitative study conducted in the UK involved a total of eight participants in two CPVA intervention programs. All participants had been violent not only with their mothers, but also with siblings and step-fathers. The researchers conducted face-to-face interviews with the participants and recorded participant behaviour observed during the interviews. The researchers, Papamichal and Bates (2020), noted key themes related to social contexts and the participants' perceptions of their emotional states. A key finding, echoed in other studies (Thorley and Coates 2018), is that CPVA links with adverse childhood experiences, unsatisfactory relationships with parents, perceived emotional rejection by parents, and emotional dysregulation in young people.

Spain

In a 2021 Spanish study, researchers Junco-Guerrero, Ruiz-Fernández and Cantón-Cortés, investigated the direct and indirect effects of exposure to violence within families; insecure attachment in the family system (manifested as disengagement and/or preoccupation); and how youth justify CPVA toward mothers and fathers. A total of 904 high school students aged 13 to 20 years participated in the study. A quarter of the students (25.4%) acknowledged having committed serious (more than six incidents) psychological assaults against their mother and 20% against their father. Concerning severe (three to five incidents) physical aggression, 2.2% of the participants acknowledged that they had committed it against their mother, and 1.7% against their father. Researchers measured participants' violent behaviour with the Child-to-Parent Aggression Questionnaire, and also used other standardized questionnaires. Researchers observed strong relationships between exposure to violence within the family, emotional insecurity, justification of violence, and CPVA toward mothers and fathers. The results showed that youth exposed to violence at home tend to be more aggressive in the future compared to youth who had no exposure to violence at home. These results suggest that prevention and treatment of CPVA should focus on improving security within the family system, as well as modifying attitudes toward violence.

Other Countries

Most of the articles reviewed in this short introduction to CPVA have been about studies from the UK. There is also work underway in several other countries, both in academe and in service organizations. For example, an article by Ilbaca Baez et al. (2018) describes the first analysis in Chile on the prevalence of CPVA. A total of 1,861 youth between the ages of 13 and 20 years participated in the study (48.1% boys; 51.9% girls) by answering questions about CPVA. The findings showed that psychological, economic, and physical aggression was directed against mothers more frequently than against fathers. Female participants were more likely to be psychologically aggressive, while male participants were more likely to be financially and/or physically aggressive.

Meier (2018), an Iowa State (United States) graduate, wrote an open letter to social workers drawing on her own experience with professionals as she parented seven foster children, five of whom she adopted. In the letter, Meier provides several pieces of advice to the professionals who support families facing CPVA: families desperately need help; they need to feel that professionals believe their experiences; and they would like professionals to use simple language. Families would also like professionals to avoid

undermining parent-child relationships, and to understand that families need support with difficult emotions and tough situations (as opposed to always emphasizing positive aspects of situations).

COVID-19 context

In the spring of 2020, Condry, Miles, Brunton-Douglas and Oladapo (2020) from the School of Law at the University of Oxford in England undertook a study to understand the impact of the COVID-19 pandemic and government restrictions on families with regards to violence and abuse. The researchers accessed parent and service-provider survey data, held discussions with policy colleagues, and conducted a Freedom of Information request to obtain data from several police services. The researchers analyzed resources available during the pandemic, along with the resources and services that policy makers and parents felt should be in place to protect families during government restricted periods and thereafter. The final sample included 104 parents with children aged 10-19 years who had experienced CPVA and 47 practitioners who worked with CPVA families.

Parents and service-providers reported that violence during the first lockdown increased (70% of parents reported increased violence and 69% of practitioners reported increases in referrals). More than half (64%) of the practitioners also noted increased severity of violence. Respondents attributed increases in violence to:

- loss of freedom and forced proximity/confinement;
- changes to routines and structures;
- increased levels of fear and anxiety; and
- decreased access to both formal and informal supports.

Interestingly, about one-third (29%) of parent respondents reported declines in CPVA during lockdown; they explained this, however, as a reduction in stress and triggers for violence. Some families impacted by the COVID-19 pandemic have embraced the slower pace, decrease in extra-curricular activities and increased opportunities to reconnect (Condry, Miles, Brunton-Douglas and Oladapo 2020). These families and associated service-providers were particularly concerned about how things would unfold as the lockdown eased. Other families have found the pandemic to be distressing; the isolation has decreased their ability to cope and/or to access their support networks (Ibid.).

Concluding questions

CPVA in Canada is not yet fully understood. Canadian researchers and policymakers are encouraged to explore many questions, including: Do Canada's current family violence data adequately capture CPVA? How do professionals in Canada respond to CPVA? How does parent and caregiver trauma impact the way parents respond to violent children and adolescents? Where are there gaps in services? And which services would best help families avoid crises? How have colonialism, racism and intergenerational trauma from residential schools, the "sixties scoop," and ongoing child welfare practices impacted CPVA among Indigenous peoples? How do families that include queer or gender non-conforming members — already at greater risk for violence — experience CPVA?

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Restorative Justice and Gender-Based Violence:

A Look at the Literature

Summary by Jane Evans

This article presents excerpts, selected by the Department of Justice Canada, of a discussion paper shared with participants in advance of facilitated dialogue sessions on restorative justice and gender-based violence. The Ending Violence Association of BC and Just Outcomes hosted these dialogue sessions in 2020.

Introduction

Restorative justice (RJ)[13], part of Canada's criminal justice system for over 40 years, is based on an understanding that crime is a violation of people and relationships. RJ can be defined as an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime (Federal-Provincial-Territorial Working Group on Restorative Justice 2018b). RJ encourages meaningful engagement and accountability, and provides an opportunity for healing, reparation and reintegration. Some key principles[14] of RJ include respect, empowerment, safety, and inclusivity (Federal-Provincial-Territorial Working Group on Restorative Justice 2018b). In recent years, growing recognition of the limited ability of the mainstream criminal justice system to meet the needs of victims/survivors of crime has increased interest in RJ (Bourgon and Coady 2019).

Generally speaking, RJ models may be employed at any stage of the criminal justice process, from diversion through pre-sentence and post-sentence processes. The models usually involve a third-party facilitator or a respected community member (such as an Elder for Indigenous community-based programs) who accompanies parties through a process of exploration, preparation, dialogue and follow-up. RJ requires that all parties participate voluntarily and that offending parties accept responsibility.

Gender-Based Violence (GBV) is violence committed against someone because of the victim's gender identity, gender expression, or perceived gender. It includes several types of violence, such as intimate partner violence and sexual violence[15] (Women and Gender Equality Canada 2018). Victims and survivors of GBV experience significant short- and long-term impacts, and have distinct needs in their pursuit of safety, recovery and justice.

The power dynamics and imbalances inherent in cases of GBV necessitate victim/survivor-centered

[13] Not all proponents of collaborative, reparative and/or healing approaches to justice prefer the term restorative justice (RJ). However, given its prevalence, RJ is used in this paper for ease of communication.

[14] In 2018, Federal, Provincial, and Territorial Ministers (FPT Ministers) Responsible for Justice and Public Safety published *Canadian Principles and Guidelines for Restorative Justice in Criminal Matters*, which articulates the purpose, principles, guidelines and safeguards expected within RJ practice nationally.

[15] Intimate partner violence refers to violence perpetrated by an intimate partner, including a current or former spouse, common-law partner or dating partner. Sexual violence is an umbrella term that includes child sexual abuse, sexual assault, sexual harassment and sexual exploitation. It is also important to note that sexual violence may occur within the context of intimate partner violence. For the purposes of this research paper, the discussion of RJ in GBV cases does not address child sexual abuse.

approaches to justice that prioritize victims/survivors' needs and restore power to those harmed. In the aftermath of GBV, victims/survivors frequently feel dehumanized and disempowered; a victim/survivor-centered approach ensures that victims/survivors have opportunities to decide what happens next and how it happens, particularly in their pursuit of justice.

While the mainstream criminal justice system offers one way to address GBV, its limited abilities to meet the needs of GBV victims/survivors and to hold offenders accountable inspires most victims/survivors to look elsewhere for support and healing outside the system (Boutilier and Wells 2018; Prochuk 2018). The mainstream criminal justice system treats GBV victims/survivors as witnesses to their own victimization, provides them few opportunities to participate meaningfully in processes, and can expose them to potential re-victimization (e.g., during trial). According to the 2019 General Social Survey, only 19% of intimate partner violence cases were reported to the police by the victim or someone else (Conroy 2021) and only 6% of sexual assault cases were reported (Cotter 2021). GBV victims/survivors "often [have] complicated, drawn out, and harmful interactions with legal systems" (Mogulescu 2020, 233). As Koss and Achilles (2008) argue, "the conventional justice system is very good at doing little to respond to sexual assault reports" (2008, 10). RJ offers another pathway toward justice for victims/survivors of crime, but is used with great caution in cases of gender- and power-based crimes.

Many theorists and practitioners suggest that since RJ positions the needs of victims/survivors as a central starting point for the pursuit of justice, it represents a beneficial alternative or complement to mainstream criminal justice processes. The roots of RJ can be found within aspects of some Indigenous legal traditions, faith traditions and critical criminology. The hallmarks of RJ can include: direct participation and input of both accused/offenders and victims/survivors; focusing on the harm that has occurred and on the possibilities for healing; asking those who have caused harm to take direct responsibility; attending to the wider repair required within the community; and identifying how to prevent future harm.

Those working in the GBV sector, such as victim services workers and advocates, have often reacted with caution, skepticism or outright dismissal when asked to consider RJ for victims/survivors of GBV crimes (Goundry 1998). A moratorium was placed on the use of RJ processes in GBV cases within most contexts in British Columbia (BC) based on past critiques of feminist and GBV scholars and advocates (Cameron 2006). Although many GBV-sector advocates remain cautious about the use of RJ in cases of gender- and power-based crimes, additional responses to GBV are being explored that prioritize the needs of victims/survivors.

This article summarizes historical and current literature that explores some of the concerns and benefits related to the use of RJ in GBV cases. This article highlights changes in the literature over time to help foster an evidence-based, victim/survivor-centered, cross-sector examination of RJ processes in GBV cases. It aims to inspire discussion and strives to avoid promoting a particular viewpoint or outcome.

RJ and Victims/Survivors of Crime

In considering RJ discourse as a whole, the needs of victims/survivors are positioned as central to justice. For example, "the main focus [of RJ] is … on repairing as much as possible the harm caused. Support for the victim, then, is the first and foremost important action in doing justice through reparation" (Walgrave 2008, 628). This view is echoed by Ada Pecos Melton who, in exploring the connection between Indigenous justice and RJ principles, writes: "The victim is the focal point, and the goal is to heal and renew the victim's physical, emotional, mental, and spiritual well-being" (2005, 108-109). Umbreit and Armour have suggested, "[c]ore to restorative justice principles is the

understanding that it is a victim-centered process. This means that the harm done to the victim takes precedence and serves to organize the essence of the interaction between the key players" (2010, 7). This emphasis on victims/survivors' needs also reflects the victim/survivor-centered approaches vital to the anti-violence sector's work to support and empower victims/survivors of gender- and power-based crimes.

In Canada, RJ has gained increased national recognition, supported by international evidence that suggests promising benefits for participants. In 2018, Federal, Provincial, and Territorial Ministers Responsible for Justice and Public Safety (FPT Ministers) expressed support for the increased use of RJ processes (though not specifically in GBV cases), at all stages of the criminal justice system to help modernize the system and promote safer communities (Federal-Provincial-Territorial Working Group on Restorative Justice 2018a).

This commitment is backed by public support from many Canadians who called for increased use of RJ as a way to transform the criminal justice system (Department of Justice Canada 2018a). In a 2017 Department of Justice Canada national survey of Canadians (n=2,027): 80% of respondents agreed that criminal justice officials should be required to inform victims/survivors and accused of the availability of RJ processes; 62% thought that RJ would provide victim/survivors with a more satisfying and meaningful experience than the mainstream criminal justice system; and 87% indicated that victims should be able to meet with offender(s) and tell them about the impacts of the crime if they wish to do so (Department of Justice Canada 2018b).

Internationally, discussions continue regarding the appropriateness of, and the risks associated with, using RJ in cases of serious crime, although there is growing recognition of the importance of providing an opportunity for victims to make informed choices about the possibility of dialogue and reparation. In addition, it is recognized that RJ can be blended with conventional criminal justice responses to address some of the gaps left by mainstream justice responses and to better respond to victims' needs (UNODC 2020).

Although support for RJ has increased, some RJ practices may be more offender-focused and fail to meet victims/survivors' needs due to several factors. The factors include: inadequate preparation of victims for RJ processes; victims feeling used by the RJ program as instruments for offender rehabilitation; victims feeling pressured to participate, to forgive the offender, to under-represent the intensity of their emotions and/or to move quickly through the RJ process; victims feeling that their views are not taken seriously; victims feeling re-victimized by the RJ process; concerns about practitioner competency; and lack of follow up. Some studies report that victims had negative opinions of the offender's sincerity, genuineness and likelihood of reoffending (Koss 2014), while others raise concerns that diversion-based RJ could cause more harm if it fails to adequately accommodate the needs of victims (Marsh and Wager 2015).

Psychiatrist and trauma-recovery researcher Judith Lewis Herman (2005) similarly observed that, "because the [RJ] movement has been highly defendant oriented at the grassroots level, it has reproduced many of the same deficiencies as the traditional justice system with respect to victims' rights" (p.578).

Early Literature on Addressing GBV Through RJ

Historically, the use of RJ in cases of GBV has been contested and controversial, both within RJ scholarship and among commentators from other disciplines (Edwards and Sharpe 2004), including advocates within the GBV sector. For example, Howard Zehr, at the start of the modern RJ movement,

indicated that "domestic violence is probably the most problematic area of application, and here caution is advised" (2002, 11).

Alan Edwards and Susan Sharpe (2004) undertook a literature review concerning the use of RJ in the context of intimate partner and family violence, documenting some promising outcomes (Pennell and Burford 2002, 110-121), as well as the failures of some programs operating under the auspice of RJ to provide for victims/survivors' safety and meaningfully hold abusers to account (e.g., Coker 1999; Griffiths and Hamilton 1996; Stubbs 2004). Edwards and Sharpe (2004, 22) concluded that while "restorative justice holds theoretic promise as an intervention in domestic violence […] evidence demonstrates that the risks are real: domestic violence victims (and their families) have been further harmed through inappropriate discussion that was intended to help them."

Feminist scholars and those who work in the GBV sector have also been cautious and, at times, resistant toward the use of RJ processes in cases of GBV. For example, the British Columbia Association of Specialized Victim Assistance and Counselling Programs (BCASVACP, 2002 – now the Ending Violence Association of BC, or EVA BC) highlighted a number of pertinent concerns about RJ. Along with those listed above and pertaining to all victims/survivors, these also relate to intimate partner violence and sexual assault, and include: failure to screen out cases involving current violence; inadequate safeguards for victims/survivors; inadequate accountability of perpetrators of violence; offender rehabilitation and reintegration trumping victim/survivor safety and well-being; dialogue sessions that reinforce destructive power imbalances between the victim/survivor and perpetrator; and underfunding, resulting in undertrained staff and/or low program capacity.

In 2006, feminist legal scholar Angela Cameron argued that although RJ may offer victims/survivors an option beyond the mainstream criminal justice system, this option has not yet been well implemented so could not be safely used in GBV cases (Cameron 2006). Consequently, at that time, Cameron concluded that "there must be a moratorium on *new* western RJ or Aboriginal justice for cases of intimate violence until more research has been completed" (2006, 59, emphasis in original) because using RJ in cases of intimate partner violence "without clear evidence that it is safe and effective, is gambling with the lives and safety of Canadian women" (59). Since then, a number of studies, within Canada and internationally, have explored the use of RJ in GBV cases.

Contemporary Literature on Addressing GBV Through RJ

Across Canada, conversations within the RJ and GBV sectors are ongoing, and many victim/survivor advocates continue to raise concerns about the safety of victims of GBV. Criticisms "often involve safety, accountability and the relegation of violence against women to the private sphere" (Goodmark 2018, 373). These concerns and those identified in the past still exist today and need to be considered and addressed.

However, Goodmark argues that while it is important to attend to "feminist cautions about safety [these] are not a reason to abandon restorative practices" (2018, 381). Studies have also found that victims/survivors want to "know their choices and [be able to] decide which justice option they want to pursue" (Wemmers 2017, 15). Feminist law professor Melanie Randall found meaningful resonance between RJ principles and feminist scholarship, noting, for example, that "although the project of achieving gender equality has not been central to restorative justice, its commitment to equality in social relationships is certainly consonant with this goal" (Randall 2013, 466). She argued that the shortcomings of the criminal justice system for women who survive violence make it imperative that approaches like RJ be examined as potentially viable options for victims/survivors. Randall further

suggested that, if pursued in a victim/survivor-centered manner which incorporates both the critiques and the expertise of GBV scholars and service providers, options such as RJ have the "potential to develop more radical, nuanced and transformative remedies than we currently have" (Randall 2013, 498).

A recent annotated bibliography on RJ and sexual violence by the Department of Justice Canada (Bourgon and Coady 2019) reports on outcomes from several studies, including increased victim-satisfaction rates and victim sense of control, and decreased risk of re-victimization and post-traumatic stress symptoms (Daly 2006; Koss 2014; McGlynn et al. 2012). A study by David Gustafson (2018) of 25 victims/survivors (approximately half of whom had experienced sexual violence) found that after completing facilitated victim offender dialogues, they had substantial reductions in post-traumatic stress symptomology, including reduced patterns of withdrawal, physiological arousal, intrusion and shame.

International research suggests a complex picture for the application of RJ in cases of GBV. For example, a study conducted by Emily Gaarder (2015) found that RJ conferencing had mixed success with meeting women victims/survivors' needs and with contributing to ending intimate partner violence. She concluded, however, that, "restorative processes have some ability to create positive changes in cases of intimate partner violence, when grounded in the experiences and contributions of the battered women's movement" (2015, 363). More recently, promising evaluative data was documented from some victim/survivor-centered RJ initiatives in the United States, including a survivor-initiated, post-sentence, therapeutic model used with cases of intimate partner violence and other serious crime cases (Miller 2011; Ptacek 2017).

A 2018 New Zealand survey of victims who had participated in a RJ process found that, "victims of family violence cases were the most likely to report feeling better after their conference (76 percent), compared with 70 percent of victims in standard cases and 67 percent of victims in sexual offending cases. Victims in family violence cases were also statistically significantly more likely to say that "undertaking the conference process made them feel a lot better (55 percent compared with 38 percent of victims in all other cases)" (UNODC 2020, 74).

While some studies have shown promising outcomes, it is important to note that empirical research exploring the use of RJ in GBV cases remains limited (Gang et al. 2019; Singer 2019), and "very little is known about the potential advantages and disadvantages of RJ specifically for crimes of gendered violence" (Miller et al. 2020, 65). Also noteworthy is the vast variability of RJ practices and programs, which adds complexity to the question of whether and how RJ "works" in GBV cases.

A recent literature review highlights a number of RJ models that have been used in the United States, New Zealand and Europe (Singer 2019). The author concluded that using RJ in GBV cases is a complex process. Care and a nuanced approach are required to ensure the safety and security of victims. The models that were developed successfully were done so in cooperation among GBV experts, RJ practitioners and criminal justice system providers (Singer 2019).

Standards for the Use of RJ in GBV Cases

The GBV sector has considered whether RJ may be appropriate in GBV cases for many years, recognizing the unique experiences and needs of victims/survivors. There have been a number of attempts to articulate minimum standards.

In the late 1990s, the BCASVACP (now EVA BC) recommended a number of standards specific to program concept and design, funding, referral and screening, victim support, training, transparency,

privacy and confidentiality, tracking and record-keeping, and evaluation.

In 2019 following their review of 34 programs, Cissner and colleagues outlined three guiding principles for using RJ to address intimate partner violence and/or sexual assault. The principles include: centering responses on the agency and safety of the person(s) harmed; engaging the person(s) causing harm and community members in an active, participatory process of accountability; and recognizing the importance of culture, including being "mindful of the tension between honoring and appropriating Indigenous practices" (Cissner 2019, 50).

Emphasizing a victim/survivor-centered approach, Goodmark articulates the importance of RJ being organized "around the needs and timing of the person who has been harmed" (Goodmark 2018, 381). Additionally, effective and safe RJ approaches to addressing GBV necessitate extensive training, both in RJ approaches and in the complex dynamics of GBV (see Keenan 2018; Goodmark 2018) and highly experienced and specialized facilitators. There are also specific tools/guides that have been developed to facilitate the effective use of RJ in cases involving sexual violence and domestic violence (see Mercer and Sten Madsen 2015).

The United Nations has encouraged Member States to develop guidelines on the use of RJ processes in the context of violence against women (UNODC 2014) and several countries have developed RJ standards in cases of family violence and sexual violence (see New Zealand Ministry of Justice 2013 and 2018). The standards recognize the need for additional safeguards and processes in these cases. This is to:

> . . . maximize the chances of healing for all parties, and minimize the chance of the process itself inadvertently causing harm, further consideration needs to be given to the psychological needs of the victim/survivor and the person who caused the harm, the psychological components of the harming behaviour, its impact on surrounding community such as family and the impact of cultural beliefs about sexual violence (UNDOC 2020, 4).

While remaining generally cautious, the literature suggests that the principles of victim/survivor empowerment, healing, inclusion, prevention and offender accountability are embedded in RJ. Miller and colleagues (2020) emphasize that despite theoretical arguments against the use of RJ in GBV cases, it would be prudent to not overlook the potential benefits for victims/survivors. Also given that many GBV victims/survivors in Canada choose not to report to police (see Conroy 2021; Cotter 2021), RJ could be a path to healing and addressing the harm caused by crime (Wemmers 2017; Zinsstag 2017).

Revisiting the Conversation

RJ practices centered on the needs of victims/survivors and responsive to the distinct impacts of GBV, have the potential to "further feminist goals and provide those who have been harmed with justice" (Goodmark 2018, 382). In revisiting the conversation about the use of RJ in GBV cases, anti-violence workers and RJ practitioners may benefit from aligning key objectives, including engaging with the community, employing a feminist and intersectional analysis, and centering victims/survivors through supporting their autonomy and amplifying their voices (Goodmark 2018, 372).

National discourse is moving the RJ field toward greater responsiveness and rigour with respect to

victims/survivors' rights and needs. There have also been recent calls in the Canadian context to develop and assess programs that respond to GBV outside of the criminal justice system through approaches based in RJ principles (see Boutillier and Wells 2018).

In BC, increased discussion and scrutiny of RJ as a response to crime raises questions about its use in GBV cases. It is important to address these questions in a pro-active, careful and intentional manner given potential risks and benefits for victims/survivors.

It is within this context that EVA BC and Just Outcomes worked with the Department of Justice Canada in 2020 to undertake facilitated dialogues in BC with RJ, GBV, Indigenous, and immigrant leaders to explore the use of RJ in GBV cases. While acknowledging historical and ongoing barriers and concerns, the objectives of the project were: to foster dialogue; examine the risks and potential benefits of restorative approaches to address GBV; increase awareness of the dynamics of GBV; and identify research gaps and best practices in the use of RJ in GBV cases.

For more about these facilitated dialogues, see the next article in this issue: Restorative Justice and Gender-based Violence: Revisiting the Conversation in British Columbia by the Ending Violence Association of BC and Just Outcomes.

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Restorative Justice and Gender-based Violence:

Revisiting the Conversation

in British Columbia

By Ending Violence Association of BC and Just Outcomes

Introduction

Across Canada and internationally, conversations about the intersection of Restorative Justice[16] (RJ) and Gender-Based Violence[17] (GBV) are ongoing, and available research illustrates the complexities of applying RJ in cases of GBV. Some people who work in GBV are cautious and/or skeptical about current approaches to the application of RJ in cases of GBV.

Recognizing the unique experiences and needs of victims/survivors of GBV, questions about whether and how RJ approaches may be used in cases of GBV surfaced in the late 1990s. Several concerns were raised then, including inadequate safeguards and supports for victims/survivors, inadequate accountability mechanisms for offenders, lack of training on GBV among RJ practitioners, a strong offender focus of RJ initiatives, pressure on victims/survivors to participate in RJ programs, power imbalances in RJ processes, and increased risk due to offenders' motivation to engage in RJ programs.[18]

RJ practices have demonstrated some encouraging outcomes for victims/survivors of crime outside of the context of GBV (Sherman et al. 2007). However, these approaches have not always lived up to their promise for crime victims/survivors generally, and have not established themselves as a trusted and credible discipline within the movement to end GBV in British Columbia (BC) (Choi et al. 2012). Based on the historical critiques by feminist scholars and leaders in the GBV sector, there has been a moratorium on the use of RJ processes in GBV cases within most contexts in BC. Meanwhile, Indigenous approaches to addressing GBV within Indigenous communities in BC have continued according to traditional and evolving knowledge outside of the dominant/Eurocentric discourse of both RJ and GBV disciplines. While there are few non-Indigenous initiatives applying RJ approaches to cases of GBV in Canada, RJ practitioners are increasing the skills and knowledge needed to better meet the needs of victims/survivors. Yet the relationship between those working in GBV and RJ (at least those rooted in dominant/Eurocentric culture) in BC is still evolving.

The Government of BC is currently exploring the further use of RJ practices as a response to crime, and BC's RJ practitioners are actively developing capacity to orient and respond safely to the needs of victims/survivors more broadly. This renewed interest in RJ inevitably raises old and new questions about the use of RJ practices in cases of GBV, including those that involve intimate partner violence and

[16] RJ is defined as "achieving justice [in a way] that involves, to the extent possible, those who have a stake in a specific offence or harm to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible" (Zehr 2015, 48). Most scholars and advocates agree that beyond any specific application or process, RJ pursues justice based on a recognition of human dignity and interconnectedness.

[17] GBV is violence committed against someone based on their gender identity, gender expression or perceived gender (Women and Gender Equality 2018). GBV is an umbrella term that includes intimate partner violence, sexual violence, and child abuse; however, the dialogue sessions described in this summary report did not address RJ approaches in the context of child abuse.

[18] These historical concerns are more fully articulated in the companion article in this issue, "Restorative Justice and Gender-Based Violence: A Look at the Literature" (Evans 2021).

sexual violence; it also underscores the need for greater understanding and collaborative partnerships among those working in the RJ and GBV fields.

A premise of the work described in this summary report is that any efforts toward the consideration of RJ approaches in GBV cases must simultaneously honour and harness both the experience and expertise of BC's RJ and GBV leaders, while also upholding the knowledge and wisdom of Indigenous traditions in communities across BC where restorative and relational approaches are used to address harm.

The #MeToo movement has shone a spotlight on the need for more accountability from perpetrators of sexual violence, and for more options for victims/survivors (see for example, Hazelwood 2016), and some feminist scholars have begun to consider the potential alignment of RJ values and feminist principles in responding to the needs of victims/survivors (Goodmark 2018; Randall 2013). Within this social context, the Department of Justice Canada (JUS) contracted the Ending Violence Association of BC (EVA BC) and Just Outcomes Canada (JO) to undertake a project on RJ and GBV in BC. JO is an RJ-focused organization with considerable experience, and EVA BC is a provincial umbrella association that supports and coordinates the work of over 300 community-based anti-violence programs and initiatives across BC. Together, JUS, JO, and EVA BC worked as partners throughout the project (herein "project partners").

The objectives of the project were: to foster dialogue; examine the risks and potential benefits of restorative approaches to address GBV; increase awareness of the dynamics of GBV; and identify research gaps and best practices in the use of RJ practices in cases of GBV. The project involved the development of a discussion paper, a dialogue with key leaders and experts, and a summary report.

This paper describes the methodology and key themes of the dialogue aspect of this project, along with some learnings and observations intended to inform future initiatives of this kind and continued conversations in service of victims/survivors.

Process/Methodology

It was important to JO and EVA BC to collaborate throughout the project and thus strong partnerships became the foundation on which to design the dialogue. The project partners were motivated by a desire to have open and honest dialogue about the use of RJ practices in cases of GBV, to ask difficult questions and to explore justice options for GBV victims/survivors whose needs have not been met through the mainstream criminal justice system. Through a facilitated dialogue, a group of RJ, GBV, and Indigenous and immigrant leaders from across the province, and two subject matter experts from outside of BC, explored the use of RJ approaches in cases of GBV, while acknowledging historical and ongoing barriers and concerns.

Participants

The project partners identified participants from both the GBV and RJ communities who were known to be both influential and open to diverse perspectives about the risks and potential benefits of the use of RJ practices in cases of GBV. Geographic diversity was also considered in the selection of some participants. The dialogue aimed to build relationships and connections, and so was limited to 25 participants including RJ, GBV, and Indigenous leaders, and representatives of Indigenous and immigrant-serving organizations, and representatives of the provincial and federal governments. [19]

[19] To focus on building a foundation of understanding and connection rather than on immediate action, referring agents (such as Crown prosecutors, police, and corrections representatives) were not invited to participate in the dialogue.

Format

While the initial plan was to hold a one-day in-person session in May 2020, the COVID-19 pandemic required an online format. The implementation team (JO and EVA BC) created an agenda that extended the dialogue to four weekly 2.5-hour sessions in October 2020 via videoconference. The team engaged a facilitator with expertise in navigating online conversations, and continued to develop the design and process collaboratively with the facilitator. These regular planning meetings occurred both before the dialogue began, and on a weekly basis between dialogue sessions. The sessions were designed to be dynamic and interactive, using a variety of methods, including small and large group discussions, sharing in pairs, and a series of 30-minute presentations. An Elder of the Stó:lō Nation generously offered an opening prayer at the start of each session and participated in the dialogue. Four presenters were invited to speak to the risks and benefits of using RJ approaches in cases of GBV. They included an RJ practitioner and trainer from Alberta, a feminist legal scholar from Ontario and representatives of two Indigenous Justice Programs – in Nisga'a and Heiltsuk Nations.

In addition to the focus on building relationships and awareness, the project was guided by the following research questions, which helped to structure the dialogue sessions:

1) What are the risks and potential benefits of restorative approaches to addressing GBV?
2) What are the research gaps in this area?
3) Is there more openness to using RJ approaches at different stages of the criminal justice system (i.e., pre-charge, post-charge, pre-sentencing, post-sentencing, post-revocation)?
4) What are some promising practices that could be used to forward the discussion about the use of RJ in gender and power-based crimes?

A discussion paper was distributed to all participants prior to the dialogue, outlining research on the use of RJ approaches in cases of GBV and the historical context in BC. Participants were also invited to complete pre- and post-dialogue surveys.

Following the dialogue, JO and EVA BC continued through a series of meetings to discuss the sessions and explore opportunities and concerns with respect to continued conversations on the use of RJ approaches in cases of GBV. These meetings helped to build further understanding and strengthen the relationship between JO and EVA BC, and to identify some shared values for the continuation of the conversation in BC, which will be discussed in the conclusion of this report.

Dialogue Themes

The dialogue themes are highlighted below, drawing on subject-matter expert presentations and question-and-answer periods, large and small group discussions, chat and virtual whiteboard comments, and pre- and post-dialogue survey responses.

<u>Community Resources and Supports</u>

It became clear, through the dialogue, that more and better community resources and supports for victims/survivors, as well as community-based supports for offenders are needed before RJ approaches can be successful. Indigenous leaders articulated a need for greater access to healing spaces in

communities where violence is prevalent in order to address intergenerational trauma, mental health and substance use issues, and poverty. They also emphasized the importance of RJ practitioners' wellness, particularly those working with individuals and communities experiencing layers of trauma and/or who have experienced trauma themselves. Participants agreed that the current victim/survivor support system lacks resources to the point that most communities do not have a community-based victim support program or where they do exist, the program is so underfunded that many have only one staff person.

The Need for Justice Options Within and Outside of the Criminal Legal System

Few victims/survivors of GBV choose to report their experiences to police (Conroy et al. 2019; Cotter and Savage 2019). This reality, which has long been recognized by GBV leaders as an access to justice issue, was raised during the dialogue as an important context for conversations about RJ and GBV. While RJ methodologies are often applied in conjunction with criminal processes (e.g., using restorative processes to inform sentencing, or at a post-sentence stage within the system), they can also be employed at a community level, outside of the formal system, and thus represent one approach to community empowerment in responding to violence. GBV leaders have also rightly been at the forefront of working to ensure that incidents of sexual and intimate partner violence are understood and addressed as criminal violations. There was discussion over how justice alternatives — under the RJ umbrella and otherwise — could potentially provide more meaningful justice to victims/survivors who may or may not wish to involve police and courts in the redress of harms resulting from GBV. Addressing some of the concerns about RJ approaches in GBV cases that have been outlined historically would also contribute to more meaningful justice.

Key Barriers and Concerns in the use of RJ in GBV Cases

Feminist scholars and GBV leaders have articulated a number of historical and ongoing concerns with the use of RJ approaches in GBV cases, many of which are outlined in the introduction to this article and in the companion article in this issue of the Digest "Restorative Justice and Gender-Based Violence: A Look at the Literature" (Evans 2021). The RJ practitioner who presented at the dialogue validated many of these concerns, including: victim/survivor safety; a general lack of training for RJ practitioners on the dynamics of GBV; the potential for RJ practitioners and processes to minimize violence and its impacts; the potential for RJ to be used as a court-diversion strategy at the expense of justice; pressure on victims/survivors to participate in RJ processes; RJ approaches as more focused on offenders than on victims; and limited linkages between RJ and GBV programs. Dialogue participants discussed these concerns, emphasizing a need to: screen out cases where violence is ongoing to safeguard victims/survivors; ensure communities have the resources to address trauma and other social issues; assess and enhance RJ program capacity and GBV training for RJ practitioners; and fund cross-sector collaboration.

Screening to Address Victim/Survivor Safety Concerns

Participants highlighted concerns about victim/survivor safety, and pressure from family and community members to participate in RJ processes. They emphasized the importance of screening GBV cases and offenders to ensure that RJ approaches do not increase risk for victims/survivors and to make sure that RJ practices would not be initiated in cases where there was ongoing violence or where there were related victim/survivor safety concerns. There was also consensus that each GBV case must be examined

individually given the unique dynamics of sexual and intimate partner violence, and the individuals and communities impacted, before a determination can be made about whether RJ approaches would be appropriate.

Assessment and Enhancement of RJ Program Capacity and GBV Training

Participants noted that it was important to reflect on and assess the capacity of RJ programs to address GBV, and to increase GBV-related expertise in RJ programs before taking on GBV cases. There was strong agreement among RJ and GBV participants that RJ practitioners needed training in the dynamics of GBV, as well as in risk identification and safety planning, to avoid replicating the harms of the mainstream criminal justice system. RJ leaders shared that, similar to the mainstream criminal justice system, RJ practitioners have focused on single incidents of violence, rather than the patterns of behaviour that may be present in many cases of GBV. They also shared that, given the moratorium on RJ practices in GBV cases in BC, many RJ practitioners have often not built their knowledge and skills in the area of GBV, and so there is a need for training in this area if RJ programs are to take on GBV cases. Specialized knowledge and training on GBV for RJ practitioners should be developed collaboratively through partnerships with GBV workers and organizations.

Funding to Support Cross-Sector Collaboration

Participants identified a number of important factors that would influence the effective use of RJ approaches to address GBV; these include the significant funding and resources needed to (1) enhance supports for victims/survivors of GBV, and (2) expand the options available to meet victims/survivors' diverse needs, including RJ practices. Participants articulated several key factors, including the need for relationship-building, cross-sector coordination, and buy-in to ensure there is adequate funding to serve victims/survivors, whether through community-based GBV services or RJ processes. RJ participants acknowledged the importance of strengthening RJ processes, through meaningful partnerships with GBV sector organizations, to ensure RJ practitioners understand the complexities and dynamics of GBV and can better mitigate the risks and concerns raised.

Potential Opportunities to use RJ in GBV Cases

Despite the concerns and risks, dialogue participants articulated several possible benefits of using RJ practices in GBV cases, including: a flexible approach to meet the diverse needs of victims/survivors; meaningful accountability through a non-punitive approach; avoiding the harms of the mainstream criminal justice system; and supporting healing and transformation for victims/survivors, offenders, families and communities.

The feminist legal scholar who presented at the dialogue spoke theoretically of the opportunity RJ provides as a relational form of justice that focuses on repairing harm, and which meaningfully engages victims/survivors and communities. However, she also cautioned that RJ approaches must not be pursued by governments as a cost-saving measure, instead noting that RJ approaches are time consuming, and require specialized knowledge and skill, careful screening of cases, assessment of capacities, and extensive community engagement and preparation. Still, she emphasized that RJ offers an opportunity to facilitate reconnection following trauma, echoing the views of some Indigenous participants and presenters who shared that RJ approaches could be empowering for GBV victims/survivors, particularly where there are layers of intergenerational trauma.

Contributing to Victim/Survivor Recovery

Some participants discussed how, as a relational approach to justice, RJ practices may contribute to trauma recovery and wellness of victims/survivors. For example, one Indigenous participant spoke about the potential for: renewing victim/survivor voice/control ("taking their power back"); being supported and vindicated by family and community members; and receiving information and answers to questions in order to make informed choices concerning victim/survivor safety and justice needs. The RJ practitioner who presented at the dialogue also spoke about victims' justice needs and moving toward best practices in using RJ approaches in GBV cases. However, immigrant participants raised concerns in this discussion about the use of RJ approaches in immigrant communities where family and community may not be a source of support, or where community leaders do not have a strong understanding of GBV, and victims/survivors face barriers due to a lack of victim/survivor-centered, culturally appropriate services.

Expanding Justice Options for Victims/Survivors Beyond the Criminal Justice System

Questions emerged about the relationship between RJ and the mainstream criminal justice system, and whether RJ practices should occur within, outside, or alongside the system. Most dialogue participants who completed the evaluation indicated they were open to the use of RJ approaches at any stage of the criminal justice system. For example, one participant noted "it would be an error to be prescriptive" given the unique nature of each case, and that these decisions should be determined based on the needs of victims/survivors; another participant suggested RJ approaches should only occur "when all parties are ready to participate." Still, some participants voiced concerns about the motivation of offenders to engage in RJ approaches at some stages of the criminal justice system, such as pre-charge to avoid charges, or pre-sentencing to avoid a sentence that may be more suitable for the crime. The feminist legal scholar who presented at the dialogue emphasized that RJ should not replace the mainstream criminal justice system, but rather expand the options available to victims/survivors and engage the community in taking responsibility for the social and structural conditions that contribute to violence and harm.

Engaging Communities in Preventing and Responding to GBV

Indigenous leaders who presented at the dialogue offered examples of RJ programs and relational processes in Indigenous communities across BC that prevent and respond to conflict and harm, including in GBV cases. These programs are rooted in Indigenous values and emphasize the role of the community in promoting safety. RJ and GBV participants said they were inspired by these programs. They reflected on the important role of community in supporting healing for all parties involved, and the need for more programs for those who cause harm and stronger connections between victim-serving, offender-serving, and other community-based programs and agencies.

Research and Knowledge Gaps

Dialogue participants identified a number of gaps in research and knowledge related to the use of RJ approaches in cases of GBV. Some of these gaps focused on foundational issues, such as a lack of shared definitions of RJ and a lack of understanding about theories of GBV, and questions about how the field of RJ (in its western context) will integrate a structural analysis of violence and a de-colonial lens. Participants also highlighted gaps in research and knowledge related to the experiences of Indigenous

and racialized people with respect to racism in the mainstream criminal justice system, and whether RJ would be able to address those concerns. Participants also articulated a need for more research and dialogue about using RJ approaches to address GBV in diverse cultural communities, including immigrant and refugee communities.

Several participants pointed to gaps in evaluation research on RJ practices in cases of GBV, including pilot projects and program evaluations to measure outcomes, and better understand the short- and long-term impacts on victims/survivors (including their experiences and satisfaction) and on people who have caused harm (including recidivism rates, particularly in comparison to other offender interventions). In his presentation, the RJ practitioner considered what an RJ lens could offer GBV cases, and shared research and best practices from several RJ programs abroad that respond to GBV; however, participants expressed concern that there was limited research evaluating RJ approaches in GBV cases, especially in Canada. Understanding the unique issues and dynamics relevant to victims/survivors of intimate partner violence and sexual violence will be important in considering the use of RJ practices in cases of GBV before moving forward.

Participants highlighted the need for sharing best practices and resources based not only on research, but also rooted in experience. For example, some participants noted a need for best practices in educating criminal justice system personnel about: the use of RJ practices in GBV cases; when not to use RJ practices in GBV cases; screening for cases of GBV where RJ practices are considered an option; maintaining confidentiality and privacy; and providing appropriate supports and resources.

Participants also noted important differences between RJ practices within and outside of Indigenous communities, and pointed to the importance of Indigenous-led research and dialogue on restorative and Indigenous justice approaches in cases of GBV that are rooted in traditional Indigenous teachings and cultural practices.

Key Learnings from the Dialogue

Throughout the dialogue, several participants expressed a sense of hope, enthusiasm, openness, interest, trust, shared values and possibility. A number of participants shared that they were engaged and grateful for the space to have open conversations, to learn from the experiences and expertise of other leaders, to build trusting relationships, and identify common goals. Some participants also indicated that they would have been able to better engage in the dialogue if there was a clear goal or intended outcome, or if they had more background information. Increased relationship-building within RJ, GBV, and Indigenous cohorts who participated in the dialogue, and discussions about their needs and interests prior to the first dialogue session, may have supported the dialogue process and outcome.

Some of the GBV leaders who participated in the dialogue expressed that they gained useful insights into the two Indigenous programs. However, they felt that more conversations and deeper engagement would have increased their comfort and confidence in moving towards using RJ as a way to address GBV.

It is clear that with more time and an in-person format, the dialogue sessions could have explored more of the complexities and nuances of the potential use of RJ approaches in addressing GBV. While relationships and connections were developed through the dialogue sessions, more difficult conversations about the use of RJ practices in GBV cases were not explored as fully as they might have been with trusted colleagues. This learning underscores the need for further dialogue between RJ, GBV, and Indigenous and immigrant leaders in BC on the use of RJ practices in GBV cases, so that any issues can be addressed and resolved in a supportive and relational context.

Possibilities Moving Forward

Many participants were highly engaged in this dialogue. The overwhelming majority of those who completed the post-dialogue survey indicated that they would be interested in participating in ongoing conversations about the use of RJ approaches in cases of GBV in BC. Recognizing that this was only a first step in revisiting the conversation about the use of RJ approaches to address GBV in the province, participants were invited to share who else should be involved in future conversations. Suggestions included victims/survivors (particularly those who have been involved in RJ processes), offender-serving organizations, criminal justice system stakeholders (e.g., police officers, Crown prosecutors, defence counsel, judges, correctional officers), child protection workers, health care providers (e.g., mental health, substance use), housing providers, multicultural community leaders, and government bodies responsible for funding justice programs.

Several unanswered questions raised throughout the dialogue could serve as a springboard for future dialogue processes with RJ and GBV leaders in BC:

- How can we build a framework to enhance resources and capacity for programs that support victim/survivors of GBV across the province?
- What shared understandings of RJ, and of the factors contributing to GBV, might help guide further dialogue between RJ and GBV leaders?
- What, if any, concrete evidence is there that using RJ practices in cases of GBV creates more safety in the long term?
- Is there openness to using RJ practices to address the needs of victims/survivors of some forms of GBV — for example, sexual violence or intimate partner violence?
- What types of training, experience and/or education should be expected of RJ practitioners prior to working with GBV victims/survivors, if they were to work in this area?
- Under what circumstances might communication or dialogue processes be appropriate in GBV cases? How should specific GBV cases be screened for involvement in RJ processes?
- To what extent can RJ processes and programs created in small, rural communities or in Indigenous communities be replicated in large urban centres, if at all?
- If RJ approaches are to be used in cases of GBV, how will success be defined and how will outcomes be measured, including victim/survivor satisfaction?
- What models exist for meaningful and effective partnerships between GBV and RJ leaders in serving the diverse needs of victims/survivors of GBV?
- What work needs to be done to create and sustain an environment of equitable leadership among programs/practitioners of diverse identities, cultures and worldviews in future dialogues on these topics?

Conclusion

The project partners brought together GBV, RJ, and Indigenous and immigrant leaders from across BC, and two subject-matter experts from outside the province, to engage in a dialogue, share promising practices, and discuss the risks/concerns and potential benefits of using RJ approaches in cases of GBV.

Two Indigenous leaders shared examples of how a relational approach can work to effectively address GBV in Indigenous communities where supports for victims/survivors and offenders are in place. However, many questions were raised — and remain unanswered — about the capacity, knowledge and expertise of non-Indigenous RJ practitioners with respect to GBV. While relationships were built through the dialogue, the online format prevented participants from having more difficult, nuanced conversations to address the concerns that were raised by feminists and GBV experts in the 1990s. For some participants, these concerns remain.

The relationship between the host organizations allowed for the two organizations to continue, and to deepen, the discussion in subsequent conversations. There was strong agreement that if RJ approaches are to be used in GBV cases, these approaches must be vigorously held to their values of being victim/survivor-centered, trauma-informed and informed by the expertise of leaders in the GBV sector. Within these subsequent conversations, it was also suggested that, if RJ approaches are used in cases of GBV, they could perhaps be operated from within victim/survivor support programs. RJ practitioners must work in partnership with the GBV sector, and restorative initiatives addressing GBV would ideally be embedded within GBV programs. However, community-based services and supports for GBV victims/survivors must also be enhanced and adequately funded to explore and expand options to meet their justice needs. Above all, conversations about the use of RJ approaches in cases of GBV in BC must be built on a strong foundation of trust and on strong relationships.

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Male Survivors of Intimate Partner Violence: A Summary[20]

Summarized and updated by Cherami Wichmann

This article provides a summary of *Male Survivors of Intimate Partner Violence in Canada*, a report commissioned by the Office of the Federal Ombudsman for Victims of Crime, and prepared by Dr. Benjamin Roebuck and his colleagues from Algonquin College's Victimology Research Centre. Where more recent data are available, statistics from the original report have been updated, and text boxes relating to self-reported and police-reported intimate partner violence (IPV) have been added.

1.0 Introduction

Significant numbers of men in Canada experience intimate partner violence (IPV), though it is rarely discussed. In research, policy and service delivery, more emphasis tends to be placed on violence against women (VAW) — and rightly so. Women are much more likely than men to be murdered by their intimate partners, to seek medical care for injuries resulting from physical or sexual assaults, and to lose access to housing as a result of IPV (Conroy, Burczycka and Savage 2019). However, the emphasis on VAW often overshadows the experiences of male survivors, many of whom report difficulty accessing help or navigating the legal system (Moreau 2019).

The report by Roebuck and colleagues examines the extent to which men who experience IPV are able to exercise their rights under the *Canadian Victims Bill of Rights* and how well they are supported by victim assistance services. To achieve this goal, Roebuck and colleagues conducted a review of Canadian academic research published from 2010 to 2020.[21] In addition, they summarized findings from a research sample with 45 male survivors of IPV, part of a larger study of survivors of violent crime and resilience. The larger study was conducted in partnership with Algonquin College and the Victim Justice Network, and funded by the Social Sciences and Humanities Research Council (Roebuck et al. 2020).

TEXT BOX 1: Police-reported Intimate Partner Violence

Men comprise about 20% of all IPV cases reported to police in Canada and about 20% of IPV homicide victims (Burczycka and Conroy 2018; Conroy 2021).

- In 2019, this amounted to 23,146 men (Conroy 2021).
- The rate of IPV reported to police by men and boys has increased over the past five years; between 2018 and 2019 the number of cases reported by men increased by 10%, while the

[20] The Office of the Federal Ombudsman for Victims of Crime commissioned this paper to explore men's experiences of IPV and their interactions with the justice system and service providers. The paper is based on the report of Dr. Benjamin Roebuck, Diana McGlinchey, Kristine Hastie, Marissa Taylor, Maryann Roebuck, Simrat Bhele, Emily Hudson, and Riya Grace Xavier, accessible at: https://www.victimsfirst.gc.ca/res/Cor/IPV-IPV/Male%20Survivors%20of%20IPV%20in%20Canada,%202020.pdf

[21] As noted, where new data are available from Statistics Canada, the numbers have been updated.

number reported by women decreased by 5% (Conroy 2021[22]). Between 2009 and 2019, the number of reported cases of IPV decreased less than the number of reported cases of non-IPV (-6% versus -14%; Conroy, 2021).

- Men are less likely than women to report IPV to police, and when they do, it is less likely to result in an arrest or police record (Dutton 2012). In one Canadian study, 64% of male survivors of IPV who called police reported being treated as the abuser (Dutton 2012).
- While Indigenous women represent 21% of female victims of intimate partner homicide, Indigenous males represent a much larger proportion (44%) of male victims of intimate partner homicide (Conroy 2021).
- According to police-reported data, an annual average of more than 2,300 incidents of IPV involving same-sex partners occurred in Canada between 2009 and 2017. Of these incidents, 55% involved a male victim and a male accused (Ibrahim 2019).

END TEXT BOX 1

TEXT BOX 2: Self-reported Intimate Partner Violence

- About one third (36%) or 4.9 million men reported experiencing IPV in their lifetime (compared to 44% or 6.2 million women) (Cotter 2021).
- When asked about the previous 12 months, 12% of women and 11% of men indicated experiencing some form of IPV (Cotter 2021).
- The most common type of IPV reported by men was psychological (35%), followed by physical (17%) and then sexual (2%). This pattern was similar to that found for women (43%, 23%, and 12% respectively) (Cotter 2021).
- In the previous 12 months, men were more likely than women to have experienced their partner being jealous and preventing them from talking to others (7% versus 5%); demanding to know where they were and who they were with at all times (4% versus 3%); slapping them (1.7% versus 0.8%); and hitting them with a fist or object, biting, or kicking them (1.3% versus 0.7%). Women were more likely to report measures of sexual assault, being choked, threats to harm or kill them or someone close to them, being harassed, and being followed or having their partner hang around their home or workplace (Cotter 2021).
- Data from 2018 indicated that 48% of gay men and 66% of bisexual men had been psychologically, physically or sexually abused by an intimate partner at least once since the age of 15 (Jaffray 2021).
- Gay and bisexual men are much more likely to have experienced physical or sexual assault by an intimate partner than heterosexual men (31% vs. 17%), and more likely to have experienced most types of IPV behaviours including the most severe violent behaviours (e.g., those that can result in serious physical harm and criminal charges; Jaffray 2021).

[22] Police-reported data are from the 2019 Uniform Crime Reporting Survey, as well as a special data collection initiative from police services on selected types of crime during the first several months of the COVID-19 pandemic. See Conroy (2021) for more information.

- Nearly 17% of men and 18% of women said they were concerned about rising violence in the home during the COVID-19 pandemic (Statistics Canada 2020).

END TEXT BOX 2

2.0 Findings

2.1 Literature review on male survivors of IPV

The literature review focused on definitions and descriptions of IPV, measuring IPV, interactions of male survivors with the justice system and service providers, and societal responses to male survivors.

2.1.1 Definitions and descriptions of IPV, and measuring prevalence

As would be expected, much of the broader literature used the terms violence against women (VAW) or gender-based violence to describe IPV. While these terms help acknowledge the disproportionate impact of IPV on women and the roles that gender, misogyny and patriarchy play in the dynamics of violence, defining IPV in these ways excludes male, transgender and gender non-conforming survivors.

As noted in Text Box 1 and 2, sources of data on IPV experienced by men include police reports and self-reports. However, there are challenges with each of those sources for determining prevalence of IPV for men. Dutton (2012) compared how frequently men and women who experience IPV call police: women who experience IPV are ten times more likely than men to call police. This may lead to an underrepresentation of police-reported IPV rates for men. Previous findings based on self-reported data that men and women report similar rates of IPV is referred to as "gender symmetry," a topic of vigorous debate (Hamberger et al. 2016). On one side are critiques of the methodology used to measure and report violence; on the other, various victimization surveys of the general populations conducted in different countries at different times by government or academic sources have found that men and women report similar rates of IPV (Chan 2012; Chen and Chan, 2019). The actual prevalence is likely somewhere between the two. Regardless, a significant number of men experience IPV in Canada each year.

There was little research on the risk factors for male victims of IPV; however, two factors identified were alcohol use and mental health issues (Woodin et al. 2014; Zamorski and Wiens-Kinkaid 2013). Also, Indigenous men are more likely to experience IPV because of systemic risk factors related to colonization and cultural genocide (Boyce 2016; TRC 2015), but there was limited information on men from other ethnocultural groups.

With respect to recognition of the IPV they experience, men are less likely to identify non-physical controlling behaviours directed towards them as a form of abuse, while physical or sexual violence are likely to be identified as abuse regardless of gender (O'Campo et al. 2017).

Certain types of IPV are unique to same-sex couples, such as "outing" or threatening to "out" a partner (Gillis and Diamond 2011). Additionally, some gay men who are HIV+ have reported that their partners threaten to disclose that information to coerce behaviour (Gillis and Diamond 2011). Also, men reporting a minority sexual identity (those who stated they were gay, bisexual, or another sexual orientation other than heterosexual) have been found to be at considerably higher risk of all forms of

violence when compared to heterosexual men (Jaffray 2021). There has been little research involving trans or gender non-conforming experiences of IPV.

Indigenous people were found to be more likely than non-Indigenous people to have experienced spousal violence (9% and 4%, respectively), and Indigenous men who experienced IPV were twice as likely as non-Indigenous men to report to police (8% and 4%, respectively; Boyce 2016). Brownridge (2010) reviewed data from Indigenous male survivors of IPV in Canada and noted that Indigenous males' elevated risk for IPV could be attributed to the fact that they tend to be overrepresented in several risk categories for IPV including being younger, having lower levels of education and employment, living in a rural location, using alcohol, having a larger number of children in the family, colonization, cultural genocide, and intergenerational trauma.

Some research has explored differences in the impact of IPV on men and women. Ansara and Hindin (2011) used data from Canada's 2004 General Social Survey on Victimization to compare the psychosocial consequences of IPV on female and male victims. While their findings suggest that women experience greater mental health consequences across all subtypes of IPV, they also highlight the limitations of their analysis, particularly that the terms men and women may use to describe mental health may differ (e.g., men are more likely to use the term "stress" and less likely to use "shame," and "guilt").

2.1.2 Interactions with the justice system and service providers

Many of the studies reviewed highlighted discrepancies between: how police respond to male and female survivors of IPV; the reduced likelihood of charges being laid when the victim is a man; the increased likelihood that survivors will be arrested when the survivors are men; and how risk assessment tools are poorly calibrated to men's experiences of IPV.

Dutton (2012) found that police tend to perceive female perpetrators as being less abusive and requiring less intervention than male perpetrators, even when levels of IPV were matched across cases. Dutton also reported that police mistakenly assumed that the male victim was the abuser in 64% of cases when a man had called the police for help. Several researchers highlighted that a woman's partner is more likely to be arrested for IPV than a man's partner (Dawson and Hotton 2014; Mahony 2010; Millar and Brown 2010).

Gender bias also affects police responses. A discrepancy was noted in police perceptions of severity when the victim of IPV is a man, and some of the risk assessment tools used by police contain a gender-bias in their language and scoring based on the assumption that the victim is a woman (e.g., Hilton et al. 2014). For example, the Ontario Domestic Assault Risk Assessment (ODARA), used to assess risk of recidivism, features definitions of violence with feminine pronouns to describe actions taken against victims, and scoring instructions that refer to perpetrators as "wife assaulters" (Mental Health Centre Penetanguishene 2005).

Men who experience IPV in Canada often have difficulty knowing where to turn for help. There are few resources available to male survivors and men have reported being further traumatized by failed attempts to get help (Fortin et al. 2012). Until the April 2021 opening of a family shelter for fathers and children in Toronto, there were no IPV shelters in Canada dedicated to men, though a small number of IPV shelters did accept men and their children (Moreau 2019). Further, when men do seek help, they may be treated with suspicion and service providers may not be equipped with tools to address men's

trauma (Brend et al. 2020; Dutton 2012). Roebuck's report highlights a number of emerging resources to improve responses.

Legislation, policy and service delivery options often focus on violence against women and there is little space to provide remedies for male survivors of IPV. The research reviewed in this study suggests that help-seeking by male victims of IPV can lead to greater distress. This is due not only to the lack of resources, such as shelters (Dutton 2012), but also to the poor quality of care that male victims tend to receive.

2.1.3 Societal responses to male survivors

Gender is important to understanding the impact of IPV. Men who are victimized by their partner can experience stigma for their perceived failure to live up to societal standards of masculinity (Arnocky and Vaillancourt 2014). The belief that only women can be victims of IPV contributes to further stigmatization and suppression of men's experiences (Martin and Panteloudakis 2019). This stigma not only discourages disclosure and help-seeking, but also affects conceptualization of the violence that male victims experience. Many men either minimize the experience of IPV or lack awareness of non-physical violence. This combination decreases help-seeking behaviour among male victims and can lead to them assuming that seeking help for non-physical violence, such as stalking, is less important for them than it is for women (O'Campo et al. 2017).

IPV experienced by men is often underestimated and downplayed. This can make those who witness it less likely to intervene or to consider it dangerous. When men are not represented in public awareness campaigns about IPV, it can be more difficult for bystanders to recognize the warning signs. Increasing awareness of IPV experienced by men might make more people sympathize with all victims of IPV (Cismaru, Jensen, and Lavack 2010, 72).

The everyday language used to speak about victimization can reinforce gender inequality through biases that are either overt or subconscious. For example, Liu et al. (2018) found that gender-based languages (including French) tend to feminize words associated with victimhood (victim, injury) and masculinize words associated with perpetration (predator, perpetrator, assailant, aggressor), reflecting a gendered worldview that negatively predisposes society to perceive women as "victims" and men as "perpetrators."

2.2 Research sample of male survivors of IPV for primary research undertaken by Roebuck and colleagues

A group of 45 male survivors of IPV in Canada completed surveys and two follow-up interviews. This research focused on: types of IPV experienced; barriers encountered when seeking help; interactions with police; level of satisfaction with the justice system; and whether their rights under the *Canadian Victims Bill of Rights* were respected. The participants were also asked what had been helpful or unhelpful following their experiences of violence, and to share feedback on the criminal justice system, victim assistance services, and informal support received from family and friends.

Most participating male survivors were heterosexual (98%), Caucasian (89%), reported abuse by a female partner (98%), and resided in either Ontario (55%), British Columbia (25%) or Alberta (11%). All respondents were over 20 years old, and most were living with their partner full-time (78%), or part-

time (11%) at the time of the violence. While this was a convenience sample and not representative of male survivors across Canada, the men who participated provided valuable insights.

The findings from the research sample were similar to that from the literature review (e.g., most commonly reported form of violence was psychological), but extended the understanding of certain areas (e.g., more information about how men experience coercive and/or controlling behaviours from their partners).

2.2.1 Types of IPV

The most common types of IPV reported by participants included psychological violence (86%), physical violence (84%), financial abuse (59%) and threats of violence to themselves, their children, or their pets (55%).

A common form of psychological violence reported by participants was the threat of false accusations by female partners. Participants said that their female partners believed they could file false charges to gain the upper hand in the justice system or family court. Participants reported being threatened with false accusations of abusing their children, and of physically or sexually assaulting their partners. Threats of this nature were used as a form of coercive control.[23] The participants reported that these false accusations affected not only them directly, but also their children.

Participants reported physical (e.g., broken bones, eye damage, and scarring from bite marks and stab wounds) and psychological harm (e.g., diagnosed and undiagnosed symptoms of Post-Traumatic Stress Disorder , depression, anxiety disorders, panic disorder, agoraphobia, sleep disorders, and substance use disorders). Other reported health impacts included weight loss, chronic pain, memory loss and sexual arousal disorders.

2.2.2 Interactions with police and satisfaction with the justice system

About half of all participants (n=24; 52%) had contact with police, and about two-thirds had contact with either criminal court (n=17; 36%) or family court (n=14; 32%). Many participants reported negative experiences with the justice system, specifically with police; several had been arrested after calling police for help. Other participants stated that they did not call police because of the risk it posed to them or to maintaining custody of their children. A few participants reported positive interactions with police, explaining how police had taken the time needed to understand what was happening without making assumptions.

Overall, participants were dissatisfied with the justice system; only five percent reported satisfaction with the outcome and none reported satisfaction with the justice process. In the authors' larger study on survivors of violent crime (N=435), male survivors of IPV reported lower satisfaction scores than any other group (i.e., males or females who experienced sexual violence, females who experienced IPV, and

[23] Gill and Aspinall (2020) define coercive and controlling violence as a pattern of behaviour that involves oppression and uses different physical or non-physical tactics in the context of intimate partner relationships. They note that coercion and control occurs through the use of force and/or deprivation to eliminate the other partner's sense of freedom in the relationship.

those who experienced forms of violence or violent death of someone close to them), including women who experienced IPV (Roebuck et al. 2020).

2.2.3 Accessing support

About half of participants sought support from friends (n=23; 53%) and/or family (n=20; 47%). Participants access a wide range of services including mental health services (n=12; 28%), child protection (n=8; 19%), domestic violence counsellors (n=7; 16%), virtual support services (n=6; 14%), a workplace employee assistance program (n=5; 12%), and/or healthcare workers (n=3; 7%). Some sought spiritual support (n=5; 12%) and/or participated in a peer support group (n=5; 12%). Finally, a quarter of participants (n=11; 26%) indicated that they did not interact with any services or supports.

The participants who received the help they sought provided the most positive feedback about interactions (in-person and/or virtual) with individual and family counsellors, and social workers. Some who accessed services, however, reported that support providers did not believe their accounts of IPV and lacked adequate knowledge of the impacts of IPV on male survivors. As with those who reported unsatisfactory interactions with the justice system, participants who were not believed by service providers were often frightened that their attempts to seek help could result in them facing criminal charges or losing custody of their children. Many participants reported that it was difficult to find help. Several stated that resources for survivors of IPV tend to be set up for women and children, and that it is unclear where men can access support.

2.2.4 Conclusions from the research sample

Men's experiences with the justice system and with service providers occur within the broader context of men's roles in society. Participants shared the pressure they felt to be strong, to be leaders in their homes, to be problem-solvers and to not appear weak. Many said it was difficult to disclose their IPV experience(s) to their peers, and upon doing so, reported being teased or receiving glib responses such as: "that doesn't happen to men," or "man up." Those who received supportive responses from their peers often acknowledged how fortunate they felt to be believed. Many participants lacked access to the types of support available to women who experience IPV. For some participants, the risks involved in seeking help and the lack of resources were reasons enough to stay in the relationship.

The sample findings provide a basis for comparison with groups of female IPV survivors. The authors concluded that there is significant work to do to ensure that male survivors of IPV are able to access their rights under the *Canadian Victims Bill of* Rights, most importantly the right to protection.

3.0 Recommendations for change

Male Survivors of Intimate Partner Violence in Canada recommends changes in five areas.

3.1 Awareness, Education and Prevention

While education on violence against women must continue, the framing of education and prevention activities must be broadened to include IPV experienced by people of all genders and sexual orientations. Additionally, proven evidence-based programs that teach healthy relationship skills should be implemented in schools and post-secondary institutions.

3.2 Police, and the Criminal and Family Justice Systems

Risk assessment tools must be designed to respond adequately to IPV experienced by all genders and to the dynamics of coercive control. Additional assistance should be available to all IPV survivors appearing in family court.

In addition, IPV curriculum for police colleges should be updated to include more diverse examples of IPV, along with training on recognizing IPV and coercive control. Police should be directed to request feedback from male IPV survivors on how well the services provided met the survivors' needs. IPV victims should also be able to request that an investigating officer of a particular gender be assigned to the case.

3.3 Victim Services

Shelter capacity should be increased for all genders. Agencies that currently serve women only should not be required to also serve men. Agencies with a mandate to serve all genders should review their practices to evaluate the how their services and outreach strategies contribute to gender inclusivity. To increase their ability to provide safer, trauma-informed spaces where men can heal, agencies should be encouraged to adopt the best practices and credentialing frameworks used by service providers who work with men. To ensure that the needs of male IPV survivors are met, they should be consulted when developing programming and outreach strategies. Programs that work with male abusers should be trauma-informed, responsive to gender-based power imbalances, address childhood experiences of violence, abuse and neglect, and be informed by feminist perspectives, understanding of queerness and traditional conceptions of masculinity in a way that validates and celebrates healthy masculinities.

3.4 Policy Development

Gender Based Plus (GBA+) analysis should be applied to government responses to IPV. All levels of government in Canada should provide leadership to alleviate the current housing crisis and recognize that access to safe and affordable housing is critical to personal safety.

3.5 Research

Research on male IPV survivors should be expanded to include patterns of IPV across the gender spectrum. Research should consider how men's IPV experiences intersect with race, socioeconomic and disability status, parenting and long-term outcomes for children. Additionally, research needs to better explain cases of reciprocal violence in relationships and better distinguish violence used in self-defence.

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Restitution: An Update on the Case Law

By Kanchan Dhanjal and Susan McDonald

Restitution orders have "long been part of the array of measures available to judges when they undertake the difficult task of sentencing" (*Moulton v R*, paragraph 27). Indeed, restitution — or compensation, as it was previously called — has been part of Canada's *Criminal Code* (the *Code*) since its inception in 1892.[24] That is a very long time to develop the jurisprudence. In this article, the authors focus only on relevant case law of the last six years — since the *Canadian Victims Bill of Rights* (CVBR) came into force and effect in 2015. Sections 16 and 17 of the CVBR state:

> **16** Every victim has the right to have the court consider making a restitution order against the offender.
>
> **17** Every victim in whose favour a restitution order is made has the right, if they are not paid, to have the order entered as a civil court judgment that is enforceable against the offender.

Since 1892, many relevant amendments have been made to the *Code,* such as: changing the term "compensation" to "restitution" to better distinguish elements of sentences from payments by the state; including restitution orders in conditions of probation or conditional sentences; and expanding the damages that can be claimed. In 2015, along with the CVBR, a number of amendments to the restitution provisions in the *Code* came into effect, including: requiring judges to consider all requests for restitution; requiring judges to include in their decisions the reasons for not granting requests for restitution; the establishment of a standardized form (Form 34.1 in Part XXVIII of the *Criminal Code*) which victims can use to request restitution; requiring judges to ask prosecutors if victims have been given the opportunity to request restitution; and requiring judges to ignore the offender's financial means or ability to pay when considering restitution orders. [25]

This article reviews the case law since the coming into force of the CVBR. Of key interest is what, if any, changes are seen in judicial decisions on restitution since the CVBR came into force in 2015. It is important to remember that jurisdiction over criminal justice is shared between the Government of Canada, which is responsible for enacting relevant laws, and the provinces and territories, which are responsible for the administration of justice.

Method

Case law databases — CanLII, WestlawNext Canada, and Lexis Advance Quicklaw — were searched using the specific *Code* sections on restitution, the CVBR sections, and the term "restitution." The article considers only appellate-level cases heard between March 2015 and December 2020, and findings are presented by principles or themes.

As shown in Table 1, the search found a total of 39 appellate cases, most from the Courts of Appeal in Ontario and British Columbia. There were no appellate decisions from the Northwest Territories or

[24] In 2009, the second issue of the *Victims of Crime Research Digest* included an article on restitution that described how restitution fits into modern criminal law (see McDonald 2009).

[25] This short summary does not include all the amendments to the restitution provisions. For the current restitution provisions in the *Criminal Code,* please see https://laws-lois.justice.gc.ca/eng/acts/C-46/index.html.

Nunavut, and there were no Supreme Court of Canada decisions. Indeed, the last Supreme Court of Canada decision on restitution was in the 1978 case of *R v Zelensky*, where the Court made it clear that restitution orders fall under the federal government's criminal law power under section 91(27) of the *Constitution Act, 1867*, specifically because they are part of the sentencing process.

Table 1: Number of appellate cases on restitution by jurisdiction, 2015–2020

Jurisdiction	No. of cases
British Columbia	9
Alberta	3
Saskatchewan	1
Manitoba	1
Ontario	13
Quebec	4
New Brunswick	3
Nova Scotia	1
Prince Edward Island	1
Newfoundland and Labrador	1
Yukon Territory	2
Total	39

The case law is discussed by theme, starting with cases that mention the CVBR. Overall, the jurisprudence on restitution has remained stable without significant changes over the past thirty years. The case law from the past six years adds additional weight and nuance to previously established principles.

Recent Case Law: 2015–2020

<u>The Canadian Victims Bill of Rights</u>

Few cases discussed or mentioned the CVBR and the right to request restitution. Indeed, appellate courts have continued to emphasize the importance of making restitution orders with caution and restraint, notwithstanding the enactment of the CVBR (see *R v Robertson, R v Abdulahi-Sabet, R v Bean*). In *Moulton v R*, however, the New Brunswick Court of Appeal reached a different conclusion, stating

that the legislative changes brought on by the *VBR*[26] made "inapplicable any restraint or caution courts may have believed they needed to exercise when considering a restitution order" (paragraph 31). According to the Court, the newly enacted provisions in the *Code* sent a "clear legislative message" that restitution must be considered during the sentencing process and, as such, the use of caution and restraint is no longer necessary. It remains to be seen whether appellate courts in other jurisdictions adopt this line of reasoning.

Ability to pay

One of the 2015 amendments to the restitution provisions in the *Code* was section 739.1, which provides that "[t]he offender's financial means or ability to pay does not prevent the court from making an order" of restitution. As the Court noted in *R c Simoneau*, section 739.1 simply codified the existing law with respect to this issue. Likewise, in *R v Cameron*, the sentencing judge held that a restitution order was appropriate because the offender had neither explained where the defrauded funds had gone, nor demonstrated that he was without assets and, as such, would be unable to satisfy a restitution order of approximately $1.85 million (see also *Simoneau* and *R v Johnson).* Because an offender's financial status is just one of many factors to be considered, judges must be careful not to place too much emphasis on this consideration.

Future ability to pay

An established principle of the doctrine of restitution is that courts, when assessing an offender's means, must also consider future ability to pay. In fact, judges have explained that an offender's future earning potential is at least as important, if not more important, than present ability to pay.

In *Simoneau*, the Quebec Court of Appeal recently affirmed the importance of considering an offender's future ability to pay. The case involved an offender who defrauded a university's student cooperative. At the time of the sentencing, the offender was a young student with limited resources. The judge considered imposing a restitution order, but ultimately declined to do so due to the offender's present inability to pay. This decision was overturned on appeal, and a $15,000 restitution order was imposed. The Court of Appeal found that while the judge properly considered the present ability of the offender to satisfy a restitution order, the failure to consider the offender's future ability to pay represented an error in principle.

Where offender's means not primary consideration

The nature of an offence may also impact whether the offender's ability to pay is given much weight. For example, when a crime involves a serious breach of trust, the means of the offender is not a primary consideration. In the case of *R v Couture*, the Ontario Court of Appeal upheld an offender's restitution order partly on this basis. Specifically, the Court found that "[c]ontrary to the appellant's submission, the trial judge considered the appellant's ability to pay but, referencing the breach of trust, he correctly noted that this was not a determinative factor" (paragraph 12).

[26] *The Victims Bill of Rights* was the name of former Bill C-32 (41st Parliament, Second session), which introduced the CVBR itself, as well as many amendments to the *Criminal Code*, as well as to the *Corrections and Conditional Release Act.*

Failure to consider

Although ability to pay is not always a primary consideration, failure to consider this factor can result in an appeal court setting aside the restitution order. The Nova Scotia Court of Appeal in *R v Kelly* set aside a restitution order, in part, because the sentencing judge did not give proper consideration to the offender's inability to pay. The record demonstrated that the sentencing judge was provided information about the offender's modest means, but "dismissed it as unimportant, because of the paramount consideration for the victim of the fraudulent transactions" (paragraph 55). This, according to the Court, reflected a legal error because the ability of the offender to pay was an important factor that the sentencing judge should have properly considered.

A sentencing judge's admission that he or she need not be concerned with the offender's ability to pay may provide a basis for setting aside a restitution order. In 2019, in *R v FMJ*, the British Columbia Court of Appeal held that the trial judge erred by explicitly observing that she was not required to take the means of the offender into account. As a result, the appellant's restitution order was set aside.

Appellate courts can eliminate a restitution order altogether due to an offender's lack of means, as confirmed in the 2019 case of *R v Ahmad* from the Ontario Court of Appeal.

Alternatively, appellate courts might substitute the original order for a much lesser one. In the 2020 case of *R v Chappell*, the British Columbia Court of Appeal reduced the amount of an appellant's restitution order from $201,613.37 to $6,500. The Court found that there was no discussion of this restitution order at sentencing, nor was any inquiry made about the appellant's ability to pay. Particularly problematic was the fact that the order appeared to have been made based on the remote possibility of a windfall, when in all reality it was unlikely that the appellant would ever be able to "make a meaningful dent in the amount owed" (paragraph 7). As a result, it was necessary to reduce the restitution order to an amount that was still meaningful, but that the appellant would reasonably be able to satisfy.

The impact of a restitution order on the offender's chances for rehabilitation, whether positive or negative, is another factor to be considered. In *Simoneau*, the Quebec Court of Appeal discussed the importance of considering how the imposition of a restitution order might affect an offender's prospects for rehabilitation. At paragraph 49 of the decision, Justice Vauclair wrote: "The judge, in determining a balanced, just and appropriate sentence, cannot ignore the impact of the restitution order, particularly when the offender will have to pay over a long period."

In the 2018 New Brunswick case of *Moulton*, the Court of Appeal considered an appeal of two restitution orders totalling $146,513. The appellant asserted that the trial judge failed to properly consider the offender's ability to pay, as well as the adverse impact the orders would have on likelihood of rehabilitation. The Court agreed with the appellant and set aside both restitution orders. At paragraph 41 of the judgment, Justice Richard wrote: "Imposing on Mr. Moulton restitution orders in amounts for which he clearly has neither current ability nor future prospects of paying is akin to financially crippling him for life. This would be most counterproductive to the aim of rehabilitation."

Similarly, in *Robertson*, the appellant's restitution orders were set aside because the sentencing judge did not conduct a meaningful inquiry into ability to pay or the impact that the restitution order would have on prospects for rehabilitation. The Court of Appeal held that while an offender's ability to pay is not a pre-condition to making a restitution order, it is an important factor that must be considered. The Court noted, at paragraph 7, that a "restitution order is not intended to undermine the offender's prospects of rehabilitation. This is why courts must consider ability to pay before imposing such an order."

Availability of civil remedy

It is settled law that restitution orders should not be used as a substitute for civil proceedings (*Zelensky*). Parliament did not intend for the restitution provisions in the *Code* to displace the civil remedies necessary to ensure full compensation to victims. This is, in part, because criminal courts are not an appropriate forum for awarding damages for pain and suffering or for determining complicated issues regarding the assessment of damages.

In 2018 in *R v Dunkers,* the British Columbia Court of Appeal affirmed the proposition that the availability of a civil remedy does not bar the court from making a restitution order. At paragraph 27, the Court noted that the trial judge "was well within his discretion to find that a restitution order would hold Ms. Dunkers accountable for the financial harm she had caused and would provide the CFA[27] with a more convenient and less expensive means of attempting to recover its losses."

Where a civil remedy has been sought

While the availability of a civil remedy does not prevent the court from making a restitution order, whether or not the victim has sought civil recourse is a factor that must be considered. This point was noted in *Zelensky*, where the Supreme Court held that "[a] relevant consideration would be whether civil proceedings have been taken and, if so, whether they are being pursued" (paragraph 29).

The fact that a victim has commenced civil proceedings may be a factor against restitution. In 2019, in *R v Schoer*, the Ontario Court of Appeal upheld the trial judge's decision to reduce the quantum of the offender's restitution order by $72,000, which represented the amount recovered by the victim through the civil process.

Length of sentence

The courts have long held that restitution orders ought to be accompanied by a corresponding reduction in other forms of sentencing in order to conform with the totality principle. This guiding principle remains relevant today. In the case of *Moulton*, the Court considered an appeal of two restitutions orders totalling $146,513 where the appellant argued that the imposition of the restitution orders on top of the three-year term of imprisonment resulted in a sentence that was unduly harsh. The Court of Appeal agreed and set aside the restitution orders. While the sentencing judge acknowledged that restitution forms part of an offender's overall sentence, she turned her mind to the restitution orders only after determining an appropriate term of imprisonment. The two stages of analysis were distinct with no discussion of how one form of sentencing affected the other. This resulted in an overall sentence that was unduly harsh, so the restitution orders were vacated.

Likewise, in the 2020 case of *R v Abdulahi-Sabet*, the British Columbia Court of Appeal varied an offender's restitution order, in part because the trial judge failed to consider the cumulative effect of the sentence imposed. On appeal, the Court reduced the amount of the restitution order from $35,607.09 to $10,000. The Court found that the custodial sentence was, by itself, proportionate to the gravity of the offence. As such, the addition of the restitution order rendered the punishment excessive and the overall sentence unfit.

[27] CFA stands for the Capital Families Association, a non-profit organization in Victoria, BC, which provided a range of social services until the fraud perpetrated by Ms. Dunkers forced it to close.

Aggravating Factors

Breach of trust

Where a breach of trust is involved, general deterrence and denunciation are typically given the most weight during sentencing. Several important cases since 2015 have examined breach of trust more than other issues, and each of these cases will be reviewed briefly. In 2018, the British Columbia Court of Appeal wrote in *Dunkers* that "the principles of deterrence and denunciation are typically of greater importance when deciding whether to impose a restitution order in cases involving theft and breach of trust" (paragraph 31).

A similar conclusion was reached in *R v Lavallée*. The sentencing judge ultimately declined to order restitution on the basis that such an order would offend the sentencing principle of rehabilitation since it could not be fulfilled. On appeal, this decision was overturned and a restitution order was imposed. The Quebec Court of Appeal held that,

> *Where the effect of the fraud on the victim is significant and there is some expectation, even faint, that the offender may be in a position to eventually comply, in whole or in part, with the restitution order, then the primary consideration must be the effects on the victim and a restitution order should follow* (paragraph 28).

With regards to the offender, the Court of Appeal found that it was "not beyond hope that he may find gainful employment" following his term of imprisonment (paragraph 31) and, as such, a restitution order was appropriate.

In the case *R v Wagar* (2018), the Ontario Court of Appeal upheld an appellant's restitution order for comparable reasons. On appeal, the Court held that the trial judge did not err in making the restitution order, even though the funds were likely "beyond the reach of [the] victims forever" (paragraph 17). For offences involving a breach of trust, the paramount consideration is the victims' loss, so restitution can be ordered even if there does not appear to be a likelihood of repayment. As these cases have shown, victim restitution takes priority over an offender's ability to pay when a breach of trust is involved. Likewise, in *Simoneau*, the Quebec Court of Appeal wrote that sentencing judges should be "focused more on the impact of the crime on the victim than the impact of the order on the offender" in breach of trust cases (paragraph 51).

Payment of restitution (particularly when it results in considerable hardship to the offender) can result in a non-custodial sentence in breach of trust cases, even though the norm is for a custodial sentence to be imposed. In *R v Samson*, the offender was an employee of a non-profit ambulance service. She used her status as an employee to have a debit card associated with a government account made out in her name, and subsequently withdrew $8,380.78 for her own purposes. At sentencing, the judge acknowledged that breach of trust cases typically warrant a term of imprisonment, even for first-time offenders. However, there were many factors — including the offender's remorse, rehabilitative efforts and that the repayment of all money taken had caused considerable hardship to her family — that justified a finding of exceptional circumstances, such that a custodial sentence was not appropriate. As a result, the judge imposed a conditional discharge and the sentence was upheld on appeal.

In the 2015 case of *R v Murdoch*, the New Brunswick Court of Appeal expressed a similar sentiment. At paragraph 66, the Court wrote:

> *The public interest is best served by emphasizing denunciation and deterrence in imposing sentence for thefts or frauds committed by employees who thereby abuse a position of trust in relation to their employers.*

The Court also provided an example of "exceptional circumstances," stating that "where restitution entails particularly onerous sacrifices by an offender of modest means, it may, in conjunction with other compelling circumstances, justify a finding of exceptionality" (paragraph 44).

Courts have subsequently relied on the decision in *Murdoch* to justify the imposition of non-custodial sentences in cases involving breach of trust. For instance, in the 2016 case of *R v Schriver*, the New Brunswick Court of Appeal upheld a 10-month conditional sentence for a breach of trust theft. Although the offence involved a breach of trust, the sentencing judge held that a jail sentence was not appropriate and instead imposed a 10-month conditional sentence. The judge particularly emphasized the fact that the offender had made full restitution prior to sentencing. On appeal, the Court agreed that the facts of the case justified a finding of exceptionality pursuant to *Murdoch*.

Restitution orders where multiple defendants

Restitution orders can be made against several offenders who participated in the same crime. However, courts must consider fairness and consistency in such cases. In *Abdulahi-Sabet*, the British Columbia Court of Appeal reduced the quantum of the appellant's restitution order, such that the appellant had to pay less than one-third as much as his co-accused, because he played a lesser role in the commission of the offence.

In the 2015 case from the Saskatchewan Court of Appeal, R v *Fast-Carlson*, the appellant worked as a bookkeeper for a corporation that her father used in a Ponzi scheme. On appeal, the Court held that the trial judge showed neither caution nor restraint in imposing a $1 million restitution order on the appellant, given "that the appellant did not profit from the fraud, that she was not the architect of the fraud but was used by her father to facilitate the fraud and was in a significantly lesser position of trust" (paragraph 26). In light of these considerations, as well as the appellant's inability to pay, the restitution order was varied from $1 million to $250,000.

An offender's greater involvement in the commission of a crime may warrant imposing a restitution order even when no such order is imposed on the other offenders. In *Widdifield*, a 2018 case from the British Columbia Court of Appeal, the appellant and three others were convicted of extortion. The appellant, who instigated and oversaw the criminal enterprise, was ordered to pay restitution. The Court upheld the restitution order, finding that the trial judge correctly noted that apportionment of restitution is not appropriate in cases involving a common enterprise. With respect to the fact that the other three offenders had not been made joint and severally liable, the Court simply stated that the appellant was "entitled to seek contribution from the other responsible offenders" to the extent that he made restitution payments (paragraph 58).

Effect on Sentence

Restitution made

When determining an appropriate sentence for an offender, courts will consider whether significant restitution has been paid. In the past six years, several appellate courts have confirmed that the

payment of significant restitution constitutes a mitigating factor. For instance, in 2015 in *R v Shi*, the Ontario Court of Appeal held that the trial judge properly treated the offender's full restitution as a mitigating circumstance. Five years later in *R v Stead,* the Court discussed the fact that the offender had repaid the victim the entire amount lost while summarizing the mitigating factors of the case.

However, as the Manitoba Court of Appeal noted in 2017 in *R v Gurske*, an offender need not necessarily make full restitution prior to sentencing for it to be considered a mitigating factor. Although a considerable amount of restitution remained outstanding, the Court held that the accused's efforts nevertheless constituted a mitigating factor.

Despite the foregoing, not all courts have found that the payment of significant restitution is relevant on appeal. In *R v Slizak*, a 2017 case from the British Columbia Court of Appeal, the appellant sought to adduce fresh evidence which demonstrated, among other things, that he had fulfilled his restitution order. The Court dismissed the application, noting that while the payment of restitution is "commendable," it is "also to be expected" (paragraph 25). Therefore, the new evidence the appellant wished to introduce did not "bear in a sufficiently material way on a fit sentence," such that it ought to be admitted (*Ibid.*).

The following year, in *R v Chandler*, the Court held that the accused's stated intention to make restitution was a mitigating factor. On this issue, the courts have diverged with some finding the willingness to make restitution to be commonplace rather than exceptional.

In 2020, the British Columbia Court of Appeal revisited the issue of if and when an offender's offer to make restitution should be considered a mitigating factor in the case of *R v Kodimyla* (see also *R v Mathur, R v Hills*). The Crown argued on appeal that the sentencing judge erroneously treated several facts as mitigating, including the appellant's willingness to pay restitution. The Court ultimately agreed with the Crown, stating that, "in the context of Mr. Kodimyala's continued denial of responsibility for the offence, it is difficult to conceive how his stated intention to pay restitution in and of itself could have been considered a mitigating factor" (paragraph 36). The Court went on to suggest that if a restitution order is sought or acceded to by an offender, it may be indicative of remorse and, as such, can be taken into account in mitigation. However, given that the appellant had not taken any responsibility for his actions, it was an error in principle for the sentencing judge to treat his offer to make restitution as a mitigating factor.

Absence of restitution efforts

Just as the jurisprudence is divided on the mitigating impact of willingness to make restitution, the jurisprudence is similarly divided on whether an absence of restitution efforts constitutes an aggravating factor at sentencing. On the one hand, several appellate courts have, either implicitly or explicitly, treated an offender's failure to make restitution as an aggravating circumstance. For instance, in the 2017 case of *R v McGee*, the British Columbia Court of Appeal explicitly held that the fact that the offender had not repaid his victims was an aggravating factor. However, in the Quebec Court of Appeal case of *R c Dayfallah* (2015), the offender's failure to provide restitution was simply described as an "important factor" (paragraph 11). Meanwhile, in *R v Bhatti,* a 2016 case from the Ontario Court of Appeal, the Court noted that the sentencing judge had not placed much weight on the lack of restitution paid by the appellant. The Court further wrote that, "if [the appellant's] failure to make restitution had been taken into account by the sentencing judge, it could only have served to increase his sentence" (paragraph 15).

On the other hand, in the 2020 case of *R v Penttila*, the British Columbia Court of Appeal found that the sentencing judge erred in treating the appellant's failure to pay restitution as an aggravating factor. The Court went on to explain that, "[f]ailure to make restitution is, at best, the absence of a mitigating circumstance" (paragraph 77).

Reduction for inability to pay

There are numerous decisions showing that the amount of a restitution order may be reduced on appeal because the offender is unable to pay. In the 2015 case of *R v Heathcliff*, the Yukon Court of Appeal varied the amount of a restitution order because the sentencing judge failed to adequately consider the appellant's limited means. Based on the record, it was clear that the appellant "would be crushed financially" by the order and that he "had no hope of paying such a large amount of restitution" (paragraph 9). As a result, the restitution order was reduced from $101,008 to $9,688. Alternatively, appellate courts may set aside a restitution order altogether due to the offender's inability to pay.

Impact on sentence if restitution imposed

When a restitution order is made on appeal, the court may vary other aspects of the offender's punishment to ensure that the overall sentence complies with the principle of totality. Specifically, where the imposition of a restitution order results in an otherwise reasonable sentence becoming too severe, the court will reduce either the offender's term of imprisonment or period of probation accordingly. For instance, in the case of *Simoneau*, the Quebec Court of Appeal reduced the offender's probation period by six months after making a restitution order in the amount of $15,000.

However, in 2018, in *R c Paquette*, the Quebec Court of Appeal noted that "the addition of a restitution order, which aims in particular to facilitate compensation for victims, does not mean that the prison sentence must automatically be reduced if the total sentence does not thereby become unreasonable" (paragraph 15).

There was no recent case law on issues such as enforcement and failure to pay, mutual legal assistance, and demonstrating loss with sufficient and detailed information.

Amount ordered

The setting of the amount of a restitution order is a judicial inquiry. In the 2019 case of *R v Erez*, the Ontario Court of Appeal held that, because the setting of the amount of a restitution order is a judicial inquiry, the sentencing judge is entitled to accept "some, all or none" of the evidence presented to them regarding the total loss. The appellant was responsible for the total loss caused by his fraudulent scheme. Thus, the fact that he may not have benefited from all of the money he received had no bearing on determining the appropriate quantum of restitution.

Scope of order – Replacement value

In the 2018 case of *R v Lawrence*, the offender was convicted of several offences after being caught smuggling refined gold in the form of "gold pucks" out of his workplace, the Royal Canadian Mint. On

appeal, the offender submitted that the trial judge erred in calculating the appropriate quantum of restitution by using market value for the gold. In particular, he asserted that because the victim (the Mint) was able to purchase large quantities of unrefined gold at a discounted price, the market value was not the same as the replacement value, so the amount of the restitution order should be reduced accordingly. The Court rejected this argument on the basis that the property stolen was not unrefined gold, but rather refined gold in the form of gold pucks. As such, the trial judge was entitled to determine the appropriate amount of restitution based on the replacement value of the pucks, irrespective of the fact that the victim was able to purchase, at a discounted price, unrefined gold to make the pucks.

Concluding Remarks

This article reviewed the published case law on restitution since 2015, when the CVBR came into force. The CVBR includes the right to request restitution (s. 16). Overall, the jurisprudence on restitution has remained stable without significant changes, with the case law adding additional weight and nuance to previously established principles.

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