



BACKGROUND

ISSUE: Concerns and Questions Related To the Potential for an Increase in the Use of Alternative Measures in Violence Against Women Cases

This backgrounder is based on the information available at April 4, 2002. In addition to the sources cited, it incorporates input from many experts on violence against women, including those involved in the Community Coordination for Women's Safety project. This includes the BC Association of Specialized Victim Assistance and Counselling Programs, BC Municipal Chiefs, the Department of Justice National Crime Prevention Centre, the Justice Institute of BC, Multilingual Orientation Service Association for Immigrant Communities (MOSAIC), the Pacific Association of First Nations Women, RCMP "E" Division, representatives from the criminal and civil bar, and Victim Services Division (BC Ministry of Public Safety and Solicitor General).

This document is also available on the website of the BC Association of Specialized Victim Assistance and Counselling Programs:

Go to www.endingviolence.org
Select "Community Coordination for Women's Safety"
Select "Documents- Coordination Resources"

FUNDING PARTNERS:

- Law Foundation of BC
- Ministry of Public Safety and Solicitor General
- Ministry of Community, Aboriginal and Women's Services
 - National Crime Prevention Centre:
*Community Mobilization Program &
Crime Prevention Partnership Program*
 - National Victims Policy Centre

BACKGROUND AND ANALYSIS:

Since the 1996 amendments to the Criminal Code which provided the first statutory authority for adult diversion in the form of “alternative measures”, women’s groups and victims’ advocates have been voicing their concerns about the dangers of the use of various forms of alternative/restorative justice initiatives in violence against women cases. While there may be some merit¹ in the future use of these “other than judicial proceedings”² in appropriate cases, safeguards have not been put in place which would protect victims of power based crimes who may agree to engage in alternative measures such as family group conferencing, circle sentencing, victim-offender reconciliation, or community accountability panels.

Concerns raised over the years by those who are well versed in the complexities of power based crimes, who are working with victims, or who are victims themselves, point to victims’ vulnerability to coercion, fear of retaliation, dependence upon the perpetrator, and pressure from their community as some of the reasons for a victim’s inability to act on her own behalf in an other than judicial proceeding.

“It is extremely difficult for a victim - enmeshed in an abusive relationship of unequal power or faced with society’s or her own culture’s views about women who have been sexually assaulted - to speak with an independent voice. The victim’s experience may have been that attempts in the past to assert her autonomy have been met with ‘punishment’ in the form of increased violence and increased control over her behaviour. She may have internalized the view that women are responsible for men’s sexual impulses or that being raped is shameful or that a woman brings shame on her family or her community if she is not chaste when married. Women of all cultures, all social classes, all ages are faced with enormous pressures to stay put and to stay silent.”³

Women’s groups and anti-violence advocates have been working for more than twenty years in this country to make visible crimes of violence against women. The trend, which was sanctioned by the criminal code amendments of 1996, and the subsequent growing movement in British Columbia toward the use of restorative justice alternatives, has the potential to place in jeopardy the gains that have been made in having violence against women recognized as a crime and taken seriously by the criminal justice system and in turn, by the public.

Aboriginal women in particular are vulnerable to their reports to police being diverted by Crown into alternative programs. Excerpts from consultations with Aboriginal women:

“Most participants felt that traditional practices, as an alternative to the criminal justice system, were not appropriate in sexual assault cases. Many pointed out that

¹ “While the literature is sparse, the potential of restorative justice is acknowledged, in its emphasis on the central role of communities in solving problems, a role that differs from the individualized response of the legal model that both constrains women’s choices and leaves the extralegal causes of their oppression unchanged. At a theoretical level, restorative justice is perceived by some to be a first step in the movement toward a transformed justice system that truly challenges inequality and fundamentally changes the conditions of women’s lives.” *Nova Scotia Department of Justice Victims’ Services Division, A Review of the Effectiveness and Viability of Domestic Violence Interventions as an Adjunct to the Formal Criminal Justice System*, June 2001.

² Section 716 of the Criminal Code defines “alternative measures” as “other than judicial proceedings”.

³ *Nature and Dynamics of Violence Against Women, Children, Seniors and People with Disabilities: Implications for Alternative Measures and Restorative Justice Approaches*. Light, Linda, (Victim Services Division) May, 2000.

any traditional aboriginal practices which may have existed had been lost. It was also pointed out that the term 'traditional' is an oversimplification, and is misunderstood by many."⁴

"The irony of these identified gaps is that government's selling point for these pilot programs is that its' origins are in 'tribal wisdoms' and are 'culturally based'. The use of 'culture' is obviously problematic."⁵

"Focus group participants expressed tremendous concern with the diversion of cases of violence against women and children because they felt that the majority of support goes to offenders along with a prevalence of victim-blaming mentalities. A lack of concern for the safety needs of women and children, particularly in isolated communities was also cited as a major concern in processes such as "Victim-Offender Mediation".⁶

"A potential difficulty in alternative justice programs in remote communities is the conflicting interests of victim services workers between fulfilling job requirements and maintaining loyalties to family members and those who hold positions of power in these justice programs."⁷

"Any alternative measure or restorative approach that takes account of the victim's wishes must involve a process of consultation or negotiation with the victim. But a victim of a 'power-based' or 'dependency-based' crime is not an equal participant in any consultative or negotiating process, whether with the person who has victimized them or with a representative of the justice system. The same dynamic that keeps a victim in an abusive relationship or that makes a victim feel powerless makes that victim vulnerable to 'pressure' from anyone who may be seen as an authority figure, whether that person is the offender, a police officer, a Crown counsel or a community-based volunteer."⁸

The concerns about the use of alternative measures in violence against women cases have been stated consistently to government over the years, and not without response. In November, 2000 The Honourable Andrew Petter, Attorney General, replied to an issues document presented by The BC Association of Specialized Victim Assistance and Counselling Programs (*Issues Related to the Interim Alternative Measures Policy*) and a subsequent meeting with Tracy Porteous and Former Minister of Women's Equality Joan Smallwood in relation to the Interim Alternative Measures Policy of the Criminal Justice Branch:

"We are committed to improving our approaches to enhancing women's safety and holding offenders accountable. In the context of alternative Measures and after hearing the concerns raised at our meeting, necessary changes will be made in three areas: strengthening the Alternative Measures approval process, increasing accountability and enhancing training."

⁴ Ministry of Attorney General, *Sexual Assault Policy, Highlights of consultation with Aboriginal Women*, Prepared for Ministry of Attorney General, Sexual Assault Committee, October 24, 1995.

⁵ *The Implications of Restorative Justice For Aboriginal Women and Children Survivors of Violence: A Comparative Overview of Five Communities in British Columbia*, Stewart, W., Huntley, A., Blaney, F. July, 2001, (pg.62)

⁶ Ibid (p.46)

⁷ Ibid (p. 55)

⁸ *Nature and Dynamics of Violence Against Women, Children, Seniors and people with Disabilities: Implications for Alternative Measures and Restorative Justice Approaches*, Light, Linda,(Victim Services Division) May, 2000.

In a subsequent letter to the BC Association of Specialized Victim Assistance and Counselling Programs, Assistant Deputy Attorney General Austin Cullen makes a further commitment:

“An improved database has been developed to track the use of Alternative Measures in these areas, and summaries of this data will be made available periodically.”

These *are* measures that could increase victim safety if implemented. But to date, there has been no indication of such “safeguards” as “strengthening the Alternative Measures approval process, increasing accountability and enhancing training.” While the Criminal Justice Branch offered statistics for a 2 year period at the Moving Coordination Forward Forum in January, 2001,⁹ subsequent to this time, there hasn’t been adequate information sharing regarding summaries of data from the Criminal Justice Branch which has been tracking the use of Alternative Measures (release of data has been sporadic and incomplete).

A Summary of Guidelines for the Use of Alternative Measures accompanied Assistant Deputy Attorney General Austin Cullen’s letter. This summary refers to the statutory authority of Criminal Code Section 716 and 717, the Crown Counsel Alternative Measures Policy, The Aboriginal Alternative Measures Policy, the Corrections Policy and policies covering sexual assault, violence in relationships, child abuse, hate/propaganda offences, hate/bias offenses and criminal harassment offences.

An additional set of guidelines was developed for discussion by the Ministry of Public Safety and Solicitor General, Victim Services Division *Guidelines for Alternative Measures Contractors: Referrals for Offences Involving Violence Against Women in Relationships*. While these are in draft only, the opening paragraph when contrasted with the Crown Counsel Policy Manual Guidelines opening, illustrates the continued need for attention to creating consistency in the methodology guiding the use of alternative measures in cases of violence against women:

- ◆ The *Crown Counsel Policy Manual Guidelines on Alternative Measures for Adult Offenders* opening at Section II A.1.:

“The intent of these Guidelines is to significantly expand diversion to persons and case types not traditionally diverted.”

- ◆ The opening of the Corrections Policy, *Guidelines for Alternative Measures Contractors: Referrals for Offences Involving Violence against women in relationships*:

“The purpose of these guidelines is *not* to increase the number of referrals of violence against women cases to alternative measures. The purpose is to provide all those involved with alternative measures, in any capacity, with guidelines to ensure a common understanding...”

While these are not opposing perspectives, they certainly represent different starting points, and it is this difference that is of concern. These guidelines do not clearly indicate that the safety of the victim is a priority.

⁹ *Alternative Measures: Issues Related to Women’s Safety*, Anne Clark, Crown Counsel, Criminal Justice Branch, Ministry of Attorney General, a presentation in Surrey, BC at the Moving Coordination Forward Forum, January, 2001: “Vawir cases: over a 2 year period 48 were referred to Alternative Measures, 46 actually went to Alternative Measures.”

Current concerns regarding the impact of government cutbacks on assaulted/abused women's willingness to access services, (including engaging in the criminal justice process), and the inevitable resulting increase in the use of Alternative Measures in cases of VAWIR and Sexual Assault:

1. Cuts to Courthouses in 24 rural communities could create:
 - ◆ the *potential* for increased stays of proceedings in VAWIR¹⁰ and sexual assault cases due to inability of perpetrator and/or victim to travel the long distance to a court house,
 - ◆ the *potential* for a decrease in willingness of police to comply with pro-arrest VAWIR policy, due to shortage in staffing at rural police detachments and additional time required for police officers to travel to court.
 - ◆ The *potential* for police to return to a model of negotiation/reconciliation between victim and perpetrator, and thus not forward charges when formerly they would have done so.
2. The government trend to "increase reliance upon alternate dispute resolution" and "increase use of out-of-court options, including community-based programs, for appropriate minor offences"¹¹ will provide sanctions to overworked criminal justice personnel to move VAWIR and sexual assault cases away from the criminal justice system and into community alternatives.
3. Closure of probation offices in five communities¹² will make supervision of perpetrators bound by protection orders more difficult and indeed threatens the viability of the entire supervision PROCESS. The result of this is to further strengthen the trend away from "vigorous prosecution" to the use of alternative measures
4. Government elimination of Crown Victim Witness Services will create the potential for decreased accessibility to justice for women victims of violence. While there were barriers in some communities to referral of victims from Crown Victim Witness Services to community-based programs, CVWS provided an excellent liaison between crown counsel and the victim. CVWS helped prepare the victim for court and provided critical information to crown and police in situations where the woman's safety was at risk. Crown Victim Witness services also provided an excellent connection for women to the criminal justice process and a valued assistance to the prosecution of violence against women cases. The loss of these programs is significant in many ways and may result in:

¹⁰ A report prepared for the BC Ministry of Attorney General by Darryl Plecas, et.al. in the year 2000 entitled: *Reticence and Re-Assault Among Victims of Domestic Violence in Abbotsford B.C.*, found a fairly high rate of stays of proceedings in VAWIR cases (about 40% of those cases surveyed.) This is consistent with other studies including the BC Ministry of Attorney General Police Services survey on spousal assault cases. (April 1999). The Plecas study found that the high rate of stays was a very serious issue because those offenders who have their charges stayed are different from other offenders generally in that they are more likely to re-assault their victim. In the Plecas sample, 54% of offenders who had charges stayed re-assaulted.

¹¹ Ministry of Attorney General and Minister Responsible for Treaty Negotiations, Service plan Summary, 2002/03 - 2004/05

¹² . Ministry of Public Safety and Solicitor General Service Plan Summary 2002/03 says that five community probation officers will be closed for greater efficiencies and reduced costs. Offenders will continue to be supervised in these communities by probation officers in neighbouring communities. The communities are Hope, Kitamat, Sydney, Parksville and 100 Mile House.

- ◆ Other victim services being overloaded and unable to provide services;
- ◆ The victim not having adequate information about the criminal justice process and being unsupported during the investigation and prosecution of the case thus potentially putting her at risk of further violence
- ◆ Greater likelihood for mistrust and misunderstanding of the criminal justice system on the part of the victim
- ◆ Greater likelihood that the victim will not feel secure enough to testify against her abuser e.g. she may fail to appear in response to a subpoena to testify, which in turn increases the potential for a case to be diverted to Alternative Measures.
- ◆ Much larger workload for a prosecutor of a VAWIR or sexual assault case.

Considerations For A Coordinated Community Response:

1. Have the cuts to Court Houses and other services impacted your community's use of alternative measures? If so, how?
2. Are the local contractors of alternative measures programs members of your coordination initiative or connected with the women serving agencies in your community?
3. Are you aware of the criteria being used by your local contractor for screening cases for alternative measures?
4. Has your community had discussions about the appropriate use of alternative measures in cases of sexual assault and violence against women in relationships? What were the results of these discussions?
5. Who in your community or region is making the final decision regarding whether a sexual assault or VAWIR case is referred to alternative measures? What criterion is being used to make that decision?
6. Is there a process in place to ensure the victim of a sexual assault or VAWIR case receives specialized information and support prior to, during and after making a decision to be involved in an alternative measure process?
7. Are young offenders in your community accused of VAWIR or sexual assault being given the option of being referred to alternative measures programs?
8. Is there a follow-up process to assess the effectiveness of the alternative measures from the perspective of the victim?

Can Community Coordination For Women's Safety help?

- If your community or region could benefit from assistance related to coordination on this issue, please contact either **Regional Coordinator**
- If your community would like more information regarding policy related to this issue or assistance with promoting action at a provincial or federal level on this issue, please contact the **Issues Analyst**
- You may also wish to contact our **Managing Partner** for other information about the project.

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