

**RESTORATIVE JUSTICE AND SEXUAL VIOLENCE**  
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Jo-Anne Wemmers PhD

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## 1. INTRODUCTION

Conventional justice systems have struggled to deliver effective responses to victims and offenders of sexual violence. The intimate nature of these crimes can make disclosure difficult and victims often fear that they will not be believed. Responsibility for the offence can also be wrongly attributed to the victim rather than the offender, by victims themselves and by others. How others, including criminal justice authorities, react to the victim will impact the victim's well-being (Campbell, Wasco, Ahrens, Sefl & Barnes 2001; Campbell 2008). All of these factors contribute to low reporting rates (Perreault 2015).

In recent decades, Canada, like many countries, introduced various legal reforms in order to improve the criminal justice response to sexual offending. The introduction of Bill C-127 in 1983, substantially changed how we define sexual assault and aimed to eliminate many of the obstacles faced by victims in order to improve reporting (Roberts 1990). Throughout the 1990s changes continued to be introduced to the law including a codified definition of consent and provisions for the production and disclosure of third-party records in sexual assault proceedings (McDonald, Wobick & Graham 2004). Despite these efforts, most victims of sexual assault do not report the crime to police and when they do, the attrition rates have steadily increased leading to a smaller proportion of reported cases proceeding to trial and a decline in conviction rates (Brennan & Taylor-Butts 2008; Daly 2011; Dauvergne 2012). Legal reform measures such as rape shield laws, broadening the definition of sex crimes, and the introduction of victim impact statements do not appear to have succeeded in improving access to justice for victims of sexual violence (Naylor 2010; Garvin & Beloof 2015; Keenan, Zinsstag & O'Nolan 2016). This has led many scholars to question whether there is a better way to serve victims of sexual violence.

In this paper we will examine the research on the use of restorative justice in cases of sexual violence. However, before doing that we first need to address key concepts that will be used in this paper.

### Victims

The term victim is used throughout this paper. The identity of 'victim' is not one we value very much because of the negative association of suffering and sacrifice associated with it (Dunn 2012). Some people prefer the word 'survivor' to the word 'victim', because it is a more positive word (Fattah 2010; Booth 2016). A survivor is someone "who continues to live or exist in spite of perils" (Oxford Dictionary 1989). While these concerns are valid, it is important to understand that before one can be a 'survivor', one must first suffer victimization. The recovery process following victimization can only begin once there is recognition of the victim's suffering. As soon as the individual defines the event as a crime, they seek recognition and validation from others, and it is important for their recovery process that they receive this support (Ruback & Thompson 2001; Hill 2009; Strobl 2010). Being a victim is not a permanent state and healing is about the metamorphosis from victim to survivor (Fattah 2010). However, recovery from crime starts with recognizing the victim.

Most victims of sexual assault are female and most offenders are male (Perreault 2015). Victims often know their offender, and there may even be a relationship between them (Mercer & Sten-Madsen 2011; Perreault 2015). In Canada, Aboriginal women are particularly likely to be victims of sexual assault. In 2014, Aboriginal women ages 15 and older recorded a sexual assault rate of 115 incidents per 1,000 population, while this rate was 35 per 1,000 for non-Aboriginal women (Perreault 2015). However, these statistics must be used with caution as they are incomplete. They are based on self-report victimizations experienced within the last 12 months and they exclude lifetime victimization, as well as certain groups such as children and youths under 15 years of age, adults in living institutions and Canadians living in the territories.

In this paper we focus on the direct victims of sexual violence, however, it is important to keep in mind that the effects of sexual violence may be felt well beyond the direct victim. Although few victims file a formal complaint, most confide in friends (72%) and many turn to family (41%) and other informal sources of support (Brennan & Taylor-Butts 2008). Those close to the victim may also be emotionally affected upon learning about the victimization (Ruback & Thompson 2001).

### Sexual violence

Sexual violence or sexual assault is a heterogeneous category. It refers to all incidents of unwanted sexual activity, including sexual attacks and sexual touching (Brennan & Talyor-Butts 2008). The victimization may have occurred recently or many years ago. It may have been an isolated incident or a series of events. Canadian victimization data indicate that most sexual assaults involved unwanted sexual touching (71%). In the remaining cases, victims were forced to have sexual activity (20%) or were unable to give consent (9%) for example because the victim was drugged or intoxicated (Perreault 2015). The characteristics of the offence and the offender will influence how the victim is impacted by their victimization and their subsequent needs.

### Restorative justice

There is not one conclusive definition of restorative justice (RJ), and this is reflective of the flexibility and diversity among restorative justice programs. One common definition is that restorative justice is *a process whereby all parties with a stake in a specific offence come together to collectively identify the harms, needs, and obligations in order to heal and put things as right as possible* (Marshall 1999; ECOSOC 2002; Zehr 2015).

Any program that uses restorative processes and seeks to achieve restorative outcomes is a restorative justice program (ECOSOC 2002). One popular form of RJ is victim-offender mediation in which victims and their offenders are brought together, under the watchful eye of a trained mediator, in order to discuss the offence and find a mutually satisfying

response (Van Camp 2014). Some feminist writers suggest not using the word 'mediation' in order to distinguish these programs from civil mediation, which is not voluntary, and suggest using the term victim-offender dialogue instead (Koss 2014; Nelund 2015). Another popular form of RJ is the family group conference. Originating in New Zealand and Australia, conferences are similar to victim-offender dialogue in that they bring together the offender with the victim(s) or a representative of the community in order to discuss what happened and find a satisfying solution. However, victims and offenders are encouraged to bring family members and other support persons to the meeting (Daly 2011). In victim-offender-encounters victims meet with sentenced offenders who committed a crime similar to the one that they experienced but who are not *their* offender (Wemmers 2002; Van Camp 2014). These are just a few examples of common RJ programs. These programs illustrate that RJ can take many different forms and occur at various stages of the criminal justice process, however, participation is always voluntary.

While restorative justice recognizes all parties, including victims, it takes a broad, criminological approach to the harm caused by crime and focuses on healing for the victim and the offender (Noll & Harvey 2008). As a result, RJ has been criticized for being offender oriented and using victims to promote the rehabilitation of offenders (Reeves & Mulley 2000; Wemmers 2002; Green 2006; Goetz 2014). When dealing with sexual violence, one must be very careful to respect victims' interests first while also respecting the rights of the accused.

Contrary to restorative justice, *reparative justice* is victim-centred and can be considered a victimological notion with its own terminology. Its focus is on victims of crime, their needs, perceptions and dignity. According to Goetz (2014) reparative justice is based on three components: reparation; victims' procedural rights; and their experiences in the justice process.

Reparation means to repair or make amends and it can take many different forms including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (Letschert & Van Boven 2011). Satisfaction refers to a variety of measures, which recognize

the victimization, promote the truth and denounce the crime. Guarantees of non-repetition means taking measures in order to prevent victimization from happening again.

Rehabilitation refers to victims' healing or recovery from crime and includes medical, psychological social as well as legal services for victims (United Nations 2005). These different forms of reparation correspond with the research literature on the needs expressed by victims of crime (Ten Boom & Kuijpers 2012; Wemmers 2014). Hence, reparation for victims is flexible and multifaceted.

Victims' procedural rights facilitate and enable victims to effectively seek and obtain justice. These include the right to information and participation, protection, support and legal assistance (Goetz 2014). The *Canadian Victims Bill of Rights*, which was adopted in 2015, provides victims with a formal right to information, protection, participation and restitution. Formal rules and procedures contribute to people's perceptions of justice (Wemmers 1996; Blader & Tyler 2003). Victims value procedures, which allow them to retain some control in the decision-making process and have a voice (Wemmers 2001; 2014; Van Camp & Wemmers 2013; De Mesmaecker 2014). However, victims do not seek full control and they are willing to cede decision-making power to a third-party (e.g. a judge) provided they are able to have input in the decision-making process (Thibaut & Walker, 1975; Wemmers 2001; Van Camp & Wemmers 2013; De Mesmaecker 2014). Reparative justice rests on procedural fairness for victims, and recognition of victims as persons before the law (Wemmers 2012). There is a vast body of research on procedural justice, which reveals that victims' perceptions of justice are not only based on the outcomes achieved but also how outcomes are reached (Orth 2002; Bradford 2011). Studying the experiences of victims of serious violent crime and restorative justice, Van Camp and Wemmers (2013) found that victims' appreciation of RJ was related to it being perceived as procedurally just. Moreover, for the victims in their study, the dialogue with the offender was an end in itself. For victims, meeting and speaking with their offender was a source of satisfaction or reparation regardless of the impact on the offender or the legal outcome of the case.

Victims' experiences in the justice process is the third component of reparative justice. This emphasizes informal treatment rather than formal rules and procedures (Blader & Tyler 2003). People's perception of how fairly they were treated in decision-making procedures is also referred to as interactional justice (Colquitt 2001). Informal treatment includes being treated with courtesy and respect, as well as being informed about services and notified about developments.

These three components of reparative justice, reparation, procedural justice and interactional justice, are interrelated. As Goetz (2014) notes, victims' experiences impact their perceptions of fairness and trust as well as empowerment and healing. Victims' formal rights shape their experiences with criminal justice authorities and their expectations. In turn, how victims are treated affects their recovery from crime (Campbell 2008; Wemmers 2013; Morissette & Wemmers 2016).

Reparative justice for victims can be achieved in many different ways including conventional criminal justice and in RJ. Reparative justice focuses on victims' needs and finding a way to achieve some form of reparation for the victim. For example, when criminal justice recognizes the victimization and denounces the crime, this can be reparative for the victim. However, there is no guarantee in criminal justice that the accused will be found guilty and an acquittal can be very difficult and disempowering for victims who seek recognition in the criminal justice system (Cyr & Wemmers 2011). Victims often turn to restorative justice programs because they have needs that were not met in the criminal justice process (Koss 2014; Van Camp 2014). RJ offers reparation to victims by providing them with recognition as well as an opportunity to enter into dialogue with their offender in order to ask questions, tell their story and reclaim their strength (Wager 2013; Van Camp & Wemmers 2013; Mercer & Sten-Madsen 2015). Reparative justice recognizes many different forms of reparation for victims, including victims' rehabilitation and is, therefore, broader than either criminal prosecution or RJ (Letschert & Van Boven 2011; Wemmers 2014).



However, a common understanding of reparative justice has yet to emerge and concretize, and while the concept restorative justice is also somewhat elusive, reparative justice in its broad form remains in its infancy. Hence, in the following we will examine research on restorative justice programs and sexual violence. Our focus will, however, be on victims, their experiences and their needs.

## 2. WHAT DOES THE RESEARCH SAY ABOUT THE USE OF RESTORATIVE JUSTICE IN CASES OF SEXUAL VIOLENCE

### Some victims of sexual violence are interested in RJ

While less than one in 10 victims of sexual assault in Canada report their victimization to police, as many as one in four victims of sexual assault is interested in RJ (Tufts 2000; Perrault 2015). The 1999 victimization survey included a module on attitudes towards alternatives to criminal justice. After presenting victims with a definition of victim-offender mediation as an alternative to criminal justice, researchers asked victims to think about the criminal incident they had just reported and indicate how interested they would have been in participating in a mediation program. Although 59% of victims of sexual assault said that they would not have been interested in RJ, 17% said that they would have been somewhat interested and 9% said that they would have been very interested in RJ (Tufts 2000). RJ is clearly not for everyone, however, some victims are interested in it.

One U.S. study with victims of sexual violence found that a majority of victims of sexual assault were interested in RJ. Unlike the above Canadian study, which examined victimization in the last year, this study looked at lifetime victimization. Fifty-six percent of victims indicated that they would like the opportunity for RJ *in addition to* the conventional criminal justice system and 30% said that they would like the opportunity for RJ *as an alternative* to going to court. This study also found that victims who had chosen to *not*

report their own assault to police were most likely to favour RJ as an alternative to court (Marsh & Wager 2015).

Research with victims who reported their victimization to authorities suggests that victims are equally likely to be interested in RJ programs when there is a relationship with offender. Koss (2014) reports that 67% of all sexual assault referred to the program and in which the victim and the offender were romantic partners, the victim wished to meet face-to-face with their offender. However, in cases where the victims did not know their offenders, 80% of victims did *not* wish to meet their offender. Koss concludes that the appeal of the RESTORE program increased as relationships became more intimate.

### Benefits for victims

Studies suggest that victim participation in RJ may be beneficial for victims' psychological wellbeing, reducing victims' PTSD symptoms and stress (Gustafson 2005; Wager 2013; Koss 2014). One of the first studies to examine RJ in cases of very serious violent crimes, including sexual violence, was David Gustafson's evaluation of the victim-offender mediation program of the Fraser Region Community Justice Initiatives Association in British Columbia. The evaluation was undertaken in 1989 and involved interviews with 28 victims of serious violent crimes whose offenders were serving a prison sentence in a federal institution. In this program, cases were selected for mediation based on offense characteristics (i.e. serious violent crime). Researchers first contacted the offenders. Only victims of offenders who agreed to participate in mediation were contacted. Most victims (17 out of 28) agreed to meet their offender and considered such a meeting to be helpful to their personal recovery and their ability to bring a measure of closure to the offence. Based on the case study of an adult victim of child sexual abuse who participated in the program, Gustafson (2005) finds a reduction in stress symptoms reported by the victim following the victim-offender dialogue.

An evaluation of the RESTORE program for victims of sexual violence found that victims showed a decrease in PTSD from intake (82%) to post-conference (66%). Not only did victims experience a reduction in stress, they were also able to reclaim their power. All of

the victims who participated in the RESTORE program strongly agreed with the statement that taking back their power was a major reason to select RESTORE over other justice options (Koss 2014).

Similarly, Wager (2013) found that for victims the conferencing experience was empowering rather than traumatizing. Based on a scoping study of 58 publications on sexual violence and RJ, which included 10 victims' accounts, the author reports numerous benefits for victims. These include gaining a sense of empowerment, acknowledgement of the harm done, restoration of relationships, being able to let go and move on with life, and relinquishing the fear of retaliation for reporting.

The Leuven Institute of Criminology in Belgium, recently published a practice guide for restorative justice in cases of sexual violence as part of a larger research project. The principle authors of the report, Mercer and Sten-Madsen, have extensive experience using RJ in a wide array of cases of sexual violence. According to the authors, when there is a relationship between victims and offenders, RJ may help to redefine their relationship. Victims become empowered, which allows them to reclaim their lives and transforms them from victims to survivors (Mercer & Sten-Madsen 2015)

Research with adult survivors of child sexual abuse found that for some, the conference constitutes a "turning point" in their healing process in which they reclaim power (McGlynn, Westmarland & Godden 2012). Similarly, adult survivors of sexual child abuse by members of the clergy found mediation to be helpful in their healing journey (Noll & Harvey 2008).

RJ can be integrated or combined with victim therapy. In this approach, the focus is on victims' healing, and RJ becomes a tool to help victim in their healing process (Julich, Buttle, Cummins & Freeborn 2010; Van Camp 2014). Integrating RJ with victim therapy is an excellent example of a victim-centred, or reparative justice. It is initiated based on the victim's need and its potential to contribute to the rehabilitation of the victim while respecting the rights of the accused.

### Information to empower choice

The vulnerability of victims of sexual violence raises concerns about if, when and how to approach the topic of RJ with victims. Some might say that the risk of secondary victimization is too high. But if we just dismiss restorative justice and say that we shouldn't do this because victims are vulnerable then we're depriving people of an opportunity that can be beneficial (McGlynn et al 2012).

While some victims are interested in RJ, victims are often not made aware that RJ is possible. Marsh and Wager (2015) conducted a web-based survey with 121 community members in the United Kingdom, 40 of whom identified themselves as survivors of sexual violence. In their interviews with victims of sexual violence, the authors found that most victims had never heard of RJ before taking part in their study.

Victims want to be informed so that they can decide what they want to do. Based on qualitative interviews with 34 victims of serious violent crimes, including 8 cases of sexual violence, Van Camp and Wemmers (in press; Wemmers & Van Camp 2011) examined victims' experiences with restorative justice in Canada and Belgium. Focusing on how RJ had been introduced to the victim, the authors distinguish two main approaches: one protective and the other proactive. In a protective approach, victims were shielded and not told about restorative justice unless they explicitly asked about it. In contrast, in a proactive approach victims were actively informed about RJ. This allowed victims to make up their own minds about whether or not they were interested in it. They could even come back to it at a later time if they were not immediately interested in it. Van Camp and Wemmers found that victims prefer a proactive approach to a protective one. Making choices is integral to victims' healing process (Muscat 2010) and victims want to decide for themselves what they want to do. This requires, however, that they be informed of all possible options, including RJ. As survivors remind us, we must not underestimate the strength of victims (McGlynn et al 2012).

In terms of when to offer victims information, Marsh & Wager (2015) report that while survivors of sexual violence have mixed views about when is the best time to offer victims RJ, the earliest point of contact may be best time to inform victims about RJ as an option. It is important that RJ remains flexible and that it is possible at any stage in the criminal justice process (Tinsely & McDonald 2011; Van Camp 2014).

### Restorative versus criminal justice

RJ is sometimes used as an alternative to court and a way for victims to avoid secondary victimization in the conventional criminal justice system. For example, the RESTORE program in Arizona was used as an alternative to conventional criminal justice (Koss 2014). Research with survivors of sexual assault shows that some, especially those who did not report their victimization to police, are interested in RJ because it offers an alternative to going to court (Marsh & Wager 2015).

However, not all victims like the idea of RJ as an alternative to court (Tufts 2000; Marsh & Wager 2015). RJ may also be complementary to the traditional criminal justice system and take place during or after the criminal trial process (Daly 2011; Van Camp 2014; Keenan, Zinsstag & O’Nolan 2016). An advantage of RJ for victims is its flexibility. In order to remain flexible, RJ should be possible at any stage in criminal justice system.

While RJ may be considered an alternative to conventional criminal justice, it is not a cheap alternative and it is vital that the program be sufficiently resourced (Wager 2013; Mercer & Sten 2015). RJ may avoid expensive court costs, however, when done properly it requires a substantial investment of resources. Programs require highly trained, professional staff who can evaluate offenders, screen victims, prepare victims and their family members prior to participating in any meeting with the offender, as well as prepare offenders and their family members prior to the meeting. Cases also have to be followed-up afterwards in order to ensure the wellbeing of the victims and compliance by the offender. All of this costs time and money. However, the available research suggests that once both the victim and offender agree to participate, there is little attrition, which is very important from a resource perspective (Daly 2006; Wager 2013; Koss 2014). For example, in the RESTORE

program, three quarters of cases in which both the victim and the offender agreed to participate, were successfully completed (Koss 2014). RJ should, however, never be approached as a cost-saving measure. To do so would risk putting the wellbeing of victims in jeopardy. Instead, it should be considered a humanitarian measure, aimed at helping victims heal and reducing their risk of secondary victimization.

### Accountability

Recognition by the offender of the harm they have caused is extremely important for victims. RJ requires the voluntary participation of victims and offenders. This means that offenders who enter into RJ programs are already open to dialogue and acknowledge the victimization (Daly 2011; Wager 2013; Koss 2014; Mercer & Sten 2015). This is an essential difference between RJ and conventional criminal justice. In criminal justice defendants will often plead not guilty and deny wrongdoing, leaving it is up to the prosecution to prove guilt beyond a reasonable doubt. While this is inherent in the criminal justice system and is meant to avoid the wrongful conviction of someone who is innocent, it can be a source of frustration for victims.

Besides a positive attitude going into RJ, the dialogue itself can allow offenders to further develop their acknowledgment of their wrongdoing. Studying offenders who participated in the RESTORE program, Bletzer and Koss (2012) found that offenders' discourse changed over time and that they gradually took *more* responsibility for their actions and acknowledged the harm caused to the victim. Victim-survivors were very satisfied with the program and all said that they would recommend it to other victims (Koss 2014).

### Prevention

Prevention constitutes a form of reparation for victims (Wemmers 2014). Victims often place great importance on crime prevention and do not want what happened to them to happen to someone else (Gustafson 2005; Van Camp & Wemmers 2013). Victims who participated in the RESTORE program, often felt they were "making sure the responsible person doesn't do what he did to anyone else" (Koss 2014: 1642). Similarly, in the Dalhousie University Facebook Incident, the female students who chose to participate in RJ

emphasized that in the traditional dentistry setting, the majority of the auxiliary staff are female and while they felt confident in their ability to confront the men about what they had written, these women “might not feel similarly able to speak up” (Llewellyn, Demsey & Smith 2015: 46). Effectively, they were standing up for other women.

Knowing that you helped prevent future suffering can be quite satisfying and research indicates that when outcomes following stressful encounters are satisfactory, persons tend to view the difficult episodes as learning experiences that leave them better off than they were before (Janoff-Bulman 2006). Feeling that something positive came from this otherwise negative experience may help victims heal.

Furthermore, diversion programs, such as RESTORE, conduct offender screening in order to exclude perpetrators whose undetected prior offences or psychological characteristics make them unsuitable for a community-based program. Screening offenders ensures that they receive the help that they need and, hence, may contribute to crime prevention (Koss 2014). Moreover, formal assessment of offenders can boost program credibility, and reduce professional resistance to the program (Mercer & Sten-Madsen 2015).

### The community

Victimization does not only affect the direct victim. The relational context in which sexual violence often occurs means that others, such as family members, may also be affected. Family and friends may feel many different emotions: shame; guilt; anger; confusion. RJ focuses on relationships and RJ programs are able to include family and other group members (Mercer & Sten-Madsen 2015; Llewellyn, Demsey & Smith 2015). By including others, RJ can go beyond the victimization itself and expose underlying issues, such as dysfunctional relationships within the group, which contributed to the victimization (Llewellyn, MacIsaac & Mackay 2015). For example, in the case of Dalhousie University’s Facebook incident, RJ allowed participants to tackle issues of misogyny, sexism, and discrimination within the university, which contributed to the existence and the content of the Facebook group.

### 3. WHAT RESTORATIVE JUSTICE PROGRAMS FOR VICTIMS OF SEXUAL VIOLENCE AND ACCUSED/OFFENDERS CURRENTLY EXIST IN CANADA AND ELSEWHERE ?

#### Canada

It is difficult to know just how many and which RJ programs exist in Canada, let alone how many serve victims of sexual violence. According to a survey conducted by the Federal-Provincial-Territorial Working Group, in 2009/10 there were over 400 government-funded RJ programs in Canada operating in the criminal justice sector. These programs operate at different stages of the criminal justice process: pre-charge; post-charge; and post sentencing. The majority of programs work with young offenders and the most common types of programs are conferences, victim-offender mediation and healing circles (FPTWG 2016).

Few RJ programs treat cases of gender-based violence and many have it as their policy to exclude violence against women including sexual violence (Wemmers & Cousineau 2005; Cameron 2006; Tomporowski 2006; Tinsely & McDonald 2011; Nelund 2015).

In contrast, Aboriginal Justice initiatives, such as healing circles, encourage participants to talk about painful events and let go of emotions, irrespective of the type of victimization experienced (FPTWG 2003; Hill 2008; Daly 2011). Healing circles involve a facilitator meeting with the victim and the victim's friends, families and perhaps professionals and others to support the victim (FPTWG 2016). The legacy of the Residential schools has left its mark on Aboriginal communities and Aboriginal people suffer higher rates of violent victimization, including sexual violence, than non-Aboriginal people in Canada (Bombay et al 2014; Perreault & Simpson 2016). Aboriginal beliefs pertaining to healing or wellbeing focus on the community and emphasize the impact of victimization on relationships (Heilbron & Guttman 2000). Healing circles can be found in Aboriginal communities throughout Canada, however, the most mature and well-known program is in Hollow Water, Manitoba (Sawatsky 2009). Hollow Water's community holistic healing circle



process has been found to be extremely cost effective for victims, victimizers and the community as a whole (Couture et al 2001).

In 2011-2012, 30% of victim support service providers in Canada offered victims information about RJ (Allen 2014). Outside of RJ programs, there are isolated victim support programs, which include victim-offender dialogue as part of the victim's therapy. For example, *Centre de prevention et d'intervention pour des victimes d'agression sexuelle* (CPIVAS) in Laval, Quebec runs a program in which victim-offender dialogue is offered in the context of the victim's therapy if the therapist thinks that it will help the victim (See Van Camp 2014).

Outside of these programs, incident-based, ad-hoc initiatives can also be found. For example, following Dalhousie University's Facebook Incident in 2015, restorative justice was conducted with several of the young women and men involved in this case (Llewellyn, Demsey & Smith, 2015). The incident involved a private Facebook group created by a group of male dentistry students. The group members had often posted inappropriate comments, however, a reaction was triggered after male students posted a poll asking other students, which classmates they would have "hate sex" with. Restorative justice in this particular case, involved a series of meetings, led by trained mediators, in order to address the incident as well as the climate and culture at the university's Faculty of Dentistry, which contributed to the creation of the Facebook page and its contents (Llewellyn, MacIsaac & Mackay 2015).

It is also important to note that one can find examples of RJ-like responses in the confines of the conventional criminal justice process. For example, while it did not follow a RJ program, elements of RJ can be found in Kathryn Borel's sexual assault case against Jian Ghomeshi. In this case, parties (victim, prosecution and defence) agreed to resolution, invoking article 810 of the Criminal Code. Negotiations were conducted by lawyers. The accused recognized wrongdoing (without pleading guilty) and offered an apology to the victim. For the victim, accepting the defence's offer "seemed like the clearest path to the

truth” (Borel 2016). This case is instructive because of the importance placed on recognition and reparation by the victim.

### International

The RESTORE program in Arizona, USA is perhaps one of the best known RJ programs explicitly targeting victims of sexual violence. This was a pilot program, which ran from 2003 to 2007. Funding was not continued after the initial testing period due to “institutionalized opposition” (Koss 2014: 1655). According to Koss, many U.S. government entities, such as the U.S. Department of Education, confuse RJ with mediation, especially the type used in divorce courts where participation is ordered without consent. Because of this confusion, RJ is specifically forbidden by many organizations in response to sexual violence in order to protect victims.

Since 2005, the RESTORE program has been replicated in Auckland, New Zealand, where the organizers work together with community-based services for victims of sexual violence, Aboriginal groups, academic researchers, and RJ providers (Jülich et al 2011). Like the American program, this program is victim-centred and is focused on helping victims heal. It is not a one-off intervention but a process, beginning with rigorous assessment and pre-conference preparation, which is often followed by a conference. Post-conference support is also provided and a follow-up conference is possible if required (Centre for Innovative Justice 2014).

Some programs specifically target sexual violence in the family context (e.g. incest). In New South Wales, Australia, Cedar Cottage offers a pre-trial diversion program in which offenders participate in a two-year, intensive, community-based treatment program. As part of their treatment, offenders write a letter of apology to the victim and victims have the opportunity to ask questions of the offender (Centre for Innovative Justice 2014). This is not a victim-centred RJ program because its focus is on the offender and his rehabilitation. However, it does include elements of RJ that are relevant for victims such as the

opportunity to enter into dialogue with their offender, to ask questions and to express the impact that victimization had on them.

In Denmark, the Centre for Victims of Sexual Assault in Copenhagen offers victim-offender dialogue. This victim support service began to offer RJ following the request of a victim of sexual violence who wanted to speak with her offender. Denmark has specialized services for the treatment of victims of sexual violence and for the treatment of children and youth with sexually harmful behaviour. RJ meetings between victims and offenders take place as part of treatment and are arranged to meet the needs of the victim (Mercer & Sten-Madsen 2015).

RJ has been used with adult victims of child sexual abuse by clergy. Clergy-perpetrated sexual child abuse is a violation of one's faith as well as a violation of physical, psychological and emotional well-being (Noll & Harvey 2008). In response to requests from victims to confront their offenders, the Dutch RJ-program, "Victims in Focus"<sup>1</sup>, developed a special adaptation of its program for former victims of child sexual abuse by the Catholic Church. The program offers victims an opportunity to engage in victim-offender dialogue either directly (face-to-face) or indirectly (via a mediator) (Sagel-Grande 2013). In the USA, the *Restorative Justice Council on Sexual Misconduct in Faith Communities* is a national body of restorative justice practitioners, theologians, ministers, victim survivors and lawyers dedicated to the use of restorative mediation in response to clergy-perpetrated sexual child abuse (Noll & Harvey 2008). Victims who wish to participate in RJ can contact the Council.

While most of the available programs deal with adult victims and offenders, there are isolated programs that deal with juvenile offenders. In South Australia, youth justice conferencing is used as a diversionary tool in some youth sexual offence matters (Daly Bouhours, Curtis-Fawley 2007; Daly 2011). In England, the AIM project (*Assessment, Intervention, Moving on*<sup>2</sup>) offers RJ post-conviction and post-sentence to young offenders with harmful sexual behaviours. The victims of these young offenders can be any age and

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<sup>1</sup> Translated from Dutch by author : *Slachtoffer in Beeld*

<sup>2</sup> <http://aimproject.org.uk/>

include infants as well as senior citizens, however in the vast majority of cases, victims are themselves minors. Special attention is given to the needs of very young victims. For example, when the victim is a very young child Family group conferencing will be employed instead of victim-offender dialogue. The program is flexible in order to adapt to the needs of the victims (Mercer & Sten-Madsen 2015).

#### 4. WHAT ARE THE CHALLENGES OF USING RESTORATIVE JUSTICE IN CASES OF SEXUAL VIOLENCE AND HOW HAVE PROGRAMS OVERCOME THESE CHALLENGES ?

##### Safety

Victims' safety is key concern and must be properly dealt with. This has been the main argument against RJ from victim support organizations (Wemmers & Cyr 2002; McGlynn et al 2012; Koss 2014). Programs use various measures in order to ensure victims' safety. To begin with, programs use trained professionals who are aware of the unique challenges facing victims of sexual violence. They must be skilful, knowledgeable, sensitive, experienced practitioners and have specialized training in the area of sexual violence. The complexity of these cases means that professionals should work in a multi-agency environment. In order to offer the required level of specialized support, RJ programs dealing with sexual violence should be dedicated programs designed specifically to handle cases of sexual violence (Wager 2013; Mercer & Sten-Madsen 2015).

Furthermore, RJ must be victim-initiated (Mercer & Sten-Madsen 2015). Many programs, including the RESTORE program, which was designed specifically to handle sexual assault, only offer the program to offenders upon the victim's consent. This does not mean that victims should not be informed about RJ. Research on crisis-intervention with crime victims show that an important part of the intervention is providing victims with options and letting them make decisions (Muscat 2010). Victims should have a menu of options (Daly 2011). A victim-centred approach allows victims a degree of choice and control.

Another safety measure is offender screening. In the RESTORE program, all offenders had to have acknowledged the offence as well as undergo forensic assessment. The aim of forensic assessment was to exclude perpetrators whose undetected prior offences or psychological characteristics made them unsuitable for a community-based program (Koss 2014). Formal screening mechanisms provide a level of professionalism, which can enhance confidence in the program (Mercer & Sten-Madsen 2015).

Using their expertise, workers should properly prepare victims and offenders prior to their meeting. Pre-conference meetings with victims are crucial in order to ensure that the victim has some idea of what to expect and confirm that the victim really is ready and able to meet with their offender and that the offender is not manipulating victim (Noll & Harvey 2008; Mercer & Sten-Madsen 2015). Proper preparation is believed to reduce their anxiety and stress prior to the meeting, manage their expectations, and avoid secondary victimization (McGlynn et al 2012; Koss 2014). Victim follow-up after the dialogue with the offender is equally important. The aim of follow-up is two-fold: 1) to help the victim with emotions that arise following the meeting and 2) to ensure that the any agreements made at the meeting are respected (Koss 2014).

During the meetings with the offender, support can also be helpful for the victim. Victims may wish to have friends and family members at the meetings. In the RESTORE program staff would meet separately with the victims' friends and family attending the conference and explain to them the rules and procedures to be followed. These were preparatory meetings, in which victims' support network were prepared for the meeting and their role in it as support for the victim (Koss 2014).

### Imbalance of power

Another concern is the power imbalance, which is inherent in gender-based violence (Nelund 2015). This always has to be kept in mind when dealing with sexual violence cases. RJ recognizes all parties, including victims, and, therefore, affords victims greater recognition than the criminal justice system. However, it does not directly address power imbalances between parties and instead assumes that they are equal. When dealing with

gender-based violence one cannot assume this (Tinsley & McDonald 2011). It is therefore important to ensure that victims going into RJ are empowered.

Victim empowerment is impossible if the violence is still ongoing. First the violence has to stop (Wemmers & Cousineau 2005). The RESTORE program, for example, chose not to accept domestic violence cases in order to ensure that there was no ongoing manipulation of the victim (Koss 2014). The subtleties of gender-based violence highlight the need for specialized programs with specially trained personnel who know the impacts of sexual violence in order to recognize the particular vulnerability of victims, identify and challenge rape myths, recognize manipulation and denial by offenders and who are aware of the risk of recidivism (Julich et al 2011; Wager 2013).

From a child protection perspective, RJ is not suitable when the victim is a minor and the offender is an adult due to the power imbalance. RJ is more suitable when the victim and offender are of similar ages. However, both the victim and the offender may be minors. The AIM program, which was discussed earlier, handles the challenge of working with child victims by using highly trained staff specialized in intervention with child victims of sexual violence (Mercer & Sten-Madsen 2015).

RJ has also been successfully used with former victims of sexual child abuse. Adults who, as children, were victimized by clergy have successfully participated in RJ (Noll & Harvey 2008; Keenan 2012; Sagel-Grande 2013). The passage of time helps to reduce the power imbalance in these cases as these victims, now adult, find themselves face-to-face with their aggressor who is now an old and weak man. RJ focuses on healing for the victim-survivor and the accountability of the offender and the church (Noll & Harvey 2008).

Some programs have tackled the question of empowerment by combining RJ with victim therapy. Trauma-informed services recognize and understand the extent and impact of trauma in people's lives (Randall & Haskell 2013; Randall 2013). When integrated with therapy, RJ may be highly beneficial for victims' healing process. For example, in the CPIVAS program mentioned earlier, the victim's therapist would suggest RJ to the victim if they felt

that it would be helpful for the victim's rehabilitation. If the victim were thought to be too vulnerable and fragile for RJ, the therapist would not suggest it. Victims who were offered RJ in this context felt an enormous amount of pride. They saw the offer of RJ as evidence of their progress, and a confirmation by their therapist that they were ready to meet their offender (Van Camp 2014).

However, most victims of sexual violence are not in contact with formal victim services and instead seek informal support, such as friends (Brennan & Taylor-Butts 2008; Perreault 2015). While therapy may be helpful, it should not be imposed on victims as a pre-requisite for participation in RJ (Daly 2011). Victims are often able to judge if they are up to meeting with the offender and one must be careful to not disempower the victim (McGlynn et al 2012; Finn 2013). Nevertheless, when the victim is already in contact with victim support services, it may be helpful to have the professional participate in the decision-making process about suitability of the case for RJ (Mercer & Sten-Madsen 2015).

### Secondary victimization

Victims sometimes chose RJ in order to avoid secondary victimization in the criminal justice process (Marsh & Wager 2015). However, there is a risk of secondary victimization in RJ as well (Reeves & Mulley 2000; McGlynn et al 2012; Nelund 2015). When RJ is not victim-centred, it risks using victims to promote and rationalize its agenda. There are many other priorities that RJ could serve such as to protect the church (i.e. child sexual abuse by clergy), to protect the university (i.e. sexual assault on campus), and to promote the rehabilitation of the offender (i.e. crime control). Putting other priorities above the interests of the victim undermines the credibility of RJ and creates a risk of secondary victimization (Wemmers 2002; Van Camp 2014).

A victim-centred approach can ensure that victims' wellbeing is given priority. One of the advantages of RJ is its flexibility, which allows it to be tailored to meet the specific needs of the victim and the situation. Hence, the specific safety concerns of the victim, their needs, as well as any possible power imbalances can be taken into consideration. Because of its flexibility, RJ can be integrated in a victim-centred approach to reparation (Wemmers

2014). Focusing on the victim's rehabilitation, RJ can be combined with victims' therapy and used as a tool in the victim's healing process (Van Camp 2014). The appropriateness of this tool is entirely dependent upon the victim and her specific needs. That is not to say that the rights of the accused are not respected, but rather the starting point for reparation is the victim and her needs.

In order to reduce the risk of secondary victimization in RJ it is important that the offender acknowledge the offence. Insincerity can be very hurtful (Koss 2014). This can be avoided by proper screening of eligible offenders before they are admitted into the program (Wemmers & Cyr 2004; Koss 2014; Mercer & Sten-Madsen 2015). Daly (2006) suggests not requiring an apology in order to avoid insincere apologies.

In addition, it is important to provide victims with adequate, specialized support throughout the process and to monitor the successful completion of any agreement arising from RJ (Tinsely & McDonald 2011; Koss 2014). Staff should be trained in the area sexual violence and educated about victim trauma (Mika 2004; Randall & Haskell 2013). In the RESTORE program, victims were followed up for one year after meeting (Koss 2014). Failure to monitor the completion of agreements can leave victims feeling used and re-victimized (Wemmers & Van Hecke 1992; Shapland, Robinson & Sorsby 2011; Mercer & Sten-Madsen 2015).

### Filling the justice gap

One of the problems with conventional criminal justice is that very few sexual assault cases are reported and, among those reported, very few result in a conviction. This is referred to as the *justice gap* as justice is rarely served to those who have been victimized (Marsh & Wager 2015). While criminal justice must always remain an option, dissatisfaction with criminal justice has led many scholars to question whether there is a better way to serve victims.



Although RJ will never fully replace criminal justice, it may nonetheless reduce the justice gap. RJ may provide victims with a sense of justice, whereas the conventional criminal justice system would not (Daly et al 2007). Comparing cases that went through RJ with similar cases that went through the conventional criminal justice system, Daly and her colleagues (2007) found that cases that were handled using RJ were resolved faster. Moreover, in approximately half the cases that went to court the accused was not convicted, and when there was a conviction, the charges were often downgraded. Hence, RJ appears to have a favourable impact on the high case attrition and low conviction rate and, therefore, offer victims a greater sense of justice (Daly et al 2007; Daly 2011).

It is important to bear in mind that diversion programs are not intended for cases that are too weak to be dealt with by the courts. The due process rights of the accused do not allow cases with insufficient evidence to be referred to diversion programs. If there is insufficient evidence, the case must be dismissed. For example, in the RESTORE program, cases were referred by the prosecutor's office based on the characteristics of the offence and the offender and insufficient evidence for a conviction was not a reason for referral (Koss 2014). Nevertheless, as we saw, even when RJ is used in cases, which from a legal standpoint could have been handled in the conventional criminal justice process, RJ may offer victims a greater sense of justice (Daly et al 2007).

The question remains whether RJ could be opened up to a larger pool of cases than those before the courts. Many cases of sexual violence are never reported to authorities. Could RJ be a suitable response in these cases? Research with victims of sexual assault found that many were interested in RJ. When asked if they would prefer to have the opportunity to use a RJ conference *instead* of going to court, 30% of victims agreed. In particular, victims who had not reported their victimization to police were more likely to support RJ as an alternative to court. However, more victims (56%) wanted the opportunity to be part of a RJ conference in *addition* to court (Marsh & Wager 2015).

### Public opinion

Perhaps one of the biggest challenges facing RJ in the context of sexual violence is the negative attitude of others (i.e. non-victims) towards it. The Dalhousie University Facebook incident illustrates this problem. Across Canada, women's groups spoke out against RJ and insisted that the male students be expelled, while ignoring the wishes of the victims (Llewellyn et al 2015). Comparing the views of the public and victims of sexual violence, Marsh and Wager (2015) found that victims were less likely than non-victims to see conferencing as dangerous for victims. These findings highlight the importance of further research and, in particular, public education on the needs and rights of victims.

Besides public opposition, there is also considerable professional resistance to the use of RJ in cases of gender-based violence. In the USA, popular misconceptions regarding what is RJ and how it works, led to the termination of funding for the RESTORE project, and ultimately resulted in it closing (Koss 2014). Heightened concern for victims' safety and wellbeing has meant that sometimes, with all good intentions, supporters of victims fail to actually assist victims when they choose RJ. Mercer and Sten-Madsen (2015) address the topic of professional resistance in their guide on the use of RJ in cases of sexual violence. They emphasize that one needs to be mindful of the concerns of allied professionals, such as victim support personnel, and anticipate their apprehensions. Good research is vital in order to ease apprehensions and reassure allied professionals of the benefits of RJ.

## 5. CONCLUSION

Legal reform has proven ineffective for victims of sexual violence. Most victims of sexual violence chose to not report and avoid the criminal justice process altogether rather than subject themselves to secondary victimization. The few brave victims that do report their victimization to authorities are confronted with a system that is largely ineffective in prosecuting sexual violence. This has led to repeated calls for a more visionary change.

Victim-led, reparative justice, which is integrated in victim support is an interesting alternative approach to sexual violence. While there have been relatively few experiments with victims of sexual violence, the available research suggests that, when conducted properly, RJ can improve victims' psychological wellbeing, reduce PTSD symptoms and

stress. In a victim-centred approach, RJ begins with the victim's needs and its potential to contribute to the reparation of the victim. This shifts the focus from retribution to reparation for victims, including victims' rehabilitation and satisfaction.

One of the strengths of RJ for victims is its flexibility, which allows it to be adapted to the unique needs of the victim and their case. It is important that victims can choose to enter into or opt out of RJ at any stage of the criminal justice process. This means that there is not one model that fits all. Instead of one model, there are fundamental guiding principles and a victim-centred approach to RJ is guided by a fundamental commitment to victims' needs, healing and dignity.

It has been over thirty years since legal reform was introduced in Canada in order to improve the treatment of victims of sexual violence in the criminal justice system and reduce secondary victimization. Today, it is clear that victim-friendly measures such as rape shield laws, and the introduction of victim impact statements have not improved reporting rates by victims of sexual violence and attrition rates for these crimes have steadily increased. It is time to listen to victims and develop innovative responses, which meet their needs and promote healing, while respecting the rights of the accused.

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