



VICTIMS OF CRIME
RESEARCH DIGEST 2024

ISSUE 17

Editorial Team

Gillian Scobie
Carmen Bigras
Charlotte Fraser
Susan McDonald
Lara Rooney
Victoria Stillie
Ellen Wiltsie-Brown

Feedback

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

Department of Justice Canada <http://www.justice.gc.ca/eng/index.html>

Information for Victims of Crime <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/index.html>

Department of Justice Canada Reports and Publications on Victim Issues
<http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/index.html>

The views expressed in this publication are those of the authors and do not necessarily represent the views of the Department of Justice Canada or the Government of Canada.

Information contained in this publication or product may be reproduced, in part or in whole, and by any means, for personal or public non-commercial purposes, without charge or further permission, unless otherwise specified.

You are asked to:

- exercise due diligence in ensuring the accuracy of the materials reproduced;
- indicate both the complete title of the materials reproduced, as well as the author organization; and
- indicate that the reproduction is a copy of an official work that is published by the Government of Canada and that the reproduction has not been produced in affiliation with or with the endorsement of the Government of Canada.

Commercial reproduction and distribution is prohibited except with written permission from the Department of Justice Canada.

For more information, please contact the Department of Justice Canada at: www.justice.gc.ca

© His Majesty the King in Right of Canada, represented by the Minister of Justice and Attorney General of Canada, 2024

Victims of Crime Research Digest No. 17

J12-3E-PDF
ISSN 1929-9990

Introduction

Welcome to the 17th issue of the *Victims of Crime Research Digest*!

National Victims and Survivors Week 2024 takes place from May 12th to May 18th.

The theme this year is **The Power of Collaboration**.

The goal of the Digest is to make research about victims of crime and the criminal justice system accessible to a wide audience, using short articles and clear language. In this issue, we are pleased to include extensive reference lists with several of the articles. These will be great tools for readers who are interested in reading more and diving into more detail on the topics discussed.

The first article, “Victim-Centred Restorative Justice: Program Design and Implementation” by Patricia Hughes, looks at how the practice of restorative justice has evolved over the past few decades in Canada and worldwide into a more victim-centred approach to better address victims’ needs. The second article, “Accessing Justice for Victims and Survivors of Sexual Assault and Intimate Partner Violence,” by Susan McDonald, reports on the development of several Independent Legal Advice and Independent Legal Representation projects funded by the Department of Justice Canada. Through a series of qualitative interviews, McDonald examines how these projects are making a difference for victims and survivors. In the third article, “A Brief Overview of Coercive Control and the Criminal Law”, Lisa Ha summarizes the research on and evaluations of coercive control legislation in other jurisdictions, such as England and Wales, Scotland, and Australia. In the final article, Bianca Stumpf summarizes the findings from the 2023 Child Advocacy Centre/Child and Youth Advocacy Centre Operational Survey.

Once again, the articles in this issue illustrate the breadth of research that the Department of Justice takes on for victim-related topics to support the goals of the Federal Victims Strategy (FVS). The FVS is a federal government initiative that involves several departments. It has two goals:

- to improve the experience of victims and survivors of crime by giving them a more effective voice in the criminal justice system, and
- to increase access to justice and services for victims and survivors.

We hope you find these articles timely and thoughtful and, as always, we welcome your feedback.

Susan McDonald
Principal Researcher
Research and Statistics Division

Stephanie Bouchard
Director and Senior Legal Counsel
Policy Centre for Victim Issues

Table of contents

Victim-centred restorative justice: Program design and implementation.....	5
Accessing justice for victims and survivors of sexual assault and intimate partner violence	24
Brief overview of coercive control and the criminal law.....	40
A portrait of Canadian Child Advocacy Centres and Child and Youth Advocacy Centres in 2021–22	48

Victim-centred restorative justice: Program design and implementation

By Patricia Hughes

Introduction

If restorative justice (RJ) is to better respond to victims than the criminal justice system (CJS) does, RJ programs must be designed to respond to victims' needs. This article addresses how restorative practices have evolved, from early efforts to help offenders, particularly young offenders, to a philosophy of RJ that shifts the role of victims as contributors to RJ to one that positions victims as central to RJ processes. This article further considers what is required to satisfy victims' needs in the design and implementation of RJ programs.

The term "restorative justice" is used to refer "to a variety of practices." There is a distinction (and a confusion) between "restorative justice" and "restorative practices" or "restorative principles" (O'Mahony and Doak 2017; OPPAGA 2020; Paul and Borton 2021). For example, courses for offenders to learn about empathy and so-called restorative cautioning by police in Australia and the United Kingdom do not include or necessarily include victims and are therefore not "fully restorative" (O'Mahony and Doak 2017; Chiste 2013; Pali 2016; OPPAGA 2020).

In its full sense, as a coherent philosophical approach, and the way RJ is used in this article, restorative justice "refers to '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 Ministers of Justice and Public Safety 2018, n.p.). It is "concerned with accomplishing restoration (or the rectifying of wrongs) along multiple dimensions (relational, material, financial, and moral), typically through direct, facilitated dialogue between affected stakeholders (typically victims, wrongdoers, and their supporters)" (Paul and Borton 2021, p.9.). It focuses on "needs" rather than "rights," and on righting wrongs rather than punishing offenders (LCC 1999; Hughes and Mossman 2004).

RJ is "relationship-based," whereas the CJS is "event-based" (LCC 2003). That is, RJ focuses on the harm created by an offence, not the contravention of the law. In gender-based violence (GBV) cases, where a victim often experiences stigma, on the reintegration of the victim and not only the offender, into the community, this is different from offender reintegration in property crime cases (where RJ began) because there is no stigma attached to property crimes (Herman 2005). Because the offender is known to have committed an offence and has admitted doing so and the victim is known to have been affected by the offence (i.e., is a victim), guilt or innocence is not an issue: "Nor is there an expectation that crime victims compromise and request less than they need to address their losses." Furthermore, "while many other types of mediation are largely 'settlement-driven,' victim-offender mediation¹ is primarily 'dialogue-driven,' emphasizing victim healing, offender accountability, and restoration of losses" (Umbreit 1999, 216).

Restorative justice can occur at any stage of the criminal process: "to **diversion** from formal court process, to **actions taken in parallel** with court decisions, and to meetings between victims and offenders at any stage of the criminal process (arrest, pre-sentencing, sentencing, and prison release)" (Daly 2000, 168 [emphasis in original]).

¹ Victim-offender mediation (VOM) is a common RJ process involving the victim and an offender with RJ facilitators.

Three caveats help to frame the scope of this article:

- 1) Although RJ programs and principles have been integrated into many contexts, such as schools, for example,² this article considers RJ only in relation to the CJS;
- 2) RJ has been touted as a way to bring about social change (Shah et al 2017; Coker 2019) or, indeed, has itself been characterized as a “social movement”;³ however, as considered in this article, RJ is also employed in a narrower way: to address the impact on the victim, the offender and, depending on the model, the community affected by a specific offence or to which the offender or victim may belong;
- 3) The article recognizes that, depending on the context, RJ practitioners, “victim” advocates, and others, prefer terms such as “survivor,” “affected person,” “complainant,” or “harmed party” (and for the offender, “the person causing harm”) to “victim” and “offender” (Zehr 2015; Barga et al. 2019; Woolford and Nelund 2019; LEAF 2023).⁴ The article nevertheless uses the terms “victim” and “offender” because they are the terms most commonly used in legislation and commentary and in common public understanding.^{5,6}

After briefly outlining the evolution of RJ – from being focused more on helping offenders (particularly young offenders) avoid imprisonment and begin to reintegrate into their community to programs that pay more attention to victims – this article sets out what is required for RJ practice to be more consistent with RJ philosophy in its emphasis on **victim-centredness**.

Evolution of Restorative Justice towards a victim-centred philosophy

In the beginning

Restorative justice principles and practices arose from legal, religious, political, and social sources, resulting in a “complicated web” of RJ methods (Crosier 2022). In Canada, the legal systems of Indigenous communities were characterized by both punitive and restorative responses to wrongdoing long before RJ emerged into mainstream society (Chartrand and Horn 2016). The use of RJ in Indigenous communities today is not a separate undertaking, but just one element in a holistic approach to justice (Shah et al 2017; Mi’kmaq Confederacy PEI).⁷

In Indigenous communities, sentencing and healing circles are based on Indigenous values and practices that reflect the communities they serve. The circles both preceded criminal justice RJ or their absorption into the CJS (Evans et al. 2018). The Mi’kmaq Confederacy of Prince Edward Island’s Indigenous Justice Program shows the

² Shah et al. (2017) set out “four distinct streams” of RJ: in Indigenous communities; in community-based settings; in schools (and other institutions); and in legal systems (2).

³ Indeed, for some, “it holds transformational maybe even liberatory promise” (Williams 2013, 440; also see Burford 2018), while others consider it more as part of an evolution toward transformation (LEAF 2023).

⁴ The term “victim” is contentious because it can suggest “a state of helplessness or stigma, and fails to acknowledge the courage, resourcefulness and resilience of people living in the aftermath of a crime against them” (Barga et al., 12). However, some commentators note that a “victim may become a ‘survivor’ through the RJ process” (Zehr 2015; Why Me? 2022; LEAF 2023).

⁵ O’Mahony and Doak (2017) observe that the terms “offender” and “victim” are not as distinct or oppositional as they may seem, since offenders and victims may come from similar social groups, or may have harmed each other, and offenders have often been victimized. However, RJ maintains a distinction between the victim and the offender for a specific offence.

⁶ A further note on the term “victims,” using the terminology and definitions in *Principles and Guidelines for Restorative Justice Practice in Criminal Matters* (2018): A “(direct) victim” is the person actually subject to the offence; an “indirect victim” is someone (perhaps a family member of or who is close to the direct victim) who has been harmed resulting from the harm to the direct victim; and a “secondary victim” is someone who is harmed as a result of witnessing a crime or the aftermath of a crime (n.p.)

⁷ Canada’s Indigenous Justice Program offers RJ through a cost-sharing arrangement with the provinces and territories: “The supported programs incorporate the principles and processes of RJ alongside Indigenous legal traditions” (Evans et al. 2018).

range of circles that respond to offenders, victims, and communities: conflict-resolution circles (to prevent crime); early intervention circles (occurring at pre-and post-charge stages to develop a healing plan); healing circles (to assist with recovery); sentencing circles; and reintegration circles (to help offenders who have completed their sentence to reintegrate into the community).⁸

The first RJ approaches in western systems arose from efforts in the 1970s to provide alternatives to the CJS for youthful offenders (Zehr and Umbreit 1982; Shah et al. 2017; Hansen and Umbreit 2018). Victims were sometimes involved in these efforts but were not the focus. Sometimes, however, they were not even involved; for example, community reparative boards would meet with the offender and decide reparations (Weisberg 2003).

Over the last 40 years or so, many national and other levels of government have implemented or provided a framework for programs called “restorative justice” set up by civil organizations in one form or another (Pavelka 2016; Banwell-Moore 2019; Sewak 2019; OPPAGA 2020; Earthen 2020; Paul and Borton 2021; Hobson 2022). For example, the European Forum for Restorative Justice has over 40 country members; it has published statements of RJ values and principles. The European Union Council⁹ enacted the binding Victims’ Rights Directive in 2012, which includes provisions about RJ (European Forum n.d.). As well, in 2020, the United Nations Office on Drugs and Crime released an updated handbook on RJ programs (UNODC 2020).

There are several models of RJ: they may be offender-focused – if the victim is involved at all, they are there mainly to help explain the impact of the offence; they may include victims “on paper”, but in practice efforts to ensure that victims participate are small and RJ may go ahead without the victim; victims may be involved, but the dynamic of the RJ may result in the victim’s role being diminished; or they may be victim-centred, meaning that RJ processes are planned around the needs and choices of the person who has been harmed, prioritizing their safety and avoiding unintentionally retraumatizing or revictimizing them (NZLC 2015; O’Mahony and Doak 2017; Woolford and Nelund 2019; Young and Dhanjal 2021; Hobson et al. 2022; Victoria State Government 2023; Government of New Brunswick 2022).

One of the most common forms of RJ, and one with the greatest potential to be victim-centred and “integrated into criminal justice systems around the world,” is victim-offender mediation (VOM), also referred to as victim-offender dialogue (Young and Dhanjal 2021, 52; also see Hansen and Umbreit 1999). In VOM, the victim and offender meet face-to-face, or, when the victim prefers, through alternative means of communication (e.g., Zoom), along with members of the affected community; both victims and offenders may wish to have supporters present, who may be family or others (such as victim advocates for victims). Hansen and Umbreit (2018) stress that, unlike other forms of RJ, VOM emphasizes “the interaction between the victim ... and the offender ..., rather than other interactions with family members, support people, or members of the wider community” (who may be participants) (p.100). From the early days of RJ, it has been recognized that both the victim and the offender must participate voluntarily and “extreme sensitivity and patience must be exercised in encouraging victim involvement” (Umbreit 1986, p.56).

⁸ “The sentencing circle empowers victims, community members, families, and offenders to have a shared responsibility in finding constructive resolutions” (Indigenous Justice PEI). Also see descriptions of Indigenous practices by British Columbia Indigenous participants in the 2017 “Canadian Listening Project” (Shah et al. 2017).

⁹ The European *Union* Council defines the general political direction and priorities of the European Union. A number of other countries, such as New Zealand, Australia, the United States, and Canada, have also implemented legislation to facilitate the use of restorative justice in the criminal justice system.

Another form of RJ is family group conferencing (FGC), described by Umbreit and Zehr (1996) as tending to be about “retributive justice” (24), with more victim and community involvement because FGC can include family and supporters of both the victim and the offender. This enables the offender’s family to explain their own contribution to – and feelings of disappointment and shame about – the offender’s behaviour, and provides both the offender and the victim opportunities to reintegrate into the community. Because of the interaction among several participants, however, the victim’s voice may be lost (Umbreit and Zehr 1996; Hughes and Mossman 2004; Zehr 2015; Sewak 2019). FGC provides an example of how a model that includes victims should not automatically be considered “victim-centred.”

In Canada, RJ receives official recognition as a form of “alternative measure” under section 717 of the *Criminal Code* (CC),¹⁰ requiring the offender’s free and informed consent to participate; the offender’s acceptance of responsibility; and sufficient evidence to prosecute; among other requirements. Notably, under section 717 the victim’s consent is not required. As a result, RJ processes can proceed with just the offender.

Restorative justice processes are also enabled through section 718.2(e) of the CC, which states that all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders. For example, under Nova Scotia’s Restorative Justice Program Protocol, following a guilty plea or a finding of guilt the court **may** pause to refer a case to a RJ process or to hear from victims or family members, the results of which may inform sentencing decisions.¹¹

The federal, provincial, and territorial governments work together to fund and support RJ programs. In one program, run at the federal level, Correctional Service Canada (CSC) offers restorative opportunities to victims to communicate with the federal offender who harmed them. This program also offers RJ to members of offenders’ families and offenders (Correctional Service Canada: Restorative Justice 2022). Victims can request a meeting with the offender who harmed them; however, offenders cannot make a direct request, but must go through an intermediary.¹²

Governments at all levels in Canada have implemented RJ processes although they vary in how they function and even, in a few instances, whether they make victim involvement a mandatory part of the program’s design.¹³ To be clear, making victim participation a mandatory part of the design does not mean that victims **must** participate; rather, the issue is whether the process will go ahead with just the offender (or with the offender and the community) if the victim declines to participate. However, a program that does not make

¹⁰ *Criminal Code*. R.S.C., 1985, c. C-46. Accessed at: <http://www.justice.vic.gov.au/fvrjservice>.

¹¹ Nova Scotia Restorative Justice Program Protocols. Accessed at: <https://novascotia.ca/restorative-justice-protocols/court.asp>. In contrast, in New Zealand judges **must** adjourn cases before sentencing to enable inquiries to be made about the appropriateness of RJ in the circumstances of the case, considering the wishes of the victim (Mikva Pfander 2020). The legislation states that the court must adjourn the proceedings to: (a) enable inquiries to be made by a suitable person to determine whether a restorative justice process is appropriate in the circumstances of the case, taking into account the wishes of the victims; and (b) enable a restorative justice process to occur if the inquiries made under paragraph (a) reveal that a restorative justice process is appropriate in the circumstances of the case.

¹² Registered victims, victim representatives acting on behalf of registered victims, and non-registered victims affected by serious crime, can participate in Restorative Opportunities by contacting CSC. Offenders can also request a meeting; however, they must do so through an intermediary, such as a CSC chaplain or parole officer. The program follows the most common RJ VOM practices (CSC Restorative Justice Fact Sheet for Victims, a Fact Sheet for Families of Offenders and a Fact Sheet for People Working with Offenders that is directed at offenders). See <https://www.csc-scc.gc.ca/restorative-justice/003005-5002-en.shtml>.

¹³ For example, Nova Scotia has a long-established RJ program (the NSRJP). Although the NSRJP protocols refer to paying “particular attention to the needs of victims and those harmed by crime,” the **potential** for victim participation is merely one factor in determining appropriateness for RJ.

victim participation mandatory as part of the design, in which the victim can choose whether to go ahead – a critical factor in decisions about the appropriateness of RJ for an offence – raises doubts about whether the program complies with the victim-centred paradigm.

Courts also apply principles and practices that share some similarities with the philosophy of RJ. However, these processes do not always include victims. Of particular significance is the Supreme Court of Canada (SCC)'s endorsement of the use of restorative principles by courts in the sentencing of Indigenous offenders “alongside or in the place of other, more traditional sentencing principles,” based on the unique factors affecting the offender’s life as an Indigenous person, whether they live in an Indigenous community or not. For example, the court might not impose a prison sentence when traditional principles would warrant one (*R. v. Gladue* 1999).

The Move Towards a Philosophy of Victim-Centred RJ

The seed of **victim-centred** RJ in Canada can be found in the failure of the CJS to respond adequately to victims’ justice needs¹⁴ because the criminal justice system sees crime as a violation of the state or society, and prosecutors represent the state, not the victim. The impact of crime on victims had been recognized as early as the 1970s (Zehr and Umbreit 1982). Even so, despite many efforts to respond to victims’ needs in the CJS – victim impact statements (VIS), legislation setting out the rights of victims, criminal injuries compensation, prosecutors maintaining contact with victims or victims’ families, improvements in sexual assault procedures and, recently, permitting victim representations about a proposed publication ban on the names of sexual assault victims¹⁵ – victims remain “peripheral to the justice process” (Zehr 2015, 37). Victims are merely “witnesses” to their own harm rather than central to the process as the person who was harmed; they have little to no part to play in **deciding** what happens to the offender; in sexual assault cases, in particular, they may be revictimized by police and defence counsel, and left feeling irrelevant to the system in other ways (Herman 2005; Young and Dhanjal 2021; LEAF 2023).

In contrast, foundational to restorative justice philosophy and practice is a commitment to recognizing victim harms, fulfilling victim needs, and ensuring that victims can be fully engaged actors at all stages of the process. Victim-centred or victim-focused RJ has been described as an “authentic inquiry into the needs of victims and survivors; not as an instrument for offender rehabilitation or treatment, but as individual needs that stand on their own merit” (Bargen et al. 2019, 6, 8; also see LCC 2003; Evans 2022). As Canada’s *Principles and Guidelines for Restorative Justice Practice in Criminal Matters* (2018) notes, “those who have been harmed are central in deciding what is needed to repair it” (n.p.). One community-based RJ program in British Columbia has stated that it follows a victim-centred approach, which means addressing the harm done to victims informs everything we do” (Restorative Justice Victoria n.d.).

¹⁴ Indeed, one might question whether the CJS can respond adequately to victim needs. It is, after all, a system based on the nature of crime as an offence against the state or society. The state is harmed and the prosecutor represents the state, not the victim. The benefit of this system is that it says that criminal acts against victims merit state disapprobation and victims do not have to bring an action against offenders or bear those costs, as is the case in a civil action. The trial takes place in public. In practice, allegations do not necessarily end up in court. And when they do, they may only be peripherally dealt with in public; for example, guilty pleas or plea deals occur primarily behind the scenes. Offenders have constitutional rights. And most important, for the purposes of RJ, the victim exists mainly on the sidelines, even when they are a witness. As far back as 1982, Zehr and Umbreit (1982) wrote that “victim neglect is not simply a result of indifference. It is a logical extension of a legal system which defines crime as an offense against the state” (p. 63). While it has been improved, the CJS cannot be transformed to be victim-centred.

¹⁵ Bill S-12, amending sections 486.4 and 486.5 of the *Criminal Code* (Royal Assent 26 October 2023). Accessed at <https://www.parl.ca/DocumentViewer/en/44-1/bill/S-12/royal-assent>.

It is important to note that a victim-centred approach to RJ does not dismiss or ignore offenders. Rather, it takes into account the needs of, and is also intended to benefit, offenders. However, it seeks to keep the needs of **those harmed by crime** as central to the design and delivery of RJ. This reduces the risk of further harm to victims through their participation in RJ, where typical RJ programs and processes are more focused on meeting offender or system needs. RJ must remain victim-centred. For example, “Where offenders are provided with help to change their lives, but victims are not provided help to deal with their trauma, victims feel betrayed by the offender orientation of restorative justice” (Mika et al. 2004, 3).

Designing Victim-Centred Restorative Justice

The foremost principle for designing an RJ program that ensures victims are recognized as “key stakeholders in justice” (Federal-Provincial-Territorial Ministers of Justice and Public Safety 2018, from Zehr and Mika 1998) is the need to involve victims in designing RJ programs; and the victim in a particular RJ process must be involved in planning the session. This constitutes the philosophical imperative of the centrality of the victim. It requires an ongoing review that allows RJ programs to incorporate how victims are affected by crime as their needs evolve. The design establishes a framework of principles and requirements to implement in practice (for example, victim choice is a RJ principle, realized in a particular RJ process by the victim, who decides, among other aspects, when and how to meet with the offender).

Before considering some of the elements illustrating the principle of victim choice, it is helpful to comment on gender-based violence (GBV) cases and RJ. Although some of the issues these cases raise may seem to be (or are) particularly relevant to GBV cases, they also serve as lessons for RJ more generally.

A Special Case? Restorative Justice and Gender-based Violence

The use of RJ in GBV cases remains contentious despite its increased acceptance and research that demonstrates that victims of GBV and other serious personal offences can benefit more from RJ than victims of other offences (Sewak et al. 2019; Why Me? n.d.). RJ is increasingly considered preferable to the CJS (“more effective”) for victims of sexual assault because RJ “empower[s] [the victim’s] voice, validat[es] their experience and facilitate[s] relationship reparation” (Sewak et al. 2019, 5; also see Randall 2013; Community Legal Centres NSW; LEAF 2023). Victims can confront the offender in a safe environment and affect the outcome (Randall 2013; Coker 2019).

Nevertheless, valid concerns about the use of RJ in these cases persist, and some jurisdictions, including Nova Scotia, Ontario, and British Columbia (in the last, available only in “rare cases”), continue to have a moratorium on the use of RJ in sexual assault or intimate partner violence (IPV) cases (NSRJP; BCRJ; LEAF 2023).¹⁶ The Tungasuvvingat Inuit program in Ontario, for example, explicitly excludes sexual assault and spousal and child abuse.¹⁷

¹⁶ In other jurisdictions, there has been movement towards increasing the use of RJ in cases of sexual assault and IPV. For example, since 2017, the Restorative Justice Centre in Manitoba has been triaging cases of domestic violence that police and Crown prosecutors have recommended for diversion out of the courts. Manitoba Victim Services supports victims by providing resources and offering programming to repair the harm. The victim is given the option to provide input into the process of resolution. Restorative Justice Services for Victims: <https://www.gov.mb.ca/justice/corrser/vpubs/restorjus.pdf>.

¹⁷ Tungasuvvingat Inuit Program. Accessed at: <https://tiontario.ca/programs/restorative-justice-program-rj>.

Concerns about the use of RJ in GBV cases are linked to the nature of the violence and include apprehension for the victim's safety or the risk of manipulation by the offender. Depending on the RJ model, the victim's voice and preferences may be at odds with those of others involved (such as other family members or community members in a conferencing context) (Randall 2013; Mercer and Sten Madsen 2015; Crosier 2022). There is a risk that the "learning experience" of IPV, that victims "must comply with perpetrator wishes and subvert their own in order to avoid further violence," might be imported into the RJ process (Wood and Russell 2021, 3).¹⁸ These concerns must be addressed in RJ if RJ is to be used in GBV cases. Taking a victim-centred approach means they can be.

Victims of gendered violence who do want to participate in RJ want to do so for the same reasons that victims of other crimes want to participate (as Mercer and Sten Madsen (2015) indicate, partly "for the impact and aftermath of the harm to be more profoundly and widely considered"). They point out that RJ can allow a new relationship to develop with community members, with an offender, and with RJ practitioners, when the victim wishes it. RJ also provides an opportunity for the victim to reclaim their voice, not as a "victim," but as a "survivor" (Mercer and Sten Madsen 2015, 10–13; also see *Why Me?* n.d.; LEAF 2023).

Regardless, there remain risks beyond those ordinarily associated with RJ: the nature of the harm (including the myths and [cultural] stereotypes associated with sexual violence and its sometimes acceptance or tolerance), power imbalances arising from familial and other connections, the significant vulnerability of young victims, and the mixed responses or "dual loyalties" of other family and community members (Daly and Stubbs 2006; Mercer and Sten Madsen 2015; Berlin 2016; Armstrong 2021; Crosier 2022). Indeed, victims may want to know why people who knew about the abuse did not intervene (Herman 2023). In RJ models with an outcome based on group consensus, "[v]ictims may be pressured to accept certain outcomes, such as an apology, even if they feel it is inappropriate or insincere" (Daly and Stubbs 2006, 17). Offenders may treat victims' experiences not as a source of empathy but as fodder for offenders to manipulate the victim or to gain pleasure from the victim's participation (Wood and Russell 2021).

In some ways, then, GBV cases pose a special challenge for RJ; in other ways, however, they share issues with other types of cases that must be addressed if the victim is to remain central to the process. Taking the concerns with RJ in GBV into account in designing an RJ program that addresses a range of crimes highlights what is needed to ensure that the philosophical promise of victim-centred RJ is realized in practice. This means abiding by the RJ principles of repairing harm and doing no more harm.

Recommendations for improving RJ for GBV cases should be considered for RJ more generally: these should include trauma-informed approaches that, preferably, apply to everyone involved (Ponic et al. 2016); cross-sector collaboration and (GBV) training for RJ practitioners (EVABC 2021, n.p.; NZLC 2015; Goodmark 2018); flexible schedules, increasing information, providing support during the process (including support animals, where feasible and appropriate), for the offender as well as the victim (Bargen et al. 2019; Ha 2020); and facilitators who understand trauma, the dynamics of racism, and cultural and other social inequalities, and are ready to challenge victim-blaming and manipulation by the offender (Crosier 2022).

¹⁸ Indeed, historically, a commonly believed view of RJ as a process of offender apology and victim forgiveness is seen by some as replicating the domestic abuse ritual of the abuser apologizing and asking for forgiveness from the wife (Acorn 2004; Milward 2023). However, this does not have to occur in RJ.

Victim Choice in Design and Implementation

Victim choice in a specific RJ process begins at the beginning: whether to participate in RJ. Participation in restorative justice is voluntary for both victims and offenders; in a truly victim-centred framework, however, RJ will not go ahead if the victim does not want to participate, whether directly or indirectly, as discussed below.¹⁹ For victims to make this decision, however, they must know that RJ is available.

In Canada, victims are not automatically told about RJ when they become involved with the CJS. Rather, they are entitled to information about RJ under paragraph 6(b) of the *Canadian Victims Bill of Rights Act* (CVBR),²⁰ when they request it, and under subsection 26.1(1) of the *Corrections and Conditional Release Act*,²¹ when they have registered under that legislation. However, some jurisdictions have adopted a policy of proactively informing victims about their rights under the CVBR.

Regardless of the kind of wrongdoing, some programs inform victims about RJ only when they consider it “safe”; even victim services may not refer victims if they believe it will save them from “distress” (Van Camp and Wemmers 2016). This has been described as “protective” because it suggests that someone else, other than the victim, is better equipped to determine whether victims are “ready” or “suitable” for RJ. By comparison, when victim services provide information on RJ opportunities proactively, without victims asking for it, victims can make that decision – whether to pursue RJ – for themselves.

A study of Belgian and Canadian victims indicated that the proactive approach to providing information about RJ used in Belgium resulted in greater satisfaction among victims; even then, the way in which information is delivered matters, with personal contact likely more effective (Van Camp and Wemmers 2016). The Office of the Federal Ombudsman for Victims of Crime has recommended that providing victims information about RJ should be proactive (O’Sullivan 2016, 26; Illingworth and Ferrara 2021).

Once the victim has decided to participate, the organizers of the program or facilitators will discuss several issues relevant to planning the session. Referring to FGC, Umbreit and Zehr (1996) state that holding the session in the most “victim-sensitive manner possible” means that victims choose when and where to meet, how to arrange the room, go first if they want to, are informed of the risks and benefits, should not be pressured or told to trust the facilitator’s judgment; and that facilitators be trained in trauma-informed practices and in cultural and ethical issues (Bargen et al. 2019; Bargen et al. 2018).

The recognition that victims (and, of course, offenders) are not homogenous needs to be integrated into RJ design. Operationalizing this principle requires taking into account the specific relevant characteristics and factors of victims (and offenders) in practice, to the extent possible. Victims differ in many ways, including, for example, in their economic status, culture or ethnicity, sexual orientation, gender expression, religion, age; some knew the offender, some did not; some are isolated, others are part of a supportive circle. The same offence may leave lasting scars, physical and emotional, or little imprint. Furthermore, “[s]ome victims will be traumatised by what may appear to be a relatively trivial offence; others may be able to find closure and healing

¹⁹ This does not mean offenders will not be able to benefit from other restorative approaches.

²⁰ *Canadian Victims Bill of Rights Act*. S.c. 2015, c. 13, s. 2. Accessed at: <https://laws-lois.justice.gc.ca/eng/acts/c-23.7/page-1.html>. For citations for provincial and territorial victims’ rights legislation, see Young and Dhanjal 2021, appendix b (note that the Alberta legislation is now entitled *Victims of Crime and Public Safety Act*, accessed at: https://docs.assembly.ab.ca/ladder_files/docs/bills/bill/legislature_30/session_2/20200225_bill-016.pdf).

²¹ *Corrections and Conditional Release Act*. S.c. 1992, c. 20, s.26(1) accessed at: <https://laws-lois.justice.gc.ca/eng/acts/c-44.6>.

soon after falling victim to a serious offence” (O’Mahony and Doak 2017, p. 52; also see Zehr and Umbreit 1982; Barga 2019). For some, financial reparation may be important, but others may consider it an attempt to “buy them off.” These factors may affect why they experienced the wrongdoing, how the offence has affected them, and what they need from RJ.

The main element of an RJ process is the opportunity for the victim to meet and communicate with the offender. However, not all victims want to meet with the offender face-to-face. A victim may prefer a letter, an audio recording, or “shuttle mediation.” Appointing a representative or a surrogate victim who has experienced similar wrongdoing may act as a substitute and keep the actual victim informed of what transpires (LCC 2003; O’Mahony and Doak 2017).²² For example, Restorative Justice Victoria offers a “victim healing circle” for victims who do not want to meet with the offender; for other people, it might include a “surrogate offender” who can answer questions for the victim (Restorative Justice Victoria n.d.). Computer-mediated communicative RJ may be preferable to in-person meetings (Paul and Borland 2021), but it must be remembered that domestic (and other) abuse may take place online or manifest as cyber “terrorism.” A victim’s concerns about online abuse need to be addressed by the facilitator assisting the victim selecting an alternative way to speak with the offender.

The Importance of the Facilitator

The facilitator for an RJ process must be trained to address the many issues that can arise during the process. For example, the facilitator should provide information and guidance about the choices victims (and, as appropriate, the offender) can make during the preparatory period before the RJ process.²³ Preparation is crucial and may, in some cases, take months (Urban et al. 2011; Mercer and Sten Madsen 2015; Restorative Justice Victoria n.d.). Proper preparation with the victim and offender individually in IPV cases, including how to express themselves and how to share information between one another through the facilitator, may help to alleviate the prospect of the offender manipulating the victim (Urban et al. 2011; Wood and Russell 2021). Timing matters and assessing “the right time” for the process to begin requires the facilitator’s careful consideration (although the actual decision rests with the victim): some victims may be ready for an RJ process soon after the event to address it, whereas other victims may not and may need more time, perhaps even after a formal CJS process has begun or concluded. A post-RJ-process follow up with the victim and offender individually is also integral to the success of the process. Like preparation, it may take considerable time if there are outstanding issues, or if the victim, in particular, is still experiencing trauma.

Facilitators must be sensitive to language. Edwards and Haslett (2011) found that those who committed violence and those who experienced it spoke about it differently. The focus of the former “has often been on having the facilitators understand, in detail, their position in the conflict, or how the other person was behaving in a way that was unfair or unreasonable,” while the person who has experienced violence speaks “much more about the fear, shame, pain, and/or how the event(s) have altered the way that they think or behave” (896). The offender speaks of “conflict,” which involves both them and the victim. The victim speaks of violence, which affects only

²² These methods may lack the strength of the actual victim’s emotional input, as well as allow the offender to avoid directly addressing the person they harmed. Offenders may also feel less incentive to carry out the agreement reached in the process. Furthermore, in indirect communication, victims are unable to “assess facial expressions, gestures and physical posture” (O’Mahony and Doak 2017; Marshall 2018). Nevertheless, these processes may still be satisfactory. For example, one study found that “shuttle mediation” had lower rates of satisfaction than a face-to-face meeting, but victims were still more satisfied than not (Hansen and Umbreit 2018).

²³ Individual follow-up is also important, determined by the needs of the victim regarding frequency and length of time and possibly counselling.

them. Facilitators must be aware of the language they use, that, even if it is well intended (to appear non-judgmental or to “create a safe space for dialogue,” for example), they must ensure that “victims’ experiences of violence are accurately named and validated in order to ensure that victims do not suffer further harm” (Edwards and Haslett 2011, 899).

Facilitators must be cognizant of what the victim is seeking through the RJ process. The victim may want to ask questions (for instance, why me? were you following me?). They want to express their feelings about the nature of their harm (for example, in robbery cases, victims may be upset not only by the loss of money but the feelings of hurt).²⁴ By listening to the victim, the offender may gain empathy and a greater understanding of what the victim experienced. The offender may apologize; however, the victim is not required to accept the apology. The victim may forgive the offender, but they are not required to do so. The victim may want a say in determining the reparation by the offender (for example, restitution or volunteer work in the community) (Zehr and Umbreit 1982; Umbreit 1989; LCC 2003; Zehr 2015; Bargen et al. 2019; Ha 2020; Ndegwa and McDonald 2023). Facilitators need to be aware that a victim’s interest in the offender’s fate or background could lead to the victim placing the offender’s needs before their own, and eventually feeling “used” by the offender and even the RJ process (Bargen et al. 2019; Ha 2020).

A Short Note on Funding for RJ

The federal and provincial governments financially support RJ programs.²⁵ However, given the extensive role facilitators sometimes play, the need for training in various skills, the length of time it *may* take to implement RJ processes effectively, and other resource requirements, organizations offering RJ also seek funding from other sources. As Restorative Justice Victoria explains, “While restorative justice services are becoming more integrated within the Canadian legal system, they are not yet considered a part of it and therefore are not funded through the same structures as the police and court system in Canada. The province of British Columbia (BC) only provides restorative justice programs \$2,500 yearly and their operating insurance. Like all restorative justice programs in BC, Restorative Justice Victoria is a non-profit organization and is required to do extensive fundraising to deliver programming.”²⁶ Funding often takes the form of time-limited project grants. A guidebook for victims about RJ notes, “A significant amount of funding is required to develop and sustain restorative justice programs.” And yet, the guidebook also cautions that the purpose of RJ is not to cut costs in the CJS, but rather to provide a process more responsive to victims (and offenders) (Restorative Justice in Canada 2022, 5). Providers and advocates maintain that they need sustainable core funding. As the Women’s Legal Education and Action Fund (LEAF) recommends in *Avenues to Justice*, “Provincial/territorial and federal governments must establish long-term and sustainable funding for RJ/TJ²⁷ programs specific for sexual violence. Such funding needs to also include ongoing supports such as counselling services or other culturally appropriate modalities of healing for survivors and people who cause harm.” (n.p.)

²⁴ In a study of 37 individuals who participated in VOM, the victims who chose to participate most often did so to obtain answers about the crime or a “genuine” apology, tell the offender about their experiences, and help the offender to improve their lives (Hansen and Umbreit 2018).

²⁵ Government of Canada. Accessed at: <https://www.justice.gc.ca/eng/cj-jp/rj-jr/res.html>. For just one example of provincial funding, see British Columbia Government News, June 2023. Province supports enhanced services for restorative justice projects. Accessed at <https://news.gov.bc.ca/releases/2023PSSG0044-000889>.

²⁶ Restorative Justice Victoria. Accessed at: <https://www.rjvictoria.com/funders/>. This webpage is helpful in indicating the range of sources from which this RJ provider obtains funding.

²⁷ TJ stands for transformative justice.

The Benefits of Victim-Centred RJ

In addition to answers to their questions, the benefits of RJ for victims may be considerable: the fact of being part of the process, gaining back some of the control they lost; alleviating concerns about whether the offender will return to harm them; satisfying their need to feel vindicated; accepting that the offender's conduct was not their (the victim's) fault (Hughes and Mossman 2004; O'Mahony and Doak 2017; Coker 2019; Bargen et al. 2019; Wood and Russell 2021). Furthermore, "[b]ecause [RJ] is flexible and less formal, it may be less threatening and more responsive to the individual needs of victims" (Daly and Stubbs 2006, 18).

For victims, the emotional impact of RJ may be more important than financial reparation (where that would be appropriate). "Simple gestures," such as a handshake, an apology, or an undertaking not to repeat the offence, might not undo the harm, but "may still carry a beneficial role in helping victims move beyond anger and a sense of powerlessness by communicating that the offender has a personal desire to make amends" (O'Mahony and Doak 2017, 50). Victims also want "validation" from family and community: "They want their communities to take a clear and unequivocal stand in condemnation of the offence" (Herman 2005, 585).

Marshall (2018) suggests that the victim and offender "can effectively draw a line under the experience": while this may be true in some cases, it may be unrealistic in others, since the offender may agree to pay restitution (such as a scheduled repayment to the victim) subsequent to the RJ encounter. Furthermore, even if the victim has overcome some of the feelings engendered by the wrongdoing, they may not all have dissipated. Indeed, some of the victims in the Department of Justice's 2019 "A Listening Project" considered the RJ process to be only the positive start of a longer recovery process (Bargen et al. 2019).

Lessons can be learned by those designing RJ programs, as well as facilitators of specific RJ processes, from the reasons victims decline to participate in RJ: they do not think it is worth the effort; they are afraid of or are too angry with the offender; they believe the offender has ulterior motives in wanting to participate; too much time has passed or the victim believes the offender's intent is to restore a previous (unwanted) relationship. Victims can also leave dissatisfied with their RJ experience: they felt rushed or pressured to participate, had inadequate preparation, lack of information, the facilitator was overbearing, they considered the process overly offender-centric, they felt pressures to forgive the offender, or they did not believe in the sincerity of the offender's remorse or apology (LCC 2003, 47–48; O'Mahony and Doak 2017; Evans et al. 2018; Hansen and Umbreit 2018).²⁸ Some of these reasons can be addressed when speaking to victims about participating in RJ, if the occasion arises. Others can inform the planning for a specific RJ process.

A Note on the Involvement of "Community"

Canada's *Guidelines and Principles* (2018) defines a community as "[a] group of people living in the same geographical area, or a group with a shared culture, identity or occupation." A community may also be formed online (Paul and Borland 2021). It may be difficult to identify "the community" for the purposes of RJ, especially when the offender and victim do not live in the same area or are strangers; even identifying Indigenous communities is complicated by the movement of Indigenous people to urban areas (Berlin 2016; Manikis 2019; Manikis 2022).

²⁸ For example, a survey of New Zealand victim participants in RJ found that only 64 percent felt the offender was sincere (NZ Survey 2023, 37).

Community involvement may be as a stakeholder or victim (as in the case of hate crimes, for example ([Fashola 2011]), or as a participant in determining reparation or to subsequently assist in the offender's reintegration. Indigenous participants in the Department of Justice's "A Listening Project" in 2019 said the community's involvement and community-based ceremonial practices played a significant role for them in the RJ process (Bargen et al. 2019; Evans et al. 2019).

Community involvement may sometimes have negative ramifications for victims, however. Importantly, communities are not always benign towards victims and the predominant views may not be consistent with the goals of victims: for example, it may be that the predominant view in a community tends to be one of blaming victims' conduct when they are sexually assaulted. As Herman writes, "[v]ictims often perceive quite accurately that their abusers are acting with the tacit permission, not active complicity, of family, friends, church, or community" (2005, 572). Communities also have their own internal power struggles, which affect their involvement in RJ (LCC 1999; Hughes and Mossman 2004; O'Sullivan 2016; O'Mahony and Doak 2017; Wood and Russell 2021). If preparation includes members of the community, facilitators may learn about these issues and address them then or be prepared to deal with them in the RJ session, as they would any concerns about behaviour revealed during the preparation for RJ.

The design of victim-centred RJ requires appropriate facilitator training given their significant responsibilities,²⁹ as well as provision for their own safety. Some form of review incorporated into the design would help to maintain the standards for RJ processes and an emphasis on victims without short-changing offenders. Staff burnout has been identified as a difficulty for RJ programs and it may be that support is required for facilitators and others whose work with victims (and with offenders) may cause them trauma and stress (Badets 2023).

Conclusion

Victim-centred restorative justice **program design** requires victims to participate to ensure that the processes envisioned by the design encompass victim needs. Victims also need to be involved in planning the actual RJ processes in which they participate. This requires an ongoing review as victims' needs and how to meet them may change over time. As Mika et al. (2004) write, victim community advocates should "[d]evelop guidelines and standards for programming in the victim community, including restorative justice initiatives that seek to ensure and maximize victim input and impact, and minimize further harm to victims" (6) (see also Bargen et al. 2018).

Victim-centred RJ may be accomplished relatively quickly, without serious challenges. Sometimes, though, it may take time and challenges will occur. The philosophy of RJ views crime fundamentally as a violation of people and relationships and sees victims, offenders and affected communities as key stakeholders in justice, but especially victims, who are directly affected (Zehr and Mika 1998). RJ philosophy begins with the questions: Who has been hurt? What are their needs? And, who is obligated to address them? (Zehr 2015, 193). How these questions can be translated into practice should be well known. If the future of RJ is to be more victim-centred, offering victims a true alternative to their experience in the criminal justice system, it will require education

²⁹ The Alberta Restorative Justice Association, for example, developed a guide for RJ practitioners entitled: *Serving Crime Victims through Restorative Justice: A Resource Guide for Leaders and Practitioners* and a webinar to go along with it in 2018. <https://www.arja.ca/booksguidespublications>. Restorative Justice Victoria has also developed an online training program that is focused on collaboration and capacity building in victim services and RJ. It can be accessed here: <https://rjvictoria.thinkific.com/courses/collaboration-and-capacity-building-in-restorative-justice-and-victim-services>.

about the philosophy of RJ and what victim-centred practice entails; training for facilitators to enhance their understanding of, and capacity to deliver, victim-centred, trauma-informed RJ services; an ongoing commitment to develop and maintain practices that are faithful to RJ philosophy and principles; and significant funding so that RJ can reach its full potential in serving victims and survivors of crime.

References

Acorn, Annalise. 2004. *Compulsory Compassion: A Critique of Restorative Justice*. Vancouver, Toronto: UBC Press, 2004.

Badets, Nadine. "Supporting Victims of Crime Participate in Restorative Justice." 2023. *Victims of Crime Research Digest*, No. 16, 26: https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd16-rr16/pdf/rsd_vcrd2023-eng.pdf.

Banwell-Moore, Rebecca Mary. 2019. Restorative Justice: Understanding the Enablers and Barriers to Victim Participation in England and Wales [Thesis]. <https://etheses.whiterose.ac.uk/26923/>.

Bargen, Catherine, Alan Edwards, Matthew Hartman, Jennifer Haslett and Aaron Lyons. 2018. *Serving Crime Victims through Restorative Justice: A Resource Guide for Leaders and Practitioners*. AB: Alberta Restorative Justice Association. <https://www.justoutcomesconsulting.com/wp-content/uploads/2022/02/serving-crime-victims-through-restorative-justice.pdf>

Bargen, Catherine, Aaron Lyons, and Matthew Hartman. 2019. *Crime Victims' Experiences of Restorative Justice: A Listening Project* (Department of Justice Canada). <https://www.justice.gc.ca/eng/rp-pr/jr/cverj-vvpci/cverj-vvpci.pdf>.

Berlin, Meagan. 2016. Restorative Justice Measures for Aboriginal Offenders: Developing an Expectation-Led Definition for Reform of Restorative Justice Practices. *Appeal: Review of Current Law and Law Reform*, vol. 21, no. 3, 2016 CanLII Docs 74. <https://canlii.ca/t/6rr>.

British Columbia Crime Reduction through Restorative Justice (BCRJ). 2010. Ministry of Public Safety and Solicitor General. <https://www2.gov.bc.ca/gov/content/safety/crime-prevention/community-crime-prevention/restorative-justice>.

Burford, Gale. 2018. Keeping Complexity Alive: Restorative and Responsive Approaches to Culture Change. *The International Journal of Restorative Justice* vol. 1, no. 3, 356.: https://web.archive.org/web/20190429084146id_/https://www.elevenjournals.com/tijdschrift/IJRJ/2018/3/IJRJ_2589-0891_2018_001_003_002.pdf.

Burnett, Tamera, and Mandi Gray. 2023. "Avenues to Justice: Restorative and Transformative Justice for Sexual Violence." Women's Legal Education and Action Fund (LEAF). <https://www.leaf.ca/wp-content/uploads/2023/10/Avenues-to-Justice-Report-LEAF.pdf>.

Canadian Resource Centre for Victims of Crime. July 2022. Restorative Justice in Canada: What Victims Should Know ("Restorative Justice in Canada"). https://crcvc.ca/wp-content/uploads/2021/09/Restorative-Justice_DISCLAIMER_Revised-July-2022_FINAL.pdf.

Chartrand, Larry, and Kanatase Horn. 2016. A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada. Department of Justice Canada. <https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/index.html>.

Chiste, Katherine Beaty. 2013. "The Origins of Modern Restorative Justice: Five Examples from the English-Speaking World" vol. 46, no. 1, *UBC Law Review* 33, 2013 CanLIIDocs 893. <https://canlii.ca/t/7n6l6>.

Coker, Donna. 2019. Feminist Response to Campus Assault in the Republican Era: Crime Logic, Intersectional Public Health, and Restorative Justice. In *The Politicization of Safety: Critical Perspectives on Domestic Violence Responses*, ed. Jane K. Stoever. New York: New York University Press, 2019, 171.

Community Legal Centres NSW. N.d. "Restorative Justice After Sexual Assault." <https://www.clcnsw.org.au/restorative-justice-after-sexual-assault>.

Correction Service Canada Restorative Justice. 2022. <https://www.csc-scc.gc.ca/restorative-justice/003005-5002-en.shtml>.

Crosier, Kate. 2022. *Restorative Justice and Gender-Based Violence* (Project Willow: YWCA-CJI-CMW). <https://thefeministshift.ca/wp-content/uploads/2022/06/Lit-Review-RJ-GBV.pdf>.

Daly, Kathleen, 2000. Restorative Justice in Diverse and Unequal Societies." *Law in Context: A Sociological Journal* vol. 17, 167. https://heinonline-org.greatlibrary.idm.oclc.org/HOL/Page?public=true&handle=hein.journals/lwincntx17&div=14&start_page=167&collection=fijournals&set_as_cursor=10&men_tab=srchresults.

Daly, Kathleen, and Julie Stubbs. 2006. "Feminist Engagement with Restorative Justice." *Theoretical Criminology* vol. 10, 9. https://heinonline-org.greatlibrary.idm.oclc.org/HOL/Page?public=true&handle=hein.journals/thcr10&div=4&start_page=9&collection=agopinions&set_as_cursor=32&men_tab=srchresults.

Edwards, Alan and Jennifer Haslett. 2011. "Violence is Not Conflict: Why It Matters in Restorative Justice Practice." *Alberta Law Review* vol. 48, no. 4, 893. <https://albertalawreview.com/index.php/ALR/article/view/138/138>.

Ending Violence Association of BC and Just Outcomes (EVABC). 2021. Restorative Justice and Gender-Based Violence: Revisiting the Conversation in British Columbia, *Victims of Crime Research Digest*, no. 14, n.p. <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd14-rr14/p3.html#c>.

European Forum for Restorative Justice. "Connecting People to Restore Just Relations." <https://www.euforumrj.org/en>.

Evans, Jane, Susan McDonald, and Richard Gill. 2018. Restorative Justice: The Experiences of Victims and Survivors. *Victims of Crime Research Digest*, no. 11, 27. <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd11-rr11/rd11-rr11.pdf>.

Fashola, Sidikat (2011). Understanding the Community Impact of Hate Crimes: A Case Study. *Victims of Crime Research Digest*, no. 4. <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p4.html#sec4>.

Federal-Provincial-Territorial Meeting of Ministers Responsible for Justice and Public Safety. "Principles and Guidelines for Restorative Justice Practice in Criminal Matters (Principles and Practice)." 2018. <https://scics.ca/en/product-produit/principles-and-guidelines-for-restorative-justice-practice-in-criminal-matters-2018/>.

Gladue, R. v., 1999 CanLII 679 (SCC), [1999] 1 SCR 688. <https://canlii.ca/t/1fqp2>; <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1695/index.do>.

Goodmark, Leigh. 2018. "Restorative Justice as Feminist Practice." *International Journal of Restorative Justice* vol. 1, 372. <https://heinonline.org.greatlibrary.idm.oclc.org/HOL/Page?collection=agopinions&handle=hein.journals/ijrestore1&id=382&men tab=srchresults>.

Government of Canada. "Restorative Justice." n.d. <https://www.justice.gc.ca/eng/cj-jp/rj-jr/index.html>.

Ha, Lisa. 2020. "Summary of Crime Victims' Experiences of Restorative Justice: A Listening Project." *Victims of Crime Research Digest*, no. 13, 39. <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd13-rr13/rd13-rr13.pdf>.

Hansen, Toran, and Mark Umbreit. 2018. "State of Knowledge: Four Decades Of Victim-Offender Mediation Research and Practice: The Evidence." *Conflict Resolution Quarterly* vol. 36, 99. https://heinonline.org.greatlibrary.idm.oclc.org/HOL/Page?public=true&handle=hein.journals/cfltrq36&div=15&start_page=99&collection=usjournals&set as cursor=27&men tab=srchresults.

Herman, Judith Lewis. 2005. "Justice from the Victim's Perspective. Violence Against Women." vol. 11, no. 5, 571. ResearchGate. https://www.researchgate.net/publication/7701236-Justice_From_the_Victim's_Perspective.

Herman, Judith Lewis. 2023. "Truth and Repair: How Trauma Survivors Envision Justice." YouTube. <https://www.youtube.com/watch?v=nUcSV-9mEmM&t=3175s>.

Hobson, Jonathan, Anamika Twyman-Ghoshal, Rebecca Banwell-Moore, and Daniel P. Ash. 2022. "Restorative Justice, Youth Violence, and Policing: A Review of the Evidence," 2022, vol. 11, no. 4 *Laws | An Open Access Journal from MDPI*, 2022 CanLII Docs 1638. <https://canlii.ca/t/7lnrb>.

Hughes, Patricia, and Mary-Jane Mossman. 2004. *Re-Thinking Access to Criminal Justice in Canada: A Critical Review of Needs, Responses and Restorative Justice Initiatives*. Department of Justice Canada: Ottawa. https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03_2/index.html.

Illingworth, Heidi, and Nadia Ferrara. 2021. *Information as a Gateway Right: Examining Complaints Related to the Canadian Victims Bill of Rights*. Office of the Federal Ombudsperson for Victims of Crime, Ottawa. <https://www.victimfirst.gc.ca/res/pub/IGR-IGR/index.html>.

Indigenous Justice (Indigenous Justice PEI). Mi'kMaw Confederacy of PEI. <https://mcpei.ca/program/indigenous-justice/>.

Jeffries, Samantha, William R. Wood, and Tristan Russell. 2021. Adult Restorative Justice and Gendered Violence: Practitioner and Service Provider Viewpoints from Queensland, Australia. vol. 10, no. 1 *Laws / An Open Access Journal from MDPI*. <https://www.mdpi.com/2075-471X/10/1/13>; 2021 CanLIIDocs 488. <https://canlii.ca/t/t22l>

Justice Canada. "Principles of Restorative Justice." <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rest.html#:~:text=Victims%2C%20offenders%20and%20the%20affected,the%20key%20stakeholders%20in%20justice>.

Law Commission of Canada. 1999. From Restorative Justice to Transformative Justice: Discussion Paper. https://publications.gc.ca/collections/collection_2022/jus/JL2-6-1999-eng.pdf.

Law Commission of Canada. 2003. Transforming Relationships Through Participatory Justice. <https://publications.gc.ca/collections/Collection/JL2-22-2003E.pdf>

Manikis, Marie. 2019. "Recent Developments in Victim and Community Participation in Criminal Justice." *Victims of Crime Research Digest*, no. 12, 5. <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd12-rr12/rd12-rr12.pdf>

Manikis, Marie. 2022. "Impact Statements at Sentencing: Developments since the Victims Bill of Rights." *Victims of Crime Research Digest*, no. 15, 30. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd15-rr15/docs/rsd_vcrd2022-eng.pdf

Marshall, Antonio F. 1999. *Restorative Justice: An Overview*. Home Office. As referenced in the Coventry Lord Mayor's Committee for Peace and Reconciliation (2018). [RESTORATIVE JUSTICE AN OVERVIEW \(antonio-casella.eu\)](https://www.restorativejustice.org.uk/resources/antonio-casella).

Mercer, Vince, and Karin Sten Madsen (Marie Keenan & Estelle Zinnstag, ed.). 2015. *Doing Restorative Justice in Cases of Sexual Violence: A Practice Guide*. Leuven Institute of Criminology (LINC), University of Leuven (KU Leuven). https://www.euforumrj.org/sites/default/files/2019-11/doing-restorative-justice-in-cases-of-sexual-violence_practice-guide_sept2015-1.pdf.

Mika, Harry, Mary Achilles, Ellen Halbert, Lorraine Stutzman Amstutz, and Howard Zehr. 2004. Listening to Victims – A Critique of Restorative Justice Policy and Practice in the United States. *Federal Probation Journal* vol. 68, n.p. https://www.uscourts.gov/sites/default/files/68_1_6_0.pdf.

Milward, David. 2023. "Arguments Against Restorative Justice" in *Criminal Law: Canadian Law, Indigenous Laws & Critical Perspectives*, ed. Benjamin Perrin et al., (Canadian Legal Information Institute). 2023 CanLIIDocs 316. www.canlii.org.

Ndegwa, Anna, and Susan McDonald. 2023. "Hate Crimes in Canada." *Victims of Crime Research Digest*, no. 16, 4. https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd16-rr16/pdf/rsd_vcrd2023-eng.pdf.

New Zealand Law Commission. 2015. "R136-The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes (NZLC)."

<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R136-The-Justice-Response-to-Victims-of-Sexual-Violence.pdf>.

Office of Program Policy Analysis and Government Accountability (OPPAGA). 2020. *A Review of Restorative Justice in Florida and Other States*. Report No. 20-02. <https://oppaga.fl.gov/Documents/Reports/20-02.pdf>.

O'Mahony, David, and Jonathan Doak. 2017. *Reimagining Restorative Justice: Agency and Accountability in the Criminal Process* (Oxford: Hart Publishing).
https://www.researchgate.net/publication/320877937_Reimagining_Restorative_Justice_Agency_and_Accountability_in_the_Criminal_Process.

O'Sullivan, Sue. 2016. *Supporting Victims of Gender-based Violence in the Criminal Justice System*. Submission to the Status of Women Canada. Federal Ombudsman for Victims of Crime.
<https://www.victimfirst.gc.ca/vv/FSAGV-SVDFS/index.html>.

Pali, Brunilda. 2016. "Briefing Paper about the Regulation of Restorative Justice in the Direction 2012/29/EU." <https://www.euforumrj.org/sites/default/files/2020-01/efrj-briefing-paper-rj-in-the-victims-directive.pdf>.

Paul, Gregory D., and Ian M. Borton. 2021. *Creating Restorative Justice: A Communication Perspective of Justice, Restoration, and Community*. London: Lexington Books.

Pavelka, Sandra. 2016. "Restorative Justice in the States: An Analysis of Statutory Legislation and Policy." *Justice Policy Journal*, vol. 2, no. 13 (Fall).
https://www.cjcj.org/media/import/documents/jpj_restorative_justice_in_the_states.pdf.

Pfander, Sarah Mikva. 2020. "Evaluating New Zealand's Restorative Promise: The Impact of Legislative Design on the Practice of Restorative Justice." *Kotuitui: New Zealand Journal of Social Sciences Online* vol. 15, no. 1, 170.
<https://www.tandfonline.com/doi/epdf/10.1080/1177083X.2019.1678492?needAccess=true&role=button>.

Ponic, Pamela, Colleen Varcoes, and Tania Smutylo. 2016. "Trauma- (and Violence-) Informed Approaches to Supporting Victims of Violence: Policy and Practice Considerations." *Victims of Crime Research Digest*, no. 9, 3.
<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/rd9-rr9.pdf>.

Randall, Melanie. 2013. Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert: Why Feminists Should Critically Engage with Restorative Approaches to Law. *Dalhousie Law Journal* vol. 36, no. 2, 461–499; CanLII Docs 747. <https://canlii.ca/t/t0zg>.

Restorative Justice Victoria. <https://www.rjvictoria.com/about-rjv/>.

Sewak, Selby, Marina Bouchahine, Karen Liong, Josephine Pan, Chandla Serret, Adrian Saldarriaga, and Eisha Farrukh. 2019. A Report for HAQ Centre for Child Rights: Youth Restorative Justice: Lessons from Australia. McQuarie University, Sydney. <https://haqrc.org/wp-content/uploads/2019/07/restorative-justice-in-australia.pdf>.

- Shah, Sonya, Carl Stauffer, and Sarah King. 2017. Restorative Justice Listening Project Final Report (November 2017). Zehr Institute for Restorative Justice. <https://zehr-institute.org/images/Restorative-Justice-Listening-Project-Final-Report.pdf>.
- Umbreit, Mark. 1986. Victim/Offender Mediation: A National Survey. *Federal Probation* vol. 50, no. 4, 53–6. [Victim/Offender Mediation: A National Survey | Office of Justice Programs \(ojp.gov\)](#).
- Umbreit, Mark. 1989. Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice. *Federal Probation* vol. 53 no. 3, 52–7. [Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice | Office of Justice Programs \(ojp.gov\)](#).
- Umbreit, Mark. 1999. Victim-Offender Mediation in Canada: The Impact of an Emerging Social Work Intervention. *International Social Work* vol. 42, no. 2, 215. [\(PDF\) Victim—offender mediation as a social work practice \(researchgate.net\)](#).
- Umbreit, Mark, and Howard Zehr. 1996. Restorative Family Group Conferences: Differing Models and Guidelines for Practice. *Federal Probation* vol. 60, no. 3, 24–9. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/restorative-family-group-conferences-differing-models-and>
- United Nations Office on Drugs and Crime (UNODC). 2020. Handbook on Restorative Justice Programmes (Second Edition). https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf.
- Urban, Lynn S., Jeananne Markway, and Kay Crockett. 2011. Evaluating victim-offender dialogue (VOD) for serious cases using Umbreit’s 2001 handbook: A case study. *Conflict Resolution Quarterly* no. 29, 3. [Evaluating victim—offender dialogue \(VOD\) for serious cases using Umbreit's 2001 handbook: A case study - Urban - 2011 - Conflict Resolution Quarterly - Wiley Online Library](#).
- Van Camp, Tinneke, and Jo-Anne Wemmers. 2016. Victims’ Reflections on the Protective and Proactive Approaches to the Offer of Restorative Justice. *Canadian Journal of Criminology and Criminal Justice*. [Victims’ Reflections on the Protective and Proactive Approaches to the Offer of Restorative Justice: The Importance of Information | Canadian Journal of Criminology and Criminal Justice. \(utpjournals.press\)](#).
- Weisberg, Robert. 2003. Restorative Justice and the Danger of Community. *Utah Law Review* vol. 1, 343–4. [Utah Law Review 2003 Number 1 | University of Utah Partnerships | J. Willard Marriott Digital Library](#).
- Wemmers, Jo-Anne Ph.D. 2017. Judging Victims: Restorative Choices for Victims of Sexual Violence. *Victims of Crime Research Digest*, no. 10, 12. <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd10-rr10/rd10-rr10.pdf>.
- Why Me? n.d. <https://why-me.org/>.
- Williams, Michelle Y. 2013. African Nova Scotian Restorative Justice: A Change Has Gotta Come. *Dalhousie Law Journal* vol. 36, no. 2, 419, CanLIDocs 746. <https://canlii.ca/t/t0zf>.
- Woolford, Andrew, and Amanda Nelund. 2019. *The Politics of Restorative Justice: A Critical Introduction*. 2nd ed. Halifax & Winnipeg: Fernwood Publishing.

Young, Alan N., and Kanchan Dhanjal. 2021. Victims' Rights in Canada in the 21st Century. Department of Justice Canada. 2021 CanLII Docs 13572: <https://canlii.ca/t/ttjz>.

Zehr, Howard. 2015. *Changing Lenses: Restorative Justice for Our Times*. [1990]. 25th anniversary ed.: Kitchener, Ont., Herald Press.

Zehr, Howard, and Henry Mika. 1998. Fundamental Concepts in Restorative Justice. *Contemporary Justice Review*, vol. 1.

Zehr, Howard, and Mark Umbreit. 1982. Victim Offender Reconciliation: An Incarceration Substitute. *Federal Probation* vol. 46, no.4, 63–8. [Victim Offender Reconciliation - An Incarceration Substitute? | Office of Justice Programs \(ojp.gov\)](#)

Accessing justice for victims and survivors of sexual assault and intimate partner violence

By Susan McDonald³⁰

Access to justice is a broad, somewhat ambiguous phrase that means different things to different people (see McDonald 2019). For victims and survivors of gender-based violence (GBV), such as sexual assault and intimate partner violence (IPV), it could mean having a nurse or a police officer believe that a sexual assault happened; or understanding your options and knowing that you **could** report it if you wished; or filing a civil suit in a case of historical abuse and either winning, or not, but nonetheless feeling like you were able to tell your story. This article presents the findings from a small, exploratory research study on the Independent Legal Advice and Independent Legal Representation (ILA/ILR) projects for victims and survivors of sexual assault or IPV funded by the Department of Justice Canada (JUS). The projects and the findings illustrate one way victims and survivors of sexual assault and IPV are accessing justice.

Introduction

In 2016, Ontario's Ministry of the Attorney General established a new program – Independent Legal Advice for Survivors of Sexual Assault. The program, the first of its kind in Canada, was, and continues to be, open to all women, men, trans, and gender-diverse people, aged 16 years and older, living in Ontario, and where the sexual assault occurred in the province. Individuals complete a voucher request form and submit it. If deemed eligible, the requestor is sent a voucher for up to four hours of free legal advice and a list of lawyers – criminal and civil – who are qualified to provide this advice.³¹

Following the establishment of Ontario's program, JUS offered funding to provinces and territories to set up their own pilot projects through the Victims Fund.³² Several provinces, including Nova Scotia³³ and Newfoundland and Labrador, accessed funding to establish their own ILA/ILR projects, and Ontario accessed JUS funding to expand theirs. Saskatchewan³⁴ received funding from the Victims Fund for its pilot projects in 2018, and Yukon received funding in 2019. Budget 2021 provided \$85.3 million over five years, starting in 2021–22, for the Department to further support a national program for ILA and ILR for victims of sexual assault and to support pilot projects using a similar ILA/ILR service delivery model for victims of intimate partner violence (IPV), who are also disproportionately women and girls. These projects fall under the third pillar of Canada's Strategy to Prevent and Address Gender-Based Violence – A Responsive Justice System.³⁵

In the mid-2010s, there was a great deal of public discourse about sexual assault, consent, and reporting to police. The sustained focus was likely due, at least in part, to the media coverage of some high-profile cases in

³⁰ The author would like to acknowledge the assistance of Jessica Morin and Bianca Stumpf with this study.

³¹ See <https://www.ontario.ca/page/independent-legal-advice-survivors-sexual-assault>.

³² Led by Justice Canada, the Federal Victims Strategy (FVS) combines federal efforts to provide victims and survivors of crime with a more effective voice in the criminal justice system. The FVS aims to improve the life of all victims and survivors of crime in Canada and build the capacity of players and service providers within the criminal justice system. The Victims Fund is an important part of the FVS. For more information, see <https://www.justice.gc.ca/eng/fund-fina/cj-jp/fund-fond/index.html>.

³³ The project is administered by the 211 Nova Scotia service. See <https://novascotia.ca/sexualassaultlegaladvice>.

³⁴ The Listen Project is administered by the Public Legal Education Association of Saskatchewan. See <https://listen.plea.org/>.

³⁵ See the [2019-2020 and 2020-2021 Report](#) on the GBV Strategy for a discussion of ILA/ILR projects.

Canada -- University of Ottawa hockey players,³⁶ Dalhousie University dentistry students,³⁷ allegations against CBC host Jian Ghomeshi,³⁸ and the “Unfounded” series in the *Globe and Mail* that began in February 2017.³⁹ When the allegations against Harvey Weinstein in the United States surfaced in October 2017,⁴⁰ the resulting #metoo and other social media movements fuelled additional public discussion.⁴¹

In 2018, the Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety approved the release of a report entitled *Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims* (hereinafter “the report”). The report was the culmination of two years of work by government officials on the criminal justice system’s response to sexual assault against adults. One of its many recommendations was that independent legal advice and representation for complainants be provided in sexual assault cases. Recommendation 17 of the report (2018) reads:

The Working Group recommends consideration be given to:

- providing government funding for victim’s counsel in third party records applications; and,
- examining the experiences of the current pilot projects that are underway to provide various forms of independent legal advice to victims of sexual assault, with a view to considering developing similar initiatives. (*Subsection 5.4.7*)

The Working Group report built upon years of research and writing, in academia and by advocacy groups, that examined the criminal justice system’s response to sexual assault against adults, not only in Canada, but in the United States, Australia, and other common law countries (for example, Johnson and Dawson 2011; Craig 2018). Many academics and advocates have long been calling for independent legal advice and representation for victims of sexual assault (Garvin and Beloof 2015; Walton and Palmer 2014). Here in Canada, Karen Bellehumeur (2020), a former Crown prosecutor with Ontario’s Ministry of the Attorney General, proposed:

a fully funded confidential trauma-informed model of victim representation for survivors of sexual violence to better protect their rights and facilitate equal access to justice. I find support for my proposed model by looking to systems of victim representation internationally, in the U.S. Military and in the International Criminal Court.

In a 2023 article, Bellehumeur argues that female sexual assault victims are systematically discriminated against by how their cases are handled in Canada’s criminal justice system. She asserts that one way to address the

³⁶ See <https://www.cbc.ca/news/canada/ottawa/guillaume-donovan-david-foucher-verdict-1.4717857#:~:text=Two%20former%20University%20of%20Ottawa,%2C%20Ont.%2C%20hotel%20room.>

³⁷ See <https://universityaffairs.ca/news/news-article/dentistry-students-facebook-scandal-puts-spotlight-restorative-justice-process/#:~:text=In%20December%2C%20Dalhousie%20University%20President,misogynistic%20and%20sexually%20explicit%20comments.>

³⁸ See <https://www.cbc.ca/news/canada/toronto/jian-ghomeshi-sexual-assault-trial-ruling-1.3505446.>

³⁹ On 3 February 2017, *The Globe and Mail* began publishing a series of articles entitled the “unfounded series.” The first article by Robyn Doolittle (“Unfounded: Why Police Dismiss 1 in 5 Sexual Assault Claims as Baseless”) referenced a 2006 Department of Justice funded study entitled *Preliminary Study of Police Classification of Sexual Assault Cases as Unfounded*. The Department of Justice Canada held a Knowledge Exchange on the criminal justice system’s responses to sexual assault cases against adults on March 8th, 2017. The event provided a forum to discuss current experiences associated with reporting, charging, and prosecution rates of adult sexual assault in the criminal justice system and to examine promising practices from within Canada and other common law jurisdictions.

⁴⁰ See <https://www.bbc.com/news/entertainment-arts-41594672.>

⁴¹ See <https://canadianwomen.org/the-facts/the-metoo-movement-in-canada/#:~:text=The%20%23MeToo%20Movement%20has%20been,assault%20and%20harassment%20across%20society.>

discrimination is to provide trauma-informed legal representation for all victims (Bellehumeur 2023). It is within this ongoing discussion and scrutiny of the criminal justice system's response to adult sexual assault cases, and to IPV cases, that understanding how the ILA/ILR projects are working – through this research project – remains a priority.

This research project was designed to explore, through qualitative, in-depth interviews, a sample of the ILA/ILR projects that received funding through Budget 2021–22 and had been running for 18 months or longer in September 2023. This article presents the statistics on sexual violence and IPV in Canada to understand their prevalence and the low rates of reporting to police, and a description of the methodology and the findings of the research project.

Statistics

There are two primary methods of measuring IPV and sexual assault in Canada: 1) administrative data collected from the police; and 2) survey data collected directly from Canadians. Sexual assault and IPV are both underreported to police, so it is important to complement the police reports with self-reported data. This is collected on the General Social Survey on Canadians' Safety (2019 GSS on Victimization), which is carried out every five years. The GSS on Victimization measures spousal violence – a narrower form of IPV that would not include dating partners but does include common-law and married (current and former) partners. Police-reported data through the Uniform Crime Reporting Survey does capture dating relationships, so both IPV and spousal violence will be used below. The GSS also asks whether it was respondents, or someone else, who reported their victimization to police.⁴²

According to police-reported data, rates of IPV declined from 2009 to 2014, reaching their lowest levels in 2014. In 2015, rates began increasing year over year until 2022 when rates of IPV remained unchanged from the previous year. In 2022, there were 117,093 victims of IPV aged 12 years and older, with an overall rate of 346 incidents per 100,000 population (Statistics Canada 2023).

The rate of IPV for women and girls aged 12 to 24 years was almost seven times higher than the rate for men and boys (776 vs. 114 incidents per 100,000 population). Physical assault was by far the most common form of IPV in 2022 (253 victims per 100,000 population), followed by sexual assault (24), uttering threats (23), and criminal harassment (20). Intimate partner sexual assault showed the highest increase – 163 percent – since 2014 (Statistics Canada 2023).

According to the 2019 GSS, self-reported spousal violence was significantly lower in 2019 than in 1999. While one quarter (25 percent) of Canadians reported that they had experienced violence by a current or former spouse in the five years preceding the 1999 GSS on Victimization, this had fallen to just over 1 in 10 (11 percent) in 2019. That year, spousal violence continued to be significantly more common among women, with 4.2 percent of women experiencing such violence compared with 2.7 percent of men. As well, in 2019 one in five (19 percent) spousal violence victims said the violence they had experienced in the past five years was reported to police, either by the victim or another person. A large majority (80 percent) of spousal violence victims said the violence they experienced was not reported to police (Conroy 2021).

⁴² For the questionnaire and more information on the 2019 GSS, see <https://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=4504>. In 2018, the Survey of Safety in Public and Private Space (SSPPS), collected self-reported data on Canadians' experiences of gender-based violence. See <https://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=5256>.

Turning to statistics on sexual assault, the rate of police-reported level 1 sexual assault⁴³ rose 3 percent from 2021 to a rate of 90 incidents per 100,000 population in 2022, an increase of 1,574 incidents. While there was a decrease in 2020, the rate of level 1 sexual assault has been rising since 2014 (Statistics Canada 2023). As in previous years, level 1 sexual assault accounted for 98 percent of sexual assaults in 2022, with 33,215 incidents reported to police in 2022. Rates of level 2 and level 3 sexual assault, two more serious offences, remained stable, with 627 and 123 incidents reported, respectively, and both decreased 4 percent from 2021.

As with IPV/spousal violence, sexual assault is largely underreported. Only an estimated 6 percent of sexual assaults are reported to police (Cotter 2021). The results from the 2019 GSS on Victimization show that there were 30 sexual assaults per 1,000 population aged 15 years and older. Rates of sexual assault were seven times higher among 15- to 24-year-old women (187 per 1,000) and five times higher for 25- to 34-year-old women (85 per 1,000) when compared with men aged 15 to 24 years (25 per 1,000) and men aged 25 to 34 years (16 per 1,000). The rates in these two age categories are higher than in any other age group. Overall, the sexual assault rate was over five times higher among women (50 per 1,000) than men (9 per 1,000) (Cotter 2021).

Methodology

The purpose of the research was exploratory - to better understand how the different ILA and ILR projects were working based on their first 18 to 24 months of operation. JUS program managers sent an invitation to the contact person at each funded organization to participate in the research study. The researchers then contacted those interested and sent a letter of information and consent, as well as the interview guide.

Interviews took place by video using MS Teams (one interview was by phone) and lasted about one hour. Interviews were recorded with permission from participants to assist with notetaking. Most of the interviews included two or more participants representing different team members of the project. A total of 18 people were interviewed in the fall of 2023.

All the participants were from not-for-profit organizations, rather than government, and came from five jurisdictions: Prince Edward Island, Ontario, Manitoba, Alberta, and British Columbia. Those interviewed included lawyers, social workers, and community legal workers/navigators. All interviews were conducted in English, except for one that was conducted in French. Once interviews were completed, the transcripts and notes were reviewed, and the data was analyzed thematically.

Limitations

As with all small, exploratory studies, the findings represent only the views of those who volunteered to participate and cannot be generalized to all the ILA/ILR projects. As noted, all the participating organizations were not-for-profits so there were no participants from government, or other entities, such as legal aid plans. Also, only five jurisdictions participated so the study is not national in scope.

Findings

In this section, the findings are presented by theme, based on the questions posed to the participants.

⁴³ The *Criminal Code* has three offences for sexual assault. They are defined as: Sexual assault level 1 (s. 271):

An assault committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated. Level 1 involves minor or no physical injuries to the victim. Sexual assault level 2 (s. 272): Sexual assault with a weapon, threats, or causing bodily harm.

Aggravated sexual assault (level 3): Sexual assault that results in wounding, maiming, disfiguring, or endangering the life of the victim.

Project structures

The ILA and ILR projects explored through this research study were all run from not-for-profit, community-based organizations and usually became another project/program in an already existing organization. Funding from JUS also went to provincial and territorial governments or legal aid plans, where, in many cases, ILA and ILR projects for survivors of sexual assault are run.

Most of the projects researched involved ILA for survivors of IPV. To a lesser extent, the projects included ILR for survivors of IPV. The funding announced in Budget 2021–22 took the ILA/ILR model developed to support survivors of sexual assault and applied it to survivors of IPV as pilot projects.

For most projects, survivors complete an intake process with one of the team members upon initial contact with the organization. This might be a social worker, navigator, or intake worker, but rarely a lawyer. Someone other than a lawyer may provide basic information – also called public legal education and information (PLEI) – but when advice is requested, a lawyer will always be available, with the caveat that they can only provide advice for that specific jurisdiction.

One specific model/structure stood out among the projects: the community legal clinics in Ontario. A group of nine specialty and community legal clinics came together to submit a proposal for a project entitled “Your Way Forward.” The clinic model, funded by Legal Aid Ontario, has a long history dating back to the early seventies. It is premised on serving specific communities, whether geographic or demographic, or by areas of law. Today, there are 59 general community legal clinics, 7 student legal aid services societies, and 13 specialty clinics across the province.⁴⁴ The clinics are independent, not-for-profit organizations with boards of directors that reflect the community membership and can speak to legal needs and priorities. Legal aid in Ontario has been structured to focus on poverty law issues such as housing, social benefits, and human rights issues, among other areas of law, but not family or criminal law. Clinics provide a range of services, from PLEI to advice to legal representation, as well as community development and test cases in the courts. While clinic models exist in other jurisdictions (see Roberts 2021), their long history in Ontario has fostered a more comprehensive approach to poverty law issues in the province.

Several participants from the Your Way Forward group noted in their interviews that building ILA/ILR for sexual violence and IPV into their existing clinic model leverages the benefits of the model. Because it is a fairly large group of clinics, they have been able to pool resources, and learn from and support each other and their community of practice.

Services provided

Participants noted that they provide a range of services, including information, referrals, and advice. Depending on their funding, they might also provide brief services, which could involve writing a letter on behalf of a client, up to and including representing the client.

Survivors of IPV might have questions about any number of areas of law: criminal, family (and within family, division of property, tax, separation, divorce, and parenting arrangements), child protection, or immigration. All the participants noted that they do not have expertise in some areas of law, so they would refer clients on to other professionals. The biggest demand from clients is for family legal advice.

⁴⁴ See Legal Aid Ontario at <https://www.legalaid.on.ca/services/legal-clinics/>.

The organizations stressed the importance of using “warm referrals,” which means making a connection, with the permission of the survivor, to an external service provider who can respond to a need that the survivor has identified. In the context of the ILA/ILR projects, it means that those making the referrals have confirmed that the professionals were receptive to referrals, that they understand trauma-informed practice, and that they are not too busy to see new clients in a timely way. This referral could include a heads up by phone or email that would be sent to the professional. Warm referrals are intended to remove as many barriers to access as possible, by ensuring that there is no conflict of interest. One participant described their work this way:

And, and that's often what we see our role there, as has been really helping them to get going, understand the services, understand their right.

So that by the time they're talking to somebody else, who we're gonna refer them to, they're doing that from a place of, you know, some empowerment and certainly some information also . . . with the offer to come back if it doesn't make sense. . . . I'll often say if you come away and you're very confused, you know, come back and we'll keep talking you through the system . . .

This participant noted that this is what they mean “when we're talking about really enhancing the services that we provide to offer more trauma informed service.”

The ILA/ILR projects are focused specifically on victims and survivors of sexual violence and/or IPV. For both types of gender-based violence (GBV), this has meant that these lawyers become experts in many different areas of law, including criminal, family, and child protection law. But it has also meant that during intake and during main meetings, they must try to spot issues of GBV. One participant asked: “How can we be more attuned to those things without maybe clients being really upfront about them?”

Participants noted that within their organizations, their capacity to use trauma-informed practice has improved beyond the work of the ILA/ILR team. And in doing so, the community legal clinics have been able to create stronger networks and partnerships with other community-based organizations, such as shelters. These partnerships are built on connection and trust. One organization was invited to sit on their regional collaborative review committee, where they review sexual assault cases and discover how the cases were handled by police.

All the ILA/ILR projects provide legal advice orally, whether by phone, by video, or in person. One organization has taken an extra step and provides each client a follow-up written memo outlining the information and advice they provided. This aspect is unique to this particular ILA project.

Outreach

All the participants interviewed indicated that there had been targeted outreach at the beginning of the projects to groups with which victims and survivors of IPV would generally connect. This included putting flyers up at public health and drop-in centres, victim services and shelters, libraries, legal aid offices, and other public centres, as well as notices placed in community newspapers, speaking to different groups of professionals, etc. The outreach did not always work, particularly with certain communities, such as when no one showed up for a workshop at a local library. Regardless, most or all the organizations had more clients than they could realistically handle shortly after they opened their doors.

Organizations across the country took different approaches to setting up their project/program. One participant noted:

I think we took the approach that we were going to slowly start taking on clients, respond to their needs and then based on what we learned, build, continue building the project. . . . I'm glad that we did that because I don't think we could have anticipated some of the client concerns that we got if we had done it another way.

Outreach varied depending on the specific community. A couple of organizations found that they had to use more formal approaches to building relationships and accessing relevant committees. This involved setting up a meeting to introduce themselves and the ILA/ILR project, and when the meeting kept getting rescheduled, ensuring that it did not fall off the calendar.

Training

All those interviewed indicated that they had taken advantage, and would continue to do so, of multiple training opportunities, whether they were conferences (such as the Ending Violence Against Women Annual Conference), webinars hosted by the Centre for Research and Education on Violence Against Women and Children (CREVAWC) at Western University, or self-learning opportunities. Topics include trauma-informed lawyering and other practices, self-care, professional legal education on areas of law such as property division, and civil claims in sexual assault cases, among others. Participants also make use of JUS's HELP Toolkit, a resource designed for family law lawyers to ask their clients questions about violence within relationships.⁴⁵

Almost all of those interviewed also provide training or information workshops to the public and to targeted audiences of both professionals (e.g., bar associations) and possible clients (at a shelter). Participants view this training and PLEI as essential parts of their projects to raise awareness about IPV and sexual violence generally, but also to raise awareness about the services they provide.

One participant, who had previously worked in private practice in family law, noted feeling disappointed about the lack of awareness of IPV and trauma-informed practice within the family law bar in their jurisdiction. They said that despite organizing learning events, they found that the number of private bar lawyers who attended was small.

Accessibility

During the planning stages, accessibility was, and continues to be, important to all the projects, and the participants spoke about ensuring that the services were as accessible as possible. For one organization, the participants acknowledged that they were only open during regular work hours, although they would have liked to have one late night (for example, when they might be open until 7 or 8 p.m.) or a Saturday morning when they could meet with clients. At the time of the interview, this was not possible, but was something they were aiming for in the future.

Many of the projects could be initially contacted by phone, by email, or by text. Those interviewed saw this choice as important for their clients. So often violent victimization takes away one's sense of agency, and interacting with the criminal justice system or the family justice system can again feel like one is not in control of anything. Participants noted that small choices, such as being able to decide how or when to contact a lawyer or other supports, can be very meaningful to victims and survivors.

⁴⁵ The Department of Justice Canada designed the HELP Toolkit through researching and engaging with family law and family violence experts. See <https://www.justice.gc.ca/eng/fl-df/help-aide/docs/help-toolkit.pdf>.

All the projects serve a geographic area within a city, a region, or even the province. Because the ILA/ILR projects participating in the research do not impose income eligibility criteria, clients did not have to prove they qualified for the service because of their low income, as would be necessary for legal aid. There were also projects that served a particular demographic – for example, francophones or tenants.

Research and needs assessments

For the group of legal clinics that make up the Your Way Forward project in Ontario, five general service and one specialty clinic undertook a legal needs study to better understand the needs of their respective communities. The studies differed slightly in that while each included interviews with service providers, not all interviewed clients and only one incorporated data on statistics on gender-based violence.

For the specialty clinic, which focuses on tenants, the study included a review of research literature, a scan of residential tenancy and social housing legislation in all provinces and territories, interviews with key informants and tenants (n=80), as well as a survey of service providers (n=120). These findings have helped inform the design of their service delivery model.

Key findings from these studies include: significant PLEI needs for survivors' rights and legal options, for victims and survivors, as well as service providers; a need for trauma-informed training for legal professionals; and a lack of family lawyers, particularly those who accept Legal Aid Ontario (LAO) family law certificates and two-hour domestic violence (DV) certificates, as significant issues. There were many similarities in the research methods, findings, and recommendations, but the studies highlighted how local service providers function and interact differently.

Evaluation, data collection, and performance metrics

The Department of Justice Canada has specific reporting requirements for their funding recipients. Recipients must submit annual reports with a long list of data that need to be collected. They are also required to evaluate the project. Half the organizations reported that they found the reporting requirements burdensome, not just for themselves, but for their clients, for whom they were particularly problematic. This was especially true for the ILA projects.

As part of the interview guide, each participant was asked about collecting data on their projects, including demographics on the clients and types of services provided. This question prompted discussions on how to collect the data and the ethics of doing so when the client wants to remain anonymous or has only a short meeting for legal advice, as can occur in the ILA projects. On this issue, participants noted that

People call and want to remain anonymous. So [there are] ethical issues with collecting the identifying information.

[R]eally the ethical issue of asking for this type of data for somebody who is again maybe in crisis, maybe in some kind of emergency mode, but just has so much going on and where you don't have a relationship with them beyond you know the two or three hours of that initial intake and the information and advice session and it's really because of course it's important you know and there's that tension there.

With the ILA projects, the organization has little to no ongoing contact with the client after the advice has been given. This makes it hard to record outcomes or go back to the client to capture data that was missed. Most of the organizations capture the demographic data requested during the intake process when a social worker or

other community worker, sometimes joined by a lawyer, goes through the intake form to capture gender, race/ethnicity, Indigenous status, and other demographics. However, none of the questions are mandatory and many clients choose not to answer. One participant expressed the concern that:

[I]f it's a very truncated relationship, it's not the appropriate space to collect data.

While it is completely understandable for funders to want data on whom the projects are serving or not serving, demographic questions about sexual orientation, income, and other aspects of a client's identity can feel intrusive and unnecessary in receiving legal advice. Several of the organizations had worked to figure out ways to report back to the funder without being intrusive. One organization spoke highly about the support they received from the JUS program manager to be flexible on the reporting requirements.

Another organization commented on how much time the reporting requirements took and noted that they were having a full evaluation done by a third party, so they felt they were doing double-duty reporting.

There's simply the practicalities of it, you know . . . we have such limited time and we want to do client service and every minute that we're spending, you know, collecting data is taking us away from that, which I realize is the, you know that is not, we are not unique in that within any of the profession.

This organization also hopes that the data they continue to supply to the evaluation team will be shared back with the organization every six months or so to support their own assessments of what is working or not working. This continuous feedback loop can be a very effective way to assess performance and correct issues in a timely and efficient way.

All the organizations interviewed recognize the need for data to understand how the projects are running. One participant rationalized that,

The funder, you know, needs the evidence base in order to, say, advocate for additional, you know, longer term funding.

Another participant noted that in collecting data on identity:

[T]hese are the people who don't have access to the same resources but are subject to a higher risk of experiencing these things.

However, we need this data somehow because I have heard from racialized communities. I have heard from folks with disabilities. I have heard from trans people and non-binary people that they are not being captured in this data, so we really need qualitative data on the experiences of people.

And another participant added:

But what gets dollars and funding is quantitative data, and so particularly, and I've heard this from a lot of folks in the healthcare sector, particularly around COVID like the need to collect data on how this virus and the resources were differently affecting people of different races where the dollars were going, where the money was going, who was being disproportionately impacted, who had access to these things.

In the end, the organizations and the participants reported doing the best they could to adhere to the reporting requirements from the funder. These findings point to the need to have additional conversations about

reporting. As can be seen from the participants' own words, there should be ways to collect data and report back to the funder thoughtfully and ethically, while respecting some ILA clients' need for anonymity and the very short, truncated nature of providing one-time, limited legal advice.

Advice-only challenges

The nature of ILA projects is that they often involve only one meeting with a lawyer. Sometimes just talking about the facts of a case can take up a lot of time, leaving little time for the lawyer to provide advice. To respond to this issue, several of the participants of this study noted that they do not limit meetings to only one nor do they put a time limit on meetings. Most participants noted that clients could return for additional advice. Some did, but not all.

Clients in one organization first met with navigators, who provided them with PLEI to orient them to what the relevant legislation could or could not do. The organization was not prepared when their clients requested that the navigators then attend the client meetings with lawyers because they had not budgeted the resources to do so. The travel time plus meeting time could take up to two to three hours out of a day, but the clients felt safe with the navigators, whom they had gotten to know and trust. For those experiencing IPV, feelings of shame, blaming oneself for the violence, and not knowing who to trust are all significant barriers to reaching out for help.

Overall, the participants shared that:

- They always follow up with the client after the first ILA meeting, but they recognize that it is the client's choice as to whether they wish to respond.
- Some clients get the legal advice and do not proceed with anything at that time but come back six months to a year later ready to leave the relationship.
- They always keep files open in case a client returns for more advice.

For projects offering ILA only, participants said that the most challenging aspect was not knowing what happened next for their clients. Sometimes, clients would call and report back, but most often this did not happen.

One organization, which provided legal advice province-wide using a virtual platform, said that they felt far better providing advice on emergency protection orders or legal aspects of safety plans when the client had the support of a shelter or other community services worker. The lawyers would then know that there was on-the-ground support for that individual, and if the client wanted to get a restraining order in place, a shelter worker would be there to make sure it was done. In situations where the IPV was ongoing, the lawyers felt quite frustrated at not being able to do more than provide advice.

Another organization that provided advice noted that it was important for their staff to remember that they do not provide crisis or emergency services. Their phone lines and other communication links, such as websites, include emergency/distress phone numbers, but they are not monitored after hours and on the weekends. While this can be difficult when there are safety concerns, the more experienced lawyers believe strongly that boundaries are essential, or people quickly burn out.

Challenges

Socio-economic conditions

Several of the organizations noted that with the additional pressures of rising inflation and costs since Budget 2021–22, as well as limited housing, there have been many pressures on households, and these pressures can often exacerbate tensions, leading to violence. Most of the organizations noted that there were high levels of IPV in their geographic areas and that their capacity to respond adequately in a trauma-informed way is limited because it has been challenging to support each individual client and their specific needs.

Lack of lawyers fluent enough in French to litigate in family law cases

Participants from one francophone organization in a province where French is a minority official language noted that there is a lack of French-speaking lawyers in the province. While their clients are French speaking, the lawyers representing the other spouse are not always able to negotiate or litigate in French. This poses challenges in accessing justice in an official language.

Lack of lawyers with substantive knowledge and understanding of trauma-informed practice, and conflict of interest

Participants also noted that lawyers were not willing to take on IPV or sexual violence cases, sometimes because they lacked substantive knowledge about IPV or sexual violence, but also because of how busy they are. Lawyers are also unwilling to take on these difficult, high-needs cases when their own capacity for trauma-informed practice is limited. At one organization that provides intake and general legal information and then connects the client with a lawyer, the challenge is to ensure that this meeting with a lawyer occurs in a timely manner, at least within four weeks, if not sooner.

Conflicts of interest can also occur. In some smaller, rural, or remote communities, especially where solo and small practices have been merged into larger firms, there is the potential that the ex-spouse will already have met with a lawyer, who then cannot meet with the spouse because of a conflict of interest.

Silos

Many participants noted that the legal system is very siloed. One participant noted that criminal and family courts do not talk to one another. Another participant noted the value of the Legal Sexual Violence Group, an informal group of lawyers based primarily out of Toronto that provides support to survivors of sexual violence. This group deals with a lot of civil disputes and sections 276 and 278 of the *Criminal Code* (i.e., rape shield and third-party record applications). Many in this group have years of experience with both the criminal and civil justice systems and can provide both substantive input and peer support to those newer to these areas of law.

Legal clinics in Ontario have always used communities of practice (CoPs) to problem-solve and share information and practice tips. The group of legal clinics in Ontario with the Your Way Forward project brought that model into these projects and while, overall, these communities are working well, it has been harder to connect with some of the other funded ILA/ILR projects. Participants noted that this can be due to scheduling conflicts or language barriers, among other challenges.

Overall, the legal profession recognizes the siloed nature of the different justice systems, especially in cases of IPV or family violence where a client might have a case in the family justice, criminal justice, and child protection

systems at the same time.⁴⁶ Participants from the group of legal clinics in Ontario noted that their community-based structure, with many partnerships across the community, as well as their multidisciplinary teams, facilitates breaking down those silos and responding to all of a client's justice needs.

Unrepresented litigants in the family justice system

Participants providing advice were concerned about the number of unrepresented litigants in the family justice system. This is a significant issue that the ILR projects for victims and survivors of IPV are trying to address, but there remain many unrepresented litigants in the system. And when these unrepresented litigants get into a courtroom, they are interacting with ex-partners who are represented, and judges who expect them to know what they are doing. As one participant observed:

I am hearing from people that they are treated like they are dumb. They are treated like they have failed. Somehow, they are treated like they have made a moral error, and it's really hard for them.

The treatment of unrepresented litigants is a huge barrier to accessing justice and the ILA/ILR projects are making a difference to those who would ordinarily have little legal support. This participant shared that there will always be more resources needed than are available.

When victims and survivors of IPV do have representation through a legal aid plan (not through the ILA/ILR projects), the limits of that can also be frustrating for lawyers who are trying to approach these cases with trauma-informed lawyering.⁴⁷ Participants interviewed in two organizations discussed the challenges with the legal aid certificate system in that jurisdiction. They said that a trauma-informed practice would require lawyers to spend more time with the client to ensure that they trust the lawyer and that they feel safe enough to disclose the personal details of the relationship. A certificate would not necessarily cover the time needed to do that. The community legal worker noted that she regularly takes clients to other appointments and meetings, but the family law lawyers in the area working on legal aid certificates are reluctant to do this because they are not funded for anything outside of legal work. Yet often this extra work is essential in a trauma-informed practice.

Funding

Participants recognized that all the funding in the world would not resolve all the challenges that victims and survivors of IPV and sexual assault face. This participant shared that there will always be more resources needed than are available, noting:

We could be resourced to the hilt and I don't think we could still do everything for a client ... where the needs are really, really complex. . . . but no matter how you build your project, there's always going to be something that you can't do and like that is just the nature of kind of trying to slay the beast.

At the same time, everyone spoke about the need for secure funding, which is more sustainable than the project funding provided by the Department of Justice. As one participant observed:

⁴⁶ See, for example, the report completed by the Coordinating Committee of Seniors Officials – Family Justice published in 2021 at <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvf/toc-tdm.html>.

⁴⁷ For more on trauma-informed lawyering, see Myrna McCallum's podcast "The Trauma-Informed Lawyer" at <https://thetraumainformedlawyer.simplecast.com/>.

You know we always celebrate like 5-year funding, yes!! And it is a blessing . . . but also funding that is temporary is funding that is temporary . . . 5-10 years you know it's going to come to an end.

Another participant spoke about the effect of time-limited funding on the partnerships they need to build with other service providers:

The funding is so crucial because I think that it not only affects our perspective, but it also affects the types of partnerships that we can build with others because they're asking that as the first question and the fact that it's only five-year funding, you know it influences how they engage with us.

One participant outlined three possibilities for the future of ILA/ILR projects, if they prove successful in helping victims and survivors of IPV. In the best-case scenario, projects would have access to sustainable permanent funding. Less ideal would be having to continue to rely on project funding. The worst-case scenario would be that no new funding is found, and the pilot projects just end.

Self-care and vicarious trauma

Participants for all organizations spoke about the need to mitigate their own exposure to trauma because of what their clients are experiencing. Many have learned to give clients the space to talk, but at the same time the lawyers and other professionals do not need to know every detail. Limiting those details can minimize retraumatizing the client as well as minimize traumatizing the people on the team who are trying to help.

One participant observed that their Community of Practice is both good and bad. The good is that legal clinics in Ontario have been “in the trenches” doing difficult work for many years. The bad is that clinics have been “in the trenches” doing difficult work for many years. Another participant noted that the work seems never-ending and self-care must be a priority.

Everyone interviewed for this research, whether they were new to working with cases of sexual violence and IPV or had decades of experience, spoke about the need for self-care. Many participants had taken training on trauma-informed lawyering and the impact of trauma on memory and learning in the context of sexual violence and IPV. At the same time, they learned about vicarious trauma and the importance of setting boundaries around their work to protect their personal lives, to recognize the limitations of the systems and projects such as these, to share their concerns with others, and to develop healthy coping strategies. Where the ILA/ILR project was part of an already established organization (e.g., one of the legal clinics in Ontario or Calgary Legal Guidance in Alberta), participants noted that more resources were available and more people with experience working with clients who have significant needs.

Successes

The list of challenges was lengthy, but, overall, participants were positive about the impact the ILA/ILR projects have been having at this early point in their implementation. Interview participants were also asked about what they consider to be their successes, and there were many. For example, one organization said it was proud that it had been able to get the program up quickly and running in early 2022, shortly after receiving funding.

Others said they were proud to help clients take at least one concrete step to achieving their goal that could help them feel safer, stronger, and more in control – whether that was to leave an abusive relationship, report abuse or a sexual assault to police, or file divorce papers. Being able to do this is important for the clients, but

the participants noted that it is also important for those working on the ILA/ILR projects. For many victims of IPV and sexual violence, making big decisions, such as leaving a relationship, can be extremely difficult and take months or years. A trauma-informed practice involves not passing judgment on the amount of time a decision takes, or ultimately what that decision is.

Another success participants reported was the support from the different communities' stakeholders and legal community in having a great roster of lawyers who really care about the clients and meeting their clients' often very complicated and difficult needs.

And importantly, one significant success has been the ability to build trust with each client, as a result of all the different professionals involved communicating consistently and clearly with one another. With that trust, there is a better chance of being able to reach out to those in need and for clients to feel safe enough to contact the professionals for help when they are ready.

Using the written memo to summarize advice given to clients is an excellent example of a solution to the challenges many victims face absorbing all the information and advice they are given over the course of a meeting with the ILA lawyer. Research shows that trauma has an impact on memory (Haskell and Randall 2019) and on learning (Horsman 1999; McDonald 2001). Providing a written summary afterwards allows the victim to return to the information again and again, when they are able to absorb it, at a time and in a place where they feel comfortable and safe. It also provides a reference tool for a lawyer who might represent the client later.

The group of clinics in Ontario feels that having a central coordinator has been important in pulling the groups together weekly, in supporting the clinics by compiling the data as required by the funder, and by creating spaces for collaboration.

One clinic noted that website upgrades have been an important part of the project, so that the information online is value added and easy for most clients to access. This updated PLEI has been possible because the clinics have been able to work together, pooling their resources so they can be more efficient. One of the identified needs from the community legal needs assessments was to increase legal literacy, that is, increase trusted intermediaries' (such as shelter workers) understanding and capacity, through training. The ILA lawyers and other professionals hold training events for shelter workers and other service providers in their communities who meet with victims of sexual violence and IPV. This work is essential for extending the reach of the ILA projects.

In sum

This research project was exploratory in nature to understand how ILA/ILR projects were running more than 18 months after they first received funding from the Department of Justice Canada. A total of 18 participants were interviewed from not-for-profit organizations in five jurisdictions. While many challenges were noted, some – such as the state of the economy or the number of family law lawyers practising in a certain area – are beyond the scope of the pilot projects to address. It was clear that other challenges – such as improving access to justice for victims and survivors of sexual violence and IPV – were well within their mandate and were being addressed. Victims and survivors were accessing justice in ways that they had not been able to prior to the projects, beginning by speaking directly with lawyers and other professionals who were providing information and advice in trauma-informed ways.

The literature is clear about the many benefits of trauma-informed legal representation for victims: protection from retraumatization that may occur during cross-examination, increased satisfaction with the criminal justice

process, full information and advice, and having an advocate (Bellehumeur 2020; Garvin and Beloof 2015; Randall 2013).

Those providing only independent legal advice expressed some frustration that they often did not know what their clients had done next, which path to justice they had taken, if any. Organizations that were able to leverage other services and community supports felt more confident than those less connected that their clients would continue to get support, for example, in seeking an emergency protection order. The one organization that provided a follow-up written memo to their clients summarizing the advice they provided, noted that the memo would serve the clients well if they went on to access legal representation.

As part of the funding requirements, the organizations will be evaluated and will be able to build further on this exploratory research. While the model is not new, it has been well received in every jurisdiction and it will be important to follow the work by these committed individuals to ensure access to justice for victims and survivors.

References

Bellehumeur, Karen. 2023. "Systemic Discrimination Against Female Sexual Violence Victims." *Canadian Journal of Human Rights* vol. 11, no. 1, 131-X, 2023 CanLII Docs 1244. <https://canlii.ca/t/7n4jf>.

Bellehumeur, Karen. 2020. "A Former Crown's Vision for Empowering Survivors of Sexual Violence", *Windsor Yearbook on Access to Justice* vol. 37, no. 1, CanLII Docs 3481. <https://canlii.ca/t/t0nx>.

Brennan, Shannon, and Andrea Taylor-Butts. 2008. *Sexual Assault in Canada 2004 and 2007*. Canadian Centre for Justice Statistics: Ottawa.

Carrera, Marianna. 2015. "Moving Past Barriers in Reporting Crime: Considering the Need for a National Comprehensive Policy Framework for Victims of Sexual Assault in Canada." *Public Policy & Governance Review* vol. 6, no. 2, 5–18.

Conroy, Shana. 2021. *Spousal Violence in Canada, 2019*. Statistics Canada: Ottawa. Catalogue No. 85-002-X202100100016. <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00016-eng.pdf?st=diRYODo2>.

Cotter, Adam. 2021. *Criminal Victimization in Canada, 2019*. Statistics Canada: Ottawa. Catalogue No. 85-002-X. <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00014-eng.pdf?st=v1z-ueW9>.

Coordinating Committee of Senior Officials Working Group on Access to Justice for Adult Victims of Sexual Assault. 2018. Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims. <https://scics.ca/en/product-produit/reporting-investigating-and-prosecuting-sexual-assaults-committed-against-adults-challenges-and-promising-practices-in-enhancing-access-to-justice-for-victims/#biblio>.

Craig, Elaine. 2018. *Putting Trials on Trial: Sexual Assault and the Failure of the Legal System*. Montreal & Kingston: McGill-Queens University Press.

Garvin, Margaret, and Douglas E. Beloof. 2015. "Crime Victim Agency: Independent Lawyers for Sexual Assault Victims." *Ohio State Journal of Criminal Law* vol. 13, no. 1, 67–88.

<https://kb.osu.edu/server/api/core/bitstreams/7017d909-ffc4-54bf-9d9c-0eb004ae6bec/content>.

Haskell, Lori, and Melanie Randall. 2019. *The Impact of Trauma on Adult Sexual Assault Victims*. Department of Justice Canada: Ottawa. <https://www.justice.gc.ca/eng/rp-pr/jr/trauma/index.html>.

Herman, Judith. 2003. "The Mental Health of Crime Victims: Impact of Legal Intervention." *Journal of Traumatic Stress* vol. 16, 159–66.

Horsman, Jenny. 1999. *Too Scared to Learn: Women, Violence and Education*. McGilligan Books: Toronto.

Johnson, Holly. 2017. "Why Doesn't She Just Report It? Apprehensions and Contradictions for Women Who Report Sexual Violence to the Police." *Canadian Journal of Women and the Law* vol. 29, 36–59.

Johnson, Holly, and Myrna Dawson. 2011. *Violence Against Women in Canada: Research and Policy Perspectives*. Don Mills, ON: Oxford University Press.

McDonald, Susan. 2019. Access to Justice for Victims of Crime. *Victims of Crime Research Digest*, no. 12.

<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd12-rr12/index.html>.

McDonald, Susan. 2001. "Women's Voices Being Heard: Responsive Lawyering." *Journal of Law and Social Policy*, vol. 16, 207–240 (with Pamela Cross) (PhD thesis).

Randall, Melanie, and Lori Haskell. 2013. "Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping." *Dalhousie Law Journal* Fall 2013, 501–533.

Roberts, Tim. 2021. *Legal Clinics in Canada: Exploring Service Delivery and Legal Outcomes Among Vulnerable Populations in the Context of COVID-19*. Department of Justice Canada: Ottawa.

<https://www.justice.gc.ca/eng/rp-pr/jr/clinics-cliniques/index.html>.

Statistics Canada. 2023. *Trends in Police-Reported Family Violence and Intimate Partner Violence in Canada, 2022*. The Daily. <https://www150.statcan.gc.ca/n1/daily-quotidien/231121/dq231121b-eng.htm>.

Statistics Canada. 2023. *Police-Reported Crime in Canada, 2022*. The Daily.

<https://www150.statcan.gc.ca/n1/daily-quotidien/230727/dq230727b-eng.htm>.

Walton, Morgan, and Jane Palmer. 2014. "Legal Considerations on a Sexual Assault Victim's Right to an Advocate." *Sexual Assault Report* vol. 18, no. 1, 1–6.

Brief overview of coercive control and the criminal law

By Lisa Ha

The Government of Canada is committed to ending the epidemic of gender-based violence in all its forms. In the fall of 2023, the Minister of Justice expressed an openness to criminalize coercive control in a letter to Ontario's chief coroner (in response to the coroner's inquest into the 2015 femicides in Wilno, Ontario).⁴⁸ In November 2023, the government had expressed support for an NDP private member's Bill C-332, *An Act to amend the Criminal Code (controlling or coercive conduct)*, which is currently at second reading in the House of Commons.

Introduction

This article provides a summary of the literature on criminal law approaches to coercive control. While there is no one accepted definition of coercive control, the term "coercive control" or "coercive and controlling behaviour" is generally used to describe a pattern of controlling behaviour that takes place over time in the context of intimate partner relationships, as well as familial relationships, and serves to "entrap" victims, eliminating their sense of freedom in the relationship (Standing Committee on Justice and Human Rights 2021). The article focuses on the most significant and recent literature evaluating or considering the advantages and disadvantages of legislation that addresses coercive and controlling behavior (CCB) in intimate relationships. The literature on criminalizing CCB primarily originates from countries in Europe, particularly the United Kingdom, because they have the most experience in considering and implementing such legislation. There is also a body of literature from Australia.

The literature review was conducted using online databases, including Google Scholar, ResearchGate, and EBSCO. Government reports and evaluations were located using Google searches. The search included only English-language documents. Variations of the term "coercive control" were used to search for articles, as were the bibliographies of relevant articles and government reports.

The literature has differing views on whether or not criminalizing coercive control will have a positive impact on the epidemic of gender-based violence; however, one recurring theme among most scholars is that criminal law reform on its own will not be effective. Evan Stark, who coined the term "coercive control," argues that "more law" (though not necessarily a bespoke offence) is needed, but he cautions that even the best-designed laws require commitments of resources, coordinated assistance, and political will "to pursue the [women's] equality agenda" (Stark 2020). Most scholars agree that any criminal law approach must be multi-faceted (including recognizing the effects of immigration, family law, and child protection) to be successful.

Tolmie (2017, 63) writes that, while criminalizing coercive control may be part of the solution, on its own it is not a "complete solution to the problem of fragmentation in the criminal justice response to intimate partner violence." Similarly, Burman and Brooks-Hay (2018, 11) caution that legislative change is "only as effective as those who enforce, prosecute, and apply [the laws]. Improving these practices – through education, training and embedding best practice and domestic abuse expertise – is likely to be more effective than the creation of new offences alone."

⁴⁸ [Justice minister says Canada remains 'open' to criminalizing coercive control | CBC News.](#)

In Canada, while some academics (e.g., Gill and Aspinall 2020; Chambers 2021; Lee et al. 2020) have advocated for criminalization,^{49,50} others have been more cautious. In a 2022 *Globe and Mail* article, several Canadian social science and legal academics expressed reservations about criminalizing CCB. They argued that it would exacerbate harms (particularly among Indigenous and racialized people, already overrepresented in the criminal justice system); would not work as a deterrent; would not facilitate successful rehabilitation of offenders; or improve safety and justice for victims.

In the *Globe* article, Professors Myrna Dawson and Janet Mosher advocate putting resources towards the things that we know help victims, such as adequate social assistance and supports, and other substantive, structural changes that can save women at risk (e.g., more coordinated legal system approach, better risk assessment, more education and awareness among the public and the legal system about abuse, etc.). Feminist lawyer Pamela Cross (Cross 2021; 2022) has a similar view, arguing that the criminal law is not the best avenue for keeping women safe, because it may have unintended outcomes on the people it is designed to protect.

On the other side of the debate, in a 2023 position paper, Quebec front-line service organization Regroupement argues for criminalization. The group suggests that the potential unintended outcomes that have been identified (e.g., victim harm, disproportionate harm on already overrepresented groups) can be mitigated and addressed upstream to ensure that the law meets its intended objectives (Regroupement 2023). While Haist (2021) is cautious about a criminal law approach to CCB, she argues that if criminal law reform is pursued it should include a clear definition of CCB within the legislation (clear but broad, similar to the Scottish approach). Haist also argues that a Canadian approach should not have a requirement for victims to prove subjective fear,⁵¹ and there should be adequate testimonial aids/support for victim testimony.

The remainder of this article provides a high-level summary of some of the most prominent themes in the literature about the pros and cons of criminalizing coercive control.

What are the main arguments in favour of criminalizing coercive control?

A CCB offence will improve the criminal justice system's approach to intimate partner violence

Some scholars argue that criminalizing CCB is needed to fill a gap in the criminal law (e.g., Stark 2020; Gill and Aspinall 2020). The incident-based approach to intimate partner violence is viewed as inadequate because it does not fully recognize the dynamics and patterns of coercive control in relationships, and CCB can only be recognized when viewed as a pattern over time (Lee et al. 2020; Haist 2021). As Weiner (2022, 4) notes,

“[criminalisation] has the potential to remove the illusion, so often present in policing models with an incident-specific focus, that victims of control exercise autonomy “between” episodes by “choosing” to stay, and instead could allow for a risk assessment with a more appropriate orientation to the on-going entrapment experienced by victims of coercive control.”

⁴⁹ <https://www.parl.ca/legisinfo/en/bill/44-1/c-332>.

⁵⁰ Gill and Aspinall recommend elements of the UK approach, and consideration of Scotland's legislation.

⁵¹ An offence could be structured to include a subjective component, requiring the prosecution to present evidence that the victim subjectively experienced the prohibited effect (e.g., that the coercive control caused the victim to experience fear.)

Criminalizing non-physical violence sends a message that this type of abuse is serious

Some authors suggest that including non-physical types of abuse in the criminal law would better reflect the lived experiences of victim-survivors, send a message that this type of abuse is serious, have a symbolic effect that can influence community attitudes, and act as a deterrent to perpetrators (Bettinson and Bishop 2018; Brennan and Myhill 2021; Douglas 2018; Weiner 2022; Lee et al. 2020).

Similarly, the legal clarity that a CCB offence offers could aid victims by strengthening their confidence to seek support (Bettinson and Bishop 2018). As one domestic violence worker described, “For [the domestic violence support sector], [criminalisation is] absolutely a gift because we are now able to turn around to our survivors and say, “This is a criminal offence.” So it values and puts an evidence-base underneath what they are experiencing. ‘It is a criminal offence that he was behaving like that.’ It is just so valuable to us” (Weiner 2022).

Early intervention may help prevent abuse from escalating

Some authors argue that criminalizing non-physical abusive behaviours that are currently outside the scope of criminal law may allow for early intervention in cases of abuse. This could prevent the abuse, including intimate partner homicides, from escalating (McMahon and McGorry 2020). As described in Weiner (2022), criminalizing CCB offers valuable tools to police “at a specific point in time when the ability to remove a dangerous perpetrator from a volatile situation can be a life-saving device.” Further, senior officers interviewed by Weiner (2022) noted that domestic homicide cases are often incorrectly assessed as low risk when a coercive control lens is not used.

What are some of the cautions or potential unintended consequences of criminalizing coercive control?

Perpetrators could use a CCB offence against their victims

Many authors caution that more criminalization will create avenues for abusers to find ways to use the laws against victims, as abusers are very adept at manipulation and deflecting blame. In the scenario of a CCB offence, which does not involve physical forms of violence, an abuser could easily claim that the victim is the one perpetrating the abuse (Haist 2021; Cross 2022; Tolmie 2017; Walklate et al. 2018; Burman and Brooks-Hay 2018). Criminalization can also exacerbate harm by taking control away from victims (e.g., some victims do not wish to see their partner criminalized) and is viewed by many as ineffective at ensuring victim safety or holding perpetrators accountable (Standing Committee on Justice and Human Rights 2021; Cross 2022; Hocking 2022).

Wangmann (2021) points to other potential unintended consequences of an offence. For example, if the system is not fully capable of transitioning away from an incident-based approach, there is a risk that multiple incidents would be considered as “adding up” to coercive control, rather than being considered as the cumulative, interrelated way in which acts and behaviours give meaning to each other to create the context of control over time. If the offence is interpreted in this way, there is a risk of women being identified as perpetrators of coercive control, because dual charging is already a significant issue under existing mandatory charging policies (Cross 2017), particularly if the gendered nature of CCB is not recognized.

Some approaches to CCB criminalization have a high evidentiary burden, which may result in low prosecution rates and revictimization

Several papers have identified evidentiary challenges as a concern, particularly under the UK's *Serious Crime Act 2015* approach, where there are difficulties meeting evidential thresholds in proving non-physical types of abuse, and in demonstrating the harm to the victim (Cairns 2020; Bettinson and Bishop 2018; Burman and Brooks-Hay 2018). The literature review in the evaluation of the *Serious Crime Act 2015* identified challenges in gathering evidence/proving and prosecuting CCB because physical evidence is more limited, and victims may be less likely to support prosecution because they are being subjected to CCB. As the low rate of conviction in England and Wales shows, even where CCB has been recognized and recorded, investigating the offence may not be prioritized due to the difficulty in collecting evidence (Home Office 2021).

Wangmann (2022) and Weiner (2022) both point to the victimization that can happen when a victim of CCB is required to prove the impact of the abuse. In her critique of England and Wales's *Serious Crime Act 2015*, Weiner (2022) argues that the requirement for the victim to prove harm – and the inadequate/inappropriate articulation of what constitutes that harm – creates a more traumatic courtroom experience for survivors. “Making the harm she suffers a constituent part of the offence makes a conviction heavily dependent on her account (under cross-examination) of the most intimate details of her emotional state. If she cannot perform, the prosecution falls at the first hurdle. But if she performs too well, juries mistrust her” (Weiner 2022). Similarly, Wangmann (2021) comments on the requirement of “serious effect,” cautioning that judicial officers may draw on stereotypical notions about how a victim should react and behave.

The criminal justice system is not equipped to effectively manage this type of offence

Many authors are skeptical of the criminal justice system's capacity to handle the more nuanced dynamics of coercive control when the system is not effectively managing even the most serious cases of abuse under the incident-based approach (Brennan and Myhill 2021; Walklate and Fitz-Gibbon 2018). The *Serious Crime Act 2015* evaluation literature review found challenges for the police in recognizing and recording CCB due to its nature as **a course of conduct** offence rather than an **incident**. This is consistent with the literature, which suggests that police require a significant change of mindset to fully embrace the use of the coercive control offence (Home Office 2021). In their study looking at the *Serious Crime Act 2015*, Barlow and Johnson (2019) found that calls to police for coercive control were given a lower priority than other domestic abuse-related crimes. Further, Brennan et al. 2019 consistently found in interviews with police officers in different areas that they were unprepared to conceptualize domestic abuse as a pattern of behaviour rather than specific episodes.

Some Australian states initially rejected the creation of a coercive and controlling offence. Both the Special Taskforce on Domestic and Family Violence in Queensland (2015) and the Victoria Royal Commission into Family Violence (2016) noted in their final reports that difficulties in prosecuting cases under existing laws suggest that improving the enforcement, prosecution, and application of the existing laws would be more effective than creating new offences.

Increased criminalization may have disproportionate impacts on those who are already overrepresented in the criminal justice system

Many authors have cautioned about the potential impacts of increased criminalization on groups that are already overrepresented in the criminal justice system. Racialized groups do not trust or have confidence in the police, which can lead racialized women to avoid seeking help. For some women, their race or cultural

background, sexuality, or economic status may affect their ability to communicate their experiences of CCB in a way that the criminal justice system recognizes. Also, some women end up targeted by the offence, particularly those who fight back verbally and physically. For offenders, some authors argue that the prison system does not rehabilitate or deter, which can negatively affect the safety of victims. These issues are even more pronounced for Indigenous and racialized groups (Wangmann 2022; Hampton 2008; Cross 2022; Walklate et al 2018; Hocking 2022; Stark 2020; Sisters Inside 2021; Standing Committee on Justice and Human Rights 2021).

What do we know about approaches to CCB criminalization in other countries?

The UK and Ireland have passed legislation in the past decade on non-physical forms of abuse that occur in intimate relationships. England and Wales⁵² and Ireland⁵³ have enacted specific coercive control offences to cover the “gaps” in the existing criminal law, while Scotland⁵⁴ and Northern Ireland⁵⁵ have enacted a more holistic domestic violence offence, which covers physical and sexual violence as well as psychological control within the same offence. Australia has been considering a national approach to coercive control while several states have implemented or are in the process of implementing legislation. Tasmania⁵⁶ enacted offences for economic and emotional abuse in 2004, and in New South Wales,⁵⁷ a coercive control bill was passed in late 2022 and will come into force in 2024. In 2022, Queensland⁵⁸ took its first steps towards criminalizing coercive control by passing a suite of reforms to combat domestic violence (e.g., expanding the definition to include a “pattern of behaviour”, and strengthening the offence of stalking), as well as police training initiatives.

Several other European countries have introduced offences targeted at non-physical forms of abuse in intimate relationships, including France, Denmark, Hungary, and Spain. Many states in the US are also considering legislation aimed at this type of abuse; most recently, in 2021, Hawaii passed legislation making coercive control a petty misdemeanor offence as part of a five-year program to strengthen state and county responses to domestic violence and increase offender accountability.

Conclusion

In recent years, many jurisdictions have grappled with the increasing prevalence of intimate partner violence and the question of how to address coercive and controlling abuse. Legislation introduced to combat these issues has generally taken either a “filling the gap” approach, such as that taken in the *Serious Crime Act 2015*, or the more holistic approach of the *Domestic Abuse (Scotland) Act 2018*. Early evidence on existing legislation is mixed; however, the approach adopted in Scotland is generally viewed more favourably in the literature. Arguments vary on whether a criminal law approach will have a meaningful impact on protecting victims of intimate partner violence and coercive control, and not have unintended impacts on some groups. Overall, the consensus is that, to be successful, any criminal law approach must have multi-sectoral involvement and support, as well as sufficient resources for training and implementation.

⁵² <https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted>.

⁵³ <https://www.irishstatutebook.ie/eli/2018/act/6/section/39/enacted/en/html>.

⁵⁴ <https://www.legislation.gov.uk/asp/2018/5/contents/enacted>.

⁵⁵ <https://www.legislation.gov.uk/nia/2021/2>.

⁵⁶ <https://www.legislation.tas.gov.au/view/whole/html/inforce/2018-09-10/act-2004-067>.

⁵⁷ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=4024>.

⁵⁸ <https://www.legislation.qld.gov.au/view/html/asmade/act-2023-001>.

References

- Barlow, Charlotte, Kelly Johnson, Sandra Walklate, and Les Humphreys. 2019. "Putting Coercive Control into Practice: Problems and Possibilities." *The British Journal of Criminology*, July. <https://doi.org/10.1093/bjc/azz041>.
- Bishop, Charlotte, and Vanessa Bettinson. 2018. "Evidencing Domestic Violence*, Including Behaviour That Falls under the New Offence of 'Controlling or Coercive Behaviour.'" *The International Journal of Evidence & Proof* vol. 22, no. 1: 3–29. <https://doi.org/10.1177/1365712717725535>
- Brennan, Iain, and Andy Myhill. 2021. *Coercive control: Patterns in crimes, arrests and outcomes for a new domestic abuse offence*. <https://doi.org/10.31235/osf.io/jaxde>.
- Brennan, Iain, Andy Myhill, Giulia Tagliaferri, and Jacki Tapley. 2021. "Policing a new domestic abuse crime: effects of force-wide training on arrests for coercive control." *Policing and Society* vol. 31, no. 10: 1153–67. <https://doi.org/10.1080/10439463.2020.1862838>.
- Brennan, Iain R., Victoria Burton, Sinéad Gormally, and Nicola O'Leary. 2019. "Service Provider Difficulties in Operationalizing Coercive Control." *Violence Against Women* vol. 25, no. 6: 635–53. <https://doi.org/10.1177/1077801218797478>.
- Burman, Michele, and Oona Brooks-Hay. 2018. "Aligning policy and law? The creation of a domestic abuse offence incorporating coercive control." *Criminology & Criminal Justice* vol. 18, no. 1: 67–83. <https://doi.org/10.1177/1748895817752223>.
- Cairns, Ilona. 2020. "The Moorov doctrine and coercive control: Proving a 'course of behaviour' under s. 1 of the Domestic Abuse (Scotland) Act 2018." *The International Journal of Evidence & Proof* vol. 24, no. 4: 396–417. <https://doi.org/10.1177/1365712720959857>.
- Chambers, Lori. 2021. "Submission for Bill C-247". Accessed 20 April 2023. <https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11101619/br-external/ChambersLorie.pdf>.
- Cross, Pamela. 2022. "What to do about coercive control?" <https://pamelacross.ca/what-to-do-about-coercive-control/>.
- Cross, Pamela. 2021. "Should Canada criminalize coercive controlling behaviour? – Luke's Place." 2021. 18 February 2021. <https://lukesplace.ca/should-canada-criminalize-coercive-controlling-behaviour/>.
- Cross, Pamela. 2017. "Why are women sometimes charged with assaulting their partner when they are just trying to protect themselves or their kids?" <https://lukesplace.ca/why-are-women-sometimes-charged-with-assaulting-their-partner-when-they-are-just-trying-to-protect-themselves-or-their-kids/>.
- Douglas, Heather. 2018. "Do we need an offence of coercive control?" *Precedent* vol. 144 (January): 18–21. <http://classic.austlii.edu.au/au/journals/PrecedentAULA/2018/6.html>.

Gill, Carmen, and Mary Aspinall. n.d. *Expert Report – Understanding Violence in Relationships* (2022), 26. [P-003352 / COMM0058937]

Gill, Carmen, and Mary Aspinall. 2020. “Understanding Coercive Control in the Context of Intimate Partner Violence in Canada: How to Address the Issue through the Criminal Justice System?” Office of the Federal Ombudsman for Victims of Crime. <https://www.victimfirst.gc.ca/res/cor/UCC-CCC/index.html>.

Haist, Allana. 2021. “Criminalizing Coercive Control in Canada: The Implications for Family Law.” Luke’s Place. <https://lukesplace.ca/wp-content/uploads/2022/03/Stopping-Coercive-Control-by-Criminalization-Lukes-Place.pdf>

Haist, Allana. 2021. “Criminalizing Coercive Control in Canada: The Implications for Family Law.” Luke’s Place, Oshawa, ON. <https://lukesplace.ca/wp-content/uploads/2022/03/Stopping-Coercive-Control-by-Criminalization-Lukes-Place.pdf>

Hampton, Robert I., Jaslean J. LaTaillade, Alicia Dacey and J.R. Marghi. 2008. “Evaluating Domestic Violence Interventions for Black Women.” *Journal of Aggression, Maltreatment & Trauma* vol. 16, no. 3. Accessed 9 May 2023. <https://www.tandfonline.com/doi/abs/10.1080/10926770801925759>.

Hocking, Anwyn. 2022. “Intersectional Complexities of Coercive Control.” Parliamentary Library & Information Service, Parliament of Victoria. <https://apo.org.au/node/317275>.

Home Office. 2021. “Review of the Controlling or Coercive Behaviour Offence.” <https://assets.publishing.service.gov.uk/media/608bdba28fa8f51b909ca167/review-of-the-controlling-or-coercive-behaviour-offence.pdf>.

Lee, Lianna, Wells, Lana, Gray, Shawna, and Elena Esina. 2020. “Building a case for using “Coercive Control” in Alberta: Discussion Paper.” Calgary, AB: The University of Calgary, Shift: The Project to End Domestic Violence. <https://prism.ucalgary.ca/server/api/core/bitstreams/9e796e37-f550-400f-ab5a-ee95e65db3ab/content>.

McMahon, Marilyn, and Paul McGorrery. 2020. *Criminalising Coercive Control: Family Violence and the Criminal Law*. Springer: Singapore.

Regroupement des maisons pour femme victimes de violence conjugale. 2023. “Position of the Regroupement Concerning the Criminalization of Coercive Control.” <https://maisons-femmes.qc.ca/wp-content/uploads/2023/09/Position-criminalization-coercive-control-RMFVVC.pdf>.

Special Taskforce on Domestic and Family Violence in Queensland. 2015. “Not now, not ever.” Queensland Department of Justice and Attorney General. <https://www.justice.qld.gov.au/initiatives/end-domestic-family-violence/about/not-now-not-ever-report>.

Standing Committee on Justice and Human Rights. 2021. “The Shadow Pandemic: Stopping Coercive Controlling Behaviour in Intimate Relationships.” Committee Report no. 9 – JUST (43-2) – House of Commons of Canada. Accessed 28 March 2023. <https://www.ourcommons.ca/DocumentViewer/en/43-2/JUST/report-9/>.

The Globe and Mail. 2022. "Coercive control can be a life or death issue in relationships. But few people even know how to recognize it," 13 March 2022. <https://www.theglobeandmail.com/canada/article-coercive-control-can-be-a-life-or-death-issue-in-relationships-but-few/>.

Victorian Government. 2016. Royal Commission into Family Violence. <http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>.

Sisters Inside. 2021. "The State as Abuser: Coercive Control in the Colony." https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0005/691340/wsit-submission-sisters-inside-and-institute-for-collaborative-research.pdf.

Stark, Evan. 2020. "The 'Coercive Control Framework': Making Law Work for Women." In *Criminalising Coercive Control*. Springer, ed. M. McMahon and P. McGorrery, Singapore, 33–49. https://doi.org/10.1007/978-981-15-0653-6_2.

Tolmie, Julia. 2017. "Coercive control: To criminalize or not to criminalize?" *Criminology & Criminal Justice* vol. 18 (December): 174889581774671. <https://doi.org/10.1177/1748895817746712>.

Walklate, Sandra, Kate Fitz-Gibbon, and Jude McCulloch. 2018. "Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories." *Criminology & Criminal Justice* vol. 18, no. 1: 115–31. <https://doi.org/10.1177/1748895817728561>.

Wangmann, Jane. 2022. Law Reform Processes and Criminalising Coercive Control, *Australian Feminist Law Journal*, vol. 48, no. 1, 57–86, <https://doi.org/10.1080/13200968.2022.2138186>.

Weiner, Cassandra. 2022. *Coercive Control and the Criminal Law*. London: Routledge.

A portrait of Canadian Child Advocacy Centres and Child And Youth Advocacy Centres In 2021–22

By Bianca Stumpf

Between 2022 and 2023, the Department of Justice Canada distributed a national operational survey to Child Advocacy Centres (CACs) and Child and Youth Advocacy Centres (CYACs) to collect information on the way they work, their clientele, their services, and other key aspects of their operations. This project served as an update to the 2014 national operational survey (Hickey 2015). Since the completion of the 2014 survey, the number of CACs/CYACs at some stage of development in Canada has more than doubled – from 23 centres in 2014 to 51 in 2023.

What are Child Advocacy Centres and Child and Youth Advocacy Centres?

CACs/CYACs are facility-based programs that provide a safe, trauma-informed, and child-friendly environment where children, youth, and their families can complete a forensic interview and receive services and supports after child abuse or other violent victimization has occurred. As part of their model of service delivery, CACs/CYACs establish Multidisciplinary Teams (MDTs) to provide a coordinated and collaborative approach to respond to the needs of children and youth and their families. These teams include professionals from areas such as law enforcement, child protection, medical and mental health, and victim advocacy. The goal of these centres is to minimize system-induced trauma on children and youth and their families, for example by conducting joint forensic interviews to reduce the number of questions directed at a child or youth and providing a child-friendly setting where a child or youth can access services.

Methods

The survey questionnaire was developed by adapting questions from the 2014 national operational survey to account for the lessons learned through the previous survey. For example, definitions for key concepts were added and questions were simplified. New questions were also added for new services, such as support dogs and virtual testimony. The draft survey was sent to the National Network of CACs/CYACs' Research Subcommittee, composed of CAC/CYAC representatives and affiliated academics, for feedback. The survey was also pilot-tested in English and French by four different organizations across the country.

The survey was distributed to CACs/CYACs through the National Network of CACs/CYACs and was initially open from October to November 2022. Due to a low response rate, the data collection period was extended until April 2023. In total, 35 out of 51 CACs/CYACs responded to the survey, representing a 69 percent response rate. The survey results were analyzed, and the draft report was circulated to CACs/CYACs to ensure that the findings for their centre were accurately presented.

Summary of Findings

Of the 35 CACs/CYACs that responded to the survey, 28 identified as open, five were in development, and two were conducting a feasibility study to assess whether their community had an interest in or the resources for developing a CAC/CYAC. Almost all operational CACs/CYACs (27 of 28) adopted a site-approach model, where most or all services are offered in the one location. In addition to the site-approach model, five CACs/CYACs adopted a mobile approach, deploying staff and MDT partners to meet clients in or near their home – a model

that can be particularly useful when serving multiple communities. Two CACs/CYACs reported adopting a rural/virtual model, with the MDTs operating out of different locations. With this type of model, one service may be offered in one community, and another may be offered in another location, which can be beneficial when serving a dispersed area. Over half of CACs/CYACs reported serving urban and rural areas; five serve only urban areas, two only rural areas, and three only northern areas.

Clientele

In 2021–22, 10,665 child and youth victims were served by the CACs/CYACs that responded to the survey.⁵⁹ Among those served, about seven in ten (71 percent) were girls and 29 percent were boys. Almost all operational CACs/CYACs reported that they served Indigenous clients and 2SLGBTQI+ clients in 2021–22. Many also reported that they served racialized clients, clients with disabilities, and clients who were recent immigrants or refugees.

All operational CACs/CYACs reported that they serve child and youth victims aged three to 15 years old. Some also reported serving clients younger than three and/or older than 15.

Over seven thousand (7,436) child and youth victims of sexual abuse and 2,913 victims of physical abuse were served by a CAC/CYAC in 2021–22. CACs/CYACs reported that they served 423 clients who were exposed to family violence, 260 who had experienced online child sexual exploitation, 244 who were emotionally harmed, 122 who were neglected, and 65 who were trafficked. All CACs/CYACs reported having had cases of family violence and non-family violence in which the alleged perpetrator was known to the victim, such as a family friend, teacher, or neighbour. All but one also reported cases in which the alleged perpetrator was unknown to the child or youth victim.

Multidisciplinary teams

According to the CACs/CYACs that responded to the survey, there were many service providers on their multidisciplinary team (MDT). The most common types reported were child protection workers, law enforcement officers, advocates, victim services workers, and other CAC/CYAC staff such as coordinators and supervisors. While most CACs/CYACs (31 of 35) had at least one type of MDT service provider working at the CAC/CYAC main location (referred to as “co-located”), previous research has shown that MDTs that are not co-located can still provide beneficial services to clients, and these centres often adapt to meet the needs and resources of the communities they serve (Herbert et al. 2018; Bertrand et al. 2018).

MDTs provide coordinated services to children and youth, and their families, by having information-sharing protocols in place and conducting case reviews. Information-sharing protocols allow MDT partners to share information among themselves, and over two-thirds of CACs/CYACs (24 of 35) indicated that they had information-sharing protocols in place with their partners. Case reviews provide the opportunity for MDT partners to monitor active cases by reviewing the cases, sharing updated information, and coordinating interventions, as needed. Three-quarters of operational CACs/CYACs (21 of 28) reported that their MDT conducts case reviews, most commonly on a monthly or as needed basis.

⁵⁹ While the majority of the operational CACs/CYACs used data from the period of April 2021 to March 2022, three CACs/CYACs reported using the calendar year, meaning that their data were from January 2021 to December 2021. For ease of reference, throughout this article the period of 2021–22 will be used to refer to their last fiscal year.

Services

CACs/CYACs provide a range of services to children and youth and their families, such as prevention, intervention, prosecution, treatment, and support. Based on the survey responses, the most common services offered by CACs/CYACs were forensic interviews, mental health services, and victim and family support and advocacy. Many CACs/CYACs also provided forensic medical examinations, assistance in preparing Victim Impact Statements, court preparation, court accompaniment, trauma assessment, and assistance in seeking compensation or restitution. Twenty-five out of 28 CACs/CYACs reported that a total of 10,264 forensic interviews were conducted/undertaken in 2021–22, 82 percent at the CAC/CYAC and 18 percent off-site.

In addition to court preparation and accompaniment, over one-third of CACs/CYACs (11 of 28) reported having the ability to offer virtual testimony at their centre. The remaining CACs/CYACs reported not having the ability to offer the service (n=6) or that they were in the process of developing or considering offering the service at the time of the survey (n=11). Virtual testimony can help facilitate the participation of child and youth victims and witnesses in court processes and is a service that has received growing attention from CACs/CYACs in recent years, partly driven by the COVID-19 pandemic.

Some operational CACs/CYACs (13 of 28) also indicated having at least one support dog. The most common type was a facility dog trained to provide specific services and behaviours that suit the needs of the CAC/CYAC. While CACs/CYACs reported offering support dogs at various times throughout a case, the dogs were most offered at the CAC/CYAC generally such as during their first visit or in the waiting room, during client meetings with MDT partners, and during forensic interviews.

Another service provided by most CACs/CYACs (29 of 33) was educational services, including: webinars, presentations, and workshops, as well as media campaigns, online resources, community events, and conferences.

Training

Continuous training is important to ensure that CAC/CYAC staff and MDT partners are properly equipped to respond to the needs of their clients. In 2021–22, the most common training taken by CAC/CYAC staff was on trauma-informed practices, mental health, diversity and inclusion, and child abuse. Many CACs/CYACs also reported that their staff had taken training on victim support and advocacy, case reviews and MDT building exercises, and forensic interviews.

Research and evaluation

Most CACs/CYACs (22 of 35) reported that they had conducted research independently or collaboratively with others. One-third also reported that they had participated in research conducted by other organizations, such as a government, academic, or non-governmental organization, beyond their participation in the operational survey. Over half of CACs/CYACs reported that they had undergone or were in the process of undergoing an evaluation at the time of the survey.

Funding

Since 2010, the Department of Justice Canada has provided funding for the development and enhancement of CACs/CYACs through the Federal Victims Strategy. CACs/CYACs may also receive funding from other sources, such as other governments, fundraising events, and private foundations. Most CACs/CYACs received a portion of their funding from federal and provincial/territorial grants, the private sector, or donors.

In 2021–22, the majority of CACs/CYACs (21 of 33) reported an annual budget of less than \$500,000; the remaining CACs/CYACs reported an annual budget between \$500,000 and \$5 million. It is important to keep in mind that a CAC/CYAC's annual budget may not reflect what they require to fully implement the CAC/CYAC model in a way that achieves the best outcomes for the children, youth, and families they serve. In fact, over half of the CACs/CYACs reported challenges with securing sustainable funding to cover their operating costs, such as paying their personnel and covering the cost of their facilities, signalling that funding remains a significant challenge for many CACs/CYACs.

Biggest successes and challenges

In the survey, CACs/CYACs were invited to share the biggest success they had achieved and the biggest challenge they had faced. The responses to their biggest success were varied; the most common successes pointed to their relationships with their MDT and their use of the CAC/CYAC model. Both successes were explained as helping to effectively support children, youth, and their families.

The most common challenge, as reported by over half of CACs/CYACs, was securing sustainable funding for their personnel, services, facilities, and expansion. Some CACs/CYACs also reported challenges with MDT collaboration, particularly with the need for ongoing relationship-building, and communication challenges.

Study Limitations

Not every CAC/CYAC responded to the survey, meaning that the findings presented above should not be interpreted as a full national portrait of CACs/CYACs in Canada. Each CAC/CYAC has their own unique mandate, clientele, partnerships, funding partners, and reporting mechanisms, all which have an impact on their operations. For instance, most CACs/CYACs reported operating on an April 1st to March 31st fiscal year, while a few operate on a calendar year. This difference had an impact on survey reporting, as many questions asked CACs/CYACs to provide information on the activities that occurred in their last fiscal year.

CACs/CYACs were also not able to provide all the data requested in the survey, despite best efforts to address potential data challenges in the development of the survey. Due to their reporting mechanisms and data sharing agreements, many were not able to receive or access MDT partner data or did not have the resources to access the data within the time constraints of the survey. These challenges led to lower response rates to certain questions. In particular, data on case outcomes, such as the number of cases that proceeded to court and the number of testimonial aids accessed, were excluded from reporting due to a low response rate.

Conclusion

This article presents data about the CACs/CYACs that participated in the survey. The data show how the CAC/CYAC model differs across the country in Canada to respond to the unique needs of the communities CACs/CYACs serve. It is, however, important to remember that not every CAC/CYAC responded to the survey. As a result, the survey results should not be interpreted as a complete national portrait of CACs/CYACs in Canada. This, coupled with the limitations outlined above, highlights the need for continued efforts to improve national data collection, including the development of national data requirements for both short- and long-term outcomes. Work is underway within the provincial networks of CACs/CYACs to adopt regional standardized

approaches to defining key concepts and collecting data, and the National Child and Youth Advocacy Research and Knowledge Centre⁶⁰ is exploring how to improve data collection across the country.

For more information about the survey results, see: [Results from the 2022-2023 National Operational Survey of CACs/CYACs in Canada](#)

References

Bertrand, L.D., Paetsch, J.J., Boyd, J.-P. and Bala, N. 2018. Evidence Supporting National Guidelines for Canada's Child Advocacy Centres. Ottawa, ON: Department of Justice Canada.

Herbert, J.L., Walsh, W. and Bromfield, L. 2018. "A National Survey of Characteristics of Child Advocacy Centers in the United States: Do the Flagship Models Match Those in Broader Practice?" *Child Abuse & Neglect* vol. 76, 583–95.

Hickey, S. 2015. Child Advocacy Centres and Child and Youth Advocacy Centres in Canada: National Operational Survey Results. Ottawa, ON: Department of Justice Canada.

⁶⁰ See <https://www.lunacentre.ca/research-centre-intro>.