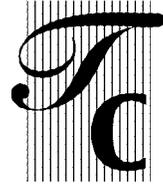


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## Stopping the violence

### *Canadian feminist debates on restorative justice and intimate violence*

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#### Abstract

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This article maps out the current literature and trends in Canada in the area of restorative justice and intimate violence. It focuses on feminist and women-centred approaches to the debates and controversies in this area. The article concludes with a recommendation for a moratorium on new restorative justice initiatives dealing with intimate violence.

#### Key Words

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Aboriginal justice • Aboriginal women • feminism • intimate violence • restorative justice

To look at the use of restorative resolutions in cases of violence against women is to engage in a controversy . . . And although it may appear at times that we are at opposite ends of the continuum . . . we are all close in terms of what we are looking for, and that is, for the violence to stop.

(Tracy Porteous, British Columbia Association of Specialized Victim Assistance and Counselling Programs, Provincial Association of Transition Houses, 2000: 2)

Restorative justice (RJ) is used with some frequency to deal with cases of intimate violence in Canada.<sup>1</sup> Many models are employed, across the provinces and territories, and each varies in its approach, administration and resources (Cameron, 2005). Canadian women have responded to these initiatives in diverse, and at times, conflicting ways. The debates reflect, in

part, their different positions in communities, government and academia, and in part, differing analyses of gender and race politics. Academic feminists have complicated the debate in important ways by drawing attention to the need for specificity in the discussion of models, and the importance of a nuanced, intersectional approach (Razack, 1999; Coker, 2002; Daly, 2002; Stubbs, 2002). Feminists working in the community have highlighted the potential dangers to abused women of poorly executed programmes (Goundry, 1998; Lakeman, 2000; Aboriginal Women's Action Network, 2001). Commentary by Canadian Aboriginal and non-Aboriginal women has highlighted the differences between and among RJ and Aboriginal justice models,<sup>2</sup> and has served as an important corrective to the mainstream RJ literature, which often conflates western and Aboriginal models (Nightingale, 1991; LaRoque, 1997; McGillivray and Comaskey, 1999; Razack, 1999; MacDonald, 2001).

This article maps the tenor and complexity of Canadian debates. In the first part, I outline the ways that RJ is practised in Canada in response to intimate violence, with attention to differences between and among Aboriginal and non-Aboriginal initiatives. In the second, I analyse the debates between and among Canadian Aboriginal and non-Aboriginal women on RJ, Aboriginal justice and intimate violence.

## Restorative justice practices in Canada

In examining RJ practices, two elements must be considered. First is the model in question; some programmes have been endorsed by women, and others are critiqued (Goundry, 1998; Razack, 1999; Goel, 2000). Second is whether or not the practice arises or is derived from an Aboriginal tradition, law or legal order. Although the debates themselves are not always delineated by cultural or racial identification, there are often important differences in methods, philosophies and practice along these lines (Nightingale, 1991; LaRoque, 1997; McGillivray and Comaskey, 1999; Razack, 1999; MacDonald, 2001). Such cultural distinctions have been an integral part of discussions and debates in Canada.

### *Aboriginal justice and western restorative justice*

While most RJ models in Canada borrow from several traditions, they can be categorized loosely as either western RJ<sup>3</sup> or Aboriginal justice. Further variability arises when individual models and programmes have differing degrees of Aboriginal participation and control (see later).

Many Canadian commentators, government policy makers and scholars conflate western RJ with Aboriginal justice, viewing Aboriginal justice models as either the historical basis for or a 'type' of western RJ. Others have argued that these two categories have distinctive social, historical, cultural and political goals (Jackson, 1992; Monture-Angus, 1995a, 1995b; Griffiths and Hamilton, 1996; Proulx, 2003).<sup>4</sup> The western RJ and Abori-

ginal justice movements *do* have features in common. However, in my view, it is better to differentiate between them as they emerge from differing historical, cultural and political contexts. In particular Aboriginal justice can be linked to the larger project of Aboriginal peoples' self-government and self-determination (Monture-Okanee, 1992; Palys, 1999; Provincial Association of Transition Houses, 2000). Social control and the formulation of an appropriate response to crime is a fundamental aspect of nationhood. Unlike western RJ projects and theories, Aboriginal justice can be seen as contributing to the furthering of Aboriginal independence and self-sufficiency.

By giving Aboriginal justice models a social location rooted in unique histories, cultures and politics, it is easier to understand the players within these models as something more than abstracted 'offender', 'survivor' and 'community'. This allows for a deeper, more specific discussion of both Aboriginal justice and western RJ to emerge from the overwhelmingly positive, abstract language frequently used in western RJ literature. Mary Ellen Turpel-Lafond, a Cree judge and legal scholar, warns that 'romantic projections of perfect cultural regimes with superior concepts of goodwill will not get far because they are disconnected from the real experiences of Aboriginal peoples across the country' (Turpel, 1994: 210). Both Aboriginal and non-Aboriginal communities must deal with differences rooted in contemporary manifestations of gender, violence and race.

In Canada both western RJ and Aboriginal justice have attracted the attention of those who are dissatisfied or disillusioned with conventional criminal justice. The Canadian government has embraced western RJ, marking its popularity with a celebration of national Restorative Justice Week (Cormier, 2002) and by adopting it as a state-sanctioned model in most provinces and territories (at least eight of thirteen), and within the federal government. Although officially Aboriginal justice is often included under this tent, there are few models that clearly fall into this category.

Not all of these initiatives deal with intimate violence, and in fact a number have expressly decided not to. There are, however, several Canadian models that are regularly used to deal with intimate violence. These include sentencing circles, family group conferencing, victim-offender mediation and alternative measures. Two types of sentencing circles are currently in place (Stuart, 1996; Couture et al., 2001). The first is a judicially convened sentencing circle, which is used in a courtroom by a sentencing judge following a finding or plea of guilt. Under common law sentencing powers, a judge can alter the format of the court (usually into a circle) and hear informal evidence from members of the defendant's community to guide a sentence, although the ultimate decision lies with the judge. This model is most often employed in the Canadian North by non-Aboriginal judges with Aboriginal offenders (see, for example, *R v. Morris* [2004] 186 CCC (3d) 549). A second type of circle is typically a form of court diversion, although each programme is unique. It is convened under an 'optional protocol', the official term given to an agreement between a

local prosecutor's office and a faith or Aboriginal community that seeks to administer a diversion programme. The agreement places restrictions on who can be diverted out of the courts and into the circle, and it will specify whether cases of intimate violence can be dealt with. In this case the circle format is used as part of a larger, more independent programme run by a group, and it is usually accompanied by resources such as counselling, and drug and alcohol treatment. Programmes that are situated in Aboriginal communities are generally run by and for Aboriginal people exclusively (see Lajeunesse, 1993, 1996; Couture et al., 2001).

Family group conferencing was originally used in the province of Newfoundland, where extensive pilot studies were conducted in both Aboriginal and non-Aboriginal communities (Pennell and Burford, 2000a, 2000b, 2002; Wemmers and Canuto, 2002). Family group conferencing is currently used in British Columbia to deal with family violence cases, including those concerning child welfare in Aboriginal and non-Aboriginal communities.<sup>5</sup> Victim-offender mediation is also used to deal with a small number of intimate violence cases (Gustafson, 1997). At the request of a victim, supervised mediation can take place during an offender's incarceration, under the authority of a special agreement with correctional authorities.

Finally, in the context of pre-charge diversion, each province and territory has an alternative measures programme that is mandated by federal criminal legislation (Plant, 2003). For example, in British Columbia, cases of intimate violence are diverted from prosecution into programmes administered by probation officials. Offenders are generally required to write letters of apology or complete community service. Personnel in family group conferencing, victim-offender mediation and alternative measures programmes are primarily non-Aboriginal. These models serve victims and offenders from all ethnocultural communities.

### **Debates among women**

Discussion and debate about western RJ, Aboriginal justice and intimate violence occur at various sites. Aboriginal women and women's anti-violence organizations were among the first to canvass the issues and raise concerns, as western RJ and Aboriginal justice projects began to appear across Canada in the early 1990s. While not all of the women included here identify as feminist, all pay special attention to the role of gender in intimate violence and are 'woman-centred' in their approaches.

### ***Culture and justice***

Attentiveness to Aboriginal values and practices, and how Aboriginal laws and legal principles can be applied in contemporary conflicts are key features of Aboriginal justice initiatives (Royal Commission on Aboriginal Peoples, 1996; Mallett et al., 2000; Perrault and Proulx, 2000; Roach,

2000). It is precisely the role of tradition, law and legal principles in both western RJ and Aboriginal justice models that is central to debates among women. There is general agreement that separate and legitimate Aboriginal justice models, laws and legal principles pre-dated colonial times; but disputes arise over how these are currently misapplied or misunderstood in ways that may harm women.

Although the term 'traditional' is used frequently in both the western RJ literature and by Aboriginal women (see Kirkness, 1987; MacDonald, 2001), this is problematic because the term has (at least) two meanings. It is used in the western RJ movement to caricature a backwards-looking or 'frozen in time' formulation of Aboriginal laws and legal practices. At the same time, it is used by Aboriginal women's groups to denote a respected place held by Aboriginal women within their nations prior to colonization, which they believe should inform contemporary Aboriginal justice models.

The notion that western RJ principles are derived from Aboriginal 'traditions' is widely proclaimed by RJ advocates (Weitekamp, 1999; Braithwaite and Strang, 2000; Morris, 2000; for critiques, see Daly, 2002; Cunneen, 2003). For instance, the John Howard Society of Canada asserts that:

Restorative justice principles can also be seen in Aboriginal justice movements across Canada. In essence, traditional Aboriginal justice is based on the restorative model. The goal is to facilitate restoration, rehabilitation and reintegration. Increasing numbers of Aboriginal groups are lobbying for a return to traditional justice.

(1998: 103)

Countering this frozen image of 'traditional justice', it is preferable to view Aboriginal justice practices, laws and legal principles in more dynamic terms, as having evolved and changed with time, and as now having to wrestle with contemporary social problems such as intimate abuse and substance abuse. Idealized or romantic notions of antiquated societies fail to capture the reality of colonialism and the social problems that accompany it. Western RJ advocates use the term 'traditional' unproblematically and non-reflectively as if it had one, easily discernable meaning. In doing so they conflate Aboriginal values with those of western RJ.

Women and feminist groups have challenged the view of a singular or static Aboriginal culture, belief system or tradition (Crnkovich, 1993; LaPrairie, 1995; LaRoque, 1997; Aboriginal Women's Action Network, 2001; MacDonald, 2001). Three themes on 'tradition' and culture are apparent in the feminist literature. First, feminists are critical of western RJ constructions of culture, pointing out that these understandings ignore the contemporary realities of other intersecting oppressions such as gender, sexual orientation or class (Nightingale, 1991; Nahanee, 1994; Depew, 1996; LaRoque, 1997; LaPrairie, 1998; McGillivray and Comaskey, 1999; MacDonald, 2001). Sherene Razack argues that legal academics, judges

and lawyers who support the use of judicially convened sentencing circles have applied an 'impoverished' notion of culture in deciding domestic violence and sexual assault cases, which leads to the revictimization of women survivors in these cases.

[T]he notion of culture that has perhaps the widest currency among both dominant and subordinate groups is one whereby culture is taken to mean values, beliefs, knowledge and customs that exist in a timeless and unchangeable vacuum outside of patriarchy, racism, imperialism and colonialism.

(Razack, 1999: 58)

Second, some Aboriginal women argue that current western RJ and Aboriginal justice models are male-centred and culturally inappropriate. Historically, Aboriginal women had a substantial cultural role in laws, legal orders and justice practices; western RJ models such as judicially convened sentencing circles ignore this, despite their claiming to be 'traditional'. These critiques are accompanied by concerns that justice reforms have been initiated, supported and perpetuated by reform-minded, non-Aboriginal judges and lawyers rather than by Aboriginal peoples. These critiques flow in part from concerns about the conflation of western RJ and Aboriginal justice (Nightingale, 1991; Monture-Okanee, 1992; LaRoque, 1995, 1997; Crnkovich, 1996). Thus, Aboriginal women point out that some western RJ models do not correspond with the laws, values or justice practices of the communities or nations where they are being applied (Clarke and Associates, 1995; Royal Commission on Aboriginal Peoples, 1996). Indeed, some observers see little difference between existing criminal justice and the western RJ 'alternatives'. For example, Mary Crnkovich, formerly the staff lawyer for Pauktuutit, an Inuit women's organization, has critiqued judicially convened sentencing circles in Canada's north:

The distinction between the (justice) alternatives and the existing criminal justice system is rooted in this premise that the latter is non-Inuit and therefore non-traditional. This dichotomy is artificial in my view. Many of the alternatives to the existing justice system initiated and used in Inuit communities such as diversion, mediation, and sentencing circles are also non-Inuit, have varying degrees of Inuit participation and, for the most part, are part and parcel of the existing criminal justice system as it exists today.

(1995: 5-6)

Third, there is considerable debate among Aboriginal women regarding how 'tradition' *should* be understood and applied in Aboriginal justice models. Some Aboriginal feminists question the authenticity of Aboriginal justice models, even when conceived of and run by Aboriginal communities themselves. Their concerns arise when particular models, practices or theories do not afford Aboriginal women respect, stature or a leadership role, or when Aboriginal justice practices fail physically to protect victims from abusers (LaRoque, 1997; Aboriginal Women's Action Network, 2001; MacDonald, 2001; Ryan and Calliou, 2002). In large part, the

debates regarding the roles of Aboriginal women are embedded in larger questions regarding the assertion of cultural continuity as a prerequisite for 'authentic' Aboriginal justice models. Thus, a key question is, what should 'traditional' Aboriginal practices look like when they are brought forward in time to the present?

### *Debates among Aboriginal women*

The quest to incorporate an appropriate cultural *and* gender perspective into the debate about Aboriginal justice models is a difficult one. Aboriginal women, though travelling different paths, share a journey towards ending and repairing the damage done by colonial injustice. Some travel on the path of culture, with the political, cultural and economic self-determination of Aboriginal peoples as their primary goal. The role of women in that journey is an important consideration. For these women, Aboriginal culture (and sovereignty) is the primary tool to be used against colonialism (Monture-Okanee, 1992; Lajeunesse, 1993; Green, 1998: 86; Perrault and Proulx, 2000; Provincial Association of Transition Houses, 2000: 21, 2001: 10–12). Other Aboriginal women travel on a path where culture does not have primacy. Although they recognize the devastating role of colonization in the lives of Aboriginal peoples everywhere, they also recognize the gendered nature of intimate violence in their communities and the failures of both the conventional and Aboriginal justice systems to address it. They differ in the solutions proposed for these problems.

### *Culture matters*

Patricia Monture-Angus, a Mohawk woman and legal scholar, and Mary Ellen Turpel-Lafond, a Cree judge, have written extensively on the role of culture, community and Aboriginal women in criminal justice and self-government models. They have been key voices in articulating support for Aboriginal justice (Turpel, 1989, 1991, 1994; Monture-Okanee, 1992; Monture-Okanee and Turpel, 1992; Mercredi and Turpel, 1993; Monture-Angus, 1994, 1995a, 1995b, 1996, 2000; Turpel-Lafond, 1997, 1999). Their lens is primarily cultural. Both reject the conventional justice system, citing the ongoing abuses against Aboriginal peoples within it (Monture-Okanee and Turpel, 1992; Monture-Angus, 1994; Turpel, 1994). In their analysis of gender, they argue that before European contact and colonization, there was gender equality within Aboriginal communities, and no intimate violence existed (Monture-Angus, 1994).<sup>6</sup> European laws and abuses forced sexism upon Aboriginal communities through the *Indian Act* (Monture-Angus, 1994). According to Monture-Angus (1995a), when Aboriginal women reach their goals, following Aboriginal sovereignty, equality will be based upon pre-contact gender roles and contemporary manifestations of Aboriginal culture, not the western models of equality sought by some feminists. Within Aboriginal justice initiatives, Monture-Angus argues that women must act as teachers and leaders, and that they

must include men in this healing process. She emphasizes the importance of women's roles in building, administering and running successful Aboriginal justice initiatives (Monture-Okanee, 1992).

Hollow Water, one of Canada's best known Aboriginal justice programmes dealing with intimate violence, was initiated and supported by many women in the Ojibway communities where it operates.<sup>7</sup> Burma Bushie, an Aboriginal woman and one of the founding members of the programme, sees Aboriginal justice as a healthy and safe alternative to imprisonment for those who commit partner violence, child sexual abuse and related forms of violence in Hollow Water. Her vision is shared by some commentators, researchers and community members (Lajeunesse, 1993; Ross, 1994; Green, 1998: 86; Couture et al., 2001).

### *Culture and gender matters*

Other Aboriginal women do not prioritize culture; rather, their foremost concern is to incorporate gender equality *and* culture, redressing intimate violence. These writers see Aboriginal women's issues as distinct from those of Aboriginal men, and in need of responses that actively incorporate gender equality from every starting point. The goal of an Aboriginal-centred gender equality, as espoused by Turpel-Lafond and Monture-Angus, while important, is viewed as secondary to ensuring the immediate safety and dignity of Aboriginal women and children who are victims of intimate violence (Nahanee, 1994; Clarke, 1995; LaRoque, 1995, 1997; Pauktuutit, 1995; Provincial Association of Transition Houses, 2000, 2001; Aboriginal Women's Action Network, 2001; MacDonald, 2001). These writers also challenge Monture-Angus' views on the dynamics of violence within Aboriginal communities. For instance, a publication by the Aboriginal Women's Action Network, an Aboriginal feminist organization based in Vancouver, British Columbia, states that Monture-Angus' analysis 'does not in any way represent a critical analysis of the dynamics of violence and abuse and fails to account for victim safety' (MacDonald, 2001: 41).

This group of writers and activists employ feminist theory and methodology alongside various Aboriginal worldviews on gender roles and equality. Their work centres on the particular oppressions faced by Aboriginal women, and their analysis of western RJ and Aboriginal justice is informed by feminist and anti-racist perspectives. They speak both to colonial and patriarchal oppression of the Canadian state and the oppression of a powerful male elite within their own communities (see Aboriginal Women's Action Network, 2001: 46).

Fay Blaney, a Homalco member of the Aboriginal Women's Action Network, argues that contemporary sexism in Aboriginal communities makes Aboriginal justice potentially dangerous in cases of intimate violence.

It's really important to talk about the systemic and institutionalised discrimination we face as Aboriginal women. I'm intending to do this so we can

make our case that we do have patriarchy and we have colonialism within our Aboriginal communities, not only historically, but today. It sounds wonderful on the surface that Aboriginal people are getting the right to self-government, but underneath that is the very hard reality that Aboriginal women don't have a voice in that process. We have patriarchy in our Aboriginal communities.

(Provincial Association of Transition Houses, 2000: 24)

Based on research on intimate violence, criminal justice and alternative justice forms such as RJ<sup>8</sup> the Aboriginal Women's Action Network has called for a moratorium on the use of RJ in cases of intimate violence, sexual assault and child abuse in Canada.

### *No safe place: critiques of restorative justice*

Aside from specific, culturally focused critiques, Aboriginal and non-Aboriginal women have shared concerns regarding the use of both western RJ and Aboriginal justice models for intimate violence. While critiques are as varied and diverse as the women who express them, the following represents a summary of some of the main arguments presented in recent Canadian literature.

While those who advocate for western RJ and Aboriginal justice claim it empowers victims, critics fear that that survivors may be revictimized, either emotionally or physically (Pauktuutit, 1995; LaRoque, 1997; Koshan, 1998; LaPrairie, 1998; Avalon Sexual Assault Centre, 1999; McGillivray and Comaskey, 1999). These concerns have been supported by several recorded cases of survivor revictimization including victim blaming, threats of physical violence, physical violence and coercion (Crnkovich, 1996; Aboriginal Women's Action Network, 2001; Ryan and Calliou, 2002; Rubin, 2003).

Silencing is a reoccurring theme and is used in the literature in several ways. First, women assert that taking intimate abuse out of the more public venue of the courtroom decriminalizes and privatizes intimate violence, counteracting 20 years of feminist activism to bring intimate violence into the open (Oglov, 1997; Coward, 2000; Dewar, 2000). Second, many note a lack of consultation with women and women's groups in planning and implementing both western RJ and Aboriginal justice initiatives, preventing women from having a meaningful role in directing how gendered crimes should be dealt with in their communities (Pauktuutit, 1995; Newfoundland and Labrador Provincial Association against Family Violence, 1999, 2000; Aboriginal Women's Action Network, 2001). Also around planning and implementing, women have criticized a general lack of gender and diversity analysis (Clarke, 1995; Goundry, 1998; Newfoundland and Labrador Provincial Association against Family Violence, 1999, 2000). Finally, critics note a failure to address meaningfully the underlying causes of violence against women, namely, the social, political and economic inequality of women (Pate, 1994; Lakeman, 2000).

Other concerns are based in the administration of programmes and the negative impact of poorly run models on victims. Women cite a lack of transparency and accountability in the planning and execution of western RJ and Aboriginal justice initiatives (Clarke, 1995; Coward, 2000) and an overall lack of research, resources, proper training and funding (Goundry, 1998; Rubin, 2003). Several writers emphasize problems with the role of communities in maintaining procedural safeguards for victims of intimate violence in informal processes. For example, critics are concerned that confidentiality will not be maintained in small communities, communities will pressure and intimidate victims to keep relatives or friends out of jail and that it is difficult to treat intimate violence as a crime in communities where it is normalized (Pauktuutit, 1995; LaPrairie, 1998; McGillivray and Comaskey, 1999; MacDonald, 2001; Ryan and Calliou, 2002). In short, for these writers, there is a deep cynicism regarding the possibilities of western RJ and Aboriginal justice, and its ability to overcome the cycle of violence against women and children.

These critiques can be loosely divided into two main categories. First are those who believe the conventional justice system has failed survivors and racialized offenders, and who see western RJ and Aboriginal justice as viable alternatives that have simply been badly executed. Their concerns lie primarily with the ways in which western RJ and Aboriginal justice have been developed and applied. Their critiques are frequently accompanied by precautions and parameters, which they would like to see in place before cases of intimate violence are considered (LaPrairie, 1998; Coward, 2000; Provincial Association of Transition Houses, 2000). Second, there are those who assert that the theory behind western RJ is flawed and potentially dangerous to survivors (Acorn, 2004) or that there will always be cases where the gendered power imbalance cannot be safely addressed. Therefore, neither western RJ nor Aboriginal justice can be used (Goundry, 1998; McGillivray and Comaskey, 1999; Lakeman, 2000; Aboriginal Women's Action Network, 2001; MacDonald, 2001; Provincial Association of Transition Houses, 2001).

### *Worth pursuing: feminist support for restorative justice*

While many are cautious or negative regarding western RJ and Aboriginal justice, there is support by both Aboriginal and non-Aboriginal women for its use. Supporters cite the need for an alternative to the colossal failure of the conventional justice system and the possibility that western RJ and Aboriginal justice practices will empower the victim (Green, 1998: 886; Martin, 1998; Provincial Association of Transition Houses, 2001: 10–12; Pennell and Burford, 2002). Wanda Gamble, a self-described 'restorative justice practitioner' in the province of Saskatchewan, argues that alternative processes can be empowering for survivors. '[S]ome women want and do choose alternative processes'. She quotes a participant in her programme, 'Even now I would like the opportunity to tell him exactly what

he did to me and how it felt . . . It's a start to the healing process' (Provincial Association of Transition Houses, 2000: 21).

The use of family group conferences for cases of violence against partners and children has been endorsed by Burford and Pennell, the primary researchers on a Newfoundland pilot project (Pennell and Burford, 2000a, 2000b, 2002). The model was primarily used to deal with child welfare cases, but also provided programming for families with histories of intimate violence. This was not a criminal diversion project; rather, adult criminal charges were laid and ran concurrently with the child-focused conferencing. Their research showed positive results with this model of western RJ, including survivor empowerment and a reduction in recidivism rates for intimate violence. This model has been emulated in other provinces, particularly in dealing with child welfare cases. Notably, this model was based in a woman-centred feminist praxis, was well funded and resourced and mandated incarceration for offenders who violated safety conditions (Pennell and Burford, 2002).

## Conclusion

Having considered the arguments by critics and proponents of RJ in intimate violence, I take a similar position to the Aboriginal Women's Action Network. There must be a moratorium on *new* western RJ or Aboriginal justice for cases of intimate violence until more research has been completed. Western RJ and Aboriginal justice have taken off in Canada, despite calls from critics (including feminists) for caution. Recently we have seen an expansion of the use of Alternative Measures in British Columbia (Plant, 2003) and a major pilot project in the Yukon (Aboriginal Women's Action Network, 2001: 63; Provincial Association of Transition Houses, 2001). Several organizations have showed interest in using RJ in cases of intimate violence in the Maritime and Prairie Provinces (Provincial Association of Transition Houses, 2001; Lund and Dodd, 2002).

Arguments on either side are presented with emotion and a genuine desire for positive social change. However, the fact remains that there is little empirical evidence to support either position (R. Morris, 2000; Presser and Gaarder, 2000; Sherman, 2000; A. Morris, 2002). I believe that the current practice of using western RJ and Aboriginal justice in cases of intimate violence, without clear evidence that it is safe and effective, is gambling with the lives and safety of Canadian women. In Canada we are well positioned to re-analyse data that have *already been gathered* from several major initiatives that have been in place for some time. Thus, research can proceed without further jeopardizing the safety of victims. Research should examine factors such as offender's manipulation of the process, emphasis on reconciliation, the resources available to violent men

and to victims, and the presence or absence of feminist voices in planning, executing and evaluating these initiatives.

Although there is a diversity of opinion, there is also a unity of purpose among Canadian feminists. Put simply this is 'for the violence to stop' (Provincial Association of Transition Houses, 2000: 2). Feminist debates about western RJ and Aboriginal justice have been fruitful in bringing gender, intersectionality and the interaction of culture and gender to the fore, against a backdrop of overwhelmingly non-gendered literature on western RJ and Aboriginal justice. This analysis must be part of a new Canadian research agenda on western RJ, Aboriginal justice and intimate violence. When conducting research we need to move away from romanticized, abstract notions of what can be achieved by western RJ or Aboriginal justice and turn our attention to the actual experiences of victims and offenders. Their experiences, whether positive or negative (or both) need to be grounded in a more adequate theorization of the intersection of culture and gender in post-colonial societies.

## Notes

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1. I follow McGillivray and Comaskey in using the term 'intimate violence' to denote physical, sexual, emotional, financial, psychological or spiritual abuse by adult males of adult female partners in intimate relationships. The term is used in lieu of wife battering, battered woman syndrome, wife abuse, spousal assault, family violence, domestic abuse, domestic assault and domestic violence because it speaks to the close, personal relationship between abuser and survivor, the diverse types of relationships that can be affected, and 'the deep trust presumed to exist among family members, between intimate partners' (McGillivray and Comaskey, 1999: xiv).
2. Canada's Aboriginal peoples are geographically and culturally diverse, and these differences will be significant factors in how RJ and Aboriginal justice models are integrated into Aboriginal communities or nations.
3. By 'western' I refer to RJ theory in western democracies such as the United States, Canada, New Zealand, Australia, the UK and Europe. Although western RJ advocates claim that RJ draws upon other cultures and time periods, it is primarily fashioned as a response to the perceived social injustices entrenched in and perpetuated by the contemporary criminal justice systems in these jurisdictions.
4. Such conflation is also apparent in Australia and New Zealand along with calls for separating RJ from Aboriginal justice (Daly, 2002; Cunneen, 2003).

5. *Child, Family and Community Services Act*, RSBC 1996 Ch. 46 ss. 22–24.
6. This view is not accepted by other Aboriginal women. For instance, LaRoque (1997), a Metis scholar, states that intimate and gendered violence did exist pre-contact, and that traditional ways of dealing with such behaviour (particularly sexual offences) included banishing or killing the offender.
7. There has also been criticism of this project by women within the Hollow Water community (see Lajeunesse, 1996) and by Aboriginal and non-Aboriginal feminist scholars (LaRoque, 1997; Koshan, 1998).
8. The Aboriginal Women's Action Network has completed a literature review, and as part of the World March of Women 2000, members of the Aboriginal Women's Action Network rafted the Fraser River from Prince George to Vancouver, BC, visiting nine Aboriginal communities during the trip. They held focus groups and rallies on the subject of restorative justice and intimate violence.

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