

# Aboriginal Women's Action Network Restorative Justice Policy (AWAN)

## *The Implications of Restorative Justice in Cases of Violence Against Aboriginal Women and Children.*

### 1. Introduction

The Aboriginal Women's Action Network (AWAN) was established in 1995 in response to a pressing need for an Aboriginal women's group to provide a much needed voice for Aboriginal women's concerns regarding governance, policy making, women's rights, employment rights, violence against women, Indian Act membership and status, and many other issues affecting Aboriginal women in contemporary society. The founding members of AWAN conceived of themselves as salmon swimming upstream with determined vision to create new life, and therefore, renewed hope and possibilities for our children. For members of AWAN the Salmon Nation's legacy of survival depends on an unwavering commitment to future generations, a commitment which serves to guide AWAN in our political involvement and quest for social justice for Aboriginal women and children.

Through AWAN's work with Aboriginal women, many concerns were raised with regards to the implications of restorative justice in cases of crimes of violence against Aboriginal women and children. In responses to these concerns AWAN sought, and was generously provided with, funding from a number of sources in order to engage in community consultations, to provide education workshops for women, to host a provincial forum and to complete a comprehensive literature review. The Law Foundation of British Columbia, City of Vancouver, Status of Women Canada, the British Columbia Attorney General Office (Victims Services), the former British Columbia Ministry of Women's Equality and the Law Commission of Canada all contributed financially to this important work.

The Aboriginal Women's Action Network (AWAN) has developed the following policy in response to: extensive community consultations (see *The Implications of Restorative Justice for Aboriginal Women and Children Survivors of Violence: A Comparative Overview of Five Communities*), and a comprehensive literature review (see *Literature Review: Implications of Restorative Justice in Cases of Violence Against Aboriginal Women and Children*), and AWAN: Major Project Initiative: *Aboriginal Women, Violence, and the Law-Evaluation*.

### 2. AWAN's Position on Restorative Justice in Cases of Violence Against Women and Children

AWAN is strongly opposed to the application of restorative justice measures in cases of violence against Aboriginal women and children.

AWAN's opposition is in responses to the recommendations of Aboriginal women who formed part of their study on the implications of restorative justice, including from: the consultations AWAN held in various communities, AWAN's provincial forum on restorative just, AWAN's *Comparative Overview of Five Communities in British Columbia*, as well as AWAN's literature review, *Implications of Restorative Justice in Cases of Violence Against Aboriginal Women and Children*. Some of the primary issues and concerns raised by Aboriginal Women and/or identified in the literature regarding the application of restorative justice in cases of violence against women and children include, but not limited to:

- Structural power imbalances between abuser and abused;
- Long-term impact, both emotional and physical, of violence against women and children;
- Lack of availability of adequate services to address the long-term effects of violence against women and children;
- Lack of adequate rehabilitative services for perpetrators of violence;

- Lack of community capacity (both fiscal and human resources) to address crimes of violence;
- Denial of violence;
- Casual relationship between suicide and sexual victimization of children - should not be exacerbated by forcing them to confront their abusers;
- Lack of criteria for selection of appropriate cases;
- Lack of training;
- Lack of standards of guidelines for the application of restorative justice;
- Lack of community consultation and consultation with Aboriginal women and Aboriginal women's groups
- Lack of informed choice for victims regarding participation in restorative justice initiatives of potential re-victimization;
- Offender focused rather than victim focused restorative justice;
- Misrepresentation of Aboriginal "culture"
- Failure of Aboriginal leadership to adequately address crimes of violence against women and children;
- Lack of awareness of the impacts of colonization in relation to violence against Aboriginal women and children

In short, AWAN's primary concern with the current move towards a restorative justice model is a lack of attention to and research on the effects of restorative justice processes for the victims of violent crimes, namely women and children. Currently there appears to be little in the way of procedural, institutional and practical measures to protect and support women or children who are victims of violence. Finally, there has been no emphasis in case law or in current restorative justice models on the legacy of colonialism for Aboriginal women and children: racism, sexism, poverty and violence.

### 3. Ministry of Attorney General

The Ministry of the Attorney General's Office, British Columbia, introduced, in early 1998, a number of criminal justice reforms for various restorative justice initiatives. As well, the Attorney General's Office developed policy guidelines for responses to crimes of violence, which were categorized as follows:

1. Violence Against Women Relationships (VAWIR)
2. Sexual Assault
3. Violence Against Children and Youth

The Attorney General's policy stresses that:

Provision of appropriate assistance to victims is essential to keep victims informed of the criminal justice systems, to prepare them for the court experiences, and to refer them to services that may help them through the justice system and to deal with violence in their relationships.

Currently the provincial government is eliminating many of the resources that would facilitate in addressing some of AWAN's concerns with restorative justice. Recently, Crown victim services were terminated and there have been closures of transition houses for battered women and children. These services were provided primarily to off-reserve Aboriginal victims of crime. There is little if any concomitant services for on-reserve Aboriginal Women and children who are dealing with violence. These factors\* underscore AWAN's position that restorative justice not be utilized in cases of violence if there are no services for victims.

Furthermore, as observed in a report prepared for the BC Association of Specialized Victim Assistance and Counseling Program, there was little in the way of an equality or gender analysis of restorative justice reforms in BC. Such an analysis could highlight the implications of restorative justice on marginalized groups such as Aboriginal women and children. The lack of a gender analysis of restorative justice models has been underscored by many authors, including legal scholar Jennifer Koshan who noted, in her examination of reports on Aboriginal justice that:

Many of the reports recommend that the creation of Aboriginal justice systems or reform initiatives without any meaningful consideration of the impact of such reforms on the Aboriginal women who would engage with such systems primarily as survivors of violence crimes.\*\*

Finally, the provincial government (Attorney General) in their VAWIR policy allowed for the application of restorative justice in "exceptional circumstance". AWAN agrees and supports and the concerns of other women's groups that the "exceptional circumstances" provision be eliminated:

The "exceptional circumstances" provision should be eliminated in relation to VAWIR, sexual assault, children sexual abuse, criminal harassment and hate motivated offences until there is an opportunity to conduct all of the necessary research, analysis and evaluation of these initiatives and consult with all of the affected parties.\*\*\*

#### 4. AWAN's Policy Position on Restorative Justice in Cases of Violence

AWAN is strongly opposed to the use of restorative justice in cases of violence against Aboriginal women and children. Although AWAN supports Aboriginal people's quest for the resumption of their rights to self-determination, they acknowledge that at this time Aboriginal peoples live with the effect of colonization. Until measures are taken by the Federal, Provincial and Aboriginal governments to decolonize attitudes and practices, and to address the impact of colonization on Aboriginal women and children, the application of restorative justice will not be able to best serve the needs, and address the concerns of Aboriginal women and children who are the victims of violent crimes. Decolonization would include a commitment by all governments to address issues of violence, poverty, sexism and racism.

AWAN strongly recommends:

- A moratorium on any agreements that allow for the application of restorative justice practices for crimes of violence against women and children.
- Further research and analysis, by AWAN, on implications for the application of restorative justice for Aboriginal women and children who are victims of violence
- Commitment to fund AWAN to conduct research, examine, evaluate and propose guidelines and criteria for restorative justice practices.
- Adequate resources, both financial and human, for effective services, as defined by Aboriginal women, for Aboriginal women and children who are victims of violence, including a commitment for resources to address the long-term effects of violence
- Resources for: preventative services and community education on the impact of violence and the implications of restorative justice processes for Aboriginal women and children dealing with violence, as defined by Aboriginal women.
- Elimination of the Attorney General's "exceptional circumstances" provision in their VAWIR policy.
- A commitment for the Federal, Provincial and Aboriginal governments for consultation with AWAN on any restorative justice policy, procedures and practices that will impact Aboriginal women and children who are victims of violent crimes.
- Serious consideration be given to AWAN's findings and concerns in any reform of the criminal justice system or implementation of restorative justice programs.

Notes:

\* S. Goundry, "Restorative Justice and Criminal Justice Reform in British Columbia: Identifying Some Preliminary Questions and Concerns" (April 1999) A report prepared for the BC Association of Specialized Victim Assistance and Counseling Programs.

\*\* J. Koshan, "Aboriginal Women, Justice and the Charter: Bridging the Divide?" (1998) UBC Law Review 23.

\*\*\* S. Goundry. "Restorative Justice and Criminal Justice Reform in British Columbia: Identifying Some Preliminary Questions and Concerns" (April 1999) A report prepared for the BC Association of Specialized Victim Assistance and Counseling Programs.

Exhibit: National Inquiry into Missing and  
Murdered Indigenous Women and Girls

Location/Phase: Part III: Quebec

Witness: Fay Blaney

Submitted by: Big Canoe, Comm. Counsel

Add'l info: P03P02P0101

Date: MAY 14 2018

Initials

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