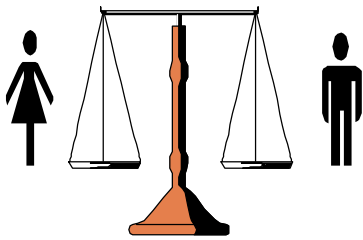


Keeping an Open Mind



A Look at
Gender Inclusive Analysis,
Restorative Justice
and
Alternative Dispute
Resolution

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Introduction

There is a trend across Canada towards using alternatives to the traditional justice system because of serious dissatisfaction with its ability to be responsive to people and their experience. This trend provides an opportunity to shift the perspective of doing justice to one of protecting and serving the people and communities who are harmed.

Various agencies and individuals in Newfoundland and Labrador are increasingly and enthusiastically promoting alternatives to the traditional court system. Words such as mediation, conditional sentences and restorative justice are now part of the vocabulary. Local and national organizations offer training courses for these processes. Practitioners advertise their services. This movement from the adversarial court system to other methods challenges us to improve conflict resolution in the justice system.

While the positive side of these alternatives is welcomed by many, those involved with women's equality recommend vigilance. At the heart of the concerns is the protection of women who have experienced violence and those who are in relationships of unequal power and control.

The Provincial Association Against Family Violence (PAAFV) is an umbrella organization of shelters and transition houses which advocates for a justice system that protects and serves people and communities.

It is aware of the particular needs and perspectives of women, children and other vulnerable populations and works towards protecting their interests.

The PAAFV decided to produce a handbook for the use of policy makers and service providers who help individuals consider alternatives to court. The handbook aims to:

- create dialogue and mobilize people to inform policy and shape programs.

I believe that the desire for justice of every human being is the source of our desire for equality. For inequality is injustice.

Madame Justice
L'Heureux-Dube, "Making
Equality Work", an address to
the Department of Justice
Canada, Ottawa, December 10,
1996.

- introduce gender inclusive analysis to increase awareness of gender issues and articulate the best ways of serving women, children, vulnerable populations and communities.
- explain different alternative dispute resolution (ADR) processes and programs accurately and explain restorative justice philosophy.
- create a common language and understanding around the terminology.
- encourage organizations involved in ADR training programs to incorporate gender analysis into the curriculum.

The handbook presents facts, reflection, analysis and cautions. The cautions indicate points of concern - places where safeguards to protect women must be incorporated into policy, programs and service delivery. It introduces gender analysis - a process that is particularly useful at the planning stage of developing policies and programs. Gender inclusive analysis is a tool and approach which helps makes clear the different perspectives women and men bring to program and policy development and shows the different ways they are affected. It recognizes that not all women are the same and perspectives vary according to age, sexual orientation, colour, race, ethnicity, ability/disability and socio-economic status. Gender analysis is ideally part of a more comprehensive diversity analysis that assesses the impact of laws, policies or programs on the full range of diverse groups in Canadian society.

In order to appreciate the different perspectives of men and women we present the “big picture” of our society through social and economic indicators such as poverty levels, access to decent housing, and violent crime. This information helps to clarify the difference gender makes to an individual's life experience.

Both provincial and federal governments have made commitments to the use of gender based analysis. *People, Partners and Prosperity: A Strategic Social Plan For Newfoundland and Labrador, 1998*, published by the Government of Newfoundland and Labrador states that a gender based analysis framework will be formulated for the purpose of assessment of provincial legislation, policies and programs. In 1998, the Women's Policy Office published *Guidelines for Gender Inclusive Analysis: An Integrated Approach to Policy/Program Development*. The Government of Canada included a commitment for gender analysis of future legislation and policies with the presentation of its *Federal Plan for Gender Equality* to the Fourth United Nations World Conference on Women in Beijing in 1995.

This handbook will benefit those responsible for policy and program development, by providing them with tools for understanding gender differences and systemic inequality. It will also contribute to the work of service providers who assist individuals with decision making about alternatives to court – professional staff in shelters, transition houses, women’s centres and victim services, as well as police officers, corrections officials, advocates for offenders, lawyers, family counsellors, and social workers.

The handbook does not provide a comprehensive gender inclusive analysis of alternatives to court such as family mediation, diversion, victim offender mediation and community justice forums. This remains to be done. However, with the use of “caution boxes,” the authors direct attention to areas of concern to women. Regrettably, it was not possible to extend the analysis from the point of view of age, sexual orientation, colour, race, ethnicity, ability/disability and socio-economic status.

Another area needing further work is the issue of children who may be subject to conflict resolution processes and alternatives to court. While legislative and policy changes which address the better care of children are welcome, an analysis of the potential impact of these processes on children is needed. It is beyond the scope of this project to adequately present these concerns.

The Provincial Association Against Family Violence hopes to secure funding that will support a more in depth analysis and creation of a template to guide program planning and refining. It is hoped that Phase Two of this project will include the development of a workshop curriculum through which participants can engage in gender inclusive analysis of specific ADR processes.

Woman Positive Voices

Questions about power, decision making, violence and equality are consistently put forward by people and groups which work for women’s rights. They challenge the people in power - governments - to create policies and programs that will lead to systemic equality for women. This is what we mean by “woman positive.”

When I feed the hungry they call me a saint; when I ask why the people are hungry they call me a communist.

Dom Helder Camara

Lots of people work hard to reform systems. This means things get a little better than they were before. Some people are more insistent and say the systems are unjust and the only way to introduce justice is to transform the systems.

People who promote woman positive programs and policies raise similar questions. They keep the big picture in the forefront and challenge us to create a society where all people are equal. This handbook invites you to stay open to that voice which calls for social justice and equality. With these values we cannot stray far from public policy that serves all people well.

Trends Towards Alternatives

Most provinces now have policies and programs offering alternatives to court. Some refer to these as DR (Dispute Resolution), others use ADR (Appropriate Dispute Resolution), while still others use ADR (Alternative Dispute Resolution). This terminology, along with Alternative Measures, Mediation and Restorative Justice, is the cause of considerable confusion. A glossary is provided at the end of this handbook, to define the terms used.

The Government of Newfoundland and Labrador is currently considering alternative options that will demand policy and program decisions. For example, courts dealing with family cases are discussing extension of services such as mediation and parent education, which are currently provided by the Unified Family Court in St. John's.

Another example of an upcoming change can be found in the new Child, Youth and Family Services Act (formerly the Child Welfare Act) which was passed by the House of Assembly in late 1998 and is expected to come into force in the near future. It allows both the social worker and the judge to resolve a conflict by using an alternative dispute resolution process. In other provinces, mediation has been used in these cases. The process attempts to shift the focus from proving parental fault to an emphasis on the child's welfare.

This environment of change, planning and development demands an informed public and an attentive bureaucracy. Alternatives to the current justice system are welcome because of weaknesses in the adversarial courts and judicial processes (see Section Two). However we must be careful not to create new weaknesses in the alternatives we establish. The PAAFV challenges those developing alternatives and policies to be responsive to the needs and perspectives of women, children and vulnerable

populations.

This handbook has been compiled into four sections. Depending on your background and experience some sections may offer new information while the information in others may be well known to you. Since each section was designed to stand on its own, some repetition of information was necessary.

Section One introduces **The Big Picture** -- a look at sex, gender, systemic inequality and gender inclusive analysis. It also looks at the ways in which power works in a relationship.

Section Two provides **Background Information on the Canadian Legal System**. It raises important concerns about how the legal system affects individuals who use it. Alternative trends within the justice system are described. These include Alternative Measures, a program available to youth and adults to divert offenders from the court and prison system and alternatives to prison such as conditional and suspended sentences.

Section Three explores **Major Influences on Alternatives**, including Restorative Justice and some programs rooted in that framework. Alternative Dispute Resolution processes are highlighted, in particular the different forms of Mediation. The concerns raised by a gender inclusive analysis are discussed.

Section Four contains information on **Programs in Newfoundland and Labrador**. Youth Diversion is widespread while the Unified Family Court mediation program is available only in St. John's. Community Mediation Services is profiled, as an organization committed to providing alternative dispute resolution processes. This is an *information only* section and does not include a gender analysis.

There is a **Glossary** of terms at the end of the handbook that might be useful as you use and share this information.

Principles and Assumptions

- ? Changes in the justice system, laws, programs and policies have an impact on people. When considering the impact it is necessary to look at the lives of women and men and not assume the impact is the same for both.
- ? Women in our society have not yet reached equality with men. While some individual women have achieved and even surpassed economic and social parity with their male counterparts, the vast majority have not. This handbook illustrates the impact of systemic inequality on women.
- ? Too few women are involved in decision making processes and leadership positions within organizations, communities, and governments. The experience of women is valuable and offers a significant contribution to these processes.
- ? It is important that biases in the system be identified and addressed because awareness is a critical step in correcting biases in the system. People's values and life experiences shape their perspectives and influence their policy, program and service delivery work.
- ? Both women and men must be involved in creating an equal society. The benefits will help us all.
- ? Gender inclusive analysis must become an integral part of policy and program work in order to create effective public policy that ensures the safety and equality of women and children.
- ? An appreciation of gender differences includes an understanding of the different needs, roles, life experiences, economic and social circumstances facing women and men. The nature of relationships between men and women is also important.

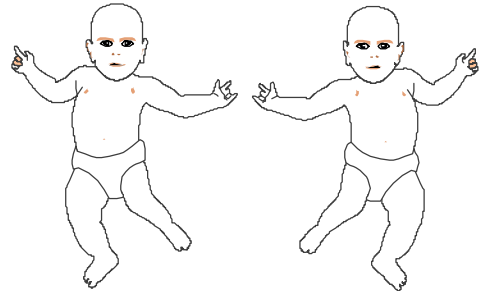
- ? A gender inclusive analysis appreciates that not all women are the same. Women can be disadvantaged further by age, the colour of their skin, sexual orientation, race, ethnic background, ability and disability and income. They are therefore affected differently by policies and programs.
- ? Mediation and other ADR processes are not appropriate problem solving practices in every situation. For example, women exiting abusive relationships are vulnerable to making agreements that are not fair and equitable and which can have negative long term consequences.
- ? To be effective, ADR processes have to be adequately funded and supported by complementary services such as availability of lawyers to individuals involved in family mediation. Women must know their rights before negotiating these same rights.
- ? ADR processes are an appropriate alternative to the court system when they suit the particular circumstances of the people involved and not because governments think it is cheaper justice.
- ? ADR cannot replace the court system. It is important for cases to go before the courts when conflict is escalated, when there is no cooperation or when a court ruling on a case may result in the law being changed.

Section 1

Parts of the Big Picture

Sex and Gender

There is a difference between sex and gender. A person's sex is either male or female and is a description of the way people's bodies are made. Gender brings in aspects of people's life experiences, including expectations that are put on women to be feminine and men to be masculine, i.e. that it's OK for girls to cry but not for boys.



If you take two infants of the same race, one of the main differences between them is whether they are male or female. However the expectations that are put on them have a great deal more to do with gender than with sex. These gendered assumptions are socially constructed by societies. They can vary from country to country and from culture to culture.

There are gender expectations about needs and rights, for example, that men should be paid a decent wage because they have greater needs and more family responsibilities than women. The gender expectation is that women do not have the same need for decent pay and benefits because they don't need as much, have men to take care of them and that family needs take priority.

Systemic Inequality

It is important to give gender issues consideration because of the “big picture” that affects women in our society. It hurts women and men when governments provide programs which do not take women's experiences and needs into account. Consider, for example, descriptive categories like income, social status, poverty, benefits, education and standard of housing in our country and province. These are used to assess the health and well being of people and are called social and economic indicators. The indicators paint a picture that shows women and men are not equal. This holds true in our families, our communities, our province and our country. This is called “systemic inequality” because it is evident in many aspects of life and in

government and business programs and policies. Systemic inequality cannot be corrected by simply changing one rule or practice. For example, in Canada, 80% of single parents are women and 60% of these female led families have an average income of \$12,000 less than single parent families headed by men (1995, Statistics Canada). While the female led families could truly benefit from increased income, the increase alone would not create equality.

Systemic inequality refers to the unequal living conditions, opportunities and status of women. We see it in the continued violence against women in relationships and other ways. We see it in the fact that women's paid work and unpaid work are undervalued. While there have been some positive changes, systemic inequality persists in the "big picture".

Gender Inclusive Analysis

When new programs or policies are developed by governments or community agencies it is important to look at them carefully and anticipate how they might affect women and men differently. When we do this "looking at" from the point of view of the "big picture" and take gender into consideration it is called a "**gender inclusive analysis**". It assumes that we can make changes and move closer to equality for women and men. In this analysis, or taking things apart for a closer look, we uncover the things that are taken for granted, assumed to be true but not stated clearly. If we look at the "big picture" we see that women in our province do not have the same chances that men often have.

If we look at things from the point of view that equality means everybody is the same and that gender does not make a difference it is called a **gender neutral analysis**. Gender neutral analysis may not result in equality for men and women.

Social and Economic Indicators

- Women in Newfoundland and Labrador who work all year earn approximately 65% of the gross income of a male counterpart(1996 Census).
- When it comes to tax deductions women don't get credit for *caring* work. Sometimes women choose to do this work; sometimes they are expected to do the work because they are women. Women do lots of work that they don't get paid for doing, like caring for elderly family members and taking care of children. This affects women financially for their whole lives.
- Women who are senior citizens are more likely to live in poverty and to live longer – 72% of low-income Canadians aged 65 and over are women.
- For every 10 people living in a long term care institution – almost 70% are women.
- 72% of lone parent families live below the poverty line. Most lone parent families are led by women (Statistics Canada, 1995).
- In Newfoundland, the 1996 Census found that out of a total of 20,485 lone parent families with never married children at home, women led 17,240 of these households – that is, 84%.
- Women are more likely to experience violence than men.
 - * Studies show that most women are afraid to walk alone at night (The Canadian Panel on Violence Against Women).
 - * Every 6 minutes there is a sexual assault committed in Canada; 90% of the victims are female (House of Commons 1991, The War Against Women).
 - * One half of all Canadian women have experienced at least one incident of physical or sexual violence since the age of 16. (Statistics Canada)

This means most women are very aware of the threat of violence - that it could happen to them. The same is not true for most men. While men are often physically stronger than women and might feel more confident in defending themselves, the issue is much deeper.

The option of walking at night is one most men take for granted. Women cannot take that option for granted because life experience has shown women that they are more likely to be a victim of violence. And so it is clear that a woman's choice is affected by her past experiences, roles and expectations.

A society that values and works to achieve equality promotes life choices that are not limited by gender. As an example: A woman walks alone at night. If she chooses to take the risk and gets hurt she is often blamed for showing poor judgement, making bad decisions and not giving enough recognition to the realities of a women's lives in our society. She is blamed for not knowing her place, not having common sense. If we believe all citizens should be able to walk alone at night then our laws and the ways we react as a society when violence happens to women would support that basic assumption about equality.

Uncovering Gender Assumptions

The following examples show how a gender inclusive analysis uncovers the assumptions we make because of gender expectations. You may not share the views but they will help you understand how to look at issues through a gender inclusive lens.

Example 1. A decent wage

A stereotypical view:

Men should be paid a decent wage and have benefits in order to meet their needs and care for responsibilities such as their families. Women do not have the same need for decent pay and benefits because their needs are not as great, they have men to take care of them and the family needs take priority.

Lets consider the assumptions being made about what women need and what men need based on their gender; the roles and expectations we have of them.

Assumption 1. Family needs are most important.

Discussion This assumption is commonly accepted. Family needs, when met, leads to creating healthy children and building strong communities. Few would argue with this assumption.

Assumption 2. Family needs are primarily a woman's work and concern.

Discussion This family caring work is so closely connected to being female and how a women should spend her life energy that no financial compensation, either in cash or tax credit, is necessary. Women are doing what comes naturally, what they are meant to do and what they are most happy doing. This is not always true. While it is important to support women who make the choice to work in this way, it is also important that in some way as a society we value that contribution. It is also important that women have the choice to live their lives differently. Therefore programs and policies such as home care for the elderly, child care for the young and wages should not assume a woman will take care of all the families needs.

Assumption 3. All families include a man and that he works outside the home for a decent wage.

Discussion The facts of the “big picture” tell us otherwise. They tell us that most lone parent families in this province (84%) are led by women. We also know that families consist of same sex couples, sometimes female and sometimes male. We also know that many families and children are living in poverty, that wages are often insufficient and that unemployment is a tremendous social and economic problem in this province.

Example 2. Equal access to education and opportunity

A widely held view:

Everyone has a right to an education and opportunity to get a job based on what you know how to do rather than whether you are a man or a woman.

Assumption:

Men and women are equal and are treated equally.

Discussion

However, women and men do not start from the same place. Men, more than women, have been fed the message that they can do things if they are willing to work for it. A young woman may have the right to an education just like her brother but it isn't that simple.

Maybe the young woman does not get encouraged to try non-traditional work, maybe she has responsibilities for younger children after school or for household chores. Maybe she has swallowed all the messages from families, communities, TV and friends that tell her a women's responsibilities and interests should be in caring for children, elderly parents and families. Maybe she has swallowed the message that the family and all its needs are her responsibility and that if she plans to do that job well then she will not have time for jobs that will require a lot of her time and energy.

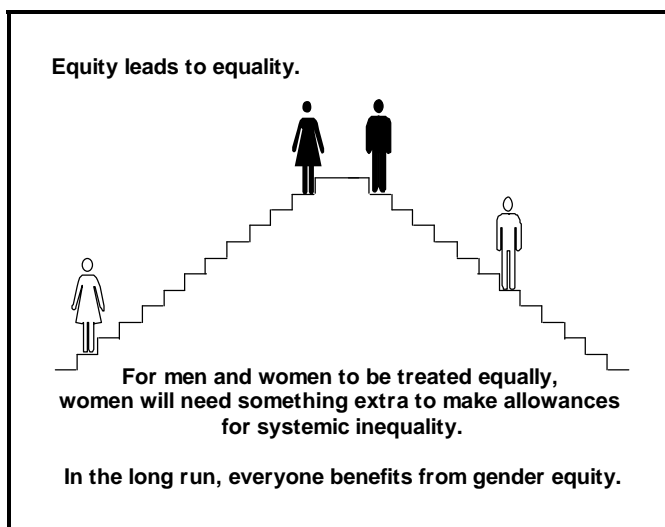
It is important to appreciate the different expectations facing men and women and the different life experiences that influence the choices they make. It is clear that the roles and expectations that are defined by gender have a big impact on our lives and our ability to respond to opportunity. The impact and influences of differences other than gender, such as age, ethnicity, and disability would be examined in a wider diversity analysis.

Gender Equity

Over time it became clear that “equal” did not mean women would be treated fairly. For example picture a woman on step one of a ladder. She is at step one because of the “systemic inequality” that is part of women’s experience. A man is on step five because compared to most women he has had some privilege in society because he is male. If we treated both equally and said move up two steps then the woman would be on step three and the man on step seven. Both would have been treated equally but the distance between them is the same and does not make things fair.



There is a different way of thinking about things that is called **gender equity**. It is a process of being fair to women and to men. It means that in order for men and women to be treated equally, women will need something extra, such as affirmative action and pay equity, in order to make allowances for the systemic inequality.



Historical and social disadvantages have prevented men and women from operating on a level playing field. Everybody benefits from gender equity in the long term because equity leads to equality. Gender equity is good for all of society: men, women, people who are poor, people who have a disability, people from diverse ethnic backgrounds and sexual orientation and people of colour. It works to create social justice for all of us.

Power Imbalances in Relationship

Power and control, or power imbalances, are most commonly experienced as part of our day to day lives and relationships. However, this is not to say that power imbalances are absent from the “big picture.” In our society some people have more power and some people have less power. Adults generally have power over youth, bosses over workers, teachers over students, men over women, heterosexuals over homosexuals and so on. The people with less power are more vulnerable to violence from people in the groups with more power.

We often change sides, so we know what it is like to be powerful and have privilege and we know what it is to have less power. If we are in the less powerful position we know how important it is to have the more powerful people support us and be our allies.

Power is not always influence over a lot of people.

- ? Power is a part of all our social relationships including our one on one relationships
- ? We need power for our sense of well being and self esteem.
- ? Power helps us feel as if we are somebody, as if we matter and that we are appreciated by others.

When we are in relationship with somebody, we care about them, we often care about what they think of us, how they feel and what they do. Because we are in a relationship, be it good or bad, power is part of that relationship. When there is no relationship there is no power. Power is part of the social relationship and it changes with the kinds of interactions we have. It can be big issue or a not so big issue. It can be a warm, safe and nurturing power or it can be a destructive, hurtful power.

Power in a relationship is linked to the dependence of one person on the other. In healthy relationships the power balance shifts back and forth because we are all dependent some of the time. Think of it in terms of goals and needs. If I need you to reach my goal then you have power over me for that situation.

It is sometimes helpful to sort out our thinking about this by asking :

- ? Who has the power?
- ? Who makes the decisions?
- ? Who has the resources (money, jobs, social contacts, community contacts, knowledge and skills)?
- ? Who is vulnerable to the imbalance of power? Can it lead to violence?

The issue of power in relationships is very important when you consider alternative dispute resolution processes because ADR focuses on people who share a problem sharing the resolution of the problem. When there is a power imbalance between the people who share the problem it may be difficult to engage in an equitable problem solving process and generate an equitable resolution to the problem.

Section 2

Background Information: Canadian Legal System

In Canada, our legal system is based on the British system. Criminal laws are written so that a person who commits a crime is charged with an offence against society. Even if the injury or harm caused is against a person, the justice system and the trial process holds the offender responsible for a crime against society. The importance of protecting the rights of innocent people is another hallmark of our criminal law system – some believe that this is more important than convicting guilty people.

Civil law deals with disputes between people or between people and government or companies – cases such as malpractice or failing to keep up your part of a contract. Family law is thought of as a separate system but it is a branch of civil law. Unified Family Courts permit people to deal with both family law matters and criminal law matters that affect the family in the same court.

The philosophy or way of thinking which underlies our current criminal justice system includes the following notions:

- ? Perception: justice must be seen to be done.

- ? Punishment: the process is often about what type of punishment suits the situation.
- ? Deterrence: the system must prevent and discourage people from offending behaviour.
- ? Behaviour change: because the circumstances surrounding criminal behaviour can be a contributing cause, changes to these circumstances may be necessary.
- ? Safety of others is important.

Federal laws are the same for all Canadians and are referred to as being in the federal jurisdiction. Provincial laws guide us in situations that the province has control over - the provincial jurisdiction. The laws are supposed to be the same for everybody, are supposed to be consistently applied and promote fairness.

Concerns Regarding the Justice System

For many years now people in our country and province have been critical of the justice system, and of the courts in particular. The court system is adversarial, pits one person against another and where there are two sides there must be a winner and a loser.

Other criticisms and concerns:

- ? Victims have concerns about not being part of the process and sometimes feel like they are on trial instead of the person who has committed the crime. This has been particularly true for women who are victims of abuse and violence. The system is often very confusing and overwhelming.
- ? Many people think the way the justice system operates keeps people in the system rather than encouraging them to stop committing crimes.
- ? Young people who commit crimes often have deeper needs that are not being met. Many feel the justice system trains them to become better at committing a crime rather than meeting the deeper needs.

- ? The length of time it takes for cases to move through the courts is another criticism often heard about our current justice system. Sometimes it takes years to have a case settled. If you are a separated woman waiting for your share of jointly owned property, this can cause a lot of hardship.
- ? Another concern is the cost of the system. In criminal law this includes not only the individual cost of a lawyer but the costs of police, courts and jails. In civil law you may have a good case but it may cost more to bring the case to court than you would receive if successful.
- ? Many women believe that their reality is not reflected in the laws and in the courtrooms. One example in divorce law is that if you want custody of your children the court will look at how willing you are to have the father see them even if he has not shown any interest in seeing them.

Many things could be done better:

- ? The justice system needs to have more of a balance between the recognition of the victim and their needs and the rights of the person charged.
- ? Family law has to take into account the power imbalance and abuse many women experience at the hands of their partners. The effect this has on the children has to be considered when making decisions about custody and access.
- ? Access to Legal Aid lawyers is very necessary but not always available. Legal Aid must be given adequate funds to meet the need for their services.
- ? Cases need to be dealt with more quickly by the courts in order to avoid having to wait months or years for a case to go to court.

Alternative Measures

As stated in the Introduction to this handbook there is a growing trend towards exploring alternatives to and within the traditional justice system. Alternative measures is one “within” the justice system alternative.

Alternative Measures refer to formal programs, other than court proceedings. They may come into play before a charge is laid against a person or after the charge has been laid. Alternative Measures Programs are designed to balance society’s right to protection with the needs of the person in conflict with the law. Alternative measures often include some form of diversion, a way of pointing offenders in a different direction than the court. The main reason for Alternative measures is to give the justice system a way of dealing with first time offenders that will hopefully stop them from committing future offences. Alternative measures can include community volunteer work, attending a group such as anger management or a meeting between an offender and victim in a mediation.

In Newfoundland and Labrador we have had a Youth Diversion Program for over twenty years. In this program the successful completion of an agreement keeps the offender out of court. The Youth Diversion Program is described in Section 4.

Diversion includes:

- police having a choice not to lay charges
- informal police warnings
- informal police referrals to community based recreation services
- informal police referrals to community based individual or family intervention services
- formal referrals to authorized alternative measures programs

Caution

There is a danger that victims’ rights will not be protected or taken seriously when the police have a choice about whether or not to give an informal warning or to lay a charge. The police have a lot of power in this situation. For example, dating violence is an increasing problem for young women. It is a gender issue and we must not downplay it. By using diversion with this offence, we are sending the message that dating violence is not an issue that demands serious attention.

At this point we do not have an **Adult Alternative Measures Program** in this province. Elsewhere in Canada, such programs offer adult offenders alternatives

to being charged with an offence and going through the formal court system. The alternatives include programs such as victim offender mediation.

There have been other changes “within” the justice system that affect adults who have committed crimes. They should not be confused with Alternative measures which are alternatives to being charged and going to the formal justice system, that is, court. **Alternatives to prison** are implemented after the person has been convicted of a crime.

The alternatives to prison include a spectrum of punishments such as:

- conditional sentencing – where a person is sentenced to serve their time in the community rather than in prison.
- suspended sentence – where a suspended sentence is given and the person is placed on probation and if probation is breached, the suspended sentence can be revoked and another sentence can be imposed.
- ? community service – where a person is sentenced to provide a number of hours, weeks or months of service to a community agency. This is an attempt at paying back or settling a debt with the community.
- options like the electronic release program. Offenders are required to wear electronic bracelets that are monitored. The offender is usually confined to a specific area such as their home. The bracelet lets the authorities know if they have moved outside the area.

Caution

Women have seen alternatives to prison used as punishment for sexual assaults and for domestic violence. This is not good enough. This type of punishment says that these offences are not very serious since they don't warrant prison. This is especially true when the sentences are compared to those given for property offences, like break and entry, which seem to attract stiffer punishments.

This section has introduced some of the alternatives that have evolved within the traditional justice system. The next section elaborates on the major influences that impact on current alternatives and those that are being considered.

Section 3

Major Influences on Alternatives

Costs, alternative dispute resolution and restorative justice are the significant influences on the nature of the alternatives being developed.

- ? **Cost:** The cost of the legal system, both to individuals who are involved in actions in the legal system and to the country, are formidable. The cost of incarcerating people in prison is high - over 17 million dollars per year in Newfoundland and Labrador.
- **Alternative Dispute Resolution:** a continuum of problem solving processes seen as reducing cost and producing more satisfying resolutions and agreements.
- **Restorative Justice:** a way of looking at crime and conflict. When a program or policy is rooted in the restorative justice philosophy the dominant concerns are victim needs, community needs, and offender needs. Some programs are focused on one group's need while maintaining an interest in the other two groups' concerns. In other programs all three are well balanced. Because it is a philosophy or vision of how justice should serve victims, communities and offenders, restorative justice will influence the way a program or policy unfolds.

These latter two influences, that is ADR as a spectrum of collaborative problem solving processes and restorative justice as a vision or philosophy, overlap and appear to varying degrees in alternative options. Sometimes the alternative options are not influenced by either ADR or restorative justice and are driven primarily by cost saving. Sometimes ADR processes work from a restorative justice philosophy and sometimes they do not.

When we consider alternative programs it is important to be aware of the primary motivation and perspective supporting these alternatives.

- For some programs the major impetus is to save money, de-congest the court system or begin intervention with the lowest form of social control.
- For some other programs the interest is in meeting victim needs more effectively.
- Still others want to support offenders returning to communities.

- Some other programs are primarily interested in a process where the people who share the problem come up with the agreement themselves or find a satisfactory way to move forward.

These perspectives affect the design of the alternative program. This handbook suggests how the program design for alternative programs can be made more woman positive.

Restorative Justice

Restorative justice is not a distinct model or system of law. Sometimes it is described as a philosophy and other times as a vision. This makes it difficult to understand. In many respects it is like choosing to look at conflict, crime and community through a particular lens - a lens that keeps in mind the needs of the victim, the community and the offender. Restorative justice encourages dialogue and responsibility for past behavior while focusing on future problem solving and an understanding of the obligations created by the offence. Restorative justice views crime as a violation of one person by another, not simply a breaking of the law.

Restorative justice is based on the following assumptions:

- victims often need an opportunity to speak about their feelings.
- victims need to have power restored to them that has been taken away by the experience of an offence.
- victims need recognition of their pain and suffering.
- victims need to understand the offender's motivation for committing crime.
- offenders often feel the need to make amends.
- offenders often need to have a way back into communities so they do not forever remain outcasts.

There are different kinds of programs based on restorative justice. Most programs in

Canada deal with minor property offences while some deal with more serious crimes like assault.

Community Justice Forums are an alternative measures program based in the restorative justice way of thinking. Both the victim and the offender are asked if they want to participate. If the offender is willing to accept responsibility for the offending behaviour/action then this alternative to the court can be used. Community Justice Forums are used extensively in other provinces and territories in Canada. They are primarily motivated by an emphasis on offender accountability to community and are believed to effectively reduce recidivism.

The **Sentencing Circles** of aboriginal communities reflect core restorative justice principles. They involve the victim, demand that offenders accept responsibility for their actions, decide on ways to repair the harm done and provide an opportunity for reintegration back to the community. Sentencing Circles generally occur after the offender has been to court and has been convicted. Instead of the judge giving a sentence, the offender meets with members of the community and they decide how best he can make amends.

Some restorative justice programs focus on healing, reconciliation or victims' taking power back. In these situations the meeting of victim and offender takes place after the offender has been dealt with by the formal justice system, the courts. The offender may even be in prison. Usually these meetings happen because the victim has made the request. The victim likely feels this is an important step to getting on with her life and not letting the offender or the crime continue to influence her in such a big way.

Those who recommend restorative justice believe it encourages dialogue, a way of talking that helps people understand each other. It encourages the offender to take responsibility for past behaviour and challenges people to focus on future problem solving. In doing these things it helps create an understanding of the obligations created by the offence, how one might begin to make things right with the victim and the community. Community healing is an important part of this way of thinking. Restorative justice views crime as a violation

Caution

Women who are critical of programs which use restorative justice principles see a number of pitfalls. They are concerned that the process will result in the "decriminalization" of criminal acts. They fear that the offences directed to these programs will be those that they have fought long and hard to have acknowledged by the police and courts – such as wife assault, criminal harassment and uttering threats. They question whether proper steps are taken for the safety of the victims and whether the victims are pressured – subtly or otherwise – to take part. Most serious of all is the apprehension that the process will support and sustain power imbalances between the victim and offender.

of one person by another, not simply as a breaking of the law.

Alternative Dispute Resolution

Alternative Dispute Resolution, or ADR as it is often called, is a term that includes a number of different approaches for resolving disputes. “Alternative” refers to resolving disputes without bringing them before the court.

In ADR, the people with the problem name the issues that need to be discussed and work at creating a resolution. They have more control over matters than if a lawyer was negotiating for them or if a judge was making a decision about their problems.

Some ADR programs are based in the restorative justice way of thinking. These programs are concerned about participants’ reaching an understanding of the others’ point of view and experience. There is an emphasis on the relationship between the people involved and a belief that the victim, community and offender must be involved in order to create an opportunity to “make things right”.

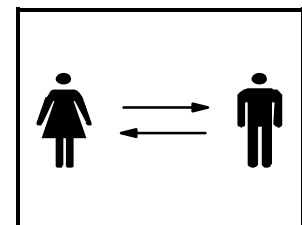
Other ADR programs do not have this concern. These programs focus on problem solving and reaching an agreement in an efficient and low cost manner. Disputes between businesses or between a client and an insurance company might fit into this category.

ADR includes a number of different processes that go from very informal problem solving between people to a more formal arbitration. In all situations the people involved in the dispute choose whether or not they will accept the plan or agreement.

As you move along the ADR spectrum the people with the problem give over the control of the process and the way the issues are named to the third party. For example, if two people have a problem and they work it out by themselves they have total control of the process. If they need a mediator to help them, the mediator is in charge of the process, but the people with the problem still come up with the solutions. If an arbitrator is involved, then the final decision is left to the arbitrator and the people with the problem no longer have control over the final result. The kind of ADR process used depends on the kind of conflict. We describe six types of ADR below.

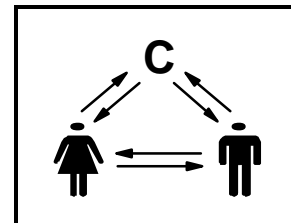
Interpersonal Conflict Resolution or Interest Based

Negotiation: disputing parties agree to solve their problems by talking about their concerns face to face and working together to find a resolution that is mutually acceptable. It is in this form of conflict resolution that the disputants maintain the

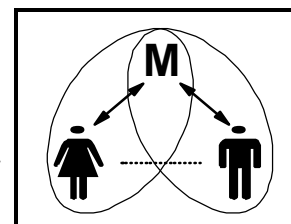


greatest degree of control. This is in essence interest based negotiation.

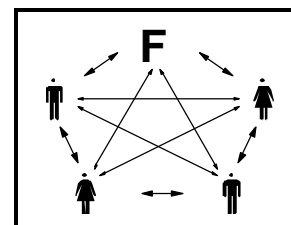
Conciliation: a conciliator is a third party that encourages disputing parties to solve their problem. For example he/she may make suggestions on how to approach the other party to the conflict, help the person understand her or his underlying interests, and/or provide shuttle diplomacy (act as a go-between).



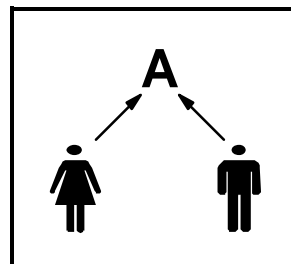
Mediation: mediation is a voluntary, cooperative problem-solving process in which a person acceptable to the disputing parties assists them in clearly defining the issues in dispute and helps them work towards a resolution that is mutually acceptable. In mediation, disputants are no longer in control of the process itself, but maintain responsibility for the resolution of their conflict. Mediation can take place with or without the assistance of lawyers.



Facilitation: Facilitation is a group process whereby the leader (s), often called a facilitator, leads a group through a process that encourages dialogue, understanding and promotes group problem solving and decision making. Family Group Decision Making, Community Justice Forums and Sentencing circles are examples of facilitation.



Arbitration: an arbitrator is a person appointed by two disputing parties to settle their dispute. In arbitration, the third party makes a judgement after hearing both sides of the dispute. Disputants no longer have decision making power.



Court annexed ADR: when one or more processes such as mediation, early neutral evaluation, mini trials and arbitration are incorporated directly into the court process.

In suitable cases court annexed ADR permits the parties to pursue these processes voluntarily. In the absence of the parties' agreement, they could be required to pursue them before returning to the court. At this point court annexed ADR is not widely available in Newfoundland and Labrador.

Concerns regarding ADR

Many advocacy groups are concerned about the implications of community based alternative dispute resolution programs. Those working towards women's equality share these concerns.

- ? Will ADR mean that government is not taking the full responsibility for people's rights that are protected by law?
- ? If communities become involved in providing alternative services, will there be adequate resources and support services? For example will women have timely access to legal aid lawyers to ensure the agreements they reach in mediation are fair and that they are not giving away rights?
- ? Will there be adequate assessment of the cases to ensure that the standards of the program are maintained or will cost cuts continue to take away support services?
- ? Is the government interested in ADR because ADR is better for people and communities or is the government interested because it will save money?

Mediation

Mediation is only one of the alternative dispute processes but it is the one most people will identify with ADR. It is used in many different situations as a useful problem solving process and is sometimes based in the restorative justice way of thinking. This handbook includes a significant elaboration on Mediation because it can be used in many different ways and for different purposes.

What is Mediation?

Mediation is a cooperative problem solving process. The mediator, a person acceptable to the disputing parties, helps them move through a process. During the mediation they clearly define the issues and work towards a solution that is acceptable to them.

The following overview illustrates the various standpoints or essential understandings of the premise of mediation. Given these differences, approaches and

terminology might have different meanings or intentions in different contexts.

Bush and Folger (1996) suggest there are four diverging views that can be best illustrated by describing the story of the development of the particular kind of mediation.

Satisfaction story: Mediation is a tool to reduce court congestion and provide “higher quality” justice in individual cases. Because it is flexible, informal, and based on consensus, mediation can open up the full dimensions of the problems facing the parties. Mediation is not limited by legal categories or rules and can help reframe a contentious dispute as a mutual problem. It can thereby produce creative, “win-win” outcomes that can reach beyond formal rights to solve problems and satisfy the parties’ needs in a particular situation.

Social justice story: Mediation is a vehicle for organizing people and communities to obtain fairer treatment. Unaffiliated individuals are especially subject to exploitation and effective community organization can limit such exploitation and create more social justice. Because of its capacity for reframing issues and focussing on common interests, mediation can help individuals perceive a larger context in which they face a common enemy. Mediation can help strengthen the weak by helping to establish alliances among them.

Oppression story: Mediation is a covert means of social control and oppression. Because it is informal and depends on mutual approval of the process and hence the absence of both procedural and substantive rules, mediation can magnify power imbalances and open the door to coercion and manipulation by the stronger party. Mediator “neutrality” excuses the mediator from preventing this.

Transformation story: Mediation is a way to foster qualitative transformation of human interaction. Because it is informal and consensual, mediation can allow parties to define problems and goals in their own terms, thus validating the importance of those problems and goals and empowering participants who have a greater sense of self respect, self reliance and self confidence.

When is mediation used?

By definition mediation is used only when the parties voluntarily agree to meet to try and resolve differences. It is used in many different situations.

Caution

There are serious concerns about mediation being used as a problem solving process when an imbalance of power and control exists. This is particularly true in situations of family violence and child custody cases. The face to face meeting provides an opportunity to continue the power and control dynamic of abusive relationships.

- ? We often hear about mediators being used to settle labour-management disputes.
- ? An insurance company may hire a mediator to help resolve a claim.
- ? Divorcing or separating couples trying to resolve custody, access, financial support and division of property may use mediation as a mutual problem solving process.
- Families wanting to address problems between family members such as parents and teens may chose mediation to help them.
- It can be helpful for community disputes or problems between neighbours and friends.
- Some employers will offer mediation to solve disputes between co-workers in the workplace.

Mediation is also used in the criminal justice system as an option under alternative measures. Youth Diversion workers may feel it is appropriate for the young offender to meet the victim of the crime. Sometimes the victim is willing to state what they need from the offender. Victim offender mediation is not based on the assumption that both are contributing to the conflict.

Family Mediation

Family mediation generally deals with issues that are subject to family law in the court system. Advocates of mediation stress that problems are best solved within the framework of the family unit. They say the family is capable of solving its own problems and this is a better choice than going to court.

Family Mediation Canada defines family mediation as a non-adversarial, cooperative decision making process in which a qualified and impartial third party, “the mediator”, attempts to help family members resolve disputes by agreement. The resolution is to be voluntary and based upon sufficient information and advice for each party. The goal of family mediation is a fair and workable agreement, not a settlement at any cost.

In St. John’s, couples who are divorcing or separating and sorting out issues of custody, access and financial matters can obtain mediation services from the Unified Family Court. The program is explained in greater detail in Section 4.

What can be mediated?

All matters arising out of the breakdown of a relationship and which would usually be negotiated by lawyers or settled by a court can be the subject of family mediation. These include custody, access, division of property, child and spousal support. However, many programs do not mediate property or financial issues without safeguards to ensure complete financial disclosure.

Caution

Mediation can trivialize family law issues by letting them be resolved in an informal way, with settlements kept private and away from the public record. Keeping family law issues in the public record is important because it increases the chance of fairness and makes sure women in particular get whatever they are entitled to by law. This is especially important for the division of property and other financial matters such as spousal support payments.

One of the fundamental values of mediation is that it is a voluntary process. Many women have felt that family mediation is forced upon them even when violence has existed in the relationship. They feel pressured – both directly and subtly – into participating. The explicit pressure happens because they need to maintain a “friendly parent” role in order to be sure to have custody and/or access to their children. On a more subtle level, it happens when mediation is unconditionally encouraged and presented as a better alternative than court.

What are some features of family mediation?

Although family mediation shares many of the same characteristics as other forms of mediation it does have some unique considerations. A review of the descriptions of four different programs in *Family Mediation in Canada: Implications for Women's Equality* reveals some of these. It also demonstrates the range of available programs.

Access to legal counsel: Most programs give consideration to how best to integrate legal counsel with the mediation process. Some will only go as far as ensuring availability of referral information; others will strongly encourage the parties to have legal advice throughout the process or only before signing a final agreement; some will welcome the parties' lawyers to sit in during the mediation discussions; and some will not proceed to mediate financial issues unless both parties have a lawyer.

Screening mechanisms: Many, but not all family mediation services agree that mediation is not appropriate where a power imbalance or a history of abuse is detectable. In these circumstances, the St. John's Unified Family Court will exercise sensitivity but mediation is not entirely ruled out. A variety of screening tools have been developed and are used to make this determination. The training for and the screening process itself is different from program to program.

Measures to protect the safety of a client: Again, the mediation service may have established practices to minimize risk of physical or psychological harm to the mediating parties. These can include termination of the process by the mediator, different arrival and departure times and setting well defined ground rules about contact.

Confidentiality: Generally, family mediation proceeds with the understanding that it is a confidential process. If the conflict ends up in court, the discussions held in mediation are not usually revealed. Most mediators would make parties aware of this aspect of the process before proceeding.

Victim Offender Mediation

Victim offender mediation is a process which provides interested victims the opportunity to meet the offender in a safe and structured setting. The goal is to hold offenders directly accountable for their behaviour while providing important assistance and compensation to the victim. Victim offender mediation is used mostly for property crimes and is generally based in a restorative justice program.

The Victim:

? must be willing to meet with the offender.

- ? has an opportunity to talk about the impact of the crime on them.
- ? can ask the offender questions they may have.
- ? can also state what they want to see happen as compensation.

The Offender:

- ? has to hear about the impact of what they did.
- ? can take responsibility for their behaviour.
- ? can make a plan for how they can make amends.

The Mediator:

- ? creates a safe place for the victim to meet with the offender.
- ? helps the victim and offender move through a process of discussing the offence.

When are cases referred?

In some programs cases are referred to victim offender mediation as part of an alternative measures program. In this situation a person is charged with a crime and the case is diverted from the court and trial process to a diversion program.

In other programs cases are sent to mediation after the offender has entered a guilty plea in the court. In some programs a victim offender meeting is held after the person has served time in prison. These are often called victim offender meetings or reconciliation.

How is victim offender mediation different from other mediation?

In victim offender mediation the parties are no longer called “disputants” because one has clearly committed a criminal offence and admitted doing so. The other is clearly the victim. The issue of guilt or innocence is not mediated and victims are not expected to compromise and settle for less than they need to address their losses.

Victim offender mediation aims to promote understanding through dialogue. It creates an opportunity for victims to get power back from the situation by addressing their emotional needs and need for information. The aim is also for the offender to take responsibility for their actions - to be held accountable, to develop empathy and to make amends in so far as is possible. It is hoped this will lead to less criminal behaviour in future.

Most victim offender mediation results in a signed agreement. When victim offender mediation is used as an alternative to court and no agreement is reached, the matter returns to the court.

When is it appropriate?

Victim offender mediation is not appropriate for all crimes. In all cases it must be presented as a voluntary choice to the victim. It is appropriate when the offender accepts responsibility.

What have we learned from research about victim offender mediation?

The following research comments come from Dr. Mark Umbreit, Centre for Restorative Justice and Mediation, School of Social Work, University of Minnesota (October 1996).

- Victims of crime who meet with their offender are far more likely to be satisfied with the justice system response to their case than similar victims who go through the normal court process.
- After meeting the offender, victims are significantly less fearful of being victimized.
- Offenders who meet their victim and are held directly accountable for their behaviour are far more likely to successfully complete their restitution obligation.

Caution

Critics say that not enough research has been done about how mediation affects people, the justice system and communities. Advocates for women's rights say that long term monitoring and evaluation must be completed. No research studies have looked at the long term impact of the service. None of the research known to the authors has included a gender inclusive analysis or women's equality perspective.

ADR in an Environment of Systemic Inequality

Women can be involved in ADR in many different roles: as victim, as offender, as neighbour, as mother of a young offender, and as a separating parent. Concerns about ADR fall into five general areas:

- **The inability of the programs to identify and screen out women who have experienced violence or abuse and situations where there is unequal power and control between the parties.** If the woman is intimidated or does not feel equal in the relationship she may not be able to negotiate a fair agreement. Most of the woman positive

concerns about ADR are with family mediation and with victim offender mediation in situations where violence and intimidation may be part of the relationship.

- **The capacity of these services to protect women's rights and entitlements, achieved after many years of fighting for these rights (such as the Matrimonial Property Act).** ADR is usually a private affair and not open to the public view. This can be a good thing. On the other hand it can mean that a woman's rights may not be protected. She may walk away with less than is her right to receive. This could happen because the emphasis is on the two people involved sharing the problem - on equal problem solving. On the surface that sounds fair, however gender analysis reveals that women and men do not necessarily start from the same place (See Section 1 of this handbook).
- **The lack of mediator regulatory and accountability mechanisms.** While there is an increase in alternative dispute resolution programs and specifically family mediation programs, we do not have laws or regulations which demand that mediators have credentials. This raises concerns about quality and consistency of the service.
- **The downloading of government responsibilities to communities without adequate support services.** Many programs use volunteer mediators who have been trained and are willing to do this work. Family mediation programs that are part of the court system generally use paid staff. Often volunteer mediators help individuals resolve problems and represent community commitment and involvement. This in turn keeps the cost of the ADR programs to a minimum. The costs of the legal systems in our country (courts, prisons, correctional services) are very high so this is an obvious benefit. On the other hand it is very easy for governments to take this good will and expect that volunteer programs will provide services that should be publically funded. This is not an idle concern.
- **The impact of the privatization of government responsibility.** Over the past 10 years the government has been giving work previously done by government employees to private organizations. The postal services and Canadian parks are two such examples. This privatization, or giving work that was done by government employees to private companies, has also happened to family mediation services. While the mediators are paid staff, the work is awarded on contract to private firms. This means that making a profit will almost certainly be a higher priority than providing service.

Specific concerns about women participating in family mediation

- Does the woman feel pressured into trying mediation by her partner, or by the court? Is this a truly voluntary process ?
- ? Is there a process through which women become informed about their rights, entitlements and the advantages and disadvantages of dispute resolution processes?
- ? Has the relationship been screened so as to detect a power imbalance that would affect the agreement? Has violence and abuse been ruled out?
- ? If the courts suggest parent education programs prior to divorce - is mediation presented in an unbiased manner or is it assumed that mediation is the best way to proceed with family matters regardless of the situation?
- ? In mediation for divorcing and separating couples, how is full disclosure of financial statements ensured so that a woman can bargain for a fair share?
- Does the woman also have access to a lawyer before she agrees to mediation? Will the lawyer be available during the mediation and after to check the agreement to make sure she is informed of rights and entitlements and that the agreement is fair?
- ? Does the fact that the courts are so slow pressure the women to choose mediation?
- ? If a woman chooses to not continue with the mediation will that affect how the judge may look at the case?
- ? Are the mediator's responsibilities clear? For example is the mediator responsible for making sure the agreement is fair? That the process is both fair and safe?
- Are sufficient records kept such that we can understand the long term impact, success and cost of ADR programs?
- ? How is the program being monitored and evaluated? Will the records kept add to our understanding of the issues that are of concern to women?

These last three pages incorporate views stated in S. A. Goundry et al, 1998, Family Mediation in Canada: A Review of the Literature and Analysis of Data from Four Publicly Funded Canadian Mediation Programs

Section 4

Programs in Newfoundland and Labrador

In the province of Newfoundland and Labrador, we have an alternative measures program for youth but not for adults.

Youth Diversion Program

The only long standing victim offender program in this province is the Youth Diversion Program. Youth Diversion is an alternative measures program within Community Corrections. Alternative measures are formalized community-based programs, which provide a direct alternative to judicial proceedings for some young persons. Referrals to alternative measures will normally be of a pre-charge nature whereby no charge is laid in court. The youth is alleged to have committed a crime, has not been convicted in court, but has usually admitted the offence. If the alternative measures agreement is not completed the young person is then charged in court.

Philosophy

Youth crime has its roots in family, community and in the make up of the young person. Young people and their families need to be provided with opportunities to address underlying causes of the youth's illegal behaviour. Whenever possible they also need to receive services in their home communities that will help them change their behaviour. The family and community must be part of the plan to have the young person take responsibility for their misdeeds and to support them in the future.

The model in this province is one of volunteer community management through 30 Youth Justice Committees. These Youth Justice Committees work in association with Regional Health and Community Services Boards to implement an approved provincial standard as regulated by the Department of Health and Community Services.

Diversion is an alternative to the court for many young persons between their 12th and 18th birthdays accused of a first time offence. The program generally allows the

offender and the victim an opportunity to meet, in an attempt to reach a mutually agreeable solution. The youth has a positive and meaningful chance to take responsibility for their actions through a mediation process which actively integrates the concerns of the victim.

Diversion educates young offenders by helping the young person accept responsibility for the alleged offence and making him or her aware of the impact of the alleged offence.

What are the first steps?

The police are informed when a crime has been committed by a young person. They conduct an investigation, compile a report and send it to the Crown Attorney. The Crown Attorney reviews the case and decides whether or not to divert the case from the courts to an alternative measures program - Youth Diversion. The Youth Justice Committee then decides whether or not the case is suitable for the program based on the criteria.

What conditions must be met for a young person to participate in diversion?

- they must admit responsibility for the alleged offence.
- there must be sufficient evidence to conclude that the offence was committed by the young person.
- the parties involved must have a clear understanding of the diversion program, and the young person must voluntarily agree to participate.

Who is involved?

A diversion worker, employed by Health and Community Services meets with the young person to explain the program. The young person's parents may be with them for the interview. If the young person agrees to participate in the program, he/she will meet with a trained volunteer mediator and sometimes with the victim of the crime. During the meeting they will try to come up with an agreement. The young person can be accompanied by his/her parents, a lawyer or a friend.

What is a Diversion Contract?

The Diversion Contract is a written document which is designed to address the harm done and restore harmony between the parties. The terms of the contract may include any or all of the following:

- a verbal or written apology.
- ? work for a community agency/organization.
- ? work for the victim.
- ? attendance at educational sessions.

? other terms felt to be suitable by the victim and the offender.

For information about Youth Diversion contact your local Health and Community Services Regional Office or Robin Janes, the Provincial Coordinator for Alternative Measures (709-729-5164).

Unified Family Court

The Unified Family Court (UFC) was initially established in St. John's in 1979. It was the first of its kind in Canada. It provides services for all family matters to everyone living on the Avalon and Bonavista Peninsulas.

It is a unique court because it offers a number of services in addition to the ones we associate with court. These include mediation services, preparation of home assessments, provision of supervised access, parent education programs, and support groups for children.

UFC Mediation Services

Mediators employed by Unified Family Court provide free mediation services to people living within the UFC jurisdiction. Most mediation deals with custody and access disputes. Comprehensive mediation is also available for couples who request it.

Pre-mediation Process

Before a mediation proceeds the Mediation Service schedules individual pre-mediation sessions. These sessions are intended to educate the parties about mediation, assess the situation and level of conflict, the history and nature of the abuse and/or intimidation between the parties, power imbalances and the parties' capacity, willingness and readiness to proceed with mediation.

Types of Issues appropriate for family mediation:

Issues to be mediated can include:

- ? with whom should the children live?
- ? how much time should the children spend with each parent?
- ? how will decisions about the children's education, health and other matters be decided?
- ? how should property be divided?

? how much support should be paid?

Philosophy

The court “believes in the ability of parents to remain empowered in the family and to make decisions both short-term and long-term which address the best interests of their children.” Mediation and other methods (pre-trial and settlement conferences) used to achieve agreements are strongly encouraged by the court. In situations of family violence, sensitivity is exercised but use of mediation is not entirely ruled out.

How do you sign up for the Mediation Service?

A person who wants to use the UFC mediation service can call the Court and make an appointment to see one of the mediators. Referrals also come from lawyers, social workers, other professionals and the court itself.

What can you expect in the mediation process?

At the beginning of the mediation process, parents can expect to meet separately with the mediator. After that, several joint sessions with the mediator may be required to make the necessary decisions about the children and/or the financial matters. The mediator acts as a facilitator and assists the parents in this decision making process.

Sometimes the children and/or new partners are involved in the sessions. This would be done only if it was considered appropriate.

Usually the final decisions made about these matters are written in a mediation agreement. The parents are encouraged to have a lawyer review the agreement before signing it.

What is the status of the agreement reached by mediation?

The agreement reached by the parents can be incorporated into their separation agreement or divorce settlement. Until changed, a signed written agreement is a legally binding agreement.

Is the mediation process confidential?

Although full disclosure is required regarding the issues of custody, access, property division and finances, what is discussed in mediation is usually treated as confidential,. Mediators are obligated by law to report disclosure of child abuse to the proper authorities. Mediators will assist the individual in obtaining further assistance when disclosure of domestic violence arises. The confidentiality of the mediation process should be discussed with the mediator at the first meeting.

For information on the services provided by Unified Family Court call 709-729-2258.

Community Mediation Services

Since 1983 there has been interest in a community based mediation service for adults in St. John's. Community Mediation Services(CMS) was established in 1995 as a charitable organization with a voluntary Board of Directors. Since that time CMS has been providing services to St. John's and other areas of the province.

Philosophy

CMS promotes peace and restorative justice within the community by empowering people to settle disputes using peaceful resolution processes. The organization is community based and rooted in transformative and social justice principles.

What services are provided?

With restorative justice principles forming the foundation of its work, mediation and other conflict resolution processes are offered to organizations and individuals through a co-mediation model. In St. John's, the group has been taking referrals from the Community Policing Program, Royal Newfoundland Constabulary. If the strategy is adopted by the Department of Justice, CMS hopes to provide victim offender mediation to certain cases diverted from the court. A similar program is being considered in the Happy Valley Goose Bay area. In addition, mediation is available for people who wish to resolve disputes within community groups, organizations, workplaces and in situations involving housing issues.

Community Mediation Services offers training in Interpersonal Conflict Resolution, and Mediation Skills Levels One and Two at different locations in the province. While some of the services are provided free of charge, other programs are funded by government or other agencies.

Who are the Mediators?

Individuals with an interest in conflict resolution provide CMS services and they come from varied occupational and personal backgrounds. All mediators are volunteers and must meet qualifications established by CMS. These include successful completion of 64 hours of training, apprenticeship involving six to eight mediation sessions with experienced mediators and continuing evaluation.

For more information call 709-729-4169

Glossary

arbitration: where a person is appointed by two disputing parties to settle their dispute.

alternative dispute resolution: an umbrella term used to refer to a variety of ways of dealing with disputes in which the people with the problem have varying degrees of control over the naming of the issues and the process.

alternative measures: refers to formalised programs other than court proceedings which can be used before or after a criminal charge is laid.

conciliation: a conciliator is a third party who encourages and assists disputing parties to solve their problem by making suggestions, helping them understand their underlying interests, and acting as a go-between.

conflict resolution: is a very broad term referring to many forms of dispute resolution.

court-annexed ADR: processes such as mediation, early neutral evaluation, mini trials and arbitration which are incorporated directly into the court process.

custody/access assessment: custody and access assessments are not dispute resolution mechanisms but are reports, generally prepared by a social worker or family counsellor, which assist the judge in determining custody and access issues.

diversion: the process of diverting youth or adults who commit acts that could be considered criminal away from the traditional court system.

family mediation: generally considered to be mediation dealing with issues that are subject to family law in the court system.

gender equality: focuses on achieving equitable outcomes for women and men rather than treating women and men as if they are the same.

gender equity: is the process of being fair to women by compensating for historical and social disadvantages that prevent women from operating on a level playing field.

gender inclusive analysis: a tool and approach that can be used to correct biases that impact on women. It recognizes that to the extent that a policy has an impact on people, it will very likely have different impacts on women and men because they have different roles, expectations and life experiences.

gender neutral analysis: assumes that all people are affected by policies/programs in the same way or that there is a neutral impact on people as a result of a policy/program.

gender vs sex: Sex refers to the biological differences between men and women. Gender refers to the socially constructed roles and responsibilities of women and men.

interpersonal conflict resolution: when disputing parties agree to solve their problems by talking about their concerns face to face and working together to find a resolution that is mutually acceptable.

litigation or court adjudication: Most people refer to this as “going to court”. A judge settles the dispute after hearing both sides, usually through their lawyers.

mediation: a voluntary problem-solving process in which a third party assists the disputing parties towards a resolution that is mutually acceptable to them.

restorative justice: a philosophical framework or way of thinking about crime and conflict rather than a distinct model or particular process. It is usually focussed on the needs of the person harmed.

victim/offender mediation: mediation which provides the victim of crime an opportunity to meet the offender in a safe and structured setting, to hold the offender directly accountable and to address the victim’s needs.

Bibliography

Bush, Robert A. Baruch and Folger, Joseph P. (1994). *The promise of mediation: Responding to conflict through empowerment and recognition*. Jossey-Bass Publishers, San Francisco.

Day, S. and Brodsky, G. (1998). *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs*. Status of Women Canada.

Department of Justice Canada (1998). *Diversity and Justice: Gender Perspectives. A guide to gender equality analysis*. Ottawa.

Department of Justice Canada (1998). *Resolving Disputes: Think About Your Options*. Ottawa

Government of Newfoundland and Labrador (June 1996). *Strategic Social Plan Consultation Paper*. St. John's: Government of Newfoundland and Labrador.

Goundry, S.A. et al(1998). *Family Mediation in Canada: Implications for Women's Equality*. Status of Women Canada.

Hebert, Cheryl (1998). *guidelines for gender inclusive analysis: an integrated approach to policy/program development*. Women's Policy Office , Government of Newfoundland and Labrador.

Newfoundland Continuing Legal Education (1996). *Mediation: The Alternative for Dispute Resolution Workshop Materials*. Canadian Bar Association and the Law Society of Newfoundland

Provincial Strategy Against Violence (1998). *Understanding Violence Against Women: A Peer Education Manual for Preventing Violence Against Women in Newfoundland and Labrador*. Women's Policy Office, Government of Newfoundland and Labrador

Status of Women Canada (March 1996). *Gender Based Analysis: A Guide for Policy Making*. Ottawa: Status of Women Canada.