

Restorative Justice in Cases of Gendered Violence:

Views from Aotearoa Opinion Leaders

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Statement of Originality

This work has not been previously submitted for a degree or diploma in any other university. To the best of my knowledge and belief, the dissertation contains no material previously published or written by another person except where due reference is made in the dissertation itself.

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Abstract

In Aotearoa/New Zealand, restorative justice has been energetically and legislatively institutionalised in both the adult and youth justice systems. Although there are a variety of statutory-based restorative justice practices currently operating in Aotearoa, there is evidence of the same reluctance to using restorative justice in adult cases of sexualised and gendered violence as there is in Australia. Consequently, restorative justice is not used in these cases, with one or two exceptions.

This thesis explores a contentious question: is restorative justice appropriate in cases of gendered violence? There has been considerable debate on the matter around the world. This thesis presents findings from interviews conducted in 2004 with 19 key Opinion Leaders in Aotearoa. It asks under what circumstances restorative justice is appropriate or not, that is, for which kinds of gendered violence. Opinion Leaders were identified as those people well known in restorative justice, and those in policy and victim services positions. The aim of the research is to provide an understanding of the Opinion Leaders' views of the appropriateness of restorative justice for different kinds of gendered violence.

The major finding from the study is that three groups, rather than two, better describe the range of positions. These are the Supporters, Sceptics, and Contingent Thinkers. This typology challenges the typical polarisation of "for and against" camps in the literature. I also found that all Opinion Leaders' viewed child sexual assault the least suitable kind of violence for restorative justice. However, they were more supportive of RJ for partner, family, and sexual violence, relative to their position in the typology. Opinion Leaders' views were shaped by their experiences with restorative justice, their professional position, their views of the cultural relevance of restorative justice, and their views of the criminal justice system. The findings challenge any simple dichotomised understanding on the question of appropriateness for gendered violence, and they create an opening for new ways of thinking about debate in this area.

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Introduction

Are alternative justice forms, and in particular, restorative justice (RJ) appropriate in cases of gendered violence? Specifically, are they appropriate for child sexual abuse (CSA), partner violence, family violence, and adult sexual violence? There is substantial discussion on this question, but relative to the degree of debate and argument, there is a dearth of empirical evidence.

The terms of the debate can be briefly sketched this way. In general, feminists and victim advocacy groups are sceptical of, and at times in strong opposition to, the use of alternative justice practices, such as RJ, for gendered violence. They have highlighted concerns of safety for victims and the potential of re-victimisation in an informal process. As a consequence, cases involving partner, family, and sexual violence have not been included as “eligible offences” in most RJ activities. It is for this reason it has been difficult to gather information on whether or not RJ is appropriate, and specifically for which kinds of gendered violence it is (or is not) suitable.

There are two major ways to think empirically about the lack of information: one is to pursue what actually occurs in RJ practices and how they affect victims; the second is to conduct interviews with people who are familiar with RJ and associated debates, and to gauge their sentiment on this question. My project takes the latter approach and builds on previous research that has explored key peoples’ views of appropriateness. The focus of my study is in Aotearoa¹/New Zealand. Aotearoa is

¹ Aotearoa is the Māori term more commonly used by North Island Māori, meaning “Land of the Long White Cloud” as the term for New Zealand. In order to remain respectful of Māori, who were in Aotearoa long before Pākehā invasion, their term for the Land will be employed from herein.

an especially important place to investigate this question, because more than any other jurisdiction, it has instituted RJ across a variety of locales, and also within the adult criminal justice system (CJS).

My project is part of a larger ongoing program of research, under the direction of Professor Kathleen Daly on the race and gender politics of justice. In March 2004, Daly interviewed 19 Opinion Leaders (OLs) in Aotearoa. In this thesis, I present the first systematic review of the materials and analysis.

This thesis is organised as follows. Chapters 1 and 2 consider theoretical perspectives and associated Māori critiques, and review the debates on the appropriateness of RJ for gendered violence. Chapter 3 outlines the research process. In Chapter 4, I describe a three-way typology of Supporters, Sceptics, and Contingent Thinkers and analyse their views on different kinds of gendered violence. In Chapter 5, I seek to explain the OLs' views with a focus on these major areas: experience with RJ, professional position, and how they judge the strengths and limits of the CJS. Chapter 6 reviews the major findings and discusses their significance and implications.

Chapter 1: Theory and political-legal contexts

Feminist and critical race theories inform this research. I begin by discussing feminist perspectives on gendered violence and Māori critiques of Pākehā² feminism. I then sketch the context of RJ in Aotearoa.

Feminist analyses of gendered violence

In the western world in the late 1960s and early 70s, the second-wave of feminist movement facilitated the “discovery” and thus public awareness of the varied dimensions of rape and partner violence (Brownmiller, 1975; Dobash & Dobash, 1979; Schechter, 1982). The early approaches to understanding partner and sexual violence focused largely on gender and patriarchal relations of power and domination of women in western society. During this early phase, there were varied approaches to understanding gender and gender relations, oppression and inequality, and subsequently, diverse strategies for change, including liberal, radical, Marxist and socialist feminist perspectives (see Daly & Chesney-Lind, 1988). Of these, a radical feminist perspective, which examined men’s relations and control over women and women’s bodies, seemed the most logical way of thinking about women’s experiences of victimisation. Key radical feminist analyses of partner and sexual violence include Brownmiller (1975), Dobash and Dobash (1979), Kelly (1988), MacKinnon (1982, 1983), and Schechter (1982). They emphasised gender as the principle axis of oppression and victimisation of women. For example, Dobash and Dobash (1979) argued that patriarchal ideologies supported and

² Pākehā is the Māori noun for a person of European (or non-Māori) descent (Moorfield, 2003-2008). I have used Māori terms that have been incorporated into the English language in Aotearoa. I do so to be respectful of Māori and their involvement in Aotearoan society. Where Pacific Islander terms are relevant, I have employed these also. In line with Jones, Herda, and Sualli (2000), I have chosen not to italicise Māori and Pacific Islander terms (making them seem foreign), or to include a bracketed translation. Instead, I have presented their meanings in footnotes.

reinforced a gender-based hierarchical system, creating “positions of power, privilege and leadership, and others ... [of] subservience” (p.43).

The 1960s and 70s were largely dominated by liberal, radical, and socialist perspectives. However, this began to change in the 1980s, as differences among women were politicised. This shift was triggered by challenges to white mainstream feminist theory by women of colour (for examples, see Collins, 1990; Crenshaw, 1989). Critiques thus emerged that centred on challenging the representation of feminist thought as concerned solely with gender difference and having a unified understanding of “woman”. It is within this context that critical race theory and Māori critiques of Pākehā feminism arose.

Critical race theory, intersectionality, and Māori critiques

Critical race theory first emerged in the United States, but can be applied to other environments characterised by racial tension and white hegemony. Its major thrust is to challenge the construction and representation of race and racial superiority (Crenshaw, Gotanda, Peller & Thomas, 1995; Delgado & Stefanic, 2000). One stream of critical race theory focuses on the multiple and intersectional influences of class, race, gender, and other social relations and sites of identity (Crenshaw, 1991; see also Wing, 1997).

Crenshaw (1991) employed the term “intersectionality” to identify a specifically black feminist perspective. With this frame of reference, it became clear that liberal and radical feminism drew principally on the experiences and political claims of white, middle-class women (Crenshaw, 1991). A second stream of inquiry

developed largely in neo-colonial societies, like Aotearoa, and it focused on the effect of past and present colonial practices on Aboriginal women or those from cultural minorities.

In Aotearoa, scholars emphasised the double bind of oppression experienced by Māori women, in the same way that Crenshaw (1991) had for black women in the United States. Wāhine³ Māori who initially joined the Pākehā feminist movement became aware that the movement did not speak fully to their realities as wāhine Māori (Mohanram, 1996, 1999). Thus, wāhine Māori critiqued western feminism to highlight the monocultural biases at play when interpreting their experiences (see Evans, 1994; Irwin, 1992; Jahnke, 2002; Johnston & Pihama, 1994; Mohanram, 1996, 1999; Smith, 1992; Te Awekotuku, 1992). They argued that Pākehā feminist interpretations tended to exclude the worldviews of wāhine Māori and the cultural context of their lives. Although the idea of Māori feminism is problematic⁴, it has been conceptualised as an overall framework of harmonious existence within and between people and earth (Evans, 1994). A Canadian Vice-Chief, Mary Jane Jim (2001) evinces a similar conceptual argument, and claims that Indigenous women do not seek sexual or gender equality, as have white feminists, but rather a return to cultural values of egalitarianism, which is the basis for Indigenous women's power.

³ Wāhine is the Māori noun (pl) for “women, females, ladies, wives” (Moorfield, 2003-2008). The singular is spelt the same, but is not accented.

⁴ It may not be possible to have “Māori feminism”, given that feminism is a Pākehā term, replete with Pākehā values. According to Jackson (1995), Māori social principles were related to “harmony and balance within and between individuals, and among the various collectives which made up the community” (p. 247). With this in mind, it could be argued that Māori culture would not have *required* feminist perspectives prior to colonisation.

Feminist and Māori advocacy and activism

The Northern hemisphere story of radical feminist and critical race perspectives is recapitulated in developments that occurred in Aotearoa. Early responses in the 1970s were largely informed by radical feminists, and they centred on self-help interventions and the establishment of safe places and refuges for women experiencing violence (Women's Refuge⁵). There were strong shifts in the 1980s from grass roots movements to more government-led developments. The *Parallel Development* model, established in 1984, was initiated to oppose institutionalised racism and to ensure egalitarianism among different racialised groups in the refuge movement (Campbell, 2000). The disproportionate levels of violence experienced by Māori were key in promoting *Parallel Development* use in the refuge movement⁶. Two wāhine Māori, Roma Balzer and Hinematau Te Hiini, played key roles in developing a Māori presence in the Refuge movement. They organised the first Māori Women's Hui in 1985, and during 1986 three wāhine Māori refuges were established in Auckland, Hamilton and Wellington (Campbell, 2000). These actions promoted the establishment of further refuges to address violence against women of other cultural minorities.

Activists within the women's movement also facilitated the development of specific legislation aimed at women and children affected by gendered violence. The *Children and Young Persons Act 1974*, the *Domestic Protection Act 1982*, and

⁵ Women's Refuge website was consulted in understanding the background and herstory (history) of the refuge movement.

⁶ Today in Aotearoa, levels of *reported* gendered violence in Māori, and to a lesser extent in Pacific Islander contexts, show higher levels of violence are experienced than in Pākehā contexts. For examples, see Glover (1995), Koloto and Sharma (2005), Leibrich, Paulin, and Ransom (1995), Lievore and Mayhew (2007), Mayhew and Reilly (2006), and the Ministry of Social Development (2002).

modifications to the *Crimes Act 1961*⁷ were early examples of such legislation. In the 1990s, further reforms to domestic violence legislation were introduced when the *Domestic Protection Act 1982* was replaced by the *Domestic Violence Act 1995*. The 1995 legislation broadened definitions of violence and domestic violence⁸, and it extended eligibility to seek a Protection Order to include those in close personal relationships with another⁹.

A decade after the feminist movement raised consciousness for violence against women and children, another social movement was borne: alternative justice mechanisms. This movement emerged in the early 1980s from Māori critiques of the cultural integrity of the welfare and justice systems. Specifically, members of the Māori community felt alienated by the Pākehā system and values, a system that continued to remove Māori children from families (see Ministerial Advisory Committee, 1988). Māori activism led to the replacement of the *Children and Young Persons Act 1974* by the *Children, Young Persons, and Their Families Act 1989*. The 1989 legislation placed considerable importance on family decision-making, rather than state involvement alone (Hassall, 1996). The legislation was welfare-based, and sought to address problems for children and young people who were affected by partner and family violence¹⁰. Importantly, the 1989 legislation utilised family group conferencing (FCG) as the primary process for welfare decision-making (see Hassall, 1996; McElrea, 1998). As applied to youth offending, this process was re-branded as RJ in the early 1990s.

⁷ In 1985, s.28(3) of the *Crimes Act 1961* was removed, thereby criminalising rape within marriage contexts.

⁸ See s.3(2) and s.3(a)(b), and s.3 respectively.

⁹ See ss.7-13 for information on Protection Orders and s.4 for definitions of those in close relationships.

¹⁰ See s.6 and ss.15-17.

These two movements – feminist and Māori – had different concerns. One focused on gendered violence, called attention to the hidden victimisation of women and children, and sought effective means of redress. The second focused on alternative decision-making processes, which offered a more family-based and community-oriented form of justice. The tensions and competing forces evident in feminist and Māori perspectives frame the debate on the appropriateness of RJ for gendered violence.

Conceptualising restorative justice

There are varied definitions of RJ: some focus on process, and others on values (Johnstone, 2002; Daly, 2006b). The former centres on how RJ processes unfold; for example, Marshall (1996) defined RJ as a process where all “parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (p. 37). Values associated with RJ include empowerment through active participation of those affected, through speaking and adopting decision-making roles; respect, honesty, and humility; and accountability and responsibility for wrongdoing (Boyack, Bowen & Marshall, 2004; Braithwaite, 1999).

RJ can take different forms and is found in different legal contexts. Practices under the rubric of RJ include conflict resolution, peacemaking (Coker, 1999, 2006), victim-offender mediation¹¹ (Pelikan, 2002), FGC and community conferencing

¹¹ Although victim-offender mediation has been included in this list, RJ is not to be confused or conflated with mediation, as has occurred in the United States (Presser & Gaarder, 2000). While RJ is considered an intervention, mediation is generally concerned with resolving “disputes” (Eaton & McElrea, 2003; Presser & Gaarder, 2000). Morris and Gelsthorpe (2000) rightly add that mediation is an incorrect approach for violence, as “violence is not negotiable and freedom from violence could never be conditional” (p. 419).

(Morris & Maxwell, 2001), safety conferencing (Pennell & Francis, 2005), sentencing circles (Gray & Lauderdale, 2007; Goel, 2000; Levis, 1998), and victim impact panels¹². Daly (2006a) has condensed four sites where RJ is practiced: diversion from court, pre-sentencing advice to the courts, as part of a sentencing condition, and post-sentence. Although definitions vary and practices differ, the general understanding is that RJ is an informal, dialogic process, and normally involves victims, offenders, and their supporters (Braithwaite & Daly, 1994). It is set in motion only after an admission to offending, thus addressing the penalty or post-penalty phases of the sentencing process, *not* adjudication.

Institutionalising restorative justice in Aotearoa

The RJ movement has been part of the social fibre of Aotearoa longer than in other western countries, and there has been substantial legislative energy to institutionalise RJ in youth and adult justice systems (see Appendix A). The state's incorporation of RJ into the mainstream system was partly in response to the political protests of Māori activists, who challenged the widespread monoculturalism and institutional racism in the welfare and justice systems (Jackson, 1987; Ministerial Advisory Committee, 1988). This criticism in the 1980s remains evident today, with critiques of an indigenisation¹³ venture that projected and perpetuated a false sense of biculturalism (Tauri, 1998).

The level of experimentation (and later institutionalisation) of RJ in *adult* contexts in Aotearoa surpasses other jurisdictions. In 1995, the first RJ community group, *Te*

¹² See Daly and Immarigeon (1998) for a historical description of kinds of alternative justice practices.

¹³ In the Aotearoa context, Tauri (1998) defines indigenisation as “an overall *cultural sensitisation* [italics original] of policy and service delivery to Māori” (p. 168).

Oritenga was formed (Boyack et al., 2004); and in 1996, three adult pilot diversionary schemes were launched (see Morris & Maxwell, 2003; Triggs, 2005b). Currently in Aotearoa, there are approximately 30 groups who provide a variety of statutory-based RJ practices. There are four major sites of RJ practices: police youth diversion, FGC, court-referred conferences, and community-managed programs (known also as community panel pre-trial diversion) (Triggs, 2005b). Police diversion and FGC both occur in youth contexts and adopt a welfare approach to justice (Maxwell & Hayes, 2006; McElrea, 1998). By comparison, court-referred and community-managed programs address adult offending.

In these adult contexts of RJ, family and sexual violence cases are not usually dealt with. They were deemed ineligible for the trial of court-referred RJ during 2001 to 2005, and they are typically not used in community-managed programs (Triggs, 2005a, 2005b). This began to change, following consideration by the Rotorua Second Chance and the Wanganui Community-Managed RJ Programmes (see Paulin, Kingi & Lash, 2005a, 2005b). In March 2006, the Ministry of Justice issued a survey to 30 RJ providers, from which 21 of 24 who responded indicated they accepted family violence offences for RJ in the previous 12 months (see Kingi, Paulin & Porima, 2008, pp. 31-39). This degree of RJ activity in adult contexts of gendered violence puts Aotearoa in a unique and pioneering location.

Chapter 2: The landscape of debate

Many feminists and victim advocates argue that it is ill-advised or premature to use RJ for cases of gendered violence. RJ advocates believe, on the other hand that it may be appropriate, particularly in light of the failures of the CJS. The problem with the debate, however, is that we lack empirical information of using RJ in adult contexts of gendered violence.

There are several structural problems and confusion with the debate. First, most advocates and critics have in mind *adult* cases of gendered violence, whereas the sparse empirical literature centres on youth contexts. Secondly, some critics assume that RJ is synonymous with diversion from court, when in fact it is applied to the penalty or post-penalty phase of the justice process. Thirdly, RJ is used only after a person has admitted offending; it does not as yet have a mechanism for adjudication. However, some critics have misplaced concern that RJ is about the mediation of facts (e.g., Hooper & Busch, 1996).

Potential drawbacks

Many scholars have critiqued RJ and discussed its drawbacks for gendered violence. They include Acorn (2004), Busch (2002), Cavanagh, Dobash, Dobash, and Lewis (2001), Coker (1999, 2002, 2006), Cook (2006), Frederick and Lizdas (2003), Daly and Stubbs (2006), Goel (2000), Herman (2005), Hopkins, Koss, and Bachar (2004), Jülich (2006), McGillivray and Comaskey (1999), Presser and Gaarder (2000) and Stubbs (1997, 2002). Their arguments consider the following points:

- The lack of victim safety promised by alternative processes.

- The potential for power imbalances to go uncurbed, and thus reinforcing violent behaviour.
- The potential for offenders and bystanders to manipulate the process.
- Problems surrounding genuine apologies in relationships characterised by violence.
- The ineffectiveness of RJ to change an offender's violent behaviour.
- Victims may be coerced: some may not be able to self-advocate effectively, or they may be persuaded into agreeing to certain outcomes.
- The problematic role and function of the community, where communities may be under-resourced or may normalise and/or reinforce, rather than challenge violent behaviour.
- Family and support people may have divisive and conflicting loyalties to the victim and offender, particularly in intra-familial contexts.
- The symbolic implications of RJ: it appears too lenient and sends the wrong message to offenders (and potential offenders), and the informality of RJ re-privatises gendered violence.

Broadly the critics' concerns centre on engaging an informal, face-to-face process. Specifically, they say that a variety of protections offered by formal mechanisms will be lost, in particular, victims will be inappropriately coerced and their safety compromised. Other scholars and advocates perceive potential benefits of RJ for gendered violence. They identify the limits of the conventional¹⁴ system and see the value of using an informal process.

¹⁴ When speaking of the formal CJS, I interchange terms such as the established, formal, standard, and conventional system. I recognise that institutionalised RJ *is* part of the formal system, although when employing the above-mentioned terms, I am referring to traditional adjudication and penalty setting.

Potential benefits

Those who have discussed potential benefits include Boyack et al. (2004), Braithwaite and Daly (1994), Daly (2002, 2006b), Daly and Stubbs (2006), Frederick and Lizdas (2003), Hopkins et al. (2004), Hudson (1998, 2002), Kingi et al. (2008), Koss, Bachar, and Hopkins (2003), Morris and Gelsthorpe (2000), Morris (2002), Presser and Gaarder (2000), and Umbreit (1997). Their arguments consider the following points:

- The ability for RJ to allow for victim participation in the process and outcome.
- Victims are potentially empowered and/or healed through having a “voice” and sharing their experiences of victimisation.
- Victims may potentially receive an apology, although this has been recognised as laden with problems in gendered violence contexts.
- RJ can promote victim validation, as their experiences are listened to and validated.
- Offenders are required to be responsible for their behaviour, are potentially made accountable, and their violent behaviour is condemned.
- Unlike court settings, RJ allows for a flexible and dialogic environment.
- RJ provides a justice option to those who wish to continue and/or repair a relationship.

Additionally, while critiques focus on the drawbacks of informal processes, those who see the benefits of RJ focus on the limits of formal responses to gendered violence. These include re-victimisation through the court process (Dobash & Dobash, 1992; Eastwood, 2003; Frohmann, 1998) and attrition at many stages of the CJS (Braithwaite & Daly, 1994; Daly & Bouhours, 2008; Frohmann, 1991; Garner

& Maxwell, 2009; Hudson, 2002). Further, Carbonatto (1995) and McElrea (2004) recognise the CJS has been unable to address and/or rectify power imbalances in violent relationships. Advocates of RJ point to these problems, and cite the potential benefits of engaging in an informal process: the greater role of participation, dialogic interaction among participants, and the direct validation that may occur.

Empirical lessons

Ideological and critical discussions, both for and against RJ for adult gendered violence, predominate in the literature. The more sparse empirical literature is of three types. First, some studies are directly related to my thesis, i.e., they cite the views of key people on the question of appropriateness. Second, is a body of work that describes victims' experiences of the CJS and their views of what constitutes justice. Finally, some studies have examined victims' and offenders' experiences of RJ in response to family violence.

Studies exploring key peoples' views

Three studies examine key peoples' views of RJ's suitability for gendered violence. Curtis-Fawley and Daly (2005) conducted an interview study of 15 victim advocates in two Australian states (South Australia and Queensland). Nancarrow (2003¹⁵, 2006) was interested in the conflicting recommendations from two Queensland Taskforces¹⁶ concerning RJ in domestic and family violence cases. She interviewed Indigenous women ($n=10$) and non-Indigenous women ($n=10$) drawn predominantly from the Taskforces. A segment of Kingi et al.'s (2008) review from Aotearoa

¹⁵ In 2003, Nancarrow completed her Master's thesis, and from this, she published an article in an international journal. From herein, I cite the publication, rather than the thesis.

¹⁶ The Aboriginal and Torres Strait Islander Women's Taskforce on Violence and the Report of the Taskforce on Women and the Criminal Code.

examined 24 key informants' views regarding RJ for family violence¹⁷. This study differs from the two others in that the informants were drawn from sites where RJ is being used for family violence. Informants included program providers, victim advisers, judges, police, and lawyers. I review their findings in several key areas.

Understandings of restorative justice. In Curtis-Fawley and Daly (2005), the victim advocates who were most critical of RJ were those who had the least knowledge of RJ. Five of eight of the South Australian advocates had had direct experience, while almost all the Queensland advocates spoke from a principled position, with many linking RJ to mediation practices. The South Australian advocates were generally more supportive than their Queensland counterparts. The informants in Kingi et al. (2008) were highly informed about RJ because they were directly involved in some way. Most (17 from 24, or 70%) were supportive of RJ in family violence cases. The Indigenous and non-Indigenous women in Nancarrow (2006) similarly conceptualised RJ as an alternative to the established system. However, while the non-Indigenous women often conflated RJ with mediation, the Indigenous women identified a wider set of RJ practices and goals.

Views of appropriateness. All three studies examined views on the question of appropriateness. In Curtis-Fawley and Daly (2005), victim advocates believed RJ to be suitable in partner violence cases characterised by verbal and emotional abuse,

¹⁷ It is necessary to view Kingi et al. (2008) as a preliminary study, as they do not provide systematic inquiry and interpretation of their findings. Their study is mainly quantitative with a small sample size, and they provide qualitative quotations to illustrate their points. In many cases, the authors refer to "some" key informants, instead of indicating numbers. In my presentation of their findings, I do refer to numbers of key informants that shared a particular view. On occasion, this figure comes from my interpretations of the findings or the number of quoted excerpts that are provided as examples. The authors do not explore or analyse the key informants' views according to their employment, gender, cultural backgrounds, or any other factors. However, there are some interesting findings that will be presented.

when the victim wished to continue the relationship, and when the victim perceived formal responses as antagonising further violence. However, they viewed RJ as most appropriate in youth offending. Some advocates also viewed RJ as more suitable than established responses for intra-familial and CSA cases. Similarly, Kingi et al. (2008) found that of the 17 informants who supported RJ for family violence, two viewed youth family violence offences cases such as violence towards siblings or parents as appropriate. The informants viewed RJ as particularly suitable for less serious offences, low-end violence, first time offenders, sporadic offenders, and offenders who “showed genuine remorse and accepted responsibility” (Kingi et al., 2008, p. 84). Most informants also viewed RJ as appropriate in cases with an ongoing relationship.

Nancarrow (2006) conceptualised views of appropriateness differently, and asked Indigenous and non-Indigenous women what their preferred justice response was. She found a “racialised split” throughout her findings, with the sharpest differences on women’s views of the CJS. While most Indigenous women (six of ten) favoured RJ over established responses, they believed that some gendered violence cases were inappropriate. These included serious assaults, domestic homicide, and CSA with adult offenders. However, even in the offences considered unsuitable, they saw the possibility of RJ functioning in addition to the CJS. In contrast, non-Indigenous women preferred criminal justice responses, and viewed RJ as supplementary and able to manage only non-violent elements of gendered violence.

On the question of inappropriateness, people in all three studies considered partner violence as unsuitable, particularly because of ingrained patterns of violence. Sexual

violence was thought to be unsuitable by the advocates (Curtis-Fawley & Daly, 2005) and informants (Kingi et al. 2008). However, some qualified their opposition by referring to specific cases, such as domestic homicide (Nancarrow, 2006) and rape (Kingi et al., 2008). In addition, certain contexts were viewed as less suitable for RJ. Informants in Kingi et al. (2008) believed situations characterised by co-dependency, coercion, and/or intimidation, and those where breaches of protection orders had occurred, as inappropriate for RJ. Thus, although there appeared to be initial support for RJ, this was clearly qualified by the nature of the offence, the offender's criminal history, and the victim's circumstances.

Perceived benefits of restorative justice. Across the three studies, reservations of RJ were expressed, but benefits for victims were also noted in these areas: victim and offender participation, the potential for relationship repair, and the informality of RJ. Most victim advocates in Curtis-Fawley and Daly (2005) saw beneficial aspects for victims, including victim participation, voicing their experiences and being heard, having an opportunity for healing, and feeling empowered by a decision-making role. They also viewed RJ positively in light of offenders' acknowledging and taking responsibility for their abusive behaviour. Likewise, informants in Kingi et al. (2008) noted that victims had a voice and offenders were made to examine the effect of their violent behaviour.

With respect to relationship repair, both Indigenous women and non-Indigenous women in Nancarrow (2006) identified RJ as able to restore relationships. Likewise, Kingi et al.'s (2008) informants viewed RJ as an appropriate response for those victims wishing to remain in relationships. However, victim advocates in Curtis-

Fawley and Daly (2005) were of two minds about RJ's potential for relationship repair: on one hand, they saw the benefits of providing alternatives for victims, yet they also viewed reconciliation as promoting further victimisation.

The informality of RJ was considered by all three studies. Informants in Kingi et al. (2008) saw their local RJ programs as providing an informal setting where victims and offenders could identify the broader context of violence, and promote the involvement of the local community. Likewise, Indigenous women in Nancarrow (2006) considered the informality of RJ as potentially beneficial for community empowerment and as "ownership" of justice. Victim advocates in Curtis-Fawley and Daly (2005) saw RJ as contributing an alternative to the CJS, and as a potentially effective parallel mechanism to the conventional system.

Perceived drawbacks of restorative justice. Drawbacks were identified across the studies with major problems identified: re-victimisation and safety, power dynamics, and symbolic implications of RJ. The broader feminist critical literature calls attention to the fact that informal and face-to-face processes may lead to victim's re-victimisation and lack of safety. In Curtis-Fawley and Daly (2005), eight of 15 victim advocates were concerned with the potential for victims to be re-victimised, especially in a face-to-face encounter. Although Kingi et al. (2008) did not specifically investigate this point, two informants were quoted who stated opposition to RJ in family violence cases because of its potential to re-victimise (see p. 83).

Linked with re-victimisation, the lack of safety promised by RJ was also considered. Non-Indigenous women in Nancarrow (2006) stressed that safeguards be established to “protect women from being coerced ... or agreeing to participate when they had not had the opportunity to make a genuinely informed decision” (p. 98). In Kingi et al. (2008), two of 11 informants rated their local programs as ineffective in keeping the victim safe during the meeting, while three from ten saw their local program as ineffective in addressing the ongoing safety of victims¹⁸ (see p. 88). It is not possible to determine why, or on what basis, informants thought their programs were unsafe, and it is quite concerning that this is not further investigated. This finding does, however, suggest that while informants were supportive of RJ, questions were raised about the level of safety for victims.

With respect to entrenched power dynamics, most victim advocates in Curtis-Fawley and Daly (2005) believed that it would be difficult to manage these in an informal process. However, two took a contrary view, believing that RJ had the potential to address these dynamics. Informants in Kingi et al. (2008) viewed RJ as more suitable for cases involving early, rather than later (or entrenched) patterns of offending. In sum, there appears to be no settled views about when power dynamics may potentially be difficult for victims.

Critics often suggest that RJ may appear to be too lenient to offenders, and thus it may reinforce the offender’s belief that their behaviour is justifiable, or worse still, not wrong (Daly & Stubbs, 2006). Six advocates in Curtis-Fawley and Daly (2005)

¹⁸ The way that Kingi et al. (2008) have presented the data does not allow the reader to determine whether those informants who rated their local program as ineffective in keeping the victim safe during the meeting, were the same informants who rated their local program as ineffective in addressing the ongoing safety of victims, *or* whether they are different informants altogether.

specifically used the expression “soft-option” to describe the problem that RJ could be perceived as a lenient approach to gendered violence. Likewise, of ten informants in Kingi et al. (2008) who recorded whether they viewed RJ as soft or harsh, three thought RJ agreements were *soft*¹⁹. A related problem is whether RJ conveys a social message of condemnation. Nancarrow (2006) found that Indigenous women believed that both RJ and the CJS could be effective in publicly denouncing domestic and family violence, but the non-Indigenous women could only see the formal system as being able to accomplish this goal.

In sum, from Curtis-Fawley and Daly (2005), we learn that different views are based on experience and familiarity with RJ, with the more knowledgeable people seeing the value of RJ. From Nancarrow (2006), we see a “racialised split” with more Indigenous women seeing the value of RJ than non-Indigenous women. Both studies suggest that many people are not precisely sure of what RJ is. Applying these insights to Aotearoa, I expect to see a more informed set of viewpoints about RJ, because the social and legislative support for RJ is greater in Aotearoa than Australia. It is unclear whether there will be racial differences in viewpoints. From Kingi et al. (2008), we find that informants view RJ more or less appropriate, depending on the type of offence, offence context, and the offender. All three studies suggest that peoples’ views about RJ vary and are conditional on the individual contexts of any given case. This thesis focuses on how (and why) the OLs view the appropriateness of RJ for different kinds of gendered violence, and thus extends the research literature.

¹⁹ Three others believed RJ agreements were *harsh* and four as *neither soft nor harsh*.

Studies exploring victims' views of justice

A second body of research seeks to understand victims' conceptualisations of alternative and established justice mechanisms for gendered violence. Several studies have examined this question. Two studies probed women's views of alternative justice in Canadian First Nations contexts (McGillivray & Comaskey, 1999; Stewart, Huntley & Blaney, 2001). Two others, by Herman (2005) and Jülich (2006) analysed survivors'²⁰ views of RJ.

McGillivray and Comaskey (1999) interviewed 26 First Nations women who had experienced long-term partner violence. The authors were interested in exploring the women's views on formal responses to partner violence compared to diversionary schemes²¹. Two general findings emerged, which together give a mixed picture. Nineteen of 26 women were somewhat interested in diversionary responses, but contingent on factors such as ensuring safety, the kind and severity of offences, who is present during the process, and protections from an offender's potential to manipulate outcomes (see pp. 128-9). They also felt limited by the lack of resources and community politics within their reserve communities, and viewed "community-based dispute resolution as partisan and subject to political manipulation" (p. 143). At the same time, most (20 of 26) women favoured the formal system, specifically regarding symbolic implications and safety through imprisonment.

Stewart et al. (2001) sought to understand how rural and urban First Nation women experienced violence and the implications of using RJ. The authors conducted focus

²⁰ Both authors used the term "survivors" in presenting their findings, thus I use that term here.

²¹ In this study, the authors spoke of alternative justice as diversion. Perhaps because the authors used this terminology, four women specifically said that it was a "too lenient" form of justice, and four others re-stated that imprisonment through the formal system was better (see p. 127).

groups in five communities in British Columbia; and they interviewed women in seven communities, including follow-up interviews with those in the focus groups and those engaged in anti-violence work. Participants acknowledged they did not have a good understanding of RJ, and thus they felt disadvantaged to meaningfully participate in discussions of RJ. However, they remained concerned with the ability of alternative practices to provide safety to women and children and the lack of accountability and structure in existing alternative models. They pointed out that alternatives appear offender-focused: “the majority of support goes to offenders along with the prevalence of victim-blaming mentalities” (Stewart et al., 2001, p. 39). In addition, the women considered meanings of “community” and “culture” in alternative practices²², and they believed that successful alternative justice presupposes a functioning or healed community. Moreover, they were fearful that RJ would not be equipped to address the “underlying power inequity rife in communities from years of oppression” (p. 39).

Herman (2005) interviewed 22 survivors of sexual and domestic violence and sought to identify whether they viewed criminal justice responses or RJ as representative of justice²³. Herman (2005) found that survivors who had experienced the CJS were shocked to discover “how little they mattered ... [and were] useful only as the instrument of the state’s agenda and unworthy of any particular consideration in their own right” (p. 581). Further, they did not fully endorse either retributive or restorative models. Rather, they envisioned justice as a combination of retributive

²² The First Nations women from McGillivray and Comaskey (1999) also considered the meaning of “community” in neo-colonial environments. This is consistent with other analyses of alternative justice in Aboriginal contexts (see Coker, 1999, 2006; Goel, 2000).

²³ Herman (2005) conceptualised the meaning of justice through the following set of questions: “How can the truth be made known? How should offenders be held accountable? What is appropriate punishment? Can the harm be repaired and, if so, what would be required to repair it? How can victims and offenders go on living in the same community? Is reconciliation possible?” (p. 571).

and restorative ideas: retribution was evident in the survivors' wish to expose and disgrace their abusers, and at the same time, they conceptualised justice as their own individual healing and community re-integration.

Julich (2006) interviewed 21 historical CSA survivors in Aotearoa on their experiences of conventional justice and their views of RJ. Julich (2006) found that survivors had little confidence in established processes, and they viewed RJ positively in light of its potential for healing and recovery. Survivors expressed a desire for a justice process with greater participation and validation. As such, they seemed to describe a process that reflected RJ. However, they were uncertain that RJ would be able to effectively deal with historical CSA cases. Their concerns stemmed from entrenched power dynamics, the level of control in abuser/survivor relationships, manipulation of bystanders, the ability of the facilitator to manage dynamics, and scepticism that the process would be victim-centred.

From both studies, we learn that survivors of gendered violence were traumatised and unsatisfied by their experiences of conventional criminal justice responses. They looked to other forms of justice that might respect and integrate their experiences and voices. However, their perceptions of RJ were ambivalent: although cautiously supportive of RJ, their views were characterised with much uncertainty. Survivors in both studies pointed to a paradox at the heart of informal responses: family and community members who may be present in RJ meetings were precisely those who were unable to intervene or fully condemn the offender's violent behaviour, or as Julich (2006) points out those present would be members of

the “very community that was apparently powerless to prevent or intervene in the sexual victimisation” (p. 134) when the survivor was a child.

Studies of participants’ experiences of restorative justice

Two studies have emerged recently from Aotearoa that examine participants’ experiences of RJ for domestic and family violence (Kingi et al., 2008; Tisdall, Farmer, Robinson, Wells & McMaster, 2007).

Kingi et al. (2008) asked 20 victims and 19 offenders about their experiences of RJ for family violence, and interviews were drawn from five urban RJ provider sites²⁴. Most victims (16 of 20) were female and most offenders (14 of 19) were male. Almost half of the victims, and one-third of offenders were Pākehā²⁵. A range of relationships was evident, including current or ex-partners, siblings, children, in-laws and parents; and offences were predominantly assaults. This study, which initially appears to have some promise, was disappointingly realised in the report. The authors do not give a careful, systematic analysis of the interview findings. Rather, from my reading, they draw to hasty conclusions and gloss over major concerns found. I focus here on two areas: participants’ perceptions of safety, and their views of the appropriateness of RJ for family violence.

Safety was explored in several ways. In asking participants about the preparation they received for the RJ meeting, six victims and three offenders recalled that they

²⁴ The Nga Whare Waatea Trust in South Auckland, the Horowhenua Restorative Justice Programme in Levin, Nelson Restorative Justice Services located in Nelson, Restorative Justice Services in Christchurch, and Project Turnaround in Timaru.

²⁵ The cultural backgrounds of participants were as follows: Pākehā victims ($n=9$), Pākehā offenders ($n=6$), Māori victims ($n=7$), Māori offenders ($n=8$), Pacific Islander victims ($n=1$), Pacific Islander offenders ($n=3$), other victims ($n=3$), and other offenders ($n=2$).

had been asked if they had safety concerns, and eight offenders were told about safety “ground rules” for the meeting. Although for most victims, safety during the meeting was not a concern, two victims said they felt unsafe. Another two victims said they felt *safer* as a consequence of participating.

With reference to the appropriateness of RJ for family violence, most offenders²⁶ and all victims said that they viewed RJ as appropriate. However, Kingi et al. (2008) note that an unspecified number of victims qualified their support, and they provided quoted material from four victims. These victims thought there should be increased security for more violent offenders; that RJ was more suitable for those in the relationship at the time or just shortly out of it; and that RJ can assist families who want to be helped. In brief, the authors conclude that victims and offenders broadly thought RJ was an appropriate response. However, they do not analyse their findings according to types of offences, kinds of relationships, gender, race, or any other factors; nor do they give an indication of the precise frequency of responses. This study therefore should be viewed as preliminary at best.

Tisdall et al. (2007) reviewed the Mana Social Services (herein termed Mana) and conducted interviews with participants who experienced pre-sentencing RJ²⁷ for domestic violence cases. They interviewed eight victims and six offenders (of which five were couples²⁸). The authors provide little information about the offenders’ demographics and do not provide *any* demographics of the interviewed victims.

Mana is in the Rotorua district, a location where approximately 35% of people

²⁶ The authors do not provide numbers to indicate the level of support or level of qualified support.

²⁷ Because Mana offers pre-sentencing RJ, a guilty plea is necessary for RJ to occur (see pp. 38-42 for a detailed explanation of the process).

²⁸ In the methodology section of the report, the authors indicate that four of the participants were couples (see p. 33). However, throughout the report, they say there was five couples.

identify as Māori. Mana is founded on kaupapa²⁹ and tikanga³⁰, and the majority of its clients identify as Māori. All but one male offender interviewed was convicted of assaulting a female, and the physical violence was considered moderately severe, but stopped short of “creating lasting injury” (Tisdall et al., 2007, p. 69). Like Kingi et al. (2008), the interviewed material in this report is not carefully or systematically analysed³¹. The authors conclude that the RJ meetings appeared to “have been valuable and positive for most victims and offenders” (p. 70), yet this finding should be viewed as preliminary.

I present one set of findings of relevance: the safety of victims. All the victims indicated that they felt safe during the conference held by Mana. Three factors contributed to their feelings: the public or neutral venue, facilitation by a skilled and authoritative figure, and because their partner was sober. However, one victim reported that there had been a further incident of violence after the conference. Linked with safety, the authors found that an unspecified number of offenders engaged in minimising behaviours and denial, and a number of these victims³² consented to the less serious version of the violence. Although the victims attest to feeling safe, the complex power dynamics of family violence remain apparent. It is concerning that the authors did not pursue this, or other problems. In reading this report, I felt the authors provide a glowing endorsement of the appropriateness of RJ without critically examining participants’ concerns.

²⁹ In this context, kaupapa is the Māori term for “Māori ideology” (Moorfield, 2003-2008).

³⁰ In short, tikanga means culturally oriented. The dictionary meaning of tikanga refers to the Māori noun for “correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, reason, plan, practice, convention” (Moorfield, 2003-2008).

³¹ In addition to reporting different numbers of couples, the number of victims interviewed is eight in some places, but nine in others.

³² Tisdall et al. (2007) do not say how many victims accepted their offenders’ minimisation of the violence.

In sum, Kingi et al. (2008) and Tisdall et al. (2007) are among the first to examine adult victims' and offenders' views of experiences of adult RJ processes and outcomes for gendered violence. The authors conclude that victims and offenders of family violence who have experienced RJ are broadly supportive of RJ as conducted by their local providers. However, these studies must be viewed as preliminary and with caution, because they do not present the findings with precision, nor do they critically assess their claims.

This chapter has reviewed the empirical literature on RJ and gendered violence. Debate is largely skewed towards principled positions, i.e., authors provide arguments for or against, but they are not based on actual cases or victims. The sparse empirical literature that does exist, suggests a more complex picture. Specifically, we see different viewpoints, depending on types of offences, participants' experiences of RJ, and their cultural background. We also see recurring concerns (such as victim safety), contingencies on when RJ should, or should not, be used, and views formed according to the perceived strengths and weaknesses of the CJS. These areas of debate and the reasons for different views are the focus of this thesis.

Chapter 3: The research process

This chapter outlines how the research was carried out. I describe the project context, interview instrument and process, sampling strategy, ethics, and the analytical strategies employed. I conclude with a discussion of the strengths and limitations of the study design.

Context

This interview study is part of a broader program of research, which is investigating the appropriateness of alternative justice mechanisms in cases of gendered violence. Among other areas of investigation (see Daly 2006a; Daly, Bouhours & Curtis-Fawley, 2006), this study builds on previous studies examining the views of key people in the RJ and gendered violence field.

Steps taken in the research process

The design of the research went through several phases in late 2003 and early 2004. The early phase involved conversations between Curtis-Fawley and Daly on interview questions and sampling. It was decided to examine different kinds of gendered violence and to identify opinion leaders, rather than victim advocates, for interview. During January and February 2004, Daly developed a sampling frame of individuals who would be appropriate to be interviewed (see below under sampling). Daly conducted the interviews over a concentrated period of time in Aotearoa during March 2004. My honours thesis presents the *first* analysis and interpretation of the interviews, and thus it is an original contribution.

The main objective of this research is to increase our understandings of the context and politics of debate concerning the appropriateness of RJ for *adult* gendered violence in Aotearoa. The interview schedule (see Appendix B) had six main sections:

- Demographics (including work history and roles).
- A continuum for the OLs to place their views regarding the appropriateness of RJ.
- OLs' views on the appropriateness of RJ in youth cases.
- OLs' views on an ideal justice system (e.g., changes or improvements to the CJS or an ideal way to use RJ for gendered violence).
- OLs' views on the symbolic politics of RJ for gendered violence. First, whether or not RJ re-privatises justice and thus undermines the legal gains of feminists and victim advocacy groups. Secondly, whether or not RJ is, or appears to be, a "soft option" in responding to gendered violence.
- Why family and sexual violence cases were not included in the adult conferencing pilot established in 2001.

This thesis will focus on a portion of these interview items. Specifically, I analyse the OLs' views of the appropriateness of RJ in different kinds of gendered violence, and how and why they came to have these views.

Sampling frame

In early 2004, Daly spoke with and emailed key people in Aotearoa with the aim of developing a list of opinion leaders on RJ and gendered violence. This list was created through purposive sampling, using the "maximum variation" (McMillan & Schumacher, 2006, p. 320) strategy, and aimed to identify people with a range of

views on the matter. Because the sample was not random, percentages of the OLs cannot be generalised.

Potential participants were identified through seeking the advice of key academics, researchers, and people in policy positions in the justice domain in Aotearoa³³. This activity generated the names of 58 people with varied views on RJ. This constituted the sampling frame, and it included people of a range of experiences and work positions: in government and policy, legal officials, victim support groups, the faith community, and RJ facilitators and practitioners. Academics were generally excluded from the sampling frame because their views were accessible through the published literature.

With several iterations with a series of people, it emerged that particular people were more often considered opinion leaders, and thus a smaller sample was selected and honed from the sampling frame. The identified Opinion Leaders (OLs) were approached by email and all agreed to be interviewed. The final sample had 20 individuals, 19 of who were designated as key OLs. One interview was conducted as background to understand why family and sexual violence cases were excluded from the adult conferencing pilot. The 19 OLs were considered to be individuals with well-formed views, who would reflect diverse positions.

The sample

Ten OLs were women, and nine were men; their cultural backgrounds included 15 Pākehā (eight women and seven men), three Māori (two men, and one woman), and

³³ See Appendix C for the letter of introduction that was emailed to contacts to identify potential participants.

one Tongan woman. Ten OLs resided Wellington, while nine in Auckland. Table 1 shows the sample's demographics.

Table 1

Opinion Leader Demographics

Opinion Leader	Location	Gender	Cultural b/ground	Professional affiliation
# 1	Wellington	Female	Pākehā	Government official
# 2	Wellington	Female	Pākehā	Government official
# 3	Wellington	Male	Pākehā	Victim services
# 4	Wellington	Male	Māori	Victim services
# 5	Wellington	Female	Pākehā	Victim services
# 6	Wellington	Male	Pākehā	Victim services
# 7	Wellington	Male	Pākehā	Government official
# 8	Wellington	Female	Māori	Victim services
# 9	Wellington	Male	Pākehā	Victim services
# 10	Wellington	Female	Pākehā	Government official
# 11	Auckland	Male	Pākehā	RJ worker
# 12	Auckland	Female	Pākehā	RJ worker
# 13	Auckland	Male	Pākehā	Legal official
# 14	Auckland	Female	Pākehā	Legal official
# 15	Auckland	Female	Pākehā	Victim services
# 16	Auckland	Male	Māori	RJ worker
# 17	Auckland	Male	Pākehā	Faith-based community
# 18	Auckland	Female	Pākehā	Victim services
# 19	Auckland	Female	Tongan	Faith-based community, RJ worker

Their professions at the time of the interview were government officials ($n=5$), victim services ($n=7$), faith-based community ($n=2$), legal officials ($n=2$), and RJ

workers ($n=4$)³⁴. The length of time in the position at the time of the interview averaged about eight years. The level of formal education was generally high, with participants' highest as follows: Masters ($n=9$), Bachelor Degree ($n=6$), Diploma ($n=2$), PhD ($n=1$), and one having no formal certifications. Their areas of study included social work, criminology, law, education, business, arts, theology, and history.

Thirteen had had previous work experience with gendered violence, and seven had had previous (and current) work experience in facilitating RJ. One OL had had no experience working in either gendered violence or RJ contexts, while another respondent had had work experience in both. In addition to the seven OLs who had direct professional facilitation experience, a further six had less direct experiences with RJ, including observations, through support, and close associations with the operation and management of RJ. Except for one interviewee, all the OLs had direct contact and experience with gendered violence victims. On balance, the sample had a high level of familiarity and understanding of RJ practices in Aotearoa.

In analysing the interviews, the OLs were referred to by an identification number. However, it soon emerged that some OLs articulated positions in an effortless and crystallised manner, and others gave highly complex, passionate and spirited views. To draw attention to these nine individuals, I decided to give them pseudonyms. This was not meant to diminish the views of others, but rather to create a personal and lively dimension to the findings and to present ideas from those OLs who had particularly solidified views.

³⁴ One respondent gave two separate professions at the time of the interview.

The interview process

Ethics

Interviewees were given an Information Sheet (see Appendix B for the consent package) that outlined the scope of the study, confidentiality provisions, and voluntariness of being involved in the study. They were then asked to sign a consent form. De-identification of the OLS occurred with the designation of an identification number, and thus their privacy and confidentiality was maintained throughout the undertaking of the project.

The interview

All but the final interview was conducted face-to-face in Aotearoa during March 2004. The last interview was conducted by telephone in April 2004, and a copy of the interview instrument and consent package was sent to the person in advance of the interview. The 19 interviews varied in length from 30 minutes to 125 minutes, with an average time of approximately 75 minutes. The interviews were professionally transcribed.

The question of the appropriateness of RJ for gendered violence was approached in the interview by the use of a continuum, on which OLS placed their views (see the last page of Appendix B). It was made clear to the respondents to reflect on *adult* offending, not youth. Furthermore, the respondents were to focus on the contexts where RJ is practiced in adult cases. The continuum question was asked early in the interview, following the section on demographics and work history. Although OLS had the choice of responding according to their own, or their organisation's views, they chose to speak from their personal viewpoints. The continuum utilised

percentages, which permitted the OLs to place their views of the suitability of RJ in different kinds of gendered violence, ranging from zero, to 25% or more. Although a challenging instrument to some OLs, the continuum proved a useful visual tool for them to orient themselves.

For the types of gendered violence, sexual violence was defined as adult offenders and victims, and CSA was defined as an adult offender and a child victim. Family violence was defined as including spousal or partner violence and other types of victim-offender relations (e.g., physical abuse/neglect in child and elder contexts and sibling violence³⁵). Throughout the transcripts, I found that the interviewer (Daly) often needed to re-focus the OLs to consider a particular kind of gendered violence and to steer their views towards the two legal contexts where RJ is practiced, as opposed to speaking generally. However, some OLs at times resisted such guidance or wished to place themselves between the categories on the continuum. The continuum question area raised ample discussion and comprised the largest portion of interview time.

Reflection and analytical strategies

Early in my honours year, I received a total of 437 pages of raw interview material, yet to be analysed. Sifting, reading, examining, and re-examining the materials was time and energy intensive. Because I was not involved directly in the interview process itself, I did not “know” the interviewees, except as voices on the tape or words in the transcript. At one level, this was strength, as I had the opportunity to

³⁵ In fact, OLs’ focused on partner violence, although some spoke to extended family violence such as sibling violence.

independently assess and interpret the OLs' views. At the same time, I felt outside of the conversation and generally external to proceedings.

I analysed the transcripts with content analysis, using techniques outlined by Berg (2007) and Neuman (2006). I initially read the interview materials with an open-coding approach. This soon shifted to more targeted coding, including minute coding and attention to theoretical and empirical triggers. Throughout all passes of coding, both manifest and latent content were examined. I began to observe the emergence of themes from my initial immersion into the data, and categories and concepts were clustered through axial coding. I found that the process of thematising continually evolved, and occurred through the use of inductive and deductive techniques. I encountered two related problems during data reduction and analysis. First, I felt obliged to holistically understand the interviews, which were at times quite complex, and thus much time was spent in carefully examining and interpreting the material. Secondly, OLs' views on the question of appropriateness were interspersed throughout the interview, and were at times difficult to decipher and/or categorise.

My principle focus of analysis was the OLs' views of appropriateness. Many themes surfaced from this seemingly focused section of the interview. From these thematic categories, patterns and meanings emerged, which I then related to the empirical literature and the research goals. Throughout the analytical process, I sought to determine the ways in which support or opposition materialised in the interviews. Specifically, I was interested in understanding why OLs adopted positions, and whether there was variation in different kinds of violence. Additionally, I was

interested in appreciating and documenting the complexity and subtlety in the ways in which OLS responded. I was also curious to determine whether there were racialised elements to the OLS' responses, and I was particularly attentive when this emerged in the materials. As will become apparent in the next empirical chapters, the OLS challenged me with a range of views that I had not expected.

Strengths and limitations

The strengths of this study lie in providing a detailed and rich account of OLS' views, and how and why they came to those views. The variation in OLS' perspectives by occupation, gender, and cultural background is also examined.

One study limitation concerns the sample. It is a small number of cases, and it would have been preferable to interview more Māori and Pacific Islanders. Because a purposive sample was used, I cannot generalise from the sample in producing estimates of those for or against RJ. Rather, the focus was on exploring the spectrum of views on the question of appropriateness, and how and why OLS came to those views. A second potential limitation is that the interviews were conducted in March 2004. It could be argued that the level of the discussion and implementation of RJ for gendered violence has since changed. However, countering this, there have been few changes in the environment of RJ since 2004³⁶ and the tenor of the conversation regarding RJ for gendered violence has not radically altered.

³⁶ Legislative changes relating to RJ mostly occurred in 2002 (see Appendix A). There has been little research that documents the developments of RJ for gendered violence in Aotearoa. However, some providers are conducting RJ for family violence, e.g., Mana Social Services (Tisdall et al., 2007). The Ministry of Justice issued a survey to RJ providers, and found that 21 (of 24 who responded) indicated that they had accepted family violence offences for RJ from March 2005 to March 2006 (see Kingi et al., 2008). This suggests that although RJ is being used in some cases, it is somewhat under the surface and not entirely part of public discourse.

Chapter 4: What are the Opinion Leaders' views?

In this chapter, I present OLs' views of the appropriateness of RJ in specific types of gendered violence, i.e., partner and family violence, adult sexual violence, and CSA³⁷. From an analysis of OLs' responses to the continuum, a typology was identified. I found that contrary to the polarised "for and against" debate in the literature, three groups of OLs emerged: what I term Supporters, Sceptics, and Contingent Thinkers. Furthermore, I found considerable complexity of viewpoints in each group.

Supporters' views

Nine OLs were classified as Supporters. Their views can be characterised by four points. First, they broadly supported RJ for gendered violence. Secondly however, they believed CSA to be least suitable for RJ. Third, Supporters saw many potential benefits of using RJ for partner, family, and sexual violence. Their views of appropriateness in these cases were similarly ranked, although they saw fewer problems with sexual violence. Finally, nearly all discussed certain additional provisions for RJ to be used.

For ease of presenting the findings, I developed four categories that represent percentages on the continuum (see the last page of Appendix B). They are as follows: 0% = *none*, 5-10% = *few*, 10-25% = *some*, and 25% or more = *many*.

Table 2 shows Supporters' views ordered by different offences.

³⁷ The OLs did not always address each kind of violence, but rather the kinds of violence they had knowledge about.

Table 2

Supporters' Views of Restorative Justice for Gendered Violence

Opinion Leader	Partner violence	Family violence	Sexual violence	CSA (child present)	CSA (child absent)
#5			Some		
#7	Few	Some	Many		
#11	Many			Some	
#12	Many	Many	Many	Some	
Gabriel (#13)	Many		Some	Few	Many
#14		Many	Many ¹	Few	
Janice (#15)	Some	Some	Some	Few	Some
#17	Many		Many	None	Many
Anita (#19)	Many	Many	Many	None	None

1. OL #14 qualified that her support for RJ in sexual violence cases related only to post-sentence contexts.

Of the 31 viewpoints registered; just under half (15) said that was RJ appropriate in *many* gendered violence cases, while nine saw RJ as suitable in *some* cases. Over a quarter of views (nine) said that RJ was either inappropriate or appropriate in a *few* cases. However, individual views altered according to types of offences. Partner, family, and sexual violence were ranked similarly, i.e., the ratios of *some* and *many* rankings across these cases were similar. Compared to adult gendered violence, all Supporters who registered views on CSA were less likely to believe it was appropriate for RJ.

While the degree of support decreased for CSA, five Supporters³⁸ who considered CSA cases when child victims were present, saw potential for RJ. However, they discussed the vulnerability of children as being problematic, and thus cited the need for increased victim support. Janice considered the relative powerlessness of children, leading to vulnerability, and the difficulty of addressing “gender and power imbalances”. Gabriel said,

The younger the child, the less capable they are to look after themselves in that sort of exchange and potential confrontation. It’s hard to imagine a child having the strength to confront an adult.

Supporter #12 related more positively to RJ for CSA, yet she believed that such cases must be treated “with extraordinary care”, and that key people had to be present: “People who have been working with children, who the children trust [and] advocating for the child as well as the family”.

Only one Supporter (#14) spoke of a particular type of CSA case – paedophilia – as being inappropriate for RJ. Her reasons included exacerbated power imbalances, the potential for re-victimisation, and “I’ve heard ... the perpetrator actually quite likes the attention of a conference”. Two Supporters³⁹ were against RJ for CSA, as they were concerned with face-to-face encounters involving child victims. Overall, the strongest Supporter, Anita, best characterised this position:

The impact of anything that is done to a three year old ... will come out ten, 15, 20 or even more years after that ... RJ has to be in some different form to be able to appropriately and effectively address young victims.

³⁸ Supporters #11, #12, Gabriel, #14, and Janice.

³⁹ Supporters #17 and Anita.

Three Supporters⁴⁰ considered contexts when child victims were absent. Janice thought “there could be a role for [RJ] ... with someone representing the child”. Supporter #17 and Gabriel increased their rankings of appropriateness: if family members were present instead of child victims (#17), and Gabriel said, “It might well be appropriate in half the cases ... I think you’d really have to try it and see”. Gabriel also reflected on an adult survivor context, “if the child is now an adult, then I don’t see any reason why they shouldn’t be dealt with like any other RJ case”. In sum, the Supporters demonstrated some uncertainty in their views of RJ for CSA, but largely thought it was better if child victims were absent.

Contrasting Supporters’ hesitance concerning CSA, they believed there were many potential benefits of RJ for adult gendered violence. Four Supporters⁴¹ drew from their experiences to underscore these, typified by Supporter #12: “from seeing cases, facilitating cases, and seeing how people can go into a conference with the world on their shoulders and go out feeling much lighter”. Most Supporters⁴² cited potential benefits as including healing, active participation, and the ability for victims to voice their experiences. As Supporter #11 put it: “It’s always valuable to bring people who have hurt each other together to talk about what’s happened”. Anita, the strongest Supporter, said that RJ is ideal for relationship repair: “Anything to do with partners, RJ would be appropriate because the ultimate is restoring relationships”.

⁴⁰ Supporters Gabriel, Janice, and #17.

⁴¹ Supporters #11, #12, #14, and #17.

⁴² Supporters #11, #12, Gabriel, #14, Janice, and #17.

Two Supporters considered the benefits of face-to-face encounters. One said, “offenders confront the human misery that they’ve been responsible for in a very inescapable way” (#11). Another considered face-to-face encounters in sexual violence cases, where the offender must face “a person instead of a vagina ... a person with feelings, opinions, status, a role in society. And it must impact them in terms of what they’ve done” (#12). In fact, Supporter #7 said, “I’ve never understood why you would want to exclude sexual assault ... given the way the system deals with victims ... I think restorative justice seems to be tailor-made for sexual assault”.

Although two Supporters’ individual views for partner, family, and sexual violence differed, as a group they ranked these cases similarly. However, Supporters recognised that using RJ for cases involving ingrained power dynamics (partner and family violence) was more problematic, than for cases likely to be a discrete event (sexual violence). Their views were conditional on a number of provisions, including preparation and pre-conference conditions, providing information to victims, victim support, and awareness of power dynamics.

Several Supporters discussed pre-conference conditions. As Supporter #17 put it, “safety, preparation, and voluntariness issues [must be] ... totally and utterly addressed before ... any conference stage”. Supporter #14 saw the need for establishing offender programs based on recognition of “power and control issues” prior to RJ. Three Supporters⁴³ spoke of providing RJ information to victims, so they could reach an informed decision. Supporter #14 best described this:

⁴³ Supporters #12, #14, and Janice.

[RJ] should only ever take place if the victim is really clear about what the process entails, including all the difficulties, and that he or she does that fully informed and wants to do it.

Supporters' views were conditional on adequate victim support and facilitator awareness of power dynamics. Three Supporters insisted on victim support: Supporter #14 said victim support was necessary both during and after RJ, while another said that victims "can't be coerced in any way or form and they need to have adequate and proper support" (#12). Supporter #7 said if greater support was provided and abuses of power controlled, he believed RJ would be more suitable. With respect to dynamics, Janice said that family violence relationships create a "different context", where abuses of power and safety are marked. Likewise, Supporter #7 viewed cases without ongoing dynamics, such as sexual violence, as less problematic: of sexual violence cases which come before the court, "a much greater proportion ... don't have the same sort of ... ongoing power relationship issues as family violence does".

Supporter #14 considered the ineffectiveness of a one-off RJ process in partner and family violence: "[It] isn't going to change the power dynamic of an abusive, violent perpetrator". Another pointed to victim vulnerability: "the fragility of the victim is so intense that what another person could cope with ... they really can't" (#11). Supporters Janice and #5 discussed victim-offender relations, with both recognising less problems for RJ when victims did not know each other, i.e., in sexual violence cases. Janice believed that in such circumstances, it would be easier to ensure safety, as the violence "wasn't personal, it was a one off, the violence and

the power wasn't directed at that person". When there are existing relations, Supporter #5 saw RJ as less suitable, due to "compounded issues around fear and power and control"⁴⁴. Their views echo a general concern that where there are entrenched power dynamics, i.e., in partner and family violence cases, victims may be more vulnerable in RJ processes.

To summarise, Supporters broadly subscribed to RJ for gendered violence. However, they viewed CSA as the least suitable kind of violence for RJ, although some were uncertain and discussed the inclusion or exclusion of children in RJ processes. Supporters saw many benefits of using RJ for partner, family, and sexual violence, and they ranked these cases as equivalently appropriate. However, they recognised that there were less difficulties in using RJ for sexual violence. Their support for RJ remained conditional on having certain additional provisions in place.

Sceptics' views

Six OLs were classified as Sceptics. Their views can be characterised by four points. First, their views ranged from being cautionary to largely against RJ for gendered violence. Secondly, all Sceptics viewed RJ as unsuitable for CSA, while half (three) saw some potential for adult contexts. Moreover, when Sceptics were asked to reflect on different kinds of gendered violence, they focused on partner violence and CSA, and as a result, heavily cited problems related to ongoing power dynamics to illustrate their opposition. Thirdly, they discussed certain additional provisions for RJ to be used. Finally, despite their concerns, all Sceptics saw the

⁴⁴ However, Supporter #5 later said that victim choice was important; and if victims wanted to pursue RJ processes, then that should be honoured.

viability of RJ and provided suggestions for its future. Table 3 shows their views ordered by different offences.

Table 3

Sceptics' Views of Restorative Justice for Gendered Violence

Opinion Leader	Partner violence	Family violence	Sexual violence	CSA
Sally (# 1)	None			None
# 3	Few		Few	
# 4	None			None
# 6	None	None	None	None
# 9	Few	Few		None
Bianca (# 10)	None	Few	Few	None

Of 17 registered rankings, RJ was considered inappropriate in 11. The remaining six believed RJ was appropriate in a *few* cases: evenly dispersed in partner, family, and sexual violence. However, all five Sceptics who considered CSA viewed it inappropriate. Cited concerns with using RJ in these cases included exacerbated power imbalances, the lack of accountability, vulnerability of the child victim, and skills of the facilitator.

With respect to CSA, Sceptics were most concerned with patterns of violence and power imbalances. For example, Sceptic #9 pointed to the abuse of child/parent trust and the difficulty of “regaining that balance”; another considered the dynamics in face-to-face encounters, saying “it’s not appropriate for you to be trying to create an equitable environment when you have such a major power imbalance” (#6). Sally added,

The real issue is around children who have less power than an adult ... children are being exposed to adult emotions, adult responses, and sometimes manipulation and whether they're equipped to deal with that.

Related to dynamics, Bianca spoke of the vulnerability of children and lack of safety:

Children who are victims of sexual abuse are the most vulnerable members of our community, and I just think there's not enough safeguards, not in relation to the restorative justice processes I'm aware of.

Tied with these problems, the Sceptics examined facilitation. Sally typified this discussion: she thought that facilitators would have difficulties in managing power imbalances and they can be potentially manipulated "into feeling sympathy for the offenders". The only Māori Sceptic viewed RJ positively, but was unsure of current arrangements for CSA, "because it doesn't have all the parts in place" (#4).

I turn now to consider the Sceptics' views of adult gendered violence. Compared to their unanimity concerning CSA, three Sceptics saw the potential of RJ for partner, family, and sexual violence. However, there were fewer registered rankings for family and sexual violence, than for partner violence, making these offences difficult to compare or contrast. Moreover, Sceptics' frames of reference for discussion of adult gendered violence centred on partner violence, and they therefore concentrated on ongoing patterns of violence and power dynamics. For RJ to be considered in adult gendered violence, the Sceptics pointed to certain additional conditions, including types of conferencing, pre-conditions, offender programs, skills of the facilitator, increasing safety and awareness of dynamics, and protection against coercion of victims.

Sceptic #3 thought post-sentencing RJ could be used: “At the end of a process where they’ve gone through court, the man’s done some fronting up ... Then I think restorative justice can be really useful”. Sally and Sceptic #4 saw RJ more positively if offender intervention programs were undertaken. This position was best characterised by Sally: “The only time I could see a restorative justice intervention operating would be [after] ... a well-managed program where an offender was already some way down the path towards insight and understanding”. Five Sceptics⁴⁵ were also concerned about the skills of RJ facilitators, e.g., “my real overriding concern is that we don’t have enough [facilitator] expertise” (Sally). Sceptic #3 believed RJ was suitable when facilitators were “highly skilled ... with a strong understanding [of power imbalances] ... [and] able to genuinely feel that the victim feels safe”.

For all Sceptics, the lack of victim safety and power dynamics in partner violence were focal points of their scepticism. As Sceptic #6 said,

There is significant potential to breach safety, or to compromise that safety. Particularly because of the power imbalances that exist ... [and] the safety aspects are not just during the conference, that’s the scary part about it.

However, he later thought RJ could be used in stranger cases of sexual violence: “It’s less unsafe. There is less potential to be unsafe. Because there’s no coercion, no later harassment, no reprisals”. Further, he said that given a more victim-centred process with increased victim support, he would shift his views on the continuum⁴⁶.

⁴⁵ Sceptics Sally, #3, #6, #9, and Bianca.

⁴⁶ When prompted to consider by how much he would shift his views, OL #6 did not provide an answer.

Along similar lines, Sceptic #3 thought RJ must include “good support and follow-up mechanisms”. Although he said RJ “fits really nicely with our philosophical view of the world”, he considered the lack of parity in violent relationships. He also wondered whether offenders would take advantage of RJ: “Is he coming from a place of being compliant and charming because he wants something to happen”. Bianca thought power dynamics “would carry through into the restorative justice setting”. Relatedly, Sally and Bianca also thought that one-off processes were potentially “risky”, and would be unable to address complex power dynamics. Finally, Sceptics Bianca and #9 spoke of victim-offender relations they saw as acceptable for RJ. Bianca thought RJ possible in relationships without patterns of abuse, or in circumstances of an ongoing relationship, while OL #9 believed RJ appropriate in cases where violence was not chronic and entrenched, i.e., “where there is a chance, or greater chance for change and recovery”.

Sceptics #6 and Bianca thought that informal processes could potentially coerce or pressure victims. Sceptic #6 saw some potential benefits of RJ, depending on the victim’s circumstances:

For some women, going through a restorative justice process may be very freeing and empowering and I would hate to deny that ... The problem is trying to balance it with those people who are being coerced into making that choice.

Bianca said that, “there’s a risk of undue pressure for victims to accept the restoration that’s offered, when in fact they may not feel that what is offered is sufficient to address how they feel”.

The only Māori Sceptic (#4) was conceptually supportive of RJ, but opposed its current arrangements. He discussed the lack of accountability in state-run RJ, by comparison to more effective forms of “how we use RJ in our own families”:

People were made to be accountable. And my sister was abused by her husband, then she came home and my dad wouldn't allow her to go back to ... her husband. Her husband had to come down here ... he had to apologise, [and] he had to bring his people down to have a meeting with my dad and mum before she would be allowed to go back.

Although Sceptics were generally against RJ for gendered violence, all suggested a range of future directions, based on the management and operation of RJ⁴⁷. Sceptics all approved of RJ principles, but were concerned with its current arrangements and how RJ might work in practice for gendered violence. For instance, Sceptic #6 said, “I have a strong belief that restorative justice is a positive initiative ... And it has potential to be really responsive to victim's needs”.

In sum, Sceptics were broadly against RJ for gendered violence, and unanimously viewed it as inappropriate for CSA. In adult victim contexts, Sceptics focused on partner violence and the associated ongoing patterns and power imbalances to illustrate their opposition. The Sceptics highlighted their concerns and spoke of additional provisions for RJ to be used. Finally, Sceptics shared ideas for the future of RJ for gendered violence. They were not firmly against the application of RJ in gendered violence cases, but rather they retained problems linked with partner

⁴⁷ Many ideas were presented according to the ways in which RJ could be ideally used within and without the system. Most of the OLs addressed this, and their views will be subject of a future publication.

violence at the fore of their minds, and were critical of and had concerns about current arrangements.

Contingent Thinkers' views

Four OLs were classified as Contingent Thinkers. Although small in number, they presented multifaceted and complex views. They discussed appropriateness in two very different ways: Rakin and Mary focused only on state responses, while Eva and Valerie distinguished between state, community, and Māori/Pacific Islander RJ responses⁴⁸. Two main points emerged from all Contingent Thinkers' views of state-run RJ. They broadly supported RJ, yet they spoke of conditions more strongly than the other groups. Secondly, like other groups, they viewed CSA as the least appropriate kind of violence. Contingent Thinkers more closely resembled Supporters than Sceptics, but they were different in one substantial way: their views were more conditional on certain contexts of violence and aspects of cultural relevance. Table 4 shows their views of state-run RJ, ordered by different offences.

Table 4

Contingent Thinkers' Views of State-Run Restorative Justice for Gendered Violence

Opinion Leader	Partner violence	Family violence	Sexual violence	CSA
Valerie (#2)	Few	Few	Few	Few
Eva (#8)	Few	Few	Few	None
Rakin (#16)		Many	Many	Few
Mary (#18)	Few	Some		None

⁴⁸ When Eva and Valerie spoke of different levels of control, they had in mind all kinds of adult gendered violence, i.e., partner, family, and sexual violence.

From 14 registered rankings, most (nine) saw RJ as only appropriate in a *few* cases. However, their views increased substantially with the inclusion of certain provisions (discussed below). Similar to others, Contingent Thinkers were most hesitant of RJ in CSA cases, with half saying it was inappropriate, and half saying it was suitable in a *few* cases. First, I review all four Contingent Thinkers' views of state-run RJ, and then Eva's and Valerie's cultural conceptions of RJ.

With respect to CSA, all Contingent Thinkers reflected on the potential for RJ in CSA cases. Their concerns included treatment, power dynamics, and the age, capacities, and vulnerability of children. Although Mary thought RJ was inappropriate, she hinted that after extensive treatment, it could be an option: "until they've [offenders] done really extensive therapeutic recovering, I find it really difficult to believe that a restorative justice process would shift their world-view". Valerie and Mary pointed to exacerbated power dynamics in CSA. Valerie typified this position: she believed that because of magnified power imbalances, the suitability of RJ was "highly dependent". She added, "the younger the victim gets, then the more need for a victim advocate to work with the victim".

The age of child victims was also considered. Rakin believed that children could be easily intimidated, saying

We're asking a child to come into a forum that is adult dominated ... in some ways it appears child versus adult, ... children are automatically handicapped in my opinion because they're children in an adult world.

Like Supporter Anita, Rakin also thought it would be difficult to determine the effect of RJ on children: “we don’t know the psychological effects that restorative justice could have on that young child, and how it may alter their behaviour later on”.

For adult gendered violence, Contingent Thinkers’ rankings did not vary by offence type. However, like Supporters, they saw fewer problems with using RJ for sexual violence. They highlighted several concerns and conditions if RJ were to be used, including pre-conferencing matters, facilitator skills, increased victim support, and the ability for RJ to manage safety and power dynamics. Valerie and Rakin spoke of pre-conferencing factors. Valerie thought that victims must be fully informed before deciding to participate and that victim transition to “power equalisation” must be initiated. She felt victims can be empowered through “information, education, support and training, and be on the way to the survivor transition: if a victim does not start transitioning into that, then ... you wouldn’t consider RJ at all”. Rakin said there must be “voluntary agreement by both parties” and that participants must be completely willing to engage in the process.

Rakin was the only Contingent Thinker to discuss facilitator skills and victim support. To highlight his discussion of facilitators, he shared experiences of sexual violence conferences: “All the ones I’ve come across [are appropriate], and I think it hinges [on] ... the skill of the facilitator. All the cases that I’ve seen have been superbly done”. Rakin also saw the strength of a victim’s “scaffold” as vital. He explained:

You and I refer to it as networks, but the picture I want to leave with you is a scaffold because you need to rebuild [the victim] ... when you rebuild, you

re-empower, and in order to do that you need a strong scaffold ... If you don't have a strong scaffold then the scaffold will tumble, the building will tumble and you've got a heap of rubble back on the floor again.

Rakin thought RJ unsuitable without a scaffold.

Like Supporters and Sceptics, Contingent Thinkers were concerned with victim safety and power dynamics. With reference to safety, Valerie said, "there's a non-negotiable bottom line for me: it's the safety of the victim". Mary recognised that "no process promises safety", but she was concerned with the level of victim-centredness: "unless the process is managed very carefully, it can focus ... on the outcomes for the offender". With respect to power imbalances, Valerie was critical of the way in which RJ addresses such dynamics:

Most of the social workers and family court mediators running conferences haven't got a clue about power dynamics ... There are horrendous anecdotes ... where guys have been sent to anger management and been taught not to leave bruises, but to take the distributor cap out of the engine instead. But the power dynamics remain unchanged.

Mary discussed the dynamics associated with the "triangle of victim, persecutor and rescuer" premise in partner violence⁴⁹. She said, "if you put that dynamic into restorative justice ... there's a very strong motivation for her [the victim's] own needs to be overlooked and his [the offender's] to become primary".

⁴⁹ The triangle referred to by Mary was characterised as follows, "When she's assaulted, she is the victim, he's the persecutor, police are the rescuer... If you put that man in the dock the next day, he becomes the victim, police becomes the persecutor, and she wants, and is strongly motivated to be the rescuer. And she's often supported to take that point of view by her family, by his family, by her friends, by concerns about the children, by her own concerns about how she's going to survive without him being there. She doesn't want him to go to prison. So all of those things will be very strong motivators to rescue him".

Concerning victim-offender relations, Valerie thought appropriateness should be determined on a case-by-case basis, e.g., “whether it’s a one-off [act of violence], whether it’s longstanding, what the power dynamics are, what the cultures are of the people involved and their value sets, whether they’ve got a prior history”. By contrast, Mary focused on the degree of inequality in relationships, viewing RJ more positively where relations were “more or less equal”. Thus, she believed violence including “brother against brother or father/son or mother/daughter or even in-laws” would be suited to RJ. However, she recognised the “extraordinarily complex [nature of these] cases because you were unpacking sometimes years of family dysfunction”.

Cultural conceptualisations of justice

Two Contingent Thinkers, Eva (Māori) and Valerie (Pākehā), spoke at length of the level of state, community-based, or cultural control of RJ⁵⁰ relative to their views of appropriateness. Both women viewed state approaches as being the least appropriate and cultural, most appropriate. Eva saw state responses as only able to respond to early, rather than well-established, patterns of violence:

So it’s like a swift, sharp, public slap on the hand ... If the violence is an established pattern in that relationship, or if the offender has been a batterer in previous relationships ... then I would say that [state responses] shouldn’t be used.

Eva believed that community-based RJ initiatives were better able to deal with gendered violence cases, however, she was unsure that such initiatives were able to

⁵⁰ Community-based or cultural control of RJ, were not clearly defined. When talking about community-based initiatives, the women were making reference to cohesive and functioning communities, as Eva put it, those with “a fairly strong identity”, and whether such communities were Māori or Pākehā was of no significance. When speaking of cultural control of RJ, the women had in mind a process completely controlled by either Māori or Pacific Islander communities.

address violence characterised by power imbalances. Eva believed that the most appropriate form of RJ would be “completely controlled by Māori”:

Colonial methods of intervening don't work, haven't worked, and that's why our numbers keep escalating, and we're the ones most likely to die. But there's a lot of traditional wisdom and experience and knowledge [which] create an alternative reality and therefore a range of alternative responses to the violations that would occur against women and children⁵¹.

Like Eva, Valerie distinguished between mainstream and culturally controlled RJ. She saw cultural communities characterised by strong levels of social control as better positioned to control RJ:

It takes a village to raise a child; it takes a village to do RJ. Which is why it's actually working (where it is working) ... in Māori communities, in rural areas where people still know each other and where the bush telegraph works real quick.

When prompted to consider why Māori embrace the ideals of RJ for gendered violence, Valerie spoke of the importance of harmony and whakapapa⁵² and why “It's a violation to abuse”:

The more intact the cultural values are, the more importance is given to continued contact with the parents, grandparents, extended family ...

Therefore, the breach that can occur between the adults, or the offence against the child, is a violation of this sacredness.

⁵¹ Eva explained this “alternative reality”: “In a lot of traditional Māori ways of thinking you are not an individual, you are a physical manifestation of the people that came before you and the people that will come after you. You're kind of like their vessel for this moment in time. So a violation of any kind against the individual is a violation against all of those people that have come before and all of those people who will potentially come after you”.

⁵² In this context, whakapapa is the Māori noun for “genealogy, genealogical table, lineage, descent” (Moorfield, 2003-2008).

Valerie said that for cultural RJ to work, important cultural values, such as identity, whakapapa, and Te Whare Tāngata⁵³ must be called upon: “[By] invoking these ancient connections they provide the base for coming back into the models of whānau⁵⁴ and aiga⁵⁵”. However, she recognised that functional whānau or aiga are better positioned to deal with violence:

It’s dealt with right on the spot ... There are [also] dysfunctional ones ...
[That is] another reason why one size doesn’t fit all because no culture’s
homogeneous in terms of its connections within itself, its value bases.

To summarise, Contingent Thinkers were supportive of RJ for gendered violence, yet they placed more weight on conditional provisions, and swung from views of inappropriateness to appropriateness. Like the other groups, they viewed CSA as least suitable for RJ. Unlike the others, however, Contingent Thinkers examined the level of state, community, or cultural control over RJ, with mainstream approaches receiving the least support and cultural approaches the most.

This chapter has presented OLS’ views of the appropriateness of RJ for different types of offences. From their views, I identified a typology that contradicts the simplistic and dichotomised “for and against” debate in the literature. Although OLS’ views were organised according to their overall position on RJ, they also shared similar concerns. Specifically, consistent with feminist critiques of RJ, including Stubbs (1997) and Busch (2002), all OLS were concerned with power

⁵³ Te Whare Tāngata translates to mean “House of the People”. From this principle, wāhine Māori are acknowledged, protected, nurtured, and respected as givers of future generations.

⁵⁴ In this context, whānau is the Maori noun for “extended family, family group” (Moorfield, 2003-2008).

⁵⁵ Aiga is a Samoan term for extended families or clans, who are descendents from a known ancestor (Epati, 1995).

dynamics and victim safety. While each group's degree of support varied for partner, family, and adult sexual violence, all viewed CSA as the least suitable kind of violence for RJ. Like CSA survivors in Jülich (2006), the OLs saw CSA as having exacerbated power imbalances, which would be particularly difficult to manage in RJ. The OLs' views can be arrayed as falling into a three-way typology, but my analysis finds great complexity and fluidity in their thinking. In the next chapter, I seek to explain how and why OLs reached their views.

Chapter 5: Why are the Opinion Leaders oriented this way?

In this chapter, I show how and why OLs decided that RJ was appropriate or not for gendered violence. In particular, I examine OLs' experiences with RJ, their professions, and cultural background. I also investigate OLs' perceptions of strengths and weaknesses of the CJS. These individual sets of positioning and experience are, in turn, related to how they conceptualised the appropriateness of RJ.

Like Curtis-Fawley and Daly (2005), I find that OLs with more experience of observing RJ in action were more likely to support the idea, whereas those with less experience were more sceptical. For instance, most Supporters (six) drew on their experiences as facilitators to underscore why they believed RJ was appropriate. A second major finding is that those people working in government and those with only managerial experiences in victim services, were less likely to support RJ for gendered violence, whereas those working as RJ facilitators, legal officials, in the faith-based community, and direct victim services, were more likely to support the idea. Thirdly, OLs were more or less positively oriented toward RJ, based on their perceptions of the efficacy of the CJS. As I found in Chapter 4, the views of the three groups can be distinguished, but at times there were shared views.

Opinion Leader profiles: Variation in views

I expected to see variation in the OLs' views that was related to their socio-demographic profiles, specifically, the literature suggests that experience with RJ and cultural background may differentiate viewpoints. Table 5 arrays this, and other information by the three-way typology.

Table 5

Profile of Supporters, Sceptics, and Contingent Thinkers

Opinion Leader	Location	Gender	Cultural b/ground	Profession and length of time in current position (months or years)	Experience with RJ
Supporter					
#5	Wellington	Female	Pākehā	Victim services (2yrs) ¹	
#7	Wellington	Male	Pākehā	Government official (4yrs)	Facilitation
#11	Auckland	Male	Pākehā	RJ worker (2yrs)	Facilitation
#12	Auckland	Female	Pākehā	RJ worker (2yrs)	Facilitation
Gabriel (#13)	Auckland	Male	Pākehā	Legal official (16yrs)	
#14	Auckland	Female	Pākehā	Legal official (24yrs)	Facilitation
Janice (#15)	Auckland	Female	Pākehā	Victim services (6 months) ¹	Observation
#17	Auckland	Male	Pākehā	Faith-based community (31yrs)	Facilitation
Anita (#19)	Auckland	Female	Tongan	Faith-based community (8yrs), RJ worker (5yrs)	Facilitation
Sceptic					
Sally (#1)	Wellington	Female	Pākehā	Government official (5yrs)	Management
#3	Wellington	Male	Pākehā	Victim services (20 months) ²	
#4	Wellington	Male	Māori	Victim services (5yrs) ²	Observation
#6	Wellington	Male	Pākehā	Victim services (4yrs) ²	
#9	Wellington	Male	Pākehā	Government official (10yrs)	Management
Bianca (#10)	Wellington	Female	Pākehā	Government official (3yrs)	
Contingent Thinker					
Valerie (#2)	Wellington	Female	Pākehā	Government official (8yrs)	Management
Eva (#8)	Wellington	Female	Māori	Victim services (2yrs) ¹	
Rakin (#16)	Auckland	Male	Māori	RJ worker (8yrs)	Facilitation
Mary (#18)	Auckland	Female	Pākehā	Victim services (6yrs) ¹	Support person

1. These OLs were in managerial capacities at the time of the interview, but prior, they had been involved in direct, “on the ground” delivery of victim services, through volunteer and/or paid positions.

2. These OLs were in managerial capacities at the time of the interview, and had not had “on the ground” work experience with victims.

Direct and indirect experiences with restorative justice

Thirteen of the 19 OLs had some kind of experience with RJ. Seven had direct experience as facilitators, and six had more indirect experiences as RJ managers, through observations, and as a support person. RJ experiences influenced OLs views of appropriateness. Supporters were more likely than others to have had facilitation experience, and described largely positive encounters of RJ. Likewise, Contingent Thinkers spoke of positive RJ experiences and discussed cultural principles that resembled RJ. By contrast, Sceptics drew either from their experiences of the problematic nature of power dynamics or others' negative experiences of RJ.

Nearly all (six of seven) of those who had facilitated were Supporters. Four of these⁵⁶ gave examples of their facilitation experiences: Supporter #17 spoke of a [post-sentencing] sexual violence case he facilitated; Supporter #11 shared two accounts of cases he facilitated (one with an adult survivor of CSA, the other involving adult sexual violence); Supporter #12 spoke of a CSA case she facilitated, and a second involving her own experiences of RJ as a survivor of CSA; and Supporter #14 described two cases she facilitated, one family violence case involving a Pacific Islander woman, and a CSA case in the absence of the victim. Their examples depicted largely positive experiences⁵⁷. More generally, the Supporters drew on their direct experiences of RJ to explain their views.

In a similar vein, three Contingent Thinkers⁵⁸ drew from personal and professional experiences. From the previous chapter we learned that Eva drew from cultural

⁵⁶ Supporters #11, #12, #14, and #17. Unfortunately, it is outside the scope of this thesis to present the lengthy in-depth narratives depicting Supporters' facilitation experiences.

⁵⁷ Supporter #11 described both positive and negative elements in the two examples he provided.

⁵⁸ Contingent Thinkers Eva, Mary and Rakin.

values, and she regarded community-based and cultural initiatives highly. Rakin said his view was influenced by his facilitation experiences, and he shared two examples: a court-referred CSA case and an intra-familial sexual abuse case in a Māori whānau. He said his view was also shaped by a colleague who was a trained RJ facilitator, giving him the impression of its benefits for gendered violence. Mary said her involvement as a support person in RJ influenced her views, and she shared two examples of partner violence cases, and one adult survivor sibling violence case. She also spontaneously disclosed that having been a victim of partner violence shaped her worldview. Their examples portrayed largely positive accounts⁵⁹.

By contrast, the Sceptics gave examples that underscored power imbalances. Sceptic #3 indicated that counselling couples experiencing violence helped shape his views; and with this he became aware of the subtlety and extensiveness of power dynamics. Bianca said her views were shaped by her experiences as a family court solicitor, and on this basis, she preferred the formal system over alternatives to “overcome power imbalances”. Sceptic #6 said his view was both “experiential and principle based”: his view was influenced by speaking to victims who had expressed “a degree of dissatisfaction” of engaging with RJ. The only Māori Sceptic (#4) shared two examples (one relating to partner violence and another to CSA) to illustrate how Māori justice reflected RJ. However, he was concerned that current mainstream approaches to RJ were “missing parts”. The Sceptics predominantly focused on the dynamics of gendered violence, and drew mainly from others’ negative experiences of RJ. In sum, direct experience with RJ does matter. OLs’ facilitation experience

⁵⁹ However, Mary described one of the partner violence cases as negative, due to the offender’s behaviour and family collusion in the conference, and continued violence.

affected their views positively, while no, less direct, and vicarious experiences meant OLs' viewed the potential of RJ for gendered violence less positively.

Profession and geographic location

Stark differences in geographical location and profession were apparent (see Table 5). However, what first appears to be a geographical difference can be explained by professional involvement. OLs from Wellington were government officials and from national victim's groups, while those from Auckland were predominantly facilitators, legal officials, and from the faith-based community.

There were five broad categories of professions: government officials, victim services⁶⁰, RJ workers, faith-based community, and legal officials (see Table 5).

Supporters included the two legal officials, two from faith-based communities, and two victim services workers who had had direct work experience with victims. Both of the legal officials (Gabriel and OL #14) were critical of conventional justice practices (discussed below), drawing from considerable direct experiences spanning 16 and 24 years, respectively. Both of those from the faith-based community (Supporter #17 and Anita) spoke of a close association with victims and families who had experienced violence, in light of the Church's role in responding to victims' needs for dialogue. Supporter #17 had been energetically involved in facilitation, but had decreased his activity because of what he viewed as the bureaucratisation and manipulation of RJ:

⁶⁰ There were two kinds of victim services workers: those that had *only* managerial experience; and those in managerial positions, but who had had previous work experience working directly, and "on the ground" with victims.

The movement has become over-bureaucratized: I understood it primarily as a community empowerment movement and that if the state took it over, then the state's processes would take it over. And I believe that's the case ... I have [also] watched how lawyers manipulate an awful lot for their own purposes.

In contrast, Sceptics worked either in victim services (three) or government (three). The three in victim services worked in national offices as managers, and had not had been previously involved in direct victim service delivery. Likewise, the government workers had managerial and co-ordinating roles in the national delivery of RJ. Although the Sceptics' opposition to RJ was not as static and fixed as the literature often presents, one important finding is that Sceptics were often connected to bureaucracy and victim services with only management experience.

Cultural background and gender

Recall that Nancarrow (2006) found a "racialised split" in support for RJ, with Indigenous women viewing RJ more positively for domestic and family violence, than non-Indigenous women. My study in Aotearoa does not find a "racialised split". The four cultural minority participants were dispersed across the typology: one a Supporter (Anita), one a Sceptic (#4), and two were Contingent Thinkers (Eva and Rakin). While there was no "racialised split", I found there was commonality and shared ideologies among their views.

All three Māori approved of the philosophy of RJ and considered it positively, *provided* it was founded on cultural values. They were united in their concern that

state appropriation, and subsequent application in a wholesale manner, would make RJ inappropriate for gendered violence. This was evident in the two Contingent Thinkers' differentiation of appropriateness, relative to the degree of Māori/Pacific Islander control. The Māori Sceptic persistently said he was not against RJ principles, but against its current approach. The Tongan Supporter, Anita, viewed RJ as assisting to "bridge that kind of gap" between a western system that juxtaposes guilty and not guilty pleas, and a more culturally relevant question: "Are you ashamed or are you not?" Anita thought RJ was closely related to Pacific Islander justice philosophies, in which justice is not a question of right and wrong, but rather an exploration of one's "sense of shame and disgrace". Thus, cultural background did not affect OLs' positions in the typology, but shared ideologies were apparent.

Based on Curtis-Fawley and Daly (2005), I did not expect to see gender differences in views of appropriateness. Of the 19 OLs, about half each of the women and men were Supporters, with a slightly higher share of Contingent Thinkers among the women, and a slightly higher share of Sceptics among the men. Therefore, there appears to be no substantial gender differences.

The criminal justice system under the microscope

Another way to analyse OLs' views of RJ is to examine their concerns with how established justice handles gendered violence. On balance, Supporters and Contingent Thinkers identified more disadvantages in engaging with the CJS, while Sceptics saw both strengths and weaknesses. Table 6 shows the OLs' perceptions of the CJS, according to three positive and three negative themes. The positive themes are social censure, safety, and victim empowerment or validation; and the negative

themes are ineffective criminal justice responses, re-victimisation, and social and political concerns.

Table 6

Perceptions of Strengths and Weaknesses of the Criminal Justice System

Opinion Leader	Positive themes			Negative themes		
	Social censure	Victim safety	Victim empowerment / validation	CJS does nothing	Victims are re- victimised	Social / political concerns
Supporters						
#5			×	×	×	
#7						
#11		×		×		
#12			×		×	
Gabriel (#13)		×		×	×	×
#14				×	×	
Janice (#15)		×	×		×	
#17						×
Anita (#19)				×		
Sceptics						
Sally (#1)	×	×	×	×	×	×
#3	×			×		×
#4						×
#6		×			×	×
#9			×		×	
Bianca (#10)	×	×				
Contingent Thinkers						
Valerie (#2)				×		×
Eva (#8)					×	×
Rakin (#16)			×	×		
Mary (#18)		×	×		×	×

Table 6 was constructed by coding the OLs' responses to guided questions (see Appendix B, section 2) and from their views of the CJS dispersed throughout the interview. From these, I identified thematic categories, and sought to grasp the tenor of their views. I marked a "×" on the Table when OLs explicitly mentioned a theme.

From Table 6 we see that Supporters' identified twice as many weaknesses (12) as strengths (six) of the CJS for victims of gendered violence. In contrast, Sceptics identified a similar number of weaknesses (nine) and strengths (eight). The following discussion shows OLs' views are complex on this topic. Like Supporters, Contingent Thinkers recognised more weaknesses (seven) than strengths (three). Group differences are apparent, but so too are shared views.

Supporters' views

Although Supporters recognised some positive outcomes, they mostly spoke of the many limitations of the conventional CJS for victims of gendered violence. They focused on the idea that the CJS was ineffective and re-victimised victims.

Supporters viewed victim safety as largely accomplished through the imprisonment of the offender. However, Gabriel noted critically that taking an "offender out of circulation ... is the only thing the criminal justice system achieves". Likewise, Supporter #11 said, "the theory is that it's a way of protecting the victim, and in some cases I suppose with very dangerous offenders it does do that for a while". Two Supporters addressed the safety and protection of CSA victims. Janice said that with an offender imprisoned, the family has a "period of time where they really can

put ... the offender out of their mind”, yet Gabriel pointed out that the potential for increased safety comes “at a huge cost”.

Supporter #12 viewed the *Victim's Rights Act 2002* as introducing more inclusive processes, which better position victims to voice their experiences. Janice also said that victims can defer the personal responsibility of pursuing a case: “well the system is doing this ... The police or the crown are prosecuting this case – I’m not doing it”. Supporter #5 said, “I have worked with a few women who have taken great strength from following a process through”, but then provided qualification by saying “I just don’t believe that the process should have to be that hard”.

Supporters largely focused on limitations of the established system. Most said, in slightly different ways, that the formal CJS was ineffective. They said that it achieves “very little” (Supporters #5 and Gabriel), “accomplishes really little” (#13), or “do[es] nothing” (#16), and one noted “whether it delivers better results than RJ, I think is very questionable” (#11). Anita characterised the limits of the CJS for victims this way:

The current system as I see it ... is like a doctor giving an aspirin to a person with a brain tumour. That is the closest that I can describe it to. It achieves little if anything ... what is the point?

For CSA victims, Gabriel believed that “the court is only interested in whether guilt is established”.

Supporters spoke of re-victimisation and the lack of victim participation by the conventional system. For example, although Supporter #5 noted that victims do not

want to engage with the CJS because they are afraid of the potential for re-victimisation. Supporters #12 and Gabriel cited significant concerns with re-victimisation: “victims are just getting used and abused by the criminal justice system” (#12), and the conventional system exposes victims “to new risks without removing or dealing with the underlying problems” (Gabriel). Supporter #14 felt that with RJ, the victim has “more chance to be heard ... I don’t think there’s any way that an offender can know that in the current system other than a piece of paper that’s handed up to the judge”.

Two Supporters⁶¹ examined political and social questions associated with the CJS. They pointed to the social promotion of denial through the adversarial system, a view typified by Supporter #17: “the adversarial processes of the court push people to levels of denial rather than understanding”. He additionally said, “I think the processes create more victims to be honest with you. The minute you lock someone up in prison, they become a victim of the system”.

Sceptics’ views

Sceptics saw similar numbers of weaknesses and benefits of the conventional system’s responses to gendered violence. With respect to strengths, it was only the Sceptics⁶² who discussed the court’s ability to send a symbolic and social message of censure. As Sally said, “It’s an authority saying very clearly, that activity, that violence, while you might have minimised it, it’s not okay”. Similarly, Bianca believed that the “force of the criminal law, it treats family violence as a crime ... the formal system doesn’t always succeed in doing that, but ... that’s the potential it

⁶¹ Supporters Gabriel and #17.

⁶² Three of six Sceptics: Sally, #3, and Bianca.

has”. Sceptics also saw the CJS as potentially able to offer safety and validation for victims. Similar to Supporters, they saw this as being achieved through imprisonment. Two Sceptics⁶³ also believed that with the involvement of a formal authority, victim responsibility decreases and thus, so does the risk for further violence. Sceptic #6 best described this position:

In domestic violence, I think, it certainly does protect the vulnerable partner much more. Because it removes it from their hands ... it takes away the responsibility for what happens in the end. So therefore the risk of reprisals is less.

OL #9 saw the court’s ability to impose harsh sentences as validating for victims, but he was the only Sceptic to mention the CJS as validating victims.

Like the Supporters, some Sceptics said that the CJS “can be pretty hopeless” (#3) and is “a terrifying process” (Sally). They also saw the CJS as a site of re-victimisation, one saying, “in many cases victims are going to be put through hell” (#9). Sceptics saw the weaknesses of the CJS as especially salient for CSA victims. Sally felt that it is difficult for children to understand the way the system works:

The burden of proof is on the prosecution, and that if it’s not proved, it doesn’t mean that they thought the victim was wrong or they didn’t believe them ... What it means is there wasn’t enough proof. And that’s an incredibly difficult message to get across.

Another focused on the idea that the court uses victims in order to establish guilt “so their job is to give their evidence and then vanish” (#9).

⁶³ Sceptics #6 and Bianca.

Four Sceptics addressed political and social problems. Sceptic #6 viewed the conventional system as promoting not guilty pleas, in contrast with RJ, which “encourages people to plead guilty and take responsibility”. Aotearoa’s strong focus on punishment was also discussed. Sceptic #3 believed that punitive practices were empty: “We have this hope that jail will work, we have this hope that exercising power over people who abuse power will somehow scare them into submission”. Another Sceptic viewed the established system’s over-focus on punishment in opposition with the ability of RJ to “bring people together” (#4). Sally noted that few CSA cases proceed to court, but focused on the difficulty of conviction: “Prosecutors really have to balance it. Are they actually going to get a conviction?” In sum, the Sceptics saw similar measures of positive and negative attributes of the CJS.

Contingent Thinkers’ views

Contingent Thinkers made just three positive remarks about the CJS. Mary spoke of victim validation and empowerment: “I often used to experience that women who gave evidence in a hearing felt more validated and more empowered than women when it was just a change of plea”. Further, she said: “There’s a sense of validating the story of a victim by locking the offender up”. Like, Supporter #12, Rakin felt the *Victim’s Rights Act 2002* introduced more inclusive processes for victims: “I think it gives them an involvement in the process [and] it gives them a sense of ownership, a sense of empowerment”.

Contingent Thinkers largely focused on the weaknesses of established justice practices. Rakin said the system “does nothing” for victims, and Eva felt formal

trials focus on victims: “the prosecutor has to prove, that this woman has a right – it isn’t like an automatic right – but has a right to her autonomy in our society”.

Further, Mary spoke of the dilemmas for intra-familial CSA cases, where child victims often absorb the responsibility of an offence.

A variety of political concerns were raised about gendered violence victims in the justice system. Eva, a Māori woman, provided an intricate response concerning the isolation and individualisation of violence through conventional practices, and race and class subordination within the CJS. Similarly, Valerie viewed formal responses as tools of control:

They’re there for the state and control of the state. They’re not about victims and offenders. They’re about complex societies that have given up their village rights to a state and put strangers in there at arms length. The justice system is divorced from the reality of all those around.

Mary considered the state’s carefree nature of imprisoning offenders, and by extension the lack of resourcing of rehabilitation programs. At the same time, she thought that punishment for gendered violence offences was often not severe enough, “very often, women felt that the criminal justice system let them down in terms of penalties”.

To summarise, Supporters spoke of many limitations of conventional justice for gendered violence victims, and thus observed a greater need for meaningful alternatives. Even when they recognised strengths of the CJS, they couched their views in negative terms. Sceptics also acknowledged problems concerning conventional justice responses, yet they saw benefits. Contingent Thinkers

continued to respond in a complex and politically charged way, and like Supporters predominantly viewed the CJS negatively. Although the OLs' views of the CJS parallel their views of appropriateness of RJ for gendered violence, shared concerns of the weaknesses of established justice were evident.

Answering the “how” and “why”

In this chapter, I have sought to answer how and why OLs reached their views. I found that their views were shaped and reinforced by a variety of factors. In order of importance, they were as follows: their experiences with RJ, their different professional positions, and their perceptions of the strengths and weaknesses of the CJS.

OLs with facilitation experiences were more likely to be Supporters, while those with no or indirect experiences were more likely to be Sceptics. This finding builds on Curtis-Fawley and Daly (2005), where those victim advocates who were supportive of RJ for gendered violence, were more likely to have experienced RJ. It also confirms Kingi et al.'s (2008) analysis of informants' views, those people who worked closely with the operation and management of RJ through their local providers. A relatively higher share (17 of 24) was supportive of RJ for family violence.

Secondly, OLs' professions affected their views of appropriateness. Sceptics were more often connected with government and management positions of victim services, while Supporters included RJ facilitators, legal officials, members of the

faith-based community, and those victim services workers who had experienced “on the ground” service delivery.

Finally, the findings concur with Hudson’s (2002) observation that the failings of conventional justice responses are one reason that people lean to alternative justice. They also concur with Nancarrow (2006): because Indigenous women viewed the CJS negatively, as a tool of oppression, they tended to see RJ more positively than non-Indigenous women. My study shows that OLs were oriented positively or negatively toward RJ for gendered violence, relative to their judgements of the strengths and weaknesses of the CJS. Supporters and Contingent Thinkers viewed the CJS negatively, and thus perceived a greater need for alternatives, compared to Sceptics who perceived benefits and drawbacks in similar measures. The final chapter reviews these and other major findings from the study, relates them to the literature, and considers the implications.

Chapter 6: Discussion

My thesis sought to answer a contentious question: is RJ appropriate for cases of gendered violence? To explore this question, I analysed 19 in-depth interviews with Aotearoan Opinion Leaders. My findings extend and challenge the sparse empirical knowledge in this area, and they present new ways of thinking about the suitability of RJ for gendered violence.

Findings

There are six major findings from my research. The most significant is the identification of a three-way typology of Supporters, Sceptics, and Contingent Thinkers. Supporters were broadly in favour of RJ for gendered violence, while Sceptics were largely against it. Contingent Thinkers, though also supportive, focused more particularly on certain contexts of violence and aspects of cultural relevance. Second, regardless of the OLs' position in the typology, all believed CSA to be the least suitable kind of violence for RJ. Third and relatedly, each group's overall rankings were similar across partner, family, and sexual violence, with varying degrees of support relative to their position in the typology. However, the rankings do not show the OLs' frames of reference toward different kinds of gendered violence. Specifically, Sceptics tended to focus on partner violence and CSA over other offences, and as a result, cited ongoing power dynamics to illustrate their opposition. Fourth, although there was variation in the degree of support, everyone spoke of the need for certain additional protections and conditions if RJ were to be used. Fifth, OLs' views cannot be explained by any one factor. Rather, in order of importance, the major factors shaping their views are the degree of experience with RJ, their current professional position, and the degree to which OLs

were concerned with the cultural relevance of RJ. Sixth, their views of RJ flowed from their perceptions of the CJS. Those who saw many weaknesses of the CJS were more likely to be supportive of RJ. I turn now to a discussion of these findings.

Three-way typology

I found that three groups better represented the range of OLs' views, rather than two. The identification of a three-way typology challenges the simplistic and dichotomous "for and against" debate in the literature. Further, OLs' views reflected fluidity and complexity, and contextual and pragmatic thinking. They seldom adopted principled positions based on abstractions. Their views depict a debate that is less sharp-edged and more nuanced. Further, I believe that a shift away from polarised understandings of the appropriateness of RJ for gendered violence may offer a way forward. Indeed, the OLs' views offer hope that reasonable debate can occur.

Concern with child sexual assault

When OLs were prompted to think about RJ according to different kinds of offences, all treated CSA independently. From this, it emerged that across the three groups, CSA cases were viewed the least suitable for RJ. All Supporters and Contingent Thinkers had relatively less support for RJ in CSA, but all the Sceptics considered RJ as not at all appropriate because of exacerbated patterns of violence and power imbalances. In general, OLs' views on RJ in CSA cases were characterised by uncertainty and doubt.

There are few studies that have empirically examined the suitability of RJ for CSA, and their findings are mixed. Curtis-Fawley and Daly (2005) state, “several advocates felt that intra-familial sexual violence and child sexual abuse ... may be better suited to RJ interventions than established criminal justice” (p. 28). By contrast, even the Indigenous women in Nancarrow (2006) who viewed RJ more positively, thought it inappropriate for CSA. Jülich (2006) more explicitly examined RJ for CSA. She found that historical CSA survivors described justice in a way that reflected RJ principles, e.g., they desired a process with greater participation and validation, and they viewed RJ positively in light of processes of healing and recovery. However, they did not wholly subscribe to the use of RJ for historical CSA.

The OLs had similar concerns to the CSA survivors interviewed by Jülich (2006). Both groups mentioned entrenched power and control dynamics, manipulation of bystanders, and facilitator skills in managing dynamics; and they were sceptical that the process would be victim-centred. Even Morris (2002), an enthusiastic advocate of RJ, has noted that the vulnerability and relative capacities of children and young people potentially relegates them to passive roles in RJ. In sum, the OLs in my study saw few advantages of using RJ in CSA cases. However, it is noteworthy that when considering RJ for CSA cases, most OLs’ frames of reference centred on a process that included child victims in a face-to-face encounter. With this in mind, it is not surprising that many OLs were against the use of RJ. In support of this claim, of those OLs who considered a process in the absence of child victims, most saw this as having more potential.

Adult gendered violence: ranking and frame of reference

The three group's overall rankings of appropriateness were similar across partner, family, and sexual violence, with varying degrees of support relative to their position in the typology. However, the rankings do not show the OLS' frames of reference of their views. Specifically, when asked to reflect on specific kinds of gendered violence, the Supporters and Contingent Thinkers tended to speak of problems associated with using RJ in a general way, and recognised that sexual violence was less problematic given that victim-offender relations were less complex. In contrast, the Sceptics focused on the on-going power dynamics in partner violence and CSA, as opposed to other contexts of violence.

Supporters were the group most supportive of RJ for partner, family, and sexual violence. OLS from all three groups discussed particular conditions that were more favourable for RJ. These were early offending patterns, ongoing relationships, and those of roughly equal status (e.g., siblings in family violence). At the same time, OLS believed RJ could be appropriate for couples wanting to maintain a relationship. In contrast, Sceptics predominantly saw partner, family, and sexual violence as inappropriate, although they tended to focus on problems relating to partner violence. Yet even Supporters and Contingent Thinkers discussed contexts they felt were unsuitable for RJ. These were circumstances characterised by coercion and power imbalances. Thus, my research confirms some of the contexts of violence that victim advocates (Curtis-Fawley & Daly, 2005), Indigenous and non-Indigenous women (Nancarrow, 2006), and informants (Kingi et al., 2008) saw as both inappropriate and appropriate for RJ. In particular, OLS indicated that those who

wish to remain in relationships were more suited to RJ, while coercive situations were not.

One further way to compare the research literature to my study is to notionally apply the three-way typology. From Curtis-Fawley and Daly (2005), South Australian advocates resembled Supporters, while Queensland advocates were similar to Sceptics. This can be explained by their overall views of appropriateness, and their experiences with RJ. From Nancarrow (2006), Indigenous women were like Supporters, while non-Indigenous women resembled Sceptics. This can be explained by the women's orientation toward the CJS and [thus] their views of RJ. Informants from Kingi et al. (2008) were similar to all three groups in the typology. There were those informants who were broadly supportive of RJ (Supporters), those who qualified their support (somewhat similar to Contingent Thinkers), and those who were opposed (Sceptics). Although this exercise likens my study to those in the field, the complexity of OLs' views in this study and their greater degree of support (despite the need for conditions), extends the research literature.

Protections and conditions

Although OLs differed in their degree of support for RJ, they all named certain additional protections and conditions if RJ were to be used. These centred on: facilitator awareness of power dynamics, the need to ensure victim safety, and more generally, effective facilitation to manage these and other dynamics. This agreement across the three groups shows that there are grounds for common concern. However, while unanimity was evident, each group emphasised some provisions more than others.

The Sceptics emphasised the need for RJ to be more victim-centred in two ways: reducing the chances of victim's re-victimisation and increasing the likelihood of offender accountability. In contrast, the Supporters and Contingent Thinkers identified the need for three elements: victim's desire to participate, victim's voluntary consent, and several meetings, not just one. In addition, the Contingent Thinkers' emphasised the need for greater control of RJ by communities.

I pause to consider claims about "the community" in the literature. Frederick and Lizdas (2003) say that the role of the community is central to RJ in that community members can condemn violence more meaningfully than criminal justice officials. Countering this view, many are critical of "the community" when it condones or ignores gendered violence (see Coker, 1999; Goel, 2000; Herman, 2005; Jülich, 2006). The First Nations women interviewed by McGillivray and Comaskey (1999) and Stewart et al. (2001) challenged the positive meaning of "community" when reserve politics and other influences served to coerce women. The idea of "community" is thus double-edged. For some, it offers a means of autonomy from white justice practices, whereas for others, it means a recapitulation of male dominance.

OLs noted other problems that are discussed in the literature. Feminist critiques of RJ, including those by Stubbs (1997) and Busch (2002), cite ongoing dynamics, re-victimisation, and potential lack of victim safety as reasons for RJ's unsuitability for gendered violence. Yet Daly (2006a) contends that such opposition neglects the effects that may occur (and often does) as a result of formal court processes.

Explaining Opinion Leaders' views

OLs' views of appropriateness cannot be explained by any one factor. Rather, in order of importance, the factors are their experiences with RJ, professional position, and degree of concern with the cultural relevance of RJ. I now discuss how these factors affected their views.

First and most important, understandings and experiences of RJ affected OLs' views of appropriateness. I expected that Aotearoan OLs would have a solid grasp of RJ because it has been in Aotearoa for some time and has legislative backing. My study finds that those who had direct facilitation experience were more likely to be supportive of RJ: of seven OLs with past and current facilitation experience, six were Supporters. This shows that a better understanding of, and direct experience with RJ, results in greater support for it in gendered violence cases.

Because RJ is a recent development, the literature suggests that there are varying understandings of what it is. In Stewart et al. (2001), the Canadian First Nation women felt they had little knowledge of RJ, and this limited their ability to discuss its appropriateness for partner violence. Nancarrow (2006) also found that her interviewees were unsure about what RJ was, and those who were more sceptical of RJ tended to conflate it with mediation. My finding of a relationship between experience and support for RJ confirms Curtis-Fawley and Daly (2005). They found that more supportive victim advocates were more likely to come from South Australia, who, in turn, had more experience with RJ. Likewise, there was a high degree of support for RJ in family violence cases by key informants in Kingi et al.

(2008). Informants were actively involved in their local RJ providers in Aotearoa and, as a result, highly informed on RJ.

Second, OLS' professional position affected their position in the typology. I found that those working in government and strictly managerial backgrounds in victim services were more likely to oppose RJ for gendered violence. In contrast, those working as RJ facilitators, legal officials, in the faith community, and those who had had direct experience with service delivery to victims, were more supportive. This finding further validates the idea that those with higher levels of familiarity and experience with RJ are more likely to be supportive of its use for gendered violence.

Finally, cultural background did not predict OLS' position in the typology, i.e., there was not a "racialised split" in the OLS' views. The four OLS from minority cultures did view RJ somewhat differently than the others, but were located across the typology. Māori OLS saw the potential of RJ, but they felt there must be cultural control of justice, rather than only state control. Further, the four cultural minority OLS, plus Contingent Thinker Valerie (a Pākehā woman), confirmed the limitations of earlier radical feminist perspectives. They endorsed critical race approaches and Māori critiques of Pākehā radical feminism. Specifically, they emphasised that cultural approaches to RJ were better suited than the standard Pākehā approaches. Although my study does not confirm a "racialised split" found by Nancarrow (2006), the Māori and Tongan OLS spoke of the need for new kinds of justice, where there was cultural control of justice. In this respect, my findings are somewhat similar to Nancarrow (2006).

Perceptions of the criminal justice system

OLs' perceptions of strengths and limits of formal justice responses to gendered violence played a key role in their judgements of the appropriateness of RJ. Sceptics saw the CJS as having both benefits and drawbacks, and they were more inclined to want to improve the conventional system, than to move on developing alternatives. Supporters and Contingent Thinkers saw more limits than strengths of conventional justice practices, and thus wished to extend and improve RJ. These findings affirm Nancarrow's (2006) insight that non-Indigenous women, who saw the CJS in positive terms, were less likely to support RJ, whereas Indigenous women who saw the conventional system as oppressive, were more open to alternative justice. At the same time, all three groups noted that a measure of "safety" may be possible for victims if the convicted offender was imprisoned. This finding is similar to what the women interviewed by McGillivray and Comaskey (1999) and Herman (2005) said. However, it must be noted that a sentence of imprisonment takes some time to be imposed. Moreover, there is no reason to assume that imprisonment could not be part of an RJ process.

The limitations of established justice responses are, according to Hudson (2002) one of the major reasons people lean toward or consider alternative justice. Most (17 of 19) OLs discussed many drawbacks associated with the formal system, echoing the research literature. Most notably, this included re-victimisation (Dobash & Dobash, 1992; Eastwood, 2003). I believe that in light of this and other problems, there is a need to consider alternative justice practices such as RJ. This is not to assume that RJ will be a "nirvana" experience (Daly, 2002), but rather to say that support for RJ

needs also to embrace the many protections and conditions that Aotearoan OLs point toward.

Conclusion

This study has offered empirical insights in stimulating further discussion on the appropriateness of RJ, although it should be noted at the outset that my findings are based on a small number of participants. Because the sample was small and purposively selected, the findings cannot be generalised to percentages of OLs in Aotearoa. Rather, the intent of the study was exploratory and sheds light on the range of views that are adopted.

The overall findings both confirm and challenge previous work in this area. Similar to Jülich (2006), I found that OLs had many reservations concerning RJ for CSA. Like Curtis-Fawley and Daly (2005), I found that a higher degree of experience with RJ results in more supportive views. Like Nancarrow (2006), I found that greater support for RJ was associated with greater negativity towards the efficacy of the CJS. Moreover, like Nancarrow's (2006) Indigenous women, Aotearoan OLs from cultural minorities saw the potential for RJ to create a more autonomous system of justice. My findings challenge the research literature in one substantial way: the identification of a three-way typology. This finding goes beyond the simplistic, oppositional, and predominantly ideological arguments in the literature. Further, although I could identify three distinct groups with varying degrees of support, there was complexity and variation in OLs' views, and there was not uniform support or opposition for RJ in gendered violence cases. Rather, Supporters saw limitations to

using RJ, Sceptics saw potential benefits of RJ, and Contingent Thinkers focused more particularly on certain contexts of violence and aspects of cultural relevance.

Two major implications emerge from this study. First, the debate on the appropriateness of RJ will continue to be unsettled chiefly because we lack empirical evidence of victims' experiences across a variety of types of gendered violence.

This study has sought to analyse key peoples' views in the field for different kinds of gendered violence, yet we still see variation and contestation. Second, the people in this study, compared to others, seemed to generally see more benefits to RJ. This may reflect the particular environment in Aotearoa, or it might reflect a growing interest in the idea of using RJ for gendered violence. In conclusion, Aotearoa continues to provide a fertile ecology for adult gendered violence and RJ, and more recent developments demonstrate that RJ *is* being practiced in such cases. Thus, it is important to conduct rigorous research with all those directly involved, including victims, offenders, personal and professional support people, referrers, and facilitators. One of the reasons for the polarised debate is a lack of research. Thus, with more research, the debate will move into a mature phase, one that is informed by evidence, and not strictly by ideology.

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Children and Young Persons Act 1974

Children, Young People, and Their Families Act 1989

Corrections Act 2004

Crimes Act 1961

Criminal Justice Act 1985

Domestic Protection Act 1982

Domestic Violence Act 1995

Parole Act 2002

Penal Institutions Act 1954

Sentencing Act 2002

Victim's Rights Act 2002

Appendix A: The legislative incorporation of restorative justice into the adult criminal justice system

In 2002, three new Acts were established (and enacted in June 2002), the *Sentencing Act 2002*, the *Parole Act 2002*⁶⁴ and the *Victim's Rights Act 2002*. Later, the *Corrections Act 2004* replaced the *Penal Institutions Act 1954*, and indicates that offenders be provided with RJ options.

Boyack et al. (2004) indicate that the statutory recognition of RJ through these legislative changes expect encouragement, support, and accommodation for RJ processes by relevant state agencies. These new Acts provide increased *legitimacy* and *acknowledgement* of RJ, promote RJ in appropriate cases, and *require* RJ outcomes to be considered in sentencing and parole (Ministry of Justice, n.d.). However, the Ministry of Justice (n.d.) stress that the legislative changes do *not* require RJ to be implemented in all contexts (and judges are not required to adjourn cases for RJ processes to take place); do *not* require victims or offenders to be involved in RJ; do *not* require community agencies related to justice to arrange RJ processes in any way; do *not* require judges to prioritise RJ outcomes; do *not* require judges to engage in accepting or confirming the outcomes of RJ processes; and finally, the Parole Board is *not* required to prioritise RJ outcomes. In addition, the *Corrections Act 2004* also included RJ within the guiding principles.

The *Sentencing Act 2002*

There are a number of provisions in the *Sentencing Act 2002* that provide for restorative processes. Eaton and McElrea (2003, see pp. 14-15) indicate the court is

⁶⁴ The *Sentencing Act 2002* and the *Parol Act 2002* together replace the *Criminal Justice Act 1985*.

now *required* to consider the outcomes of restorative processes (ss. 8-10). Further, the Select Committee altered the language of the legislation, where instead of the court's possible consideration of RJ outcomes, it was instead made mandatory⁶⁵. Eaton and McElrea (2003) indicate several of the "statutory purposes of sentencing" (p. 14) are reflective of RJ tenets. The following information was derived directly from a document compiled by the Ministry of Justice (n.d.), a document which outlines provisions for RJ in the *Sentencing Act 2002*.

Section 7: Purposes of sentencing or otherwise dealing with offenders

The purposes for which a court may sentence or otherwise deal with an offender include (ss. 7(1)(a) to (d), (h)):

- Hold the offender accountable for harm done to the victim and the community by the offending, and/or
- Promote in the offender a sense of responsibility for, and an acknowledgment of, that harm, and/or
- Provide for the interests of the victim of the offence, and/or
- Provide reparation for harm done by the offending.

Section 8: Principles of sentencing

In sentencing or otherwise dealing with an offender, the court must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including without limitation, anything referred to in s. 10) (s. 8(j)).

⁶⁵ See s.10 of the *Sentencing Act 2002*.

Section 9: Aggravating and mitigating factors

Mitigating factors that the court must take into account in sentencing or otherwise dealing with an offender include any remorse shown by the offender, or anything as described in s. 10 (s. 9(2)(f)).

Section 10: Court must take into account, offer agreement, response or measure to make amends

In sentencing or otherwise dealing with an offender , the court must take into account (s. 10(1)):

- any offer of amends (whether financial or the performance of any work or service) made by or on behalf of the offender to the victim
- any agreement between the offender and the victim as to how the offender may remedy the wrong, loss or damage caused by the offender or ensure that the offending will not continue or recur
- the response of the offender or the offender's family/whanau to the offending
- any measures taken or proposed by the offender or the offender's family/whanau to make compensation or apologise to the victim or the victim's family/whanau, or to otherwise make good the harm that has occurred
- any remedial action taken or proposed to be taken by the offender in relation to the circumstances of offending.

In deciding whether and to what extent any offer, agreement, response, measure or action should be taken into account, the court must take into account whether or not

it was genuine and capable of fulfilment, and whether or not it has been accepted by the victim as expiating or mitigating the wrong (s. 10(2)).

If a court determines that, despite anything of the kind referred to in s. 10(1), it is appropriate to impose a sentence, it must take that offer, agreement, response, measure, or action into account when determining the appropriate sentence for the offender (s. 10(3)).

In any case contemplated by s. 10, a court may adjourn the proceedings until compensation has been paid, the performance of any work or service has been completed, any agreement between the victim and offender has been fulfilled or any proposed measure or remedial action has been completed (s. 10(4)).

Section 25: Power of adjournment for inquiries as to suitable punishment

A court may adjourn proceedings after the offender has been found guilty or has pleaded guilty and before the offender has been sentenced or otherwise dealt with. The purposes of adjournment include to enable a restorative justice process to occur, or to enable a restorative justice agreement to be fulfilled (s. 25(1)(b) and (c)).

Section 26: Pre-sentence reports

A pre-sentence report may include any information regarding an offer, agreement, response, or measure of a kind referred to in s. 10(1) or the outcome of any other restorative justice processes that have occurred in relation to the case (s. 26(2)(c)).

Section 27: Offender may request court to hear person on personal, family, whānau community, and cultural background of offender

If an offender appears before a court for sentencing, the offender may request the court to hear from anyone called by the offender to speak on any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence, involving the offender and his or her family, *whānau*, community, and the victim or victims of the offence (s. 27(1)(c)).

Section 32: Sentence of reparation

When determining the amount of reparation to be made, the court must take into account any offer, agreement, response, measure or action as described in s. 10 (s. 32(6)).

Section 62: Guidance to probation officer in determining placement of offender for community work

When deciding on a placement of an offender for community work, the probation officer must take into account the outcome of any restorative justice processes that have occurred in the case (s. 62(e)).

Sections 110 and 111: Order to come up for sentence if called upon

The court may, instead of imposing a sentence, order the offender to appear for sentence if called on to do so within a specified period (s. 110(1)). The court may also make an order for the restitution of any property or the payment of any sum that the court thinks fair and reasonable to compensate any person who, through, or by

means of, the offence, has suffered loss of or damage to property, emotional harm, or consequential loss or damage (s. 110(3)).

Such an offender may be called up for sentence if he or she:

- fails to comply with any order referred to in s. 110(3), or
- fails to comply with any agreement or to take any measure or action of a kind referred to in s. 10 that was brought to the attention of the court at the time the court made the order under s. 110 (s. 111(1)(b) and (c)).

An application to have the offender brought before the court to be dealt with for that offence may be made by:

- a member of the Police,
- a Crown Prosecutor,
- the Solicitor-General, or
- any person designated by the Chief Executive of the Department for Courts or the Chief Executive of the Department of Corrections.

The *Parole Act 2002*

The following information was derived directly from a document compiled by the Ministry of Justice (n.d.), a document which outlines provisions for RJ in the *Parole Act 2002*.

Section 7: Guiding Principles

When making decisions about, or in any way relating to, the release of an offender, one of the principles that must guide the Parole Board's decisions is that the rights of

the victim are upheld, and victims' submissions and any restorative justice outcomes are given due weight (s. 7(2)(d)).

Section 35: Direction for detention on home detention

The outcome of any restorative justice processes that may have occurred is one of the factors to be considered by the Parole Board when considering an application for home detention (s. 35(2)(b)(v)).

Section 36: Detention Conditions

With the approval of a probation officer, an offender on home detention may leave the residence in which he or she is detained to (s. 36(3)(c)):

- attend a restorative justice conference or other process related to the offender's offending, or
- carry out any undertaking arising from any restorative justice process.

Section 43: Start of the process

When an offender is due to be released at his or her statutory release date, or to be considered by the Board for parole or home detention, the Department of Corrections must provide the Board with any reports arising from restorative justice processes engaged in by the offender (s. 43(1)(b)).

The Victims' Rights Act 2002

The following information was derived directly from a document compiled by the Ministry of Justice (n.d.), a document which outlines provisions for RJ in the *Victims' Rights Act 2002*.

Section 9: Meetings to resolve issues relating to offence

If a suitable person is available to arrange and facilitate a meeting between a victim and offender to resolve issues relating to the offence, a judicial officer, lawyer for an offender, member of court staff, probation officer, or prosecutor should encourage the holding of a meeting of that kind (s. 9(1)).

These people should only encourage a meeting if they are satisfied that (s. 9(2)):

- the victim and offender agree to the holding of a meeting, and
- the resources required for a meeting to be arranged, facilitated, and held, are available, and
- the holding of a meeting is otherwise practicable, and is in all the circumstances appropriate.

Section 10: Enforceability of Principles

S. 9, and the principles in it guiding the treatment of victims, do not confer on any person any legal right that is enforceable, for example, in a court of law.

The Corrections Act 2004

The *Corrections Act* 2004 was enacted in June 2005 and replaced the *Penal Institutions Act* 1954. According to the Department of Corrections (n.d.), this Act “introduced reforms that reflect modern conditions and approaches to how the Department manages offenders and is in line with other recent criminal justice reforms”. Under s. 6 (*Principles guiding corrections system*), sub-section (d) indicates for offenders to have access to processes that promote restorative justice:

(d) offenders, must, where appropriate and so far as is reasonable and practicable in the circumstances, be provided with access to any process designed to promote restorative justice between offenders and victims.

The legislative enmeshment of RJ has firmly established RJ in the adult CJS.

Appendix B: Interview instruments and consent package

Research on Conferencing and Sentencing Project Professor Kathleen Daly, Project Director, Griffith University

Information Sheet on New Zealand Opinion Leaders' Views on Restorative Justice in Cases of Family and Sexual Violence

There is an international debate about the use of restorative justice in cases of family and sexual violence, but there is a lack of information on the views held by those who work with or on behalf of victims or opinion leaders who are shaping the debate. This project aims to interview about 20 people in New Zealand who work in victim advocacy groups, government policy-setting areas, academia, and other relevant organisational contexts.

The conduct of ethical research requires that a researcher describes the scope of the research, assure confidentiality of responses, and ensure that a participant's responses are voluntary.

Scope: The interview asks questions about your views on the appropriateness of restorative justice in cases of family and sexual violence, for which kinds of cases it may (or may not) be appropriate, and what an ideal justice response would be in these cases. It invites your reaction to common claims in the literature about the relationship of restorative justice to cases of family and sexual violence. The interview should take about one hour to complete.

Confidentiality: All the information that is gathered in the project is confidential. I am bound by law to protect your privacy and to maintain confidentiality of data records. When the research is complete, the interview responses will be grouped and reported as statistical aggregates, and any discussion of individual responses will use pseudonyms, rather than real names, to protect the identity of those who participate in the study. Other information that could identify an individual, such as specific location or professional role, will not be used for the same reason.

Voluntariness: Your participation in the research is voluntary. That means you don't have to answer any question and can end the interview at any time. I would also like to tape this interview and am seeking your consent to do that. If at any point in the interview, you wish to switch off the tape recorder, I will of course do that.

The conduct of ethical research in Australia also requires that if any participant has a complaint about the manner in which a research study is conducted, the complaint is made to the Project Director (Professor Kathleen Daly, School of Criminology and Criminal Justice, Griffith University, +61 7-3875-5625, k.daly@griffith.edu.au); or if an independent person is preferred, to the University, either:

Griffith University's Research Ethics Officer, Office for Research, Bray Centre, Griffith University, Kessels Road, Nathan, Queensland 4111, +61 7-3875-6618;

or

the Pro-Vice-Chancellor (Administration) Office of the Vice-Chancellor, Bray Centre, Griffith University, Kessels Road, Nathan, Qld 4111, +61 7-3875-7343.

When the research report is finalised, a copy will be sent to all the participants at an address to be confirmed at the time of the interview.

Visit the Project Director's website (www.griffith.edu.au/school/ccj/kdaly.html) for other reports or publications arising from this project.

***Research on Conferencing and Sentencing Project
Professor Kathleen Daly, Project Director, Griffith University***

Consent Form

*New Zealand Opinion Leaders' Views on Restorative Justice
in Cases of Family and Sexual Violence*

I consent to participate in the research project as described in the Information Sheet, which I have read and understood. I understand that my participation is voluntary, that I can end the interview or the recording of the interview at any time, and that the Project Director will protect the confidentiality and privacy of the information I give.

Signature: _____

Name (printed): _____

Date: _____

Research on Conferencing & Sentencing Project
Professor Kathleen Daly, Project Director
Griffith University

New Zealand Opinion Leaders' Views
on Restorative Justice in Cases of
Family and Sexual Violence

Research on Conferencing & Sentencing

New Zealand Opinion Leader Interview

NZ Interview Number

Date of interview:

Time interview began:

Section 1 – work history and demographics

1.01 The organisation/government department you work for is

.....

1.02 Your position is.....

1.03 You've worked for this org or govt department for how long?

1.04 What other positions have you held in organisations or departments that are related to domestic or sexual violence, or to restorative justice?

.....
.....
.....

1.05/06 Sex and race/ethnic identity male female

.... Maori Pacific Islander Pakeha

1.07 What is the highest level of education/degree you have completed and in what field?

.....

1.08 (For those in organisations), what do you do? OR
(For those in government), what are your main roles?

.....
.....
.....

For those saying under no circumstances:

2.10 How did you come to this view? (sources of data or experience)

2.11 What are your specific concerns with RJ in these cases?

2.12 Now, let’s consider established criminal justice responses (traditional court adjudication and penalty setting): what do these accomplish for victims?

For those saying rarely or perhaps some cases:

2.20 How did you come to this view?

2.21 What kinds of cases are appropriate, and what kinds are not?

2.22 Now, let’s consider established criminal justice responses (traditional court adjudication and penalty setting): what do these accomplish for victims?

For those saying in many cases, so long as they fit the criteria

2.30 How did you come to this view?

2.31 What kinds of cases are appropriate, and what kinds are not?

2.32 Now, let’s consider established criminal justice responses (traditional court adjudication and penalty setting): what do these accomplish for victims?

Section 3 – From adult to youth justice cases

3.10 You’ve given me your views for RJ in adult cases. Are they similar or different for youth offenders?

.....
.....
.....
.....

Section 4 – Constructing an ideal system

For those who think that RJ is not appropriate or only rarely appropriate in family violence or sexual assault

(KD: There may be different ideal systems, depending on type of violence. Specify with respondent what they are referring to.)

4.10 How should the current system be changed, if at all?

For those who think that RJ can be appropriate in some or more cases of family violence or sexual assault, let's consider each stage of the justice process and what your ideal system would be like.

4.20 When cases are reported to police: who should be making decisions on referral and how should they be made? (This concerns the screening criteria and who makes the decisions, e.g., more feminist or victim advocacy involvement in referral decisions).

4.21 Who should be facilitating the conferences? (Give detail on background and training, if possible.)

4.22 How should victims and offenders be prepared?

4.23 In what ways (if at all) would the conference itself be different compared to other types of offences.

4.24 What kind of penalties would be available?

4.25 Anything else (with respect to the process and outcome)?

Section 5 – Reaction to common claims

For over 30 years, feminist and victim advocacy groups have worked to change the law to increase awareness of family violence and sexual assault; to make these offences “public crimes”, not private problems; and to strengthen police responses, court prosecution and penalties.

5.01 RJ undermines (or appears to undermine) the legal gains of feminist and victim advocacy groups. [Your reaction?]

.....
.....
.....

5.02 RJ is (or appears to be) a “soft option” in responding to family or sexual violence. It sends the “wrong message” to offenders. [Your reaction?]

.....
.....
.....

Section 6 – Other

6.01. How did it come to be that family violence and sexual assault cases were not included in the adult conferencing pilot?

.....
.....
.....

6.02. Only those with some interest in RJ: what do you see as the main sources of resistance to RJ in family violence and sexual assault?

.....
.....
.....

6.03. Anything else you want to say on this topic?

.....
.....
.....
.....

Address to send copy of the report same as current address?

.....
.....

Interviewer comments about the content or context of this interview:

.....
.....
.....
.....
.....

Time interview ended

Total time of interview (minutes)

Placing your views on a continuum regarding the appropriateness of RJ in cases of family violence and sexual assault

Kinds of violence

family violence

- spouse/partner
- rest of victim offender relations (physical child and elder abuse/neglect)*

sexual assault

- adult offenders/adult victims

child sexual abuse

- adult offender/child victim

I	II	III	IIII
under no circumstances (zero percent)	rarely, in only a few cases (5 to 10%)	in some, but still a minority of cases (more than 10%, but less than 25%)	in many or more cases, so long as they fit the right criteria (25% or more)

Defining restorative justice: the two ways it is currently practiced for adults in NZ

- pre-sentence conferencing as practiced under the adult pilot
- community prevention programs (adult offenders)

*parental abuse and sibling abuse would be relevant largely for youth cases

Appendix C: Standard letter of introduction

Dear

By way of introduction, I've been conducting research on restorative justice (RJ) since 1995, when I came to Australia from the US. I began with a detailed study of conferencing in South Australia, and now my research has expanded to consider debates on the appropriateness (or not) of RJ in cases of domestic/family violence and sexual assault, along with developments in Indigenous justice.

For one part of the research, we have interviewed victim advocacy groups on their understandings and views on the appropriateness of RJ in cases of dv/fv and sexual assault in two Australian states. (A paper on that will be appearing mid 2004 in a special issue of *Violence Against Women*, and is available on my website, see address below). I have been funded to continue that work in New Zealand (and I hope also in Canada).

I'm planning to interview key people in NZ with well-formed views on the appropriateness of RJ in cases of domestic/family violence and sexual assault. I have in mind about 15 to 20 people (and can interview more, especially to include Maori or Pacific Islander groups). I have in mind people inside and outside government, as well as those in the academic sector. (I may hold on interviewing those in the academic sector for now because the views are published, and the interview would have to reflect this.)

I'd like to generate a sample who would reflect diverse views as "opinion leaders or shapers". You definitely fall within that criteria, and I wondered if you could assist me in identifying others.

I'm planning to be in New Zealand for about 2 weeks in March to conduct the interviews (roughly from about 6-22 March).

I'd very much like to talk with you by phone (or continue by email if that's easier for you) to see when you'd be available to be interviewed and perhaps also to suggest other names of people.

At present, my plan is to fly to Wellington, to arrive either 4 or 6 March and to go on to Auckland after that (leaving Wellington 14 March), and spending a week in Auckland. But my travel plans are highly dependent on the availability of people to be interviewed.

I look forward to hearing from you.

With best wishes, Kathy