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Why Rock the Boat?

Non-Reporting of Intimate Partner Violence

2010

A thesis submitted to Auckland University of Technology

in fulfilment of the requirements for the degree of

Doctor of Philosophy (PhD)

Institute of Public Policy

Faculty of Applied Humanities

Primary Supervisor: Love Chile

Dedication

This thesis is dedicated to two women. Firstly, I dedicate it to the late Maxine Burgham-Page, a woman of many talents. Not the least of these was to empower victims of intimate partner violence and breast cancer sufferers. By her own example of courage and personal power and her wish for us all to live life and love well, Maxine has left a legacy for us all to aspire to. Secondly this work is dedicated to my mother, the late Evelyn Parkes, whose love and belief in me gave me the will to learn and the determination to aim high.

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Attestation of Authorship

"I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any degree or diploma of a university or other institution of higher learning."

Signed:

Name:

Date:

Acknowledgements

Firstly I would like to thank the people who agreed to participate as victims and perpetrators of intimate partner violence in this research. Your contribution was crucial to this study, and your input courageous and generous, given the sensitivity of the subject matter and your roles within it. Some of you entrusted me with information you have told no one else. Thank you for openness and belief in the research.

I have had the privilege of being advised by three superb supervisors, Associate Professor Love Chile, Dr Allison Morris and Dr Shirley Jülich. Together they have contributed a huge knowledge and skill base. The oft-used phrase, "It's a process" is so true, but equally as important are the personal characteristics of one's supervisors. They have shown me encouragement, wisdom, enthusiasm, belief in my ability and experience to see it through, and given me the motivation to do my utmost to complete despite health challenges. Even though Allison has been in the United Kingdom, I have always felt her presence and mana beside me on this project. Shirley, whom I have known through restorative justice for many years, has traversed the path from friend to supervisor with integrity and warmth. Love's knowledge of academic process and politics, coupled with extraordinary patience with me has been invaluable.

Other people have given me their precious time towards the completion of this research. I was really fortunate in having as key informants 16 exceptional people. They were: Judge David Mather (Waitakere District Court); Judge Chris McGuire (Rotorua District Court); Judge Lex de Jong (Auckland District Court); Neville Robertson (Waikato University); Deborah Mackenzie (Safer Homes in New Zealand Everyday); Pippa Nicholson (Auckland District Court); the late Maxine Burgham-Page (Burgham-Page Foundation); Naida Glavish (Auckland District Health Board); Louisa Ryan (Counties Manukau District Health Board); Aaron Steadman (Safer Homes in New Zealand Everyday); Alistair Duhs (North Harbour Living Without

Ethical Approval

Approval to undertake this research was granted by the Auckland University of Technology Ethics Committee.[1]

Ethics Application Number: 06/193

Dated: 30 March 2007

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[1] See Appendix 1 for all formal documentation.

Abstract

This study critically examines the reasons for non-reporting of intimate partner violence (IPV). It explores the thesis that the use of restorative justice processes could impact on the rate of reporting and victims seeking early interventions for this form of offending (Morris, 2002; Morris & Gelsthorpe, 2000), or giving victims more choice, and therefore power (Curtis-Fawley & Daly, 2005). Empirical data from a range of participants including interviews with key informants such as judges, restorative justice practitioners, victim advocates, and men's group facilitators, as well as victims and perpetrators of IPV identified a number of key factors responsible for non-reporting.

Findings from this study support previous studies in New Zealand and internationally that a relatively small percentage of victims (36.1%) reported informally, to family and friends, and formally, to police, and as low as 5.6% reported intimate partner violence to police only (Fanslow & Robinson, 2010). However, reporting rises to as high as 77% in form of disclosure to "someone". The factors for non-reporting include fear of the consequences, such as offender retaliation (Jordan, 2004; Ruiz-Perez, Mata-Pariente, & Plazaola-Castano, 2006), loss of children (Robertson et al, 2007), the role of law enforcement agencies such as the police (Tjaden & Thoennes 2000, cited in Jordan, 2004, p. 1415) and the judicial system (Jordan, 2004, p. 1413; Ruiz-Perez et al., 2006; Seuffert, 1996). This study also identified the complex nature of power dynamics in partner relationships as a critical factor in non-reporting of IPV.

There are strong reservations in the literature about the use of restorative justice in IPV. For example, some of these concerns include: that it may tend to label IPV crime as conflict thus minimising its seriousness (Hooper and Busch, (1996, p. 10), concerns for the safety of victims, and the potential to reduce offender accountability (Busch and Robertson, (1993, p. 15). This study found significant support (79%) for the use of restorative justice enhancing the reporting of IPV, and

no one opposed its use for IPV altogether. One of the key contributions of this study, therefore, is the re-conceptualisation of 'reporting' and the development of a reporting framework and how restorative justice could be applied at each of these forms to increase the rate of reporting of IPV.

Part One: Literature

Chapter 1: Intimate Partner Violence

Introduction

Intimate partner violence (IPV) can be likened to a silent cancer in the unsuspecting body of its community. Its existence is usually unknown until something shocking happens. Reasons for this are many, some of which are discussed in-depth in this thesis. Offences by partners are often considered "too private" to be reported with the result that subsequent generations learn and perpetrate the same behaviours (Ministry of Justice, 2009). The New Zealand Crime and Safety Survey 2006 (Mayhew & Reilly, 2006) found that crimes committed by partners and people known to the victim were not reported to the police for a number of reasons including: it was not important enough; they lacked confidence in the police response; they did not want to get their partner into trouble; and the shame and embarrassment of the violence being discovered. As long as intimate partner violence continues to be under-reported, the effects over time and generations must surely multiply. This is because successive generations and their offspring will behave with similar aggression believing it is normal to behave that way. From one couple using intimate partner violence, decades later a family tree of people adversely using aggressive power to control others can occur. It is, therefore, necessary to find a way to encourage reporting. Accordingly, my question on which this thesis is focussed is, "To what extent would the use of restorative justice improve the reporting of intimate partner violence?"[2]

The use of restorative justice (RJ) as an alternative intervention for dealing with intimate partner violence is minimal. Although this process has been used for a wide range of crimes, including intimate partner violence, its use for these cases has been heavily debated. On the one hand, proponents of restorative justice put forward that it can present perpetrators and victims with greater honesty, flexibility

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[2] Some cultural dimensions were not explored due to insufficient data.

and creativity in laying the foundations for a positive future. On the other, some academics and victim advocates had concerns that restorative justice might allow further victimisation of victims. But whether or not restorative justice is appropriate in these cases is not the only problem. There can be issues such as identifying who is the victim and who is the perpetrator and deciding whether safety or the relationship should be the priority.

This thesis explores the extent to which the use of restorative justice could increase the reporting of intimate partner violence, primarily to the police, but also informally. I consulted victims, perpetrators, and key informants (including victim advocates, the judiciary, cultural advisers, men's group leaders and restorative justice service providers). The results of this investigation are presented in three parts. Part One comprises a literature review which is divided into four chapters. The first chapter addresses intimate partner violence (including gender violence, victim precipitation, prevalence, power, intimate partner violence in New Zealand, legislation and definitions). The second chapter discusses restorative justice (including justice, restorative justice, the history of restorative justice in New Zealand, contemporary practice, shame, and gatekeeping). The third chapter canvasses victims' responses to intimate partner violence (including help-seeking, reporting, women's agency, and victims' resistance). The fourth chapter examines responses to intimate partner violence by the court, through attending programmes, and restorative justice.

Part Two describes the mixed methodology used in this investigation. This is followed by the results which are outlined, using the voices of participants. The results are then analysed and compared and contrasted with other research in this field.

Part Three addresses the implications of the research for policy and practice. Restorative justice practice and its implications for the key issues of safety and power are canvassed. Implications for policy are examined. The thesis concludes

with a brief summary, discussion, implications for policy and practice, and potential areas for future research, followed by a glossary of Māori words and concepts.

Finally, the Appendices include case studies, some innovative ideas, and formal documents. The remainder of this chapter contains an exploration of intimate partner violence.

Intimate partner violence

Research into intimate partner violence has been wide-ranging, with people writing about different behaviours based on sometimes diverse terminologies. As a result, comparing and contrasting their research has been problematic, making generalisation difficult, despite some overlapping being evident. As stated by Tjaden and Thoennes (2000), there is little consensus among researchers on how to define intimate partner violence. Terms such as *intimate partner violence, domestic violence, family violence,* and *spousal violence* have been used interchangeably. For example, Carbonatto (1995) used the term *spousal violence*; Fanslow, who in her report for the Ministry of Health (2002), used *family violence*, two years later referred to *intimate partner violence* (Fanslow & Robinson, 2004); Mouzos and Makkai (2004) noted that *domestic violence* was also called *intimate partner violence*; Parker (2004) used *family violence*, qualifying it by calling it *interspousal physical violence.* New Zealand writers (Robertson et al., 2007), however, coming from a legal perspective, have continued to use *domestic violence*, in keeping with the New Zealand Domestic Violence Act 1995 (DVA). Intimate partner violence, though, has been used more recently. Some terms are used politically. For example the word *battering* has consistently been used by the anti-domestic violence movement, which has "centred on holding the State accountable for women's safety.… pay[ing] special attention to modifying the criminal justice system" (Dasgupta, 2002, p. 1364).

Although researchers and practitioners have not yet, according to Dasgupta (2002), agreed on a common definition, the word *battering* was used in debates about the

politics of gender roles and gender relations. The response by criminal justice systems depended on whether intimate partner violence was limited to the narrow definition of physical assault, or to the broad definition of a "pattern of intimidation, coercive control, and oppression, that is, battering" (Dasgupta, 2002, p. 1367). Thus, how intimate partner violence was defined was crucial to deciding on what was an appropriate response. The New Zealand legislation covers both definitions.

There are numerous feminist analyses of many aspects of intimate partner violence, including possible causal factors, incidence and implications. Because this discussion is very prevalent in the literature, the following few examples convey a sense of its breadth. Addressing causal factors, Nancarrow (2006) described intimate partner violence as a consequence of patriarchal power, with social and economic structures making women dependent upon men and therefore vulnerable to abuse by them. Ruiz-Perez, Mata-Pariente, and Plazaola-Castano (2006) expressed a similar view, stating that intimate partner violence evolves from "patriarchal social structures that imply women's subordinate status in society" (p. 1156). Stubbs (2002) discussed intimate partner violence as control-based, comprising features such as:

- A range of behaviours and coercive tactics, not always recognisable to others;
- Being often repetitive, meaningful and strategic, reflecting deeply held beliefs rather than an isolated incident; and,
- Social and cultural norms giving meaning to the violence, possibly authorising or sustaining gender-based violence which may constrain women's options for dealing with the violence. (Stubbs, 2002, pp. 43-44)

Citing Dobash and Dobash (1979; 1992) Stubbs explained that men's violence affected the negotiations of women's everyday life. She noted that this went beyond the victim-agency dichotomy (discussed in Chapter 3) because it recognised women's active role in resisting violence, while noting that men's violence can effectively limit women's choices in crucial ways.

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One victim advocate who is also a key informant researched the area of female perpetrators. Mackenzie (2009) of Safer Homes In New Zealand Everyday, studied arrested women in Auckland. Out of 60 women, Mackenzie found 40 had offended against male victims (2009, pp. 11-15). Of these almost 50% were intimate partners, and had a history of being the victim of the same male intimate partner (p. 11). A quarter (25%) of the women offended against their intimate partner and had no known history, whereas 15% women had a history as a perpetrator against the intimate partner and 12.5% had perpetrated violence against other male victims. This finding is consistent with (Muftic, Bouffard, & Bouffard, 2007b) discussed later in this chapter.

Irrespective of the Domestic Violence Act's gender neutrality, a number of writers coming from indigenous or victim advocacy perspectives highlighted existing gender differences. Cram, Pihama, Jenkins, and Karehana (2002), for example, included in their definition of Māori domestic violence, reference to men as most often the aggressor. Women and children were included in their definition as the most frequent targets. Much of the literature agrees with them (Busch, 2002; D. Coker, 2004; Robertson et al., 2007). Cram, et al. (2002) added to this by describing domestic violence in the Māori context as usually "in a non-public place and inclusive of non-stranger rape" (p. 3). These and other differences, such as adding class (Sokoloff & Dupont, 2005) or examining women's use of force (S. L. Miller & Meloy, 2006) have affected research findings.

Other factors adding to the difficulties of comparing research include research design and whether the information was obtained by interview or telephone survey, sampling, whether the study was population-based or based in another setting such as healthcare (Koziol-McLain et al., 2004). Furthermore, the acceptance and the reliability of measuring instruments used (New Zealand Family Violence Clearinghouse, 2007) is essential to the reliability of any statistical data. For example, the Conflict Tactics Scales compiled by Straus (2006), even in their updated form, remain subject to critique (see Muftic et al., 2007b, discussed in Chapter 3). Gender differences were seen in studies of the impact of intimate

partner violence. New Zealand research by the Ministry of Justice (Morris, Reilly, Berry, & Rayson, 2003) reported that although women's violence to men was similar in proportion to men's, it had a significant difference in its impact. Women reported that they were affected very much or quite a lot, whereas men were not. Dobash and Dobash (2004) made similar observations. Saltzman, Fanslow, McMahon and Shelly (1999, p. 11) included in their definition of physical violence, "intentional use of physical force with the potential for causing death", whereas many other definitions do not. This follows New Zealand's situation, where homicide is a known outcome of some intimate partner violence. For example a 1991 study by Fanslow, Chalmers and Langley, cited in Anderson (1997, p. 6) found 47% of female homicide victims were killed by an existing or former male partner.

After considering the identified variations in terminology and definitions, for this research I use an operational definition which states: "Intimate partner violence is physical, sexual and psychological violence between people over 20 years of age in a current or past intimate heterosexual or same sex relationship, who may or may not live together, who may or may not be married, where the violence is characterised by dominance and subordination, intentional force, with or without the potential to cause death. Physical violence can result in pain, injury, impairment or disease; sexual violence includes any forced, coerced or exploitative sexual behaviour or threats imposed on a person; psychological and emotional violence is any behaviour that causes anguish or fear, including intimidation, harassment, damage to property, threats of physical or sexual violence, or deprivation of decision-making powers."

Gender violence

Most earlier definitions of intimate partner violence referred to violence against women. International covenants referred to it as gender violence, generally considered to be violence by men against women (Hester, 2003). For example, the General Assembly of the United Nations, in its "Declaration on the Elimination of Violence Against Women" (1993), in Article 1, defined violence against women as:

any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

(United Nations, 1993)

In Article 2 the General Assembly further defined violence against women as including, but not limited to:

Physical, sexual and psychological violence occurring in the family, including battering ... (and) marital rape.

(United Nations, 1993)

The Oxford English Reference Dictionary, however, states the word "gender" refers to a "person's sex ... belonging to such a class ... sex as expressed by social or cultural distinctions" (Pearsall & Trumble, 1995). It does not use the word in solely feminine terms. Despite this, some literature (Curtis-Fawley & Daly, 2005; R. E. Dobash, Dobash, Cavanagh, & Medina-Ariza, 2007; Enander, 2010; Hester, 2004) and common usage by practitioners in the field of intimate partner violence, indicated that gender violence is violence perpetrated by men against women. This implied that women's violence against men is something different, unrelated to gender. Other researcs found limitations in the term. For example, Fergusson, Horwood, and Ridder (2005) in a Christchurch birth cohort of 828 25-year olds, which examined both victimisation and perpetration of intimate partner violence, found "considerable similarity in the range of responses and levels of domestic violence reported by men and women" (Fergusson et al., 2005, p. 1113). This was particularly so in the victimisation reports. Lower perpetration reports by men were explained as a possible tendency for men to under-report their perpetration of intimate partner violence. Fergusson, et al. suggested this could indicate that intimate partner violence was more a function of violent partnerships rather than violent individuals. However, Fergusson, et al.'s research was critiqued by Johnson (2005) who suggested their results were the result of situational couple violence, because it was the most common type of intimate partner violence. Furthermore,

batterers or their victims were less likely to make themselves available for research into intimate partner violence. Other researchers have developed this theme by referring to intimate partner violence as gender neutral, enabling both genders to be recognized as perpetrators of violence (Buzawa & Buzawa, 2003).

A recent example is Merry (2009), who has described the issue of gender violence as a diverse set of actions ranging from interpersonal violence within the home to the rape of men or women. It was violence whose meaning depended on the gendered identities of the parties. Merry acknowledged the wide range of issues and approaches used to define gender violence, noting the risks associated with a movement-generated definition. The race and class variation had led the violence against women movement in the US to expand their frameworks and programmes to include people of differing language, ethnicity, race, and sexuality. Merry stated:

> [The movement] has produced a very broad definition of gender violence that has some conceptual incoherence and builds on a wide variety of theories about [gender violence] and modes of intervention. It has not resolved the problem of establishing a universal standard of unacceptable forms of gender violence that simultaneously validates cultural difference. Nor has it succeeded in specifying prohibited forms of violence while also understanding these practices within their social and cultural contexts. (Merry, 2009, p.184)

Somewhat pertinently, Merry observed that a society that was free of violence against women could only happen when it was free from other forms of violence.

Gender has, according to Straus (2006), influenced the way research has been reported. He gave examples of research that collected data about the violence of men and women, but published only that which related to men's violence against women. Straus explained that this could be due to an ideological commitment to the idea that men are almost always sole perpetrators, and to avoid "vitriolic denunciations and ostracism" (p. 1087). Furthermore, Straus raised a possibility of progress toward equality between men and women leading to more equality in the perpetration of crime (Straus, 2006).

Thus, gendered violence, as it has been used in much of the literature, is acknowledged. Notwithstanding, gender-neutral terminology will be used in this thesis. My reasons for this are threefold. Firstly, I understand that gendered violence can apply to both genders; secondly, the data obtained in this research is consistent with gender-neutral terminology, that is, that both men and women in this research have been victims of their partners. Thirdly, issues such as gender symmetry, responses to intimate partner violence, and the concepts of victim and perpetrator all relate to gender, and are best discussed, as far as possible, in gender-neutral terms.

Victim precipitation

In contrast to an innocent victim (Hollander, 2009) who lacked an ability to resist violence perpetrated against them and who were weak and defenceless, some victims have had something to do with the incident. When victims' actions were a contributing factor, Muftic, Bouffard, and Bouffard (2007a), attributed this to victim precipitation, or "the victim … act[ing] as a direct, positive precipitator in the crime" (citing Wolfgang, 1967, Muftic et al., 2007a, p. 328). Victim precipitation was referred to as "unplanned or spontaneous" by Koons-Witt and Schram (2006). Their research on the relationship between co-offending groups, victims, and the conditioning of these by the offender's race, found that aggravated assaults committed by women were usually retaliatory and involved a personal relationship with the victim. Citing research by in Philadelphia Wolfgang (1967), Muftic, et al. (2007a) discussed a sample of homicides involving 588 victims and offenders who were in interpersonal relationships. In 26% of the homicides, victims were first to use physical force. Wolfgang referred to these as victim precipitated, or examples of victims who used their agency, possibly to defend themselves. Another researcher, Amir (1967), applied this concept to rape, referring to cases where consent was given initially, then withdrawn "before the actual act" (Muftic et al., 2007a, p. 328). Not surprisingly, feminist scholars strongly protested that this was victim-blaming. Clark and Lewis (1977) stated that trials were generally based on the credibility of the victim rather than on the true nature of the event, and the

assault was often committed by someone known to the victim. They further advised that the inequality between women and men in society meant sexual relationships were also power relationships, in which women's sexuality was a commodity. Notwithstanding these objections, Muftic, et al. (2007a) suggested that victim precipitation could provide new insights into the use of violence among intimates, especially the contextual differences between men's and women's use of violence.

Prevalence

The prevalence of intimate partner violence in New Zealand and overseas cannot be established precisely, largely because people experiencing it are loathe to disclose the fact. Reasons for this are outlined in Chapter 3. Furthermore, in New Zealand, even those incidents which have been reported are not always recorded in criminal statistics as intimate partner violence. Despite government policy and police efforts to deal with these as crimes, police records of reported intimate partner violence (one of the main ways statistical data regarding intimate partner violence is acquired (Mackenzie, 2009)) are recorded as family violence. This term also comprises violence involving children, male assaults female and/or common assault. The last two include the violence of strangers.

Other means include national surveys (Mirrlees-Black, 1999; Morris et al., 2003) and other quantitative research, which might be population, health or ethnicity-based. For example, Fanslow and Robinson (2004) and Koziol-McLain, et al. (2004) conducted research which was situated in the health sector and used population-based cluster-based sampling (Fanslow & Robinson, 2004). By using face-to-face interviews, this data gave more insight than reported violence, about the demographics, emotional impact, and responses to the violence. Both the authorities and researchers in the above research wanted to see a reduction in intimate partner violence. In this way reporting and prevalence are conceptually tied. Statistics are also kept on the services provided by Women's Refuges and respondents for protection orders. In its review of the Domestic Violence Act 1995

(Ministry of Justice, 2007), the Ministry reported that, during 2006, the police responded to over 71,000 family violence related incidents, and in the same year Women's Refuges provided services to 16,738 women. The same review advised that Māori were over-represented as both victims and perpetrators. In 2005, almost half of the known murders, (29 of 61) were related to intimate violence (Ministry of Justice, 2007, p. 2). The New Zealand National Survey of Crime Victims (Morris et al., 2003) reported that, of the women who had ever been in a partnership, 15% reported violence compared with 7% of the men (p. 5). The New Zealand Women's Safety Survey conducted in 1996 found that 2% of women with current partners and 22% of women with recent partners reported that they had experienced 10 or more acts of physical or sexual abuse by their partner (Ministry of Justice, 1996).

New Zealand research has found considerable disparity in the incidence of intimate partner violence on the basis of ethnicity and gender. Four New Zealand studies have been discussed below, which demonstrate the diversity of approach and the incidence across different New Zealand communities. One of the few surveys in New Zealand involving both women and men is the National Survey of Crime Victims (Morris et al., 2003) which examined the lifetime prevalence of violence by heterosexual partners. In a large computer-assisted self-interviewing survey of over 2500 people, Morris, et al. found 26% had experienced at least one form of violence ranging from a threat of, or actual physical force, damage to property or the use of a weapon. Of the European women in Morris et al.'s survey, 24% had experienced partner violence at least once, whereas of the European men, 18% had (Morris et al., 2003, p. 7). In the Māori subgroup, 49% of the women and 28% of the men had experienced partner violence at least once.

Intimate partner violence was found to be more prevalent in the two age groups of 17 to 24 and 25 to 39 (Morris et al., 2003, p. 4). Māori were found to have experienced violence at significantly higher rates than any of the other ethnic groups, at 39% compared with 21% for Europeans, and, for each of Pacific Peoples and Other (17% and 18% respectively) (Morris et al., 2003, p. 5).

Another study possibly indicating higher abuse levels among Māori women was that of Koziol-McLain, et al. (2004, p. 1) who found higher prevalence rates among women seeking emergency health care, 22% of whom were Māori. This exceeded the national figures of the percentage of the total New Zealand population of Māori at 15%, by 7%.[3] It is possible, however, that the higher ratio of Māori attending the clinic, along with a higher proportion of Māori women victims is related to Statistics New Zealand's 2006 Census (Statistics New Zealand, 2007) which showed Manukau's population of Māori was highest out of the 73 electoral districts in New Zealand. In the Ministerial Review of the programmes and policies targeting ethnicity, Kale (2005, p. 5) commented that Māori represented 14% of the population, and yet comprised around 50% of the offending population.

Koziol-Mclain, et al.'s (2004, p. 1) research also found that 44% of women had experienced intimate partner violence over their lifetime (that is, over 17% more than in the national survey by Morris, et al. (2003)), and 21% had experienced it during the past year. The results of this study were not, however, analysed according to ethnicity.

A second study focusing on both genders (referred to earlier) by Fergusson, Horwood, and Ridder (2005), examined domestic violence and its consequences for mental health outcomes, finding that exposure to domestic violence was significantly related to increased risks of depression. Official statistics give some support to Fergusson et al.'s (2005) contention that both genders perpetrate abusive behaviour. The Family Violence Clearinghouse reported that in 2005/6 the New Zealand police apprehended 25,356 male family violence perpetrators, compared with 4,135 female perpetrators (New Zealand Family Violence Clearinghouse, 2007, p. 2). Thus, in that period, 14% of perpetrators were female.

A large cross-sectional study (*N* = 2,855) was carried out using face-to-face interviews with women who attended a medical clinic, and focussed on prevalence and health consequences in Auckland and North Waikato (Fanslow & Robinson,

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[3] In 2001 15% of the New Zealand population identified with Māori ethnicity.

2004, p. 1). They found that among ever-partnered women, 33% in Auckland and 39% in North Waikato had experienced at least one act of physical and/or sexual violence by an intimate partner. Women who had experienced moderate physical violence by a partner were 2.5 times more likely to report current emotional distress and thoughts of suicide, while those who experienced severe physical violence were almost 4 times more likely to report the same effects (p. 5). Using data from the same 2004 study, Fanslow, Robinson, Crengle, and Perese (2010) examined the lifetime prevalence of physical and sexual abuse of Māori, Pacific Island, European/other and Asian women. They found that 1 in 2 Māori women, 1 in 3 Pacific Island, 1 in 3 European and Other, and 1 in 10 Asian women had experienced intimate partner violence.

Psychological abuse was one form of abuse reported by men from their partners which the New Zealand Crime and Safety Survey (Families Commission, 2009) found as often as, or more often, than did women. However, more female victims were injured in the partner offence they described than male victims, and female victims more often rated the offending as the most serious category than men did. So although there have been differences found in the types of violence perpetrated by men and women, some theorists have suggested that intimate partner violence is a crime which cuts across genders. Irrespective of the diversity of views, New Zealand's reputation as a legislative precedent-setter[4] in this area has not been followed by positive results. Fenrich and Contesse (2009) commented that, in New Zealand, it is generally stated that one in three women has been a victim of domestic violence. They expressed concern about the "lack of available data on domestic violence ... [which is] a serious, and largely unattended problem in New Zealand" (p. 21).

Power

No discussion about intimate partner violence is complete without referring to power. This concept is an integral part of intimate partner violence, typically in the

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[4] See Domestic Violence Act 1995, later in this chapter.

sense that one person in the relationship has, or exerts, more, power over another. As Foucault (1982) put it, power is part of our experience rather than a theoretical question. Power in intimate relationships in USA was examined by Falbo and Peplau (1980) who examined power strategies according to their directness (ranging from direct to indirect) and interaction (bilateral to unilateral). They found gender differences where people who perceived themselves as having more power than their partner, predominantly heterosexual men, were more likely to use bilateral or persuasion and direct strategies. More recently, Jin and Keat (2010) explored how changes occurred in power relations within Chinese couples after they immigrated from a more patriarchal society, and how these factored into intimate partner violence. They found that batterers *and* nonviolent men both lost decision-making power in favour of their spouses. Furthermore, the objective measures of education and income found lower gains in the batterer group, but these did not impact on their attitudes towards intimate partner violence. However, the greater the subjective power loss, the harsher their attitudes to wife beating became, believing that victims were to blame and needed no help. Both of these studies concern what, for the purpose of this thesis, I will call relational power, that is, the power used between individuals such as those in an intimate relationship.

As part of my analysis, I contend that each individual also has, and can exercise, their personal power. This entails a person: (a) becoming informed about matters directly related to their social, physical, psychological and emotional wellbeing; (b) prioritising those aspects of life that are most important; (c) making informed decisions about their priorities; (d) taking responsibility for their decisions; and (e) involvement in outside/community activities.[5]

Also impacting on couples experiencing intimate partner violence is institutional power. Foucault (1982) described power relations at a societal level as being "rooted deep in the social nexus" (Foucault, 1982, p. 791) requiring a certain

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[5] This definition of personal power was derived from my observation of the late Maxine Burgham-Page, Key informant, and breast cancer sufferer, to whom this thesis is dedicated, whose 24-year management of her own disease epitomised 'personal power'.

number of systems of differentiation (such as laws or status and privilege); objectives (such as bringing into action a statutory authority); the means of bringing power into being (such as systems of surveillance); forms of institutionalisation (such as legal structures); and degrees of rationalisation (for example, greater or lesser technological refinements used in the exercising of power). Power relations, therefore, were rooted in a system of networks. As part of my analysis, I refer to this as macro power, which can be described as having two components: firstly governmental and institutional power; and secondly, non-governmental organisations (NGOs) which are at least partly dependent on government fiscally and/or politically.

A glimpse of intimate partner violence in New Zealand

Intimate partner violence has been a serious problem in New Zealand for a long time. One example occurred on 5 February 1994. Christine Bristol lost her three children because her separated husband murdered them and then committed suicide by carbon monoxide poisoning. As stated by Busch and Robertson (1994), "this was the final act of a sustained campaign of violence and intimidation ... against his estranged wife, Christine" (p.41). This occurred despite a New Zealand police policy of intervening in cases of intimate partner violence, rather than treating them as "just a domestic" (Ford, 1993). According to Ford, the policy required such incidents to be recorded officially, coded as offences, and to result in the arrest of the perpetrator. Furthermore, victims of violence were to be referred to supporting agencies.

Prior to the Bristol homicides, in July 1991, the Hamilton[6] Abuse Intervention Pilot Project (HAIPP), modelled on the Duluth Project in Minnesota, was created. It took a multi-agency approach to intimate partner violence, comprising five agencies (Community Corrections, Police, Women's Refuge, District and Family Courts, and the HAIPP office). Its aims were to prioritise the safety of victims, to enhance their

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[6] Hamilton is a New Zealand city.

autonomy, to hold perpetrators accountable for their use of violence without breaching their human rights, and to rehabilitate perpetrators (Busch & Robertson, 1993). Subsequent to this initiative, the government decided to support the development of other multi-agency projects around the country including the Waitakere[7] Anti Violence Essential Services (WAVES). As previously discussed, Māori have consistently been over-represented in statistics regarding intimate partner violence. Recognising this disparity, a number of Government initiatives have been developed specifically for Māori.

Cram, et al. (2002) evaluated two programmes for Māori women[8] who were adult protected persons, that is to say, who held protection orders against their abusive partners or ex-partners. Observing the prevalence of intimate partner violence among Māori, Cram, et al. noted that, in 1991, 45% of the women who used Women's Refuges were Māori. The same year, at the Māori Women's Welfare League Indigenous Women's Conference, one participant challenged Māori to prioritise the eradication of family violence (Cram et al., 2002). In 1993 51% of Women's Refuge clients were Māori, and, in 1999, 44% of the National Collective of Women's Refuges' adult clients were Māori (Cram et al., 2002, p. 1). This was consistent with the New Zealand National Survey of Crime Victims (Morris et al., 2003), which found the lifetime prevalence of violence by heterosexual partners was twice as high for Māori than for non-Māori (Morris et al., 2003, p. 5).

In order to counteract this imbalance, and to ensure that programmes were culturally appropriate, the Domestic Violence (Programmes) Regulations 1996,[9] specified that Māori values and concepts should be taken into account in their service provision (Cram et al., 2002). However, while Cram, et al. (2002) acknowledged the attempt the Domestic Violence Act 1995 made to "legislate for a problem that is prevalent among Māori communities and to the police, ... it fail[ed]

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[7] Waitakere is in Auckland, New Zealand.

[8] Te Tama Wahine o Taranaki, New Plymouth, and Te Whare Ruruhau o Meri, South Auckland.

[9] These Regulations were developed as a result of the Domestic Violence Act 1995.

to recognise its own inclusion as part of a great mechanism of continuous violence perpetrated upon Māori people within a colonised Aotearoa" (p. 4), thus perpetuating systemic inequality through macro power. A possible consequence of this has been, according to Milroy (1996), that Māori Women's Refuges considered not using the legal system at all. Furthermore, Milroy noted that the situation for Māori women had been compounded by a monocultural system. Love (2000) agreed with this view. When discussing family group conferencing (see Chapter 2), she observed limited state commitment to a culturally appropriate and empowering process for Māori, describing it as:

> serv[ing] only to provide a brown veneer for a white system that has historically contributed to state run programmes of cultural genocide and whānau dismemberment. It may also serve to undermine Māori systems and institutions , and to co-opt Māori people and cultural forms as agents in our own oppression. (Love, 2000, p. 29)

In 1995, the groundbreaking[10] Domestic Violence Act 1995[11] was enacted. Described by Judge Boshier (2006) as "a new approach to domestic violence and contain[ing] potent weapons for addressing family violence" (p. 1), it is not possible to establish whether the Act has reduced the incidence of intimate partner violence. Judge Boshier added that family violence was occupying "unprecedented time in the government and judicial sectors" (Boshier, 2006, p. 1). The Act made protection orders[12][13] for victims more accessible[14] and programmes for those with protection orders more available (Cram et al., 2002). However, the implementation

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[10] It was my impression when overseas on a Winston Churchill Fellowship, that other countries that I visited understood New Zealand's Domestic Violence Act 1995 as an international precedent.

[11] This Act replaced the Domestic Protection Act 1982, an early legal framework for addressing intimate partner violence (Seuffert, 1996).

[12] Protection orders are court orders protecting individuals and their property from harm from the named respondent.

[13] This is in the jurisdiction of the Family Court, and some of the history relating to that includes mediation meetings, discussed in Chapter 3.

[14] See Part II of the Domestic Violence Act 1995.

of protection orders has been reported to be problematic for women (Robertson et al., 2007). Part of the wider definition of the Domestic Violence Act 1995 was the addition of psychological violence, which included, but is not limited to, intimidation, harassment, damage to property, threats of physical, sexual and psychological abuse, and to subject a child to any of these behaviours.[15] Even though the Domestic Violence Act 1995 more widely defined domestic violence, and catered for the prevention of intergenerational violence by making it an offence to allow children to witness actual or threats of domestic violence,[16] we still have a long way to go to address this problem.

Relevant legislation and definitions

Legislation

The New Zealand statutes most relevant to this thesis are the Domestic Violence Act 1995, the Sentencing Act 2002, and the Victims' Rights Act 2002. Intimate partner violence is defined in the Domestic Violence Act 1995, and this definition forms the basis of intimate partner violence in this research. According to this Act, domestic violence includes physical, sexual and psychological violence between adults in a domestic relationship. Psychological violence includes, but is not limited to, intimidation, harassment, damage to property, and threats of physical, sexual or psychological abuse. The Domestic Violence Act 1995 empowers the Family Court to issue a protection order to prohibit or control access by a perpetrator to the victim and/or their children, and to direct a person to a service provider such as a stopping violence programme.

Perpetrators prosecuted for intimate partner violence are subject to the Sentencing Act 2002 in which the courts are to hold the perpetrator accountable for the harm done to the victim and the community; and to provide for the interests of the victim of the offence (Ministry of Justice, 2009). Principles of the Act relevant to victims include the effect of the offending on the victim. Purposes of the Act

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[15] s.3(2) of the Domestic Violence Act 1995.

[16] s.3(3) of the Domestic Violence Act 1995.

relevant to perpetrators are to promote in the perpetrator a sense of responsibility and an acknowledgement of that harm; to deter the perpetrator from committing the same or similar offence(s); and to assist in the perpetrator's rehabilitation and reintegration. Furthermore, the court must take into account any offer, agreement, response or measure to make amends (s.10(1)). Thus, the Sentencing Act 2002 reflects in a number of ways, the principles, purposes and processes of restorative justice, discussed later in this chapter.

The Victims' Rights Act 2002, discussed next, defines victim and states how they should be treated and what services should be made available to them.

Victim
The Victims' Rights Act 2002 states that a victim is a person against whom an offence is committed by another person, whether they suffer injury or not, and anyone who, through an offence committed by another person suffers physical injury, loss of or damage to property, directly or indirectly, or suffered any form of emotional harm. The definition of the victim also includes a person who has suffered emotional harm as a result of an offence, to enable them to have treatment and access to services (Ministry of Justice, 2009). The Act requires, inter alia, that victims are treated with courtesy and compassion, and with respect for their dignity and privacy, as well as stating that they should have access to support services, and be informed by government agencies about the programmes, remedies and services available to them. They are also able to provide an opinion on whether or not the defendant should be bailed (Ministry of Justice, 2009). A victim does not include another person charged (whether as a principal or party or accessory) with the commission of, or convicted of, or found guilty of, or who pleads guilty to that offence or an offence relating to the same incident. This appears self-explanatory until intimate partner violence is considered. This is because intimate partner violence may include violence by both parties. One party might have used violence to defend themselves, leading to both parties being arrested by the police. This is a repercussion of the pro-arrest policy used by the

New Zealand police. The evolution of the pro-arrest policy (discussed more fully in Chapter 4), began in the late 1970s (Buzawa & Buzawa, 2003), culminating in its introduction into New Zealand in 1987. Its establishment was jointly influenced by the Report of the Ministerial Inquiry into Violence, the National Collective of Independent Women's Refuges, the Domestic Dispute Research Project, the Family Violence Prevention Coordinating Committee, and the Hamilton Abuse Intervention Pilot Project (Carswell, 2006). Critics objected to this policy on the grounds that pro-arrest was detrimental psychologically to women by increasing the risk of further violence (Mills, 2003) and reducing their decision-making power when they were already disempowered.

Other critique focused on dual arrests, that is victims who resisted the violence and were arrested alongside their partners (Bledsoe, Yankeelov, Barbee, & Antle, 2004; Muftic et al., 2007b; Young Larance, 2006). This might be one reason for being arrested in Mackenzie's (2009) research of Auckland women, where a number of women had been dual arrests. The implications of these issues are discussed more fully in Chapter 4. Victims can be of either gender.

Burman (2010) used case law to examine the ability of criminal law to produce gender equality in Sweden, and discussed discourses and the construction of victims. She differentiated between the innocent victim and the less innocent victim. The innocent victim was "intimidated, silent and subordinated" (Holmberg & Enanander, 2004, cited in Burman, 2010, p. 179), defenceless, often considered as an ideal victim and was, therefore, worthy of full criminal justice protection. The less innocent victim was described "as an agent interacting with the man" (Burman, 2010, p. 180); she was a non-ideal victim, because she was not innocent. It is arguable, that, in New Zealand, similar less innocent victims are more likely to be arrested with their partners (see Mackenzie, 2009). Furthermore, Burman suggested that discourses on victim precipitation (Muftic et al., 2007a, 2007b) which focus on how the woman behaved in relation to the man, provide examples of less innocent victims. Interestingly, Burman found only one instance where on appeal, in a dissenting judgement, the agency of a victim was taken into account to

the credit of the victim by one of the appeal judges (Case RH 2004:48, in Burman, 2010). This suggested that, apart from this appeal case, only ideal victims, or those who did not resist, were given victim status.

Thus, agency, discussed in Chapter 3, is related to gender equality and, by implication, responsibility (Burman, 2010). Burman advised that, for victims to obtain full support from the criminal justice system, they had to deny their agency or interaction with a perpetrator. Or, in other words, they had to be an innocent victim. Furthermore, those women who had "put up resistance or defend[ed] themselves using non-violent or physical means ... risk[ed] being ascribed moral guilt for the violence to which they [were] exposed" (p. 182). Burman explained:

> There is an obvious risk that women's resistance – for example, by arguing with the man, making their opinion clear, not accepting the man's efforts to subordinate them, screaming at him in an aggressive manner, or just simply acting in their own interest – will be considered, in a criminal legal context, as victim precipitation, and as a relevant, mitigating circumstance to be taken into account in the moral judgement of the perpetrator's guilt. (Burman, 2010, p. 182)

Accordingly, the New Zealand Victims' Rights Act 2002 could, in fact, penalise a victim, who has exercised his/her agency by defending him/herself, by denying them the rights of victims. This is particularly so if this action resulted in injury, in which case it is possible that both parties would be arrested. Accordingly, one question that arises from this scenario is "Does resistance equal perpetration of intimate partner violence?" Another question relates to the labelling of the less innocent victim, who exercised his or her agency as a victim. Should they be called survivors instead? There appears to be a trend in the literature for victims of sexual abuse to be labelled survivors (see Jülich, 2001; Kia-Keating, Sorsoli, & Grossman, 2010), whereas victims of other crimes, including intimate partner violence, are generally called victims. Jülich (2001) discussed the differences between victims and survivors of childhood sexual abuse, citing Figley (1985), who noted that both victims and survivors experienced trauma, suggesting that the difference was that

victims were immobilised, in contrast to survivors, who overcame the trauma to acquire greater strength (Jülich, 2001). However, this is not to say that they completely recovered. Kia-Keating, et al. (2010) described male survivors of childhood sexual abuse as continuing to face challenges as a result of their childhood sexual victimisation. Furthermore, it could be asserted that victims of crime having recovered from their experience, and gained strength from it, still believe that they were or had been victims rather than survivors of a crime. Another perspective is that the term survivor should only be used when it is used by a victim referring to themselves.[17] In this thesis I use the term victim, keeping in mind Burman's differentiation described above.

Perpetrator

The literature on intimate partner violence and the criminal justice system refers to people who have committed one or more acts of intimate partner violence in a variety of ways. The terms *offender* and *perpetrator* appear to be used most frequently. Less frequently used are the terms *abuser, defendant* (a person who has been prosecuted)[18] and *suspect*. In New Zealand, an offender is a person convicted of a crime or offence that has affected a victim, and includes a person found guilty of, or who pleads guilty to, that crime or offence as per the New Zealand Victims' Rights Act 2002. Actions which constitute intimate partner violence have been described previously. Offending or wrongdoing under the Domestic Violence Act 1995 requires there to be violence from one person to another; however, it does not define victim or offender. There must, nevertheless, be a perpetrator of violence against a victim before there is a protection order issued by the Family Court.[19] Very serious intimate partner violence, such as common assault or male assaults female, is dealt with in the Criminal Court.

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[17] Personal communication from Dr Allison Morris, 16 April, 2010.

[18] Personal communication with Catherine Gardner, New Zealand Police, 12 March, 2010.

[19] Personal communication from Judge David Mather, 16 March, 2010.

For the purposes of this thesis and consistency, the term *perpetrator* is used. The word *perpetrator* can be either gender and refers to the person responsible. Perpetrators were not necessarily respondents on a protection order application, or subject to a criminal conviction. Instead, the parameter that I have used is that perpetrators have been either *judged* by another person or agency as having transgressed the Domestic Violence Act 1995 or *have* carried out any of the behaviours cited, whether or not these have been reported.

Conclusion

Currently in New Zealand, many women and men who experience intimate partner violence do not seek the assistance of the criminal justice system. As a result, little is known about the prevalence of intimate partner violence or its impact on the New Zealand community. While New Zealand is known for its proactivity creating "some of the best legislation in the world … [we have] among the worst of performances" (citing the Governor-General, in Hassall & Fanslow, 2006, pp. 1-2). As stated previously, according to Fenrich and Contesse (2009), this area is under-researched. With the exception of several relatively recent studies (Kingi, Paulin, & Porima, 2008; Tisdall, Farmer, Robinson, Wells, & McMaster, 2007), acquiring empirical data about the use of restorative justice as one possible avenue of redress has also lacked research attention. One reason for this is that using restorative justice for intimate partner violence has brought about considerable, and, at times, heated, debate. This chapter introduced some of key issues relating to intimate partner violence. The following chapter presents an overview of restorative justice, a history of restorative justice in New Zealand, processes used overseas, and related theory.

Chapter 2: Restorative Justice

Introduction

The concept of restorative justice in New Zealand and elsewhere evolved from indigenous peoples. For example, pre-Norman Ireland, Africa, Asia, the Pacific and the Caribbean used restorative indigenous law (Consedine, 1995). While in New Zealand the oral tradition of Māori goes back much further than the early 19th century, my account of this development starts then. This part of the thesis contains an overview of justice and restorative justice, providing examples of restorative processes in New Zealand and overseas. I then explore the history of restorative justice in New Zealand, from colonial to contemporary times. Theoretical analyses of shame and gatekeeping conclude this chapter.

Justice

Justice means different things to different people at different times and in different places. Although justice was difficult to define, it was understood because most people could recognise an injustice when it occurred (Jülich, 2001). Victims, perpetrators and society have tended to use the term according to their needs, and generally speaking, what they want is fairness. Aristotle, an early Greek philosopher, provided a framework for thinking about justice which is still used today (Honderich, 1995). These were distributive justice, corrective justice (Honderich, 1995), retributive justice and commutative justice (Fletcher, 1996). Kant was a prominent Enlightenment era thinker who talked about justice as a unitary concept, one which was understood irrespective of cultural, gender or class constructs. Nardin (2006) discussed Kant, whom he stated considered people were morally bound not to interfere coercively with another's choices, except if one interference was necessary to stop another hindrance to freedom. Therefore individuals had a moral right to live under laws that protected them from being

used, against their will, to satisfy other people's desires. Accordingly, the purpose of law, according to Kant, was to prevent coercive interference with the freedom of individuals, either by other individuals or by government (Nardin, 2006).

A more recent influential writer is John Rawls (1958). He argued that there were two principles of justice, the principle of equal liberty and the difference principle. Under the principle of equal liberty, each person had an equal right to the most extensive liberties compatible with similar liberties for all. The difference principle defined what kinds of inequalities were acceptable. This meant that social and economic inequalities should be arranged so that they provided the greatest benefit to every person. The principles concerned people being able to live peacefully and to be treated fairly.

Jülich (2001) canvassed the concept of justice in depth with adult survivors of child sexual abuse. She found that a sense of justice comprised the provision of survivors with a safe forum in which they had a voice. The processes they described which could provide them with a sense of justice were what Jülich identified as those used by restorative justice. At present, the conventional criminal justice system does not provide fairness to all, nor is it perceived as fair by many who have experienced it. Restorative justice, on the other hand, may offer more to victims and perpetrators, particularly a sense of being treated fairly, where both parties' needs can be met (Zehr, 1990) more equitably. Restorative justice can allow participants to define justice for themselves, albeit often within the framework of the conventional criminal justice system.

Restorative justice

Despite the apparent needlessness of another form of justice, when there is already a comprehensive collection of philosophies, Zehr (1990) explained what restorative justice could offer, illustrating the ability of the community to define justice for itself. He stated "[c]rime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the perpetrator, and the community in search for solutions which promote repair, reconciliation, and

reassurance" (p. 181). Marshall (1999) described restorative justice as "a process whereby parties with a stake in a particular offence collectively resolve how to deal with the aftermath of the offence and its implications for the future" (p. 5). Generally the process has involved meetings facilitated by one or more trained facilitators in a safe place. Unlike conventional criminal justice systems, restorative justice has not dealt with issues of guilt or innocence, nor has it removed prisons as a possible sanction; instead it has presented a new way of thinking when responding to crime (Young & Morris, 1998). Restorative justice does not need to be separate from conventional criminal justice systems. Notwithstanding its differences, restorative justice has often been practised alongside them, optimizing justice with greater involvement and satisfaction for victims. Violation by crime of people and relationships was addressed where those directly involved and their community representatives were helped to respond.

Marshall (2001) argued that the focus of restorative justice was on relationships, reconciliation and reparation of harm done, in contrast with notions of lawbreaking, guilt and punishment that have been integral to retributive justice. Frederick and Lizdas (2010) developed this further by describing restorative justice as focusing on mending the harm caused by crime by utilising the resources available within the communities of the parties involved. As with Marshall, this entailed less emphasis on using legal means. Communities could refer to family, friends, neighbours, or representatives from other parts of the community such as churches, social services, businesses or criminal justice institutions. Marshall (2001) advised that the main concern of restorative justice has been the infliction of injury or loss on another person. Perpetrators are given opportunities to be accountable for their actions; recidivism can be reduced by identifying and addressing the reasons for their offending (Jülich, 2001). Restorative justice processes have aimed to redress the imbalance caused by the offending by holding perpetrators accountable to the victim and community. Dignity and respect are extended to all present. Thus, through balancing the power held by the parties, restorative justice processes can increase the likelihood of understanding, mutual empathy and resolution, thereby benefiting victims, perpetrators and communities.

Restorative justice is practised in a wide range of communities. Present day restorative processes have evolved in schools, prisons, work environments and government agencies around the world. Restorative justice models practised in New Zealand include restorative conferencing in schools and restorative justice programmes in prisons. Community-based adult restorative justice has indigenous origins coming from traditional Māori whānau hui[20] used for family decision-making. Māori[21] values and traditions are those of a collective society, as compared with the more individualised focus of Western societies. Love (2000) described the spirituality of these meetings which began and ended with a karakia. Whānau hui ensured all members could express their thoughts and feelings with the aim of rebuilding the mana of the whānau which may have been damaged by the actions of one of their members.

In New Zealand restorative justice is frequently used within the criminal justice system as another layer in the criminal justice process. That is, it is an adjunct to the conventional system, not a replacement for it. Restorative justice can occur through a referral to restorative justice by a court, usually at the request of the defence counsel, or occasionally, at the request of the victim. However, restorative justice can occur as a result of a private referral which bypasses the police. This avoids the punitive aspects of the criminal justice system but leaves the parties vulnerable to recurrence of abuse without the oversight and infrastructure of the conventional system. Some advantages of restorative justice for victims and perpetrators are summarised below.

Both victims and perpetrators can:

- Participate voluntarily because they want to rather than be forced (Morris & Gelsthorpe, 2000).
- Benefit from procedural safeguards to counter any imbalance of power (Carbonatto, 1995; Morris, 2002; Morris & Gelsthorpe, 2000).

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[20] See Glossary in Appendices for translations of Māori words.

[21] Māori are the indigenous people of New Zealand.

- Have the advantage of community representatives' contributions at a conference (Curtis-Fawley & Daly, 2005).
- Become more educated about what is intimate partner violence and develop new norms in community and personal networks (Morris & Gelsthorpe, 2000).
- Both be included in the process of addressing the offence (Morris & Gelsthorpe, 2000).

Victims can:

- Be heard by the perpetrator (Carbonatto, 1995; Morris & Gelsthorpe, 2000).
- Be validated and assured they are not to blame (Curtis-Fawley & Daly, 2005).
- Avoid revictimisation through the court process (Busch, 2002).
- Use restorative justice as a means of maintaining relationships (Morris & Gelsthorpe, 2000).
- Feel better as a result of participating (Morris & Gelsthorpe, 2000).

Perpetrators can:

- Be less likely to be reconvicted (Triggs, 2005).
- Experience denunciation of their offending from their family and friends, which is likely to be of greater significance to them than from a judge (Morris, 2002).
- Apologise in a meaningful way to the victim (Morris, 2002).

History of restorative justice in New Zealand

The Treaty of Waitangi[22]

Two peoples signed the Treaty of Waitangi of New Zealand on 6 February 1840. The Treaty applied to all Māori, whether under the Confederation[23] or not, and the

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[22] It is important for the reader to note that the translations or interpretations reflect the iwi of the people consulted, and might not be accurate for all iwi in New Zealand.

[23] The Confederation of United Tribes was the result of 34 Māori Chiefs signing a Declaration of Independence on 28 October 1835, asking King William IV to be the parent of their infant state, and

British colonials. It comprised four Articles. Article One required the Chiefs of the Confederation and independent Chiefs to "cede to Her Majesty, the Queen of England, absolutely and without reservation all the rights and powers of Sovereignty" (Orange, 1987, p. 40). Most relevant to restorative justice is Article Two, which confirmed and guaranteed to the Chiefs and Tribes of New Zealand "the full exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession" (Orange, 1987, p. 40). Integral to Article Two was the phrase "te tino rangatiratanga" meaning possession and chieftainship (Orange, 1987), and self-determination (Durie, 1994). The terms mana whenua and mana tangata have been the most relevant aspects of tino rangatiratanga to contemporary Māori society. The first article acknowledged the rights of hapū and iwi in respect of their own tribal affairs, while the second recognised the right of Māori people generally to organise according to a range of social and political groupings. Tino rangatiratanga was about Māori policy being developed by Māori and Māori assuming responsibility for Māori affairs at tribal and national levels (Durie, 1994).

Meaning more than possession, and including the exercise of power, authority and jurisdiction, tino rangatiratanga was used in the 1835 Declaration of Independence to refer to New Zealand's independence as it was acknowledged by the British (Orange, 1987). Māori agreed to sign the Treaty of Waitangi mainly because it guaranteed their rangatiratanga over their lands, forests, fisheries and "other possessions" (Orange, 1987, p. 37), such as independence to manage their own disputes. The Native Land Purchase Ordinance of 1846, however, was described as the first step in the negation of the Treaty, indicating government firmness in its dealings with Māori, presumably to bring Māori within the compass of British law (Orange, 1987). Accordingly, Māori believing they had retained their rights of

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its protector from all attempts to compromise its independence. It was the Chiefs' intention to hold an annual congress where they could frame laws for the promotion of peace, justice and trade (Orange, 1987).

chieftainship or authority over their own possessions when the Treaty was signed soon discovered that this was being taken away from them. This was, and continues to be, an ongoing concern as evidenced in the series of Acts of Parliament designed to address emerging social issues (Chile, 2007) and in contemporary case law.[24]

Since the signing of the Treaty, Māori have attempted to change the loss of chieftainship and associated customary rights, and restorative justice has been part of this process. Marae justice has been undertaken in New Zealand for many generations, and still occurs today on a smaller scale. It concerns the healing of both the victim and perpetrator, using a Māori worldview of tikanga Māori incorporated into the framework of New Zealand's judicial system. An offence to a person is a violation of their tapu, which affects not only the offence victim but also the whole whānau, including the whānau of the perpetrator. An integral part of marae justice has been to address whakamā, and to restore, which provokes the need to address conflict that leaves the whānau of both offence victim and perpetrator in a dark place. The marae has been the place to stand (Salmond, 1975) or the platform[25] used to allow freedom of speech, honesty, regardless of the pain of honesty, which has resulted in reconciliation,[26] reparation and healing.

Contemporary restorative justice practice

While it is not solely a Māori approach to justice, restorative justice has provided a complementary system, which attempted to incorporate and give effect to the values and aspirations of both Treaty partners (Bowen, Boyack, & Hooper, 2000). It was in this spirit that the Children, Young Persons and Their Families Act (CYPFA), enacted in 1989, provided a "new" philosophy for dealing with childcare and

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[24] See Jackson (1988) and Quince (2007). See also R v Nathan (reported as (1997)15 CRNZ 381 (re assault on Americas Cup); and R v Te Kaha (re theft of McCahon painting).

[25] According to marae protocol the platform is an area of space declared neutral – personal communication from Naida Glavish, Key informant.

[26] Reconciliation reflects the European perspective of the author.

protection and youth justice. However, some Māori have considered restorative justice is another form of colonialisation.

Restorative justice's inspiration was derived, in part, from the indigenous pre-colonial justice systems, all but destroyed by colonialism (Jackson, 1988 & Pratt, 1992, cited in Morris & Maxwell, 1998). The Act was the consequence of several reports[27] and a process of lawmaking that occurred over several years, with submissions from many diverse sources. Doolan (1993) who assisted in the drafting of the CYPFA, described five issues that impacted on the development of the Act. These included:

- Growing dissatisfaction among practitioners that treatment plans were ineffective for rehabilitating young offenders.

- Maoridom was seeking self-determination in a discriminatory monocultural legal system.

- There was growing rejection of the paternalism of the State and its professionals.

- The 60 years of paternalistic welfare legislation had resulted in therapeutic programmes that congregated young offenders, adding to the problem of offending.

- There were expressions of the need for a more "decided" justice in process and disposals.

Thus, court decision-making processes were perceived by many Māori as inappropriate in their approach to offending and alien to Māori values and traditions (Bowen et al., 2000). In contrast with the criminal justice system, a relatively inflexible process in which the professionals dominated, restorative justice placed value on the wisdom and views of community members. Consultation among as many people as possible to allow their voices to be heard was a philosophical and practice norm of the tangata whenua. In addition, other sectors in New Zealand were rejecting the existing regime, which was perceived as

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[27] See Jackson (1988; Ministerial Advisory Committee, 1988).

paternalistic and ineffective, particularly with young perpetrators. Māori whānau, hapū and iwi had significant roles to play to repair the harm of conflict. Families in New Zealand, including Māori, saw that being heard and allowed to participate in decision-making about their children and young people was imperative to restore balance to their lives. This was particularly true for Māori who were, and still are, disproportionately represented in New Zealand courts. The process of family group conferences under this legislation made it clear that the State was not the primary caregiver. Section 13 of the CYPFA stated that the primary role of caring for children lay with their whānau, hapū or iwi who should be given all assistance necessary to do this (Brown, 2000). An evaluation of family group conferences by Morris and Maxwell (1998) showed that some victims were willing to attend, around half of victims felt positively towards the process and were satisfied with the outcomes; offenders were held accountable; reconviction rates were no worse and possibly better than court-based samples; and restorative justice process factors could be linked to a lower probability of reconviction.

From dealing with children and young persons, the concept was extended to dealing with adults, for whom Doolan's observations, cited above, had certain relevance. A number of community restorative initiatives have appeared around New Zealand, each with its own focus, priorities, structure and process. The development of these initiatives around the country has been ad hoc, without, in its early days, national standardisation of approach or practice. This has been remedied by the establishment of practice guidelines by the Ministry of Justice (2004).

Te Oritenga Restorative Justice Group was the first. During a District Court hearing on Auckland on 22 April 1994, Judge McElrea extended an invitation to Rev. Douglas Mansill to conduct an "experimental" community group conference. This initiated the formation of Te Oritenga. The founding of this restorative justice group occurred some months later in December 1994, quickly followed by the emergence of a number of groups appearing around the country. Local authorities also became involved, recognising the potential for the restorative concept as a crime

prevention strategy, supported by the Ministry of Justice which funded three community pilot programmes.

One of three pilot schemes funded by the Crime Prevention Unit[28] (Maxwell, Morris, & Anderson, 1999) was Project Turnaround, in Timaru, a community panel diversion scheme with extensive victim involvement. It was funded and managed by the Timaru District Safer Community Council (Webster, 1999). A culturally based programme, *Te Whānau Awhina*, which incorporated community panels without extensive victim involvement, was based at the *Hoani Waititi Marae* and *Waipareira* Trust, and was funded initially by the Waitakere Safer Community Council. Evaluations carried out of Project Turnaround and *Te Whānau Awhina* in 1999 dealing with cases that went through the court process showed positive results. Reconviction rates at 12 months were reduced, bettering those of the control groups by 14% (Webster, 1999). Other advantages of the process included: perpetrators had been confronted with the consequences of their offending; they were encouraged to make up for their offending to the victim and community; the victim was present whenever possible; plans emphasised rehabilitative measures to prevent further offending; and decision-making was carried out by the community (Webster, 1999).

Subsequently, in June 2000, the Court-Referred Restorative Justice Pilot Scheme in four District Courts was announced by the Minister for Courts, Matt Robson, and the Justice Minister, Phil Goff (Scoop News, 2000), funding over $4 million to be used for three years to introduce new court-referred restorative justice pilot projects and expand current community-managed restorative justice groups. A number of positive aspects of restorative justice were identified in the evaluation of this pilot (Ministry of Justice, 2005) These included the potential for increased victim involvement, satisfaction and understanding of why the offence occurred. There was also increased involvement, understanding and agreement with the

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[28] The Crime Prevention Unit is a department within the Ministry of Justice which provides resourcing and partnership arrangements for community projects.

decisions made by perpetrators, and satisfaction with the process and agreements reached. The two year follow-up of offending found a small decrease in the reconviction rate. While this pilot presented an opportunity to obtain data on restorative justice for intimate partner violence, family violence was specifically omitted.

Having addressed restorative justice processes in general, and the history of restorative justice in New Zealand, I will now discuss restorative justice processes in the context of intimate partner violence, giving examples of past and present practices in New Zealand, the US and Canada.

New Zealand

The use of restorative justice for crimes other than family violence had a cautious welcome into the New Zealand criminal justice system. It began with the enactment of the Children, Young Persons and Their Families Act 1989, which introduced the use of family group conferences to deal with care and protection issues relating to children and youth justice. Restorative justice conferences, which are facilitated meetings between perpetrators and their victims for adults, have developed since then. However, using restorative justice for intimate partner violence has met with much opposition. Due to the contentious nature of restorative justice's suitability for intimate partner violence (discussed in Chapter 4) many service providers have avoided these cases, and the judiciary and legal fraternity have steered away from making referrals to restorative justice service providers. Conferencing family violence was specifically excluded in the New Zealand Court-Referred Restorative Justice Pilot, largely as a result of concerns expressed by victim advocates and some researchers. In effect, victim advocates and some researchers (for example, (Busch & Robertson, 1993; Hooper & Busch, 1996; Stubbs, 2002, 2007) and senior personnel in government departments, have, through their opposition, blocked opportunities for empirical research. This has also been experienced overseas (Mills, Grauwiler, & Pezold, 2006; Walker & Hayashi, 2007).

Despite low levels of support, a number of provider groups have supplied restorative justice services for the Department of Courts of New Zealand, catering for intimate partner violence to a limited extent. Te Oritenga accepted cases only if they met the criteria of willingness of both parties to participate, responsibility for actions were accepted by the perpetrator, support people were able to attend, and agreement to the presence of the police. The Rotorua Second Chance Restorative Justice Programme[29] was established by the Mana Social Services Trust in 1999, and funded by New Zealand's Crime Prevention Unit. This programme has remained tikanga-based, in that the programme recognised that restorative justice processes were similar to whānau hui. The community had a very high incidence of intimate partner violence.[30] Perpetrators who had pleaded guilty to domestic violence were accepted, provided victims were willing to attend a restorative justice meeting (Paulin, Kingi, & Lash, 2005). Although the recidivism rate for perpetrators who had been through the programme was similar to the matched sample that had not, they did not do any worse. The evaluation results were largely positive. They met objectives such as community and victims' participation; restorative community-negotiated sanctions; and acceptance by relevant authorities and agencies. Research by Kingi, Paulin and Porima (2008, pp. 66-67) explored victims' and offenders' satisfaction after restorative justice conferences concerning family violence. They found all offenders in the study (N = 19) would recommend restorative justice to other similar offenders, and 14 of them said the meeting helped them take responsibility for their behaviour. Another research project relevant to this research was carried out by Morris and Maxwell (2001). They found that young offenders being made to feel like a bad person at family group conferences were more likely to have persistent reconvictions six years after participating in a family group conference. Dignan, et al. (2007) explained this, commenting that stigmatic shaming could be long-lasting and indelible.[31] 31

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[29] Rotorua is a New Zealand city.

[30] Personal communication from Maxine Rennie, then Managing Director of Mana Social Services Trust.

[31] Shaming is discussed later in this chapter.

A more recent programme, Nelson[32] Restorative Justice Services, has dealt with domestic violence cases using community panels. The coordinator-facilitator calls on appropriate members of the community to form panels to listen, ask questions and address in a non-judgmental manner, the concerns of victims and communities. These processes have aimed at achieving reparation, penalties, treatment and/or education.[33] Another, newer, programme is Project Restore, launched in Auckland in August, 2005. This project began to fill a gap in the criminal justice system by providing restorative justice for sexual abuse cases, including those dealing with intimate partner violence. Project Restore has had the support of organisations such as Rape Crisis, Auckland Sexual Abuse Help and Restorative Justice Services (Goff, 2005). As at 7 May 2010, Project Restore had received 37 referrals, and had conducted 10 conferences, 3 of which used community panel processes with victim surrogates or representatives attending instead of the victim.[34]

United States

Examples of four restorative justice programmes in the US are transformative justice, Navajo peacemaking, transformational justice and restorative justice services. Coker (2002) examined how transformative justice run by the Institute for Family Services, New Jersey, worked for intimate partner violence in the indigenous setting. The aim of this programme was to build more just communities through encouraging new ways of thinking about gender. Joint meetings between the victim and perpetrator could occur if the victim requested them and after the perpetrator had accepted full responsibility for his or her abusive behaviour. Navajo peacemaking, in contrast, used traditional Navajo stories to teach people their "gendered responsibilities, including the husband's responsibility to treat his wife with respect" as "justice-making processes" (D. Coker, 2002, p. 23). Transformational justice has been used to help young female offenders to maximise their potential, notwithstanding the mistakes they have made. It was based on an

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[32] Nelson is a New Zealand city.

[33] Personal communication, Mark Rutledge, and community panel application form.

[34] Personal communication, Fiona Landon, Co-founder of Project Restore.

understanding of the complex relationship between female delinquency, economic marginalisation, gender bias, ethnicity and victimisation (Alexander, 1999). In Hawaii, the pilot Pono Kaulike Programme started providing restorative justice within the court system in 2003. Some of these concerned intimate partner violence. Pono Kaulike offer three types of restorative justice services that have given affected parties choices: restorative conferences, restorative dialogues, and restorative sessions (Walker & Hayashi, 2007). Restorative conferences comprised a meeting of the defendant, victim and support people to discuss the effect of the wrongdoing. Restorative dialogues, on the other hand, involved the defendant and victim only. Restorative sessions suited parties who were unwilling to meet. One or both met with the facilitator separately, possibly with support people, to form a Restorative Plan. Walker and Hayashi (2009) conducted a telephone survey of a sixth of the participants one to four years after their restorative justice process. They found the participants remained positive about the experience. Furthermore, the recidivism rate of those who had experienced a restorative process was approximately half that of the control group (Walker & Hayashi, 2009).

Canada

Canada has at least two types of restorative justice programmes dealing with intimate partner violence. The Family Group Decision-making model and the Victim Perpetrator Mediation Programme both have considerable experience in the area of intimate partner violence. Pennell and Burford (2002) developed the Family Group Decision-making model in Newfoundland and Labrador. Their project addressed serious cases of family violence, many of which involved intimate partner violence. Progress reports found the conferences promoted family unity, safety, and a minority found the family was worse off (Pennell & Burford, 2000). Parker (2004) advised that the objective of this programme was to reduce families' reliance on state authorities, thus empowering the extended family. Edwards and Haslett (2003) discussed the Victim Perpetrator Mediation programme of the Mediation and Restorative Justice Centre. This programme has been conferencing domestic violence cases since 1998 (Parker, 2004). Edwards and Haslett advised

that prerequisites for participation included that victims gave informed consent; were strong enough and wanted to talk safely about their needs and experience; knew and were able to terminate the meeting if necessary; and felt safe physically and emotionally outside the sessions. Perpetrators were required to take meaningful responsibility for their actions. Preparation could take 2-8 sessions over weeks or months (Parker, 2004).

Summarising

These programmes collectively indicate increasing acceptance of using restorative justice for intimate partner violence cases. In particular, I refer to the length of experience of some service providers, and the creativity in programmes becoming available. Furthermore, the cautious approval by victim advocate, Ruth Busch (2002), of Pennell and Burford's (2000) Project in Canada is significant.

An important aspect of restorative justice conferences is the management of shame, often a fundamental emotional response to an adverse event. After an offence has been committed, both parties can experience shame.

Contrasting shame in conventional and restorative justice

Shame is one of the most under-researched and misunderstood human emotions. However, it is also one of the most complex with considerable potential for damage (Mills, 2008). If it is left unresolved, it is unlikely to be dispelled (Mills, 2008). Shame has been directly associated with the experience of intimate partner violence, which creates many emotions in both parties. It has been frequently documented as part of the victims' experience (Morris & Gelsthorpe, 2000), especially with respect to sexual abuse (Jülich, 2001). When it is considered in relation to the perpetrator, however, shame has generally been discussed as a possible, or even a necessary, process which the perpetrator should undergo as a result of having committed an offence. Accordingly, this section will address, firstly, the victim's experiences and, secondly, the perpetrator's.

The victim's shame

The shame experienced by victims appears to be only occasionally considered in the restorative justice context. This could possibly be due to victims' shame being most likely to occur in situations where there has been an assault, especially if it was sexual or an assault that could be classified as intimate partner violence. These types of offences, as I have mentioned earlier, are considered by many to be unsuited to the restorative justice process. Nevertheless, it is important to consider victims' shame because the experience of intimate partner violence is usually associated with shame. Service providers of restorative justice need to understand the likelihood of victims to feel shame and violation.

One interpretation of the word shame was presented by Swedish researcher, Enander (2010), who examined women who left abusive heterosexual relationships and labelled themselves as stupid. Enander proposed that labelling oneself as stupid in this context was "an expression of gendered shame, or more explicitly, 'battered shame'" (2010, p. 5). An example of this might be "I guess I deserve no better" (Mills, 2008, p. 99). Building on the research that found women who had been abused suffered from impaired physical and mental wellbeing (see Fanslow & Robinson, 2004), Enander's (2010) research concerned previously battered women, some of whom still negatively judged themselves as stupid. In other words, they were still weighed down by negative feelings that could affect their self-esteem and sense of well-being, in some instances, years later. Enander suggested this was due to internalisation, where a woman may see herself "with his eyes" (Lundgren, 2004, cited in Enander, 2010, p. 17). Negative perceptions of this kind needed to be taken into account when discussing shame, as well as what might make abused women feel ashamed (Enander, 2010, p. 18). It could take many months of therapy for this manifestation of intimate partner violence to be repaired. To illustrate the severity of such self judgements, Enander cited Katz (1990) who argued "shame carries the sense that there is revealed an undeniable truth about the self" (p. 19). This, for some, could be too much to bear. Furthermore, because women in violent heterosexual relationships had been subjected to gendered violence, Enander claimed that their shame could be interpreted as gendered shame.

As reported by Braithwaite and Daly (1994), women did not report rape or violence because they felt ashamed of, and responsible for, the violence. It is well known that victims of these crimes have been revictimised at trial (Braithwaite & Daly, 1994; Herman, 2005; Koss, 2000). Victims could be "put through the mill" about their living circumstances, relationship with the suspect, or other allegations regarding their sexual behaviour. "The rape trial is a ceremony [that] ... puts a highly trained practitioner at the defendant's disposal to deny responsibility, to deny injury, and to deny the victim" (Braithwaite & Daly, 1994, p. 204). Women fear being degraded in the courtroom (Braithwaite & Daly, 1994; Herman, 2005). American research by Herman (2005), comprising in-depth interviews with 22 informants, showed that many experienced marginalisation in the justice system as a humiliation very similar to what they had experienced with the original crime. She noted that the stigma attached to victims was still so severe that the media refrained from publishing the names of clients who came forward to complain.

> At every step of criminal proceedings, victims are powerfully reminded of their marginal and dishonoured status. Small wonder that these crimes remain the least reported, the least frequently prosecuted, and the least likely to result in conviction of the offender. (Herman, 2005, p. 574)

Herman talked about the "myth of the vengeful victim" (2005, p. 575) and, citing Luskin (1999), explained the way that their anger has been pathologised "as a kind of inflammation ... [which] compounded the stigmatising effect of the original crime" (Herman, 2005, p. 576). As long as the victim was regarded in this demeaning manner, the community was vindicating the perpetrator by adding to the victim's shame.

In contrast with a criminal court, a community conference has the ability to offer a lot to victims. It could facilitate the victim confronting the offender; enable the victim to veto the action plan; and assist the victim towards reintegration by the use of sub-ceremonies (Braithwaite & Daly, 1994; Harris & Maruna, 2006). Informants in Herman's (2005) research reported that the focus was on the need for *their* reintegration with their communities, rather than their perpetrators' need.

While they recognised the central importance of shaming the perpetrator, they needed to be relieved of their own burden of shame (Herman, 2005). Dignan, et al. (2007) pointed out that allowing victims some control over who attended a conference could reduce their embarrassment and help minimise revictimisation. Braithwaite and Daly commented that the availability of a community group conference could encourage women to come forward and be supported in their victimisation (1994, p. 202). While Herman supported the concept of restorative justice in comparison with conventional justice, she observed the high defendant orientation at the grassroots level, which had reproduced many of the same deficiencies as the criminal justice system, with respect to victims' rights (2005). Nevertheless, Herman conceded that later work by Zehr referred to victims as "key stakeholders, rather than footnotes in the justice process" (Zehr, 2001, cited in Herman, 2005, p. 579). Additionally, Koss (2000) noted victims would be better supported by their communities at a community conference. There, advocates had a more active role speaking on the issue of women's rights to be free from violence, and to counter violence-supportive attitudes (Koss, 2000). This could only be an improvement on what a criminal justice or civil forum would offer victims.

The perpetrator's shame

One of the early writers about shame in the context of offending and/or justice was Australian, John Braithwaite, who conceptualised reintegrative shaming as part of a restorative justice process in 1989. His aims were to recast criminological findings in a more understandable and constructive way, and to offer a practical basis for criminal justice reform. A key factor in his theory was an understanding of the relationship between crime and social control, which argued for the shaming of criminal behaviour and the subsequent reintegration of the deviant person once appropriate recompense and apology had occurred (Braithwaite & Mugford, 1994). This process was described by Maxwell and Morris (2004) as comprising four steps. These were: disapproving of the offence; sustaining a relationship of respect for the perpetrator and not labelling them as bad or evil; not allowing the offending to be viewed as the perpetrator's main characteristic; and re-accepting the offender

through "words or gestures of forgiveness" (Braithwaite, 1989, cited in Maxwell & Morris, 2004, p. 134). Braithwaite and Mugford (1994) argued that countries such as Japan with low rates of crime had achieved this through social control. They had reconstructed the perpetrator's social ties and, in so doing, gave them a supportive network. Braithwaite and Mugford contrasted this with the high levels of crime in the US, which relied on stigmatisation, thus doing little to prevent reoffending. Braithwaite and Mugford (1994) described the court room as tending towards degradation, rather than reintegration. In contrast with the courtroom setting, community conferences utilised victims as the key communicators of the impact and irresponsibility of the perpetrator's behaviour. They advised that "the shaft of shame, fired by the victim at the direction of the offender might go right over the offender's head, yet it might pierce like a spear through the heart of the offender's mother sitting behind him or her" (p. 144). So even if the victim's suffering might not have affected the perpetrator, the anguish of the perpetrator's mother over her offspring's behaviour might encourage the perpetrator to confront rather than deny his or her offending.

But the process of reintegrative shaming had limitations. Braithwaite and Daly (1994) questioned the likelihood of affecting men with entrenched patterns of raping and assaulting women with reasoning and shaming. On the other hand, they pointed out that it was equally as implausible that authorities would deter them with prison sentences. It could be argued that people with behaviour patterns like these were unlikely to acquire any empathy (an emotion which could result from a reintegrative shaming process (Liu & Hanke, 2007)) for their victims.

Gilligan (2009), however, discussed interviews he had conducted with violent offenders in prison. He was told repeatedly by them that the reason they assaulted or murdered someone was because the victim had "disrespected" them. To them, violence was the only alternative to being shamed, whether it occurred in front of others or not. Gilligan pointed out, however, that shame on its own was not a sufficient cause for violence. Necessary additions to the mix were loss of self, lack of capacity to feel remorse, and/or the belief that there was no non-violent means

of restoring his/her self-esteem. It is significant, then, that being "dis'ed" was a crucial element in their offending. Thus, social factors did matter to them. This could mean that a social response such as restorative justice could yield more positive results. If perpetrators felt respected, there was potential for them to acquire greater insights into the effects of their past behaviour on their victims and to make improvements for the future.

Nevertheless, research conducted on restorative justice conferencing in the Australian Capital Territory (ACT), which began in 1994, showed some positive results. The Re Integrative Shaming Experiments (RISE) was a police-run programme, largely influenced by Braithwaite's theory of reintegrative shaming (Braithwaite, 1989, cited in Maxwell & Hayes, 2006). Maxwell and Hayes described RISE as among the most rigorous field experiments in restorative justice. It compared the experiences of four types of juvenile and adult offenders (including violent youths and adults aged up to age 29), and two processes, court or conference. Measures of reintegrative shaming showed that conferenced violent youths perpetrated less reoffending after the conference (Daly, 2002; Maxwell & Hayes, 2006). Daly (2002) reported that that this process and its outcomes had been viewed as fair by both victims and perpetrators.

In response to suggestions that remorse and empathy played a more important role in restoration than reintegrative shaming, Harris, Walgrave, and Braithwaite (2004) analysed the theoretical distinction between shame and guilt, arguing that emotions like empathy, remorse and guilt would spill over into feelings of shame. It was, in their opinion, the resolution of these emotions that was critical for a successful intervention. They concluded that shame-guilt was a central issue, because adequate responses to the crime, even if not intended, impacted on the way perpetrators saw themselves. They noted that "[f]or interventions to be successful, and in particular, restorative, it seems necessary to understand the process by which offenders manage these feelings of shame and come to enact a positive law-abiding self" (Harris et al., 2004, pp. 204-205). They also commented that empathy was an important gateway for perpetrators to understand the harm

caused by an offence, which in turn contributed to the development of genuine remorse and a willingness to repair the harm. In addition, Harris, et al. commented that victims' empathy was necessary if forgiveness was to occur. This latter point appears to have assumed an obligation on victims to forgive, which perhaps reflects a perpetrator-orientation, and has also been the subject of debate. Harris, et al. concluded that much more understanding of the emotional aspect of these processes was necessary to comprehend the impact restorative justice could have on victims, perpetrators and their communities.

Marshall (2007), as part of a discussion about deterrence theory, commented that punishment by itself was not usually an adequate deterrent, especially for serious crimes. He noted that deterrence research had indicated that formal sanctions imposed by legal authorities had less impact on deterring criminal behaviour than informal sanctions imposed by family, friends and associates, or internal restrictions compelled by moral convictions. Marshall concluded this was the fear of being shamed rather than the fear of legal punishment, regardless of whether it came from personal conscience or peer disapproval. He described the pain of taking responsibility as accepting the shame of exposure of offending. Referring to Braithwaite's reintegrative shaming, Marshall differentiated between disintegrative shaming, which stigmatised and integrative shaming which led to the "bonds of respect or love, and leads beyond the approval to repentance, forgiveness, and restoration" (C. Marshall, 2007, p. 134). Accordingly, Marshall's comments indicated the need for care with the practice of reintegrative shaming, a process which has been the subject of critique for its potential to harm.

One of the most common criticisms is that disintegrative shaming has a very negative impact on individuals who already have little connection to a conventional way of life (Winfree Jr., 2004). Accordingly, concerns have been expressed that rather than a restorative and constructive process, shaming had the potential to be stigmatising and destructive. For example, Maxwell and Morris (2004) questioned the linkages between effective crime control and shaming. They described the ideal of reintegrative shaming as involving "the offence rather than the offender [being]

condemned and the offender ... reintegrated with [i.e. included] rather than rejected by society [excluded]" (p. 134). However, shame was a psychological process based on "the actual or imagined negative responses of others to our behaviour" (p. 135). Shame could involve a range of emotions including embarrassment, contempt, ridicule and feeling put down, or repentance, penitence, regret, guilt or sorrow (2004). Maxwell and Morris observed that the consequences of shame were almost always negative and could lead people into one of four patterns. These were: withdrawal; attack of self; avoidance; or attack of others; behaviours they described as potentially the effect of stigmatic shaming. For example, shaming intended to be reintegrative, could be viewed by the offender as stigmatic. In this case it could become counterproductive. Maxwell and Morris highlighted the importance of Blagg's (1998) comment that it was difficult to imagine how Australian aboriginals who had experienced harassment from the authorities and public in their everyday lives could be expected to respond to reintegrative shaming. Furthermore, Maxwell and Morris found that feelings of "being stigmatically shamed or excluded had a highly significant relationship with reconviction as an adult" (p. 138). Instead they suggested that conferences hoping to result in perpetrators intending not to reoffend should:

- Include the presence of support people;
- Encourage perpetrator participation and an understanding of what was going on;
- Ensure fair treatment and respect;
- Not stigmatically shame the perpetrator;
- Result in agreement with the outcomes and actions being taken to repair the harm; and,
- Leave the perpetrator feeling forgiven. (Maxwell & Morris, 2004)

Once again questions arise about whether the ideal of perpetrators feeling forgiven was appropriate, as it has potential to put pressure on victims to forgive when they are not ready to forgive, and may never be. Further critique was made by Van Stokkam (2002), who commented that planned shaming appeared to be abusive.

Addressing others from a superior position and displaying self-righteous anger were overtly disapproving and likely to block communication with the perpetrator. Furthermore, it risked their becoming increasingly defensive. Von Stokkam commented that Braithwaite acknowledged inadequacies in the definition of shaming, and later "plead[ed] for a broader definition" (Van Stokkom, 2002, pp. 354-355) of shaming. In addition, he pointed out that discussing the consequences of wrongdoing was also a form of shaming.

A possible solution to the definition issue is to consider it in the same way that Harris and Maruna (2005) did. This was for restorative justice practitioners to acknowledge that shame existed, and by allowing all participants in an event to tell their stories, they and their supporters are enabled to work through and resolve the shame they experienced. In other words, shame is managed at a restorative justice process.

Much of the restorative justice that is practised in New Zealand occurs within the criminal justice framework, for example, before sentencing. Dignan, et al. (2007) discussed some implications of processes which could arise within the criminal Justice context. On the subject of protecting the privacy of the victim and perpetrator, if, in the restorative justice conference, the principle of open justice were to be applied, the likelihood of offenders being shamed stigmatically would be "long-lasting and indelible" (Dignan et al., 2007, p. 20), especially when the media was present. However, a restorative process can enable support people to be carefully selected, or, in other words, they can be subjected to "gatekeeping".

Gatekeeping

I have included gatekeeping in this chapter because it is an important issue when it comes to victims and perpetrators having opportunities to access services that might help them. The ethic of informed consent applies. I explain this below.

For people to give informed consent to access a service, they need to be given information about its existence and its potential benefits. If they have not been given the relevant information, they have been denied the opportunity to give informed consent to participate in the process if they wished to. This is gatekeeping. In the context of intimate partner violence, withholding information about the existence and potential of restorative justice, for example, is not only withholding information, but also withholding opportunities for the use of a different means to deal with their situation, which is an ethical issue.[35]

It could be argued, therefore, that failure to provide relevant information is a form of constraint, leaving those who are denied without sufficient knowledge or comprehension to make an enlightened decision. Another way of looking at this was expressed as a "right" (Goldney, 1998; Wilson, Lincoln, & Mustchin, 2001). Following the reporting of a crime in Australia, Goldney noted that the police advised victims of their rights to approach the Victims of Crimes Service, pursue litigation, and, if necessary, seek therapy. In this context, then, restorative justice could be another agency choice conveyed to the victim. Along the same vein, Wilson, Lincoln, and Mustchin (2001) referred to strengthening victims' right to knowledge. The New Zealand's Victims' Rights Act 2002, in section 8, states that the victim or a member of the victim's family, who has welfare, health, counselling, medical, or legal needs arising from the offence, should have access to services responsive to those needs. The Act also requires that they be given information about programmes, remedies or services available to them. Inadequacies in the distribution of information are discussed in Chapter 4.

This is not to say that gatekeeping or withholding information is necessarily an individual's responsibility or decision. There has been a crime prevention policy in New Zealand, a part of which has been to prevent intimate partner violence. When this is considered alongside the frequently expressed concerns about revictimisation for victims of intimate partner violence attending a restorative

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[35] See Chapter 5 for further discussion on ethical implications of gatekeeping.

justice conference, the gatekeeping of police attending an incident could be understood in a number of ways. One could be Garland's (1997) sociological explanation of crime control as part of the criminogenic situation which he described as a new site of intervention of governmental practices, somewhat like the economy with its own dynamics and processes. Populated by active people whose actions shaped the processes, the criminogenic situation had "functional ends of its own that were easily disturbed by heavy handed regulation" (Garland, 1997, p. 3). Thus, the situation could be governed but not completely coercively controlled. "The aim is to align the actors' objectives with those of the authorities; to make them active partners in the business of security and crime control" (Garland, 1997, p. 3). In this way, various agencies have been standardised with such mechanisms as gatekeeping guidelines that can be official or unofficial.

A feminist explanation, on the other hand, could be that gatekeeping was an example of patriarchy. Weedon (1999) discussed feminist considerations of Foucault's theory of power and its link to knowledge. She observed that, while Foucault acknowledged repression had been associated with the use of sexuality over the last 300 years, Foucault reduced the role of repression to a part of a broader strategy of power. Repression, through defences, censorships and denials, was a strategy to become part of discourse which was "a technology of power, and a will to knowledge" (Foucault, 1981, p. 12). Foucault noted that the will to knowledge had not come to a halt in the face of a taboo, instead it has persisted to create a "science of sexuality" (Foucault, 1981, p. 13) involving many discourses about sex and the exercise of power. Grosz (1990) has explained Foucault's theory of power as a form of repression in which power exists in its frustrated form rather than its typical functioning which is productive and creative. Thus, for victims of intimate partner violence, most often considered to be women, access to restorative justice has been frustrated or prevented by the paternalistic approach, albeit motivated by the perceived need or wish to protect them. In other words, without gatekeeping or withholding information about a process, victims might be endangered.

Research on restorative justice practice in youth justice in Australia has been the subject of serious concerns regarding police gatekeeping. Stewart and Smith (2004), discussed Wundersitz's (2000) finding that only 18% of apprehensions in South Australia were diverted to a conference, whereas 45% went to court. Despite the pivotal gatekeeping role of police officers, Stewart and Smith observed the limited research on police officers' understandings of, and attitudes towards, conferencing. The research did, however, discuss the views of police officers involved *in* the conference, obtaining enthusiastic responses. Because accessing restorative justice depended largely on police gatekeeping, there was a need for police to have greater understanding of the philosophy and practice of restorative justice. Thus, Gatekeepers need to have similar values conducive to restoring balance and reintegration (Winfree Jr., 2004). Indeed, as Stewart and Smith (2004) pointed out, there was a gap in the research which needed to be remedied about our understanding of police decision-making and police discretion.

Conclusion

This chapter provided an overview of justice, restorative justice, and the history of restorative justice in New Zealand going back to its indigenous roots. It explained why, to some people, the process of restorative justice has the status of a taonga or a treasure. Not so treasured, however, is the fact that intimate partner violence, although also arising from ancient traditions throughout the world, has continued to be a major problem in this country. When the two peoples of New Zealand joined in signing the Treaty of Waitangi, there was hope for a future of cooperation and peace. Over the decades, Māori have clawed back some of what they lost, and Europeans have learned greater appreciation for tikanga Māori. However, what has not been resolved is intimate partner violence, which, by some Māori, has been attributed to colonialisation.[36] Thus it was fitting that this chapter also discussed shame. Although, I have addressed shame from the point of view of victims and perpetrators, in the indigenous context, "whakamā" or shame has been associated

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[36] See case law cited earlier in this chapter.

with stigma, and therefore is viewed as counterproductive. The various ways the word shame, in principle, definition and practice, has many meanings has been demonstrated, illustrating the need for care with its use. Gatekeeping, on the other hand, depends upon ethical principles such as the provision of information and informed consent. This is particularly so when it has the potential to benefit victims as well as perpetrators. The implication of withholding helpful information is that a misuse of power has occurred, even if this has been motivated by claims to protect victims.

Chapter 3: Victims' Responses to Intimate Partner Violence

Introduction

As part of examining non-reporting of intimate partner violence to the police it is important to consider what happens after an incident of this kind has occurred. It is necessary to examine how we, as human beings or a society, respond to intimate partner violence. Potential reporters of these offences no doubt consider their options, most likely on the basis of limited information, partial truths, or anecdotal details that they have acquired from their peers or communities. Each choice they make has implications for the future safety of the victim(s) and the viability of their relationship.

In the same way that there have been many ways of looking at intimate partner violence, so, too, there are many responses to it. It could be likened to an onion with numerous layers to be peeled. The first layer is how the victim responds – by reporting and/or seeking help, resisting, or doing nothing. From there, the authorities or helping agencies may come into play, not infrequently requiring a police arrest to be made. Then the matter may be referred to court, sanctions can be imposed, and referrals made for both parties to separate programmes (stopping violence programmes for perpetrators and empowerment courses for victims). At any phase in this process, a restorative justice conference could be used.

Therefore, in this and the following chapter, I will address responding to intimate partner violence in sequence, to reflect the layers of the process of reporting. This chapter discusses victims' responses to intimate partner violence; Chapter 4 addresses agency responses. I begin at the phase in which victims look for assistance.

Victims' help-seeking

Victims of intimate partner violence are renowned for their failure to seek help (Jordan, 2004). Indeed, many have chosen to take no action and remain in abusive situations (Jordan, 2004; Ruiz-Perez et al., 2006). Research has shown that only 15% of the abused women in one sample tried to resolve the situation by reporting the abuse (Ruiz-Perez et al., 2006). This is consistent with New Zealand research by Fanslow and Robinson (2010) who found 18% of ever-partnered women sought help from formal services (486 out of 2744 women). Reasons given for seeking help included: the inability to endure any more (almost half the women were in this group); recurring threats to kill; victims were badly injured; children suffering, hit or threatened; or being encouraged to leave by family or friends (2010, p. 939).

As has been discussed previously, many women have feared retaliation (Fanslow & Robinson, 2010; Jordan, 2004, p. 1419), fear losing their children, have little support from their family and may have had the constant hope that their partner might change (Fanslow & Robinson, 2010; Ruiz-Perez et al., 2006). Victims could be in denial, and, in some cultures, may have feared social rejection (Goel, 2005; Ruiz-Perez et al., 2006). Furthermore, options available to them may have been limited by their financial and social resources. As pointed out by Ruiz-Perez, et al. (2006, p. 1158), a victim's future actions depended on the response she/he received from the community. This was supported by Rubin's (2010) research into women's responses to a restorative justice initiative in Nova Scotia which found that most women described their community as being those to whom they could turn for support, or, as Ptacek (2010) suggested, possibly due to concerns that responses by the criminal justice system to victims of domestic violence are profoundly limited. A New Zealand survey found 23% of victims of intimate partner violence who reported being injured received medical attention, with women reporting the need for medical attention more frequently than men (Families Commission, 2009). The same survey found that few victims of an intimate partner assault mentioned having contact with specialist support agencies – 3% contacted Victim Support[37],

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[37] Victim Support is a non-governmental organisation which offers support to victims of crime.

1% an agency for women, 1% a church group and 1% an iwi or Māori organisation (Families Commission, 2009, p. 173).

Victims have not always received adequate guidance about the help that is available to them. Carbonatto (1998) examined the criminal justice response to victims of intimate partner violence in the Wellington, Porirua and Waitakere districts, as part of her PhD. Her findings were not encouraging. Even though in New Zealand the police arrest policy has specifically required support to be arranged for all victims, a referral to the local Victim Support Group was made for only 36% of the victims in her sample (p. 90). Well over half (64%) of the police Form 400s[38] examined showed that support for victims was stated as either victims' relatives or none. Furthermore, despite the fact that at least 15% of victims suffered financial loss through medical injuries, loss of employment, broken property, or ruined clothing, reparation was sought by police in only 6% of these cases (Carbonatto, 1998, p. 90). Without police consideration for victims' needs, it was not surprising that victims found themselves having to perform difficult balancing acts in respect of their priorities. Many could get emotional support from their friends and families (Fanslow & Robinson, 2010), but this did not guarantee their safety. Of those who did report, in the United Kingdom (UK) at least, as Lewis, et al. (2000) found, expectations were high.

In their UK research (comprising 142 women survivors and 122 male perpetrators) about women's use of the law to deal with intimate partner violence, Lewis, et al. (2000) found that the female victims of intimate partner violence had looked to the law to provide deterrence, protection, rehabilitation, and surveillance. These women were of the opinion that one intervention was insufficient. Although almost all the women sought help from their informal networks, a majority had also sought help from formal agencies and, as a result of their research sample coming from a police source, all had had at least one contact with the police. When explaining why

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[38] Form 400 is a New Zealand Police form to be completed by the attending police officer at an incident of domestic violence. It is also referred to as the POL 400.

they had resorted to the legal system, the women revealed that they were constantly negotiating their own and their children's safety. They had to make decisions on the basis of what was the most effective safety strategy, including what the likely impact of a court case would be in terms of their abusive partner's behaviour, his criminal record, the children's relationship with their father, and, lastly, their finances.

One aspect of intimate partner violence which is known to be expensive in New Zealand is obtaining a protection order. Robertson, et al. (2007) were commissioned by the Ministry of Women's Affairs to examine women's experiences of protection orders. Of the 32 subjects of case studies, 28 were successful in obtaining a temporary order, while only one woman obtained a permanent order. This closely reflected what happened nationally. Four women were pressured to drop their orders or applications for orders. For those who had to go through a defended hearing, the process was "gruelling" (Robertson et al., 2007). Both Robertson, et al.'s and Jordan's research received reports of respondents' legal counsel presenting inaccurate accounts of the women's traits to the courts, while behaving towards them in an abrasive, questioning, and interrogative manner (Jordan, 2004; Robertson et al., 2007). Notwithstanding, it was not all negative. One participant in Robertson, et al.'s research commented that having the protection order had changed her feelings so that for the first time she did not feel powerless. She felt the protection order had given her grounds for making a complaint about her partner's behaviour if necessary, and that she had a right to be taken seriously about it.

Being taken seriously did not necessarily mean that the victim wanted to have the perpetrator arrested. I discuss reporting more fully in the next section, and arrest in Chapter 4. It was possible that victims hoped a visit by a police officer, in response to a 111 call, would frighten the perpetrator into stopping the violence. They might not have wanted the perpetrator to be arrested (Morris & Gelsthorpe, 2000). Possibly unaware of the pro-arrest policy, to be discussed later, victims may have had little comprehension of the possibility of arrest. In their research into victims'

preferences for arrest and the relationship between arrest and revictimisation, American researchers, Hirschel and Hutchison (2003) examined what victims of intimate partner violence wanted the police to do. They found that victims did not always want perpetrators arrested, a factor which is problematic when pro-arrest policies tend to take the decision away from victims (Hirschel & Hutchison, 2003; Morris & Gelsthorpe, 2000).

During the time when New Zealand was tightening up its police approach to domestic violence, one of the early difficulties was that prosecution of perpetrators depended almost completely on the willingness of victims to go through with the prosecution or to give evidence (Ford, 1993). Accordingly, the 1987 policy emphasised that victims should not have to make a formal complaint, decide whether or not they wanted the perpetrator arrested, or have to be called as a witness in the defended hearing, unless there was no other choice (Ford, 1993). Unfortunately, this policy has not proved to be successful at reducing intimate partner violence or meeting victims' needs because many victims do not want their partner arrested. They just want the violence to stop (Morris & Gelsthorpe, 2000). Nor has it been consistently applied by police officers in the field (discussed in Chapter 4).

Hirschel and Hutchison's (2003) research asked women what they hoped the police would do when they responded to a call for assistance. They found only a quarter of the sample of 354 women who answered this question, wanted the perpetrator arrested (Hirschel & Hutchison, 2003, p. 321). Furthermore, Hirschel and Hutchison carried out follow-up interviews with women who had wanted their abusers to be arrested. Six months after the presenting incident, they found that these victims were consistently more likely to be revictimised than victims who had not wanted arrests to be made and whose partners had been arrested. Although Hirschel and Hutchison's research was limited by being carried out on a single site, with a sample of women who had either called the police or had had a call made on their behalf, and was skewed towards the lower socio-economic level, it presents a perspective on the possible desires of victims. The victims had wanted to maintain their

relationship and take what they thought might be a safer option, possibly because they considered they had no other choice. In addition, the research tended to support the idea that victims of intimate partner violence needed other avenues to seek remedies for their situations, especially at lower levels of violence where restorative justice offered a real opportunity to stop the escalation of violence.

Reporting

Reporting of intimate partner violence can be informal, to friends and/or family members, or formal, to authorities such as the police or courts. I will discuss informal reporting first. A victim can choose to tell a family member or a friend informally, often on the understanding that they do not tell anyone else. Fanslow and Robinson (2010, p. 939) conducted a survey into the help-seeking behaviours of New Zealand women victims of intimate partner violence (n = 956) examining their use of formal and informal sources of help. They found among the reasons for not seeking help were that some victims perceived the violence as normal or not serious (63%); they felt ashamed and embarrassed (14%); and because they feared the consequences (6%). Informal reporting can be intentional where the victim tells someone about what is happening to ease their emotional load or to receive support, or accidental, as a result of family or friend making an enquiry about the situation, the victim's bruising, or the victim's unhappy demeanour. Fanslow and Robinson found that over 77% of the respondents stated that they had told someone about the violence, however, 40% reported that no one had helped them. While informal sources of support (family and friends) were the most frequently told, not all were found to be helpful.

Another form of informal reporting could occur as a result of attending an emergency department for treatment of injuries received through intimate partner violence. Fanslow and Robinson (2010, p. 936) found that almost 13% of their sample spoke to doctors and health workers and 16% disclosed to counsellors and other mental health professionals. However, it does not necessarily follow that victims of intimate partner violence would report what actually happened to

medical practitioners. In cases of serious injury and/or when the victim has disclosed, and/or when a child is involved, it is likely the police will be notified. Thus, an informal approach can result in formal consequences. In New Zealand social service agencies have an obligation to act when a child is included (either directly or as a witness) in an incident of intimate partner violence, under the paramountcy principle (s.6 of the Children Young Persons and Their Families Act 1989).

Formal reporting can be carried out by the victim or another concerned person, such as a neighbour. The type of formal reporting which is the primary focus of this thesis refers to victims reporting intimate partner violence to the police. This is because formal reporting to the police results in consequences for the perpetrator under the criminal justice system, which can also impact on the victim. Among the positive consequences of this kind of reporting is the potential for them to be referred to a restorative justice conference. Other more negative consequences, however, are known to be a deterrent to victims reporting abuse to the police (Morris & Gelsthorpe, 2000; Carbonatto, 1995), and are discussed below.

Much intimate partner violence is not reported. Information about reporting of intimate partner violence to the authorities in New Zealand is available from the 1996 national surveys, namely the Women's Safety Survey and the Crime Victims Survey (Ministry of Justice, 1996), and research in the health sector. The Crime Victims Survey did not give reporting details for intimate partner violence offences; however, it found that the relationship between the victim and the perpetrator influenced the decision to report. The Women's Safety Survey found that just over one tenth of women who disclosed any level of physical violence reported it to the police (Ministry of Justice, 1996, p. 11). According to the Family Violence Intervention Guidelines (Ministry of Health, 2002, p. 39), reporting within the health sector has been as low as 2%, which mirrored the Women's Safety Survey results of a few years before. In fact, the New Zealand Crime and Safety Survey (Mayhew & Reilly, 2006) found that only one third of all victims reported the offending to the police. Just over a quarter of those who did not report said it was

because they considered it not a matter for the police, but something better dealt with by themselves. Fanslow and Robinson's (2010, p. 937) survey revealed that almost quarter of the respondents had not told anyone. This is in sharp contrast with reporting to someone[39] which was found to be much higher at 77%. This is not unlike overseas research by Coker, Derrick, Lumpkin, Aldrich, and Oldendick (2000), which found that 87% of women, and 57% of men experiencing physical or sexual violence in South Carolina shared their feelings with family, friends, or counsellors, etc. (p. 4).

There are many reasons why people do not disclose intimate partner violence, usually based on fear. Most frequently cited has been fear of retaliation from the perpetrator (Jordan, 2004; Ruiz-Perez et al., 2006). Other deterrents to reporting have included concerns about the police's reaction when the perpetrator was already known to police (Tjaden & Thoennes, 2000, cited in Jordan, 2004); ambivalence about having their partner arrested; concerns about finances; confusion and fear about the slow judicial process (Jordan, 2004; Ruiz-Perez et al., 2006; Seuffert, 1996), due to perpetrators defending charges; the feeling of bias of the legal system towards men, referred to as "white male thinking" and that it was "just set up to hear this poor man's needs because she had walked out on him" (Seuffert, 1996, p. 7); the possibility of collusion between the extended family or whānau and the abuser; loss of their children through the intervention of Child, Youth and Family[40] (Robertson et al., 2007); and the loss of autonomy (Gielan et al., 2000). However, it need not be conscious considerations which prevent reporting.

Some victims may be affected by the enduring effects of chronic abuse at the subconscious level. One manifestation of this is the Stockholm Syndrome, named after a bank robbery in Stockholm in 1973. This condition is characterised by misplaced loyalty by victims towards their abuser. Graham, Rawlings, and Rimini (1990) wrote about its application to battered women, and Jülich (2001) used it to

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[39] This included 36.1% who had told both family or friends and the Police.

[40] Child Youth and Family is a child protection agency.

explain why victims of historical sexual abuse found it so difficult to report. Graham, et al. (1990) suggested battered women suffered from a psychological reaction as a result of being trapped in a situation similar to that of hostages. Extreme power imbalances between an abusive husband and a battered wife could lead to strong emotional bonding. However, Graham, et al. suggested that it needed four conditions to be met, namely: the victim considered the perpetrator capable of carrying out his threats; the victim's isolation made her dependent on the perpetrator; perspectives other than the perpetrator's were unavailable to the victim; and the perpetrator showed some kindness to the victim. Thus, in the case of intimate partner violence, the relationship was permanently unequal, and the victim's survival depended on avoiding direct, honest reactions to the destructive treatment of their perpetrator partner (Miller, 1976, cited in Graham et al., 1990). Jülich (2001) explained how sexual abuse survivors exhibited similar traits. Even when sexual abuse had ceased due to physical separation, psychological separation from the perpetrator might not have occurred, survivors were unable to report and as a consequence "deeply entrenched survival techniques utilised by survivors have continued to protect the perpetrator long after the abuse ceased" (p. 200).

Other psychological responses may be influenced by culture, thereby contributing to the silence. Ruiz-Perez, et al. (2006) coupled denial of the violence with fear of social rejection, where in some cultures, asking for help led to ostracism by their communities. For example, Goel (2005) explained the difficulties experienced by Indian women who found it embarrassing to ask for assistance from social services or the police. According to their culture, women had to suffer silently, and escape only after the children had left home. On the other hand, some women might have decided not to report because they considered they "deserved it" (Kimmel, 2002, p. 1345); or were partly responsible for what happened; because they would be likely to be arrested as they had used violence in self-defence (Muftic et al., 2007b); or in the absence of physical abuse, they did not see themselves as abused (A. L. Coker et al., 2000).

Taking a different angle, other research compared gender and education levels associated with disclosure of intimate partner violence. Clear differences were found with women more inclined to report than men. Coker, et al. (2000, p. 1), found more women in South Carolina reported physical or sexual intimate partner violence (18%) compared with men (5%). Coker et al. reported that men, however, were as likely as women to report perceived emotional abuse without physical or sexual intimate partner violence. Help-seeking increased with the severity of the violence and the education levels of the female intimate partner violence victims. Formal reporting, then, was infrequent and influenced by a number of factors. These included fear and loss, psychological conditions such as the Stockholm Syndrome, social stigma, or a sense of responsibility for the violence.

Women's agency and victim resistance

It is acknowledged throughout this thesis that both genders can be victims of intimate partner violence. When examining issues around the non-reporting of intimate partner violence, and answering the question as to why this is the case, it is necessary to consider possible theoretical reasons for not reporting. This section concerns women mostly, but not completely, because there is a shortage of theory about men as victims of this type of offending. Some reasons for this are explained below.

There is a strong interrelationship between women's agency, resistance, and the previously discussed victim precipitation in intimate partner violence. This is because women's agency has been used to argue against women's socialisation as inferior, and women possessing agency directly contradicts the patriarchal perception of women as being less endowed in terms of their physical, intellectual, psychological, and emotional strength. Women's agency refers to women taking action and not succumbing to the patriarchal perspective that they are weak and helpless. Women's resistance is the subject of more recent literature, where it is acknowledged that women use violence, predominantly in self-defence. On the other hand, victim precipitation refers to actions by the victim that lead to or cause

the offence, hence its inclusion in Chapter 1 where intimate partner violence is discussed. The following sections will refer to women's agency and resistance in more detail.

Women's agency

Women's agency has been described as part of the dichotomy between victimhood and agency (Picart, 2003) where the discourse described, on the one hand, a pure agentless victim, and on the other, agency. Women were seen as pure victims who needed to be protected from all evil because they were incapable of defending themselves. However Picart suggested that victims straddled powerlessness and agency from day to day. This meant they were neither a pure victim, nor only taking action or exercising their agency. Instead, she described these terms as "simple binary dichotomies [which] fail to get at the complex predations of power and disempowerment [that] women differentially occupy" (Picart, 2003, p. 119). Thus, women at different times in their lives were both victims and agents, depending on their situations. A woman's use of agency was contextual, and related to her perception of her need for, and exercise of, power.

In other words, at the risk of being flippant, sometimes a woman's "gotta do what a woman's gotta do". For example, an extreme illustration of women's agency was committing homicide, the ultimate in violent offending. Koons-Witt and Schram (2006) discussed research by Wilson and Daly (1992), in which the sex ratio of homicides showed that for every 100 US men who killed their wives, approximately 75 women killed their husbands (2006, pp. 129-130). They noted research which suggested possible motivations for women's violent offending as self-defence and/or protection of their children. Accordingly, if one accepted these driving forces as likely, women took action (or used their agency) to defend themselves and/or their children by killing their partner. Had they not done so, they or their children would probably have been the victims. In this case, the theoretical implication of this could be that they were weak, helpless, and most probably deceased victims.

To go to the other extreme, Whitehead, and Kurz (2009) carried out qualitative research in Australia using focus groups into the activity of pole dancing as an aerobic recreational activity. This was in stark contrast to pole dancing's original function as a sexual activity used to satisfy men's desires. It was an example of "female agency within the so-called post feminist society" (2009, p. 224), which they referred to as the supersexualizing of female bodies as powerful and playful. This was distinct from the "passive or victimised object of the male gaze" (Whitehead & Kurz, 2009, p. 224) which was consistent with feminists' description of the patriarchially socialised woman. Such a woman would prefer to remain silent rather than risk rocking the boat by disclosing any family disagreements or violence (Woods, 1999, p. 480). Thus, it is this contrast between the weak sexualised female role of old, and the contemporary proud, assertive, and proactive use of the same activity which demonstrated sexuality being actively constructed by people living in a particular historical time (Foucault, 1981). In this instance, by using their agency, women refused to deprive themselves of the opportunity to get fit and have fun, despite using an activity with previously negative sexualised connotations. Furthermore, it showed that sexuality, as suggested by Foucault, was an example of feminist politics of freedom, individualism and choice, where choice was seen as a cherished principle (Foucault, 1981). Another modern day example of women exercising their agency is cosmetic surgery where women have been both agent and object (Braun, 2009). Whitehead and Kurz's (2009) research found a dominant theme of choice and control, confirming the contemporary nature of women's agency. One means women can use their agency in intimate partner violence is to resist.

Victims' resistance

The literature I have reviewed appeared to consider victims' resistance from two angles. The first and more common aspect of victims' resistance involved their actions to defend themselves in situations of intimate partner violence. The second, less frequently discussed, aspect of resistance was the struggle to accept that women could use their agency in the same context. I will discuss each in turn.

Frederick and Lizdas (2010) and Muftic, et al. (2007b) discussed the increase in the number of women who were arrested, noting suggestions that this was due to women being arrested for defensive rather than offensive violence. However, they stated that there was very little empirical data to substantiate this claim. Hirschel and Buzawa (2002) attributed the increased arrests to the mandatory or pro-arrest policies that were put in place in many countries around the world. Both parties to the violence were sometimes arrested, called dual arrest, which Muftic, et al. (2007b) claimed has put women at an increased risk of criminal sanctioning. The implication of this was that victims would, in turn, be more reluctant to report intimate partner violence, which, of course, threatens their safety.

Some researchers, when discussing responses to intimate partner violence, did not believe that everyone who used violence against his or her partner was a batterer. Osthoff (2002) considered this factor should be taken into account when judges made referrals of arrestees to batterers' intervention programmes. Supporting this premise was Johnson's (2006) research, which involved surveying a number of American studies, leading to the identification of four types of intimate partner violence. These were:

- Intimate terrorism (the individual is violent and controlling and the partner is not).
- Violent resistance (the individual is violent, but not controlling, whereas the partner is violent and controlling).
- Situational couple violence (although the individual is violent, neither the individual nor the partner is both violent and controlling).
- Mutual violent control (the individual and partner are violent and controlling).

Using data from Frieze's (1983) research involving 274 female interviewees who had been in violent relationships, Johnson (2006) identified a number of controlling tactics. These included: using threats; economic control; use of privilege and punishment; children; isolation; emotional abuse; and sexual control. Johnson

found that almost all the husbands used intimate terrorism (97%); 56% featured situational couple violence; and the men scored equally with the women for mutual violent control. The wives, on the other hand, almost all scored on violent resistance (96%); they scored equally with their husbands at mutual violent control and 44% of them scored on situational couple violence. Accordingly, while couples were found to use a variety of violence types, intimate terrorism was by far the lowest for wives and violent resistance was extremely low for husbands. Johnson concluded that this data left little doubt that intimate terrorism and situational couple violence were different (Johnson, 2006).

Victims' resistance was found in research in USA by Guerette and Santana (2010) to affect the impact of the perpetrator's offending. This has possible implications for victims of intimate partner violence. Their quantitative research (p. 198) found that greater levels of resistance by victims increased the effort needed by the perpetrator to complete the offence, resulting in substantial decreases in the odds of a robbery and a rape being completed, compared to when there was no resistance. Even though this research concerned general offending rather than intimate partner violence, it may have relevance to this thesis because victims' resistance occurs in intimate partner violence. Using Ullman's (1997) work on definitions, Guerette and Santana (2010) divided victim resistance into four categories: (a) forceful physical resistance (including wrestling punching, biting, scratching, kicking, use of a weapon, and implementing martial arts techniques); (b) non-forceful physical resistance (such as avoidance, removing the perpetrator's hands, pulling or running away from the perpetrator); (c) forceful verbal resistance (for example, screaming or yelling to scare the perpetrator or to attract outside help, or threatening the perpetrator); and (d) non-forceful verbal resistance (involving trying to reason with the perpetrator, pleading or begging) (Guerette & Santana, 2010, pp. 200-201). Thus, Guerette and Santana's findings support the use of situation-based prevention measures such as resistance to prevent the occurrence of crime and to reduce the consequences when offending did occur. Furthermore, as pointed out by Guerette and Santana:

> Events taking place in private ... settings are less likely to contain potential guardians that could increase risk for offenders. Crime events occurring in public places, however, will be more susceptible to guardianship ... Thus, resistive action by victims might increase concerns of offenders that someone has been alerted to the crime at hand. (Guerette & Santana, 2010, pp. 205-206)

Accordingly, their research suggested that the presence of oversight or overt support for the victim, as well as actions which reduced anger responses could result in increased safety and less offending.

On the other hand, it was possible that Guerette and Santana's (2010) findings, which took an oppositional view to the theory of victim precipitation (see Muftic et al., 2007a), could leave victims of intimate partner violence in even greater danger, depending perhaps, on who initiated the event – the victim or the perpetrator. This, of course, leads to the question of when the event started. If the battered wife syndrome was a possible scenario, it could have started years previously. And how could a police officer, called out to an incident, assess the situation and accurately decide who started or caused the violence? As a result of this dilemma, and to some extent, the pro-arrest policy, victims have been assessed as perpetrators of violence and have consequently been arrested.

I turn now to the other form of resistance, relating to ideology. This type of resistance was experienced in USA by Osthoff (2002) and Hollander (2009) in their roles as researchers. Both had experienced adverse responses to suggestions that women could use violence. For example, Osthoff relayed an occasion when she said in a public forum that she did not think every man who hit his female partner was a batterer. She then experienced the outrage of a woman who reported that she had been the former wife of the batterer, and who, when he had passed out, hit him with a hammer, injuring him quite badly. She concluded her account with the words, "And I most certainly was not a batterer!" (2002, p. 1522). She had missed the point of Osthoff's talk, and had become extremely defensive. Furthermore, Osthoff explained how some battered women's programmes found themselves

attacked from members of their own communities when they provided services to, and advocacy for, battered women charged with crimes. This was claimed to be gender bias, because they assisted women charged with assaulting their partners, but would not assist men charged with the same offence.

Hollander, on the other hand, found considerable resistance to her proposal from funders and some members of an evaluative committee when initiating a research project into women's self-defence. She wanted to learn whether it made trained women less likely to be attacked or more effective at resisting if they were attacked. Having taken a self-defence course herself and finding that it had radically changed her sense of safety and empowerment, Hollander found there was very little literature on the subject. She wrote the following of her experience, which was indicative of gatekeeping;

> I have ... received an array of negative, even hostile, reactions to the research. At first, I wrote off these reactions as idiosyncratic. But as they started to accumulate – and as I heard similar stories from others researching the same topic – I began to see these negative reactions as a form of resistance: to women's self-defence training, to women's resistance to violence more generally, and I think, to women's empowerment. (Hollander, 2009, p. 2)

Hollander (2009), like Osthoff, considered that these forms of resistance should be discussed, and, indeed, analysed. In brief, Hollander's analysis comprised three forms of resistance, namely, "it's impossible", "it's too dangerous", and "it's victim blaming." The first form referred to women not being capable of defending themselves against men's violence, whereas the second assumed women were to put themselves in risky situations or start beating up men, again, risking their safety by initiating another altercation. The third, victim blaming, on the other hand, implied that women were responsible for protecting themselves and were, therefore, responsible for controlling men's violence (Hollander, 2009). Hollander suggested that this resistance arose from ideas about gender being deeply rooted in our culture. It was not deemed feminine to fight back. Even if they had

successfully resisted a violent attack, they did not identify this as resistance. They continued to identify with the women as vulnerable, men as invulnerable myths. This has limited women's willingness to access and understand research on women's resistance in the form of self-defence, thus preventing them from conceptualising women as strong and competent social actors.

Conclusion

The multiplicity and complexity of the layers of responding to intimate partner violence have been at the core of not reporting intimate partner violence. Up until now, victims have had to assess what could be described as a sea of floating bombs, while examining the potential contribution of each layer to alleviate their problem. Fanslow and Robinson's (2010) research showed that, in New Zealand, victims favoured reporting to their communities over using official channels. Reasons for this can be that reporting intimate partner violence to the police has posed risks for victims such as being arrested, either as the primary perpetrator or as part of a dual arrest; the retaliation of the abusive partner; or sustaining other losses such as an income, child custody, or the companionship of a loved partner. If a woman uses her agency and resists the intimate partner violence, the bureaucratic meaning of the word agency may impact. In other words, organisations and services ranging from the police to stopping violence programmes can become involved.

Chapter 4: Agency Response to Intimate Partner Violence

Introduction

In this chapter I discuss arrest, taking into account pro-arrest policies; dual arrest; arresting victims as perpetrators (including gender symmetry); and perpetrators' experience of arrest. Next I discuss victims' experiences in court, firstly as witnesses, secondly as perpetrators. I conclude this chapter with an overview of the use of restorative justice for intimate partner violence. This canvassed the New Zealand debate; including indigenous aspects; feminist perspectives; risks to victims; and suitability of restorative justice for intimate partner violence. Where possible I will refer to New Zealand research and the New Zealand situation.

Arrest

Obviously arrest has serious implications for both victims and perpetrators. For victims, it can become even more personal than the removal of the breadwinner, the father of their children, and their lover from the home. Victims can also be arrested for the perpetration of violence. However, before discussing victims as perpetrators, it is necessary to give a brief overview of some terminology relating to arrest policies and contextualise this process in New Zealand.

Arrest terminology in brief

There are a number of terms relating to arrest. A frequently used term related to the policy favouring arrest in instances of intimate partner violence is the pro-arrest policy. Less often referred to, but meaning the same, is presumptive arrest. Supporters of this policy believe victims have been made to feel secure in the knowledge the law will make any necessary decisions about arresting their abuser

(Guzik, 2008). Critics of this policy, however, have argued that presumptive arrest takes away decision-making from victims and, as a consequence, disempowers them even further (Guzik, 2008; Morris & Gelsthorpe, 2000). This is particularly so with respect to impoverished, immigrant or other disadvantaged victims (Balfour, 2008; D. Coker, 2004). The term mandatory arrest relates to an obligation for police to arrest perpetrators of intimate partner violence. All of these policies increase the likelihood of dual arrests. In these cases, if there is evidence that both parties injured the other party, both could be arrested. A preferred arrest, on the other hand, is one where the relevant department supported or encouraged arrest in situations of intimate partner violence. However, the final decision is left to the discretion of the police officer attending the incident (Muftic et al., 2007a). A further arrest policy described by Mackenzie (2009) later in this chapter is the predominant aggressor policy, which has entailed the identification and arrest of the person who caused the other to feel the most fear and intimidation. It was Mackenzie's view that New Zealand's arrest practices follow similar lines to the predominant aggressor policy "most of the time" (Mackenzie, 2009, p. 21). Newbold and Cross (2008) and Carbonatto (1998), on the other hand, have pointed out that New Zealand police are mandated to use a pro-arrest policy, but are exercising police discretion at a rate beyond what was intended.

New Zealand's arrest policy in a global context

A strong influence on police policy in New Zealand has been the Minneapolis (1981–1984) experiment in which three types of police intervention were compared to see which had the best results in reducing recidivism in intimate partner violence (Newbold & Cross, 2008). These were arrest, separation, and mediation. Arrest showed the lowest recidivism rate in the 314 cases in the study. In other words, according to police reports, arrest had a deterrent effect. However, although the police records showed the recidivism rate was only 10%, victims' accounts contradicted this, indicating that, in fact, recidivism had doubled (Newbold & Cross, 2008). This omission was a major limitation of the Minneapolis experiment, in that they ignored a large number of domestic violence incidents that were of significant theoretical and policy interest (Felson, Ackerman, & Gallagher,

2005). Another limitation of this study was that attempts to replicate the research often did not support its findings (Felson et al., 2005). Irrespective of the outcomes of the victims' interviews, the Minneapolis police findings influenced many countries, including New Zealand, into adopting a pro-arrest or mandatory arrest policy to reduce this type of offending. Whether the pro-arrest policy complied with victims' preferences varied across studies. Hirschel and Hutchison (2003) observed that, for some debaters, a pro-arrest policy was preferable because they considered women trapped in a coercive relationship were unable to make decisions for themselves, whereas, for others, preferred or mandatory arrest indicated that the victim was powerless to deal with the situation. Another point in the debate was that arrest was only a temporary measure, which could leave the victim faced with a released perpetrator even more angry than before (Hirschel & Hutchison, 2003). In some cases, the victim's role was passive rather than active in the decision-making process (Buzawa & Austen, 1993). In others, when victims knew what they wanted to happen, the decision was taken out of their hands. Morris and Gelsthorpe (2000) strongly expressed their view that taking the decision-making role away from victims, for whatever reason, increased their powerlessness. Referring to researchers and police alike, they stated:

> For us, as outsiders, to dictate otherwise in order that we might fulfil some assumed greater goal – for example the penalisation of all violent men – is to increase the powerlessness of [these women]. To do so in the name of "women's interests" or "feminism" seems to us even more problematic. (Morris & Gelsthorpe, 2000, p. 414)

In 1987, New Zealand adopted a pro-arrest policy, modelled on the Minneapolis experiment. The Commissioner's Circular 1987/11 required arrests in all domestic violence cases where evidence of an assault or breach of a protection order had existed, unless the assault was minor, or there were extenuating circumstances. Two principles applied: to protect victims and to make perpetrators accountable (Newbold & Cross, 2008). However, not all police departments followed this policy, and so its implementation has been variable. This was found in HAIPP (previously outlined) and by Ford (1993) in 1993 (Newbold & Cross, 2008). Despite further

attempts to correct the differences in application, including the enactment of the Domestic Violence Act 1995, this problem, as it was assessed by Newbold and Cross, has continued. The POL 400 form,[41] which was devised for the purpose of recording each incident of intimate partner violence attended by police, was inadequately completed, if at all (Newbold & Cross, 2008, p. 9). They cited an earlier unpublished study by Cross (2006) which found that only 20% of the violent incidents that received a police visit resulted in an arrest. Cross concluded from this that frontline police appeared to exercise the discretion not to arrest in the majority of situations. A number of "factors that mitigate[d] against a pro-arrest response" (Newbold & Cross, 2008, p. 10), included the following:

- Refusal of witnesses and victims to talk to the police;

- In cases of mutual assault, the numerous logistical problems (such as organising the care of any children) that would arise if both parties were arrested;

- The possibility that an assault was in self-defence; and

- A history of previous complaints followed by a victim's refusal to testify.

<div align="right">(Newbold & Cross, 2008, p. 10)</div>

At least two of the factors raised by Newbold and Cross were supported by Carbonatto's (1998) research in which she found that 34% of victims were described as uncooperative (p. 91). Furthermore, 46% refused to testify, and 34% attempted to have the charges withdrawn (p. 91). Carbonatto observed that the apparent use of police discretion in intimate partner violence cases was the exception to a rule that the New Zealand police did not generally make policy decisions regarding particular crimes or laws. She described this as a peculiar phenomenon which was not easily explained. Research appears to have found this factor affecting other countries as well, as suggested by Morris and Gelsthorpe (2000). They pointed out that penalisation might brutalise the perpetrators further, making their partners even less safe after they have been released (Morris & Gelsthorpe, 2000). Supporting Morris and Gelsthorpe's view was research by

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[41] This was referred to by Carbonatto as the Form 400, as discussed in Chapter 3.

Felson, et al. (2005). They conducted an analysis of the National Crime Victimisation Survey (USA) (see Tjaden & Thoennes (2000)) to establish whether intimate partner violence was less likely to be repeated if it was reported to the police and the offender was arrested. In contrast to the Minneapolis results, Felson, et al. (2005) noted that their longitudinal analyses suggested that reporting had a "fairly strong deterrent effect, whereas the deterrence effect of arrest [was] small and statistically insignificant" (p. 563), and that it did not depend on gender, prior offences or the seriousness of the offence. This result suggested that reporting intimate partner violence to the police was itself a deterrent, especially if the police did not make an arrest. However, Miller (2003) presented the opposite view when she observed in USA that, if victims held personal and legal power as a result of a police response to intimate partner violence, even when it included the arrest of the perpetrator, re-occurring violence could be prevented. Miller commented that the more satisfied the victim was with police action, the more legal power she perceived. Although in disagreement, both views have significant implications for the way the police both evaluated a situation and exercised their discretion to arrest. Furthermore, the flow-on effect could also influence the considerations of potential reporters of intimate partner violence. This would be particularly so when a person who considered him or herself a victim found themselves arrested. This brings us to the issue of whether women are as equally violent as men, or perpetuate violence at the same rate.

Straus et al. (1996) (USA) created the Conflict Tactics Scales (CTS) [42] in 1972, which were used to measure the extent to which intimate partners engaged in psychological and physical attacks on each other. It also measured their use of negotiation when dealing with conflicts. It was Straus's belief that women and men

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[42] The Conflict Tactics Scales (CTS) has been the subject of considerable critique including: the use of general population and cohabiting couple samples; reporting biases; recruitment; omission of data regarding context; lower rates of injuries; recall issues with retrospective reporting the omission of the gendered nature of battering; and misrepresentation of minor incidents to more serious events (see Kimmel, 2002; Muftic et al., 2007b). In response, a revised version was produced (CTS2) (Straus, 2006), which has been used widely with "excellent test-retest reliability ... over approximately a 2 month interval" (Vega & O'Leary, 2007, pp. 703, 707).

perpetrated violence at similar rates. In contrast to Straus's assertion that women perpetrate violence at similar or higher rates than men, the National Survey of Crime Victims found 15% of European men and 20% of women had been hit, kicked or pushed by their heterosexual partner at least once in their lifetimes. More women (37%) were found to be fearful of their partners than were men (6%) (Morris et al., 2003, pp. 14, 20) Consequently, Straus' et al.'s (1996) assertions were not replicated by New Zealand data, especially when fearfulness was taken into account. DeLeon-Granados, Well and Binsbacher (2006) advised that the revised National Crime Victimisation Surveys have shown lower rates by women, but with a known increase in numbers of female-perpetrated partner abuse than previously recorded. They stated that this showed the criminal justice system had, over time, proved its ability to recognise, and to be more willing to respond to, violence perpetrated by women. However, DeLeon-Granados (2006) added that it is possible that the system has overcompensated. In other words, by demonstrating a zero tolerance policy to any intimate partner violence, relevant actors such as police officers and the judiciary have had little opportunity to understand and effectively deal with the different motives of violence. They have seen it as equal, regardless of whether it was in self-defence, ongoing or long term. In other words, violence has been seen in black and white terms. As a consequence, the contexts in which the violence occurred have often been disregarded in order to pursue policies designed to stamp out these kinds of offences. This has had serious consequences. By omitting context, assessors of any intimate partner situation can inadvertently place either or both parties at a disadvantage through forming assumptions based on inadequate information. One example of this is arresting victims.

Arresting victims as perpetrators
The subjects of victim precipitation, women's agency, and victims' resistance have already been discussed. These can form the basis of victims being arrested after calling the police to deal with an incident of intimate partner violence. At this juncture it is appropriate to consider gender symmetry. As a consequence of the apparent increased number of arrests of women (Muftic et al., 2007a), some

researchers have claimed that this was a result of gender symmetry, i.e. that women were just as likely to resort to the use of violence against a partner as men (Muftic et al., 2007b). This idea was supported by Straus and his colleagues, who used Straus's Conflict Tactics Scale to measure the frequency of violence between intimate partners. This, according to Muftic, et al. (2007a), if correct, suggested that victim precipitation played little role in intimate partner violence and the way the criminal justice system responded to it. If women were just as likely to offend, then they were just as likely to be arrested, as either part of dual arrest or as a sole arrest, reflecting the equally violent nature of both parties, or situational couple violence (Johnson, 2006). Johnson described situational violence as when an individual can be violent and non-controlling and in a relationship with a partner who is either nonviolent or who is also violent and non-controlling. Muftic, et al. noted that this tended to disregard the gendered nature of battering, the disproportionate reporting of intimate partner violence by women against men, and the severity of men's offending against women. In their view, victim precipitation fitted more neatly. However, their research (USA), which looked at victim precipitation as a way of understanding contextual differences in men's and women's offending in intimate partner relationships, was less conclusive. They were unable to identify any factors that helped to predict victim precipitation in intimate partner violence. They noted that "[i]t may be that victim precipitation is more common in IPV than other types of interpersonal violence … but is a feature of IPV regardless of the personal characteristics of the parties involved" (Muftic et al., 2007a, p. 341).

Gender differences in reactions to stress and violence were examined in a New Zealand sample by Moffit, Robins, and Caspi, (2001). They conducted a couples analysis to examine potential effects of "negative emotionality" (Moffit et al., 2001, p. 8) on partner abuse, to assess informants' self-reports about their usual reactions to stress. They concluded that abuse was usually mutual, where reciprocity meant both partners had been physically aggressive toward one another. In their research, abusive acts did not differ significantly by gender. The women's mean abuse score was similar to the men's "even within the subgroup of clinical abusive couples"

(Moffit et al., pp. 25-26). Not surprisingly, this received a negative response from some feminist researchers. Osthoff (2002) found Moffit, et al.'s perspective problematic because the incidents were not contextualised: information was not obtained about who initiated the violence or whether the violence had been in self-defence. Osthoff also argued that mutuality implied shared or equal, when the use of violence in self-defence by victims of battering was not equal to the aggressive acts by their partners.

I turn now to the impact of arrest on victims. Hirschel and Buzawa (2002) gave an account of the negative consequences a wrongly accused victim might suffer as a result of being arrested, including the loss of the rights and privileges of a victim (see Dual Arrest below). Muftic, et al. (2007a) noted how the incidence of intimate partner violence disproportionately involved male perpetrators and female victims (Rennison, 2003, cited in Muftic et al., 2007a) with the result that women were less likely to be arrested as perpetrators. A possible exception to this was put forward by Balfour (2008) who wrote about the complete criminalisation of domestic violence in Canada, and, as a consequence, a doubling of the rates of federal imprisonment of Aboriginal women. This was despite legislated changes which had mandated the use of restorative justice as an alternative to the more punitive conventional and retributive policies.[43] Aboriginal women in Canada were victims of violence three and a half times more than non-Aboriginal women. Balfour stated that they had slipped between the cracks of zero tolerance and restorative justice because they were likely to be both severely victimised by gendered violence and coercively punished. She advised:

> Given this, we might reasonably question how feminist inspired strategies intended to criminalise and denounce intimate partner violence may have contributed to the imprisonment of Aboriginal women and why restorative justice sentencing practices have not been taken up more vigorously by

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[43] Bill C-41 (Balfour, 2008, p. 106).

judges and defence lawyers in cases of Aboriginal women. (Balfour, 2008, p. 102)[44]

At the same time, it has been recognised that the number of women being arrested is increasing as is the use of dual arrest (Muftic et al., 2007a). Among the explanations for this increase are defensive violence (previously discussed) and gender symmetry. Mackenzie's (2009) research into women arrested in the Auckland area during a 6-month period threw some light on how this has occurred in one New Zealand city.

Mackenzie (2009) examined female arrestees in order to study the prevalence of female domestic violence perpetrators who had previously been reported as victims by the New Zealand police. This was carried out by doing a detailed analysis of female offenders during 1 April to 30 September 2008, by accessing police files. Mackenzie found almost half (19 out of 40) of the women offending against men involved intimate partnerships, where the perpetrator had a history of being physically abused, or classified by police as being at serious risk of being physically abused (p. 12) by the man they had assaulted. The majority were still in the relationship with the victim (14 out of 19); the remainder were ex-partners. In a small minority of these cases (2 out of 19), the victim was recorded as being scared (see Table 6, Mackenzie, 2009, p. 12). All victims had been prior perpetrators whereas only two of the perpetrators had offended before the presenting incident. Although this was a short period of time and a small sample of a particular population, it gives credence to the possibility that these perpetrators offended in self-defence. This possibility is supported by two factors. First, there was a low level of fear reported by the victims (although it is not uncommon to hear the view expressed that men would be less likely to report being afraid of female perpetrators because they would be ashamed of being scared of a woman). Secondly, who reported the violence was significant. Reporting was carried out

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[44] See restorative justice section, later in this chapter for more about indigenous origins of restorative justice.

almost equally by men and women, with 8/19 of both genders calling the police. In three cases, who reported was not recorded. Thus, the near equal reporting rate indicated that at least some of the perpetrators were afraid enough to call the police. This could signal the potential benefit of recording perpetrators' fear in the POL 400 as a diagnostic tool to establish what the context of the offending was. Felson, et al. (2005) commented that the relationship between reporting and reoffending was possibly due to victims not calling the police because they committed violence themselves, and also because couples engaging in mutual violence were more likely to have experienced repeat incidents. Furthermore, they would be likely to regard the incident as a private matter. However, as I have previously stated, Fanslow and Robinson's (2010) research found that privacy was not always a priority, where three quarters of women who had been victims of intimate partner violence told someone. On the other hand, it is possible the offending was an act of retaliation. Supporting the retaliation theory was research by Stuart, et al. (2006), who studied reasons for the perpetration of violence by women on Rhode Island. This is discussed below.

Perpetrators' experience of arrest

Perpetrators have responded to arrest in various ways. Some interesting research into perpetrators' experience of presumptive policies was carried out by Guzik (2008) who used in-depth interviews with 30 people (men and women) from Centralia County, Illinois, USA, who had been arrested and prosecuted for intimate partner violence. Guzik described the objective of presumptive arrest and prosecution policies as being "designed to eradicate domestic violence by disrupting abusive relationships and transforming the subjectivities of victimised women and abusive men" (Guzik, 2008, p. 111). While he observed presumptive policies had demonstrated the criminal legal system's responsiveness to the battered women's movement (Guzik, 2008; Morris & Gelsthorpe, 2000), his study aimed to fill a gap regarding the dilemmas experienced by perpetrators. Data from respondents in his research demonstrated two forms of response to police questioning. These were, firstly, compliance by most with the police's request for

information; for example, one respondent reported, "They asked, 'Did anybody get hurt?' I'd basically told them that all I did was push her off, because she was trying to get on my face" (Guzik, 2008, p. 119). The second response-type was to lie. Guzik explained that these responses of compliance and defiance resembled what Ewick and Silbey (1998) had described as standing before, with, and up against the police. Furthermore and not surprisingly, some respondents reported that they had minimised their offending in their accounts to reduce their culpability for the violence. Most commonly, respondents considered their actions were acts of self-defence. However, none of these responses and behaviours prevented them from being arrested. Although some were subject to no contact court orders, the respondents reported that they had seldom complied. Rather than sever their usual strategies for exercising power over their partners, they transformed them, using new strategies. These included using the family to communicate with the victim, manipulating the victim by claiming to be the victim (by going to prison), or by being nice. Some respondents also tried to control their legal counsel's strategies, for example, plea-bargaining or denial of their offending. However, they found the power of the law was less malleable. An overwhelming finding of Guzik's research was, rather than "triggering inward reflections by abusers on the wrongness of their behaviour, arrests and prosecutions triggered outward reflections on the wrongness of legal authorities' actions" (Guzik, 2008, p. 129). Most believed that they had been mistreated by the police and courts. For instance, some found that their criminal records had influenced the way they were treated. One respondent in Guzik's research, Ann, explained, "I had a couple of priors with domestics, but once you're pegged in Plainsville, you're pretty well screwed" (Guzik, 2008, p. 131). A predominant feature of this research was the finding that the perpetrators considered that the punishment was unfair, not only from targeting the poor or other group identities, but also from power tactics used by the police and courts. Guzik's research found examples of the police or the court telling the perpetrator false consequences which were calculated to effect a certain reaction, for example, giving perpetrators the message that nothing they had done was necessarily wrong, but that the local legal system was unjust. From his findings, Guzik concluded that presumptive policies had failed to fulfil their promise of increasing perpetrators'

responsibility for the violence. Guzik's work has considerable relevance to the theory of shaming, (discussed in the previous chapter) where stigmatising has been shown to have little effect in reducing recidivism. Nor has arrest, as stated in Felson, et al. (2005).

Dual arrest

As previously stated, there are some occasions when the police have made the decision to arrest both parties. Mackenzie (2009) discussed the possible effects of dual arrest on the victim's safety. In her research, 6 out of 19 heterosexual female offenders previously only known as victims were dual arrests. Mackenzie and others expressed concern that being arrested makes women more vulnerable (Hirschel & Buzawa, 2002; Mackenzie, 2009) when they have been subjected to ongoing abuse. This is because they would be less likely to report future abuse, or abusers could threaten to call the police and say the victim had been breaching bail conditions. Other negative consequences cited have been the loss of rights and privileges as the victims,[45] or as an employee, the loss of custody of children, or suffering increased financial hardship (Hirschel & Buzawa, 2002).

Two perspectives were presented in the literature on why dual arrests occur (Finn & Bettis, 2006). These were that dual arrests were a backlash against the new policies by arresting officers (Saunders, 1995), or they were the result of the equal application of the law (Finn & Bettis, 2006). In the latter case, the criminal justice system and service providers responded in this way to any person using violence, even women who were victims of ongoing abuse (Finn & Bettis, 2006). Possibly the rationale that victims who responded to violence by defending themselves were not good or innocent victims (Burman, 2010), and the view that Osthoff (2002) had expressed that not all people who used violence were batterers, were not taken into account when dual arrests were made. Those who supported the contention that women and men used intimate partner violence at equal levels have relied on research using Straus's Conflict Tactics Scales and these, as indicated earlier, were

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[45] This is the case in New Zealand – see Victims' Rights Act 2002, s.4(c).

the subject of critique. Many who opposed what they saw as overzealous policing or the use of mandatory or preferred arrest policies did so because they saw women using their agency as a right to defend themselves.

As well as the acquisition of empirical data, Muftic, et al. (2007a) sought to understand contextual differences between men's and women's offending in intimate relationships, including the defensive violence or violent resistance category discussed in Chapter 3. Their sample included 70 women in heterosexual relationships and their results showed two types of female intimate partner violence arrestees, namely dual arrestees and sole arrestees. Dual arrestees were found to be more likely to be cohabiting with the other party, 57% compared with 27% of sole arrestees, and they fitted (Muftic et al., 2007b, p. 766) into the defensive violence category. In cases of dual arrest, the male partner was reported to have started or provoked the incident, and the female perpetrator had acted in self-defence. Furthermore, the female perpetrator was more likely to have called the police. Sole arrestees, on the other hand, were found to resemble male perpetrators and their violent behaviour. They were more likely to use violence offensively and repeatedly. Commenting further on the implementation and merits of dual arrests, Muftic, et al. described differences between male and female perpetrators, noting that the women were younger, were more likely to be charged with a felony assault, and to be unemployed. Men, on the other hand, were more likely to have multiple intimate partner violence arrests, have histories of making threats to kill and to have previously committed extramarital violence.

Research by Finn and Bettis (2006) (USA) examined the rationales of police officers to justify dual arrests in a preferred arrest jurisdiction. Their research involved 24 respondents from a larger group of 257 police personnel. A written script was presented to each participant who was required to write down how they would respond to the situation. Data obtained from the written thoughts of the participants included the following examples. Officer 655 in the study stated:

> Since Sally seemed to be cut and bruised, showing signs of a fight, and also
>
> with the potential of the violence of both are left together, I will charge Bob

with battery and transport him to jail. Also since Bob complained of injuries, I would issue Sally, a citation to be in court for simple battery. (Finn & Bettis, 2006, p. 279)

One respondent said he would arrest both parties under the Family Violence Act. The first officer quoted above considered the future safety of the couple and the second, on further questioning, stated, "I considered advising warrant procedures or asking the husband to leave, but he might have returned that night, and [done] more damage" (Finn & Bettis, 2006, p. 280). Even though only one had considered safety, both were legally focused. A second motivation Finn and Bettis identified was the possibility of the couple receiving positive benefits from criminal justice system involvement. For example, one officer suggested that involvement in court increased the possibility of a couple receiving counselling. Accordingly, Finn and Bettis's research showed that dual arrest was not only due to overzealous adherence to the law, but it could also be considered a means of helping the couple. Moreover, police officers cited evidence of injury to both parties as the most important factor in determining whether to make a dual arrest. However altruistic their motivations, police, according to Finn and Bettis, showed they were paternalistic and had assumed that battered women would not seek services or assist in the prosecution without such strategies being used.

Another possible reason for making a dual arrest was being unable to determine who the primary aggressor was (Muftic et al., 2007a). Mackenzie (2009) discussed the predominant aggressor policies which recognised the increased vulnerability of victims in dual arrest situations in the US and elsewhere. According to this policy, a safe response to intimate partner violence incidents:

- Discourages dual arrest in intimate partner violence cases;
- Helps police to determine which party is the predominant aggressor;
- Directs police to take only the predominant aggressor into custody; and

- Enables police to be directed to document or in some other way follow-up on investigating allegations against a secondary offender.

<div align="right">(Mackenzie, 2009, p. 20)</div>

Legislation ensured that police officers received guidance in the assessment of who the real offender was in the relationship, the presenting incident and the use of information about the history of the abuse, to distinguish between defensive and offensive injuries (Hirschel & Buzawa, 2002). One way to help determine who was the predominant aggressor was to ask each party whether or not they were afraid of being injured by the other (Mackenzie, 2009). However, police practices depended upon the "jurisdiction leadership and policies" (Hirschel & Buzawa, p. 1464) and the interaction between the victim, perpetrator and police officer.

Research found some differences between victims who had been arrested singly and as part of dual arrests. The work of Henning and Feder (2005) (USA) found that, where female defendants were part of dual arrest, they were more likely to have the case dropped by prosecutors and less likely to be sentenced to prison. However, once a decision was made to prosecute, dually arrested defendants were more likely than singly arrested defendants to be convicted. Because only 34% of dually arrested defendants were prosecuted compared with 86% of those singly arrested, Henning and Feder suggested that, for dual arrest cases that have gone through screening by prosecutors, there was likely to be clear evidence supporting mutual aggression.

In court

A Ministry of Justice review of two New Zealand family violence courts[46] was carried out by Knaggs, Leahy, Soboleva, and Ong (2008) to evaluate, inter alia,

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[46] Family violence courts were established in response to community concerns about the increase in family violence cases to deal criminal cases of family violence. They are held in the following New

operations, complainants' involvement, and reconviction rates. A number of inadequately met needs for victims were identified, including advocacy for victims. Among other findings were the needs for increased safety of victims, particularly in waiting areas, monitoring of perpetrators' programme completion by perpetrators, and non-payment for programmes by self-referred people. If people were able to participate in the programmes on a funded basis, it seems likely that there would be fewer impediments to volunteer participants attending. Other identified risks for victims were delays due to not-guilty pleas and defended hearings (p. 8). This was because it was known to be a period during which victims and perpetrators often reconcile thereby exposing the victim to further abuse while matters remain unresolved. Furthermore, Knaggs, et al. (2008) found that training was needed in the dynamics of intimate partner violence. As far as the perpetrators were concerned, accountability could be improved by better funding for programme providers and monitoring of programme completion. They also suggested that the use of s.106 discharge without conviction[47] could convey that intimate partner violence was not serious. Victims can be in courtrooms as complainants and/or witnesses (Ministry of Justice, 2009) or as perpetrators. I will discuss their role as witnesses first.

In the Ministry of Justice discussion document reviewing victims' rights (2009), the observation was made that victims often feel sidelined in the criminal justice process. This view has been shared by others (Curtis-Fawley & Daly, 2005). Although some developments have occurred such as victims/witnesses being occasionally met by prosecutors before a court hearing to explain court processes, this has been ad hoc. Victims have often felt they were tools for the prosecution rather than respected as people who have been harmed by someone else's offending. For example, Carbonatto's (1998) research exposed what could only be called the persecution of a witness by police. She stated:

Zealand District Courts: Auckland, Waitakere, Manukau, Lower Hutt, Palmerston North, Porirua, Masterton and Whangarei.

[47] The Sentencing Act 2002 No. 9 in s.106 allows the court, if an offender is found or pleads guilty, to discharge the offender without conviction.

One case ... involved an incident in which the victim had reconcile[ed] with the offender, and, on the day she was supposed to testify, she was found hiding by police under the defendant's bed. Pursuant to a warrant, the victim was brought to trial for not testifying and strict bail conditions were sought *for the victim*, including a reporting clause, a non-association clause of the defendant and a residential clause ... She was held in custody overnight and charged with failing to answer a witness summons. The police told her that charges would be withdrawn if she cooperated. The charges against the victim were finally withdrawn after three remands and court appearances on her part. (Carbonatto, 1998, p. 92) (her emphasis)

Improvements such as prosecutors being required to meet or, at least, contact the victim in all cases where a serious crime is involved, have been proposed for New Zealand in order to reduce victims' marginalisation. Possible disadvantages of the proposal cited in the Ministry's discussion document (Ministry of Justice, 2009) included delaying the laying of charges or court proceedings; victims not wanting to speak with the prosecutor; and the impracticality of a prosecutor contacting victims of minor offences, who may be less likely to want to engage in court processes. It could be argued that some of the disadvantages outlined in the document, which relate to the court rather than the victim, demonstrated yet another manifestation of the process and the perpetrator-orientation present in New Zealand courtrooms. This is because what has been considered a minor crime to court personnel might be a life-defining moment for the victim.

Women as perpetrators

Much has been written on the subject of women as perpetrators. Two prominent researchers in this field who have examined why women offend are Daly (1992) and Gelsthorpe (1992). Daly's research was in response to her observation that feminist work in crime and justice had focused almost completely on women's legal status and experiences as victims. As part of this research, Daly analysed the biographies of women who had been convicted of felonies in the New Haven felony court

during 1981-1986, to assess their journeys to criminal behaviour. Daly estimated that no more than half of the women prosecuted in the courts arrived by the street woman pathway.[48] She also found some racial and ethnic differences, for example, no white women were classified as battered or drug connected, and no Latin women were members of the street woman group. Daly concluded that, in addition to the street woman pathway, there were other reasons why women became perpetrators. These included: abuse or neglect as a child; being or previously being in a relationship with a violent man; and being around boyfriends, mates or family who used or sold drugs. Gelsthorpe (1992) analysed social inquiry forms conducted between 1989 and 1991 in three British probation services. She found that the most significant differences were between male and female reports, where the reports of female perpetrators referred to stress, early childhood difficulties and psychological difficulties, such as depression or emotional stress. Women offenders were often victims of life (Gelsthorpe, 2009). Emphasising that victimisation did not excuse offending behaviour, she commented:

> It helps explain why some women, battered by exigencies of life are into crime. Victimisation can be linked to offending in several ways – for example, through the impact on a woman's psychological health and substance abuse. This is not to say that victimisation causes offending, but that there may be complex response[s] to domestic experiences.... Conflict in adult relationships may increase stress and impair [women] from solving their problems appropriately. (Gelsthorpe, 2009, p. 28)

Also using a gendered pathway approach was American research by Salisbury and Van Voorhis (2009) whose quantitative research statistically supported three gendered pathways to female offenders' incarceration. These were: childhood victimisation leading to mental health and drug issues; a relational pathway where

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[48] The street woman pathway refers to young girls (from abusive homes) engaging in petty thefts, and progressing from there to drug use and addiction, leaving school early, getting bored, possibly getting pregnant, lawbreaking and having a relationship with men also involved in crime. Daly (1992) described this as the revolving criminal justice door, where women move between incarceration and time on the streets.

dysfunctional relations as an adult with adult victimisation, reduced self worth, mental health problems and substance abuse could occur; and the social and human capital pathway relating to reduced education, family support, and relationship dysfunction contributed to employment and financial difficulties. Rape was also found to be a part of intimate partner violence in the UK (Stern, 2010, p. 111). She noted how being a repeat victim had a significant impact, where alcohol was often a part of that norm, which added to the victims' vulnerability. Stern echoed Daly (1992), Gelsthorpe (1992) and Salisbury, et al. (2009) by noting the exploitation of young people from difficult backgrounds, and that as a result they felt "disengaged and marginalised from society" (Stern, 2010, p. 112). However, Daly identified a blurring of boundaries between victimisation and the perpetration of harmful acts. "By joining victimisation and criminalisation, feminist scholars, evade[d] core questions about the conceptual status of 'crime offender' and 'crime victim'" (Daly, 1992, p. 48). Not surprisingly, Balfour's (2008) description of that line between victimisation and criminalisation in the Aboriginal context as a "fault line", challenged Daly's (1992) perspective.

Not quite so challenging of Daly's (1992) comments were observations made by Rumgay (2005), who addressed the issue of victimhood and responsibility. She suggested that understanding the perpetrator's plight as a victim was sometimes seen as, "smacking of collusion with 'excuses' for crime and exoneration from personal responsibility" (Rumgay, 2005, p. 5). Rumgay noted how rehabilitation programmes that acknowledged the perpetrator's history of victimisation were likely to be suspected of focussing on personal need at the expense of personal change. Herman (1992) pointed out, however, that these views overlooked the evidence that trauma recovery was a challenging process that could not succeed without the active participation of the traumatised person or victim. Accordingly, there were occasions when helping perpetrators who had been victimised could lead to changes in their behaviour, which did not evade the issue of responsibility. Examining the victimisation of a perpetrator was not, she advised, excusing the victim for their offending (Rumgay, 2005, p. 10). However, considering the issue of responsibility in its broader sense, Rumgay stated:

If we are bound to hold the victimised offender morally accountable and capable of personal responsibility, then we may demand that such responsibility be exercised in tackling the social, psychological and economic legacy of victimisation and thereby changing the conditions in which offending has emerged as an adaptive solution. (Rumgay, 2005, p. 15)

There was, therefore, a responsibility for the community to provide support to these women. Rumgay advised that the provision of support services for such perpetrators could be matched by a demand that, when supplied with appropriate assistance, they acted to rectify the damage sustained through victimisation in ways that would enable them to avoid the commission of more offences (Rumgay, 2005). Nevertheless, as Daly (1992), Stern (2010), Gelsthorpe (2009), Rumgay (2005) and Balfour (2008) showed, women have been prosecuted and/or incarcerated. One of the numerous ways that has been attempted, the chivalry hypothesis[49] is discussed below.

Some research has found women to receive lighter sentences than men. In New Zealand, Jefferies, Fletcher and Newbold (2003) examined the process of sex-based differentiation in sentencing outcomes for 194 men and 194 women over seven years, using data from the Christchurch courts. Notwithstanding the possibility that apparent leniency for women could be due to women having less serious criminal histories, Jefferies, et al.'s research supported the contention that judicial processes treated women more leniently. They found that judges were less likely to sentence women than men to prison terms. They explained that this was due to gendered information and decisions made earlier in the judicial process, such as the perpetrator's criminal history, custodial remands, and pre-sentence recommendations by probation officers. If women were sentenced to imprisonment, they received shorter terms (Newbold, 2000, cited in Jeffries et al., 2003). One explanation for the perceptible difference was that the length of prison

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[49] Overseas research has indicated that resolving these problems is much more complicated than the chivalry hypothesis would suggest (personal communication from Dr Allison Morris, 20 March 2010).

term was a judicial discretion up to the statutory maximum (Jeffries et al., 2003). Another possible explanation could be the blurring of boundaries between victimisation and offending within the various stages of the criminal justice process.

I have previously mentioned that these responses have included homicide. Polk (1993) investigated Australian women as perpetrators of homicide. His research found that women generally responded to precipitating violence from their partner and that the criminal justice system was more lenient to them than male offenders. From the perspective of any male perpetrator who was aware of such differences, this use of judicial discretion could raise the issue of fairness especially when considered alongside Guzik's (2008) findings (discussed above) where most perpetrators felt they had been treated unfairly within the criminal justice system. The chivalry theory argues that leniency towards women is the result of "paternalistic, benevolent attitudes towards women, in particular, those who fulfil stereotypical female roles" (Herzog & Oreg, 2008, p. 45) such as women living traditional gender roles, and being socially and economically subordinate to their husbands. Thus, patriarchal cultures tended to identify women as weak, submissive, childlike, defenceless, and unable to be fully responsible for their actions. Herzog and Oreg (2008) made the observation that well socialised people believe that female perpetrators needed to be protected rather than punished. In contrast, male perpetrators were regarded as independent and mature, and as a result able to take responsibility for their actions. Rather than look at court decision-making, Herzog and Oreg examined the attitudes of evaluators by asking a sample of 840 Israeli residents to evaluate criminal scenarios involving women. The research found that paternalistic attitudes towards women were a likely source of chivalry effects, influenced by the degree in which the crime evaluators held benevolent or hostile attitudes towards women (Herzog & Oreg, 2008). In a similar way, Burman's (2010) comments, discussed in the previous chapter, about the innocent victim being the recipient of better treatment in the criminal justice system than victims who have acted in their own defence, reflected Herzog and Oreg's findings on the role of patriarchy in the criminal justice context. This suggested the fairness of processes and outcomes in this context could be called into question. In addition to,

or as an alternative to, court, there are other possible avenues for victims and perpetrators.

Programmes for perpetrators and victims of intimate partner violence

There are numerous specialised programmes for victims and perpetrators, including therapeutic ones, for those affected by intimate partner violence, which have been subjected to considerable research. There appear to be mixed reviews of the stopping violence programmes. Early research by Dobash and Dobash (1996) into two Scottish initiatives (CHANGE and the Lothian Domestic Violence Probation Project (LDVPP)) analysed court records, showed little difference between programme attendees in terms of reoffending (7% and 10% respectively). Interviews with their partners showed the programmes had been even less successful (p. 9). However, a later three-year evaluation showed that criminal-based education programmes could lead to significant changes in violent men (R. E. Dobash, Cavanagh, Dobash, & Lewis, 2000, p. 18). The researchers, however, issued a caution about excess use of alcohol and advised that programmes such as these needed to be informed by women who had been victims of intimate partner violence. Female perpetrators were found to need programmes that took account of "personality and mood disorder" (Henning, Jones, & Holdford, 2003, p. 839). Henning, et al. highlighted the need for service providers to be sensitive to, and assess women for, familial risk factors such as childhood abuse, including witnessing parental abuse, and to ensure safety planning was carried out. Perpetrators in Neighbors et al.'s (2010) (USA) research were found to consistently overestimate the number of men who perpetrated intimate partner violence. Neighbors, et al. concluded that addressing this perception was an important step in understanding and applying normative feedback to motivate behaviour change in perpetrators. They cited research into interventions which had successfully changed perceived norms and, as a result, changed behaviour (Borsari & Carey, 2000; Neighbors et al., 2010).

As far as victims are concerned, Hovell, Seid and Liles (2006) observed that there was a need to be aware that police and social services programmes could unintentionally create conditions which could lead to more violence. This was especially so if the intervention was used without the permission of the batterer, who may feel a loss of control, and respond accordingly. More encouraging was American research by Stith, Rosen, McCollum, and Thomsen (2004) who compared outcomes for two types of programmes. These were multi-couple group work and individual couple therapy. They found that the multi-couple programme showed lower male violence recidivism at 25% six months after treatment, compared with 66% for the individual couples therapy, and 43% from the comparison group. Marital satisfaction increased significantly and both marital aggression and acceptance of wife battering decreased significantly for those who experienced multi-couple group work. It is interesting to note that couple counselling had less success than the group with no intervention. This could be due to the continuation of isolation from others or to resentment on the part of perpetrators against the interference of others. The multi-group were perhaps influenced by the effect of intimate partner violence on other victims and possibly by the perpetration of violence by other men. However, it is also important to note that the evaluation was limited by taking place only a short time after programme completion. Although most programmes are initiated with the betterment of the community in mind, they may not achieve the objectives which instigated them. An example of this was presented by Cram et al.'s (2002) research. Programmes in New Zealand, despite being designed to counteract the disproportionate incidence of intimate partner violence among Māori, (discussed in Chapter 1) were assessed as perpetuating systemic inequality (Cram et al., 2002). This was to such a degree, according to Milroy (1996), that Māori Women's Refuges considered not using the legal system at all. There is another possibility.

The restorative justice option

The focus of this section is the use of one type of process which could benefit both victims and perpetrators: restorative justice. Rather than being solely therapeutic,

restorative justice is concerned with repairing the harm and, where possible, treating the underlying causes. This process was described by Straus (2006) as "[o]ne of the most promising developments in criminal justice … as a means of treating offenders and increasing the sense of wellbeing among the population" (Straus, 2006, p. 1092). Notwithstanding Straus's enthusiasm, it has been the subject of much deliberation.

The debate about risks

Like other countries where restorative justice has been practised, there has been considerable debate in New Zealand about the use of restorative justice for intimate partner violence. This global discussion has been explained by Frederick and Lizdas (2010) as a result of the crossing of paths of two reform movements, the battered women's movement and the restorative justice movement each of which were challenging the Western criminal justice system. These "both … [held] the promise of being truly effective responses to domestic violence" (Frederick & Lizdas, 2010, p. 39). In this section I consider the implications of using restorative justice for intimate partner violence.

Participating in a restorative justice conference, while giving couples an opportunity for a facilitated discussion, may also pose risks. The focus of this section is on the latter, a subject about which victim advocates have been vocal. People dealing with intimate partner violence have often found it necessary to balance safety with considerations of their future together. Most battered women do not want their partners prosecuted (Frederick & Lizdas, 2010; Morris & Gelsthorpe, 2000). One possible reason is that separation has presented substantial risks for victims before, during or within a few months of separation (Busch, 2002; Stubbs, 2002). Hooper and Busch (1996) stated that a characteristic of men who are violent towards their partners is that their violence often escalates at the time of separation, or within 12 months of that date. As discussed earlier in this chapter, intimate partner violence has been considered too serious for mediation (Carbonatto, 1995; Curtis-Fawley & Daly, 2005), because it could provide the offender with another opportunity to

abuse the victim emotionally or physically (Cameron, 2006; Hooper & Busch, 1996). This has been frequently attributed to abuse of power.

When contemporary restorative justice practice was relatively new in New Zealand, Busch and Robertson (1993), Hooper and Busch (1996), and Carbonatto (1995) demonstrated the contentious nature of this issue from the standpoints of victim advocates and supporter of restorative justice. Both views advocated protection of the victim and prevention of further intimate partner violence, and were located in the context of earlier days in New Zealand when couple mediation and restorative justice were conceptually linked. Proponents of HAIPP, Busch and Robertson (1993) initially critiqued the Family Courts' use of a therapeutic approach in the form of mediation as a means of dealing with conflict. Hooper and Busch (1996, p. 10) later criticised restorative justice because they believed it labelled crime as conflict, minimising the seriousness of the violence, especially intimate partner violence. Busch and Robertson's (1993) reservations centred on the safety of victims, their ability to speak freely, and the fact that that mediation implied no fault on either side, potentially reducing offenders' accountability. Hooper and Busch (1996) stated that victim-offender mediation's emphasis on consensus, neutrality and power-balancing made it unsuitable for domestic violence. They considered victims' responses could be compliant, placatory and modified to reduce retaliation; mediation was unlikely to resolve spouse abuse; and the abuser's power would exceed the victim's. Their concerns about Carbonatto's conferencing approach included the possibility that domestic violence cases could be referred without going through the criminal justice system; confidentiality implied no external accountability; and there was no monitoring of agreed plans. Hooper and Busch (1996) had concerns that the lack of formal legal safeguards due to the privatised nature of restorative justice, and the risk of the family of the perpetrator further intimidating the victim (Busch, 2002; Hooper & Busch, 1996). Consequently, restorative justice was considered a risky process for intimate partner violence, and the risk was increased if perpetrators experienced shaming that was stigmatising rather than reintegrative at a restorative justice process (Busch, 2002).

Critique further afield has included the fact that apology was frequently used by perpetrators to reinstate their power over the victim (Stubbs, 2007); the risk of re-privatising intimate partner violence after the years that have been spent bringing this type of offending out into the open (Curtis-Fawley & Daly, 2005; Edwards & Haslett, 2003; Stubbs, 2002); and the inability of restorative justice to prevent imbalance of power between the victim and perpetrator (Curtis-Fawley & Daly, 2005).

Carbonatto had a different view. Carbonatto (1998) noted that the increased response to domestic violence by the criminal justice system had failed to provide solutions for couples continuing to live together. Referring to the 32% reoffending rate by offenders within three months of being arrested, prosecuted and attending the HAIPP programme (1995), Carbonatto suggested that insufficient attention could have been given to the experiences, thoughts and feelings of victims. Carbonatto noted how women wanted the violence to stop, and protection, safety, support and assistance. There was little evidence to suggest that all women wanted were arrest and punishment. Treating intimate partner violence as a crime had also led to the offence of assault being prioritized over the relationship (Morris, 1993, cited in Carbonatto, 1995).

Much of the literature refers to significantly unequal power held by the parties (Carbonatto, 1995; Curtis-Fawley & Daly, 2005; Frederick & Lizdas, 2010). However, in addition to well-informed facilitators, procedures can be adopted to address unequal power. Morris and Gelsthorpe (2000) suggested using procedural fairness, supporting the less powerful and challenging the most powerful. They also suggested that the presence of friends and families could prevent recurrence of violence and help monitor a safety plan. Frederick and Lizdas (2010) had similar views, adding that the engagement of the community was one aspect of restorative justice practice which could have the most potential for restoring battered women's safety, autonomy and agency. Frederick and Lizdas (2010) commented that although the battered women's movement has worked to reform the criminal justice system's response to victims, they had not done enough to "address those

other needs that women repeatedly identify … [including] safe and affordable housing, child care, true autonomy, and community support for staying in a relationship while staying safe" (p. 48). However, they warned that the presence at a restorative justice conference of community norms that it was appropriate to excuse violence against women would increase the risk for battered women. Therefore it was vital that the community present at a restorative justice conference had a deep understanding of the dynamics of intimate partner violence, the past and potential harm to the victim, the perpetrator's likely response, and other personal and political dynamics which could affect the process or the result.

While citing Braithwaite and Strang's (2002) observation that conference victims fared better than those whose cases went to court, Curtis-Fawley and Daly (2005) cautioned that any legal response to gendered violence needed to consider different victim–offender relationships and victims' needs, factors relevant for the use of restorative justice. Furthermore, cultural factors needed to be taken into account, a possible strength of restorative justice.

Indigenous origins

Restorative justice is a process generally considered more consistent with Māori values than mainstream criminal justice (Ministry of Justice, 2009). Nancarrow (2006) in Australia, interviewed ten Indigenous and 10 non-Indigenous task force[50] women and found that the two groups had largely opposing views. None of ten Indigenous women preferred the criminal justice system as a response to intimate partner violence, while six preferred restorative justice. Six of the non-Indigenous women, however, favoured the criminal justice system. Coker (2006) suggested this could be due to differences in who controlled the service providers. She compared Peacemaking, designed by the independent Navajo judiciary, with family group conferencing in New Zealand, which was controlled by a non-Indigenous authority.

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[50] One taskforce comprised Indigenous women (see Torres Strait Islander Women's Taskforce on Violence Report), and the other comprised women who had contributed to the Report of the Taskforce on Women and the Criminal Code, Australia.

The former could be self-petitioned or bypass the authority, whereas the latter required notification to the authority. Referring to her research into Navajo Peacemaking in 1999, Coker commented on positive aspects of victims' experiences. The meetings were not separation-focused; family members from both sides could support the victim and confront the abuser; and the oppression was explored without excusing the abuser's conduct. On the negative side, Coker found some coercion of victims to attend and inadequate attention to victims' safety. Coker (2006, p. 67) set five criteria for restorative justice practice:

- Prioritizing victims' safety over perpetrators' rehabilitation;

- Making material and social supports available for victims;

- Ensuring the process is a coordinated community response;

- Addressing gendered domination; and

- Forgiveness not being a goal.

Over the years there have been more calls for effective interventions for dealing with intimate partner violence. However, it has not always been clear what an effective intervention is (Romkens, 2006). Inspired by the indigenous practice of healing circles, Mills (2008) discussed the use of restorative justice circles for intimate partner violence where circles may be available for couples wanting to be dealt with together, as a way of placing a violent event into their larger contexts (for example childhood history, drug and alcohol addictions) to help everyone acquire a shared understanding. "Only when we have put circles into widespread use and studied them , will we know their limitations ... and ... their full potential" (Mills, 2008, p. 247). As with the current research, Mills acknowledged the need for empirical research to support the use of restorative justice for intimate partner violence, for it to be a legitimised practice. But empirical data needs to come from practice.

Implications for restorative justice

Theorising intimate partner violence has failed to address disadvantages and the "raced, classed and gendered patterns of crime" (Stubbs, 2007, p. 171), which negatively impacted on the use of restorative justice. She explained it as follows:

> The challenge of taking domestic violence seriously may require something that differs from common restorative justice practices. Domestic violence offences … cannot be subsumed within generic restorative practices without significant risks to victims' interests. The broad principles of RJ such as repairing the harm, stakeholder participation and community building do not … offer sufficient direction or accountability to ensure that practitioners respond to domestic violence adequately and safely. (Stubbs, 2007, p. 180)

In other words, frequently mentioned components of restorative justice, such as reparation, apology and forgiveness, and confronting the abuser, did not rest easily with intimate partner violence (Cheon & Regehr, 2006; Stubbs, 2007). However, expressing their views has been found to be important to victims (Herman, 2005; Jülich, 2001). Victims of historical sexual abuse wanted to be acknowledged, listened to and treated with respect in the judicial process; they also showed anger and the need for validation (Herman, 2005). Restorative justice offers victims greater opportunities for this expression than the criminal justice system. Wendy Pedlar of the Sensible Sentencing Trust (New Zealand) stated, "So often in our justice system the focus is on the perpetrator. We want to put the victim in the centre of the justice system and listen to them … and how to meet their needs" (Palmer & Webb, 2007, p. 1).

To summarize, the welcome acceptance of restorative justice by many jurisdictions has not extended to intimate partner violence cases. Those service providers that have taken these cases have tended to be indigenous or to have involved less severe cases. Decreases in recidivism have been varied, demonstrating differing success rates.[51] Furthermore, due to minimal practice in this field, few evaluations have been carried out. Consequently, with so little empirical evidence, service

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[51] See Chapter 2.

providers have continued to be influenced by professionals limiting their practice in intimate partner violence. Among these service providers have been police and victim advocates who have, as previously discussed, played a significant gatekeeping role. This, whether or not intentional, has limited couples' access to restorative justice. Although they were referring to youth justice, Stewart and Smith (2004) suggested the adoption of a watchman-style of policing designed to maintain order, rather than enforce it. This could have useful applications with respect to intimate partner violence, because once again, it comes down to the use of police discretion. As previously discussed, New Zealand police have already been using this extensively.[52]

Conclusion

The impact of the criminal justice system on individuals experiencing intimate partner violence is profound; however, the pro-arrest policy has not been an effective disincentive to perpetrate or a means of reducing intimate partner violence. Its inconsistent application due to variations in the use of police discretion has only made the consequences of reporting more unpredictable. The possibility of victims being arrested has been a likely restraint on reporting. Furthermore, two courts in New Zealand were shown not to meet victims' safety and advocacy needs, and stopping violence programmes have been found to have varying success. Research has, however, indicated that restorative justice, while contentious, has the potential to better meet victims', perpetrators', and communities' needs. To increase its acceptability for intimate partner violence cases, safety and other considerations have needed to be prioritised. Who better to inform the research than victims and perpetrators? The current research has consulted those people most affected by intimate partner violence and its methodology, ethics and method are discussed in the next chapter.

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[52] See Newbold and Cross (2008) and Carbonatto (1998).

Part Two: Rocking the Boat

Chapter 5: Methodology, Ethics and Method

Introduction

This research project focussed on the various actors engaged in some aspect of intimate partner violence, comprising victims and perpetrators, but also relevant service providers such as the judiciary, stopping violence programmes, victim advocates, people involved with restorative justice and key cultural groups. Numerically, key informants were the largest group. Most victims were women, whereas the perpetrators were men. A principal aim of this research project was to learn more about the experiences, needs and wishes of victims and perpetrators, with a view to finding other options for people with similar experiences than are available at present. Information from professionals working in the area of intimate partner violence or restorative justice was obtained with a view to improving knowledge and practice. As a former participant in the fields of domestic violence, victim advocacy and restorative justice, I considered ethnography provided the most appropriate philosophical basis for the work. Due to the predominance of victims of intimate partner violence being women (not only in my research but in other New Zealand and international studies), the research has also been informed by feminist research methodology.

In this chapter I provide an overview of the research project, ethnographic research, and ethical and political issues before discussing the research methods used, and other activities forming part of the research.

Overview of research project

This research has used several research methods to examine the extent to which the use of restorative justice would increase reporting of intimate partner violence. Ethics approval was obtained from Auckland University of Technology's Ethics Committee on 30 March 2007.

In order to orientate myself to the areas of study and introduce myself to potential key informants and/or interviewees, I had informal meetings with an indigenous restorative justice service provider, victim support, police, founding members of Te Oritenga Restorative Justice Group, and a victim agency. I then obtained the written consent of and conducted 16 in-depth interviews with experts in the area, including victim advocates and advisers, stopping violence service providers and a men's group coordinator, members of the judiciary, cultural advisers (Māori and Samoan) and restorative justice service providers (indigenous and non-indigenous). Broadly speaking, these interviews focussed on reporting to police, restorative justice for intimate partner violence cases, and restorative justice practice. I observed two courts addressing intimate partner violence, the Waitakere Family Violence Court on a status hearing[53] day, and the Auckland Domestic Violence Court on a defended hearing[54] day. I corresponded with theorists and writers who have advocated for the use of restorative justice in cases of intimate partner violence and family violence (Linda Mills, Gale Burford and Lorenn Walker). After obtaining their written consent I conducted in-depth unstructured interviews with eight victims and six perpetrators[55] to learn their views on non-reporting and whether the availability of restorative justice would increase reporting to the police.

When it was appropriate and in context, I acknowledged my previous experience as a victim advocate, intimate partner violence victim and restorative justice practitioner. Victim and perpetrator participants were asked whether they had heard about restorative justice; what they thought the positive and negative aspects of participating in a restorative justice process were; what their expectations were in respect of the facilitators, safety measures, their partners'

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[53] A status hearing involves informal discussions between the judge, defendant and prosecution about the case, frequently when pleas are considered.

[54] A defended hearing is held when a defendant has pleaded not guilty, and has brought witnesses to the court to support his stance. These are often considered by a jury.

[55] Because one perpetrator was also a key informant as a men's group leader, I have included both of his roles in the qualitative results, whereas in the quantitative data, his data as a perpetrator only is used. This avoids creating bias by giving him two voices in the quantitative aspects of the research. I have named him Zeddy.

responses, and followup; and what their thoughts were about using restorative justice for intimate partner violence. Key informants were asked what their views were on using restorative justice for intimate partner violence; what criteria should be in place for intimate partner violence cases; and their expectations as above.

Ethnographic research

Ethnographic research is based predominantly on an interpretivist or qualitative epistemology, combining ethnographic theory and the voices of the reflexive researcher and the informants. To a lesser extent, it reflects a positivist or quantitative approach, in that questions have already been constructed, the theory researched extensively, instruments (question guides) used, and the data reduced to numbers (albeit a simple analysis). Tolich and Davidson (2000) described this methodology as being based on observable phenomena viewed objectively, thus reducing the observed data to figures. In a positivist approach, the researcher was the expert as his or her hypothesis or question was tested, an approach regarded as patriarchal by feminist theory. Ethnographic research, on the other hand, presented not only descriptions of phenomena, but also explanations (R. P. Dobash & Dobash, 2004). This occurred through the use of the interpretivist approach, a paradigm informed and favoured by feminist researchers because it argued against the reductionist approach of positivism (Tolich & Davidson, 1999, p. 28) and used the researcher as an instrument, that is, as witness to, and participant in, the lives of others (Hammersley, 1992). The interpretivist approach used indirect discourse to uncover naturally occurring concerns and meanings (Grant & Giddings, 2002) with the goal of understanding lived experiences rather than the prediction and control of events (Lofland & Lofland, 1995). Interpretivist or qualitative methodology has been based on assumptions that reality is socially constructed; the subject matter is of primary importance; variables are complex, interwoven, and difficult to measure; and involve the insider's view in contrast to quantitative which provides an outsider's point of view (Tolich & Davidson, 1999). In this context, the researcher–participant relationship has entailed the adoption of a reflexive stance by the researcher, whose involvement and engagement in that relationship may help

informants to feel more comfortable sharing their information (Forbes et al., 1998). This is also more likely to encourage dialogue while avoiding bias. In this way it has helped to counter interpretations made throughout the research process, which were the researchers' construction rather than reflecting on the views of the informants. Using three ethnographic methods (in-depth interview, autoethnography, in the form of a critical reflective journal, and observation) has triangulated the research, thus enabling corroboration of the data. Listening to the voices of informants, the reflexive researcher and theory has given this research potential to be more informed, with positive implications for practical application for dealing with intimate partner violence.

The incorporation of some quantitative research methods in this largely ethnographic research project has worked together well as the two paradigms "share tenets of theory-ladenness of facts, fallibility of knowledge, in determination of theory by fact, and a value-laden inquiry process" (Sale, Lohfeld, & Brazil, 2002, p. 46). In addition, the realist perspectives of both methodologies have been committed to understanding and improving the human condition, aimed to disseminate knowledge for practical use, and have valued rigour, commitment, conscientiousness and critique (Reichardt & Rallis, 1994).

Autoethnography

Using autoethnography enabled the data to be triangulated with observation and interviews, thus giving it more validity. Autoethnography is a qualitative research method which makes connections between the researcher's personal self to the broader social context (Foster, McAllister, & O'Brien, 2006). The term autoethnography was explained as coming from the Greek words "auto", meaning self, "bio", meaning life, and "graphos" meaning to write (Foster, et al. (2006), citing Johnstone (1999)); and "ethno" refers to nations, people or cultures (Tolich & Davidson, 1999). Wall (2006) contrasted autoethnography with traditional positivist approaches by pointing out that autoethnography used the researcher's experience of self in a way that did not minimise or view the researcher's experience as a

contaminant, unlike the "dominant, objective, competitive, logical male point of view" (2006, p.3). Foster, et al. (2006) described four key features in autoethnography, namely, personalized accounts through the use of personal accessible writing; outing the researcher's experiences and shared humanity with informants; rejection of claims of objectivity; and valuing both subjectivity and the researcher-participant intersubjectivity. Data could be gathered through the researcher keeping a reflective journal, and Hanrahan and Burroughs-Lange (1999) explained how this could help clarify ideas, allow connections to be made, and confront a wider range of issues such as moral and political issues that were otherwise unlikely to be confronted.

Like all research methodology, autoethnography had advantages and disadvantages. The advantages included the ability to see multiple layers of consciousness; allowing the researcher to understand him or herself and others more deeply (Foster et al., 2006); reflection on self by the researcher could enable recontextualisation in light of the experiences of the other informants; it could challenge the objectivity and authority of the researcher; and emotions and responses by both reader and researcher could encourage reflection on "the lived human experience" (Hanrahan & Burroughs-Lange, 1999, p. 414).

In the literature, critiques of the methodological approach of autoethnography being self-indulgent and narcissistic (Holt, 2003) have not been uncommon. Other negative comments have included a lack of rigour or grounding in a theoretical framework, and that it could be problematic for evaluation purposes (Holt, 2003). Foster, et al. (2006) reminded us of the need for researchers to balance their own experiences with those of informants to avoid overshadowing the voices of informants. In the current research, many of these concerns were negated by the use of triangulation methodology. Furthermore, the controversy surrounding autoethnography was partly related to the exclusive use of the self to produce research (Denzin & Lincoln, 1994, cited in Holt, 2003).

Ethical and political issues

Ethics

Relational ethics

The importance of ethical considerations in any research cannot be overstated. They are complex, comprehensive and need to be constantly under review. These were especially important in the current research, which focused on aspects of people's lives that have been often kept hidden away. Guillemin and Gillam (2004) referred to two components of ethics in qualitative research, namely, procedural ethics and ethics in practice. Ellis (2007) added a third, relational ethics, which she described as ethical practice involving principles such as care, responsibility, mutual respect, dignity and the connectedness between the researcher and the researched. While Guillemin and Gillam had partly catered for important ethical moments by adding reflexivity as a resource, a personal accountability and reflection by the researcher, Ellis considered more needed to be done to account for situations where researchers either developed, or already had established, relationships with the research participants.

For the sake of completeness, it is necessary to briefly examine Guillemin and Gillam's account of procedural ethics and ethics in practice, to put relational ethics into context. According to Guillemin and Gillam (2004), procedural ethics entailed the obtaining of approval from a relevant ethical committee. As in the case of the current research, it was the Ethics Committee who was responsible for ensuring I had the competence and insights into research ethics to make certain that privacy, safety, confidentiality, and informed consent were integral to the research methodology. On the other hand, ethics in practice concerned day-to-day ethical issues that arose in the course of conducting research in the field. Guillemin and Gillan provided an example of a researcher responding to a participant who disclosed the sexual abuse of her child by her partner. Guillemin and Gillam called this an ethically important moment. This was an event not canvassed in a standard ethical application under procedural ethics. In situations of this kind, the use of

reflexivity was "a process and a way of thinking that will actually lead to ethical research practice" (p. 273) which they described as a bridge to procedural ethics.

When interviewing people about such sensitive issues as their past or experiences of intimate partner violence, participants have, on occasions, revealed information they might not have disclosed to another person before. This led to the development of an interpersonal bond or type of relationship. In the current research, I sometimes, as appropriate, disclosed my background as a previous victim of intimate partner violence. Tillman-Healy (2003) described this interviewing style as interactive interviewing, advising that it called for more sharing of personal and social experiences, and required intense collaboration (Tillmann-Healy, 2003). In the case of the interviewee being someone I knew, relational ethics were very relevant.

Feminist ethics

Despite it being a goal for feminist research to limit power imbalances and the disempowerment of women in the research process, these problems remained "when a research technique encourages friendship in order to focus on very private and personal aspects of people's lives" (Cotterill, 1992, p. 597). The researcher could take the role of sympathetic listener, or friendly stranger. The advantage of the latter was that "unlike a friend, there was no social control over respondents because the relationship exists for the purpose of the research and is terminated when the research is complete" (p. 596). This was partially applicable in regard to most of the participants in the current research, some of whom I had not met previously. However, all people interviewed understood they could terminate the interview or leave the project at any time. When interviewing people she knew, Cotterill was unsure whether she was seen as a friend who was doing research, a researcher who happened to be a friend even if it was possible to differentiate between both roles. Although I am not sure of this, it was my impression that those people I knew saw me as a friend or acquaintance who was doing research. I also felt that because most participants considered the research was important, they were glad to be able to contribute. Cotterill (1992) noted that, in her experience,

the power balance was not fixed and depended largely on the perceptions of the person being interviewed. This was likely to be especially so when the age, status and class of the researcher exceeded that of the participant.

Cotterill (1992) referred to Stanley and Wise's (1983) research in which they argued that the respondent was always vulnerable whether a powerless woman or a sexist man. This is largely because they were self-disclosing, most often to a stranger. Stanley and Wise's solution was for the researcher to make her/himself vulnerable too. However, Cotterill argued that the researcher might already see herself as vulnerable stating that, rather than sharing vulnerability, the issue was commitment to the research. Somehow the researcher was vulnerable "because she must sustain some level of commitment in her respondents if her research is to develop beyond a set of unexplored hypotheses" (Cotterill, 1992, p. 603). This raised questions for me about the ethical points raised by Tillman-Healy regarding the potential conflict between obligations of respect and honour for the participants, and the researcher's responsibility to readers to write as comprehensive an account as possible. Cotterill's stance is based on a slightly cynical understanding of vulnerability. She balanced this to some extent, however, by concluding that the balance of power was with the researcher, who was the person who walked away with the responsibility for analysing and interpreting the data. From this point the participant could be vulnerable. Cotterill pointed out that her interpretation might differ from the participant's:

> if they do not share the political view which shapes those interpretations. Providing an accurate interpretation is difficult in these circumstances and I do not know whether those women I interviewed who were not feminists would agree with mine. I accept the validity of their experiences for themselves, but the responsibility for presenting their realities is a heavy one. (Cotterill, 1992, p. 604)

I was not aware of any power imbalances either way in any interviews with victims, perpetrators or key informants, and there was no way to tell how the partricipants

felt in this regard. However the depth of their disclosures indicated that they were comfortable with the process.

Furthermore, Cotterill highlighted the danger of damaging the interests of the family of women while discussing the unique experience of one individual, advising that one way to avoid this was to produce research which distinguished between the collective and individual interests of women (Cotterill, 1992). As the current research was informed by, but not based on, a feminist perspective, individual experiences, rather than collective ones, have added to the richness of the data. It involved the telling of the truth as experienced by its participants of both genders.

Feminist ethics have evolved over time, from a discipline by, on and for women, to become more inclusive of both genders. While some (for example, Bograd, 1990) might have argued that feminist research should not include the perspectives/viewpoints or experiences of men, it has been useful to consider Gelsthorpe's work in men's prisons (Gelsthorpe & Morris, 1988). Illustrating the early anthropological development of gender violence as a human rights violation (Merry, 2009), rather than solely violence against women, Gelsthorpe and Morris discussed the meaning of feminism in academic, and more particularly, in criminological traditions. They advised that non-sexist methodologies should be employed; questioning the exclusion of men from the feminist enterprise, both as research subjects and researchers. Gender awareness meant they had to analyse men in relation to women as well as other men. Furthermore, Gelsthorpe and Morris argued against feminism being a theory, pointing out that theories were weak if they only represented half the potential criminal population, noting that women experienced the same deprivations and family structures that men did. To illustrate this point I will relate an interesting occurrence I had in the current research. A vulnerable male victim had volunteered to be involved after hearing about the research from other men's group members. Cotterill (1992) had discussed women's vulnerability, disagreeing that women only agreed to be interviewed because they were vulnerable; this man highlighted his vulnerability to the point of bringing a number of psychiatric and psychological reports along for my

perusal. His vulnerability was such that he wept intermittently throughout the interview, determined, however, to carry on. Cotterill commented:

> When a woman talks about a painful aspect of her life, perhaps breaking down in an interview because something "touches a nerve", the research relationship is inevitably affected. The contradiction between the researcher's position as sociologist, woman, and a friend becomes more acute yet seems impossible to reconcile. (Cotterill, 1992, p. 597)

During this somewhat difficult interview I experienced empathy with a fellow human being. This man showed how being a victim of intimate partner violence could be a painful and damaging experience with long-term ramifications. Despite his vulnerability, however, this participant had put himself forward knowing it would require him to revisit his experiences of intimate partner violence. He did not agree to participate because he was vulnerable.

To return to whether feminism is a theory in the disciplines of academia and criminology, Gelsthorpe and Morris saw feminism as "a mode of analysis, a perspective rather than a theory" (1988, p. 103). Rather than focusing research on, by and for women, they questioned the exclusion of men from feminist work, both as research participants and researchers, supporting earlier work by Cain (1986). She had argued that rather than use the by, on, for women as a test for feminist research, a more valid test would interpret the social and political character of by, on and for women relationships, rather than treat them as empirical givens. (Cain, 1986). Cain stated:

> As soon as it is conceded that women as we know it is a socially constructed category it becomes not possible but actively necessary to do research not just on women, seen both as the outcomes of these processes and as resistant to them, but also on the social processes of gender construction and constitution themselves. This involves research on men, as they relate to women ideologically and in practice. (Cain, 1986, p. 257)

Cain (1986) argued that feminists work with relational concepts which are based on a socially constructed theory. Thus, provided the subjectivity of the participants was

taken into account (Cain, 1986), men could be included in research coming from a feminist standpoint. Gelsthorpe and Morris (1988) described research Gelsthorpe had conducted within a men's prison as an example of feminist research including male participants. Firstly, Gelsthorpe did not regard the men as "research objects or mere informants" but recognised their vulnerability in the prison context. Secondly, research questions were not always adhered to if men wanted to redefine questions to what was more relevant to them. Thirdly, Gelsthorpe and Morris included reference to the impact of imprisonment on the men's partners and children. Fourthly, Gelsthorpe attempted to meet their partners and those of the prison officers. By using these techniques she was able to examine gender relations between the men and their partners, and between men and men. Stanley and Wise (2000) held similar views but rather than discuss the practical implications of whether feminism was a suitable theoretical construct in criminology, Stanley and Wise considered the issue from a macro theory perspective. They described feminist theory as having undergone a transition. From its earlier rejection of scientistic claims that knowing the category 'woman' was best done from the outside, by becoming situated within and part of the analysis of the feminist 'knower', it had moved to a different form of feminist theory as fully within and part of the analysis (Stanley & Wise, 2000). This conceptual shift meant it had taken on many of the characteristics of (grand) theory, including being able to claim it had moved general knowledge. Feminism's earlier attempts to ground the production of feminist theory and location and situatedness of the knower were instead criticised as an essentialist claim about experience. As Merry (2009) stated:

> The anthropological approach, which sees gender violence as socially produced, performed, contextually defined, and existing in many different situations and contexts, provides a valuable way to understand what gender violence is, how its definition is changing, and how modes of approaching it are changing. (Merry, 2009, p. 185)

Feminist epistemology has been represented by the use of autoethnography, of which critical reflexivity and shared subjectivities have been a part. However, as interpretivist research, the interpretation of the data has been mine. By sending

each participant a copy of their transcript for their amendment and comments, I have relied on consensus that the transcripts of the interviews were accurate. Once analysed, the data has been compared and contrasted with the other research, and distinctive and common aspects highlighted and discussed. Accordingly, feminist theory in its various forms has informed the current research.

Political

This research is political; an intentional act designed to produce empirical data to explore the value of restorative justice for intimate partner violence cases. Giddens (1984) defined intentional as "an act which the perpetrator knows, or believes, will have a particular quality or outcome and where such knowledge is utilised by the author of the act to achieve this quality or outcome" (Giddens, 1984, p. 10). In this case, the desired outcome was data which included the voices of victims and perpetrators of intimate partner violence, to take forward the dialogue on this disputed issue. Analysis of this data may then influence progress in the treatment of intimate partner violence, while at the same time obtaining informed views on the reporting of intimate partner violence and restorative justice. To progress in any field, there needs to be informed consideration of, and dialogue about, what has been; what is now and what could be in the future. Foucault (1991) put forward a number of hypotheses about the progression of political discourse, including the following:

> A progressive politics is one which recognises the historic conditions and the specific rules of a practice, whereas other politics recognise only ideal necessities, one-way determinations, or the free play of individual initiatives.
>
> A progressive politics is one which sets out to define a practice's possibilities of transformation and the play of dependencies between these transformations, whereas other politics put their faith in the uniform abstraction of change or the thaumaturgical[56] presence of genius.
>
> […]

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[56]This means relating to miracles (Pearsall & Trumble, 1995).

> A progressive politics does not hold that discourses are the result of mute processes or the expression of a silent consciousness: but rather that – whether as science, literature, religious utterance or political discourse – they form a practice which is articulated among the other practices.
>
> (Foucault, 1991, p. 70)

Although Foucault (1991) refers to the free play of individual initiatives as one of the other politics that is not progressive, it could be argued that many initiatives which have been spontaneous and unpredictable have progressed. Indeed in the process, they may become political and historical in their progression.[57]

This research has been contextualised in the New Zealand setting, both historically and currently, incorporating the experiences and views of stakeholders. It presents the views of the researcher and interviewees, and may provide insights to advance the improvement of the criminal justice system, thus improving services to couples experiencing intimate partner violence. This has political and financial implications.

Choice of topic

My motivation to undertake this research was primarily the fact that I have wanted to provide some much needed empirical research about the wants and needs of New Zealand couples experiencing intimate partner violence. I have been aware of some of these from the time I experienced intimate partner violence during the 1970s and 1980s. I subsequently became a victim support volunteer and saw people (after they had been abused and bruised) resolve that the relationship was over. Then on follow-up visits days later, I saw couples reunited, on yet another honeymoon, with the victim remaining in isolation, again hopeful that, this time, things would be alright. I knew first hand that there are very limited choices for people in such situations. In mid-1995 I became involved in restorative justice. I have seen the restorative justice process work with intimate partner violence

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[57] An example of this is the first restorative justice conference initiated by Judge Fred McElrea, facilitated by Rev. Douglas Mansill in 1994.

couples. I have engaged in debates with numerous key people about the possibility of using restorative justice as a tool to deal with intimate partner violence, finding myself challenged all the way. "But there is no evidence," they would say, "to show us it works, that it's safe." And I saw that, as long as there was little evidence, there would be a scarcity of service providers who would take on these cases, thereby perpetuating the difficulty of obtaining evidence. Intimate partner violence couples still had limited choices. Despite my subjective perspective on the focus of this research, the data has not been affected by this or the non-random nature of my sample. I have given equal weight, credence and consideration to those whose views I have disagreed with in writing up the research. Next I provide a brief theoretical explanation of my motivation.

How I have been motivated has been supported by theory discussed by Pintrich (2003). While addressing learning and teaching contexts, Pintrich (2003) cited three themes for motivational research. These were: the importance of a general scientific approach, the utility of multi-disciplinary perspectives, and the importance of use-inspired basic research on motivation. These themes were relevant to the current research in several ways. Firstly, a scientific perspective required empirical evidence to support knowledge claims. I needed proof to either lend weight to my views or oppose them, that is, that the reporting of intimate partner violence could be increased by using restorative justice. Although I had my views, I needed to hear from victims and perpetrators to find out what theirs were. Secondly, by approaching both victim and perpetrator service providers from a number of sectors, there was potential for greater depth of information about services available and their perceived adequacies and inadequacies in New Zealand. Thirdly, it was important for me to produce research that would have practical application in society and the criminal justice sector. Accordingly, my political position was my most powerful motivator. This was not with a view to furthering my own career, but to meet a longstanding need of some vulnerable people in this country.

Political position of the researcher

As stated above, this research was political. From my previous work with victims and perpetrators, I have long held the view that New Zealand could do better for these intimate partner violence couples. This position was a result of my roles in the fields of restorative justice, victim support, and as a prior victim of intimate partner violence. Because of these subjective positions, keeping a critical reflective journal has been an important means of reflecting on themes that have emerged in my research, my feelings or emotional response to some of the material that has been obtained, and also to examine critically my understandings of the literature and the research process. Giddens (1984) noted that reflexivity should be understood as not only self-consciousness, but also "as the monitored character of the ongoing flow of life" (p. 265). My critical reflective journal did not merely record events or ideas as they happened, it also evaluated them. Political progression needs to be evaluative. That is, an assessment has to be made that transformation or progress was happening. Accordingly, keeping a critical reflective journal has enabled me to monitor myself, the process and the people involved. As I had a strong involvement with the subject being researched, the ethnographic approach was the most suitable. However, this was not without challenges, as can be seen in the following section.

Gatekeeping

In the process of conducting this research, I experienced gatekeeping while attempting to gain access to participants. Homan (2001) stated that gatekeepers are those who give access to a research field. My experience was the opposite, and that using formal channels to access victims was seriously challenging. According to Homan (2001), informed consent is a standard feature of ethical procedure in social research. Using a school situation as an example, Homan pointed out that the entitlement to give or withhold consent has often been assumed by gatekeepers such as teachers who decided whether their pupils would participate in a certain activity. He further explained that the principle of informed consent was standard in a variety of professional practices, as well as social research. It is the professional

practice relating to victims and perpetrators that is most relevant to this thesis. Homan stated that the principle came from the Nuremberg Code of 1946, where internees of concentration camps were used as research subjects (2001) without giving their consent. The code specified that voluntary consent meant the person involved should have the legal capacity to give consent without the intervention of any element of force over-reaching or any other form of constraint or coercion, and that they should have sufficient knowledge or comprehension of the subject matter involved to enable him or her to make an enlightened decision (Homan, 2001).

An early indication of the significance of gatekeeping in this research occurred when I started making contact with key people in relevant agencies with a view to getting participants for focus groups. The following extract from my critical reflective journal explains:

> *I am in the early stages of trying to get my focus groups together and have noticed a marked difference in responses from [a victims' advocacy agency – VAA] and [a men's group – MG]. My meeting with VAA was with the … Manager, who wasn't expecting me, when I expected to meet with [another senior person] …. So it was very ad hoc. VAA refused to be taped and generally I just took a few notes.… I have given my assurance twice that if I get a minimum of four per group I would do separate groups, or interview them informally individually. I have also been required to send details of my supervision [for my selfcare] and post focus group care for the participants. This info is being put to a Leaders' meeting. They have copies of my documentation. I still don't know if they will help with potential participants. I had to wait 2 months for my first meeting which was on …*

> *In contrast … of the MG has [after receiving my docs and screening criteria] initially left me a telephone message … He felt the screening criteria was too difficult to understand and the words victim and perpetrator were "meaningless".*

I was able to contact him again and we agreed to have a meeting. It was 3 hours long and he was very enthusiastic about the potential of RJ for these types of cases. I assured him that the terms perpetrator and victim (or similar) were used in much of the literature. I also told him I knew it was not only men who were violent. I said that at any focus group meeting I would acknowledge this to potential participants. He was happy with this. He has [made the offer] for me to go to one of their meetings to talk to the men about my research and RJ to see who would like to participate.

So what we have [are] two very different types of groups, the survivor-driven women's group, and the perpetrator or men's group, both with initial reservations about the research, and very different responses to it. On the one hand the women's group has used its protective role as gatekeepers to a marked degree, calling on its infrastructure and procedures to keep the research at bay. On the other hand the men's group is accommodating language (in the words perpetrator and victims) and opening itself to the extent of inviting me to a meeting to talk about my research and RJ.

27 November 2008.

The irony of this experience was that the representative from one men's group, whom I expected would be less trusting of me, a researcher with more experience with victims, was more interested in my research than those of the victim advocate agency. In some ways, this should not have been unexpected given my knowledge of restorative justice practice which was that perpetrators were more willing to be advised of, and explore the possibility of, restorative justice than victims or their representatives. There is a distinct benefit for perpetrators to be involved in restorative justice, as they often are sentenced at the lower end of the sentencing scale. For victims, however, benefits can be less tangible. As a restorative justice practitioner, I found police were significant gatekeepers as far as access to victims was concerned, whereas referrals for perpetrators came most frequently from their legal counsel. The victim agencies' protection of their clients was understandable and justified. They owed their clients a duty of care to protect their privacy, to

ensure that any research that might be inviting their participation is not going to endanger their physical, emotional, psychological or emotional wellbeing. They had codes of practice and protocols to follow to ensure they complied with their own high standards. However, these appeared to deny their clients an opportunity to be fully informed (by me attending a meeting and explaining my research to them) before a decision was made for them, that in effect, my research should be kept at arm's length. Thus, while I complied with the recruitment protocol[58] set out for the Ethics Committee, it did not give me access to victims for focus groups. There were other reasons and possible processes I could have employed to improve this. For example, Lofland and Lofland (1995) described a number of factors associated with threats to access. The first they described was factions where some kind of distrust and dissent is "almost universal in human groupings" . It is possible that this was an issue in the current research, between victims and perpetrators, and/or between victim advocates and a former practitioner of restorative justice. Lofland and Lofland made a number of suggestions for dealing with this problem. They included:

- Join one faction, remain aloof from intra-group disputes and be on your group's side in any conflicts within the setting;

- Move among conflicting parties as observers, an outsider to the dispute;

- Initiate trade-offs such as helping in some way in exchange; or

- Use insider understandings. (Lofland & Lofland, 1995, p. 58)

So, to apply those suggestions to the current research, firstly, it was possible I was seen as a member of one faction – the restorative justice one, but in my career I have also been a member of the victim faction, although I believe this was disregarded in the present context. Perhaps I was regarded as a defector, having moved to a perspective that related to the opposition or to perpetrators. This took me back to the 1990s when restorative justice was in its infancy and victim groups

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[58] The recruitment protocol for victims and perpetrators required me to contact relevant agencies by telephone, followed by, with their agreement, me sending them the information sheet. I would then telephone them in two weeks to find out whether they would see me, with a view to meeting and introducing the research to potential participants.

saw restorative justice as "just another initiative for perpetrators". Secondly, I was not seen as an independent observer, probably because of my previous roles in victim advocacy, but more recently as a practical and political actor in restorative justice. Thirdly, I could not offer a trade-off, apart from a cup of coffee if we were in a café. Although I was hearing some very sad stories, it was not possible for me to offer more to them, such as counselling.[59] The one interviewee who was tearful intermittently during the interview said he had "plenty of support" including counsellors and medical practitioners. My contribution could only be an ear, empathy, and some tissues, along with offers to discontinue the interview if he had wanted. Fourthly, as far as the use of insider understandings was concerned, I used this process with the result that I had 16 key informants. One, a professional stopping violence educator and former perpetrator, volunteered himself as a participant in the perpetrator category.

While, on the one hand, this process of gatekeeping was understood, it was not always beneficial to the people it was aiming to protect. This was obviously not an unknown phenomenon, as acknowledged by Homan (2001) who discussed the need to consider potential contra-indications of gatekeeping. There have been other researchers who have experienced similar non-cooperation including Osthoff (2002). Homan's view that gatekeepers should not act without giving careful consideration to the reasons why that entitlement is being denied the proposed research participants themselves was most relevant to this research. Equally, it could be argued that well-meaning victim advocates carried out their protective role of their clients so diligently that they denied their clients the opportunity to gain information about, or contribute their ideas towards, a different way of dealing with intimate partner violence. As a result, most victim interviewees were sought privately through people I knew, or their acquaintances, who fitted into the definition of intimate partner violence used in this research. Most perpetrators were accessed through my attending men's group meetings.

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[59] This was apart from counselling cited in the information sheet.

Research methods

Interviews

The ethnographic interview needed to be carried out with care, while not appearing to be contrived. As far as possible, this research interviewed people in a way that resembled a conversation allowing for participants to meander around the topic as they felt appropriate. This appeared to make them feel comfortable enough to disclose often very personal information, which, on two occasions, had been disclosed to no-one else. The format of the interviews did not strictly follow the interview guide. Respondents controlled the flow and direction of the interview so that what the respondent considered was most important was discussed. While this might be seen as a weakness, it is a strength, as each participant went where they wanted the interview to go, and to what they considered most important. The use of open-ended questions ensured that their responses provided fresh and untainted data, not influenced by me. I found using a question guide provided some structure and consistency in themes canvassed in the interviews. In all cases I disclosed that I had been a victim of intimate partner violence. There were three question guides. One concerned non-reporting, the second focused on restorative justice, and the third was directed to key informants. In the question guide on non-reporting, I started the interview by inviting their comments and views on the criminal justice system and police in general. This was followed by asking them about the reporting or non-reporting of their incident; what did or could have happened if the incident had been reported; how they might handle it if there was a next time; their views on ways to prevent further intimate partner violence; and finally, would access to restorative justice increase the likelihood of reporting? In the question guide on restorative justice I asked them if they had heard about restorative justice. Two victims knew a little and one, a former restorative justice practitioner, knew much more. I described the model I had in mind with the current research. This model involved victims and perpetrators meeting (with their support people) in a co-facilitated environment on safe ground to have a discussion about the intimate partner violence before agreed outcomes were reached. There was no particular timing for the restorative justice conference; however, it was frequently

conducted pre-sentence when a perpetrator was being processed within the criminal justice system. The perpetrator must have admitted responsibility for the wrongdoing, and both the perpetrator and the victim need to be willing participants. I then asked them what they thought would be the negative or positive aspects of going to one generally; their views on safety measures; what they thought about participating in restorative justice themselves; what their expectations of the process and its participants were; what they thought about the process for intimate partner violence; and finally by repeating the question of whether access to restorative justice would increase the likelihood of reporting. Key informants were asked about their roles in the field of intimate partner violence; their views on using restorative justice for intimate partner violence; necessary criteria; what they would expect from a restorative justice conference; what would prevent them from making a referral; and whether they had any suggestions for making restorative justice a choice in intimate partner violence cases. As described above, the interviews were transcribed and sent to the participants for their comments or amendments. Most key informants checked theirs and provided feedback, whereas most of the victim and perpetrator participants did not. No reasons were given. I assumed that they did not wish to revisit the material, make the time to do so, or that they trusted the transcription process to be accurate.

While my subject matter was not about everyday events in many households, the questions illustrated Tolich and Davidson's (1999) observation that, in contrast with everyday observations of life going on around us, ethnography was more methodical, building on previous observations or conversations, in a systematic and rigorous way. Whereas quantitative surveys used standardised questions, ethnographers "do their own kind of asking" (Olesen, 2000, p. 165). This was certainly the case in the interviews. Although Spradley (1979, p. 60) explained there were over 30 types of questions, these could be grouped into three *main* kinds of questions which were:

    (a) Descriptive questions, which enabled collection of an ongoing sample of language, e.g. "Could you tell me what you do at the office?" In my question guide this was illustrated by the question, "What do you think would have

happened if you did report intimate partner violence?" or "What did happen when intimate partner violence was reported?"

(b) Structural questions, which enabled the ethnographer to discover information about domains, the basic units in a cultural knowledge, or how the informants have organised their knowledge, e.g. "What are all the different kinds of fish you caught?" This is included in the current research illustrated by the question, "What do you know or think about the criminal justice system or the police?"

(c) Contrast questions, which entailed comparing different terms in their language e.g. "What is the difference between …?" In this research, the contrast was present with the question, "If there is a next time, how would you handle it?"

Where interviews took place varied, and in all cases they were conducted at venues of the participant's choice. Those people who were friends or acquaintances were interviewed at either their homes or mine. Others were conducted in their places of work, for example, judges' chambers, stopping violence premises, university offices, and cafes. Ethnographic interviews were better conducted in what Werner and Schoepfle (1987) described as the grass hut or near the site of native or informant activity, than the white room or a location away from the subject matter under discussion. The former was preferred because it provided additional information or observations which could then be recorded in the ethnographer's journal. In the case of the current research, over half the participants (18/29) were interviewed at their homes or work places. There were two exceptions to the face-to-face format. One was a perpetrator I had met at a men's group meeting who was busy on jury duty and he sent his comment by email. Upon receiving his comments I prepared further discussion points and we spoke about these on the telephone. These were recorded by both of us and subsequent comments from him were emailed to me. The second interview was conducted by telephone due to geographical constraints after he had received the question guide to consider before the interview. This interview was transcribed, sent to him for checking and was amended accordingly.

Among other suggestions made to optimise the interview method were the following:

- Prepare the informant by asking a question, then repeating or rephrasing it (Spradley, 1979);

- Express cultural ignorance, prefaced by the repetition of questions, along with pausing, expressing an interest and incorporating their views (Spradley, 1979);

- Restate noted activities by asking structural questions, for the informant's verification that it was correct (Spradley, 1979);

- Keep the informant interested and talking (Werner & Schoepfle, 1987);

- Ask open-ended questions to encourage dialogue (Werner & Schoepfle, 1987);

- Ask a "grand tour" question such as an enquiry about the physical setting to help build rapport (Werner & Schoepfle, 1987);

- Ask indirect questions to invite spontaneous responses (Werner & Schoepfle, 1987);

- Ask questions about daily activities to explore a way of life (Werner & Schoepfle, 1987);

- Divide interview guides into three parts – introductory questions, a list of recurrent themes that reflect researcher's interest, and a set of generic prompts, e.g. "How?" or "Tell me more" (Tolich & Davidson, 1999);

- Ask leading questions (Lofland & Lofland, 1995); and

- Be flexible and have a list of questions (Lofland & Lofland, 1995).

Being myself with participants, and reflexive when appropriate, helped the conversation to be productive, valuable and, hopefully, comfortable to both the participant and me. Thus, structured and unstructured interviews were conducted with key informants (individually), including members of the judiciary, cultural advisers (Māori and Pacific Island), men's group leaders, restorative justice service providers, and victim advocates, as well as with victims and perpetrators of intimate partner violence.

Critical reflective journal

This method enabled me to reflect on the context of, and my personal connections with, the subject matter of the study, enabling me to consider my engagement with the research process by reflecting on theory as part of the research process. It involved difficult aspects as well as making discoveries. As can be seen in the section on gatekeeping, discussed earlier, I used the critical reflective journal to explore my observations in the domestic violence courts and my experiences as a researcher. I found keeping the journal cathartic, when I needed to relieve myself of frustrations, motivational when I felt despondent, and encouraging when I felt challenged. In a funny way, it was like a friend as well as a research tool.

Observation

I have attended two courts dealing with family violence, the Waitakere District Court on a status hearing day, and Auckland on a defended hearing day. These were of particular interest, especially the latter, which I discussed at length in my critical reflective journal. Basically I recorded what I considered were bad and good points about the court scene, and then I made a comparison with what restorative justice could offer. This is included in the next chapter.

Coding process

Coding had to cater for three types of interviews: namely, key informant, restorative justice, and non-reporting. Accordingly, three groups of codes were used. To get a good idea of the breadth of coding needed, I read through an interview of each type, noting categories and items that warranted coding. Once each code guide was completed, it was trialled with one of the shorter interviews and amended accordingly. Occasional further amendments were added as the coding progressed. At that stage, cover sheets were constructed for each interview type, set out with categories to summarise the data. Entries allowed for were the page number, number of entries per code, and whether or not they would be useful examples.

The non-reporting interview guide was divided into: abuse type; contexts; reporting; attempts to remedy; strategies; history; responses to criminal justice intervention; and influence of restorative justice on reporting. The restorative justice coding guide was divided into: knowledge of restorative justice; negative aspects; positive aspects; restorative justice needs; restorative justice for intimate partner violence; and innovative ideas for restorative justice for intimate partner violence. The key informant coding guide was divided into: experience; bureaucratic; victims; perpetrators; restorative justice process for intimate partner violence; innovative ideas for intimate partner violence; ethnicity; and strategies in respect of the restorative justice process for intimate partner violence.

Some categories overlapped; however, this was covered to a large extent by the colour coding I used in addition to the letter code. For example, most codes directly related to restorative justice were green; those related to intimate partner violence were red, and so on. In addition, it was necessary to add categories to the cover sheets.

Once each interview was coded and data summarised on the cover sheet, codes were grouped in preparation for analysis. The groups were: restorative justice (with subcategories of restorative justice for intimate partner violence, influence of restorative justice on reporting, restorative justice needs, restorative justice negatives and restorative justice positives); intimate partner violence; reasons for reporting and reasons for not reporting; victims; perpetrators; and context. Each group was assigned a colour, and, in groups with subcategories, symbols for each subcategory. The cover sheets were coded accordingly. It was expected that further subcategories would be required as the data analysis progressed, but this did not eventuate. An added advantage of this coding process was that I became very familiar with each interview.

Other research activities

In the earlier part of the research I had informal meetings with a number of people associated with restorative justice and intimate partner violence. This helped me to

generally orientate myself with the areas of research, make significant contacts with a view to possibly using them as both key informants and/or sources of participants. Not the least of their contribution to the research was their help in the formulation of the research question. From people associated with restorative justice I met with several founder members of Te Oritenga Restorative Justice Group, the first non-indigenous restorative justice service provider in New Zealand. I met with the Director of Mana Social Services, an indigenous group dealing with family violence cases on direct referral from the District Court in Rotorua, and the coordinator of another indigenous group in Auckland that was marae-based. Among victim advocates were senior members of the Victim Support Group.

I also attended two meetings of men's groups, one of which was a stopping violence programme. Here I talked about my research inviting the men to consider attending a focus group. Men at one of these meetings strongly conveyed a need to be heard. My research appeared to present them with an opportunity to speak out. As stated previously, the focus groups did not eventuate because of insufficient interest and/or gatekeeping. Instead, I enlisted my participants from the men's group, by word of mouth, and networking among service providers in both the criminal justice and community sectors.

In the process of reading the literature I made email contact with three overseas experts in restorative justice and intimate partner violence, namely, Linda Mills (academic from USA), Gale Burford (academic USA), and Lorenn Walker (practitioner and researcher, Hawaii), and more locally, policy makers and practitioners in the public sector (Julia Hennesy), academic environment (Gabrielle Maxwell, and Neville Robertson, who is also a key informant).

I attended part of a course on solution-based therapy in Honolulu, where I presented a paper on my research to the Alternative Dispute Resolution Centre at the Supreme Court. While there, I contributed towards the development of a protocol between the restorative justice service providers and Hawaiian prisons. I have written a chapter in Chile, (2007) called, "Doing victims justice" and made a presentation on my work at the AUT Research in Progress Symposium. Finally, I

have been throughout the period of my research, a Member of the Restorative Justice Centre Advisory Board, in the Institute of Public Policy, AUT University.

Conclusion

This qualitative research was based on feminist methodology, including interview data derived from women and men in the service sectors associated with intimate partner violence as well as women and men who have participated as victims and perpetrators of intimate partner violence. Altogether 16 key informants, and 8 victims and 6 perpetrators have participated in in-depth interviews which were transcribed. The autoethnography aspect of this project comprised my keeping a critical reflective journal. Furthermore, observations were made of the criminal justice system in action by visiting two family violence courts. Thus, the data was triangulated to enhance validity. Throughout the research I have been open about my own roles within the criminal justice, victim and restorative justice sectors, as well as my earlier history as a victim of intimate partner violence. I have acknowledged my perception of the often blurred lines between the concepts of victim and perpetrator. This has enabled interviewees to engage with me honestly, and at times with some humour. Learning and sharing has been a mutual experience.

Chapter 6: Findings

Introduction

The three groups of participants in this research presented wide-ranging perspectives, influenced by their knowledge, understanding and/or experience of restorative justice and intimate partner violence. It is necessary to emphasise that in the victims' and perpetrators' groups, only the perspective of the interviewee, not their partner, was obtained. Had partners been interviewed, the results would have had greater depth. However, having results from both victims and perpetrators has provided more information than would have been available by concentrating solely on victims or perpetrators. Case studies of six participants, comprising three victims and three perpetrators, set out in the Appendices, illustrate various aspects and implications of intimate partner violence. The inclusion of key informants from relevant agency groups such as victim advocates and men's groups, does, to some extent, further this balance. Note that one participant, whom I have named Zeddy, was interviewed both as a key informant and a perpetrator (see Appendices for Case Study Zeddy). However, to avoid bias, Zeddy's quantitative data was recorded only in the perpetrator group, whereas his qualitative data was recorded as both perpetrator and key informant.

The 29 participants were generous in their disclosures, resulting in large amounts of information being gathered. However, only the data answering the key questions in this research, and any considered directly relevant to the issues of intimate partner violence and restorative justice, will be reported in this thesis. The following are included: the participants and their experiences; reasons for not reporting intimate partner violence to the police; the influence of restorative justice on reporting intimate partner violence; using restorative justice for intimate partner violence; and the role of power in relationships.

The participants and their experiences

The participants

Table 6.1 sets out a profile of participants in this research.

Table 6.1: Profile of victims and perpetrators

Name	Status	Ethnicity	Gender	Gender of (Ex) Partner	Reported to Police Y/N	Psych. Abuse	Phys. Abuse	Relationship Status at time of interview
Alice	V	Caucas	F	M	N	Y	N	Divorced 14 years
Brenda	V	Chinese	F	M	Y	Y	Y	Divorced 10 years
Christine	V	Caucas	F	M	Y	Y	Y	Separated 2 months
Dudley	V	Caucas	M	M	Y	Y	**Y**	Separated 9 years
Eileen	V	Caucas	F	M	N	Y	N	Separated 5 years
Fraser	V	Caucas	M	F	Y	Y	Y	Separated 1 year
Gayle	V	Caucas	F	M	N	Y	Y	Separated 1 year
Heeni	V	Māori	F	M	N	Y	Y	Still together
Ian	Perp	Caucas	M	F	Y	Y	N	Separated 6 years
John	Perp	Caucas	M	F	Y	Y	N	Unknown
Kaveh	Perp	Iranian	M	F	Y	Y	Y	Separated 1 year
Lawrence	Perp	Caucas	M	F	Y	Y	N	Divorced 19 years
Zeddy	Perp	Caucas	M	F	N	Y	N	Separated 1 year
Neville	Perp	Caucas	M	F	Y	Y	N	Separated 2 years
N								*14*

Key:
V   Victim
Perp   Perpetrator

A wide range of intimate partner violence was experienced by the victims and perpetrators. I will present each group separately because, predictably, their experiences differed in type and impact. Case studies presented in the Appendices also help convey the diversity of intimate partner violence.

Victims' experiences

This group comprised two male victims, one of whom was gay and whose intimate partner violence experience was in the UK and six victims who were women. This group included European, Chinese and Māori. In some cases, the psychological impact of a physical act was greater than the actual physical abuse, as can be seen below.

Psychological abuse

All victims reported experiencing in varying degrees, psychological abuse. Examples are given below. Heeni[60] received verbal abuse which was very intimidating, "I'll poke you full of holes"[61] a comment, she said, which stayed at the back of her mind because she knew her partner was capable of it. For Gayle it was the threat of her partner's anger, the raised fist, and his screaming at her if she was late home from work. This culminated in threats to kill her at the time of their separation 20 years later.[62] Fraser's[63] partner controlled the purse strings, and if he left the house to avoid her physical and verbal abuse, she reported the credit cards lost, leaving him with no funds for accommodation. She called the police four times and complained that he was abusing her. The police, not believing her, recorded the calls as 1M.[64] Eileen said she was threatened with having her children taken from her. After separation, her partner took all the furniture and children's toys and sent her abusive emails and texts. One of the victims, Dudley, had experienced intimate partner violence in the UK. His partner bullied him with loud disruptive verbal abuse while Dudley was consulting in his downstairs veterinary clinic. On one occasion his partner brought home a new lover from a night club. After Dudley split from his partner he was continually harassed by him and his partner's friends. Later, he received threats that a third party would "blow [his] legs up."[65] Christine's partner

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[60] See Case Study: Heeni in Appendix 2.

[61] Heeni, Interview H.

[62] Gayle, Interview G.

[63] See Case Study: Fraser in Appendix 2.

[64] This means that one or more people involved had a mental problem (per personal communication from Takapuna Police in February 2010).

[65] Dudley, Interview D.

was very possessive, not wishing to share her with her children or friends. He also had a frightening temper. Once when she told him she wanted to end the relationship, she stated, he "just came up to my face and just started spitting in my face."[66] While technically this was a physical assault, its psychological impact on her was significant. Alice's partner abused her psychologically by leaving her alone in social situations to flirt with other women. He did not express any affection, and refused to discuss anything that was important to her. Brenda's[67] partner used isolation, removing her car keys so that her activities were limited to her work and home. After she reported his abuse, he said, "You watch me. I'm going to make you pay so that you'll be broke."[68] She was bankrupted.

Physical abuse

Six of the eight victims reported they had been physically abused. Heeni reported, "Can I say it wasn't that bad – you'd get a slap."[69] Gayle was subjected to pushing and shoving. On one occasion when her partner wanted to have sex with her he physically threatened her. Fraser experienced hitting, punching, kicking, and slapping, and had things thrown at him. He said he found the slapping was worst because it expressed contempt. Dudley received random punches on his head for no apparent reason, even after he had taken out an injunction against his partner.[70] The first time Christine[71] was physically assaulted by her partner, he grabbed her by the throat and then by her hair, pulling her head back. Brenda did not describe the physical abuse she received, only that there were times she would hide in the toilet and weep with the fear and degradation she had been subjected to. Alice was never hit. Had she been, she commented that she might have left her partner earlier.

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[66] Christine, Interview C.

[67] See Case Study: Brenda in Appendix 2.

[68] Brenda, Interview B.

[69] Heeni, Interview H.

[70] An injunction in the UK is equivalent to New Zealand's protection order.

[71] At the time of interview, Christine was preparing to appear in court as a witness for the prosecution of her ex-partner.

Perpetrators' experiences

Psychological abuse

Members of the perpetrator group also reported psychological abuse. This was often experienced through their partner either lying to police and/or using the Family Court to deprive them of access to, or custody of their children or property. Four experienced removal of access to funds. Neville[72] advised that his partner was an alcoholic for eight years of their marriage, drinking and hiding alcohol around their home. Neville's partner later lied to the police about the duration and extent of his physical abuse. According to Neville there had been two incidents, whereas she reported to the police that she had been abused for 17 years. Kaveh's[73] partner, in addition to physically abusing him, laid false complaints to the police, which resulted in him being imprisoned for nine nights. Subsequently, he lost unsupervised access to his child.[74] John advised that he first knew there were problems in his relationship when his partner took out a protection order against him, which locked him out of his home, credit cards and bank accounts, and limited his access to his children. His partner did, however, leave some tidy clothes on the garage floor for him to wear to court. He had $4 in his pocket. Ian's story of psychological abuse had a different twist. He had referred, in an email to their son's optometrist, to his partner having to get up off her "ample backside"[75] and pay an account. When she learned of this, she complained to the police that he had breached the protection order by hurting her psychologically. This required him to make numerous court appearances, and cost him thousands of dollars to defend. The case was eventually dismissed. Lawrence said that his partner used the Family Court, which he believed was biased against non-custodial and male parents, to abuse him over custody and guardianship matters. John reported that his partner needed to say only that she was afraid of what he would do when he found out she'd left him, for him to be made the subject of a protection order. In contrast,

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[72] See Case Study: Neville in Appendix 2.

[73] See Case Study Kaveh in Appendix 2.

[74] See Case Study: Kaveh in Appendix 2.

[75] Ian, Interview I.

Zeddy's[76] partner told him that she would sometimes deliberately provoke him, knowing he would lose his temper.

Would the availability of restorative justice increase reporting?

All participants, including key informants, were asked if the availability of restorative justice would increase reporting. It was explained that the process of restorative justice would be based on a co-facilitation model, where both the victim and perpetrator had support people present. Although I did not use the words, automatic, mandatory, or compulsory, some participants did. The results, in Table 6.2 below, have been divided into three types of response, positive, provisionally positive, and negative.

Table 6.2: Views on influence of restorative justice

Views		Victims	Perpetrators	Key Informants	Total Sample Percentage
Positive	n	4	2	7	
	% of group	50	33.3	47	
	% of sample	14	6.9	24	44.9
Provisionally Positive	n	3	2	5	
	% of group	37.5	33.3	33.3	
	% of sample	10.3	6.9	17.2	34.4
Negative	n	1	2	3	
	% of group	12.5	33.3	20	
	% of sample	3.44	6.9	10.3	20.64

Victims
Positive

Half of the victims believed the availability of restorative justice would increase reporting. Of the three who had reported their intimate partner violence, only one had been satisfied with the criminal justice process. This was Dudley, whose

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[76] See Case Study: Zeddy in Appendix 2.

experience was in the UK. The other two victims, Fraser and Brenda, had been dissatisfied with the outcomes of their reporting. Fraser commented that if his partner knew there was going to be an automatic restorative justice conference, she might have thought twice about being abusive. He considered that the process needed to be compulsory to ensure that she and others would attend. Fraser also favoured a follow-up conference:

> *It wouldn't have to be as formal, it wouldn't even have to be a collective meeting; it could be done individually. Where the parties could meet facilitators individually or be given the option.... [for] a debrief [about] ... what's happened and how it's been, whether they are satisfied with the outcome, whether both parties have lived up to expectations and in terms of the victim, with the victim dissatisfied with what has transpired and what steps the other party has made. And in terms of the perpetrator, it would be a good opportunity for them just to reiterate the changed behaviour and their remorse and their willingness to continue to accept responsibility for their behaviour.*

> *Fraser: Interview F*

Brenda, on the other hand, commented that restorative justice would offer more to ethnic families, where the emphasis was on the family, rather than on the individual. She stated:

> *I think restorative justice is a very good platform, especially in the Asian culture because the thing is ... the shame aspect of it. You report the man, the woman gets chastised and criticized by the community because the community thinks, "This woman doesn't know ... she brings shame to the family." So if you have a process like restorative justice, where you have trained people who can equalize the power ... and make it a safe environment ... I'm going to quote Chinese [quotes in Chinese] It means ... This person is up on stage, the perpetrator and you've painted him in a corner as a bad guy and everybody in the audience has seen him. He can't come down from the stage gracefully. The thing is he knows he's wrong. But to keep his face he has to do this thing to say that ... But if you can do it in an*

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oblique way … to let him step down from the stage gracefully, then everybody wins. Whereas the Western way is confrontational, it destroys the family, it doesn't allow for reconciliation, it causes loss of face which means that the man is forced to, in fact a lot of times I think … the fact that I went into refuge … I forced him to [do] that. To save his face, to redeem his face, he had to fight and to try to make me wrong. So we get caught up and I regret it, I regret it. That I took that path; and that was a Western path, the Western education in me. But the Chinese woman in me realized that I was doing it very, very wrong.

Brenda: Interview B

Eileen was positive about the concept, but said it would not work in her case where her partner had what she described as a borderline personality disorder.

Provisionally positive

Three victims were provisionally supportive of the possibility of restorative justice increasing reporting of intimate partner violence. Heeni's reservations lay in the fact that her partner was a gang member and had a strong aversion to police and anything related to the word "justice". She warned, "You'd have to let them [the police] know that they had to be careful. It wouldn't be about me; it would be about … the police's safety; not mine in the finish."[77] Gayle said it depended on a number of factors such as: people needing to know of, and really understand the concept; it depended on the perpetrator being willing; and that there was a fine line between helping the couple and making the situation worse. She advised:

In my case, I wouldn't think it would be necessarily helpful because, I guess … Before I've [left him], yes it would have been a great thing, but now that I've gone, I've moved on. I don't need to do it. [My ex-partner] needs to do something. And you know, maybe in a while I'd be prepared to do it for his sake.

Gayle: Interview G

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[77] Heeni, Interview H.

Gayle also raised the possibility that, later on, a restorative justice conference could help resolve conflicts between her ex-partner and their adult children. Christine said she would like to attend a restorative justice conference, but only after her partner had been reported, arrested and bailed. Then she would welcome the opportunity to have her say and let him know how she felt.

Negative

Only one victim was negative. Alice did not believe restorative justice would increase reporting. She commented:

> *The support's there, but once you leave that controlled situation, what happens when you go home with the person? … [If restorative justice] was something that was a matter of course … that if someone [was aggressive] towards someone, they saw [restorative justice] as, "Well, if I'm repentant, this system will see me through without a severe penalty … All I have to do is make the right noises and I'll come out the other end."*

> *Alice: Interview A*

Perpetrators

The perpetrator group was equally divided about whether the availability of restorative justice would increase reporting of intimate partner violence.

Positive

Laurence and Karveh were both positive. Karveh saw the process as offering couples an opportunity for one-on-one discussion, to put their views to one another, and to learn how to correct any problems. Lawrence commented that the concept of getting people to clean up the messes that they had created was excellent, and he strongly supported the idea of people being pressurised into sorting these.

Provisionally positive

Ian and John were both provisionally positive. Ian suggested that police involvement would not be helpful because, "the police's attitude tends to be, 'If there's any violence, you arrest the bloke and cart him away until he cools off, and

then you either prosecute him or let him go.'"[78] He suggested that there should be a caveat where facilitators acknowledged they were not only dealing with a man who lashed out and hit his partner; they also needed to address *why* he lashed out. John thought the availability of restorative justice would increase reporting if it was not mandatory. He proposed restorative justice being offered to help. Even if it failed to achieve reconciliation, it could at least steer the couple towards a path of co-operation.

Negative

Two perpetrators gave negative responses, one of them, qualified. Neville did not think the availability of restorative justice would increase reporting, however, he felt that restorative justice would produce a better outcome after the intimate partner violence had been reported. He explained, "Most people who offend to the point of being arrested have been probably progressing that way over a long time, so they might not be aware … [S]o if you are not aware, how can you report?"[79] The other negative view was Zeddy's. He reasoned that both victims and perpetrators were:

> *conditioned into hiding stuff that's happening in [their] intimate relationship.… if they knew he was going to have to attend an RJ thing, then it might even deter her from reporting even further … she doesn't want you to know [what's under] that cloak of secrecy.*
>
> *Zeddy: Interview M*

Key informants

Almost three quarters (73%) of the key informants thought the availability of restorative justice would increase reporting. Two of the three key informant judges were positive, while the third was negative.

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[78] Ian, Interview I.

[79] Neville, Interview N.

Positive

Those key informants who were positive about this question included two judges, two cultural advisers, two restorative justice practitioners, and one men's group representative. One judge responded with a "resounding yes," commenting:

> *We endlessly find that after a particular assault is over, in the majority of the cases, the female complainant will want to recant, in whole or in part. This can be as early as a few hours after the assault … So, if prior to the assault, or during those hours, days even, before he appears in court, she knows that an RJ problem solving approach is the first approach to be considered, and that in the event of a positive outcome, any punitive result for him will be significantly reduced, she is much more likely to seek help in the first place.*
>
> *Interview P: Key informant*

The second judge saw the restorative justice option as a potential alternative to prosecution. He stated:

> *I think it would [increase reporting], particularly if the complainant saw this option as an alternative to the police being involved or a prosecution inevitably following … the victim's … main priority is that the violence stop, not that the partner be prosecuted or go to prison.*
>
> *Interview O: Key informant*

However, this judge also drew attention to an ethical dilemma faced by the intervener when the violence is repeat and/or serious. Notwithstanding this, he acknowledged the present low success rate by the courts dealing with intimate partner violence, stating, "Because we have such a poor success rate with [family violence] prosecutions, where victims don't carry through, from a wider perspective we might in fact get better interventions with a less coercive approach in some cases."[80]

Both cultural advisers considered the availability of restorative justice would increase reporting. The Māori cultural adviser commented, "There shouldn't be any

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[80] Interview O, Key informant.

… reason not to have a restorative justice conference. If there is, it means that one's wairua[81] isn't settled".[82] The Samoan cultural adviser saw restorative justice as a healing component. However, her observation that this would not be much of a punishment implied that punishment should be additional to the conference.

Like some of the victims, one former restorative justice practitioner and lawyer emphasised the need for people to be informed about restorative justice; how the process worked; what they were likely to gain; and that the conference was not only available if they went to the authorities. In fact, he saw it as a potential bargaining tool, adding, "[Victims] could even say, 'Look, I'm willing to refrain from reporting to the police, if you agree to come to a restorative justice conference.'"[83] Another restorative justice practitioner commented:

> *If we don't deal with the situation, who will? We interview each of the victim and perpetrator separately pre-conference; we have support people present and ongoing follow-up. No one else is. I know it's not foolproof because we are dealing with people, but the positive outcomes outweigh the risk.*
>
> *Interview X: Key informant*

A men's group representative saw potential for restorative justice in the management of post-separation child care arrangements. Rather than focusing on restoring the relationship for its own sake, he considered that restoration of the relationship for the parental partnership was where restorative justice "should be going."[84]

Provisionally positive
Those key informants who were provisionally positive included two victim advocates, two restorative justice practitioners, and one men's group representative.

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[81] Wairua – "attitude, mood, spirit, soul" see Ryan (1995).

[82] Interview V, Key informant.

[83] Interview Y, Key informant.

[84] Interview ZC, Key informant.

One victim advocate thought a restorative justice conference might appeal to people who denied that their violence was significant.

> *I think [restorative justice] is a really good idea, but I think needs to be within the framework where they have to show irrefutably that they understand what their responsibilities are. Not just "Yes, yes I know".... not just give it lip service. That's what I'm afraid of unless there is something legal around that. I think restorative justice is a very good idea, with facilitators. And if [perpetrators] have been to a stopping violence course they had to say what they had learned ... to have some understanding of why they chose to behave like that, and how they are integrating the knowledge.*
>
> *Interview R: Key informant*

The second victim advocate, a court victim adviser was more conservative in her appraisal. She explained, "[Victims] do have the capacity to ask for restorative justice in the Family Violence Court, and out of the hundreds that I've seen go through, I know of only two who requested it."[85]

According to two restorative justice practitioners, the use of restorative justice depended upon public knowledge about restorative justice. One practitioner, who has facilitated restorative justice conferences for intimate partner violence, reported that many people have told him they wished the police had not been contacted, "as they [the victims] were only asking for help, not for charges to be laid."[86] A second practitioner commented that it could provide another option for couples, and "make them think about it more."[87] The third restorative justice practitioner felt that a restorative justice conference could be potentially helpful prior to court and police involvement. She felt it could also be useful in cases where a protection order was being applied for, provided both parties agreed.

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[85] Interview U, Key informant.

[86] Interview X, Key informant.

[87] Interview ZA, Key informant.

A men's group leader considered it would influence reporting but depended on what sanctions were in place and what people thought about them. He commented that if restorative justice was included as one of an increasing number of options, people could be tempted to try it.

Negative

A judge and two victim advocates gave negative responses. The judge did not think the availability of restorative justice would increase reporting, particularly at the time of an incident. "It's a question of whether it does later. I'd be surprised if it did make a difference."[88] One victim advocate advised:

> *My impression is that, mostly, women call the cops because they want the violence to stop right now. I don't think consideration of what criminal justice system processes might be invoked as a result of dialling 111 figures much in their decision-making. In fact I think there is a serious lack of knowledge about what the system will do ... particularly ... for women calling [or contemplating calling] the cops the first time.... There are two main impediments to calling the cops. One is shame. The other is fear that things will be made worse, specifically that they will be subject to payback. It is difficult to see how the availability of RJ will make a blind bit of difference to either.*
>
> <div align="right">Interview S: Key informant</div>

The second victim advocate added:

> *Women make calls to police when they are in crisis and are weighing up whether it is more risky to call police or more risky not to call police.... I think mostly women are scared of facing their partners after the police have been involved and rely on bail conditions for their safety. One of the reasons women are often reluctant to call police is because they know that the repercussions of that call can endanger them further.... So the thought of facing their partner at an RJ conference as a result of calling for crisis*

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[88] Interview Q, Key informant.

> *intervention would have a more negative impact on them calling than a positive one.*

> *Interview T: Key informant*

The question of whether the availability of restorative justice would increase reporting raised many topics. These included: reactions to the use of restorative justice for intimate partner violence, safety, possible gains for education, skills development and personal growth of conference participants including facilitators, and the restorative justice process.

Reasons for not reporting intimate partner violence

Victims' perspectives

All of the victims had reasons for not reporting the intimate partner violence to the police. Brenda, Christine, and Dudley eventually reported and left their relationships. Fraser, on the other hand, said, "I tried [reporting] once … and they told me to be a man!"[89] Consequently, he did not report the continued intimate partner violence. For some, their reasons for not reporting were multiple. The reasons are recorded in Table 6.3 (below) in order of frequency and are also discussed in this order.

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[89] Fraser, Interview F.

Table 6.3: Victims' reasons for not reporting

Reason	Frequency	Percentage of Sample
Fear of partner	6	75%
Fear of retribution	4	50%
It wasn't real violence	3	37.5%
Children's happiness first	3	37.5%
Shame and denial	2	25%
Didn't know it was intimate partner violence	2	25%
Self-blame	2	25%
Verbal abuse and threats	2	25%
Only an isolated incident	1	12.5%
Tried once but received poor response from police	1	12.5%
It's not important	1	12.5%
Imagined it would stop	1	12.5%
Abuse made her question her judgement	1	12.5%
Fear of family disapproval	1	12.5%
n	*30*	

Fear of partner

Six victims said they were afraid of their partner's anger and physical abuse. In each case this fear was associated with psychological abuse. Eileen, who was already dealing with an ill child, commented:

> *There would have been more abuse of the children in terms of [inappropriate] music and movies ... as a tool to get at me ... because he was so unpredictable they just didn't know what was coming [next]. I used to get lots of emails and stuff from him with regards threatening ... as he had to pay 24% of his salary for both the children, he'd have to leave them, move overseas and push me not to tell IRD or declare both children 'cos I did have to go onto the benefit after we split up.... He got quite abusive at that point whenever he got a letter from them having to pay child support.*
>
> *Eileen: Interview E*

Conversely, Fraser told the police he was not afraid of his partner, and Alice, who was never physically abused, stated she had no reason to fear physical violence.

Fear of retribution

Four victims commented that negative consequences would have been likely, had they reported. Gayle knew her partner would have been extremely angry and made her life terrifying. She commented:

> *The constant threat was more [of] ... anger ... physical violence, but, very rarely did it ever [get] followed through. And it would be more pushing and shoving ... the raised fist ... and the one time when I was actually thinking of leaving ... we were in bed. And I just didn't want a bar of it. And he was sort of kneeling over me and I pushed him away. He just got one hand around my neck and raised his [other] fist. Didn't do anything, but just that.*

> *Gayle: Interview G*

In contrast, Heeni said she feared her partner's response to the police, if his abuse was reported. She added:

> *[If] I was to make a call and say, "he is abusing me, come around." All those details would come out. "You rang the police on me." You might not get it right then, but eventually you're going to get it. It might not happen at that time, but down the track it's going to come back on you.*

> *Heeni: Interview H*

It wasn't real violence

Heeni said it was her choice not to report. This was because her partner was "more than verbal ... very verbal ... it's like, well let him cool down and he'll be right after that. It's just one of his outbursts."[90]

Alice did not report because it was:

> *really mental rather than physical ... the only place I could have reported it would have been to a woman's refuge or to a psychiatrist or psychologist ... I*

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[90] Heeni, Interview H.

don't consider it a law issue because I could get out of it ... I had full rights which I did eventually [use] to leave the marriage.

Alice: Interview A

Children

Three women either did not report or stayed with their abusive partners for the children's sake. Gayle did not want to place her happiness above her family's and made a conscious decision to stay until they had left home. She stated:

All along I tried to do what I thought was the best thing for the kids [and] that was to stay ... he does love the kids and he's spent huge amounts of time with them. Disrupting their whole lives ... seemed terrible.

Gayle: Interview G

Alice also thought she would stay until her children had left school.

Shame

Shame and denial deterred Alice and Dudley from reporting, Dudley for at least one year. This was further complicated for him because his partner had helped Dudley "come out" as a gay man. Alice, on the other hand, commented:

For years I could have the "Me" publicly which was able to be bubbly and happy, and the "Me" at home which was just totally different. And the "Me" for my children. My children never saw me like that either."

Alice, Interview A

The threat of further shaming Brenda's husband was one of her considerations against reporting even though she had a protection order.

I didn't want to report him and I didn't want to call the police, even though he was harassing me. I was feeling fearful because ... I left and in fact caused a loss of face and I didn't want a further loss of face for him, and he would make life more difficult for me.

Brenda: Interview B

Non-recognition of intimate partner violence

Two women had not recognised that they were victims of intimate partner violence. One of them, Eileen, whose relationship had been observed by service providers caring for her ill child, pointed this out to her. They then made a referral for her to a helping agency. The other, Christine, was confronted by the reality of her situation when she told a colleague what was happening. The colleague asked her if she needed to do a domestic violence checklist with her. Conversely, Gayle knew what was happening was wrong, but she rationalised:

> [I]t was more threats, intimidation, emotional abuse, verbal abuse … If there had been a lot of real physical violence, then it [would have] been different. You know sometimes I'd think, you know, give me a good punch, I['d] have the scar, the black eye, the broken nose, whatever, and then I could go, you know?

> *Gayle: Interview G*

Self-blame

Two women, Brenda and Gayle, partly blamed themselves for allowing the intimate partner violence to continue. Brenda stated:

> And I think, like, I couldn't believe that I married a man like that. So I couldn't believe that I made such an error in judgement. And I have always been a person that when anything goes wrong, I think the fault lies with me. So if somebody is acting abusively, I would think, no he's not. He's a good man. What did I do wrong? … It's just the way I see him now, is wrong.

> *Brenda: Interview B*

Gayle advised that if she had reported it she would have felt that she was over-reacting. "It still felt it wasn't right.... I guess everybody would have thought badly of me for reporting something."[91]

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[91] Gayle, Interview G.

Verbal abuse and threats

"It was only verbal" was the reason given by two victims, Heeni and Gayle. However Heeni, whose partner was a gang member, later disclosed that in the earlier years, he had been very controlling. However, the nature of the verbal abuse was calculated to seriously frighten her. She reported him saying things like, "I'll kill you, cut you up, stab you."[92] Gayle also received threats; a constant threat of anger and the raised fist. The threat of physical violence was rarely followed through, however.

It was "only an isolated incident"

Gayle said she did not report because they were only isolated incidents. She said that her children's friends told her children that their Dad was just like Jake [the Muss]![93]

Poor response first time

Fraser had been the victim of his partner for a long time. Finally he made a stand and telephoned the police. Their response to him was to inform him to be a man and leave the house. No further support or action was offered. Although there was much abuse following this, Fraser did not report it. This case will be discussed in detail later.

"It's not important"

Because her partner "never drew blood"[94] Alice said she never thought of reporting him. She said as she became more adjusted to the behaviour that she became helpless, and less able to talk about it.

> *It was really mental rather than physical. I was never physically assaulted in any way.... There [was] nothing to [report]. I supposed I wasn't valued as a person or my opinions weren't valued, and the person I was with set out,*

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[92] Heeni, Interview H.

[93] Gayle, Interview H.

[94] Alice, Interview A.

> *mainly in verbal [abuse] and in action, but not aggressive action, to demoralise me or belittle my position in the relationship.*

<div align="right">

Alice: Interview A

</div>

Imagined it would stop

Dudley advised, "It was the fact that it would cause me more difficulty again.... that I would personally have to face issues that I would rather not, at the time. I was just pretending it would all go away."[95]

Abuse led to self doubt

Over time the abuse eroded Brenda's sense of self worth, self-esteem and her judgement. As a result she put up with the abuse describing herself as being at times "crazy, I was insane when the abuse happened because the abuse wasn't just physical abuse, there was a lot of emotional and psychological abuse."[96]

Fear of family disapproval

Gayle had been very conscious of what the extended family would think of her reporting:

> *I guess everyone would have thought badly of me for reporting something, you know. "Oh for goodness sake what's she making all the fuss about?" You know? "Look at the damage she's done." Yeah, I guess there would have been disapproval from not my own friends or family, because they would have known, but other people on the outside, his family.*

<div align="right">

Gayle: Interview G

</div>

Key informants' perspectives

The question of why victims do not report intimate partner violence was not put to key informants. However a number, mostly victim advocates, offered comment unprompted. All but one key informant acknowledged that intimate partner violence was under-reported (14/15). Two victim advocates attributed this to a

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[95] Dudley, Interview D.

[96] Brenda, Interview B.

conspiracy of silence (2/4). One restorative justice representative thought male victims would be too embarrassed to admit that they had been abused by their partner (1/4). One victim advocate believed that victims would be deterred by a belief that the Family Violence Court would focus disproportionally on the relationship rather than the violence (1/4). Another victim advocate suggested that the perpetrator's minimising of the offending would influence non-reporting, as would potential threats by the family of the perpetrator (1/4). One victim advocate advised that whenever he was teaching about the subject of intimate partner violence, mothers of victims would seek his advice or comment (1/4). One men's group representative noted that there was a problem of over-reporting and false complaints being laid (1/3). On the other hand the same key informant noted:

> *If they put up with this stuff for a period of time, they have become an accessory after the fact of the abuse, and they feel abused by their own "accessoryship" if there is such a word.... they have become an accomplice in their own abuse, whether male or female.*
>
> *Key informant: Interview ZC*

One judge stated:

> *As far as the victim is concerned, having worked with so many women in Refuge and so forth, who have needed protection orders, I imagine that they're scared about what might happen to them … because there [are] always threats … or they think it's their fault and therefore they should not report it, because they've done something to cause it … Sometimes women just don't want their partners to get into trouble [however] I would imagine that there are more in the category where they think it is their fault.*
>
> *Key informant: Interview Q*

Another judge commented that some victims might have unrealistic expectations about how their relationship is going to be repaired,[97] which would also have a deterrent effect on reporting.

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[97] Interview O, Key informant.

When compared with the reasons for not reporting given by victims, key informants identified four additional elements, that is; over-reporting; family of victims seeking advice on behalf of their adult child; concern about disproportionate focus on the relationship rather than on violence in the Family Violence Court, and finally being complicit in their own victimhood through not reporting.

Reactions to restorative justice

Perspectives of victims and perpetrators
No victims or perpetrators ruled out the possibility of using restorative justice for intimate partner violence. Two were positive, and 12 were provisionally positive. Their reasons are summarised in Table 6.4.

Positive
One victim and one perpetrator were enthusiastic. Brenda considered it would be especially appropriate for ethnic families. If she went through the same experience again, she would use restorative justice. Kaveh, whose partner had physically fought against his wish to leave her, said had restorative justice been available, he would have used it without reservation.

Provisionally positive
Five perpetrators and seven victims were provisionally positive. The most reluctant of *all* participants who were provisionally positive was Zeddy. He would only have participated in a restorative justice process if his partner had wanted to. Similarly ambivalent was Christine, who said she would feel nervous, and would not like to face her ex-partner again. However, she added that she would consider it if he had to sit and listen, without speaking rights. The most enthusiastic victim about restorative justice in this group, Eileen, referred to her partner's borderline personality disorder, saying it would not have been appropriate in her case. Three perpetrators saw the benefits of restorative justice as being the possibility of it serving both parties, rather than the interests of one. One victim, Dudley, thought going to a restorative justice conference in the early stages of abuse would be better. Two others, Eileen and Gayle, said it depended on their partners' mental states and maturity. It was

important for Heeni to have ethnically appropriate facilitators. She said that, for Māori, at least one facilitator should be a Kaumātua or Kuia, or that the restorative justice service providers had made every effort to get one.

Table 6.4: Victims and perpetrators on restorative justice

Status	Positive Y/N	Provisionally Positive
P (Lawrence)		Hoped it would be constructive in promoting care of children
P (John)		Provided it's not, "you have to go"
P (Ian)		Provided you deal with both sides of the conflict
P (Kaveh)	Y	Without reservation
P (Zeddy)		Only if his partner wanted a conference
P (Neville)		Need to have clear objectives, and it to serve both parties
V (Fraser)		Would go but worry it would be like a court
V (Dudley)		In early stages of IPV would be best
V (Christine)		Would go but not relish seeing him again
V (Brenda)	Y	Especially in ethnic cases
V (Alice)		Maybe if partner was willing to discuss problems
V (Eileen)		Not suitable for me as partner mentally unstable
V (Gayle)		Only when partner had maturity to look at self
V (Heeni)		If facilitators Kaumātua or Kuia or RJ provider made effort to get one
n	*2*	*12*

Key
P   Perpetrator
V   Victim
n   number

Safety

Safety was discussed in terms of psychological/emotional and physical safety. Fear of retribution was often (N = 4) raised by the victims and by one perpetrator. The former focused on what would happen after the conference. For example, Alice commented that it was one thing being in a controlled situation during the conference but she was concerned that she would be punished afterwards for speaking out. Zeddy expressed concern about the reaction of extended families to what they learned at the conference, which could put the perpetrator back where he started. Fraser's concern was emotional safety. He commented, "Sometimes it can be harder to reveal things in front of friends and family than strangers. You have to go on living with those [people]."[98]

Measures that could be taken to make the process safer appeared to be influenced by ethnicity and/or prior experience. For example, Kaveh, who was from Iran, considered it would be necessary to have two security guards and for each participant to be body searched before the conference to avoid any risk. Heeni, on the other hand, saw information held by the facilitators as an important safety factor. They needed to know about his violent past, drug addiction and volatility. She advised, "[W]ith his history ... that possibility of [violence] yeah, definitely. Drug user, gang member, access to whatever."[99] Then again, Neville considered a police presence to be appropriate, particularly as advocates for the victim. Gayle suggested:

> [It] might be good to have someone actually [leave the building] with you. It
> would depend on his reaction to all this … I feel like he'd be this time bomb
> ticking away inside him … all the anger welling up as a defence against
> facing who he is. I'd feel anxious that I'd just stir up a hornet's nest really.
>
> *Gayle: Victim*

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[98] Fraser, Interview F.

[99] Heeni, Interview H.

Perpetrators' maturity and willingness to compromise were other criteria raised with respect to participants' safety.

Possible gains for victims and perpetrators

Two victims and one perpetrator saw restorative justice as a possible catalyst for change, accountability, and an opportunity for open and honest discussion. Dudley reflected on the benefits of having an open and honest discussion with his partner, "without there being … any screaming or shouting … [in] a safe environment to talk."[100] Heeni commented that she would gain "that support, that trust, that I'm safe … the environment is safe for all of us, and confidentiality is the biggest."[101] Ian commented on how support people could "help … with the re-education … facilitate their relearning [how they] relate to each other."[102] For Fraser, receiving an apology "would be huge. Because that is what I want to hear from my ex-partner, that she was sorry. And I would have forgiven her."[103]

John believed it was a way perpetrators could realise that other people "were concerned about what's happening to him".[104] He also thought facilitators could tell the couple how they were relating to each other. In addition, victims considered restorative justice could help their partners understand the effects of intimate partner violence; the process could enlighten the victims about why they had stayed in the situation; the abusive partner could demonstrate changes in their behaviour since the incident; and promises could be documented.

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[100] Dudley, Interview D.

[101] Heeni, Interview H.

[102] Ian, Interview I.

[103] Fraser, Interview F.

[104] John, Interview J.

Facilitators' skills and knowledge base

Two victims' and four perpetrators' comments centred on facilitator qualities, skills, and style. They suggested that facilitators needed to be fair and have integrity. They also needed skills which enabled them to guide the process; to intervene as necessary; to identify and ask relevant questions; and to have cultural safety awareness. It was important for them to rely on evidence, rather than hearsay; to model appropriate behaviour; and to be able to direct participants to appropriate agencies for help. One perpetrator felt facilitators:

> *should be skilled enough to know where to turn ... and to make recommendations if necessary.... [I would expect] to be treated fairly and to be allowed to put my version of events forward ... [and] there needs to be a very clear expression of what the next steps will be after the conference and ... I think [the facilitators] should outline some specific steps you can take as the perpetrator to improve.*
>
> *Neville: Interview N*

Heeni pointed out the personal qualities necessary for facilitators, "They uphold respect, of course, that they can handle it ... they've got to be able to handle everything thrown at them ... and probably, coming down to the questioning, be very careful how [they] ask the questions."[105] Lawrence saw the facilitators' role "as being able to detect manipulation and respond constructively and fairly, in a way to respect all parties involved."[106] Another perpetrator, Ian, commented, "Because what you really want to do is say to this couple, 'You have the power and it is up to you to make changes in your lives rather than for anyone else outside to try to impose changes.'"[107]

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[105] Heeni, Interview H.

[106] Lawrence, Interview L.

[107] Ian, Interview I.

The restorative justice process

One of the common principles of restorative justice is that it is a voluntary process (Carbonatto, 1995; Jülich, 2001; Morris & Gelsthorpe, 2000; Zehr, 1990). Most participants either did not comment on this, or said they preferred non-compulsory involvement to encourage people to attend. They considered making the restorative justice process compulsory would be likely to lead to resistance by the person compelled to attend. There was also general recognition that the earlier the process was in the development of intimate partner violence, the better the outcome was likely to be. Lawrence, however, stated the process should be compulsory. This related firstly, to his previous unsuccessful attempt to go through mediation at the Family Court, whereas he considered restorative justice offered an opportunity to pressurise his partner to pay constructive attention to childcare issues, and secondly to ensure undertakings at the conference were carried out.

What happened before a restorative justice conference was discussed. This related firstly, to what occurred at a personal level for the individuals concerned, and secondly, by the pre-conference process used by facilitator(s). Fraser advised that he did not think it would be appropriate to have a conference the day or week following the incident, because people needed time for reflection. Time was also needed for the abuser to accept that their behaviour was inappropriate, and to have started demonstrating new behaviour. As previously discussed, maturity was considered another important factor. Like victims, perpetrators needed to be properly prepared. Zeddy commented, "I would need to be 'prep'd' around being defensive, 'cos if you start being defensive in an environment like that, you're stuffed, I think."[108]

Expectations of a restorative justice conference

Participants were asked what they would expect from their partner at a restorative justice conference. The way they interpreted this question was up to them.

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[108] Zeddy, Interview M.

Participants' responses were then categorised into positive expectations of their partner, provisionally positive expectations of their partner and negative expectations of their partner.

Four victims and four perpetrators conveyed that they had positive expectations of their partner. Three victims gave provisionally positive responses and two victims and one perpetrator responded negatively. The positive responses centred on the following expectations: improved communication; perpetrator's accountability; acknowledgement of wrong by the perpetrator; being equally committed to the process; having the ability to self-reflect; demonstrating that they wished to improve their behaviour; and that a restorative justice conference would be an improved process for managing issues around parenting.

Neville commented that he knew his partner had the best interests of their children at heart and from that perspective, he trusted that they would reach the right decision at a restorative justice conference. He also saw it as having potential for the couple, whether or not they remained together.

> *If you took the process ... in the case of families who have children, let's do this to achieve the best outcome for the welfare of children. If it's just a relationship, well, let's do this to achieve the best outcome for the relationship, which may be an agreement that you guys don't get back together.*
>
> *Neville: Interview N*

Dudley commented:

> *I would want him to be totally present and willing to have all his attention to the process. And be equally willing to take part, really, and be as committed as I was. I mean there's no point in dragging somebody in who is not even willing to listen.*
>
> *Dudley: Interview D*

Brenda considered that her ex-partner's response depended entirely on how well the facilitator managed the conference. Heeni stated that for facilitators to be very careful about how they asked questions. Alice commented that it would depend on getting her partner to discuss their situation.

Examples of participants expressing negative expectations of their partner are as follows: "He would not go";[109] "There would just be a traumatic experience … anger, sadness, probably some fear about what would happen as a result of a [restorative justice conference] … attack a little bit;"[110] and "My ex-partner's unwillingness to compromise would make it a waste of time."[111] Ian felt quite strongly that if the restorative justice practitioners used terminology such as offender or perpetrator, it would be a negative factor. He described being embarrassed at being required to stand in the dock for judicial monitoring. This was for counselling he and his partner were undergoing at his request. Therefore, he considered it important for facilitators to recognise mutual conflict, looking at both sides, rather than assign each party to either the victim or perpetrator role.

Other more general comments relating to expectations included: it was better to have expectations of oneself than to have expectations of one's partner; and unrealised expectations of reconciliation would have a negative impact on perpetrators.

Perspectives of key informants

Reaction to using restorative justice for intimate partner violence
Table 6.5 provides an overview of key informants' responses. Some gave more than one response and so the Table sets out the 24 views given by the 16 key informants.

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[109] Gayle, Interview G.

[110] Zeddy, Interview M.

[111] Lawrence, Interview L.

Key issues raised included safety, process, and power. And each will be discussed in turn.

Table 6.5: Key informants on restorative justice

KI Status	Power	Safety	Process
Victim Advocates	2	1	3
RJ Providers	5	2	4
Men's Group	3	2	2
Cultural Advisers	1	1	1
Judges	1	2	4
n	*12*	*8*	*14*

Safety

Victim advocates expressed a number of concerns. One asked what it took to ensure that the victim would be physically and psychologically safe in that setting. He commented that the timing of a conference was likely to be when a woman was at greatest risk. "The things they can say at a conference and the kind of sharing they do … do have implications for how he's going to behave afterwards."[112] Two victim advocates expressed concern about the safety implications for victims deciding whether or not to have a restorative justice conference. They also thought that perpetrators should be required to attend a stopping violence programme prior to the conference. But there were differing views on whether attendance should entail the whole course or a proportion of it.[113] It was also suggested that victims attend a course prior to attending a restorative justice conference that would help them understand the dynamics of intimate partner violence and power and control.

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[112] Interview S, Key informant.

[113] Project Restore has found that the best time to hold a restorative justice conference in cases of sexual abuse is towards the end of the perpetrator's therapy.

One restorative justice practitioner considered that a co-facilitation model would enhance safety because there would be a balance of background, experience and ideally gender, where pairs are matched as near as possible to the ethnicity of the participants. He put a caveat on that, however:

So long as it doesn't become a battleground. There's danger from my knowledge of group dynamics ... e.g. if you put a defence lawyer and you put a victim support volunteer as co-facilitator. They could end up having a big row between them ... let's just say they need to be compatible ... 'cos you can't run the risk of them acting out their own agendas.

Interview Y: Key informant

Another key informant, Zeddy, suggested screening all participants, including support people to ensure they were the right kind of support. He stated:

I'd be concerned the support person wouldn't know how to support, you know? One of the things we tell men when they're taking time out, and you need to leave the house, you don't go and talk to your mates.... No. it's the last thing you do. Because you'll all start, she did this, she did that. He'll start supporting that and you don't need extra support around that.

Zeddy: Key informant

A victim advocate advised that the victim should be asked how she/he felt about support people or the perpetrator coming along to a restorative justice conference and if there were any issues to do with those people that would make her/him frightened or threatened.[114] A restorative justice practitioner asked what the extent of the facilitators' responsibility for safety was once participants had left the conference. Another restorative justice practitioner said he routinely arranged for separate arrival and departure times to the conference. On arrival, key participants were shown to separate rooms until the conference started. He also said that a conference could be stopped by the victim, perpetrator or facilitator if this was indicated. One restorative justice practitioner, referring to gatekeeping commonly

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[114] Interview T, Key informant.

associated with cases of intimate partner violence and restorative justice, asked, "Are we denying [victims] the full gambit [sic] of justice?"[115] One cultural adviser felt that taking karakia[116] before and after the conference would meet the physical, psychological, spiritual and safety needs of the participants, if that was culturally appropriate.

Men's group representatives supported the attendance by both parties to appropriate courses before the conference. One men's group representative suggested that if safety was a concern the wisdom of holding a conference was in question. Another advised that it was important to assess the readiness of the perpetrator to meet, not only his partner, but also her family.

One judge summarised the dilemma of using restorative justice for intimate partner violence.

> *The principle of restorative justice is an extremely valuable one, and as a proponent of restorative justice of many years, [I believe] restoring relationships is a fundamental social goal, and it happens as much in a family violence context as any other context. Restoring a family where there is an underlying commitment, that apart from the violence, those in the relationship want to continue, then efforts should be made to facilitate that. That means dealing with the violence so that it doesn't recur, put the safety of women, children, and men [first], and allow them to move on with the benefits of a relationship that they want. Where the difficulty arises is reconciling the need to hold people accountable for the violence on the one hand, with the repair of the relationship on the other.... There's a risk of bringing the parties together in the restorative justice context that puts pressure on the abused person and exposes them to further emotional abuse, and doesn't deal adequately with the underlying issue of violence. There can be subtle and unspoken pressure on women, usually, to put to one side the violence, to condone it in one sense, in the interest of moving the*

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[115] Interview ZA, Key informant.

[116] Karakia refers to a prayer.

relationship forward. This does not give the person an adequate opportunity to express the pain and hurt, physical and otherwise, of the violence that has occurred in a supported environment, nor having the perpetrator acknowledge his violence and his willingness to do something effective about it. Until you've got that side of things properly addressed, it seems to me to be premature to talk about restorative justice and the restoring of the relationship.

Interview O: Key informant

Other judges' suggestions included: a restorative justice conference would only happen if people wanted to be there, which was itself a safety valve; assessment of safety before, during and after the conference by facilitators was essential; having guidelines and rules; and, finally, if it was a volatile situation then it was unlikely to be suitable for restorative justice. "If there is that degree of volatility, it's unlikely that much progress is going to be made in the conference."[117] One judge in a district where intimate partner violence was conferenced regularly, commented that in nine years, only one conference had had to be stopped because a perpetrator became agitated.

Process

In addition to the safety processes cited above, a number of key informants advised that assessment should involve examination of the willingness of both parties, and the perpetrator's desire to make changes. One victim advocate was adamant that perpetrators should have no say as to whether they even attended a restorative justice conference. He said:

So does the [perpetrator] get to have a say? I don't think so, no. If we are really serious about restoring victims to places of dignity, but the perpetrator get a choice about taking part in the process? Nuh, 'fraid not.

Interview S: Key informant

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[117] Interview O, Key informant.

This view was shared by another victim advocate.[118] The intent of the violence was another point raised by a victim advocate. She suggested this might be to ensure his partner acted in a certain way. She considered it was all about power and control. Some key informants had opposing views on whether the restorative justice process should be mandated. One victim advocate believed it should, whereas a men's group representative disagreed. Another men's group representative indicated the process needed to rely on empirical evidence rather than ideology, and should be a process that takes account of children's feelings. The possible involvement of teens was also raised by a victim advocate in certain circumstances.

Sometimes the restorative justice process has been described as being either perpetrator-centred or victim-centred. One restorative justice practitioner commented that, in his view, it should not be "anybody-centred".[119] Another pointed out that he usually asks the victim to tell his/her version of what happened at the beginning of the conference, in order to prevent the perpetrator saying, "If you hadn't … I wouldn't have."[120]

According to the Māori cultural adviser, the role of the platform was vital to the process. She stated:

> *Sometimes what we need to do is prepare both parties for the platform. And the facilitator[s] must understand the power of the platform, because it is the platform that should be used to throw everything on, rather than at anyone.… The karakia will lift everything that has been said … at the end of it all.*
>
> *Interview V: Key informant*

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[118] Interview R, Key informant.

[119] Interview Y, Key informant.

[120] Interview X, Key informant.

Observation

I observed two court sessions in the domestic violence courts. After one of these I recorded in my critical reflective journal what I had seen, how I interpreted this and my assessment of how it compared with using restorative justice. The extract follows:

I observed the domestic violence court defended hearing yesterday, and found it very interesting from the point of critique of the criminal justice system, processes, and also on the positive side how the judicial process can be used restoratively.

I feel encouraged that the criminal justice system can be positive but I also feel affirmed in that RJ is kinder to people in IPV situations for so many reasons.

Implications for my study

I will deal with this first of all by evaluating the positives and negatives of the criminal justice process.

Positive –

1. *A judge can see through the denials, conflicting information presented to the court and impose a restorative judgement, aiming at helping the family.*
2. *Translators for those with English as a second language.*
3. *The judge's referral of the offender to a counselling service that offered anger management and counselling (in part) acknowledge the 'it takes two to tango' scenario. It also acknowledged that this was a troubled family.*

Negative –

1. *The administration side of it where an offender has to stand in the dock six times before his matter is dealt with, even if it is dealt with that day is appalling. During this time witnesses, complainants have*

to stay around, and were found not to have shown up at all. Same goes for offenders. Then a warrant is signed for their arrest. I didn't blame them for disappearing, going to the toilet, going for a coffee or home or whatever. One lawyer said of her client, "Oh he's usually here on time", meaning or at least implying that he was habitually at court. Is that because court is not helping him to deal with the problems?

2. *The lack of support for weeping victims, offenders and witnesses appalled me – the registrar offered one complainant a glass of water and there was a box of tissues on the witness stand if they could find it in their distress.*

3. *The process encouraged more adversarial interactions, more lies or incomplete truths, between the parties, through their legal counsel thereby discouraging resolutions. One couple were of different opinions as to whether they were separated or not. Another couple had different opinions about whether the knife in the police prosecutions possession was the weapon used. The same couple were unclear about whether he threatened her with the knife, or whether his handling of the knife and threat to kill himself was a threat.*

4. *The same questions such as name, address, etc, were asked of the witness/defendant/complainant by the barrister and solicitor and prosecution lawyer. I am not certain how this helped the process; it just made it take a lot of time.*

5. *Translators were of opposite gender and abbreviated the dialogue on occasions.*

6. *One male witness deliberately obstructed prosecution against his wife. There was no way he was going to complain against her, yet the police had charged her with common assault. Her case was dismissed as the judge had no evidence to prove the assault occurred.*

7. *There seemed to be an underlying assumption that the witness/complainant was squeaky clean, even if she admitted she manhandled the offender.*

Secondly I will set down how these negatives could be bettered through RJ.

1. *The conference is arranged appropriately, and those who should be there are: It starts on time. There is no shuffling of people back and forth through a process. If people know when it is they show up. They do not come expecting to be in the dock seven times and still have to come back another day with stuff not done.*

2. *Support people for both parties at a conference would make it a far more humane experience if people were upset, and the conference could temporarily stop if necessary.*

3. *In an informal environment people would be more likely to tell the truth or encourage the truth to be told, and greater understanding achieved between the parties, through dialogue, rather than staccato questioning, repeated by the prosecution and defence over and over.*

4. *Once an issue is canvassed and understood or agreed it would be recorded and left for the report.*

5. *Efforts would be made to get translators of same gender, but this would be limited, I know.*

6. *At a restorative justice conference both could discuss what happened and then agree to disagree, prioritise what was important and then discuss. It could be both played a part in the violence, but the criminal justice system doesn't really fully acknowledge this.*

[...]

What have I learnt?

1. *The criminal justice system can be restorative.*

2. *The criminal justice system wastes a huge amount of its own and people's time.*

Journal Entry, 9 April, 2009

Power responses

Power is a central dynamic in intimate partner violence. As discussed in Chapter 1 its presence can be seen at two levels, the macro (institutional) level, or the micro (relational and personal) levels. It can also be positive or negative. According to the participants in this research, power was exercised at the relational and personal level (micro level) by both perpetrators and victims. In this chapter, I will discuss primarily the findings at the micro level.

Relational power

Examples of relational power included strategies and actions concerning financial matters; safety; negotiation between parties; children as instruments of power; using physical force, threats and psychological behaviour; and using macro power. The numbers of victims and perpetrators who experienced these different types of relational power are set out in Table 6.6. Positive relational power is behaviour towards other people that is pleasant, constructive, conciliatory, and/or likely to promote a healthy relationship. Negative relational power is the opposite, that is, unpleasant, destructive, adversarial and/or likely to promote an unhealthy relationship. These will be discussed in turn.

Table 6.6: Relational power reported by victims and perpetrators

Finance		Safety		Negotiation		Threat or use of force		Using Children		Using Macro power	
+ve	-ve	+ve	-ve	+ve	-ve	+ve	-ve	+ve	-ve	+ve	-ve
Nil	6	3	8	1	3+*	Nil	8	Nil	6	2	2
Nil	4	2+*	1	1	1	Nil	5	Nil	5	1	5
n	*10*	*5*	*9*	*2*	*4*	*0*	*13*	*0*	*11*	*3*	*7*

Note: 3+* refers to 3 negotiations including promises to not abuse the victim again
Note: 2+* refers to 2 perpetrators doing anger management course voluntarily, plus others mandated to do the same

Financial matters

An example of inflicting financial hardship was given by Dudley.

> *[T]here were all sorts of threats hanging around and he would try and drive me out of my business ... he would shout and scream and abuse me whilst I was consulting.... he would equally bully and abuse my staff. He would bully me in front of clients ... [once it got physical] my business was at risk, my income was at risk, [and] my staff were at risk.*
>
> *Dudley, Interview D*

Stopping access to financial resources or inflicting financial hardship was reported by the following victims: - Brenda, Christine, Dudley, Eileen, Fraser and Heeni (75% of victims). Perpetrators placed in similar situations by their partners included: Ian, John, Kaveh, and Lawrence (67% of perpetrators).

Safety

Safety strategies to prevent intimate partner violence or minimise its impact were employed by some participants. An example was provided by Zeddy:

> *After I attended the [stopping violence] programme ... for her my apology in a way is to do this [leading a stopping violence programme] for a living now.... Back then I didn't even have the capabilities that I do now.*
>
> *Zeddy, Interview M*

Other strategies employed by victims included placing important documents in safe custody (Dudley); planning a public venue for telling him "it was over"[121] (Christine); and adapting behaviour while still in the relationship (Dudley and Heeni). Another perpetrator who voluntarily attended a stopping violence programme was Neville.

Negotiation between partners

Negotiation was a form of relational power found in the data. Christine, who was in the middle of criminal justice system proceedings against her partner, advised:

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[121] Christine, Interview C.

"The only negotiation I will do is a financial one. If he puts money into my solicitor's trust account [to pay his share of the mortgage], signs the documents, then I might think of dropping the first charge [against him] and [reduce the charge from male assaults female to common assault]

Christine, Interview C

Negotiation by Christine about a plea bargain in respect of charges laid versus separation agreement provisions regarding finance became quite intense. When Gayle attempted to leave her relationship, her partner became even more threatening, including making several threats to kill her, as she confirmed her decision to "finally and actually" leave. Less intensive negotiation in the form of promises to desist from further abuse was made to three victims. Mutual negotiation was used by Christine and her partner, when he wanted her to drop one charge against him, in return for his signing papers that would allow the selling of their house. One perpetrator, Neville, negotiated with his alcoholic partner that the protection order against him would stay in place, provided he had custody of the children.

Threat of, or use of, force

When Heeni was asked what would increase the likelihood of her reporting her partner's abuse to the police, she was ambivalent:

Sadly, I'd probably have to be bashed.... I don't know. Even to be put in the boot and taken somewhere. I know that's possible because he carries a knife with him and has access to guns, so it's not something that I [pause] I know he'd be able to do that.

Heeni, Interview H

Victims affected by the use of, or threat of anger have been discussed previously, particularly the effects of psychological abuse in the relationships of Alice, Heeni and Gayle. The power of the threat of physical violence was a strong deterrent to their reporting. Additionally, Zeddy described anger being used against him by his partner with a view to provoking him. Heeni, on the other hand, described how her

own verbal abuse of her partner about his drug abuse, caused his aggression to escalate. Neville provided an example of a perpetrator using anger as a means of exercising power in the relationship, calling that anger an expression of stress.[122] He said he had used this anger as a means of payback for what his alcoholic wife had put the family through.

Children as instruments of power

Examples of victims reporting that their partners used their children in this way included: Alice (through her partner hitting their child when he was angry); Brenda and Eileen (by their partners threatening to take the children); Christine (by her partner's unwillingness to share her with the children); Fraser (whose partner's home schooling the children meant that he, the income earner, had to cook dinner when he returned home from work); and Heeni (through her partner reacting adversely to her complaints about his continually exposing the children to his drug and alcohol abuse). Perpetrators also said they had experienced their partners' use of children for power, relating to custody and access matters. They included Ian, Kaveh, Lawrence, Neville, and John, and each involved the application of macro power, through the Family Court. As I have previously discussed, John had believed he was happily married until he found himself locked out and having papers served on him by a stranger. Kaveh lost custody of his daughter when his partner fought back after he insisted they separate. She had hit him, yet within 24 hours, she laid a complaint to the court that he had abused her. He spent thousands of dollars defending himself in both the Family and Criminal Courts. Even though the case was dismissed in the Criminal Court, he still lost unsupervised access to his daughter.

Personal power

Personal power was assessed according to participants; (a) becoming informed about matters directly related to that person's social, physical, psychological and emotional wellbeing; (b) prioritising those aspects of life that were most important to the individual; (c) making informed decisions about how priorities could become

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[122] Neville, Interview N.

reality; (d) taking responsibility for their decisions; and (e) involvement in outside/community activities. Victims described more experiences which were identified as positive personal power, than perpetrators (24 for victims versus 19 for perpetrators) and equal frequency of negative experiences of personal power (11 and 11). Table 6.7 identifies which participants fell into each category and why. Positive personal power by victims was seen by reporting the violence to the police; making the decision to never be in another abusive relationship; raised self belief and control of their own lives; and the adoption of new safety strategies.

Table 6.7: Personal power experiences of victims and perpetrators[123]

	Victim Positive	Victim Negative	Perpetrator Positive	Perpetrator Negative
Safety strategies	D B F C (reporting) D (safety of documents D B C E (new strategies)	A E G H (not reporting)	M N (voluntarily attending stopping violence courses)	K (refusal to see child)
Self-esteem/ control of own life	B C G		M N J	K (refusal to see child)
Self-blame/taking responsibility		B C H	M N (acknowledging anger) I (acknowledging mutual conflict)	J K L (not taking responsibility)
Attempts to remedy	H (seeking support)	A (defending partner hitting child)	M N J I L (seeking counselling or mediation)	
Won't happen again!	B C G A F E D (relationships ended)	H (staying in violent relationship)	M	
Use of State or macro power	D B F C (reporting)	F B (adverse result from reporting)	M A I L (counselling) K (legal defence to false allegations)	I J K L N K **
n=	*24*	*11*	*19*	*11*

Note: ** These reflect macro power used against participants

There were 11 instances of negative use of personal power by victims, which included: not reporting the intimate personal violence; choosing to remain in the

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[123] Upper case letters identify participants, such as, H for Heeni, N for Neville and so on.

situation; defending their partner's aggression; self-blame for the violence; and the unintended negative consequences of reporting, resulting in a loss of personal power. Positive personal power was shown by two perpetrators by self-referring to anger management courses; increased self-esteem; acknowledgement of their anger; seeking counselling or mediation through the courts; and using the resources of the State, or macro power, to determine the violence would not happen again.

Negative personal power by perpetrators was identified as: refusal to see their child under supervision;[124] and failing to acknowledge their responsibility for abusive behaviour. Furthermore, negative experiences of the power of the State, or macro power as used by partners, reduced personal power for all perpetrators.

Positive personal power by victims was shown in the following ways. They used safety strategies, such as reporting the violence (n=4); storing important documents elsewhere (n=1); and the development of new strategies for dealing with violence (n=4). They developed improved self-esteem and control of their own lives (n=3), and one attempted to remedy her situation by seeking support (n=1). Most determined that they would not find themselves in an abusive relationship again (n=7). Reporting the violence was also a positive use of macro power. Negative use of personal power by victims was seen by the failure to use the safety strategy of reporting (n=4); by the use of self-blame (n=3); by a lack of attempt to remedy the violence through defending partner who has hit their child (n=1); and by staying in the relationship (n=1). Two experienced negative results from seeking help from the police, or enlisting macro power, by reporting (n=2).

Examples of the positive use of personal power by perpetrators were voluntarily attending stopping violence courses (n=2); having self-esteem and control over their own lives (n=3); taking responsibility (n=3); seeking a remedy to their situation such as counselling or mediation (n=5); deciding to never be in an abusive

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[124] This was Interview K who was placed in two categories because of the unsafe decision (relationship-wise) for him and his child, and because taking control, in this sense, is negative.

relationship again (n=1); using macro power in the form of counselling through the Family Court (n=4) and legally defending false allegations (n=1). Negative use of personal power by perpetrators included: using an unsafe strategy of refusing to see his daughter without supervision (n=1); negative control of own (and daughter's) life (n=1); refusing to take responsibility for what had happened (n=3); and finally, negative personal experiences from the way their partners called on State resources, sometimes by laying false complaints to the police, or the use of macro power, against them (n=6).

Macro power

Children were often used in conjunction with the power of the State, in matters of access and custody. One victim, Fraser, had been separated from his partner when he asked to see them. He stated:

> *{S]he did apply for a protection order because once I left her I wrote to her and [said] I wanted to see the children ... I was polite and I've still got those texts ... And I'd say things like, "I'd like to see the kids this Sunday, and can I do that please?" And she just refused to let me see the children.[125]*
>
> *Fraser, Interview F*

John, who as previously described, thought he was happily married, found that when he arrived home to a dark and securely locked house, that his wife had used a protection order to deprive him of access to both his home and their children. Christine experienced positive personal power, cited previously, through calling the police who laid charges against her partner, thereby using the macro power of the State.

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[125] At the time of interview Fraser had not seen his children for 299 days.

Case study themes

Six case studies in Appendix One illustrate a number of themes. These include the following:

- The use and impact of power (Heeni, Brenda, Fraser, Zeddy, Neville, and Kaveh).

- The timing, negative use, implications for children, and informality of reporting (Fraser, Zeddy, Neville, and Kaveh).

- The significance of the relationship (Heeni, Fraser, and Zeddy).

- Dissatisfaction with the criminal justice system (Brenda, Fraser, and Kaveh).

- Victim precipitation and the question of who was the victim, and who the perpetrator? (Kaveh and Fraser).

- Gender in the form of assumptions that victims of intimate partner violence are women (Fraser and Kaveh) and patriarchy (Brenda and Heeni).

- Intergenerational violence (Heeni, Neville)

Conclusion

The research question, "To what extent would restorative justice increase reporting of intimate partner violence?" has yielded an encouraging result. When all participant groups were asked what influence they thought the availability of restorative justice would have on reporting, 23 of the 29 (79%) were positive or provisionally positive; that is, half the victims, a third of the perpetrators and almost half (45%) of the key informants. One victim, two perpetrators and three key informants (21% of the total sample) responded negatively to this question.

None of the participants totally opposed the idea of using restorative justice for intimate partner violence. Of the victim and perpetrator groups together, three were unreservedly in favour, and the remaining participants were provisionally positive.

These results conveyed the complexity of intimate partner violence and of couples' relationships when they break down. All victims and perpetrators experienced psychological abuse. One of the six perpetrators and six of the eight victims were physically abused. Psychological abuse was usually based on the fear of possible consequences including: physical violence; their partners' anger; retribution; and the loss of access to, or custody of, their children. In some cases, this was accelerated when attempts were made to end the relationship. In two cases, it appeared that the psychological abuse was based on revenge, rather than on fear (Kaveh and Ian), and, in another, for no known reason (John).

Four of the eight victims reported the intimate partner violence to the police, generally speaking, after the abuse had been occurring for at least a year. Only two of them were satisfied with the outcome of reporting. Among the reasons for not reporting intimate partner violence (starting with the greatest frequency) were: fear of their partner; fear of retribution; believing it was not real violence; for the children's sake; shame and embarrassment about being abused; denial of the reality of being in an abusive relationship; threats; self-blame; abuse made the victim question her judgement; fear of the extended family's disapproval; the abuse lacked importance; imagined the abuse would stop; the violence was an isolated incident; and a poor police response to a previous complaint of violence.

Power responses at the relational levels were reported as being experienced by both victims and perpetrators. These responses focused on stopping access to financial resources; using safety strategies; negotiation; using children; and anger/psychological threats. At the personal level more positive power responses were identified as experienced by victims. It is important to note here that the sample included two more victims than perpetrators. However, similar levels of negative personal power experiences were found to be experienced by victims and perpetrators. Macro power was reportedly used by both victim and perpetrator groups. In some cases, this was used and perceived as being used negatively. However, macro power was also found to be experienced positively by one victim who reported the intimate partner violence, resulting in her having increased personal power. On the other hand, negative use of State resources by a partner,

was found, in some instances, to lead to negative use of personal power of participants.

These results demonstrate, in this small sample of New Zealanders, the reluctance of victims to report intimate partner violence, and the low satisfaction of those who did report. Because over three quarters of all participants, including half the victims, believed restorative justice would increase reporting, there was a clear indication that some victims would appreciate the availability of a restorative justice option. All participants, even the most ambivalent, thought restorative justice had a place in the management of intimate partner violence. This has significant implications for the practice of restorative justice, which I have discussed in the next chapter.

Chapter 7: Analysis of Results

Introduction

In order to evaluate the extent to which the use of restorative justice would improve reporting of intimate partner violence, I will discuss participants' views on why they did not report and their perspectives on the merits of using restorative justice. The chapter is divided into the following two sections:

- Reporting of intimate partner violence
- Intimate partner violence and restorative justice

Reporting intimate partner violence

It is often said that the intimate partner violence reported is just the tip of the iceberg, or words to that effect (Curtis-Fawley & Daly, 2005; Morris & Gelsthorpe, 2000). Professionals working in the field might ask, "Is it embarrassment, shame, fear, fiscal considerations, hope, or the lack of power that persuades victims not to seek help from statutory authorities? Are victims unaware of what constitutes intimate partner violence?" Eileen had not recognised that her partner was abusing her until health professionals caring for her child saw what was happening. She explained the help she received, and why legal action was not taken:

> *They ... referred me to the domestic violence team. Because of what was occurring, they'd seen it ... When I actually went to the domestic violence team, they, I mean, it was really just stuff on how to deal with someone that's bullying and controlling.... We were looking at taking a protection order out at one stage against him because of the abuse. But we thought there were conflicting areas of advice on that and we thought that would have en[raged] him more. But what people were trying to do at that stage was actually manage him.... [to] minimise his actions towards me because everybody could see what he was doing. Because he was so unpredictable*

they just didn't know what was coming … and they wanted to protect the children as well. And already anytime [my son] was with him, just to antagonise me he would be showing him inappropriate movies such as highly violent movies [and] sending him home with guns and hunter magazines, and he was five at the time.

Eileen: Interview E

Then it is necessary to consider why people do report. Possible reasons include: they want the violence to stop (Morris & Gelsthorpe, 2000); the perpetrator to be punished or warned; or to gain control of their lives. This research and the literature indicate it may be any combination of the above.

Robertson, et al. (2007) identified a number of barriers to women getting help, either in the form of seeking a protection order or in reporting breaches of existing protection orders. Reporting intimate partner violence to the police or a relevant helping agency may be the key step to getting help. On the other hand, as already discussed in Chapter 4, reporting to the police may have the opposite effect. For some women, it was safer to stay. This was reflected in the case of Heeni, a Māori woman, except that it was not only her own safety she considered but that of the police. Although her partner, a gang member, was not the provider for the family, she knew that if she either left him or reported the abuse, things would get far worse. She explained:

At first it was "I'm sorry, I'll never do it again." But it's the same old. I've heard it throughout. In one voice I'm thinking ... "He'll change. Just support him." And on the other hand, "He's not going to change. He's full of [the drug P]." ... [If I reported it] possibly he could have gotten violent … reason being - anti-police ... knowing his history in his gang ... it's like … "Yeah, you're capable of doing it." ... [He was violent towards me] in the early years, yes. He was very controlling.... There's always been threats."

Heeni: Interview H

Robertson, et al. (2007) discussed the impact of issues such as women's economic position and lack of safety from men's violence. Furthermore, they observed a lack of faith in State agencies to help them. One reason for this was inappropriate comments made by police when attending an incident of intimate partner violence. In the current research, Fraser, who suffered from depression, experienced this when he telephoned the police to report his wife's violence, and later when he visited them.

> *I tried it once. I just … I rang the police and a woman answered the phone … and she said … "Well … are you in fear of this person?" And I'd have to say, no I'm not. I'm not in fear of her … she hurt me quite badly once but it was only because I wasn't watching. I turned my back on her and she took off her stiletto and hit me on the back of the head and punched a hole in my head. … this disbelieving policewoman who basically said "Be a Man!" you know? … Yes, it was basically "You're a man, be a man!" And I said "What do you mean?" She said "You should leave. If you feel threatened by her, you should leave." So I did. And I just didn't think that … if a man calls the police and alleges domestic violence by a female … it's not going to be … [an easy road] … Well, I got some horrible mail two weeks ago. Someone sent me a letter and all it said was "Do us all a favour." And there was a razorblade cello-taped to it.… So I said to my lawyer, "What's this about?" She said "Go to police." So I did. And they looked at it and said "It's not really a threat. It's just a suggestion.… it's not actually saying that they want to hurt you or harm you."*
>
> *Fraser: Interview F*

Participants in the current research were invited to comment on the criminal justice system. Many comments were negative, including such issues as:

- *I have little faith in the jury system.* (Alice)
- *This is a huge machine that sometimes is not doing what it should be.* (Brenda)
- *It is very confrontational … more attacking victims.* (Eileen)

- *It is unfair.* (Fraser)

- *The domestic violence court treats men like feral beasts who need to be controlled.* (Ian)

- *The family court is gender-biased.* (Lawrence)

- *The courts believed the lies of victims.* (John).

The experience of one perpetrator in the current study (Kaveh, an Iranian) illustrates the potential for people to abuse the power of the criminal justice system. His partner, a New Zealander, was very reluctant to agree to his request that they separate. Kaveh stated the following:

> *We were not happy with each other the way that things were but there was never violence, not once. I came to the conclusion that I had to move out of there.... So I made the arrangement for 50/50 custody [of our daughter] … there was never violence.... If there had not been a child involved, I would have walked away from [my partner] in 2002, 2003. But I was worried about my daughter. I was worried about [my partner's] psychology … [my partner] is not a normal person. When she says, "I'm ugly, no-one loves me, I'm miserable," … Passing on those words … that's what pisses me off about the Family Court or the lawyer for the child, they should examine these things! None of them came to the attention of the court.... [Before I indicated I wanted us to separate] I said, "I'm going to be around, I'm going to be a good Dad. Teach her the right things." Then I realized she was abusing [my daughter]. She felt rejected and she made it clear to me she didn't want me to leave.... She said, "No, no. I'm going to fight if you leave me." I said, "Why?" She said "Because you've destroyed my life. Who is going to come into a relationship with me?"*

> *Kaveh: Interview K*

According to Kaveh, his partner then hit him, following this some hours later with a complaint to the police that Kaveh had abused her. The bruises on his arm apparently provided evidence of the allegations. This raises the question: "Who was

the victim?" It was Kaveh's view that he was the victim even though he had been arrested and charged. Supporting his claim was the fact that he had eventually been found not guilty in the criminal court. Possibly Kaveh's partner had acted the part of the innocent victim as described by Burman (2010), discussed in Chapter 4, effectively convincing the police she had been genuinely physically hurt by Kaveh. Notably, the police had not come at the time of an incident, but had appeared over 24 hours later.

On occasions when police arrive at a home to find a couple both injured and distressed, the officers have to make an immediate decision whether to arrest one, or both parties to the intimate partner violence, or, on the other hand, to exercise their discretion (Carbonatto, 1998; Newbold & Cross, 2008) to arrest neither. It is possible that Kaveh's experience of intimate partner violence could have been an example of situational couple violence described by Johnson (2006) where both parties were stressed by their situation and reacted angrily towards each other, leading to violence.

It is noteworthy that of the four victims who actually reported the intimate partner violence to the police, only two were satisfied, one of whom had had his experience in the UK. It could be argued, therefore, that the low reporting rate in New Zealand is at least partly due to victims' and perpetrators' dissatisfaction with, or distrust of, the criminal justice system. Consistent with the views of victims and perpetrators in this study, is research by Curtis-Fawley and Daly (2005) which examined the views of victim advocates about gendered violence and restorative justice. Curtis-Fawley and Daly (2005) interviewed 15 victim advocates whose work included contact with the criminal justice system of South Australia and Queensland, Australia, to explore their views on the use of restorative justice for gendered violence. When asked about non-reporting by victims, they found the advocates conveyed a sense of urgency and frustration about the criminal justice system. It was described as being very tough and painful for victims, and that "[t]he standard practices in the criminal justice system put victims in the untenable position of risking further degradation and disappointment with very little chance of a successful outcome, for example, a

conviction" (Curtis-Fawley & Daly, 2005, p. 14). This tended to presuppose that a successful outcome was a conviction. One participant in the current research, Christine, conveyed satisfaction with what the police had done when she reported the violence. She felt she had been listened to, and was clearly empowered by having the police on her side.

However, this is not always the case. What comprises a successful outcome in these cases has not been clear. Mather (2005) commented that, even when an incident has been reported, there are no guarantees that prosecution will proceed due to the subsequent refusal or unwillingness to give evidence by the complainant, supporting the view expressed by Morris and Gelsthorpe (2000) that not all victims wanted their partners prosecuted. The male victim I observed in the domestic violence court, who was called to be a witness against his wife, did not cooperate with the prosecution, presumably because he disagreed with the process. The advocates in Curtis-Fawley and Daly (2005) observed that the criminal justice system rarely validated victims' understandings of what they had experienced, nor acknowledged that they were not to blame. The system was not considered an appropriate forum for addressing violence between people who were in a continuing relationship (Morris & Young, 2000, cited in Curtis-Fawley & Daly, 2005). Significantly, despite these observations, most advocates believed the criminal justice system was still the best place for dealing with gendered violence. The implication of this, therefore, was that, at the very least, changes needed to be made within the criminal justice system to better accommodate their needs. Interestingly, the advocates indicated their belief that flexibility existed to create such changes. Furthermore, the cooperation[126] between the courts and the restorative justice service provider in Rotorua, described by one key informant, Judge P, has indicated promise about the potential of restorative justice to deal successfully with intimate partner violence. Furthermore, his view has been confirmed by the evaluation findings of Tisdall et al. (2007) and Kingi et al. (2008).

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[126] This comprises regular meetings between members of the judiciary and other staff and Mana Social services.

The findings of Curtis-Fawley, et al. (2005) are particularly relevant to this research, because much of the opposition to restorative justice as a tool for dealing with intimate partner violence is by victim advocates, many of whom are academics or researchers (see Parker, 2004). The Australian advocates in their study, on the other hand, spoke from the benefit of their experience of working in the field. At the very least one can conclude that the criminal justice processes in New Zealand and Australia still need to improve to meet the needs of couples experiencing intimate partner violence.

Because one of the best indications of reporting of intimate partner violence is research into prevalence, it is difficult to discuss one without the other, or, in other words, reporting and prevalence are conceptually tied. Consequently, an analysis of the results about the reporting of intimate partner violence necessarily brings the discussion to back to prevalence, discussed in Chapter 1. Public and individual perceptions of what is intimate partner violence influence reporting. As seen in the previous chapter, two victims did not recognise their experience as real violence. Two victims (Heeni and Eileen quoted above) were informed by professionals working in a different context that they were being subjected to intimate partner violence. They had not made enquiries or sought help about the violence. Instead, the advice they received was given spontaneously by people who were concerned about them. Another reason for the difficulty establishing prevalence is the differing definitions of what comprises intimate partner violence. First of all, victims and perpetrators may have limited knowledge of what behaviours fall into this category. This has effectively reduced the likelihood of an abusive incident being reported to either the police or a researcher. Even when offending is reported to the police, researchers have found that limited statistical data has been recorded (Morris et al., 2003). What is more, certain ethnic groups may be over- or under-represented within some populations, skewing the results. Although Māori have the highest representation in New Zealand statistics about intimate partner violence (Morris et al., 2003) the current research sample, which was not in any way representative, included only one Māori participant within the groups of

victims and perpetrators. Nevertheless, Heeni's contribution to this study presented a window into the situations experienced by some Māori, in particular her comment, "it wasn't that bad". What one individual might describe as abusive could be regarded as normal everyday behaviour by another. Only when Heeni told her employer did she fully appreciate the seriousness of her partner's behaviour and that she could do something about it.

All of the victims in this study suffered emotional distress. Some of them experienced depression, of which reduced self-esteem is a part, which impacted on their ability or motivation to report. This was consistent with the findings of Koziol-McLain, et al., (2004), Fanslow and Robinson (2004), and Fergusson, et al. (2003) all of whom found that intimate partner violence was significantly related to depression and emotional distress. This could have influenced the behaviour of perpetrators seen in Mackenzie's (2009) study, where some women had been the previous victim of the person they assaulted and were arrested for intimate partner violence.[127]

Role of communities

Personal experience can be exacerbated by communities. Minimisation, denial of violence, and blaming at a societal level, has tended to make intimate partner violence less visible (Seuffert, 1996). This situation has remained despite the enactment of Domestic Violence Act 1995 and more recent government-funded initiatives such as the "It's not OK!" campaign.[128] In contrast to Rubin's (2010) finding that women considered their communities were a resource for assistance, Gayle did not disclose her situation to part of the family because she feared its response and the physical and social consequences. This was illustrated in Gayle's interview in 2009. She stated the following:

> *Um, what do I know? ... Domestic violence calls are probably not a high priority, perhaps. That's probably because they have a lot of instances where*

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[127] See Chapter 4.

[128] This publicity campaign promoting safer families was broadcast on TVNZ in 2007-2009.

> *if they are called, they get there and the woman says, "Oh no, it's all fine, it's all fine. Don't worry".*

<div align="right">*Gayle: Interview G*</div>

She was certain she would have been judged by her partner's family and that this would have negatively affected her immediate situation, increasing her distress.

Gayle's interview also introduces the issue of how people view intimate partner violence. Possibly her partner's family decided she was equally to blame, or at least that she had a role in the violence. Here is where what comprises intimate partner violence plays a crucial part. The definition has been discussed fully in Chapter 1. However, intimate partner violence could be summarised as comprising physical actions or injuries by one person against another, the exertion of power, and/or psychological and emotional abuse. On the other hand, much of the literature and police responses relate to physical violence.[129] Psychological abuse is often a vital part of the context of intimate partner violence, but this is often not dealt with. So, generally the context of the offending is omitted. In research this may be due to the greater emphasis on quantitative studies rather than qualitative, in which data is more likely to be incident-based. Furthermore, information about types of physical actions and, to a lesser extent, the fear experienced by the victims may be easier to measure. Alternatively, it could be less politically correct to suggest that something preceding the violence actually influenced or caused it to happen, because here we get in to victim-blaming, one of the numerous points of debate. Context and victim-blaming can go together.

Context

The context of intimate partner violence is important, especially when it comes to considering who did what to whom and why. Two studies are particularly relevant, namely, Muftic, et al.'s (2007a, 2007b) research in the US, and Mackenzie's (2009) in New Zealand. Their relevance centres on a frequent observation (Hirschel & Buzawa, 2002; Muftic et al., 2007a) that in cases of dual arrest, both parties showed

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[129] Personal communication with a former family violence police sergeant in January 2010.

evidence of injury. This, of course, relates to suggestions of offending in self-defence, but also can provide some awareness of women's violent offending. In Muftic, et al., female arrestees were recorded as being more likely to have physical marks of injury. This was not recorded in Mackenzie's research. Because they had observed the lack of empirical data to support the claim that women's arrests were for defensive rather than offensive violence, Muftic, Bouffard and Bouffard (2007a) explored the characteristics of women arrested for intimate partner violence. As outlined in Chapter 4, Muftic, et al. (2007a) explored victim precipitation and police use of dual arrest. This showed how the context of intimate partner violence was an important factor to be considered when deciding appropriate outcomes for couples. It appears that there was some understanding of context by the police officers when they responded to Fraser's partner's calls. Unfortunately the same understanding was not evident, according to Fraser's account, when he reported his partner's violence. Relevant to Fraser's situation is Muftic, et al.'s (2007a) indication of the need for further research into the contexts of previous offending to establish whether these victims had been dual arrests, or charged with defensive violence. It is acknowledged that this study has also not addressed this important aspect of intimate partner violence. However, there is no doubt that longitudinal research into intergenerational violence, as well as long term or repeat intimate partner violence would complement what is presently available, that is, single-incident data found in police records or in victim surveys.

Mackenzie (2009, p. 19) found that 19 heterosexual and one lesbian perpetrator who had previous histories as victims of their victims, totalling 20 women. Of those 20 women, five heterosexual and one lesbian were dually arrested. Thus, 30% of female perpetrators who had been previous victims of their victims were dually arrested. Muftic, et al.'s (2007b, p. 762) findings, on the other hand, showed 57% of dual arrest (co-habiting) female perpetrators in an intimate partner relationship were dual arrests, considerably more than in Mackenzie's research. However Muftic, et al.'s (2007a) research did not establish whether or not the perpetrators were previously known as victims. Nor did they include sexual orientation. Furthermore, when Mackenzie's total sample of female perpetrators in an intimate

partner relationship is taken into account, ten out of 44 (23%) were dual arrests (Mackenzie, 2009, p. 19), less than a quarter when compared with Muftic, et al.'s (2007b) finding that 32%, almost one third, were dual arrests (p. 762). Although these studies reflected different communities, police policy, and police implementation of policy, they still demonstrate the fact that victims can be violent, and not necessarily fit into the 'innocent' victim category described by Burman (2010).

Although neither of the two following accounts from the current research involved an arrest, let alone dual arrest at the time of the abuse, they illustrate the significance of context in intimate partner violence. Christine's first experience of physical violence from her partner clearly demonstrated victim-precipitated events.

> *I had been working a 12-hour shift, come home, got changed and then I drove to the casino with him ... and then went to the carpark; couldn't find the car. He went in one direction and I went in another and we sort of lost each other ... And I sort of sat by the ticket booth, thinking, well, he will come back here [because the lifts were there as well] and I must have sat there about half an hour. And because I was out with him, I hadn't taken my mobile phone so I couldn't get in contact with him. He didn't come back and I kept walking down the rows of cars and in the end went back into the casino to our friends, used my friend's mobile phone to contact him, and he was in a taxi going home and he was absolutely furious ... furious with me that I was so stupid to have lost the car and how dumb was I, and swearing and cursing at me. Which obviously I felt very upset about, because I felt it was undeserved. And I was also extremely tired having done the 12-hr shift ... and then he now had the car-parking ticket, so I was stuck in the carpark. I couldn't get out because I didn't have a ticket, so this friend who had a pass, came with me and got me out of the carpark. I got home, and of course, I had the house key, so he was sitting in the driveway in his car and he's absolutely furious ... So we got in the house and he continued to rant and rave about how stupid I was and comparing me to his ex girlfriend saying, "not even X was as dumb as you!" And then, [he had] this very aggressive*

temper, very aggressive, very frightening ... and that's the first time he grabbed me by the throat, and I mean, I pulled away. He then grabbed my hair and yanked my head back and I was walking into the bathroom and just continued to get changed and get ready for bed and very shocked that he'd actually caused me physical harm.

Christine: Interview C

Secondly, formerly a home-based veterinary surgeon, Dudley also illustrated that context was relevant. He advised:

[My partner] met somebody at a nightclub and he brought him home and said, "This is such and such, he's from Australia and he's got nowhere to stay." So, he stayed the night and then it just went downhill. And obviously he was having an affair behind my back and he was sleeping around behind my back and I saw what was happening and I said, "That's it, finish, gone." And that's when it got physical and I left the apartment we were in, I left and he set up home with his new partner in our apartment ... I left. I had to leave.

Dudley: Interview D

The adverse behaviour and risk created by Dudley's partner towards him, his staff, and the business were too much for Dudley, not to mention the humiliation he experienced as a result. If one applied victim precipitation theory to Dudley's story, as soon as Dudley challenged his partner, physical abuse began, or, in other words, Dudley had precipitated the increased abuse, as had Christine. Both Dudley and Christine delayed reporting the intimate partner violence to the police. One can only guess why they did not report the abuse to the authorities immediately, or whether they blamed themselves in some way. In each case, it was a catalyst outside the couple dynamic, which led them to take this step. In Dudley's case, it was the effect on his business that was the catalyst for him to report. Whereas for Christine, it was when she told a nursing colleague what had happened weeks later that the latter pointed out Christine's experience was intimate partner violence. When victim precipitation is coupled with delayed reporting, it is tempting to consider the possibility of victim-blaming being involved, only this time, by the

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victims themselves. Andrews and Brewin (1990) assessed the degree of self-blame in 70 women who had experienced intimate partner violence. They found that women currently living in violent relationships reported the highest rate of self-blame. This was found to be "most highly associated with repeated physical or sexual abuse in childhood, lack of social support concerning the violence, and a high rate of depression once out of the relationship" (Andrews & Brewin, 1990, p. 757). Andrews and Brewin formed no conclusion about why this happens, instead noting self-blame's association with childhood abuse, lack of social support and depression. So why would victims blame themselves, especially when it has been frequently stated that women were violent in self-defence (Johnson, 2005)? If victims blame themselves (Herman, 1992), it is perhaps not surprising that the police might do the same. However, this kind of police response calls into question whether it is justifiable, or even reasonable for professionals to act in the same way simply because the general public do it, and suggests that there could be a gap in police training in the area of intimate partner violence.

Assessment of intimate partner violence

The role of police in cases of intimate partner violence is not an enviable one. When confronted with a couple engaged in these problems, it can be difficult to identify who is the perpetrator and who is the victim, who is to blame and why it happened? Moffit, et al. (2001) carried out an analysis of 360 young adult couples and found abuse was a dyadic process, influenced by the psychological characteristics of each person. They acknowledged three types of theories of intimate partner violence: feminist theories, evolutionary theories, and social-interactional theories. Feminist theories (Dobash & Dobash, 1979, cited in Moffit et al., 2001), considered abusers had an extreme need for control and domination, and were "hypersensitive to perceived threat and experience[d] negative emotions that patriarchal ideology channels into aggression toward women" (Moffit et al., 2001, p. 8). Evolutionary theories, on the other hand, entailed abusers' suspicion about their partners' sexual fidelity (Daly & Wilson 1988, cited in Moffit et al., 2001). Social interactional theories involved dyadic conflicts, which could escalate

into abuse "because social dominance can be based on aggression" (Hand, 1986, p. 201). Moffit, et al. claimed each of these theory groups fitted in with their measure of negative emotionality (referred to as NEM) which was based on self-reports about participants' usual reactions to stress. Moffit, et al. focused on five models of couples analyses, namely perpetrator effects, victim effects, mutual additive effects, male dominance, and interaction, in which physical abuse and NEM were measured. Positive NEMs were seen in the perpetrator-effects, victim-effects, and mutual additive effects models. Interestingly, male dominance and interaction did not feature in their results. While the absence of male dominance conflicted with part of their analysis of feminist theory, the negative emotionality remained. A similar finding arose from the interviews with victims and perpetrators in the current study. For example, Heeni advised, "When I knew he was on [P] and before we actually started talking about it ... I couldn't control myself. I just went anti. I'd be negative and was at him all the time which caused us to fight more."[130] Ian, a perpetrator, stated the following:

> To me it is a mutual problem. It is not just one hitting on the other. Extreme cases ... maybe [of] one hitting on the other. But often it is not. It is a conflict which reflects the power struggle between the male and female. The man's reaction, usually, is to get a bit physical. The female's tactic is usually a lot more subtle. But it's the actual issue. And simply to deal with one part of that conflict and to demonise one half of that conflict, is not dealing with the issue, with the fundamentals.
>
> Ian: Interview I

Neville, another perpetrator, commented:

> I've got two friends now, where the female is the perpetrator of violence. But ... they'll never get reported ... well, they probably wouldn't ... describe it as domestic violence ... a guy can stick up for himself most times.... but that doesn't stop the female partner displaying violence, but the guy's gonna be

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[130] Heeni: Interview H.

pretty unlucky if he comes off second best, if you know what I mean ... it's just part of the relationship, you just keep going.

Neville: Interview N

Thus, there appears to be a consensus supported by the current research that negative emotions of various forms occur at times of and in the aftermath of intimate partner violence (Fanslow & Robinson, 2004; Fergusson et al., 2005; Koziol-McLain et al., 2004; Moffit et al., 2001). However, there is no consensus that consideration of the context of the offending is important. Clearly Muftic, et al., and Wolfgang (1967, cited in Muftic et al., 2007a) emphasised the significance of preceding events in intimate partner violence. Others do not (Muftic et al., 2007a)**.** Notwithstanding, as can be seen in the extracts quoted in this chapter, victims and perpetrators each conveyed their experiences within a context. They did not discuss the physical abuse as a solitary entity.

Consequently, it could be argued that, as long as emotions and context are ignored, interventions for dealing with these situations have limited capacities. The criminal justice system fails to adequately deal with the emotional side of intimate partner violence and the context in which intimate partner violence has occurred, according to most key informants in this research, including members of the judiciary. This is where restorative justice could play a significant part, possibly meeting needs which are currently neglected.

Intimate partner violence and restorative justice

This has been the subject of much discussion, as outlined in Chapter 4, and New Zealand has not been exempt from this argument. Kingi, et al. (2008), summarised the debate on the use of restorative justice processes for family violence as:

> Some advocates envisage them as having the potential to increase women's choices, provide women with a voice, and draw on the support of family/whānau and friends in a way that may increase their safety. Opponents draw attention to unequal power relationships between victims

and perpetrators, and raise concerns that restorative justice processes may compromise women's safety and expose them to further victimisation. (Kingi et al., 2008, pp. 11-12)

Nevertheless, restorative justice has been practised in situations of intimate partner violence for some years. Judge P, whose work in Rotorua entailed making regular referrals of intimate partner violence cases to a restorative justice service provider in Mana Social Services, when asked if he supported the use of restorative justice for intimate partner violence responded with a "resounding yes". He added that the judges in his court frequently found that in the majority of cases after an assault was over; the victim would want to recant, in whole or in part. He considered that if the victim knew of the possibility of restorative justice which could, if there was a positive outcome, reduce the punishment of the perpetrator, the victim was more likely to seek help in the first place.

Reporting similar experiences in the courts, Mather (2005) commented that frequently perpetrators will remain in the relationship or that relationships will resume shortly after an incident. This is likely to influence the co-operation of victims within the criminal justice system. However, on the subject of restorative justice for intimate partner violence, a key informant (Judge O) was more conservative, coming from a provisionally positive point of view:

> *The ethical dilemma remains for the intervener, especially when the violence is repeat and/or serious. Because we have such a poor success rate with [family violence] prosecutions, where victims don't carry through, from a wider perspective, we might in fact get better interventions with a less coercive approach in some cases.*
>
> *Key informant: Interview O*

Judge P's enthusiasm was largely supported by research by Kingi, Paulin, and Porima (2008). They researched the delivery of restorative justice in the family violence context, based on the definition of family violence in the Domestic Violence Act 1995. Their research involved a national survey of restorative justice

providers' use of restorative justice practices for cases of family violence, including a qualitative and quantitative analysis of five programmes within New Zealand. The survey showed that most of the respondent restorative justice service provider groups (21 out of 24) accepted a small number of referrals of family violence with the highest proportion being a quarter of their case load.[131] Although there are significant differences between the victims and perpetrators in this research who have not attended a restorative justice conference, when compared with those in Kingi, et al.'s (2008) research who had, along with reference to different restorative justice models,[132] their views are not dissimilar. The reported interviews with victims and perpetrators in Kingi, et al. showed most of them found the restorative justice meeting to be a positive experience. Few made negative comments, and most agreements included some form of counselling or programme attendance. Almost two thirds 12 (63%) felt the perpetrator was made accountable and 16 (79%) of victims said they would take part in the process again should they need to. Significantly, both victims and perpetrators agreed that restorative justice meetings were a good way to deal with family violence, although "some qualified this by saying it depended on those involved and the circumstances relating to the violence" (Kingi et al., 2008, p. v).

Victims in the current research were also positive about the potential of restorative justice. For example, recently separated Gayle, who had moved on, saw it as having benefits for her partner and adult children, and she would participate in a conference for their sakes. She stated:

> *I think it would be great if, um, both parties are willing. Fantastic. It could be hugely helpful, I'm sure. Um, whether or not you're talking about intimate*

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[131] Approximately half stated that 1-10% of their cases concerned family violence and one quarter estimated 11-25% concerned family violence.

[132] They had experienced a range of different restorative justice models. They included community panels, victim - perpetrator meetings, one or two facilitators, and pre- and/or post-sentencing, whereas the current research entailed a description of restorative justice as a two-facilitator model where victims and perpetrators met face to face, at any stage in or outside the criminal justice process, with support people.

partner violence, whether or not they're getting back together again, I think it would be hugely helpful to help them move on, understand their behaviour, understand their partner's behaviour, and air any grievances and ... probably give them tools to get on with their lives and heal themselves.... healing of what made them aggressive.... To help him move on, get some self awareness, and you know, help him in future relationships ... If he's genuinely wanting to help himself, yes I would. Um, I imagine, though, in that situation ... I could possibly get quite angry. Um, but yeah, if it helped him out, if he genuinely wanted to sort himself out ... He's not all bad, you know, and also, he's my children's father ... And him having some insight into himself is going to be helpful for their relationship with him. Because at the moment, especially with [my son] it's not good at all ... And it's not good for [my son] not to have a good relationship with his father ... So if [my ex partner] can come to some self awareness it would help them as well.

Gayle, Interview G

Brenda (who is Chinese) felt attending a restorative justice conference would have been preferable to reporting the abuse to the authorities. She considered restorative justice could resolve issues without the perpetrator losing face. She considered restorative justice had much to offer the Chinese community because it prevented shaming of the perpetrator. In hindsight she wished she had known about restorative justice, as it was a way she could have avoided the Western confrontational form of approach to intimate partner violence.

It is also useful to compare the data from the key informants from each study, which were more evenly matched in experience. The research conducted by Kingi, et al. (2008) involved 24 key informants, including violence intervention programme providers, victim advisers, judges, police, and lawyers. The current study consisted of 16 key informants, including judges, victim advisers, cultural advisers, restorative justice practitioners (one of whom was a lawyer) and men's group and violence intervention programme providers. Key informants in Kingi, et al. (2008) were closely divided into three groups in their support or non-support for using

restorative justice for intimate partner violence. That is, 33% expressed unconditional support, 38% expressed conditional support, and 29% were against the use of restorative justice in family violence cases (Kingi et al., 2008, p. 85). On the other hand, key informants in the current research showed greater approval, the figures being 19% against, 25% were provisionally positive, and 56% were positive. It is important to note, however, that the higher approval in the current study was likely to be influenced by the inclusion of restorative justice practitioners in the group. Notwithstanding this, it might, to some extent, have been balanced by the inclusion in Kingi, et al., of lawyers, two of whom were defence counsel and, therefore, more likely to hold positive views on this subject. But this is uncertain.

A review of the Rotorua restorative justice operation was commissioned by the Ministry of Justice and it was reported in 2007. Tisdall, et al. (2007) conducted research comprising focus group interviews with key informants, and in-depth interviews with eight victims and six perpetrators of family violence. The six perpetrators were the only ones who could be contacted out of a total of 26 with contact details from the 48 perpetrators who had attended a conference. They also interviewed the restorative justice coordinator, victim adviser, and other stakeholders. Tisdall, et al. (2007) reported that all perpetrators described themselves as having adopted positive behaviours since attending the restorative justice conference, although, in some cases, they said they learned more from the subsequent counselling or classes they had attended rather than by attending the conference. Agreements were completed by 42 (87.5%) of the 48 perpetrators, and only one of the six perpetrators in the qualitative study was reported to have committed another assault (p. 97). Victims spoke positively about the experience, particularly their opportunity to talk freely, to receive an apology, and to feel safe during the process. The researchers concluded that perpetrators' accountability and facilitators' skills were high.

Like the participants in Tisdall's research, relationship counselling was given high priority by participants in the current study. Participants considered attending counselling and/or anger management programmes to be important. What varied,

however, was the timing of these. Two key informants, both victim advocates, regarded it as vital for both victim[133] and perpetrator to attend, and possibly complete a programme before the restorative justice process. Furthermore, victim advocate R thought perpetrators should attend a restorative justice conference after they had attended a stopping violence programme, so that one objective would be to show the victim what they had learnt. She stated:

> *They need to have attended "X" number of sessions. I think they need to be able to say what they learnt, how it applied to them. What they are able to change themselves, the awareness they have gained, what they are prepared to do to break the cycle.*

> *Key informant: Interview R*

Another key informant, a restorative justice practitioner and lawyer, believed, however, that making attendance at a stopping violence programme compulsory prior to a restorative justice conference would be likely to prejudice their commitment to the programme. He said perpetrators were more likely to willingly participate if attendance was an agreement made at a restorative justice conference. All victims acknowledged the need for the conference to be a safe process. One perpetrator considered intense preparation of perpetrators was an issue. This man, speaking from the dual perspectives of perpetrator and anger management programme leader, made clear the need for appropriate preparation, including the provision of reasonable expectations of the process and outcomes as stated in the Government's restorative justice guidelines (Ministry of Justice, 2004). Zeddy stated:

> *I don't know whether to go or not. You know, I don't know what it's going to be like. Well I'd need to be really informed about what goes on in there. I'd need to know, I'd have to have experienced several so that I could speak from a place of knowledge or experience with him. And I'd prep him for that quite a lot ... that support person I think needs ... I dunno, I haven't been to*

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[133] For victims it was suggested they attend a course which explains the dynamics of intimate partner violence and power and control (Key informant, Interview T).

restorative justice, you know. I'd be concerned the support person wouldn't know how to support, you know? ... [if we were to reconcile] I guess a lot of that would come out. But if we weren't together, yeah I'd be sort of – it'd be a bloody emotional experience actually.... It might bring up all the shame and guilt and anger again, at myself. You know, feelings at myself ... Because sometimes it's just plain old arrogance that stops me talking about stuff. A lot of the time it's shame ... And it's self-hate ... [Women can ask] questions or tricky stuff where he feels trapped.... If I answer that, that way, she's going to come back with that, "Oh fuck you" ... you become defensive ... [I'd go to a restorative justice conference] if I care for her enough, and she needs to go through this, then I'd go. But it would be a scary place for me to be, an intimidating place.

Zeddy: Perpetrator and Key informant

Tisdall, et al. (2007) identified some process shortcomings in Rotorua in regard to meeting New Zealand's restorative justice practice guidelines (Ministry of Justice, 2004). A number of victims and perpetrators were reported to be unclear about the restorative justice process before they attended one (Tisdall et al., 2007). Additionally, the access by restorative justice service providers to contact and other personal information about the victims appeared to be ad hoc. Although the court protocol required victim advisers to provide this information to them, it was often conveyed by the programme coordinator at court, in effect, bypassing the adviser (Tisdall et al., 2007). The partial omission of the victim adviser from the process could possibly be explained by the former Director of Mana Social Services' comment that she was not sure what time victim advisers would have to encourage victims to take part. This might explain Victim Advocate U's statement that only two victims of intimate partner violence had requested a restorative justice conference. On the other hand it could be explained by gatekeeping, as giving advice about restorative justice would be appropriate to an advisory role. One key informant confirmed one of Tisdall, et al.'s observations:

There had been a lot of controversy about who is giving the victim information to the restorative justice providers. Up until now [the

programme coordinator based in the court] has got most of the info from the police because of a relationship with prosecutions.

Key informant: Interview Z

The same key informant advised that soon after this interview in May 2007, victim information would only be accessible through the victim adviser. Concern was also expressed about the training of the programme coordinator at court. This was because he made decisions and assessments which would impact on the restorative justice facilitator who had the responsibility and accountability for the process. As one key informant in the current research, a victim adviser, commented, "It is very difficult to be strictly advisory and not advocacy. If I make a call for one of my clients I consider this advocacy. But with particularly disempowered women, I will make the first call."[134]

Knaggs, et al.'s (2008) research found evidence of victim advocacy in the Waitakere Court, where victim advocates could speak for victims or, alternatively, present victims' views to the judge in writing. However, it appears that the application of this advocacy process was not always followed because they reported that some victims felt at risk by being expected to speak in an open court. Advocacy was one of a number of requirements often not met for victims in court (see Chapter 4).

One of the critiques of restorative justice is the observation that it tends to minimise the violence and focus more on reconciliation. Victim advocate T in the current research commented as follows:

We are concerned that restorative justice processes may place victims of domestic violence in more danger and may not be a safe process for them to participate in. And our concerns about that are largely due to the fact that we cannot see how a two hour restorative justice conference is going to be significantly different from the types of discussion that the perpetrator of violence and the victim might have had in the past. And that we understand

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[134] Key informant: Interview U.

that the perpetrators of violence have apologised ongoingly throughout relationships for the violence they commit. The saying "sorry" part has probably already occurred many times in the relationship, and also, talking about change and wanting to change may have happened continually throughout the relationship.

Key informant: Interview T

While the frequency of apologies and discussions about behaviour are undoubtedly true, these are almost without doubt occurring in a private situation. The advantage restorative justice has over this includes the presence of support people, which, in turn, increases perpetrators' accountability and ongoing support for both victim and perpetrator (Morris & Gelsthorpe, 2000). In addition, this argument has often been countered by the view that giving the victims the opportunity to speak freely to the perpetrator, in a controlled environment, gives the perpetrator greater insight into the effects of their behaviour, which hopefully will lead to change (D. Coker, 2006; Edwards & Sharpe, 2004).

Moreover, and significantly, reconviction rates after one year were unchanged in Waitakere and increased by 4% in Manukau (Knaggs et al., 2008, p. 9). Thus, despite the fact that courts were specialising in family violence cases, adopting what one key informant named a therapeutic approach, recidivism continued at the same or increased rates in these two courts. Hence, these specialist courts had not demonstrated any improvement in reducing recidivism.

Although there was an opportunity to observe the effect of restorative justice in cases of intimate partner violence, when the New Zealand Court-referred Restorative Justice Pilot was conducted, family violence was specifically excluded. However, one of the main findings of this research was that there was a small overall decrease in the reconviction rate of those participants who had attended a restorative justice conference, compared with those who had not (Triggs, 2005, p. 7). This suggests that restorative justice could possibly play a positive part in some

intimate partner violence cases, or at least not worsen the situation as was found in the Manukau Family Violence Court – see Knaggs (2008) discussed in Chapter 4.

Conclusion

Using restorative justice for intimate partner violence cases was supported by positive feedback from victims and perpetrators in Kingi, et al. (2008), Tisdall, et al. (2007), the majority of participants in this research, and the opinions of victim advocates in Australia. What is agreed in this field of considerable debate, is that reported intimate partner violence is just the tip of the iceberg. Furthermore, most agree that the present criminal justice system in New Zealand is having little impact in its attempts to reduce the incidence of this type of offending. The findings of the current study support this view, where out of eight victims, only four reported the intimate partner violence they experienced to the police. Of those four, only two were satisfied with the assistance provided, and one of these was in the UK. This indicates that an acceptable alternative means of dealing with these situations is required.

The challenge is to encourage reporting so that intimate partner violence can be dealt with more constructively. One way would be to provide an option that could better cater for victims' emotional needs, and provide opportunities for both parties to put the offending into context. The incident-based arrest process found in the criminal justice system completely disregards the contexts and/or foundations of the abuse, and how victims and perpetrators feel about their situations. Furthermore, it is unrealistic to expect courts to address the context and emotional side of intimate partner violence for couples, let alone do so satisfactorily.

Most participants in this study were positive about the prospect of restorative justice. As pointed out by Brenda, cultural needs presently not met by the criminal justice system could be met at a restorative justice conference. However, some New Zealand research and feedback from participants in the current research

shows that there is some way to go before the concerns of victim advocates and some researchers are addressed. This is vital if acceptance by referral agencies and other stakeholders is to be achieved. The next chapter will explore some ways this might be accomplished.

Part Three: Implications for Policy and Practice

Chapter 8: Implications for Restorative Justice

Introduction

This study examined the extent to which restorative justice might improve reporting of intimate partner violence. According to the literature, the prevalence of intimate partner violence cannot be established precisely, largely because people experiencing it are reluctant to report it. Information that exists is the result of national surveys (Mayhew & Reilly, 2006; Morris et al., 2003) and research into the health sector (Fanslow & Robinson, 2004; Fanslow et al., 2010). The New Zealand National Survey of Crime Victims (Morris et al., 2003) reported that 15.3% of women and 7.3% of men who had ever been in a partnership reported violence. On the other hand, when ethnicity differences were examined by Fanslow et al. (2010), lifetime experience of intimate partner violence was found to be generally higher, with Māori women at 1 in 2, Pacific Island women, 1 in 3, European and other, 1 in 3, and for Asian, 1 in 10. Responding to intimate partner violence in New Zealand became a priority in the 1980s, when the New Zealand police policy of intervening in cases of intimate partner violence changed from being "just a domestic" (Ford, 1993) to pro-arrest. In 1995, the Domestic Violence Act 1995 was enacted.

A recognised aspect of intimate partner violence is power, which was described by Foucault (1982) as part of our experience rather than a theoretical question. He stated that power was exercised, exerted, or put into action over others. Shame, another integral part of crime has been a negative part of the victims' experience (Morris & Gelsthorpe, 2000), while also used to help perpetrators. John Braithwaite conceptualised reintegrative shaming as part of a restorative justice process in 1989, to use social control to reintegrate the perpetrator (Braithwaite & Mugford, 1994). The merits of using shame to reintegrate perpetrators have been debated by practitioners and researchers alike.

Evaluations of restorative justice for adults in New Zealand have shown positive outcomes. The New Zealand Court-referred Restorative Justice Pilot (Ministry of Justice, 2005) showed favourable results and this was supported at the two-year follow-up of reconvictions (Triggs, 2005). Significantly, research by Kingi et al. (2008) and Tisdall et al. (2007) has shown that restorative justice could help victims and perpetrators of intimate partner violence.

Responses to intimate partner violence can range from doing nothing (Jordan, 2004; Ruiz-Perez et al., 2006) to resisting or reporting. New Zealand research by Fanslow and Robinson (2010) found 18% of ever-partnered women sought help from formal services. Reporting may be informal to friends and /or family members, or formal, to authorities such as the police or courts. Fanslow and Robinson (2010) found that 77% of New Zealand women victims told someone, whereas 23% told no one. Negative consequences of formal reporting, such as perpetrators' retribution, were known to be a deterrent to victims reporting abuse to the police (Morris & Gelsthorpe, 2000; Carbonatto, 1995). The Women's Safety Survey found that just over one tenth of women who disclosed any level of physical violence reported it to the police (Ministry of Justice, 1996). Some reasons given for seeking help included: inability to endure any more abuse; threats to kill; and injury (Fanslow & Robinson, 2010, p. 939). Agency responses were not found to be satisfactory. For example, police guidance about support available to victims of intimate partner violence was found to be less than adequate by Carbonatto (1998). Robertson et al. (2007) found flaws in the administration of protection orders. Furthermore, victims might not have wanted the perpetrator to be arrested (Morris & Gelsthorpe, 2000). Hirschel and Hutchison (2003) found only a quarter of the sample in their research of 354 women wanted the perpetrator arrested (Hirschel & Hutchison, 2003, p. 321).

Victims who resist the abuse are sometimes faced with unexpected consequences. Muftic, et al. (2007b) suggested the increase in women being arrested was possibly due to their defensive rather than offensive violence. Hirschel and Buzawa (2002) attributed the increased arrests to the mandatory or pro-arrest policies. Alternatively, both parties to the violence could be arrested (Mackenzie, 2009).

The current research found that of all participants, 79% considered restorative justice would increase the reporting of intimate partner violence, and all saw the potential of using restorative justice for intimate partner violence cases. Of the eight victims, four had reported the violence to the police, and only two of these four were satisfied with the criminal justice system. One of these had been in the UK at the time. While four reported, all victims gave reasons for not reporting (such as fear of reprisal, prioritising the children or "it wasn't real violence"). All victims and perpetrators experienced negative use of psychological power, seven of the eight victims and one out of the six perpetrators experienced physical abuse. Many expressed the wish to have had the option of restorative justice earlier in the development of intimate partner violence.

In this chapter I argue that, for restorative justice to be better accepted within (or in addition to) the criminal justice system, it is important to work to improve understanding of intimate partner violence by restorative justice service providers and practitioners. This chapter highlights the views of victims, perpetrators and key informants regarding restorative justice practice in intimate partner violence cases. The focus is on issues of safety and power as key factors that restorative justice practice may need to address to enhance its use and positive outcomes when dealing with intimate partner violence and the acceptance of relevant stakeholders. Data from this study is discussed in the context of literature and also compared with results reported in previous similar studies.

The use of restorative justice for intimate partner violence

Participants commented that they felt restorative justice was less adversarial than the criminal justice system. Brenda (a victim) observed that restorative justice would be better than the present processes through the criminal justice system because:

> I think restorative justice is a very good platform, especially in the Asian culture because ... [of the] shame aspect of it. You report the man; the woman gets chastised by the community because ... the woman brings

shame to the family. So if you have a process like restorative justice, where you have trained people who can equalise the power ... If I had known of restorative justice and if [it] was available, it would have been a marvellous way [to deal with the abuse].

Brenda: Interview B

Kaveh (a perpetrator) extended this by suggesting that restorative justice would provide a better model to deal with intimate partner violence because of the complex dynamics of violence:

Violence was on both sides. Maybe there's more violence from men towards women because they are physically stronger. But what have we achieved by introducing these laws so far? Look at the consequences, the effect of this suppression of the family on the children ... the [criminal justice system] doesn't look at all the scientific fact[s] ... when you appear in court, [t]here's a lot of frustration because there is no justification for going through this kind of thing.

Kaveh: Interview K

Although victims and perpetrators indicated support for the use of restorative justice, current political realities may need to be addressed. For example, the New Zealand guidelines[135] state:

The use of restorative justice processes and family violence and sexual violence cases will not always be appropriate. The particular dynamics of family violence and sexual violence, including the power and balances inherent to this type of offending, can pose significant risks to the physical and emotional safety of the victim. Family violence offending in particular, is often cyclical and reflects deeply entrenched attitudes and beliefs. Perpetrators may be more manipulative and have offended seriously and

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[135] These were a response to the basic principles adopted by the United Nations in 2002 to develop guidelines and standards for the use of restorative justice processes. They consist of two parts: the Principles of Best Practice for Restorative Justice Processes in Criminal Cases, and the Statement of Restorative Justice Values and Processes.

repeatedly. A one-off intervention may therefore not be effective or safe. Where a restorative justice process does take place providers must ensure that facilitators possess the specialised skills and experience required, to facilitate these cases and that additional safety measures are in place (Ministry of Justice, 2004, p. 19).

Accordingly, every care must be taken to ensure that the restorative justice process is carried out safely. A very useful model for dealing with intimate partner violence was provided by Pennell and Francis (2005) in North Cvarolina, USA. They conducted research into victims' views of intimate partner violence, staff and supporters' views on what they called "safety conferencing", which is a model of restorative justice. This research answers a number of the concerns raised in the Ministry's guidelines.

Pennell and Francis (2005) saw the model as having advantages for victims such as reducing their isolation, providing support for them and their families, and potentially creating safer environments for people experiencing intimate partner violence, through the creation of safety plans. They felt that safety conferencing:

- was appropriate perhaps two months after separation in cases where couples had separated (p. 681);
- involved the making and carrying out of a safety plan with the help of support people (p. 677);
- required batterers to attend a batterers' programme (where a safety conference could be held at the beginning, middle and end of the programme, in the presence of the programme facilitator) (p. 685);
- entailed the domestic violence service provider staff convening the conference to ensure that the women's safety and that of any children were safeguarded (p. 686).

(Pennell & Francis, 2005)

Some participants in the current research, and victim advocates in particular, stated that it should be mandatory for perpetrators to attend a stopping violence

programme prior to attending a restorative justice conference. One advocate suggested attendance at a full 20-week course beforehand was necessary; another key informant (a men's group leader) suggested attendance at a minimum of four sessions would suffice. Furthermore, one key informant (T, a victim advocate) suggested that a domestic violence service provider for victims would be an ideal support person for a victim at a restorative justice conference. Taking this possibility even further, Brenda, a victim, stated the following:

> *Yeah, I think before you even report, restorative justice [could be] made available … you know it is a tool or a forum that is available in all the agencies like ... in the Refuge for example, if the Refuge could use restorative justice as a means of facilitating, and I would use reconciliation in the widest sense of the word … reconciliation does not mean [necessarily] that the woman goes back to the man. Reconciliation ... of the issues ... it could be that one of the outcomes is that you live separately, recognizing that "you are the father, you are the mother. Let's negotiate a way to continue the parenting." Before it even goes into the court, [the perpetrator] goes to jail, [or is] throw[n] ... in the cell for a night or 24hrs or 36 hrs.*

> *Brenda: Interview B*

Not unlike Brenda, Pennell and Francis (2005) concluded that the safety conference was a coordinated and inclusive response; a way to build individual and collective strength to "reshape connections, to make sound choices, and promote the safety of women and children" (Pennell & Francis, 2005, p. 688).

Although the safety conferencing model used strict guidelines, the objective of building individual and collective strength implied flexibility to meet the needs of each situation. A more adaptable programme which took into account the varied needs of victims and perpetrators is the Hawaiian-based, Pono Kaulike programme (see Walker & Hayashi, 2007). Using a solution-focused brief therapy approach, this programme offered three restorative justice models. Solution-focused brief therapy (Walker & Hayashi, 2007) involved respectful language that focused on the positive attributes and potential of the parties, in particular, the perpetrator (Walker &

Hayashi, 2007). The goal of this process was to help them find solutions to the violence, in contrast to dwelling on the mistakes of the past. Solution-focused brief therapy has been compared with strength-based therapy, appreciative enquiry[136] and motivational interviewing (Walker & Hayashi, 2007), all of which prioritised language use in group or therapy contexts. The Pono Kaulike programme included three models: (1) restorative conferences; (2) restorative dialogues; and (3) restorative sessions. Firstly, the restorative justice conference model involved the perpetrator, victim, and supporters for both, and produced a written restorative conference agreement. Secondly, a restorative dialogue, on the other hand, occurred when the victim and perpetrator met without the presence of support people. In this model, a restorative dialogue agreement was made. Thirdly, a restorative session entailed the victim and/or the defendant meeting the facilitator independently of each other. In this model, supporters were welcomed and a restorative plan was prepared. The programme (3) discussed above, identified as "partially restorative"[137] by Walker & Hayashi (2007, p. 22) was designed to meet people's needs, without the requirement of meetings between victims and perpetrators face to face. It could be argued, however, that restorative dialogue risked couples continuing to be isolated from the support of their community and families.

The influence of language used in the context of restorative justice processes should not be underestimated, particularly in cases of intimate partner violence. This includes naming the parties either victim or perpetrator. For example, in the current study, the following quotes illustrate a concern that couples being labelled had the potential to be detrimental to the process, and/or the safety of either party:

> *If the emphasis is on "you're the perpetrator, and you're the victim," then I think it is going to be destructive and get people's backs up.*
>
> *Ian: Interview I*

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[136] Personal communication from Gale Burford in an email dated 26 February 2009.

[137] See Chapter 2.

In a restorative justice conference it's no longer a perpetrator and a victim, it's Jane and Rich.[138]

Eileen: Interview E

As can be seen from the foregoing, there appear to be multiple understandings about the optimal use of language in different contexts. When discussing language, it is necessary to remember that it is a major component of communicating within a social environment. This is certainly the case with respect to intimate partner violence. Picard (2000) (Canada) researched the multiple understandings of mediation, which included facilitation. Because restorative justice conferences concerning intimate partner violence usually concern heterosexual partners, Picard's research is particularly supportive of co-gender facilitation. Picard not only found gender and experiential differences, but she also found different objectives associated with gender, experience and context. She stated:

> In some instances, the word [facilitation] was used to depict activities that involved the exploration of needs and concerns, the acknowledging of emotions, and a heightening of understanding, empowerment, and self-determination. In the other influence, it had to do with the guiding of process, the exploration of options for settlement, and making possible joint problem solving (Picard, 2000, p. 2).

Not surprisingly, the first understanding was more likely to be held by female mediators, whereas the second, more process-oriented understanding was usually used by male mediators.

Accordingly, from Picard's findings, there is a strong suggestion that facilitation by a team of a male and female facilitators would be more likely to relate to each party in a way that was gender appropriate. Moreover, with two gender partners, the two-sex facilitation team could enhance the possibility of dealing with both emotional and resolution foci, which, it could be argued, could effect better

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[138] These are pseudonyms used by the participant.

outcomes. In addition, Picard's research may suggest that this would enhance the likelihood of canvassing the emotional (thereby helping to meet the needs of distressed victims and perpetrators seen in Moffit et al. (2001)) and contextual issues (thereby addressing context as raised by Muftic, et al. (2007a)), while also reaching towards solutions or resolutions (Walker & Hayashi, 2007).

However, focusing on language use at restorative justice conferences could also imply structured, indeed "pre-scribed" dialogue as part of the process, such as the scripted model created by Wachtel in the 1990s.[139] While these scripted models have had a place in restorative justice, facilitators using them lack the knowledge, skill, sensitivity, and elasticity required in such a sensitive area as intimate partner violence. Furthermore, pre-scribed dialogue fails to take into account the basic requirement, one which was supported by almost all of the participants in this research, for facilitators to have a high and specialised skill base for dealing with these cases.

Restorative justice practice

Safety

In the literature (see Stubbs, 2004) safety is often confined to the physical and, to a lesser extent, the emotional. I argue that safety needs to be considered as also comprising social elements because people are social beings living in social contexts. The criminal justice system tends to centre on the physical, responding proactively to prosecute perpetrators when evidence of physical injury is present. Victim advocates often argue on the basis of the emotional needs of victims. For example, victim advocate S in this research advised:

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[139] See McDonald, J., Moore, D., O'Connell, T., & Thorsborne, M.'s (1995) *Real Justice Training Manual: Co-ordinating Family Group Conferences.*

In general, I think that there are two main impediments to calling the cops. One is shame. The other is the fear that things will be made worse, specifically that they will be subjected to payback.

Key informant: Interview S

On the other hand, the focal point of spokespeople for perpetrators has often been the fairness of the criminal justice system, particularly in custody matters. It follows that where there is a sense of injustice, safety may be compromised.[140] Significantly, neither the criminal justice system, nor victims' or perpetrators' advocates tend to consider the social (which implies community) or contextual aspect of intimate partner violence. This is where restorative justice, with the gathering of community support around a couple, is uniquely placed to meet the needs of both parties. A number of writers have expressed concern about the safety implications of the use of restorative justice for intimate partner violence cases (Busch, 2002; Edwards & Haslett, 2003; Hooper & Busch, 1996). Participants in the current research also agreed that safety was vitally important. However, one asked if it was reasonable to expect restorative justice facilitators to have greater responsibility for safety than the criminal justice system, especially when noting the shortcomings in safety of, and advocacy for, victims found in the Manukau and Waitakere District Courts (Knaggs et al., 2008). Participants also felt that screening of couples' history of intimate partner violence, victims' and perpetrators' readiness to attend a restorative justice conference, and the perpetrators' remorse were part of the safety process. In addition, screening of support people was suggested by one participant in particular, who commented about his concern that support people have an important role, and that rather than taking sides, they should be on the side of everyone.

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[140] Key informant ZC referred to Stephen Jelicich, who, in January 2005, abducted his child, Caitlin, to prevent her mother, who had been charged with assault, removing the child to her homeland in Wales. See Smith (2005).

Morris and Gelsthorpe (2000) stated that friends and family during and following a restorative justice process would be better placed than professionals in the criminal justice system to prevent the recurrence of violence. Indeed, Cheon and Regehr (2006) observed that the greatest promise of restorative justice appeared to be a potential to build community and mobilise resources. In other words, it took into account the social needs of the couple and their families. Notwithstanding this promise, the impact of the safety question has limited opportunities for victims to gain empowerment. As suggested by Hudson (2002), if the claim of advocates of restorative justice that the process is empowering is true, then a restorative justice process would be appropriate for people who feel disempowered by court proceedings, as found by Curtis-Fawley and Daly (2005). Furthermore, Jülich (2006), who examined the views of justice of historical sexual abuse victims, found some victims were estranged from members of their families as a result of court action.

Mills (2008) made an important point when she commented that safety should be on the victims' terms. She described the Family Wellness Programme, which supported women to develop tools to manage their own lives. She stated:

> A harm-reduction model encourages people to reflect on the danger they are being exposed to and then learn to reduce the risks, so that they are less likely to put themselves in harm's way.... Many feminist advocates resist the idea of supporting a woman who is living with her abuser because they see it as somehow, the equivalent of endorsing the abuse. But by refusing to extend support to those women who are not ready or able to leave their violent partners, these advocates isolate and alienate the victim even more.
>
> (Mills, 2008, p. 187)

Mills' comment is consistent with findings by Pennell and Francis (2005) who interviewed a group of battered women survivors. They found women were often too ashamed to tell refuge staff that they were returning to their partners. Nevertheless, refuge staff believed that a family group conference provided a way to educate the family about intimate partner violence.

Qualities of restorative justice which could increase safety

According to the data, safety was looked at in a number of ways. These were: the capacity of restorative justice to make couples safer; its potential to make couples less safe; and precautions that could be taken to enhance the safety of the process. Each of these will be addressed in turn.

One observation was that restorative justice was speedier than the criminal justice system. As discussed previously, Knaggs, et al. (2008) identified a number of safety concerns for victims, including the often lengthy duration of the criminal justice process which put victims at increased risk. This was especially in cases where the offending was denied. A number of participants in this research would have welcomed the opportunity to undergo restorative justice to improve their relationships. Both victims and perpetrators observed that had they known about restorative justice, they would have tried it at an earlier stage in their difficulties, long before they separated. On the other hand, Busch (2002) pointed out the risk of reconciliation being prioritised over the victim's safety needs. She argued that a focus on the relationship as the cause of violence may lead to a minimisation of the risks of separation violence once a couple have parted, a period well known to be dangerous (Busch, 2002; Busch & Robertson, 1994).

Nevertheless, one participant saw the potential of restorative justice to look at the relationship as a whole. He stated, "It would be a very positive thing if the emphasis is on dealing with all aspects of this relationship ... [Support people] can help this couple with the education, the relearning and monitoring of how to relate to each other."[141]

Eileen thought the restorative justice process would:

> *Give them both a chance where they're not all powerful [and in] control and dominant. That's been stripped away ... it would also then give the*

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[141] Ian: Interview I.

perpetrator an opportunity to look at themselves [to] see the consequences

of their actions, and hopefully ... motivate them to change their behaviour.

Eileen: Interview E

This way, both parties could take steps to correct unhelpful behaviours, using "tools to get on and heal themselves".[142]

To help couples cope with their difficulties in the future, support people were considered an invaluable tool, in the sense that it was part of the collective responsibility of the whānau to prevent further harm to children.[143] Some felt that restorative justice would be particularly helpful for people who wanted to remain in the relationship, since the primary relationship and the wellbeing of their family could be taken into account. One victim advocate stated:

It would be really helpful for people who were staying together to make sure it doesn't happen again, but also for those who are not. This is especially for the children; adults make choices but children can't. Anything that makes kids safer and saner has to be good.

Key informant: Interview U

The victims in Pennell and Francis' (2005) study also considered that, where possible, children should attend the conference. In this event, two or more restorative justice processes could be conducted, the first for the couple and their support people, and a second with the children and their support people present. This would be particularly appropriate in the case of teenagers, for whom having an input about their future is important. But participants felt that, as with the adults, careful screening and assessment of their suitability and/or readiness for participation in such a process would be vital. Parental responsibility was an issue raised almost invariably by the perpetrators in the study. Many saw restorative justice as offering them encouragement in custody disputes, as well as a way to

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[142] Ian, Interview I.

[143] Interview Z, Key informant.

establish safe parenting practices by estranged parents. One key informant, a men's group leader stated:

> *[Restorative justice can] restore the relationship in relation to the parental partnership for the children…. It's saying, you've obviously severed your relationship, there's no more trust or respect left … that is how you restore … mutual need for each other … so therefore you've got to become a parenting team.*

> *Key informant: Interview ZC*

Following up a restorative justice conference with another meeting to monitor completion of tasks is a practice used by some restorative justice service providers. However, less often considered is the safety of the agreements made at the conference. Dudley, whose business was affected by the intimate partner violence he and his partner were experiencing, articulated this clearly:

> *The mere fact of … being asked to document things would be enough to reinforce the events of that restorative justice conference … I would imagine that promises would have been made. And I'd like to, being a victim, see that those promises are being kept. And if they were not kept, it was documented.*

> *Dudley: Interview D*

Qualities of restorative justice that may make participants less safe

One key informant, an anger management programme leader, commented that if there was a question of violence occurring at a restorative justice process, then why have it?[144] Many variables need to be taken into account when setting up a restorative justice process. All participants in the current research recognised the importance of various factors related to facilitators. These included: gender appropriateness; skills; having a balance between academic and practical experience; routine monitoring and debriefing; having friendly and sensitive personalities; common sense; culturally appropriate behaviour; and

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[144] Interview ZB, Key informant.

education/experience in the National Network of Stopping Violence and/or National Collective of Women's Refuge. However, it was also noted that the background of facilitators could put them in positions where they could inadvertently influence the conference process or outcome. A frequently expressed concern was that the process may be manipulated. Eight participants raised this issue (three each from the key informant and perpetrator groups and two from the victim group). One perpetrator put it this way, "The concept is rather easily open to abuse if the people running it have wacky values, for ... example accepting accusations of domestic violence without any proof that violence has actually occurred."[145]

Hooper and Busch (1996), whose early critique was based on observations about mediation processes, also saw the potential for a mediator's own goals to "predominate" during a mediation session. More often, however, manipulation at a restorative justice conference is regarded as the penchant of the perpetrator. Sexual abuse survivors in Jülich's (2006) study discussed the ability of perpetrators to manipulate others. One survivor in her study commented, "What if he's one of those smart arses that goes along [to a restorative justice conference] and says all the right stuff?"(p. 254). Other manipulations possible within the type of restorative justice process raised in the data were: getting a lighter sentence or avoiding conviction; insufficient focus on the needs of victims; and where one party had an agenda alien to the concept of restorative justice (e.g. a vengeful victim or a retributive perpetrator). Thus, there was a perception in the research that restorative justice processes could be vulnerable to abuse by perpetrators, victims, and facilitators.

In addition to the manipulation of the restorative justice process, or of conference participants, minimisation of intimate partner violence was considered likely to hinder safety. A victim advocate asked:

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[145] Lawrence: Interview L.

Is the focus of the process restoring her to her rightful position as someone with dignity, a right to autonomy and is it a process where it is absolutely crystal clear that nothing justifies violence? Or is it, and this is what I think is more likely to happen, "Yeah, well, he did hit her on that occasion, but, yes, she had been less than attentive, and so we need to resolve the relationship problem and not a problem of [the violence itself], and maybe if there was a bit better communication … they could sort the relationship out."

Key informant: Interview S

He added that victims often become responsible for resolving relationship problems, which, in his view, should not be addressed until the victim is safe. This has created a problem conceptually and logically, as well as in restorative justice practice. It comes down to a "which comes first, the chicken or the egg?" situation. Most victims and all perpetrators in this study considered their relationship important, whereas victim advocates considered safety was the priority before addressing the relationship. While restorative justice provided the potential for improvement in their relationship to reduce violence, a reduction in violence in the first instance could enable them to improve the relationship. Two victims (Gayle and Alice) thought couple counselling would also be helpful, thus indicating their relationship as their priority. This dilemma could be catered for to some extent by the presence of victim advocates supporting the victim and a stopping violence programme leader supporting the perpetrator before, during and after the conference. One victim advocate observed:

I think there would need to be an assessment of where a woman was at before there was a restorative justice conference, just so the conference could be tailored to where she's at. That's all part of checking her safety along the way. I think it would be really important for the restorative justice process to be really well connected with a victim advocacy service, also with a stopping violence programme. So that's really about the opportunity to safely share information. Both before and after having the conference.

Key informant: Interview T

In keeping with the observations of much of the literature (Busch, 2002; D. Coker, 2006; Hooper & Busch, 1996) one perpetrator in the current study observed, "Men can be very intimidating. I can imagine some men in that environment could intimidate the partner [into] saying [she would] agree to things that she may not necessarily want to agree to."[146] Other significant factors described as being contra-indications to undertaking a restorative justice process were: power imbalance (which is discussed below); the involvement of drugs and alcohol; the perpetrator being unrepentant; serious mental health problems; lack of recognition of the victims' needs; and the likelihood of retribution by the perpetrator afterwards. In the next section I discuss special restorative justice practices that are applicable in these cases.

Making restorative justice safer

Many aspects of restorative justice practice which impact on the safety of all participants are part of the preparation stage. As indicated previously, this includes physical, emotional, and social/contextual safety. One key informant, a judge, stated:

> *Sometimes the victim will have unrealistic expectations about how this relationship is going to be repaired. Reality testing of all women in that situation, not to discourage them from trying to achieve a goal they want ... but to make sure they are not going into the process with unrealistic expectations, and end up with an unhappy outcome.*
>
> *Key informant: Interview O*

Zeddy's comments about the need for perpetrators to be fully informed, well supported and prepared about the possibility of feeling defensive during the restorative justice process provide an example of how the safety needs of perpetrators also need to be considered. Being given the wrong expectations and inadequate information about the process could prejudice work already done by a perpetrator in an anger management programme.

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[146] Neville, Interview N.

Accordingly, it is vital for perpetrators to be prepared for some emotional outpouring by victims, an important way perpetrators get to see the consequences of their actions. As Eileen put it, "From a victim's perspective ... [it is necessary] to put forward, 'This was my life before; this is my life now.'"[147] Taking this theme even further, Strang (2004) acknowledged that victims may arrive at the conference bitter and retributive as a result of the harm they had experienced. She stated:

> Only by acknowledging the legitimacy of these retributive emotions and permitting their expression can restorative justice be perceived as a mainstream alternative to have to the exclusive and impersonal punitive focus of the formal justice system ... Restorative justice provides the time and space for victims and perpetrators to talk about more than the price to be exacted for the wrong doing, and much of it is more salient and important ... than the question of punishment.
>
> (Strang, 2004, p. 103)

The emotional component of restorative justice is a significant way for victims to address or relieve the stress that has resulted from the offending (Fanslow & Robinson, 2004; Koziol-McLain et al., 2004). Being informed about this can additionally prepare perpetrators. Restorative justice facilitators could guide perpetrators to attend their conference armed with ideas about how they might make good the harm done. This may show the victim that they want to make things right, and had thought about how. Should the situation create potential risks, however, one restorative justice practitioner pointed out that consent to participate in a restorative justice process ran from moment to moment.[148] Thus, both parties and the facilitators (and possibly advocates for the perpetrator and victim) should have the power to stop a restorative justice conference, should the need arise. This is already the practice of many restorative justice service providers.

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[147] Eileen, Interview E.

[148] Interview Y, Key informant.

The timing of a conference is important, and in the view of Tony Marshall[149] can occur at any time for any crime, depending on the readiness of the participants. In addition, it can have a major impact on outcomes. For example, Neville pointed out that in his case, had he been given the opportunity of a restorative justice process soon after being arrested, it would have been too soon. Prior to the incident he had taken his homeless, alcoholic ex-partner on a temporary basis into his rented home when she was in desperate need of somewhere to stay. He explained:

> I think it would have been too early [to hold a restorative justice conference] because right in the midst of ... trying to get the children back into my care ... it would have been dangerous, because my ex-partner would have ... [had little] incentive ... to be completely honest, because it would have resulted in her having to leave the home.

> *Neville: Interview N*

Blatant lying in most contexts is likely to provoke a reaction, and in the restorative justice situation it would almost certainly be problematic. Thus participants need to be informed and prepared to be completely honest during the process.

Most literature refers to victims requiring the choice of attending a restorative justice process or attending voluntarily (D. Coker, 2006; Morris & Gelsthorpe, 2000; Zehr, 1990). This is primarily to ensure that neither the court nor the perpetrator coerces them into attending. Coker (2006) explained that in Navajo peacemaking processes when people self-referred, care had to be taken to ensure that abused women had not been compelled by their partners to attend. One victim advocate in the current study has, however, pointed out a serious difficulty with giving a victim the choice, when a refusal would mean there was to be no restorative justice conference. She explained:

> [What] if she chooses not to participate or remains silent and ... doesn't want to be involved in the conference? Even having that responsibility,

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[149] Personal communication from Tony Marshall, researcher of the Home Office, London, in December 1995.

having the conference go ahead or not ... I see at court, and victims are asked for their views on bail. It is very difficult for them not to give any view. They are held responsible for not participating and holding up the process, and by the perpetrator ... there may be some sort of retaliation for that.

Key informant: Interview T

This presents a dilemma when victims' willingness is a prerequisite for holding a restorative justice conference, and would be exacerbated by a perpetrator thinking that a restorative justice conference might lead to a lighter sentence.

Who should facilitate a restorative justice process is another important factor in preserving victims' safety. One victim advocate suggested it was not appropriate for a family member to facilitate a restorative justice conference as this could create further division within that community.[150] Similarly, a cultural advisor pointed out that, in the Māori sector, the choice of facilitator was very important to prevent embarrassment and loss of mana by the parties involved.[151] In her opinion, facilitators needed to be quite removed from the family/whānau. Almost all participants in this research advocated a high skill level in facilitation and a broad knowledge of domestic violence. Victim advocates believed training in this specialist area would be best obtained by attending a course of 20 weeks currently provided for victims of intimate partner violence or, either first-hand experience[152] or work experience. Nonetheless, one key informant, a judge,[153] suggested that specialisation was less important than life experience and common sense. I discuss power dynamics in relationships next.

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[150] Interview R, Key informant.

[151] Intertview V, Key informant.

[152] Interviews S and T, Key informants.

[153] Interview P, Key informant.

Power

Discussions about restorative justice practice and intimate partner violence must include a discussion of power. This is because dialogue about the contra-indications to, and practice of, restorative justice for such cases almost invariably concern "power and control", usually by the perpetrator. In fact it has now become an almost clichéd phrase in the area of intimate partner violence. According to the Concise Oxford Dictionary (Allen, 1990, p. 934), however, among the meanings of power is to have control over another person. In other words, power and control can be synonymous. Accordingly, this research has addressed power and the interrelationships within dyads, their communities, and government agencies. This section has two objectives. The first is to illustrate various aspects of power used by victims and perpetrators. The second is to relate power to various aspects of restorative justice practice in cases of intimate partner violence.

For the purpose of this research, power has been described as macro and micro power. Macro power is associated with government agencies and groups such as non-governmental organisations funded by government agencies, including some restorative justice service providers. Micro power, on the other hand, concerns the power of communications between individuals, family and/or friends, called relational power and personal power. Personal power includes: the ability of individuals to become fully informed, prioritise; make informed choices; take responsibility for their decisions; and to have outside or community interests.

The data showed that both victims and perpetrators have employed power in the macro and micro fields. As can be seen in the following quotes, the use of power can be positive and/or constructive, or negative and/or destructive. Dudley's comment illustrated the use of positive personal power. Even before things became physically violent, Dudley took precautions:

> *I recall picking up all my important documents and taking them to a friend's*
> *house for safe keeping in case things went pear-shaped, but that was a year*
> *before anything [started to get physically abusive], see there was actually*

> *plenty of time to ... put some money aside, hide things from your partner ... you set yourself up for the ... safety zone.*
>
> *Dudley: Interview D*

Christine had been subject to physical and psychological abuse from her partner. When she recognised what was happening, and had reached the point where she could take it no longer, she told him the relationship was over. After receiving further abuse, she reported him to the police. At interview she stated:

> *And I felt SO in control, I was absolutely so removed from him and there was no emotion left in me. I didn't feel like crying, I didn't feel like getting upset or shouting, I was so calm and I think it unnerved him a little bit because he was used to being in control and now I was totally in control and absolutely pulling the strings. Because he always said it would be his decision if the relationship ended. And I was making the decision that it was finishing.*
>
> *Christine: Interview C*

Having reported the abuse, Christine's account showed how the use of macro power through calling the police also gave her considerable personal power as their roles were reversed. Gayle, on the other hand, saw reporting to the police quite differently:

> *If I'd reported it and gone on living there it would have been absolute hell. Um, 'cos what could they have done? What could the police have done when there wasn't, there were threats, there was the odd kick or punch, but you know, but there was nothing they could have done really.*
>
> *Gayle: Interview G*

Thus, she saw the potential of macro power negatively. As a result, her personal power was, at that stage, used negatively.

Four perpetrators referred to their partners laying false complaints or expressing fear of abuse without reason. John had thought he was very happily married, but found out that his ex-wife had obtained a protection order by

saying she feared that he might hurt her. He commented that he thought legal aid lawyers told women that they needed protection orders:

My daughter rang me one night when I was in the supermarket and I lost the call. The protection order was on at this time and without thinking, I just re-dialled. And of course then my ex said I had breached the protection order and the police rang me and said, "You can't do that, otherwise you'll be arrested." For something as innocent as that ... But he said to me ... "Have you actually thought about getting a psych. report on your wife?"... Because he said he felt that some of the things she said were a bit strange. One of the things she said in the courtroom was ... I used to teach martial arts ... and she said that perhaps it could be that [she had this bone broken in her elbow] because I knew martial arts so well, I had broken it in her sleep and she didn't know ... which sounds a bit ridiculous, I know. But in another part of the court case she claimed that my young son would wake up at night and say he was scared ... that Daddy was chasing him. The judge said, "So he can break your arm when you're sleeping and you don't wake up, but your son wakes up crying and you wake up?" This is while he was considering the protection order.... I think the judge realised [and removed it].

John: Interview J

This showed how the negative use of macro power by a victim had impacted on this perpetrator. Another perpetrator, Neville described his experience as a perpetrator who had been reported to the police. He advised me that he had hit his ex-wife when she was drunk and had a baby in her arms.

Part of the issue is what the police have been told. So, my ex-wife had obviously told them her version and um, you know, in my opinion, made up facts about our whole relationship. So ... so, they came in with the attitude that I was a long-time abuser of seventeen years. So, um, so the, sort of handling if you like, of me, was in that sense ... You're exposed to a system that you've never been exposed to, so it's always a bit scary ... what you

don't know, so if you haven't been arrested and haven't been/gone through

that procedure, you're sort of a little unsure of what's coming next.

<p style="text-align: right;">*Neville: Interview N*</p>

Neville acknowledged that what he'd done was wrong, and that he had hit her once eight years previously. By assaulting her, he had used relational power negatively. However, he considered that his ex-wife's elaborations in terms of the extent of his abuse, impacted on the way the police treated him. Thus, his ex-wife had used macro power positively by reporting his abuse, but followed this by using it negatively, through lying about the extent of the violence. How, then, can these examples help restorative justice practice?

Power in restorative justice practice

Firstly, the data showed that power is a multi-dimensional concept in intimate partner violence. Therefore, it is important for restorative justice practitioners to understand this. Much of the literature refers to the need for a balance of power at restorative justice conferences (T. Marshall, 1999; Morris & Gelsthorpe, 2000; Zehr, 1990) however, the achievement of this balance is more complex than may be understood by many. To work top down, if a perpetrator is currently being prosecuted in the criminal justice system, it is probable that he/she is in a less powerful position than within his/her domestic environment. This has given the victim who reported the violence to the police more power, as can be seen in Christine's quote, cited above. Giving a victim disproportionate power in a conference, in addition to the power already held through incorporating the assistance of the police, could create a more adversarial situation, through increased defensiveness and stigmatising shame on the part of the perpetrator. This would effectively disrespect the perpetrator and be likely to reduce the possibility of a successful outcome. On the other hand, in cases where the victim has not reported the violence, because, for example, reporting occurred through the initiative of a neighbour, both the victim and the perpetrator are less empowered than in their domestic environment. Because there, they make

decisions between them. In these circumstances it could be helpful for the criminal justice process to be deferred for some months after a restorative justice conference and after a review of the situation has been carried out, particularly with respect to the fulfilment of the outcomes from the conference.

The presence of appropriate support people can help a couple gain equal power at a restorative justice conference. This needs to be an integral part of thorough preparation. Victim advocate S was sceptical about this being carried out in practice. He observed:

> *Battered women [may] turn up with ... a Refuge woman ... that'll be the extent of it. So they'll be unsupported. There won't be any preparatory work done with the woman to get her to a place where she is empowered.... [Regarding] all the work that needs to be done to make sure she's absolutely safe, I don't think we're going to see our justice system prepared to commit enough resources to make it work properly. Therefore I don't think we should do it.*
>
> *Interview S, Key informant*

Perpetrator and men's group leader, Zeddy also emphasised that support needs to be the right support. The role of these support people could be to provide and equalise relational power, preferably in a restorative justice conference that is "not anyone–centred" as suggested by a restorative justice practitioner.[154] Moreover, as stated by Morris and Gelsthorpe (2000), these support people can continue to give support and oversight after the restorative justice conference as well.

The influence of the facilitator(s) has already been discussed above, in terms of the potential for them to impose (consciously or unconsciously) their own biases onto the couple. Therefore, given that the restorative justice service provider is likely to be a non-governmental organisation was, as a consequence, a form of macro power, facilitators need to be aware of their influence in conjunction with the

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[154] Interview Y, Key informant.

criminal justice system. Whether or not the matter was within the criminal justice system, facilitators needed to be mindful of their responsibility and manage any potential biases. Victim advocates S and T considered that facilitators should be specialists in intimate partner violence. Victim advocate S commented:

> *Having generic family lawyers doing domestic violence, generic judges doing domestic violence, many [have] assumptions of how the world is, what options are open to people. Many of those assumptions that are perfectly valid in a life without violence go right out the door once you introduce violence. If [facilitators] come to [a domestic violence case] bringing with them those assumptions and beliefs, they're just dangerous.*
>
> *Key informant: Interview S*

Victim advocate T also observed:

> *It would be great if they had some training in domestic violence as well.... if they had worked as [victim] advocates in the past, or as men's group facilitators. [Then they would have] really clear insight into the behaviour and dynamics that can happen and how collusion can happen really easily when you are looking at violence.... Because of the collusion element, [it would be a good idea] to have a man and woman facilitate.*

The use of co-operation between the restorative justice service provider, and victim and stopping violence advocates, as suggested by one victim advocate,[155] may go some way to manage the power of facilitators. The personal power of participants, however, can be enhanced through restorative justice.

A well-managed restorative justice conference could be the catalyst for each party to partly develop their own personal power and ways to use it positively. By this, I mean they could perhaps be guided towards prioritising, becoming fully informed before making decisions, taking responsibility for those decisions, and establishing outside activities. Some knowledge of solution-focused brief therapy, used

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[155] Interview T, Key informant.

carefully, could also be useful here. This is already happening in part. One key informant (a restorative justice practitioner) advised that a routine outcome of intimate partner violence conferences was often an undertaking to become involved in a community activity.[156]

Conclusion

This research, albeit based on a small, non-randomised sample, has shown that more inter-agency talk is necessary to increase understandings, thereby giving couples another much-needed option for dealing with intimate partner violence. Intimate partner violence is already being conferenced with a variety of restorative justice models in New Zealand, and could be another layer in the criminal justice and/or societal response to intimate partner violence. It appears likely that using this process would increase formal reporting, or make informal reporting more effective. At present many victims of intimate partner violence remain in dangerous situations, lacking information, support, and a way forward. This research has shown that most of these victims and perpetrators would have welcomed a constructive, fair, flexible, and less adversarial approach, which could have produced better outcomes for them and their families. Safety issues with restorative justice are acknowledged but ways of addressing them have been identified, as have the safety advantages of restorative justice over the status quo. Furthermore, restorative justice can be more culturally appropriate for some ethnic groups. The power, context and emotional components of intimate partner violence can also be given greater focus through restorative justice, thus addressing their problems from a broader perspective than currently occurs in the criminal justice system.

The next chapter concludes this thesis with a brief summary of its contents, and discussion about its main contributions, implications for policy and suggested research.

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[156]Interview X, Key informant.

Chapter 9: Conclusions

Introduction

This thesis set out to address the question, "To what extent would the use of restorative justice improve reporting of intimate partner violence?" While some restorative justice service providers in New Zealand have offered their services to couples experiencing intimate partner violence (see Kingi et al., 2008; Tisdall et al., 2007), the concept of restorative justice was new to most of the victims and perpetrators in this research. Much of the literature reported reservations on the potential of restorative justice to address intimate partner violence. However, many of the participants in this study expressed the view that the use of restorative justice would have encouraged them to seek help, supporting the positive results of Kingi et al.'s (2008) research.

The research participants included victim advocates, men's group leaders, judges, cultural advisers and restorative justice practitioners, as well as victims *and* perpetrators of intimate partner violence. This was the first point of difference between this PhD study and many of the previous overseas studies about intimate partner violence reported in the literature, whose participants were drawn almost exclusively from either, victim groups or perpetrators, rather than both.

The aim of this chapter is to highlight the key contributions of the study, which focus on a reconceptualising of "reporting" and the use of power in intimate partner violence. This study critically examined the context and prevalence of intimate partner violence in New Zealand. The review of literature showed that although prevalence varied widely across population and health-based surveys, its extent is still unknown due to under-reporting, the use of varied definitions by researchers, gender factors, traditional roles and different cultural norms, among

other factors. An operational definition of intimate partner violence was constructed for the purposes of this study as:

> physical, sexual and psychological violence between people over 20 years of age in a current or past intimate heterosexual or same sex relationship, who may or may not live together, who may or may not be married, where the violence is characterised by dominance and subordination, intentional force, with or without the potential to cause death. Physical violence can result in pain, injury, impairment or disease; sexual violence includes any forced, coerced or exploitative sexual behaviour or threats imposed on a person; psychological and emotional violence is any behaviour that causes anguish or fear, including intimidation, harassment, damage to property, threats of physical or sexual violence, or deprivation of decision-making powers.

Feminist methodology using the ethnographic research methods of in-depth interviews, autoethnography, and observation were employed in this study. The research found that, of all the participants, 79% considered that restorative justice would improve reporting of intimate partner violence, and no victims or perpetrators excluded the possibility of using restorative justice. This led to the critical question of what constitutes reporting?

Reconceptualising Reporting

Reporting can be formal or informal. Most literature on reporting focused on one form of reporting, that is, reporting intimate partner violence to the police so that the criminal justice process would become involved (Carswell, 2006; Felson et al., 2005; Mayhew & Reilly, 2006). Despite the fact that many victims of intimate partner violence told a friend or family member this was not conceptualised in the literature as reporting.

Research for this PhD thesis showed that there were a number of ways that victims and perpetrators reported intimate partner violence. Fanslow and Robinson (2010) found that 77% of the women in their research into help-seeking behaviour of victims of intimate partner violence told someone about the abuse (including 36%

who reported the violence to the police). Equally as important were their findings that 23% of victims of intimate partner violence told no one, and that only a very small number (5.6%) reported only to the police.

This PhD study considered that the reporting of intimate partner violence to police was very important. However, for the purpose of developing a more comprehensive approach that addressed the needs of victims and perpetrators this research suggested a reconceptualising of what constitutes reporting. What was previously considered "informal reporting" is a crucial means of victims seeking and getting help, and needs to form part of the reporting framework. Victims who may not go to the police do not necessarily remain silent, or keep their experience of intimate partner violence a secret. They tell someone discreetly, a friend or family member without making waves, or someone else in the community, a colleague, or a professional person in their lives. It is this understanding that informed the reconceptualising of what constitutes reporting in a framework that consists of five forms of reporting as illustrated in Figure 9.1 below.

These forms consist of reporting to:
1. Family-Whānau-Close Friends
2. Acquaintances-Colleagues-Employers
3. Health Provider-Paramedics-School -Counsellor
4. Women's Refuge-Men's Group-Health Clinics
5. Police

Figure 9.1: Reporting intimate partner violence
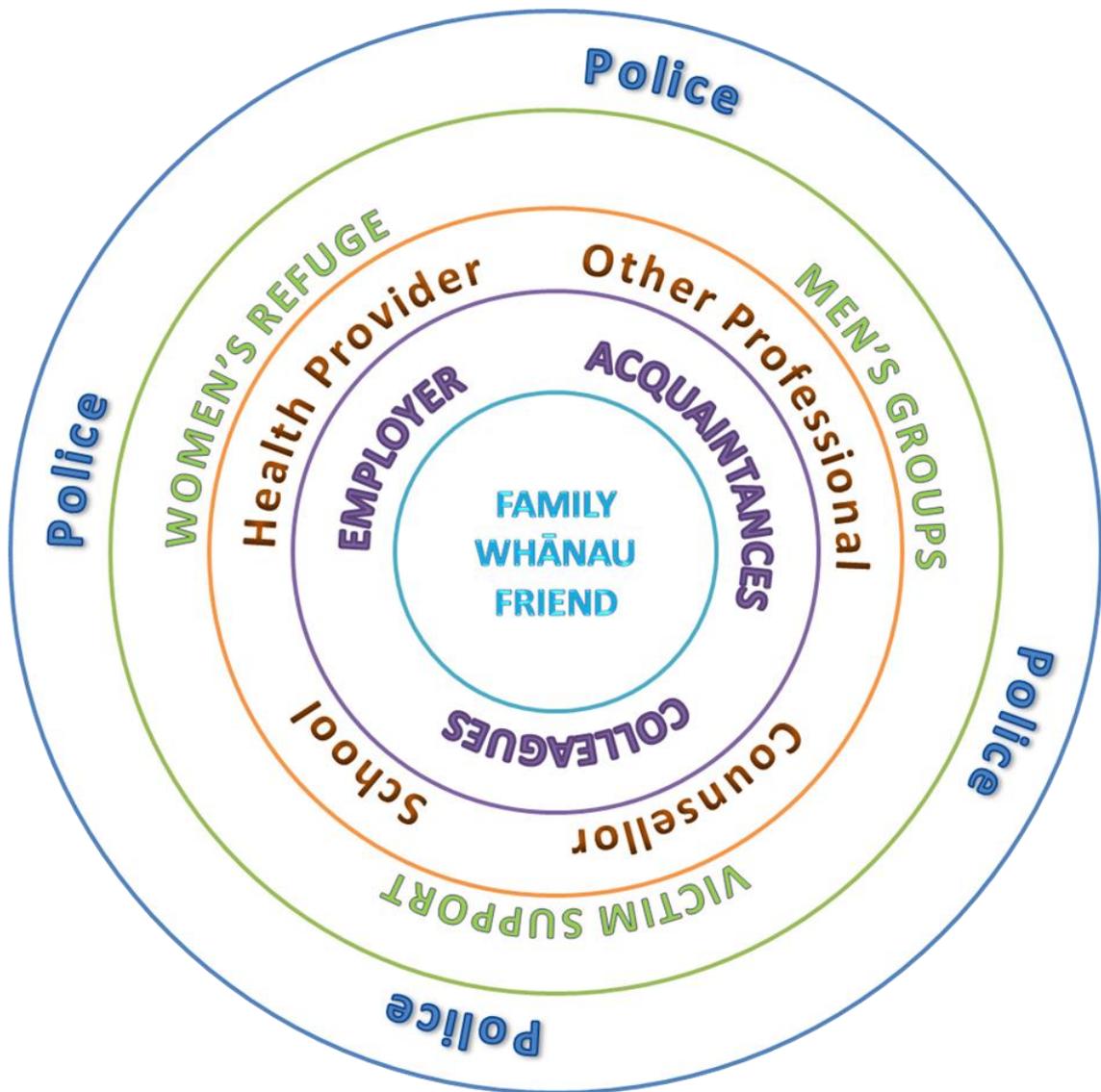
These different forms are outlined below. While *victim* is referred to in this model, perpetrators can, and do, sometimes report intimate partner violence.

1   **Reporting to** Family-Whānau-Close Friends

The victim reports to a close family member or friend, often in confidence, that they are experiencing intimate partner violence.

2   Reporting to Acquaintances-Colleagues-Employers

The victim reports to an acquaintance, colleague, employer, that they are experiencing violence. This may be voluntary by way of seeking support on what to do, or involuntary such as dropping hints during conversations. In any case the victim may be seeking help.

3   Reporting to Health Provider-Paramedic-Counsellor

A victim is compelled to report intimate partner violence to a professional such as a health provider, counsellor, First Aid officer or paramedic called in when victims have "accidents" at home. This is what has been referred to in some literature as disclosure. Or perhaps a child reports to their teacher at school that their parent was being subjected to intimate partner violence. Intimate partner violence is not actively reported in this stage; it is discovered accidentally or by astute questioning.

4   Reporting to Women's Refuge-Men's Group-Health Clinic

The victim reports to an agency such as a health clinic, Women's Refuge or men's group if the victim is male. Some perpetrators may in the course of seeking help also report their actions to a support group. The difference between this stage and the previous stage is that in this instance the victim is actively reporting.

5:   Reporting to police.

This is the most obvious form of reporting where the victim (or someone) calls the police, or the victim takes refuge at a police station.

The aim of this model is to demonstrate that victims are likely to report to someone very close to them but over time they might report to people who are increasingly more distant from themselves. Hence the "onion skin" model has been used to depict this. Reports made to any of the people or agencies identified in the model could occur at any time. There is some overlap between the various stages, and it could be debatable as to which reporting sits in which stage. The reconceptualising

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of reporting demonstrates that reporting occurs in many different ways. Acknowledgment of informal and accidental disclosures enables opportunities for restorative responses that do not require a formal report to the police. Awareness of specialist restorative justice programmes might encourage self-referral, particularly in the early stages of intimate partner violence. At each stage of this model victims are demonstrating personal power. Furthermore, each offers an opportunity for a safety plan to be created.

The question of power in intimate partner violence

Power is integral to intimate partner relationships and can take many forms. Power can be used positively as well as negatively. Intimate partner violence is an activity where the negative use of power at micro (personal and relational) and macro levels can be highly destructive for victims, perpetrators and their families. Intimate partner violence has the potential to escalate, and keeping it secret increases its potential to spiral to unmanageable and often homicidal levels. Both victims and perpetrators exercise personal power through reporting or not reporting. By reconceptualising reporting, this framework has the potential to empower victims particularly, and the use of restorative justice processes may increase the chances of victims to report intimate partner violence.

In relationships that are sound and functional, power is distributed equitably, often with one partner taking the more powerful role in one or more aspects of their lives, the other partner taking responsibility for different parts. In such partnerships, interactions tend to be calm and respectful, with little evidence of a hierarchy. However, in dysfunctional relationships, problems based on power imbalance and its misuses are manifest. As discussed in Chapter 1, Johnson (2006) identified four types of intimate partner violence: intimate terrorism; violent resistance; situational couple violence; and mutual violence. The differences in intimate partner experiences are crucial to this thesis. Johnson's (2006) warning that these should not all be treated as one phenomenon is very significant. Intimate terrorism can be attributed to gross misuse and imbalance of power. It would be

likely to require different treatment or management than what would be required for situational couple violence, for example. Using the same process to deal with these two types of intimate partner violence could be extremely counterproductive. As Johnson (2006) suggested, to intervene effectively in individual cases of intimate partner violence, or make useful policy recommendations, these distinctions need to be made. Thus, each case of intimate partner violence needs to be assessed on its own merits, rather than a blanket approach used for all. This new framework for understanding reporting recognises that each form of reporting is an expression of the level of personal power (or disempowerment) used. Recognising these different forms of reporting and the potential for restorative justice in each of them enhances the opportunity for dealing with intimate partner violence in its early development.

The dynamics of power in relationships means that the more empowered the victim feels the more likely they are to report intimate partner violence. The degree of empowerment is related to how much they feel in control of those factors that this thesis has identified as barriers to reporting, such as fear of negative consequences of reporting to the police. The reconceptualising of reporting together with the opportunity to use restorative justice in each of these forms of reporting may enable victims to become more empowered to report. Brenda summarises this most eloquently:

> *I think before you even report* [to the police]*, restorative justice [could be] made available. I think restorative justice is a very good platform. If I had known of restorative justice and if [it] was available, it would have been a marvellous way.*

This clearly shows that the use of restorative justice has the potential to improve the reporting of intimate partner violence across the five forms of reporting conceptualised in this thesis.

Implications for policy and practice

A summary of implications for policy and practice is outlined below.

Victims' Rights Act 2002

The Victims' Rights Act 2002 should be amended as follows:

Remove from the definition of "victim" the words, "A victim does not include another person charged (whether as principal or party or accessory) the commission of, or convicted, or found guilty of, or pleads guilty to that offence or an offence relating to the same incident". This will then be more in keeping with the police Risk Assessment and Intervention document (New Zealand Police, 2006), which states in 4.3.3(l), "Recognise that some clients may be both a perpetrator and a victim of family/whānau violence." Furthermore, it will better accommodate dual arrests.

Police

1. Form POL 400 should be amended to include the questions, "Were you afraid?" and "Are you afraid to be at home with him/her?" to be asked of both parties, as a means of assessing whether one or both parties are victims or perpetrators, especially when dual arrest is being contemplated.

2. In cases of court-referred restorative justice conferences, a copy of the restorative justice report should be placed on the police file to enable the police to be informed about its outcomes.

3. Police should receive training into how to deal appropriately and sensitively with male victims of intimate partner violence.

4. Suggested police procedure is presented pictorially over the page in Figure 9.2.

Figure 9.2: Police Procedure Incorporating IPV and RJ
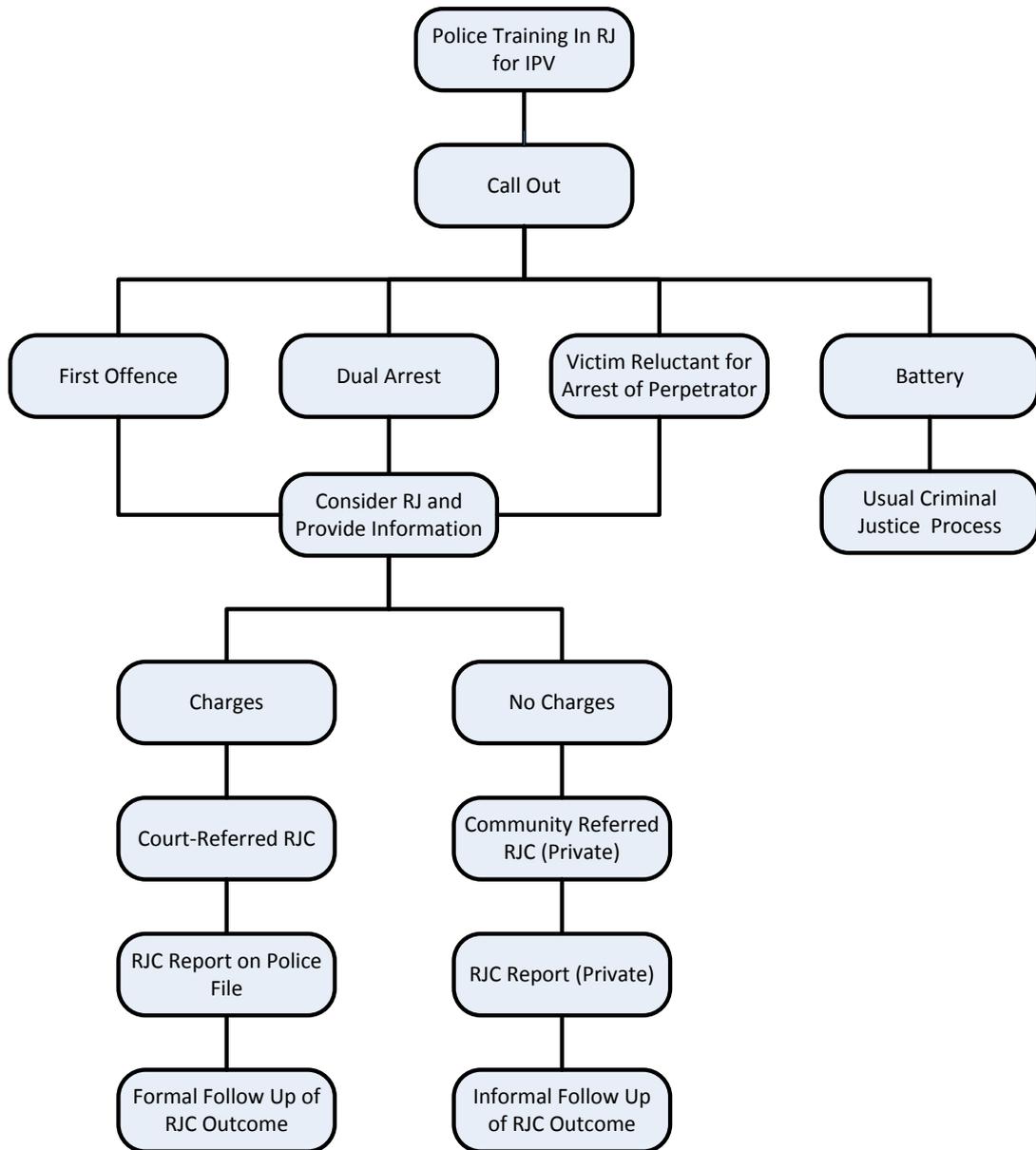
Restorative justice policy and practice

1. Service provider groups addressing intimate partner violence with restorative justice must be a specialist service with expertise in the complexities of intimate partner violence.

2. Funding should be readily available to specialised restorative justice service providers who have demonstrated appropriate training, accountability and safety standards.

3. Facilitators should have access to supervision and ongoing professional development.

4. Facilitators should be aware of the desired outcomes of the victim and perpetrator.

5. Facilitators should assess whether restorative process should include one or both participants or other family members, and whether multiple conferences are indicated.

6. Preparation for the restorative justice conference should involve a rigorous assessment for risk and readiness.

7. Restorative justice facilitators must have access to all relevant information.

8. The language used should promote open communication.

9. A co-gender facilitation team should include specialist support people for the victim and perpetrator.[157]

10. Facilitators should address contextual, emotional and outcome needs of the participants at a conference as appropriate.

Areas for further research

The results of this research have indicated the need for further research into the following areas: a quantitative study into the opinions and experiences of victims and perpetrators of intimate partner violence about the use of restorative justice and the criminal justice system; the subsequent perpetration and reporting of intimate partner violence after dual arrests; effectiveness and types of victims' resistance; emotional responses by both perpetrators and victims dealing with intimate partner violence and how these affected the context of offending for both parties; the contexts of victims' previous offending; police and other agency responses to men as victims; police decision-making and the use of discretion regarding intimate partner violence; and finally, examination of the reconceptualised model for reporting and its integration with the four types of intimate partner violence identified by Johnson (2006).

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[157] Project Restore, an Auckland based restorative justice provider group addressing sexual violence, uses a similar model.

This research highlighted dissatisfaction about the assistance currently available to couples experiencing intimate partner violence. Not only were those directly affected frustrated by this, but so too, were people working in the field. The study also demonstrated the importance placed by victims and perpetrators on their relationships, including those of their families. The use of power was shown to be more complex than was previously considered, and reporting of intimate partner violence wider, with potentially more benefits, than formal reporting alone. Unlike the criminal justice system, specialised restorative justice processes could cater for these factors, and in the process, interrupt the tide of intergenerational violence.

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By excluding restorative justice in regards to domestic violence, how do you get over that interface with the partner who's probably still going to be there at the end of the day? Not that I'm down-playing anger management courses ... They're vital, but obviously there's got to be dialogue with the [couple]. I know there are issues with power and control, etc., but you've got to try it.... As a District Court Judge, again [I say], you wouldn't do it unless everyone was singing from the same hymn book.

Interview P, Key informant

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Chapter 10: Glossary of Māori words and concepts used in the thesis

Hapu	smaller subset of iwi
Iwi	tribal affiliation
Karakia	prayer
Māori	indigenous people of New Zealand
Mana	influence, prestige, honour
Mana whenua	trusteeship of the land
Mana tangata	indigenous rights
Marae	meeting area, focal point of settlement, courtyard
Tangata whenua	people of the land
Tapu	potential, sacred quality, not to be defiled
Tikanga Māori	customs of Māori
Tino rangatiratanga	possession, chieftainship, self determination
Whānau	family or extended family
Whānau hui	gathering of extended family

Appendices

Appendix 1: Formal Documentation

AUT

UNIVERSITY

TE WĀNANGA ARONUI O TAMAKI MAKAU RAU

MEMORANDUM

To: Love Chile

From: **Madeline Banda** Executive Secretary, AUTEC

Date: 20 December 2006

Subject: Ethics Application Number 06/193 **Restorative justice: a way forward for domestic violence?**

Dear Love

I am pleased to advise that the Auckland University of Technology Ethics Committee (AUTEC) approved your ethics application at their meeting on 9 October 2006, subject to the following conditions:

1. Provision of satisfactory responses to the following points from AUTEC's memo of 25 October 2006:

   4.   The response to section F.4 of the application must be reflected in the Information Sheets;

   5.c.   Amendment of the Information Sheet for victims and offenders by inclusion of information about the screening criteria and provision of an option to withdraw by the researcher as well as the participants.

I request that you provide the Ethics Coordinator with written evidence that you have satisfied the points raised in these conditions at your earliest opportunity. Once this evidence has been received and confirmed as satisfying the Committee's points, you will be notified of the full approval of your ethics application.

You may not of course commence research until full approval has been confirmed. You need to be aware that when approval has been given subject to conditions, full approval is not effective until *all* the concerns expressed in the conditions have been met to the satisfaction of the Committee.

To enable us to provide you with efficient service, we ask that you use the application number and study title in all written and verbal correspondence with us. Should you have any further enquiries regarding this matter, you are welcome to contact Charles Grinter, Ethics Coordinator, by email at charles.grinter@aut.ac.nz or by telephone on 921 9999 at extension 8860.

Yours sincerely

Madeline Banda

Executive Secretary

Auckland University of Technology Ethics Committee

Cc: Anne Hayden anneda@xtra.co.nz

MEMORANDUM

Auckland University of Technology Ethics Committee (AUTEC)

To: Love Chile

From: **Madeline Banda** Executive Secretary, AUTEC

Date: 30 March 2007

Subject: Ethics Application Number 06/193 **Restorative justice: a way forward for domestic violence?**

Dear Love

Thank you for providing written evidence as requested. I am pleased to advise that it satisfies the points raised by the Auckland University of Technology Ethics Committee (AUTEC) at their meeting on 9 October 2006 and that as the Executive Secretary of AUTEC I have approved your ethics application. This delegated approval is made in accordance with section 5.3.2.3 of AUTEC's *Applying for Ethics Approval: Guidelines and Procedures* and is subject to endorsement at AUTEC's meeting on 16 April 2007.

Your ethics application is approved for a period of three years until 30 March 2010.

I advise that as part of the ethics approval process, you are required to submit to AUTEC the following:

- A brief annual progress report indicating compliance with the ethical approval given using form EA2, which is available online through *http://www.aut.ac.nz/research/ethics*, including when necessary a request for extension of the approval one month prior to its expiry on 30 March 2010;

- A brief report on the status of the project using form EA3, which is available online through *http://www.aut.ac.nz/research/ethics*. This report is to be

> submitted either when the approval expires on 30 March 2010 or on completion of the project, whichever comes sooner;

It is also a condition of approval that AUTEC is notified of any adverse events or if the research does not commence and that AUTEC approval is sought for any alteration to the research, including any alteration of or addition to the participant documents involved.

You are reminded that, as applicant, you are responsible for ensuring that any research undertaken under this approval is carried out within the parameters approved for your application. Any change to the research outside the parameters of this approval must be submitted to AUTEC for approval before that change is implemented.

Please note that AUTEC grants ethical approval only. If you require management approval from an institution or organisation for your research, then you will need to make the arrangements necessary to obtain this. Also, should your research be undertaken within a jurisdiction outside New Zealand, you will need to make the arrangements necessary to meet the legal and ethical requirements that apply within that jurisdiction.

To enable us to provide you with efficient service, we ask that you use the application number and study title in all written and verbal correspondence with us. Should you have any further enquiries regarding this matter, you are welcome to contact Charles Grinter, Ethics Coordinator, by email at charles.grinter@aut.ac.nz or by telephone on 921 9999 at extension 8860.

On behalf of the Committee and myself, I wish you success with your research and look forward to reading about it in your reports.

Yours sincerely

Madeline Banda

Executive Secretary

Auckland University of Technology Ethics Committee

Cc: Anne Hayden anneda@xtra.co.nz

MEMORANDUM

Auckland University of Technology Ethics Committee (AUTEC)

To:	Love Chile
From:	**Madeline Banda** Executive Secretary, AUTEC
Date:	1 October 2008
Subject:	Ethics Application Number 06/193 **Why rock the boat? Non-reporting and/or avoiding resolutions for intimate partner violence.**

Dear Love

I am pleased to advise that as Executive Secretary of the Auckland University of Technology Ethics Committee (AUTEC), I have approved minor amendments to your ethics application, allowing a change of focus and title and the use of a focus group regarding non-reporting. This delegated approval is made in accordance with section 5.3.2 of AUTEC's *Applying for Ethics Approval: Guidelines and Procedures* and is subject to endorsement at AUTEC's meeting on 13 October 2008.

I remind you that as part of the ethics approval process, you are required to submit the following to AUTEC:

- A brief annual progress report using form EA2, which is available online through *http://www.aut.ac.nz/about/ethics*. When necessary this form may also be used to request an extension of the approval at least one month prior to its expiry on 30 March 2010;

- A brief report on the status of the project using form EA3, which is available online through *http://www.aut.ac.nz/about/ethics*. This report is to be submitted either when the approval expires on 30 March 2010 or on completion of the project, whichever comes sooner;

It is a condition of approval that AUTEC is notified of any adverse events or if the research does not commence. AUTEC approval needs to be sought for any

alteration to the research, including any alteration of or addition to any documents that are provided to participants. You are reminded that, as applicant, you are responsible for ensuring that research undertaken under this approval occurs within the parameters outlined in the approved application.

Please note that AUTEC grants ethical approval only. If you require management approval from an institution or organisation for your research, then you will need to make the arrangements necessary to obtain this. Also, if your research is undertaken within a jurisdiction outside New Zealand, you will need to make the arrangements necessary to meet the legal and ethical requirements that apply

within that jurisdiction. When communicating with us about this application, we ask that you use the application number and study title to enable us to provide you with prompt service. Should you have any further enquiries regarding this matter, you are welcome to contact Charles Grinter, Ethics Coordinator, by email at charles.grinter@aut.ac.nz or by telephone on 921 9999 at extension 8860.

On behalf of the AUTEC and myself, I wish you success with your research and lo ok forward to reading about it in your reports.

Yours sincerely

Madeline Banda

Executive Secretary

Auckland University of Technology Ethics Committee

Cc: Anne Hayden anneda@orcon.co.nz

Participant Information Sheet Victims and Offenders

Date Information Sheet Produced:

5 March 2007, amended 26 September 2008

Project Title

Why rock the boat? Non-reporting and/or avoidance of resolutions for intimate partner violence

An Invitation

- I am Anne Hayden, a student at the Institute of Public Policy at Auckland University of Technology. I would like you to join my research project, which is for my Doctor of Philosophy. Your participation is entirely voluntary and you may withdraw at any time to up until the analysis of data has begun.

What is the purpose of this research?

- To provide information to professionals working in the area of intimate partner violence, reasons for low reporting rates of intimate partner violence.

- To provide information about the views of professionals working with intimate partner violence which can help us to understand this issue.

- To provide information to professionals in the criminal justice system and the people who organise and conduct restorative justice conferences to help improve the quality of their services for people experiencing intimate partner violence.

How was I chosen for this invitation?

You were recommended by one of the organisations participating in this study (such as restorative justice groups, women's refuges, Corrections, Victim Support and men's groups) as someone who had something to offer. The screening criteria is enclosed for your information.

What will happen in this research?

There are two groups of participants in this research, and what happens depends on which of these groups you come to.

1. **If you were, or were not involved in the criminal justice system, and either chose not to, or would not choose to attend a restorative justice conference.** You will be invited to join a focus group, which would take approximately one and a half hours.

I might ask you if your case could be one of the case studies for this research. This may require a further interview of approximately another hour.

2. **If you were not involved in the criminal justice system**. You will be invited to join a focus group, which would take approximately one and a half hours. I might ask you if your case could be one of the case studies for this research. This may require a further interview of approximately another hour.

Notes will be taken of the focus groups by me and/or a note taker. The purpose of these groups is to talk about a few questions I will put to the meeting.

Notes will be taken of any interviews and I will ask your permission to tape them.

I might get some information about you from third parties such as the court, Victim Advisers, or judge (such as sentencing notes or Summary of Facts), or the agency that referred you (contact details).

What are the discomforts and risks?

It can be difficult to talk about sensitive matters. Talking about bad times can bring it all back; even make you feel a little depressed. You might have concerns that confidential information you provide could be divulged to a third party.

How will these discomforts and risks be kept to a minimum?

If you take part in the research project you have the right to:

- Refuse to answer any particular question and to leave the project at any time up until the analysis of data has begun.

- Ask any questions about the project at any time.

- Provide information on the understanding that it is completely confidential. Your information will be used in such a way that you remain anonymous. It will not be possible to identify you in any reports, presentations or articles written on the project.

- You and I are both free to terminate the interview at any stage of the meeting.

If you experience any discomfort I will refer you to any of the AUT counselling services. This is available to you free of charge, for up to three consultations should you need them. I would need your permission to pass on your contact details to them.

People who participate in focus groups will sign confidentiality agreements to protect each other's information.

What are the benefits?

- You will be able to give your views on restorative justice being used to resolve intimate partner violence and domestic violence.

- You will be able to give your views on the criminal justice system

What compensation is available for injury or negligence?

Compensation is available through the Accident Compensation Corporation within its normal limitations.

How will my privacy be protected?

Analysed data may be kept for future publications and presentations in an academic context. However only I and my supervisors will have access to information which might identify you and will be stored in a secure place in AUT. Any note takers or transcribers will have signed a confidentiality agreement. Material on my computer will be protected by a password that only I know. After this it will be stored in a secure place at the Auckland University of Technology. At the end of the project all tapes and transcripts will be offered back to you. If you don't want them they will be destroyed. Tapes will be destroyed by removing tape from cassette and burning it and hard copies of transcripts will be shredded. Any files that identify you will be destroyed – hard copy will be shredded and soft copy will be deleted from my computer/s. Any backup disks/CDs/DVDs that can identify you will be destroyed by opening the case, removing the media and burning it.

Consenting to join a focus group includes agreement to maintain confidentiality about the identity and information disclosed by other participants, which all participants will sign.

What are the costs of being involved?

Your time.

How long do I have to consider this invitation?

I will contact you, 2 to 3 weeks after you have received this information sheet.

How do I agree to be involved?

If you agree to participate in the research you will need to sign a consent form before becoming involved.

Will I receive the results of this research?

A summary of findings will be available to all participants.

What do I do if I am worried about this ?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Dr Love Chile, email: love.chile@aut.ac.nz, telephone, (09) 921 9999, extn 8312.

Concerns regarding the conduct of the research should be notified to the Executive Secretary, AUTEC, Madeline Banda, *madeline.banda@aut.ac.nz* , 921 9999 ext 8044.

Whom do I contact for to learn more about this?

Researcher Contact Details:

Anne Hayden   Email: anneda@orcon.net.nz

Telephone: 027 2300343

Project Supervisor Contact Details:

Dr Love Chile   Email: love.chile@aut.ac.nz

Telephone: (09) 921 9999, extn 8312

Approved by the Auckland University of Technology Ethics Committee on 30 March 2007, AUTEC Reference number 06/193.

Participant Information Sheet
Professionals

Date Information Sheet Produced:

5 March, amended 26 September 2008

Project Title: Why rock the boat? Non-reporting and/or avoidance of resolutions
for intimate partner violence

An Invitation

- I am Anne Hayden, a student at the Institute of Public Policy at Auckland University of Technology. I would like you to join my research project, which is for my Doctor of Philosophy. Your participation is entirely voluntary and you may withdraw at any time to up until the analysis of data has begun.

What is the purpose of this research?

- To provide information to professionals working in the area of intimate partner violence, reasons for low reporting rates of intimate partner violence.
- To provide information about the views of professionals working with intimate partner violence which can help us to understand this issue.
- To provide information to government officials in the criminal justice system and the people who organise and conduct restorative justice conferences to help improve the quality of their services for people experiencing intimate partner violence.

How was I chosen for this invitation?

You were selected because you are an expert in a relevant field, a source of potential participants, or you have been involved in a referral of a couple dealing with domestic violence to a restorative justice conference.

What will happen in this research?

If you are either a source of potential participants or involved in a referral, you will be asked to screen people who are suitable for the research, in which case the Screening Criteria will be enclosed, along with some Participant Information Sheet: Victims and Offenders documents. Using the Screening Criteria to select victims and offenders, you will be asked to give copies of the Participant Information Sheet: Victims and Offenders to suitable people. Furthermore you will be asked to keep a list of the contact details and dates of distribution and keep me advised on an ongoing basis so that I can contact the potential participant within 2-3 weeks.

Similarly, if you are a member of the judiciary, a court victim adviser, or a restorative justice coordinator, I will interview you at a time convenient to you.

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Interviews will take approximately one hour. It is also possible that I would like to use one of your referrals to the research as a case study. Therefore, I might want to have an additional half hour interview.

What are the discomforts and risks?

You might have concerns that confidential information you provide could be divulged to a third party. You may feel uncomfortable saying adverse things about a person.

How will these discomforts and risks be alleviated?

If you take part in the research project you have the right to:

- Refuse to answer any particular question and to leave the project at any time up until the analysis of data has begun.
- Ask any questions about the project at any time.
- Provide information on the understanding that it is completely confidential. Your information will be used in such a way that you remain anonymous. It will not be possible to identify you in any reports, presentations or articles written on the project.

If you experience any discomfort I will refer you to any of the AUT counselling services. This is available to you free of charge, for up to three consultations should you need them. I would need your permission to pass on your contact details to them.

- You and I are both free to terminate an interview at any stage of a meeting.

What are the benefits?

- You will be able to give your views on restorative justice and the criminal justice system's response to intimate partner violence.

How will my privacy be protected?

Analysed data may be kept for future publications and presentations in an academic context, and will be kept in a secure place in AUT. However only my supervisors and I will have access to information which might identify you. Any note takers or transcribers will have signed a confidentiality agreement. Material on my computer will be protected by a password that only I know. After this it will be stored in a secure place at the Auckland University of Technology. At the end of the project all tapes and transcripts will be offered back to you. If you don't want them they will be destroyed. Tapes will be destroyed by removing tape from cassette and burning it and hard copies of transcripts will be shredded. Any files that identify you will be destroyed – hard copy will be shredded and soft copy will be deleted from my computer/s. Any backup disks/CDs/DVDs that can identify you will be destroyed by opening the case, removing the media and burning it.

What are the costs of participating in this research?

Your time

What opportunity do I have to consider this invitation?

I will contact you, 2 to 3 weeks after you have received this information sheet.

How do I agree to participate in this research?

If you agree to participate in the research you will need to sign a consent form before becoming involved.

Will I receive feedback on the results of this research?

A summary of findings will be available to all participants.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Dr Love Chile, email: love.chile@aut.ac.nz, telephone, (09) 921 9999, extn 8312.

Concerns regarding the conduct of the research should be notified to the Executive Secretary, AUTEC, Madeline Banda, *madeline.banda@aut.ac.nz* , 921 9999 ext 8044.

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Approved by the Auckland University of Technology Ethics Committee on 30 March 2007 AUTEC Reference number 06/193.

Consent Form
Interviews

Project title: **Restorative Justice: A Way Forward for Domestic Violence?**
Project Supervisor: Drs Love Chile, Allison Morris and Shirley Jülich
Researcher: Anne Hayden

○ I have read and understood the information provided about this research project in the Information Sheet dated 5 March 2007
○ I have had an opportunity to ask questions and to have them answered.
○ I understand the interview(s) will be audio-taped and transcribed.
○ I understand I may withdraw myself or any information that I have provided for this project at any time up until analysis of data has begun, without being disadvantaged in any way.
○ At the end of the project or if I withdraw, I understand all relevant information including tapes and transcripts, or parts thereof, will be returned to me or destroyed.
○ I agree to take part in this research, and understand the data may be used in future publications and presentations in an academic context in such a way that I cannot be identified.
○ I wish to receive a copy of the report from the research (please tick one): Yes○   No○

Participant's signature:

....……………………………………………………………
Participant's name:

....……………………………………………………………
Participant's Contact Details (if appropriate):

…………………………………………………………………………………..
…………………………………………………………………………………..
……………………………………………………………………………   Date:

Approved by the Auckland University of Technology Ethics Committee on 30 March 2007 AUTEC Reference Number 06/193

Note: The Participant should retain a copy of this form.

Interview guide for professionals

Tell me about your experience of working with cases of intimate partner violence

What is your role usually in this type of case?

Approximately what percentage of cases you know about report IPV to the Police?

What are some of their reasons for reporting?

What are some of their reasons for not reporting IPV to the police?

What are your views about restorative justice for IPV?

Why do you think that?

What do you think about the possibility of people knowing they could have a restorative justice conference if they reported? Do you think this might increase reporting of IPV?

What would make a restorative justice conference more acceptable in these circumstances in terms of:
   (a) Facilitator training

   (b) Facilitator experience

   (c) Facilitator knowledge

   (d) Cultural sensitivity

   (e) Accountability

   (f) Safety measures

   (g) Follow-up

What conditions would prevent you from making a referral; /facilitating a restorative justice conference?

Do you have suggestions about strategies for making rj a choice for more IPV cases?

Question Guide for Interviews
Re Restorative Justice

1.   What have you heard about the restorative justice process?

2.   A restorative justice conference is a facilitated meeting between an offender and victim after a crime has been committed. What do you think would be the positive aspects of going to one?

3.   What do you think would be the negative aspects of going to one?

4.   What do you think about you and your partner going to one?
   - Positive?
   - Negative?

5. If you went to a restorative justice conference what would you expect

   - From the facilitators?
   - Safety measures?
   - Your partner?
   - Follow up?

6.   What do you think about going to a restorative justice conference about intimate partner violence

7. If reporting in incident of intimate partner violence to the police meant you would have the opportunity to attend a restorative justice conference with your partner, would this increase the likelihood of the incident being reported?

Thank you for your time. I might need to get back to you to check the accuracy of my notes.

Question Guide for Interviews

Re Non-Reporting

1. What do you know or think about the police or criminal justice system?

2. Why was your incident of intimate partner violence not reported?

3. Whose choice was it not to report?

4. What do you think would have happened if it had been reported?
   - Arrest (of whom)?
   - Retaliation or consequences (from whom)?
   - Money?
   - Children?
   - Anything else?

5. If there is a next time, how do you think you would handle it?

6. What do you think is the best way to prevent further intimate partner violence?

7. If reporting in incident of intimate partner violence to the police meant you would have the opportunity to attend a restorative justice conference with your partner, would this increase the likelihood of the incident being reported?

Thank you for your time. I might need to get back to you to check the accuracy of my notes.

Confidentiality Agreement

![AUT University logo]

Project title:	Why rock the boat? Non-reporting of intimate partner violence?
Project Supervisor:	Drs Love Chile, Allison Morris and Shirley Jülich
Researcher:	Anne Hayden

○ I understand that all the material I will be asked to transcribe is confidential.

○ I understand that the contents of the tapes or recordings can only be discussed with the researchers.

○ I will not keep any copies of the transcripts nor allow third parties access to them while the work is in progress.

Transcriber's signature:

....

Transcriber's name:

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Transcriber's Contact Details (if appropriate):

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Date:

Project Supervisor's Contact Details (if appropriate):

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Approved by the Auckland University of Technology Ethics Committee on 30 March 2007 AUTEC Reference number 06/193

Note: The Transcriber should retain a copy of this form.

Appendix 2: Case Studies

These case studies give snapshots into the lives of three victims and three perpetrators. They demonstrate the complexity of and significance of context and emotion in intimate partner violence. Furthermore they show how dysfunction can impact on the wider family, sometimes for future generations. Three of them (Heeni, Brenda and Kaveh) illustrate the impact of culture and cultural difference on relationships and intimate partner violence.

Case Study: Heeni

Heeni has been with her partner for 23 eventful years. At the time of interview she had not reported any incidents to the Police. Her partner was a gang member, with little interest in complying with the law. Although she was innocent, her association with him meant she was implicated in drug dealing. He has spent 2 years in prison for these offences. Since this earlier period when she had been implicated in drug offences she has had no further involvement with offending. Her partner is anti-police.

Although her partner's violence tended to be verbal, in the early days of their relationship he was very controlling. "Can I say, it wasn't that bad? … You'd get a slap. It was more the verbal abuse which [was] very sharp and meaningful.… and that action of standing over you." Before she started working for her current employer, she had no one to talk to.

> *I could speak to Mum, but I didn't need to say anything, Mum would know. But she didn't need to know the details. She was always there to support me and she didn't have a problem telling him where to go. She was very strong in that sense … [But there are] some thing[s] you don't want your mother to know.*

If she had reported the intimate partner violence to the police Heeni advised:

There's always been threats. "I'll kill you, cut you up, stab you." All of that. It's all there … At the time you get told, "I'll poke you full of holes … [I]n the back of your mind you know he's capable of it … because knowing his history in his gang, it's like, "Yeah, you're capable of doing it" … I could even be put in the boot and taken somewhere. I know that's possible because he carries a knife with him and has access to guns.

But it wasn't all bad. Heeni advised that although he was not a provider, he was a:

caring wonderful father, but on the other [hand] not a father that does the right thing.… [If I reported him] he would have taken the kids. He has quite often threatened me with taking the kids … there's some possibility of him getting the boys.

She loved him but that was diminishing, "thin[ning] down a bit" each time he was abusive. But her love for him was such that she kept hoping.

The sad part is that the love you had was the drugs … he's been on it and obviously he's on the P now. … This is a really horrible thing to say. When he's on it, he's wonderful. He is. He's the man I first knew. But obviously he has to come down eventually, and that's when the horrid happens. That's when the gremlins come out and the family, the kids, they know and they walk around on eggshells when he's coming down.

It is only recently that Heeni has told someone other than her mother about the abuse. She acknowledged this was a first step in dealing with the intimate partner violence. And her partner hated the fact that others knew about his behaviour. Her employer suggested Heeni talk about the P use with her partner, which has helped. Before this she used to get "anti". She advised:

I'd be negative and was at him all the time which caused us to fight more and the kids would see it. And then I sat back and thought, "gee this is not getting us anywhere! He's going to use the drugs, he can only help himself. He's got the support there but he's just greedy. He's got a good life, why should I change?"

Her children have been affected by these events. Heeni's daughter would sometimes step in and tell him to stop. He would reply: "Piss off!" But this did not deter her, as she would continue to stand up to him. However this has come at a price. Sadly Heeni has seen her daughter slapping her boyfriend. Heeni said to her, 'Don't you do that! It's ugly!' And it's her father again, all over." Recently, Heeni advised me that much to the surprise of her partner, she reported his abuse to the police. They are still together and she said she was feeling stronger.

Case Study: Brenda

Brenda is a Chinese woman who has held high-profile positions in her community. However, she was also an abused wife, physically and psychologically, by her Chinese businessman husband. They had three school-aged children. She said that the emotional and psychological abuse "eroded [her] self-esteem, sense of self worth, but more importantly [her] judgement". Sometimes she told herself she had married an honourable man, and that it was just the way she saw him that was wrong. Other times she could not believe she had married a man like that. Not infrequently he would take away her car keys, restricting her activities with the children. She recalled occasions when she would be so afraid that she would go into the toilet or a corner and cry, very frightened. The contrast between her life at home and her corporate responsibilities at work was massive.

Nevertheless, she had never thought of leaving him or reporting his violence to the police until she felt "pushed into it". Her husband had brought home another woman. The next morning she instructed her children to remove their school books from their school bags and, instead, to pack essentials into them. Brenda drove around for a while, pretending to take them to school before going into a Women's Centre. When she went in the woman saw her, "and she knew". She said "Do you want to go into Refuge?" Brenda replied, "Yes".

At the Refuge, Brenda saw a lawyer who advised her to make an application for a protection order [PO].After the PO was served on him, Brenda's husband "came after" her. "[H]e didn't fear [the PO] and he came and he told my girlfriend and her husband … [to] 'stay out of it or else, I'll do something to you'". This increased Brenda's isolation. She knew that by leaving him she had caused him loss of face. She didn't want further loss of face for him because he would make life more difficult for her. But one day when she was home with her son, her husband was banging on the door, frightening her. She rang the police. He was arrested. This made things worse.

Her husband gave up the business so that he was eligible for legal aid. Brenda had to pay her own legal expenses because she had a job. He said to her, "You watch me. I'm going to make you pay so that you'll be broke. You either reconcile with me or I will make you pay." He wanted the house and full custody of the children. As a result of this legal battle Brenda was bankrupted. But she retained custody of their children, who are now successful adults.

In hindsight Brenda feels that the course she took was not the right one. She commented that had she brought the matter to a restorative justice conference instead, there would have been a better result. She observed that the Western way of "stopping the violence" was dealing with the symptoms, whereas the Eastern was to deal with the cause.

> *When you pull the grass you must pull the roots as well … What happened to me is that the PO is not worth the paper it is written on. Because when the guy comes to you, you don't even have time ... A PO is only good if the other party is a law-abiding citizen. [And] if he is law-abiding, he wouldn't do this in the first place.*

While in the Refuge, Brenda was sent to an agency where a psychologist spoke to her about strategies.

> *And he said to me, "Brenda, I want to teach you a few strategies. I want to teach certain words for you to use. Instead of saying 'go away', you say 'Fuck off! … Learn self-defence so you are not afraid …'" Now I think of myself differently. I think I'm strong, I'm an intelligent woman. I deserve better than this. I'm not going to take this from you … Fuck off! ... And it worked. He was thrown.*

Brenda is now a single woman embarking on a new pathway, focusing on the simple things like her garden.

Case Study: Fraser

This was Fraser's second marriage and he had really wanted to it to work. But his second wife turned out to be abusive. He had been married to her for 24 years, during which time she abused him physically and psychologically. He explained her behaviour was due to her being sexually abused as a child.

At times when they had arguments, she punched, kicked, and/or threw things at him. What he found worst was being slapped, which he said was

> *so degrading … and worse than a punch … an action of contempt … It wasn't like, she would just attack me. She would get really, really angry. And then I would want to leave and she saw that as a power and control thing … that I would control her by leaving and not saying when I was coming back … and I'd say I'd call her in the morning.*

On these occasions she rang the bank and credit card company and told them that she'd lost her credit cards, twice saying Fraser had stolen them. Basically, she controlled the purse-strings. His salary was put into her account. He was given $60 per week pocket money and she took $100. She needed more than him because she needed to buy makeup. Fraser had agreed to this arrangement as he did everything he could to please her.

Fraser's wife had other strategies of abuse. On four occasions, she rang the police and informed them she was being abused. When this happened she told Fraser what she'd done. He would wait for the police outside his house at the roadside. When they came, he showed them in, telling them they were coming in response to a call from his wife. After interviewing each party separately the police left, recording the case as an M1, involving a mentally unstable person. On numerous occasions their two daughters were present but the police never considered them at risk of any abuse. This was despite them sometimes witnessing the altercations. Fraser later learned that this contravened the provisions of the Domestic Violence Act 1995.

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Although Fraser had a full-time job he was expected to cook dinner when he returned in the evenings. This was because his wife was busy homeschooling the children. If he was more than five minutes late due to heavy traffic she'd be furious. When he tried to explain this to the police, he advised, "[T]hey looked at me as though I was some sort of wimp".

Once *he* tried reporting the abuse to the police. In response to questioning, he advised that he was not in fear of his wife. The disbelieving policewoman responded, "You be a man, leave the house". No further support or advice was offered to him.

When Fraser finally left home, he suggested that he and his estranged wife go for mediation and/or counselling in order to come to an arrangement for access to his children. In response to this request, she took out a protection order against him, accusing him of violent behaviour. This was a means of preventing him from seeing the children. The application (which took 109 days to be heard, and cost him $17,000) was declined. No costs were awarded. Furthermore, according to Fraser, his wife has alienated the children against him. He had not seen them for 299 days at the time of interview.

Fraser has formed a new relationship and lives with his new partner and her children. He said he believed restorative justice could have helped him and his ex-partner, had they participated in one many years previously. He also felt it would need to be compulsory so that his ex-partner would be compelled to attend.

Case Study: Zeddy

Zeddy was working in a position of responsibility in the hospitality industry and enjoyed being really well known in his suburb. He was charming, friendly and outgoing; part of the jet set. His hours were long and drink and drugs were part of the mix. He had a longstanding partner, an attractive and loving young woman, of whom he was very fond. Unfortunately when he'd been on alcohol and/or drugs he would treat her badly. It was usually when he was "hung over, tired and grumpy". He described his abuse of her as:

> *I wasn't your bashing kind of abuser. I used a lot of language and intimidation … kicking doors and walls and throwing phones … and I did physically push my partner, um, several times, and ah, I put my hands around her throat a couple of times as well. Twice, yeah … As soon as she [saw] my eyes hardening up, my nose flaring, or my jaw clenching or my face reddening, she knew it was coming.*

Their relationship was very much an on-and-off affair going on nine years. She told him once that there were times when she used to do things deliberately, "Knowing I'd lose my rag over it … taking back the power". He tended to leave every 3-4 months "so there was," Zeddy explained, "something in me that was not committed to the relationship". But Zeddy was always the one who would return, begging her to take him back. She always knew he would, and she always took him back.

One day a family friend, who he also knew from one of his recreational activities, visited him at the restaurant. He asked to speak to him outside. He said to Zeddy, "Look mate, I don't know what's happening to you two, but I think the relationship has got to end. Otherwise I'm going to have to come and see you in my professional capacity and take it further". The friend was a policeman and, as far as Zeddy knew, had been asked by his partner's mother to "have a word". There never was another visit by his friend and no legal action took place.

Over a year later, the catalyst for change occurred when he and his partner split up again. They had been going out for seven years, and had been living together off and on for three years. He had been drinking all this time. After this last split, the drinking and end of the relationship resulted in his "life falling apart". Zeddy moved out of town and stopped drinking. He made the decision that he never wanted to be like that with her again. By way of apology to her and to help fulfil his decision, he attended a stopping violence programme.

Zeddy now coordinates a men's stopping violence group. Since his interview, his relationship has resumed and then broken off again. He was negative about the potential of restorative justice to help his situation, but stated he would participate if his partner wanted him to.

Case Study: Neville

Neville was a smart, well-groomed man, a father of two. He had been with his estranged partner for over 9 years, and for many of those he'd been married. The trouble was – his wife was an alcoholic. In Neville's view, this had created difficulties for the whole family during most of their children's lives. It took eight years for him to react abusively to this situation, but that time his wife did not report him. After they separated, Neville cared for the children as her drinking problem continued to deteriorate. It culminated in her needing accommodation. His mother had raised him to help people, so Neville asked her to stay with the family until she found somewhere else. But things had not changed. She continued to drink, to hide alcohol, and to behave inappropriately. Their older child wanted her to leave.

In contrast with it previously taking eight years for him to react, this time it only took 8 weeks. Neville explained that his upbringing also included him seeing his father's use of anger as an outlet for stress. Neville hit his wife, while she had her two-year-old baby in her arms. Six days after the incident he was visited by the police. His wife had told them a version of this incident including that he was a long-time abuser of 17 years … So the "handling" of him reflected that impression. At the time of the arrest Neville said he "didn't care … about what [he'd] done … [He] didn't have a lot of feelings either way … [although he] was a little bit taken aback by what she had intimated [he] had done and what type of person she portrayed [him] as".

Neville was bailed to his uncle's house after his first appearance in court, and was informed he was to have no contact with the children except between 4 and 5 pm by telephone until his next court appearance. The children went back into their mother's care and she had the use of Neville's rented house for nearly eight weeks. He and his family had concerns about the wellbeing of the children, "knowing" she would be drinking again. To ensure the children's safety he arranged for his parents

to stay with them and his ex-partner. They telephoned the police three times when she was drunk, thus enabling the police to advise CYPFS of their findings.

At the same time, Neville referred himself to a stopping violence agency to talk about his situation and get some help. It was only during this first meeting that the full impact of what he had done hit home.

> *So my attitude in terms of what I went through with my arrest was that I wanted to learn as much as I could out of the process … and I've done a lot of reading around intimate partner violence and just the whole area … trying to put things into context … If I reflect on the group of people that I went through my anger management course with, I … would break them down into two … groups: those people who want to have an ongoing relationship with their partner … and those that didn't.*

From his reflections of his own situation, Neville realised that his children had been exposed, as he had, to anger being used to deal with stress. But he now has custody of the children, while his wife still has a protection order against him. This suited them both, according to Neville, as he no longer wished to make contact. Neville saw restorative justice as a means of achieving the best outcome for the children's welfare as well as the relationship, especially for first-time perpetrators. He felt a restorative justice process would have dealt with his situation faster.

Case Study: Kaveh

Kaveh was an Iranian land surveyor who married a New Zealander. They had one daughter. Their relationship had not been a happy one for some years and, according to Kaveh, it only lasted as long as it did because of their daughter. But finally he came to the conclusion that it was time to leave. He decided the best way to do it was to tell his partner what he wanted to do and that they would have 50/50 custody of their child. However, his partner responded by saying, "No, no. I'm going to destroy your life if you leave me." When he asked why she replied, "Because you will destroy my life if you leave me. Who is going to come into a relationship with me when I have a child?"

She tried to provoke him, chopping down two of his trees. She left the loppers next to one. When Kaveh noticed this, he picked up the loppers and asked her not to provoke him. They argued, during which time his partner admitted she had cut the trees because she was angry with him. Kaveh replied, "If you are angry at me come and talk to me." She burst into tears and said to him, "I did it because you never loved me, you're a conman!" She then assaulted him and, to stop her, Kaveh held her against the wall, saying, "Don't provoke me. Calm down".

Kaveh told her to call the police and think about what she was going to say to them. When she did not reply, Kaveh offered to call them. Again she did not react. Things escalated from there. Kaveh told her he was going to put the house on the market that day. He made an appointment with a real estate agent, and advised his partner. He also contacted a family lawyer, advising him that his partner did not want to leave peacefully and had become violent. The lawyer made an appointment for them to meet in two days' time. Kaveh then left the house and returned later to meet with a real estate agent. Not realising it was daylight saving, Kaveh arrived an hour earlier than arranged. His partner tried to change Kaveh's decision about selling the house. He told her that her violence was dangerous and had changed the situation. He wanted a peaceful separation. He told her she could

take charge of selling the house and Kaveh could sign any offers. They both signed the sales agreement and Kaveh left.

He returned later, keeping his distance. His partner cooked dinner and fed their daughter as usual. The next morning their daughter asked Karveh if he was going to be home when she came home after school. Kaveh said he would. However, his partner advised them that their daughter would go to a friend's instead. Kaveh enquired why when he could look after her. She insisted that their daughter would not be coming home. Because Kaveh did not want another argument, he told their daughter to do what her mother wanted.

Both mother and daughter left for work and school as usual and Kaveh stayed home and tidied the house for sale. During the morning he received a call from his partner's work saying that she had not appeared at work. Then, at around 4pm, he noticed an undercover policeman watching him work outside. Kaveh realised that his partner must have spoken to the police and made allegations against him. He telephoned his lawyer, who advised him that his partner might have brought criminal charges against him, and obtained a protection order. The lawyer told Kaveh that, if this was the case, he needed a criminal lawyer.

Later, two policemen visited him. One advised Kaveh that his wife had laid a complaint, and requested that he go to the police station to make a statement. Kaveh agreed and told the officers that he had to get changed. The officer watched him dress, noticing bruises on Kaveh's arm. According to Karveh, the officer decided then that Karveh had been the perpetrator. He was told to bring some warm clothes because he would be detained. Kaveh refused to be interviewed without the presence of a lawyer. He was finger-printed and taken to the cells, despite his protests of innocence. The next day Kaveh appeared in court where he stated the police used false evidence against him. He discovered that the police told the court that there had been another incident one year prior to the actual date. This alleged offence was why he was refused bail. Kaveh was told by other prisoners that he had a right to make one phone call. This was refused on several occasions.

He was also refused bail for a second time and was transferred to Mt Eden prison. While there, he was served with Family Court Orders disallowing him from using his home and furniture, or to contact his partner and daughter. Notwithstanding, he continued to disbelieve the lawyer's repeated advice that his situation was serious. He had done nothing wrong. After spending nine days in prison he was released with a curfew and instructions not to contact his partner. Sometime after that he found out from his lawyer that his partner had earlier informed victim support that he would kill her, so he should be in jail. He also learned that she had blocked their bank account. He had no accommodation and no money, making it necessary for him to borrow from his employer.

At Kaveh's lawyer's request, the police provided Karveh's partner's first statement and the Summary of Facts. Kaveh was shocked at his partner's allegations. Because this lawyer's fee was beyond his means, Kaveh decided to take his file to a less expensive lawyer. As requested by his new lawyer, prior to the depositions hearing, the police provided fresh evidence which had not been released before. It contained two contradictory statements by Kaveh's partner, one written on the day of the incident, and the other taken by police the day after Kaveh was arrested. Kaveh gave his lawyer a list of inconsistencies. Then, because Karveh was dissatisfied with his lawyer's performance at the hearing, Karveh re-enlisted the previous (and expensive) lawyer, this time funded by his mother in Iran. After a brief trial, Kaveh was found not guilty.

Subsequently Kaveh represented himself at the Family Court regarding the custody of his daughter. At one of several hearings, the presiding judge refused to accept the finding of the criminal court. Kaveh was allowed to see his daughter only under supervision. He was warned against making further challenges of the judge's decision. Kaveh's access to his daughter was limited to indefinite supervision. Kaveh refused to see his daughter under these conditions and had not seen her for ten months at the time of interview.

A few months later the police apologised for their "error" and "remedied" their system accordingly.[158] Had restorative justice been an option Kaveh would have taken it. He considered it presented an opportunity to have a one-on-one discussion to put their views to each other. Kaveh believed a restorative justice conference could have directed each party to appropriate courses of action and informal follow-up. The last time I spoke to Kaveh he was going back to Iran for a few months.

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[158] This was contained in a letter dated 10 June 2008 from the police, which I have witnessed.

Appendix 3: Some innovative ideas

A number of innovative ideas have been suggested by participants in this research as they relate to the research question. These are summarised below.

1. Children

   - Restorative justice can enable children to have a say and this can lead to the best outcome for children.[159]

   - Use restorative justice post-separation to help resolve issues with children because it provides a facilitated environment which can assist the formulation of priorities and communication about them.[160]

2. Timing

   - Perpetrators and victims should be encouraged to self-refer to restorative justice, as in a referral to stopping violence courses in the earlier stages of intimate partner violence.[161]

   - Use restorative justice as an early intervention, where goals can be set to continue the relationship and communication re-education can occur, or where the relationship is set to end.[162]

   - Both parties arrive and leave a conference at different times.[163]

   - Attending a restorative justice conference could suspend the criminal justice process for up to 12 months.[164]

   - A follow-up meeting should be held for reporting progress on specific points and progress or otherwise should be reported to the courts.[165]

   - If agreements have been met and, depending on the previous history and seriousness of the abuse, the courts could discharge, convict and discharge, suspend a sentence, order community work/supervision/

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[159] Interview U, Key informant.

[160] Interview ZC, Key informant

[161] Neville, Interview N.

[162] Dudley, Interview D.

[163] Gayle, Interview G.

[164] Neville, Interview N.

[165] Interview R, Key informant.

community detention or sentence to reduce jail time than would otherwise have been imposed.[166]

- If agreements have not been met, and depending on the previous history and seriousness of the abuse, the courts could impose a maximum sentence.[167]

- Perpetrators should complete a stopping violence programme and victims a course on intimate partner violence prior to attending a restorative justice conference (victim advocates).[168]

3. Safety

- Use a video of a conference as a safety measure to use as evidence if anything goes wrong, and "big burly men" discreetly placed.[169]

4. Incorporating other agencies

- A restorative justice conference is an opportunity to showcase behaviours learned at a stopping violence course.[170]

- Educate the police and probation officers about restorative justice potential as a case management tool, where goals and objectives can be agreed towards which perpetrators can work.[171]

- Telling support groups about restorative justice is a way of increasing awareness about restorative justice.[172]

- Judges need to know that trained facilitators are suitably qualified or experienced and able to facilitate intimate partner violence cases. One judge felt life experience was more important, whereas the other two

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[166] Interview P, Key informant.

[167] Interview P, Key informant.

[168] Interviews S, ZB, P, and T, Key informants.

[169] Eileen, Intervew E.

[170] Interview R, Key informant.

[171] Brenda, Interview B.

[172] Interview O, Key informant.

considered special skills acquired through experience or training were needed.[173]

- There needs to be more talking between agencies to educate and increase understanding of restorative justice, and ultimately protocols need to be developed between them with a view to increased numbers of couples participating in the restorative justice process.[174]

- Communities need to take responsibility and say that abusive behaviour is not acceptable, instead of asking the victim to decide whether he/she wants the perpetrator charged or not, or referred to restorative justice or not.[175]

- Restorative justice practitioners should train police about restorative justice.[176]

- Use of community resources for debriefing and supervision increases safety through transparency.[177]

5. Name change

- For promotion or marketing purposes, the name of restorative justice could be changed. Suggestions included, "Improving your life" and "Learning to communicate better".[178] Another was to remove the word justice from the title, or incorporate something to do with family.[179] For example Heeni[180] said her partner would not attend anything with the word justice in it. Ian considered another name that promoted relationship-building would have more appeal.

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[173] Interview O, Key informant.

[174] Interview O, Key informant.

[175] Interview S, Key informant.

[176] Brenda, Interview B.

[177] Interview T, Key informant.

[178] Ian, Interview I.

[179] Neville, Interview N.

[180] Heeni, Interview H.

6. Follow-up

- Follow-up should be carried out by someone qualified in intimate partner violence work.[181]

- After a restorative justice conference, give couples a guide sheet with information and/or discussion points to help them to continue to make progress.[182]

- If a conference takes place pre-sentencing, follow-up should take place within a month or a specified time after the conference and outcome completion reported to the court.[183]

7. Facilitators

- Facilitators should be able and well qualified to outline steps to improve the situation.[184]

- In the Māori context, there should be a monthly karakia meeting of the whānau.[185]

- Training of facilitators needs to be extensive in intimate partner violence, consisting of at least eight weeks of eight hours' training (men's groups or women's groups) to gain understandings of gender and domestic violence.[186]

- Information-sharing for risk assessment (inter agency) should be followed by reports of a conference to be sent to advocacy services.[187]

- Use of therapy after a restorative justice conference over the following two weeks for victims and perpetrators.[188]

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[181] Interviews T and ZB, Key informants.

[182] Gayle and Alice, Interviews G and A.

[183] Interview U, Key informant.

[184] Neville, Interview N.

[185] Interview V, Key informant.

[186] Interview T, Key informant.

[187] Interview T, Key informant.

[188] Eileen, Interview E.

8. Referrals

- Self-referral to restorative justice should be possible, as in the self-referral to a stopping violence course before a matter gets to court.[189]

- Legal counsel should be paid for referrals.[190]

9. Preparation

- Couples should put their own story in writing on a confidential basis to enable facilitators to be fully informed before a conference.[191]

- Telling the perpetrator the positives of restorative justice for him/her might reduce safety problems.[192]

- It may take months of preparation work with some women as well as some men to get them ready/empowered/safe enough to participate.[193]

10. Support

- Support people should be on everybody's side.[194]

11. Other

- The process should be informal, i.e. less structured than mediation.[195]

- Restorative justice could be used to engage people in the programmes more easily, in that they would not be coerced into it.[196]

- Restorative justice should be available to all at every level in the criminal justice system.[197]

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[189] Neville, Interview N.

[190] Interview ZC, Key informant.

[191] Ian, Interview I.

[192] Brenda, Interview B.

[193] Interview T, Key informant.

[194] Zeddy, Interview M, and Key informant.

[195] Ian, Interview I.

[196] Interview ZB, Key informant.

[197] Brenda, Interview B.

- The key to restorative justice is allowing families to find ways forward when an ongoing relationship of some kind is likely.[198]

I am aware that some of these innovative ideas may already be happening in some

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[198] Interview Q, Key informant..