

# **Restorative Justice Facilitation**

**An appreciative inquiry into effective practice**

**for Aotearoa/New Zealand facilitators**

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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 other degree or diploma of a university or other institution of higher learning.

Signed

Date

## Ethics Approval



# MEMORANDUM

*Auckland University of Technology Ethics Committee (AUTEC)*

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To: Marilyn Waring

From: **Madeline Banda** Executive Secretary, AUTEC

Date: 28 November 2008

Subject: Ethics Application Number 08/222 **Restorative justice facilitation.**  
**An appreciative inquiry into effective practices for Aotearoa/New Zealand facilitators.**

---

Dear Marilyn

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 13 October 2008 and that 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 8 December 2008.

Your ethics application is approved for a period of three years until 27 November 2011.

I advise 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 27 November 2011;
- 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 27 November 2011 or on completion of the project, whichever comes sooner;

It is a condition of approval that AUTEK is notified of any adverse events or if the research does not commence. AUTEK 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 AUTEK 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.

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](mailto:charles.grinter@aut.ac.nz) or by telephone on 921 9999 at extension 8860.

On behalf of the AUTEK 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**

## Acknowledgements

This thesis would not be without the contribution of many people.

Firstly, thank you to the restorative justice facilitators and key informants who generously gave their time and shared their expertise, providing data for this study. Working with them was the part of this study I most enjoyed.

The journey from an idea to the completed thesis was eased by the guidance and assistance of a network of competent and experienced staff at Auckland University of Technology. My particular thanks go to my primary supervisor Professor Marilyn Waring who, using her superb intellect and wisdom, constantly encouraged and empowered me to achieve at a higher academic level than I had previously experienced. As well, she invited me into her wonderful group of postgraduate colleagues who were a source of information, inspiration, support and fun. Thanks also to my other supervisors: Dr Shirley Jülich who enhanced my knowledge from her pioneering work on restorative justice in Aotearoa/New Zealand and increased my formatting skills; and Professor Howard Zehr who shared his understanding of restorative justice.

I thank my family for their support, encouragement and technical advice, and for managing without the attention that would otherwise have been theirs as I focused on my research and writing. Most importantly, I acknowledge my husband Norm, who was – as always – my financial, practical and emotional support. Thank you with all my heart.

Ethical approval to conduct focus groups and interview key informants was granted by the AUT Ethics Committee (AUTEC) on 28 November 2008. The AUTEC reference number is 08/222.

Professional assistance with editing (unpaid) was provided by Norm and our daughter Penny who between them patiently proofed every line of my thesis. Formatting of the thesis was provided by Lorraine Scott of VA Plus Ltd and reference checking by Joy Oehlers.

## **Abstract**

“What do restorative justice facilitators in the criminal justice system in Aotearoa/New Zealand consider to be effective practice?” is the question this thesis seeks to answer. The research investigates how facilitators – the lynchpins in a restorative justice process in the criminal justice system – contribute to restoration of just relationships between adult victims, offenders and their communities. It is an evaluation using an appreciative inquiry methodology with a positive, face-to-face, storytelling approach congruent with restorative justice practice, a practitioner/researcher position and Māori and Pacific perspectives. Data was gathered from focus groups and interviews with key informants.

The importance of facilitators in the restorative justice process is examined and new links made between recognised practical facilitation skills, group facilitation theory and restorative justice practice. Policies and actions of successive governments of Aotearoa/New Zealand in the field of restorative justice in the criminal justice system, 2000-2011 are also studied.

A thematic analysis of the data gathered, along with the theoretical information discussed, demonstrates the complexity of facilitation in restorative justice practice. Five crucial attributes of effective facilitators emerged: personal presence; awareness of their own self and the wider community; a wide range of facilitation skills; knowledge about restorative justice and where it fits in the

social and political context; and personal, collegial and organisational support.

Research participants suggest a number of policy changes which would improve the effectiveness of facilitators in restorative justice. These include adequate recognition of and funding for professional restorative justice practice; training for effective facilitation appropriate to European, Māori and Pacific perspectives; and an evaluation of the current state of restorative justice, as well as the development of a plan for its systematic growth and promotion in the criminal justice system.

## Glossary

Source: Ryan, P. (2012). *The Raupo dictionary of modern Māori*. Auckland: Penguin.

Aotearoa	whole of New Zealand, “Land of the long white cloud”
awhina	helper
hapū	sub-tribe,
hohourongo	make peace, conciliate, reconcile
hongi	salute by pressing noses together
hui	gather, meeting
iwi	race, tribe, people, nation
kanohi ki te kanohi	face-to-face, eye-to-eye
karakia	prayer-chant
kaupapa Māori	Māori philosophy
kawa	protocol, ceremony
kete	basket, kit, bag
kia ora	a greeting/hello
kohanga reo	preschool, language nest
korero	talk
mana	integrity, charisma, formal status, jurisdiction, power
manākitanga/manaatanga	rites, respect, generosity – cultural and social responsibility
Māori	ordinary, native people
marae	meeting place of whānau or iwi
mātauranga	knowledge
mihi/mihimihi	greeting
Pākehā	the Māori term for a person of predominantly European descent
tangi	Māori funeral ceremony
tapu	sacred, forbidden
tauīwi	alien, heathen, foreigner
tauīwi	Non-Māori New Zealanders

tikanga	custom, obligations, locally specific practices
te reo Māori	Māori language and culture
Te Tiriti o Waitangi	The Treaty of Waitangi
tupuna/tipuna	ancestor, grandparent
utu	revenge, cost, compensation
wairua	attitude, spirit or soul
wānanga	learning, seminar, series of discussions
whākamā	shy, embarrass, loss of mana, feel ignominious, shame
whakapapa	recite genealogy, family tree, cultural identity
whānau(-tia)	extended family
Palagi	European/white person (used by pacific people)
talanoa	storytelling without concealment



## **Part One: Literature**

# Chapter 1: Introduction

Restorative justice, as practised in the adult criminal justice system in Aotearoa/New Zealand,<sup>1</sup> brings together the people at the centre of an offence. In a conference led by a trained facilitator the victim(s), the offender(s) and their communities are given an opportunity to address the facts and consequences of the crime, taking into account both the material and the emotional factors involved. Restorative justice aims to place the victim at the centre of the process (unlike being on the periphery as in the criminal system) and the primary participants meet face-to-face in a safe situation to recount their perspective of the offence, and to work to repair the harm done by the offending. “There is no legislative provision that defines what restorative justice is or how the conference should be conducted. Rather the process is based on a set of principles which include: voluntariness, accountability, emotional and physical safety and appropriateness” (Ministry of Justice, 2010, p. 2).

Tania, a facilitator and a focus group participant in this research, explained:

In the normal criminal justice system, offenders never actually have to face the reality of what they've done – they only get to face the consequences of what they've done but not the human touch. Not everything that

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<sup>1</sup> Aotearoa/New Zealand is located in the south-west pacific with a population of approximately 4,500,000. It has two main islands, the North Island and the South Island. The official languages are English, Maori and Signing. Aotearoa is the Māori term for this country. The Treaty of Waitangi, Te Tiriti o Waitangi, signed in 1840 is the founding document of Aotearoa/New Zealand, in which Māori accepted British sovereignty in exchange for various guarantees of protection. Its principles have been incorporated into much legislation.

happens behind that – not the emotions that happen from what they've done to somebody else. When you put a human face to something, it becomes more difficult to do that act again, whereas when all you face is the consequence, you just decide whether you're going to risk having the consequences again.

## **Why research restorative justice?**

Restorative justice works! It achieves its goal of restoration in the criminal justice area as well as in some civil justice cases, in education institutions and in community situations. But why does it succeed? What factors contribute to a restorative justice process that is just, or fair, for all parties involved and restores the participants and their communities, as far as possible, to their pre-offence state?

- Is it mainly the process itself, or mostly the facilitation of the process?
- Is it an equal contribution of process and people?
- Can the restorative justice process work in spite of the facilitator, or can a facilitator achieve an equally just and restorative outcome without using an accredited restorative justice process?
- Can a restorative justice process be unjust and non-restorative and re-victimise the victim and harm the offender and their community? If so, what leads to such an outcome?
- Are there aspects of the restorative justice process used in this country that require further development?
- Are there voids in the process that need to be addressed?
- What impact does public policy have on facilitators?

Such questions have not been researched from a facilitator perspective in the criminal justice system in Aotearoa/New Zealand and, as a restorative justice

facilitator of seven years' experience, I wanted to do this, not just for my own enlightenment but, potentially, for the benefit of the restorative justice community as well.

Previous doctoral research with an emphasis on adult restorative justice in Aotearoa/ New Zealand has been in the area of child sexual abuse (Jülich, 2001) and intimate partner violence (Hayden, 2010). Masters studies relevant to restorative justice with adults have discussed: Māori<sup>2</sup> and restorative justice (Fraser, 2005); Victims, restorative justice and the New Zealand family group conference<sup>3</sup> (Ellis, 2000); Mediation concepts and their relevance to restorative justice processes (Wright, 1998).<sup>4</sup>

Aotearoa/New Zealand has been well regarded in the field of restorative justice and frequently affirmed by prominent writers (for example: Johnstone, 2003; McLaughlin, Fergusson, Hughes, & Westmarland, 2003; Roche, 2003; Sullivan & Tifft, 2005; Zehr & Toews, 2003). The passage of the *Children, Young Persons and Their Families Act 1989*, and the *Sentencing Act 2002*, the *Parole Act 2002* and the *Victims' Rights Act 2002*, put Aotearoa/New Zealand in a leading role in the development of restorative justice. Indeed, McLaughlin et al. (2003), claimed, along with others, that "family group conferencing originated in New Zealand" (p. 70).

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<sup>2</sup> Māori are the indigenous people of Aotearoa/New Zealand.

<sup>3</sup> This refers to a family-centred model used with offenders appearing in the Youth Court.

<sup>4</sup> Mediation is a major debate for some restorative justice practitioners, which is not reviewed because my focus is on researching effective facilitation.

## **The public policy framework for restorative justice in Aotearoa/New Zealand**

Restorative justice for adults in the criminal justice system is administered by the Ministry of Justice, a government department which initiates and monitors laws that make provision for restorative justice, and manages the District Courts where restorative justice is practised (Ministry of Justice, 2011b). The Ministry also holds ultimate responsibility for matters concerning restorative justice – funding, training, accreditation and accountability – although consultation about these matters occurs with Restorative Justice Aotearoa<sup>5</sup> (Restorative Justice Aotearoa, 2011). Major structural changes made by the Ministry of Justice in 2009 were the background to this research and had a major impact on facilitators involved.<sup>6</sup>

## **The restorative justice process**

Most people want a fair and reasonable relationship with other people and are prepared to work at achieving that connection. I reached this conclusion during 25 years of working with couples in my marital counselling practice, where I observed people entering into new partnerships despite previous negative experiences of relationships. Similarly, apprehensive offenders appear to be motivated by a desire to restore relationships when they volunteer to face the person they have offended against, and damaged victims accept an invitation to

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<sup>5</sup> Restorative Justice Aotearoa (RJA) is the primary professional association for restorative practitioners and agencies in New Zealand.

<sup>6</sup> Current national delivery of restorative justice services is discussed fully on p. 188.

meet with the person who harmed them.

In restorative justice conferences, victims normally display considerable graciousness in agreeing to outcomes that have the potential to assist their offender to reform. On their part, offenders explain why they acted as they did, demonstrate their remorse, and attempt to repair the harm they have done to their victim. In the process, broken relationships begin to be restored. The willingness of human beings to co-operate and assist each other when given an opportunity is amazing.

### **Restorative justice purpose**

Restorative justice is a process intended to be voluntary, safe, private, direct, truthful, and respectful for all the parties involved. A combination of restorative justice principles<sup>7</sup> and process can allow victim(s) and offender(s) and their communities to move on, mentally and emotionally, from the state they were in at the time of the offence to a more restored state. Crime has a negative impact on the wider community, not just on the immediate participants, so when the material damage, fear and emotional distress caused by the offending is resolved for the individuals concerned, and the trauma taken out of their community, it can contribute to healing for the whole society.

Healing for the victim is a prime aim of the restorative justice process. But for a victim to gain full benefit from the restorative justice process, the offender has to

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<sup>7</sup> Discussed in Chapter 2, p.22.

participate fully in it, and move on from the state they were in at the time of the offence. When a victim witnesses the shift, through seeing an offender's remorse, and feels that their apology is sincere, the victim can then accept offers to repair the harm done to them. As well as victims having the opportunity to have their story heard by their offender, victims have input into their offender's sentencing process through the report of the restorative justice conference, which the *Sentencing Act 2002*<sup>8</sup> requires the judge to read before sentence is passed. The victim also has a chance to ask for any reparation that they deem will help them move on in life. Further, the victim is given information about the sentence handed down to an offender – this does not normally happen in the criminal justice system. Thus, the victim has a personal interest in the offender's sentence and the actions that follow and the offender knows the victim has this interest.

Some members of the public – and professionals working with offenders – consider the restorative justice process to be a soft option for the offender. However, offenders report<sup>9</sup> that facing the person they have wronged is more demanding than standing in court, saying nothing before a judge who has not been personally involved in the case. Indeed, a restorative justice process may result in an offender being given the same, or an even harsher sentence, than they would have been given otherwise.<sup>10</sup> Offenders are informed that this might

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<sup>8</sup> *Sentencing Act 2002*, s8, s10. See p. 445.

<sup>9</sup> See p.266.

<sup>10</sup> Practitioner conversations at RJA Conference, 2005.

happen, so are prepared for it. Yet, going through a restorative justice process gives the offender an opportunity to make an apology and hear the victim's response. The sentence may be the same, but the offender's emotional state is usually improved, and they have an opportunity to move on from their offending.

Enabling people to move forward from their present state is a fundamental principle of the education and counselling work in which I have been involved.

Society expects the criminal justice system to rehabilitate offenders and produce reformed persons at the end of their sentence. Recidivism figures<sup>11</sup> indicate this is not always the case. By contrast, a restorative justice process has the potential to have a positive life-changing effect on offenders as well as their victims. This thesis is a contribution to the continuing development of this process in Aotearoa/New Zealand.

## **Why research facilitators?**

In this thesis, a facilitator is a person who helps a group achieve its purpose, using their own unique style to set up the working environment, manage the dynamics of the group and encourage group members to work together.

Facilitators are vital components in a restorative justice process. It is my opinion that victims and offenders would conduct restorative processes by themselves if

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<sup>11</sup> "Across the entire sample of offenders released from New Zealand prisons in 2002/03, 49 percent were convicted of a new offence and were returned to prison at least once during the 48-months follow-up period" (Nadesu, 2008, p. 1).



they could, but generally they cannot,<sup>12</sup> which is why a structured process involving facilitators is necessary. Because facilitators are so significant in the restorative justice process, it is crucial that they are effective in their work.

Barton (2003) claimed that restoration for the participants in a restorative justice process “in terms of reported and visible signs of closure, satisfaction, emotional conciliation and healing – is directly related to the facilitator’s competence in preparing and running a restorative justice meeting” (p. 44).

The *New Zealand court-referred restorative justice pilot: Evaluation* (Crime and Justice Research Centre and Triggs, 2005)<sup>13</sup>, states that dissatisfaction with issues related to restorative justice conferences “could be addressed with improved practice” (p. 252). Souza and Dhami (2007) claimed that “given the important role that facilitators play in RJ<sup>14</sup> programmes, there is surprisingly limited research on how they contribute to the RJ process” (p. 58). Indeed, there has not been any research conducted in Aotearoa/New Zealand about the effectiveness of restorative justice facilitators. Maxwell and Morris Maxwell (1993), pioneered work on evaluation but focused on the family group conference which is not central to this work.

## **Restorative Justice Aotearoa**

Restorative Justice Aotearoa is the primary professional association for

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<sup>12</sup> Twenty-five years’ experience as a Family Court Counsellor assisting couples with restoration of their relationships leads me to make this statement.

<sup>13</sup> The restorative justice pilot involved adult offenders.

<sup>14</sup> Restorative Justice.

restorative practitioners<sup>15</sup> and agencies in New Zealand and welcomes all restorative practices, practitioners and providers as members.<sup>16</sup>

When the restorative justice pilot in the criminal justice system was set up in 2001, it established a series of autonomous provider groups, working to develop competent restorative justice facilitators. Provider groups were administrative and professional support units which “manage the performance of facilitators to ensure they meet ethical and supervision requirements. They appoint the most appropriate facilitators for the particular victim and offender for each case” (Ministry of Justice, 2005b, p. 7). Each provider group is related to the Ministry of Justice but usually, because of geographical distance, not to each other. The Ministry recognised the benefit of having restorative justice practitioners confer, and assisted with organising annual national conferences where practitioners exchanged experiences and learned from each other.

The next step for practitioners was the formation of a nationwide organisation, and the restorative justice conference in 2003 “concluded with a discussion on developing national standards and forming a national body” (Department for Courts, 2003b, p. 2). In 2005, Restorative Justice Aotearoa became an incorporated society, following consultation with groups providing restorative justice.

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<sup>15</sup> The term “practitioner” includes facilitators and others who work in restorative justice in a non-facilitating role.

<sup>16</sup> [www.rja.org.nz](http://www.rja.org.nz).

About 36 groups, throughout Aotearoa/New Zealand, using restorative justice processes, were affiliated to Restorative Justice Aotearoa in 2011 (Restorative Justice Aotearoa, 2011). The Ministry of Justice assisted with funding Restorative Justice Aotearoa and their national conferences.<sup>17</sup>

## **About the researcher**

I began working in the field of restorative justice in 1998 as supervisor for Anne Hayden, a member of Te Oritenga Restorative Justice Group. Then I trained as a facilitator in the Ministry of Justice restorative justice pilot in 2001.

The role I take in the restorative justice process uses the training, skills and experience I have acquired. My background includes primary school teaching, personal and couple counselling, voluntary community work and being a wife, mother, mother-in-law and grandmother. All this has added practical skills to my basket of knowledge. I assess a theory from a pragmatic viewpoint and search for its practical application. I endorse the words attributed to Einstein: "Not everything that can be counted counts. And not everything that counts can be counted".<sup>18</sup> For me, the intangible and unquantifiable aspects of life are often the most important.

The criminal justice system had not been a particular interest of mine. However,

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<sup>17</sup> In the 2009/2010 financial year, \$178,440 of Restorative Justice Aotearoa income was from Ministry of Justice, with \$8,823 from fees and interest.

<sup>18</sup> <http://www.alberteinstein.com/quotes/einsteinquotes.html>

when I was introduced to restorative justice, my interest was piqued because its process seemed to offer:

- fairness and equality for victims otherwise ignored by the court system
- an opportunity for the repair of harm
- healing for victims, offenders and their communities.

As well as living in rural, urban and metropolitan areas in Aotearoa/New Zealand, I lived for a year in the United Kingdom, which gave me a comparison of cultures. This enabled me to see that as a Pākehā<sup>19</sup> New Zealander, I have a culture – and what it is. Previous academic studies – in education, theology and counselling and also working in Kohanga Reo (language nest) and bicultural education – have enlarged my knowledge and understanding of other cultures and are some of the influences which have shaped my view of the world. These insights have added to my effectiveness as a restorative justice facilitator and researcher.

## **Outline of the thesis**

This research studied what restorative justice facilitators working in the criminal justice system in Aotearoa/New Zealand considered to be effective practice.

The results of the study are presented in four parts. Part One comprises a

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<sup>19</sup> Pākehā is the Māori term for a person of predominantly European descent who lives in Aotearoa/New Zealand. In this thesis a translation of Māori words will be given in brackets or in a footnote when first used. A glossary of Māori words and concepts is included on p. xiv.

literature review with three chapters which introduce the research and present the theoretical background of restorative justice, facilitation, and effectiveness.

Part Two has two chapters. One describes the methodology for the study including appreciative inquiry, Māori and Pacific research and reflexivity. In the other chapter the methods used for the data collection are discussed: participant observation, interview theory, focus group theory, research process, fieldwork and the critical lens used in the data analysis process.

Part Three is the research section where the data is presented. In seven chapters the public policy regarding restorative justice and the themes that emerged from the facilitators' discussions – presence, awareness, skill, knowledge and support – are analysed.

Part Four discusses the conclusions drawn from the data analysis and addresses the implications of the research for policy and practice. Areas for further research are listed.

Finally, the bibliographical references and the appendices are presented.

## **Summary**

This chapter introduced the research project and the questions to be addressed. Restorative justice purpose and process and the reasons for studying facilitators were discussed. The public policy framework of restorative justice in Aotearoa/New Zealand was outlined and the development of Restorative Justice Aotearoa sketched. The background of the researcher and

an outline of the thesis were presented.

Chapter 2 will discuss restorative justice, facilitation and effectiveness which are the theoretical perspectives in this research.

## **Chapter 2: Restorative justice and facilitation**

In this chapter I discuss the theoretical perspectives of restorative justice and facilitation that underpin this research and outline the theory and early development of restorative justice. However, restorative justice is the foundation for this research and threads its way throughout the whole thesis, being discussed in the survey of the literature, the research environment, the theoretical perspectives, the methodology, and methods, the data analysis and conclusions. When it was available, material written by New Zealand and Australian authors with an antipodean perspective was used in preference to that from other cultures.

### **Restorative justice**

In this research, “restorative justice” denotes a specific process, with clearly defined elements and principles, which is linked to the international community of people involved in this work. It is not to be confused with the variety of processes and encounters that use the term indiscriminately.

### **Definitions of restorative justice**

Zehr (2002) offered the following working definition of restorative justice:

“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and to put things as right as possible” (p. 37). Zehr considered there was no consensus on a definition of

restorative justice, and he was reluctant to confine the process in a rigid statement of meaning, hence a working definition. Marshall (2003) claimed a “commonly accepted definition used internationally is: *Restorative justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future*” (p. 28).

In New Zealand, Father Jim Consedine (1995) stated that restorative justice is a people-centred process in which the restoration of the victim, ideally to their pre-incident state, is more important than punishment of the offender. Judge McElrea defined the process as “essentially a community-based model that encourages the acceptance of responsibility by all concerned and draws on the strength of the community to restore peace” (Department for Courts, 2003a, p. 22).

Zehr (1990) stated that restorative justice was a way of looking at wrong-doing and justice based on the concept that “crime is a violation of people and relationships” ( p. 181). He considered that such violation creates obligations on the part of the person who commits the crime, and that their major obligation is to put right the wrongs they have created. Zehr also stated that the central focus in restorative justice is victim needs and offender responsibilities so both must be addressed for a restorative outcome – even though victim needs do not necessarily create a corresponding responsibility on the part of the offender. Zehr also advocated involving the affected community in the effort to put things



right.

### **Elements of restorative justice**

Thus, for the label “restorative justice” to be used accurately, all five of the following elements need to be involved in the process:

- harm or injustice has been done by one party and experienced by another
- the person who has been harmed (the victim) is given a voice in the resolution process
- the person who has done the harm (the offender) takes responsibility for their actions and is given a voice
- the communities of the offender and the victim are involved in the restoration process
- decisions are made collectively by the offender, the victim and their communities to – as far as possible – heal the hurt or injustice that has been experienced, restore relationships and move on.

A variety of restorative justice processes can be used to achieve resolution, but this research focused on face-to-face restorative justice conferences between an adult offender and a victim, along with their support people, preceded by separate pre-conference meetings

It is important to note that restorative justice can, like any process, be open to distortion. Critics argue that the emphasis on the offender in restorative justice is problematic in a supposedly victim-centred process and that restorative justice can be detrimental to women when practitioners work within a patriarchal cultural situation.

## **Restorative justice development**

Restorative justice is not new. Weitekamp (2003) traced the history of forms of conflict resolution and claimed that, in acephalous societies, before formal legal systems developed, restorative forms of justice were the preferred method for resolving troublesome incidents, because they enabled victim(s) and offender(s) and their communities to deal expeditiously with the matter, resume normal relations and continue their daily lives. He stated: "The historical origin of restorative justice has existed since humans began forming communities" (p. 113). Indigenous peoples claim restorative justice-oriented processes as part of their history (Johnstone, 2003; Sullivan & Tifft, 2005).

The emergence of restorative justice since the 1970s has, according to Toews and Zehr (2003), been a challenge to "the assumptions of the dominant criminal justice system" (p. 257). Roche (2003), writing of the rise of restorative justice, claimed that it captured the imagination of many interested in reform of the criminal justice system in the 1990s, and that programmes using a restorative justice process bringing together victims, offenders and their communities have now been established across the world. He cited the hundreds of programmes operating in the United States, Canada and Europe, noting that New Zealand and Australia's programmes are well-established, and that the list of other countries which are in the process of developing them is long and growing. He claimed: "One of the prominent features of restorative justice is its ability to command political support from a wide range of political camps" (p. 7).

In their discussion of the emergence of restorative justice, Sullivan and Tifft (2005) said it was applicable not just in personal situations, but also for groups within countries. A well-known example is the Truth and Reconciliation Commission in Africa, established in 1996. In Northern Ireland it has been demonstrated that “community-based restorative justice projects can become a far more effective venue for responding to harms than comparable projects administered by the state” (p. 18). Umbreit, Bradshaw and Coates (2003) claimed that “restorative justice theory is having an increasing impact upon communities, and even entire justice systems, throughout North America, Europe and the South Pacific” (p. 123). This claim has been reinforced by the development in 2000 of the United Nations Economic and Social Council's “Basic principles on the use of restorative justice programmes in criminal matters” (Johnstone, 2003, p. 485) that required member states to have restorative justice legislation in place by 2006.

According to Marshall (1996), some commentators suggested that practice came first in the development of restorative justice, then the theory emerged which informed the practice, and so the cycle has continued. Daly and Immariageon (1998) listed the following areas of theoretical work underpinning restorative justice:

- informal and community justice
- abolitionism
- reintegrative shaming
- psychological theories

- feminist theories of justice
- peacemaking criminology
- philosophical theories
- religious and spiritual theories (pp. 27-28).

My study fits into this developmental cycle and evaluates established facilitator practice by examining theories of the facilitator role, of facilitation and of group skills.

### **Facilitators**

Restorative justice processes and practices have been detailed and critiqued by a number of theorists (Roche, 2003). When issues are discussed, the role and practice of the facilitator is often implicit as, for example, in Goodey's (2005) discussion of victim issues, where the role of the facilitator and their influence and effectiveness were not discussed as a separate topic. Here Goodey assumed that facilitators have knowledge and experience of the points she raised as they work with victims. Roche (2003) also examined the accountability of restorative justice itself, but not of its facilitators.

Restorative justice theorists have focused on discussing principles and process rather than facilitators. However, such issues as:

- the position of facilitators in the process (Roche, 2003)
- what they should do (Hayden, 2001; United Nations Economic and Social Council, 2000)
- what training they should be given (Ministry of Justice, 2008b)
- and the issues they should be aware of (Sivasubramaniam & Goodman-Delahunty, 2006)

do arise in the discussions. But these writings are about how facilitators should act, not an assessment of what they do.

The role of facilitators has been touched on by other authors, but only briefly.

Bowen, Boyack, and Marshall (2004) made some assessment of facilitator practice, and Dyck (2004) asked whether facilitators were practising what they preach. Sherman, Strang, and Woods (2003) expressed concern about the lack of consistency and the variability in practice, and discussed the influence of facilitators on the outcomes of the restorative justice process.

Facilitators are essential to the restorative justice process and its outcomes.

Benjamin Franklin's analysis seems pertinent: "Even when the shipdesign [sic] held constant, the performance of the ship varies widely depending on the details of how a ship captain sails it" (cited in Weitekamp & Kerner, 2003, p. 230). The focus of restorative justice theorists so far has appeared to be on the design of principles and practice rather than assessment of the effectiveness of facilitators. My study seeks to begin to redress this imbalance.

### **Restorative justice in Aotearoa/New Zealand**

Restorative justice is not a new concept in Aotearoa/New Zealand, where Māori traditionally addressed justice issues on the marae (meeting place) with whānau (family group) support. The history of restorative justice in Aotearoa/New Zealand will be discussed in Chapter 6: Public policy, p.173.

## Restorative justice principles

Restorative justice processes in New Zealand are based on carefully developed guiding principles. They are listed here in abbreviated form:

- all human beings have dignity and worth
- crime is injury and creates an obligation on the part of the offender to make things right
- crime hurts not just the individuals involved (including the offender) but also their communities
- all parties affected should be given an opportunity to respond to the crime
- the restorative justice process is centred on the victim, who chooses how they will participate in the process and what outcomes might repair the harm done to them
- the offender is given an opportunity to be accountable for their offending i.e. to accept responsibility for what they have done and to attempt to repair the harm caused by their actions
- the primary purpose of restorative justice is repairing the harm and rebuilding the relationships damaged by the offending
- the results of the process are measured by how much repair was done rather than how much punishment was inflicted
- “the restorative justice process is respectful of age, abilities, sexual orientation, family status and diverse cultures and backgrounds – whether racial, ethnic, geographic, religious, economic, or other – and all are given equal protection in due process” (Department for Courts, 2002, p. 16).

## Restorative justice process

Restorative justice facilitators working within the court-referred section of the Ministry of Justice in Aotearoa/New Zealand base their work on the Ministry of Justice (2008b) definition: “**Restorative justice is** – a process where parties with

a stake in a specific offence come together in a conference, to talk about the effects of the offence and to agree how those effects could be overcome or reduced” (p. 5). This process provides an opportunity for the offender to apologise for their actions and make amends to the victim. Outcomes of the restorative justice process may include financial reparation, community service, an apology and/or a specific action by the offender in response to a request from the victim.

Facilitators participating in the research reported that restorative justice conferences achieved most, if not all, of the conference aims. Conferences that ‘failed’<sup>20</sup> were not discussed by research participants and this may have been because facilitators did not recognise when a conference failed, or they did not admit to such failures.<sup>21</sup> However, the positive results achieved in court-referred restorative justice conferences may come about because in the process prior to the conferences factors that might contribute to a failed conference are filtered out. These include:

- the offender has already pleaded guilty to the offence
- a judge has considered the case appropriate to be referred for a restorative justice process
- the court Victim Adviser has gained permission from the victim to give their details to the facilitators

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<sup>20</sup> There does not yet appear to be a clear definition of what a ‘successful’ conference is and what a ‘failed’ conference is. Each of the participants – victims, offenders and facilitators might have a different view about how well or badly the conference went, making definition difficult.

<sup>21</sup> Cases that are referred by the court but do not go to a conference because the victim or the offender choose not to do so, are not deemed to be ‘failed’ conferences.

- the victim and the offender have chosen to participate in the conference
- the victim, the offender and their support people have participated in a pre-conference process, are informed of what a conference involves and have considered what they want from it, as well as their contribution to it
- the facilitators have assessed all conference participants as being capable of and appropriate for participating in a face-to-face conference
- the facilitators are aware of the possibility of the conference process being manipulated by participants for their own purposes and so they guard against it
- the conference allows for, and encourages, the victim and the offender to use the process to achieve the aims they brought to the conference.

That is, an effective restorative justice conference is not only the result of careful planning, but of optimising the circumstances under which it will take place.

## **Shame**

Shame is an important issue in restorative justice literature (Barton, 2003; Braithwaite, 2000). Monte (1999) in his theory of the development of personality, wrote: "Shame supposes that one is completely exposed and conscious of being looked at: in one word, self-conscious. One is visible and not yet ready to be visible . . ." (p. 391). In Aotearoa/New Zealand, restorative justice facilitators deal with two different concepts of shame. One is the individual approach of Pākehā/European people and the other the collective culture of Māori and Pacific people. Individual shame is "a feeling of distress or humiliation caused by consciousness of the guilt or folly of oneself or an associate" (Deverson & Kennedy, 2005, p. 1035). In a collective culture the



shame of the offence belongs to the whole family, not the individual.<sup>22</sup>

Shame, in restorative justice, is not the result of deep violation by another person – as for instance in sexual abuse – but a mixture of the offender's guilt which is the result of their own actions, of being embarrassed by others knowing of the guilt-inducing action and fear of the consequences from the action. These may lead to “a capacity for experiencing this feeling, esp. [sic] as imposing a restraint on behaviour” (Deverson & Kennedy, 2005, p. 1035).

Braithwaite (1989) has suggested that shame can either help prevent criminal activity or exacerbate it. In discussing shame and rage, Retzinger (1991), claimed that shame precedes anger, with anger being the reaction to the real or perceived rejection experienced by the angry person.

Braithwaite (1989) makes a clear distinction between shaming that leads to stigmatisation, thereby confirming a deviant status, and reintegrative shaming. He stated: “Shaming that is reintegrative, that shames while maintaining bonds of respect or love, that sharply terminates disapproval with forgiveness, instead of amplifying deviance by progressively casting the deviant out” (p. 12) can prevent recidivism.

However, as Donna Coker pointed out:

Reintegrative shaming requires that private individuals agree with and

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<sup>22</sup> This is illustrated in Chapter 8 p. 241.

support the moral norms reflected in the penal laws (Braithwaite, 1989). It also requires that private individuals (implicitly, at least) acknowledge the moral authority of the state to create and enforce those norms (cited in Strang & Braithwaite, 2002, p. 138).

Some offenders do not recognise the moral norms reflected in the laws of the State, nor its authority to make and enforce the laws based on those norms.

Barton (2003) took an opposing view to Braithwaite. He reframed shame as “empowerment” and “disempowerment” for both victim and offender. He saw that offenders were also disempowered by the criminal justice system and argued that “offender disempowerment was the greatest obstacle preventing them from putting things right with victims” (p. vi). Barton believed that the empowerment of all the stakeholders in the restorative justice process was necessary to attain restoration, and that it was possible with effective facilitation.

*The above discussion is predicated on a personal, individual concept of shame.<sup>23</sup> In Aotearoa/New Zealand Māori and Pacific<sup>24</sup> people focus on collective shame – the whole whānau or family is shamed by the offending. Doing wrong does not in itself necessarily cause an offender to experience shame, but, having other people who are important to them – such as members of their community – knowing they have done wrong usually does impact on them.*

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<sup>23</sup> My reflections, as a reflexive researcher, will be presented in italics in a freestanding block of text throughout this thesis.

<sup>24</sup> Not all Pacific people living in Aotearoa/New Zealand are immigrants. In 2006 6.9% of the total population identified as Pacific peoples and more than 60% of the people who define themselves as part of the Pacific community were born in New Zealand.

## Facilitation and facilitators

In this section, I define facilitation and facilitators and outline a theoretical rationale to support restorative justice facilitation. I discuss co-facilitation, ethical values, creation of a facilitator style and practical issues for facilitators. In this research, I make new links for restorative justice between recognised practical facilitation skills and group facilitation theory. Both are important foundations for effective facilitators.

Facilitation is a complex and skilled process, and facilitators need to base their facilitation practice on a sound rationale. They also need to have a broad range of facilitation skills in order to work with group participants.

Facilitation is an ancient art; it had a place in spiritual and monastic traditions in the form of guides, spiritual masters and spiritual directors where it still flourishes. Facilitation is found in many forms of experiential and practical learning. . . . In the 20th century facilitation re-emerged within progressive or radical education and expanded through the 'new' psychotherapeutic fields such as Gestalt, psychodrama, therapeutic art and dance and other humanistic personal development approaches (Gregory, 2002, p. 79).

Facilitation is now also employed in many other situations. Kitson, Harvey, and McCormack (1998) claimed: "Facilitation has been applied in different fields and disciplines, both within and outside health care, including education, counselling, management, practice development, health promotion, action research, clinical supervision, quality improvement and audit" (p. 152). The restorative justice process can be added to the list of situations in which

facilitation is a key component.

Hunter, Thorpe, Brown, and Bailey (2007) acknowledged that group facilitation has a rich history and many influences – including Māori and other indigenous people. However, the literature discussed in this chapter is predominantly from a Western perspective.<sup>25</sup>

The *New Zealand Oxford Dictionary* has identified that the word “facilitate” comes from the Latin *facilis*, and has defined it as to “make easy or less difficult or more easily achieved” (Deverson & Kennedy, 2005). The aim of facilitation is to enable those who are being facilitated to achieve their purpose as smoothly and productively as possible in a consensus style. Although facilitation aims to make the process easier for group participants, being the facilitator is not effortless. Thomas and Pyser (2008) wrote: “The proliferation of literature that promotes stand-alone technical facilitator education ‘dumbs down’ the real complexity and challenge of facilitating groups and does not accurately depict what is required to facilitate effectively” (p. 13). It is this complexity and challenge that I have attempted to outline here.

In effective facilitation, the facilitator intentionally shares power with the participants in a co-operative manner, rather than having power over them in an autocratic way. Hunter, Bailey, and Taylor (1999) claimed that:

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<sup>25</sup> The issues of facilitation with multicultural groups are discussed on p. 248.

Power and control issues lie at the heart of facilitation. . . . Facilitation is about releasing the group wisdom, and to do this requires every person in the group to be fully empowered and participating. Personal power and power with others is essential for a powerful group (p. 53).

Carl Rogers (as cited in O'Hara, 1989), a pioneer of facilitation, described the facilitation role:

- The facilitator is genuinely free of a desire to impose ready-made truths or to control the outcome.
- The facilitator has skills in helping people engage in genuine dialogue.
- The facilitator respects the capacity of the group to discover the nature of their own problems and has the skills to help people to express that capacity.
- A respectful hearing is given to all attitudes and feelings, no matter how “extreme” or “unrealistic”.
- The members of a group are permitted to choose, collectively and individually, their own processes and work towards their own goals (pp. 14-15).

Hunter et al (2007) argued that: “Facilitation starts from the premise that every person has an equal right to speak and participate in dialogue and decisionmaking” (p. 21). Gregory (2002) claimed that the art of facilitation is in “drawing out the wisdom already embedded and lying dormant in the psyche of the learner” (p. 80).

*This claim fits with my own practice. When I am working with a group, I operate on the principle that the knowledge needed by group members is already present and my task as facilitator is to assist the knowledge to emerge in a way that the members can use.*

## **Facilitators**

Hunter (1999) defined a facilitator as a “process guide who works with a group to assist it to achieve its self-defining purpose” (p. 118), while Gregory (2002) noted: “Facilitators are people with the skills to create conditions within which other human beings can, so far as possible, select and direct their own learning and development” (p. 80). Heron (1999) claimed that the role of the facilitator is to manage the dynamics of the group, particularly the feeling and emotion in the group’s life. Hunter et al (2007) stated: “A facilitator intervenes to protect the group process and keep the group on track to fulfil its task” (p. 69). McCain and Tobey (2007) argued that a facilitator has many roles – as leader of the group, manager of the agenda, role model for positive behaviours, content expert and consultant. However, for a facilitator to be effective they need to be competent in the three major areas of knowledge, skills, and behaviour. Facilitators do not involve themselves in the group deliberations.

Gregory (2002) added the perspective that “facilitation can be explored in terms of both being and doing – what the facilitator ‘is’ and what the facilitator ‘does’ or the passive and active aspects of presence and performance” (pp. 82-83).

“Presence” is who facilitators are and “performance” is what they do, with presence and performance being intertwined and interdependent. Competence in both aspects is necessary for effective facilitation.

Facilitators are the lynchpins in restorative justice – they keep the restorative justice process moving. Facilitators begin the process when they invite

participants to a pre-conference meeting and continue it by enabling victims and offenders to work towards restoring their fractured relationship. Hitherto, restorative justice facilitators have been trained in practical skills, but not in group theory.

A restorative justice facilitator, then, has the task of assisting a group to achieve its purpose. Facilitators do this by using their unique style to set up the working environment and manage the dynamics of the group to encourage group members to work together towards their goal.

### **Co-facilitation**

In many restorative justice cases in the criminal justice system, the role of facilitator is shared between two or more people, and is termed co-facilitation.

Co-facilitation is “a *relationship between two or more people* working with a group *to facilitate a group* process . . . [It] is about making things easier for the group *and the facilitators*” (Hogan, 2002, p. 86). Brief complex groups and long-term groups can benefit from co-facilitation.

It is appropriate to have more than one facilitator present at restorative justice conferences because they are complex situations which present a number of variables that must be managed simultaneously. Van der Merwe (1998) wrote that the lesson he learned was “never undertake long-term mediation as an individual. For the sake of balance and continuity, it should always be undertaken as a team” (p. 12). Many restorative justice facilitators prefer to work in pairs and, if there are multiple offenders or victims, then additional facilitators

may be added to the facilitation team. Co-facilitation also allows for an appropriate mix of facilitators to be provided if ethnic, gender, disability or other special circumstances are present. Co-facilitation might be two trained facilitators working together as equals, or one experienced facilitator working with a trainee facilitator (Hunter et al., 2007, p. 31).

Martin (2003) suggested that during their preparation for the case, restorative justice co-facilitators would discuss how they might work together, and which one of them would be responsible for each of the required tasks. Then at the post-conference debrief, where facilitators discuss how effectively they have worked together, co-facilitators can give current and accurate feedback to each other on their performance. The Ministry of Justice Training manual has a section on how to give such feedback (Ministry of Justice, 2008b, p. 3, Module 5).

Advantages of co-facilitation include having two people using their training and expertise to plan and facilitate the process and having two people monitoring and attending to the participants. It allows for one facilitator to be with the victim, and another with the offender, during breaks. With co-facilitation it is possible to match participants and facilitators, and enable precise feedback in the post-conference debrief.

The disadvantages of co-facilitation are that it is more expensive than a single facilitator, and it takes more time and organisation to co-ordinate two compatible



facilitators to plan and run a restorative justice process. It is also more complex: “Co-facilitators simultaneously need to maintain an awareness of each other, the relationship of their co-facilitator with the group and ways of supporting each other” (Hogan, 2002, p. 112). As Schwarz (2002) wrote: “When cofacilitators [sic] work well together, both they and the group benefit; when they don’t, everyone suffers” (p. 297).

*My experience is that effective co-facilitation provides a better quality process than a single facilitator in a victim/offender restorative justice process in the criminal justice system. Restorative justice conferences require notes to be taken for a report to go to a judge. Because one facilitator is mainly a note-taker in the actual conference, they may not be considered by theorists as a full co-facilitator. However, as they fulfil that role in all other aspects, and are not solely scribes, I have deemed them to be co-facilitators.*

## **Facilitation and other disciplines**

The terms facilitator and facilitation have been used loosely by some commentators in a variety of situations, often inaccurately. Hunter et al (2007) commented that mediators, teachers or trainers, coaches, managers, group therapists and leaders have been erroneously labelled facilitators. There may be a facilitative component in all these roles, but that does not mean they are a facilitator as defined in this discussion. A mediator<sup>26</sup> works only with people in conflict, so they do not fit the definition (Schwarz, 2002). Teachers or trainers

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<sup>26</sup> In Aotearoa/New Zealand mediation and facilitation are regarded as quite distinct disciplines with mediation being a goal-oriented procedure and facilitation process-oriented. See p.82.

focus on transferring information or knowledge to individuals and have an assessment component to their role which is not undertaken by facilitators. Coaching and facilitating use similar skills and approaches, but coaching, especially in a sporting situation, can involve choosing and removing people, which is not done by facilitators. Managers in an organisational setting usually assess, appoint and dismiss staff, which facilitators do not. Group therapists have as their focus the personal healing of individuals, and even though this may be in a group setting, it is a professional/client relationship of inequality, not the equal relationship of participant and facilitator. Importantly, facilitators do not engage in therapy while they facilitate. Effective leaders may be facilitative, but may also be required to exercise power over their followers and influence the direction they should take, which facilitators do not do.

### **Ethical values and principles of facilitation**

Facilitators are nonpartisan in their work with groups and do not set the group's value base. However, facilitators as individuals – and facilitation as a process – are not without values. Schwarz (1994) “stresses that facilitation is value-based, and that these values guide effective group behaviour and effective facilitator behaviour” (p. 4). He sees these key values as:

- valid information (sharing and understanding information)
- free and informed choice
- internal commitment to these choices (people being personally responsible for the choices they make as part of the group)
- compassion (p. 9).

Hunter et al (2007) stated: "Facilitation is not value-neutral. The inherent value of the individual, the collective wisdom of the group, co-operation, choice and consensus are all key values in facilitation" (p. 161).

### **Use of facilitation in restorative justice process**

The parties in a restorative justice process normally come from diametrically opposed positions, with one having experienced harm and the other having committed the harm. Therefore it is reasonable to expect the parties to require some assistance as they talk about the offence and its effects.

The most appropriate assistance for these parties is facilitation, because it aims to achieve agreement as smoothly and productively as possible. Bruce (2008) affirmed this when she stated that a central argument of her thesis was: "that facilitation is a skilful accomplishment that is deeply embedded in the procedures and rituals of restorative justice that it is largely taken for granted and remains unrecognised" (p. 1).

The restorative justice process in the criminal justice system was set up to operate in a way that is user-friendly for victims, as well as for offenders. It is intentionally not a legal process. The conference is a managed process but is not mediation or counselling. The *Victims' Rights Act 2002*, s 9<sup>27</sup> states that: "If a suitable person is available to arrange and facilitate a meeting between a victim and an offender to resolve issues relating to the offence [the relevant

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<sup>27</sup> Victims' Rights Act 2002, No 39, Public Act, New Zealand Government. See p.447.

officials are to] encourage the holding of a meeting of that kind.” A facilitator, using a restorative justice facilitation process, fits the criterion of a suitable person to assist victims and offenders to resolve their issues.

### **Theoretical rationale**

Although a restorative justice process in the criminal justice system is very brief in group process terms,<sup>28</sup> its facilitators need to be trained and experienced.

They need to have a sound theoretical rationale, a high standard of skills, and be just as aware of hazards as facilitators of more lengthy processes are. They also need to be as personally competent as they are theoretically sound.

I will use the theoretical perspective of John Heron (1999)<sup>29</sup> as a basis for a rationale for restorative justice process facilitators in the criminal justice system, because his perspective and explanations best fit this research. Gregory (2002) claimed Heron as one of the first modern developers and writers in the field of facilitator-participant relationships. Heron is frequently referred to and quoted by other writers in this field, (for example: Elwyn, Greenhalgh, & Macfarlane, 2001; Gregory, 2002; Hogan, 2002; Hunter et al., 2007; Thomas & Pyser, 2008).

Heron's perspective fits with restorative justice facilitation and following his work has enabled me to develop a clearer theoretical rationale than using a variety of theorists with disparate views would have done.

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<sup>28</sup> Time spent facilitating would include two pre-conferences of 45 to 90 minutes each, and one conference, sometimes of less than two hours, but on occasions up to five hours.

<sup>29</sup> This chapter has been heavily influenced by the work of Heron. Most other writers in Australasia since 1999 have relied extensively on Heron as there is limited literature on group facilitation.

### *Facilitator as an educator*

Heron (1999) defined a facilitator as “a person who has the role of empowering participants to learn in an experiential group” (p. 1). He approached facilitation from an educational perspective and believed that “whatever the sort of group, its members are acquiring new understanding of themselves and others” (p. 15).

I will follow his perspective, using the sections of his work that are apposite for my research, and suggest that a restorative justice process is as much an educative/learning situation, albeit a very brief one, as it is a healing/restorative process indicated by the Ministry of Justice.<sup>30</sup>

In a restorative justice process in Aotearoa/New Zealand, the interaction of the victim and offender, and their supporters, does not occur until their conference is convened. However, the pre-conference meetings are intentionally designed to begin the development of a supportive climate and to equip the victim(s) and their supporter(s), and offender(s) and their supporter(s), with knowledge that will help them to participate fully in their conference and learn about, and from, each other.

*Victim(s) and offender(s) would not perceive themselves as students or learners in a restorative justice process but, at the end of a conference, they frequently talk of what they have learned. I have observed that learning is constantly occurring, can be self-directed, and does take place*

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<sup>30</sup> The Ministry of Justice stated that restorative justice “aims to restore power and peace of mind to the offence victim” (2008b, p. 7).

*in conferences.*

Heron (1999) listed four interdependent forms of learning:

1. experiential
2. imaginal
3. conceptual
4. practical learning (pp. 2-3).

These constitute a hierarchy, with experiential learning as the base of the pyramid.

Heron (1999) recognised six issues which are basic to good facilitation in a learning situation. They are factors that can assist a facilitator to influence a learning process. He labelled them “dimensions”. These work in conjunction with his “modes of facilitation”, which are the different decision-making approaches a facilitator can use within each dimension.

The six dimensions of facilitation are summarised below, along with the facilitative question Heron posed for each of them.

1. The planning dimension, which deals with the aims of the group and the programme to achieve them. The facilitative question is: “How shall the group acquire its objectives and its programme?”
2. The meaning dimension attends to the participants’ cognitive responses. The facilitative question is: “How shall meaning be given to and be found in the experiences and actions of group members?”
3. The confronting dimension is the challenge to the group about what is being resisted or avoided. The facilitative question is: “How shall the group’s consciousness be raised about these matters?”

4. The feeling dimension is about sensitivity. The facilitative question is: “How shall the life of feeling and emotion within the group be handled?”
5. The structuring dimension deals with the formal aspect. The facilitative question is: “How can the group’s learning be structured?”
6. The valuing dimension is about creating a supportive climate in which group members can be honest about who they are and what they need. The facilitative question is: “How can such a climate of personal value, integrity and respect be created?”

An effective facilitator needs to be aware of each of these dimensions as separate entities, as well as recognising how they interrelate and integrate into a well-balanced whole. “The full form of the facilitative question is: given that my purpose is to elicit and empower learning through an effect on this or that dimension, how can I go about it?” (Heron, 1999, pp. 6,7).

For each dimension there are two questions to answer. Who will make the decision about the issue raised by the question – the facilitator, the facilitator and group, or the group? And, which intervention will be used?

Heron (1999) claimed that the six dimensions detailed above can each be handled in three different modes with regard to the exercise of facilitator power:

1. hierarchical: the facilitator directs the learning process
2. co-operative: power is shared between facilitator and group
3. autonomous: the group exercises its power without facilitator intervention.

Generally, groups will use all of the modes during the life of their group.

Hierarchy will be used in the early part, co-operation in the mid-term and

autonomy later on. Each of the modes can be used with each of the dimensions. An effective facilitator will move flexibly between modes and dimensions, matching them with the situation in the group. Because of the very brief nature of the restorative justice process, its facilitators operate mostly in an hierarchical mode in pre-conferences and conferences, but they report that many conferences move into autonomy mode towards their conclusion. In this research, my facilitation of the focus groups used all three modes and all six dimensions discussed above.

### ***Tasks and process***

Facilitators need to understand the distinction between task and process when working with a group. This is easily seen when a group *task* is something physical such as creating a picture. However, in personal development work – psychodrama, role play, or a restorative justice process – the distinction is less clear but still present. The *process* is what occurs as the task is worked on. Heron (1999) stated: “The social phenomena that go on during this task, constitute the group’s process” (p. 12). In a restorative justice process, the task is to facilitate the meeting of the victim(s) and offender(s) and their communities as they work to repair the harm caused by the offending. The group’s process occurs during the progress of the task.

### ***Effective facilitation***

In this research, the task of the focus groups was to discover what effective



facilitation was.<sup>31</sup> The group process occurred as this task was worked on. As Heron (1999) stated, the process is the “intrapsychic and interpersonal phenomena that go on as warp to the woof [sic] of the task” (p. 12). An effective facilitator would be aware of these two factors and plan, then facilitate, for both to occur.

How a facilitator is appointed to their task, and how they use their power in their role, depends to a large extent on the situation. In a restorative justice process, the facilitator is appointed to a very brief and highly prescribed task with the designated victim(s) and offender(s). However, the facilitator needs to be aware of, and build into their work the following factors: facilitator style, facilitator authority, group dynamic, existential and archaic anxieties, transference issues, feeling and emotion differences, the confronting dimension, preventive strategies, cultural/planetary and transcendental anxiety, psychophysical modes, the valuing dimension, integration and shame. Each of these is discussed below.

#### *(a) Facilitator style*

Facilitator style – that is, “the unique way a person leads a certain group, and more generally, the distinctive way that person leads any group” (Heron, 1999, p. 13) – is crucial to effective facilitation. In Heron’s view, facilitator style is a

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<sup>31</sup> *Effectiveness* for this study has two meanings. The first is what the authorities say it is – see discussion p.70f. The second meaning is central to this study: it is what restorative justice facilitators in Aotearoa/New Zealand say it is.

more significant contributor to effective facilitation than the rules and principles of facilitation practice, although they have to be taken into account. He claimed that there is no one right way to facilitate a group, and there are many valid approaches. Heron said that facilitator style can be analysed

in terms of the dimensions, modes and particular interventions given in this book, and how these are put together. We can also see it as a function of the facilitator's values and norms, psychological make-up, degree of skill and development, of the objectives and composition of the group, and of a wider cultural context. But in the last analysis, it is you, the imponderable person, that determines your style (p. 13).

Heron's statement would suggest that – at least with facilitator style – there is more than training, skill, appropriate values and ethics required for high-quality facilitation. Heron (1999) labelled this unique personal contribution as charisma or personal power. He said:

What I mean by charisma is personal power. I do not mean by such power the ability to control and dominate others, to be a source of oppression. I mean the very opposite: the ability to be empowered by one's own inner resources, the wellspring within, and the ability thereby to elicit empowerment in others (p. 216).

As a participant in facilitated groups, and as a facilitator working alongside other facilitators, I have observed that some people are more effective facilitators than others. Therefore, I ask whether it is the quality of training that makes a facilitator effective, or whether an innate ability is required as well. This research seeks to answer this question, and discover what restorative justice facilitators

in the criminal justice system in Aotearoa/New Zealand consider to be effective practice. Heron's analysis is a useful contribution to the discussion.

*(b) Facilitator authority*

Heron lists three kinds of facilitator authority in relation to learning. The first is tutelary authority, which is having the appropriate knowledge and skill for the learning situation. The second is political authority and concerns the decisions that need to be made about the use of strategies to achieve the task. The third is charismatic authority, which is the way facilitators use their presence, manner and style to influence the learner and learning process. "Charismatic facilitators empower people directly by the impact of their way of being and behaving. It manifests on all the dimensions and especially through the feeling, confronting and valuing dimensions" (Heron, 1999, p. 20).

The issue of facilitator authority, and its use, has commonly been a discussion topic in facilitator training courses I have taken part in as a learner or a trainer. Heron (1999) claimed the exercise of facilitator power can be handled in three different modes: hierarchical, co-operative or autonomous. However, unless a group is totally autonomous from conception to completion, a facilitator is appointed to assist the group to achieve its purpose. Autonomous groups tend to be lengthy, as it takes a lot of time to develop the group process and make facilitative decisions. However, most groups are not autonomous, and in these other groups a facilitator has the role of convening a group and moving it through its task. To do this, facilitators need to use their authority. That tutelary

authority, political authority and charismatic authority are used appropriately by the facilitator is a theme running through Heron's (1999) work.

### *(c) Group dynamic*

A group dynamic is present in all groups whether large or small, brief or long-term, and an understanding of the group dynamic is basic to all effective facilitation. The group dynamic is "the combined configuration of mental, emotional and physical energy in the group at any given time; and the way this configuration undergoes change" (Heron, 1999, p. 51). However, there seems to be no reliable guide to how a group's dynamic will develop. Not all of Heron's theory is applicable in this discussion – because of the brevity and small numbers in a restorative justice process – so only the relevant sections will be included. In groups of longer duration, the development of the group dynamic is more complex.

Each group is unique in the way it experiences its group dynamic. Heron (1999) claimed that the group dynamic can take many forms, some positive and some negative, and that the positive forms usually emerge from negative forms. He described four obvious phases experienced by groups which shift from negative to positive (pp. 51-52). Heron labelled them as the four seasons of the year.

- The stage of defensiveness (wintertime), which usually occurs at the start of a group when trust is low and anxiety is high.
- The stage of working through defensiveness (springtime) as trust builds and a fresh culture develops.
- The stage of authentic behaviour (summertime) when trust is high and

group process and task work together to produce good growth.

- Closure (autumn). The end of the group is approaching and participants prepare to transfer to their usual life. Separation anxiety may arise. This can be dealt with by acknowledging that the end of the group is near, addressing unfinished business, celebrating the harvest, and saying goodbye in an appropriate manner. It is at this stage in a restorative justice process that decisions are made to repair the harm done by the offending and begin the healing process for victim(s) and offender(s).

The seven positive forms of the group dynamic listed by Heron (1999) are:

1. task-oriented – members are involved in their task and co-operating
2. process-oriented – the group is aware of its psychosocial process
3. expressive – the members are expressing themselves creatively
4. interactive – members are interacting at a deep personal level
5. confronting – creative conflict resolution is occurring
6. personal work oriented – intentional personal growth work is occurring
7. charismatic – the group is using psychic and spiritual energy.

For these positive forms to occur, both group members and facilitator would be working flexibly, using the dimensions and modes discussed earlier as the situation requires.

Heron (1999) commented that these seven positive forms are the outcome of three main interdependent influences:

1. cultural liberation – ideas from the growing edge of the surrounding culture<sup>32</sup>
2. educational confluence – a variety of kinds of learning interacting

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<sup>32</sup> "Culture" as used here refers to customs of a group rather than race or ethnicity.

3. psychological openness – members open to change and growth.<sup>33</sup>

In a restorative justice process, all three of these need to be taken into consideration by facilitators. In both their positive and negative forms, they influence the course and progress of a restorative justice process, especially a conference where victim(s) and offender(s) are present and the group dynamic can enhance or restrict the outcome.

Some of the more obvious socially restricting forms of the group dynamic are particularly apposite to a restorative justice process:

- rigid contribution hierarchy – how often people speak gets set in a pattern
- power struggles – high contributors struggle to dominate
- gender bias – men dominate the speaking and ethos of the group
- compulsive task-orientation – participants need to “fill unscheduled or process-oriented time” with defined task work
- emotional and physical isolation – self-disclosure and touching are taboo
- spiritual and subtle occlusion – being absent spiritually.

The dynamic of shame, which is discussed on p. 24, could be added to this list for restorative justice processes, as could cultural issues.<sup>34</sup>

***(d) Existential and archaic anxieties***

The anxieties of group participants have a significant effect on its dynamics.

This is especially so at the beginning of a group. Heron (1999) discussed two

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<sup>33</sup> These influences in their negative form – culturally oppressive norms, values and beliefs; educationally limited learning; and psychologically anxious and defensive members – create a negative, restricting group dynamic.

<sup>34</sup> Māori and Pacific research, p101ff.

sorts of anxiety: existential and archaic. Existential anxiety arises out of being in a group situation where, in the initial stage, a participant has an identity crisis to some degree. They experience acceptance anxiety, in which their need to love and be loved is put at risk. They experience orientation anxiety as they wonder if they will understand what is happening, and if they will be understood by other participants. In addition, they experience performance anxiety, wondering if they will be competent in getting what they have come for. These are all normal fears and, in moderation, are self-motivating and have a positive effect on the group's dynamics.

Archaic anxiety is caused by repressed distress, particularly childhood hurt – especially grief, fear and anger. Heron (1999, p. 60) claimed that repressed grief for emotional deprivation, fear of not being in control and anger at restriction of one's freedom to develop, are carried by most people. On top of these is embarrassment about who we really are and the fear of how others will react if they discover it.

Facilitators need to be aware of the possibility that these anxieties will be present in participants and use appropriate facilitation strategies to handle them.

#### ***(e) Transference issues***

An issue that facilitators need to be particularly aware of is the possibility of the unconscious transference of hidden and repressed feelings. Transference is “the displacement (and projection) of feelings, thoughts and behaviour,

originally experienced in relation to significant figures during childhood, onto a person involved in a current interpersonal relationship” (Moore & Fine, 1990, p. 196). This may occur between participants, from a participant to the facilitator, or from the facilitator to a participant or the whole group.

Transference intervenes in group interactions in unhelpful – sometimes destructive – ways, with different types of transference having different consequences for the group. Even positive transference, where a participant transfers onto the facilitator the longing for the good parent they did not have, has an adverse effect on the group. Transference is a more significant issue for groups that have a long-term association, as its effects generally develop over time.

All facilitators, including restorative justice facilitators, need to be particularly careful that they do not project their own hidden distress from the past on to a participant(s). This phenomenon is known as counter-transference. It is important that a facilitator keeps their distress out of the group process. Once a facilitator’s distress becomes part of the group dynamic, the facilitator’s effectiveness will deteriorate. Heron (1999) pointed out: “One basic indicator of good facilitators at work is that they keep relatively clear of their own past unfinished business while on the job. This is one of the most important criteria of their emotional competence” (p. 64).

#### ***(f) Feeling and emotion***

Heron (1999) claimed that feeling and emotion are the significant factors in the



dynamics of a group. This is as true for a small and/or brief group as it is for a large and long-term one. Heron makes a distinction between feeling and emotion, which each have an impact on the dynamics of a group. Feeling is what occurs in a participatory situation, while emotion is the individual response. He defines feeling as

the capacity of the person to participate in what is here and now, to indwell what is present through attunement and resonance. Through feeling I know unity with the content of experience, and at the same time know my distinctness from it. This is the domain of empathy, indwelling, participation, presence, resonance and suchlike (pp. 199-200).

Heron stated (1999): “Emotion is to do with the fulfilment or frustration of our individual needs and interests in the forms of joy, surprise, anger, grief and so on” (p. 195).

Managing the dynamics of the group is a facilitator’s task – particularly the feeling and emotion in the group’s life. In a restorative justice process, the emotion of individual participants is very apparent, and often quite readily expressed, or relatively easily evoked and recognised by facilitators. However, feeling – as defined by Heron – may not be as understood by facilitators but its management is important.

### *(g) The confronting dimension*

Even in a brief group experience, such as a restorative justice process, participants will display resistance to, or avoidance of, some issues. If this resistance or avoidance – displayed as rigidity – is appropriately addressed, the

group process will again be able to flow appropriately.

The sources of rigidity, according to Heron (1999), are: educational alienation, cultural oppression, psychological defensiveness, underdevelopment and easy street. In a restorative justice process the following rigidities will be commonly experienced from victims, offenders and support people:

- cultural oppression – oppressive norms and values which participants bring from their ethnic background or social situation
- psychological defensiveness – coming from existential or archaic anxieties
- underdevelopment – a lack of knowledge or experience (especially for immigrants not familiar with the societal norms of this country or of the restorative justice process)
- easy street – taking the soft option (p. 179).

Confronting rigidity is necessary to enable the flow of the group progress to resume. The three factors which may be the cause of the rigidity are: the issue, the behaviour and the source. Heron (1999) claimed that raising awareness of what is being avoided is a way of confronting what is occurring. This can focus on the issue presented, or the defensive behaviour displayed, or the source of the rigidity, or all three. In a brief restorative justice process, there is not time to resolve resistance or avoidance as described above, nor is it appropriate to intervene to that extent, as it is not an agreed part of the conference task.

However, restorative justice facilitators need to be able to analyse the cause of the blockage in the progress of the process and choose a way to deal with it so the process can continue.

### *(h) Unblocking strategies*

Heron (1999) detailed strategies for unblocking group dynamics locked into negative forms: using preventative measures is one strategy. The following strategies are based on Heron's work, but adapted to fit a restorative justice process.

Preventive strategies:

- at the beginning of the group, establish, by example, an ethos that affirms the worth of participants, and their right to a supportive and safe environment in which they may be vulnerable
- negotiate a clear set of ground rules for the group to use e.g. speaking respectfully
- allow participation to be voluntary
- when a course of action is not productive, switch to another before the group gets stuck.

Solution strategies:

- identifying the restriction – e.g. contribution rate, gender bias – by pointing it out when it becomes apparent
- interrupting its activity by immediately practising an alternative, productive behaviour.

It is important that confrontation is always made in a respectful and affirmative manner, while being firm in addressing the issue and the behaviour. However, facilitators may find that confronting a participant is not easy. It is normal to feel anxious about being confrontational, but if the facilitator's archaic anxiety is also raised, their ability to confront in an appropriate way may be compromised. The

facilitator may soft-pedal and avoid confronting, or they may be heavy-handed and attack the participant. Effective confronting is a balance between these two.

Rigidity will surface at intervals in the life of a long-term group. Each time it surfaces it needs to be confronted and addressed with strategies appropriate to the dimension and mode in which the group is operating at the time. In the brief restorative justice process, confrontation will usually be in an hierarchical mode. Heron (1999) suggested that such confrontation uses an issue focus such as: “I think we are all avoiding issue X” (p. 185), and that there be no focus on how it is being avoided. This is a direct and concise action which would fit with a restorative justice process.

#### *(i) Cultural/planetary and transcendental anxiety*

Because a restorative justice process is brief, it cannot deal with concerns that affect the whole of society or are global – such as the world financial situation – and usually they do not arise. Nor does it address transcendental issues such as: “Is there a god?” However, victims and offenders do come to the restorative justice process with, for example, questions about fairness in the criminal justice system, whether or not punishment achieves rehabilitation and whether or not offenders can cease offending. Participants need to have such matters addressed in the process to enable them to be present in a feeling manner.

Heron (1999) believed that if these anxieties are not addressed, participants may display rigid conventional behaviour and cling defensively to the status quo, rather than being open to, for example, the possibilities of the restorative

justice process.

Participants also might find it difficult to make decisions about outcomes from the conference – such as whether the judge should be asked not to send the offender to prison – if some of the anxieties they have brought with them have not been addressed. Unaddressed cultural/planetary and transcendental anxiety may result in participants clinging to a conservative stance on offending and offenders. For instance, if the participant believes in a judgemental god by whom punishment is required for wrongdoing, they may not be able to access the restorative possibilities of the restorative justice process.

Heron (1999) suggested that cultural/planetary and transcendental anxiety may also be positive stimuli which offer two challenges:

1. The challenge of shaping a new kind of society, both locally and globally, which cares for the planetary environment and manifests social justice.
2. The challenge of living aware of the conscious experiential field of a multi-dimensional universe (p. 68).

While these challenges are not openly addressed in a restorative justice process, they are present to an extent. Many facilitators are involved in restorative justice because they want to be part of shaping a new kind of social justice and some victims say they are taking part for a similar reason.

### *(j) Psychophysical modes*

As well as the issues already discussed, facilitators need to be aware of the psychophysical modes of relating to others – such relating is mental and

personal, as well as physical expression. The psychophysical modes of relating are more usually called non-verbal communication and according to the Scottish philosopher Thomas Reid (1801) that is the natural language which expresses our thoughts, while words are the artificial language which has been learned.

According to Heron (1999), psychophysical modes of relating include:

- posture
- gesture
- facial expression
- relative position (distance, height, or orientation)
- voice (tone, volume, rate)
- speech (what is said)
- hearing
- gazing
- touch
- smell
- taste
- intrasensory perception (non-sensory understanding of the other person's mental and emotional state).

Understanding these modes gives facilitators further information from which to gauge what is going on for participants, and what might be affecting the group dynamics.

### *(k) The valuing dimension*

Through the presence, actions and statements of a facilitator, participants become aware of the worth or value that is placed on them. In an hierarchical mode, the facilitator has the responsibility to set the environment or culture of

the group. Heron (1999) suggested to facilitators

you propose, for example, that the group becomes a place where there is safety and support, vulnerability and fallibility, honesty and risk-taking, emotional openness and appropriate self-disclosure, a spirit of inquiry, liberty and autonomy (voluntary participation), and confidentiality. You affirm the fundamental value of persons and personhood. You commend worthwhile ways of being which you feel will enable the group to fulfil its objectives of personal growth, skills building, or whatever (p. 304).

For people to participate fully in the group's process, it is essential that they feel valued and respected at all times. The facilitator sets the model for the group to emulate. Facilitators should reach out to participants in distress, validate individuals and the group, convey positive feeling, make physical contact if appropriate, be authentically themselves and intentionally use their charisma in the group process.

### *(I) Integration*

Heron (1999) discussed the topic of being a whole person and integrating learning or educational development with personal development – which may be a by-product of it. The task of many groups is personal development, which, Heron suggested, is the business of learning to be a whole person. It is “the world of personal growth, interpersonal skills, social change, ecological awareness and transpersonal unfoldment” (p. 309).

A restorative justice process is neither a purely educational situation nor a personal development one. However, in restorative justice, offender(s) and

victim(s) are viewed as members of their communities which are affected by the offending, and involved in its causes as well as the resolution of its consequences. Thus, a restorative justice facilitator must be aware that the factors Heron cited as constituting a whole person may be involved in the conference. Facilitators need to have the skills to manage cases within the brief restorative justice process, where very deep emotions are stirred, and significant learning and personal shifts occur.

### **The creation of a facilitator style**

Elwyn, Greenhalgh and Macfarlane (2001) asked: “Are good facilitators born or made?” (p. 54). This question echoes the thinking of Gregory (2002) and Heron (1999) that knowledge, skills and training alone do not create a quality facilitator – they consider personal presence to be a central attribute. Heron recognised the uniqueness of personhood which each facilitator brings to their facilitating. He stated that this innate ability permeates the manner in which a facilitator relates to participants. It is original, not created or learned, but it can mature as it integrates with training and experience. Gregory (2002) added: “An important aspect of presence is self-esteem, which develops with the growth of competence, achievement and recognition” (p. 84).

Also basic to facilitator style are personal values. Heron (1999) stated: “Your facilitator style will reflect what you deeply value about human development, what you hold to be really worthwhile forms of human flourishing” (p. 335). The facilitator’s beliefs about the capacity for participants to be fully in charge of their



own destiny, the equality of participants and facilitators and whether the facilitator strives for participant autonomy or dependence, will be reflected in their facilitation style.

Likewise, a facilitator's personal principles will influence their facilitation. Heron (1999) called these "guiding moral principles of facilitation". In addition to the common principles, such as being honest and reliable, he listed three ultimate ones. These were:

1. the principle of love
2. the principle of impartiality
3. the principle of respect for persons.

Heron (1999) defined the principle of love as "the commitment to provide conditions within which people can, in liberty and co-operation, and with appropriate hierarchy, determine and fulfil their own true needs and interests" (p. 241). The principle of impartiality "means that facilitators are committed to giving everyone in the group equality of consideration" (pp. 241-242). The principle of respect for persons, which could also be called respect for autonomy, commits facilitators to honour each person's right to make autonomous choices about what they do in any group, and to be given enough information about any proposed activity to make an informed choice about it.

Gregory (2002) considered that all facilitation in which personal matters are touched on makes demands on the facilitator. "Even the most innocent facilitation of personal development will touch on emotional, spiritual and

imaginal levels if one is working holistically” (p. 86), pulling facilitators back into themselves and reducing their effectiveness if they are not emotionally competent. So, the personal development of a facilitator provides the foundation for their work. The more work a facilitator has done on healing past distress and developing a healthy self, the better they can attend to the purpose and dynamics of the group. A confident and healthy restorative justice facilitator will be able to move flexibly between the dimensions and modes described here, confronting blockages that arise and keeping the group progressing toward its goal.

Combining each mode with each dimension provides a framework whereby facilitators might both plan and evaluate their own performance. . . . They might also form the basis of guidelines for personal development, since they help facilitators reflect on their own identity, on the limitations of their own competences, on the types and techniques with which they can work, and so on (Gregory, 2002, p. 91).

Good training also helps to develop facilitator style “by alerting you to a comprehensive range of issues and options, a large repertoire of policies and strategies” (Heron, 1999, p. 337). Heron listed the basic elements of effective training as:

- discrimination – being able to discern what is best to do at a particular stage
- modelling – following a model of good facilitation
- practice – rehearsing interventions until they work
- feedback – from peers and trainers, to learn when you are facilitating well and when you are not.

Ongoing professional development will continue facilitators' learning and maintain a high standard of facilitation.

Group purpose and composition make demands on facilitator style – different groups of people and different goals require different responses. What a group is set up to do – along with the skill and experience of the participants – will also affect which facilitator style is most appropriate and how the modes of hierarchical, co-operative and autonomous approaches could be used.

It is the facilitator's task to enable participants to achieve their potential in whatever that group is set up to do. It is also the facilitator's responsibility (for a group that is not autonomous) to create an environment suitable for the purpose of the group and then to manage the group dynamics so participants can participate fully.

*When facilitating a group I aim to provide opportunities for participants to discover things for themselves, because participants gain more by experiencing than by hearing or seeing (Jarvis, Holford, & Griffin, 2003). I believe that the more I say as facilitator, the less participants learn. I also believe that everything I do as a facilitator needs to have a sound practical or theoretical reason. For example, I use paper charts which have infinite capacity, have their information constantly available to all participants throughout the event and can be reorganised if required in a different order, rather than a static white board from which information has to be erased when it is full to add new data.*

## **Self-actualisation**

Heron (1999) considered self-actualisation an important attribute for facilitators.

So did Cilliers (2000), who defined self-actualisation as

a natural, dynamic and creative growth process in which the person, while fully acknowledging [their] own responsibility, gradually develops a unique sense of integration and wholeness through selfdefinition [sic] and the optimisation of all psychological potential, and in whom the expression of the actualising tendency leads to enhancement and enrichment of life, intrapersonally as well as interpersonally (p. 22).

Cilliers (2000) focused on self-actualisation in the qualitative/quantitative mixed methods research on facilitator development that was conducted with facilitator trainers in a workplace situation. The general research hypothesis was that “the trainer whose self-actualisation (including facilitation skills) is enhanced, will act in an empowered way in all training situations, and thus empower trainees towards personal growth” (p. 22). His research suggested that facilitation skills workshops can stimulate the enhancement of self-actualisation in the facilitators. I suggest that this can be generalised to other situations, such as the restorative justice process. Self-actualisation is important for restorative justice facilitators so they can empower participants to choose the outcomes appropriate for themselves, rather than the facilitator imposing their wishes.

Hunter et al (2007) stated: “The most important work for any facilitator is developing one’s own capacity to be and become an embodied, grounded, self-aware and self-reflecting person – to facilitate yourself.” (p. 46) That is, “growing, developing and training yourself” (p. 47).

## Planning

Before the facilitation skills discussed above can be put into practice, a plan to be facilitated – which takes into account the dimensions and modes that Heron (1999) expounded – must be made. Planning is a crucial element in facilitation, so skimping on preparation makes the process less effective. Therefore I expect to spend as much time in planning as I do in facilitating a process. However, there are issues to be decided even before planning of the group process commences.

The decision on how to plan for a learning situation is, in Heron's terms, a political one (Heron, 1999). Governance of learning has, historically, been the domain of the teacher and it was taken for granted that the teacher would make all curriculum planning decisions without involving students. Heron challenged this view, suggested alternatives, and discussed the facilitator's use of their political authority in planning.

Decisions about the planning of a group's work can be made by the facilitator alone, by the facilitator in consultation with the participants, or by the participants only.

In a facilitated restorative justice process decisions are made in an hierarchical mode by the co-facilitators. An hierarchical mode is the most appropriate because of the brief time available for the restorative justice process, the task it is required to achieve and the availability of participants. As well as facilitator/co-facilitator planning taking less time to set up, participants expect

that a restorative justice facilitation team will manage the process. Circle models<sup>35</sup> of restorative justice may use a more autonomous approach.

Even in a brief process, restorative justice facilitators need to be aware of six key areas for planning. Heron (1999) listed these as:

1. objectives
2. programme
3. methods
4. resources
5. assessment
6. evaluation (pp. 72-73).

Planning areas for restorative justice facilitators are also detailed throughout the Ministry of Justice *Restorative justice facilitator induction training manual* (2008b).

### **Facilitation contract**

Heron (1999) recognised that, because participants and facilitator need to co-operate in the process, participants must accept the facilitator in their role before the facilitator can operate effectively. Thus, an implicit contract<sup>36</sup> exists between the facilitator and the group, which is usually not recognised until it is broken – when either the facilitator or group member(s) cease to adhere to it.

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<sup>35</sup> Circle approaches emerged initially from First Nation communities in Canada . . . they are today being used in a variety of communities . . . for a variety of situations beside criminal cases (Zehr, 2002, p. 50/51).

<sup>36</sup> This contract may consist of expressed promises or it may be unexpressed expectations.

Such a contract applies particularly to situations in which members have self-selected into the group, often before establishing a relationship with the facilitator.

In a restorative justice process, a facilitator's initial contact with the participants is personally to invite the victim and offender to be part of the process, and therefore part of the group. If this contact results in the victim and offender entering into the restorative justice process, an implicit contract is established. However, the initial contact may result in either the victim or the offender declining to enter into the process, and no further relationship will occur. Thus, being able to establish rapport rapidly with the victim and offender individually is a vital skill for restorative justice facilitators.

The restorative justice process involves stating clearly what the principles, process and ground rules for a conference are (Department for Courts, 2003a). However, participants will bring other expectations with them that may have the potential to derail the conference. Gregory (2002) called this a "psychological contract" (p. 87) which underpins the facilitator-participant relationship. When the psychological contract is broken, the relationship between facilitator and participants breaks down, and the group process becomes ineffective.

### **Practical issues for facilitators**

Facilitators need to be practical people who can also manage the sometimes mundane details of establishing and maintaining a group. Tasks such as booking a venue, obtaining chairs and arranging refreshments have to be done.

So the actual facilitating of the group, once it has gathered, is only part of the task. Hunter et al (2007) stated: “A purposeful group is not just a collection of individuals. A group is an entity in itself. It is a living system with its own physical form, its own personality, its own potential and its own limitations” (p. 65). To work in this living system, facilitators need a good theoretical basis and sound practical training. Hunter et al (2007) outlined a practical framework for facilitators. They discussed:

- establishing a group process
- group culture and climate
- levels on which groups operate
- making interventions.

### ***Establishing a group process***

Once group members are gathered, the facilitator begins bonding the individuals into a unit. A group must be clear as to the reason it exists, what it aims to do while it exists, and its expected outcome – then participants can work together towards their goal. Groups that do not have a well-defined and articulated purpose are not efficient or effective. Hunter et al (1999) stated: “The primary role of the group facilitator is to focus the group on its purpose” (p. 18). When the group goal is not clear, each participant works towards their own goal, rather than the collective purpose of the group. The result is usually misunderstanding and frustration.

### ***Group culture and climate***

The facilitator initiates setting the group culture and climate, which are pre-



requisites for effective functioning. Schwarz (2002) described this as,

the set of fundamental values and beliefs that members of a group share and that guide their behaviour. A belief is an assumption about what is true (for example, “people are naturally motivated to do a good job”). A value is an assumption about what is worthwhile or desirable (for example, “maintaining honesty at all times”) (p. 27).

For participants to be able to express these beliefs and values, they need to feel that they will be respected. A supportive climate that enables them to “be genuine, empowered, disclosing their reality as it is, keeping in touch with their true needs and interests” (Heron, 1999, p. 7) is necessary.

### ***Group levels***

Groups operate on many different levels, the main ones being the physical level, the thinking level, the emotional level, the intuitive level, the energy level, the spiritual level, and the synergistic level when the group is attuned as one.

Facilitators need to be aware of and able to operate on these levels and to shift between them, as appropriate for the group.

### ***Making interventions***

Making interventions is one skill a facilitator uses to assist the group to achieve its purpose. Indeed, it is necessary for facilitators to “frequently act ‘in the moment’ – deciding if, when and how to intervene in group process discussions” (Shaw, et al, 2010, p. 4). Listening and speaking are the main ways a facilitator affects what is happening in the group. “Listening is the primary skill of facilitation. The quality of your hearing will profoundly affect the group. Listening

is active, focused and affirming. You listen for the whole group and for each person in it” (Hunter et al., 2007, p. 78). Facilitators listen to see how they can help the group to progress.

A more obvious intervention is speaking. One frequently asked question is: how does a facilitator know what to say? The answer is that they do not know in advance. As Hunter (2007) explained:

Facilitation is an improvisatory art. Like tennis, swordsmanship and jazz, you can practise the strokes or riffs, watch or listen to other practitioners, and seek to understand the philosophy and values. The facilitation itself can occur only in the practice of it – by being in action (p. 79).

Hunter et al. (2007) stated that interventions usually come in the form of questions and suggestions. They might deal with issues such as:

- climate and culture setting
- time management
- inviting participation
- keeping participants present and awake
- looking to the future
- drawing out issues
- keeping on task
- shifting to a different level
- interrupting unhelpful behaviour
- uncovering what is not being said
- identifying agreement and disagreement
- clarifying learning
- getting feedback and acknowledgement
- completing the process.

While facilitators believe that participants have all the resources to achieve their goals, it may be necessary at times for facilitators to use their diagnostic skills to confront behaviour or attitudes that are impeding the group's progress.

### *The facilitator's toolkit*

Heron (1999) suggested a range of interventions that help facilitators to keep a low profile while enabling participants to learn for themselves. They are:

- be here now – focusing on the task in hand
- be there now – open to what is happening for participants
- giving free attention – giving unencumbered focus to the group
- simple echoing – reflective repeating of the last word(s) spoken, inviting more
- selective echoing – reflecting a word or phrase of significance to lead the speaker to develop their thought
- open questions and closed questions – asked as appropriate
- empathetic divining – to recognise the implicit feeling and elicit a response
- checking for understanding – clarifying confusion
- paraphrasing – rephrasing a person's significant statement
- logical marshalling – verbally organising what the group has been saying
- following, consulting, proposing or leading – following the group direction, checking where they want to go and leading them
- working with non-verbal cues – picking up on pensive, wanting to speak, emotional, cathartic, or alienation cues
- bring in, draw out, shut out – using eye contact or hand gestures to direct participation (p. 264f).

### *Completion*

After a facilitator has used all the appropriate skills and personal power to guide

participants to achieve their goal as easily as possible, it is important to conclude the experience satisfactorily. "Completion in its wider sense means meeting the group purpose and tying up loose ends, finishing off something with nothing left undone, meeting the purpose with certainty" (Hunter et al., 1999, p. 82). Rounding off and closing the group is important. It is necessary for participants to feel they have achieved what they came for, can drop the issues on the group's agenda and move on. Hunter et al. claimed that a sign that completion has happened is that "people will spontaneously start to talk about what's next for them" (p. 85).

### ***Effective facilitators***

Facilitation is a complex process and facilitators need to have a wide range of skills available to them as they work with a group. Hunter et al. (2007) summarised it as follows: "Facilitation is the body of expertise associated with leading cooperative groups and cooperative processes. It is based on values of equal worth, full participation, consensus and celebration of difference" (p. 25). Gregory (2002) noted: "The main factors influencing facilitation are the internal cultural environment or group context, the social and psychological contract, the wider culture, both institutional and environmental, the facilitator style and the model of facilitation" (pp. 91-92). These writers spell out the complexity of knowledge and skills that restorative justice facilitators need to be effective practitioners.

## **Summary**

In this chapter the theoretical basis of restorative justice, and facilitators and facilitation, has been presented as a foundation for this research. Restorative justice has been defined, its development as a practice outlined, its principles and process discussed, the importance of facilitators in the restorative justice process noted and the place of shame in the restorative justice process presented.

A theoretical rationale for restorative justice facilitation has been explained and the complexity of the facilitator's task has been discussed. The ethical values and principles of facilitation, co-facilitation, creation of a facilitator style, self-actualisation and a facilitation contract have been considered. Practical issues for facilitators have been outlined.

The next chapter will discuss the issue of effectiveness central to this research.

## Chapter 3: Effectiveness

Facilitators are pivotal in the restorative justice process and their effectiveness is a relevant area of study and the subject of this chapter. A precise definition of effective practice for restorative justice facilitators in the criminal justice system will emerge from this study: however, other areas that give indications about what a framework for effectiveness might include are discussed here.

The aim of this research is to gather data about the effectiveness of restorative justice facilitators in the criminal justice system in Aotearoa/New Zealand.

According to Vedung (1997), effectiveness is “the extent to which a program achieves its goals or spawns certain effects” (p. 9). Using that definition, this research aims to find out what restorative justice facilitators are, and do, that achieves the goals of a restorative justice process.

Erlendsson (2002) defined effectiveness as the extent to which objectives are met. This indicates that at least some factors of effectiveness may be specific to a particular discipline. For instance in education, Wescombe-Down (2009) claimed: “It’s no coincidence that quality teachers help to produce quality learners” (p. 18). However, for restorative justice facilitators, the three broad factors contributing to effectiveness – taking into consideration the areas discussed in this thesis – are:

- personal attributes
- theoretical rationale
- skills.

Effectiveness cannot be measured precisely, nor objectively demonstrated. As with all qualitative studies, the factor of effectiveness can only be assessed alongside criteria already found to be effective. I will briefly examine two areas where effectiveness has been assessed – counselling and aid to developing countries – which differ from restorative justice facilitation but have some similar characteristics. I will then look at some of the criteria for effectiveness discussed in restorative justice studies.

## **Counselling effectiveness**

Restorative justice and counselling both have therapeutic effects, so it is appropriate to use counselling as a model for examining effectiveness. While restorative justice is not therapy, therapeutic elements are apparent in the process. These include healing, participant empowerment, moving toward the future and relationship restoration.

Adams and Gilbert (1998), in their article *Providing Effective Counselling Services to Australia's Ethnic Minority Groups*, defined counselling as a process that helps clients understand and clarify their views of life, and then assists them to reach their goals. This definition would fit restorative justice, in which reaching outcomes for future action is part of the process. The article is also relevant to the racially/ethnically/culturally diverse population that restorative justice facilitators work with in Aotearoa/New Zealand.

Adams and Gilbert (1998) wrote “the personal characteristics of the counsellor

contribute significantly to the counselling outcome” (p. 34) and listed the following as contributing to an effective counsellor:

- personal congruence or genuineness of the counsellor
- empathy
- respect or positive regard for the client
- cultural sensitivity
- good communication skills
- expertise to help clients make changes.

Adams and Gilbert also listed barriers to counsellor effectiveness:

- universally using counselling training which has been developed primarily for people of white, middle-class backgrounds
- lack of clear communication when counsellor and client do not have the same proficiency in the language used in counselling
- the counsellor not understanding the client’s social rules or conventions
- counsellor and client working from different value bases
- counsellor cultural bias
- clients feeling powerless.

Members of the New Zealand Association of Counsellors (NZAC) are also very aware of effectiveness issues in regard to counselling, and the effectiveness of therapeutic assistance is of major importance to individual counsellors and to the profession as a whole. The *New Zealand Journal of Counselling* has emphasised this. Every issue of the journal from 2005 to 2010 had at least one article that specifically and directly addressed the effectiveness of what counsellors do. The word “effectiveness” has not necessarily been used in the journal articles, but terms such as “fulfilling aims” or “expectations”, “achieving



positive change”, “being accountable”, “successful service”, and “evaluation” are referred to.

Manthei (2005) discussed the successful work at the Christchurch community counselling centre and listed five areas that were generally considered indicators of effective counselling:

1. clients reporting significant improvement in how they were managing
2. client satisfaction with the number of sessions and the way the termination of counselling had been handled
3. that most clients demonstrated “positive changes in their thinking, behaviour or level of control in their lives and/or level of personal skill” (p. 83)
4. clients reporting satisfaction with their relationship with their counsellor
5. that clients commented on what they found helpful and unhelpful in their counselling.

The results of this study, together with a preceding one about the same centre, “strongly suggest that the aims of this community-based, affordable counselling are being fulfilled to a satisfactory degree” (Manthei, 2005, p. 85). Even taking into consideration the limitations of the study – its small sample, the time lapse between ending counselling and receiving the questionnaire and the possibility that clients might not feel free to report negative aspects of the service or their counsellor – the data suggested the agency’s work was effective. Therefore, its findings are useful as a yardstick for effectiveness in this study.

Another factor which may contribute to counsellor effectiveness is supervision.

Indeed, the New Zealand Association of Counsellors’ Code of Ethics states:

“The purpose of professional supervision is for counsellors to reflect on and develop effective and ethical practice” (NZAC, 2002) – although this may be an expectation, rather than a claim about what actually occurs. Holloway (1995) noted that “the supervisor’s *raison d’être* is to ensure that the trainee can deliver effective services to the client” (p. 92). However, there has been little research into whether there is a link between counsellor supervision and client progress, or how effective supervision might generate effective counselling. In a New Zealand study of experienced supervisors (Crocket et al., 2007), an unnamed participant stated that while s/he may not be able to prove that effective supervision has a positive effect for clients, s/he is certain – as are other supervisors in the study – that it does. Data obtained in the study does make it “abundantly clear that ascertaining supervision effectiveness is very complex” (Crocket et al., 2007, p. 62). But those that took part in the research felt that it led them to a greater awareness of their practice, and consequently to develop more effective supervision, resulting in supervisees becoming more effective counsellors.

A further study produced similar findings. In an extension of a multi-national study, 123 New Zealand counsellors were asked how they “perceived themselves to have developed in skill and knowledge across their careers” (Kazantzis et al., 2009, p. 73). This survey was, in other words, assessing a component of counsellor effectiveness. It showed that New Zealand counsellors exhibited high levels of ongoing development throughout their careers and that

supervision and training were positive contributors to their professional development. It appears there may be a link between effective supervision and effective counselling. However, establishing “how effective supervision might produce effective counselling” has still to be explored (Crocket et al., 2007, p. 55).

From the articles published in the New Zealand Journal of Counselling, I have compiled a list of what counsellors consider to be the elements of effective counselling. They are:

- a broad life base: current knowledge/information/experience of life in general and specifically of their area of therapeutic intervention
- personal attributes: personal presence/self-confidence, being aware of self and their own prejudices, being aware of their own cultural and spiritual dimensions and being self reflective (assisted by supervision)
- appropriate skills: a high standard of relevant skills such as communication skills, the ability to establish counsellor/client relationships, the ability to provide appropriate structure and process
- a suitable work context: the ability to work with clients in the context of this country; with the client’s culture, values, and their particular circumstances; and to respect the client’s self-knowledge and wishes.

This final element of acknowledging the contribution that clients make to an effective outcome to counselling suggests that the practitioner’s presence, knowledge and skills do not by themselves achieve therapeutic effectiveness.

Bohart and Tallman (1999) reported that research evidence suggests that the active efforts of clients contribute to making psychotherapy work. I consider that this is also true for counselling and restorative justice work. Thus, the client and

their interactions with the counsellor are a crucial component of therapeutic effectiveness.

## **Effectiveness of delivering aid to developing countries**

Examining the delivery of aid to developing countries also provided information on the criteria used to evaluate effectiveness. For the United Nations (UN), the “aid effectiveness agenda is not a ‘new’ agenda. However, consensus over what makes aid effective has changed significantly – both in terms of the content of the agenda and the degree of consensus” (Beloe, 2005 p. 6). In response to this change, the Organisation for Economic Co-operation and Development (OECD) with its Development Assistance Committee (DAC)<sup>37</sup> developed the following principles and commitments which are indicators for aid effectiveness:

- ownership: developing countries set their own strategies for poverty reduction, improve their institutions and tackle corruption
- alignment: donor countries align behind these objectives and use local systems
- harmonisation: donor countries coordinate, simplify procedures and share information to avoid duplication
- results: developing countries and donors shift focus to development results and results get measured
- mutual accountability: donors and partners are accountable for development results (OECD Development Co-operation Directorate,

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<sup>37</sup> The Development Assistance Committee ([www.oecd.org/dac](http://www.oecd.org/dac)) is an international forum where donor governments and multilateral organisations come together to help partner countries reduce poverty and achieve the Millennium Development Goals (Development Co-operation Directorate, 2010, p. 1).

2005, p. 1).

The Accra Agenda for Action (AAA) was drawn up in 2008 and builds on the commitments agreed in the Paris Declaration, but the above principles are the criteria I will use for examining effectiveness. There is disagreement and concern about how well the principles have been put into action by the target date of 2010,<sup>38</sup> but that is not discussed here.

From these indicators it appears that an effective aid programme demonstrates:

- ownership of a programme by both the donor and the recipient of the aid
- that the provision of aid would be aligned with the recipient's priorities
- that the procedures for aid provision would be harmonised for the best outcomes
- that a results-oriented framework would be used to assess progress
- that donor and recipient would be mutually accountable for the progress in implementing agreed commitments on aid.

Further to the DAC principles, the United Kingdom Department for International Development (DFID), which works with individual UN agencies on development issues and is regarded as one of the best aid agencies to work with from a developing country point of view, used an additional perspective. The *UK Progress Report on Aid Effectiveness* (United Kingdom DFID, 2008) stated that providing aid by itself is not enough. "What matters is not just the quantity of aid but its quality. Aid can be made to work much harder, pound-for-pound, in

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<sup>38</sup> For example: Aid effectiveness: a progress report on implementing the Paris declaration (OECD, 2008).

reducing poverty and there are four key ways to do this” (p. 4):

1. greatest impact
2. best outcomes
3. assessment of effectiveness
4. sustainable changes.

So quality aid is efficient and effective, achieves the best long-term outcomes for those who need it and is assessed to check that its aim is being fulfilled.

The four key ways also apply to the restorative justice process. Likewise, the following effectiveness indicators:

- ownership of the programme by the two parties – victim and offender
- provision of assistance being aligned to the priorities of the recipient – the restorative justice victim
- and the parties involved being mutually accountable for implementing agreed commitments.

### **Restorative justice effectiveness**

The restorative justice community has also addressed the issue of effectiveness. A Canadian quantitative study *The Effectiveness of Restorative Justice Practices: A Meta-Analysis* (2010 ) found that restorative justice was effective in some areas. It concluded that

generally, compared to traditional non-restorative approaches, restorative justice was found to be more successful at achieving each of its four major goals. In other words, based on the findings of this meta-analysis, restorative justice programs are a more effective method of improving victim [and] offender satisfaction, increasing offender compliance with

restitution, and decreasing the recidivism of offenders when compared to more traditional criminal justice responses (i.e. incarceration, probation, court-ordered restitution). In fact, restorative programs were significantly more effective than these approaches in all four outcomes (with the exclusion of the offender satisfaction outlier) (Research and Statistics Division Department of Justice Canada, 2010 p. 17).

This quantitative study made a comparison between restorative justice and traditional approaches and found restorative justice to be more effective than the conventional justice system. This study does not evaluate the quality of either approach, but it does indicate criteria worthy of study:

- offender satisfaction
- improving victim satisfaction
- increasing offender compliance with restitution
- decreasing the recidivism of offenders.

Although this Canadian study differs from my research in methodology, methods, location, and personnel, it provides useful criteria for assessing restorative justice effectiveness.

Another study, *Restorative Justice Volunteers' Perceptions of Effective Facilitators* (2007), conducted by Souza and Dhami (2007) of the University of Cambridge (UK), was a self-completion questionnaire with two open-ended questions which asked volunteers<sup>39</sup> to define “good” (i.e. effective) and “bad” restorative justice facilitators. The study focused on trained, experienced,

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<sup>39</sup> These people were community volunteers as opposed to professionals such as police and probation officers.

restorative justice facilitators who were involved in a face-to-face, victim/offender conferencing mode, from acceptance of the case to the post-conference stage, and were seen to play a pivotal role in the restorative justice process. The facilitators' primary responsibilities fitted into four stages:

1. accepting the case and preparing victims and offenders to meet
2. pre-conferencing the parties
3. facilitating the restorative justice conference
4. monitoring outcomes from the conference.

The volunteers reported that "having adequate skills was the most important aspect of being a good facilitator, while the qualities of a bad facilitator were being judgemental and dominating in the RJ process" (p. 55).

The characteristics, listed in order, of a good facilitator were:

- adequate skills/being prepared
- objective/non-judgmental/impartial
- personal traits
- believes in programme principles/practices.

More specific factors cited were:

- tangible skills, for instance administration
- internal abilities such as interpersonal and leadership skills
- attributes like open-mindedness, attitudes like motivation
- values like accountability and fairness.



The characteristics of a bad facilitator were:

- opinionated/judgmental/biased
- imposing/dominating
- inadequate skills/lack of preparedness
- having a personal agenda
- personal traits.

The researchers claimed that the findings raised some interesting points:

the most highly regarded attributes of a good facilitator generally represents dynamic, external forces (i.e., skill level and organisation), while being a bad facilitator involves internal and more static descriptors (i.e., judgemental and biased). While the former can be improved upon through further training, the latter is more problematic as these are often ingrained attributes” (Souza & Dhami, 2007, p. 60).

The research methodology and methods of the Cambridge study were different from my study but some of the findings in each were similar.

### **Effectiveness questions for facilitators in Aotearoa/New Zealand**

The 2002 *Advancing the Agenda in Aotearoa/New Zealand* (Jülich, 2003) hui (meeting), explored critical issues in restorative justice. It raised the following questions that relate to facilitator effectiveness in this country:

- are practitioners being adequately supported and resourced, for example, with status and money?
- would full-time professional facilitators be more effective than volunteers?
- how are cases being referred in this discretionary programme? Is this victim-oriented? Who are the gatekeepers?

- what is good practice and what is bad practice? How much variety in practice is helpful?
- should practitioners be grounded in principles and visions as opposed to practice and methodology?
- is restorative justice too settlement driven so that feelings and relationship issues get ignored?
- is the level of risk-taking appropriate – for example domestic violence?
- are we evaluating ourselves and allowing ourselves to be evaluated?
- are we adequately victim-oriented?
- are we practising what we preach?

## **Facilitation case studies**

Van der Merwe (1998), in the three case studies of his facilitation and mediation work in South Africa, raised some further aspects of effectiveness in facilitation.

He made a clear distinction between facilitation and mediation – which he defined as being a goal-oriented procedure. Facilitation is process-oriented and is

restricted to one aspect of mediation: the facilitation of communication between conflicting parties. The facilitator does not suggest solutions and is primarily concerned with technical rather than moral issues, that is with the process of improvement of communication, rather than the goal of reaching a solution (p. 18).

This definition would be appropriate for restorative justice facilitators, who aim to restore relationships. Van der Merwe (1998) made a further distinction, stating that mediators need to be impartial, whereas facilitators can be partisan and empower the weaker party when there is a power imbalance. This fits with the victim-centred aspect of the restorative justice process. Van der Merwe

claimed that a facilitator can make partisan interventions as a change-agent in favour of what, in the restorative justice process, would be the offence victim. He pointed out that such partisan interventions can estrange the change agent from the perceived perpetrator of the offending. Indeed, restorative justice facilitators walk a fine line between supporting the victim and alienating the offender.

The context of van der Merwe's (1998) work was different from that of a restorative justice facilitator, but many of the factors that he discussed are very apposite for restorative justice work. In his conclusions, he suggested some important factors of effective and sound mediation, of which the following could be applied to facilitation.

Firstly, some key principles:

- to help parties who have been guilty of misbehaviour, or who have talked themselves into a corner, to get out of the predicament while saving face
- the mediator [facilitator] must have credibility with all contending groups
- where there is gross asymmetry of power between adversaries, a process of empowerment of the weaker party is essential
- be respectful towards all parties especially towards the perceived perpetrator of violence or oppression (pp. 16-18).

Van der Merwe also stated that:

- the facilitators needed to be aware of the context of the situation and the needs of the participants
- the participants should demonstrate trust, respect and tolerance
- the facilitator would not impose their own wishes but allow the

participants to decide how they would use the insights gained from the reliable information and meaningful communication that they had facilitated

- the facilitator would be very patient and work at the pace of the participants.

Van der Merwe claimed that quality service is necessary for effective mediation or facilitation. He considered that facilitators should have skills gained through training and experience. He noted: “While I did learn from experience, I had no formal training in conflict handling. I maintain that appropriate training, especially at an early stage in my career, would have greatly increased my expertise and efficiency” (1998, p. 19).

The new elements that van der Merwe (1998) adds to this discussion are that:

- facilitation is a *process* of improvement of communication
- facilitators may act as a change-agent and make partisan interventions to empower the weaker party
- facilitators need to be aware that partisan interventions can estrange the change agent from the perceived perpetrator of the offending
- facilitators need to help parties who have been guilty of misbehaviour to save face while taking responsibility for their misconduct
- the participants should demonstrate trust, respect and tolerance
- facilitators should allow the participants to decide how they would use the insights they gain
- facilitators should be very patient and work at the pace of the participants.

## Effectiveness in restorative justice

One measure of effectiveness is whether the goal of the process has been achieved. According to Strang et al. (2006): “One major goal of face-to-face restorative justice (RJ) is to help heal the psychological harm suffered by crime victims” (p. 281). In the study *Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-Experimental Analysis*, Strang et al. (2006) claimed that restorative justice and criminology theories “have focused almost exclusively on effects on repeat offending by offenders (see, for example, Braithwaite, 1989, 2002; Sherman, 1993; Tyler, 1990), with no formal theories of victim consequences” (Strang et al., 2006, p. 284).

That study had access to both qualitative and quantitative data and employed randomised controlled trials. The restorative justice approach studied by Strang et al. (2006) used voluntary, face-to-face meetings between offenders, their victims and their respective supporters. In total, 210 people from three locations<sup>40</sup> took part. Each victim was interviewed once, two to six weeks after the restorative justice conference. The study reported that, “despite substantial variations in offense types, social contexts, nation and race, before-after changes revealed by qualitative and quantitative data are all in the same beneficial direction” (Strang et al., 2006, p. 281). “Evidence from the three situations showed that victims can derive substantial benefits from a form of

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<sup>40</sup> Canberra (Australia); London, Thames Valley (UK); and Northumbria (UK).

*face-to-face* RJ” (Strang et al., 2006, p. 282).

The study found that, since a major restorative justice goal – of helping heal the psychological harm suffered by crime victims – was achieved, the facilitators involved had demonstrated effective practice. While the study did not focus on facilitator effectiveness, it is clear that the following factors contributed to the effectiveness for victims of the restorative justice process:

- preparation of the participants for the conference in a pre-conference meeting where the participants are given information about their roles and responsibilities in the conference
- offender and victim knowing they will be able to talk freely about what happened at the time of the offence, and to express their feelings directly to one another
- offenders knowing the purpose of the conference is to hold them accountable for their actions, for them to demonstrate responsibility for their behaviour and for them to attempt to repair the harm they have caused
- victims knowing they will be given an opportunity to find out why the crime occurred, to describe the emotional and material effects of what happened and to ask questions of their offender
- the facilitator keeping the discussion focused on the incident and its aftermath
- conference participants being aware it may be a highly emotional encounter, sometimes with shouting and tears
- the facilitator will assist the parties to compose agreed outcomes aimed at repairing the harm that has occurred – including such matters as material reparation to the victim, what the offender can do to prevent future offending, apologies and expressions of remorse
- the facilitator will give participants an opportunity for everyone to talk together informally, which gives time for important emotional repair work to take place.

In this study, the victims of crime stated that they were in a better state after attending this particular type of restorative justice conference than they were before it.

Regardless of the kind of crime they have suffered, the kind of community they live in, the point in the criminal justice process, or the physical location of the conferences, victims who have taken part in RJ report very positive experiences. This conclusion applies to almost every criterion on which data are available (Strang et al., 2006, p. 306).

Osborn (2003), in his dissertation on training in restorative justice, examined the following qualities and skills for effecting praxis:

- flexibility
- trusting
- intuiting
- intentions
- respect.

Dignan et al. (2007) studied three major restorative justice schemes operating within a criminal justice context in England and Wales. The study used a dramaturgical analysis to make clear a number of process issues. The factors of facilitator effectiveness peculiar to this study included:

- the number of facilitators for a conference varied between one and four persons
- in a criminal justice context, the issue of who is the offender and who is the victim may not be clear – as in a brawl, for example
- when operating in a criminal justice context, the process must conform to certain suitably modified human rights standards that may not be

required in other settings.

The study introduced another important element, which was that facilitators were required “to act as the ‘custodian of restorative justice values’. What we mean by this is that one of the primary duties of a facilitator is to ensure that the proceedings are conducted in accordance with restorative justice precepts” (Dignan et al., 2007, p. 13). These were cited as

- fairness
- inclusiveness, that is, letting everyone have their say
- equality of standing – that is, one party not dominating another.

The study concluded that the

rôle of the restorative justice facilitator that we have outlined in this section is clearly both demanding and exacting, and it is hardly surprising that there is almost unanimous agreement on the need for appropriate high-quality training to be provided for all restorative justice convenors and mediators (Dignan et al., 2007, p. 14).

## Summary

The data cited here indicates that – in delivering effective counselling, development aid, or restorative justice processes – the following criteria need to be present:

- the practitioner/donor has a client-centred approach and the client/recipient is empowered to claim their authority in the interaction
- the client/recipient and practitioner/donor share accountability for their interaction, and together decide on and implement process outcomes
- quality practice/procedures are provided which work for sustainable long-



term outcomes and are monitored and assessed

- practitioners are skilled and have personal presence, and values and attributes appropriate for the work.

Having presented theoretical perspectives of restorative justice, facilitation and facilitators, and effectiveness, and established a theoretical foundation for this research, I move to discuss the methodology used to conduct this research.

## **Part Two: Methodology, Methods, Analysis**

## Chapter 4: Methodology

This research aimed to evaluate the effectiveness of restorative justice facilitators in the criminal justice system in Aotearoa/New Zealand and to discover what might enhance facilitator effectiveness. In this complex chapter I am going to discuss the methodological base I used for this research.

I will outline the appreciative inquiry methodology employed to gather data from facilitators and key informants, review issues in Māori and Pacific research methodology and their relevance to this research, and consider reflexivity and its significance for research and researchers.

I aimed to be transparent with participants, informing them of the methodology and methods being used, and the stages of the research process. I was open to being challenged about what was happening, and why, as the process proceeded. I made notes of what surprised me, what worked well, and what did not, and how I handled those matters.

An appreciative inquiry approach was appropriate for this research because it is rigorous and can cope with multiple methodologies and multiple methods – for example: action research, participatory research, focus groups, key informant interviews, observation research, official statistics and even phenomenological research.<sup>41</sup> Appreciative inquiry was also able, when the nature of the findings

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<sup>41</sup> Professor M.Waring, 27.5.2009, unpublished commentary.

called for a more critical academic lens, to draw on the notions of Grant & Humphries (2006) to support this. Rigour occurs as methodologies inform each other. Babbie (1998) claimed that “evaluation researchers often have to cope with more complex ethical, political and administrative issues than in other forms of social research” (p. 9), so a methodology such as appreciative inquiry, that can cope with such multiplicity, was most appropriate for this study.

Appreciative inquiry was also chosen because its nature is closely aligned with that of restorative justice. Both have an affirmative, strength-oriented, story-telling approach that involves people relating across all levels of status, so everyone can contribute to their potential. Restorative justice and appreciative inquiry recognise that growth and change are possible. The appreciative inquiry affirmative focus is on what works (Hammond, 1998). This focus also fits with the view of evaluation as being “grounded in the everyday realities of practitioners” (Preskill & Catsambas, 2006, p. 41).

### **Appreciative inquiry**

Cooperrider and Whitney (2005) claimed “appreciative inquiry is about the coevolutionary search for the best in people, their organisations, and the relevant world around them” (p. 3). It is “the study and exploration of what gives life to human systems when they function at their best” (Whitney & Trosten-Bloom, 2003, p. 240).

A problem-solving methodology could be used to evaluate the perceived lack of

uniformity of effectiveness of restorative justice facilitation, but problem-solving modes of inquiry, which use a vocabulary of human deficit, are contrary to the restorative focus of restorative justice. It was important that the methodology used in this study did not use a deficit discourse. To do so would conflict with the practice of restorative justice facilitators, who consciously avoid negative terminology as they work with victims and offenders to achieve positive outcomes. For example, at a restorative justice conference the negative terminology of “offender” and “victim” are replaced with participants’ names so the language used gives them equal worth.

Appreciative inquiry aims to discover the strengths of an organisation or programme and from them design and implement more effective operation.

“The major assumption of appreciative inquiry is that in every organisation something works and change can be managed through the identification of what works, and the analysis of how to do more of what works” (Hammond, 1998, p.3). Patton (2003) described appreciative inquiry as having an open-ended story-gathering nature which is appropriate for use with a restorative justice process in which victims and offenders tell their stories. Elliot (1999) considered appreciative inquiry to be more than a set of procedures to be applied in a mechanical way, “it is art as much as science, poetry as much as prose” (p. 57). Thus, appreciative inquiry fits well with the restorative justice process, which needs to be able to encompass people of all ages, ethnicities, cultures, and perspectives, their circumstances and their modes of operation.

### **Appreciative inquiry focus**

Appreciative inquiry intentionally turns from a deficit-based approach to an affirmative focus. Instead of asking “What problems are you having? [it asks] What is working around here?” (Hammond, 1998, p. 6). This positive focus leads to accusations of appreciative inquiry being “unbalanced and uncritical” (Patton, 2003, p. 91), or of “being focused on ‘warm, fuzzy group hugs’” (Grant & Humphries, 2006, p. 404), and of ignoring what is not working. Preskill and Catsambas (2006) state that appreciative inquiry deals with problems “by accepting the realities for what they are” and “shifting the focus and language from one of deficits to one of hope and possibilities based on what has worked in the past” (p. 26). It focuses on strengths, which is more productive than focussing on problems. Management guru, Peter Drucker, stated in a recent interview “the task of organisational leadership is to create an alignment of strengths in ways that make a system’s weaknesses irrelevant” (Cooperrider & Whitney, 2005, p. 2). An appreciative inquiry approach accepts that organisations already have within themselves that which is needed to effect the desired change. Appreciative inquiry’s task is to liberate this energy. This is what a restorative justice process aims to do for victims and offenders, as it gives them both the opportunity to hear and accept the facts of the offence and move on to repairing, as far as possible, the harm done by the offending. This is demonstrated by the frequency with which participants leave a conference with more positive energy than when they entered it.

## **Appreciative inquiry process**

Different exponents of appreciative inquiry have given its usual four phases different labels. I followed the “4D” cycle developed by Cooperrider and Whitney (2005, p. 16).

- Discovery: the strengths of the organisation are discovered
- Dream: the future starts to emerge
- Design: the ideal organisation is designed
- Destiny: the new organisation is created.

These 4Ds gave a framework for the data collection phase of the study, as well as showing the flow of the growth and change that an appreciative inquiry approach encourages. The process used in the focus groups was based on these 4Ds.

Cooperrider and Whitney (2005) listed five principles and scholarly streams central to appreciative inquiry’s theory-base of change, which are derived from three streams of thought – social constructionism, image theory, and grounded research. Briefly, these principles and scholarly streams are:

1. the constructionist principle
2. the principle of simultaneity
3. the poetic principal
4. the anticipatory principle
5. the positive principle.

Preskill and Catsambas (2006, pp. 10-11) add another three:

6. the wholeness principle

7. the enactment principle
8. the free choice principle.

## **Language**

In an appreciative inquiry process language is vitally important – just as it is in our daily interactions. The words we use disclose the perceptions and perspectives from which we operate. If we view a glass as half empty we disclose our deficit attitude, but if we view it as half full we demonstrate our hopeful perspective. Therefore the language used in an appreciative inquiry is very different from that used in problem-solving approaches. Appreciative inquiry intentionally turns from a deficit-based approach to an affirmative focus. Instead of focusing on the problems it looks at what is functioning. Rather than being drained by looking at problems and seeing gaps in the organisation, its members discover they are part of a fluid, adapting, dynamic system.

Asking questions – the “inquiry” part of appreciative inquiry – is fundamental to human learning, growth, and change. Questions are significant in organisational management and developmental change too, because “human systems grow in the direction of what they persistently ask questions about” (Cooperrider & Whitney, 2005, p. 9). But the style of questioning is also crucial. Questions in an appreciative inquiry process ask “respondents to communicate their concept of the nature, worth, quality, and significance of a programme or some aspect of the organisation” (Preskill & Catsambas, 2006, p. 76). Some appreciative inquiry exponents (Cooperrider & Srivastava, 1987; Preskill & Catsambas,



2006) consider questions so vital that they give the actual wording of the questions to be used.

As with appreciative inquiry, language is also very important in a restorative justice process. The communication in a situation dealing with both a person who has been harmed, and the one who has harmed them, can either assist in healing and restoration, or lead to entrenching resentment and revenge. One of the first language tasks in a restorative justice process is the reframing of the negative titles of offender and victim – participants are called by the personal name they choose and become people, rather than fulfilling a role with weighting of unequal value. Throughout the process, restorative justice facilitators consciously avoid negative terminology.

### **How Appreciative Inquiry and Restorative Justice fit**

The affirmative approach of appreciative inquiry (Preskill & Catsambas, 2006) correlates with the restorative emphasis of the restorative justice process. The story-telling that is an integral part of appreciative inquiry matches the story-telling that is central to the restorative justice process. Victims and offenders tell each other, in their own words, what happened before, at the time of, and since the offending. Because restorative justice processes are nearly always very exciting events, restorative justice facilitators have also become skilled tellers of affirmative stories. Indeed, telling stories has long been used by humans as a method of communicating (Chu, 2008), and appreciative inquiry and restorative justice processes continue this tradition.

Like an appreciative inquiry process, a restorative justice process moves from talking of the past to dreaming of, and designing for, the future. Victims and offenders together decide what will need to occur to heal the harm that has been done: offenders offer to take action and victims accept their offer. Again, like appreciative inquiry, restorative justice processes produce unexpected positive outcomes because the participants relate to each other from positions of equality.

The positive stance of appreciative inquiry also fits well with the emphasis on empowerment that has consciously been the cornerstone of my own professional work for three decades.

### **Critique of Appreciative Inquiry**

There has been little self-reflection or critique of appreciative inquiry. According to Aotearoa/New Zealand researchers Grant and Humphries (2006), there have been few evaluations of appreciative inquiry documented in literature, and what has been written assessed the outcomes rather than the process of the methodology. In the reflection that has occurred, the 'determined' positive approach of appreciative inquiry has been a concern. Rogers and Fraser (2003) asked "whether appreciative inquiry, focused entirely on the positive, risks distortion by its emphasis of the positive, in the way a plant may grow lopsided as it reaches for the light" (Grant & Humphries, 2006, p. 402). My assessment is that this analogy does not take into account that for a plant to have to grow lopsided to reach the light, it is growing in negative conditions and is reaching

for positive ones. It is indeed a good metaphor for an appreciative inquiry at work. I agree with Patton (2003) who stated that appreciative inquiry can deal with the weaknesses as well as the positives.

This question of balance between positive and negative approaches is explored by Grant and Humphries (2006) in their research, *Critical Evaluation of Appreciative Inquiry: Bridging an Apparent Paradox*. They use critical theory to critique appreciative inquiry and find that despite coming from opposing perspectives – hence the paradox – both appreciative inquiry and critical theory seek to facilitate “human flourishing”. Grant and Humphries (2006) propose the development of “Critical Appreciative Processes (CAPs)” (p. 408) which they suggest could enrich appreciative inquiry theory through an association with a “negative” critical theory. I would not see this proposal as being relevant to my study, or fitting with my own experience of using a positive approach such as appreciative inquiry, where a positive approach has achieved the aim of the work better than a negative one.

Patton (2003) disagreed with view that appreciative inquiry ignores or stifles weaknesses in its study and observed that in the dream phase of an appreciative inquiry study where the “dreams and wishes” are articulated, existing weaknesses are often identified. He stated, “cases in this volume provide strong evidence that problems and weaknesses can and do emerge in an appreciation-centred inquiry” (p. 91). That is also my experience. I have found that participants in a group more easily raise and deal with deficiencies in

a positive atmosphere than they do in a negative one where they can expect a critical response.

### **Appreciative inquiry and research**

Appreciative inquiry has been viewed primarily as an organisational development intervention. However, according to Reed (2007) appreciative inquiry is also a social research method. The difference in the two streams of appreciative inquiry is that in organisational development the focus is the “effect on the organisation and its practices” (p. 46), while appreciative inquiry as a research method “may mean shifting the emphasis of thinking to the *process* of inquiry, that is, the way in which information is gathered and interpreted” (p. 46).

When appreciative inquiry is used as a research method, research criteria have to be observed, and appropriate methodologies and methods considered. Reed (2007) suggested that appreciative inquiry can be used in both quantitative and qualitative approaches, and that central ideas in appreciative inquiry are reflected in social constructionist theory and critical theory. More specific methodologies would be ethnography, case study, narrative and action research, which correspond to the inclusive, collaborative and building on the positive, concepts of appreciative inquiry.

Issues of power and control have been discussed in Chapter 2, p. 29.

## Summary

Appreciative inquiry theory states that organisations are centres of human relatedness, first and foremost, and relationships thrive where there is an appreciative eye – “where people see the best in one another, share their dreams and ultimate concerns in affirming ways, and are connected in full voice to create not just new worlds but better worlds” (Cooperrider & Whitney, 2005, p. 61). These words captured for me the essence of appreciative inquiry. They also can be applied to the restorative justice process, which is primarily about human beings who are in relationship through the offending that has occurred. At the beginning of the restorative justice process the relationship is broken, but the aim of the process is to enable the participants in the relationship to thrive – either in the same community, or in their separate communities, in the future. In a restorative justice conference participants generally want to see the best in each other and create a better future. These similarities make appreciative inquiry an appropriate methodology for this research.

## **Māori and Pacific Island research**

This thesis has a Eurocentric approach but a discussion of issues specific to Māori and Pacific people is an essential aspect of research in Aotearoa/New Zealand. Some of the research factors examined are common to both Māori and Pacific peoples. The issues that are unique to Māori and those unique to Pacific peoples will be dealt with separately, then the common factors will be discussed, followed by the facilitation issues that arise.

To include cultural practice was a crucial aspect of the methodology used in this research. Sixteen of the thirty-eight participants identified as Māori and Pacific people, so the study needed to be conducted in a culturally appropriate manner. Sarantakos (2005) defined this ethnographical approach as “the science of cultural description, a description and interpretation of a cultural or social group or system” (p. 207).

Cultural respect is also an important issue for restorative justice facilitators and is one of the policy areas designated in the Ministry of Justice *Restorative Justice Policy and Procedure Guidelines* (Ministry of Justice, 2007b).

## **Māori research**

I am emboldened by the words from the Health Research Council of New Zealand (2010) to believe that the research I have undertaken may be of some benefit for Māori if it has been conducted appropriately. The Council stated, “All research in New Zealand is of interest to Māori, and research which [included]

Māori is of paramount importance to Māori” (p. 1).

Researchers conducting studies that are about or for Māori, while acknowledging that research itself is a universal concept, need to recognise that a Eurocentric research perspective is no longer appropriate.<sup>42</sup> Research should take into account the complex and spiritual nature of Māori society, have an awareness of Māori cultural issues, and use a methodology and analysis which is appropriate for their culture. Mason Durie (1996) proposed an approach to research that “deliberately places Māori people and Māori experience at the centre of the research activity” (p. 2).<sup>43</sup>

### ***Researcher awareness***

Research with Māori participants, on Māori issues, requires the researcher to have an understanding of Māori world views and the “distinctively Māori way of organising knowledge” (Davidson & Tolich, 2003, p. 41) and its protection by tapu (ceremonial or religious restriction). Māori world views acknowledge the importance of whakapapa (genealogical recital), the relationships which are embedded as kawa (primary values), tikanga which are “locally specific practices that aim to enhance these relationships and ensure the preservation of mana” (Pūtaiora Writing Group, 2010, p. 2)<sup>44</sup>, mātauranga Māori (traditional

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<sup>43</sup> In 1982 Dr Mason Durie had developed a holistic health and wellness model called Te Whare Tapa Wha which incorporates a Māori philosophy toward health.

<sup>44</sup> This work is published by the Health Research Council of New Zealand.

knowledge), manaakitanga (cultural and social responsibility), and mana (justice and equity). These are all interwoven into a seamless way of being, based in the collective nature of iwi (tribe), hapū (sub-tribe), and whānau (family). The use of a “kaupapa Māori<sup>45</sup> framework to develop research that is designed by, conducted by, made up of, and benefits Māori is promoted” (Pūtaiora Writing Group, 2010, p. 10).

### ***Mainstream approach***

*Te Ara Tika – Guidelines for Māori Research Ethics: A Framework for Researchers and Ethics Committee Members*, issued by the Health Research Council of New Zealand<sup>46</sup> (Pūtaiora Writing Group, 2010), placed research in a Māori context and provided a framework and guidelines for researchers working in that context. It also outlined a “**mainstream approach**” [sic] (p. 9) that is, research where Māori are research participants and where the research may, or may not, be directly relevant to Māori. A mainstream approach seems to describe the situation of the present study where some of the research participants were Māori, and the findings about the effectiveness of facilitators of the restorative justice process were expected to be of direct benefit to the Māori practitioners who participated, and of indirect benefit to Māori people who engage in the restorative justice process in the criminal justice system, as victims or offenders.

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<sup>45</sup> “conceptualisation of Māori knowledge” <http://www.kaupapaMāori.com/theory/6/>.

<sup>46</sup> The guidelines for Māori health research are an appropriate guide for this research, even though this is not specifically health research.



In a mainstream approach “researchers are expected to **protect the rights** [sic] and interests of Māori although there is little real involvement in the research process or outcomes” (Pūtaiora Writing Group, 2010, p. 9). According to the mainstream approach, the factors that needed to be considered when designing such research included specifying the purpose of the project and its relevance to Māori goals, ensuring that if Māori were participating, the sample recruitment method was appropriate, and deciding whether or not ethnicity data should be collected. The guidelines suggested that the following questions should be asked:

- In what way does this research project impact on Māori?
- How will Māori be included in this project? Is this appropriate and respectful?
- Do I need to consult with Māori for this project? If so, how do I do that? (Pūtaiora Writing Group, 2010, p. 9).

### ***Māori involvement***

While this research did not target Māori participants and was not designed to be specifically about or for Māori people, some Māori restorative justice practitioners working in the criminal justice system chose to be participants in the study. One group of Māori practitioners elected to participate as a focus group with only Māori facilitators, and two Māori facilitators chose to participate in multi-ethnic groups. So this research needed to take Māori cultural issues, and alternatives to Eurocentric research approaches into account, and to be conscious of whether or not an appropriate approach had been used with the

Māori facilitators.

### *Treaty partnership*

The Auckland University of Technology Ethics Committee approval for this research required that it would recognise the Māori/tauiwi (foreign race/later comers) partnership of the Treaty of Waitangi. My application stated that the Ministry of Justice, as the government department responsible for restorative justice facilitators in the criminal justice system, would be consulted as the tauwiwi partner, although the ministry has oversight of both Māori and tauwiwi facilitators. For this study the Māori Caucus of Restorative Justice Aotearoa (Restorative Justice Aotearoa, 2005) was the Māori treaty partner and was consulted on matters that particularly affect Māori facilitators. Both partners were consulted on the study design, the participation of facilitators, and the circulation of reports.

### *Consultation*

Consultation in designing the research was with members of Restorative Justice Aotearoa, (RJA), the facilitators' professional body, who represent the full range of restorative justice facilitators. Representatives of the Māori caucus are on the RJA Executive. The Executive of RJA, in response to my letter formally seeking permission to conduct this research with members of RJA, wrote:

Thank you for your letter requesting Restorative Justice Aotearoa's approval to approach RJ [sic] facilitators working in the Auckland, Whangarei and Hamilton area. We do appreciate that you have thought to

contact RJA although our formal permission is not in fact necessary for you to approach individual facilitators or the member groups.

We have read the outline of your research work and consider that it will be a valuable contribution to understanding more about the RJ [sic] process. RJA has no objection to you approaching member groups and/or individuals.<sup>47</sup>

Formal direct consultation with Māori practitioners to obtain in-depth input into the planning and development of the research was requested, and could have been pursued. I knew the Māori members were very busy and did not have time and energy to be used unnecessarily for what was a Pākehā (white person) research project. When there was no direct response to my approach I interpreted that as a “no” to being involved in planning the research. As well, there was the question of who should be consulted for a Māori perspective, because the Māori restorative justice facilitators were not usually unanimous in their response to any particular issue.

### **Pacific research**

The Health Research Council of New Zealand guidelines on Pacific health research recognised that research is important to and for Pacific people living in Aotearoa/New Zealand, and has compiled some guidelines on Pacific health research,<sup>48</sup> on which I will base this discussion. These guidelines state that when doing research on, or for, Pacific peoples “the overarching principle is that

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<sup>47</sup> Personal communication from Meryl Dixon, RJA Executive Officer, 15.12.2008.

<sup>48</sup> The guidelines for Pacific health research are an appropriate guide for this research even though this is not specifically health research.

relationships are the foundation of all ethical conduct. It is within the context of relationships that all significant ethical decisions, actions and practice occurs” (Health Research Council of New Zealand, 2005, p. 2). As with Māori research, good Pacific research requires the researcher to recognise that a Eurocentric research perspective is no longer appropriate and at least be aware of a Pacific world-view.

### *Pacific people*

Another important factor in working with Pacific people is to recognise that they are not a homogenous group but a collection of ethnic groups who come from a number of distinct island nations, and different islands within those nations. The term “Pacific peoples”<sup>49</sup> has been used in this thesis to describe people from the various Pacific groups. Pacific peoples living in New Zealand – who have migrated here or been born in this country – include Samoan, Cook Islands Māori, Tongan, Niuean, Fijian, Tokelauan, Tuvaluan, as well as some other ethnic groups (Pacific Advisory Group, 2009). While these people share many cultural perspectives and values, each ethnic group has their own history, stories, traditional structures, customs, values, languages and aspirations. However, it is tenable to claim that all Pacific cultures place high importance on family, church, and community relationships, even though exactly how these are expressed may differ.

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<sup>49</sup> Pacific peoples’ is an “umbrella” term that is used to encompass a variety of Pacific Island nations and communities who are linguistically, culturally, and geographically distinctive from each other.

Pacific peoples place enormous value on the idea of family. The notion of family is founded on the extended family form and underpinned by the key values of respect, service, leadership and humility. Preservation of the Pacific family and its values is the responsibility of every Pacific person (Pacific Advisory Group, 2009, p. 15).

### *Pacific peoples' world-views*

The world-view of each of the Pacific peoples is unique to them, so it is not possible to define a pan-Pacific world-view. However, when researching with Pacific peoples, researchers need to be aware of factors such as genealogical lineage, place of belonging, collective identity, relationships, sacredness of persons, customary obligation, roles, responsibilities and heritage for each nation they work with. The Pacific Advisory Group (2009) stated: "The essential world view for Pacific peoples is the maintenance of relationships with their faith, the material environment and other people. Family is the critical centrepiece of relationships" (2009, p. 1).

The Health Research Council of New Zealand (2005) described the preferred situation for research for Pacific peoples as

Pacific research design, methods and approaches, will be informed, first and foremost, from within the continuum of Pacific worldviews. Pacific approaches to research will aim to be responsive to changing Pacific contexts. Pacific research will be underpinned by Pacific cultural values and beliefs, and will be conducted in accordance with Pacific ethical standards, values and aspirations (2005, p. 11).

## *Principles for Pacific research*

To assist Pacific researchers, and non-Pacific researchers, to undertake health research with Pacific peoples in New Zealand, the Health Research Council Guidelines have named eleven principles as essential to forming and maintaining Pacific ethical research relationships. They are listed here with some guidance as to how to translate these principles into culturally effective research practice.

### *Principles*

1. Relationships
  - build and maintain ethical relationships
2. Respect
  - demonstrate respect
3. Cultural Competency
  - seek ethnic-specific and context-specific advice on culturally competent practice, and understand the importance of communicating appropriately translated information to Pacific people
4. Meaningful Engagement
  - effective 'face-to-face' consultation is critical to establishing meaningful relationships with Pacific people
  - understand how to consult, and identify with whom you should consult
5. Reciprocity
  - build Pacific health research capacity and capability to extend reciprocity
  - provide training opportunities
  - provide formal qualification opportunities for Pacific people
  - build the research and health knowledge of the participants
  - reimburse the costs of participation in research

- share potential financial gains of research equitably with research participants (or the research participant community)
- disseminate research findings so that they are accessible to Pacific communities

#### 6. Utility

- clearly explain the potential of the research to improve health outcomes
- address priority health issues
- demonstrate how the research will inform policy
- develop Pacific methodologies, frameworks, models, analysis, and approaches

#### 7. Rights

- recognise that participants must be properly informed in order to consent
- all participants should receive all of the information
- researchers must uphold the right of participants to withdraw

#### 8. Balance

- aim for balance in who benefits from research (reciprocity)
- aim for balance in research relationships and partnerships

#### 9. Protection

- determine from the knowledge source, the appropriate function of the knowledge that is shared
- researchers should always acknowledge that the ownership of primary knowledge and data lies with the people who contribute that knowledge

#### 10. Capacity Building

- build Pacific health research capacity and capability to extend reciprocity
- provide training opportunities
- provide formal qualification opportunities for Pacific people

#### 11. Participation

- participation of Pacific peoples in a research project is encouraged on a number of levels, e.g. investigators, advisors, students, and interviewers

- provide support for Pacific members of the research team.

Adapted from Guidelines on Pacific health research (Health Research Council of New Zealand, 2005, pp. 143-145).

### *Communication*

Appropriate communication is also a vital tool for non-Pacific researchers to acquire when researching with, or for, Pacific peoples. Part of good cross-cultural communication is using suitable language, but non-Pacific researchers need to recognise that for Pacific peoples nuance, metaphor, and layers of meaning are also important. The Pacific Advisory Group (2009) added: “however the message is delivered, sufficient attention must be paid to taste, tone, terminology and dialect, to ensure that the messages are acceptable and to encourage interest and participation” (p. 20).

While this study did not target Pacific peoples as participants, Pacific restorative justice practitioners were included in the general invitation to take part.

However, all the Pacific facilitators who had gained experience as restorative justice practitioners in a multi-ethnic provider group were specifically invited to take part in the study because the Chief Executive Officer of Pacific Island Affairs expressed an interest in fostering the use of restorative justice among Pacific peoples. The facilitators elected to be a focus group with only Pacific peoples’ practitioners. Consultation in designing the research was with members of Restorative Justice Aotearoa, because as yet there is no



identifiable caucus of Pacific peoples with whom to consult.

### **Factors common to Māori and Pacific peoples' research**

A significant question for both Māori and Pacific peoples was who would benefit from the research – would the researcher be the major beneficiary or would the participants and their communities. As a participant researcher in this research I expected to benefit along with other participants, including Māori and Pacific peoples, in raising the standard of our practice as individuals. As a body of restorative justice practitioners, we expected that the recipients of restorative justice work would benefit from the research findings. That I may gain a qualification with status and reputation was not significant for me at this stage of my career.

### ***Facilitation issues***

Two facilitation questions for this research arise from the issues raised here:

1. Do Māori and Pacific facilitators assess facilitation effectiveness from a similar perspective to non-Māori and non-Pacific facilitators?
2. Do non-Māori and non-Pacific facilitators effectively facilitate Māori and Pacific victims and offenders?

A comprehensive response to these questions will need to come from research by Māori and Pacific people. For the present research, the Māori and Pacific data reported in the analysis chapters will to some extent answer the first question. I attempted, as a participant researcher, to be culturally sensitive so that Māori and Pacific facilitators could provide accurate data for this study.

However, it is clear to me, as a person from a different culture, that I cannot assess the extent to which the findings produced by this study do accurately reflect the perspective of Māori and Pacific facilitators, or how useful the findings could be for them.

The concerns of the second question are shared by counsellors in this country. The New Zealand Journal of Counselling stated that several authors have “discussed the fact that unexamined white privilege, ethnocentrism and unintentional racism can profoundly obstruct counsellors’ [facilitators’] ability to develop multicultural counselling [facilitating] competencies” (as cited in Addy, 2008, p. 15). This issue is also outside the scope of this research, although it is a factor in facilitator effectiveness.

The Māori and Pacific facilitators who participated in this research presented their data from a context that was recognisably different from the non-Māori and non-Pacific facilitators – particularly in their emphasis on family and group response, rather than Eurocentric individualism. Otherwise, Māori and Pacific facilitators appeared to work comfortably within the same facilitative theoretical constructs as their European colleagues.

## **Summary**

I am conscious that I am a Pākehā New Zealander and I do not have Māori or Pacific origins and that, in spite of consultation about the research, this study was designed by me from my European experience and environment. As well, the methodology and research methods used were chosen to fit with my

attitudes and facilitation practice, rather than that of Māori or Pacific facilitators, and I did not use Māori and Pacific practitioners in designing the research. However, it was participatory action research, using an appreciative inquiry methodology, it was flexible and adaptable, and allowed for cultural differences to be accommodated. The kanohi-ki-te-kanohi (face to face) of Māori and the talanoa story-telling mode of the Pacific seemed to have fitted well with appreciative inquiry. Conscious of my European presence in the research, I took specific care to reflect actively throughout this research on those key aspects.

## **Reflexivity**

Researchers need to be constantly reflecting on what they are doing and how that is impacting on their research and its participants. As a counsellor and a restorative justice facilitator I continually reflect on my practice to keep it relevant to my clients' needs, so consider this methodology important for this research. I discuss reflexive research and reflexive researchers and the complex interaction of practice and reflexivity.

Reflexivity is crucial to good social research (Davidson & Tolich 2003, p. 152). Reflexive researchers are constantly aware of what they are doing, and how this affects their work. They are conscious not only of the kinds of choices they make, and how critical these choices are, but also of why those choices have been made. "Reflexivity can be thought of as the process by which we make those reasons explicit" (p. 152). Throughout this thesis I have made "careful

interpretation and reflection” which Alvesson and Sköldberg, (2009, p. 9)

consider are the two basic characteristics of reflective research.

Some traditional approaches to research believed that the researcher could be impersonal and conduct their study without having their culture, beliefs, and experience impacting on the process and outcome of their research. It is now recognised that social researchers need to be aware that their personhood, their knowledge, their skills and their experience cannot be separated from what they think and do as a researcher. Researchers are, after all, either directly or indirectly, part of the world in which they are doing their research. Likewise, effective restorative justice facilitators need to engage all that they are, and are able to do, in their facilitation.

Alvesson and Sköldberg (2009) noted that that reflexivity is not mere reflection on the research process and data but is “multidimensional and interactive” (pp. 271-272). Clegg and Hardy emphasised this complexity of reflexivity when they expressed it as “ways of seeing which back on and reflect existing ways of seeing” (as cited in Alvesson & Sköldberg, 2009, p. 271). Seale, Gobo, Gubrium, and Silverman (2004) stated that “reflexivity is the way that qualitative researchers strive for reliability and validity” (p. 214).

### **Reflexive research**

Reflexive research is a constant cycle, like the action/reflection method used for social change by Freire (1976) who stated that action and reflection “constantly and mutually illuminate each other” (p. 151). The cycle of taking action, while

being conscious of what you are doing, recognising you are on a continuum, noting the power dynamics, and where you are in relation to others, is followed by intentional reflection on what has occurred. The period of reflection results in the planning of the next action phase of the research based on the current situation. Reflexivity enables the researcher to be constantly aware of the state of the context of the research, enabling adjustment to its current environment. “Reflexivity is thus considered essential, potentially facilitating understanding of both the phenomenon under study and the research process itself” (Watt, 2007, p. 82).

Storytelling is a way of making sense of what happens to us, and this is true for researchers as well as participants. Etherington (2004) discussed how the telling of stories is an integral part of reflexive research. Storytelling links reflexivity, appreciative inquiry methodology, and the restorative justice process, as all have story-telling as an integral part of how they operate. Storytelling is indigenous to Māori and Pacific oral cultures and reflection on my research has noted that storytelling enabled Māori and Pacific people freely to contribute data about their own experience.

### **Reflexive researchers**

Reflexivity is not just self-awareness. Etherington (2004) quoted a research participant who said, “For me, another dimension of reflexivity implies a reciprocity between what you experience out there and changing yourself in response to it” (p. 30).

Therefore, reflexive researchers also think about how the research may have affected, and possibly changed them, both as people and as researchers. This is another significant factor in keeping the research current. Who I am as a researcher impacts on my research, so it is important for me, as researcher, in responding to the next stage of the research to take account of the change – constant and often unconscious – that has occurred in me, as well as in the research context. However, it must always be a deliberate process to reflect on the change since the previous period of action – as I did when transcribing a focus group or interview recording. As Nightingale and Cromby (1999) claimed “reflexivity requires an awareness of the researcher's contribution to the construction of meanings throughout the research process” (p. 228).

Reflexivity also enables what is happening for the researcher, for the participants, and in the research context, to be taken into account. Then the research is firmly grounded in reality. Douglass and Moustakas (1985) claimed that when reflexivity is used as a framework for research “it offers a disciplined pursuit of essential meanings connected with everyday human experiences” (p. 39). This comment arose from the dominant worldview of Douglass’ and Moustakas’ time, but is relevant for me today. It was very important for me that I should conduct research that could gather data that was firmly based in what was happening, and could produce findings that would be of use to facilitators.

Reflexivity uses the researcher as a valuable tool in the research process. This means that the researcher is not working as a disinterested person, just at the

level of collecting data, but is employing all of their training, experience, knowledge, skills, and emotions, along with the research process, as they work with the research participants. The researcher will reflect on what has occurred, and in that reflection take into account the multiple levels at which they, and the people they have been working with, operated. Then, as Etherington's (2004) research participant said, the practitioner will change in response to this.

## **Summary**

This chapter has outlined appreciative inquiry methodology, discussed its focus and process, critiqued appreciative inquiry, and examined how appreciative inquiry and restorative justice fit. Appreciative inquiry has been shown to be a valid research approach for examining restorative justice facilitator effectiveness. Research methodology for Māori and Pacific peoples and the issues of reflexivity have been discussed.

The next chapter will consider the methods used in this research.

## Chapter 5: Methods and Analysis

In qualitative practice, methodologies and methods are intimately linked.

“Methods are the techniques or tools researchers use to collect and interpret data” (Hesse-Biber & Leavy, 2004, p. 3). Techniques include observation, interaction, interviews, and focus groups.

This chapter discusses ethical approval, the design of the study, the sampling strategy, the research process, participant observation, interview theory, focus group theory, and the fieldwork process required to answer the research question: What do restorative justice facilitators in the criminal justice system in Aotearoa/New Zealand consider to be effective practice? It reports on what occurred in the focus group process. The key informants and the interview process used with them are discussed. There is a brief introduction to the analysis process used in this study.

### Ethical Considerations

“The point of research is to improve the situation of human beings” (Davidson & Tolich, 2003, p. 73). However, the situation of the participants in the research will not be improved if the study is not conducted in an ethical manner. Nor will the research findings be able to be relied upon. Because researchers are “interested parties” in their studies, their work needs independent ethical scrutiny. This research used the AUT<sup>50</sup> University for such scrutiny and followed

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<sup>50</sup> Auckland University of Technology.



its principles of partnership, participation, and protection (AUT, 2007). Ethical approval was sought and was granted on 28 November 2008, Ethics Application Number 08/222.<sup>51</sup>

## **Protection**

Confidentiality was particularly important in this study as the criminal justice system restorative justice community is small and close-knit in this country. Members of the focus groups were “encouraged to hold in confidence what is disclosed” (Ministry of Justice, 2004, p. 2) in the group, just as they are at a restorative justice conference. The confidentiality of focus group members has been preserved throughout the study. The key informants did not know the identity of the focus group members. Some key informants are widely published in restorative justice and may be able to be recognised by what they say. They were asked for permission to cite their responses to interview questions. The recording, analysis and publishing of data was done in ways that prevent the recognition of individuals. Decisions about publication of material from the study will be made in consultation with the participants.

An ethical risk for participants was that they inadvertently disclose confidential information as they discussed the facilitation they had done. Another risk was the disclosure of issues they have with their co-facilitators or other colleagues. Restorative justice facilitators on contract to the Ministry of Justice have a professional supervisor who they may consult about issues concerning the

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<sup>51</sup> See Appendix A, p. 425.

research. Each participant stated they were in active supervision during the research. Research participants were able to have three sessions of counselling at the AUT counselling service to address issues that arose as a result of their participation in the research, if that was necessary.

## **Participation**

Facilitators were invited to participate in the study but were free to accept or decline the invitation as there was not any pressure placed on them; nor were there any adverse consequences if they did not participate. This approach mirrored the process followed in a restorative justice process.

I was conscious of the need for transparency and clarity when I spoke with participants. I aimed to give participants honest and truthful information about the research process and its findings at all times. Since I was conducting research with participants who were my colleagues it was important to make my role as researcher transparent. I was the facilitator of the focus groups and conducted the interviews, so it was crucial that the participants were clear about my role. My training, experience, and personal bias in the research were clearly stated. Such openness minimised any role conflict that could have arisen from my participation.

Restorative justice practitioners work within an ethical framework, so for the study to be credible for them it needed to be ethical at all stages. Ethics Committee approval was sought for the research process. Participants, and the

bodies that have jurisdiction over restorative justice practitioners, such as Ministry of Justice, Courts, and Provider Groups, were asked for approval to conduct the research. However, as Davidson and Tolich (2003) suggested, ethics is more than having comprehensive consent forms and official approval. It is also about the way the researcher behaves. They stated: “ethics is a question of integrity and positioning” (p. 244). Thus, issues such as who participated, how they were treated, how data was collected, how informed consent to participate was gained, how unexpected ethical issues were dealt with, how confidentiality was maintained, and how data was used in analysis and reporting were important. These were stated in detail in my research, both as information to participants and in reports.

The probability that participants might experience discomfort or embarrassment as a result of the research procedures was slight. The research procedures were set up and conducted in a manner which would minimise or prevent such experiences occurring. If discomfort or embarrassment occurred in an interview, the interview would have been stopped and the participant asked whether or not they wished to continue. If discomfort or embarrassment occurred in a focus group I would have stopped the group process and conferred with the participant in private asking whether or not they wished to continue. Any interviewee or participant who demonstrated discomfort or embarrassment would have been offered the use of the AUT counselling service.

## **Design of the study**

The design of my study was, as Davidson and Tolich (2003) suggested, tailor-made for the question being researched, and the details of the design were determined by the participants. As a participant researcher I followed an appreciative inquiry approach to evaluate facilitator effectiveness. The collection of data from focus groups was from facilitators and it was their practice that was studied, not the programme. Key informants were interviewed to gather data that did not emerge from the focus groups. As the data was analysed, themes emerged that pointed to facilitator effectiveness. The dissemination of the findings from the study will be to restorative justice facilitators and administrators, relevant government departments and legal and judicial audiences.

## **Sampling strategy**

The total population of restorative justice facilitators working in the criminal justice system under contract with the Ministry of Justice in this country was not large – perhaps 70 people.<sup>52</sup> It could have been numerically possible to invite all those facilitators to participate in this study. However, the logistics of a national study were problematic, so my sample was limited to facilitators working in

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<sup>52</sup> According to Ministry of Justice there were 34 Restorative Justice Provider groups throughout the country in 2009, and about 70 facilitators, 35 of whom were based in the Auckland region (Jülich & Molineaux, 2009).

Whangarei, the greater Auckland area and the Waikato.<sup>53</sup> The exact number of participants who would elect to be part of the study could not be predetermined. However, I had expected that between 18 and 30 facilitators would select themselves as participants. In the event, thirty facilitators signed Consent Forms and became participants in focus groups. Interviews were conducted with eight key informants.

### **Participant criteria**

The criteria for being invited to be a participant were that the person was a trained and assessed facilitator in the criminal justice system, belonged to a Ministry of Justice accredited Restorative Justice Provider Group, and worked under a contract between their Provider Group and the Ministry of Justice at the commencement of this study, in Whangarei, the greater Auckland area, or the Waikato. Facilitators who failed in any way to meet the criteria were not included in the study. The crucial criterion for participation was the facilitator's willingness to join a focus group and make themselves available to attend up to six focus group meetings at times which best suited them. The flexible meeting times arranged enabled everyone who wished to participate to do so.

Key informants, who were not required to meet the other criteria, were invited to participate because of their experience in restorative justice in the criminal justice system, and because they could provide a perspective additional to

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<sup>53</sup> Whangarei is a small northern city, Auckland the largest metropolitan city in the country, and Waikato a region noted for its dairy farming and horticulture. All are in the North Island.

those provided by the focus groups.

### **Māori and Pacific participation**

This study did not target Māori participants, but Māori who were restorative justice practitioners were invited to take part. One group of Māori practitioners elected to participate as a focus group with only Māori practitioners, and two Māori facilitators chose to be in a multi-ethnic group.

This study did not plan to target Pacific people as participants. However, experienced Pacific facilitators were specifically invited to a Pacific focus group because of interest in the research from the Ministry of Pacific Island Affairs.

### **Key informants**

Key informants were chosen to provide a perspective not already obtained for the study through the focus groups. They were chosen from judges who advocate for restorative justice in the criminal justice system, restorative justice theorists, restorative justice trainers, restorative justice administrators in the Ministry of Justice, and practitioners who had more than 15 years' experience in facilitating the restorative justice process. Key informants, except for one who went to live abroad before the focus groups had been completed, were approached at the conclusion of the focus groups.

### **Consultation**

Consultation in designing the research was with members of Restorative Justice Aotearoa, including members of the Māori caucus, who represented the full

range of cultures of restorative justice facilitators. There was no identifiable caucus of Pacific or Asian people with whom to consult.

## **Participant observation**

According to Delamont (2004), "Participant observation, ethnography and fieldwork are all used interchangeably in the literature and are therefore synonymous" (p. 206). The term participant observation will be used in this discussion for the mix of methods commonly called fieldwork. Davidson and Tolich (2003) claim, participant observation is "the most common kind of academic qualitative research and involves a combination of observation and unstructured interviewing 'in the field' of study" (p. 133).

### **Definition**

The aim of the participant observer is to understand the participants' world from their perspective. Simpson (2007) claimed that participation observation is multifaceted, conducted within the framework of the researchers' own and others' life worlds, and is an attempt to experience the lives of others to the extent that is possible.

Participant observation is more than just noting what occurs, it is also asking questions about why it happens. The researcher needs to have a depth of knowledge and understanding about the group or culture being studied to be able to recognise the language and behaviours that should be analysed. This depth can be achieved by immersion of the researcher in the context –

although, usually the researcher does not actually participate in the activity but merely observes it.

Observation, however, is not a 'natural' gift but a highly skilled activity for which an extensive background knowledge and understanding is required, and also a capacity for original thinking and the ability to spot significant events. It is certainly not an easy option (Nisbet, 1977, p. 15).

Participant observation requires researchers to use all their senses – sight, hearing, touch, taste and smell – and generally requires them to be in close proximity to those being observed, although “ethno-data need not be produced by participant observation techniques” (Stablein, 1996, p. 519).

### **Ethical issues**

Participant observation raises ethical issues around the safety of participants and researchers. Research Ethics Committees endeavour to aid researchers to create and maintain safe practice by requiring informed consent of participants and accountability of researchers.<sup>54</sup> Underlying these paramount concerns is a number of other factors.

### ***Trust***

For researchers to observe the real world of their research participants, a relationship of trust needs to develop. “Trust is the traditional magic key to building good field relations” (Ryen, 2004, p. 222), and such relationships are

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<sup>54</sup> See Appendix A, p. 425.



crucial to effective data collection. Researchers will not be entrusted with the data they need without establishing good rapport. However, too high a degree of trust can impede research, and researchers need to be aware of both the ethics of involvement and the ethics of detachment, and balance between these positions.

### ***Boundaries***

The loss of appropriate boundaries for researcher and participants may also be an issue. Being a participant observer generally involves prolonged immersion in the group, community or organisation under study. Such protracted involvement raises ethical concerns about whether participants are, or remain, aware of being research subjects, and conversely, whether researchers stay in their role. Merrell and Williams (1994) claimed that to keep pace with the tactical decision-making that occurs over time in participant observation, gaining informed consent of participants cannot be regarded as a single event, and should be an ongoing process.

### ***Insider observer***

“Evered and Louis describe ethno-research as ‘inquiry from the inside’, as opposed to ‘from the outside’,” (as cited in Clegg et al., 1996, p. 518). An insider observer is one who takes complete membership of the group being studied, either by being immersed with the participants, or because they were a member of the research participants’ culture or group prior to the study. An insider observer has, or gains, the trust of participants, and an understanding of the

participants' perspective, which assists in eliciting and analysing research data.

However, there are some issues for an "insider" to be aware of. Gerrish (1997) noted that "over-familiarisation with the setting might lead me to make assumptions about what I was observing without necessarily seeking clarification for the rationale underpinning particular actions" (p. 26).

Hammersley and Atkinson (1995) warned of developing too much rapport with research participants and becoming a non-observing participant. Bowers (1988) claimed the researcher must be able to step back and ask questions about data, noting what was similar and what was different.

Bonner and Tolhurst, (2002) outlined some strategies for minimising the effect of being an insider.

- overt recognition of the relationship that already existed between the participants and the researcher
- being reflexive and critically examining researcher assumptions and actions in relation to data collection and analysis
- reflection, through personal journaling, including providing details of the context of the study
- reflection on researcher reactions to people and events in the setting
- reflecting on researcher relationship with the participants, examining the researcher's feelings when undertaking participant observation and interviews
- providing reasons for researcher decision making (p. 11).

### ***Covert research***

A tactical, but also ethical, issue is whether or not research should be

undertaken in an overt or covert way.<sup>55</sup> Covert observation occurs when the observer does not declare to the participants how, when, or where, they are being observed, and may have a place when participants change their behaviour when they are aware they are being observed. However, Calderon (2011) considered that covert participant observation, unless there were legal breaches that needed investigating, would seem to be counterproductive. Critics of covert research “hold that such studies violate participants’ right to autonomy” (Murphy & Dingwall, 2001, p. 342), and remove their right to decide whether they wish to become a participant.

### **Research strategies**

Gold (1958) suggested that a participant observer may use any one, or a combination of the following roles:

- complete observer
- observer as participant
- participant as observer
- complete participant

Hammersley and Atkinson (1995), considered that complete observation or complete participation might equate with covert research, as discussed above. However, generally speaking, a combination of roles is adopted by researchers during data collection. Rabinow (1977) thought that observation and

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<sup>55</sup> The deception model: “accepting any method or technique including setting people up, infiltrating settings and deliberately misrepresenting oneself to obtain greater and deeper understanding by simply hiding the truth the way others do” (Ryen, 2004, p. 222) is covert.

participation might stand in a reciprocal relationship, and that change resulting from participation might lead the researcher to new observation, which then could change how the researcher would participate. Merrell and Williams (1994) recognised that researchers encounter restrictions during their studies and often have to make changes to their role in response to them.

### **My position**

There are two distinct, but connected, parts that I bring to my role in this research. The first is my historical experience as a complete participant as a restorative justice facilitator. This part of my role is ever present and does not change. The second is best described as a participant researcher, as well as a participant observer. I was an employee in a role of total immersion – a facilitator studying other facilitators – although we were all part-time workers on contract to Ministry of Justice, not full-time employees. This second part of my role evolved during the research.

### **Summary**

Participant observation was used, in two time periods, to collect data in this research. The important ethical issues of trust, boundaries, insider observer and covert research have been outlined and my role in the research clarified.

## Interview theory

Interviews are part of normal practice for most professionals. Keats (2000) claimed that “everyone who works with people uses interviewing in some form or another” (p. 1), but added “to interview effectively is not just a gift but it is a skill that needs to be developed” (p. 1), and can be learned.

### What is an interview?

“An interview is a controlled situation in which one person, the interviewer, asks a series of questions of another person, the respondent” (Keats, 2000, p. 1).

There is a wide variety of contexts and purposes of interviews, but this discussion will focus on interviews which are individual, in-person interviews, sometimes called face-to-face interviews (Russ-Eft & Preskill, 2001).

Schostak (2006) claimed that interviewing is a complex, subtle process that needs to take account of its context. Miller and Crabtree (2004) agreed, claiming: “the interview is a research gathering approach that seeks to create a listening space where meaning is constructed through an interexchange/cocreation of verbal viewpoints in the interest of scientific knowing” (p. 185). It involves negotiations, calculations, and interpretations and “interviewees are specifically encouraged, by questions and other verbal and nonverbal methods, to produce *elaborated* and *detailed* answers” (Rapley, 2004, p. 15). Etherington (2004) had the view that: “researcher reflexivity in interview conversations allows a closer relationship to develop between interviewer and participant” (p. 57).

## **Types of interviews**

Sarantakos (2005) listed three types of interviews:

1. structured interviews use structured questionnaires that are presented verbally, with the answers recorded by the interviewer who adheres strictly to the questions
2. unstructured interviews use unstructured questionnaires, or interview schedules, with open-ended questions, with guidelines, rather than rules, about how to use the questions and record the answers
3. semi-structured interviews contain elements of structured and unstructured interviews (pp. 268-269).

Unstructured interviews were used in this research.

## **The interviewer's role**

An interviewer needs to be a competent administrator to set up an interview and observe professional, research, and ethical boundaries. Once the interviewer and interviewee are facing each other, the interviewer should “try to develop rapport by using a friendly, relaxed, and non-judgemental approach” (Russ-Eft & Preskill, 2001, p. 280) which assists the interviewee to begin the “exchange of ideas” (Reed, 2007, p. 125) leading to an effective interview.<sup>56</sup>

The completion of an interview is equally as important as its beginning. The interaction between interviewer and interviewee should end “in a spirit of trust, cooperation and mutual respect, so that the respondent feels that the

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<sup>56</sup> Question formulation is discussed below, p. 148.

contribution made to the research and to society in general has been appreciated” (Sarantakos, 2005, p. 277).

### **Interviewer skills**

To be effective in their task interviewers need a range of skills such as maintaining confidentiality, ability to ask in-depth questions, and competence in recording responses. They need to be able to adapt their interviewing to the type of person being interviewed, for example, child, adolescent, adult, disabled, criminal, or cross-cultural situations.

Russ-Eft and Preskill (2001) considered the following criteria most important when selecting potential interviewers:

- acute observation skills
- ability to deal with the unexpected
- neutrality
- willingness and ability to follow procedures
- appropriate educational background (p. 294).

Sarantakos (2005) also considered that interviewers should have a high level of personal criteria such as honesty, conscientiousness, objectivity and familiarity with the research topic. The items in the toolkit suggested by Heron (1999), and listed on p. 67 (above), are appropriate for an interviewer.

### **Quality interviewing**

According to Roulston (2010) it appears there is “no consistency in the terms used in relation to the assessment of ‘quality’ of qualitative interview research”

(p. 201). However, Kvale (1996) suggested six criteria for judging the quality of an interview:

- the extent of spontaneous, rich, specific, and relevant answers from the interviewee
- the shorter the interviewer's questions and the longer the subjects' answers, the better
- the degree to which the interviewer follows up and clarifies the meanings of the relevant aspects of the answers
- the ideal interview is to a large extent interpreted throughout the interview
- the interviewer attempts to verify his or her interpretations of the subjects' answers in the course of the interview
- the interview is 'self-communicating' – it is a story contained in itself that does not require extra description and explanation (p. 145).

## **Focus group theory**

This section discusses what a focus group is, why they are a useful research method, their elements, and their uses. Focus groups and interviews are compared, and criticisms of focus group research are noted.

### **What is a focus group?**

In a focus group the participants' attitudes and feelings about a chosen subject are explored by a trained facilitator, or moderator, with the emphasis on eliciting perceptions and ideas. They gather data about "why people act, think and feel as they do" (Elwyn et al., 2001, p. 286).

Puchta and Potter (2004) defined focus groups as "interactional, conversational



encounters” (p. 69). “The main aim of focus groups is to provide information-rich, in-depth data about attitudes, ideas and perceptions in order to answer a specific research question” (Elwyn et al., 2001, p. 292). Stewart et al. (2007) stated that focus groups are “group discussions among carefully selected individuals guided by a skilled moderator who follows a well-constructed but loose and flexible interview guide” (p. 67).

Stewart, Shamdasani, and Rook (2007) defined a working group – which focus groups are – (as opposed to a social group) as “a number of interacting individuals having a community of interest” (p. 37). Such a group is “a small number of people who have:

- a shared identity
- a shared frame of reference and
- shared objectives” (Elwyn et al., 2001, p. 4).

### **Why are focus groups a useful research method?**

Focus groups engender energy and enthusiasm (Litosseliti, 2003, p. 18). They stimulate debate and new ways of expressing opinions. Focus groups can demonstrate the extent of agreement about a topic within a group of people, which individual interviews cannot. It is possible for focus group members to agree with each other and develop a group view. In focus groups participants often feel safe to express views not normally voiced in public. The focus group process gives individuals time to develop and modify their ideas as others talk, and, as well, participants can choose when to contribute to the discussion.

“Focus groups provide opportunities for investigators to have direct contact with subjects at a level of interactive depth and candour that is otherwise difficult to achieve” (Elwyn et al., 2001, p. 289). Focus groups can be conducted online (Litosseliti, 2003), but this research used in-person focus groups.

Focus groups are not appropriate for all research. They should not be used in quantitative surveys, nor are they appropriate where confidentiality is an issue, when conflicts of interest may arise, or when groups lack homogeneity. They should not be used when the purpose of the group is to teach, inform, resolve conflict, change attitudes, or make decisions. Krueger (1994) listed the limitations of focus groups as:

- the researcher having less control
- the data being more difficult to analyse
- carefully trained interviewers being required
- when groups are not uniform and may be difficult to assemble
- that they need an environment conducive to conversation (p. 26).

### **Focus group elements**

Stewart et al (2007) claimed that despite the variety of formats, there does appear to be “core elements of focus group theory that are common across the various disciplines that use focus group research” (p. 8) and they proposed four normative criteria that make up a standard focus group.

1. To “gather qualitative data from individuals who have experienced some “particular concrete situation,” which serves as the focus of the interview” (Merton & Kendall, 1946, p. 541).

2. “To better understand the group dynamics that affect individuals’ perceptions, information processing, and decision making” (Stewart et al., 2007, p. 9). Conducting research in a group provides the opportunity to observe “how and why individuals accept or reject others’ ideas” (Stewart et al., 2007, p. 10).
3. It is “a belief that live encounters with groups of people will yield incremental answers to behavioural questions that go beyond the level of surface explanation” (Stewart et al., 2007, p. 11).
4. Focus groups are considered to be “humanistic” research in the qualitative spectrum. They emphasise meaning rather than the measurement of quantitative research and require some “degree of immersion into individuals’ lives” (Stewart et al., 2007, p. 12).

### **The uses of focus groups**

Focus groups can be used for a number of purposes, and at different times in the life of an organisation. It is appropriate to use focus groups:

- to gather data about the practicality of setting up a programme
- to evaluate progress during the programme
- at completion.

Because this qualitative research attempted to describe, understand and explain the “nature of reality” (Elwyn et al., 2001, p. 287) from the participants’ perspective, I considered focus groups were an appropriate method to use to gather data to evaluate the effectiveness of facilitation of the restorative justice process in the criminal justice system in Aotearoa/New Zealand.

### **Operating a group**

A major factor in how well a group works together is the number of participants

it has. "Observational studies of naturally occurring groups with high levels of interaction between members have demonstrated that these groups normally contain two or three individuals, and rarely more than five or six" (Elwyn et al., 2001, p. 15). There is a variety of opinions about the appropriate size for a focus group, and numbers of participants in a group set up to achieve a task may reasonably vary between three and fifteen. Stewart et al (2007) stated eight to twelve as the usual size. Morgan (1997) claimed that normally focus groups have between six and ten participants, though this may be as few as four or as many as twelve. According to Krueger and Casey (2000) groups of four have a smaller pool of ideas to work with and groups of twelve or above are too big to work as a single unit, and need to divide into smaller groups to give all participants an opportunity to contribute their insights. Further, Elwyn et al. (2001) stated: "Small group work starts to become confused when the threshold of eight or more participants is exceeded" (p. 17). This research used one group of four, one of five, one group of six participants, and two groups of seven.

### **Practical details**

For a focus group to operate to a high standard, the ordinary practical details of working with a group of people, as well as focus group theory, have to be attended to. These include:

- choosing a physical environment which will accommodate the needs of the participants is necessary (Elwyn et al., 2001)
- informing participants beforehand about what they can expect may allay unnecessary anxieties about how they will cope

- “such courtesies as providing cookies and coffee to facilitate focus group interactions can help to smooth data collection” (Denzin & Lincoln, 1994, p. 229).
- having resources such as whiteboard, flipchart paper, pens, audio recorder, audio–visual equipment, and a box of tissues.

### Group process

The content of each group’s work will vary according to its task, but the process that groups go through usually follows a common pattern. Levine and Moreland (2006) called this a life cycle model as it “presumes that different psychological problems or issues are prominent at different periods in the group’s life” (p. 457). Tuckman (1965) described four stages of group development:

1. *forming* stage of introductions and exploratory engagement
2. *storming* stage of intra-group conflict where participants attempt to mould the group to meet their own needs
3. *norming* stage where a group cohesion develops, when tensions are reconciled, and participants accommodate to each other
4. *performing* stage where the group is a functional instrument and participants work together to achieve the group’s aims (Tuckman, 1965, pp. 395-398).<sup>57</sup>

Tuckman and Jensen (1977) added the fifth stage of *adjourning* which addresses the ending of the group.

When participants are gathered, the facilitator needs to begin the *forming* process. “Forming a group does not just happen” (Elwyn et al., 2001, p. 112).

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<sup>57</sup> Tuckman’s group development stages are still commonly used as a basis for understanding group process (Elwyn et al., 2001; Levine & Moreland, 2006; Litosseliti, 2003).

The introductions and exploratory engagement stage of a group needs to be handled well for the rest of the process to follow appropriately and helping a group to form its working culture, or “the way we do things around here” (Hunter et al., 2007, p. 42), is very important. Elwyn et al (2001) claimed that “failure to ‘gel’ as a group or to set and follow ground rules are two major causes of groups going wrong” (p. 112).

Once the group has formed and participants are feeling more comfortable they begin to look after their own interests and attempt to steer the group to meet their personal needs. This is the *storming* phase, as differences emerge and participants compete with one another to get what they want. “Conflict occurs when people disagree about what they want to achieve by working together” (Elwyn et al., 2001, p. 115). These differences are often based on participants’ differing values and beliefs.

As the group works through the unrest it reaches the *norming* phase, in which ideas emerge about what is acceptable and unacceptable in the group. These norms function as controls on the behaviour of the participants and provide limits within which participants can feel free to act. The “members of the group acknowledge shared interests and adopt shared perspectives and patterns of thought” (Elwyn et al., 2001, p. 130). However, the focus group moderator needs to watch that the norms of the group do not stifle important minority views.

When the group has formed, stormed, and normed, it can perform the task for which it was set up i.e. it can use “the group process to achieve the group’s agreed objectives” (Elwyn et al., 2001, p. 130). Groups that reach this ideal stage can work “in the most productive and interactive ways to form the debate and redefine the issue” (Litosseliti, 2003, p. 77). Then the participants and facilitator can work together and use their strategies to maintain a productive performance.

The final phase of the group is its ending. Tuckman and Jensen (1977) called this the *adjourning* stage. If a group has been a satisfactory experience for its participants the end of it can be sad. Gorman (1998) used the term “mourning” for this phase. It is appropriate to recognise grief that may be present and finish the group’s work with a suitable ritual.

### **Conducting a focus group**

According to Krueger and Casey (2000), “Focus group interviews typically have five characteristics or features. These characteristics relate to the ingredients of a focus group:

1. people
2. who possess certain characteristics
3. provide qualitative data
4. in a focused discussion
5. to help understand the topic of interest” (p. 10).

Other group processes may have some of these characteristics but unless all

are present they are not focus groups. I will discuss these features of focus groups and relate them to this research.

## **People**

The criteria for focus group participants should be tightly selected and strictly adhered to so the study is not weakened. Participants should be as homogeneous as possible in the chosen category. Purposeful sampling, where the participants are typical of a defined group rather than representative of the general population, is appropriate for research using focus groups. In this research the appropriate sample were trained and experienced restorative justice process facilitators, working in the criminal justice system, in the upper North Island of Aotearoa/New Zealand.

## **Characteristics**

Focus groups are composed of people who share particular characteristics. The similarities which are required in the group are determined by the research enquiry. Prospective participants in the focus groups are the people who the researcher wants to respond to their research question. In this research the participants were facilitators who were facilitating victim and offender restorative justice processes.

Traditionally, focus groups have been deliberately made up of people who do not know each other. However, researchers are now recognising that this may not be necessary, though there is still a caution that participants should not be



close relatives or intimate social or work colleagues (Krueger, 1994). This is because participants who have known each other well for a period of time may react to the research from shared past experiences, rather than responding to the present topic. As well, participants may feel inhibited and choose not to disclose in front of people to whom they are close. In this research, because of the small pool of restorative justice facilitators working in the criminal justice system, the focus group participants were either close colleagues or at least nodding acquaintances. I checked by personal observation and verbal enquiry that it was not a disadvantage.

In this research, the relationship that I, as researcher and facilitator of the focus groups, had with the focus group participants who are colleagues, could also have been a disadvantage. I kept checking that the associations I had with the participants were not intervening in the process. In the planning of this research, my relationship with the participants was an advantage as they trusted that I understood their work, and they showed much enthusiasm for this study. As I have not in the past, do not now, and will not in the future, have any influence on my colleagues' employment, advancement, or payment prospects, that was not an issue for this research.

### **Qualitative data**

The purpose of focus groups is to produce qualitative data that is of interest to researchers, not to reach consensus or make decisions. "Focus groups work particularly well to determine the perceptions, feelings, and thinking of people

about issues, products, services, or opportunities” (Krueger & Casey, 2000, p. 12). Open-ended questions and the opportunity for participants to give open-ended answers, leads to the collection of rich data. The environment of a focus group is more like a real-life situation than an interview and produces more natural responses. These responses are recorded and made into a transcript for analysis. The understandings reached by the researcher are based on the discussion, not from testing, or confirming a hypothesis.

Focus groups are not one-off events but are conducted in a series of at least three, in order to find a “range of opinions of people across several groups” (Krueger & Casey, 2000, p. 11). As well, if a researcher is relying on a sole focus group for their data and group members do not participate fully, or internal or external factors unduly influence the results, the researcher’s work will be voided.

The focus groups in this research gathered data from restorative justice facilitators on the effectiveness of restorative justice facilitators in the criminal justice system in Aotearoa/New Zealand. There were five focus groups. Each group met four times.

### **Focused discussion to help understanding**

“The questions in a focus group are carefully predetermined. The questions are phrased and sequenced so they are easy to understand and logical to the participant” (Krueger & Casey, 2000, p. 12). The focus group process may

appear to be casual and without clear direction. However, the questions and their sequence have been carefully planned. There is no expectation that consensus will be reached by the group. It is the thought processes used by the participants, as they discuss the issues that are important. The data from the groups may be combined at the completion of the process and designated decision-makers may use the findings to make more informed choices. Moderators of focus groups may be more or less directive during the group's discussion depending on the intent of the research. "Indeed, one of the strengths of focus group research is that it may be adapted to provide the most desirable level of focus and structure" (Stewart et al., 2007, p. 38).

## **Ethics**

Ethical issues need careful consideration when using focus groups. Such issues include:

- informed consent for participants to be part of the research
- confidentiality of participants and what they reveal in the focus group
- clear policies about who will have access to the information gained
- who can analyse and report the findings
- whether or not the participants should receive copies of the reports.

The Ethics Committee of the Auckland University of Technology checked that these ethical issues were considered in this research.<sup>58</sup>

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<sup>58</sup> See Ethical Approval documents, Appendix 1, p. 424.

## **Focus group questions**

According to Stewart et al (2007) focus group questions should be developed in consultation with the parties who have an interest in the research, including policy and decision makers. As well as deciding the content and wording of the questions, other issues need to be considered. For example:

- whether the questions begin with specific ones and go on to general ones, or begin with general ones and lead to specific ones
- whether the questions of greatest importance should be asked first and those of lesser significance later, or vice versa.

How to balance these principles when they conflict is a task for the research designer.

Stewart et al (2007) stated that further issues to consider are the number of questions that focus group participants can appropriately deal with in a session, and how structured (closed) or unstructured (open) they should be. Then the issue of the pretesting of the interview guide arises. While it may be considered good practice to try out the questions, the group itself and the moderator, who are also parts of the research instrument, cannot be pretested. So it is not possible to pretest the complete package.

## **Role of the moderator or facilitator**

Stewart et al (2007) claimed that “an effective moderator is one of the keys to the collection of rich and valid insights from focus groups” (p. 69). Such a person will have leadership qualities and be skilled in group dynamics. Indeed,

“it is generally acknowledged that focus group moderators are required to have more education, skill, and experience than interviewers” (Fern, 1982, p. 3).

A moderator will be experienced in interviewing styles and tactics, and will understand questioning techniques, and the issues of moderator bias in group interviews. The selection and preparation of the moderator are important issues. Finally, “the moderator and the strategy for conducting the interview must be matched with the purpose of the research and the characteristics of the group” (Stewart et al., 2007, p. 86).

### **Criticism of focus group research**

Generally there are two criticisms of focus groups. The first is that “focus group interviews do not yield ‘hard’ quantitative data” (Stewart et al., 2007, p. 39). The second is whether the small numbers in the research sample and the “idiosyncratic nature of the group discussion” (Stewart et al., 2007, p. 39), can be representative of a larger population.

There are other influences on data gathered from focus groups that are possibly negative. One is the issue of whether the interactions between participants, and between the moderator and participants, influences what is said and not said. As well, unduly dominant or hesitant participants may bias the findings, while the moderator may influence the results by unwittingly giving cues about what are desirable responses for the research.

Stewart et al (2007) claim that the summarising and interpretation of results is

made more difficult by the open-ended responses focus groups produce. Some researchers find focus groups very time-consuming to organise and analyse, while others would make the same claims for interviews. It appears that what in some situations are considered to be the strengths of focus group will in other situations be disadvantages. According to Morgan (1997) “focus groups are no different from any other method, qualitative or quantitative, in this regard – there are some cases in which they should be preferred and others in which they should be avoided” (p. 13).

### **Focus groups compared with interviews**

Morgan (1997) stated: “The comparative advantage of focus groups as an interview technique lies in their ability to observe interaction on a topic” (p. 10). In a group discussion the differences and similarities in participants’ views and experiences can be observed, rather than having conclusions reached from what is said in separate interviews. However, individual interviews give interviewers a greater control over the direction of the interview, and interviewees have more time to share their information and will often elaborate on their initial statements with little or no interviewer input.

Morgan (1997) also argued for “the continuity and completeness of the narrative that individual interviews produce” (p. 11). Thus, for research where in-depth understanding is required, the interview is more useful. Morgan (1997) stated that a “90 minute focus group among 8 to 10 participants will, of necessity, generate roughly a tenth of the information that each participant would provide

in an equivalently long individual interview” (p. 11). What may contribute to this is that focus groups members may not stay focussed on the topic as closely as interviewees do – that is, unless the moderator takes control over the group and it loses the free-flowing discussion which is seen as a strength of focus groups.

It has been believed that focus groups have an advantage over interviews in generating ideas. But Fern (1982) concluded from his research that this was not so, and that for exploratory research “the sheer volume of ideas, as well as the quality of ideas, suggests using individual interviews” (p. 12). However, Cohen and Garrett (1999) claim that a knowledgeable researcher can “break focus group rules responsibly, thus bringing greater depth to the data gathered and allowing the researcher to be more sensitive to the needs of focus group participants” (p. 359).

Another debate is whether or not focus groups have a cost and time effectiveness over interviews. Fern (1982) suggested that the costs of conducting interviews may be lower than those of focus groups, while Stewart et al. (2007) maintained that “focus groups provide data from a group of people much more quickly and often at less cost” (p. 42) than individual interviews. Litosseliti (2003) claimed that the flexibility that focus group process allows assists in the development of meaning, as it emerges from the participants in a way that interviews do not.

Krueger and Casey (2000) raised the issue of the dominance of the interviewer

in interviews. Indeed Rice (1931), one of the first social scientists to express concern, stated: “A defect of the interview for the purposes of fact finding in research, then, is that the questioner takes the lead . . . data obtained from an interview are as likely to embody the preconceived ideas of the interviewer as the attitudes of the interviewed” (p. 561). Fern (1982) compared moderated and unmoderated groups and proposed a “moderator effect” (p. 3) on focus groups from the participation of the moderator. It appears that both interviewer and moderator (facilitator) may make interventions in the process they conduct.

## **Research process**

The majority of the facilitators who participated in the focus groups for this research had been facilitating restorative justice processes in the criminal justice system since 2001, when they began as part of the Ministry of Justice four-year pilot scheme in four District Courts. The pilot scheme trained 120 facilitators throughout the country and was academically evaluated by the Crime and Justice Research Centre at Victoria University and Sue Triggs (2005). Many of these facilitators have worked in the field since then, but this research is the first to evaluate their effectiveness as facilitators.

The initial contact with facilitators about the research was by a letter from me to their Provider Group, requesting a meeting with the group to inform members of this research. The public policy framework in which restorative justice operates, and the appreciative inquiry methodology of evaluation of this research, were explained at the meeting. After the information had been presented, facilitators



were invited to participate and were given a copy of the AUT approved Participant Information Sheet and the Consent Form<sup>59</sup> and asked to return the signed form if they decided to participate in the study. Participants were asked to fill in an Availability Indicator to show when they could attend the first focus group meeting. When the number and geographical spread of participants was known, meetings of the focus groups were arranged. I labelled the groups by the geographical location, or ethnicity of their participants: Southwest, Whangarei, Mixed, Thames,<sup>60</sup> Pacific Island. Whangarei was the Māori group.

### **The research focus groups**

The focus groups each had between four and seven participants. Participants chose which group they joined according to their availability for the date and time of the meeting of that group. The groups met for up to two hours, up to four times, over a six month period. Data was gathered in the meetings by audio recording of the participants' responses to the research questions. The questions followed the style suggested by Preskill and Catsambas (2006) as typical of the discovery, dream, and design phases of appreciative inquiry research. This style fitted well with restorative justice facilitators, who are practised tellers of positive stories.

Each focus group decided whether they wanted to meet frequently, and collect the data quite rapidly, or if they wanted to take a more leisurely approach. For

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<sup>59</sup> See Appendix A, p.425f.

<sup>60</sup> Thames is a rural town in the Waikato.

the study the pace of data collection was not crucial, as long as the appreciative inquiry process was completed within an eighteen month time frame. However, all the focus groups chose to meet frequently and the data collection from focus groups began on June 30th 2009 and was completed on 10th December 2009.

### **Key Informants**

Key informants were all people who were aware of, and interested in this research, and had verbally indicated their willingness to participate. The key informants were chosen because they could provide information not covered by the focus group discussions. They were formally approached by a letter from me outlining the project, and enclosing a copy of the approved Participant Information Sheet and the Consent Form<sup>61</sup> for them to sign if they agreed to join the study. All the people approached agreed to participate, and interviews took place at mutually agreeable, appropriate, locations, dates, and times.

Key informants were two judges, three people with Ministry of Justice experience, and three people who were facilitator trainers and had lengthy experience as restorative justice facilitators, although only one was still practising as a facilitator. Four of the key informants were Pākehā, three were Māori, and one was a Pacific person. The inclusion of Māori and Pacific people as key informants in the study occurred because these ethnic groups are represented among facilitators, and the victims and offenders they work with.

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<sup>61</sup> Appendix A, p. 429f.

One key informant interview occurred in September 2009 before the focus groups were completed because that person was going to live abroad and no-one else could easily replace their perspective. The next five interviews took place in June and July 2010, one in October 2010 and the last in January 2011.

### **Data recording, transcribing and analysis**

I transcribed the recordings of the data from all the focus group meetings, and key informant interviews, then summarised and analysed it, using a thematic approach. According to Hall and Hall (2004) using themes enables “the larger structure of how people say what they say” (p. 157) to come through. Or, as Bouma (2000) said: “key issues, concepts, and opinions [are] identified through thematisation” (p. 186). I manually analysed the data, as software does not pick up subtleties such as texture, pauses, and irony that indicate values which will be important in assessing effectiveness in this research.

### **Fieldwork**

Permission was obtained from Ministry of Justice to approach restorative justice facilitators to participate in the research. Restorative Justice Aotearoa, the professional body to which facilitators belong through their provider group, also expressed their approval of the study. Twelve restorative justice provider groups were invited to participate. Responses were received from ten groups. Five groups were visited. Three did not make arrangements for a visit, but individuals from these groups chose to participate; a member from one group participated in the interviews; one group was overburdened and did not participate; two

groups did not respond.

Responses from the groups who received a presentation of this research were:

- in one group four of four possible participants signed a Consent Form
- in two groups five of six possible participants signed a Consent Form
- in one group five out of eight possible participants signed a Consent Form
- in one group two out of three possible participants signed a Consent Form.

Nine individuals signed a Consent Form without receiving a presentation in their provider group. This was a total of thirty participants. One participant was moved from being a focus group participant to being a possible key informant, but then ceased to be appropriate as a research participant. One participant was available for only part of the first meeting of her focus group. Otherwise all facilitators attended all the meetings of their group, unless they were ill, detained by work commitments, or mixed their dates. All but the two members above completed the research.

The focus groups were organised as follows: one focus group of four participants in Whangarei, three focus groups in the Auckland area – two with six participants and one with seven participants – and one focus group in Thames with seven participants. I travelled to Whangarei and Thames to conduct those focus groups.

Communication with focus group members was by email, after members gave permission for email contact. From the information received it was determined

when participants of the groups were available to meet. They were then informed of the date, time, venue and other relevant details. At each meeting of each focus group the participants decided when they would meet next.

### **Focus group process**

Four of the focus groups met four times – the three Auckland and one Whangarei – and the Thames group met only three times, but covered the same questions as the other focus groups. My intention was to use the same questions, in the same sequence, with the same facilitation techniques in each of the group meetings to, as far as possible, collect similar data from all the groups. It was not possible to replicate the focus group process exactly with the groups, as each group had its own occurrences that prevented duplication. As well, some additional explanations were given when confusion was expressed by participants. These variations have been noted. The questions used are cited in Appendix E, Focus Group Process p. 448ff.

A plan was written for each of the four phases of focus group meetings, taking note of focus group theory. Refreshments, which I provided, were included in the plan. Each of the groups decided at what time in the meeting they would take their refreshments. The Whangarei group did not have any refreshments as their meeting times did not coincide with normal food and drink times, and one of the policies for their workplace, where we met, was being aware of obesity. The Pacific peoples' group had a light tea as the beginning of their meetings in the early evening.

Details of what happened at each of the four phases of the group meetings are in Appendix E.<sup>62</sup> The meeting plan, and what occurred, is described in detail for whichever focus group used the plan for that level first. For subsequent groups where and how the meetings differed is noted.

## **Reflections on focus groups**

### **Practice issues**

Focus groups were the main method used to collect data for this research. As much as possible the groups followed the facilitative practices used by restorative justice conferences. I used an hierarchical power mode (Heron, 1999) to establish and administer the groups. However, once the groups were functioning, the participants and I worked together in a co-operative mode and agreed on:

- where and when they would meet, as necessary changing established dates to enable full attendance
- using efficient communication, mainly e-mail, for information-sharing, including receiving transcripts of focus group meetings
- establishing rapport and relating appropriately. Participants were pleased to meet together and those who missed a session expressed their regret
- reading the transcript sent to them, usually within a fortnight of the focus group meeting, and acknowledging that it was correct or needed amending
- the fourth sessions where groups were being asked to be specific and practical were more difficult for participants. The two groups that were not composite groups found it easier to make concrete decisions about

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<sup>62</sup> p. 449.

putting their dreams into action. Asking direct questions of the Pacific people was too white-western for them, but to have taken a more Pacific style would have required many more hours of focus group time.

### **Effective outcomes**

The focus group participants displayed considered thought, good self-analysis, and depth of disclosure in responding to the appreciative inquiry questions in the data collection/discovery phase of the meetings. In the first focus group held there was a profound silence as the last story was told and it would have been appropriate to have continued with more storytelling.

The group with representatives from four different Auckland/Waitakere/Manukau provider groups acted as a getting-to-know-you place and considerable respect between the participants was built up. This would have been very useful prior to the Ministry of Justice contracting process in Auckland when the ministry wanted the four groups in Auckland to become one entity.

The degree of my participation in the focus groups was adjusted to match my relationship with their participants. In the two mixed Auckland focus groups I participated to a greater degree as a group member than I did in the Thames, or the Māori, or Pacific Island groups. This was because in the two Auckland groups I was a colleague of all the participants, which I was not for the other groups.

I felt warmly accepted by the Māori and Pacific focus groups. It seemed I had

been culturally appropriate enough for them to work with me.

### **Negative outcomes**

There were two significant occurrences in the focus groups. In the first, a participant in a focus group demonstrated behaviour that some other members of the group found to be unsuitable. The sample design of the study allowed that this situation could arise, because facilitators were invited to participate as long as they met the criteria for participation. When the facilitator in question agreed to participate in the research I was aware of their potential unsuitability and was anxious about the effect on this research. My supervisor suggested that I take immediate action and invite the facilitator to transfer from being a focus group participant to being a key informant. I did this and the facilitator gladly accepted the transfer. The focus group did not appear to be adversely affected by the participant's removal from the group.

In the second, a participant from a focus group confronted me after the group about revealing confidential information to the group. This is discussed in Chapter 9, p. 298.

### **Key Informants**

Interviews were conducted with eight key informants who were invited to participate because of their experience in restorative justice in the criminal justice system, and because they could provide a perspective that was additional to that provided by the focus groups. The key informants, listed in the



order in which they were interviewed, were Eldon Takitimu, Auckland District Court restorative justice coordinator; Judge McElrea, a developer and theorist of restorative justice in Aotearoa New Zealand; Alison Hill, manager of the Ministry of Justice Crime Prevention Unit during the Restorative Justice Pilot scheme; Fuimaono Tuiasau, who was a member of the Ministry of Pacific Island Affairs but had previously been in the Ministry of Justice crime and justice policy team and worked in their project teams relating to restorative justice; Tim Clarke, restorative justice trainer, long-term practitioner and past chairperson of Restorative Justice Aotearoa; Judge Phil Recordon, advocate for restorative justice in the criminal justice system; Dame June Jackson, and Naida Glavish, both facilitator trainers, and long-term practitioners and supporters of restorative justice.<sup>63</sup>

The key informants were chosen to complement the data that arose from the focus groups. The interview questions used an appreciative inquiry approach and mirror those posed to the facilitators.<sup>64</sup>

#### **Additional questions for the interviews of key informants:**

- From your experience how would you define an effective restorative justice facilitator?
- How does the restorative justice process in the criminal justice system fit with Māori/Pacific practitioners?

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<sup>63</sup> For clarity the abbreviation (KI) will denote a quote from a Key Informant.

<sup>64</sup> See Appendix A, p. 437.

Supplementary question for judges:

- As a judge, what about a conference report is most useful to you? Would a different format be more useful? If so, what type of format?

## **Process**

The key informant interviews were recorded and transcribed and the interview findings collated. At one interview the recording equipment failed so the interview was not recorded and as soon as possible after the interview I made notes of what had been said by the interviewee. At another interview an equipment failure was discovered before the interview, so I wrote notes during interview. The questions used an appreciative inquiry approach and mirrored those posed to the facilitators, but also differed, as the questions asked of each key informant sought to elicit the particular experience of each participant, and to gather data from the perspective of their expertise or professional responsibility in the field of restorative justice.

## **Data Analysis**

In this qualitative research I have sought to provide a valid representation of what participants said in the study. According to Davidson and Tolich (2003), the validity of research is strengthened by triangulation of its findings.

“Triangulation is the use of multiple sources of information, methods, theories and techniques to generate a variety of data which measure the social phenomena under investigation” (p. 34). My research was an inductive process and I have brought literature into the data analysis to scaffold and support my

analysis.

In this data analysis I triangulated the findings when I put together data gathered from the focus groups and the key informant interviews, the theoretical information discussed in the thesis, such as the critical questions for restorative justice in Aotearoa/New Zealand (Jülich, 2003) that are particularly relevant to facilitators, and reflected on them in the context of my nine years' experience as a restorative justice facilitator and my much longer experience as a teacher and counsellor. When my own reflections on the data, theory and local context are stated the first-person is used. Focus group participants and key informants have given permission to include direct quotes. In order to give the reader the tone and nuance of what was said, their words have been left unchanged except when clarity was an issue, and any changes have been noted in the text.

### **Analysis process**

The focus group discussions and interviews were audio recorded and transcribed within four weeks of the meeting and sent to the focus group members and key informants to check for accuracy. I transcribed all the recordings and collated the data according to the themes that emerged. Apposite quotes from focus group participants and key informants were included when the themes were written up. The theoretical chapter on facilitation from this thesis was summarised and the concepts relevant to facilitators included. Then the data from the focus groups and interviews was compared to the theoretical concepts and the patterns, similarities and

differences, and unexpressed themes, noted. Interpretation of the information that emerged was made in the light of the research question. The findings from the key informants were, as far as possible, collated into the same themes as those of the focus groups, so that comparisons could be made.

The focus groups demonstrated a marked degree of agreement on what was significant to them as facilitators. The same issues were frequently raised in each of the five focus groups and members nodded or vocally agreed with what was being said. Generally, only one person addressed a particular issue, with group members adding other perspectives rather than repeating what had been said. They used words such as “I will follow on from there”, or “I feel very similar to what’s been said”. What is in the findings is only a sample of facilitators’ experiences and what is quoted from only one facilitator is not just the experience of that facilitator.

### **Data framework**

Deciding on an appropriate framework for my data analysis was not straightforward. I consulted Ministry of Justice documents and examined several texts without finding a suitable framework. The Ministry of Justice *Restorative Justice Facilitator Toolkit* (2007a) listed facilitator role requirements, and supplied a facilitator person specification. However, these were at a very basic assessment and training level, so were not appropriate. My analysis dealt with effective facilitation which, while building on basic skills and attributes, is addressing a more sophisticated level of practitioner activity. The

(2008b) also detailed restorative justice values and how they fitted with facilitator skills. While restorative justice values are an important basic component of effective facilitation, they do not address the facilitator issues being evaluated in this research.

Having read texts, made a mind map and talked to other students about data analysis – without finding an appropriate way to analyse data from restorative justice facilitators and key informants about facilitator effectiveness gathered using an appreciative inquiry methodology – I realised a new framework was called for. This needed to:

- evolve from the data collected
- analyse the data in a completely respectful way
- fully honour the participants' perceptions and insights
- express the passion and experience of the participants.

I asked myself the question: What elements are present in an effective restorative justice facilitator? In response I used the learning I had gained while gathering the data, the theory studied in preparation for fieldwork, my experience as a restorative justice facilitator, contextualised by my prior knowledge as an educator and counsellor, my experience of being in receipt of effective facilitation, and my perception of the crucial elements of effective facilitation.

What emerged “in the process of examining and organising [the raw data] so

that it [could] be experienced and discussed by others” (Reed, 2007, p. 137), was a thematic analysis which enabled the nuances and tones of the data to be captured. I attended the focus group meetings, conducted the key informant interviews, and transcribed them all, so I could recall the detail conveyed by gesture, silence, hesitation, laughter and heartfelt comments of agreement. The framework needed to include these elements as well.

### **Thematic emergence**

The result was that five themes emerged as crucial areas for effective facilitators:

- presence
- awareness
- skill
- knowledge
- support.

These themes are similar to those described elsewhere, for instance the factors described by Vaughan, Reddy and Dunbar (2010) for measuring the effectiveness of training diabetes facilitators: knowledge of the subject, and of group facilitation, confidence to facilitate, and in facilitation of the programme – and the skills, knowledge, and experience that, according to Thomas and Pyser (2008), facilitator educators should assist novice facilitators to develop.

However, neither of these studies placed the emphasis on the themes of facilitator presence and support that participants in this study did.

I then searched the collated data from focus groups and key informants and five

principle themes emerged. In doing this I began to move toward what Savin-Badin (2004) termed interpretation, that is: “the process of framing information so that the elements of meaning, rather than simply content, come to the fore” (cited in Reed, 2007, p. 137). I recognised that much of the data could have been subsumed under more than one theme, but for the purpose of analysis it generally fitted fairly clearly in one theme more than any other. For clarity I have discussed the themes as though they were separate areas and then looked at the interconnectedness of them, making sure that what the research participants considered was important was clear in the analysis.

## **Analysis**

Appreciative inquiry is often seen as being determinedly positive, ignoring or averting discussion of the negative, and thereby preventing full engagement with the complexity of human interaction. Such determined positivity was not my attitude while gathering and analysing the data. Rather, I took the approach that appreciative inquiry “discovers and highlights the life-giving properties of an organisation” (Fry, 2000, p. 46). I also used the critical theoretical perspective of Grant & Humphries (2006) and noted context, power issues, injustices, suppression of conflict and looked for emancipatory action. Facione (1990) defined critical thinking as “purposeful, self-regulatory judgment which results in interpretation, analysis, evaluation, and inference, as well as explanation of the evidential, conceptual, methodological, criteriological, or contextual consideration upon which that judgment is based” (p. 3). By noting the critical

perspective within appreciative inquiry, I hoped to present a balanced and complex analysis of the data.

## The Themes

### *Presence*

Personal presence is a pre-requisite attribute of an effective facilitator.

“Presence”, according to Gregory (2002), is who facilitators *are* (as opposed to what they *do*), and in my experience personal presence is not something that can be trained into or taught to a facilitator. The data from this research revealed that facilitator presence demonstrates:

- confidence
- a belief that people can change
- appropriate values
- ethics
- self discipline
- insight
- respect
- vision of a way forward
- passion
- being spiritual but analytical
- rising to challenges
- being caring and empathetic
- a sense of responsibility.

### *Awareness*

Awareness is also an innate characteristic of facilitators, although it can be enhanced by training. Awareness, defined as “fully informed about current



issues of concern in a particular field” (Deverson & Kennedy, 2005, p. 71),

includes such areas as being aware of:

- self
- the needs of victims and offenders and their supporters
- justice
- many cultures and their traditions
- relationships and human contact
- the importance of learning and debriefing and supervision
- victims and offenders being people, not roles.

In my observation, aware facilitators recognise the context of their work, including its voluntary component, and they strive for quality practice and are able to recognise “bullshit”.<sup>65</sup>

People who have awareness and personal presence can be taught facilitation skills and become effective facilitators and co-facilitators.<sup>66</sup>

### ***Skills***

Facilitators in the study considered that such skills include:

- being professional
- having good communication and good listening skills
- maintaining confidentiality
- being able to establish rapport
- being logical, methodical, and flexible
- having sound boundaries

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<sup>65</sup> Key informant interview with Tim Clarke.

<sup>66</sup> See the United Nations, Office on Drugs and Crime, 2009, *Handbook on Restorative Justice Programmes* (2006).

- acting with balanced neutrality
- having the skills of good preparation
- setting up a restorative justice process and reaching outcomes
- being able to take control when necessary but also being able to relinquish it to participants when that is appropriate
- affirming success
- writing reports to be delivered to the court by the due date
- being able to balance the needs of the court with human needs
- being able to work within the court system.

### *Knowledge*

The knowledge, that is “a person’s range of information” (Deverson & Kennedy, 2005, p. 611), required by facilitators to be an effective practitioner needs to be acquired. This knowledge includes an understanding of:

- restorative justice principles and practices, and processes
- the restorative justice and the criminal justice systems
- victim and offender issues
- group dynamics
- the political and social issues in which the restorative justice process is situated
- the importance of conferences and seminars
- utilising previous experience.

### *Support*

Adequate support and resourcing is essential for sustaining effective facilitators (Jülich, 2003, p. 15). Support is provided by:

- colleagues in their provider groups and local situation
- Restorative Justice Aotearoa and the Ministry of Justice
- facilitators’ communities

- resources and research.

## **Summary**

This chapter summarised the ethical considerations and design of the research, discussed interview and focus group theory and practical issues, outlined the research process and reported on the focus groups that were held, and the key informant interviews that took place. The data analysis and triangulation process used when the data was collated was outlined and reflected upon, along with my experience and the theoretical information discussed in the thesis. Five themes emerged as crucial areas for effective facilitators: presence, awareness, skill, knowledge and support. Each of the themes is discussed more fully in chapters 7 - 11.

In the next chapter Public Policy is discussed.

## **Part Three: Research**

## Chapter 6: Public Policy

The practitioners in this study conducted their facilitation of adult restorative justice cases in the criminal justice system within a New Zealand government public policy framework which is discussed in this chapter.<sup>67</sup> The history of restorative justice in the criminal justice system in Aotearoa/New Zealand is outlined and the two distinct streams of restorative justice in the adult criminal justice system that developed – community-managed and court-referred programmes – are defined and compared. The current national delivery of restorative justice is reviewed, and the reorganisation of restorative justice service in Auckland examined. Government funding of restorative justice is analysed.

Data was sought from the Annual Reports, and Departmental Forecasts or Statements of Intent, submitted to Parliament by the Crime Prevention Unit (CPU), the Department for Courts, and the Ministry of Justice. In 2000 the Crime Prevention Unit transferred to the Ministry of Justice, in 2003 the Department for Courts was merged with Ministry of Justice, and in 2009 the policy functions of the CPU were distributed across other justice policy teams and a new Community Relations and Operations team was established.<sup>68</sup> Material in this chapter was found on government websites, or by making official information

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<sup>67</sup> Government funded restorative justice programmes will be discussed here.

<sup>68</sup> [Letter dated 30 March 2009, from Jared Mullen, Deputy Secretary Policy, Ministry of Justice, to Restorative Justice Aotearoa.]

requests. Other secondary data is from letters and documents from government bodies to Restorative Justice Aotearoa and restorative justice provider groups, and emails between practitioners about policy matters.

## **The history of restorative justice in the criminal justice system in Aotearoa/New Zealand**

Māori attitudes to dealing with social regulation, control and punishment have been influential in the development of restorative justice in Aotearoa/New Zealand. Strong protest from Māori to the proposed 1986 Child Youth and Family Services (CYFS) legislation, which was premised in a Western reality construct, led to widespread consultations resulting in the Children, Young Persons, and Their Families Act 1989, and the development of the Family Group Conference mechanism.<sup>69</sup> According to Daly (2002), the Act was an interweaving of Māori customary practice and public service processes. Jantzi (2001) stated that “the 1989 Act and its application in the Youth Justice system is clearly a major milestone in the development of restorative justice initiatives in New Zealand” (p. 9).

*The Act, which is a family-focused and offender-focused model, was not considered to be a restorative justice process and is retrospectively recognised to have restorative elements.*

Since the mid-1980s, Consedine<sup>70</sup> had been calling for alternatives to prison

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<sup>69</sup> Judge McElrea believed that the Family Group Conference was the directly related to the whānau (family) meeting process that Māori people use.

<sup>70</sup> Jim Consedine is a New Zealand justice campaigner.

and retributive justice and he was encouraged by the visit in 1994 of Howard Zehr, a founding developer and advocate of the restorative justice process. So was McElrea (1994) who described Zehr as “a prophet of justice, proclaiming that there is a better way of dealing with both offenders and victims, one which promotes healing in the community” (p. 2). McElrea has been influential in restorative justice in Aotearoa/New Zealand.<sup>71</sup> In 1992, he wrote a paper on the topic for the Legal Research Foundation. The following year he spent a month of his sabbatical leave learning about restorative justice at the Institute of Criminology at Cambridge University, England. Back in New Zealand, in 1994, he proposed the introduction of Community Group Conferences for adults.<sup>72</sup>

Also in 1994, a *New Zealand Listener*/Heylen poll found that “55% of respondents agreed or strongly agreed that offenders should meet with their victims and, where possible, try to put things right. Only a quarter disagreed with this” (Department for Courts, 2002, p. 44).

McElrea presented a paper to the National Conference of District Court Judges in 1994 titled, *Restorative Justice – The New Zealand Youth Court: a model for development in other Courts?*<sup>73</sup> That same year McElrea, then a District Court judge, invited Rev D Mansill<sup>74</sup> to conduct an “experimental” restorative

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<sup>71</sup> Judge McElrea was a District Court judge and developed an interest in restorative justice in 1990 when he first became a Youth Court Judge and experienced the different way in which that Court operated compared to the adult courts.

<sup>72</sup> McElrea, Restorative Justice Online [www.restorativejustice.org/leading/mcelrea](http://www.restorativejustice.org/leading/mcelrea).

<sup>73</sup> This was later published in *Journal of Judicial Administration*, Vol 4, No1 (August 1994).

<sup>74</sup> Rev Mansill worked with young offenders.

conference (Hayden, 2001), and restorative justice for adults in the criminal justice system in Aotearoa/New Zealand began in an organised way.<sup>75</sup>

According to Boyack et al., (2004), the passing of the *Children, Young Persons and Their Families Act 1989* had provided a model for working co-operatively in the criminal justice system, so this conference with an adult offender and victim had some precedent. Later that year, *Te Oritenga*<sup>76</sup> Restorative Justice Group was established in Auckland by Mansill (Department for Courts, 2003a). *Te Oritenga* blended Māori restorative justice, which was grounded in pre-European practice, with the Western (introduced) version. Later, the stream of restorative justice practised in the Pacific was added.<sup>77</sup>

Consedine's 1995 book *Restorative justice: Healing the Effects of Crime* introduced restorative justice to a wider section of people when it presented restorative justice as an alternative to the current justice system. That same year, the Crime Prevention Unit (CPU)<sup>78</sup> funded the first government-sponsored restorative justice-oriented programmes for adults.<sup>79</sup> This was followed by the

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<sup>75</sup> The Criminal Justice Act 1985 provided the initial legitimacy for restorative justice to be used in the New Zealand criminal justice system prior to the 2002 legislation.

<sup>76</sup> *Te Oritenga*, meaning equinox or balance, was the name given to the group by a Māori member, Naida Glavish.

<sup>77</sup> Conversation with Mansill.

<sup>78</sup> CPU was attached to the Prime Minister's Department. On 1st November 2000 CPU became part of the Ministry of Justice.

<sup>79</sup> *Project Turnaround* in Timaru, *Te Whānau Awhina* in West Auckland, *Community Accountability Programme* in Rotorua (ceased operation in its first year). All these had Safer Community Council involvement and diverted adult offenders appearing before the criminal courts.



Department for Courts issued *Restorative justice: A discussion paper –1996*. In 1997 a restorative justice trial pilot, to commence during 1998, was approved by the National Party-led government, provided funding was made available in the Budget.<sup>80</sup> It was not, so the pilot did not proceed at that time (Bowen & Consedine, 1999). In 1998/99, three more community panel-type diversion programmes were funded,<sup>81</sup> in 1999/2000 another five programmes were funded,<sup>82</sup> and by 2004 the Crime Prevention Unit was administering 17 programmes.

By 1998 restorative justice facilitators were working with adults in New Plymouth, Palmerston North, Hawkes Bay, Wellington and Christchurch (Bowen & Consedine, 1999), as well as Auckland, in a variety of restorative justice programmes. From 1 April to 30 September 2000, a Restorative Justice Pilot for adult offenders was conducted at Waitakere Court (Schmid, 2001) and the same year the Prison Fellowship New Zealand began experimenting with their Sycamore Tree project<sup>83</sup> in Arohata, the women's prison at Tawa near

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<sup>80</sup> Estimates of the cost of the pilot were: 1998/99 \$1,500,458, 1999/00 \$1,851,750, 2000/01 \$2,066,625, 2001/02 \$1,802,813, all GST inclusive (Bowen & Consedine, 1999, p. 157).

<sup>81</sup> *Project Turnaround Kerekere* in Horowhenua, *Turnaround Waimakariri* in Rangiora – both following the Timaru model, and a *Second Chance Programme* in Rotorua, a bicultural offender-victim conferencing model.

<sup>82</sup> *Ashburton Restorative Justice Programme*, *Waitaki Turnaround*, *Wanganui Restorative Justice Programme* - all community panel programmes, and Hawkes Bay Restorative Justice Programme *Te Puna Wai Ora*, and *Te Runanga O Turanganui a Kiwa* Restorative Justice in Gisborne – both victim-offender conferencing models. All had Safer Community Council involvement.

<sup>83</sup> The Sycamore Tree Project® is an intensive 5-8 week in-prison programme that brings groups of crime victims into prison to meet with groups of unrelated offenders.

Wellington, and Rimutaka men's prison north of Wellington. By 2001, privately funded programmes were also operating in New Plymouth, Nelson, and Waitakere (Auckland) (Jantzi, 2001, p. 12). "New Zealand was the first to use and evaluate restorative justice in cases of serious offending" (Ministry of Justice, 2010, p. 3).

Morris and Young, in their 1999 lecture in Wellington: *Reforming Criminal Justice: The Potential of Restorative Justice* (as cited in Hayden, 2001), began to address how the focus of the criminal justice system in Aotearoa/New Zealand might be changed. In 2000 and 2002, The Centre for Justice and Peace Development, Massey University, Auckland, organised national conferences. At the 2002 conference, Zehr and "a mix of practitioners, policymakers, and academics" (Jülich, 2003, p. i) took part in a set of five one-day hui (assembly). By this time both government and non-government agencies, in various parts of the country, were working with restorative justice.

On 11 June 2000, a press release from Courts Minister Matt Robson and Justice Minister Phil Goff announced a restorative justice package of \$4.857 million, over three years "to introduce new court-referred restorative justice pilot projects, and expand current community-managed restorative justice projects" (Department for Courts, 2002, p. 7). The new adult pilots were to be implemented in Waitakere, Auckland, Hamilton and Dunedin District Courts and would be in addition to the range of restorative justice services already available. This academically-evaluated, four-year scheme began training

carefully-selected people to be co-facilitators of a community group conferencing restorative justice process with court-referred cases (Bowen et al., 2004).

The evaluation of the pilots was published in 2005 by the Ministry of Justice. It reported, “It seems that the pilot has been reasonably successful . . . there is some evidence to indicate reduced reoffending by those who attended court-referred restorative justice conferences . . . [which also] have the potential to increase victims’ involvement in dealing with offending ” (Crime and Justice Research Centre, & Triggs, 2005, p. 317). The first specialist group to provide a restorative justice option for victims of sexual offending receiving referrals from the court, Project Restore in Auckland, was launched in 2005 (Jülich, Buttle, Cummins, & Freeborn, 2010).

When the pilot scheme was officially complete,<sup>84</sup> the court-referred groups<sup>85</sup> it had set up throughout the country continued their work, alongside the community-managed groups which had been working in the criminal justice system. Restorative justice processes were also used for civil and community situations, and as restorative practices in schools (Wearmouth, McKinney, & Glynn, 2007). Publications by local authors and government departments added

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<sup>84</sup> The pilot scheme was to be from 2001 to 2005. The evaluation of the scheme was published in May 2005, but for provider groups and facilitators the scheme continued, with minor amendments, until the termination of current contracts on 30 June 2009. (Letter from Ministry of Justice to St. Luke's Restorative Justice Provider Group 9 April 2009.)

<sup>85</sup> The Court-Referred Restorative Justice Pilot changed its name to the Court-Referred Restorative Justice Programme in 2005.

to the development of restorative justice work in Aotearoa/New Zealand.

The Crime Prevention Unit and the Ministry of Justice funded work in the criminal justice system. However, even facilitators and administrators receiving government funds had to apply for charitable grants, or find money from other sources, to balance their budgets.<sup>86</sup>

## **Restorative justice in the criminal justice system in Aotearoa New Zealand**

The criminal justice system in Aotearoa/New Zealand developed two different restorative justice pre-sentence perspectives and practices for adults – community-managed restorative justice and the court-referred restorative justice pilot.<sup>87</sup> In 2009 the Ministry of Justice placed these two different service providers under a single interim funding framework, the aim of which was to “bring all providers to the same funding level based on the services they provide”.<sup>88</sup>

### **Community-managed restorative justice**

Community-managed restorative justice was initiated in 1995 by the Crime Prevention Unit, when it was attached to the Prime Minister's Department, and was the first government-sponsored restorative justice-oriented programme for

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<sup>86</sup> Conversations among restorative justice practitioners, 2009.

<sup>87</sup> There are other restorative justice streams outside the criminal justice system – for example, in education, workplaces, civil courts, and post-sentence restorative justice in prisons.

<sup>88</sup> Interim funding framework update, circulated by Ministry of Justice to restorative justice providers in December 2008.

adults in this country.<sup>89</sup> I have been unable to locate a specific definition of community-managed restorative justice. It would appear that community-managed restorative justice groups were contracted providers and each group determined their own process within the principles of restorative justice as they understood them. The first projects incorporated three distinct operational models:

- a community panel diversion with extensive victim involvement
- a culturally based programme incorporating panels without extensive victim involvement
- an offender-victim conferencing programme (Jantzi, 2001, p. 11).

In 1999 the Department for Courts conducted an evaluation of the Timaru and Waitakere pilot community diversion programmes (Department for Courts, 1999a). Community-managed restorative justice programmes aimed “to divert from the criminal justice system more serious offenders than are currently dealt with through the Police diversion scheme”<sup>90</sup> (Department for Courts, 1999b).

Diversion provided an opportunity for Police to deal with some offences and/or offenders without going through formal court prosecution. In 2000 the Crime Prevention Unit transferred to the Ministry of Justice and under that portfolio administered the Provision of Crime Prevention and Community Safety Programmes which included community-managed restorative justice (Ministry of

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<sup>89</sup> Discussed on p. 177.

<sup>90</sup> Diversion is a scheme that has been operating for almost two decades.

Justice, 2001).

Some of these community-managed programmes were groups specifically set up for restorative justice work and others were existing groups which adapted to the restorative justice process to obtain funding.<sup>91</sup> Thus a variety of practices in community-managed programmes were all labelled “restorative justice”. In 2003 there were 17 community-managed restorative justice groups (Ministry of Justice, 2003) and in 2011 there were 23 of these groups operating (Ministry of Justice, 2011a, pp. 20-22).

### **Court-referred restorative justice pilot**

A court-referred restorative justice pilot had been approved by the National government in 1997 (Bowen & Consedine, 1999) but funding was not available. In 2000 the Department for Courts of the Labour government

announced some exciting and innovative new measures within areas for which the Department is responsible . . . A restorative justice approach seeks to enable fuller participation for victims with appropriate restitution by offenders, who must however still be sentenced within the law. Court directed judicial referrals to restorative justice conferences will be piloted in three District Courts (Department for Courts, 2000, p. 7).

The pilot, which was set up and developed in four courts, was a nationally-managed programme with clearly defined rationale, policies and practices.<sup>92</sup>

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<sup>91</sup> Conversation with Alison Hill, Restorative Justice Manager, Ministry of Justice, 25.6.2010.

<sup>92</sup> “Drug offences, offences against the administration of justice, home invasion and domestic violence are all ineligible” (Crime and Justice Research Centre & Triggs, 2005, p. 41) although there was much debate in the Ministry of Justice about the inclusion of domestic violence.

Only offenders who pleaded guilty were eligible to be referred by a judge for a restorative justice process, and conferences were held only when both victim(s) and offender(s) voluntarily agreed to attend. Facilitators were put through a uniform selection process and training programme, and monitored annually. The pilot was evaluated and “was one of the first in-depth studies by any government of the use of restorative justice in cases of serious offending by adults” (Crime and Justice Research Centre & Triggs, 2005, p. 3).

“The court-referred restorative justice pilot includes offences that range from moderate to serious offending, eg aggravated robbery. This is to allow restorative justice to have an impact where the greatest need for restoration and healing exists” (Department for Courts, 2002, p. 64). Normally cases referred to restorative justice were those where the maximum penalty was at least two years’ imprisonment, but common assault – which carries a maximum penalty of imprisonment of one year – was also included. Offences handled by the restorative justice pilot included:

- all property offences under part 10 of the *Crimes Act 1961* – 2 years, or more, imprisonment
- all other offences in the *Crimes Act* – between 2 and 7 years imprisonment
- common assault, sections (s)196 *Crimes Act* – 1 year imprisonment
- driving offences under *Land Transport Act 1998*, s61 causing injury or death, s62 causing injury or death not covered by s61, s36 (1) driving dangerously causing injury or death and failing to stop, s38 careless use causing injury or death, s39 aggravated use causing injury or death
- s8, *Harassment Act 1997*

- *Arms Act 1983*, s45 & s46 carrying firearms and imitation firearms, s50 & s51 unlawful possession of firearms in public place, s53 careless use in discharge of firearms. (Department for Courts, 2002, p. 64).

## Comparison of community-managed and court-referred restorative justice

The following table shows how court-referred and community-managed restorative justice programmes differed. Each of the criteria shows significant differences between court-referred and community-managed programmes. The differences were the result of the establishment and development of the two programmes. Community-managed programmes were accountable to their local authority, and court-referred programmes to a national government body and the criminal justice system. Therefore court-referred programmes required more national administration and were seen as being more expensive,<sup>93</sup> and as being less effective because of the lower rate of referrals resulting in conferences.

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<sup>93</sup> See Table 4: Nationwide projects funded by Ministry of Justice, p. 212.



**Table 1: Comparison of court-referred pilot and community-managed restorative justice practice**

Criteria	Pilot process	Community-managed process
Referred by	Judge at court appearance	Police for diversion process
Victim or offender focus	victim	offender
Facilitated by	Two nationally trained and accredited facilitators	One facilitator, or one facilitator and a panel of local people
Selection of facilitators	Uniform selection process for facilitators	Panel members may, or may not, go through a selection process
Training of facilitators	Government approved training process	Facilitator may, or may not have government approved training. Panel members not trained
Government or local assessment and accountability	Nationwide government assessment and accountability	Accountable to local authority which reported to government
Evaluation	Nationwide evaluation by Crime and Justice Research Centre, Victoria University of Wellington, 2001-2005. Annual assessment of Provider Groups by Ministry of Justice.	Evaluation of individual, or a group of projects in 1998, 1999, 2005, 2005, 2007, 2008.

## Annual reporting

The work of both community-managed and court-referred restorative justice programmes was reported by the government departments responsible.

Government departments provide annual forecasts of the work they aim to do for the financial year 1 July to 30 June, and the funds budgeted for that work.

At the end of each year they report to the government on the work achieved and account for their spending of public money. Forecasts of and reporting about government departments is public information and they reveal governmental

policy. Annual Forecasts and Reports to Parliament about restorative justice from the Department for Courts, Ministry of Justice, and Crime Prevention Unit, have been examined and analysed for policy. Annual expenditure figures are reported later in this chapter. A very brief summary of information from the forecasts and reports 1998 to 2011 is provided in Appendix B.<sup>94</sup> It shows:

- 2002 – 2005 while the court-referred restorative justice pilot was being evaluated Department for Courts, and then the Ministry of Justice, forecast and reported annually in some depth – including giving definitions – about restorative justice. This continued until January 2009 when the experienced manager of the Restorative Justice sector left the restorative justice team.
- The definitions given in Department for Courts reports 1999 to 2003 each addressed a component of the restorative justice aims, principles and practices. No one of them was a full definition, but nor did any one contradict any other, or contravene restorative justice. The discrepancies between policy and practice are discussed on page 213f.
- 2009 – 2011 An Acting Operations Manager, who was not experienced in restorative justice principles or practice, and a smaller inexperienced team worked on restorative justice matters. In the 2010 and 2011 Statement of Intent and Annual Report of the Ministry of Justice there was no information about restorative justice.
- Annual forecasts and reports showed that the Department for Courts and Ministry of Justice did not always achieve their Forecasts or Statements of Intent in the stated time frames. See Table 3: Government expenditure on the court-referred restorative justice pilot, the community-managed service groups and the practice improvement projects p. 207.

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<sup>94</sup> See p.439f.

**Table 2: Restorative justice policy intent and actual action**

Policy	Intent	Action
Pilot scheme commencement	To commence in one court by 1/3/2001 and other courts by 31/5/2001 <sup>95</sup>	Facilitators contracted by 30/9/2001 Facilitator training manual 2002 Pilot fully operational in year ending 30/6/2003
Evaluation of pilot	Evaluators to be contracted by 1/3/2001. Final report December 2004. Recidivism results September 2005	Evaluators contracted February 2001. Evaluation commenced 31/12/2001. Interim report April 2003. Final Report May 2005
Policy framework and practice principles	2003/2004 Ministry of Justice plans to develop a policy framework and a set of practical principles using and funding restorative justice programmes	Principles of best practice and a Statement of restorative justice values published May 2004 Policy & Procedure guidelines 2007 Restorative justice facilitator selection toolkit in 2007
Community-managed restorative justice	2001-2009 Crime Prevention Unit will support and develop community-managed restorative justice programmes	2002 – report not available, 2003:17 programmes, 2004:19 programmes, 2005: 21 programmes, 2006:19 programmes, 2007: 21 programmes, 2008: 22 programmes, 2009: 21 programmes, 2010: 22 programmes.
Policy advice	Output Class D2 policy advice listed in Statement of Intent annually 2002-2008 but not 2009-2011	2004 policy advice on alternative responses to crime including restorative justice provided.
Restorative justice practice improvement project	Commenced 2004/2005 Groups were able to apply for funds, up to the amount specified by the Ministry, for specific educational courses or equipment	Ceased 2006/2007
Restorative Justice Centre at AUT	June 2006 start-up funding grant	

<sup>95</sup> The dates in the Department for Courts Annual Report are 1/3/2000 and 1/5/2000 but as the pilot scheme was not announced until September 2000 (Schmid, 2001, p.17) this would appear to be a misprint and I have used the probable dates of 2001.

Policy	Intent	Action
National restorative justice facilitator training and assessment programme	2007/2008 programme launched	Revised facilitator training manual 2008. Restorative Justice Standards Code of Ethics 2010. Restorative justice provider organisation accreditation competency standards & organisational requirements: Provider & assessor accreditation guide 2010 Pre-sentence restorative justice process.
Support for Restorative Justice Aotearoa	Establishment and maintenance of restorative justice practitioners' national body	2005 to 2011 Annual grant to Restorative Justice Aotearoa for operating expenses and conferences for practitioners.
Restorative Justice Funding Framework	Launched 2008/2009	

## Current national delivery of restorative justice services

In February 2008 Ministry of Justice announced a nationwide reorganisation of the provision of restorative justice in the criminal justice system in

Aotearoa/New Zealand, which was the background to this research (Ministry of Justice, 2008a). In August 2008 the Crime Prevention Unit conducted a Stakeholder Satisfaction Survey, with government and nongovernmental stakeholder organisations, “in order to better understand its stakeholders’ perceptions of the work it does, and to identify any possible improvements”.<sup>96</sup>

In December 2008 Ministry of Justice issued an Interim Funding Framework Update which explained why the Ministry was moving to a funding framework for two years from December 2008. The update stated “we aim to have the

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<sup>96</sup> E-mail to stakeholders from Jo Gascoigne, Community Advisor, Crime Prevention Unit, 1/8/2008.

interim funding framework in place by April 2009 (backdated to December 2008) (Ministry of Justice, 2008a).

The reorganisation was the environment for this study. The review was termed as “bringing together restorative justice services, currently managed by the Ministry’s Crime Prevention and Criminal Justice Group and the District Courts Unit, under the same contractual and reporting arrangements”.<sup>97</sup> The Ministry claimed that the contracting changes “would provide for the same referral, funding, quality assurance, and case management arrangements across all providers and all courts” (Ministry of Justice, 2008b, p. 1).

However, the changes appeared to be a cost-cutting exercise that affected not only the provision of restorative justice in the criminal justice system, but the way that court-referred facilitators practised. Some of the “best practice principles” that the Ministry of Justice had required of facilitators (Ministry of Justice, 2004, p. 11f) were not able to be upheld as a result of the contracting changes. These are discussed below.

The ministry did not appear to recognise that community-managed programmes and court-referred programmes provided significantly different services, with different participant emphasis, facilitation systems and funding requirements. See Table 1: Comparison of court-referred pilot and community-managed restorative justice practice p. 185.

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<sup>97</sup> Letter from Ministry of Justice to St. Luke's Restorative Justice Group, 9 April 2009, referring to letter of 7 April 2008.

## Reduction of resources

In 2008 the Ministry of Justice claimed that as a result of some reorganisation of restorative justice budgets it was “able to increase overall funding for restorative justice services by about 20% (from total funding of \$1.4 million to \$1.74 million per year). The increase was made up from the District Courts’ budget for administration of restorative justice and previously ‘ring fenced’ funding from the practice improvement initiatives in 2005”<sup>98</sup> (Ministry of Justice, 2008a, p. 1). In fact there was not an increase in restorative justice funding but a reorganisation of funding, and the restorative justice ex-pilot (court-referred) practitioners were the group that had the greatest reduction of resources.<sup>99</sup>

The changes to the District Courts’ administration of restorative justice involved discontinuing the positions of the restorative justice court coordinators at Waitakere, Auckland, Hamilton and Dunedin District Courts.<sup>100</sup> Terminating these positions removed the system operated by the coordinators, that moved cases from the judges to the facilitators, thus adding this task to the facilitator groups, without giving them any funding for the procedure. When the coordinators were being supportive of restorative justice, the facilitators could focus on best practice rather than coping with the legal and court system. This

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<sup>98</sup> This was a bulk grant, given by Ministry of Justice to restorative justice providers for training and equipment in 2005, 2006, 2007. Each provider applied for the sum their group required.

<sup>99</sup> Community-managed programmes only had their rate per conference reduced if they had received a significantly higher rate than other community-managed groups.

<sup>100</sup> On 1 July 2009 dedicated restorative justice coordinators ceased to be employed in District Courts.

cutback also took away the publicity and education role that court coordinators played in the criminal justice system, and because facilitators did not have the authority to make the contacts with judges, lawyers, police, and court staff that court coordinators had, restorative justice practitioners were isolated from the system and the staff who operated it. Knowledge in the wider judicial and court environment about restorative justice was not updated, and consequently diminished.

Another example of cost-cutting was that prior to the change, the Ministry of Justice indemnified the provider group against any claim brought against it by a third party.<sup>101</sup> After the change, the Ministry required facilitators, or their provider groups, to pay for indemnity insurance,<sup>102</sup> but without any Ministry of Justice funding for it. Thus, the insurance of practitioners became the responsibility of the individual or the contracted provider groups, not the institution.<sup>103</sup>

These actions were presented as rationalising restorative justice arrangements

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<sup>101</sup> Agreement between Ministry of Justice and Community of St Luke Provider Group for provision of services under the Court-referred Restorative Justice Pilot. Ministry of Justice. (2003). Document held by Administrator of St Luke's provider group.

<sup>102</sup> As a Family Court counsellor contracted to the Ministry of Justice I paid \$315.00 Indemnity Insurance for the 2008/2009 year for one person, so this type of insurance could constitute a considerable expense for individual facilitators and groups.

<sup>103</sup> Employed practitioners, such as counsellors and social workers, normally have their indemnity insurance paid by their employer. Self-employed, or subcontracted, practitioners would pay their own insurance but their rate of payment would take such expenses into account. For example, the Ministry of Justice paid Family Court Counsellors from July 2008 to June 2011 at the rate of \$110 per counselling hour for standard cases and \$135 for complex cases. (From contract in my possession.)

in the Ministry of Justice<sup>104</sup> but to court-referred restorative justice facilitators given an increased workload and diminished support, they appeared to be cost-cutting. Added to the lack of appropriate funding already discussed, these measures caused facilitators to feel themselves, and the service they provided, devalued.

### **Policy changes**

In the new contracts offered to provider groups by the Ministry of Justice in 2009 it was stated that restorative justice cases would be divided into High Level and Low Level conferences,<sup>105</sup> and paid at different rates, under a bulk funding regime.<sup>106</sup> High Level conferences were where the offence had a maximum sentence of 2 years or more, and \$1400 would be paid for a completed conference. Low Level conferences were where the offence had a maximum sentence of less than 2 years, and \$1100 would be paid for a completed conference. This regime meant that the payment of restorative justice services was being based on the offender's criminal status. As restorative justice is a process set up for the benefit of the victim, an alternative funding regime might be considered based on issues such as the number of victims that would be involved, or the victims' needs for the process, not the

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<sup>104</sup> Letter to St Luke's Restorative Justice Group, Review of Restorative Justice Services – Termination of Current Contracts, 9 April 2009.

<sup>105</sup> Deed between the Ministry of Justice and Auckland Restorative Justice Trust for voluntary restorative justice services to North Shore District Court, 2010. Available from Auckland Restorative Justice Trust, 130 Remuera Rd, Auckland, New Zealand.

<sup>106</sup> This was changed in 2011, see p.194.



offender's status. Facilitators were not consulted about the division into high and low level conferences, and stated that they did not differentiate in the service they gave. Further, although cases varied in the amount of time they required – which did not necessarily equate to the gravity of the offence – all cases were given the same quality of attention.<sup>107</sup>

Another change made apparent in the 2009 contracts was that the Ministry of Justice had decided that provider groups would no longer be funded for any cases that did not culminate in a restorative justice conference. This meant that facilitators might spend up to eight hours working with victims and offenders, but if the work did not include a conference, no funding, or expenses, would be received for it. Facilitators were in the position of either changing their policy to accept only cases that were likely to culminate in a conference, or to continue to view the pre-conference as a vital part of the process, albeit unpaid, and add another voluntary aspect to their work.

Restorative justice facilitators, who were dependent on Ministry of Justice permission to work in the criminal justice system, felt that their opposition to the review changes – expressed on their behalf to the Ministry of Justice by Restorative Justice Aotearoa – had been ignored. However, in August 2010, the Ministry of Justice commenced a review of the way restorative justice providers were funded and proposed a new way of funding providers. This new Funding Framework, taking into consideration facilitators' views, and removing the

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<sup>107</sup> Conversations among restorative justice facilitators at RJA conference 2010.

distinction between low level and high level conference types, was implemented in July 2011. However, funding of pre-conference meetings was not reinstated.

## **Auckland reorganisation**

Prior to 2009 there were up to six restorative justice provider groups in Auckland<sup>108</sup> each of which had a contract with the Ministry of Justice to accept restorative justice cases from the Auckland District Court under court-referred restorative justice programmes. In 2008 the Ministry of Justice announced that they were reviewing arrangements for the delivery of restorative justice services.<sup>109</sup> However, in 2007 Auckland groups were aware that in future the Ministry of Justice would have a contract with only one group for the Auckland Court.<sup>110</sup> Groups had been informed that the current four provider groups<sup>111</sup> needed to become one organisation for the Ministry of Justice to have a contract with, and if they could not do this the contract could be put out for public tender.

The Ministry of Justice and Auckland practitioners worked extensively at achieving one organisation for restorative justice practitioners. Auckland

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<sup>108</sup> Promoting Accord and Community Trust (PACT), Restorative Justice Services Auckland (RJSA), All Saints Restorative Justice Provider Group (All Saints), The Community of St Luke Restorative Justice Provider Group (St Luke's), Te Waka No Nga Hau E Wha and St Giles Restorative Justice Provider Group. Manukau and Waitakere groups were treated separately and not as part of Auckland.

<sup>109</sup> Ministry of Justice brochure *Reviewing Arrangements for the Delivery of Restorative Justice Services*, April 2008.

<sup>110</sup> St. Luke's, Minutes 13.6.2007.

<sup>111</sup> All Saints, PACT, RJSA, St Luke's.

facilitators set up a working party in July 2007 to “research and formulate a plan for future structure of RJ in Auckland “. <sup>112</sup> Meetings were held over a period of more than two years, with Ministry of Justice staff, <sup>113</sup> other Auckland practitioners, <sup>114</sup> and my own provider group, many of which I attended. Ministry of Justice paid a consultant, Chris Mene, <sup>115</sup> to work with Auckland facilitators to decide on a way forward together. Even after such extensive consultation Auckland practitioners were unable to unite into one group as required by the Ministry of Justice.

On the 9<sup>th</sup> April 2009 the Ministry of Justice notified St Luke’s and other Auckland groups, that their current contracts would be terminated on 30 June 2009. <sup>116</sup> Why Auckland groups did not succeed in coming together as one group has not been formally examined, but there were a number of factors which contributed to that failure.

*I noted the following:*

*The Auckland Ministry of Justice restorative justice pilot situation was more complex than any of the other city centres. Hamilton had only one provider group, Waitakere two very different provider groups<sup>117</sup> which were*

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<sup>112</sup> St. Luke's minutes, 11.7.2007.

<sup>113</sup> For example, 26.2.2009 at Auckland District Court with Ministry of Justice representatives Brenda Baxter and Linda Duncan, and Auckland Court staff.

<sup>114</sup> For example, Auckland regional meeting at St Luke’s, 10.12.2008.

<sup>115</sup> Email from Fiona Landon, RJA Executive member, to Auckland Provider Groups 11.11.2008.

<sup>116</sup> Letter to St Luke’s administrator.

<sup>117</sup> One group at the Waitakere Court, Te Whānau Awhina - Hoani Waititi Marae Trust, a community-managed group, used marae protocol, and the other, Restorative Justice Waitakere, a court-referred Restorative Justice Programme, used Ministry of Justice protocols.

*not required by the Ministry of Justice to become a single entity, Dunedin initially had three provider groups which over time had united into one, and Auckland had four different groups.*

*All facilitators in the pilot scheme were required to belong to a provider group but groups initially did not receive assistance, or guidance, or funding, from the Ministry of Justice to form into provider groups. So groups developed in ways that suited their membership and the community to which they related. They developed very diverse attitudes to their work and very different styles of group governance. For example, RJSA used an hierarchical governance model, and St. Luke's used an egalitarian model. Each group valued the way they worked and did not want to relinquish it.*

*The provider groups were in competition for cases from the District Court, which were allocated by the court coordinator, and some provider groups felt that other provider groups received more cases than they did. This competitive stance did not easily move into cooperation.*

*Facilitators were able to choose which provider group they belonged to. Some facilitators left one provider group and joined another, and others left a provider group and set up a new group. Such changes were perceived as negative, and facilitators who had changed groups did so for good reason and did not want to return to work with ex-colleagues.*

*On reflection it seemed to me that neither the consultant, nor restorative justice personnel who facilitated regional meetings, fully understood these factors or how powerful they were.*

*Once it was clear that the Auckland groups were not going to unite in one body, our provider group looked at other options. I facilitated a meeting on 4 March 2009 of St Luke's provider group in which we made the decision not to tender as a single group for the Ministry of Justice contract at the Auckland District Court, but to become part of an independent trust, with*

*members of RJSA, similar to that proposed by Dr Shirley Jülich, Fiona Landon and Iain Fraser, the RJA Executive members for the Auckland region. PACT and All Saints groups formed another body to tender for the contract.*

## **Redundancy**

The tenders offered by Auckland groups were not accepted,<sup>118</sup> and in late August 2009, for a start date of 1 September, the Ministry of Justice announced that the Waipareira Trust, which had no trained or experienced restorative justice facilitators and a strong focus on offenders, had been awarded the contract for restorative justice work in the Auckland District Court. This meant that the provider groups of trained and experienced facilitators who had been operating at the Auckland court – RJSA, St. Luke's, All Saints, PACT – were made redundant and not able to work at the Auckland Court.

*I feared that these happenings might have a detrimental effect on my research and thesis. The focus groups were conducted between 30 June 2009 and 10 December 2009, and the twelve Auckland focus group members made redundant were informed of this in late August 2009. However, the full force of the redundancies was not felt until after focus group meetings were completed. Less than half of focus group members were without work, all focus groups had at least one facilitator still employed, and two focus groups had all facilitators still on contract.*

*All the facilitators in the study had been receiving information about the reorganisation since early 2007, so it was the background to their*

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<sup>118</sup> The tender process was overseen by the Acting Operations Manager of the Restorative Justice team in the Ministry of Justice, who was not experienced in restorative justice policy and practice.

*restorative justice work. The process of the reorganisation had not been smooth and the Ministry of Justice had set, but not met, deadlines for actions, so restorative justice practitioners found it difficult to believe that a final decision had been made and would be kept. Auckland facilitators were in disbelief and denial about their redundancy – to us an unfair and unwise decision – and waited for the results of an appeal against the decision (not decided until after the focus groups were completed). The focus group data-gathering phase of my research appeared not to be significantly adversely affected. Indeed, there may have been a positive reaction for the research, with facilitators recognising how much they valued the restorative justice process they had been working with, when it was in jeopardy of being taken away from them by the changes, and so were more interested than usual in exploring effective facilitation.*

*My colleagues and I were bereft of the work that we had enjoyed and at which we had become very experienced. We knew that it had taken us a number of years – from 2001 to 2009 – to develop into effective facilitators and it would take a similar amount of time for the new contractor to become equally effective.<sup>119</sup> We were also greatly concerned that Auckland District Court victims were not going to be offered the restorative justice process that the law stated they should.*

### **Auckland response to reorganisation**

Two Auckland provider groups, St Luke's, and RJSA, decided to continue to be restorative justice practitioners under the umbrella of the Auckland Restorative Justice Trust (ARJT)<sup>120</sup> and to negotiate with the North Shore Court to provide restorative justice services there. During this time the St. Luke's provider group, of which I am a member, continued to meet monthly and to work intentionally

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<sup>119</sup> In mid 2011 Waipareira Trust ceased providing restorative justice services to the Auckland Court and Nga Whare Waatea was given a one-year contract for this work.

<sup>120</sup> Initially named the Auckland Restorative Services Trust.

toward becoming active restorative justice facilitators again. This was a decision made by all members of the group, not as a result of pressure from me. None of the other Auckland provider groups remained fully functional, though some retained links with their members.

## **New contracts**

In 2009 research participants in Whangarei, Thames and Waitakere had their contracts with the Ministry of Justice renewed, but with considerable changes to funding and administration. These participants were not happy with the changes they felt had been imposed upon them by the Ministry of Justice, and were very concerned for the welfare of the redundant Auckland facilitators, and from September 2009 I was frequently asked how Auckland facilitators were coping with what had occurred. I responded as honestly as I could and said that we were very angry, hurt, and sometimes despondent, but grateful for our colleagues' support.

On the 1<sup>st</sup> February 2011 the ARJT signed a Deed detailing the terms and conditions of a contract between the Ministry of Justice and the ARJT to provide pre-sentence and adult diversion restorative justice services to the North Shore Court for a two-year period. One of the terms of the contract was that the facilitators would not be paid for their work,<sup>121</sup> nor receive any reimbursement of

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<sup>121</sup> Ministry of Justice also signed a voluntary contract with a restorative justice provider in the Wairarapa.

expenses.<sup>122</sup>

## **Restorative justice organisational structure**

A requirement of being qualified to operate as a Ministry of Justice restorative justice facilitator was that practitioners would form themselves into local Provider Groups with which the Ministry signed a contract for the provision of restorative justice services to their nearest District Court. When the national pilot scheme to train restorative justice facilitators was initiated, the Ministry of Justice recruited prospective practitioners, and this practice has been followed when restorative justice has been set up in a new area. However, once restorative justice work is established, it becomes the responsibility of the local Provider Group to recruit new people from their local community to be trained as facilitators (Ministry of Justice, 2007a). This is the system currently in use.

Stakeholders in a restorative justice process are the victims, and offenders, and their communities, who participate in the restoration process and in implementing the conference outcomes. Hence, provider groups are based in their local community. There is no funding from the Ministry of Justice for involving communities in the restorative justice structure.

## **Geographical distribution**

In 2011 twenty-five provider groups had a contract with Ministry of Justice to provide restorative justice services to approximately thirty-one of the sixty-two

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<sup>122</sup> A grant of \$8,500 was received by the Trust from the Ministry of Justice in June 2011.



District Courts in Aotearoa New Zealand.<sup>123</sup> On a limited basis, contracted facilitators conduct restorative justice conference processes at some of the smaller Courts. Thus, in half of the country (mostly in rural areas) victims are not offered a restorative justice process. This lack of access is significant because, in the criminal justice system, referrals to restorative justice are made as a consequence of the offender's actions, and only rarely at the request of victims. So, if restorative justice is not offered at their local court, victims do not have access to it, nor do offenders.

## Payment

Ministry of Justice term their payment for restorative justice work as “funding to providers for their services” (Ministry of Justice, 2010, p. 10). In fact, restorative justice facilitating is voluntary work towards which the Ministry of Justice makes a donation to the facilitators' provider group for expenses. McElrea (2011) observed “the Ministry of Justice started subsidising (one cannot say ‘paying for’) some ‘provider group’ costs” (p. 49).

Funds received from the Ministry of Justice were required to meet:

- the costs of administrative support and consumables
- rental for conference venues
- translation fees
- conference report production
- reporting to the Court and the Ministry of Justice

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<sup>123</sup> <http://www.justice.govt.nz/policy/criminal-justice/restorative-justice/restorative-justice-info-for-providers/restorative-justice-funding>, 29.6.2011.

- professional supervision – required by the Minister of Justice
- training – required by the Minister of Justice

in addition to the expert, and time-consuming, professional service of facilitating conferences.

The lack of appropriate funding for restorative justice work has meant that facilitators are people who do not depend on their restorative justice work for their livelihood; there are more women than men practitioners; and the majority are older people. The money to pay the essential group administrator, who manages the court-to-facilitator procedure, has had to be sought from grants or other sources of funding.

## **Restorative justice in the legal system**

In spite of the growth of restorative justice work, and the development of Restorative Justice Aotearoa, the restorative justice process, which is voluntary in the legal procedure, is merely an adjunct to the main criminal justice system. McElrea said that he saw three disadvantages in restorative justice being a voluntary system.<sup>124</sup> The first was that restorative justice could easily remain on the fringe of the criminal justice system. The second was that in New Zealand, in his opinion, there has been an unholy alliance between the media and most politicians to promote the illusion that punitive reactions promote community

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<sup>124</sup> Key informant interview.

safety – despite all the evidence to the contrary.<sup>125</sup> The third reason was that as long as restorative justice is a voluntary process for offenders, key professionals (e.g. police, lawyers and judges) are able to ignore it, or (as anecdotal evidence suggests of some police) actively to discourage its use.

A few lawyers and judges actively support restorative justice work, but many do not have any knowledge of the process, and some regard restorative justice as a soft option for offenders.<sup>126</sup> The Sensible Sentencing Trust (<http://www.safe-nz.org.nz/newsletters.htm>), a group that comments on sentencing issues and appears to have popular support, does not promote restorative justice work. Some facilitators work on a totally voluntary basis, and those who are paid receive less per hour than the minimum wage, which would indicate that restorative justice work is not viewed as equivalent to other professional court services which are paid at a much higher rate.

*My calculation of income, minus expenses, divided by number of hours worked, showed an hourly rate of payment, before tax, in 2003 of \$4.95 and, after an increase in funding, of \$9.95. Expenses were travel, supervision, office, phone/email, postage. There was no increase in funding for facilitators in the court-referred programme between 2003 and 2009 when the review occurred. Most provider groups kept part of the fee from the government for administration. The provider group I worked in paid us at a higher rate than other provider groups, so other facilitators would have received less per hour.*

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<sup>125</sup> McElrea added that it was not uniform, and there were signs of change.

<sup>126</sup> "Restorative justice is not a soft option as its detractors would have us believe." Dr Shirley Jülich, *Sunday Star Times*, <http://www.stuff.co.nz/sunday-star-times/news/637407/Rape-victim-disgusted-at-Schollums-gutless-U-turn>.

Restorative justice has made some progress in being recognised by the justice system. The 2002 passage of the *Sentencing Act*, the *Parole Act*, and the *Victims' Rights Act*, gave credibility to the work done by restorative justice practitioners in the legal system. Each of these Acts has sections in which restorative justice processes are specifically detailed either as mandatory or valid options. But the addition of restorative justice to these Acts has not changed the focus of the criminal justice system, which remains an offender-centred, retributive process.<sup>127</sup>

The stance of the law is that crime is against the state, not the victims directly affected by it who are largely disregarded by the criminal justice process.

Obold-Eshleman (2004) stated “our current justice system defines crime as breaking the law, thus causing harm to the state as representative of society in general” (p. 572). Offenders are punished by the state and not required to be directly responsible to the victims of their offending.

Restorative justice has not appeared to be significant in the criminal justice sector. An example is that at the 2007 Restorative Justice Conference it was announced that the New Zealand Police and Ministry of Justice proposed extensions to restorative justice work because they saw it as effective. But in the following government funding round the restorative justice budget was not increased to cover this additional work and the extensions did not eventuate

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<sup>127</sup> See Appendix C, p. 445f for relevant sections of the Acts.

(Bridgeman, 2007; Thomas, 2007).

However, in June 2011 the National government announced it was increasing funding for adult restorative justice by \$2 million<sup>128</sup> citing the mounting evidence, both in New Zealand and internationally, about the positive benefits restorative justice provides for both victims and offenders. This announcement followed statements by Finance Minister Bill English, who called prisons a moral and fiscal failure, and said, “prisons are expensive, and everyone in the law and order system – from the police, through the courts, through to the prison and probation service – has been working pretty hard on trying to understand how to make that system more cost effective.”<sup>129</sup> It appears that fiscal pressures may have begun to achieve the expansion of restorative justice funding for which restorative justice practitioners have advocated. This increase in funding coincides with the new Funding Framework cited above and the National Government’s Drivers of Crime initiatives which included extended use of restorative justice.<sup>130</sup>

## **Funding of restorative justice**

The Ministry of Justice manages a crown budget of \$2.052 million for restorative justice, \$1.8 million of which is allocated to restorative justice providers. The

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<sup>128</sup> The reprioritisation means that in 2011/12 and 2012/13 restorative justice will receive an extra \$500,000, while in 2013/14 and out-years it will receive an extra \$1 million.

<sup>129</sup> Interview, 22.5.2011. <http://tvnz.co.nz/q-and-a-news/bill-english-interview-transcript-4183518>.

<sup>130</sup> <http://www.justice.govt.nz/justice-sector/drivers-of-rime/documents/DoCJun11%20Cab%20Paper.pdf>

balance supports Restorative Justice Aotearoa, contributes toward running the national restorative justice conference and the training and accreditation of facilitators (Ministry of Justice, 2010, p. 9).<sup>131</sup> Estimates and actual expenditure figures for restorative justice in Crime Prevention Unit, Department for Courts, and Ministry of Justice, were sought to make comparisons between government intentions and government actions. Restorative justice expenditure figures are listed below, but no figures for estimates for restorative justice were found in Ministry of Justice, Vote Justice, Treasury, or Parliamentary Forecast Reports or Statements of Intent. I made an official information request for estimate figures. The Vote Analyst responded “I don't think you will find specific reference to restorative justice funding in the estimates documents . . . there is no specific appropriation for restorative justice”.<sup>132</sup> This was confirmed by a Ministry of Justice staff member who said that if a bill came in they paid it. It was difficult for Ministry of Justice to determine how much was spent on various sections of the Court-Referred Restorative Justice Programme because the Court Coordinators’ salaries were not separated from other expenditure and it was only the coordinators who kept such statistics on expenditure. It would be difficult for central government to evaluate the effectiveness of restorative justice practice when from their Statement of Intent and Annual Report they

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<sup>131</sup> For 2010 the \$2.052 million for restorative justice was approximately 2.66% of Ministry of Justice operating budget of \$129.9 million (Ministry of Justice, 2009c).

<sup>132</sup> Email from Frederic Ernst [Justice & Security Team] The Treasury 7.9.2011

cannot compare what they estimated to expend on the project with what it actually cost.

The following Table of expenditure on restorative justice is compiled from Department for Courts and Ministry of Justice annual reports.

**Table 3: Government expenditure on the court-referred restorative justice pilot, the community-managed service groups and the practice improvement projects**

Year	Pilot	Community-managed RJ	RJ Practice Improvement
2000 / 2001	235,943	807,925*	
2001 / 2002	450,868	816,605*	
2002 / 2003	468,248	725,770*	
2003 / 2004		838,012*	
2004 / 2005		977,254*	76,724
2005 / 2006		766,919*	620,557
2006 / 2007		1,052,800*	643,443
2007 / 2008		1,669,079	
2008 / 2009		1,638,000	
2009 / 2010		1,730,431	
2010 / 2011		1,763,400	

\* This figure does not include pilot provider groups  
2008 - 2011 figures include ex-pilot provider groups

The pilot group totals were divided between 4 courts, while the community-managed amounts were divided between 17 to 21 programmes. Using average figures in 2002/2003, each court would have received \$117,062 and each community-managed group would have received \$42,692. The total court amount could have been divided between 11 provider groups, as three courts

had 2 to 5 groups, to be \$42, 568 per group. In this figure the cost of court coordinators would be shared between the court-referred groups. These amounts are very general and do not account for differences in membership or experience in groups.

## **Fees paid to restorative justice practitioners**

Prior to the review of restorative justice services in 2009, community-managed and court-referred restorative justice programme restorative justice practitioners were paid differently. Community-managed practitioners were paid on a contract basis, by bulk funding, from Crime Prevention Unit funding, and practitioners in the Courts Pilot areas on a case-by-case basis. “A difference in origin, and the piecemeal growth of RJ service provision have contributed significantly to the current inconsistency in the way, and the level at which individual provider groups are funded”.<sup>133</sup>

Community-managed restorative justice groups were not all funded at the same rate. Each group put in a separate tender, including their fee, which was accepted or not by the Ministry. Prior to the restructuring, one group was being paid at the rate of \$2,200 per case. That group’s administer remarked “What it probably highlights is the lack of coordination within Ministry of Justice at that point between the court pilot and the Crime Prevention Unit.”.<sup>134</sup>

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<sup>133</sup> Funding of Restorative Justice Service Providers, RJA Member Consultation Document, 21.12.2007.

<sup>134</sup> Personal communication from group administrator 30.9.2011.



Court-referred restorative justice programme practitioners were paid at a rate set by the government which was as follows:

2001

- restorative justice process that does not proceed to a conference \$150
- completed restorative justice conference including report and follow-up victim \$510

2003 - 2009

- restorative justice process that does not proceed to a conference \$260
- completed restorative justice conference including report and follow-up victim \$625
- new fee of \$100 for following-up a restorative justice agreement and providing a brief report to the court
- new fee of \$400 per facilitator for set-up (Crime and Justice Research Centre and Triggs, 2005, p. 48).

There were no increases in payment for pilot (court-referred) facilitators from 2003 until restructuring in 2009. The government funded the court coordinator's role for the pilot, but provider groups had to pay their own group administrative costs, and, before 2003, also the set-up costs for their provider group.

Note that in the court-referred restorative justice programme the payments were shared by two facilitators, so each facilitator received only half the amount paid by the government for each piece of work.

In the same period community-managed funding did increase. For example in 2004/2005 with 21 groups funding was \$977,254 and in 2006/2007 with 21

groups it was \$1,052,800.<sup>135</sup> In addition these groups received practice improvement funding which the pilot groups also received. Community-managed groups paid all their administrative costs as well as facilitator costs.

The pilot evaluation found that “the average cost per conference was \$2,528” (Crime and Justice Research Centre & Triggs, 2005, p. 48). This cost may have reduced since as facilitators have become more experienced and raised the rate of referrals that result in a conference.<sup>136</sup>

## **Policy change**

The Ministry of Justice Court-Referred Restorative Justice Pilot was considered to be completed with the publication of its evaluation report in May 2005. The project was renamed the Court-Referred Restorative Justice Programme and the Ministry of Justice confirmed that there would be no changes to the programme in the short term.

The Restorative Justice Practice Development Project, headed by Alison Hill (KI), was launched in June 2005 and aimed to focus on

training, including facilitator induction and assessment, supervision, and governance; data collection and management by providers – including the

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<sup>135</sup> The Consumer Price Index rose: 2004/05 2.8%, 2005/06 3.3%, 2006/07 2.5%, 2007/08 3.4%. (consumers-price-index-mar08qtr-hotp.pdf), so it was not an actual increase in reimbursement but it meant it was an even further deficit of income for court-referred facilitators.

<sup>136</sup> The statistics show that for the year 2007, St. Luke’s facilitators took 65% of all cases received to conference, two experienced facilitators working together took 71% of their cases to conference, and two less experienced facilitators working together took 43% of their cases to conference.

possible development of a data base for restorative justice providers; options for improving information sharing between providers, possibly including a website; establishment of a fund to support providers' own practice improvement initiatives.<sup>137</sup>

The new project expected to work closely with Restorative Justice Aotearoa.

The Practice Development Project was the second phase of the development of an overall policy framework for restorative justice in the criminal justice system.

The first phase was the development of *the Principles of best practice for the use of restorative justice in criminal cases* (Ministry of Justice, 2004) and a funding framework for restorative justice, and policies and processes that would provide long-term quality assurance for restorative justice.

The following Table shows the projects funded in the second phase of the development of an overall policy framework and the amounts they received.

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<sup>137</sup> Memo from Restorative Justice Practice Development Project, July 2005.

**Table 4: Nationwide projects funded by Ministry of Justice**

Project	2005	2005/2006	2006/2007	2007/2008	2008/2009
Funding for national body	\$16,070	\$62,667	\$60,444	\$66,000	\$44,000
Practitioner training	\$60,654	\$6,856	\$25,681	\$16,616	\$49,091
Supervisee workshops		\$11,111	\$2,445 \$10,165		
Project Restore		\$40,000			
Evaluation provider selection		\$1000			
RJ Centre IPP AUT		\$17,778	\$17,778	\$5,000	\$30,000
RJ in family violence		\$35,001 \$39,145	\$4,343 \$59,211 \$5,334		
RJA conference		\$53,333		\$80,000	\$60,000
Sycamore tree training		\$8,889		\$10,000 \$5,000	
Governance training		\$19,569	\$1,058		
Training development		\$120, 999	\$26,280	\$60,550 \$13,890	
Training resources		\$29,973	\$40,284		\$3,807 DVD
Training provider selection		\$21,645			
Police vetting of practitioners			\$2,444		

Project	2005	2005/2006	2006/2007	2007/2008	2008/2009
RJ/domestic violence			\$24,153 \$4,995		
Funding framework				\$34,000	
RJ standards development				\$18,000	
Assessor training					\$27,554
<b>Total</b>	\$76,724	\$467,966	\$284,615	\$309,056	\$214,452

Data collated from annual Vote Justice Report on Non-Departmental Outputs B.14 (Justice).

## Discrepancies between policy and practice

Ministry of Justice policy did not always match its practice. For example, the paper *Restorative Justice in New Zealand December 2010* (Ministry of Justice, 2010), acknowledged that there is no single agreed definition of restorative justice, and it views restorative justice as based on a set of principles. It stated that restorative justice “gives victims a voice . . . requires offenders to face their victims . . . Involves a meeting (conference) run by skilled facilitators between the victim and the offender” (p. 1). However, the *Ministry of Justice Point of Closure Report: 01/01/2011 to 30/06/2011*<sup>138</sup> showed that nationally 28% of restorative justice conferences do not have a victim present. The Ministry supports victimless conferences by paying \$900 for conferences where the victim doesn't attend but has been involved in pre-conference work and the victim can be represented by proxy or the community, and \$700 for diversion

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<sup>138</sup> Email to Auckland Restorative Justice Trust from Brenda Baxter, Ministry of Justice.

cases, which may or may not include the victim. Brenda Baxter, Senior Advisor, Restorative Justice, stated “we recognise that there is much more work to be done for victims to be present”.<sup>139</sup>

*I noted that:*

*Ministry of Justice policy, at least since the inception of the pilot in 2000, has been that the purpose of a restorative justice conference was for the victim and offender to meet face-to-face. Court-referred restorative justice facilitators have been trained to work with victims since 2001.*

*The new contracts in 2009 removed payment for pre-conference work, stating that only when a restorative justice process resulted in a conference would Ministry of Justice make payment for the case. A restorative justice conference provides a report which is used by the judge at sentencing.<sup>140</sup> It would appear that having a report which will benefit the court system and the offender has become more important than meeting the needs of victims for whom having a face-to-face meeting with the offender is not appropriate. The reasons victims do not progress from pre-conference to conference is discussed in Chapter 8, p. 244.*

## Conclusions

From the above examination the following conclusions have been reached:

- 2002 – 2005 while the court-referred restorative justice pilot was being evaluated, the Department for Courts, and then the Ministry of Justice, forecast and reported annually in some depth. This continued until 2009 when the leadership of the Restorative Justice sector changed.
- 2009 – 2011 an Acting Operations Manager, and a smaller team worked

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<sup>139</sup> Email to ARJT from Brenda Baxter, 15.9.2011.

<sup>140</sup> *Sentencing Act* s8, s10, s26. See *Sentencing Act* 2002 restorative justice provisions: p. 445.

on restorative justice matters. In the 2010 and 2011 there was no information about restorative justice in the Annual Report of the Ministry of Justice.

- Annual forecasts and reports showed that the Department for Courts and Ministry of Justice did not always achieve their Forecasts or Statements of Intent in the stated time frames.
- The Restorative Justice Practice Development Project for 2005 aimed to establish policies and processes that would provide long-term quality assurance for restorative justice. However, from 2003 until 2011 there was no real increase in restorative justice funding. This did not indicate long-term intentions by the government for restorative justice.
- In February 2008 the Ministry of Justice announced a nationwide reorganisation of the provision of restorative justice in the criminal justice system in Aotearoa/New Zealand. This appeared to be a cost-cutting exercise rather than the expansion of restorative justice, signalled at the 2007 Restorative Justice Conference.
- The reduction in staff numbers and expertise in the Ministry of Justice was reflected in the reorganisation in Auckland in 2009. The one provider group appointed in place of the four provider groups replaced years of facilitator knowledge, skill, training and experience with a total absence of them.

Restorative justice in the criminal justice system began in 1995 with community-managed groups. The government established the court-referred pilot in 2000, passed legislation in 2002 to support restorative justice, and Aotearoa/New Zealand was recognised as a world leader in the field. The Department for Courts and Ministry of Justice developed training and practice-related resources for practitioners and organisational competency assessment frameworks.

In 2008 reorganisation of the national delivery of restorative justice services

occurred. In 2010 restorative justice was not reported in the Ministry of Justice annual report. It would appear that government policy was not supportive of restorative justice. Then, in June 2011 the National government announced it was increasing funding for adult restorative justice. It cited mounting evidence about the positive benefits restorative justice provides for both victims and offenders, and its cost effectiveness.

## **Summary**

This chapter has examined the New Zealand government public policy framework within which restorative justice facilitators in the criminal justice system practice. It has outlined the history of restorative justice in the criminal justice system and discussed the current national delivery of restorative justice and the reorganisation of the restorative justice service. Government funding of restorative justice has been analysed.

In the next chapter, Presence, the first of the themes that emerged from the data is discussed.



## Chapter 7: Presence

This chapter will explore the place of Presence – i.e. who facilitators *are* – in the effective facilitating of a restorative justice process. The components of facilitator presence – confidence, belief in change, values, ethical issues, self-discipline, being insightful, respectful, visionary, passionate, spiritual, analytical, ability to rise to challenges, being caring and empathetic, and having a sense of responsibility – are discussed.

As I examined the data from the restorative justice facilitators and the key informants, along with theories of facilitation and effectiveness, it became clear that it takes more than training to create effective facilitators. Heron (1999) claimed: “Charismatic facilitators empower people directly by the impact of their way of being and behaving” (p. 20) and Gregory (2002) stated that knowledge, skills and training alone do not create a quality facilitator. Dorothy M, an experienced counsellor and restorative justice facilitator, observed that not “just anybody can do restorative justice, it really is somebody who genuinely has an interest and it is a skill that you pick up”. Eldon (KI) supported this when he noted: “It's the passion that the facilitators have for it that is the key to it, really” and added, “you can identify very passionate facilitators almost immediately”.

So, what is the primary quality that effective restorative justice facilitators have? Gregory (2002) considered personal presence to be a central attribute of the effective facilitator, while Heron (1999) recognised the uniqueness of

personhood which each facilitator brings to their facilitating.<sup>141</sup>

The many related elements of facilitator presence are discussed below.

## **Confidence**

Gregory (2002) considered self-esteem to be an important aspect of presence.

Alison (KI), in talking about a group of facilitators which she assessed as competent, said that she thought they were probably all reasonably confident.

She classed a confident facilitator as “someone who is able to learn because they are not too threatened by learning something”. She added that a good facilitator can connect as a human being with the victims and offenders they deal with. Alison (KI) said: “People do have goodness within them and part of our task as a facilitator is to bring that out and extend that”. Being able to recognise such goodness would be more innate than learned. For Fred (KI) this goodness in people – which enables them to be a neighbour to their community – is very important. He observed that restorative justice fostered this.

Fuimaono (KI) said that in the many restorative justice experiences he has attended “the abiding feeling I get about restorative justice is – it’s people understanding each other’s positions”. While the knowledge part of this understanding may be learned, as a facilitator it is the ability to accept a

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<sup>141</sup> This is discussed on p. 56.

different approach as being as valid as one's own that is part of the innate ability which Heron (1999) cites. Likewise, Tim (KI) considered that being confident enough and integrated enough as a person to engage in personal interaction with participants is necessary for facilitators.

Restorative justice is a complex process and "facilitators are bombarded with stimuli during a meeting and must constantly make decisions in the moment" (Shaw et al., 2010., p. 4). While facilitating what is happening, facilitators are required to hold in their minds information appropriate to the case, evaluate what is being said, notice and analyse the group dynamics, decide which process option is appropriate at that particular time, and gain the insight needed to restore the relationship and heal the harm caused by the offending. Tim (KI) gave an example of one part of this multifunction in a restorative justice conference:

I think it is that building of relationships at a whole series of levels: between victim and offender, between victim and the support services, between victims and the people who come as their support people who they often haven't told their whole story to, and offenders and their support people who they often haven't told their whole story to, and the layers that build out from there. So, in essence, it's about building relationships and building communities.

Not everyone is capable of working at all these levels at the same time, but effective facilitators will have had the capacity, and the confidence to do so, before they entered training.

## Belief in change

Another prerequisite for effective restorative justice facilitators is a belief that people can make significant changes in their attitudes and actions. For offenders to move from a position of causing harm by their offending to wanting to repair the harm they have done, requires them to make a change in their attitude and actions. To facilitate such movement, restorative justice facilitators need to believe that people can make such changes. Zehr (1990) affirmed this when he argued that central to restorative justice is the idea of making things right. To do this change has to occur. The capacity to believe that people can change, and the insight to recognise the potential for it to happen is another inborn factor, or product of early conditioning, required of facilitators.

Alison (KI) remarked that sometimes she would sit and listen to facilitators talking and think “if I was to summarise that in a sentence it would be there is something magical about that.” Philip was more pragmatic. He said that each time he starts a new case he wonders how it is going to work because the case “sounds so awful, it sounds impossible, but you get people together and it kind of straightens itself out”. Tim (KI) strongly believed that people change when they want to change. “They’ve got to see the reason to change before they’ll do anything and restorative justice is a perfect vehicle for this – they can see the people on the other side, they can see their mother or their sister there and can relate to the fact that they’ve hurt someone who is a real person.” Facilitators’ stories show that people do change when they are given the opportunity – and

have the will to do so.

Phoebe related a story about a little girl who witnessed a burglary near her home. The child was most traumatised by this experience and was having nightmares, so, most unusually, it was decided that she would attend the restorative justice conference. The child was asked at the beginning of the conference if she had anything to say but she said she didn't. She sat there through the conference and played with her toys and sometimes listened to what was going on. At the end of the conference she was asked again if she had anything to say. This time the child looked the offender in the eye and said: "I used to think you were a monster but now I know you're just a naughty bad boy who ought to do as his mummy says." At this point the offender wept.

Danni gave another example. "I can think of a guy who was really, really angry when he arrived. It was a car accident and he was quite, not abusive, but he certainly showed them his injuries and then his family followed up. And at the end they were all embracing each other."

## **Values**

That facilitators should come to their task having a set of values may seem to contradict the principle that they are expected to be impartial in their work – but being impartial actually requires a facilitator to put into action their values about not favouring one side or the other. Schwarz (1994), "stresses that facilitation is value-based, and that these values guide effective group behaviour and

effective facilitator behaviour” (p. 4). Thus, facilitators need to have a base of relevant values to be effective.

When asked what she valued about herself as a restorative justice facilitator and why she did the work, Ngatamariki responded “I really think it's because we all want to save society”. Mike claimed:

I think that in restorative justice what you value most about yourself is a very hard question to answer. I think all these values and attitudes are linked and you've got to look at the whole gambit – honesty, empathy, understanding, compassion – and they have to be linked to your attitude and how you portray these things, which then again is linked to your belief.

When facilitators and key informants were asked to talk about some things they valued deeply – specifically, things they valued about themselves, about the nature of their work, and about restorative justice – they produced the following list:

enthusiasm/passion, honesty, integrity, reliability, trustworthy, empathetic, objective, non-egotistical, responsible, resilient, insightful, accountable, collaborative, nonjudgmental, cultural, gender, age, socio-economic, sensitive, open to new ideas, patient, flexible, appropriate boundaries, sense of humour, sensible, good learner, value self and family, respectful of persons, sense of the other/God<sup>142</sup>/wairua<sup>143</sup>/ spiritual dimension, will face difficult situations, will support clients, high standard of practice, hope, values difference and change, curious and interested in people, trusts self, colleagues and process, values community involvement, believes restorative justice can make a difference to people's lives and

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<sup>142</sup> In this thesis the word is used for the Christian God, unless stated otherwise.

<sup>143</sup> Attitude, spirit, soul.

communities, able to learn as you go along, competent, education/knowledge, family, knowing your place/where you belong, belief everyone is redeemable, a thirst for justice and fairness and restoration of relationship.

I noted as I compiled the list that the word “respect” was the most mentioned of the values and was used with several different meanings – respect of self, respect for other persons, being respectful, to be respected, to command respect, to assist/teach participants to respect each other/relate as equals, to respect restorative justice as part of the criminal justice system, to respect other cultures’ ways, and to respect what people are going through. The value “culture” also had a number of aspects – my own culture, other people’s culture, to know my culture so I can help others of the same culture, being an interpreter between cultures, living in two cultures.

For Fred (KI), the most important values were: respect, humility and open-mindedness, participation and ownership of the whole process by the community rather than by officialdom. Tim (KI) saw being in prison as a waste of human life. He said one of the values that he held dear was the opportunity for justice and for reconciliation for people.

Jacob suggested that having a value base is not necessarily the starting point for restorative justice work. He remarked to his colleagues:

isn't it interesting – the way you described your journey you started with values and found restorative justice as a way to express them. And I think I started the other way – I came to restorative justice not knowing anything

about it and then discovered, re-discovered, some of my values through restorative justice.

Hunter et al (2007, p. 161) stated: "Facilitation is not value-neutral. The inherent value of the individual, the collective wisdom of the group, cooperation, choice and consensus are all key values in facilitation". The values in the comprehensive list compiled from the facilitators' responses have not been dealt with individually, but all have been discussed in this analysis.

## **Ethical**

Being ethical is an attribute that the Ministry of Justice (2007a) lists as essential for facilitators. The Ministry defined being ethical as: "operates with integrity, employs the principles of restorative justice, follows rules" (p. 12). Facilitators in the focus groups did not use the terms ethics and ethical behaviour in their discussions, but their conversations demonstrated that they expected themselves to behave ethically and they talked about ethical behaviour. For example, even though facilitators felt that victims who did not engage were missing out on something that would be of benefit, they did not pressure them to participate in the process, because they held a value of voluntariness. Being non-judgmental and maintaining boundaries were appropriate ethical behaviours for them to exhibit. Philip illustrated this when he said he felt

sad sometimes the victims don't agree to go to conference because I think to myself "well they don't know what they miss". It might not have worked totally for them if they did go, but they didn't go so they'll never know.



Alison (KI) considered that having facilitators as independent contractors – free to do what they think is right – enabled them to act ethically. She said:

It is their initiative, which enables them to be ethical practitioners – free to operate according to their own best practice, instead of being bound by an imposed code – that I consider to be one of the hallmarks of effective restorative justice facilitators.

## **Self-discipline**

Self discipline is a vitally important attribute for effective restorative justice facilitators. In a restorative justice process in the criminal justice system, the facilitator is appointed to a very brief and highly prescribed task which requires them to follow restorative justice principles and practices, stay within the boundaries of the criminal justice system, operate within effective facilitation guidelines, and maintain appropriate personal interactions with victims, offenders, their supporters, and the community. Facilitators need to be responsible, respectful, truthful and have clarity of thought and purpose, when it would sometimes be quicker and more comfortable not to maintain such high standards. Facilitators set ground rules for participants to abide by at restorative justice conferences, so it would be reasonable to expect that facilitators intentionally maintain their own ground rules and model the behaviour they expect from the other participants.

Eldon (KI) disclosed that for him as an administrator in the criminal justice system, it was important for facilitators to meet the court time frames. Alison (KI)

declared that people were useless as restorative justice facilitators if they couldn't manage to contact people on time, if they didn't follow through on their undertakings, and were poorly organised. The Ministry of Justice Restorative Justice Facilitator Selection Toolkit (Ministry of Justice, 2007a) stated that among their essential skills and attributes, facilitators should be “able to arrange things in a methodical, structured way ensuring requirements and deadlines are met” (p. 11) and a facilitator is a person who “maintains ethical standards even under pressure” (p. 12).

Facilitators need to have self-discipline well developed as a core attribute of their personhood if they are to be effective practitioners.

## **Insightful**

Tim defined an effective facilitator as someone who has an understanding of what makes people tick, what motivates their actions and of what likely life experience the participants have had. Tim (KI) considered it is possible, but difficult, to train what I have labelled as insight, as it often comes from a facilitator's own life experience and the other work that they do. One example of this, according to Fred (KI), is that facilitators should understand that an important part of the restorative justice process is to allow people to express their anger and hurt, sometimes thought of as negative, but which has a positive role if properly handled.

*From my counselling experience I agree with Fred (KI), but I also know that to encourage explosive feelings to be expressed takes courage and*

*belief in one's ability to cope with the situation that may develop. This requires self-insight as well as insight into the process of transforming negative feelings into a positive stance.*

The *Restorative Justice Facilitator Selection Toolkit* (Ministry of Justice, 2007a) described an insightful facilitator as one who is "emotionally self aware and confident, keeps negative emotions under control, considers reactions, responds calmly to negative emotion in others" (p. 12).

Facilitators who are not insightful could feel that their control of the conference is threatened when participants begin interacting directly with each other. Effective facilitators note this as a significant stage in a conference and many examples are given in Chapter 9.<sup>144</sup>

Wilson (cited in Souza & Dhimi, 2007), posits that facilitators who have the most restorative impact tend to employ a non-directive approach to conferencing and facilitate with minimal interference. Being able to sense when it is the appropriate time to be non-directive is one of those times of insight. Kate noted that she assesses the appropriate moment as when "the sound of people's voices change too, because they go from being squeaky high to a deep voice because they're a bit more relaxed and you see the clenched teeth and body change too". Other facilitators said that it is when that emotional connection between victim and offender is established and they are able to

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<sup>144</sup> See p. 301f.

relate directly to each other. Wendy remarked that “until you have been part of the restorative justice conference and you can actually see that turning point, people don't believe it”.

Personal insight is also important and one facilitator described how he experienced a life change as a result of an encounter with some participants. Mike talked of his “awakening as a facilitator”. He said: “When pieces fit together and you suddenly realised that's what it was about. It wasn't about offenders. It wasn't about victims. It was about *people*.” Another aspect of self insight was expressed by Jacob and Dave who spoke of how privileged and humbled they felt that victims and offenders allowed them to enter into their lives at an intimate level. They also recognised that they quickly developed bonds with participants, getting to understand them, how they thought, what their boundaries were, what made them tick, but then needing to let go these bonds at the end of the case.

Peter demonstrated insight when he said: “I shouldn't feel bad if they [participants] don't make the best of it, but I should do my absolute *best* to enable them to make the best of it”. He concluded that conversation by saying: “For me it's important to acknowledge that it's absolutely okay not to be altruistic. . . . It's not just what I get from it, but it's about what's my pay-off that keeps me there”.

Self insight is a necessary component of the self-actualisation that Cilliers

(2000), Heron (1999) and Hunter et al (2007) discussed as being important for facilitators to develop.<sup>145</sup>

## **Respectful**

Respect was one of the values most talked about by facilitators and was also stated as a strong value by key informants. Respect, defined as “deferential esteem felt or shown towards a person or quality” (Deverson & Kennedy, 2005, p. 957), is an attitude that will be part of an effective facilitator’s basic value system, and one they will bring to their facilitating, not one that will be learned in training. Respect, in the way that facilitators talked about it, had a number of aspects to it. It is very important in restorative justice work that facilitators can be respectful to victims who are angry and unforgiving, as well as respecting offenders as human beings, rather than regarding them as criminals. Alison (KI) said she thought there was an attitudinal stance prevailing to some extent in the media, and maybe in the community as a whole, that criminals are bad people, and that decisions on what should happen to them are made on that premise. She stated that restorative justice facilitators need to put that view aside as a starting point, and start from the basis that the offender is a person. Then “you have your offender in the picture as a person, not a factor that’s gone wrong”.

Respect is also about facilitators believing that participants will be able to participate fully in the restorative justice process – that victims are competent

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<sup>145</sup> See Chapter 2, p. 60.

people not casualties, and that offenders have minds, emotions and spirits. It is also about facilitators not having to be in control all the time but believing that participants are capable of sharing control for what happens. It is being able to allow the conference process to develop a life of its own.

Most facilitators felt they were very privileged to be accepted and respected by the participants – who cover a wide range of people across all sectors, ethnic groups, values and views of life – as appropriate to facilitate the restorative justice process.

Carl Rogers, (as cited in O'Hara, 1989) a pioneer of facilitation, when describing the facilitation role also emphasised the need for facilitators to be respectful.

## **Visionary**

Effective facilitators also need to be people with vision, to be able to see beyond the immediate situation and have a sense of what could be possible. Schwarz (2002) defined vision as “a mental picture of the future that a group seeks to create” (p. 27). Hone said: “It gets me excited when I have a case where I can see that I can help to bring about . . . the miracle that could happen”. Facilitators need to have caught a vision of something that is more just and restorative than the present criminal justice system, to believe that human beings are capable of demonstrating genuine remorse, as well as goodness and forgiveness, and be willing to work towards it. Facilitators need to have an expectation that victims can, and should be given an opportunity to be involved in restoration of the

harm that has been done to them when they are an offence victim. Facilitators must also envisage that offenders can be remorseful and want to repair the harm caused by their crime.

When facilitators in the research talked about what excited them in their restorative justice work they demonstrated that they were people with vision – for victims as well as themselves. Mike said: “When a victim can actually believe . . . that the conference has actually made a difference to this offender and . . . that both the offender and victim will be safer people because of it”, then the vision is realised.

## **Passionate**

The restorative justice facilitators who participated in this research were people who were passionate about restorative justice. Anne declared:

I get excited all the time. I come from a place where I was trained as a clinical psychologist . . . and it was really hard for me to believe that we could make a change in people's lives in one session. It took me some time to get there! The whole theory in my head said that's not possible, it's never going to work, you need more than one session. Shifts that big from being an offender who's probably sometimes had a life of offending, to a place where they are not going to offend any more, for a victim to get over the hurt and over the trauma that sometimes offending can create for them. I thought just the one session – there is no way that's going to work. But it does every single time, so every single time we get out of there and I'm dancing.”

Eldon (KI) endorsed such enthusiasm.

It's the passion that the facilitators have for it that is the key to it really. It's the passion of those people that want to do things differently and make a difference. It's certainly not the monetary incentive that keeps things going.

Passion like this is not the result of training but of emotional development that facilitators bring with them into training.

### **Exhibits emotions**

Schwartz (2002) stated: "Our own feelings are a significant part of our work as facilitators" (p. 15). So, facilitators need to be capable of and practised at feeling and expressing a range of emotions such as excitement, satisfaction, curiosity, humour and tears. All the facilitators in this study talked about what had excited them in their experience of restorative justice. Greta said: "So when I was accepted for doing the training I was really, really excited and thought I'm going to be part of something that's quite different and, I guess not new, but probably life-changing I guess". Facilitators also talked about other emotions. Gayle revealed that "at the close of the conference I felt a real great feeling of satisfaction . . . they all hugged and shook hands". Jacob added: "I think curiosity is one of my strongest values and it makes me just interested in both the victim and the offender". Being moved to tears was a common response from facilitators. For example, Jan cried when she saw that the young male offender had repaired the victim's teddy bear, and Gayle said that she sat and cried on a number of occasions. Gayle added: "but that doesn't stop, as far as



I'm concerned, my professionalism where conferencing is concerned”.

Restorative justice is about restoring relationship and healing harm – mental, spiritual, emotional harm – that is, dealing with matters of the senses rather than tangible, physical matters. So, it is important that facilitators can understand what they are dealing with from their own mental, spiritual, and emotional experiences. Such understanding needs to predate their training. Facilitators were aware of this and talked about other significant issues, such as not having an ego so large that they could not let participants take over and run their own conference, not giving advice but waiting until asked for it, being humbled by the participants’ attitude to the facilitator, being nervous – hoping they didn’t “bugger up” the conference. Many facilitators had their own stories about being a victim and so being able to empathise with victims.

Schwarz (2002) when discussing emotions said that it is very important for facilitators to deal with their own emotions. He stated, “because your emotions and how you deal with them profoundly determine your effectiveness, the Skilled Facilitator approach involves understanding how you as a facilitator feel during facilitation and using these feelings productively” (p. 14).

## **Spiritual**

The literature on restorative justice shows that the concept has links to Christian biblical ideals – using words such as forgiveness and reconciliation – and some of the developers of modern restorative justice present from a Christian

perspective (Bowen & Consedine, 1999; Zehr, 2002). They, and Batley (2004) discussed the role of spirituality in restorative justice and considered it as an appropriate blending. One session of the hui that discussed critical issues in restorative justice in Aotearoa New Zealand was titled *Indigenous Traditions and the Spirituality of Restorative Justice* (Jülich, 2003, p. 31). It is not surprising that many facilitators came from a religious background and reported a spiritual dimension to their work. Dorothy M observed: “When things come together there is a sense of the other, a spiritual dimension”. Mike added: “It’s all about wairua, an intangible thing that you can see and you understand it intrinsically when it’s happened, and when it’s going down even, you know you can actually see it happen in a conference”. One of the Māori facilitators said that when they were working with Māori participants they would routinely address the spiritual tikanga side of things like saying karakia (prayer). However, when they were working with non-Māori it would be checked out, rather than assumed to be appropriate. Tania added: “I think working from a Māori perspective, the tikanga perspective, you also bring the spirit of peace to start. You invite the spirit of peace to be there through karakia and mihi (greeting)”.

Spirituality is one of the four attributes – physical, mental, emotional and spiritual – Māori recognise as being components of a fully rounded, competent person.<sup>146</sup> Therefore it is important that facilitators themselves have a

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<sup>146</sup> See *Te Whare Tapa Wha* developed by Dr Mason Durie in 1982.

spiritual<sup>147</sup> aspect to their presence, and that they can recognise the spiritual needs of the people they work with.

## Analytical

Being analytical is an important basic characteristic for facilitators. The *Restorative Justice Facilitator Selection Toolkit* (Ministry of Justice, 2007a) defines thinking analytically as: “Takes a logical approach to situations, breaks them into smaller pieces, and identifies underlying causes and appropriate solutions” (pp. 10,11). Such analytical skills may be enhanced by training but need to be well-developed before becoming a facilitator. Alison (KI) talked about the analysis that she considered needed to be done before domestic violence cases were included in the restorative justice pilot scheme. She said: “The argument risked all the time getting polarised without the real questions being considered because some of them were systemic questions about what else is happening for people”. It is being able to recognise what are the real questions and deal with them, that is constantly required of effective facilitators.

Phil (KI) said that he saw the reports that facilitators wrote after restorative justice conferences and he was usually impressed with the detail included – the thoroughness, people being allowed to really express themselves, and the

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<http://www2.careers.govt.nz/educators-practitioners/career-practice/career-theory-models/te-whare-tapa-wha/>

<sup>147</sup> Spiritual, as used here, is not connected with organised religion but “of or concerning the spirit as opposed to matter” (Deverson & Kennedy, 2005, p. 1087).

encouragement to talk and to come up with concrete proposals regarding repayments. He indicated that he thought good report writers analysed what information should be included, and what should be left out of the report, and what was appropriate to discuss at the end of the conference. He noted: “There’s issues of discharges without conviction that sometimes come up and you don’t get to that final little bit without a bit of talk beforehand”.

Facilitators need to be able to analyse what a desired outcome of the conference process looks like and whether the parties generate that, or whether it is imposed. Tim (KI) claimed: “There’s that fine line that we walk about having a general idea and asking questions, and we build towards that, giving people the room to create their own space”.

Facilitators also need to be able to analyse the context in which restorative justice is being done. Mariameno illustrated this when she said:

We’re trying to apply this thing called restorative justice where families have to contend with injustice because of racism all the time. How do you bring that when injustice is something you have to – it’s nearly the sea we swim in every day – how do you apply that?

Facilitators need to be analytical about their own competence, affirming themselves where they are effective and being aware of additional learning and experience they require. Karen admitted:

I’ve also realised, mainly through conversations with co-facilitators in my group, the various places where I am not yet perfect! We do talk about things, and if there are learnings that should be taken from something,

they are presented in a way that should we want to learn from them, we can do that. And for me that's been a hugely valuable thing.

The Ministry of Justice recognised that facilitators need to be analytical. In their *Facilitator induction training* manual (2008b), Module 2, p 2, they stated:

Facilitators of restorative justice process need to understand the differing perspectives and mindset of offenders and offence victims in order to make sound decisions about whether or not it is appropriate to proceed to conference, and how to best support both parties during and after the conference.

## **Rise to challenges**

Restorative justice facilitators working in the criminal justice system need to be able to cope with a great variety of people and the situations that they present. Facilitators are required to respond effectively to the unexpected, the complicated, and the tragic by using their insights with their training and experience. Even cases that on paper appear to be straightforward can present challenges. As Philip said “You can't predict what's going to happen”.

Some of the offenders and victims that restorative justice facilitators meet present challenges. Offenders who have committed assault, burglary, or fraud have the potential to continue the behaviour that led to their offending in the restorative justice process and facilitators need to have not only the training to deal with such behaviour but the personal resources as well. Tim (KI) developed his personal resources while he was being brought up in a prison environment where his father worked. He said “you get to know about kind of

being confident in that setting and keeping yourself safe . . . also you get kinda used to working in that situation too and developing skills and insights”.

## **Caring and empathetic**

Restorative justice facilitators are almost without exception caring and empathetic people who enter the work because they already have these qualities. Facilitators reported that what made them feel alive, fulfilled, or most excited about their involvement in restorative justice was seeing people get in touch with themselves, having offenders realise what they'd done, and watching victims hearing the story and being able to express what they felt. It was helping people work through things together and feeling that they had the opportunity to change lives for both the victim and the offender.

Satisfaction at the outcomes of the conference was often reported. For example Gayle reported that at the end they all hugged each other and kissed each other and she was so proud of having a part to play in bringing that reconciliation and loving back together again. Hone spoke of the satisfaction of reuniting friends/relatives/colleagues who had been not been able to talk to each other because they were victim and offender in a case.

Facilitators talked about the work being very fulfilling when they saw hearts changed, saw the relief of victims and offenders and the load taken off them both as relationship was restored. Wendy talked about the community work done by some young arsonists.

She reported:

They were actually working in the community that they had offended against in a very public way. And to me this conference was just perfect because it was extensive damage throughout a large community and every little community was paid back.

Wendy went on to say that the case had come up two or three times in the three years since the offending and all the boys had appreciated the restorative justice conference and how they were made to work in the community, and all were doing exceptionally well.

However, it is important for facilitators to be able to be caring and empathetic without slipping over into sympathy. According to Schwarz (2002) sympathy or pity “leads people to help others in a way they do not want to be helped, and to protect others in a way they do not want to be protected” (p. 47). This is not what effective restorative justice facilitators do.

### **Sense of responsibility**

Effective restorative justice facilitators have a strong commitment to doing the task they have taken on to the best of their ability. But facilitator commitment varied and their effectiveness varied accordingly. Eldon (KI) remarked that he experienced some facilitators putting a lot of thought and time into their work, but he also saw some facilitators who would make only one phone call and that was as far as they would go. The Ministry of Justice (2007a), defined effective facilitation as “a commitment to following agreed processes” (p. 10).

Philip remarked:

When we set out a case we don't know how long it's going to take altogether, and sometimes it takes a long, long time but we don't suddenly decide we're going to stop because we reckon we're not going to get paid for it anymore. It's not the prime consideration. We go on as long as it takes.

Many facilitators related stories of extensive work on a case for which they knew they would not receive payment, but their sense of responsibility and commitment to the task motivated them to continue with it to the end.

## **Summary**

Facilitator presence is a crucial element in restorative justice conferences.

While many skills can be learned, who the facilitator *is* plays a major part in their effectiveness. As has been shown in the comments from focus group members and key informants, the personal qualities they bring to the task are a vital part of the interactions between facilitator and participants.

The next chapter will discuss the significance of facilitator Awareness.



## Chapter 8: Awareness

Facilitators do not practise in isolation, so they need to be conscious of, and take into account the factors that impact on their work and the people they work with. This chapter discusses the issues of which facilitators need to be aware if they are to be effective. Self-awareness is basic, but they should also be aware of how and where restorative justice fits in the legal system and the community; of the needs of victims, offenders and supporters and the complexity of these relationships; issues of voluntariness; and of working with different cultures. Effective facilitators should also be aware of how they can maintain themselves and their practice at a high standard by continually learning, using debriefing and supervision, and being wisely sceptical.

### Self-aware

A prerequisite to an awareness of what is happening around facilitators is self-awareness. Hunter et al (2007) stated: “The most important work for any facilitator is developing one’s own capacity to be and become an embodied, grounded, self-aware and self-reflecting person – to facilitate yourself” (p. 46f). Cilliers’ (2000) notion of self-actualisation or extended self-awareness reinforces Hunter’s idea. Cilliers defined self-actualisation as:

a natural, dynamic and creative growth process, in which the person, while fully acknowledging own responsibility, gradually develops a unique sense of integration and wholeness through selfdefinition and the optimisation of all psychological potential, and in whom the expression of the actualising tendency leads to enhancement and enrichment of life, intrapersonally as

well as interpersonally (p. 22).

Both definitions claim that facilitators need a well-developed, integrated knowledge of who they are. One reason for this is that facilitators need to be able to recognise the feelings they have as they work with participants. Dorothy A admitted:

When I've done a conference I've always felt quite nervous because on one side you have the legal system, and it's a referral from the court, and on the other side we're walking into people's homes and it becomes kind of a very sensitive place to be . . . So I'm always fairly nervous about my interactions, but not to say that I'm actually [too] nervous to facilitate.

Two other facilitators, at different focus group meetings, recalled feeling rather embarrassed at a conference because it seemed they were intruding in a very special moment for those people. Other facilitators felt humble, recognising that they themselves, or their family members, could have been the offender. They thought they had learned not to be judgmental. Many facilitators had their own stories about being a victim and so were able to empathise with victims. Jacob described his feelings:

The thing about restorative justice is you enter people's lives, both the offender and victim, at the time when they are very vulnerable and so you become a part of their lives for that period and then you walk away. But for the time that you are in their lives you are in it in a quite an intimate way and that can be very humbling.

Most facilitators felt they were very privileged to be accepted by the participants – a wide range of people across all sectors, ethnic groups, values and views of

life – as an appropriate person to facilitate the restorative justice process. Peter described the task of facilitator as: “creating an opportunity for people to come together and have conversations – what they do with that opportunity is up to them”.

Self-awareness enables facilitators to focus on what is happening for victims, offenders and support people, rather than what is occurring for themselves. An example of this would be when an account of the offending and the emotions expressed are shocking to facilitators and conference participants, yet the facilitator needs to be able to focus on facilitating what is happening to other people, not to be taken up with their own reactions. Wendy observed: “In restorative justice everybody does stop and listen and it's amazing”. However, if facilitators are not conscious of their own feelings, and cannot recognise them as their own, they may project their feelings onto participants and deal with their feelings as though they belong to the participants. This is transference: “The displacement (and projection) of feelings, thoughts and behaviour, originally experienced in relation to significant figures during childhood, onto a person involved in a current interpersonal relationship” (Moore & Fine, 1990, p. 196) and it is not effective facilitation.

## **Victim and offender needs**

Restorative justice is a “victim-oriented approach” (Zehr, 2002, p. 23) so facilitators consider that victim's needs are paramount. Hone explained the need to centre on victims, when he noted that “history tells us that the focus has

been on the offender, and a lot of time, a lot of effort, everything actually, has been focused on the offender, and the victim has been sidelined". Although restorative justice claims to be victim-oriented, a number of writers have questioned whether or not the restorative justice process can and does deliver justice to victims (Archilles, 2004; Herman, 2004; Strang, 2004; Stutzman Amstutz, 2004). Effective facilitators need to be aware of this critique.

## **Victims**

However, not all victims accept the invitation to participate in a restorative justice process. In my experience some victims feel that too much time has elapsed since the offence occurred and they have moved on and do not want to be taken back into the trauma of the offence. Others are fearful that being identified, or re-identified, to the offender may make them unsafe; and others do not want to engage in the restorative justice process. Fuimaono (KI) remarked: "For restorative justice to succeed, there needs to be some way of reassuring victims that the process will benefit them in the long run".

Facilitators told stories of how victims who were very doubtful about attending a restorative justice conference, were very pleased with what happened when they did. Gayle reported about one such case where the victim's mother had been killed in a car accident. She said:

Afterwards he [the victim] came to me and said "Gayle, I'm just so pleased – I came to please you – but I'm so glad I've met him [the offender] and met his dad and met his boss."

Facilitators reported that at the end of a restorative justice conference, victims and offenders frequently said that it felt like a weight had been lifted off their shoulders.

## **Offenders**

While victims are clearly a prime focus in restorative justice, this does not mean that offenders are ignored or sidelined in the process. For a restorative justice conference to be truly a helpful and healing experience for victims, it needs also to be a helpful, and often healing, experience for offenders. The restorative justice process offers offenders an opportunity to be responsible, to face the reality of what they have done, to put right the wrong as far as possible and to restore relationship with their victim. Offenders are acknowledged and offered dignity, and healing. Mike provided an illustration of offender benefit when he stated: “Doing restorative justice reconfirms to me my faith in people because you do get angry men<sup>148</sup> who will come and listen and provide the opportunity for the healing to take place”.

## **Support people**

Another significant factor for facilitators to note is the importance of support people in the restorative justice process. Marlene reported:

One of the things we do impress on them is that they are absolutely

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<sup>148</sup> Because an angry offender could re-victimise a victim, their attitude would be assessed at a pre-conference to make sure they were also remorseful and could behave appropriately at a conference, or that the victim knows about the anger and makes an informed choice to meet.

allowed to have support people, and that whoever comes to the conference needs to be pre-conferenced so that everybody knows what they're coming into and on conference day everybody knows what's happening. . . . It helps people feel safe.

Facilitators reported that it is not always easy to get support people to participate in a conference, but that appropriate, adequately-prepared support people assist the progress of a conference, as well as supporting their victim or offender before, during, and after the conference. In fact, post-conference support is important in reducing recidivism. "Evidence from here [New Zealand] and overseas suggests that support networks increase the chances of an offence-free future for the person involved" (Department of Corrections, 2011, p. 9).

One of the tasks of a support person in a conference is monitoring the frustration-level of their victim or offender, noticing when they are bewildered or overloaded and requesting time out. As support people are often family members, the restorative justice process at times deals with the whole family, not just one member of it. Effective facilitators are aware of all these issues.

## **Justice**

Justice has many aspects. Facilitators in the research talked about justice as it relates to restorative justice in the criminal justice system. Justice is defined in the *New Zealand Oxford Dictionary* as "1. just conduct. 2. fairness" (Deverson & Kennedy, 2005, p. 592). In the discussions of their practice of the restorative

justice process, facilitators demonstrated that they were intentional about acting justly. They suggested that effective facilitators would have “a thirst for justice and fairness”, want to “put right the wrong”, and have a “sense of justice being done”. Some key informants were more forthright about their concept of justice. Fred (KI) said that the thing he valued doing most was justice and that he felt that restorative justice was much more than just procedural law, or just following the rules. He added: “For me it’s almost the biblical concept of justice which is over and beyond what’s fair. It’s the justice, almost like shalom, being in right relationship – people with each other, people with the world, people with God”.

Fred (KI) also valued very highly the interdisciplinary nature of restorative justice. He liked it that people from various disciplines were able to make a contribution, so that people with all sorts of skills worked together, not just lawyers. Fred (KI) also saw restorative justice as very egalitarian. Eldon (KI) saw restorative justice as an opportunity for people to be involved in the criminal justice system, rather than it just being something that happens to them. He noted: “It’s open to an offender that wants to take advantage of the process a bit”.

A different aspect of justice was discussed by Alison (KI), who said she felt:

immensely proud to be in a country that's dealing with Treaty of Waitangi issues. I see that as a restorative approach . . . and the restorative justice work that we were doing in the criminal justice system seems to me to be part of an overall picture that we could actually see extend across a broader range than justice only . . . that kind of creating an expectation

that that's how people will operate in New Zealand, and that's how agencies will operate, and that's how people will operate and that we will continue and maintain our fairness as a society.

Tim maintained that in restorative justice there were examples of people coming through and building a sense of community. He said one of the values that he holds dear is the opportunity for justice and for reconciliation for people.

## **Multicultural issues and needs**

Restorative justice is a process that is available to and can provide a service for people from all ethnicities, social groupings, economic, educational and religious groups. Facilitators in the focus groups reported that the victims and offenders who were involved in restorative justice processes came from all sections and cultures in the community.

*It is important to note that culture should not be seen as just belonging to Māori, Pacific Island, Asian, Middle Eastern and other non-European groups. New Zealand Europeans also have a culture that needs to be understood and worked with. Facilitators and key informants who were not European easily recognised the dominant European culture. Many European facilitators had an awareness of the impact of their culture on non-European people.*

## **Māori**

In the focus groups there were a number of issues raised in discussions about culture. Māori facilitators talked about their background. Hone said:

I'd say it is intrinsic in my family – I grew up always having to know what was right and wrong and that balance was always there for me. We



learned what utu and what hohourongo was. Utu is payback, hohourongo is restoration. And looking at restorative justice at times when I felt alive and fulfilled and excited and involved I was thinking the land, the tupuna,<sup>149</sup> the whānau, the loss, the gain, the learning, the taking, the giving, the faith, the truth, the hate, and the love. All those things culminate and somewhere it's got to be sorted out. Somewhere we have to find a point where things can be settled and everyone can feel they've been put at ease.

Tania added: “My father often talked to us about how you were accountable for everything you did and you weren't just accountable to the one person you were accountable to their whole hapū or iwi”.

Three facilitators told of their experience of going into the territory of another tribe and how the conference was only able to proceed once it was discovered that their facilitation team included a person who had links with that tribe. Other cultural issues should be considered in matching facilitators to a case. This might be that a male facilitator is required, or a fluent speaker of Te Reo Māori,<sup>150</sup> or someone who can command whānau respect, or specific safety issues in cross-cultural situations. As well there may be whakapapa connections that impact on the restorative justice case.

June (KI) presented another perspective when she stated that facilitators needed to understand how Māori offenders and victims viewed the world if they are going to be effective restorative justice facilitators for Māori people. She

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<sup>149</sup> Ancestor

<sup>150</sup> Māori language

said that when Māori people are assessed with Pākehā assessment tools, such as psychological assessments, Māori people appear at the bottom of the table and the assessment is not accurate.

Thomas observed:

I think within the Māori world there is perhaps a better sense of restorative justice processes being more a cultural artifact that's closer to how some things were traditionally handled. Within Māori family meetings I've certainly seen quite restorative processes happening within an extended family. So I think that culturally there are some enormous strengths within the Māori culture that could perhaps be drawn on for bringing restorative justice more to the fore for Māori victims and offenders and the rest of society too.

## **Pacific**

Pacific people see restorative justice as a way of life. Titiula claimed:

“Restorative justice is our way at home, especially when we are dealing with conflicts, of restoring peace and finding a way forward”. Perema said: “That's the background of how we got involved in this New Zealand format of restorative justice”.

*Parema stated that restorative justice was part of him as he grew up with it, he lived it every day and so he activated it automatically when the need arose. Illustrating this he said that if somebody kills or rapes or steals in the village of course they have committed a crime according to the law of the land but the parallel, more powerful system has already taken place and that's recognised by the courts. The house has been burned, the family banished, they have been shamed badly and the court takes that into account. But the ruling has been done by the village and restorative*

*justice done also with fine mats<sup>151</sup> and apologies had taken place.*

*I found the punitive action taken against the offender and their family did not fit with my understanding of restorative justice. However, I note that definitions of restorative justice do not forbid punishment. One of the guiding principles of restorative justice processes in Aotearoa/New Zealand states that the results of the process are measured by how much repair was done rather than how much punishment was inflicted.<sup>152</sup>*

*None of the other participants in the focus group, who were all Pacific people, made any comment about the punitive actions in the story. It seemed that the restoration of village relationships by the exchange of fine mats and apologies was the restorative justice aspect.*

For Pacific people shame was a significant issue. Sylvia said: “That's the element of shame. They brought the family shame to the fore. The harm that was done draws backwards and the shame comes to the front and the offender recognises ‘oh, we have done this to the family’”. Sylvia noted that Pacific island people do not ask each other are you guilty or not guilty, but are you ashamed or not ashamed, “because then you can tell whether someone is apologising because he or she regrets that they were caught, or apologising genuinely because ‘I am so ashamed I can't face any more’”.

Also, for Pacific Island people the church was a major factor in their lives. Perema reported on a restorative justice conference where the offender's support people came straight from church, dressed in their suits and ties and

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<sup>151</sup> Fine mats are very special and may be proffered as a peace-offering for some crime or offence.

<sup>152</sup> See p.22.

hats and the restorative justice conference began with a church service.

Fuimaono (KI) talked about family honour and name still being a strong ethic in Pacific communities. The Pacific Advisory Group described it as:

Pacific peoples place enormous value on the idea of family. The notion of family is founded on the extended family form and underpinned by the key values of respect, service, leadership and humility. Preservation of the Pacific family and its values is the responsibility of every Pacific person (2009, p. 15).

## **Language**

Cultural issues are a significant factor in the northern part of Aotearoa/New Zealand, particularly in Auckland, where it is rare in restorative justice conferences for all participants to have English as their first language. Indeed, facilitators often needed to cope with multiple cross-cultural interactions. On occasions each of the three parties – the facilitators, the victims and their supporters, and the offender and their supporters – all had a different ethnicity. Added to this, some of the parties might include more than one culture. In such circumstances English would be the common language, although for many of the participants English would be their second or other language. Greta, herself a Pacific person, reported that in her training there had been a session from a Pacific perspective which had struck a chord with her in terms of the special importance of language. She learned about “the language that’s going to be used when you’re dealing with people who have English as their second language”.

Greta noted:

I've got to be really mindful when I'm working with people whether they are Pacific islanders, or Asians, or Indians, that if English is their second language I've got to be respectful in a way that when I'm explaining the process they can understand it, particularly if they are victims.

As well, European facilitators need to recognise that for Pacific peoples, nuance, metaphor, and layers of meaning are important. The Pacific Advisory Group stated: "Sufficient attention must be paid to [good] taste, tone, terminology and dialect, to ensure that the messages are acceptable and to encourage interest and participation" (2009, p. 20).

Gayle reported having a conference with people for whom English was a second language. She said they were struggling to get understanding in English and they asked if they could speak in their own language. Gayle's response was that it was their conference and if it was going to bring resolution and they were going to be happy about the result afterwards to go ahead. She reported that speaking in their own language enabled them rapidly to come to a conclusion with which they were very happy. Wendy described a similar situation.

### **Cultural issues**

Effective facilitators are aware of cultural issues. Dorothy A talked about a case she was involved in, where the facilitators and all the participants were Pacific people, as she herself is. She reported that the participants kept saying that they had sorted the matter out with the families talking together, but that in her

view it actually had not really been resolved. Dorothy A observed that maybe the extended family had resolved matters between themselves but the victim was still very hurt and sobbed throughout the conference. Dorothy A felt that the offenders probably did not realise the full impact of the wrong that they had done. She added: "I think the most important thing was that they were family and they realised that the people involved hadn't actually forgiven and after the conference they were truly able to leave that day with their relationships fully restored".

The restorative justice process does allow cultural practices to be an important part of the conference. Titiula reported a conference where when the offender and victim started to reveal their whakapapa they discovered they were related to each other. Perema reported on a conference where the Pacific offenders presented a fine mat to demonstrate their remorse. The European victim and supporters initially had no idea what to do but when it was explained, they accepted the fine mat and the participants embraced. At the end there was a big meal provided by the offenders and supporters.

Dorothy A talked about a case she facilitated where the offender was a Samoan, and the Asian victim came to the conference quite prejudiced against Samoans because of his experience as an offence victim. Dorothy A said that as they went through the process, restorative justice happened and it was a positive outcome because the victim stated that he had lost his fear about Pacific people.

One of the issues that facilitators, particularly European facilitators, need to be aware of is the danger of treating all Pacific people as though they are the same, when in fact the practices of each Pacific nation are specific to their group. It is very important for facilitators to recognise the diversity of Pacific communities. Fuimaono (KI) observed:

There is this danger of lumping Pacific Island people all in one group, one basket, or one cluster, where, in fact, there are diverse Pacific communities who do things. The basics are usually the same, but their practices in different islands are circumscribed to their community, so that the way Tongans deal with offending in their villages is very different from Samoans, is different from Fijians, and in the New Zealand context I think it's very, very important just to keep in mind the diversity of Pacific communities.

I asked Fuimaono (KI) how possible he thought it was for white people to effectively facilitate a restorative justice conference with Pacific island people.

He responded:

I think language is very important, bearing in mind that for a lot of Pacific islands people English is a second language. So, assuming that their language skills are reasonably good, some Pacific communities would prefer a Palagi<sup>153</sup> because it keeps it out of the community's gaze and nobody except the participants are aware of what's going on.

Fuimaono (KI) said that as Palagi it is important to be attuned to Pacific protocols of respect and to use Pacific phrases or words and act in a way which

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<sup>153</sup> Pacific people use the term Palagi for a European person.

is appropriate to them. For Pacific people non-verbals are probably more important than the verbals. There are a lot of behavioural things that need to be observed. For instance:

The way you walk into a room, you never stand when you're talking to people. You always sit. When you've got food you never eat it on your own. You never ask if people want a cup of tea or coffee, you just make it, because food is one of those things that you give; you never ask permission to give. Sometimes the saying of a prayer, a blessing is very, very important, just depending on the context to bring a solemnity or dignity to the proceedings, which sometimes can be quite tense and it sometimes relieves people of that tension.

Fuimaono (KI) added that there are a whole lot of behavioural things which Pacific people almost do instinctively, unconsciously, and if Palagi can do that too, it builds confidence in them. He believes that Pacific people need to share much of their good things with their communities – as Palagi do. Fuimaono (KI) said that for facilitators to get advice all the time is very important, so that they can be informed about the communities that they are dealing with and be empowered to respond and act.

### **Restorative justice and culture**

Facilitators need to be aware that sometimes restorative justice has been seen as synonymous with traditional Māori and Pacific cultures. While there is a really strong alignment with restorative justice and some parts of traditional cultural approaches to dealing with harm in communities, in other parts there is a significant misalignment. Pacific communities and Māori communities in New



Zealand model retributive behaviour just as European communities do.

There is also sometimes an assumption that the restorative justice process is Māori, has been borrowed from Māori, and that therefore Māori can intrinsically engage in it. For some Māori people this may be so, but it is an unhelpful assumption to make because in all cultures there will be retributive people and restorative people. Care also needs to be taken when assuming that traditional Māori and Pacific cultures are inherently restorative<sup>154</sup> and that Pākehā culture is inherently violent. All cultures have a variety of approaches. Indeed, Pākehā have restorative practices in their history – albeit mostly pre-12th-century<sup>155</sup> – as well as the extreme violence that is more documented and remembered. Effective facilitators should recognise what is restorative and what is not.

Key informants pointed out that making assumptions based on culture about what is right, and what is not, runs the risk of blinding facilitators to the actual detail of what is going on in the situation and may be dangerous for the people involved. This raised the issue of how the restorative justice process coped with cross-cultural interactions. Tania said that as Māori facilitators in a heavily Māori area they were surprised at how often they were dealing with European victims and offenders. She went on to say that they have not experienced any barriers. She observed:

I don't know if it's because we live in the north and there is a large

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<sup>154</sup> See p. 250

<sup>155</sup> See p. 18.

population of Māori here so it mightn't be unusual for Māori to turn upon your doorstep to be supporting you in a situation where elsewhere they might be white.

I asked Tania if they do anything different when they have non-Māori victims and offenders. Tania replied: "I think the only thing that we might do differently is around the spiritual tikanga side of things like karakia. We say that tikanga is our best practice and that's the way we work".

### **Relationships - human contact**

One of the significant, if not the most significant, aspect of the restorative justice process is the human contact that it enables. The legal process does not provide for or encourage human contact, or the restoration of relationship, and as long as victims and offenders continue to be treated in the legal system as roles rather than human beings, they are prevented from interacting in a meaningful way. Zehr and Mika (1998) stated that crime is fundamentally a violation of people and interpersonal relationships. Thus the aim of a restorative justice process is, as far as possible, to repair the violation of people that has occurred and to restore the interpersonal relationships that have been damaged. To do this requires acknowledgment of the personal human element present and person-to-person contact between those involved.

Alison (KI) asserted that it is very important in the restorative justice community that offenders are respected as human beings rather than as criminals. She stated: "It's recognising people as whole people and dealing with them as

people". Effective facilitators connect very intentionally with both victims and offenders as people, not roles, and encourage restorative justice participants to respond to each other as individuals.

Facilitators told many stories about the graciousness that victims demonstrate toward offenders. One story was about how the support people of the victim invited the homeless offender to come and live in their flat. They said: "We'll look after you and make sure you get onto the right path and that sort of thing". When this occurred the lines between victim and offender just disappeared – they were people assisting and supporting each other. That could not have happened in the court process.

Joanne told of an unpromising brutal assault case. When the offender related what had happened the victim just sat there and when it was his turn to speak he said: 'I've got nothing to say, I'm speechless, I have no memory of it but it sounds like I'm to blame as well'. The victim's ex-wife agreed that he probably was. At this point in the conference the families began talking to each other and discovered that they had a great deal in common. The offender then offered to do things that the victim was still unable to do because of his injuries. The victim replied: "No, I can do all of them, you go and be a dad to your new son and I can move on with my life". The two men then went outside and had a smoke – the modern equivalent of the peace pipe?

In deciding the outcomes of a restorative justice process a much broader view

than normal can be taken than that of the current (adversarial) criminal justice system. Karen told of a case where both participants had been an offender and a victim in the situation and one young man had nearly died from his injuries. At the conference that young man stated:

Well, I reckon there have been enough people hurt by this already and I don't actually want anything more to happen. I would like us to be able to shake hands, say that wrong has happened, and we are now both over it.

Karen said that when the case came to court the judge heeded this wish and gave both men identical community service sentences. Karen felt that true justice had been done. But the restorative justice process did not stop there, as the older man coached the young man to get his skills back and be able to go on and do the things in rugby that he had wanted to do.

Alison (KI) believed that the criminal justice sector must “address people's human needs – we mustn't treat them like they are woodchips going through a factory”. She said we must not forget that “these are people in a very vulnerable time, an enormously vulnerable time for them and their families, and it makes a big difference if we are making sure they get through this process as well as they can”. Alison (KI) saw the restorative justice process as attempting to do just that.

## **Victims and offenders are people**

The restorative justice process aims to encourage victims and offenders to “come together in a conference to talk about the effects of the offence and to

agree how those effects could be overcome or reduced” (Ministry of Justice, 2008b, pp. 5, module 1). This aim is based on the premise that the victim and the offender are human beings who in the restorative justice process will treat each other as people not as roles. One of the important transitions that victims make in a conference is when they move from viewing the offender as a role to seeing her/him as a person. This transition is helpful for both parties and it occurs as a result of skilled facilitation. Titula noted that during a conference things can change right around and at the end the people who were the victims may ask that there be a recommendation to the judge to be lenient because they don't want the person who was the offender to be jailed. Indeed, they might even want to withdraw the complaint. Effective facilitators recognised this change as a possibility and allowed for it to be accommodated should it occur.

Fred (KI) said the fact that restorative justice allows the goodness in people to come through is probably one of its most exciting things. “There is a huge amount of goodwill that this process taps into and allows to blossom – and encourages to blossom.” He added that the general populace aren't all the sort of negative, vengeful people that the media would like us to believe.

Examples of victim goodwill are demonstrated in the following cases with a selection of offenders:

- Young male, no family support, unemployed, burglary, supportive victim
- Young male, fractured family, running burglary ring, supportive victim
- Young male, school pupil, fractured family, assault, supportive victim

- Young males, school pupils, family support, arson, supportive victims
- Young male, drunk, family support, car theft, supportive victim
- Male in 40s, regular recidivist, supportive victim

In all the cases cited above the victims had voluntarily attended a conference.

Their reasons for choosing to meet with the offender were not revealed in the focus groups and may have varied, but they all were like-minded in their support for their offender. The support offered ranged from employment and accommodation to mentoring. All these offenders realised the effect of their actions and expressed remorse; all their victims wanted the offenders to work towards reaching the positive potential they had demonstrated in the conference.

In discussion, Peter remarked:

The system is slanted at the worst of the worst somehow . . . So because of that we've kind of lost sight of the fact that most people are reachable if you find a way to reach them. We need to keep reminding ourselves of this.

Alison (KI) described restorative justice as a process that recognised people as people and dealt with them as people, which sets it aside from the different, really old justice. Anne observed:

I have worked with victims and offenders, perpetrators of the most enormous crimes and victims of war situations, and I've come to understand that there's not much difference between offenders and victims. I ask how do offenders become offenders? Behavioural issues do not come out of the blue they come out of somewhere always. To me, both

of them are just people and I am people focused.

Phil (KI) said that of the things he valued about restorative justice, the main thing really was communication and giving people a bit of confidence back – for both the victim and the offender. He claimed that when victims talked to offenders they could find out why the burglary was committed or have their drug issues explained, or hear about their families, and make human contact.

Dorothy A illustrated this when she talked about the personal fear that participants bring to a conference. She said:

But just being able to deal with that fear that they've kept in for six or nine months or even a year -- you find at the beginning of the process that victims, offenders, and their families and support people are still very much victims of the crime because they haven't dealt with it.

## **Remorse**

The remorse, “deep regret for a wrong committed” (Deverson & Kennedy, 2005, p. 950) expressed by an offender is an important part of the process. To be eligible to attend a restorative justice conference, an offender must have demonstrated their remorse to the satisfaction of the facilitators. Marlene said: “They find their own healing and are willingly accountable”. Jan gave an example of this when she talked about a young man who had taken a child's teddy bear from the car he had stolen. She reported that he had had heart enough to see what effect this would have on a little child. He fixed the teddy and returned it at the conference.

Greta told another story where

A staunch young guy who thought he could rule the world was in tears as the old man talked about how the stuff that was stolen had belonged to his wife who had passed away months earlier and was the only things he had of her.

Sylvia remarked:

We focus on the victim to whom the harm was done, but one of the aspects for a facilitator to realise is the biggest restoration is what the offender has done to him or herself. That's when the genuine apology and breaking down [of the offender] in the process happens.

Dorothy A expressed it as: "When the offenders say sorry they really do mean it and their lives are changed at that point".

*I noted that Māori and Pākehā facilitators in this study did not use the words whākamā<sup>156</sup> or shame with individual offenders but focussed on remorse. An appreciative inquiry methodology may have precluded a discussion on the theme of shame and the sample of participants may have influenced a lack of discussion on shame.*

*However, the process used by restorative justice practitioners may also have contributed to this lack of emphasis on shame. In the criminal justice system in Aotearoa/New Zealand offenders only enter a restorative justice process after they have pleaded guilty in a court hearing, so they have already been subjected to a form of public shaming. As well, the offender admits their wrong doing to the person(s) who support them in the restorative justice process. Then, in the pre-conference meeting the offending is discussed with the facilitators and support people and the*

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<sup>156</sup> The word 'whākamā' is a complex construct and can also denote shyness, embarrassment or feelings of inferiority.



*causes of the offence are explored. Facilitators move on to address the outcomes of the shame-inducing action, look for remorse and focus on an offender's willingness to repair the harm they have done.*

*Pacific facilitators recognise that the court system does not deal with the collective nature of Pacific peoples' shame, so they address collective shame in a restorative justice process when Pacific people are participants.*

*The process used and the strong support given to offenders in the restorative justice process may mean shame is not experienced in this country in the same way as in other countries. Offenders report that it is the experience of the face-to-face encounter with the victim and facing the consequences of the harm they have done that has a major effect on their attitude and actions to future offending. It could be that the restorative justice process used in this country, particularly the support given to the offender, has shifted the emphasis from the helplessness of shame to the next and more motivating emotion of remorse discussed above.*

## **Importance of learning**

Restorative justice practitioners in this study stated that they valued the way being a restorative justice facilitator gave them the opportunity to learn new ideas, and they recognised the importance of continuing their learning for the whole of the time that they practise. Heron (1999) claimed that ongoing professional development would continue a practitioner's learning, and maintain a high standard of facilitation.

Margo affirmed this, saying that debriefing with her co-facilitator after a conference and supervision with her supervisor had so much learning in it.

"That's exciting because it's a chance to learn and grow and do things

differently so I'll be a better facilitator – more skilled.”

A principle of the draft *Restorative Justice Standards Code of Ethics*

(Restorative Justice Aotearoa, 2010) is “ongoing learning & development of coordinators, facilitators and panel members” (p. 18). Ministry of Justice and Restorative Justice Aotearoa have assisted this by instituting a system whereby designated assessors, who have undergone appropriate preparation to undertake the role, evaluate the competency of facilitators, including their on-going learning.

Research participants were also aware that in a restorative justice process there are opportunities for learning for victims, offenders, and their support people. A number of facilitators observed that for an offender to face their victim was difficult, but that very action seemed to be what caused the offender to learn about the effects of their offending and to want to change their behaviour. Thomas told of a young woman who had been to court several times for shoplifting but nothing had changed. However, when she was confronted by the shop owners and apologised to them, she was completely overwhelmed by the experience. To his knowledge she never stole anything from the shop again.

But the restorative justice process itself can be a learning experience for all restorative justice conference participants. Marlene reported that after a conference an offender said: “I need to go and do this with my own family”. He could see that the repair and healing he had experienced himself could also be

experienced in his family. As well, many of the facilitators reported that they modelled restorative justice practices to their own family members and then saw those practices being used in the family – even by teenagers.

## **Training**

Facilitator training is the place where the importance of learning is most obvious. In one discussion the issue was raised of whether restorative justice would be enhanced if everybody undertook more formal training. Facilitators came to the conclusion that this would not necessarily be so, and that while all facilitators need practical skills, not all needed highly theoretical knowledge.<sup>157</sup>

## **Debriefing and supervision**

The restorative justice practice of face-to-face debriefing and feedback that occurs as soon as possible after a conference assists facilitators to continue their learning and to operate intentionally and consistently at a high level of competence. Debriefing allows “the facilitator(s) to review the conference, note concerns and follow up critical incidents” (Restorative Justice Aotearoa, 2010, p. 20). Thus, substandard practice can be addressed and rectified before it becomes entrenched, and effective practice can be reinforced. The Ministry of Justice facilitator course devotes a whole module to training facilitators to “give and receive feedback that is objective, useful and complete” (2008b, pp. 2, module 5). The issues raised in debriefing that relate to practice or training

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<sup>157</sup> See p. 385 for this discussion.

needs are relayed to, and addressed by, the provider group, as required by the Ministry of Justice.

Facilitators clearly considered debriefing a significant practice, because all five focus groups spoke of the importance of debriefing in improving their facilitation skills. Margo said that she found that in her working life she did not have much opportunity to get accurate feedback on her performance so she really appreciated it in her restorative justice work. Marlene spoke of debriefing as helping facilitators to grow but also “pruning” them when that was needed to improve their facilitation.

Debriefing following a conference is judged to be more beneficial with accurate feedback from a co-facilitator. Vivienne said:

You have someone else that you discuss the situation with, you debrief, and find out what's going on for them and often I'm fascinated with how I will come from my perspective and my co-facilitator will come from a totally different perspective. And I think wow because it just stretches my mind to see from their perspective – and they say the same thing to me.

Professional supervision is also a requirement for all restorative justice facilitators working in the criminal justice system. The *Restorative Justice Provider Accreditation Competency Standards* (Restorative Justice Aotearoa, 2010, p. 18) state that “all facilitators and coordinators will have regular supervision”. According to section 9 of the *Code of Ethics* (2002) of the New Zealand Association of Counsellors, the purpose of professional supervision is for practitioners “to reflect on and develop effective and ethical practice”.

Facilitators who had previously received regular professional supervision viewed it as a very helpful and significant part of being an effective facilitator.

## **Voluntariness**

Voluntary participation is one of the principles of best practice for restorative justice processes in criminal cases: “Restorative justice processes are underpinned by voluntariness” (Ministry of Justice, 2004, p. 11). Facilitators in the focus groups were very clear that effective practice required handling the voluntary participation of victims and offenders in the restorative justice process with great skill, so neither victims nor offenders felt pressured into engaging in it. Facilitators reported that frequently victims’ families think restorative justice is a soft option for the offender so they almost immediately want to say no to participation in the process. So, as Tania reported: “it’s being able to have the skill to say can we just come and talk to you about it, you can still say no, but can we just come and talk about this and how it could benefit you – not the offender, but you”. Discovering that restorative justice is for the benefit of the victim encouraged their participation.

When participants chose not to go to a conference it was sometimes difficult for the facilitator to decide whether just to accept that decision or whether to attempt to persuade the participant to change their mind. As Dorothy M said, it is “being able to decide when enough is enough – have I over-pushed, have I done too little, when do I stop?” A facilitator’s perspective is that a conference would be a wonderful thing, but if a victim does not want to go down that line –

for whatever reason – the facilitator is required to be ethical and gracious enough, to think that they have acted appropriately and accept non-attendance.

All participants in a restorative justice conference are present because they have chosen to attend and this is especially significant for offenders. Philip expressed the opinion of the majority of facilitators when he said making it “voluntary is really, really important. That distinguishes restorative justice from everything else, because if people come to an agreement [in a conference] then people outside the circle must know that it's not something that's been forced on people.” Furthermore, when decisions are made at a conference by offenders who have chosen to be present and participated fully, the decisions are more likely to be put into action than if they had been imposed on an unwilling person.

Facilitators acknowledged that some offenders enter into the restorative justice process because their lawyer said it would be a good idea, but this must become a willingness to engage fully in the process before a conference will be convened. Effective facilitators at the pre-conference skilfully assess the offender's voluntary willingness and suitability to meet with the victim.

Another aspect of voluntariness that is often a topic of conversation among restorative justice facilitators is whether facilitators should be volunteers or professionals.<sup>158</sup>

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<sup>158</sup> This is fully discussed in Chapter 9, p. 282.

## Context – community

According to Wardale and Thorpe (2008) there are four clear stages that are significant for effective facilitation: planning, intervention, immediate outcomes, and implementation, but these all operate within a context which is the foundation for the whole process. The community is very intentionally the context of the restorative justice process. As Zehr (2002) stated, this is because “restorative justice understands crime first of all as harm done to people and communities” (p. 22) and the restorative justice process aims to repair, as far as possible, the harm done to them.

In restorative justice practices, definitions of community vary. In Aotearoa/New Zealand most court-referred restorative justice facilitators would consider the support people for the victim and offender, who have been personally, directly affected by the offending, as the community to be involved in the restorative justice process. In community-managed processes it is generally members of the wider community, such as panel members without personal involvement. Facilitators are sometimes seen to be the community representatives. However, the broader the community involvement in the restorative justice process, the fuller the repair and restoration experienced in the community.

Kate claimed: “It’s all the peripheral people in the community that are affected by something like that too and they all have their own little piece of the picture.” Hone declared: “It’s gains all the way around when restorative justice comes together and works properly – there are gains for the victim and the offender,

their families, and the whole community.” Thomas said: “I see restorative justice as having huge potential to change disharmony into harmony within the community and for individuals.” However, such outcomes are not achieved without effective facilitation.

Mike supported this when he described the restorative justice process as going “against the culture of retribution, judgment, and blaming. We are putting that aside for something that we think is more important – we’re going for healing and for moving people on”. Peter then added:

In restorative justice it's really apparent that inherently the human beings that we come into contact with don't come in keeping the intention of revenge for very long. Most of them become very conciliatory. And to me what it feeds into the community is the fact that at a direct human level that's how we operate. Somehow as a system we've lost sight of that.

Restorative justice helps restore interpersonal and family relationships and this contributes to the health of the community. Tania said: “Being able to help families mend their relationships has got to be good for our communities. I think that's one of the most important things restorative justice is contributing to our wider community.”

Involving the communities of the victim and offender in addressing the consequences of the offending is in stark contrast to the individual approach of the criminal justice system, and facilitators need to be aware of the context in which they operate. Anne claimed that restorative justice “has taken justice out of the court and is making it fair for the people in the community”. Margo



provided a definition for community when she declared “when you say the restorative justice community I think of facilitators and others but it isn't really, it's really the people who are involved as clients and offenders and victims – they are part of that community”.

Facilitators intentionally foster community support for victims and offenders by conducting restorative justice processes in venues that are convenient for the participants. An example of this was provided by Anne who was excited about what happened in a restorative justice conference on a marae. She stated that restorative justice works all over the world and

everyone can be involved regardless of language, the culture and everything. That's one example of something that gets me greatly excited. What made it exciting – the creativity made it exciting for me. Who was involved – everybody, everybody who was concerned, even the ones in the kitchen were. And how did I feel about it? I felt like dancing!

## **Quality practice**

Eldon (KI) defined this:

I would say quality practice is facilitating a process that allows for – whether it reaches conference or not – that allows the victim to feel that they've gained something of benefit, whatever that may be. That someone listened to them, or whatever, and that ideally the offender's gained something from it . . . if those who have been involved in the process come out of it grateful for having been involved in the process . . . then I think the facilitator's done their job.

Fred (KI) stated that quality practice is demonstrated by a facilitator “who is alert

to possible abuse of the process, abuse of other people's rights, or bullying, and can intervene in a helpful way to stop that”.

Provider groups would see one of their tasks as supporting facilitators to maintain best practice standards. This would include debriefing, so facilitators can learn new skills, improve existing skills, support and challenge each other to improve their practice, and have their minds clear to take on the next case.

Greta said:

I appreciate the fact that we have systems in place and procedures for best practice for our group and particularly the fact that the victim focus of the restorative justice process is emphasised in every monthly group gathering. In my group I value the fact that as the only Pacific Island facilitator in the group that we do work together and there's a lot of respect for our Pacific Island community when we are working on a referral with my colleagues.

Provider groups each decide their own system for allocating cases to facilitators. Normally, facilitators are given the opportunity to work with a variety of members in their group and when groups take in new trainees they pair them with more competent facilitators to gain experience and improve their practice.

However, there are many things that contribute to quality practice and a prime one would be the selection of restorative justice facilitator trainees who have personal presence, and the capacity to develop appropriate awareness, skills and knowledge. The Ministry of Justice and Restorative Justice Aotearoa are the institutions which oversee the establishment and maintenance of best

practice standards for restorative justice practitioners and recognise that facilitator training builds on what trainees bring to their restorative justice work, hence their development of the *Restorative Justice Facilitator Selection Toolkit* (Ministry of Justice, 2007a).

*Having been involved with developing the restorative justice training manuals and assisting with training sessions, I have attempted to assess what quality practice is and how it is achieved. I consider that the provider group to which I belong does provide quality practice consistently and I think one of the things that enabled our group to operate at a very high standard is that all of us come with literally decades of relevant expertise from our previous experience. With that background, and a week's training, and then on-going learning, a high standard of performance can be achieved and maintained. I think it is when people don't have that prior experience that ineffective practice may result.*

Tim (KI), who is a facilitator trainer as well as a facilitator, observed that “in terms of quality facilitation I just think I'd add that good quality process has the potential to build more good quality process and build momentum”. However, he was concerned that good quality process was getting lost. In particular he was referring to changes made by the Ministry of Justice in 2009 which affected facilitator practice. He remarked:

I'm seriously wondering at the moment that the compromise model that's being applied and the lack of understanding of what works in restorative justice and the lack of collaboration between practitioners is going to put us in a position where restorative justice falls over . . . my fear is that right now there is the potential for RJ to go real bad and everyone will say it's just a complete waste of time because it doesn't achieve this, when what we are talking about is the compromise model that conflicts with the

standards etc rather than the just fantastic restorative justice.

However, it is not only facilitators who recognise the quality of the restorative justice process. Hone reported that at the end of one conference the participants congratulated them on their professionalism and affirmed us on “how slick we were in the work we did!”

### **Wise scepticism**

One of the criticisms levelled at restorative justice and restorative justice facilitators is that it is a process that offenders can use to gain lighter sentences than would otherwise be appropriate for their offending. A corollary to this is that restorative justice facilitators are soft-hearted, gullible people who do not have the experience or the understanding of offenders to recognise when they are being duped. However, an effective facilitator “accurately reads people’s moods, feelings, and nonverbal cues” (Ministry of Justice, 2007a, p. 11) and would listen to what offenders and victims said, and how they said it, with an appropriate amount of scepticism. Facilitators in this research routinely assessed the consistency of the information given to them and looked for evidence that it was an accurate picture. Tim (KI) provided a model when he remarked that he had learned to relate to prisoners “and not buy into the whole bullshit, but actually kind of respect and love them as people”. Peter reminded the facilitators that “there are some people in the prison system who you wouldn’t want to see walking the streets” so they needed to make sure they were not taken in.

Facilitators reported that it is not easy for an offender to face their victim. Danni observed that “for the offender it's really nerve-racking and they can have several sleepless nights beforehand”. Anne reported: “The offender said this was the hardest thing he had ever done in his life. He said it before [the conference], he said it during the breaks, and he said it afterwards”. Dave added: “After the conference was completed I had a chat with him and he said going to court and facing the judge would be a piece of cake after facing the victim”. Tania’s comment reinforced this. She said: “It would have been easier for that person, I think, to have done three months in jail than to have to face so many people and face what happened”. Facilitators were aware that such comments could be just words and looked for congruence between offenders who said they were afraid and what they demonstrated as they faced their victim. If the offender shook with fear, had fear showing on their face, and had the odour of fear about them, then their words and their physical demeanor matched up.

## **Summary**

Effective facilitators should be aware of who they are as persons, how they impact on the people they work with, and how they can maintain themselves and their practice at a high standard. This chapter also discussed how facilitators need to be aware of where restorative justice fits in the legal system and the community; of the needs of victims, offenders and supporters and the complexity of these relationships; of the issues of voluntariness; of working with

different cultures; and how to be wisely sceptical.

The next chapter will examine facilitator skill.

## Chapter 9: Skill

The task of a restorative justice facilitator, according to Peter, is: “creating an opportunity for people to come together and have conversations”. This sounds like a relatively simple undertaking. But in fact, the effective facilitation of a restorative justice process, and particularly a conference, is a highly skilled task and requires the facilitator, as well as having personal presence and awareness of the context in which they live and work, to be proficient in a number of specific and practical skills which are discussed in this chapter. Skill is defined as “expertness, practised ability, facility in an action; dexterity or tact” (Deverson & Kennedy, 2005, p. 1057).

### Facilitating skills

Wardale and Thorpe (2008) stated that much of the literature on effective facilitation focused on facilitator competencies and attributes and cited them as crucial to the facilitation process. They claimed that “facilitator attributes suggested by the literature may be grouped under the following terms: neutrality, humility, flexibility, sincerity, professionalism and awareness” (p. 50).

The Ministry of Justice “Facilitator Person Specification” in the *Restorative Justice Facilitator Selection Toolkit* (2007a) listed the following as the essential skills and attributes that an applicant must have to be selected by a provider group as a potential restorative justice facilitator: collaborative, empathetic, nonjudgmental, organised, flexible, thinks analytically, emotionally mature,

effective verbal communicator, culturally aware, effective written communicator, ethical. Additional skills and attributes that are desirable are: conflict management, offence victim/offender knowledge and skills, community links and knowledge, and experience of Courts/legislation (pp. 11-13). It would seem that the Ministry of Justice considers that a practitioner with the above skills should, with training and experience, become an effective facilitator, able to perform the wide range of tasks required by a restorative justice process.

Focus group facilitators used the following words to describe appropriate skills:

- Preparation
- creating a safe environment
- establishing and maintaining rapport with co-facilitator and conference attendees
- able to follow a trusted process
- sensitive to the vulnerability of participants
- willing to listen
- good communication
- able to demonstrate good life skills
- able to initiate person-to-person connection and help people understand the other side of the fence
- able to work across cultures
- able to relate to a wide range of people
- unflappable, unstressed, unshockable
- likes challenge
- reliable
- willing to share
- able to write a professional report for the judge
- able to admit mistakes
- address gaps in knowledge
- give and receive feedback on own and colleagues' practice.



Such a wide range of skills is needed because the groups that are facilitated in a restorative justice conference are more complex than, for example, personal growth or specific task groups. The groups that facilitation theorists write about (Gregory, 2002; Heron, 1999; Hunter et al., 1999; Schwarz, 2002) are usually relatively homogenous groups which have a common purpose – whether it be a task to perform or some learning they wish to achieve.

*My analysis of restorative justice conference participants is that they are usually in completely opposed stances, being:*

- *either the party that has been harmed by an offence or the party that has perpetrated the harm – intentionally or unintentionally*
- *at opposite ends of the socio-economic-educational scale*
- *totally unknown to the other party, or having a long and close association with them*
- *verbally astute and accomplished or verbally impoverished*
- *proficient in English or having English as a second or other language*
- *emotionally literate or emotionally illiterate*
- *from different cultures – the values and customs of which may not be understood by the other party.*

*Because facilitators have to incorporate one, or sometimes many, of these diverse characteristics into what is already an intricate facilitation task, a very high level of performance is required of them if they are to practise effectively.*

The list of skills in the *Facilitator Person Specification* (Ministry of Justice, 2007a) cited above is comprehensive, but finding people who possess such skills has, from my knowledge, been achievable since the restorative justice

pilot scheme was launched in 2001. However, many more people have been assessed as suitable, and trained as restorative justice facilitators, than have remained to become experienced restorative justice facilitators. Clearly, having the required skills is important, but more than just ability is necessary to grow an effective facilitator – as the data discussed here demonstrates.

## **Professional**

Restorative justice facilitators talk about being “professional”, but this term can have more than one meaning. For some facilitators, being professional is the opposite to being a volunteer and means being a full-time facilitator having a career in restorative justice. For other facilitators, being professional is a description of the way a facilitator works within the best practice guidelines, code of ethics, and competency standards accepted by the restorative justice community – regardless of monetary reward.

Some restorative justice facilitators and administrators want there to be a move away from the current voluntary service and there are a number of reasons for that. One of them is that restorative justice is frequently seen as a community-initiated service and therefore not really professional. Although, as Wendy declared: “the values of professionalism of the facilitators are of the highest standard”. There was a chorus of agreement from her listeners.

The aspect of voluntariness that two focus groups debated with great fervour is whether restorative justice facilitators should be volunteers or professionals. At

present facilitators are actually part-time volunteers, and facilitators who support being full-time professionals claim that both facilitator effectiveness and the restorative justice system would benefit. Facilitators who supported continued volunteerism feared that the passion for restorative justice, which they saw as being a necessary component of effective facilitation, could be lost. Jacob stated:

I've been quite interested in my two years on the national executive to try and professionalise restorative justice in the sense to try and get it paid appropriately so people can think of it as a career and conduct themselves as full-time or permanent part-time practitioners. So there is a conundrum for me as to whether the two can go together – can you both have it resourced and have the values that are expressed?

Wendy observed:

What struck me when we went through the training is that there was a major split at the end between those where the monetary value meant the most and those who had the values for restorative justice. . . . It was mostly the men who wanted the money and they didn't think the money was enough. It's interesting to note that it's only those who had the core values and the heart of restorative justice values at the foremost that are actually still in it today.

Karen added her thoughts about the issues:

We may in our other lives be very successful career people and have quite a hard-hitting attitude towards that, but because we share these values and this passion, and this enthusiasm, it means that when we come together in the restorative justice field we put ourselves on the outside and we put the values of restorative justice and what we can accomplish

together and all these other things we talked about, on the inside. To me that's what makes the difference between an RJ grouping of people and any other grouping of people.

Marlene, from another focus group commented:

It's very cool to be in a space where you have a belief in: one, what we do, and two, to be able to portray that to the people in the room as we talk to each other. We couldn't do this if we were only doing it as a job.

Eldon (KI) said that he could see merit in having many facilitators and spreading it as wide as possible but he could also see merit in developing a real elite group of practitioners that fit alongside, or within that broad base of facilitators, because it's obvious that you get better the more you are doing something.

Thomas:

I actually think that having volunteers doing it is a strength of the system. Because I think that if you simply employ people to do it as a job then people would have perhaps vested interests in ensuring it worked a certain way, or it got a certain outcome. And I think that having it as a voluntary endeavour – the people who do it, do it because they are passionate about the process.

There was recognition, though, that more than passion is needed and that not all volunteers with passion meet the necessary standards of practice. There was some agreement that the basic training and qualifications of facilitators needed to be consistent and at such a level that judges and lawyers, in particular, could respect restorative justice as a valid part of the criminal justice system.

*From my knowledge of the participants some of the difference of opinion between those participants who wanted restorative justice facilitators to be full-time professionals and those who preferred volunteers, could be due to their different backgrounds. The people who wanted facilitators to be volunteers were people who already had many years' experience in the areas of education and counselling and did not require more than brief training to feel they were proficient restorative justice facilitators. They were also aware of some of the negative implications of facilitators being full-time professionals. For instance, facilitators who were fully paid, and had a time-defined position, might expect victims and offenders to fit around them rather than the facilitator responding to their needs. Facilitators also wondered how facilitator holidays and the on-going requirements of cases would fit. On the other hand, the people who wished that facilitators would have more extensive training and be full-time professionals did not already have a background in counselling, facilitating or working with volunteers and were possibly not aware of some of the implications outlined.*

### **Accountability and funding**

One focus group had a discussion about facilitator accountability. Dorothy M pointed out that restorative justice facilitators are basically volunteers who get their expenses paid, but they give an extraordinary amount of time and energy to a system which is so helpful to the people in New Zealand – not only for those who go through the restorative justice system but the rest of the community as well. A restorative justice process impacts on society because of the changes that occur in the participants and in the savings made when offenders are not given a custodial sentence. Dorothy M added: “We mask it all because we’re kind and they [the government] don't want to pay us much and here is a group of people doing the work.”

Alison (KI) observed: “I do think to survive and become professional – and some practitioners say they want it to become a more professional field – then they’ve got to accept that professional rigor is about being tested, and not hide behind ‘it’s magical’”. She said that initially assessment was done separately from training because some of the trainers felt it was not part of the restorative justice ethos. Alison added that she comes from a background that says if you are delivering training you assess the trainees because otherwise, how do you know that you've actually managed to train people.

The Ministry of Justice *Restorative Justice Facilitator Selection Toolkit* (2007a) contains a section on maintaining professional standards, which are listed as:

- understand and follow provider-group policies and procedures including matters such as confidentiality and safety
- maintain knowledge about changes and developments in restorative justice in New Zealand
- maintain knowledge about community resources
- attend meetings and/or training as required by local provider group (p. 9).

Practitioners who saw that their professionalism undergirds and guides them

- had an understanding of the principles and practice of restorative justice
- had a sound rationale for how to put those principles into action as a restorative justice facilitator
- were able to analyse what occurs as they facilitate and choose the appropriate action to use from the principles and practices
- work within an ethical framework
- were able to facilitate what the conference participants want even though it may not be what, as facilitator, they would choose for them.

Facilitators considered that the training they received was both very important and very useful for their professionalism. For example, Gayle quoted an instance where conflict between family members resulted in one of the participants challenging her facilitation and she told of how the training enabled her to deal with that issue in an appropriate manner.

## **Facilitation**

The facilitator and their facilitation are, according to the United Nations (United Nations Economic and Social Council, 2002) the key to the restorative justice process. However, facilitating a restorative justice conference is a complex process. Jacob illustrated some of this complexity when he reported:

I sometimes look at the participants and I have a prediction about how the conference is going to go and what's going to happen and I am constantly amazed at how it goes in a different direction and things come out that I had not thought of. And often after a conference I have a quite different idea of the people than I had from the pre-conference.

The intricate conference process requires considerable skill and Heron (1999) compiled a comprehensive list of basic skills that are appropriate for use during the duration of the restorative justice conference itself.<sup>159</sup>

## **Engaging victims and offenders**

There are many skills that restorative justice facilitators need to have in their

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<sup>159</sup> See p. 67.

kete (basket) to use as appropriate in their facilitating. Initially, the most important one is the skill of engaging victims and offenders to enter into the restorative justice process, because unless these principal participants agree to be involved, the process cannot proceed any further.

*Data about what encourages victims and offenders to accept the initial invitation from facilitators to participate was collected by the Crime and Justice Research Centre (2005). But there appears to be no data about whether experienced facilitators are more successful than inexperienced facilitators in engaging victims and offenders. Some members of the restorative justice community in Auckland believed (erroneously) that the high rate of success of getting cases to conference demonstrated by St. Luke's provider group was due to the group having one highly skilled and successful person making the initial contact with all their victims and offenders. This was actually not what occurred, and in fact all facilitators in the group contacted the victims and offenders they would subsequently work with to invite them to participate. But the belief does indicate that facilitators recognised the importance and the place that skill and experience play in this vital initial contact.*

The Ministry of Justice also recognised the importance of the initial contact and Module 7 of the *Restorative justice facilitator induction training* (Ministry of Justice, 2008b) is devoted to teaching the skill of making face-to-face initial contact. Pages 6 to 8 of the module give an example of what might be said by the facilitator, and the rationale behind the words. Experienced facilitators often discussed what they said in this initial contact – especially when there were trainees or newly trained facilitators present. This first contact is clearly very important, especially with the victim.



*There is no evidence about what proportion of conferences does not go ahead because the victim chooses not to do so. My experience, and that of my provider group colleagues, has been that there are a number of reasons why victims choose not to participate in the process. These include reasons such as that the offence occurred a long time ago and the victim has moved on and does not wish to go back into dealing with what happened, that they are too scared to face the offender, that they do not wish to be identified to the offender, that they do not see benefit for themselves in the process. On the other hand, most offenders are willing to engage in the restorative justice process because having come through the criminal justice system they have already pleaded guilty to the offence and they have some awareness of the potential benefits for themselves.*

### **At the conference**

Once the participants have been engaged, other skills are required. Phil (KI) considered that effective restorative justice facilitators have the skills to prepare thoroughly and set the process up well, to connect well with participants, telling them what's going to happen and making sure that they will turn up to the conference. At the conference itself skilled facilitators will be totally honest, let the participants know exactly what's going to happen, understand people, understand the dynamics between them, remove the tensions and make people comfortable to talk to each other, and notice if there's any bullying going on.

June (KI) said that the skill of plain talking and being very upfront with people is an important attribute for effective restorative justice facilitators to have. For Alison (KI) the key thing was whether the person could stay in the moment with the process. This was the subject of a study by Shaw and colleagues in 2010 entitled: *In the moment: An analysis of facilitator impact during a quality*

*improvement process*, which examined facilitators' decisions.

Tim thought one of the things there was the potential to do in restorative justice was for practitioners to create a good environment and build good relationships with the people they work with, and use good skills to create a safe environment for them. Hone claimed: "Of course, the best part is seeing the healing and the restoration that happens for both parties".

### **Co-facilitation**

In many restorative justice cases in the criminal justice system the role of facilitator is shared between two or more people. This is termed co-facilitation. The *Restorative justice facilitator induction training* manual (Ministry of Justice, 2008b) states in Module 10, page 3, that the facilitator of a victim-offender conference will work with a co-facilitator. All the facilitators in this study regularly worked in pairs and if there were multiple offenders or victims, additional facilitators could be added to the facilitation team. Also, if there were ethnic, gender, disability or other special circumstances, an appropriate mix of facilitators could be provided by a team. In some conferences the participants were members of the same family so there were a number of additional factors that had to be dealt with by the facilitators, for example, family rivalries, or family history that may have a positive or negative influence on conference interactions.

All the focus groups regarded co-facilitation of restorative justice conferences as

a positive practice. Facilitators who had been teachers or counsellors spoke of how much they enjoyed working with a co-facilitator instead of being in sole charge. Margo noted: "The other thing I have found exciting is the opportunity to work with a co-facilitator." Facilitators said having two minds to listen to the participants' stories, to analyse the material that is presented in them, to notice what is going on between the participants, to share the responsibility of the case, to have someone affirming what you are thinking, to make sure that the steps of the process are followed are advantages of co-facilitation. Jacob revealed that he liked having the opportunity of working with somebody as a co-facilitator and, as a new facilitator, not having to go straight in being a facilitator on your own – having that backup and support. Gayle liked "doing the facilitation as a joint thing because sometimes when you're facilitating you may forget something that's quite important and you share the burden and the responsibility". Dorothy M affirmed this.

Co-facilitation was not just a positive experience for facilitators. It also enabled the offender and supporters, and victim and supporters to meet separately during the conference because there was a facilitator available to meet with each group. It was suggested by at least two facilitators that the interaction demonstrated by co-facilitation provided a model of relating that participants copied – at least during the conference. Co-facilitation might be two trained facilitators working together as equals, or one experienced facilitator working with a trainee facilitator (Hunter et al., 2007, p. 31).

Tania talked about a conference where it was necessary to have five facilitators, as there was one offender and three groups of victims who all belonged to the same community. The facilitators conducted pre-conferences with each of the groups of victims and then arranged for a full-day conference. Tania said they were able to debrief and re-brief each other during the breaks they had. All participants had an opportunity to say what they had held in for so long. Tania reported: “As they went around one-by-one talking, you could almost see it lifted off their shoulders. And at the end of the day people seemed to be so relieved that they had had the opportunity.”

Mike declared:

I think if you are doing it on your own you are putting too much at risk. It provides balance having someone else – when you have two totally different views on things – my co-facilitator provides the check and balance for me. My co-facilitator provides reinforcement for me.

During their preparation for the case, co-facilitators will discuss how they will work together and which one of them will be responsible for the tasks that need to be done. An important aspect of co-facilitation is a post-conference debrief in which the facilitators discuss how effectively they have worked together. The *Ministry of Justice Training* manual (2008b) has a section on debriefing.<sup>160</sup>

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<sup>160</sup> See Debriefing and supervision, p. 267 for my discussion on this topic.

Advantages of co-facilitation include having two people using their training and expertise to plan and facilitate the process, and having two people monitoring and attending to the participants. Martin (2003) discussed the disadvantages of co-facilitation: it is more expensive than with a single facilitator and it takes more time and organisation to coordinate two facilitators to plan and run a process. Phil (KI) supported co-facilitation as best practice: “I think it's far better to have two people if possible, as it's someone watching and helping”.

## Communication

Communication is a basic, fundamental skill used in and required for effective facilitation. Wendy claimed: “I would have said that facilitation is the conduit to communication.” She continued:

Being able to demonstrate through your facilitation that no matter where you come from you can still respect other people. So you are actually teaching them by making them listen, and there are different parts to the process. In restorative justice you can actually teach respect as well as communication within a conference.

A potent aspect of the restorative justice conference is that victims and offenders face each other and communicate directly with each other. However, communication and communication skills as such were not specifically discussed by the facilitators in the focus groups, but were understood to be the foundation for all their work. The *Restorative justice facilitator induction training* (Ministry of Justice, 2008b) does address both written and verbal communication. Module 1 defined effective verbal communication as “the ability

to effectively convey and exchange information or feelings with others, both in one-to-one and group settings (p. 45).

Perema talked about how he also used his body language in his facilitating. He said:

there is always a part in the process where both parties want to speak and you can't control them with words – you just have to use your body language and even just a hand signal will do it. . . . You can just put a hand up which is nice and gentle and pacifies the person and lets them know that their turn will come and allows the other person to speak.

The aspect of communication that was discussed in all the focus groups was that of the skills required when working with groups that contained participants for whom English was a second or other language. It is what the *United Nations Handbook on Restorative Justice Programmes* (2006) listed as a basic skill required of facilitators: “Communication skills (including special language skills, when members of minority groups speaking a different language are often involved)” (p. 65).<sup>161</sup>

Facilitators were also very aware that their task at all stages of the process was to allow space and provide encouragement for participants to communicate. Karen observed: “It's the chance for things that may never have been said, that in other situations never would be said”. It is enabling this to happen that indicates good communication.

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<sup>161</sup> See my discussion on Language p. 252.

## Intervention

Facilitators also use their communication skills to intervene when this is necessary in a conference process. The most obvious way of intervening is by speaking and this raises the question, often asked, of how does a facilitator know what to say? The answer is that they don't know in advance.<sup>162</sup>

*I suggest that this is particularly true of restorative justice facilitation, where no two situations are the same, and all victims and offenders and their supporters are unique individuals. Their particular situation, their interactions and responses will never be duplicated in another restorative justice process. Add to this the particular qualities that each facilitator brings – along with the growth and development that takes place after each conference they facilitate – and it is truly the practice of the action that results in effective facilitation.*

Tim (KI) considered it ideal for a facilitator to have counselling-type communication skills but also to be confident enough and integrated enough as a person to engage in personal interaction with participants.

## Listening

One part of communication is talking and another part is listening. As Hunter et al (2007) stated: "Listening is the primary skill of facilitation. The quality of your hearing will profoundly affect the group. Listening is active, focused and affirming. You listen for the whole group and for each person in it" (p. 78).

Facilitators listen without making assessments or judgements, looking to see

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<sup>162</sup> See discussion on p. 66.

how the group can be assisted to progress.

Eldon (KI) agreed and judged from his perspective as a Court Coordinator that

the most important skill of facilitating is the ability to listen and I think the facilitators who were the best listeners were the better facilitators. . . . you can see it in the conference report – they've allowed the conference to flow, and I think it's good facilitating to allow the participants to own the process and therefore own the outcomes.

Hone observed:

The thing that I find great is when we go and introduce ourselves. We sit down and the story just pours out and we're just sitting there – we haven't even started anything! So we just sit and listen and when they run out of words we start. It's amazing! They tell you the real personal stuff. Yes it's good. Well, it's a privilege actually.

Other facilitators noted that when they got to talk to offenders, they often found that they were the very first independent and neutral person that the offender had spoken to who has listened to them. This in itself is therapeutic and helpful to them as they move forward.

## **Confidentiality**

Confidentiality is one of the most critical elements of the restorative justice process. The concept of confidentiality as total privacy of information which assured participants in a conference that what they said would not be shared outside the four walls in which they were meeting, is not appropriate for a restorative justice process. The report from the conference that goes to the



judge and court officials<sup>163</sup> is expected to include significant quotations from victims and offenders, and a judge may refer to the report in open court. Thus, confidentiality in a narrow sense could not be guaranteed and it has largely been abandoned by restorative justice facilitators and administrators.

Confidentiality is a term often used to mean the wise use of private information. The *New Zealand Oxford Dictionary* defined confidence as “the telling of private matters with mutual trust” (Deverson & Kennedy, 2005, p. 228). It is absolutely vital that victims, offenders and their support persons have trust in the facilitators, and in the process, and feel safe to reveal directly and honestly what actually happened, how they felt about it, and what they wish to have happen in the future, as they participate in the restorative justice process. Knowing that their intimate affairs will be kept private by the facilitators and other conference participants is essential to the security and safety of each participant, and to enabling full disclosure. Facilitators model confidentiality at the pre-conference stage. When they meet with a victim and the offender separately they do not – however tempting or helpful it may appear to be – repeat to the other party information which has been gathered in the separate pre-conference meetings.

There are occasions on which it is necessary or prudent for information from the

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<sup>163</sup> The national Restorative Justice Referral Process and Standards state a court report will be provided to the victim, court, and victim adviser. The Memorandum of Understanding with the North Shore Court states a copy of the report will be provided to the Police Prosecutor, victim, offender’s counsel and the Probation Officer if known.

conference to be given to parties not present. On such occasions “Information about what occurred during the restorative justice process may be disclosed to non-participants but only with participants’ consent” (Ministry of Justice, 2004, p. 17).

*However, what confidentiality is and how it operates in practice is open to personal interpretation. An example of this arose in one of the focus groups when I, as facilitator, in congratulating a group member, disclosed information about their actions which another group member considered I had been given in confidence. He confronted me after the session about my action. My congratulations resulted in the discovery that the information, which had been given to me by three different people, was inaccurate. My action was helpful to the overall group process, but not to my relationship with the person who thought I had breached confidentiality. The situation also raised an issue about transparency, as the person who thought I had breached confidentiality considered keeping the information secret to be much more important than being transparent, even though the information had potential to be divisive in the group when it inevitably became widely known.*

## **Rapport**

Being able to establish rapport rapidly with the victim and offender is a vital skill for restorative justice facilitators. It is in the initial contact, often in a phone call, that facilitators either engage or fail to engage participants in the process. This is particularly so for victims who, until they are familiar with the process, do not know that the restorative justice process is primarily for their benefit. Offenders, on the other hand, before they are contacted by facilitators, usually have some information about restorative justice. The skill of establishing rapport in the initial

contact is the subject of module 7 in *Restorative justice facilitator induction training* (Ministry of Justice, 2008b) where trainees are given information about contact options and examples of what to say.

*The initial contact does not establish rapport for the whole process. At each stage of the process rapport needs to be established for that different piece of work. As well, at each of the stages of the process i.e. the initial contact, the pre-conference, and then the conference, facilitators are dealing with a different set of people and so rapport needs to be established with each group of people. However, when rapport has been established satisfactorily in the initial contact, establishing it again at the next stage is normally easier, though factors such as what else is happening in the lives of the participants, and how comfortable participants are with each other, will have to be taken into account.*

Hone described the results of establishing good rapport when he reported:

We go to their houses sometimes. When they're in their own home they're willing to open up and talk, they're not under duress, or any stress from being in the court. It's being able to meet that person and talk to them face-to-face, eye to eye, hongi,<sup>164</sup> kia ora,<sup>165</sup> and then have a rapport going straight away. Then we can get a picture of why all this has happened.

## Flexible

Perema described the restorative justice process as being quite structured but flexible. He said: "It's a process that is fair from my point of view for all parties".

A restorative justice process, at all stages, has a well-defined, tried and tested,

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<sup>164</sup> Salute by pressing the noses together.

<sup>165</sup> A greeting/hello.

suggested process to be followed.<sup>166</sup> However, facilitators reported that they follow the process because it works, but adapt it when a variation would better suit the participants. As Karen commented:

I think we can all think of cases where we have had to do things on the spur of the moment in a different way because if we didn't we would not be fitting in with restorative justice. And it's a really tricky balance that we do have a process which is really important to follow, but on the other side it's equally important that it is the participants' process and so I'm sure every one of us can find an instance where we have changed things over so that it stayed their conference, even if it didn't quite fit in with our rule book.

Wendy illustrated this when she described a conference which involved two different ethnic cultures each speaking their native language and bargaining as they were accustomed to doing in the countries from which they came. It was a highly successful conference because the facilitators allowed the participants to use the systems in which they were proficient to come to mutually acceptable outcomes. Karen added:

I was in a conference recently which had time out and the time out was actually because it looked as though it couldn't go any further. We looked at a slightly different direction and within five minutes of being back together in the conference it just went from going into a brick wall to going into something happening. It was quite amazing.

A facilitator following a formulaic process, or keeping rigid control of what was happening, would have failed to recognise and act on the points that indicated

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<sup>166</sup> See modules 6, 7, 8, and 10 in the *Restorative justice facilitator induction training* (Ministry of Justice, 2008b).

that flexibility was necessary in these cases.

Hone stated that another situation in which the facilitators need to be able to adjust is when the charges faced by the offender are adjusted during the conference process, and when facilitators discover that the offender is also a victim and the victim is also an offender in the same situation. Facilitators have found that the restorative justice process is flexible enough to cope with such a situation and that they are able to do in one conference what is actually two cases.

Flexibility is also required of facilitators in the variety of venues that they are required to find and operate in at both the pre-conference level and the conference level, while still maintaining the physical and emotional standards of safety for the participants. Pre-conferences are generally more informal than the conference itself and can take place where ever the participants feel comfortable.

Mike said:

The essence of restorative justice has an enormous amount of flexibility and if the process was to become too formal, too structured and too rigid, then restorative justice will lose what restorative justice is about, which is community, and participation by people such as restorative justice providers, clients and all that about it. If we become a process of the court system we will lose that. Then I think we would lose our effectiveness.

## Relinquish control

Fred (KI) defined an effective facilitator as “one who can facilitate without controlling, so can get it going and enable people to reach the point where they are actually taking control of the process themselves”. This requires the facilitator to relinquish control. In module 10 of *Restorative justice facilitator induction training* (Ministry of Justice, 2008b) the facilitator is informed: “Your aim is to get the offence victim and the offender engaged and responding directly to each other, so you play a backseat role” (p. 13). Usually during the conference participants do begin interacting directly with each other, by-passing the facilitator. Facilitators note this as a significant stage in a conference and there were many examples given. Kate described the physical changes that occurred. Chris described it as the line disappearing between the two sides. Jacob declared the stage to be when “they are able to talk openly to each other and just forget the fact that you are there. It’s having that emotional connection with being able to relate by themselves to each other”. Karen affirmed all this.

Thomas reported on a conference where members of the same family had had a dispute. He observed: “It started off with quite a lot of blame on the offender and gradually moved to a recognition that perhaps as a family there was some things they could do to actually improve their family relationships.”

Joanne concluded: “What I like about a restorative justice conference is that I am the person in the background. It hardly matters that we are there at all.

Because if we have pre-conferenced everyone very well they will run it

themselves.”

## Boundaries

Boundaries set the limits within which the restorative justice process operates.

The *New Zealand Oxford Dictionary* (Deverson & Kennedy, 2005) defines a boundary as “a point, line, or level beyond which something does not or may not extend or pass” (p. 644). It is vitally important that facilitators have very clear boundaries or limits for themselves, as they are required to set limits for participants at all parts of the process. Expressions of emotion, except for verbal or physical violence, are encouraged in conferences and a victim should feel safe to express freely how they felt as the offence victim. This is assisted by the ground rules or guidelines that are discussed at a pre-conference and set at a conference. Wendy observed:

I think the ground rules for restorative justice are to be respectful. When we discuss them in pre-conference the participants sort of look at you and think oh yeah, yeah, this is going to be a conference that's going to be controlled. But I think they are such simple rules.

Marlene said that people are willing to come to conference because they know that if they talk, everyone there is going to listen to them. And they know that if they are going to lose it or feel frustrated they can ask for time out and we can find out what's going on for them.

Marlene continued, to talk about another boundary:

Whoever comes to the conference needs to be pre-conferenced so that

everybody knows what they're coming into and on conference day everybody knows what's happening. Even though at the conference we remind them about the ground rules . . . It helps people feel safe.

Having secure boundaries for all participants allows facilitators to let the conference process develop a life of its own and just take off in the direction that is appropriate for the participants.

Another boundary for both facilitators and participants is the completion of the case when the relationship that has been built up needs to end and the facilitator must walk away. At times it is not clear exactly where the restorative justice process finishes and where the facilitator's sense of responsibility ends. This has been a lively topic of debate among facilitators. When discussing this Mike argued that

you need to determine what your role and function is. If you overstep that boundary and then start taking on the social work aspects of it you are going into an area that I would tend to suggest you have to be extremely careful.

His listeners agreed with him.

## **Balanced impartiality**

In facilitation it is generally accepted that the facilitator, the person in control of the process, will be even-handed and not side with one party or the other.

Heron (1999) considered that there were three ultimate guiding moral principles of facilitation and that one of these was the principle of impartiality – giving



equality of consideration.<sup>167</sup> Marshall (1999) agreed that this principle was appropriate for restorative justice practitioners and that part of the role of their training was to ensure that they could fulfil the role as an impartial or neutral party. However, other theorists accepted that in the restorative justice process, which claims to be victim-centred, a compromise of neutrality was inevitable. Bowen, Boyack, and Hooper (2000) commented that “practitioners should aim to be sufficiently neutral and impartial to a level that would satisfy the participants’ perception of fairness and justice” (p. 101). Alison (KI) talked about this and stated: “I can remember us talking about balanced neutrality, rather than impartiality – recognising that . . . to be a good facilitator you needed to connect with people but that there was a balance that needed to be struck”. Van der Merwe (1998) claimed that facilitators may act as a change-agent and make partisan interventions to empower the weaker party.

*The participants in a restorative justice situation come from a position of inequality, with the victim being the person who has experienced harm and the offender being the person who has caused harm. So, to act on the principle of impartiality is to perpetuate the inherent inequality present and this is not appropriate in a restorative justice process where the aim is to redress the inequality and restore relationship. To restore balance the person harmed needs to have the harm healed, and the person who has caused the harm needs to take responsibility for their action. Thus a more appropriate guiding principle for restorative justice facilitators would be a principle of balanced neutrality.*

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<sup>167</sup> There is a fuller discussion of this issue is on p. 57.

Facilitators in their conversations generally focused more on equity of experience for cross-cultural participants than of equity of experience between victims and offenders, but in their descriptions of their restorative justice facilitation balanced neutrality was implied. Dorothy M expressed it as “I just try to achieve the goal of restoring the balance that's just been kind of moved around”.

The *Restorative justice provider organisation, accreditation, competency standards and organisational requirements, provider and assessor accreditation guide* (Restorative Justice Aotearoa, 2010) states that a Code of Ethics should cover in its principles balance and fairness rather than neutrality. Likewise, module 6 *Restorative justice facilitator induction training* (Ministry of Justice, 2008b, p. 2) encourages facilitators to use effective facilitation techniques to support the restorative justice values of “balance and fairness” and “empowerment of participants”.

*I noted that an emphasis on the victim-centeredness of the restorative justice process is not stated in the training material – just in the principles which are not included in the training manual. It seemed to me that trainees are not given encouragement to openly state that restorative justice is a victim-orientated process, nor are they given a model of empowering victims where the imbalance between victim and offender is apparent. Techniques like telling both victim and offender at the pre-conference stage that the victim will have the choice as to who speaks first in the conference demonstrate balanced neutrality and a victim-orientation that could have been included in the training instructions. This lack of emphasis on the victim is contrary to a statement from the conference*

Critical issues in restorative justice: Advancing the agenda in Aotearoa,

New Zealand, (*Jülich, 2003*) which very clearly stated that “The victim's wishes should be paramount” (p. 49).

## Good preparation

Good preparation – both short and long-term – is essential for effective facilitation. Long-term preparation includes matters discussed under the sections labelled Presence, Awareness, Skill, Knowledge and Support. Short-term preparation includes making a plan for the event to be facilitated. The *Restorative justice facilitator induction training* manual, module 9, (Ministry of Justice, 2008b, p. 2) stated that plans need to include who attended the conference, the logistics of venue, times and other physical matters, consideration of the unique situation and individuals, strategies to deal with risks, and the steps of the conference process. Planning is a crucial element in facilitation and skimping on vital preparation has a negative effect on the effectiveness of the process.

In a facilitated restorative justice process – which is a brief group – decisions are made in an hierarchical mode by the co-facilitators. An hierarchical mode is deemed to be the most appropriate because of the short time available for the restorative justice process, and the task it is required to achieve. Further, in that mode, facilitator/co-facilitator planning takes less time to set up a restorative justice process, and the participants expect that the facilitation team will manage it. Circle models of restorative justice might use a more autonomous

approach.<sup>168</sup>

However, even in a brief process like restorative justice, facilitators need to be aware of the six key areas for planning. Heron (1999) listed these as objectives, programme, methods, resources, assessment and evaluation. Restorative justice is a brief process but it is not a simple process. The complexity of the participants and their interactions requires facilitators to have appropriate background experience and be well trained in restorative justice specifics, and to be able to devise a plan that takes into account all these factors.

Fuimaono (KI) expressed this when he observed:

Restorative justice to me is not just the victims meeting the offenders or vice versa, it's almost like a pairing – two groups of people coming together and that to me is not easy and it needs to be managed really, really sensitively and delicately.

Fuimaono (KI) added that one of the core factors that give life to restorative justice is what's gone on before that to make it happen. He stated:

The facilitators are going to be very important, the time and place, the circumstances which bring people together. To me they're as fundamentally important as the encounter itself. And if those things are well prepared, then the face-to-face should run itself. They are the pillars of support that make it happen. And that to me is the key to it.

Preparing for each part of the restorative justice process was recognised by all

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<sup>168</sup> In a circle process each person takes a turn at speaking going around the circle.

the facilitators as being essential to effective practice. Preparation begins when a case is received. Tania stated:

We need to do our homework – we need to contact lawyers to make sure the Summary of Facts<sup>169</sup> is up-to-date. And we've learned to spend a lot of time in pre-conference with victims and a lot of time in pre-conference with the offender to make sure that we really understand what's happening. If there's anyone else we need to contact to make sure that we know the full picture before we get there we do that. We have learned that there's lots to do before we get to the conference place. We've learned that though we talk with offenders about outcomes and what sort of outcomes they might look at, we've learned that a couple of days or a week before we actually have a conference we ring them again and say talk to us about what these outcomes are.

Tania said the facilitators continue the discussion with the offender until they are sure the offender is coming to conference with something in mind. Marlene added: "So they are really seriously thinking about being accountable".

The victim also needs time to prepare what they might say at the conference.

Marlene said the victim "knows what he says may be hurtful but he knows that he's going to try his hardest to say it in a manner that maybe can be heard with the ears but also with the heart".

## **Pre-conference**

Pre-conferences are separate meetings with the victim and offender held at the start of the restorative justice process prior to a conference. At the pre-

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<sup>169</sup> This is the police record of the facts of the offending.

conference facilitators and participants meet face-to-face for the first time and begin to establish a relationship and meet each other as people, not as formal roles. Rapport is established and the restorative justice work is begun. Victims and offenders are able to express their feelings – hurt, anger, fear, remorse – say how stupid they were and how ashamed – and sometimes forgiveness.

The purpose of the pre-conference is to explain what restorative justice is, how the process works, what happens at a conference, to show victims, offenders and their support people what they can gain from it, to explain the ground rules that keep them safe, to assess whether it is appropriate to hold a conference, and for the participants to decide whether they want to attend a conference, and if so, to arrange its date, time, and venue. Danni said: “For me it’s about building trust and allowing those people to off-load, so that when they get together they know what to say, they can start restoring their lives”.

At pre-conference facilitators check whether or not the offender accepts they are guilty of the offence, and that the offender and victim are comfortable with the facilitators and the process proposed. Pre-conferences were generally more informal than the conference itself and could take place wherever the victims or offenders chose. Dorothy M mused:

I think of the places that I've done pre-conferences – in one of the upmarket hotels where you have high tea, sitting in Wendy’s somewhere in South Auckland, on a park bench, in someone's home, or at St. Luke's [Community Centre], McDonalds and coffee bars.

Pre-conferences help allay some of the anxiety participants have about the conference. They say: “I feel like a big weight has just been lifted off me” or “we can't wait for the conference”. Module 8 in *Restorative justice facilitator induction training* (Ministry of Justice, 2008b), encourages trainees to learn to facilitate a pre-conference meeting with offence victim(s) and support people, and offender and support people.

Facilitators in the focus groups talked about how at a pre-conference, even though the participants had not met them before, they were trusted. Chris said: “I feel best about my work when people open up at a pre-conference and show they want to talk, and they trust me and my colleague to talk to.” Heron (1999) termed this “establishment of a facilitator contract”, with participants implicitly accepting the facilitator in the facilitation role. This has to occur before the facilitator can operate effectively.

*This establishment of trust is, from my experience, very significant to the effectiveness of the restorative justice process. I consider the separate pre-conference meetings to be vital in enabling the victim and the offender to feel safe enough to be fully truthful about what occurred and to express their real feelings about it. It is only after this has occurred that they can make decisions about what might be helpful for them to do to be able to move forward. From my experience with Family Court clients – who were similar to restorative justice process participants in that they had experienced broken relationships – I discovered that having initial separate meetings with the parties was crucial in gaining their trust and giving them the opportunity to reveal intimate details which they could not disclose in front of the other party, at least to begin with. I found that when clients were not willing to have separate meetings before joint ones, that the significant level of intimate disclosure necessary for restoration of*

*relationship did not occur at the beginning of the counselling process, and usually was not reached at all.*<sup>170</sup>

Focus group facilitators talked about how some of the feelings expressed at a pre-conference, particularly negative feelings, were not expressed at a subsequent conference. Facilitators discussed whether this was because participants felt it was not safe, or not appropriate, to repeat the feelings when the other party was present, or whether the feelings were no longer relevant. Both options were possible, but facilitators felt that, mostly, it seemed that once the participants had had an opportunity to express these feelings, they were resolved and could be discarded. Tim (KI) observed:

especially in pre-conferencing, people haven't necessarily thought about things themselves so that kind of is the whole value of the experience too. You meet with somebody and they say "God, that was like going to confession, I feel great! All that talking, I've never had anybody kind of sit down and listen to me!" Yeah, so it's great. And then they build that into the meeting with the other side, so the people who are least likely to talk to each other you would think (victim and offender), have this shared experience of listening to each other and building something from that.

Tim also noted that he used an elicitive rather than a directive approach for getting the answers from the people in the room.

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<sup>170</sup> It was Judge McElrea who, in conversation, first alerted me to the similarity between a restorative justice process and the process I used in Family Court counselling.



Anne admitted:

I laugh a lot in pre-conferences – not in the conferences, in the conferences they cry and we cry with them. In pre-conferences is a lot of respect and acceptance of what people are and what they have gone through and how they look at the world and I think because we accept it they don't have to be harder on trying to make us understand it. So it's about stories and imagination and honestly.

### **Pre-conference process**

At a pre-conference, facilitators check the participants' understanding of the restorative justice process, outline what occurs at a conference, encourage participants to rehearse what they might say at the conference, and begin to think about the outcomes. Marlene noted:

The pre-conference is important because it gives us the information that the offender is sincerely prepared to take responsibility, and you get the sense that the person is willing to be accountable for making things right for the people they have hurt. . . . the pre-conference gives us an indication of whether they are up to a conference.

Pre-conference is also the time when facilitators clarify with the offender whether or not they are guilty of the offence. It seems that a number of alleged offenders have attended a pre-conference and said that they didn't actually commit the offence – they just pleaded guilty because their lawyer told them to. In such cases a conference cannot be held.

One of the benefits of a pre-conference is that it allays some of the anxiety that participants have about the conference.

Tania said:

We had a mum that just didn't want to be there [at conference] because the offenders had beaten up her son and she didn't want to be in the same room. But when we were able to explain to her that this is the opportunity to tell them everything you felt – because they had mums – so now you can tell them as a mother how that's been for you, how that felt for you when you saw your son. And when she realised that she could have the opportunity to do that, it totally changed her mind from not wanting to come at all. She said I never thought of it in that way; she just didn't want to see them. But she never thought that it would be beneficial for them to hear those things. . . . So pre-conferencing is so valuable. It's just so important that it's done correctly, by the people who are doing the facilitation of the conference.

Eldon (KI) said that he was not sure whether or not the more difficult cases required more pre-conference work. He had observed that certain provider groups seemed to have a focus on pre-conference work. He said other groups did not have as much focus on pre-conferences and their conferences tended to be more prone to implode, maybe not implode, but it could be seen that the groundwork had not been done. He added:

After effective pre-conferences I think the hallmark is reading conference reports that have a natural flow and you can see that the participants came really prepared for what they wanted to say, and they knew the process, and they knew what was going to happen. There were no major surprises for participants.

Eldon (KI) added that while you obviously can't prepare for everything, "I'd like to think that a good facilitator can expect most things and be prepared for it at

conference time”.

Sometimes a case does not go further than the pre-conference – this is mostly because the victim chooses not to proceed any further – but it is still an important part of the process. Mike reported: “I didn't do a conference for this particular case but the victim wrote me a letter in the end and said thank you for listening, at least someone cared.” Wendy and Kate raised the point that even if a conference does not take place, there can be positive outcomes from a pre-conference.

Kate talked about a case where the victims decided not to go ahead but the offender wanted to know why. Kate met with the offender and felt that the discussion they had may have prevented him reoffending.

Wendy noted:

I think the point that Kate raised is really pertinent. Actually it's something that our group talks about a lot – and that's the difference that you can make even if the conference doesn't go ahead. [There were noises of agreement from listeners] At a pre-conference, or even if you just get to talk to offenders in the end, perhaps you are the very first person who is independent and neutral that they've spoken to who has listened to them. And even if you can just give them a few pointers on how they can help themselves and say to them but it's you that's got to do the turning around. I think we affect a lot more people than we actually get credit for in restorative justice. What is important to me is that such a small contribution that we play really in a conference as facilitators can have such a major impact on that participant's life.

All the focus groups spoke about the significance of the pre-conference and echoed Tania's remarks:

What we have found is probably the thing we've got to get right the most is our pre-conference meeting. And if we get that right we find that our conference flows so that's probably the task that's most important in the whole process.

Kate declared: "The conference is really the end result of a hell of a lot of really good pre-conferencing."

## **Process set up and outcomes**

### **Set up of a case**

A restorative justice process in the criminal justice system begins with the receipt of a case from the court. Even before an offender or a victim has been contacted a facilitator thinks about the case. Titiula reported:

I think how am I going to approach the offender, what's in the case, what outcomes I might hope for. I ask myself shall I call? And if I call what kind of questions will I ask? How will I introduce myself – what kind of tone will I have in my voice? I think about my safety.

Making initial contact and engaging participants requires great skill, but once it had been achieved and it had been established that the victim, the offender, and their supporters were willing to meet with the facilitators, then the facilitators could take the next step in planning how to handle the case.

Facilitators consider

- the availability of the facilitators and participants
- the complexities of the case and the abilities of the facilitators to deal with issues presented by the case
- support people for the victim and offender
- suitable meeting venue and time

Module 8 in the *Restorative justice facilitator induction training* manual (Ministry of Justice, 2008b) stated: “Before any conference there will always need to be communication with the offence victim, the offender and, ideally, their support people” and that “This communication may be on the phone or face-to-face (depending on the policy of your provider group), although face-to-face meetings are preferable” (p. 2).

*I was surprised to find that the Ministry of Justice accepted pre-conferencing by phone. The standards expected to be attained (Ministry of Justice, 2008b, p. 3) and the pre-conference meeting checklists provided in the manual (pp. 5-12), would be very difficult, if not impossible, to achieve over the phone. For example, identifying risks could not be adequately performed from vocal contact with only one person of a group of people. I noted that none of the facilitators in the focus groups talked about having pre-conference meetings over the phone.*

Eldon (KI) observed: “From what I've seen, people who put the most work in at the pre-conference seem to have better reports and better outcomes.” He added that having said that, he had seen facilitators put in the best work with the best of intentions and end up with mediocre outcomes. “But I would say generally the more effort at the front end results in better outcomes”.

Facilitators in the focus groups were generally of the opinion that all people who attend a conference should be effectively pre-conferenced. Perema stated:

You only have a conference if you have decided it is safe and have done all the groundwork. So you walk in with your other facilitator and know it's going to be safe regardless of the magnitude of the offence.

Facilitators felt that an effective pre-conference helped participants feel safe – which was very important. Anne went on to say:

There's a moment – if it's on the telephone, or if it's when you get to see them – when they go “whew, you're not going to judge me”. Maybe it's my perception but I can almost hear it click into place that you are on their side and it works for the victim and the offender that you are on their side, you're friendly with both of them.

Dave said:

I'm very much a process man and very deontological, and to be able to understand all the little issues that are coming into a conference and then to guide these through the channels so we get to the end. I think that for me that is the best. To have confidence in the conference, to have all the side issues, develop a picture of where they fit, what their place in the conference is, and either draw some more out or let it go and then take the conference through to a conclusion.

### **Conference outcomes**

In the final stage of the conference, after the victim(s) and offender(s) and their support persons have talked about how the offence impacted on each of them, the outcomes of restorative justice conference are discussed and decided upon.

Outcomes are generally mutually agreed actions that the participants expect will

assist in repairing the harm caused by the offence and enable them to move on in a positive way. This does not happen in the ordinary criminal justice system. Alison (KI) reported that she had a policeman tell her that he participated as a victim in a restorative justice meeting about an assault because he knew he was going to see the offender again and he wanted to be able to meet with no hard feelings.

Outcomes include such things as apologies, reimbursement of expenses incurred, restoration of damage done, and community service. Wendy said: "I think that offenders should acknowledge and accept the harm that they have done and that they should be made in some way to repair or to repay." Wendy added that she thinks that offenders taking accountability for what they have done and doing something to repair the harm are the two things that contribute to a lack of recidivism.

An unexpected outcome of the restorative justice process is the opportunity for links to be made between people who otherwise probably would not meet face-to-face. Dorothy M cited a conference between a Muslim family and a Christian family which was held in a Christian church hall. As previously agreed, the conference began with karakia. And at the end the father of the Muslim family said: "I'm going to thank our gods for bringing us together so we could have this conference". Dorothy M reported that it was just amazing.

## **Restoration of relationship**

As well as the material reparation decided in the outcomes, restorative justice works to restore relationship. Hone observed: “When people that sat down as enemies, [then] leave as, maybe not friends, but will extend a hand or hug each other or cry with each other that feels good”. Dorothy M said: “They have left restored”. Tania said: “I think that’s where some of the victims actually do the restoration is in the outcomes. And also the offender gets to make something right”.

Family restoration can be the result of a restorative justice process. Tania reported a case where if a restorative justice conference hadn't happened she didn't know when an opportunity for two brothers to reconnect could have come, because even when they did start speaking they were still annoyed with each other and she thought this could have gone on for years. Hone then talked about a case where the offender and victim were twins who had not been allowed to associate with each other since the offence. He said: “It was a beautiful thing when they came together and hugged at the conference, and they cried and that was so deep it was like being at a tangi”. Anne related the story of a restorative justice conference held on a marae and the amazing long-term positive outcomes.

Facilitators reported that one of the unexpected outcomes of the restorative justice process is when the victim and offender have been teenagers. By the end of the conference the parents – often from quite different backgrounds –



talk together about how difficult it can be with teenage children. They realise that both parties have the same problems and either of their teenagers could have been the victim or the offender.

### **Wider effects**

Facilitators are also aware of the wider effect of restorative justice work on them personally. Hone said: "It's had a good effect on my life because I now have another tool in my kete and when I go to whānau meetings I use my restorative justice skills – especially when conflicts come up". Wendy said:

I have been amazed even within my work situation at how much they value the restorative justice principles. I often get comments about how my restorative justice values come through in the way I handle people . . . it permeates everything.

But it is not only facilitators have recognised this. Marlene said that after a conference the offender said: "I need to go and do this with my own family". She said he had a concern for how the process could be beneficial for his own family in making things right. Effective facilitators use their restorative justice facilitation skills throughout their lives.

Another perceived outcome from restorative justice conferencing is that when an offender has been through a restorative justice process they rarely, if ever, appear a second time. Hone said: "I think the recidivism rate for those offenders who have been through the system is just about nothing". The Crime and Justice Research Centre Evaluation (2005, p. 255f) provides some analysis of

the reduction of reoffending from restorative justice conference participants in the Court's Pilot Scheme.

## Report writing

The conclusion of a conference is not the end of the process. The report that has to be written for the judge to read before sentencing is a really important part of the process. Module 11 in the *Restorative justice facilitator induction training* manual assists trainees to “learn how to complete a conference report to meet consistent standards” (Ministry of Justice, 2008b, p. 2). The module stated that a report can

- outline significant interactions during the process
- clarify the effects of the offending
- describe what could be done to repair the resulting harm
- describe the quality of the discussions
- describe agreements reached at the conference.

Writing such a report is a skilful procedure. Tania observed, it's “being able to write the story of the conference so that it gives a picture to someone who was not in the room in a way that brings it to life for them.” Jan said it is important “being able to encapsulate the whole conference to where that exact point changes and how you put it down so somebody who was not in the conference, like the judge, can actually understand what happened”.

Fred (KI) said, from the perspective of a judge, a good report enabled “the court to get the flavour of [the conference] and understand the dynamics of what was

occurring there as well as the outcomes. I don't like reports that just tell me an outcome – I want the picture". Fred (KI) thought a report should

- be about two or three pages long
- describe the plan and the outcome
- show the main transitions that occur
- show if there had been genuine remorse
- indicate whether it has been helpful to the victim
- show if people had tried to deal with the victim's needs
- describe whether they had tried to deal with the offenders and the community's needs and how.

For Fred (KI) the human touch was very valuable. Phil (KI) agreed and said he thought he could tell from report whether or not it had been an effective process. He observed:

Generally a good thorough report will make it very clear that people were made to relax and they were just talking and being themselves and given a chance to get up and cry and laugh and hug each other and do whatever they wanted to do – you see it coming out.

Phil (KI) considered such a congenial atmosphere would not develop unless the facilitators were good at what they were doing and were able to encourage people to participate fully.

He added that with a restorative justice report – unlike probation and other reports where the main information was contained in the last couple of sentences – the judge cannot just look at the summary, or look for the conclusion, because there will not always be one. Phil stated that with

restorative justice the whole of the report was important. He said that reports for him ideally would be longish, detailed and well put together with good headings, but probably most judges would prefer a briefer version.

Eldon (KI) said that for him as an administrator in the criminal justice system, there was an element that the best facilitators were the ones who got their reports in on time! He added: “and you know it just so happened that the two groups that were best at that I also thought the best practice-wise”. He said that it was essential that provider groups had an appreciation of the time constraints that the criminal justice system was under. He thought that he could tell a good conference from a bad conference from the report – usually the better conferences had better outcomes.

Producing a good report seemed also to be a matter of pride for facilitators and most of them referred to it as an achievement. For instance Anne announced:

When I'm writing the report and I'm thinking yes this is going to achieve something, it's going to show the judge, and who ever reads it, what we did and it's going to work – there's no way he's going to jail after this report! So that's probably the best moment because even if it's all excitement on the way, you're still not sure how it's going to turn out at the end. I think my satisfaction is when I'm signing the report. Job done!

Some judges refer to the restorative justice report and sometimes read out sentences from it. But on other occasions facilitators observed there is no reference to the report and it seems that it is actually ignored. Wendy declared:

Another thing that I'm really passionate about is marrying up the outcomes

from restorative justice conferences that are really important to a victim, and are really achievable in court, that don't get included as part of the sentence in court. Because no matter how much you explain to the victims that it's at the discretion of the court, they still come away with the expectations that something they've got in their outcomes is going to be accepted by the court. [noises of affirmation from the listeners]

Kate responded:

One of the ways we dealt with that was to coach the victim, perhaps with saying that they respectfully request the judge to consider community service which would be arranged by the victim and the offender, so it actually looks like they're doing it together. And we've never been turned down on that one.

A personal reward for facilitators is the feeling of having achieved a satisfactory outcome.

Hone reported:

When you get everything right, when your pre-conferences have been great and the conference has gone wonderfully because you've facilitated it and done all those things that you need to, and your debrief happens and you sit in court and be there for their sentence and you follow it all the way through, then that feels pretty good.

### **Meet deadlines, be logical and methodical**

Meeting deadlines and being logical and methodical are not skills that always sit easily alongside the caring, people skills that facilitators are chosen for. It is Alison's (KI) opinion that if facilitators could not manage to contact people on time, or did not follow through on their undertakings, or were poorly organised, it

would not matter how likable they were as a facilitator, they could not be effective. Indeed, the *Restorative justice facilitator selection toolkit* (Ministry of Justice, 2007a) stated that facilitators should be “organised and able to arrange things in a methodical structured way ensuring requirements and deadlines are met” (p. 11).

Eldon (KI), in talking about his role in the restorative justice process, said that it was quite difficult to align the organic restorative justice process with the deadlines and time frames of the court process. He added that unless restorative justice facilitators were able to meet the deadlines set by the court his job was almost impossible.

Some facilitators found meeting deadlines very irksome because they were not naturally methodical and logical. Other facilitators were either more naturally inclined to meeting deadlines, or through previous experiences had gained skills to enable them to do this. Some facilitators considered that the court deadlines were detrimental to the well-being of victims. Examples of this would be when a case did not get addressed by the court until twelve or eighteen months after the offence was committed, or when a case was deferred two or three times because the court was not ready to address it when the victim was waiting for an outcome.

## **Balance court and humans**

One of the issues that confronted restorative justice facilitators quite regularly

was that of balancing the demands of the court with the needs and expectations of their participants in the restorative justice process. Because facilitators in this study all did their restorative justice work in close association with the criminal justice system, they confronted this issue to some extent in every case on which they worked.

When asked if the restorative justice process in the criminal justice system fits well with all practitioners, Alison's (KI) response was:

I don't think it fits it all. No, and I don't know that the division is necessarily ethnic. I think it's that with a human process how well does the court process fit because it's driven by the criminal court process and timings and I'm not clear that it fits terribly well for most restorative justice processes in terms of where people are at.

Restorative justice facilitators reported mixed reactions from judges to restorative justice. Some judges appeared to ignore the outcomes decided at a restorative justice conference. Wendy cited a case where it was very important that the carefully-devised outcomes of the conference were taken notice of by the judge. When the judge did not endorse any of the outcomes from the conference the victims felt re-victimised and the facilitator felt undermined. On the other hand, Jan reported that her experience was that "there have been so many cases where the judge did everything".

One of the outcomes of restorative justice process is that public money is saved, and this encourages facilitators to persevere with cases when they seem to be fighting the system. Facilitators talked about how many restorative justice

conferences could be run for the cost of keeping one person in jail for one year.<sup>171</sup> Marlene added:

I think it's very sad when officials are able to predict how many people are going to be in prison in the future but they can't predict how many people that we can keep out of prisons, restoring faith in people and making things right. I know there are some people who need to go to prison but not everybody does.

Marlene said it's a very sad equation when restorative justice programmes have been cut but there is an expansion of prisons. The cost of keeping a person in prison far outweighs the cost of restorative justice which enables an offender to be supporting their family, saving on welfare and health expenses, and not reoffending. Tania added: "The equation is just wrong. The thinking is in the wrong place."

One of the matters frequently discussed by facilitators was the lack of knowledge among judges, lawyers, court systems, and staff about the restorative justice process. Facilitators are aware that the *Victims Rights Act 2002*, the *Sentencing Act 2002*, and the *Parole Act, 2002*, all state that provision should be made for a restorative justice meeting, but many people in the legal and court system do not seem to know about them, or understand the implications of the legislation. The *Victims Rights Act 2002*, section 9, states: "If a suitable person is available to arrange and facilitate a meeting between a

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<sup>171</sup> The average cost per prisoner was \$249.25 per day (as of March 2010) or \$90,977 per year. <http://www.corrections.govt.nz/about-us/structure/prison-services.html>



victim and an offender to resolve issues relating to the offence [the relevant officials are to] encourage the holding of a meeting of that kind.”<sup>172</sup>

But obviously it was not only facilitators who felt frustrated. It was Phil (KI), a judge, who said his wishes were for “far more publicity, and encouragement and information for everyone involved in the criminal justice system, including the police, but lawyers and particularly judges, so that referrals are made, and for media to publicise restorative justice”.

June (KI) believed that the restorative justice process is flexible and could be used to meet a variety of situations that occur. She would also like to see it used in education, business, and the home. June felt that if secondary school pupils gained information about restorative justice processes when they were young they would have a skill to use all the rest of their lives.

## **Summary**

The facilitation of restorative justice processes in the criminal justice system is a highly skilled task which has been discussed in this chapter. To be an effective facilitator practitioners require personal presence, awareness of the context in which they live and work, and proficiency in a great number of specific and practical skills which have been examined.

The next chapter will survey the knowledge facilitators require.

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<sup>172</sup> See p. 447 for full wording of this section.

## Chapter 10: Knowledge

This chapter addresses issues of facilitator knowledge. Effective facilitators are knowledgeable, having information and understanding about the way people think, feel and respond, and how groups function and members interact. Also required are facts about restorative justice and the criminal justice system, and how people can use them, about court processes, and resources available in the community. McCain and Tobey (2007) considered that for a facilitator to be effective they need to be competent in three major areas: “knowledge, skills, and behaviours” (p. 14). Tim (KI) stated that one of the factors of facilitator effectiveness is having “general restorative justice understanding and the ‘trust the process’ type stuff”.

All participants in the research spoke of having background experience or knowledge that to me seemed to predispose, or lead them to become aware of the restorative justice process or to accept the opportunity to engage in it. Relevant background or experience included professional training such as social work, law, counselling, supervision, clinical psychology; study in conflict resolution or alternative dispute resolution; work experience in violence prevention, victim support, harassment prevention, pastoral care, probation, police, or prison; and family attitudes/experiences, or religious belief. Some participants had more than one of these in their background.

## Training

With these backgrounds trainee facilitators brought useful knowledge to their restorative justice work, but more was required. A large part of the knowledge that a facilitator initially gains about restorative justice comes from their training. For many facilitators the training was a highlight of their lives. Four people cited training as their most exciting experience. They found it exciting to discover what restorative justice was and how each person fitted into its whole scheme. It was also exciting learning what to do with a case and knowing that their co-facilitator would understand the process because they had had the same training. Gayle observed:

One of the things I've been grateful for with being a facilitator is the training that I had before actually going into the facilitation. That was terribly, terribly important to me to how my case was going to go and working with somebody who had gone through the same training – we both understood exactly where we were going and what our modus operandi was.

Greta reported: “When I was accepted for doing the training I was really, really excited and thought I'm going to be part of something that's quite different and, I guess not new, but probably life-changing I guess”. Greta talked about how in her training there had been a session from a Pacific Island perspective which had struck a chord with her, herself a Pacific person, in terms of the importance of language, especially when working with people who have English as their second language.

## Restorative justice principles and values

Facilitators found it difficult to define restorative justice precisely, or even to adequately describe what happens in a restorative justice process. Mike said: “It’s hard to tell them because it’s a bit like chocolate, isn’t it. You can’t tell people what it’s like until they taste it – and rj is absolutely the same”.

However, the principles on which restorative justice in the criminal justice system in Aotearoa New Zealand is based are clear. Module 1 in *Restorative justice facilitator induction training* (Ministry of Justice, 2008b) lists eight principles of best practice, developed in this country, for restorative justice in criminal cases. They are:

1. restorative justice processes are underpinned by voluntariness
2. full participation of the victim and offender should be encouraged
3. effective participation requires that participants, particularly the victim and offender, are well-informed
4. restorative justice processes must hold the offender accountable
5. flexibility and responsiveness are inherent characteristics of restorative justice processes
6. emotional and physical safety of participants is an over-riding concern
7. restorative justice providers (and facilitators) must ensure the delivery of an effective process
8. restorative justice processes should only be undertaken in appropriate cases (pp. 10-13).

It is important that restorative justice practitioners be informed about and understand the implications of these principles.

Fred (KI) talked about the core values of restorative justice that the Restorative

Justice Network formulated in the late 1990s. For Fred (KI) the most important values were: respect, humility and open-mindedness, being able to accept that other people may well have a point of view that's got something different to offer, participation, and ownership of the whole process by the community rather than by officialdom. He added: "I really value that the restorative justice process enables the goodness in people to come through – it enables people to be a neighbour to each other."

Facilitators must know about these principles and values, and understand what they imply, to be able to practise restorative justice and provide a quality service.

## **Restorative justice processes**

Along with an understanding of the principles and values of restorative justice, knowledge about the restorative justice process is essential for effective facilitators.

Perema described the process as being quite structured but flexible. Peter claimed:

Restorative justice as I've seen and experienced it in its different forms is a very well-designed process and it's been rigorously checked over a lot of time through successful outcomes and feedback. I think one of the things I value is that we have a process that can be trusted.

Dorothy M observed: "Restorative justice for me as a whole is a really awesome experience and a wonderful process to be part of, especially as a facilitator".

Throughout the focus group meetings facilitators talked about what restorative justice is, what it does, and what it means to them. As they were doing this they were, in fact, defining restorative justice from experience rather than from theory. Because these conversations continued throughout the focus group meetings there was some repetition of the ideas, concepts and stories. "Miracle" is a term used by many facilitators to try to capture what the restorative justice process can do. Karen, recalling what had been said in an earlier focus group, observed:

One of the things that I remember being reiterated by everybody, was a passion and almost belief in the possibility of miracles. That didn't always happen but sometimes did and so my biggest recollection is listening to other people's stories and thinking, ah! They've had a miracle too!

Anne presented another perspective when she remarked:

I find there are many people who have no idea of what I do and who still have this idea, a completely false idea, that it's the soft option and we should be hard on the criminals. This is just because they have never actually stopped for a minute and thought about it. And because I know what I'm talking about we sit down for a minute and think about it in a different way. So we can talk about the price of maintaining someone in prison, or we can talk about the feelings of relief of meeting the offender.

Further, Gayle reported that at the end of a conference the victim stood up and said: "So this is what restorative justice is all about. Boy, you fellows do a good job. That's great work!" Gayle said that she responded: "Now you know what restorative justice is all about, you can go and tell the whole of Auckland about

it”.

Hone stated that he felt that the thing that must stay in the process is

kanohi ki te kanohi – eye-to-eye, face-to-face, and the offender having to take the victim’s korero [talk] and be able to accept it and be humble about it and actually make the effort to restore that. . . . an offender can easily say these things – yeah, yeah, yeah – but as soon as they walk out the door it’s a different story. So I wonder about the follow-up part of that as well – who follows up and how is that monitored.

## **Stages of the restorative justice process**

Research participants talked about the following stages of the restorative justice process and recognised that preparing for each part was essential to effective practice.

1. Accept case: Facilitators examine the documentation provided, decide the case is appropriate for a restorative justice process and assess who to approach and how to approach them.
2. Contact participants: Participants in a restorative justice process are invited to be involved. In the initial contact it is made clear to them that they are only making a commitment to attend a pre-conference. At the end of that they choose whether or not to attend a conference.
3. Pre-conference: Restorative justice pre-conferences are separate meetings with the victim and their supporters, and the offender and their supporters.<sup>173</sup>
4. Arrange conference: When both victim and offender agree to participate in a conference the facilitators make the necessary arrangements.
5. Conference: Phases of a conference
  - a. At the beginning of the conference the facilitator taking the main

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<sup>173</sup> These are discussed on p. 309.

facilitation role introduces participants and the process of the conference, checks the accuracy of the Summary of Facts, and invites participants to speak. The victim(s) and offender(s) and their support persons talk about how the offence impacted on each of them. At this phase of the conference a facilitator uses an hierarchical mode and is in control of the interactions.

b. At some point in the conference participants begin interacting directly with each other, by-passing the facilitator. Facilitators noted this as a significant point in a conference and examples given by facilitators can be found on p. 302.

c. During the conference a distinct change of atmosphere usually occurs. At first there is a lack of trust, but gradually people make an emotional connection and feel warm towards each other and together they can agree on the actions that should be taken so people can move forward. Sometimes participants even began to accept responsibility for the family or societal background that contributed to the offending.<sup>174</sup>

d. Breaks are offered as part of the conference process. Some participants choose not to take any breaks and others take one or more breaks to consult with their supporters, to consult with facilitators, or to calm down. Generally a break for refreshments is taken after participants have talked about what happened in regard to the offence. One facilitator meets with the victim and their supporters, and the other facilitator with the offender and their supporters. This gives facilitators an opportunity to check that participants are prepared to go on to the next phase.

e. The final stage of the conference is discussing and reaching mutually agreed actions, or outcomes which would assist in repairing the harm caused by the offence and enable victim, and offender, and their communities to move on in a positive way. This interaction does not occur in Court appearances.

f. A report, written by the facilitators, on what was said and done at the conference goes to the judge, who is required to read it before they pass sentence on the offender. The Summary of Facts that the police write is the

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<sup>174</sup> See p. 302.



bare bones of a case and the restorative justice process paints in the details and brings out the emotions for judges.<sup>175</sup>

g. Debrief. Some facilitators recognised that they quickly developed bonds with participants, getting to understand them, but then they needed to let them go at the end of the case. How to do this is part of the debrief conversation after the conference.

Facilitators follow the above restorative justice process – because it works – but adapt it when a variation would better suit the participants.<sup>176</sup>

By comparison, Module 9 of the *Restorative justice facilitator induction training* manual (Ministry of Justice, 2008b, pp. 5-7) listed the steps of a victim-offender conference as:

1. introduction
2. effect and impacts, break/caucus (optional)
3. outcomes
4. close
5. debrief.

## **Restorative justice and criminal justice system**

Facilitators recognise that whereas the criminal justice system is able to address only a part of what occurs when an offence is committed, the restorative justice process addresses other issues as well. However, the juxtaposition of the Ministry of Justice – a government agency – and the

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<sup>175</sup> This is discussed on p. 322f.

<sup>176</sup> Facilitators' examples are on p. 300.

restorative justice process – a community-based victim-oriented process – is not always comfortable for restorative justice facilitators and administrators. Anne encapsulated this when she remembered her first thoughts when she started working for restorative justice. She recalled:

I was thinking how is this possible? That this stuff is really undermining the courts and justice and yet is funded by the Ministry of Justice. That's not going to work long term. If we get the funding from them we don't have the free rein to do what we're supposed to be doing – what restorative justice is all about. My first thought was ah, the funding is not right.

A variety of opinions emerged from practitioners about this positioning and especially what was seen as a lack of understanding and support from the Ministry of Justice. Marlene expressed a wish that all those government ministries that deal with crime could work together for a better national outcome. Tania gave an example when she added: “mental wellness, especially of victims if they don't get that opportunity to tell their story for restoring some sort of peace, then they will constantly be going to the doctor and they will constantly be unwell and have health issues”. Tania continued: “Crime is unhealthy for our families and our communities *and especially victims*. It's only looked at as a justice issue, it's not looked at as a health or as a social issue.” The facilitators said they thought that restorative justice should be included in the portfolio of the Ministry of Health.

Hone noted that when there was a possibility of a flu pandemic the whole country promptly acted on it. He asked: “How come restorative justice is still

happening in the background when we've got a pandemic of crime which was here long before the H1N1 flu came in?" Tania added that crime touches every family in the country, so there does need to be some sort of national strategy or campaign to get restorative justice out there. "You know, there's heaps of different campaigns on crime but there's nothing about addressing it." I agreed and added that a prevalent attitude to crime is that it is all right to break the law – it is getting caught that is viewed as the offence. If we could shift the mindset from one where breaking the law is a game we play, to a mindset that saw that breaking the law hurts people, we might begin to address at least one of the causes of crime. There has been a major societal change in attitudes to smoking, so why not in attitudes to crime?

Thomas observed:

I think that if one was to make restorative justice a much more vital process, that would put it more into the heart of the justice system and you would see it as much more as something you should actually be considering every time . . . Because if it is seen as an add-on process then the quality of what is being provided isn't important and all that is important is that you have a nominal nod to restorative justice and you get the lowest budget that you can to pay for that process so that you can tick that box, say we've still got it happening and move right on. And that to me that says it's not actually seen as at the heart of the justice process and that the justice process is still at this stage largely seen as a punitive process with restorative justice is a thing on the side – though it's kinda nice to have sometimes.

Joanne disagreed:

I wouldn't want to be more in the heart of the justice system because the justice system isn't just. In a lot of cases we can do the things we do because we are just on the edge of the justice system – we have a little bit of authority and hopefully they can't tell us what to do.

Thomas replied:

I think if you put restorative justice at the centre of the justice system you would be talking about a different justice system. I can hear that the justice system isn't just – no it's not. And does it have the effect it's designed to have – does the justice system stop people offending? Well, apparently not always, for some reason. So if you then take a restorative approach and you put it in the heart of that and say this system is not just about punishing someone, this system is about trying to find the best way that we have got of ensuring that this person doesn't offend again – and not only that, that they fix up whatever they have done. And if you make that the centre of the justice system then you have the justice system that's pretty much what we want”.

His hearers affirmed his words. Dorothy A claimed: “Part of the policy making needs to be consistency nationally but still allowing us the flexibility to be able to move and really give meaning to what we practise.”

Some positive perspectives were added. Phoebe argued:

For me the most important thing restorative justice has contributed is being able to do something, or be involved with something, that is actually positive about the criminal justice system. Having spent a lot of time feeling negative about it . . . now this is something positive!

Tania disclosed:

What restorative justice has done is given me more hope where it comes to the justice system. It's given me hope that there is an opportunity for people to really be able to look at their offending and that there is another way. It's certainly given me hope that we're moving in the right way – I mean you can't come out of a restorative justice conference and not feel touched by the whole thing. It's great to feel like you're making a difference and when you see attitudes change, when you see the moment when something has happened for that person, those are life changing things and you are part of it.

Perema said:

I value the fact that restorative justice is taken seriously at the political level, that it's embedded in the legislation, and the fact that in the community, groups are actually meeting together and talking about restorative justice whether they are funded or not.

But facilitators felt that the worth that the Ministry of Justice has put on restorative justice work is not high. Dorothy M asked:

How do you stay in it, when you know something's going well and the feedback from everyone – victims, offenders, everyone – is that this is working well within the community and the justice system says 'so what?' we're going to change it.

Mike added:

They've highlighted that by going with a high/low level payment structure with different levels of payment for different types of conferences. It devalues a lot of what you do as a facilitator and as a provider of a service. The efforts you put into these conferences are the same, and that includes

the difference between victim/offender conferences and panel conferences, which are all different as well. . . . but all parts of the restorative justice process.

The restorative justice process in this research emanates from and operates alongside the criminal justice system, but is very different from it. This inevitably creates tensions which facilitators have to work with and around. One of these is the fact-based evidence required by the criminal justice system versus the emphasis on the mental and emotional well-being promoted by the restorative justice process. Another of these tensions is the strict time frames the court system is driven by versus the more flexible time frames of restorative justice participants. For example, in the *Deed between the Ministry of Justice and Auckland Restorative Justice Trust for voluntary restorative justice services to North Shore District Court*<sup>177</sup> it is stated that facilitators will provide restorative justice services and reports in accordance with the time frame as set out by the Ministry of Justice, but there is no recognition of how these time frames might fit with offence victims, or with facilitators as they work with victims and offenders. Hone noted that sometimes time constraints are “re-al-ly tight so you're working a little bit under pressure and those times are tough”.

Eldon (KI) illustrated this tension when he talked about his role in the restorative justice process. He said that it was quite difficult to align the restorative justice process – which is an organic process that doesn't necessarily need to run on a

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<sup>177</sup> Held at the Auckland Restorative Justice Trust, 130 Remuera Rd, Auckland.

strict time frame – with the court process which is very much according to deadlines and time frames and events and dates. He said: “One of my tasks as a court coordinator was to provide administrative back up and information for facilitators from inside the court system, so I like to think that my role was important in fusing the two processes together.”

The variety of responses given by judges to restorative justice reports was another area of confusion and tension for facilitators. It was the experience of facilitators that the sentence given to an offender depended very much on the judge. Some facilitators attended the sentencing for their cases, which they found very informative, and they reported that they often got feedback from judges. Kate stated:

Every single time I've gone to the court I've been asked a question by the judge, or [have been] acknowledged at least. It's amazing, if the judges know that you are there they will ask you things, or address you, or thank you, some of the things that have been asked are just incredible. It really validates restorative justice.

Wendy added that sometimes the judges at Waitakere had actually asked for more information than had been given about why a case did not go to conference.

There are also examples of judges recognising the work of restorative justice processes in quite startling ways. One judge, when sentencing subsequent to a restorative justice conference, took a much broader view than the criminal justice system normally does. Chris cited a case where the judge was very

pleased with the conference and made a special note: “This is how restorative justice should be”. In this particular case the victim had requested that the offender did not lose his license because this would prevent him doing the community service he was engaged in, and the judge dismissed the offender without conviction and waived the required license suspension.

Conversely, other judges appear to ignore the outcomes decided at a restorative justice conference. Wendy cited a case where it was very important for the victims, who were new immigrants and not entitled to ACC<sup>178</sup> or other assistance, that the carefully-devised outcomes of the conference were taken notice of by the judge. When the judge did not endorse any of the outcomes from the conference the victims felt re-victimised and the facilitator felt undermined.

Thomas commented that he felt that judges and the restorative justice process were attempting to achieve similar outcomes. He observed:

As far as I can tell the *raison d'être* for judges is to try and prevent further offending and they are sometimes quite creative in trying to come up with sentences that will have some kind of an impact. And when you look at restorative justice processes, my best understanding of this process is it aims to reduce recidivism which is what judges at the end of the day are trying to do.

Facilitators report that their experience with lawyers in general had not been

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<sup>178</sup> Accident insurance for New Zealand citizens is provided by the Accident Compensation Corporation.



positive. Hone said:

I saw an opportunity where I thought “oh this would be a good restorative justice case” so I went to see the lawyer. He said to me “oh no, the reason being that they're not allowed to see each other”. These were neighbours who could not avoid constant contact!

Dorothy A reported that she has friends who are lawyers who don't really see much value in restorative justice except to get something for their clients. She sees there's a real misunderstanding about it. Gayle reported being at court with an offender and the lawyer opening the door and saying to the offender “you can go first because you'll probably be going out the other end”.

On the other hand, facilitators reported that when police attended a restorative justice conference they were helpful, very interested, and impressed with the conference proceedings. Tania had an instance where she invited the police to meet with their restorative justice facilitators to clarify a situation that had arisen. She said that it had a positive outcome for both parties.

Probation officers had on occasions been very supportive of restorative justice conferences. Wendy cited a case: “When the offenders were sentenced, the probation got on board with the restorative justice conference. They were so impressed with the process that they, in their report, endorsed the restorative justice conference”. The judge sentenced the offenders each to 400 hours of community service. Probation then adopted each of the different requests from each of the different victims. However, there were not many such positive

comments from focus group members.

Another area of tension that Marlene talked about was the mismatch between their Ministry of Justice contract and the way they work. Their contract with the Ministry of Justice differentiated between offences with a possible sentence of below two years and those over two years and the restorative justice processes for these two categories were funded differently. Marlene said:

Whoever we receive through a referral gets the same sort of delivery from us across the board. We deliver in the capacity of who sits in front of us, whether it's a high intensity or low intensity case we are still delivering for the end product of the families, and wellness too, with those two groups of people and their support people.

### **Domestic violence**

Alison (KI) said that at times there had been heated discussion about what sorts of cases should be included in the pilot scheme – especially about whether or not to include domestic violence cases. She considered that:

the whole domestic violence thing remains vexed. Originally we excluded it from the pilot on the basis that we weren't clear that we had the right expertise at the time. The argument risked all the time getting polarised without the real questions being considered because some of them were systemic questions about what else is happening for people? What else is available for domestic violence cases? And where do we fit in a world where there are domestic violence programmes and counselling? Where does safety fit in this picture, where are safety plans? And questions about do we have enough expertise/don't we, is it in the forgiveness cycle, where are we sitting, should it be pre-sentencing or prison sentencing, where does a one-off meeting fit in this? We know that there are cycles of

remorse and forgiveness and reoffending at the most basic level, we know that, so where do you think you are in the continuum when you do this? And why the heck, knowing that that's an ongoing continuum, why would you allow it to be driven by the court process? Because it's not a one-off.

– All very valid questions, and no one had actually thought their way through all of that.<sup>179</sup> Alison (KI) said that if they could have thought through all that it would have been worth setting up a limited pilot and seeing how it went. But nobody seemed to be grasping, addressing that, and thinking properly and systemically.

## **Employment**

Whether or not facilitators would want to be employed by the Ministry of Justice was another discussion. Phoebe was of the opinion that there were advantages to not being employed by the Ministry. She recalled someone reporting that a person being pre-conferenced asked if the facilitator was employed by the Ministry of Justice and when they replied “No” the attitude of the participants changed dramatically. This statement sparked a lively debate about whether or not restorative justice facilitators were employed by the Ministry of Justice.

Joanne pointed out that the funding comes from Ministry of Justice but then individual facilitators were contracted to the provider group which was contracted to the Ministry. Dave responded: “The Ministry decides how we will do the work, who we will approach, and won't, they give us guidelines for how we are supposed to conduct ourselves – we are virtually Ministry people even

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<sup>179</sup> Since then Kingi et al (2008) have researched the use of restorative justice with family violence.

though we like to think we are separate". Philip disagreed and argued:

The Ministry of Justice has set up training programmes which are constantly being reviewed and all sorts of people tell us this is the best way to do it – and normally you find out yes, it is the best way. But we do it in the way that works best for us.

## **Victim issues**

Archbishop Desmond Tutu described restorative justice processes as having a "focus on repairing the damage done through crime [and] on victims' needs" (Consedine, 1995, p. 7). This is quite a different focus from the criminal justice system in Aotearoa/New Zealand, where crime is committed against the state and the state decides the punishment for the crime. Repairing the damage done through crime is not a priority of the criminal justice system and nor are victims' needs. The questions that victims frequently ask of offenders, for example: "Why me? Why did you pick on us? What made you burgle us?" are not answered in the criminal justice system.

Zehr (2002) wrote that the restorative justice process holds the viewpoint that "crime is a violation of people and of interpersonal relationships" (p. 19) and it offers people who have been harmed a voice in the criminal justice system. At first this might be the victim very directly telling the offender about the harm they have done. Margo observed: "I recall one woman who just felt so much better just from telling him what it meant for her". Thomas reported:

I look for a connection with the person rather than at the action. And if in

the course of the restorative justice process you can actually get people to make a person-to-person connection then it takes the distress out of the action.

Fuimaono (KI) observed that he was aware of many victims who never got over their sense of grieving, people carrying around heavy-duty grudges for years and years which just wore them down. “There has to be some way of helping these people move on, move forward. So that's why I think restorative justice is such a powerful way of helping these victims.” Fuimaono (KI) said that sometimes the victim wanted to see the offender to find out if they were on track for treatment and that sort of thing. And there was worth in that.

Tim (KI) said that some victims ended up being incredibly dissatisfied with the system. They thought that they would be satisfied once the defendant was sentenced: “when the bastard is locked up, and gets locked up for a decent period of time.” But Tim observed that a prison term does not resolve the victim's issues so it is a huge waste of the many taxpayer dollars going into building more prisons and punishing people more harshly. Tim claims it is unrealistic to “send somebody into such a harsh environment and throw them back out onto the streets expecting them to be better people”.

June (KI) expressed a lot of empathy for victims – especially those who had experienced the death of a family member at the hands of an offender. She said that for those victims the loss was with them for life while the lowlife offender who had killed their family member would serve a number of years in jail and

then would get out and begin life again.

Facilitators needed to understand that offence victims had a variety of conflicting feelings and expectations that they brought to a restorative justice process. But if a victim could experience someone taking notice of them, gain a sense of justice being done, have some healing of the harm done, and regain their dignity, they could be able to move positively into the future.

Facilitators told many stories about the generosity of victims and the goodwill they displayed towards their offenders. Dorothy M said: "Sometimes you have a victim who says, look, my adolescent years were pretty horrific and I don't want this person to be like I was. I want to give him an opportunity so he doesn't go down that line." Philip reported how he had been asked to do a restorative justice conference by a victim because he wanted to sort things out with the offender without her having to go to court, because she was a solo mother and had been in trouble before, and he did not want to contemplate the possibility that she might go to jail.

However, victims are not always forgiving – and facilitators accept that that is appropriate. Greta said:

There is an expectation that the victim would forgive and accept the apology. However there are rare cases and this was one of them, where the victim was still very angry throughout the process, and through the conference was able to say how angry she was. . . . I guess for her the conference began the process of moving on which would be done outside of the restorative justice conference.

Nor are victims always prepared to go on and attend a conference, but such victims often report that having had a pre-conference meeting with facilitators where they can talk about what happened for them and be listened to was a positive experience for them.

## **Offender issues**

The restorative justice process is victim-centred, but if the process is to be really helpful for victims it also needs to be beneficial for offenders as well. Toews and Katounas (2004) writing from an offender perspective agreed that: "Restorative justice seeks to also bring offenders back into the 'loop,' making their experiences and needs central to the justice process" (p. 108). So, restorative justice facilitators need to be knowledgeable about offender issues. The restorative justice process offers offenders an opportunity to face the reality of what they have done, to take accountability for the wrong-doing and harm they have done, to put right the wrong, to assist healing the harm, to restore relationships with the victim, with the victim's supporters and their own supporters, and to regain some dignity. As Tania put it: "that's what restorative justice is – it's a peoples' process. It's just an absolute given for us that people are the most important". Ngatamariki noted that she has found it is significant for offenders that they know that restorative justice process comes from the court – it changes their mentality.

However, one of the issues for facilitators is how much time and energy it is appropriate to expend on encouraging offenders to engage in a restorative

justice process. Naida (KI) reported that a Te Oritenga facilitator was very good at gaining the trust of offenders and victims and would spend an extraordinary amount of time meeting with the parties.

*One of the purposes of a restorative justice process is to have the offender be accountable for their actions, and to take responsibility for what they do. It is my view however, that if a facilitator persuades an offender to enter into the restorative justice process, that may prevent the offender from taking responsibility for him/herself.*

*If facilitators do not make offenders responsible for their own decision-making at the beginning of the process – when it is easier to create a new model of behaviour – at what point in the process will they hand over responsibility to the offender? How will they do this? Will an offender be prepared to begin taking responsibility for him/herself when the facilitator has been doing it for them? To merely hope that an offender will change their attitude in the conference is not good practice and the victim may be re-victimised if the offender does not accept responsibility for their actions. Facilitators need to be aware of and address such issues if they are to be effective facilitators of offenders.*

Restorative justice provides an opportunity for an offender to become aware of the effects of their offending on the victim. Fuimaono (KI) observed that for an offender, confronting a victim who has been traumatised by the offending is traumatic. But it may also be empowering because it enables the person to realise what's happened and to realise the harm that's been caused. Peter reported that in a case that he had facilitated "the victim's terror had touched the offender – probably it was the first time in a long time he'd been really affected by what he had done".



Facilitators were of the opinion that it was the recognition of the effects of their offending that was a major factor in offenders choosing not to reoffend.

Offenders certainly reported that being face-to-face with the person they had harmed by their offending was much more difficult than facing the judge in court. Tim (KI) talked about his belief that people change when they choose to change, but facilitators realised there were factors influencing such a choice and certainly one of those factors was the emotional experience that offenders had when they faced the distressed victim of their offending.

Peter stated that facilitators needed to be aware that every offender who was not reoffending was reducing the number of victims. But we also needed to remember that just as there are a great variety of offences and reasons for offending, there were also a variety of reasons for not reoffending. Peter reported meeting a man who had been in prison lots of times but said he wanted to stop going to prison. He stated his reason was that:

While I was in here on this current crime . . . the door of B block, which is where I was, opened up one day and um a young guy walked in – and it was my son who'd just been convicted and imprisoned in the same block as me. And I just realised that if he was to ever have a chance in life I had to start modelling for him the way he needed to be. So that's why I'm here for me. Because if I don't do that my son will just have the same way of life I have.

Facilitators were aware that, for offenders, being determined not to reoffend was one factor in being a law-abiding citizen – but more than that was required. There was considerable concern amongst facilitators about the lack of support

for offenders after a restorative justice process. But facilitators also knew that post-restorative justice conference support was not part of their task and they should not attempt to offer it. However, it was possible for post-conference support for the offender to be discussed as part of the outcomes in a conference and for arrangements to be made for it to occur. At some conferences it was at the suggestion of the victims that such support was discussed.

An issue that all focus groups raised was that of discovering that in some cases the offender was both offender and victim, and the victim was both victim and offender in the same situation. The Summary of Facts that the police gave to the court was in some cases only one part of a much longer interaction. Facilitators said that it was really important to go with an open mind when meeting the alleged offender and victim so that the real story of the situation could emerge.

One situation that facilitators did not expect to have was when an offender who had pleaded guilty in court come to a restorative justice process and then stated that they did not commit the offence – which meant the restorative justice process could not proceed. All the facilitators nodded in recognition when this scenario was raised.

In provincial areas where most people had connections to each other the restorative justice process often had to cope with historical interactions that

impacted on the restorative justice case.

## Group dynamics

Restorative justice practitioners facilitate groups and need to know how the dynamics of a group operate.<sup>180</sup> Tim (KI) described one such dynamic when he observed:

Generally when I'm in a restorative justice conference and we get that moment where things change for people, because they go in with a set of expectations and they are really struggling and then something happens in the meeting and it changes, it changes for the victim or the offender or usually for both.

Focus group participants agreed and gave their own examples of when conference participants began relating directly to one another.<sup>181</sup> Effective restorative justice facilitators are aware of, and knowledgeable about, these forces – these interactions that occur between participants at a mental and emotional level at both pre-conferences and conferences.

The *Restorative justice facilitator induction training* manual (Ministry of Justice, 2008b) made no mention of group dynamics. It dealt instead with skilled facilitation and provided long lists for trainees to check whether they, or the person they were observing, had exhibited particular skills. It stated that “emotional and physical safety of participants is an overriding concern” (Ministry of Justice, 2008b, pp. 2, module 9). But there is very little, if any, specific

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<sup>180</sup> For full discussion on Group dynamics see p. 44f.

<sup>181</sup> These are recorded in detail on p. 302.

information on what emotional safety is, or precisely how emotional safety could be achieved, or how to deal with the complex emotional dynamics operating in a group. Physical safety is much easier to define and assess, and the manual discussed that adequately.

*My opinion is that the training manual should give trainees information about the configuration of mental, emotional and physical energy and the way these interact and lead to the remarkable changes described by research participants. I suggest it is when the mental and emotional needs of the participants are not observed and facilitated by facilitators that a restorative justice process does not achieve its goals.*

Chris portrayed the result of effective group dynamics when he observed:

“When victim and offender really open up to each other I feel I have facilitated some magic without having a magician's skills”.

### **Political issues**

Effective restorative justice facilitators recognise that they do not practise in isolation from the political climate in which they live and work and this has been discussed in Chapter 6.<sup>182</sup> However, focus group participants and key informant interviewees discussed the question also asked by Jantzi (2004) “What Is the Role of the State in Restorative Justice?” Information about political decisions that directly and indirectly affect restorative justice facilitators can be gained from a number of sources. For facilitators the most reliable source, with the

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<sup>182</sup> See p. 173f.

most relevant information, should be Restorative Justice Aotearoa, their professional body which maintains a relationship with the Government through the Ministry of Justice.

The funding of restorative justice work was one of the critical issues that affected facilitators during the data collection phase of this research. Tim (KI) declared: “I really worry about the expediency of the current restorative justice model with the Ministry of Justice funding just pushing us into an expediency model, it's painful”. Tim claimed that the Ministry says it doesn't tell people how to do restorative justice, it just funds it. He continued:

But the reality is that they do tell people how to do restorative justice because (a) they have the protocols but (b) they fund it at a level that you can only do it in a certain number of ways. Tauranga Moana Restorative Justice had a kind of training/strategic planning day a couple of weeks back and the facilitators were told that there is not enough money to continue with the current model of two facilitators for the pre-conference and two facilitators for the conference and that the organisation was going to look at doing it a different way. And the facilitators at the end of the day went back to the Trust Board and said that they would take a pay cut to be able to keep doing what they know is good practice in the situation.

Joanne talked about the difficulties that the groups in the Waikato were having in re-organising their administrative system as a result of the Ministry of Justice withdrawing their coordinator's position and funding. One of the suggestions had been setting up a system of satellite pods which Dave pointed out “could work very well until the Ministry changes its mind. Then they'll employ full-time facilitators and that's that”. Dave said he had been told that the Ministry “had

suggested that they'd just employ eight facilitators in the country and that would be it. The rest could go take a jump, no more voluntary facilitators – permanent facilitators". This illustrated the lack of trust that facilitators had in the Ministry of Justice and their knowledge and understanding of restorative justice, and the support that would be given to the process and the current facilitators.

Another issue for the Ministry of Justice and the restorative justice community is to decide what is meant by the term "restorative justice". Tim (KI) provided two examples of very different restorative justice processes that illustrate this. One scenario was of four young men being taken quite rapidly through a process in front of a panel in the course of one morning when the victim might be there or the victim might not be there. Another scenario was of separate pre-conference meetings with the victim and their supporters, and the offender and their supporters; a two hour restorative justice conference where the victim and offender met face-to-face; a careful written report that records all changes made and the things that people said during the process. The comparison is of a 30 minute version compared to an eight hour version. Are they both effective restorative justice? And would both facilitators be effective practitioners? How these differences arose has been discussed in Chapter 6.<sup>183</sup> Nevertheless, definition of the term "restorative justice" does need to be clarified.

Alison (KI) commented on some of the rationale behind the Ministry of Justice

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<sup>183</sup> See p. 184.

work on restorative justice. The restorative justice section of the Ministry of Justice intentionally worked with practitioners in developing restorative justice policy and training. Alison said she enjoyed her engagement with providers and working directly with Training Advisory groups, even though the interactions were sometimes a bit fraught.

### **Social issues**

Facilitators must also be cognisant of the social issues that affect them, the victims, the offenders, and the supporters that they work with. The social status of victims, offenders, and their supporters can be a significant factor in the group dynamics of a restorative justice conference. Generally, in a pre-conference meeting the social status of the participants is more homogenous. But the victim and the offender can come from very different socio-economic, and often educational, strata of the community and facilitators have to work very sensitively to enable the differing groups to respect and understand each other. Facilitators must be aware that differences of opinion about such things as who people will support in local body or national elections, which sports codes or teams are supported, and which religious bodies people adhere to are all potentially divisive. Karen talked about a case in which, when the victim's family realised that the offender's family were from a particular ethnic group, they said they would not attend the conference. After some careful diplomatic work by the facilitators the conference did go ahead and was very successful.

But it is not only differences in social standing facilitators must have knowledge

about. There are many issues in the community that shape people's attitudes and are brought into a restorative justice conference, or prevent them from engaging in restorative justice. One issue that is particularly relevant to restorative justice is the work of the Sensible Sentencing Trust (2007). Wendy declared:

I think we need to break down their attitude towards restorative justice so that maybe they're not dissing, to use the modern term, restorative justice. And have them advocate for themselves what they are doing but they should not actually criticise restorative justice. Both processes have a place for victims.

*I agree that both processes have a place for victims. My concern about the Sensible Sentencing Trust is that they promote more severe sentences as making communities safer places by locking away wrongdoers for longer. What they do not tell the community is that people who are in prison longer generally come out of prison more angry with the system, and in at least some cases, more accomplished criminals because they have made criminal connections and learned from the people they have associated with while in prison. Putting people in prison longer makes society less safe, not more safe, but the media either does not understand this or chooses not to make this apparent.*

## **Previous experience**

The previous experience that practitioners bring to restorative justice contributes to its strength as an organisation. Kate noted:

everybody is so different and that's one of the things that I value about the members of the restorative justice community. There are vast differences between us – not only ethnically – but between people. Even if you've all been brought up on the same street nobody has had the same



experience. And one of the things about the restorative justice organisation is the huge number of different life experiences – victim experience, offender experience, caring work experiences, family experiences, death experiences – and there is so much to contribute about general life.

Wendy added:

to me that's the one thing when you go to a hui that the collection of people with all the same values and beliefs that you have and no matter how experienced a facilitator you are you're always humble enough to know that there is something else that you can learn. And it's a mix of skills and experience from the facilitators' different lives and whatever they do everybody brings something special and something different into the mix. But it's the sharing of that information and nobody – I don't think I've ever seen a facilitator stand up and say I know that already. It's that listening, and accepting, and taking on board.

Māori facilitators come from a whānau-based way of life and Pacific Island facilitators talk about restorative justice being a way of life for them. Sylvia declared:

I value the personal experiences and also the new insights and skills that I have picked up on the journey. Being Tongan in New Zealand I appreciate the crossing of cultures because I have no problems with crossing the cultural boundaries of any of the Pacific Islands, but also in recognising that this is about the context of Aotearoa/New Zealand. I can cross the boundaries to work with Māori and also white Palagi and that is because I am more aware of myself, who I am and I am proudly claiming that I am. I can integrate within the context of Aotearoa/New Zealand without giving up my Tongan-ness or my own identity – what you call integration without assimilation. You don't have to conform and give up all that you are. And because restorative justice is about restoration I value the fact that I am

able actively to participate in the process. Because, at the end of the day the ultimate role is working at how in our differences we can live and coexist harmoniously in the community.

Participants also described attitudes they saw as contributing to their willingness to embrace the concept of restorative justice. These included:

- seeing prison as being a waste of people
- prisons as being counterproductive
- wanting to reduce the number of Pacific Island people in the criminal justice system
- seeing restorative justice as offering an alternative to prison
- wanting to reduce reoffending
- restorative justice as offering an opportunity for offenders to be accountable
- restorative justice offering restoration of relationship
- recognising there is something good in everyone
- cultural beliefs
- expectation of what could be achieved by restorative justice.

A facilitator's cultural background is a major part of the previous experience and knowledge that they bring to their practice. Practitioners who are European/Pākehā, and part of the majority culture in this country, need to recognise the impact that their culture has on others and be careful that they do not impose majority cultural customs and values on them. Non-European/Pākehā facilitators are generally very sensitive to the needs of different cultures.

Culture should not just be seen as belonging to Māori, Pacific Island, Asian, Middle Eastern and other non-European/Pākehā groups. New Zealand

Europeans/Pākehā have a culture and a background in restorative justice processes too.<sup>184</sup>

The third module of the *Restorative justice facilitator induction training* (Ministry of Justice, 2008b) is titled: "Working across cultures in restorative justice". It examines some traditional Māori concepts of justice in pages 5 to 15, and working across cultures from pages 19 to 28. It stated: "In the context of this module, we confine 'culture' to ethnicity and religion" (p. 19).

*My assessment of this module is that it is written by Europeans/Pākehā, from their perspective, accepting that their culture is the norm and all others are different. The module does have a "NZ European (Pākehā) cultural profile" on pp. 26, 27 as an example of how to create a cultural profile but it is the only acknowledgement that there is such a thing as a European/Pākehā culture. There is no analysis of European/Pākehā culture for these facilitators.*

*In this research there were twenty-one European/Pākehā participants and sixteen participants from other cultures. These figures would indicate that it is not appropriate for restorative justice administrators, and the material they write, to consider practitioners of European/Pākehā culture as being predominant in this country.*

## Summary

The areas of knowledge that facilitators need to be effective have been discussed in this chapter. Facilitators need at least a basic knowledge of issues such as restorative justice principles, values, stages of the restorative justice

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<sup>184</sup> See p. 248f.

process, group dynamics, the place of restorative justice in the criminal justice system, the political and social environment, and victim and offender issues.

Training is an important tool for acquiring such knowledge.

The support that is significant for facilitators will be discussed next.

## Chapter 11: Support

Restorative justice facilitating is complex and demanding work and restorative justice facilitators in the criminal justice system need to have support to practise effectively. This chapter will look at the types of support available for practitioners: at the local level, provider groups and their communities; at the national level, the practitioners' association Restorative Justice Aotearoa and the Ministry of Justice; resources such as education funding; and research.

In 2002 the hui, *Critical issues in restorative justice: Advancing the agenda in Aotearoa New Zealand* (Jülich, 2003), the importance of support for practitioners was recognised and it asked "whether we are adequately supporting and resourcing our practitioners . . . what kind of support do they need?" (p. 15). Were practitioners getting the right kind of emotional support, appropriate post-conference debriefing opportunities, adequate rewards and prestige for their work? The hui noted the personal commitment that practitioners bring to their restorative justice work and asked how this commitment can be maintained so there is not a high turnover of facilitators. Such issues were discussed by research participants.

### Local Support

#### Colleagues

Colleagues are the most constant source of support for restorative justice facilitators and are valued for the assistance and encouragement they give each

other. Kate described being at a National Restorative Justice Conference. She remembered

there was a constant sound of chatter, of stories, of connections, of passion, enthusiasm, dedication, and hours and hours of effort, voluntary time and trust that actually goes into that – it's like the ring of Jupiter around us all really, it's always there, knowing that there's people externally, not even just in this country but around the world, just constantly ticking over. And I think it's incredibly valuable to know that even when you've got your eyes shut there is someone over the other side of the world trying to do the same thing.

In the early stages of restorative justice in Aotearoa/New Zealand facilitators working in the criminal justice system joined with other colleagues for mutual support as they developed their restorative justice work. The *Te Oritenga* Restorative Justice Group was established in Auckland soon after Mansill conducted an experimental restorative justice conference in 1994 (Department for Courts, 2003a).<sup>185</sup>

### **Provider groups**

Facilitators trained and accredited by the Ministry of Justice (2008b) “are required to belong to a restorative justice provider group and abide by the group's contract” (p. 42). Provider groups see their agenda as providing accountability and supporting facilitators to maintain the standards of best practice. This includes debriefing so facilitators’ minds are clear to take on the

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<sup>185</sup> Discussed on p. 175f.

next case; enabling facilitators to learn new skills and improve existing skills; to support and challenge each other to improve their practice in a climate where they are able to admit deficits and mistakes.

Alison (KI) observed that the provider groups each had their own particular characters, with some being quite hierarchical and some being very egalitarian. Most provider groups have a very stable membership, while some have a small stable core of members and a larger group who fluctuate.

### **Co-facilitation**

Another area of support for facilitators is the system of co-facilitation that is considered to be best practice in the criminal justice system.<sup>186</sup> Even experienced facilitators reported that they found working in a co-facilitator situation was really supportive. It would not be possible for a sole facilitator to do the two tasks of facilitating the conference, and recording what was said and done there for making a report to the judge. A recording device would not be able to pick up all the information needed and may be an obstacle to free expression.

### **Supervision**

Professional supervision is another important support for facilitators. In fact, the Ministry of Justice (2009a) states: "All facilitators and coordinators will have

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<sup>186</sup> This was fully discussed on p. 31f.

regular supervision where both practice-related and practitioner-care related issues are raised (p. 16). Initially, when the Ministry of Justice required facilitators to have supervision, some facilitators opposed having supervision made compulsory. My assessment was that those people were mostly not accustomed to having supervision and had not experienced its benefits. Facilitators taking part in the research were all accustomed to having supervision, and being in supervision was one of the requirements for participation.<sup>187</sup>

## Community

Restorative justice in the criminal justice system in Aotearoa/New Zealand is designed to operate within the community and from a community base. Or, as the hui *Critical Issues in Restorative Justice: Advancing the Agenda in Aotearoa, New Zealand* (Jülich, 2003) stated: “Restorative justice should be owned by the community, even though it is used by the State” (p. 9). Facilitators belong to, work from, and are supported by provider groups established by their community. Facilitators who belonged to a well-defined community, like West Auckland, or a provincial town like Thames or Whangarei, found it easier to make community contacts than the facilitators in metropolitan Auckland. Wendy noted: “Our group has worked very hard to establish those contacts and we've had to go out into the community to the key groups to establish our processes

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<sup>187</sup> See Consent Forms p. 433f.



and systems”. Gayle then commented that central Auckland has not got such a well-defined community of support.

Alison (KI) recognised that one of the things the Ministry of Justice did achieve was keeping restorative justice based in communities. She said: “We didn't take it away and make it into the youth justice system, we didn't employ people and make them part of the bureaucracy and for that I'm very proud”. Alison also said at times it would have been easier to manage and less complex to just employ people to do the job.

Fuimaono (KI) raised the question of whether restorative justice needed to be community-based rather than Ministry of Justice-based. He said that people look to the courts as being the place to resolve crime “but I'm very much of the view that communities need to take more action and responsibilities for the ways of dealing with behavioural issues at an early stage”.

### *Community involvement*

Restorative justice brings together people who have had harm done to them, and those who have harmed them. Also involved are the secondary victims and offenders of an offence, and the restorative justice facilitators and administrators. All of these groups are interdependent in a community, and it is this wider community that supports restorative justice facilitators and administrators, as well as victims and offenders.

Fred (KI) talked about the beginning of restorative justice in Auckland and

claimed that the church community was involved from the beginning as it supported Mansill and his work with restorative justice, and other churches have continued this support. Fred went on to say that a lack of funding is the main issue in community support for restorative justice, because there are plenty of people with the goodwill prepared to do the work. Being aware of how the Ministry of Justice had treated Auckland facilitators, Fred suggested:

“Perhaps we need to look at non-government funding and concentrate more on charitable trusts, look for major benefactors, even something like the Auckland Savings Bank Community Trust“. To have restorative justice processes based in the community and funded by the community is also a wish for many facilitators as there are tensions in the present government-funded model. However, restorative justice is seen as a community-initiated service and therefore not really professional. But as Wendy said: “The values of professionalism, of effects of the facilitators are of the highest standard.” There was a chorus of agreement from her listeners.

### ***Mutual support***

Just as the community supports restorative justice, so do restorative justice people support the community. Tania said:

It isn't a financially viable option for any organisation to take on this work. By taking on a contract like this when you know financially it's probably going to cost you more than you get, you do it because it's part of your building your community – putting positiveness back into your community, giving opportunity for those to also give back to their community.

Restorative justice provides opportunities for people on the periphery of the process to grow and benefit from it as well. Tim (KI) told the story about a lawyer who, in the middle of a restorative justice conference, relinquished his fee so that his young male offender could pay reparation to the young woman who he had injured. The lawyer said: “Well I can contribute to this – I won’t charge [the offender]”. There are many examples of people coming through, building the sense of community.

Facilitators said that the people they meet from the community encouraged them to keep working in this area. Possibly the best support for facilitators came from participants in successful restorative justice conferences – gracious victims, supportive mothers and friends who thanked facilitators from the bottom of their hearts for the excellent work they did.

Tania claimed that in the restorative justice community

we're saying we believe there is another way of making people accountable rather than just locking them up or just fining them – that there's a different way that touches people that we believe is a catalyst for change in people. We give people another chance and I think that's probably something I value as being part of the restorative justice community.

Anne added: “In the wider community it's just the happiness of being in one more job in that immense sea of maybe bringing wisdom and goodness into the world”.

Vivienne observed: “It seems to me what you talked about, and what I see too,

is the healing that happens – and if you're actually taking all that amount of distress and trauma out of the community and putting that much healing in – it's wonderful for our communities”.

Facilitators discussed how their restorative justice work influenced the community in which they operated as well as their family members. Wendy said that her son was “doing exceptionally well in the Air Force because of his nature and the way that he can be conciliatory and facilitate. It's quite amazing to see how the skills and values have been passed on just simply from the work that I have done through restorative justice.”

Fuimaono (KI) spoke of the savings that he expected that a restorative justice process would make even for the Accident Compensation Corporation<sup>188</sup> – and therefore the whole country – because restorative justice processes empower people to live healthy and safe lives.

Flora added a different perspective when she observed she enjoyed being part of that lovely feeling you get when you go through the conference. She added: “It always seems as though my whānau has once more been extended and it's a really good feeling and it's reciprocated 99.9% of the time”.

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<sup>188</sup> The ACC provides comprehensive, no-fault personal injury cover for all New Zealand residents and visitors to New Zealand.

### *Future communities*

Facilitators dreamed of having restorative justice in all schools and in the community as the standard process for dealing with offending. But for this to become a reality, the community will need to be aware of and understand restorative justice. Developing this awareness and understanding would happen in a variety of ways, but each time facilitators conduct a restorative justice conference, another part of the community gains knowledge about the process and the ripple effect would spread it wider. Mike observed: “And for those who have participated, they've got it, and we've just got to try and build up that groundswell. The more people get involved the better, and in conferences we have the benefits – we touch those people.”

Fred (KI) wished that politicians would stop playing with crime as a means of getting votes because he thought that it distorted the governmental response. He would like more change in politicians' attitudes, and he noted that he began addressing this in about 2000 when he was invited to Parliament and made a presentation to all the political parties of the day. He said this resulted in the party manifestoes in the following election making favorable comments about restorative justice. Fred observed: “Perhaps just bringing home the senselessness of the punitive approach might finally win through with politicians – if they can see that there's not enough money for health and education and those sorts of things because they are spending it all on prisons”. Fred also wished that restorative justice could get a fair go in the media. He did not think it

does at present and that it would make a huge difference if it did.

## National Support

### Restorative Justice Aotearoa

Restorative Justice Aotearoa “is the primary professional association for providers of restorative justice services in New Zealand” (Restorative Justice Aotearoa, 2011) and is one of the national support agencies for restorative justice practitioners.

#### *Participants' views*

Research participants viewed Restorative Justice Aotearoa as a national organisation that offered restorative justice facilitators and administrators the opportunity to be part of:

- being able to meet and share knowledge with other people at conferences
- being part of an organisation that wants to get better outcomes for victims and offenders
- being part of something that has a moral base
- being involved in the new structure that is going against the culture of retribution, being judgmental and blaming, and is working for healing and for moving people on
- being involved with something that is actually positive about the criminal justice system
- having huge potential to change disharmony into harmony within a community and for individuals
- being able to participate in the restorative justice process so we can live and coexist harmoniously in the community
- working to have restorative justice taken seriously at the political level

- enabling groups to meet together in the community and talk about restorative justice whether they are funded or not
- encouraging restorative justice to apply to all Aotearoa/New Zealand and for practitioners to do it in different ways in pockets of bodies throughout the country.

Karen declared: "I value that there is a process outside the arbitrary/assertive/aggressive/everything/court system where voices can actually be heard and where listening can actually be done. And I think it would be very sad if that wasn't occurring". Restorative Justice Aotearoa supports restorative justice being practised in all ages and cultures and all different walks of life; it seeks to assist a strong commitment by the community to stand up and participate in the justice system; it supports adoption of restorative justice as an alternative in the justice system; and its use in schools (Restorative Justice Aotearoa, 2011).

### *Restorative Justice Aotearoa evolution*

Alison (KI) said that one of the things she is really proud about doing is seeding Restorative Justice Aotearoa. She declared: "I am proud that we actually thought through and put some funding aside and got it started, and got the [national] conferences started too". Alison said that it was always the aim of the national conferences that they would give facilitators an opportunity to get together and exchange ideas and learn from each other – as well as attending the conference sessions. Alison added that she hoped that Restorative Justice Aotearoa would bring some real vigour to exploring the cultural issues in

restorative justice. She said: "Our culture is changing very quickly and our opportunity to get those ideas [ie Treaty of Waitangi issues] across is probably limited and we probably have to be quite vocal and quite pushy about it right at the moment." Otherwise we lose the picture of New Zealand where we ask questions such as what's fair here? What happened and what is the right thing to do to put it back together?

Facilitators appreciated having Restorative Justice Aotearoa as their national body which supports them both at an individual level and at a wider national level. One of the tasks of Restorative Justice Aotearoa is to keep holding the ideal of restorative justice up to government and society. Sylvia said: "I value the fact that there is a restorative justice organisation which supports an alternative to the criminal justice system that is already adopted as part of the justice system". Mike noted that there was infighting and backbiting in the organisation, but he saw this as highlighting that we are just human. He saw that the organisation was still growing and developing, and the fact that its members deal with things and don't sweep them under the carpet was one of its strengths. Tania noted that Restorative Justice Aotearoa had put a value on Māori practitioners and given them their own forum and in doing so has recognised that people do things in different ways. Restorative Justice Aotearoa had put in extra support to get more Māori and Pacific Island practitioners on board and she was really excited by this.



## *Conferences*

The annual National Restorative Justice Conferences, that are joint ventures between Restorative Justice Aotearoa and Ministry of Justice, were greatly valued by facilitators and administrators. National Conferences offer an opportunity for people from all over the country involved in restorative justice work to meet together. Tania observed:

I think one of the great things in the wider national sense has been our yearly Conferences. 'Cause to be in a place where people are like-minded and are able to share experiences, where people can laugh at the same things and understand what you're saying and be able to give you solutions is something of great value. I value that Restorative Justice Aotearoa have seen that it is important for our people to be able to get together once a year and to be able to speak together and share together and learn from each other.

Facilitators reported that the speakers that have addressed the Conferences have broadened their understanding and knowledge.

## **Ministry of Justice**

Ministry of Justice, the government department which has responsibility for restorative justice, is the other identifiable national support agency for restorative justice practitioners in Aotearoa/New Zealand. The Ministry of Justice funds "24 community-based provider groups throughout New Zealand to try and put things right for victims, hold the offender to account and, as far as possible, repair the harm caused" (Ministry of Justice, 2011b).

### *Co-operation*

The restorative justice section of the Ministry of Justice intentionally worked with Restorative Justice Aotearoa to involve experienced facilitators in developing training manuals and performance standards, restorative justice policy, and training for the restorative justice process.<sup>189</sup> When Alison (KI) was managing the restorative justice section of the Ministry of Justice she worked on the principle that Ministry of Justice should not be an agency that ran everything from the centre, telling people how things should be. Rather, she tried to have the Ministry of Justice be a facilitator of expertise, not the expert in facilitation, and so the training advisory groups involved facilitators in running sessions so practitioners would hear from each other, not be told by the Ministry.

### *Training*

The initial training, provided by the Ministry of Justice for facilitators, was clearly appreciated – some facilitators said that just doing the training was really exciting. Tania said that the training was the thing that made restorative justice come alive for her and she could see where she fitted into it. Two facilitators reported that it was very helpful to have had their administrators receive the same training as they had. Marlene said: “It’s awesome when you have the whole team go to the training . . . and we’re able to have a conversation on the same level.” Facilitators spoke specifically about how the training enabled them to deal with issues like conflict between family members in a conference.

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<sup>189</sup> <http://www.restorativejusticeaotearoa.org.nz/node/16>.

Facilitators appreciated opportunities for post-accreditation training. Some of this training had been arranged by the Ministry of Justice, and some from funds given to provider groups by the Ministry of Justice to pay for appropriate in-service training.<sup>190</sup> Facilitators had also funded additional training themselves as they recognised the importance of updating their learning and skills.

### *Expertise*

In the early days of restorative justice in the criminal justice system some people were sure that there was only one right way to do restorative justice work and that they were keepers of that right way. Alison (KI) said one of the mistakes made in the early days was that the restorative justice section did not question hard enough about who should be accepted as experts, and why, and what was acceptable expertise. However, the 140 people trained at the first round of training each brought their own views to the restorative justice field and eventually became experts too, assisting other new facilitators to develop expertise in restorative justice.

### *Organisational effectiveness*

Facilitator effectiveness is to some extent dependent upon the efficiency of the governance and administration of the organisation in which they work. In order to assist organisational efficiency, the Ministry of Justice provided governance training for restorative justice provider groups, because they were aware that

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<sup>190</sup> See Table 4: Nationwide projects funded by Ministry of Justice p. 212.

quite a lot of effort and energy was being used by some groups who were falling apart.<sup>191</sup> The hope was that with everyone understanding governance better they would stop imploding and exploding. However, Alison (KI) reported that in some groups – even after governance training when such matters were discussed as being unhelpful – the group still had the same person sitting on their governance board while being a paid administrator and also a facilitator.

### **Lack of support**

Experienced facilitators in Auckland did not feel supported by the Ministry of Justice when their application for a contract to practise at the Auckland District Court was not accepted and an organisation with no trained facilitators was appointed instead.<sup>192</sup> Facilitators in other areas who did have their contracts renewed felt that the terms of the new contracts, particularly the new funding regime, placed restrictions on the quality of practice that they could offer. Sylvia said she felt that the Ministry of Justice had lost its way a bit but she was hopeful they would find it again.

### **Resources**

A vital source of support for practitioners is good resourcing. Concern about this has continued since the hui in 2002 when Zehr stated “One of my issues is whether we are adequately resourcing practitioners” (Jülich, 2003, p. 15).

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<sup>191</sup> See Table 5: Department for Courts Annual Forecast and Reports 1998 - 2003 p. 440.

<sup>192</sup> See p. 197.

## **Funding**

When research participants were asked what three wishes they would make to enhance the health and vitality of restorative justice, the most common response to the question was money, money, money! Part of this plea for money was that a number of resources that facilitators previously had access to no longer were available – they had been deleted to save money.<sup>193</sup>

## **Information**

Another resource that Phil (KI) wished was available for restorative justice work was the ongoing education of the police officers in charge of the police community constables, and the constables themselves, to encourage victims to go to restorative justice conferences. He would also like the court to be more organised and have someone designated to follow restorative justice cases through and make sure all the contact details were correct and other practical things addressed.

But money is not the only resource that would enhance the health and vitality of restorative justice. When Alison (KI) had the opportunity to meet with restorative justice facilitators throughout New Zealand and visited provider groups, she was able to observe the differences in facilitator practice and the groups that supported them. Information about this variety of practice would be a useful

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<sup>193</sup> Discussed on p. 190f.

resource for provider groups, administrators, and facilitators.

### **Long-term vision**

Eldon (KI) wished for the resource of a long-term sustainable vision for restorative justice. He thought there was quite a groundswell of optimism for what restorative justice could achieve. Restorative justice people just needed to be seen more. He observed:

It comes back to money again but getting in the right ears is important . . . if you shout at enough people and knock on enough doors something's got to happen. And you've got to be inventive about where you're heading . . . and you've got to look for opportunities and areas, and bark up lots of trees, and you've got to get out there. I just think that when people can see the potential that the process has . . . capture some of the positive experiences that victims have through the process because that's how you would sell it to people. I think the victim experience will win people over and if you can be shown to be reducing offending that will help.

Eldon added that he was aware that it was another whole issue as to whether it was appropriate to judge a victim-oriented process by whether an offender re-offends. He was of the opinion that there was a groundswell of lawyers who saw value in restorative justice.

Alison (KI) affirmed Eldon's opinion and stated that she thought that the restorative justice community did have to pick its horses and back those. That means, she said, pick an area and focus on it, learn about it and get politically savvy. The scattergun approach was not particularly successful, so to pick a topic and focus on it for year could be worth a try. She declared:

If it was me I'd start looking at things like the legislative and policy programme, looking on the Ministry of Justice and Corrections websites and checking out what's happening this year – have they got a push happening with victims, have they got a push happening with rehabilitation, what's happening, we can we get ourselves into the picture? And getting alongside, not in a combative way but getting in there and chat, chat, chatting . . . so I would say getting a little bit politically savvy, picking a direction, having a bit of focus on it, and engaging.

Alison also suggested that Pita Sharples,<sup>194</sup> who is interested in restorative justice, would be a good person to engage with. But also engaging with the justice sector ministers – choosing the best person to do this, sending someone who's going to engage at the right place would be useful.

## **Judges**

Judges who understand restorative justice and are aware of the legislation that includes it are a very helpful resource for facilitators. Facilitators know that the sentence given to an offender depends on the judge. In smaller courts facilitators and judges have established relationships that seem to have a positive effect on how judges accept restorative justice report outcomes. Judge Eddie Paul, the Auckland judge with responsibility for restorative justice at the Auckland Court, has said that he appreciates restorative justice conference reports as they give him more information about the case and so he is able to make a more informed decision.

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<sup>194</sup> Co-leader of the Parliamentary Māori Party and well-respected champion for justice.

## **Co-facilitation**

All the focus groups assessed co-facilitation of restorative justice conferences as a positive and supportive resource. Co-facilitation is discussed fully on p. 31 and needs no further comment here.

## **Research**

Facilitators recognised that theoretical learning was very important to their effectiveness. There is now a growing body of literature about restorative justice that facilitators can access, although the field of restorative justice facilitation has not yet been written about widely. But it is the practical information from research about restorative justice practice that is very useful to facilitators. Even more useful to facilitators in Aotearoa/New Zealand is research that has been done in this country.

The major piece of research done in Aotearoa/New Zealand was the evaluation of the restorative justice pilot scheme by Victoria University (Crime and Justice Research Centre, and Triggs, 2005). It has provided useful information for restorative justice practitioners. However, its information is now somewhat out of date, particularly because the data was collected when the pilot scheme had just been set up and was not working to its full capacity, and most restorative justice facilitators were quite inexperienced, having just completed their training. Facilitators were of the opinion that it is time to repeat the research to gain current data about the practice of restorative justice in Aotearoa/New Zealand.



One focus group had a discussion about restorative justice research and theoretical knowledge. Chris said: "Winifred, can I ask if you think the health and vitality [of restorative justice] would be enhanced by everybody undertaking more formal training?" Karen stated: "It could be a negative thing because it could result in some really highly trained theoretical people who had lost track of what it's all about". Jacob added: "I was just thinking along those lines too, whether the increased professionalism of facilitators would actually enhance the health and vitality and I'm convinced it would". Karen replied that she saw research for a PhD as different from having a more intensive, more extensive, interactive training. Research "is the theory and thinking and talking and researching, which I think is great and really important, but I don't think it's necessary for everyone". Jacob added:

We know in our group that the more experienced facilitators do better [mm] and we know that people who do more and more get better at it [yep] and succeeded in ways that others don't, particularly in bringing victims to conference. And I would say that Winifred's research, and research like that is part of the maturity of restorative justice, that it needs people that are going out there at that theoretical level to inform people about what goes on. And it would help the health and vitality if you have this continual lot of PhD or masters students doing this kind of research and us practitioners learning from that.

I added that I thought that for restorative justice to be accepted in the professional world, the academic world and the legal field, academic rigor was necessary. We need to show that restorative justice "is not just a nice little idea, or we aren't just a nice touchy-feely thing, that actually there is some substance

to it, there's some theoretical underpinning to it".

Eldon (KI) affirmed this when he noted that he is still optimistic in terms of the outlook for restorative justice but he is aware that, particularly in some sections of the legal profession, "there's not enough academic clout behind it yet and those who want to shoot it down can because they have all the book quotes to back up their opinions". So, one of his wishes is for research to capture some of the insights and knowledge and the results that are out there. Eldon also hoped that restorative justice could stand on its own two feet and not be so much at the mercy of the Ministry of Justice which, as has been seen, can throw out a whole community's worth of experience overnight on the basis of bottom lines.

Alison (KI) said research on restorative justice had showed it had an impact on offender sentences. The reason the pilot scheme focused on pre-sentencing – when she considered it should only be a little part of the picture – was that funding was granted and continued because it was shown there was a saving in prison beds. That was the reason that the pilot scheme started with a focus on pre-sentencing and has not really been able to move to post-sentencing work.

Tim (KI) also was interested in research. He observed that if he could have confidence that it was going to be done well, one of his wishes would be some research into what works in restorative justice. Tim's second wish would be for there to be some sort of coming together of restorative justice practitioners throughout New Zealand in a way that people could really understand what is

possible from the process. Tim talked about how it is possible to be intentional about getting great outcomes with nearly every restorative justice process but he thinks that many facilitators do not achieve this. He said: “There are a lot of people who just kind of throw people together and if it's a good one it's a good one and if it's a bad one it's a bad one, so be it.” Tim thinks that our level of expertise could be accelerated hugely by knowing what works in terms of the essence of practice. Hence the need for research. But also the need for people who claim they are doing restorative justice to be actually doing restorative justice, not just attaching the term “restorative justice” to whatever they are already doing to obtain funding or to take advantage of the restorative justice name. Tim said:

And for me, it's only when we've done those two things that the funding should come through because my worry is that if more funding was just made available to restorative justice it would be a partial fix because then we get more divergence, more people taking advantage of the funding for doing it.

*I considered that the willingness of so many restorative justice facilitators working in the criminal justice system to participate in this research demonstrated the interest that facilitators had in research about restorative justice, at least in Thames, Auckland and Whangarei.*

## Summary

This chapter has discussed the types of support available for facilitators at local and national levels, particularly Restorative Justice Aotearoa and the Ministry of Justice. Resources available to facilitators have been named and the place of

research in facilitation effectiveness explored. Research participants considered that consistent interconnectedness of agencies and community organisations involved in restorative justice would help bring it to the awareness of the public, the government, judges and lawyers. Academic research would also be of benefit to the development of restorative justice.

The next chapter will discuss the conclusions from the research.

## **Part Four: Implications for Policy and Practice**

## Chapter 12: Conclusions

This research set out to address the question “What do restorative justice facilitators in the criminal justice system in Aotearoa/New Zealand consider to be effective practice?” In this final chapter the key contributions of the study will be discussed, the limitations of the research noted and the findings of the research and implications for public policy reported. Areas for further research will be listed.

### **The key contributions of the study**

This thesis is a contribution to the development of the restorative justice process in Aotearoa/New Zealand and, in the instances noted, internationally.

- This was the first research conducted in Aotearoa/New Zealand, and internationally, evaluating the effectiveness of restorative justice facilitators.
- This was the first research, nationally and internationally, in which facilitators themselves defined effectiveness in their practice.
- This research was the first in Aotearoa/New Zealand to use appreciative inquiry for evaluation of restorative justice effectiveness.
- This research was the first time that Aotearoa/New Zealand public policy information about restorative justice was assembled and analysed.

It is important that facilitators are effective practitioners. They are the lynchpins in the restorative justice process that aims to restore just relationships between adult victims, offenders and their communities. This research examined facilitator effectiveness and revealed the complex nature of the facilitative task.

This research intentionally involved facilitators to provide data to assess the practice of effective restorative justice facilitation and enabled them to articulate their perspective. This perspective is now available for the use of other facilitators and public policy makers.

A point of difference between this and other studies is that this research was the first study in Aotearoa/New Zealand to use an appreciative inquiry methodology to conduct an evaluation of facilitation practice in the criminal justice system and to research restorative justice facilitation practice with adults in the criminal justice system.

This study also examined government policy on and performance of restorative justice in the criminal justice system in Aotearoa/New Zealand. It was the first research to analyse government documents – annual appropriations, departmental reports, legislation and Official Information requests – so the pattern of actions of successive governments in the field of restorative justice was apparent.

The public policy environment was significant because a major reorganisation of the structure of restorative justice in the criminal justice system by the government was the background to this study. A result of the reorganisation was that the central role of victims in the restorative justice process was sidelined by the Ministry of Justice. The focus instead was on saving expenditure in Corrections.

The data collected in this research could not appropriately be fitted into any existing theoretical framework. The new framework used needed to be one that evolved from the data collected, accommodated a form of analysis which was completely respectful of the data, honoured the participants' perceptions and insights and expressed their passion and experience.

### **Limitations of the research**

Limiting factors in the research were practical matters such as engaging only restorative justice facilitators resident in Waikato, Auckland, and Northland to provide data, and restricting the study to facilitators working in the criminal justice system.

The sampling strategy of facilitators opting-in to the study resulted in data being collected only from committed and experienced facilitators. Data from facilitators who were less experienced, and those less affirming of the restorative justice process, was not collected.

### **Facilitator effectiveness**

The United Nations (2006), as well as other writers, recognised that facilitators are of prime importance to a restorative justice process, and that group facilitation, as practised by restorative justice facilitators, is acknowledged as a very skilled and complex process. The data gathered in this research and the themes that emerged: presence, awareness, skill, knowledge and support, confirmed those perceptions.



The research identified the following factors as those that effective facilitators incorporate into a congruent facilitation model:

- the presence or personhood of a facilitator – who they *are* – which is a pre-requisite for effective facilitation
- the facilitator self-awareness and awareness of the context within which facilitators, victims, offenders and their supporters function
- the learned practical skills for assisting participants to achieve the aims of the restorative justice process
- the knowledge of people and systems necessary for facilitator efficiency
- the support at personal, local and national levels vital for maintaining facilitator effectiveness.

All the focus groups assessed co-facilitation of restorative justice conferences as a positive and supportive resource and a contributor to facilitator's effectiveness. Schwarz (2002) agreed. They emphasised the crucial importance of the separate pre-conference meetings with victim and offender in an effective restorative justice process. Facilitators also recognised the firm boundaries within which they had to function – such as severing at the end of the case the bonds they had developed with victims and offenders.

In this research I made new links for the practice of restorative justice between recognised practical facilitation skills and group facilitation theory and showed how both are important for facilitator effectiveness.

A positive finding that emerged from the research was the level of agreement between facilitators as they contributed data toward each of the major themes that evolved. I was surprised at the similarities presented by the diverse focus

group members – rural and urban based, Māori, Pacific and European, men and women. Such agreement may have been because the facilitators had received the same training and closely followed the suggested restorative justice process; that like-minded people participated in the research; that the positive appreciative inquiry methodology encouraged only similarities to be discussed; and because my presence – as a colleague of the participants – may have inhibited displays of disagreement.

Research participants did not tell or discuss stories about conferences that failed or were not successful. This may have been because facilitators did not recognise when a conference failed, their definition of failure was unrealistic, they were not honest about failures, or positively, that the process used by the restorative justice facilitators in Aotearoa/New Zealand does result in a very low rate of unsuccessful conferences.

Offender shame, a subject frequently discussed in restorative justice literature, was not raised at all by Māori and European facilitators and only by Pacific facilitators as a communal cultural response to offending. This may be because the process used in Aotearoa/New Zealand, especially the pre-conference component and the emphasis on community involvement, shifts the attitude of the offender from the self-centredness of shame to the more motivating emotion of remorse – which was discussed by all the focus groups. The restorative justice process used in Aotearoa/New Zealand may be unique in this aspect.

The prominence of community involvement as part of the restorative justice process in the criminal justice system in Aotearoa/New Zealand is congruent with Māori and Pacific collective cultural mores, which many Pākehā/European people in Aotearoa/New Zealand understand and incorporate into their worldview. This is in contrast to restorative justice practices in many other countries which are one-on-one victim/offender restorative encounters, and do not include community involvement other than the facilitator.

The data provided by the research participants demonstrated that the principles stated in *Restorative Justice in New Zealand: Best Practice* published by Ministry of Justice in 2004, are still relevant for restorative justice facilitators and their practice.

## **Restorative justice in the government**

Tracking restorative justice budget and expenses data through public information sources was very difficult, as full information was not consistently supplied in public reports. I needed to use Official Information requests to get basic information. This revealed that budget information about restorative justice as a specific area is not listed.

It appears that restorative justice has been given low status in public policy in this country. Restorative justice work has been shifted around different government departments:

- 1995-2000 community-managed restorative justice was part of the Crime

#### Prevention Unit in the Prime Minister's Department

- 2000 the Crime Prevention Unit was shifted to the Ministry of Justice
- 1998-2003 the Department for Courts managed the restorative justice pilot (later renamed Court-Referred Restorative Justice)
- 2003 there was a merger of Department for Courts and Ministry of Justice
- 2009 the Crime Prevention Unit was disestablished. Its policy functions were distributed across other justice policy teams and a new Community Relations and Operations team was established. The two streams of restorative justice – court-referred and community-managed – were merged under Ministry of Justice
- 2011 the former Restorative Justice team merged with the Community Law Centres team in December and is now called the Community Services team. The restorative justice personnel on the team are an Acting-Manager (till June 2012), Senior Advisor (works Monday, Tuesday and Thursday), Senior Advisor and Advisor.

As well, restorative justice work has not received consistent adequate funding increases. Furthermore, staffing levels have been decreased from a Project Manager and team of five in 2008 to an (Acting) Operations Manager and one staff person in 2009/2010. In 2010 and 2011 there was no reporting at all of restorative justice in the Ministry of Justice annual reports.

Practitioners reported that because of these governmental actions they did not feel the restorative justice process was valued and they did not personally feel supported in their work. They feared that a continued diminishing of government resources for restorative justice could render restorative justice an ineffectual process in the criminal justice system with a consequent diminishing of its restoration work in the community at large.

In June 2011 the government announced some funding reprioritisation for restorative justice – that in 2011/12 and 2012/13 restorative justice will receive an extra \$500,000, while in 2013/14 and out-years it will receive an extra \$1 million. By March 2012 the restorative justice team at the Ministry of Justice had been increased to three full-time and one part-time staff. However, the use of the extra funding had not been made clear to restorative justice practitioners and comments from the Minister of Finance would indicate that savings in offender expenses, rather than a response to victim needs, was the reason for the funding reprioritisation.

### **Methodology and methods**

The affirmative focus of appreciative inquiry suited this research on restorative justice and promoted the collection of data on facilitator effectiveness. The person-to-person verbal interaction that appreciative inquiry employs was particularly appropriate for facilitators – who use that approach with victims and offenders – and for Māori and Pacific people who come from communal, oral cultures. Restorative justice facilitators did not comment on, or demonstrate that the appreciation-centred approach of appreciative inquiry inhibited their addressing negative issues.

For a number of reasons, focus groups were an appropriate method for collecting quality and quantity of data from facilitators. Participants reported personal and professional benefit from being in a focus group, in that they enjoyed meeting with other group members; they relished having an opportunity

to examine practice issues in a broad context; and they were affirmed, knowing that their knowledge and experience was valuable to this research and the wider restorative justice community. Interviews were apposite for key informants as specific issues were addressed with them. The combination of focus groups and interviews enabled me to obtain the perspectives of facilitators and non-facilitator practitioners.

### **The major findings from an appreciative inquiry perspective:**

#### **Discovery**

- restorative justice process is a well-designed process
- facilitators are the key to an effective restorative justice process
- group facilitation, which facilitators practise, is very complex
- facilitators can be effective restorative justice practitioners

#### **Dream**

- facilitators in the criminal justice system dream of more support from governmental public policy
- facilitators particularly wish for increased funding
- facilitators wish for more support from the judiciary.

#### **Design**

- the selection and training of practitioners is a crucial component in the development of effective restorative justice facilitators and needs to take into account the findings of this research

#### **Destiny**

- facilitators are working toward having the restorative justice process as an accepted and widely used part of the criminal justice system.

## Implications for public policy

An aim of the study was to provide data that would be of benefit to facilitators in their work, and that would assist the practitioners' association – Restorative Justice Aotearoa (RJA) – as it develops models of practice, and the government department – the Ministry of Justice – in policy and practice issues.

The collection of data from facilitators was completed before the full impact of the new contracts between facilitator provider groups and the Ministry of Justice was experienced. However, all the facilitators – and many interviewees – recognised that Ministry of Justice funding reductions, which were presented as structural reorganisation, included a change in policy toward an offender focus.

## Policy issues

A discrepancy between Ministry of Justice policy and practice in regard to victims was found. Ministry of Justice (2010) again stated that the restorative justice process requires offenders to face their victims, but the June 2011 *Ministry of Justice Point of Closure Report*<sup>195</sup> showed that nationally 28% of restorative justice conferences – funded by the Ministry of Justice – do not have a victim present. A victimless conference ceases to be a restorative justice relationship restoration process and becomes instead an offender support process. From 2001 to 2009 Ministry of Justice paid a fee for a restorative justice process that did not result in a conference. In the 2009 Ministry of

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<sup>195</sup> Email to Auckland Restorative Justice Trust from Brenda Baxter, Ministry of Justice.

Justice contracts this had been deleted. Facilitators noted that this would affect victims who found a pre-conference meeting helpful but may not choose to attend a conference.

The Ministry of Justice policy in its training manual advocated a co-facilitation model for both the pre-conference meetings and the conference. Provider groups reported that the 2009 contract did not provide funding for co-facilitators.

### *Facilitator proposals*

Noting the increasing offender focus of the Ministry of Justice, focus group participants discussed the policy changes they desired. The discussions have been amalgamated, but all groups addressed the issues presented here.

The first matter was that public policy would recognise that the victim of a crime is not the State, but the people harmed by the offending, and restorative justice policy should treat the issues of victims and re-victimisation as legitimate matters to be addressed with adequate funding. Further, referrals to a restorative justice process should be able to be made at any stage in the criminal justice system that is appropriate for victims. Court-referred funding should be broadened – that is, unlinked from the pre-sentence stage – to provide that flexibility.

Secondly, that restorative justice work in the criminal justice system, and restorative justice facilitators themselves, should be adequately funded to be a professional activity, with uniform and rigorous training provided to develop and



maintain facilitator effectiveness.

The Pacific participants wanted public policy to enable restorative justice to be less Pākehā and less Western justice-centered and provide for facilitators in Pacific communities to be properly trained and supported to do restorative justice work appropriate to their cultural practices.

Māori participants wanted public policy to allow them to work out of a tikanga base with Māori providers. They also were aware of the negative impact of crime on the health of victims and suggested that restorative justice be placed in the Health portfolio, where it might be possible for victim and community well-being to be addressed.

### **Funding issues**

Lack of funding was reported as an issue which constantly impinged on restorative justice facilitators and their practice. Facilitators and key informants had the following ideas about how funds could be used to improve the effectiveness of their work.

- One group of facilitators and one key informant specifically stated they wished for research that could demonstrate the value of putting the approximately \$90,000 it currently costs to keep someone in jail for a year into a restorative justice process, where the outcomes are a more satisfied victim, a more informed and reformed offender and better long-term effects for the community. Discussions in other focus groups echoed this wish.
- The Pacific facilitators and a key informant wanted appropriate training for effective facilitation, including training and support for facilitators who

know Pacific communities and can bring together the Pacific way and effective facilitation.

- All facilitators wished for the development of a plan for the systematic promotion and growth of restorative justice work in the criminal justice system, adequately funded by the government and with adequate remuneration for restorative justice facilitators.

## **Areas for further research**

Key informants and facilitators felt that the evaluation of the restorative justice pilot, which was published in 2005, did not reflect the state of restorative justice work in Aotearoa/New Zealand in 2010. An updated evaluation is required to assist planning for the future of restorative justice, including the development by practitioners and policy makers of a long-term sustainable vision for restorative justice in Aotearoa/New Zealand.

This study raised the question: What is a successful restorative justice process? An answer to this question, along with confirmation of facilitator and key informant perceptions of effectiveness from this research – using an outsider perspective such as victims and offenders – would reinforce this study on facilitator effectiveness.

Māori and Pacific perspectives on restorative justice facilitation effectiveness is an area for future research for the benefit of Māori and Pacific facilitators, as well as Māori and Pacific victims and offenders. How effectively non-Māori and non-Pacific facilitators can facilitate restorative justice conferences for Māori and Pacific participants needs to be examined. For a comprehensive response

to these issues, research by Māori and Pacific people will be required, in addition to work by Pākehā.

Facilitators wish for more transparency in restorative justice public policy processes to enable Ministry of Justice policy decisions to uphold restorative justice principles. Likewise, that Treasury decisions for restorative justice funding be made from the perspective of meeting victim needs, rather than offender requirements.

## **Conclusion**

This study has examined the responses of restorative justice facilitators and key informants in the adult criminal justice system in Aotearoa/New Zealand to the question “What do they consider to be effective practice?” and set their responses beside relevant theoretical perspectives.

The major discovery from the research is that restorative justice facilitation is a highly complex task requiring a high level of personal attributes, astute awareness of context, multiple skills, broad knowledge and a supportive environment. Implications for restorative justice practice are that the selection and training of facilitators – both initial and on-going – need to take into account the data that facilitators and key informants have provided in this study.

Consistent supportive public policy would promote the development of restorative justice in the criminal justice system and assist facilitators to practise effective facilitation of restorative justice processes.

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## Appendices

## **Appendix A: Ethical Approval Documents**



## Focus Group Participant Information Sheet



Date Information Sheet Produced: 1 October 2008

### **Project Title**

Restorative justice facilitation. An appreciative inquiry into effective practices for Aotearoa/New Zealand.

### **An Invitation**

I am a restorative justice facilitator beginning a doctoral study into restorative justice facilitators working in the criminal justice system. Trained facilitators in Whangarei, Auckland and Hamilton who work on contract to the Ministry of Justice in the criminal justice system are being invited to participate in the study. Key informants chosen from judges who advocate for restorative justice in the criminal justice system, restorative justice theorists, restorative justice trainers, restorative justice administrators in the Ministry of Justice, and practitioners who have more than 15 years experience in facilitating the restorative justice process will be interviewed. Participation is voluntary and agreeing to participate, or deciding not to participate, will not impact on a practitioner's status in any way. Participants in the study may withdraw without any adverse consequences at any time, up until the analysis of the data has commenced, without giving reasons.

### **What is the purpose of this research?**

The purpose of this research is to study the effectiveness of restorative justice facilitation in the criminal justice system in Aotearoa/New Zealand and to discover what might enhance facilitator effectiveness. An appreciative inquiry approach will be used for the research. In this approach researcher and participants work together to discover what is best in the people and the system in which they operate. Story-telling is the method used for gathering data.

### **How will the information I provide be used?**

As a participant in the study you will help decide how the information gained will be used to enhance facilitator effectiveness for yourself and other facilitators in

restorative justice. It is expected that the community of criminal justice system restorative justice facilitators will be interested in the study findings which could be made available to local restorative justice facilitator workshops, to Restorative Justice Aotearoa annual national conferences, and to the Ministry of Justice. Articles may be submitted to the New Zealand Law Journal and the Institute of Judicial Studies. As there are few Restorative Justice doctoral level studies international interest in the research findings can be expected.

### **What will happen in this research?**

Facilitators will meet in focus groups and use an appreciative inquiry process to discover what effective restorative justice facilitation is in the criminal justice system in this country, to vision more effective facilitation, and to design a process for putting these visions into action. If you choose to participate, you will be asked to donate your time to be part of a focus group that will meet for up to two hours at a time six times over the next two years. The group discussion will be audio-taped and transcribed for group members to analyse.

### **What are the discomforts and risks?**

Appreciative inquiry is not usually an uncomfortable or risky process, and as researcher I will put in place the Ministry of Justice restorative justice safety guidelines to make the group safe for all members. However, if any discomfort is experienced you may withdraw from the group for time out, or leave the study. All facilitators will be required to be in supervision while participating in the study.

### **How will these discomforts and risks be alleviated?**

Your concerns may be taken to your supervisor, or a referral can be made to the AUT counselling service.

### **What are the benefits?**

Participants in an appreciative inquiry process usually report personal benefit from participation in the focus group as they share the positive stories of their work. As well, the information and analysis you provide will contribute to the enhancement of facilitator effectiveness for the wider restorative justice community.

### **How will my privacy be protected?**

Participants will decide at the focus group how their privacy will be protected in this research. Participants may choose whether all or part of their contribution to the focus group discussion may be quoted in the research findings, or whether they wish to keep their comments confidential. On the Consent Form you will be able to indicate which option you choose.

### **What are the costs of participating in this research?**

The cost of participating in the research over two years will be travel to and from focus group meetings and your time as follows:

- About two hours for attending each of the six focus group meetings – a total of twelve hours
- About two hours reading reports of each meeting – a total of twelve hours.
- Travel time to and from the meetings.
- Travel costs are not able to be reimbursed.

### **What opportunity do I have to consider this invitation?**

You will have two weeks to consider this invitation after you have been given the information about the study.

### **How do I agree to participate in this research?**

You will need to complete a Consent Form to demonstrate you have agreed to participate in this research. I will ensure you receive a Consent Form when I speak to you about this research.

### **Will I receive feedback on the results of this research?**

Yes – you will receive feedback on the results of this research at all stages. The participants will decide the form in which the feedback will be given and its timing.

### **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, Professor Marilyn Waring:

marilyn.waring@aut.ac.nz, and her phone number is (09) 921 9999 Ext 9961.

Concerns regarding the conduct of the research should be notified to the

Executive Secretary, AUTECH, Madeline Banda, *madeline.banda@aut.ac.nz* ,  
921 9999 ext 8044.

Whom do I contact for further information about this research?

**Researcher Contact Details:**

Winifred Murray, Institute of Public Policy, Akoranga Campus Mailbag A22.  
(Mob 021 251 7527)

**Project Supervisor Contact Details:**

Professor Marilyn Waring: *marilyn.waring@aut.ac.nz*, and her phone number is  
(09) 921 9999 Ext 9961

**Approved by the Auckland University of Technology Ethics Committee on *yet to be approved*, AUTECH Reference number *type the reference number*.**

## **Interviewees Participant Information Sheet**

Date Information Sheet Produced: 1 October 2008

### **Project Title**

Restorative justice facilitation. An appreciative inquiry into effective practices for Aotearoa/New Zealand.

### **An Invitation**

I am a restorative justice facilitator beginning a doctoral study into restorative justice facilitators working in the criminal justice system. Trained facilitators in Whangarei, Auckland and Hamilton who work on contract to the Ministry of Justice in the criminal justice system are being invited to participate in the study. Key informants chosen from judges who advocate for restorative justice in the criminal justice system, restorative justice theorists, restorative justice trainers, restorative justice administrators in the Ministry of Justice, and practitioners who have more than 15 years experience in facilitating the restorative justice process will be interviewed. Participation is voluntary and agreeing to participate, or deciding not to participate, will not impact on a participant's status in any way. Participants in the study may withdraw without any adverse consequences at any time, up until the analysis of the data has commenced, without giving reasons

### **What is the purpose of this research?**

The purpose of this research is to study the effectiveness of restorative justice facilitation in the criminal justice system in Aotearoa/New Zealand and to discover what might enhance facilitator effectiveness. An appreciative inquiry approach will be used for the research. In this approach researcher and participants work together to discover what is best in the people and the system in which they operate. Story-telling is the method used for gathering data.

### **How will the information I provide be used?**

As a participant in the study you will help decide how the information gained will

be used to enhance facilitator effectiveness for facilitators in restorative justice. It is expected that the community of criminal justice system restorative justice facilitators will be interested in the study findings which could be made available to local restorative justice facilitator workshops, to Restorative Justice Aotearoa annual national conferences, and to the Ministry of Justice. Articles may be submitted to the New Zealand Law Journal and the Institute of Judicial Studies. As there are few Restorative Justice doctoral level studies international interest in the research findings can be expected.

### **What will happen in this research?**

Facilitators will meet in focus groups and use an appreciative inquiry process to discover what effective restorative justice facilitation is in the criminal justice system in this country, to vision more effective facilitation, and to design a process for putting these visions into action. Key informants – *and you are one* - will be interviewed and their perspective on effective facilitation included in the study.

### **What are the discomforts and risks?**

Appreciative inquiry is not usually an uncomfortable or risky process, and as researcher I will put in place the Ministry of Justice restorative justice safety guidelines to make the interview a safe process. However, if any discomfort is experienced you may withdraw from the interview for time out, or leave the study.

### **How will these discomforts and risks be alleviated?**

A referral can be made to the AUT counselling service for you to discuss your concerns.

### **What are the benefits?**

Participants in an appreciative inquiry process usually report personal benefit from participation in the focus group as they share the positive stories of their work. As well, the information and analysis you provide will contribute to the enhancement of facilitator effectiveness for the wider restorative justice community.

### **How will my privacy be protected?**

Interviewees will decide at the completion of their interview how their privacy will

be protected in this research. Interviewees may choose whether all or part of their interview may be quoted in the research findings, or whether they wish to keep their comments confidential. On the Consent Form you will be able to indicate which option you choose.

**What are the costs of participating in this research?**

The cost of participating in the research will be the time you spend being interviewed, which will be between one and two hours, and the time it takes you to check the record of your interview. If travelling expenses or time is incurred by you to attend the interview you will not be reimbursed.

**What opportunity do I have to consider this invitation?**

You will have two weeks to consider this invitation after you have been given the information about the study.

**How do I agree to participate in this research?**

You will need to complete a Consent Form to demonstrate you have agreed to participate in this research. I will ensure you receive a Consent Form when I speak to you about this research.

**Will I receive feedback on the results of this research?**

Yes – you will receive feedback on the results of this research at the completion of the study. After your interview you will be given a copy of the transcript of your interview for you to check it for accuracy.

**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, Professor Marilyn Waring:

marilyn.waring@aut.ac.nz, and her phone number is (09) 921 9999 Ext 9961.

Concerns regarding the conduct of the research should be notified to the Executive Secretary, AUTECH, Madeline Banda, *madeline.banda@aut.ac.nz*, 921 9999 ext 8044.

Whom do I contact for further information about this research?

**Researcher Contact Details:**

Winifred Murray, Institute of Public Policy, Akoranga Campus Mailbag A22.  
(Mob 021 251 7527)

**Project Supervisor Contact Details:**

Professor Marilyn Waring: marilyn.waring@aut.ac.nz, and her phone number is (09) 921 9999 Ext 9961

Approved by the Auckland University of Technology Ethics Committee on *yet to be approved*, AUTC Reference number *type the reference number*.



## Consent Form.

For use when focus groups are involved.



*Project title:* Restorative justice facilitation. An appreciative inquiry into effective practices for Aotearoa/New Zealand facilitators.

*Project Supervisor:* **Professor Marilyn Waring**

*Researcher:* **Winifred Murray**

- ☐ I have read and understood the information provided about this research project in the Information Sheet dated 1 October 2008.
- ☐ I have had an opportunity to ask questions and to have them answered.
- ☐ I understand that identity of my fellow participants and our discussions in the focus group is confidential to the group and I agree to keep this information confidential.
- ☐ I understand that notes will be taken during the focus group and that it will also be audio-taped and transcribed.
- ☐ I understand that I may withdraw myself or any information that I have provided for this project at any time prior to completion of data collection, without being disadvantaged in any way.
- ☐ If I withdraw, I understand that while it may not be possible to destroy all records of the focus group discussion of which I was part, the relevant information about myself including tapes and transcripts, or parts thereof, will not be used.
- ☐ I agree to take part in this research.
- ☐ I confirm that I attend professional supervision and will continue to do so while I participate in this study.
- ☐ I wish to receive a copy of the research findings. (please tick one):  
Yes ☐ No ☐
- ☐ I agree to being named or quoted in the research findings  
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 yet to be granted, AUTECH Reference number **type the AUTECH reference number***

*Note: The Participant should retain a copy of this form.*

## Consent Form.

For use when interviews are involved.



*Project title:* Restorative justice facilitation. An appreciative inquiry into effective practices for Aotearoa/New Zealand facilitators.

*Project Supervisor:* Professor Marilyn Waring

*Researcher:* Winifred Murray

- ☐ I have read and understood the information provided about this research project in the Information Sheet dated 1 October 2008
- ☐ I have had an opportunity to ask questions and to have them answered.
- ☐ I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- ☐ I understand that I may withdraw myself or any information that I have provided for this project at any time prior to completion of data collection, without being disadvantaged in any way.
- ☐ If I withdraw, I understand that all relevant information including tapes and transcripts, or parts thereof, will be destroyed.
- ☐ I agree to take part in this research.
- ☐ I agree to being named or quoted in the research findings  
Yes ☐ No ☐
- ☐ I wish to receive a copy of the research findings. (please tick one):  
Yes ☐ No ☐

Participant' signature:.....

Participant's name.....

Participant's Contact Details (if appropriate):

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

Date:

*Approved by the Auckland University of Technology Ethics Committee on yet to be granted, AUTECH Reference number **type the AUTECH reference number***

*Note: The Participant should retain a copy of this form.*

## Indicative Questions for Interviews of key informants:

The key informants will be chosen to complement the data that arises from the focus groups. The interview questions will use an appreciative inquiry approach and mirror those posed to the facilitators

As a result of the data gathered from the focus groups the questions asked of each key informant may differ as the interviews will seek to elicit the particular experience of each participant and to gather data from the perspective of their expertise or professional responsibility in the field of restorative justice.

Questions:

1. Looking at your entire time with restorative justice in the criminal justice system in Aotearoa/New Zealand, and responding from your perspective as a [judge, restorative justice theorist, restorative justice trainer, restorative justice administrator in the Ministry of Justice, or long-term practitioner] remember a time when you felt most alive, most fulfilled, or most excited about your involvement in restorative justice.
2. Let's talk about some things you value deeply: specifically, things you value about yourself, about the nature of your work in restorative justice, and about restorative justice itself.
3. What do you experience as the core factors that give life to restorative justice? Give some examples of how you experience those factors.
4. What three wishes would you make to enhance the health and vitality of restorative justice?
5. What needs to be in place to achieve your wishes?
6. Is there anything else you'd like to talk about?

## **Statement on ethics to be read to focus groups:**

AUTEC recommends that the researcher discusses and identifies the issues mentioned in the responses to section E.4 of the application to the participants at the beginning of each Focus Group.

In the introductory part of each initial focus group the following issues will be addressed:

- The ethical risk for participants that they may inadvertently disclose confidential information as they discuss the facilitation they have done, or that they may disclosure issues they have with their co-facilitators or other colleagues.
- The possibility that participants might experience discomfort or embarrassment as a result of the research procedures.

Participants will be informed that if discomfort or embarrassment occurs for them in the focus group the researcher should be informed. In such an event the group process will be stopped and the researcher will confer with the participant in private asking whether or not they wish to continue.

Any participant who demonstrates discomfort or embarrassment will be offered the use of the AUT counselling service. Participants are entitled to three sessions of counselling at the AUT counselling service to address issues that arise as a result of their participation in the research.

Participants will be reminded they may consult their professional supervisor about issues concerning the research.

## **Appendix B: Government Annual Forecast and Reports**

**Table 5: Department for Courts Annual Forecast and Reports 1998 - 2003**

Government	National/NZFirst	Labour/Alliance	Labour/Alliance	Labour/Alliance	Labour/Progressive <i>United Future, Greens</i>
Year	1998 - 1999	1999 - 2000	2000 - 2001	2001 - 2002	2002 - 2003
<b>Department for Courts Forecast Report</b>	New funding for continuation of community-managed programmes at Waitakere & Timaru, if evaluation favourable. <sup>196</sup>	Initiative funding received to trial court- directed judicial referrals to restorative justice conferences in 3 District Courts.	Pilot to commence in one court by 1/3/2000, other courts by 31/5/2000. Evaluators to be contracted by 1/3/2000. <i>(These dates checked as correct in Forecast Report.)</i> Aims of restorative justice. <sup>197</sup>	Courts will work closely with local communities and other agencies in developing restorative justice. Definition <sup>198</sup>	The Court Referred Restorative Justice Pilot, and evaluation, will be maintained in 2000/2003. Courts will continue to work closely with judiciary, local communities and other agencies to ensure the pilot runs effectively.
<b>Department for Courts Annual Report</b>	Evaluation of Timaru & Waitakere completed. New funding secured for them.	New court-referred restorative justice pilot announced in 3 District Courts. Restorative justice definition. <sup>199</sup>	Pilot implemented in 4 District Courts, coordinators appointed, facilitators selected, training completed at 3 of 4 courts. Coordinator manuals & Training materials developed and printed, communication resources published, newsletter produced. Conferences will commence in August 2001. 9 new community crime prevention contracts signed. Evaluators contracted February 2001. Definition <sup>200</sup>	Conference facilitators were contracted by 30/9/2001 & referrals commenced at 4 courts. Evaluation commenced 31/12/2001. Definition <sup>201</sup> Database established for evaluation information. <i>Te Ara Whakatika</i> distributed in pilot and community. Legislation: The Sentencing Act passed 5/2002, to be implemented 30/6/2002.	Pilot fully operational in 4 Courts. In the year ending 30/6/2003 approximately 500 cases were referred resulting in 200 conferences. <sup>202</sup> Evaluation on schedule. Interim report completed April 2003, full report to be completed December 2004. Final results on recidivism available September 2005. Legislation: The Victims Rights Act 2002, The Sentencing Act 2002.

**Key**

Blue and shades of brick colours show changes in governments and their composition. Governments are elected through Mixed Member Proportional Representation system in the period 1998 – 2010.

Green denotes leadership of Alison Hill.

<sup>196</sup> These programmes aim to divert from the criminal justice system more serious offenders than are currently dealt with through the Police diversion scheme

<sup>197</sup> The greatest potential benefits [of restorative justice] would be found in providing better alternatives for more serious offenders, which will minimize prison sentences as well as reducing reoffending. In addition there are positive benefits for victims and community from working together to heal and deal with the effects of crime.

<sup>198</sup> The pilot will enable the Department to evaluate the potential long-term benefits of reducing the indirect social and financial costs of criminal behaviour for the community and reducing the direct financial costs to the taxpayer of the criminal justice system.

<sup>199</sup> A restorative justice approach seeks to enable fuller participation for victims with appropriate restitution by offenders, who must however still be sentenced within the law. These will be court directed judicial referrals.

<sup>200</sup> The pilot will be evaluated to enable decisions to be made on whether the restorative justice approach should be more widely adopted."Restorative justice is an approach to criminal justice processes broadly based on identification and inclusion of victim and community interests, as well as the State's interests. It can provide an alternate process to the criminal justice system or it can take place within the



**Table 6: Comparison of definitions of restorative justice in annual forecasts and reports 1998 - 2003**

Year	1999 - 2000	2000 - 2001	2001 - 2002	2002 - 2003
<b>Department for Courts Forecast</b>		Potential benefits of RJ <ul style="list-style-type: none"> <li>• better alternatives for more serious offenders.</li> <li>• minimize prison sentences as well as reduce reoffending.</li> <li>• victims and community working together to heal and deal with the effects of crime.</li> </ul>	Department will evaluate potential long-term benefits of reducing <ul style="list-style-type: none"> <li>• indirect social and financial costs of criminal behaviour for the community</li> <li>• direct financial cost to the taxpayer of criminal justice system</li> </ul>	
<b>Department for Courts Annual report</b>	Court directed judicial referrals. RJ approach will enable <ul style="list-style-type: none"> <li>• fuller participation for victims</li> <li>• restitution by offenders who will still be sentenced within the law.</li> </ul>	Evaluation of pilot to assess whether restorative justice approach should be more widely adopted. RJ based on inclusion of victim, community, and State Interests. RJ can be alternative process to the criminal justice system or provide additional information within traditional processes.	Evaluation focuses on three main outcomes <ul style="list-style-type: none"> <li>• increased resolution of the effects of crime for victims</li> <li>• increased victim satisfaction with the criminal justice process</li> <li>• reduced rate of reoffending by offenders referred to rj conferences, compared to those dealt with through the normal criminal justice process.</li> </ul>	Restorative justice aims to improve the quality of the resolution of offending for victims. It increases the role of victims in the process creating the potential for them to feel that they have been heard and their needs taken into account.

Key

Shades of brick colours show changes in governments, and their composition. Governments are elected through Mixed Member Proportional Representation system in the period 1998 – 2010.

Green denotes leadership of Alison Hill.

traditional processes and provide the court with additional information” (Department for Courts, 2001, pp. 111-112)

<sup>201</sup> Evaluation focuses on three main outcomes sought from the introduction of court-referred restorative justice: increased resolution of the effects of crime for victims who participate in restorative justice conferences, increased victim satisfaction with the criminal justice process, reduced rate of reoffending by offenders referred to restorative justice conferences, as compared to those dealt with through the normal criminal justice process.

<sup>202</sup> Restorative justice aims to improve the quality of the resolution of offending for victims. It increases the role of victims in the process creating the potential for them to feel that their needs have been taken into account.

**Table 7: Summary of Ministry of Justice Forecast/Statement of Intent and Annual Reports 1989 - 2003**

Government	<i>National/ NZFirst</i>	<i>Labour/ Alliance</i>	Labour/Alliance	Labour/Alliance	Labour/Progressive <i>United Future, Greens</i>
Year	1998-99	1999-00	2000 - 2001	2001 - 2002	2002 – 2003
			<i>1/11/2000 Crime Prevention Unit shifted from Prime Minister's Department to Ministry of Justice.</i>		<i>Merger of the Department for Courts and Ministry of Justice from 1 /10/2003.</i>
<b>Ministry of Justice Fore-cast report</b>	(No rj)	(No rj)	The Ministry's Focus for 2000/2001. . . Consideration will be given to the further development of restorative justice schemes.  Output Class D2 -Policy Advice: <sup>203</sup>	The Sentencing Act and Parole Act to Select Committee in June 2001, for enactment in December 2001 and commencement on 1 March 2002. The Crime Prevention Unit will support and develop the community-managed restorative justice programmes. Output Class D2 -Policy Advice:	The Crime Prevention and Criminal Justice Group responsible for criminal justice policy including . . . restorative justice. Output Class D2 -Policy Advice:
<b>Ministry of Justice Annual report</b>	(No rj)	(No rj)	The ministry has contributed to the development of restorative justice processes, which provide flexibility to address the cultural needs of both Māori and Pacific Island offenders and victims as well as those of other groups. The ministry plans to provide advice on framework for restorative justice approaches. In 2000/01 the Crime Prevention Unit set up 5 further community- managed restorative justice schemes.	The Sentencing Act came into force on 30 June 2002. Development and support of Crime Prevention. Total of 15 community-managed groups funded, \$816,605. Output Class D2 – Policy Advice. \$52,000 to AUT Institute of Public Policy for evaluation of Auckland DVFREE project.	The ministry funds 17 restorative justice programmes throughout New Zealand with funds totalling approximately \$726,000. The ministry will provide best practice principles to further develop restorative justice processes and provide advice on the extent and the way in which the government should fund those processes. Definition <sup>204</sup>

**Key**

Blue and shades of brick colours show changes in governments, and their composition. Governments are elected through Mixed Member Proportional Representation system in the period 1998 – 2010.  
Green denotes leadership of Alison Hill.

<sup>203</sup> This class of outputs includes the provision of policy and legal advice and research and evaluation on: . . . and restorative justice .

<sup>204</sup> Restorative justice provides a way for parties with a stake in specific offences to collectively resolve them through mediation and conferences.

**Table 8 Summary of Ministry of Justice Forecast/Statement of Intent and Annual Reports 2003 – 2007**

Government	Labour/Progressive <i>United Future, Greens</i>	Labour/Progressive <i>United Future, Greens</i>	Labour/Progressive <i>NZ First, United Future</i>	Labour/Progressive <i>NZ First, United Future</i>
Year	2003 - 2004	2004 - 2005	2005 - 2006	2006 - 2007
<b>Ministry of Justice Statement of Intent</b>	Develop a policy framework and set of principles for using & funding restorative justice programmes. Output Class D2 -Policy Advice:	Output Class One-Policy Advice:	Output Class One-Policy Advice Output class 7: Crime prevention and community safety programmes <sup>205</sup>	Output Class D2 -Policy Advice: Output class 7: Crime prevention and community safety programmes
<b>Ministry of Justice Annual report</b>	19 community- managed restorative justice programmes funded. Policy advice on alternative responses to crime including restorative justice provided	21 community- managed restorative programmes funded. Crime Prevention Unit continued restorative justice initiatives. Restorative justice practice improvement project begun. <sup>206</sup> Evaluation of restorative justice pilot, & 2 community-based restorative justice projects completed.	Proposals being developed for Government to fund a range of restorative justice related initiatives. <sup>207</sup> June 2006 grant to the Institute of Public Policy at the Auckland University of Technology as start-up funding for a Restorative Justice Centre for the development of basic training courses and diploma and degree course in restorative justice to support the proposed expansion of restorative justice services, which is part of the Government's Effective Interventions.	Significant progress made in developing a national performance framework to establish standards of practice for restorative justice. <sup>208</sup> Restorative justice pilot and community-managed facilitators worked with Ministry of Justice in developing the framework.

Key: Shades of brick colours show changes in governments, and their composition. Governments are elected through Mixed Member Proportional Representation system in the period 1998 – 2010.

Green denotes leadership of Alison Hill.

<sup>205</sup> This covers funding for the co-ordination and delivery of a range of crime prevention initiatives in partnership with local communities. . . The Ministry also contracts a variety of organisations to carry out crime prevention projects in specific areas, such as: . . . community managed restorative justice.

<sup>206</sup> This was designed to raise practice standards in accordance with principles of restorative justice processes in criminal cases. \$7000 spent included delivery of a two-day national training workshop in June 2005.

<sup>207</sup> These include: extension of restorative justice for less serious offending within Police Adult Diversion scheme, staged national roll-out of the court-referred restorative justice pilot for more serious offending, increase in the provision of restorative justice in conjunction with prisoners re-integration into the community, a national performance framework to ensure quality, consistency and integration for the provision of restorative justice.

<sup>208</sup> Framework will provide assurance for victims, offenders, the judiciary, stakeholders and members of the public about the quality and robustness of restorative justice processes. It will provide tools and guidelines for restorative justice providers. The framework will support and monitor quality service provision and enhance qualitative and quantitative information on which to base future decisions about restorative justice.

**Table 9 Summary of Ministry of Justice Forecast/Statement of Intent and Annual Reports 2007 - 2011**

<b>Government</b>	Labour/Progressive <i>NZ First, United Future</i>	National ACT, United Future, Māori	National ACT, United Future, Māori	National ACT, United Future, Māori
<b>Year</b>	2007 – 2008	2008 – 2009 Alison Hill (to Jan 2009) John Axcell (from Feb 2009)	2009 – 2010	2010 – 2011
<b>Ministry of Justice Statement of Intent</b>	Output Class One-Policy Advice Output class 7: Crime prevention and community safety programmes	No information on Restorative Justice in Statement for 2008/09 - 2010/11	No information on Restorative Justice in Statement for 2009/10 – 2011/12	2010 – 2013 Restorative justice practices can have better outcomes for both victims and offenders with low-level offenders
<b>Ministry of Justice Annual report</b>	Funding made available for delivery of restorative justice services by community-based organisations & 2 new restorative justice services. <sup>209</sup> A new national restorative justice facilitator training & assessment programme launched. Funding made available to increase the use of restorative justice in cases involving graffiti. Ongoing support was provided to RJA. <sup>210</sup>	A new Restorative Justice Funding Framework was launched during the year. The Ministry funds restorative justice processes through a range of community-based provider groups. The new funding framework will improve the way that funding for restorative justice services is allocated to providers.	No information on Restorative Justice in the report	No information on Restorative Justice in the report

**Key**

Brick colour and blue and shows changes in governments, and their composition. Governments are elected through Mixed Member Proportional Representation system in the period 1998 – 2010.

Note: Green denotes leadership of Alison Hill. From 2000 – January 2009 the Restorative Justice team was lead by Alison Hill: firstly as Project Manager, Operational Policy, when she managed major new initiatives and pilots including the court-referred restorative justice. Then as Manager, Restorative Justice, Alison led a team of five to manage the provision of restorative justice in the criminal justice sector. She managed contracts with 30 NGOs, introduced a quality framework and national training and accreditation for practitioners, and initiated and ran annual national conferences.

Grey denotes leadership of John Axcell (Acting) Operations Manager, Feb 2009 to mid 2011.

<sup>209</sup> Funding is provided to community-based organisations to deliver restorative justice services at the pre-sentence stage of the court process (following a guilty plea) and as part of the Police Adult Diversion Scheme (where compliance with an agreed plan will result in a withdrawal of the charges).

<sup>210</sup> Support for the national association (Restorative Justice Aotearoa), including work contributing to a national framework to establish standards of practice, a new funding arrangement for restorative justice providers and national practitioners' conference.

## Appendix C: Legal provisions for restorative justice

### *Sentencing Act 2002* restorative justice provisions:

s8: Principles of sentencing include that the court must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur

s10: Court must take into account offer, agreement, response or measure to make amends

s25: Power of adjournment for inquiries as to suitable punishment to include to enable a restorative justice process to occur, or to enable a restorative justice agreement to be fulfilled (s25(1)(b), s25(1)(c)).

s26: Pre-sentence reports may include information regarding any offer, agreement, response, or measure of a kind referred to in s10(1) or the outcome of any other restorative justice processes that have occurred in relation to the case (s26(2)(c)).

S62: Guidance to probation officer in determining placement of offender for community work includes that the probation officer must take into account the outcome of any restorative justice processes that have occurred in the case (s62(e)).

***Parole Act 2002* restorative justice provisions:**

s7: Guiding Principle is that any restorative justice outcomes are given due weight

s35: Direction for home detention is that the outcome of any restorative justice processes is to be considered by the Parole Board when considering an application for home detention

s36: Detention conditions include that an offender on home detention may leave the residence in which he or she is detained to (s36(3)(c)) to attend a restorative justice conference or other process relating to the offender's offending, or carry out any undertaking arising from any restorative justice process

s43: Start of process includes that the Department of Corrections must provide the Board with any reports arising from restorative justice processes engaged in by the offender (s43(1)(b)).

***Victims' Rights Act 2002* restorative justice provisions:**

s9: Meetings to resolve issues relating to offence state that if a suitable person is available to arrange and facilitate a meeting between a victim and an offender to resolve issues relating to the offence, . . . it should only be encouraged if officials are satisfied that (s9(2)) the victim and offender agree to the holding of a meeting, the resources required for a meeting to be arranged, facilitated, and held, are available, and the holding of a meeting is otherwise practicable, and is in all the circumstances appropriate.

s10: Enforceability of Principles state that the principles guiding the treatment of victims do not confer on any person any legal right that is enforceable, for example, in a court of law.

## **Appendix D: Summary of outcomes of the Evaluation of the New Zealand Court-Referred Restorative Justice Pilot**

The evaluation of the Ministry of Justice four-year pilot showed:

- High levels of satisfaction amongst participating victims and offenders.
- A small reduction in the re-conviction rate of offenders (11% though the sample size was too small to assure statistical significance).
- Fewer and shorter sentences of imprisonment for participating offenders.
- More use of home detention.
- Young people had higher reconviction rates than older people. However, this was consistent with the higher predicted reconviction rate for younger people. Offenders aged 20 – 25 years showed a large apparent drop.
- 36% of offenders in the pilot evaluation identified as Māori. The reconviction analysis indicated that the actual rates of reconviction for Māori offenders who had gone to conference did not differ significantly from the predicted rate. However, the sample was very small (Ministry of Justice, 2010, pp. 5-6).



## Appendix E: Focus group process

### Focus groups level one:

#### Southwest

This was the 1st of the 19 focus group meetings with six participants.<sup>211</sup>

#### Process

##### *Welcome*

The participants were welcomed and thanked for being willing to be part of the group, and reminded of the importance of the study both nationally and internationally.

##### *Group building*

Establishing my rapport with this group was a relatively simple process because they all knew me well. However, not everyone knew each other, so I began with a round asking them to say their name and provider group. Participants were familiar with going round the group and making a short statement about themselves so they easily did as requested.

##### *Housekeeping*

Information about toilets and refreshments was provided, and the appropriateness of heating and lighting was checked. A chart was introduced:

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<sup>211</sup> After this meeting one person was transferred to interviews, and then out of the study. The meeting began late as I was waiting for a participant who did not arrive and later transferred to the Pacific group.

### *Ground rules*

- **respect**
- **safety**
- **confidentiality**<sup>212</sup>

Participants were asked if they wished to add or delete anything from that list.

Clarification about confidentiality was requested and given. The list was accepted.

As requested by AUT Ethics Committee the statement on ethics was read to the group. (Appendix A).

A chart showing the agenda for the meeting and explaining what we would be doing was presented:

- **Welcome**
- **Introductions**
- **Research information**
- **Story-telling**
- **Next get-together**
- **Close**

One person requested more information about the time frame for the focus groups and this was given. I read a passage from page 61 of Zehr's (2002) "*The Little Book of Restorative Justice*" to help the group focus on restorative justice.

### *Introductions*

Participants were asked to introduce themselves by responding to the question "How did I come to start on my restorative justice journey?" The technique used was for

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<sup>212</sup> The wording that was on the charts is here in bold.

people to chat to the person next to them, and then briefly to introduce the person they had been talking to. I suggested who should talk together, matching people who did not know each other so well. In the full group they were asked who would like to begin the introductions. One member began, and the rest of the group followed around the circle without any further intervention from me.

### ***Research information***

A chart introduced the research:

- **Research question: What do restorative justice facilitators in the criminal justice system in Aotearoa/New Zealand consider to be effective practice?**
- **Methodology**
- **Appreciative inquiry is an affirmative, strength-oriented, story-telling approach to evaluation**
- **Discovery, Dream, Design, Destiny.**

After a short explanation about the research the first question was introduced:

#### **Discovery phase**

- **Looking at your entire time with restorative justice, remember a time when you felt most alive, most fulfilled, or most excited about your involvement.**
- **What made it exciting?**
- **Who was involved?**
- **Describe how you felt about it.**

Two questions for clarification were asked and answered. The group then broke for refreshments and to consider their responses to the question.

When the group reconvened the participants' readiness to respond was checked, and they were asked whether they wished to go around the circle, or to speak when

the spirit moved them. They were asked not to interrupt each other but to ask questions for clarification when the speaker had finished. The group decided they would speak when it suited them and quite quickly one member chose to be the first to speak, and others followed without prompting.

All participants then made their responses to the other questions. Their responses are recorded in the focus group findings. There were spaces about 10 seconds long between one speaker finishing and another speaker beginning. All members listened carefully to each speaker. When other group members had finished I asked whether I could add my response and the group gave me permission to do so. At the end of my response group members had a short discussion, which added additional material.

The meeting was drawn to a close with reminding participants that their conversations had been recorded, would be transcribed and sent to them by e-mail for them to check for accuracy.<sup>213</sup> The group decided when it would meet next and finished with a round of one word or one sentence expressing how they were feeling. One person began the round and the others quickly followed. The group was thanked for their participation and they tidied up the room and dispersed.

## **Whangarei**

This 2<sup>nd</sup> of 19 focus group meetings had four participants; one participant was not able to be present for all the meeting. This focus group followed the process of focus

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<sup>213</sup> This was the process followed after each focus group. It will not be repeated.

group one, Southwest, except for the following:

- Hone opened the meeting with karakia.
- One of the members of the group explained the housekeeping matters pertaining to their organisation where the meeting was held.
- I did not read from Zehr's book, nor did I read to the group the statement that AUT had requested, because one member of the group had to leave early, so we went straight to introductions.
- The group-building question, answered in the full group, was "What caused them to choose to do this work?" There was quite a long silence and I asked if it would be appropriate for me to start. There were nods of assent, so I began and other participants soon followed. I noted that their responses came from a Māori perspective.
- When the Discovery phase question was introduced a participant asked whether this meant restorative justice in the context of restorative justice as we know it, since it was named and since we've come into it, or restorative justice prior to it being named and even contracted in that way? I suggested they answer the question in whatever way made most sense for them. That person then began to talk and soon after she had finished she had to leave the meeting.

## **Mixed**

This was the 5<sup>th</sup> meeting I held as two other focus groups had already met for their 1<sup>st</sup> and 2<sup>nd</sup> focus groups. There were seven participants. The process differed in that the group decided to have refreshments to conclude the meeting, so they did not have a break in which to think about their response to the Discovery phase question. Instead they had some silent thinking time and then one person chose to begin talking.

## Thames

This was my 7th meeting. Three other focus groups had already met for their first two meetings. There were seven participants. The first focus group meeting arranged for this group did not eventuate as there was miscommunication between members, and only the host and hostess for the meeting, and I, attended. This focus group met in the home of two participants as this was the custom of the group.

This focus group worked in a different way from the other four groups, partly because they chose to be a focus group of colleagues who worked closely together, rather than an amalgam of people from different groups. That they were from a rural community, which was more socially and geographically compact than Auckland city, may have contributed to some of this difference. The group completed in three sessions the work that the other groups did in four. This may have been partly because they were already a unified group and knew each other well, so did not need to explain themselves to people who were not part of the group, and partly because I was reluctant to travel from Auckland to Thames more often than was necessary, especially as I had already been to Thames for the meeting that was abandoned. So it is possible that I facilitated the group to move through the work more rapidly than other groups. This group also had a high level of educational achievement – 2 lawyers, 1 psychologist, 1 psychotherapist, 1 mechanic who is studying at University, 1 mother with tertiary qualifications and 1 social worker. The level of discussion was of a high standard.

The group followed the same process as the other focus groups, after a discussion about how the Ministry of Justice reorganisation might affect this research.

Establishing rapport was approached differently for this group, because they all knew each other well but did not know me and I did not know them. So, the icebreaker question for this group was “What had caused them to offer to be trained as a restorative justice facilitator?” The group decided that they wished to talk only in the full group. One person chose to begin and then each person introduced themselves. I also introduced myself.

Because in this group I was an outsider I did not add my responses to the later questions.

When the agenda for the first focus group was completed there was sufficient time remaining of the contracted two hours for the focus group to go onto the next section of the work, so the group decided to begin the next section of the work about values, even if it could not be finished.

The topic of values was introduced and participants were asked to talk about some things they valued deeply: specifically, things they value about themselves, about the nature of their work, and about restorative justice. The questions were:

- What do you value most about yourself as a person and as a member of the restorative justice community?
- When you are feeling best about your work, what about the task itself do you value?
- What do you value about the restorative justice organisation?

One participant asked whether, if they inadvertently used the names of offenders or victims when they were talking, if the names would be deleted from the transcript of the focus group. I assured the group that they would be deleted.

### **Pacific people**

This was the 9th meeting and four other focus groups had already met for their first two meetings. There were six participants in the group. Three of these people were close family members. This group was specifically set up to have only Pacifica participants. This focus group followed the process of focus group one, Southwest, except for the following:

- The meeting was opened with prayer.
- Because of the timing of this focus group we had light refreshments at the beginning of the group, which shortened its working time, but allowed for good rapport building and catching up before the meeting.
- I did not read a passage from “The little book of restorative justice.” And I did not read the AUT requirements.
- The group decided they would speak when it suited them and quite quickly one member chose to be the first to speak.



## Focus groups level two:

### Whangarei

This was the 3<sup>rd</sup> meeting, but the first at level two. There were three participants in this meeting as one was not available to attend.

#### **Process**

##### *Welcome*

The meeting was opened with karakia. Participants were welcomed and thanked for continuing with the study. A check was made as to if there was anything from the last meeting that they wished to comment on, but there wasn't. The focus for this meeting, values, was introduced. I informed the group that as this session would look more specifically at their situation, my role would be to facilitate rather than participate.

##### *Group building*

To reconnect the group with the first meeting they were asked to recall what had been memorable or significant for them. "In a few sentences say what it was that caused you to be most alive, excited, fulfilled." One participant chose to respond first and the others promptly followed.

##### *Discovery phase questions*

The participants were asked to build on their responses and talk about some things they valued deeply about themselves, about the nature of their work, and about restorative justice. Values were not defined. The participants were invited to respond to the questions on the chart in whatever order suited them.

- What do you value most about yourselves as persons and as members of the restorative justice community?
- When you are feeling best about your work, what about the task itself do you value?
- What do you value about the restorative justice organisation?
- What is the most important thing this work has contributed to your life? To the wider community?

Some clarification was sought and given, otherwise the participants spoke as it suited them without intervention from me. Questions to elicit further information were asked.

All responses were recorded, and later transcribed, then sent to participants to check for accuracy. A date for the next focus group meeting was arranged.

## **Southwest**

This was the 4<sup>th</sup> of 19 focus group meetings. It was the second focus group to have a second meeting. There were five participants in this meeting as one member present at the first focus group had been transferred to be a key informant. I was a participant/facilitator in this group.

### **Process**

This group followed the same process as Focus group two, Whangarei, except for the following:

#### ***Welcome***

The focus group began with a light lunch. I welcomed participants and thanked them for continuing with the study.

### *Discovery phase questions*

The group decided their process would be to have a discussion about the first question and then have a discussion about the next question rather than doing a structured round for each question. The group defined 'values' and then answered the questions.

Toward the end of the discussion I asked participants to curtail a discussion on the situation in Auckland, as it fitted better with the next focus group agenda.

A date for the next focus group meeting was arranged.

### **Mixed**

This was the 6<sup>th</sup> meeting, at which there were six participants, one absentee. The group had decided not to meet in September but because of the news that the Auckland facilitators did not get the contract with the Auckland Court and all except one member of the focus group had become redundant, participants decided to meet earlier. I was a participant/facilitator in this meeting. This group followed the same process as focus group two, Whangarei, except for the following:

- A correction to the transcript was noted. It was acknowledged that the restorative justice situation in Auckland was the background to our lives, but not part of the research.
- Synonyms for 'values' were discussed.

### **Pacific people**

This was the 10<sup>th</sup> meeting. One member was not able to attend at short notice.

This group followed the same process as focus group two, Whangarei, except for the

following:

- To reconnect the group with the first meeting and build on what had occurred there, I asked them to say one sentence about something they remembered saying the week before.
- There was a discussion on what was meant by “values”. The group had a different concept than that intended by the question so it was suggested that participants might talk about them as the respect, or the fundamentals, that they live by.
- Participants said they were finding it difficult to talk about themselves so it was suggested that they might turn it around the other way and say “What is it I bring to the restorative justice community? What is the special gift that I offer to the restorative justice community?” Participants then responded to the questions in the way that suited them.

Time ran out and the group agreed to complete the work in their next session. The meeting closed with prayer.

## **Focus groups level three:**

### **Whangarei**

This was the 8<sup>th</sup> meeting, and was the first of the third level. There were three participants in this meeting. Karakia opened the meeting. There were no issues to address from the last meeting.

#### **Process**

##### ***Welcome***

The meeting was opened with karakia.

##### ***Group building***

It had been many weeks since their last focus group meeting and participants could not recall what had been said so the list of values compiled from the transcript was read.

##### ***Dream phase questions***

This phase in which focus group members look to the future was introduced and participants responded to the questions when they chose.

- **What do you experience as the core factors that give life to restorative justice?**
- **Give some examples of how you experience those factors.**

After considerable discussion it was suggested that participants move on to the question about dreams.

- **What three wishes would you make to enhance the health and vitality of restorative justice?**

The participants spoke as it suited them without intervention from me.

The group made arrangements to meet again. The meeting ended with karakia .

Note: this meeting had two disruptions – the recording device ceased to record but began again after it was adjusted, and then a change of room was necessary.

### **Southwest**

This was the 11<sup>th</sup> meeting. There were four participants in this meeting as one person was not available and wished the group to continue without him. The group gave permission for the transcript of the meeting to be sent to him to add his responses.

This group followed the same process as focus group three, Whangarei, except for the following:

- Participants promptly responded to the Dream phase questions and then moved on to talking about their wishes.

### **Thames: focus group two/three**

This was the 12<sup>th</sup> meeting. All seven participants attended this meeting.

This group followed the same process as focus group three, Whangarei, except for the following:

- The group began by recalling the values they had begun talking about in the previous meeting and moved on to looking at the question “What is the most important thing this work has contributed to your life? And also to the wider community?” They then responded to the Dream phase questions.

## **Mixed**

This was the 13<sup>th</sup> meeting. There were four participants in this meeting as two people were suddenly not able to attend and a third did not arrive. Permission was given to send a copy of the transcript to these people for them to add their contribution.

This group followed the same process as Focus group two, Whangarei, except for the following:

- I welcomed participants and thanked them for continuing with the study.

## **Pacific people**

This was the 14<sup>th</sup> meeting. There were five participants in this meeting as one person did not arrive because she had mixed up the meeting date.

This group followed the same process as focus group two, Whangarei, except for the following:

### ***Group building***

- This session participants continued the work on values begun last time. To bring the previous meeting absentee up to date participants were asked to recall in one sentence something they had said about values. It had been two weeks since the last meeting so participants remembered some of what had been said.
- The previous absentee then added her response to the questions "What do you value most about yourselves as persons and as members of the restorative justice community? When you are feeling best about your work, what about the task itself do you value?"

The group then addressed the other values questions:

- **What do you value about the restorative justice organisation?**

- **What is the most important thing this work has contributed to your life? To the wider community?**

The Dream phase question was introduced and participants responded to the question.

Note: The question asking what participants experienced as the core factors that give life to restorative justice and the request for some examples of how they experience those factors was not addressed in this group. This section was deleted from the process because the group was short of time, and because it was a complex concept for those participants in the group who did not find it easy to express themselves clearly in English.



## **Focus groups level four:**

### **Pacific people**

This was the 15<sup>th</sup> meeting. This was the first fourth level, final meeting. There were four participants in the meeting as two people had last-minute work commitments.

#### **Process**

##### ***Welcome***

The meeting was opened with prayer and refreshments. The group was welcomed and thanked for continuing with the study. A check was made for issues to address from the previous meeting.

##### ***Group building***

The group were asked to recall the thing they value most about restorative justice. Participants responded as they wished.

The Design phase in which the system for achieving the design is articulated was introduced. Each participant was given a sheet of paper on which was listed the wishes the group had talked about in the previous meeting. They had been put in order to help participants decide on the actions they could take. The questions were:

- **What needs to be in place to achieve our wishes?**
- **Be very specific – who? Will you do it or will you enthuse someone else to start it?**
- **When will it be done ? – this week, this month, next year, long-term ?**
- **How will it be done? – the strategy/plan of action?**

There was a period of silence as participants read the material. The group was asked to buzz in pairs and then discuss in plenary. I directed which pairs the group

would buzz in as there were only four people present.

When the group returned to a plenary session it was suggested that one group talk about one idea and then the others each talk about one idea until feedback was completed. As the ideas were presented the group discussed possible actions.

Information was given to the participants about the arrangements for presenting the research findings. The participants were thanked for participating in the group and enabling the research to be done. The meeting closed with prayer.

### **Whangarei**

This was the 16<sup>th</sup> meeting. Three participants attended, one was absent.

This focus group followed the process of focus group four, Pacific people, except for the following:

- The group discussed the questions altogether as there were only three present.
- I thanked the participants for participating in the group and enabling the research to be done and gave them a couple of smoked snapper to enjoy.
- The meeting closed with karakia.

### **Mixed**

This was the 17<sup>th</sup> meeting. Seven participants were present.

This focus group followed the process of focus group four, Pacific people, except that this meeting closed with supper.

## **Thames**

This was the 18<sup>th</sup> meeting. Six participants were present, one was absent.

This focus group followed the process of focus group four, Pacific people, except for the following:

- I asked the group to say if there was one thing that they wanted retained in the restorative justice process what would that one thing be?
- As the discussion on the above question was lengthy I suggested that the group move onto the design phase.
- The group decided which area they wanted to work on and who they would buzz with.

## **Southwest**

This was the 19<sup>th</sup> of the 19 focus group meetings. There were four participants in the meeting. The person who was unavailable asked that the group proceed and he would add his contribution later.

This focus group followed the process of focus group four, Pacific people, except for the following:

The group decided which area they wanted to work on and who they would buzz with.