

## **Conferences and gendered violence: practices, politics, and evidence**

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December 2011

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Prepared for I. Vanfraechem & E. Zinsstag (forthcoming), *Conferencing and Restorative Justice: Challenges, Developments and Debates*. Oxford: Oxford University Press.

## **Conferences and gendered violence: practices, politics, and evidence**

**by Kathleen Daly**

Using conferences in cases of gendered violence (sexual, partner, and family violence) is controversial. Two countries — New Zealand and Australia — have been pioneers in developing appropriate practices. A small body of evidence from the region and elsewhere is available on the topic. In this chapter, I first compare the legal and practice contexts of youth and adult conferencing in Australia and New Zealand, and then summarize debates on the appropriateness of conferences and restorative justice for gendered violence cases. I then review research from Australia, New Zealand, and other countries on practices and victims' experiences<sup>1</sup> with them. I conclude by outlining ways forward.

Here are the key points. In Australia, conferencing centres on youth, not adult offending. New Zealand has made greater advances by introducing conferences for adult cases in 2001, and by having a country-wide network of conference providers and standards of practice. There are differences in the profile of victims who participate in adult and youth justice conferences, which have implications for research and practice. Although there is considerable debate on the appropriateness of conferences for gendered violence in the Antipodes, it is less polarized than in North America. From New Zealand, research is available on adult conferences, and specifically, for partner/family and sexual violence. From South Australia, research is available on youth justice conferences and sexual offences, and on court/conference comparisons, and case studies of youth conferences for family violence. Contrary to those who are critical of using conferences in gendered violence cases, research findings are generally positive for victims. However, movement toward change is slowed by perceptions of conferences as being a 'too lenient' response for gendered violence (particularly those involving adult offenders) or not providing sufficient safeguards to victims. The political and evidential challenges are significant in moving the idea forward, but the ground is softening for change.

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<sup>1</sup> Terms such as victim or victim/survivor are used in the literature, but victim is used for simplicity.

## **Youth justice conferencing in Australia and New Zealand**

Youth justice conferencing was legislatively established first in New Zealand with the Children, Young Persons, and Their Families Act 1989; it moved to Australia in 1991, with the introduction of police-led diversionary conferences in New South Wales. Youth conferences were first legislated in South Australia with the Young Offenders Act 1993, which based its practices on the New Zealand model of non-police led conferences. Since then, all Australian jurisdictions have established youth justice conferencing, typically using the New Zealand model, and all have a statutory basis.

New Zealand and Australia differ in the profile of youth who participate in conferences. For New Zealand, Maxwell and Hayes (2007: 522, 528) say that ‘the family group conference is the key decision-making procedure for the top 25 per cent of offenders, including all serious offending except ... murder and manslaughter’, and they estimate there have been 100,000 or more conferences since 1989. Family group conferences are referred by the police or the Youth Court, facilitated by coordinators in the social welfare department, and deal with youth aged 14 to 16 years. Although several major reports have been written (Maxwell and Morris 1993, 1999, Maxwell et al. 2004a, 2004b), none has focused on youth cases of family or sexual violence.<sup>2</sup>

In Australia, youth justice conferences are used in relatively less serious cases and deal with a wider age group, youth aged 10 to 17 years.<sup>3</sup> There is considerable variation in youth justice policy across the eight Australian states and territories (see Australian Institute of Health and Welfare 2009, Appendix B, Richards 2010). Using South Australia as an example, data for 1994-95 show that of all offences coming to police attention, 30 per cent were referred to court and 12 per cent to conference; the rest were cautioned, and few were withdrawn (Wundersitz 1996: 29). More recent data for 2009-10 show that while over 2,000 cases were finalized by a conference, most were finalized in court (Courts Administration Authority 2010: 45). Thus, while New Zealand youth conferences deal with the top 25 per cent of offenders, in South Australia, I would estimate that the courts deal with the top 25 to 35 per cent, and conferences are utilized for the next band of offenders.

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<sup>2</sup> Youth family violence normally includes assaults between youths and their siblings or parents. Youth sex offences are intra-familial (often with young victims), extra-familial (among peers), and public indecency types of offences.

<sup>3</sup> There are always exceptions to any general claim. For example, it is reported that in Tasmania, conferences have been used since 2002 in the state’s only detention centre for youth, with over 700 conferences having been held from 2002 to 2005 (Llewellyn 2005).

South Australia and Queensland are the only Australian jurisdictions that permit conferences in youth sex offence cases. Research exists on these cases for South Australia, but none has been reported for Queensland. Across Australia, conferences are used as diversion from court, and to a lesser degree, pre-sentence. One jurisdiction (Tasmania) uses police-led conferences for formal cautions and facilitator-led conferences for court diversion conferences. Another (Victoria) uses pre-sentence conferences only, which are referred by judicial officers. The Australian Capital Territory (ACT) has the greatest degree of victim control. Only in this jurisdiction does a victim have veto power, by not consenting to a conference to go forward. Such veto power is unusual in the youth justice conferencing, but typical in the adult context.

### **Adult justice conferencing in Australia and New Zealand**

In the past decade, New Zealand has established and expanded conferencing for adult offenders to a greater degree than Australia. A national discussion has taken (and is taking) place in New Zealand on developing best practices and standards for restorative justice, including those for gendered violence cases. These developments have been aided by an organisation of restorative justice providers, Restorative Justice Aotearoa,<sup>4</sup> incorporated in 2005.

#### **Australia**

Australia's federated status has limited an ability of practitioners to identify national standards. With eight Australian jurisdictions operating under differing legal regimes and taking different conference approaches, there is relatively less sense of a critical mass of practitioners.<sup>5</sup> Although there is enthusiasm for conferencing within government and the judiciary, it is more dispersed. Importantly, beginning in June 1999, Indigenous sentencing

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<sup>4</sup> Restorative Justice Aotearoa listed 36 providers on its website in July 2011 (see [http://www.restorativejusticeaotearoa.org.nz/site\\_user\\_list](http://www.restorativejusticeaotearoa.org.nz/site_user_list)). Its Constitution exemplifies an institutionalisation of restorative justice values.

<sup>5</sup> In Australia, conference facilitators are hired on a contract basis or are members of a permanent staff; one jurisdiction uses restorative justice service providers. A few companies provide restorative justice services for schools, workplaces, and communities, but there is not an identifiable national group of restorative justice providers. The Restorative Justice Programs unit in New Zealand's Ministry of Justice shapes national policy and contracts out for research; no national entity like this exists in Australia.

courts for adult offenders began in Australia (see Marchetti and Daly 2007, Marchetti 2009). Today, these courts exist in all but one state (Tasmania), and in some jurisdictions, they are convened for youth offenders as well. The courts aim to harness Indigenous knowledge, forms of authority, and social control to reduce Indigenous offending and criminalisation. Here I am speculating, but I suspect that the introduction and popularity of Indigenous sentencing courts in Australia may have displaced government interest to resource other justice forms for adults such as conferencing.<sup>6</sup>

Although conferencing in Australia is used almost exclusively in youth cases, there are exceptions:

- In South Australia, a pilot project of adult conferencing was carried out in 2004-05; Goldsmith et al. (2005) analysed twelve cases, two for sexual violence.
- In South Australia, a hybrid practice combines adult conferences with Indigenous sentencing court practices. Aboriginal Conferencing began in 2007 and continues to operate when the magistrate is on circuit to Port Lincoln (Marshall 2008).
- In New South Wales, pre-sentence adult conferences (Forum Sentencing) began in two sites in 2005 (People and Trimboli 2007). Initially for those 18-24 years, in July 2008, the upper age limit was removed. As of April 2011, Forum Sentencing was operating in nine locations; and there are plans to expand it state-wide to all local courts in 2012-13. Sexual assault cases are not eligible.
- In New South Wales, the Restorative Justice Unit in the Department of Corrective Services, established in 1999, carries out meetings between prisoners and victims (or family members), post-sentence and post-release.
- In Victoria, Group Conferencing, established in 2007, includes offenders up to 20 years.
- Legislation for adult conferences was enacted in the ACT in 2005, but conferences have not yet been established.

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<sup>6</sup> Some Indigenous sentencing courts handle partner and family violence cases. Australian jurisdictions have also created a variety of specialist courts such as drug courts and family violence courts. In New Zealand, the first Rangatahi Court was established for youth in Gisborne in 2008, presided by Judge Heemi Taumanunu. Since then, courts have been established in other locales, including Waitakere, Manurewa, Orakei, Waitara, and Hamilton (Sharpe 2010).

## New Zealand

The passage of four Acts in 2002 and 2004 gave legitimacy and support for conferences in adult cases: the Sentencing Act 2002, Parole Act 2002, Victims' Rights Act 2002, and Corrections Act 2004 (see Boyack et al. 2004, Proietti-Scifoni 2008). In the Sentencing Act, courts must take into account negotiated outcomes between an offender and victim, e.g., actions to make amends. In the Victims' Rights Act, if there is agreement by both victim and offender, and if appropriate resources are in place (e.g., a trained facilitator), any legal or court actor (e.g., lawyer, judicial officer, prosecutor) can encourage a meeting to 'resolve issues relating to the offence' (s. 9(1)).

In 2001 to 2004, a pilot of adult conferencing was carried out in four New Zealand sites (Auckland, Waitakere, Hamilton, and Dunedin), and an evaluation funded by the Ministry of Justice was carried out by Morris et al. (2005). The pilot excluded partner violence cases<sup>7</sup> and all non-property offences having a maximum sentence of greater than seven years, which effectively excluded all sexual assaults. After a guilty plea, a judge can refer a case to a conference; and for a conference to go forward, both a victim and offender must agree to it. If a conference does go forward, a report of what occurred is given to the judge before sentence (Morris et al. 2005, executive summary, 1). The judge may take into account what occurred at the conference, along with any other reports, in deciding the sentence.

One initially surprising finding was the substantial attrition of cases after referral. Of 539 cases referred, a conference was held for 192 (or 36 per cent) (Morris et al. 2005: Table 3.3). Of the cases that did not proceed, the reasons were victim withdrawn (63 per cent), offender withdrawn (29 per cent), and unable to contact the victim or case not suitable (8 per cent) (Morris et al. 2005: section 3.4.1, para 1). For the individual victims who did not participate, they 'did not want to meet the offender' (58 per cent) or could not be contacted (13 per cent) (Morris et al. 2005: section 3.4.1, para 2).<sup>8</sup>

For comparison, I analysed case attrition in the Justice Research Consortium (JRC)-London experiment for adult burglary and street crime offences. Drawing from Shapland et

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<sup>7</sup> However, some family violence cases were handled by conferences in community-managed programs in two areas (see Paulin et al. 2005a, 2005b).

<sup>8</sup> By comparison, for the individual offenders, the reasons were more dispersed: not wanting to meet the victim (20 per cent), not accepting responsibility for the offence or contesting the facts (21 per cent), not contactable (23 per cent), and failed to attend meetings (11 per cent).

al.(2011: 49, Table 3.1), of 222 eligible burglary cases that did not proceed to random assignment, the reasons were victim refusal (45 per cent), offender refusal (38 per cent), and victim could not be contacted (17 per cent).<sup>9</sup> For street crime (mainly robbery), it was victim refusal (52 per cent), offender refusal (26 per cent), and victim could not be contacted (22 per cent). Victim refusal rates appear to be somewhat higher in the New Zealand pilots than in the JRC-London experiment. I suspect that the reason is that New Zealand victims were asked to participate in a pre-sentence conference, whereas JRC-London victims were asked to participate in an experiment, in which they then would be randomly assigned (or not assigned) to a ‘supplemental’ conferencing process, in addition to the conventional court process.

The victim refusal figures should not surprise us, in light of other research on victims’ reluctance to participate in meetings with offenders or actual participation rates of victims in youth justice conferences (about 50 per cent in New Zealand, somewhat higher in some Australian jurisdictions, very low in England and Wales (Morris et al. 2005: fns. 114 and 115). However, several research and policy implications can be drawn. First, compared to victims in youth conferences (who are typically not asked if they wish to participate), there is substantial selection bias of victims participating in adult conferences. Thus, we would expect to see more positive results from research on victims in adult than youth justice conferences, despite the fact that adult conferences are often for more serious offences.<sup>10</sup> Second, and relevant to debates on the appropriateness of conferences in gendered violence cases, if victims are asked if they wish to participate in a conference, the fact that they have a choice to do so (or not) should allay some critics’ concerns.

Adult conferencing was expanded to other New Zealand sites in 2005. Referrals (post-plea and pre-sentence)<sup>11</sup> are made not only by the police and courts, but also by community-based organizations. Depending on the context, varied approaches are used to secure victim consent for conferences to go forward. From 2005 onwards, and unlike the adult pilot, gendered violence cases were not expressly ineligible, although the Ministry of

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<sup>9</sup> ‘Withdrawn’ and ‘refused’ are the terms used by the respective authors (Morris et al. 2005; Shapland et al. 2011).

<sup>10</sup> This selection bias in part explains the differences found in victims’ experiences with youth justice conferences in the Re-Integrative Shaming Experiment (RISE) in Canberra and the adult supplemental conferences in the JRC-London experiment (see Sherman et al. 2005). Whereas RISE randomly assigned youth to conferences (or to court), JRC-London randomly assigned victims (from a group of eligible victims and offenders who consented to participate in the experiment) to court or to court plus a conference.

<sup>11</sup> Project Restore-NZ, described below, received court-based referrals and community (self-based) referrals of cases that had not been reported to the police.

Justice said that caution should be exercised. Restorative Justice Aotearoa (RJA) providers began receiving court-referred family violence cases in 2006 (Kingi et al. 2008: 31-39); and their survey published in 2007 revealed that 13 per cent of the cases were family violence matters (RJA 2007). From 1 July 2008 to 30 June 2009, an estimated 1,400 conferences were held, 350 (18 per cent) of which dealt with family violence; by contrast, three sexual violence cases were finalized by a conference (Ministry of Justice official, personal communication, 11 June 2010).

In 2009, the Ministry of Justice announced its intention to review restorative justice in family violence cases, but the review was put on hold, pending a report from Project Restore-NZ. This group, which takes a victim-sensitive approach to conferencing, was created in 2004. It was inspired by the work of Mary Koss and colleagues (Koss et al. 2004), who, in 2001, established the first pilot project in the United States to use restorative justice conferences in adult cases of acquaintance rape and misdemeanour sexual offences (see Koss 2010 for RESTORE, Jülich 2010 and Jülich et al. 2010 for Project Restore-NZ).

### **Debates on conferences, restorative justice, and gendered violence**

Collections by Cook et al.(2006) and by Ptacek (2010a), and a review by Daly and Stubbs (2006), give a good flavour of the debates on conferences and gendered violence.

Contributors are typically oriented to the question of appropriateness with partner violence in mind; relatively less is said about sexual violence. Like an early edited collection (Strang and Braithwaite 2002), the ‘debate’ takes place on principled grounds: few authors can produce research on actual practices or outcomes, victims’ experiences, or comparisons of conference and court processes and outcomes. I would emphasise that conducting such research is difficult: it can be hard to gain access to victims; and once contacted, they may not wish to participate in research. The even greater problem, however, is that because so few jurisdictions in the world use conferences (or other types of informal justice practices) routinely in youth or adult cases of gendered violence, there are few sites where it is possible to gather evidence. Critics identify these problems:

- Potential for women’s safety to be compromised.
- Potential for power imbalances to go unchecked, which can reinforce violent behaviour.
- Potential for offenders and bystanders to manipulate the process.

- Relevance or meaning of ‘genuine apologies’ in relationships characterized by violence.
- Limited impact of one meeting to change entrenched patterns of abuse and violence.
- Potential for victims to be pressured into participating or coerced into agreements and not be able to advocate effectively on their own behalf.
- Uncertain role and function of ‘the community’, when communities are under-resourced or may reinforce, rather than challenge, violent behaviour.
- Mixed loyalties of friends and family, who may partly support victims, but also support offenders, and collude with the violence.
- Symbolic implications: informal processes reflect a re-privatization of violence, and outcomes may appear too lenient and send the wrong message to offenders and potential offenders.

Critics focus on the potentially damaging and negative effects for victims in informal, face-to-face encounters, particularly in intimate relationships characterized by on-going violence. They fear that protections and penalties that are part of conventional criminal justice will be reduced or minimized.

Supporters see these benefits and potentially positive effects:

- Potential for greater victim participation and ‘voice’ in the process and outcome.
- Potential for victim validation and empowerment.
- A greater degree of offender accountability and explicit censuring of violent behaviour.
- A more flexible and less formal environment, which is less intimidating and more responsive to victims.
- Greater potential for dialogue and interaction, telling one’s story, and checking and challenging an offender’s denials or minimizations of harm.
- Potential to address violence for those who wish to continue or repair a relationship.

Those who support conferences and restorative justice also emphasize the failures of conventional criminal justice, e.g., a re-victimization of victims by the legal process and significant attrition of sexual violence cases (Koss 2006, Daly and Bouhours 2010).

Interviews of people with a range of views<sup>12</sup> have been carried out in Australia, New Zealand, and Canada. Curtis-Fawley and Daly (2005) found that victim advocates and

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<sup>12</sup> Most studies asked for views of restorative justice, but in most studies, respondents also had conferences expressly in mind.

service providers in two Australian states had different views, depending on their degree of exposure or familiarity with actual practices. Those with greater familiarity were more likely to see the value of restorative justice than those with less exposure or experience. Nancarrow (2006) found a 'racialized split' in the views held by Australian Indigenous and non-Indigenous women. The former were more likely to endorse restorative justice, compared to conventional criminal justice, in partner and family violence cases. Reviewed by Stubbs (2010: 107-8), Canadian professionals and practitioners said that they were not opposed in principle to restorative justice; however, they raised concerns about how well existing protocols could address partner and family violence, along with the adequacy of facilitator training and resources. Kingi et al. (2008) surveyed twenty-four professionals in five New Zealand sites, where adult family violence cases were referred to conferences. The professionals were program providers, judges, victim advisers, prosecutors, and lawyers. One-third expressed unconditional support for using restorative justice in family violence cases, 38 per cent expressed conditional support, and 29 per cent were against it. The conditional supporters said there needed to be better facilitation; those opposed cited problems of coercion and re-victimization of victims, and manipulation of the process by offenders.

Proietti-Scifoni and Daly (2011) analysed the views of nineteen Opinion Leaders in Wellington and Auckland on using restorative justice for different types of gendered violence (partner violence, sexual violence, and child sexual abuse [CSA]). The analysis identified three groups, not two: the Supporters, Sceptics, and Contingent Thinkers. Despite their different positions, members of all the groups were concerned with victim safety and voluntariness in participating, and all noted potential problems of power dynamics in on-going relationships. All believed that CSA was the least suitable, although they assumed that a child victim would be present at the conference. Across the three groups, it was recognized that some contexts were more favourable to restorative justice than others: in relationships of roughly equal status (e.g., sibling violence), when offenders had little or no previous offending, and when couples wished to maintain a relationship. Their views were shaped by their experiences with restorative justice and current professional role; they correlated with their views on the strengths and weaknesses of conventional criminal justice; and for Māori and Pacific Islanders, they were structured by concerns with state-run practices.

Confirming Curtis-Fawley and Daly (2005), having a more direct experience of restorative justice was related to greater support for its use in gendered violence cases: Sceptics more likely worked as government officials and managers of victim services; and

Supporters and Contingent Thinkers, as facilitators, law officers, ministers, or direct victim service workers. The analysis did not find a ‘racialized split’ as Nancarrow (2006) did, however, the Māori and Pacific Islander participants wanted to see greater ‘cultural control’ of justice practices, rather than just state control.

Positions on using conferences for gendered violence are more polarized in North America (see, e.g., Ptacek’s 2010b review for the United States) than in Australia and New Zealand. One reason is a greater degree of exposure and experience with conferences, particularly in New Zealand. In Canada, restorative justice may have been forced too quickly in areas without consultation or sufficient resources (Rubin 2010). In the United States, Linda Mills’s work (2003, 2008) on Intimate Abuse Circles (IACs), restorative justice, and partner violence has generated controversy. Those who support restorative justice in gendered violence cases have criticized Mills’s analysis of partner violence (emphasizing individual actors’ psychology rather than gender-based sources of power) and the principles of IACs, which do not pay sufficient attention to ‘normative judgments’ about conduct, including that ‘domestic [partner] violence is morally wrong’ (Coker 2004: 1347, 1349).

Writing with critics of conferencing generally in mind, Morris’s (2002:600-1) comments are especially apt when applied to the gendered violence debate: one may only be able to ‘rebut speculation with speculation’ and ‘positive and negative spins can be put on the same data’. In addition, there is circularity to the debate. Policymakers say there is a lack of evidence on conferences for gendered violence and their impact on victims, but because these offences have been ruled ineligible for conferencing, one cannot gather the evidence. This situation is beginning to change, as we see in the next section.

### **Conference practices and gendered violence**

Because the evidence base on conferences and gendered violence is small, my review includes practices and research from Austria, Belgium, Canada, Denmark, England, and the United States, in addition to New Zealand and Australia.

### **Adult offenders and conferences**

For North America, Pennell and Burford (2002) show that a feminist praxis model, which uses family group conferencing, is effective in stopping partner violence and child maltreatment. Elements of family privacy, women’s leadership, and state control articulate,

they say, to build ‘links, interruptions’ in stopping the violence (p. 126). Pennell (2006) has also addressed child welfare matters (which often include partner violence) with family-centred meetings, and continues to see benefits of using such meetings to address family violence (Pennell and Kim 2010). For England, the Dove Project reported on a small number of partner violence victims, whose cases were referred to a conference, and who agreed to participate in the research. Of six women interviewed, four rated the conference positively (Social Services Research and Information Unit 2003). In the United States, Koss’s RESTORE project in Tucson completed 22 conferences, largely of first-time adult offenders of acquaintance rape and obscene behaviour; however, no in-depth interviews were conducted with victims (Koss 2011). In the South Australia pre-sentence pilot, Goldsmith et al. (2005) found that the two sexual assault cases posed more difficulties for the conference process compared to the other offences. They concluded that ‘greater thought’ needs to be given to how participation is encouraged and managed in these cases.

Three New Zealand studies report on conferences in family (Kingi et al. 2008), partner (Tisdall et al. 2007), and sexual violence cases (Jülich et al. 2010). In Kingi et al. (2008), nineteen victims who attended conferences were interviewed; they were about half of those for whom contact was attempted (most could not be located); and they were a minority of all those who had participated in conferences (an estimated seventy people) during the research time frame.<sup>13</sup> The offenses were typically in ‘the less serious to medium seriousness range’, e.g., assaults not requiring a victim’s hospital admission (p. ix). Referrals to restorative justice providers came from varied sources; the providers took a cautious, case-by-case assessment of suitability, based on safety; and each site had somewhat different practices. Highlighting the findings, most victims said the conference was positive, citing ‘open dialogue, ... the healing process, and being able to meet the offender in a safe, supportive environment’ (p. iv). However, a minority (26 per cent) reported that the offender made up for what they did, and 32 per cent believed that the offender understood how the victim felt (p. 64). Despite this, most (89 per cent) were pleased they had taken part, 79 per cent said they would do it again if they needed to (p. 66), and 74 per cent were satisfied with the process (p. 63). Two of the nineteen victims said they felt unsafe at the meeting; for the others, safety did not emerge as a concern.

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<sup>13</sup> Offenders were also interviewed, but the findings are not reported here. Page numbers are not shown on the web-based report; thus, page citations are sourced from the report’s table of contents.

In Tisdall et al. (2007), eight partner violence victims were interviewed. They were a highly select sample, having been identified from a list of twenty-six pre-sentence conferences held in Rotorua during 2005-6 that were judged by the service providers to have been successful. Not surprisingly then, in light of sample selection bias, all the victims said they felt safe during the conference (although one reported having been assaulted some months later); the authors concluded that the meetings were ‘valuable and positive for most victims’ (p. 70).

Julich et al. (2010) focused on ethical and practice matters when preparing for and conducting conferences (or at times, panels)<sup>14</sup> for sexual violence cases. Of twenty-nine referrals, three did not proceed past initial inquiries and two were pending at the time of the report; nine proceeded to a conference (p. 25). Although most referrals did not result in a conference, the authors found that a victim’s ‘sense of justice’ could be realized during the pre-conference process. Four conferences were selected for interview purposes, and four people (three victims and one offender) were interviewed. All four had a ‘high regard for the process ... and appear, at least in part, to have achieved some kind of healing’ (Julich et al. 2010: 48), although the authors recognize that sample selection and a small number of cases limits generalization. The major contributions of this report are two-fold: to identify key principles of best practice in sexual violence cases and to show how the standard restorative justice model would require modification to include victims’ perspectives and interests.

### **Adult offenders and other justice activities**

Other types of related justice activities provide options for gendered violence victims, although they are not called conferences. They include diversionary mediation for partner violence (Pelikan 2010), Community Holistic Circle Healing (CHCH) for child sexual abuse (including historic cases) (Lajeunesse 1996), facilitated meetings for acquaintance rape (Madsen 2008), and prisoner-victim meetings (e.g., Miller 2011).

Diversionary mediation for partner violence in Austria is set in motion at the discretion of the prosecutor (Pelikan 2010). The victim-offender meetings, first as dyads with a victim and mediator/social worker, and perpetrator and mediator/social worker, are then followed by ‘the talk of four’, a mediation session that goes through a set of steps to

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<sup>14</sup> A panel is a restorative process without a victim present. Some victims wanted to confront an offender, but preferred doing so via a victim specialist rather than in a face-to-face meeting (Julich et al. 2010: 40, 51). The number of panels held was not mentioned in the report.

produce ‘recognition and empowerment’ (p. 52). The ultimate aim is to promote ‘a partnership free of violence’ (p. 54). A survey of female victims showed that a high share of the mediators took the violent behaviour seriously (over 80 per cent), and just over half (57 percent) of the ex-partners- understood the extent of hurt and harm caused. For the group of women who experienced no further violence, a high share (80 per cent) credited the mediation.

CHCH emerged in the late 1980s in Canadian First Nations communities in the Hollow Water area in Manitoba. After victim disclosure, the victimiser was confronted by staff members; the police were informed, and the suspect was given the choice of admitting guilt and being sentenced to probation, with the requirement to participate in the ‘community way’ (circles and intensive therapeutic intervention, which can last for three to five years); or to go through the regular court system. Lajeunesse (1996) found that of 52 victims (or family members of victims), about half said that the CHCH response was appropriate from a justice perspective, but the rest did not think so because the offender was not showing signs of change in that, for example, some continued to abuse alcohol. Two-thirds said they benefited from the CHCH process because it allowed them to talk to others and participate in counselling and circles.

Facilitated ‘restorative dialogues’ for acquaintance rape cases have been taking place since 2004 in at the Centre for Victims of Sexual Assault in Copenhagen (Madsen 2008, Pali and Madsen 2011). The idea evolved when victims expressed an interest to meet or confront the person who attacked them, but did not wish to report the offence to the police. The facilitator (Madsen) used letter writing as an initial step for a victim to express herself to the perpetrator and to broach the possibility for meeting. In 2004, sixteen victims came forward; ten wrote letters to the offender, and six offenders replied. Some months after the process, Madsen (2008:7) found that all the victims said ‘it was a good thing I did that, and I would do it again.’ In a further analysis, Pali and Madsen (2011:60) reported that the ‘procedure provides women with a platform from which to address the men who assaulted them, directly or indirectly, while validating their desire for retribution and rehabilitation.’ At the same time, they recognized that ‘the restorative dialogues are not a way to end or reach closure [from] a traumatic experience, nor an option for all women’, although it is a ‘step ... to take in regaining meaning and dignity in their lives after a sexual assault’ (p. 60). The Centre continues to receive and respond to requests by victims (about 15 per year), with about one-third of victims eventually having a face-to-face dialogue with the perpetrator (Pali and Madsen 2011:57).

Victim-prisoner meetings, which can be held post-sentence or post-release, are typically called ‘dialogues’ not conferences. For rape and child sexual abuse cases that conclude with a court conviction and prison sentence to serve, voluntary meetings can be organized and run by professional facilitators. This has been occurring for some time across jurisdictions in Canada (Gustafson 2005) and the United States (Umbreit et al. 2003).

A feminist-informed study by Miller (2011) analyses cases using restorative justice dialogues that were handled by Victims’ Voices Heard (VVH), a program established in Delaware in 2002. Of the nine victim-offender pairs analysed by Miller, five involved gendered violence (sexual and partner), and four murder or attempted murder. For the gendered violence cases, Miller reports that all the ‘victims received immense satisfaction when offenders told them that nothing about the crime was their fault’. In addition, benefits arose from telling offenders of the long-term consequences of the crime and being able to ask offenders questions. In all nine cases, Miller said that victims defined ‘their participation as a watershed moment, seeing VVH as essential in breaking the silence and mystery surrounding their victimization and providing a mechanism to combat feelings of being trivialized ... and disempowered by the criminal justice process’ (p. 187).<sup>15</sup> Miller terms this context of restorative justice as ‘therapeutic, post-conviction RJ’ (p. 180), contrasting it to diversionary programs that ‘function in lieu of formal case processing and punishment’ (p. 206).<sup>16</sup> She argues, and I concur, that post-conviction restorative justice for gendered violence cases is less likely to raise critique or controversy.

In New South Wales, a Restorative Justice Unit (RJU) was formed in the Department of Corrective Services in 1999. As of 2010, there were 145 completed ‘restorative justice processes’ (out of about 850 referrals). Most are face-to-face, but some are indirect, and they take place post-sentence or post-release. A small number, perhaps three, have been rapes (RJU Acting Manager, personal communication, 12 August 2010). For these cases, RJU’s policy is that only victim-initiated referrals are considered. A research project, headed by Janet Chan and Jane Bolitho at the University of New South Wales, began in 2010 to study and evaluate the RJU’s activities and outcomes across a range of offence types (Bolitho, email communication, 23 September 2010).

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<sup>15</sup> Considerable benefits were also identified for offenders, including ‘creating empathy for victims’ (p. 189), but I do not discuss these here.

<sup>16</sup> Although Miller is right to distinguish diversion from court and post-sentence contexts of restorative justice, she overlooks the fact that ‘restorative dialogues’ and ‘supplemental conferences’ may also take place when victims decide not to report an offence to the police (the Copenhagen Centre, discussed above) and when conferences run parallel to the court process (pre-sentence or is supplementary to sentencing).

Compared to other contexts of conferences (e.g., court diversion or pre-sentence), victim-prisoner meetings require significantly more time and intense preparation, which may take several years. Although the offences are very serious, the elements of victim-initiation and offender readiness, coupled with careful preparation, suggest a meeting context that has potential to be highly successful. Indeed, of all contexts in which restorative justice may be used in gendered violence cases, the post-sentence (prison) context is likely to show the highest levels of positive outcomes for victims. At the same time, we should not lose sight of the fact that relatively few cases will ever reach this point in the criminal justice system.

### **Youth offenders and conferences**

Research on conferencing for youth sexual offending and family violence, and on court/conference comparisons, is available for South Australia (Daly 2010). In addition, Mercer (2009) and Vanseveren (2010) describe conferences for youth sex offence cases in England and Belgium, respectively.

The South Australian program of research on gendered violence has several sub-studies: the Sexual Assault Archival Study (SAAS) of 385 sex offence cases (1995-2001), in which court-conference comparisons were made of processes, outcomes, and re-offending (Daly 2006, Daly et al. 2011); the In-Depth Study of fourteen conferences of sexual and family violence (Daly and Curtis-Fawley 2006, Daly and Nancarrow 2010); and the Judicial Sentencing Remarks Study (Bouhours and Daly 2007, Daly and Bouhours 2008). Summarising the findings, youth sex offending was more likely to be admitted to, and more likely to be disposed of by a conference than court, for intra-familial rather than extra-familial sex offending. Of sex offence cases that went to court, nearly half were dismissed. For youths whose cases were proved in court or disposed of by conference, the time to re-offend (specifically, *general* re-offending)<sup>17</sup> was significantly slower if youths were referred to an intensive program for sex offending, the Mary Street Adolescent Sexual Abuse Prevention Program.<sup>18</sup> However, this held only for youths with no previous offending; for those with previous offending, a referral to Mary Street made no difference in time to re-offend. A similar pattern was evident for youths whose cases were disposed of by conference

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<sup>17</sup> The number of cases of sexual re-offending was too low for a separate analysis.

<sup>18</sup> For a comprehensive description and discussion of the Mary Street Program, see Daly et al. (2011).

rather than in court. Re-offending was significantly slowed for conference than court youth, but only for those with no previous offending.

From the quantitative analysis, coupled with case studies of sexual assault victims' experiences, the conclusion is that conferences are better than court from a victim's perspective. The reason is that conferences provide a validating justice mechanism. Further, in a conference, victims (or family members) are able to explain the impact of the offence to an admitted offender, and to check and challenge denials or excuses to offending. By comparison, in half of the court cases, there was no validating justice mechanism for victims because the case was dismissed. The analysis of judicial sentencing remarks shows that although the judges admonished intra-familial sex offences strenuously and as 'real rape' (typically, these cases involved young victims), they did not admonish peer sexual assaults. This confirms patterns in adult sexual assaults: those involving acquaintances and peers are not considered 'real rape', and they face more hurdles in the legal process.

In the Greater Manchester (England) area, Mercer (2009) has applied family group conferencing to children and youth who display sexually harmful behaviour (SHB) and victims of SHB. Working with the AIM project (for Assessment Intervention and Moving On), Mercer developed a Restorative Justice Assessment framework to determine if cases (largely intra-familial) are appropriate for restorative processes. The cases are mainly post-sentence, although some are pre-sentence. AIM's justice-therapeutic practice blends a victim, offender, and family focus; it is impressive in the attention given to power dynamics, blame, and shame associated with youth sex offending. As of 2009, twenty-five referrals were made to AIM; ten had a direct meeting (Mercer 2009:14). In Flanders (Belgium), family group conferences have been used in selected youth sex offence cases (largely intra-familial). It is a pre-sentence option, with a referral by a juvenile court judge (Vanseveren 2010).

### **Ways forward**

Since the 1970s, second-wave feminism has been challenging 'business as usual' in police and court responses to gendered violence. Some advances have been made, but much remains to be done. A significant thrust of social and legal change is introducing stronger police and court responses to gendered violence offences and to provide greater support for victims. When the idea of restorative justice was introduced in the early 1990s, it was met with critique by those in the domestic violence sector, in part because of well-known failures

of mediation in these cases and in part because it sent the wrong message of a ‘too lenient’ response to perpetrators.

Gendered violence offences pose challenges to conferencing and restorative justice, in part because of a charged political context, and in part because these offences require serious reflection on the role and place of victims in a justice process. Victim safety and voluntary participation, and facilitators who are knowledgeable about the dynamics of gendered violence offences, are obvious pre-requisites. If occurring in a legal context, a justice activity cannot be set in motion without an admission by the accused to offending, or at a minimum, by not disputing what occurred.<sup>19</sup> The results from the SAAS project on youth sex offending suggest that in addition to conferences or other types of restorative processes, targeted therapeutic interventions are required. The SAAS project also suggests that conferences and therapeutic interventions aimed at youth sex offending are more effective for first-time offenders.

To move forward, these points should be considered:

1. Distinguish among differing types of gendered violence, by recognising that some offences and victims may be more amenable to conference processes than others.
2. Be aware that gendered violence is one of several types of offences that cause victims serious distress and potential re-victimisation in a justice activity.
3. Move slowly and carefully in developing protocols and practices, and be sure to conduct research on what occurs.
4. Develop a range of responses to gendered violence, some of which are part of a criminal justice process, and others outside of it.

For the first, sexual violence offences, especially historic cases of child sexual abuse, youth and adult peer and acquaintance violence, and youth intra-familial violence are good candidates for conferences. These offences are highly under-reported, associated with high levels of shame and blame among victims, and may involve complex familial dynamics that legal systems handle poorly. In general, sexual violence may be a better starting point than partner violence in developing alternative justice practices: the former offences are more likely to be ‘once off’ and not involve on-going relations (with exceptions, of course), and many include youth offending.

The second point arises from my research on youth justice conferences, when I discovered that girls’ and boys’ peer violence created high levels of victim distress and re-

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<sup>19</sup> There may be other contexts for conferences, meetings, and restorative justice that are outside a legal context, e.g., those for victims when a suspect has not been detected or arrested on a charge (Daly 2011).

victimisation (Daly 2008). Although often termed ‘school yard squabbles’, these female and male peer violence cases are often serious matters of bullying and victimisation that require careful handling in a conference process. In addition, youth violence toward mothers and fathers, a type of youth family violence, requires careful handling as well (Daly and Nancarrow 2010). These offences pose as many problems for the standard conference model as the more frequently discussed adult cases of partner violence or peer sexual violence.

For the third, devising more effective justice responses to gendered violence will take some time; there is little to be gained by rushing into ill-considered or poorly resourced practices. New Zealand’s history of adult conferencing and gendered violence is a good example of building a strong facilitator base and moving slowly in developing appropriate protocols. For all jurisdictions, practices need be documented and analysed. Without an evidence base, proposals for change will fall on deaf ears. Such justice practices need to be joined with effective therapeutic intervention programs.

Even with an evidence base that shows the value of conferences (or similar justice activities), proposals for change may be treated with scepticism. Part of the problem is the politics of justice and gendered violence. There is resistance by some victim and advocacy groups and by government policy makers to entertain alternative justice practices, although there appears to be an increasing openness to the idea. Another part of the problem, and with respect to the fourth point, is the way in which justice alternatives are presented. We need to widen the scope of proposed justice activities beyond conferences and restorative justice. I use the term ‘innovative justice’ to refer to mechanisms that may be outside a legal process or part of it (Daly 2011). Many victims want something to be done, but they do not wish to call the police or engage a legal process; thus, mechanisms need to be established to assist this group. For those who do engage the legal process, other mechanisms, in addition to conferences, should be considered. The more options there are for victim participation, voice, validation, and vindication in the aftermath of crime, the better. In time, those who are critical of alternative justice practices for gendered violence will come to see their value. Such alternatives cannot replace criminal prosecution and trial, but they offer a larger set of options for victims.

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