

YES, THERE IS ANOTHER WAY!

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I. INTRODUCTION

Yvette Tinsley and Elisabeth McDonald outline concerns in their article, entitled *Is There Another Way? Possible Alternatives to the Current Criminal Justice Process*,¹ regarding the use of restorative justice with cases of sexual violence. We do not disagree with these concerns. In this commentary we will demonstrate that traditional concerns about the use of restorative justice in sexual violence cases have been addressed by Project Restore. To so do we will outline the history of Project Restore and its development as a community group. We will describe the interventions that have been developed, by discussing typical scenarios and will conclude by highlighting the necessity for specialised restorative justice practice in cases of sexual violence.

II. THE DEVELOPMENT OF PROJECT RESTORE

Project Restore, a restorative justice provider group, grew out of an interest group that was called for by Jülich and McGregor at an Auckland conference² in 2004 at which Professor Mary Koss reported on RESTORE.³ This inspirational programme, combined with Jülich's research⁴ and the frustration of victim-survivors of sexual violence pursuing justice in the

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1 See Tinsley and McDonald this issue.

2 "Success By Working Together" (paper presented to The Australian and New Zealand Association for the Treatment of Sexual Abusers, Third Biennial Conference, Auckland, 15-17 April 2004).

3 Mary P Koss, Karen J Bachar and Quince C Hopkins "Restorative Justice for Sexual Violence: Repairing Victims, Building Community, and Holding Offenders Accountable" (2003) 989 *Annals New York Academy of Science* 384.

4 Shirley Jülich *Breaking the silence: Restorative Justice and Child Sexual Abuse* (PhD Thesis, Massey University, 2001).

conventional criminal justice system as experienced by counsellors from Auckland Sexual Abuse Help (ASAH),⁵ provided the impetus for the development of Project Restore.

Project Restore's services and practice models are the result of extensive collaboration between victim-survivor advocates, established community organisations such as ASAH, SAFE Network, Rape Prevention Education Whakatū Mauri (formerly Rape Crisis Auckland), Tiaki Tinana (the Māori prevention programme of Rape Prevention Education), academic researchers and other restorative justice provider agencies working with victim-survivors and offenders. From its first inception Project Restore has been unique. It is driven by victim-survivors of sexual violence, is based on research and operates across community agencies that have extensive expertise and experience addressing sexual violence from the perspectives of victim-survivors, offenders and justice practitioners. Project Restore personnel have not only developed safe processes, but also have developed good practice guidelines⁶ to complement those developed by the Ministry of Justice.⁷

III. THE PRACTICE OF PROJECT RESTORE

Project Restore aims to provide victim-survivors with an experience of a sense of justice, support offenders to understand the impacts of their behaviour and to facilitate the development of an action plan. At the same time, it avoids any practice that might undermine the gains feminists have made at putting sexual violence on the agenda. The practice is driven by established practice guidelines⁸ and although unique processes are specifically developed for individual cases, the restorative process is based on a modified version of the New Zealand conferencing model,⁹ which is expanded to include the following:¹⁰

- A restorative justice facilitator who has an in-depth understanding of the dynamics of sexual violence;
- Two community specialists – a survivor specialist and an offender specialist with an in-depth understanding of restorative justice;
- Clinical psychologists (the survivor agency clinical manager and offender agency clinical manager) who provide professional supervision and joint team leadership, but have no contact with the stakeholders.

All cases, irrespective of whether they are court referred or community referred, are assessed by the Project Restore Clinical Team, which is comprised of the facilitator, and two community specialists – the survivor specialist, and

5 ASAH counsellors have from time to time assisted victims to experience a sense of justice in other ways, such as civil cases and face-to-face facilitated meetings.

6 Kathryn McPhillips *Restorative Justice for Sexual Violence: Good Practice Guidelines* (Project Restore NZ Inc, 2009).

7 Ministry of Justice *Restorative Justice in New Zealand: Best Practice* (2004).

8 McPhillips, above n 6.

9 Allison Morris and others *New Zealand Court-Referred Restorative Justice Pilot Evaluation* (Ministry of Justice, 2005).

10 Shirley Jülich and others *Project Restore: An Exploratory Study of Restorative Justice and Sexual Violence* (AUT University, 2010) at iv.

the offender specialist. The facilitator is a trained restorative justice facilitator who not only has experience in working with criminal cases referred by the New Zealand District Court system, but also has additional training and expertise in the complex dynamics of sexual violence. The survivor specialist is a qualified counsellor with specific expertise and experience in the dynamics of sexual violence. To date, this person has been employed by ASAH as a sexual violence counsellor. The offender specialist is a qualified therapist working with men and women who sexually offend. If the victim-survivor was a child when the sexual violence occurred, a therapist from the SAFE Network is contracted as the offender specialist. If the victim-survivor was an adult when the sexual violence occurred, Project Restore contracts a therapist in private practice working with offenders who offend against adults.¹¹

The clinical team, which meets weekly, is supervised by the clinical psychologists who have no face-to-face contact with victim-survivors or offenders in the Project Restore programme. All cases are reviewed at the team meeting, new case files are introduced, preparatory work is reviewed, and restorative justice processes debriefed. Clinical supervision ensures objectivity of all reviews and debriefing, providing checks and balances aimed at keeping all stakeholders safe. It is in these team meetings that decisions are made regarding acceptance of referrals, or whether a case will progress to a restorative process. New developments from case work are identified and documented for inclusion in Project Restore's policies and guidelines for working with sexual violence.¹² The following scenarios demonstrate how restorative justice, as it is practised by Project Restore, can provide victim-survivors with an experience of justice.

A. Experiencing Justice

Consider Paula. She had been sexually abused by an uncle throughout her childhood,¹³ waiting some 30 years to report to the police. In the year following her disclosure there were many hearings in the District Court. One blurred into another and she had little understanding of their purpose. At one of the court appearances she was told that her uncle would plead not guilty. His lawyer had made application to have the case moved to the High Court where he intended to enter an abuse of process argument – that the case was too old for her uncle to mount an adequate defence. If this argument was not successful he would plead guilty. The argument was successful and it resulted in a stay of proceedings.¹⁴ Paula's family remains fractured and polarised, and Paula continues to cope with the aftermath of child sexual abuse. This is not justice.

11 Ibid, at 18. There are no community based treatment programmes for adult on adult sexual violence funded by government and so this is funded by the offender.

12 Ibid..

13 Jülich, above n 4, at 3.

14 Edward Rooney "Sex abuse memory lapse halts police cases" *Sunday Star-Times* (New Zealand, 13 March 1994).

Consider Robert. Sexually abused throughout his childhood by his uncle, the same person who had abused Paula and with her, he too reported to the police. “In the absence of a sense of justice from the criminal justice system,”¹⁵ Robert pursued a “more symbolic compensation”¹⁶ for the abuse he had experienced by taking civil action in the Auckland High Court. Despite his stance some years prior, the uncle admitted the charges and threw himself on the mercy of the court.¹⁷ The case was settled out of court and compensation was agreed by way of a mortgage over his uncles’ matrimonial property. Robert could only benefit on the death of his uncle but if the abuser were to predecease his wife – Robert’s aunt – she would vacate her family home of more than 40 years. This is not justice either.

Compare these experiences to that of Daisy. Sexually abused by her father throughout her childhood, she was referred to Project Restore by her therapist. The Project Restore team met individually with Daisy, her father, her mother and various family members in preparation for the first of several restorative processes that included two restorative conferences. In the first restorative conference Daisy’s father agreed to enter into a treatment programme and his family agreed to support him. It should be noted that Daisy’s therapy and her father’s treatment programme were not provided by Project Restore, but rather by expert community agencies and a private provider.¹⁸ The Project Restore team maintained contact with Daisy and her father as part of the on-going monitoring for possible adaptations to the restorative process that might better support Daisy, her father and their family. A restorative process was facilitated for Daisy and her mother at which they both agreed to begin repairing their relationship. Preconference preparations were undertaken with other family members.

On completion of the offender treatment programme some 18 months later, the second restorative conference was convened. Daisy and other family members told their stories in a forum that minimised the risk for any re-victimisation. Daisy’s father now had the capacity to discuss what had precipitated his offending and to demonstrate understanding of the impacts on all those harmed, including secondary victims (other family members). A profound mutual understanding, that enables the giving and receiving of a sincere apology, can be one of those magic moments of a restorative conference of which so many facilitators speak.

The conference concluded with the family discussing the management of their on-going relationship with each other. Daisy’s father demonstrated responsibility and accountability for the harm caused by working together with the family to develop protocols around future interactions and on-going relationship building activity between Daisy and her mother. There was discussion also regarding the implementation of the safety plan (relapse prevention) developed in the treatment programme should Daisy’s father have contact with children. This case took two years from beginning to end. Initial monitoring has indicated that the process was successful. Daisy’s

15 Jülich, above n 4, at 224.

16 Ibid.

17 Ibid, at 236.

18 These processes are part of the broader Project Restore programme and occur for all cases.

father continues to be committed to the action plans that were developed in the second restorative conference, Daisy and her mother are still working on their relationship and the family remains supportive. This is justice. This could not have been achieved in the conventional criminal justice system. Neither would it have been achieved in a generic restorative justice model.

IV. REASONS FOR SPECIALISATION

The model practised by Project Restore is significantly different to those of traditional restorative justice and it aims to negate any concerns victim-survivors might have. Accordingly, Project Restore argues that the provision of restorative justice for sexual violence must be provided by specialist services. The understandings that underpin the reasoning for this stance are outlined below.

A. Impacts of Sexual Violence

The New Zealand Treasury's work on an economic index of crime¹⁹ found that, aside from murder, sexual violence is the most expensive crime, suggesting that sexual violence is one of the most damaging experiences that a person can experience. A history of child sexual abuse has been correlated with most identified mental health problems, and problems in living such as teen pregnancy and a lowered lifetime socio-economic status.²⁰ Victim-survivors of adult rape and child sexual abuse frequently go on to develop post-traumatic stress disorder (PTSD)²¹ to some degree or another. PTSD is characterised by high levels of anxiety and social withdrawal.²² Sexual violence with or without the development of PTSD is associated with a number of health problems. Unless restorative justice facilitators are familiar with the impacts of sexual violence they will not recognise the particular vulnerability of victim-survivors when they bring them together with offenders in restorative justice processes.

B. High Levels of Rape Myth Acceptance

Beliefs held by many people about sexual violence are harmful to victim-survivors.²³ For this reason, many people do not disclose to friends and family, for fear of how they will be treated.²⁴ In one study victim-survivors of child sexual abuse took 16 years on average before disclosing the abuse to anyone.²⁵

19 Tim Roper and Andrew Thompson *Estimating the Costs of Crime in New Zealand in 2003/2004* (The Treasury, Wellington, 2006).

20 Rebecca Campbell and Sharon M Wasco "Understanding Rape and Sexual Assault: 20 Years of Progress and Future Directions" (2005) 20 *J Interpers Violence* 127.

21 Matthew J Friedman, Terence M Keane and Patricia A Resick *Handbook of PTSD: Science and Practice* (The Guilford Press, New York, 2007) at 7.

22 Edna B Foa and Barbara O Rothbaum *Treating the Trauma of Rape: Cognitive-Behavioural Therapy for PTSD* (The Guilford Press, New York, 1998).

23 Katie Edwards and others "Rape Myths: History, Individual and Institutional-Level Presence, and Implications for Change" (2011) *Sex Roles* 1.

24 Jan Jordan *The Word of a Woman? Police, Rape and Belief* (Palgrave Macmillan, New York, 2004).

25 Kim McGregor "Therapy - it's a Two-Way Thing": Women Survivors of Child Sexual Abuse Describe Their Therapy Experiences" (PhD, University of Auckland, 2003).

Exposure to rape myths within the restorative process will revictimise victim-survivors. Restorative justice facilitators need to not only be aware of rape myths, but also be prepared to challenge any distorted thinking that would merely replicate patriarchal societal structures within the restorative process.

C. Manipulation and Constructs of Denial

Many offenders do whatever they can to cover up their offending – manipulate the victim-survivor and the family so that s/he will not disclose the sexual abuse because they are afraid of not being believed. This strategy could have been occurring for years and might be so effective that the family thinks the victim-survivor is “crazy.” Such manipulation can continue to occur with subtle intimidation which is sometimes found in letters of apology. Restorative justice facilitators must have knowledge and understanding of the complexity of sexual violence so that they can identify the manipulation of victim-survivors and other participants, challenge any constructs of denial and defence mechanisms that blame victim-survivors.

D. Imbalance of Power

In the case of sexual violence one person (the offender) has demonstrated absolute power over another (the victim-survivor). This imbalance of power typically persists through any justice process, including restorative justice. While a power imbalance can be addressed within a restorative process, it is more effective to accommodate it within the design of the programme which emphasises the preparation of the participants. The survivor and offender specialists challenge any distorted thinking thereby mediating the imbalance of power. Project Restore does not ascribe to the third party neutral model for facilitation typically associated with conflict resolution,²⁶ instead it practises balanced partiality.²⁷

E. High Levels of Recidivism

The risks of reoffending differ in terms of the age of the offending and the nature of the offending. However, the risks are significant.²⁸ A restorative justice facilitator must be aware of these risks, particularly in the case of community referrals that have bypassed police investigations. The policy and practice guidelines for restorative processes must be sufficiently developed to protect all parties including the facilitator, who, in these circumstances it could be argued, has a heightened responsibility for community safety.

26 Shirley Jülich and John Buttle “Beyond Conflict Resolution: Towards a Restorative Practice Process for Sexual Violence” (2011) 8 *Te Awatea* 21.

27 Jülich and others, above n 10 at 25.

28 Sherry Hamby and Sarah L Cook “Assessing Violence Against Women in Practice Settings: Processes and Tools Practitioners Can Use” in Claire M Renzetti, Jeffrey L Edleson, and Raquel Kennedy Bergen (eds) *Sourcebook on violence against women* (Sage, Thousand Oaks, 2011).

V. CONCLUDING COMMENTS

The issues briefly outlined in this commentary demonstrate that the risks associated with this work are significant, as too are the impacts of sexual violence, but the potential for healing is equally significant. However, this can only be realised if the work is undertaken by those with the skills and knowledge of sexual violence. The impacts of sexual violence, physical, emotional and economic, demand that specialist providers develop and deliver restorative justice programmes so that the risks to victim-survivors are minimised.