Chapter 5

Restorative Justice Experiences Involving Child Victims

5.1 Introduction

The previous chapter has argued that the rights and needs of children who have been victimized are not fully met when their cases are handled by the criminal justice system. Child victims need and deserve to take active part in the process that follows their victimization, or at least to have the choice to decide not to take part in it. Child victims need and deserve a fair process in which they are treated with respect, their specific needs, interests and wishes are considered and their rehabilitation is a central concern. Possible specific needs of child victims might be having a group discussion whereby their harm is acknowledged, their behavior validated, the perpetrator apologizes and reparation is negotiated. The criminal justice process, as shown in chapter 4, completely neglects many of these needs–rights, fails to address some of them even when considered, and often traumatizes children through their exposure to an unfriendly process as witnesses.

In contrast, restorative justice fits well, at least ostensibly, the needs–rights model for child victims. As this chapter shows, restorative justice offers an environment where, at least in theory, victims are provided an opportunity to have significant control over the process that follows their victimization and its outcomes by being active partners in it. The victim’s family, friends and significant others are invited and encouraged to provide support, both during and after the process. The participants ideally listen to the victim’s story, acknowledge the harm and validate the victim’s behavior. Issues of self–blame have the potential of being resolved as the victim is given an opportunity to discuss his or her behavior with sympathetic listeners. At the same time, offenders are expected to take full responsibility for the harm they have caused the victim, and ideally to apologize. Moreover, the flexible, creative nature of restorative justice allows a range of different processes and accommodations to meet the needs and varying coping preferences of different children, according to their age and specific needs.

Moreover, restorative justice might hold particular potential for young victims. The studies discussed in Chapter 3 by Call and Mortimer (2001) and Seiffge-Krenke (1995), for example, support the claim that restorative justice may provide an opportunity for different arenas of comfort to be strengthened and for new, or perhaps
inactive arenas, to be created to support young victims and act as stress buffers. Indeed, there is evidence that in a restorative justice conference family ties can grow stronger (Burford and Pennell 1998). Other people may become more sensitive to the child victim’s difficulties following the crime and offer their friendship and support in more active ways. This of itself (notwithstanding the process outcomes with regard to the offender’s behavior), might help children cope with stress.

At the same time, restorative justice may put children in vulnerable, or undesirable, situations. For example, without adequate preparation, support and retrospective debriefing, children’s sadness and pain might grow following their participation in a restorative process (Graham and Fitzgerald 2005). Further, children do not always want to take part in decision-making processes, and might prefer knowing that the decision has been made by a neutral, fair adult who provides them full information about it later (Lawrence 2003). Finally, concerns about pressuring victims to forgive their apologizing perpetrators should be addressed, especially when there are clear power imbalances between a young victim and an older offender. These concerns, as well as the potential benefits of restorative justice for child victims, should be explored in real life situations.

Accordingly, this chapter reviews existing restorative justice programs involving child victims and discusses their levels of success, as well as the emerging challenges, in addressing the needs–rights of child victims.

First, it provides a short description of the three most prevalent restorative processes — mediation, conferencing and circle sentencing. Next, the chapter presents five documented experiences of restorative justice programs that dealt with crimes against children, as well as serious crimes, such as domestic violence and sexual assaults. These documented experiences were chosen because each one of them provides unique knowledge about aspects of childhood victimization, and together they offer a broad spectrum of examples regarding possible difficulties, as well as achievements, in the area.

New Zealand was chosen as the only jurisdiction whereby under national legislation all juvenile justice (except for murder and manslaughter), as well as child protection cases, are dealt with through Family Group Conferences as the default option. The wealth of knowledge that has been accumulated in this country where since 1989 an attempt has been made to deal with most cases of juvenile offending restoratively, is invaluable.

Australia followed New Zealand, and starting from the early 1990s all of its jurisdictions have been practising restorative justice programs, either through legislation or local initiatives. The Australian restorative justice schemes described in this chapter are examples of the two most common (and highly debated) restorative conferencing schemes. The Australian Capital Territory (ACT)’s Reintegrative Shaming Experiments (RISE) are unique for using randomized control groups for comparing court and conference experiences for victims and offenders. Beyond a review of the RISE project, this chapter uses unpublished information from it to examine the experiences of child victims participating in the study. South Australia was chosen mainly because of its routine use of family conferences to respond to juvenile offences, including sexual assaults of children and adults, and the detailed
Three major forms of restorative justice processes

As explained in chapter 1, restorative justice is a process whereby parties with a stake in a specific offence (typically victims, offenders and the affected community) collectively resolve how to deal with the aftermath of the offence and its implications for the future (Marshall 1999, Braithwaite 1999). The three processes most considered as restorative are Victim Offender Mediation (VOM), Family Group Conferencing (FGC) and sentencing circles (Strang 2002, Schiff 2003). They are designed to put victims at the center, to encourage them to tell their stories, and to provide them with the opportunity to gain some control over the outcomes of the process. In most of these processes victims are also able to hear their family members and the offender’s family condemning the crime and acknowledging their harm.

In mediation, the offender and the victim meet, with the support of a mediator,
and discuss the crime and its aftermath.\footnote{When direct mediation is undesirable, the parties sometimes communicate indirectly by some form of ‘shuttle diplomacy’ by the mediator.} A restitution agreement is then reached. The mediator plays an active role in negotiating this agreement with the victim and the offender. The completion of the agreement is monitored in the follow-up phase (Umbreit 1999).

Family Group Conferencing (FGC) or Family Group Decision–Making,\footnote{Hereinafter conferencing or restorative conferencing.} involves more participants. Typically, a conference involves the offender, the victim, and their respective communities of support, including usually family members and friends, teachers, spiritual leaders or others who have meaningful relationships with them. A facilitator provides the setting and leads the discussion, but otherwise leaves as much as possible of the discussion to the participants to work out for themselves. Other professionals, such as Police and social workers, may also be present to provide information. The objective, however, is for the decisions to be made by the stakeholders, not the professionals. In some programs, an important part of the process is family private time, where professionals and other stakeholders leave the room, and the offender and his or her family remain to decide on a plan. After an agreement was reached, the other participants are invited in and the plan then needs to be approved by the facilitator.

Circles are yet a broader forum of decision–making, in the sense that they create opportunities for involvement of a whole indigenous community and its traditions. Sentencing circles are post-conviction mechanism designed as an alternative to a sentencing hearing. They are practised largely in Aboriginal communities in Canada and in some jurisdictions in Australia as a means to rehabilitate offenders, reduce recidivism, and empower the community. The participants in sentencing circles are the victim and the offender, their families, community elders and other community members, as well as state officials — the sentencing judge, defence attorney, public prosecutor, and often the social worker or probation officer. The participants sit together in a circle and talk about the offence and the desired outcome, until a consensus is reached regarding the disposition. The final decision, however, is typically made by the sentencing judge, who can also decide to return the case to court. Sentencing circles hold political significance, as they are perceived as an opportunity for Aboriginal communities to regain their independence in controlling crime within their own community and reduce the numbers of incarcerated Aboriginal offenders (Goel 2000). Healing circles are even more traditional variants of the circle paradigm, where non–indigenous judges do not sit in the circle with a veto. The Hollow Water circles, for example, are often referred to as healing circles.

These three types of practices are ‘restorative’ in both values and process, and involve a dialogue between victims and offenders (Shapland 2003, p. 197). Other procedures, such as community boards or panels, are often regarded as restorative, although they typically do not involve direct communication between the victim and the offender (Schiff 2003). However, since these partially–restorative processes pose different questions and perhaps are less problematic from a child victim perspective,
they will not be discussed in this chapter.

5.3 Potential benefits of restorative justice for victims

As discussed in Chapter 3, the central needs and wishes of crime victims are having opportunities for meaningful participation, emotional and material restoration, and fair, respectful treatment (Strang 2002, Strang and Sherman 2003). From a victim perspective, it seems that restorative justice processes, when conducted appropriately, may address these needs and rights better than a court process.

Indeed, studies are overwhelmingly consistent in showing that restorative justice provides great benefits for victims, in various measurements such as fairness, accountability, satisfaction, repentance and forgiveness, emotional wellbeing, and feelings of safety (Strang 2002, Poulson 2003, Latimer et al. 2005).

Immarigeon (1999) provides a literature review of victims’ perspectives on restorative justice practices, particularly Victim–Offender Mediation and Family Group Conferences. Summarizing numerous studies from Canada, the United States, Australia and New Zealand on victims’ satisfaction, perception of fairness, participation and completion of restoration agreements, Immarigeon concludes that findings are significantly encouraging for victims. In Canada, for example, victims who met with their offenders in mediation programs were more likely to receive answers to their questions, more likely to value the offenders’ apologies, more likely to negotiate restitution, and less likely to fear re-victimization and remain upset about the crime and the offender. In the UK, victims who participated in direct mediation showed greater levels of satisfaction with the system; they found the apology, as well as the negotiation of restitution, important. Finally, in the United States a number of studies showed high satisfaction levels among victims who participated in mediation (Immarigeon 1999, p. 310–311).

Immarigeon further cites research conducted by Maxwell and Morris (1993) on Family Group Conferencing, which showed that approximately 60 percent of participating victims found the FGC helpful. In general, victims felt better because they were included rather than excluded from the process. Some negative impacts were also identified, but Maxwell and Morris argue that these findings challenge the implementation, rather than the value, of the FGC.3

Kathleen Daly’s findings (2001, 2003) regarding the South Australian Juvenile Justice conferences also included some negative effects on victims, including feeling upset after the conference and experiencing the offender’s apology as insincere. Most victims, however, were found to feel better following the conference and to be satisfied with it.

Crime reduction is another parameter for measuring the potential of restorative justice from victims’ perspective, because public safety is clearly in victims’ interest. Several meta–analytic reviews (Andrews and Bonta 2003, Bonta et al. 2006, Smith

3These results will be discussed in more detail later in this chapter.
et al. 2002) concluded that restorative justice interventions are associated with reductions in recidivism, although it is also known today that in some circumstances restorative justice might increase recidivism (Sherman 2000). Notwithstanding this cautionary finding, restorative justice can be positively considered as an appealing alternative for crime victims.

### 5.3.1 Particular potential benefits in family violence and other serious crimes

Perhaps the central benefit for victims in restorative justice is the empowering experience the process (when successful) provides them:

All versions of restorative justice have at their center the opportunity provided for the victim to recount what the offence meant to her. Instead of giving evidence in answer to questions, having to follow rules and maintain relevance to the questions at issue, she is able to say whatever is important to her (Hudson 2003, p. 179).

If restorative justice does indeed have this empowering effect on victims, then, Hudson claims, it is particularly appropriate to be applied to victims of sexual assaults, who typically feel disempowered by the criminal justice system. In contrast with the criminal justice process, Hudson argues, the victim’s story is not only told and listened to by the offender in restorative justice processes, it is also validated by the family members of both victim and offender (Hudson 2002).

Morris (2002b) argues that there are significant benefits in using restorative justice practices in severe crimes: restorative justice achieves denunciation of serious crimes through the presence of the abuser’s family and friends; it takes crime very seriously by focusing on its consequences and searches for meaningful ways of holding offenders accountable.

Sherman (2000) argues that it is possible to argue for the likely effectiveness of restorative justice in domestic violence cases, if it is practised in a manner compatible with the following theories of crime and crime prevention:

- **Reintegrative Shaming**: Braithwaite’s theory (1989) is drawn from family life; family members who had ‘offended’ are forgiven after their act has been condemned. Since in domestic violence it is likely that the relationships will continue after the victimization, Sherman (2000) argues, the ‘family’ basis for analysis is most appropriate. The involvement of extended family members increases the opportunity and the effectiveness of shaming, while at the same time allows the offender to be reintegrated as well.

- **Procedural Justice theory** (Tyler 1990): offenders who perceive the legal process as unfair become angry and thus are more prone to reoffend. Conversely, offenders’ feeling of being treated fairly may reduce reoffending, including in domestic violence cases. Restorative justice, Sherman (2000) claims, with its egalitarian nature is perceived as fairer (Strang and Braithwaite 2002, p. 127) and therefore is likely to reduce reoffending.
5.4 Relevant restorative justice experiences

Routine Activities theory (Cohen and Felson 1979): offending is related to opportunities to offend — the presence of a suitable target with no capable guardians who could prevent a motivated offender from the crime. Restorative justice utilizes family and community members to monitor and support the offender and create positive opportunities for offenders to be involved in other activities. The use of the extended family to monitor family violence is likely to be very effective, Sherman (2000) argues, as relatives are able to have unplanned visits and have access to intimate information.

Accordingly, Sherman calls for careful experimentation of restorative justice in domestic violence cases, particularly when considering the unsatisfying results of the formal court system (Sherman 2000, pp. 287–288).

Significantly, there is now research that suggests that restorative justice can reduce crime in serious offences. Maxwell and Morris (2001) present data on two pilot projects in New Zealand, where community panel meetings with some restorative justice characteristics took place as diversion for adult offenders who had committed medium serious offences, mostly property and some violent crimes. The projects are unique in the seriousness of the offences and the participation of repeat adult offenders. At six months and after a year, project offenders were less likely to be re-convicted, and were involved in less serious crimes, compared to control group offenders who were randomly referred to court.

At least in theory, then, it seems that restorative justice fits well with a needs–rights approach toward victims. More specifically with regard to participation and the related need of empowerment and a sense of control, restorative justice is predicated on these concepts and thus provides opportunities for victims to have an active role and have these rights–needs addressed, provided that power imbalance issues are being addressed (Nixon et al. 2005, p. 34).

Does restorative justice pose similar benefits for child victims? Can it meet their needs–rights without exposing them to further risk of harm? The next section explores the empirical findings regarding the involvement of child victims in restorative justice.

5.4 Relevant restorative justice experiences

The previous section provided a brief overview of the various models of restorative justice and its central potential benefits for victims. Indeed, there is now sufficient data indicating that victims do much better through restorative processes rather than in the court. The next question is, then, is restorative justice as beneficial for child victims as it is for adults? In what circumstances is it mostly beneficial, and are there cases in which restorative justice may actually harm children? To answer these questions, this section explores the experience accumulated in five different restorative justice initiatives in New Zealand, Australia and Canada. All these programs have included child victims, in some more than in others; they have all been evaluated and therefore provide valuable lessons from their levels of success, and most of them (with the RISE experience as an exception) included sexual assaults.
against children, possibly the most controversial crime with regard to restorative justice. Moreover, these programs provide a broad spectrum of approaches as they vary in their underlying theories as well as practice.

5.4.1 New Zealand

New Zealand was the first jurisdiction in the world to integrate the use of restorative justice into the mainstream of its juvenile justice system through the Children, Young Offenders and Their Families Act 1989. With this nation–wide legislation, the broad use of Family Group Conferencing in youth offending is unprecedented in the English–speaking world (Maxwell and Morris 1993, p. 1). According to the Act, all juvenile offenders across New Zealand, with very limited exceptions, are referred to FGCs either by the Police or the Youth Court. In 1998, for example, 6309 youth justice referrals have been made to Family Group Conferences (Maxwell et al. 2004, p. 26). The centrality of Family Group Conferencing in the New Zealand Youth Justice System is reflected in the development of practical experience as well as a wealth of research, and has made New Zealand a world leader in the field.

Morris and Maxwell (1998) describe a typical FGC. It includes the young offender and his or her family members and supporters; the victim or victim’s representative, a support person for the victim, the Police, and a mediator — an employee of the Department of Social Welfare. In the start of the conference the facts are introduced and acknowledged by the offender; then all participants discuss the offence and its effects, the reasons for the offending and the offender’s background. There is family private time in which the offender and the offender’s family make a proposed plan. This is later introduced to the rest of the participants and if all is agreed, the plan is signed. A typical plan can include an apology, community work, reparation for the victim or involvement in a rehabilitation program by the offender.

Earlier evaluations have raised some concerns. In 1990–1991, approximately one third of the victims said that they felt worse as a result of attending the FGC, and less than a half were satisfied with the outcomes (Maxwell and Morris 1993, pp. 119–120). Additionally, less than a half of the conferences were attended by the victims involved. A third of the victims who did not attend said that they had not been invited at all; others could not attend because of the timing of the conference or because they had not been informed early enough to make arrangements (Maxwell and Morris 1993, p. 79). Other concerns related to the participation of young offenders. Nearly half felt that they had not been involved in the process, and only about one third said that they felt involved (Maxwell and Morris 1993, p. 109). This result is of concern in the context of child victims as it may be related to any child–adult dynamics, including those between an adult offender and a child victim. Indeed, the researchers commented that the young people who were asked about their involvement in the process replied in a way that indicated they were either excluded by the adults present (literally by the adults ignoring them almost entirely or by the way in which adults asked questions) or that they did not feel able to participate through feelings of
shame, embarrassment or simply not knowing what to say (Maxwell and Morris 1993, p. 110).

Furthermore, Maxwell and Morris noted that parents felt more involved in the process than the young offenders, and suggested that these differences in views reflect parents’ belief that it was inappropriate for their child to participate in the decision-making process (Maxwell and Morris 1993, p. 111).

These results raised some concerns against expanding and applying the FGC practice in other jurisdictions and in other crimes. In particular, the suitability of FGC for sensitive matters such as family violence was questioned. Low victim participation and satisfaction have been seen as reflecting an offender-oriented initiative. Issues of power imbalance, victims’ safety and higher risk of victimization when the conference is unsuccessful, and facilitators who themselves are too threatened to address offenders’ behavior, have been some of the main concerns (Busch 2002).

Reflecting back, however, Morris (2002a, p. 92) argues that these results came from poor practice and failure to implement restorative justice values, rather than from a failure of conferencing itself. Indeed, the early evaluations emphasized the importance of preparing families and victims before the conference so that they know what to expect, and commented that this had not been done in many cases (Maxwell and Morris 1993, pp. 85–86). For example, victims who were asked to be the first to speak at the conference felt intimidated and were caught unprepared (Maxwell and Morris 1993, p. 88). Alternatively, positive feelings of victims were linked with careful briefings prior to the conference, involvement in the process, having an opportunity to release bad feelings, being able to affect the outcomes, and having the opportunity to confront the offender and offender’s family (Maxwell and Morris 1993, p. 118).

Another concern which Morris (2002a) regards as practice-related is power imbalances between youth offenders and others at the conference. Technically, argues Morris, all members are present at the FGC; but in fact, on occasions, the child’s views are overlooked by the families. This, however, can be resolved if young people are actively encouraged and supported to speak and are listened to by the adults. This specific concern is again of general relevance for child victims, as it is a typical problem in many child–adult communications.

The Final Report on the New Zealand youth justice system project (Maxwell et al. 2004) delivered somewhat better results. About one half of the young offenders felt involved in the decision-making process. While two thirds felt that they were able to say what they wanted, over a third felt too intimidated to say what they wanted to say (Maxwell et al. 2004, pp. 123–126). In a program that puts the stakeholders’ participation at the center, these may not be considered highly satisfactory results. Some examples of young offenders’ expressions were: ‘He spoke to Dad the whole time not me’; ‘I wish my Mum had not talked so much’ (Maxwell et al. 2004, p. 126). In one out of five cases, some of the participants were overlooked — mainly family members, with the young person themselves being ignored in some of these conferences. The Police or coordinators dominated these discussions (Maxwell et al. 2004, p. 172). With victims, the situation was relatively better: over a half felt
involved in making decisions, and 86% felt they had the opportunity to say what they wanted (Maxwell et al. 2004, p. 155). Still, however, these data present quite disappointing outcomes with regard to both victims’ and offenders’ participation, particularly when compared with other programs (Sieppert et al. 2000, Kurki 2003, Poulson 2003). They might be related to the fact that in over a half of the conferences, the observers noted the Youth Justice Coordinator was one of the most dominant figures in determining the final decision, in contrast with their originally-prescribed role (Maxwell et al. 2004, p. 169). Youth advocates, in contrast, were seen as less dominating and as playing positive roles in informing young offenders and speaking on their behalf (Maxwell et al. 2004, p. 171).

Concluding that the successes — and failures — of FGCs in New Zealand are predominately practice-related, the New Zealand evaluation group pointed to the following effective practices that were correlated with positive outcomes for families and victims (Maxwell et al. 2004, p. 302):

- Participants are well prepared for the conference;
- Participants are greeted and introduced, and encouraged to be actively involved;
- Participants understand what is happening at the conference;
- Participants are treated fairly and with respect;
- Participants are able to have an input on the outcomes; and
- Participants experience genuine remorse from the offender and believe the offender will try to make up for the crime and refrain from re-offending.

5.4.2 South Australia

South Australia was the first Australian state to enact a restorative justice law in 1993, thereby incorporating conferences as one of the responses to youth crime (Daly 2001). The South Australia Young Offenders Act 1993 adopted, with some modifications, the New Zealand model, and conferences are run by facilitators under the Youth Court umbrella. The South Australian Family Conferences scheme is unique for its inclusion of a wide array of juvenile crimes, and data on its outcomes (Daly et al. 1998, Daly 2001, 2002, Daly et al. 2003, Daly and Stubbs 2006) are illuminating regarding the experiences of child victims of sexual assaults committed by siblings, peers or stranger juvenile offenders.

The Young Offenders Act of 1993 provides discretionary authority to the police in referring ‘minor’ criminal offences committed by a ‘juvenile’ (aged 10 to 17) to a Family Group Conference (FGC). Since the definition of ‘minor offence’ has been left open for Police interpretation, the police refer quite serious cases to conferences, including sexual offences (Daly et al. 1998). This enabled Daly’s research group to conduct systematic archival research describing court and conference cases of sexual offences. The research included documents concerning all South Australian finalized
cases between January 1995 and June 2001 that involved juvenile offenders charged with at least one sexual offence — categorized as either cautioned, court–handled or conference–handled.

The total number of sex offending cases was 387. In general, the more serious crimes were court–handled and the least serious ones were cautioned, leaving conferencing to the ‘middle’ level, as in the RISE data. However, an analysis of the seriousness of the crimes proved\(^4\) shows that the legal seriousness (maximum sentence expected for the offence) of proved crimes in court cases was reduced to the same legal seriousness of conference cases. Plea bargains, or incomplete evidence led to this erosion between the original charge and the proved offence, an erosion that did not happen in conference cases (Daly et al. 2003, p. 7). Additionally, of the cases referred to court, only 51% were finalized (by either admission or proof). Almost all conferences, in contrast, resulted in admissions made by the offender. Furthermore, the more serious the offence, the less likely it was to be proved in court (Daly et al. 2003, p. 8). This finding is somewhat different from data published by the South Australian Attorney–General’s Department cited by Daly in an earlier publication, according to which only one third of sexual offences referred to the Youth Court were finalized during 1998 (Daly 2002). This difference may result from the smaller number of cases analyzed in the 2001–2003 study, as well as the longer period studied there (years 1995–2001). Whether the disposition rate is closer to a third or to a half of the cases, Daly et al. (2003, p. 4) emphasize that among the conference cases, no fewer than 94% were finalized, and therefore conference victims (and in particular victims of severe crimes) had more chances to hear the crime being acknowledged during that process.

It is important to remember, however, that cases in this study were not randomly assigned to either court or conference, and therefore any conclusion should be qualified by the selection bias concern. In particular, since admission is a precondition for referring a case to a conference, it is only natural that admissions (and apologies) were expressed almost exclusively in conferences and not in court proceedings. It would be imprudent, then, to conclude that conference cases have more chances of being finalized because of the nature of the process.

Daly et al.’s findings are nonetheless important in describing what happens in each process and their characteristics. One important finding regards victims’ ages. The median age in all cases was between 8.6 and 13 years. Conference cases had the youngest victims, with 16% being under 5. Moreover, the age gap between victims and offenders was higher in conference cases (median of 6.1 years compared with 4.2 in court cases). Interestingly, conference cases had a higher rate of intra–familial cases, with babysitter and caretaker cases included in this category (Daly et al. 2003, p. 11). Most conference victims received an apology from the offender, whether verbally or in writing. This was rarely the case in the court process. Further, a higher rate of conference offenders were ordered to stay away from victims compared with court offenders (Daly et al. 2003, p. 17). Ninety four percent of conference

\(^4\) Proved means either that the court accepted a guilty plea or found the defendant guilty at trial; see Daly et al. 2003, p. 2.
offenders complied with their undertakings. It took twice as long for court cases to be finalized compared with conferences (Daly et al. 2003, p. 19). Daly and her colleagues emphasize that on average, sexual offence victims would have to attend court 6 times, and nearly 20% would have to attend 10 times or more (Daly et al. 2003, p. 20). They conclude that

Conferences have the potential to offer victims a greater degree of justice than court. The YP’s (Young Person) admission to the offence serves as an important public validation of the harm suffered by the victim, and the conference offers a forum for apology and reparation. For victims whose cases go to court, half will be disappointed (and perhaps angry and disillusioned) when charges are withdrawn or dismissed after lengthy proceedings. On all measures of what YPs have to do for victims (apology), for the community (community service), and for themselves (Mary Street counselling), it appears that conferences outperform court... our data suggest that the court, not conference, is the site of cheap justice (Daly et al. 2003, p. 20–21).

Once again, however, it should be noted that since cases were referred to either court, caution or conference according to Police discretion and not randomly, many of these differences may be attributed to characteristics of the offender, or the offence, rather than to the process itself.

Earlier research work by Daly’s group included two waves of conference observations and interviews, one in 1998 and one in 1999 (Daly 2001). Focusing on property and violence (including sexual) offences, the research goal was not to compare outcomes with those of court cases, but to study the procedure itself, the relationship between participants’ social status and their perception of the process, the relationship between the victim and the offender, and the connection between the perception of the conference as ‘fair’ with its level of success (Daly 2001).

In general, results from this research were positive for victims in terms of victim satisfaction and victims’ reduced anger and fear. However, not all victims benefited from conferencing. Conference observers commented that 11% of the conferences ‘re-victimized’ victims. Observers also noted that in eight cases (nine percent of the observed conferences), participants intimidated others — with the offender intimidating the victim in three of them (Daly 2001). In the interviews conducted later, 18% of the victims said that they felt upset after the conference by what the offender or the offender’s supporters had said. Additionally, 13% of the victims noted in their interviews that they felt they had been ‘pushed into things’.

These findings show that while most victims benefit from conferences and are satisfied with them, for some, conferences might be a negative, even harmful experience. Children might be particularly vulnerable to intimidation, pressure and silencing.

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5A prevention program for adolescent sex offenders.
628% of the victims were under 18 years old, but it is unknown how many of them were re-victimized.
7All three victims were under 18.
The South Australian Family Conference Team practitioners provide some ‘inside information’ about the dynamics in sexual offence conferences (Doig and Wallace 1999). They indicate that conferences were particularly useful in dealing with sexual offences when there were existing relationships between offender and victim and when there were prospects of future contact, as with offences by siblings or other family members.\(^8\) When the victim was a child, preparations included discussions with the parents about possible ways to have the child’s viewpoint heard and considered at the conference, sometimes with an appointed counsellor to represent the child. Victims as young as nine participated in conferences, and team members found that with adequate counselling and parental support, their participation often had a powerful role:

For example, a 9 year–old girl whose brother had been forcing her to have sexual intercourse for several months, and who, when she had disclosed the abuse, had been accused by her father ‘of leading her brother on’, decided that she wanted to be at the family conference. She found it very satisfying to hear her brother admit to his abusive behavior and was able to confront her father about how he had made her feel; and both her brother and her father apologized to her during the conference (Doig and Wallace 1999).

Doig and Wallace (1999) add that when an offence had been committed by one family member against another, often parents (particularly mothers) were required to take sides at the criminal justice process. In conferences, they argue, as the offence was condemned independently from the offender, this was not needed. Parents could support both offender and victim, while condemning the act at the same time.

### 5.4.3 The Australian Capital Territory

Conferences in the Australian Capital Territory (ACT) more or less followed the ‘Wagga’ model, named after the first restorative justice program in Australia that was conducted in Wagga Wagga, New South Wales (Daly 2001). Accordingly, conferences in the ACT have been facilitated, until 2004, by the Police, and were not statute–based.\(^9\) Conceptually, they relied on Braithwaite’s Reintegrative Shaming Theory (Braithwaite 1989). The Reintegrative Shaming Experiments (RISE) used a randomized experimental design to compare outcomes of court and conference cases in property, violence and drink driving offences (Sherman 2000).

Restorative justice was found usually to be beneficial for victims (Strang and Sherman 2003, p. 42). Victims were found to benefit from conferences in the areas most important for them: having meaningful involvement in the process, opportunity to meet with the offender and receive an apology, emotional and material

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\(^8\)However, prospects for continuing relationships might be a serious barrier for victims to agree to meet their offenders in the first place: see Crawford and Burden 2005, p. 39.

\(^9\)The Crimes (Restorative Justice) Act 2004 regulated the operation of restorative justice practices in the ACT through a new restorative justice unit, thereby shifting from the ‘Wagga’ to the New Zealand model.
reparation, increased sense of safety, closure and healing, and finally, being treated with fairness and respect (Strang and Sherman 2003). The most significant benefits for victims were found in the emotional aspects of healing and restoration. Restorative justice, accordingly, was described as a ‘win–win situation’ for both victims and offenders (Strang 2002, p. 200).

As to the effectiveness of restorative justice in crime prevention, conferences that followed violent offences proved to reduce re-offending dramatically, in comparison to the randomly assigned court cases (Sherman et al. 2000). The results were negative, however, in property and to a lesser extent in drink driving crimes (Sherman et al. 2000).

Child victims in RISE

RISE provides important data in the current context for two major reasons. First, its rigorous design ensures reliable comparisons between court and conference cases, without being vulnerable to selection bias concerns. Second, most files include a combination of police reports, conference observations, and interviews with both victims and offenders, thus revealing much of what ‘actually happened’. I therefore decided to further explore and analyze the RISE data on cases that included child victims, beyond the general analysis of the findings conducted by Strang (2002).10

The RISE data are drawn from 175 cases of property offences and 100 cases of violence offences.11 There were two ‘waves’ of interviews. A ‘First Wave’ was conducted shortly after the disposition through court or conference, and a ‘Second Wave’ two years later (Strang 2002, pp. 66, 74). Five property cases and 28 violence cases involved children as victims — either as primary victims or jointly with adults. Given the limited number of cases, I did not attempt to draw statistical conclusions. Still, it was apparent that, like the general population of the study (adults and children), conference child victims were more satisfied, stated more often that their rights had been respected, and reported greater emotional healing in comparison to court child victims. However, exploring the files was also useful in identifying some central issues and concerns that arise when child victims are involved. These are discussed below.

1. Parent–child differences: One issue of concern emerging from the RISE materials is the role of parents in representing the child victim, and the different ways children and their parents experience conferences. Among the RISE cases there were some in which parents were very interested in holding the conference. They spoke on behalf of the child throughout the conference and reported a high level of satisfaction — while the child was not satisfied and felt that there was no restoration.

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10I am very grateful to Dr Heather Strang, who provided me with access to all of the RISE files dealing with property and violence offences against child victims.

11These figures relate to two out of the four experiments which were conducted in RISE: property (with a personal victim) and violence. The other two, drink driving and shoplifting, are of less relevance here and therefore are not included in the following analysis.
5.4 Relevant restorative justice experiences

Examples:

- A 18 year-old victim had been punched in the jaw by a neighbor. The observer commented that the victim’s mother did most of the talking during the conference, which ended with an apology and a hand-shake. The victim, however, later reported (First Wave interview) feeling dissatisfied, angry, and suffering emotional harm which the conference did little to repair. He felt the conference had been somewhat fair and that he could influence it, but at the same time regretted not being repaid, was very unforgiving toward the offender, and felt that the offender had not learned a lesson.

- A 13 year-old victim joined his parents in the conference following a theft at their home. The child reported that the reason he had come to the conference was ‘because Dad said I had to go’. Perhaps not surprisingly, the child was not very satisfied, his participation level was low, and he felt that the conference had been unhelpful and that his emotional condition remained the same afterward.

- A contrary example is that of a 17 year-old boy who had been assaulted in a fight. The victim’s parents did not want their son to take part in the conference, and thus the case was referred instead to caution. The victim reported feeling very dissatisfied, angry and bitter, and sustained significant emotional harm.

2. Victim exclusion: Another emerging concern is what happens to the victim when the process is not victim-centered, or when the victim is excluded altogether:

- One of the conferences followed a violent threat with a knife pulled on a 17 year-old victim after he had not returned shoes to the offender’s friend. The observer’s comments describe a very positive, fruitful conference for the offender and his family. However, the victim was not well informed and did not attend the conference. The victim later reported (First Wave interview) being very dissatisfied, angry and bitter; he also reported suffering loss of trust, confidence and self esteem, which were not healed by the conference. This is an example of how a successful conference for the offender and others may be unhelpful, and even hurtful, for a victim who has not taken part in it.

3. Participation and emotional healing of court victims: A discrepancy of concern was found in some of the court cases between the level of satisfaction and the level of emotional healing of the victims. This raises the question whether or not victim satisfaction with the court process is reflective of a ‘truly’ successful event, or rather it is necessary to further explore the actual emotional condition of the victim following the process:

- A 13 year-old victim had been assaulted by two brothers. The case was dealt with in court. The victim reported being very satisfied with the process and the
outcome. However, he also reported feeling frightened and sleepless, suffering headaches or other physical symptoms, coupled with a loss of confidence.

- A 15 year–old girl had been assaulted by another girl, resulting in a broken nose. The case was dealt with in court. The victim reported feeling satisfied in the First Wave and very satisfied in the Second Wave interviews. However, many of the emotional problems reported in the first interview were still bothering her two years later.

- A 17 year–old girl had been attacked by two males near a bus stop. The case was referred to court, whereby the offenders were given a twelve months good behavior bond. The victim was satisfied with the outcome, was glad that the case had been referred to court and not to a conference, and thought that the offenders had learned their lesson. At the same time, she reported being very upset and bitter about the process and the fact she could not participate in it, and feeling afraid that one of her offenders would attack her again. She also reported suffering from sleeplessness, headaches and feelings of distrust. The observer’s comments reveal that the victim had wanted to attend the court hearing but was not allowed to enter the courtroom.

4. Participation and emotional healing of conference victims: A similar concern surfaced in conference cases in which victims were not able to actively participate in the process. Their healing from their harm was minimal, even when they reported high levels of satisfaction. This raises the question whether, despite low expectations of child victims to take active part in the decision–making process, their participation is crucial for their emotional healing. In other words, perhaps children are not used (and are not trained nor encouraged) to being active partners in decision–making processes regarding their own matters. Nevertheless, facilitators should perhaps encourage them to express their views in conferences, as their meaningful participation may prove important for their healing:

- A 17 year–old girl had been assaulted, and attended the resultant conference with her mother. The mother reported being very dissatisfied, explaining that the offender came only with peers, thus making it impossible for them to communicate effectively and reflect on the criminal nature of the offender’s behavior. The victim, however, reported being quite satisfied, and said that she had wanted to attend the conference because she had not wanted the case to be referred to court. At the same time, she stated that she felt intimidated and could not speak freely at the conference. The victim reported that she experienced fears of being left alone, suffered from headaches, loss of self esteem and self confidence, and felt less trusting. She also stated that her sense of security had not been restored and that the conference had not improved her emotional condition.

- An 18 year–old had been one of several victims of internet fraud. The victim did not attend the consequent conference, but nevertheless received compensation and an apology from the offenders. It was interesting to discover that
Despite the victim’s satisfaction and perception of the process as very fair, he reported in the Second Wave interview (First Wave was not conducted) a loss of trust along with feelings of insecurity and suspicion, from which he did not recover at all.

5. Victims with special needs: Unsuccessful conferences in which special measures were not taken to address the specific needs of victims may be very harmful for them. The following case provides an example of the need to ensure that facilitators are well trained, and conferences are sufficiently equipped to meet the needs of physically, mentally or emotionally challenged victims. This is a key requirement not only for ensuring the conference’s success in these situations, but also for protecting the right to equality of all children, including those with special needs, and specifically the accessibility of such conferences to all children:

- A 17 year-old disabled boy had been assaulted during a party. The case was referred to a conference. The victim reported that he had not understood the process, that his views were not respected, and that he was pushed to the decision that was made. He also reported feeling afraid and angry at the offender after the conference. The observer commented that the conference was very poorly conducted, and that the facilitator did not manage to support the boy’s participation although it seems that in a better setting he could have explained himself very well. The outcome was that the offender was required to invite the victim for a meal at McDonald’s — despite the victim’s fear of him. The Second Wave interview revealed considerable emotional harm and anger. According to the victim, meeting the offender at the conference was ‘a major upset, I would never do it again’. The observer later reported that the McDonald’s meeting never took place; apparently, there was never any intention on the part of the victim — or his mother — that this would happen, but they chose not to argue about it in the conference. They evidently felt so disempowered by the time of the outcome agreement that they just wanted the conference to end.\textsuperscript{12}

6. The significance of expressing emotions: Some ‘emotional’ conferences, in which participants spoke freely about their feelings and could express their emotions without embarrassment (such as weeping), were very successful for the victim, even when the outcomes did not include significant material restoration. This fact is important as often adults want to protect children from emotional experiences, worrying that they might cause them further trauma. The following examples demonstrate the potential benefits of such emotional experiences for young victims:

- A unique coat had been stolen from a 15 year-old victim by another girl. After a very emotional conference (according to the observer’s comments), the victim stated that the process had ‘helped a lot’ toward healing from her emotional

\textsuperscript{12}Communication with Dr. Heather Strang, April 28th 2003.
harm. She reported that the conference had been very fair and helpful. In the Second Wave interview she reported feeling very satisfied, stated that she was fully rehabilitated from her emotional injuries, and said that meeting the offender had been ‘a major upset but felt better afterward’.

- A 17 year-old girl had been struck by another schoolmate, an assault that was the culmination of an on-going social conflict between the two girls. During a long and emotional conference the offender apologized and the two discussed the sources of their dispute. Following the conference the victim reported feeling very satisfied with it. She stated that it had helped her a lot in healing from her emotional harm, that she felt safer and that her sense of dignity was increased.

7. Technical issues: Finally, the following case demonstrates how technical failures may be crucial in determining the success of the conference. The physical environment, room temperature, seating arrangements, preventing any unnecessary delays and other operational matters should be thoroughly thought through, as even a very good facilitator cannot always predict the participants’ sensitivities:

- A conference was held after a 17 year-old boy had been assaulted by a young adult, an uncle of a younger boy whom the victim had previously punched in the face. The conference was apparently not well organized. The offender’s family spoke Vietnamese to each other, leaving the victim and his family feeling alienated and not understanding the discussion. Additionally, all parties had to wait outside the conference room in the same waiting area for a considerable amount of time before its commencement, a situation which made the victim feel very uncomfortable. A translator would have been helpful in making the victim feel part of the conversation, as would have some physical arrangements to separate between the two families prior to the conference session. Both First Wave and Second Wave interviews showed the victim was very dissatisfied, the conference had not been helpful in restoring the harm, and in fact it seems that he would have been better off without it.\(^\text{13}\)

The concerns that surfaced from the RISE files highlight some of the challenges involving the participation of young victims in restorative justice practices. While they should not be regarded as exhaustive due to the small number of cases analyzed, these issues deserve consideration.

Most importantly, these cases demonstrate that at least for some young victims being involved in the process that follows their victimization is desirable and appropriate. Therefore, at a minimum, participation in restorative conferences should not be prohibited for young victims simply because of their age. Furthermore, some of the cases above might suggest that participation can be an important and effective way in the healing process. In other words, perhaps active participation is not only something that some young victims want, it is something that they often need for

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\(^\text{13}\)For a more detailed discussion about this conference, see Strang 2002, pp. 146–148.
their emotional recovery. This fits the empirical findings and theories regarding the importance of control, procedural justice and direct interaction with the perpetrator, discussed in Chapter 3.

The difference here between adults and children is, perhaps, that children do not always know the extent to which they are allowed, and able, to have an input in the conference outcomes, nor are they critical when denied such an opportunity. It is important to remember that children are not active participants in decision–making processes in their daily lives. Adults make decisions for them regularly — regarding their education, health, life style and so forth. It should come as no surprise then that some children have low expectations for active participation in restorative conferences, and that they may not articulate disappointment when not provided adequate opportunities to have a say in the process. Nevertheless, the limited recovery of these children supports the arguments regarding children’s psychological needs to have some control over the process, to meet the offender and to exchange information. To use the psycho–social terminology presented in Chapter 3, children might perceive these processes as uncontrollable and use secondary control coping mechanisms only (controlling their own behavior and feelings), instead of believing that they can influence the process and participating in it more meaningfully. These ‘passive’ attributions and behaviors are typically less effective in dealing with emotional difficulties (see page 64), which perhaps might explain the persistent negative symptoms of children who did not have meaningful participation. These of course are not conclusive findings, but rather speculations that warrant further testing. It is possible to suggest, however, that at least for some children, merely having the option of being present at a conference is not enough. Child victims should be well prepared and informed, and facilitators should be creative and flexible, in order for these young victims to have meaningful participation in restorative conferences. If the child’s healing is a central goal of the process, than their participation must be actively pursued.

A further point of interest is that of the appropriateness of parents as their children’s representatives in restorative conferences. While it is only natural to seek the parents’ opinion regarding their child’s participation at a restorative conference, not always does the parents’ opinion correspond with that of the young victim. Often children and their parents disagree, and at a minimum there should be room for considering the child’s opinion, if not accepting it. Some of the cases discussed here demonstrate that parents do not always represent their child’s wishes, nor are they aware of their child’s psychological need to be actively involved in the process. Moreover, at the conference itself it may be easier to turn to the parents on different matters; parents may also volunteer their opinions more easily than their children, and facilitators naturally assume that their opinions are compatible with those of the child. But if the child’s active participation at the conference is important for their healing, then turning to the parent defeats the purpose. Children should therefore be encouraged to express their views at every stage of the conference, even when it seems that the parent represents the child’s opinion.
5.4.4 Hollow Water

The Hollow Water Community Holistic Circle Healing Program in Manitoba, Canada is notable for its success in promoting the wellbeing of an entire community inflicted by inter-generational violence and abuse. It has not been evaluated in any systematic methodology, although there are detailed descriptions of its evolution, as well as some indications regarding its successes and potential risks (Lajeunesse 1993, Ross 1996, Couture 2001, Roberts 2003). It is worthwhile exploring, however, since unlike the other case studies this is a community circle sentencing program initiated and conducted in and by an Aboriginal community, which has demonstrated significant achievements in uncovering and combatting family abuse.

The program was initiated in 1984, when a group of professionals from within and outside the community hoped to address behavioral problems of community youth. Gradually it became clear that the children had been facing problems in their homes, including alcohol, drug abuse and violence. A more thorough inquiry into the problematic behaviors of the parents discovered a broader picture of intra-generational sexual abuse. To address this reality, the team members began to work together in order to unravel the secrets and heal the victimizers and the victims. Abusers were encouraged to admit their crimes and to go through a healing process before being sentenced by the court, and most abusers chose this option instead of pleading not guilty and face a trial. One of the greatest achievements of the team was the large numbers of admissions — such that would have never been reached through the criminal justice system (Braithwaite 1999, p. 16). Furthermore, out of 48 cases of admission, only five did not successfully complete the program (Ross 1996, p. 36).

The thirteen stages of the healing process, which typically takes two to five years, include

...the initial disclosure of abuse, protecting the child, confronting the victimizer, assisting the (non-offending) spouse, assisting the families of all concerned, coordinating the team approach, assisting the victimizer to admit and accept responsibility, preparing the victim, victimizer and families for the Special Gathering, guiding the Special Gathering through the creation of a Healing Contract, implementation of the Healing Contract and, finally, holding a Cleansing Ceremony designed, in their words, to mark ‘the completion of the Healing Contract, the restoration of balance to the victimizer, and a new beginning for all involved’ (Ross 1996, pp. 32–33).

The Canadian Solicitor General’s report on the Hollow Water experience provides some indications as to its success. Of the 91 offenders who have been charged (and 107 who have been processed through the project) only two re-offended since the first disclosure at 1987 (Couture 2001, p. 25). Another positive indication for the success of the project is the rising levels of ‘wellness’ — a local measure that refers to various indicators such as children’s general health, number of people completing their studies, parenting skills, empowerment of individuals in the community,
increased community responsibility and resources, increased sense of safety, reduced prevalence of violence and return to traditional ceremonies (Couture 2001, p. 5). From a rating of 0–3 in the years 1984 to 1986, the wellness levels at 1999 rose to 5–6 (Couture 2001, p. 51). Additionally, the data showed that children stayed in school longer, and people were returning to live in Hollow Water — both indicators of positive growth.

Unfortunately, the experience of the Hollow Water CHCH process was not systematically evaluated in criminological terms in comparison with court proceedings. Furthermore, Dickson-Gilmore and La Prairie (2005) illuminate some problems in the program. First, they argue that it focused more on offenders than on victims, especially in the crucial stage of deciding whether to engage in the CHCH program or prosecute. Offenders were involved in that stage, while victims were not (Dickson-Gilmore and La Prairie 2005, p. 172). Another concern is the questionable reliability of the recidivism data. These were based only on cases which have been identified, prosecuted and successfully completed, instead of using a broader definition. Therefore, they claim, the exceptionally low recidivism rate of 2% is somewhat suspicious (Dickson-Gilmore and La Prairie 2005, p. 176). Another concern raised by Dickson-Gilmore and La Prairie (2005, p. 178) is that the reduction in reported violence and abuse may have been a result of victims’ reluctance to report in the atmosphere of success that had been created. At the same time, these reduced reporting rates might lead to budget cuts from the government, therefore further endangering the most vulnerable members of the community (Dickson-Gilmore and La Prairie 2005, p. 178).

It is unclear to what extent these concerns are warranted, since there are no data supporting them either. There is merit, however, in adopting a pessimistic account in considering future projects and evaluations. Accordingly, perhaps greater emphasis on victims’ unique accounts should be used both in constructing programs and in evaluating them. Nevertheless, the Hollow Water experience provides a remarkable example of a restorative justice process which has had success, at least at the community and family restoration level, in disclosing and addressing violence and sexual abuse against women and children (Braithwaite 2002b).

### 5.4.5 Newfoundland and Labrador

The Family Group decision–making Project (FGDM) in Newfoundland and Labrador Province in Canada is particularly valuable because of its special construction as a demonstration project, with a rigorous and detailed evaluation conducted during and after its implementation, as well as a followup study. It provides a good example of how the two interrelated problems of domestic violence and child abuse have been treated in a restorative manner (Pennell and Burford 2000b). This well–documented experiment included three different types of community (Aboriginal, rural and urban) as well as a range of types of abuse (sexual, physical, emotional and social) against both children and adults (Pennell and Burford 1995, par. 9.1). Whilst not using a randomized control group sampling, the project did compare the outcome results with those of a control group who were treated with more traditional
methods.

The Newfoundland case study is different from the others presented here as it might be identified as closer to the child protection context than to criminal justice. Although women, and not only children, were the subjects of many FGDMs following their abuse by their husbands or teenage children, the project was designed as an alternative to child protection (and perhaps other social work) practices. Indeed, the mission and philosophy statements of the project made it clear that the justice system maintains its role separately (Burford et al. 1995, p. 70). That means that while gatherings searched for means of ensuring the safety and wellbeing of family members, their occurrence and results did not replace the criminal process and its outcomes against perpetrators. This different context warrants some explanation and a review of child protection conferences in general, before returning to the Newfoundland experience.

**Child protection conferencing**

Family Group Conferencing (or Family Group decision–making) in child protection cases is closely related to conferencing in the criminal justice context, as it shares the goal of securing victims’ safety and enhancing the stakeholders’ participation. Child protection conferencing is being used in North America, Europe (especially the UK), Australia, New Zealand and Israel (Sieppert et al. 2000, Brown 2003). Unlike in the criminal justice context, however, the child in these proceedings is central to the process. Here the focus is not the offence and ways to repair the harm, but the child at risk and ways to secure the child’s safety and wellbeing. The conference is not an alternative to a criminal justice process against the offender. Rather, it is an alternative to other decision–making processes regarding a placement and safety plan for the child. The typical stakeholders in such proceedings are the child and the child’s family only; there is no ‘offender’s family’ — although often an offending family member or members may be present.

Morris (2002a) captures the differences and similarities between the two practices:

Care and protection and youth justice family group conferences do have very different objectives: youth justice family group conferences are concerned primarily with holding offenders accountable and making amends to victims; and care and protection family group conferences are concerned primarily with the victims’ safety. Critical for both, however, is giving victims a voice and meeting victims’ needs. Both also focus on taking steps to prevent the recurrence of the offending or victimization. Thus they share a common restorative core (Morris 2002a, p. 90).

Morris further argues that both child protection and youth justice conferences have some common features, which are: involving the stakeholders in determining the appropriate response to the act; reaching a consensual plan; informality and flexibility in the process; and the use of a facilitator (Morris 2002a, p. 91).

The similarities between child protection and youth justice conferencing justify a review of the success of the former. In general, child protection conferences
have been found successful: children are present in the vast majority of conferences (Robertson 1996), including children as young as five; children aged 11 or 12 and over are regularly present at conferences, and their presence was generally described as ‘painful but appropriate’ (Marsh and Crow 1998, pp. 93, 103). Indeed, more children attend and participate in conferences compared with other child protection decision-making processes, although some raise concerns about the difficulties that their participation causes them (Nixon et al. 2005, p. 34). Most conferences ended with a positive agreement to a plan (Robertson 1996, Fraser and Norton 1996), sometimes with surprisingly creative solutions (Marsh and Crow 1998, p. 145). Participants show high levels of satisfaction and children benefit from the process (Marsh and Crow 1998, p. 120). However, there are some indications that implementation is not always satisfactory (Robertson 1996, Marsh and Crow 2000, p. 146), although it has been suggested that other child protection procedures do not generate higher implementation rates (Marsh and Crow 2000, p. 148).

Despite the large body of literature discussing family group decision-making in child protection cases, there is very little research about the actual participation of children in them (Campell 1997, Dalrymple 2002). The limited research on child participation in such proceedings indicates that even when present at conferences, children are rarely active participants in them, and they do not feel as if they are being heard (Dalrymple 2002).

In a recent international survey of child protection FGCs conducted by Nixon et al. (2005), children’s participation varied but the authors found that with good preparation, adequate planning and sometimes a support person or an advocate, children ‘can experience good levels of participation in conferences’ (Nixon et al. 2005, p. 35). Most programs had restrictions on children’s participation, typically due to the nature of the discussion or the child’s age and understanding. Children’s safety was a major concern (Nixon et al. 2005, p. 36). However, only in very few programs were children asked whether they wanted to participate. It was also clear that procedures regarding the participation of children were not regulated but more in the hands of practitioners (Nixon et al. 2005, p. 37).

Back to Newfoundland and Labrador

The goal of this one-year experimental project was to reduce violence against women and children within families and to promote their wellbeing. Thirty-two families were treated and a total number of 384 family members participated in 37 conferences (for four families, conferences were reconvened). Conferences included an average of 10–11 family members and between two to three professionals. After the referral, conference coordinators started with preparation, which took three to four weeks. Preparations included identifying the right people to invite, preparing the participants, taking the required steps to protect family members during the conference, and taking care of practical matters, such as transportation. In comparison to the length of the preparation phase, the conferences themselves took just 5.5 hours

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14See, for example, Marsh and Crow (1998), Hudson et al. (1996), Sieppert et al. (2000), Gunderson (2003).
on average. Conferences typically included five steps (Pennell and Burford 2000b, pp. 140–141):

1. Opening (sometimes with a culturally-appropriate ceremony), setting the ground rules and giving information about the offences and existing services;

2. Family private time;

3. The coordinator and other professionals are invited in and review the plan reached by the family;

4. Approving the plan — either immediately or (in cases of budgetary difficulties) some time later. Plans often included counselling, addiction treatment, in-home support, child care, transportation, material assistance, and recreation; and

5. The implementation of the plan.

The implementation of the project’s goals was evaluated by a number of measures, including the researchers’ observations of family private time (Pennell and Burford 1995). These valuable reflections provide an unusual perspective of such proceedings. Conference outcomes were also evaluated by a range of measures that were integrated in order to overcome the underreporting of these offences (Pennell and Burford 1996). In addition, two comparable samples — one of families whose cases were dealt with by the Child Protective Services (CPS), the other of families from the community — served as control groups.15

Two of the evaluation measures — followup interviews with family members (progress reports) and the notes of the Child Protective Services (child protection events) — revealed that conferences reduced violence in families and strengthened family ties (Pennell and Burford 2000b). The majority of interviewees thought that the conference had been beneficial and described how the conference strengthened positive ties among family members. The child protection events demonstrated not only greater family unity (less separation) but also greater safety for children within families. Among the project cases the number of violent events was reduced after the conference, while in the CPS control group there was an increase in child protection events.

The Implementation Report published in 1995 indicated that the vast majority of participants were satisfied with the way the conference was run (Pennell and Burford 1995, par. 7.1.2), including biological parents who were considered as the abusers (Pennell and Burford 1995, par. 7.5.3). Furthermore, all but one conference ended with a relevant plan (Pennell and Burford 1995, par. 7.5.1). The conference that did not wind up with a plan was the only one that failed. In that conference, the abused mother had as her support person her abusing husband, and none of the children attended or had their views heard otherwise. The abusing husband managed to

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15For a detailed description of the evaluation instruments and methodology, see Pennell and Burford 1995, pp. 21–36.
manipulate the family group and scare them, and as a result the group was denying
the abuse altogether by the end of the conference. The researchers attributed this
failure to the lack of a genuine support person for the woman and the fact that the
children’s views were not heard (Pennell and Burford 1995, par. 7.5.2).

Despite the goal of family wellbeing, the plans put the children’s safety at the
highest priority and considered the children’s interests as central. In one conference,
for example, instead of removing the abused child from home, it was suggested that
the abusing father live somewhere else until he treated his substance abuse problem.
The father agreed to that suggestion (Pennell and Burford 1995, par. 7.5.4.9).

Children’s participation in the Newfoundland and Labrador experiment

Of special importance here is data concerning young victims’ participation in these
conferences and methods that coordinators used to enhance the input children had
in them.

Stakeholders’ participation seems central in the project, as reflected through the
steps taken by the coordinators to enhance such participation, and the detailed
discussion regarding methods which were found helpful in achieving this goal. It
is not surprising, then, that in most cases, family members were identified as the
main decision–makers in conferences, although abused people themselves were iden-
tified only in a minority of cases as the decision–makers (Pennell and Burford 1995,
par. 6.5.1). This does not mean that the abused people did not have a say in the
process. Instead, it might indicate that while they were able to articulate their dif-
ficulties and state their wishes, others were more active in searching for solutions.
Indeed, comparing the project and the control groups, the outcomes report con-
cluded that through conferencing, the voices of young people were more likely to
be heard and acknowledged (Burford and Pennell 1998, p. 271). This was possible,
however, only with adequate preparation (Burford and Pennell 1998, p. 264).

Support persons were found particularly important for young people to escort
them and help them articulate their views (Burford and Pennell 1998, p. 264). Ad-
ditionally, the researchers emphasized the importance of coordinators being creative
in finding specific ways to enhance children’s participation appropriate for each fam-
ily, without trying to impose a ‘one size fits all’ strategy to all children (Burford and

One of the most effective tactics in advancing children’s participation was the
early preparation of a personal statement. It was found particularly useful with
young participants because, as one researcher wrote:

... even the most vocal young people clam up at the FGC... (The young
people would) at first talk like... they would / could go in there and say
what they want. And then when they would get in there they wouldn’t
say a word — be totally intimidated. What became clear is that they had
to write down their views ahead of time, come prepared with a statement
of what they wanted to say, because that was the only way that they
were heard. Sometimes they read it themselves, but more times they
had their support person say it for them. But it was prepared ahead of time between them and their support person. (Pennell and Burford 1995, par. 4.17)

A coordinator reflected:

Always have it down in writing. And usually have their support person read it... Toward the end (of the project), I always required it of any young people, any teenagers. The ones that I didn’t do it with and the ones afterwards where I did do it, there was dramatic differences in the way that the teenagers were able to participate in the FGC (Pennell and Burford 1995, par. 5.3.4.1).

In addition, providing clear information about the conference at the preparation phase was crucial to the success of conferences, as well as taking care of technical arrangements to allow all relevant stakeholders to participate at the conference conveniently (Pennell and Burford 1995, par. 4.22).

Flexibility was also found important. For example, in one case a teenage girl did not want to sit with the rest of the family. To allow her participation and to remind the family group of her centrality in the discussion, the coordinator left the door panel open to the next room, and left an empty seat at the conference room (Pennell and Burford 1995, par. 5.1.8).

A striking example of a young victim ensuring her control over the process was that of an abused girl who volunteered to be the note taker at the family private time. The coordinator noted that she did ‘a fabulous job’, and that it allowed her to be in control. When asked in the followup interview whether she was satisfied with the plan, she replied: ‘I wrote it, didn’t I.’ (Pennell and Burford 1995, par. 5.5.3).

It was further noted that where a conference was reconvened for the second time, participants were more active in their participation, particularly young people who were often reluctant to talk at the first conference (Pennell and Burford 1995, par. 6.6.2).

Children below the age of 12 normally did not attend conferences, due to their length or their subject matter. Efforts were made, however, to use the preparation phase to make their views known at the conference. Accordingly, preparations included: 1. Private discussions between the coordinator and the child (with the coordinator later expressing the child’s wishes at the conference); 2. Letters written by the child to be read at the conference; and 3. The appointment of a representative to speak on behalf of the child during the conference. In some cases, very young children’s photos were placed in the middle of the conference room, to remind the participants of the centrality of the child in the discussion. Children who did attend conferences chose a support person to accompany them through the process (Pennell and Burford 1995, p. 76).
§5.4 Relevant restorative justice experiences

Concerns regarding re-victimization of children

With the family private time as a central aspect of the process, some fears were raised, mainly regarding the family turning against the victim and revictimizing him or her, and of the family being so dysfunctional that it would not be able to reach a plan. These fears, however, generally proved unfounded (Pennell and Burford 1995, par. 6.1). Moreover, there were no cases of violence during conferences nor conference–related violence later on (Pennell and Burford 1995, par. 6.1.1). Fears were particularly expressed with regard to sexual abuse. A central concern was that abusers would use manipulation and control similar to those in the abusive relationship, to turn the family group against the victim and to deny the accusation, while revictimizing the victim. The researchers found, however, that cases involving sexual abuse were particularly helpful for victims as they got the facts ‘out in the open’ and provided more support and empathy to the victims, who were until that time isolated in their victimization (Pennell and Burford 1995, par. 6.1.2). Moreover, one of the most powerful elements of conferences was the disclosure of abuse in detail, in front of all the decision–makers. This was found to have a sustained and significant effect on the participants (Burford and Pennell 1998, p. 267).

Not all cases, though, were free of manipulation of young people. In one case, for example, the father invited his daughters for dinner the night before the conference, something he had never done before, and stated at the beginning of the conference that he might not live for the next five years. It was perceived as ‘buying their silence’ (Pennell and Burford 1995, par. 6.5.3).

Project outcomes

The outcome report published in 1998 indicates that over 85% of the participants thought that the plan had been completely or somewhat carried out (Burford and Pennell 1998, p. 55). Many family members expressed the wish for a reconvened conference to talk about the problems that emerged since the first conference (Burford and Pennell 1998, p. 63). Overall, most of the participants (67%) thought that their family situation had been improved as a result of the conference (Burford and Pennell 1998, p. 64). However, positive responses were even more common among family members who were directly involved in the abuse — either as victims or abusers — 85% of them thought that their families were ‘better off’ following the conference (Burford and Pennell 1998, p. 66). In those cases where participants felt that their families were ‘worse off’ after the conference, the main themes that emerged were of family separation (such as the removal of the child from home), and lack of follow through of the plan.

The most outstanding impact of the conferences, however, was that of strengthened family ties and feelings of unity (Burford and Pennell 1998, p. 68). Furthermore, a recurring theme was that of enhanced caring for children within their families (Burford and Pennell 1998, p. 71). Children’s increased safety was evident in the number of substantiated abuse or neglect cases, which halved from 16 before the conference to eight after the conference (Burford and Pennell 1998, p. 81). A more general indicator was that of the Total Child Protection Events measurement,
according to which child protection events halved from 233 before the conference, to 117 after the conference (Burford and Pennell 1998, p. 91). Of these events, the most dramatic difference was identified in the ‘CPS Child Activity’ category — events that were directly linked with child abuse activities: in the project group, the number of such events declined from 120 before the conference to 69 after the conference, while in the comparison group the numbers rose from 71 to 94 (Burford and Pennell 1998, p. 100).

An important measurement that focused on children’s wellbeing was the Looking After Children (LAC) questionnaire, which comprised a list of age–appropriate indicators of the child’s development and wellbeing regarding many aspects of life such as health, education, relationships and identity. This measurement revealed that out of the 26 project children who had LAC data from before and after the conference, 16 improved in their wellbeing, nine regressed, and one remained the same (Burford and Pennell 1998, p. 146). In the comparison groups, greater proportions of children regressed in their wellbeing (Burford and Pennell 1998, p. 148). Moreover, the mean percentage of positive change was the largest in the project group (Burford and Pennell 1998, p. 149). The greatest progress in comparison with the control group was in the area of family and social relationships (Burford and Pennell 1998, p. 151). It is important to remember, however, that the project children’s starting point was lower than the control group, and that they had a lot of ‘catching up’ to do (Burford and Pennell 1998, p. 258). The LAC measurement also indicated that project children had many other problems, which stopping the abuse did not solve. Therefore, the authors emphasized the importance of continued support for children in such families and the provision of long term services (Burford and Pennell 1998, p. 164). The researchers concluded that no kind of abuse should be excluded from the practice of FGCs, including sexual offending. These issues, they argue, surface at conferences and it would be counter–productive to suggest that they are irrelevant to the discussion or that they ought to be prohibited on principle (Burford and Pennell 1998, p. 161). At the same time, the authors note that some families have so many problems to resolve that they must have intensive follow–up and long term services in order to meet their needs, including reconvened conferences (Burford and Pennell 1998, pp. 161–262). Therefore, they suggest that similar projects should include long term services, policies and protocols to ensure followups for families (Burford and Pennell 1998, p. 253).

Relying on a well–designed comparison and evaluation, then, Pennell and Burford (2002) have been able to conclude that conferencing can be effective in stopping child–maltreatment and domestic violence.

5.5 Discussion: central concerns and challenges

The cases presented in this chapter have all included child victims as participants in restorative justice conferences or circles, and by and large have done so successfully. However, some difficulties have also been noted. Not all victims, young and adult, were satisfied, nor were they all healed from their victimization. Significantly,
it seems that the participation of young people — whether as offenders or victims — was often quite minimal, despite the centrality of this aspect in restorative justice values. Are these problems practice-related, as the New Zealand researchers claim (Maxwell and Morris 1993, Morris 2002a), or are they inherent to the modus operandi of restorative justice in the case of child victims?

Even when considering the less successful experiences, it is still worth noting that studies have consistently shown higher levels of satisfaction and better recovery signs for the majority of ‘conferenced’ victims, including children, in comparison to court victims (McCold and Wachtel 1998, McGarrell et al. 2000, Strang 2002, Poulson 2003). Furthermore, the Newfoundland and Labrador experiment demonstrated that where significant efforts are made to allow young victims to actively participate, their participation can be considerable and the outcome results better than those achieved by other practices. Moreover, the adherence to victims’ voices and their empowerment are at the heart of the restorative justice approach. It is therefore possible, at this stage of restorative justice where the participation of young victims is still at its infancy, to speculate that with improved practices (such as the ones demonstrated in Newfoundland and Labrador), better results can be expected. At the same time, this is an appropriate stage for learning from past experience in order to improve future ones.

The goal of this section, accordingly, is to consider the central difficulties that emerge from the less successful cases in these experiences and explore ways of overcoming them.

Re-victimization of child victims

Perhaps the most serious concern regarding the involvement of young victims in restorative processes is the fear of exposing them to a revictimizing and intimidating encounter with the offender and the offender’s support group. Such cases of revictimization and intimidation were recorded, though at very low rates, in the RISE program in the ACT (Strang 2002, p. 139–150), as well as in New Zealand (Maxwell and Morris 1993, p. 88) and in South Australia (Daly 2001). However, it was possible to identify at least some of the reasons for these failures. These were mainly: 1. Inadequate preparation of victims; 2. Inadequate search for support persons; 3. Operational issues (such as an encounter with the offender’s family in the waiting area); and, critically, 4. Facilitators who were either too dominating or too passive in the protection of victims’ interests. Conversely, victims responded positively to conferences when they: 1. Were adequately prepared for what would happen; 2. Were greeted and introduced in the beginning of the conference; 3. Understood what was happening; 4. Were treated with respect; 5. Were involved in the decision-making; and 6. Received what they saw as a genuine apology from the offender (Maxwell et al. 2004, p. 302).

Indeed, the training and personal skills of the facilitator are critical to the success of the conference (Fraser and Norton 1996, Maxwell and Morris 1996, Marsh and Crow 1996), and an insensitive facilitator can cause harm to the victim even when all formal requirements are met. On the other hand, one of the safeguards of a large
circle (as opposed to one on one casework) is that caseworker insensitivity can be made up for by other, more sensitive adults, in the circle. Additionally, a thorough, face–to–face preparation of the victim (and equally important, the offender) prior to the conference has been recognized as crucial from the victim’s perspective (Pennell and Burford 1995, p. 82, Umbreit 1998, Maxwell et al. 2004). The preparation phase allows the facilitator to evaluate the ability of the offender to take responsibility for the crime without blaming the victim (and thus screening out those offenders who might do just this). It provides the victim an opportunity to become familiar and develop trust with the facilitator, so that there is free exchange of information between them. Moreover, when during the preparation phase victims are given adequate information, they know what to expect from the process and what will be expected of them.

Naturally, when the victim is a child the individual preparation is even more important. It might be understood as an opportunity to identify the specific needs–rights of the child and provide him or her with the appropriate tools to overcome their weaker position due to age, lack of experience and past victimization. Therefore, it should be conducted in an age–appropriate manner. The preparation phase further provides an opportunity for the facilitator to exclude the child from the conference and decide on alternative participation methods, be it according to the child’s own wishes or the facilitator’s concerns about the child’s wellbeing. For example, in some child protection FGCs in New Zealand, facilitators decided to exclude either the child or the alleged abuser from conferences, in light of fears of additional trauma for the child (Robertson 1996). In South Australian juvenile justice conferences, when victims were reluctant to participate, other options were suggested during the preparation phase, such as nominating a friend or a victim’s advocate to represent them at the conference. Other methods were the use of a tape recorder, letters or photos, in which victims could provide their perspectives without the need of being present at the conference (Wundersitz and Hetzel 1996).

In Newfoundland and Labrador, children who did participate in conferences were, as a requirement, escorted by an adult support person of their choice. The role of the support person was to provide emotional support, to speak on behalf of the child as needed, and to leave the room with the child for a break when this was required (Pennell and Burford 1995, p. 76). Another lesson learned is the importance of practical details, such as having an extra room available for children who get bored or need a rest from an emotionally charged conference (Marsh and Crow 1998, p. 54–55).

It seems, then, that the flexibility of the process allows for a wide array of arrangements that can significantly minimize the risk of re-victimization of child victims.

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16This requirement applied to any child participating in conferences, either as a victim, a family member or an offender. Indeed, many children who were not identified as victims at the start of a conference were found to have also been victimized by the end of the process.
Children being silenced by adults

In the context of juvenile justice conferences, one of the concerns that has been raised is of young people being silenced by a 'room full of adults' (Haines 1998), or simply being less involved, compared to adults participating in the conference (Umbreit 1998). The concerns that were raised with regard to young offenders and their ability to participate in an adult-dominated discourse, are relevant to young victims as well. The same issues emerge: child–adult imbalance; adults paying lip-service to giving the young person the opportunity to speak, but not really listening to him or her; and young participants being ‘pushed into things’ in the decision-making phase. Braithwaite (2002a, p. 159) suggests addressing this child–adult imbalance through carefully adding support circles for both sides, that include youngsters and adults, men and women. Here, again, individual preparation is very important for the young participant, as lack of preparation may result in insufficient understanding of the process and lack of meaningful participation (Umbreit 1998). At the same time, care should be taken not to dominate young participants in the course of informing them of the process and the possible outcomes (Morris et al. 1996).

Procedural fairness may also be helpful in preventing (or minimizing) young participants from being overlooked, by a protocol requirement to ask for the young participant’s opinion at every stage of the process. However to ensure effective participation of young people, it is suggested that balance can be regained by supporting the less powerful, and by restraining the more powerful ones (Morris 2002b). Such empowerment of the disempowered can be achieved through victims’ advocates, community activists and others who are able to promote the victims’ views and perspectives (Hudson 1998). The role of professionals and community members in supporting victims during restorative conferences should, however, be well defined, and caution should be taken not to mute the victim and other participants through the introduction of yet another professional in the room. Different models of child ‘representation’ need to be considered.

At this stage the point should be made that child victims may benefit from having someone present on their behalf at the process, not only to secure their wellbeing, but also to enhance their participation.

Young victims being pressured to be forgiving

Some programs, especially in the earlier stages of restorative justice, have been perceived as offender-oriented. This led to criticism regarding victim insensitivity and facilitators putting explicit or implicit pressure on victims to help rehabilitate offenders, and to grant forgiveness, thus enhancing victims’ feelings of re-victimization (Umbreit 1998). Victim’s feelings of being coerced to agree with others may occur even in a more victim-centered practice, if the conference is unbalanced and when facilitation is inadequate. Indeed, Braithwaite (2002a, p. 15) warns against asking or expecting victims to forgive. Forgiveness, Braithwaite says, is a gift victims can give, and making it a duty would destroy its power. Asked specifically about this

17 This will be discussed in Chapter 6.
point, however, victims in the RISE project did not generally feel pressured to for-
give or prevented from expressing their anger (Strang 2002, p. 125), and this was true for young victims as well.

Goel (2000) raises a similar concern regarding the current practice of sentencing–
circles in Canada as a means of resolving domestic violence cases. In such cases, 
Goel argues, the power imbalance is too great to overcome in a procedure aimed 
at healing the offender and the community. This is more so in the Aboriginal 
context, whereby women can feel obliged to promote their community’s interest to 
show successful outcomes (Goel 2000). The politics behind sentencing circles, Goel 
continues, discourage women from disclosing the full range of violence and reporting 
进一步 abuse. Such disclosures, women fear, might lead to the failure of the circle, 
which in turn may lead to the offender’s incarceration and to lower success rates 
of the community in controlling crime. The pressure to reconcile in order to follow 
communal values of forgiveness and to reach a consensual disposition is simply too 
great, especially for a victim who has already been weakened by the dynamics of 
abuse itself. Whether or not Goel’s concerns are well founded regarding Aboriginal 
women in domestic violence situations, a similar argument might also be relevant 
to child victims, perhaps even more so because of children’s natural tendency to 
please adults. Great caution should be taken not to give children an impression 
that they are under any pressure to agree to what others are suggesting, or to ‘make 
things easier’ for the participants to resolve. It is difficult to conclude, for example, 
whether children in the highly publicized Hollow Water program were under such 
pressure, especially in light of the vast differences between Couture’s optimistic 
evaluation (2001) and Dickson-Gilmore and La Praire’s critical review of it (2005). 
It seems, however, that the positive external indications (the increase in ‘wellness’, 
the growing population and the longer years children attend school), suggest that 
some positive results there are genuine, and are not a result of any political pressure. 
It is important to remember, however, that the CHCH program of Hollow Water is 
a unique case of sentencing circles, in which extensive work has been invested in the 
wellbeing of the victims, as well as other members of the community.

Child abuse: a special case warranting special consideration

Even if there are ways to overcome the special vulnerabilities and weaker position of 
children and to include them in restorative justice processes, still there are additional 
challenges in child abuse cases (physical and sexual ongoing abuse of children by 
their parents or other caretakers) that warrant further discussion. These include 
extreme power imbalance, the ongoing nature of the relationship and the safety of 
the child. Indeed, these concerns emerge in domestic violence cases as well, and will 
be discussed here concurrently under the title ‘family violence’.

Power imbalance is of particular concern in many cases of family violence. In 
cases of prolonged child abuse, not only are there often age differences between 
victim and offender; there is usually a relationship of control and coercion, where 
the child is ‘trained’ to obey the victimizer (Morris 2002a). Similarly, in domestic 
violence, the cycle of violence creates a relationship of subordination and control
where the victim is passive and obedient. The power of the batterer is so great in this relationship that the victim often feels that nothing she will do can change the situation. Instead, victims often choose to remain silent. This power imbalance, it is argued, presents a serious challenge to restorative justice (Busch 2002, Stubbs 2002). Kreiger (2002) argues that the power imbalances in domestic violence cases affect the bargaining power of the parties during the process and the chances for a fair agreement are minimal. This criticism, however, relates to mediation. Indeed, in contrast with conferences and community circles, mediation does not seem to provide an adequate framework for resolving these problematic situations, because other family members and supporters are not present and therefore cannot protest when manipulation, aggression or victim blaming occur (Braithwaite 2002a, pp. 251–253).

A second concern typical to family violence is the continual nature of the violence, the prospects for the future relationship between the offender and the victim, and concerns for the victim’s safety — that are typically peripheral in most other crimes (Stubbs 2002, p. 51). Accordingly, perhaps victims of family violence (both children and women) have needs that differ from those that restorative justice can meet. As Stubbs claims,

...while restorative justice literature emphasizes participation, apology and reparation, victims of domestic violence have emphasized safety and external validation of their attempts to stop abuse, together with deterrence and rehabilitation, over other possible outcomes (Stubbs 2002, p. 51).

A third concern raised by feminists against the use of restorative justice in domestic violence cases is that of privatization and trivialization of the crime: arguably, domestic violence has been ignored and pushed into the private sphere for too long, with courts acknowledging the severity of the problem only in recent years. Restorative justice practices, it is argued, might reverse this positive change (Kreiger 2002, Braithwaite 2002a, p. 152). This concern may be relevant in child abuse cases as well, where often family members believe that this is a ‘family matter’ and perceive any state intervention as an interference with their privacy.

An additional argument against restorative justice in the case of domestic violence is the centrality of apology in it, which is often used as a tactic by batterers and is highly suspect in these crimes (Daly and Stubbs 2006). It is unclear, however, to what extent this concern emerges in child abuse cases. Certainly in sexual abuse, even a seemingly sincere apology would not suffice, and a primary goal of the professionals involved is to make sure that the abuse does not recur.

In contrast with these arguments, restorative justice proponents claim that particularly in serious crimes, victims can benefit more from a restorative process, as the emotional restoration is much greater through such a response (Marshall 1999, p. 18, Strang 2002, p. 198). Indeed, restorative justice has a lot to offer victims of violent crimes, including compensation as a right; putting the victim’s story at the center; restoring the relationships between the parties involved, as well as the more
rehabilitative, restorative alternatives to punishment (Pranis 2002, Hudson 2002, p. 622). Child victims in particular, it is argued, have an interest in the restorative option instead of the criminal justice alternative, especially in cases of intra-familial abuse:

children tend to love their parents come what may, and want the behavior to stop rather than their father imprisoned; children may be afraid of the consequences of breaking up the family... (Hudson 2002, p. 622)

More specifically, South Australia and Newfoundland and Labrador demonstrated that sexual offences can be dealt with effectively through restorative justice conferences, and that restorative justice works well when there is an existing relationship between the victim and the offender (Doig and Wallace 1999, Daly 2002, Pennell and Burford 2002, Daly and Stubbs 2006). Nevertheless, these concerns pose real challenges and require special precautions.

To address the power imbalance, in both domestic violence and child abuse cases, restorative justice proponents suggest that victims must be especially empowered, and coordinators have to ensure that the victim’s voice and interests are heard, not only with regard to the outcome, but also when discussing the harms. To achieve this in child abuse cases, adequate child representation is crucial (Bazemore and Earle 2002). Furthermore, the flexible nature of restorative justice permits the involvement of multiple supporters for the victim including family members and friends; other participants, such as the family doctor or a school teacher may also act as protectors against any controlling, manipulative or aggressive behavior (Braithwaite and Daly 1994).

Another important way of addressing extreme power imbalances is the use of indirect contact between victims and offenders (Zehr 1990, p. 206). With indirect contact, victims can still benefit from the advantages of restorative justice while enjoying the safety of not meeting their offender. ¹⁸ They are able to ask questions and receive answers (through the involvement of professionals or others who represent them); to express their own feelings and wishes, and to have an impact on the final resolution; and they are more likely to receive apology and/or material restoration than through a court process.

Further, the safety of the child must always be a precondition for, and a central goal of, the process. The Newfoundland and Labrador experience showed that the safety of abused children can be maintained during and after the conferences, and that these processes can prove effective in reducing future family violence (Burford and Pennell 1998).

Whether or not one is optimistic about the ability of restorative processes to overcome these challenges, it is clear that if restorative justice is to be practised in child abuse cases, it must be constructed differently than for other crimes against children, and perhaps in conjunction with domestic violence cases. This was the case in the Newfoundland and Labrador experience, where a ‘feminist praxis’ was

¹⁸There is, however, no evidence as of today that indirect restorative processes actually help victims.
used and intensive work was invested in securing the safety and empowerment of abused family members, both women and children (Pennell and Burford 2002).

Another relevant field is child protection, where sexual, physical and emotional abuse is often the subject of discussion. The findings presented earlier regarding the relative success of FGCs in producing safety plans for abused children and the high satisfaction levels suggest that even in these sensitive and complex matters, families can sit together and reach an agreement.

One important finding regards the benefits of child representation in child protection FGCs. In Wiltshire, England, a pilot project for child representation in child protection FGCs was conducted by an independent advocacy service. The underlying premise in the project was that

if the conference is another adult decision–making forum, then advocacy support is crucial, but . . . ideally such support should be someone that the young person knows (Dalrymple 2002, pp. 292–293).

Accordingly, whenever the child chose someone they knew, that person was prepared by the coordinator. When there was no such ‘natural advocate’, an independent, trained youth advocate was provided. In follow–up interviews, out of 44 children, all but one reported feeling involved or very involved at the conference. Having an independent advocate made the children feel powerful at the personal level (had someone ‘under their command’, saying exactly what they wanted him/her to say); empowered within the family context (talking on behalf of them with their families, in ways that they did not have the courage or ability to speak), and vis–á–vis the professionals, making it possible for them to have an impact on the outcomes. With various techniques, the perspectives of the children were revealed to both the adult family members and professionals, and made the decisions more informed and child–focused. Furthermore, children generally reported feeling that they had some control over the process and their input in it. They were able to decide for themselves whether to stay in the room or leave, whether to speak for themselves or have the advocate speaking on their behalf, and what to tell the adults (Dalrymple 2002).

The positive results in the Wiltshire experience, together with the positive effect of support persons found in the Newfoundland and Labrador program, show that either support persons or advocates may enable children to have meaningful participation in such proceedings even after repeated abuse had occurred. Moreover, it is suggested that the empowerment of children should start as early as the preparation stage, and therefore children should be asked whom they would like to invite to the conference, and whom they wish to exclude. The child’s view on this matter should be central, though it is possible to propose extra support for the child, instead of totally excluding someone (Marsh and Crow 1998, p. 52).

**A lenient response?**

Even if, from the child victim’s perspective, restorative justice may be an appealing alternative, including in child abuse cases, there might be other arguments against it, external to the child’s interests but nevertheless important. One of these concerns
is the appropriateness of restorative justice as a response to serious crimes. Perhaps serious crimes such as physical and sexual violence against children should be left for the court to resolve because of the grave violation of communal norms. Perhaps restorative justice does not provide a sufficient response in such cases. The criminal process addresses the public call for condemnation in cases of severe crimes, an aspect that is missing in restorative justice practices (Hudson 2002). Further, perhaps it is simply against basic perceptions of fairness to ‘let offenders go’ without being punished in such severe cases. In addition, concerns exist with regard to perpetrators who are clearly dangerous to society or who are unwilling to repair the harm and refrain from future crime (Hudson 1998).

Clearly, whether one chooses to adhere to a punitive approach or a restorative one depends largely on personal and political preferences. There are, however, some evidence-based considerations. First, only a small minority of reported cases are finalized in court with a finding of guilt and the consequent public condemnation and punishment (Roach 1999, Zedner 2004). The majority of cases are either not prosecuted at all, or a plea bargain is reached. The reality, then, is that the criminal process does not punish or condemn most offenders, or, as Daly’s research group put it, in most cases ‘nothing happens’ (Daly et al. 2003).

Second, the public call for punishment and condemnation is not supported by findings about victims’ wishes, which are typically about the fairness of the process rather than its outcomes, and about more material and emotional reparation rather than punishment alone (Strang 2002).

Third, the expression of disapproval of the act may be generated through the open, equal and non-dominated nature of the restorative justice process, where ‘weak’ victims can speak freely, and the process encourages progressive views (Hudson 1998). A clear message, therefore, can emerge from a restorative justice conference against abusive behavior, especially when combined with community rehabilitative services and state enforcement mechanisms in cases of noncompliance. Furthermore, the bigger the conference the stronger the message of appropriate behavior would be. When not only family members of the offender but others that are significant in their lives participate, it becomes clear that the norms set through the conference are community norms, not just family norms (Pranis 2000).

Clearly, the process and the outcomes have to fit the severity of the crime, and one possible response of restorative justice to serious crimes is to include retribution in the process (Daly 2002). While there is much controversy around this matter (see Duff 1996 and Daly 2002), punishment is not completely irreconcilable with restorative justice values (Strang 2002, p. 204), as long as it is not perceived as a goal for itself (Zehr 1990, p. 210).

In addition, a flexible restorative justice scheme might allow for severe crimes to be dealt with restoratively after a court process has started, either pre- or post-sentencing, such as the case in the Australian Capital Territory under its 2004 Crimes (Restorative Justice) Act. This ‘modular’ approach allows for both punishment and restoration to occur, integrating the formal court process with restorative elements. With regard to ‘clearly dangerous criminals’, Braithwaite suggests to climb up the enforcement pyramid, which has restorative justice at its base and incarceration at
its top, with gradually more restrictive alternatives in between (Braithwaite 2002a, p. 32–41). This should be complemented with public education as to the wrongfulness of violence, so that crimes that are dealt through the lowest level of the enforcement pyramid (restorative practices) are not perceived as minor (Hudson 1998).

5.6 Conclusions

We have seen that there are benefits of restorative justice for victims, compared with the court process. This is true especially in violence offences and in other emotionally charged crimes. Unlike criminal justice processes, the victim’s perspective is central in restorative justice, thus making it possible to meet the specific needs of victims, including disempowered ones, such as children. Moreover, there are some indications that restorative justice can reduce violence, at least in some contexts, thus promoting broader interests of the community beyond the interests of the specific victim.

The five case studies discussed in this chapter provide examples of restorative justice processes which have been used (with varying levels of success) in cases of crimes against children, including very young ones. The generally positive results from these experiences support the claim that child victims can benefit from restorative justice, while at the same time providing valuable lessons as to the difficulties that emerge. The flexibility that characterizes restorative justice makes it possible for children to participate in these processes in ways that fit their specific ages and capabilities. In some cases, children may be able to express themselves independently (possibly with some creative methods such as drawings, letters, stories and so forth); in others, children may need assistance from other people, such as a victim advocate (be it a family member or a professional acting on their behalf). In extreme situations and with young children, an indirect conference may be appropriate. In all cases, however, thorough preparation, including an age-appropriate explanation of the process, is central to the successful participation of the child victim.

Indeed, the values and principles underlying restorative justice described in Chapter 1 are consistent with the needs–rights of child victims reviewed in Chapters 2 and 3. Restorative justice aims to provide victims an opportunity to have significant control over the process that follows their victimization by being active partners in the process and affecting its outcomes. This helps victims regain their sense of control in their lives and can be an important element in their healing process (Frazier 2003, Lazarus and Folkman 1984, Zehr 2002). Furthermore, restorative justice invites and encourages the victim’s family, friends and significant others to provide support for the victim, both during and after the conference. The victim’s ‘arenas of comfort’ (Call and Mortimer 2001) might be strengthened and activated. In successful conferences, participants listen to the victim’s story, acknowledge the harm and validate the victim’s behavior, thus empowering the victim (Pranis 2002), resolving their sense of shame (Ahmed et al. 2001), and helping them make sense of what happened (Zehr 2002). Issues of self-blame have the potential to be resolved, as the victim is given an opportunity to discuss his or her behavior with sympathetic lis-
In addition, offenders are expected to take full responsibility for the harm they have caused to the victim, and ideally to apologize. This provides an opportunity for victims to grant forgiveness, thus overcoming negative feelings of anger and low self-esteem and enhancing their sense of hope and self-worth (Enright and Fitzgibbons 2000). Moreover, a positive interaction between the offender and the victim may engender in the latter more positive feelings toward the perpetrator or at least permits a better understanding of the crime and its circumstances. This in turn provides an opportunity for positive reappraisal to occur which helps the victim cope with the aftermath of the crime (Lazarus 1999). Additionally, the opportunity to hear the offender’s story and to feel some level of sympathy toward him or her may create a sense of growth in the victim, even in a young age (Murray 1999). Finally, experiencing fair treatment and procedural justice may help the victim heal from the event (Herman 2003).

These of course are outcomes of an ideal restorative justice process, at least for the victim. It is yet to be examined how often such processes are conducted in a way closest to this ideal. Some of the experiences discussed in this chapter, however, such as those in Newfoundland and Labrador and in Hollow Water, may be used as examples of promising practice and be carefully adapted in other places. Nevertheless, special caution should be taken in adapting existing models from other cultures. Any program should fit the community where it is being implemented, with the specific adjustments needed (Umbreit 1998). Accordingly, general principles, and not specific programs or rules, are more useful in constructing a restorative justice approach with regard to child victims. An attuned, enculturated imagination is needed to bring these principles to life in any specific place and time. The next chapter, therefore, will propose general principles for a child-inclusive approach in restorative justice processes in cases of child victimization.