

Restorative Justice and Sexual Assault:
Canadian Practitioner Experiences

by

Taryn Burgar

B.A., University of Victoria, 2015

Certificate in Restorative Justice, Simon Fraser University, 2018

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Supervisory committee

Prof. M Jerry McHale, QC, Supervisor
Faculty of Law and School of Public Administration

Prof. Rebecca Johnson, Outside Member
Faculty of Law

Abstract

This thesis examines the use of restorative justice with cases of sexual assault in Canada through the perspective of practitioner experience. It concludes that restorative justice for sexual assault is an innovative and viable justice practice that should be offered to survivor-victims as an option for their justice-seeking process. A literature review was undertaken to create a summary of past and current academic perspectives on the topic and to provide context for the interviews. Interviews were conducted with 12 restorative justice practitioners in Canada who have experience facilitating or participating in restorative justice processes that dealt with sexual assault. The data from the interviews was analyzed using thematic coding to produce a set of themes based on practitioner experience. The data was also used to examine the ethical issues that are relevant in the current landscape. This thesis determines that practitioners are knowledgeable about the practices that can make the restorative justice process safer. It finds that practitioners report being able to meet the varying needs of survivor-victims through procedural flexibility. It observes that they struggle with the practical and ethical tensions that arise in their work, but these tensions are manageable, and they are committed to working with them. Restorative justice has the potential to address a sexual assault case successfully when survivor-victim needs are met, safer practices are used, and practitioners are informed about the complexities and varying experiences of sexual assault.

Table of contents

| | |
|---|-----|
| Supervisory committee | ii |
| Abstract | iii |
| Table of contents | iv |
| Acknowledgements | ix |
| Dedication | x |
| Chapter 1: Introduction | 1 |
| 1.1 Sexual assault | 4 |
| Image 1 | 7 |
| 1.2 Restorative justice | 9 |
| 1.3 Research purpose & significance | 15 |
| Research purpose | 15 |
| Research questions | 15 |
| Research significance | 16 |
| 1.4 Researcher orientation | 18 |
| 1.5 Language and terminology | 19 |
| Chapter 2: Literature review | 23 |
| 2.1 History of restorative justice for sexual assault research and practice | 25 |
| 2.2 Restorative justice | 27 |
| 2.3 Sexual assault | 29 |
| Sexual assault law reform | 29 |
| Offender rehabilitation | 31 |
| 2.4 Current state of restorative justice for sexual assault cases | 34 |
| Perspectives | 34 |
| Programs | 36 |
| Research: outcomes and effectiveness | 38 |
| 2.5 Feminist perspectives | 41 |
| 2.6 Intersectional perspectives | 43 |
| 2.7 Indigenous perspectives | 46 |
| Critique | 47 |
| Support | 48 |
| Lack of consensus | 49 |

| | |
|--|----|
| 2.8 Supporters and critics | 50 |
| Support | 50 |
| Critiques | 52 |
| Joint understandings..... | 53 |
| 2.9 Best practices..... | 54 |
| Survivor-victims | 54 |
| Offenders..... | 55 |
| Process formats | 56 |
| Practitioners | 58 |
| Tensions in best practices | 58 |
| Broader needs..... | 59 |
| Chapter 3: Methodology and methods | 61 |
| 3.1 Methodology & research design | 61 |
| 3.2 Data collection..... | 63 |
| 3.3 Methods of analysis..... | 63 |
| 3.4 Ethics..... | 64 |
| 3.5 Limitations and delimitations..... | 65 |
| Limitations | 65 |
| Delimitations..... | 66 |
| 3.6 Participants | 67 |
| Chapter 4: Results | 70 |
| 4.1 Overview of the case experiences | 74 |
| 4.2 Topic: Process experiences | 76 |
| 4.2(a) Referrals | 77 |
| 4.2(b) Duration..... | 80 |
| 4.2(c) In-person and remote dialogues..... | 80 |
| 4.2(d) Police presence..... | 81 |
| 4.2(e) Parental presence | 82 |
| 4.2(f) Agreements | 82 |
| 4.2(g) Process outcome measures | 83 |
| 4.2(h) Sexual education | 84 |
| 4.2(i) Indigenous communities | 86 |

| | |
|--|-----|
| 4.2(j) Racialized communities | 86 |
| 4.2(k) Disability | 87 |
| 4.2(l) Mental health..... | 87 |
| 4.2(m) Level of education..... | 88 |
| 4.2(n) Gender | 88 |
| 4.3 Topic: Process formats for safer and effective experiences | 90 |
| 4.3(a) Supporters and community members | 91 |
| 4.3(b) Preparations | 92 |
| 4.3(c) Responding to diverse needs | 93 |
| 4.3(d) Level of formality..... | 95 |
| 4.3(e) Counselling and therapy | 95 |
| 4.3(f) Choice offering control and safety..... | 96 |
| 4.3(g) Safety preparations..... | 97 |
| 4.3(h) Addressing the potential for re-traumatisation..... | 98 |
| 4.3(i) Trauma-informed practice..... | 99 |
| 4.3(j) Pressure and coercion..... | 100 |
| 4.3(k) Shame..... | 101 |
| 4.3(l) Healing, forgiveness, and apology | 102 |
| 4.4 Topic: Justice needs | 104 |
| 4.4(a) Types of justice needs | 105 |
| 4.4(b) Dialogue format..... | 106 |
| 4.5(c) Offender accountability | 107 |
| 4.5 Topic: Offender recidivism and community accountability | 109 |
| 4.5(a) Preventing recidivism..... | 110 |
| 4.4(b) Community safety and accountability | 111 |
| 4.6 Topic: Ethical considerations | 113 |
| 4.6(a) Causing no further harm..... | 114 |
| 4.6(b) Accepting sexual assault cases | 115 |
| 4.6(c) Feminist ethics..... | 115 |
| 4.6(d) Pressure for legal reform | 116 |
| 4.6(e) The protection-empowerment tension | 117 |
| 4.6(f) Training and qualification of practitioners | 118 |

| | |
|--|-----|
| 4.7 Topic: Acceptance of restorative justice for sexual assault | 120 |
| 4.7(a) Acceptance of restorative justice..... | 121 |
| 4.7(b) The criminal justice system..... | 122 |
| 4.7(c) The anti-violence sector | 122 |
| 4.7(d) The public..... | 123 |
| 4.7(e) Restorative justice misconceptions..... | 124 |
| 4.7(f) Creating acceptance | 125 |
| Chapter 5: Discussion | 126 |
| 5.1 Theme: Practitioners report that they are able to meet the varying needs of survivor-victims through procedural flexibility..... | 127 |
| 5.1(a) Meeting needs through procedural flexibility: Agreements..... | 127 |
| 5.1(b) Meeting needs through procedural flexibility: Case duration & resources..... | 128 |
| 5.1(c) Meeting needs through procedural flexibility: Justice needs | 129 |
| 5.1(d) Meeting needs through procedural flexibility: Choice..... | 131 |
| 5.2 Theme: Practitioners are knowledgeable about the practices that can make the restorative justice process safer..... | 134 |
| 5.2(a) Practices to make RJ safe: Safety as a concept | 134 |
| 5.2(b) Practices to make RJ safe: Supporters and community members..... | 135 |
| 5.2(c) Practices to make RJ safe: Mental health safety | 137 |
| 5.2(d) Practices to make RJ safe: Shame | 138 |
| 5.2(e) Practices to make RJ safe: Indigenous cultural safety..... | 139 |
| 5.2(f) Practices to make RJ safe: Trauma-related needs..... | 140 |
| 5.2(g) Practices to make RJ safe: Racialized communities and the police..... | 141 |
| 5.3 Theme: Practitioners struggle with the practical and ethical tensions that arise in their work, but these tensions are manageable, and they are committed to working with them | 142 |
| 5.3(a) Managing practical and ethical tensions: The protection-empowerment tension | 142 |
| 5.3(b) Managing practical and ethical tensions: Pressure and coercion | 146 |
| 5.3(c) Managing practical and ethical tensions: Potential for re-traumatisation | 147 |
| 5.3(d) Managing practical and ethical tensions: Process model formality | 148 |
| 5.3(e) Managing practical and ethical tensions: Gender-balanced co-facilitation models . | 149 |
| 5.3(f) Managing practical and ethical tensions: Balance of timing | 150 |
| 5.3(h) Managing practical and ethical tensions: Spontaneous innovative solutions | 150 |
| 5.3(i) Managing practical and ethical tensions: Pressure for legal reform | 151 |

| | |
|--|-----|
| 5.4 Theme: Restorative justice is being used by practitioners as a vehicle for sexual education of offenders | 151 |
| 5.4(a) RJ as sexual education: Ability to effectively teach consent | 152 |
| 5.4(b) RJ as sexual education: Remedial and preventative functions..... | 153 |
| 5.4(c) RJ as sexual education: Restorative sexual education options..... | 154 |
| 5.5 Theme: The experiences and perspectives of practitioners differ from those described in the literature on a small number of notable topics | 155 |
| 5.5(a) Practitioner and literary perspectives: Accountability | 155 |
| 5.5(b) Practitioner and literary perspectives: Preparations | 157 |
| 5.5(c) Practitioner and literary perspectives: Healing and forgiveness | 157 |
| 5.5(d) Practitioner and literary perspectives: The anti-violence sector | 158 |
| 5.5(e) Practitioner and literary perspectives: Feminist frameworks | 160 |
| 5.5(f) Practitioner and literary perspectives: Staff and volunteer facilitators..... | 161 |
| 5.6 Theme: Misconceptions about restorative justice and sexual assault held by professionals and the public are impeding buy-in of the practice..... | 162 |
| 5.6(a) Misconceptions about RJ and sexual assault: Restorative justice misconceptions .. | 162 |
| 5.6(b) Misconceptions about RJ and sexual assault: Referrals..... | 163 |
| 5.6(c) Misconceptions about RJ and sexual assault: Acceptance of restorative justice for sexual assault cases | 165 |
| Chapter 6: Conclusion..... | 167 |
| Research questions | 167 |
| Future research | 170 |
| Literature-based suggestions..... | 170 |
| Personal suggestions | 170 |
| Concluding thoughts | 172 |
| References..... | 174 |
| Appendix A: Interview questions | 181 |
| Appendix B: Thematic codes..... | 183 |
| Appendix C: Email script..... | 185 |
| Appendix D: Information letter for participants | 186 |
| Appendix E: Consent form | 187 |

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Dedication

To all the practitioners, researchers, policy makers, and advocates whose knowledge has made this research possible and for all their tireless efforts pushing for the better. The long game is not an easy road, but the faith you hold in futures you may not come to see will always be an inspiration.

To all the survivors in my life, known and unknown. I wish I did not have to dedicate my motivation for this research to you. I hope you find hope in this one step forward to creating systems that will bring you justice and creating communities where sexualized violence and gender-based violence are not dominating forces.

Chapter 1: Introduction

Restorative justice has been and continues to be used as a justice process to address sexual assault. It is a polarising and controversial practice within restorative justice. Many academics and practitioners praise the potential of restorative justice to effectively meet the needs of survivor-victims and encourage offender responsibility-taking, while others remain concerned over broader ethical concerns and the potential for re-traumatisation. The basis of restorative justice for sexual assault involves, in one manner or another, bringing together a survivor-victim of sexual assault and the offender. It provides a forum where the survivor-victims can share their experience and describe the effects of the sexual assault, and the offenders can listen to the experiences shared and take responsibility for their actions. Often this is accomplished through in-person dialogues, but there are also many innovative formats that do not involve an in-person dialogue. The potential of restorative justice in these cases lies in its flexibility, as different survivor-victims and different circumstances will require different process formats and different outcomes. Not all survivor-victims are able to forgive or heal through restorative justice. Some may not be interested in forgiveness or healing from the outset. There are a variety of different desired outcomes that lead them to participate in a restorative justice process. Because of the lack of consensus on the suitability of restorative justice for sexual assault, it is necessary to continue exploring the possibilities it may offer and the challenges it may face.

In order to create a clearer picture of how restorative justice is currently being practised in Canada in cases of sexual assault, this research project undertook a literature review and conducted a thematic analysis on the data from the interviews of 12 Canadian practitioners. The literature review will provide the context needed to understand the topics that concern the practice as well as the interview results and ensuing discussion. It creates a summary of the

current body of literature as a foundation for the study. The interviews and subsequent thematic analysis produced the many topics reviewed in the results, which were then integrated into six themes that reflect the current practice of restorative justice for sexual assault in Canada.

Chapter 1 will introduce the fundamental concepts of this study: sexual assault (1.1) and restorative justice (1.2). It will discuss the research purpose and significance and provide the primary and secondary research questions along with their rationales (1.3). It will explain why certain language has been used (1.4) and will provide the orientation of the researcher to situate the researcher within the context of the thesis subject (1.5).

Chapter 2 will review the existing research on restorative justice and sexual assault. It will provide a summary of the history of the research in the field. It will then discuss the place of restorative justice in the criminal justice system. It will examine the important issues in the literature around sexual assault law reform and sex offender rehabilitation and will outline the current state of restorative justice and sexual assault from feminist, intersectional, and Indigenous perspectives. An overview of the supporting and critiquing arguments will be provided. Finally, it will review suggested best practices and some of the tensions within best practices.

Chapter 3 will discuss methodology. It will address the research design, data collection and methods of analysis used in the study. It will review the ethical considerations that this study considered. It will look at the limitations and delimitations and will end with a profile of the practitioners who participated in this study.

Chapter 4 will begin with an overview of the cases that were discussed in the interviews. It will provide the results of the interviews through a review of the relevant topics that arose. These

topics will be grouped together based on their corresponding interview question to provide a thematic guide as to better organize the large quantity of data.

Chapter 5 will discuss the results through six themes that encompass the major findings from this study and respond to the research questions:

1. Practitioners report that they are able to meet the varying needs of survivor-victims through procedural flexibility.
2. Practitioners are knowledgeable about the practices that can make the restorative justice process safer.
3. Practitioners struggle with the practical and ethical tensions that arise in their work, but these tensions are manageable, and they are committed to working with them.
4. Restorative justice is being used by practitioners as a vehicle for sexual education of offenders.
5. The experiences and perspectives of practitioners differ from those described in the literature on a small number of notable topics.
6. Misconceptions about restorative justice and sexual assault held by professionals and the public are impeding buy-in of the practice.

Chapter 6 will conclude the thesis with a summary of how the research questions were answered, suggestions for future research, and a final perspective.

This research study will demonstrate that the 12 practitioners interviewed are practicing in a manner that meets the needs of survivor-victims and where the safety of all parties is considered. Though practitioners struggled with the tensions present in their work, they were still committed to the work and did not believe that these tensions negate the usefulness or validity of the

practice. This study will conclude that restorative justice for sexual assault is an innovative and viable justice practice that should be offered to survivor-victims as an option for their justice-seeking process.

1.1 Sexual assault

In order to understand why addressing sexual assault in restorative justice processes brings specific complexities and why some people are looking to restorative justice as a response to sexual assault, a brief examination of sexual assault in Canada will be undertaken here.

In the Criminal Code of Canada, sexual assault is defined in Section 265 as:

“a person commits an assault when without the consent of another person, he applies force intentionally to that other person, directly or indirectly; he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs. This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault” (*Criminal Code of Canada*, 1985, s. 265(1-2)).

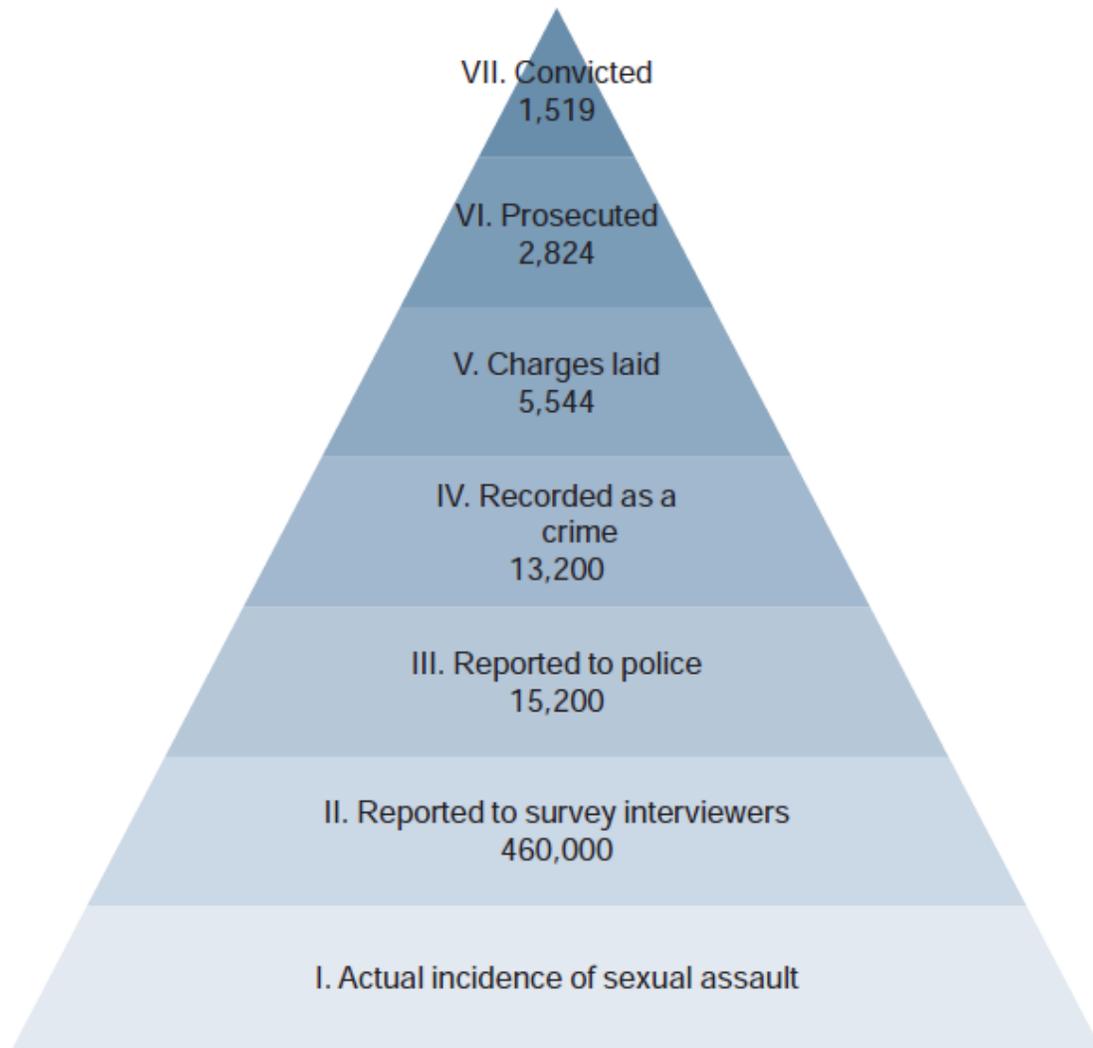
A survivor-victim’s interaction with the criminal justice system usually begins with a report to police. Sometimes this is done immediately after the sexual assault, sometimes after a rape kit has been administered and any injuries have been tended to, or sometimes it is days, months, or years after the assault. Once the sexual assault is reported, the police will conduct an initial investigation and decide how to respond (Johnson, 2012, p. 627). If a complaint is investigated,

police or Crown counsel, depending on the province, will decide if there is sufficient evidence to charge and successfully charge and prosecute a suspect (Johnson, p. 628). If the suspect is prosecuted, a trial often ensues (Johnson, p. 632). Commonly, a preliminary (pre-trial) hearing is required for sexual assault charges, where the judge decides if Crown counsel has enough evidence for a trial. Sexual assault trials can be conducted before a Judge or before a Judge and Jury, and often require the survivor-victim to testify. If the accused is found guilty, the survivor-victim has the opportunity to provide a Victim Impact Statement, where they can speak to the effects of the sexual assault on their life. The judge will take the Victim Impact Statement into consideration during sentencing (Toronto Police Services, 2016).

Anyone can be sexually assaulted, regardless of gender or sexuality. Although it is hard to obtain precise numbers because of the lack of reporting, there is consensus that sexual assault disproportionately affects women, LGBTQ people, and gender non-binary people and is largely perpetrated by men (Crew, 2012, p. 233). Based on data from all Canadian police departments collected since 1962, 86% of reporting survivor-victims identify as female (Johnson, 2012, p. 613). It is estimated that one in four or one in five women and one in eight men will be sexually assaulted at some point in their life (Johnston, 2012, p. 277). LGBTQ people experience similar or higher levels of sexual assault compared with heterosexual and cisgender people (Saewyc, Skay, Pettingell & Reis, 2006, p. 203). Approximately 46% of bisexual women, 47% of bisexual men, 13% of lesbian women, 40% of gay men, and 50% of trans people have experienced sexualized violence (Centers for Disease Control and Prevention, 2010, p. 1; Stotzer, 2009, p. 172). Between 2009 and 2014, 98% of those charged with sexual assault offenses in Canada were men (Rotenberg, 2017, p. 3). Academics, practitioners, and advocates from fields ranging from law, criminology, feminism, restorative justice, and counselling are cognisant of this reality

(Randall, 2013, p. 477). The predominant view holds that the systemic existence of sexualized violence perpetrated on women, LGBTQ people, and gender non-binary people is due to gender inequality and systemic oppression. Sexual assault is an exercise of power to perpetrate an act of control over vulnerable populations (Martin, 1998, p. 165). Judith Herman argues that offenders seek to establish survivor-victims as subservient by maintaining dominance over them, which is established by terrorising, harming, and shaming the survivor-victims. Through this, the offender hopes to shame the survivor-victim by degrading them in the eyes of the public so that they are stigmatised and scorned. The shaming, blaming, and discrediting that survivor-victims face from their communities and the public effectively completes the sexual assault for the offender (Herman, 2005, p. 573). Mary Koss, Karen Bachar, and Quince Hopkins assert that by reinforcing fears and restricting spatial and social freedom, sexual assault is not only an individual violation, but it also impedes the advancing equality of women, LGBTQ people, and gender non-binary people (2003, p. 385).

Image 1



The attrition pyramid created with Statistics Canada's 2004 victimisation survey data (Johnson, 2012, p. 631).

In Canada, between 5% and 10% of survivor-victims report their sexual assault to police (Conroy & Cotter, 2017, p. 17; Crew, 2012, p. 219). Of these reports, 16% are deemed unfounded by police, meaning that the reporting survivor-victim is not found to have provided a credible story or is otherwise considered to have fabricated the report (Kong, Johnson, Beattie, & Cardillo, 2003, p.9). See the numbers in sections III. and IV. in *Image 1* as a further

demonstration of the impact of unfounded reports. In *Image 1*, 2,000 reports made to police were not recorded as a crime because they were considered unfounded by police. The 16% unfounded rate for sexual assault is higher than average compared to 7% unfounded rates for all other crimes in Canada (DuBois, 2012, p. 196). Teresa DuBois and Holly Johnson both note that Statistics Canada had since stopped collecting unfounded rates for sexual assault (DuBois, p. 196; Johnson, 2012, p. 627). For that reason, these numbers are more than 15 years old, but they are the best empirical numbers currently available. Statistics Canada began to collect unfounded rates again in 2017 (Rotenberg, 2017, p. 5). Journalistic sources indicate that the current average unfounded rate in Canada rests at 20%. These numbers are based on Freedom of Information requests undertaken between 2015-2017 (Doolittle, 2017).

Of the remaining 80-84% of cases (considered founded), approximately 40% result in charges being laid against suspected offenders. Of the cases with charges laid, 50% of those suspected offenders are prosecuted, and 50% of prosecutions end with a conviction (DuBois, p. 193; Johnson, p. 631-632; Rotenberg, 2017, p. 3). The other 60% of the cases that are considered founded do not have charges laid because of insufficient or weak evidence (Johnson, pp. 628-629). See *Image 1* for a visual representation of this attrition pattern. It is clear from the statistics that attrition occurs at every stage of the criminal justice process, and there is evidence in some of the stages that it is a higher attrition rate for sexual assault than other crimes. However, the greatest attrition is at the reporting stage, where only one in ten survivor-victims decides to report the sexual assault to police. This low rate is due to the disheartening or traumatising experiences survivor-victims face after disclosing a sexual assault, from being shamed, blamed, or discredited by their communities and by the public (Johnson, p. 614). The anticipation or fear of the experience of reporting and trial discourages survivor-victims. The “unfounded” statistics

demonstrate that police are repeating the shaming, blaming, and discrediting that their communities and the public are doing (Johnson, pp. 628-629). Additionally, the trial process is difficult for survivor-victims, who often have their credibility attacked and experience further trauma from the adversarial nature of the trial (Randall, 2010, p. 405). The failure of the criminal justice system to convict the offender ends up further harming the person already significantly harmed by sexualized violence (Daly, 2002, pp. 12-13). Ultimately, it is a lack of faith in the criminal justice system that prevents many survivor-victims from coming forward.

1.2 Restorative justice

The difficulties of defining the term restorative justice have consistently plagued theorists. The definition used in this thesis draws on the definitions of Howard Zehr, Kathleen Daly and Elizabeth Elliot (Daly, 2014, p. 378; Elliot, 2011, pp. 65-69; Zehr, pp. 7-12). Restorative justice is a method of conceptualising justice through a set of principles and values that include empathy, respect, responsibility, flexibility, and honesty. Restorative justice is an innovative justice practice that positions the incident as a harm that affects people and communities rather than a crime against the state. Through its restorative lens, it aims to make reparations for the harms that have been committed. It is understood that not every incident can be restored to its previous state, but that there are often many ways to make amends for harms committed that do not involve legal forms of punishment. There are a variety of practices underneath the umbrella of restorative justice. These practices often involve bringing together the person who has been harmed, the person who caused the harm and the community that was affected by the harm. In these processes, the person who was harmed has the opportunity to share the weight of that experience with others, discuss how it has affected them, and seek restoration in whatever

capacity they want and are able to receive.¹ The person who caused the harm has the opportunity to hold themselves accountable and work to restore, to the extent possible, what existed before the harm was caused or to help the person harmed move forward. Accountability involves facing up to the harms caused by taking responsibility and acknowledging that they had committed the harms, understanding the impact of the harms with empathy, and being willing to take steps to make reparations and restitutions (Zehr, 2015, pp. 24-25). The communities involved can speak to how they were affected by the harms caused, they can be beneficiaries of the restorative process, and they can also be responsible for supporting the initiatives to repair the harms. Generally, the restorative justice process is defined as a series of interactions that begin with the referral to a practitioner and ends after the completion of agreement terms. These interactions in the process also include intake, preparations conducted before a dialogue or other form of communication, the dialogue or other form of restorative justice communication, the reparation stage (if included), and any follow-up required.

Restorative justice can function within the legal system, where the process occurs in lieu of criminal charges or in conjunction with them, or outside of the legal system, where it is an entirely community-based response. Restorative justice is often defined in contrast to retributive justice, which is dominant in Western legal frameworks (Randall, 2013, pp. 471-472). While there has been much work done on the conceptual ways in which restorative and retributive justice can work together, for the sake of clarity they will be contrasted in the following section. The incident in question in a retributive framework is considered to be a crime against the state, which must be condemned through punishment. The potential for punishment is meant to act as a deterrent. Retributive sanctions operate on the premise that an offender must be punished as

¹ Please see *Language and terminology* for the application of “process” that will be used in this thesis.

payment for the crime. In contrast, with a restorative framework, the incident is considered a harm that affects individuals and their community. The reparations that are agreed to in a restorative process are meant to repair the harm caused as best possible (Randall, p. 473). To illustrate the philosophical differences between restorative and retributive justice, the concept of financial reparations will be examined here. Both restorative and retributive justice can require the offender to pay financial reparations. With retributive justice, the payment will go to the state and is required as punishment so that the offender experiences a loss of financial earnings. With restorative justice, the offender can pay financial reparations to the victim or the community in order to attempt to repair the harm that was done. The victim can use the money as compensation for any financial losses they experienced because of the harm committed.

Restorative and retributive justice frame offenders and victims differently. Under a retributive framework, an offender commits a crime in isolation. They are not encouraged to take responsibility, but have their responsibility decided for them by being declared guilty or not guilty. Under a restorative framework, the harm caused by the offender is seen in the context of their broader circumstances. It does not mean that the offender is not held responsible for their actions, but the framework allows for the understanding that harms are not committed in isolation. By understanding the offender's context, it is easier to work with them in the reparation process and offers the possibility of addressing the issues present in their life to prevent future offenses. They are encouraged to take responsibility and their community is encouraged to assist in improving the circumstances that led to the harm caused. Victims are considered to contribute little more than evidence in a retributive framework. They are not permitted much input throughout the process. In a restorative framework, the victim is an active

participant who explains how the harm has affected them and is involved in how the harm is repaired.

There are many different models of restorative justice processes, including victim-offender conferencing, family conferencing, community conferencing, circle processes, healing circles, facilitated dialogues, and indirect contact through letters and shuttle processes. Victim-offender conferencing brings together the victim, the offender, and one or more practitioners to facilitate the process. These conferences often do not have anyone else participating. Family conferencing brings together the victim, the offender, the families of the victim and the offender, and one or more practitioners. This model is often used with youth offenders or victims or if the families have also been highly impacted by the harm (Zehr, 2015, pp. 60-66). Community conferencing brings together the victim, the offender, one or more practitioners, supporters, and community members. Supporters are members of the process present to assist the survivor-victim or the offender through the process. Community members are present to act as representatives of the community that was harmed as a result of the offence. This model is used when practitioners want community members to speak to how their lives were impacted by the harm, to support the victim, and to assist the offender in their restoration efforts. Circle processes bring together a facilitator and parties relevant to the harm discussed to share experiences and make decisions. The participants sit in a circle, share their thoughts one by one, and make decisions through consensus (Pranis, 2005, p. 8). Healing circles are a type of circle process where the participants share the pain and trauma of the victim and often create a plan for support (Pranis, p. 15). A facilitated dialogue (also called a conference) is a more recently-used term to designate a flexible process that brings together the victim and the offender. It often borrows from several other models to meet the needs of participants. Indirect-contact restorative justice can be achieved in

many ways, including through a shuttle process where practitioners work with participants in separate rooms by passing information between them, or through letters between participants that practitioners facilitate and screen before participants read them.

There is often confusion around the distinction between restorative justice and mediation. While restorative justice and mediation are two separate processes with different goals and frameworks, there are many people, especially those who work with survivor-victims of sexual assault, who conflate the two. From that conflation, the issues of mediation for cases of gendered violence have affected the enthusiasm for restorative justice and sexual assault, even though restorative justice can mitigate many issues that mediation cannot (Daly & Stubbs, 2006, p. 11; McGlynn, 2011, p. 829; Randall, 2013, p. 471). It is important to understand that the participant frameworks are fundamentally different. Mediation brings in participants as equals; two people who have contributed to the dispute and are equally responsible for resolving it. Restorative justice understands that one participant has caused the harm and the other has been harmed. The person who has caused the harm is responsible for attempting to restore it. Violence is often conflated with conflict, but they are two distinct experiences, each needing to be treated appropriately for processes to be safer and effective (Edwards & Haslett, 2010, p. 894)

Both nationally and internationally, laws and United Nations resolutions recognise and incorporate restorative justice principles to varying degrees. Internationally, the United Nations' Economic and Social Council Resolution 2002/12 discusses the basic principles on the use of restorative justice programmes in criminal matters and encourages states to work together to develop restorative justice programs (Economic and Social Council, 2002). Nationally, the Criminal Code of Canada asserts that just sanctions should include the objectives of promoting the acknowledgement of harms done to victims and the community, rehabilitating offenders, and

providing reparations for harms done to victims or the community (*Criminal Code of Canada*, 1985, s.718(d-f)). Those three objectives are all valued in restorative justice. With regards to Indigenous offenders, the Criminal Code of Canada states that “all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm caused to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders” (*Criminal Code of Canada*, 1985, s.718(2)(e)). Restorative justice is one of the available sanctions that can be considered in these cases. The Canadian Victims Bill of Rights specifically references restorative justice when it says that victims have the right, on request, to information about the services and programs available to them (*Canadian Victims Bill of Rights*, 2015, s. 2(6)(b)). The Youth Criminal Justice Act does not specifically reference restorative justice, but it promotes many of the same values as restorative justice. It states that efforts should be made to rehabilitate young offenders and reintegrate them into society (*Youth Criminal Justice Act*, 2002, s. 3(1)). The act also promotes extrajudicial measures to address youth crime which encourage young offenders to repair the harms they have caused and encourage community involvement in these efforts (*Youth Criminal Justice Act*, 2002, s. 4(5)). The Youth Criminal Justice Act also allows for conferences to be convened. The mandate of these conferences may include advice of extra-judicial measures and reintegration plans (*Youth Criminal Justice Act*, 2002, s. 19(1-2)). Restorative justice conferences are generally able to fulfil these mandates.

1.3 Research purpose & significance

Research purpose

The purpose of the research undertaken was to study the experiences of 12 Canadian practitioners using restorative justice processes for sexual assault cases in order to gain a clearer understanding of how restorative justice is currently being practised in Canada in cases of sexual assault. The information that is provided by this study will offer guidance regarding any further advances in the restorative justice processes that address sexual assault.

Research questions

Main research question:

The central question explored in this study is:

Based on the experiences of the interviewed practitioners, what do the resulting themes convey about the current and future practice of restorative justice for sexual assault in Canada?

Rationale: To create a clearer picture of how restorative justice is currently being practised in Canada for cases involving sexual assault and what potential it has for future use.

Secondary research questions:

1. How does the experience of interviewed practitioners substantiate and diverge from previous research and literature?

Rationale: This question is taking note of where Canadian practitioners are situated within current research and looking at how they are responding to past research. Understanding where practitioner experience substantiates and diverges from previous research allows for a more precise understanding of the current and future practice of restorative justice for sexual assault.

2. How do practitioners consider, respond to, and deal with concerns or critiques raised by academics, advocates, other professionals, and the public?

Rationale: In order to better understand current Canadian practices and options in the future, it is important to discern if practitioners are cognisant of the concerns, whether, based on their experiences, the concerns are valid, and if they are dealing with those concerns.

3. Which procedural strategies are used to encourage a safer and effective experience for participants?

Rationale: Safety is the main concern among anti-violence and feminist research and advocacy, so it is important to understand if these concerns are accommodated in the current forms of restorative justice practice and if the safety risks are being adequately managed. Though the measurement of efficacy will vary depending on individual experience, it is nonetheless important to begin to assess how practitioners view the efficacy of their work in order to understand the role of restorative justice in cases of sexual assault. Both safety and effectiveness are measures needed to better understand the current and future practice in Canada.

Research significance

Previously, this paper noted the following statistics:

- Sexual assaults in Canada are reported to the criminal justice system at a rate of 5%.²
- Of the reported sexual assaults, 80% are found to be credible reports.
- Of the credible reports, 40% of offenders are charged.
- Of the charged offenders, 50% are prosecuted.
- Of the prosecuted offenders, 50% are convicted.

² As previously mentioned, the number varies from 5% to 10% depending on the study. 5% is the most recent number, coming from research conducted in 2014 and published in 2017 by Statistics Canada.

These statistics demonstrate that only 0.4% (4 people out of 1000) of survivor-victims who are sexually assaulted will see the offender convicted through the criminal justice system. To illustrate, if 1000 people were sexually assaulted, 50 would report their sexual assault, 40 cases would be found credible, 16 cases would have the offender charged, 8 cases would have the offender prosecuted, and 4 survivor-victims would witness the offender being convicted. This is not to say that all survivor-victims will consider a conviction to be a satisfactory outcome, but as convictions are the main outcome of the criminal justice system, this demonstrates the deficiency of the criminal justice system when it comes to sexual assault cases. There is no clearer significance to this research than the statistic that shows that only 0.4% of survivor-victims will have the offender convicted through the criminal justice system in Canada³.

While many advances have been accomplished in the last four decades in the area of sexual assault law reform, and further advances are made regularly by advocates, academics, and policy makers, there is still a compelling need to continue exploring alternative forms of justice for survivor-victims. With the emphasis that practitioners place on grounding their work in research and the close relationship between practice and research, as will be discussed further in the literature review, there is a need for further research on restorative justice and sexual assault. This includes the evaluation of restorative justice's ability to safely and effectively meet the needs of survivor-victims, its ability to assist offenders in their rehabilitation, and its benefits in the greater community. This is especially relevant in Canada, where there is a significant concentration of restorative justice programs and organisations, but little academic research has been devoted to studying how restorative justice for sexual assault is being employed.

³ This percentage does include sexual assault cases that result in acquittals where the accused has been found not guilty.

1.4 Researcher orientation

I write this thesis identifying both as a supporter of the feminist movement and a supporter of the restorative justice movement. In the interest of full disclosure, I have volunteered for and donated to both restorative justice organisations and feminist anti-violence organisations. I was not involved in any of the cases discussed in the study.

I will be taking a multi-partial position rather than a neutral position in this thesis. I use the term “multi-partial” to indicate that I equally wish that the goals of restorative justice and gender equality are achieved, rather than a neutral position where I have no vested interest in the outcome. I do not believe that one can take a neutral position while researching a subject that has the overall goal of furthering social justice. However, I do believe that working towards survivor-victims of sexual assault having access to the justice process that they desire is a multi-partial position, as this position is a common link between the feminist and restorative justice movements.

When I speak of taking a feminist orientation, it means I will be looking at research with the goal of achieving social, political, and economic equality for all genders. Specific to this study, a feminist orientation allows for the understanding that sexualized violence is systemically widespread because of gender inequality. There are many types of feminism, and I do not intend to speak for all of the feminist movement, nor do I intend to speak for all of the restorative justice movement, which also has differing and contrasting opinions within its proponents. I have struggled throughout this research to balance my affiliations with both movements. I have come to a personal understanding that an intersectional feminist approach requires me to take seriously the potential of restorative justice because of the many ways in which the criminal justice system

disproportionately affects people based on their identities and marginalisation. This approach also requires me to take seriously concerns on restorative justice for sexual assault as there are many others who raise these well-founded concerns with different identities and experiences than I and therefore have insight that my identity and experiences have not afforded me.

I chose to undertake this study as my thesis subject because of my desire to see better support systems in place for survivor-victims of sexual assault. Though this goal extends far beyond the justice system into community responses and accessible services, I have chosen to focus on justice processes because of my exposure to a small number of public and private conversations on the possibilities and difficulties of restorative justice for sexual assault, which has led me down this path. The constant reminder of the failure of the traditional justice system to support survivor-victims and provide them with the justice they sought is the motivation that continually drives my curiosity forward. I undertook this study with the understanding that my results may not support the use of restorative justice in cases of sexual assault. I understood that the elimination of potential policy, programmatic, and community-based responses has equal value to the researched support of responses, for it continues to drive us forward towards the answers we seek. As my findings were supportive of this practice, I hope that this research provides support for the continued, cautious growth of restorative justice for sexual assault so that it can more accessible as a choice for survivor-victims of sexual assault and can continue to be monitored and researched in the process.

1.5 Language and terminology

The term “sexual assault” has been chosen over “rape” or “sexualized violence”. Occasionally the term “sexualized violence” will be used to denote the larger phenomenon of systemic sexual

violence, but as the focus of the thesis is on restorative justice processes, they usually address one incident of sexual assault rather than systemic violence. There are survivor-victims who claim the term “rape” to describe the harm that was done to them, and this study encourages them to do so if they feel it describes their assault. Broadly, however, this study uses the term “sexual assault” to account for the variety of harmful and non-consensual sexual incidents and to account for the experiences of all genders and sexualities.

There has been a push in the anti-violence sector, which includes sexual assault centres, transition house programs, and feminist organisations, to refer to victims of sexual assault as “survivors”, as being referred to as a “victim” can add to feelings of disempowerment after a sexual assault (Randall, 2010, p. 407). However, there are people who prefer to be described as a “victim” when discussing their sexual assault, as they do not feel like a survivor of sexual assault; they feel as though they have been victimised and that must be recognized by others. In order to reconcile these two positions, in the recognition that it is important to allow people who have been sexually assaulted to decide what term they would prefer, this thesis uses the hybrid term “survivor-victim”. An alternative term sometimes used by restorative justice practitioners in lieu of “victim” is “affected party”, but this thesis has elected not to use that in order to avoid minimising the impact of sexual assault.

Likewise, restorative justice practitioners use other terms like “responsible party” to designate the person who caused the harm without stigmatising them. The impacts of stigmatisation of sex offenders are important to consider and will be explored later in this thesis, but the decision was made to continue using the term “offender” in recognition that many survivor-victims seek the use of a proper descriptor of the person who assaulted them that indicates the severity of the act. As the people accused of sexual assault in the restorative justice processes in this study have

taken some level of accountability or agreed that the sexual act described as non-consensual by the survivor-victim took place, there is no need for the use of “alleged offender”. This is equally applicable to the literature review, where it is assumed that participants in the restorative justice process will have accepted some degree of responsibility. The only times these two terms will not be used is in direct quotations if the responding practitioners chose different language or when the reference is not sexual assault-specific, for example, if discussing restorative justice broadly or victim services programs.

As noted in the previous section, sexual assault disproportionately affects women, LGBTQ people, and gender non-binary people and is largely perpetrated by men. In the effort to make this research as inclusive as possible, this thesis refers to survivor-victims and offenders in gender-neutral terms in the recognition that sexual violence affects people of all genders including transgendered and gender non-binary people.

As previously discussed, mediation and restorative justice can be confused with one another. This leads to a misunderstanding of the nature of restorative justice in cases of sexual assault. In order to counteract some of these problems, some academics have begun to use the term “victim-offender conference” rather than “victim-offender mediation” when discussing a restorative justice process that only involves the victim, the offender, and the practitioner (Ikpa, 2007, p. 308). This thesis will do the same.

The term “participant” will be used to designate both the survivor-victims and offenders present in a RJ process. The term “case” references one incident of sexual assault that was addressed by the RJ practitioners. The term “process” is used to reference the RJ involvement in a case from the referral to the performance of agreement terms. The use of “dialogue” indicates any form of RJ process discussed in the interviews where the participants participated in a discussion, either

in person or through different means. For ease of reading, from this point forward, the acronym “RJ” will be used to indicate the term “restorative justice”.

Chapter 2: Literature review

A literature review is a crucial element of this research project for both the researcher and the reader. Firstly, for the researcher, a literature review allowed for a better understanding of the experience of practitioners. Additionally, it provided the needed information to respond to the secondary research question that asks how the experience of interviewed practitioners substantiate and diverge from previous research and literature. For the reader, it will serve to provide context for the *Results* and *Discussion* chapters. Because of the interdisciplinary nature of RJ for sexual assault, conducting a literature review on the subject required an examination of research from many different fields. This literature review will discuss nine subjects. To situate the literature review, it will begin with the history of the research and practice of RJ for sexual assault (2.1). The debates on the strengths and weaknesses of RJ within or outside of the criminal justice system will be reviewed (2.2). Sexual assault law reform and offender rehabilitation will be discussed (2.3). The current state of RJ for sexual assault will be reviewed by looking at emerging academic perspectives, RJ programs in Canada and other countries, and current research that focuses on outcomes and effectiveness (2.4). Feminist (2.5), intersectional (2.6), and Indigenous perspectives (2.7) will be explored by looking at supporters, critics, and tensions within these communities. Both the broad supporting arguments and critiques will follow, finishing with a discussion on joint-understandings between supporters and critics (2.8). A concluding review of best practices will be provided, focusing on the categories of survivor-victims, offenders, practitioners, process formats, tensions within best practices, and broader needs (2.9).

All nine of these subjects were selected to inform the later chapters in the thesis. The *History of restorative justice research and practice*, the *Current state of restorative justice for sexual*

assault cases, and the *Best practices* sections in the *Literature Review* chapter will help to situate the themes that arise in the *Discussion* chapter. As gendered, feminist, intersectional and Indigenous-specific topics were relevant in the interview results, the literature review will provide backgrounds on these perspectives. The *Results* and *Discussion* chapters cover a variety of concerns and critiques, so the *Sexual assault*, *Restorative justice*, and *Supporters and critics* sections in the *Literature Review* chapter have provided the background for these critiques. This will allow the various positions with which responding practitioners aligned themselves to be more easily situated within the broader context.

With regards to the following literature review, it is important to recognise that distinct types of gendered violence result in different experiences, different victim-offender interactions, and different survivor-victims' needs (Curtis-Fawley & Daly, 2005, p. 608). Sexual assault and intimate-partner violence are often conflated in research and discussion, but they are not inherently comparable solely because they often fall under the realm of gender-based violence (Cameron, 2006a, p. 484). The following literature review uses sexual assault-specific references as much as possible. Where that was not possible, extrapolation from research on broader gendered violence or intimate-partner violence was done only when the statements were about experiences, relationships, or needs that can also be found with sexual assault. Additionally, due to the limited amount of Canadian research on RJ and sexual assault and the desire to understand how the current Canadian state fits in with the rest of the world, the scope of the jurisdiction of this literature review includes Canadian, Australian, New Zealand, American, British, Irish, and Belgian academic work. It also includes some reporting on RJ for sexual assault programs operated by non-profit organisations and the United Nations.

2.1 History of restorative justice for sexual assault research and practice

The literature review begins with the issues that arose when alternative dispute resolution was first used in cases of gendered violence. It will then discuss the movement from theoretical to empirical research in the field. Finally, it will elaborate on the shift from characterizing the traditional criminal justice process and RJ as oppositional processes to seeing them as collaborative opportunities.

The history of research and of practice in the field of RJ for sexual assault are closely connected and inform one another. Because of the relatively short history of the practice and the cautiousness of the practice, the practice looks to the research for guidance. In turn, the research grows along with the practice as more data becomes available. This body of research began in two areas: the field of alternative dispute resolution when it first took on gendered violence cases, and the field of law when it first attempted serious reform efforts regarding sexual assault law. There was a quick feminist response to the field of alternative dispute resolution, as mediation was being used for cases of intimate-partner violence, resulting in poor and often harmful experiences (Ptacek, 2010, p. 19). This practice was generally suspended, but it created a distrust of new practices, so when RJ programs started appearing in the 1990s, women's groups raised concerns (Cameron, 2006b, p. 52). Later, research on RJ started to show that RJ could be applied to cases of serious crime. After further research, there was evidence that RJ could be more effective with serious crimes than with minor crimes, which included sexual assault (Daly, Bouhours, Broadhurst & Loh, 2013, p. 246; Van Camp & Wemmers, 2016, p. 433).

For much of its history, the academic research of RJ and sexual assault consisted of theoretical arguments and counterarguments. When a case study was found and applied, it was used as

evidence of the theoretical argument, for either a negative or positive conclusion. In Canada, this was evident in many reports written by women's groups, mostly in the Atlantic provinces and British Columbia from 1999 to 2003. More recently, research practices have moved on to studying smaller programs and interviewing survivor-victims and victim advocates. The field of criminology has been the main contributor to the research on RJ and sexual assault, but the research has also seen contributions from RJ, feminist, and legal scholars. This topic is highly divisive in feminist and Indigenous circles. Currently, one can still find some research that opposes the practice of RJ for sexual assault. However, research has shown that the better-versed advocates are in RJ, the more they will support its use for sexual assault cases (Curtis-Fawley & Daly, 2005 p. 617). Some academics, like Melanie Randall, believe that their prior sceptical attitudes towards RJ and sexual assault were based upon uninformed assumptions (2013, p. 465). Mary Koss argues that the conversations should move from whether to use RJ in cases of sexual assault to focus on how best to use RJ in cases of sexual assault (2014, p.1655). This support is largely due to the studies on those smaller programs producing cautiously optimistic results (these programs will be explored further in the *Current state* section). Additionally, it is due to further disenchantment with the criminal justice system after several more decades of its inability to thoroughly address cases of sexual assault.

In the literature, there has been a shift in RJ theory regarding the positioning of RJ in opposition to the criminal justice system. Instead of arguing that either RJ or the criminal justice system is better equipped to deal with sexual assault, other academics have more recently understood the relationship between the two as part of a spectrum between conventional and innovative justice (Daly, 2014, p. 378). This allows for a wider range of possibilities to suit the needs of participants and provides the option of choice to survivor-victims. However, it is argued by some

that the dichotomization of RJ and the criminal justice system fails to see how they both perpetuate the oppression of women, LGBTQ people, and gender non-binary people and overestimates the potential for social transformation in both (Cameron, 2006a, p. 484).

2.2 Restorative justice

This section will detail some current innovative practices relevant to RJ for sexual assault. It will also explore the debate on the relationship between RJ and the criminal justice system. This debate is important to consider when examining RJ's potential, as there are incentives to work alongside the criminal justice system to ensure the protection of survivor-victims, but there are also those who are discouraged by the criminal justice system's inability to adequately address sexual assault and would prefer to pursue other options.

Regardless of the country of practice, RJ programs usually include diversion, community referrals, post-conviction processes, pre-release processes and court-adjacent processes (Curtis-Fawley & Daly, 2005, p. 605). In the Canadian criminal justice system, there are several restorative approaches highlighted as innovative restorative practices. They include judicially-convened sentencing circles, RJ options in parole suspensions, and circles of accountability and support (Wilson, Huculak & McWhinnie, 2002, p. 364). In New Zealand, judges are permitted to consider RJ conference reports in their sentencing (Ikpa, 2007, pp. 319-320). In England and Wales, the government has been working on extending the use of RJ to all stages of the criminal justice system (McGlynn, Westmarland & Godden, 2012, p. 215). While there is greater access in some areas than others, by 2015 the British government had developed a RJ Action Plan, a new Code of Practice for Victims that included RJ, and legislation that allowed RJ to take place pre-sentencing (Collins, 2015, pp. 129-131).

The debate on the place of RJ in relation to the traditional criminal justice system has been ongoing since the emergence of RJ in the early 1990s. This debate was often explored in the literature, specifically regarding RJ and sexual assault, as the complexities of survivor-victim needs, RJ, and the criminal justice system were evident when it came to sexual assault. Broadly speaking, there are some practitioners, academics and theorists that argue for abolition (where RJ would replace the criminal justice system), others argue for a restorative approach to criminal justice, and some argue for an uptake in RJ programs and a progressively reformed criminal justice system (McAlinden, 2005, p. 374; Wemmers, 2009, p. 403).

Adult diversion, where cases are redirected by police or Crown counsel to a RJ program for completion rather than charged and prosecuted, is often the most controversial of RJ options. Research shows that it can be unpopular in both the legal sphere and the public sphere (Joyce-Wojtas & Keenan, 2016, p. 60). In a study done by Tinneke Van Camp and Jo-Anne Wemmers, respondents who had participated in a court-adjacent or post-conviction RJ process answered that they believed a combined restorative-judicial approach, rather than a diversionary approach, was most beneficial for survivor-victims as it allowed them to achieve a variety of goals (2016, p. 431). However, the authors themselves believe that RJ should remain independent of the criminal justice process (Van Camp & Wemmers, p. 433). In contrast, most academics who specifically focus on RJ for sexual assault argue for a mixed-methods approach. These academics would prefer to see increased usage of RJ programs as well as an improved criminal justice system that is more sensitive to survivor-victim needs and adept at meeting them (Joyce-Wojtas & Keenan, p. 44; Koss & Achilles, 2008, p. 10; Naylor, 2010, pp. 681-683; Stubbs, 2010, p.115). Feminist academics in support of RJ for sexual assault acknowledge that while the criminal justice system has many flaws, it would be unfair to ask women, LGBTQ people, and

gender non-binary people to forgo the protection and safety that comes from the criminal justice system's ability to remove dangerous offenders from society when needed (Hudson, 2002, p. 629).

2.3 Sexual assault

This section on sexual assault will focus on two aspects that are pertinent to the thesis; sexual assault law reform and offender rehabilitation. Sexual assault law reform will be examined in terms of: the need for reform, the advances that have been made, the challenges that remain, and the debates on the relevance of reform. Offender rehabilitation will be examined to understand which practices are effective and which are not by focusing on the impacts of retributive justice and RJ frameworks.

Sexual assault law reform

Sexual assault law reform in Canada has been ongoing for four decades. Much progress has been made, including statutory limits on a survivor-victim's sexual history, the redefinition of consent, the criminalization of marital rape, and the requirement that the accused prove that reasonable steps were taken to obtain consent (Martin, 1998, p. 153-154; Randall, 2010, p. 399). While those advances have created positive change, the pressure for sexual assault law reform and the reform of the criminal justice process that addresses sexual cases continues to exist in several ways. First, there are the dysfunctionalities of the criminal justice system, which include survivor-victims' reports of being unsatisfied by the justice process due to low conviction rates and the inability to properly rehabilitate those who are convicted (McAliden, 2005, p. 374). Secondly, the various stages of the criminal justice system have been noted as common triggers for re-traumatisation for survivor-victims (Koss, Bachar & Hopkins, 2003, pp. 387-388). Finally,

because of these dysfunctionalities and the re-traumatizing effects of the criminal justice system, the lack of reporting, at a rate of 10%, is also an area of concern (Randall, 2010, p. 431).

Survivor-victims should feel more confident participating in the criminal justice system. Melanie Randall has called attention to four main areas still in need of reform: the attacks on victim credibility in trials, the unfounding of cases by police and Crown counsel, the lack of trauma-informed practices within the criminal justice system, and complexities of consent law which make it difficult to secure convictions for some types of sexual assaults (Randall, p. 404).⁴

RJ functions within the legal system, where the process occurs in lieu of criminal charges or in conjunction with them, and outside of the legal system, where it is an entirely community-based response to a harm that is brought directly to the RJ practitioner and does not involve the traditional legal system. Although there are many academics who continue to push for legal reform, there are other academics and advocates who question the foundational ability of traditional law to properly address sexualized violence and gendered violence. Some argue that the basic structure of the trial process is incompatible with the needs of sexual assault survivor-victims and the nature of sexual assault (Joyce-Wojtas & Keenan, 2016, p. 61-62). They argue that because of its adversarial nature, shame will always be an element of the process, which is detrimental to the wellbeing of survivor-victims. In Germany and South Africa, there are sexual assault-specialized trial processes, where the trials are constructed to better support the survivor-victim through a jury-less trial or specialised prosecution, but they are also unable to fully prevent re-traumatization (Koss & Achilles, 2008, pp. 3-4)⁵. The high standard of proof needed for evidence in order to convict is hard to attain in sexual assault cases (Hudson, 2002, p. 622).

⁴ The concept of trauma-informed practice refers to a practice of any social program that incorporates an understanding of how traumatic experiences affect people's behaviour and how to lower the chances that that social program will cause any re-traumatization (Randall, 2013, p. 491).

⁵ This trial processes are similar to the Domestic Violence Specialized Courts in British Columbia.

Some believe that the removal of formal bias in law has not been enough to counter discrimination and implicit bias against women, LGBTQ people, and gender non-binary people (Johnson, 2012, p. 614). Some advocates point to increased awareness around sexual assault as the most successful part of reform initiatives, rather than the actual changes in law (Curtis-Fawley & Daly, 2005, p. 614). There are several academics who suggest that, due to the barriers still apparent after many years of effort, it is time to move on from law reform and focus on other avenues that combat sexualized violence (Daly, 2014, p. 379; McGlynn, 2011, pp. 826, 836, 838; Naylor 2010, p. 664). In contrast, others recognise that the ongoing difficulties with the legal system mean that concentrating all efforts on it is unwise, but they suggest that there is room to continue improving the traditional legal system in addition to developing other avenues like RJ (Randall, 2013, p. 492).

Offender rehabilitation

One of the major efforts in sexual assault law reform initiatives is to ensure more convictions and longer sentences for offenders. The effort to increase rates of conviction is, understandably, based on the goal of providing a functioning criminal justice system and ensuring survivor-victims' desired outcomes. The push for harsher sentences is driven by the desire to see more social condemnation of sexual assault, in order to reduce offence rates (Martin, 1998, p. 155; Naylor, 2010, p. 684). There are several issues with this premise. Research shows that survivor-victims have more complex needs than simply wanting to see offenders punished, but offender punishment has now become synonymous with healing and closure for survivor-victims (Martin, p. 156; McGlynn, 2011, p. 837-838). The efforts for social condemnation have resulted in a contradictory societal response to sexual assault. While there is more awareness and understanding that sexual assault is a crime, there is still the minimisation of the impact of sex

offending along with a greater demonization of sex offenders. Minimization leads to the stereotypes of what “real rape” is, which leads to the demonization of sex offenders who are depicted as villainous strangers. This is followed by the “tough-on-crime” agenda, which leads back to the minimisation of offenders who do not appear villainous, because many sex offenders often do not commit assault in the stereotypical manner (Daly, 2014, p. 379).

The research conducted on the results of harsher punishment, as well as general incarceration for sex offenders, does not indicate that it has the desired effect of ultimately reducing offences, regardless of level of social condemnation. Minor sex offences are indicative of future sex offending, but most offenders leave the system without any preventative measures in place. Most offenders commit multiple acts with multiple victims in their life, so without preventative measures in place, the possibility of reoffence becomes greater (Koss, Bachar & Hopkins, 2003, p. 385). Labelling theory ascribes that harsh interventions after minor crimes increase the possibility of reoffending.⁶ Some academics assert that young offenders should have the opportunity to grow out of crime without the stigmatisation that prevents them from associating with non-offending peers, being employed, and taking on the responsibilities of citizenship (Hudson, 2002, p. 618-619). Incarceration also reinforces a cycle of sexual abuse. The threat of incarceration prevents offenders from coming forward and taking responsibility, as it reinforces the silence and shame around sexual assault, which can result in the continuation of the cycle of abuse (Cripps & McGlade, 2008, p. 244). This promotion of shame also means that survivor-victims do not come forward to seek the help they need and end up becoming offenders themselves (Noll, 2005, p. 244). Regardless of call for harsher sentences, as with other crimes,

⁶ Labelling theory refers to the concept that when people are labelled as offenders, this leads to changes in their self-perception and the perception of others, leading them to adopt the role of offender and to subsequent offending (Hampton, 1975, p. 64).

most offenders will eventually return to the community. These harsher sentences that were advocated for often end without conditional release, meaning that offenders do not receive any re-entry support and are at higher risk of recidivism (Wilson & Prinz, 2002, p. 62). The stigmatization of sex offending not only encourages reoffending because they are lacking support and community as well as being denied social services due to their criminal standing, but the return to deviant behaviours can be more sophisticated and more surreptitious, ensuring repeat offenders are harder to apprehend later (Karp, Shackford-Bradley, Wilson & Williamsen, 2016, p. 33; McAlinden, 2005, p. 379).

Offender rehabilitation and recidivism are not the main priority for anti-violence advocates and RJ researchers, but there is value in understanding whether treatment can aid in the prevention of gendered violence. There are many ways in which rehabilitation and reintegration assist with lowering the potential for recidivism, including risk management, group support, therapy, and counselling (Joyce-Wojtas & Keenan, 2016, p. 49). Treatment for sex offenders has a small but significant effect on recidivism (Gelb, 2007, p. 37; Ptacek, 2010, pp. 21-22). Additionally, community support is believed to prevent gendered violence as social disapproval deters deviance more than other forms of punishment and the offender's community can help regulate their behaviour. (Presser & Garder, 2000, p. 184) Reintegration after incarceration is most successful when the offender's plans are in line with the survivor-victim's and community's needs, which is one benefit to including RJ in the reintegration process where desired and appropriate (Joyce-Wojtas & Keenan, p. 49).

Some RJ processes use reintegrative shaming, where the choice to commit assault is shamed rather than the offender as a person. The offender is welcomed back into the community once they have taken responsibility and worked to repair the harm (McAlinden, 2005, p. 376). Other

RJ processes focus on responsibility and respect for self and others as it pertains to reintegration (Daly, 2006, p. 351). The combination of counselling and RJ is more frequently seen in programs today and is particularly successful in reintegration (Joyce-Wojtas & Keenan, p. 49). Low-risk offenders have an easier time reintegrating after participating solely in RJ, while high-risk offenders fare better in reintegration after both RJ and treatment (Daly, Bouhours, Broadhurst & Loh, 2013, p. 246).

2.4 Current state of restorative justice for sexual assault cases

The review of the current state will consist of three sections. The first will examine different researcher perspectives. The majority of current academics are supporters of RJ for sexual assault. However, they still differ on conceptual frameworks and practical applications. The second section will detail the premises of 10 different programs, in Canada and abroad, that concentrate on RJ for sexual assault. The third section will review recent research on outcomes and effectiveness in four different studies.

Perspectives

The literature generally tends to support RJ as an option for survivor-victims, even if writers diverge in their opinions on how best to implement these processes. Constance Backhouse, a Canadian feminist legal scholar, explores the relationship between prison and a lack of deterrence or rehabilitation. She points to the dangers of incarcerating sex offenders in institutions that reinforce toxic masculinity and violence (2012, pp. 733-735). Through this exploration and the continuing concerns with the criminal justice system's inability to adequately address sexual assault, Backhouse believes feminists should continue exploring RJ options and investing in innovative possibilities to address sexual assault. She does note that this

conversation is still focused on addressing symptoms of systemic sexual violence rather than looking at preventative measures (2012, pp. 725, 737). Melanie Randall, another Canadian feminist legal scholar, calls herself a “cautious convert”, as she was once sceptical of RJ for sexual assault, but now believes feminists should engage with RJ. Feminists and RJ practitioners share common values, such as a commitment to equality and social justice and an understanding of how survivor-victims and communities are affected by harm. Those values can be used as foundations to working together (Kasparian, 2014, p. 401; Randall, 2013, pp. 465-466). Randall, in contrast to Backhouse, believes there is potential for RJ in these cases to function as a preventative measure because it engages bystanders from the community in order to challenge social norms. She believes that in some cases, RJ is an appropriate and even preferable option as it can provide an in-depth focus on the survivor-victim’s experience (Randall, p. 479). Several other academics also agree with Randall’s assertion. Some think that community involvement allows for the strengthening of community bonds, which is a form of social control, potentially resulting in a reduction in sexual assault and certainly improving reintegration of both survivor-victims and offenders (Joyce-Wojtas & Keenan, 2016, p. 50). Others assert that RJ has “great potential for deconstructing systemic belief systems of gendered violence” through community understanding and encouraging disclosures (Hopkins & Koss, 2005, p. 714-715).

There are current academics who suggest our idea of what success means in criminal justice should shift from the number of convictions to survivor-victim outcomes (McGlynn, Westmarland & Godden, 2012, p. 231). A review of the handling of sexual assault disclosures by the English and Welsh criminal justice system found that survivor-victims wanted to participate in processes that honoured their experiences. Convictions were not always essential to having one’s experience honoured, but other elements such as dignified treatment, demonstrated belief

and validation, support services, the ability to make informed choices, and feeling in control were part of that honouring experience (Stern, 2010, pp. 14, 101). Both the United Nations Commission on the Status of Women and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence only require that RJ for sexual assault is prohibited when it is mandatorily-enforced. The Canadian Federal Government Working Group Recommendations for RJ for Violence against Women Cases allows for the option of RJ for sexual assault so long as meets a list of requirements (Skinnider, 2014, pp. 130-131). There is still a government-imposed moratorium in place in Nova Scotia that prevents RJ organisations from taking on sexual assault cases (Rubin, 2010, p. 81). The advocacy groups that encouraged the implementation of the moratorium stated that they did not reject the premise of RJ for sexual assault but found that its current practice in 2000 was not acceptable (Rubin, p. 95). Kathleen Daly advocated for a lift on moratoriums with a careful introduction of justice mechanisms to be monitored for an evidence base (Daly, 2014, p. 381). There is an important caution in the literature warning that as RJ becomes more popular and programs increase in number and capacity, there will be an increased demand to address cases of gendered violence, but there is often a gap between what practitioners are prepared for and what is being asked of them (Edwards & Haslett, 2010, p. 894).

Programs

Throughout the literature, there were ten programs in different countries that used RJ processes or have been influenced by the practice of RJ to deal with sexual assault cases. Some of the programs listed are completed and others are on-going.

In Canada, there are three main programs that have been established to specifically address sexual assault which use RJ or have been influenced by the practice of RJ. There are other organisations and programs that use RJ for sexual assault, but their mandates are not specific to sexual crimes. The first of the three is the Revive Program, which is a part of Community Justice Initiatives in Kitchener, Ontario. The Revive Program offers a variety of services, including separate mutual-aid groups for survivor-victims and offenders and facilitated dialogue services between survivor-victims and offenders (McEvoy, 2008, p. 1). The second program is the Community Reintegration Project run by Mennonite Central Committee with support from the Correctional Services of Canada. It offers circles of support and accountability (COSA), where community groups support offenders and hold them accountable to safely and ethically manage the risk of future sex offences. The primary goal is to prevent future victimisations (Wilson & Prinzo, 2002, p. 60). The third program is the Hollow Water Community Holistic Circle Healing Program. It is a program that is specific to the Hollow Water Indigenous community. It started as a response to the widespread sexual abuse that faced the community. While it is influenced by RJ philosophy by using the restorative principles that were relevant to Hollow Water, it does not consider itself to be a RJ process (Cripps & McGlade, 2008, p. 244). It has been included in the list of Canadian programs because of the many articles on RJ and RJ programs that cite its influence as significant.

The other programs are concentrated in the United States, New Zealand, and Australia, but also exist in South Africa and Denmark. The Campus PRISM Project, which stands for Promoting Restorative Initiatives for Sexual Misconduct, focuses on post-secondary campuses. It uses a restorative approach regarding the prevention of sexualized violence, the response to sexualized violence, and the reintegration of survivor-victims and offenders (Karp, Shackford-Bradley,

Wilson & Williamsen, 2016, pp. 2-4). The Pennsylvania Office of the Victim Advocate offers a mediation program where one-half of participants that use the program are dealing with a sexual assault (Koss & Achilles, 2008, p. 5).⁷ The RESTORE Program in Arizona was a four-stage RJ program with a conference model that had a 12-month monitoring component (Koss, 2014, pp. 1627, 1640). The name stands for Responsibility and Equity for Sexual Transgressions Offering a Restorative Experience (Koss, Bachar & Hopkins, 2003, p. 389). The New Zealand Restore Project is inspired by the Arizona RESTORE Program (Jülich, Buttle, Cummins & Freeborn, 2010, p. 1). It includes self-referrals from adult survivor-victims, rather than solely referrals from the criminal justice system as with the Arizona program (Koss & Achilles, pp. 8-9). New Zealand also offers youth sexual offence conferencing (Daly, 2006, p. 334; Hudson, 2002, p. 619). This RJ work is supported by the New Zealand Government Taskforce for Action on Sexual Violence (Naylor, 2010, p. 674). In Australia, South Australia offers sexual offence conferencing for youth. In Australia, the city of Melbourne has sexual assault centres that provide RJ conferencing (Daly, p. 334; Hudson, p. 622; Naylor, p. 674). The Phaphamani Rape Crisis Counselling Centre in South Africa offers RJ processes for sexual assault (Koss, 2010, p. 234). Copenhagen, Denmark also has sexual assault centres that provide RJ conferencing (Naylor, p. 674).

Research: outcomes and effectiveness

Five notable studies were found in the literature: a study on the Community Reintegration Project, a study on the Revive Program, the Sexual Assault Archival Study, a study on RESTORE, and a study on the views of the public and survivor-victims. They all held generally

⁷ Though this program is referred to as a mediation process, Koss and Achilles have listed it in their scope of existing restorative justice programs because of the restorative principles that this program draws from.

favourable views on the outcomes and effectiveness of the programs and were able to provide insights on future initiatives.

In a study done on circles of support and accountability through the Community Reintegration Project in South-Central Ontario with the Mennonite Central Committee of Canada, out of the 30 sex offenders studied in the article, only three had reoffended compared to the predicted seven based on prior risk assessments (Wilson & Prinzo, 2002, pp. 68-73). Circles of support and accountability are restorative programs that can be one component of the RJ process if they are available and beneficial to the participants.

In a study of the Revive Program, the primary finding was the ability to heal relationships and individuals as well as reintegrate both survivor-victims and offenders back into the community. Reciprocal support was highlighted as being one of the most effective components of the group. Speaking in the group or direct support from others was not required to work through feelings and experiences. Simply listening to others allowed them to internalise discussions such as action plans and positive coping strategies. Survivor-victims responded that through discussions with other survivor-victims, their experience was normalised and validated and their voice was heard. Offenders noted that they had lower anger and increased positive mood from their participation. Because reoffence risk factors can include anger and negative moods, this was seen as a positive result (McEvoy, 2008, p. 145).

In the 2003 Sexual Assault Archival Study (SAAS), a quantitative look at youth sexual offence court and conference cases in South Australia, the author argues that, based on the evidence, the conference process may be less victimising than the court process for survivor-victims and produce more effective outcomes regarding recidivism with offenders. 61-67% of conference cases had full admissions of responsibility, while only 19% of court cases had full admissions of

responsibility. Reoffending after a court case was higher at 66% than after a conference at 48% (Daly, 2006, p. 348). A later study, which followed up with the Sexual Assault Archival Study and focused on the combined impact of RJ and therapeutic programs, found that post-SAAS youth who attended court had much higher levels of recidivism (14%), compared to youth who attended conferences (6%). The authors argue that it is unrealistic to believe that a RJ intervention of two hours would have a major effect on offender behaviour, so the intervention should be viewed as an opportunity to facilitate the decision to desist and seek further assistance (Daly, Bouhours, Broadhurst & Loh, 2013, p. 247).

The results of the RESTORE Program in Arizona support cautious optimism when it comes to feasibility, safety, and satisfactory outcomes. 10 out of 11 offenders initially charged with misdemeanour sexual offences and 6 out of 9 offenders initially charged with felony sexual offences completed the full program. All survivor-victims stated that they wanted to use RJ to reassert their agency after the assault. Many wanted to hold the offender accountable, to prevent assaults from happening again, and to ensure the offender received assistance in their rehabilitation. Most participants responded that that they felt safe, they were treated fairly and respected. 90% of participants reported that they were satisfied with the preparation stage, the conference, and the redress plans (Koss, 2014, pp. 1644, 1647).

The findings of a study done in the United Kingdom on the views of the public and survivor-victims show that both survivor-victims and non-survivor-victims (the public) had a positive view on RJ for sexual assault. No survivor respondent had participated in a RJ process for their assault, primarily because they had not been made aware of the option. A small amount (5 out of 29) of the survivor-victims said that they would consider participating in a RJ process. Survivor-victims had varying opinions on when RJ should be offered, but the majority responded that they

would not have been offended or re-traumatized regardless of when it was offered. Survivor-victims also had varying views on how they would have wanted RJ to occur; 30% preferring diversion and 56% preferring a concurrent process with the trial process (Marsh & Wager, 2015, pp. 352-353).

2.5 Feminist perspectives

Feminist perspectives are quite varied on the subject of RJ for sexual assault. This section will explore the polarisation between those who believe the potential for harm is too great a risk and those who believe it is a feminist alternative to the criminal justice system.

Feminist engagement with RJ often focuses on gendered and sexualized violence as it is regularly how women, LGBTQ people, and gender non-binary people become involved with the justice system (Daly & Stubbs, 2006, pp. 9-10). The modern understanding of victims' rights and needs, especially when it comes to sexual assault, is a result of the women's movement in the 1970s and onwards (Wemmers, 2009, p. 398). With that focus on victims' rights, some feminists have voiced concern over the fact that the RJ movement was started with offenders as the focus. They have argued that RJ will have to work to re-center victims (Herman, 2005, p. 578). Some have articulated that the reactionary feminist response to RJ in the past was due to a lack of consultation (Ney, 2014, p. 176). Through suggested consultation formats, some highlight the need for gender analysis within RJ programs, which is a type of analysis that discovers how people of different genders are affected by policy and programs differently and suggests varying solutions depending on different gender needs (Wychreschuk & Boland, 1999, p. 5). Others encourage a mutual experience of learning between RJ practitioners and anti-violence advocates, where practitioners and advocates work together to create RJ programs that address sexual

assault and bring back the knowledge they have gained from working together to their respective practices (Randall, 2013, p. 465; Stubbs, 2010, p. 115).

There are some feminist perspectives that other scholars have emphasised as being theoretically well-intentioned but disadvantageous. Sarah Curtis-Fawley and Kathleen Daly assert that, while it is indeed important to involve advocate perspectives throughout RJ programs, their opinions are not more important than the needs articulated by survivor-victims (Curtis-Fawley & Daly, 2005, p. 612). This is most apparent when looking at the research on the approaches to the offer of RJ. In the research done by Van Camp & Wemmers, they found that survivor-victims prefer a proactive approach to the offer of RJ, where all options are given to them to choose between at an appropriate time, as the opportunity for choice is empowering after a sexual assault (2016, p. 433). The protective method, where an offer of RJ is withheld unless the case is judged as appropriate is more in line with some victim advocate perspectives but is arguably paternalistic in nature despite good intentions. Another example of a well-intentioned but disadvantageous perspective is the greater comfort some feminist advocates have with RJ's use with youth offenders. While understandable, this is limiting the potential of RJ to a select group of the population and preventing survivor-victims with adult offenders from opting for a RJ process (Curtis-Fawley & Daly, p. 612). There is great potential for youth sexual offenders, especially when offending stems from a lack of consent education, but that is not reason enough to prevent survivor-victim with adult offenders from choosing RJ.

Kathleen Daly and Julie Stubbs conclude their article on feminist engagement with restorative justice with the assertion that in feminist circles there is a dichotomy of perspectives regarding RJ and sexual assault. Both perspectives position RJ in opposition to the law. Those who adhere to one perspective believe that the law is not able to accomplish the type of justice that survivor-

victims need, therefore necessitating the existence of RJ. The others believe that better legal reform can create a criminal justice system that works for survivor-victims, so there is no need for RJ (Daly & Stubbs, 2006, p. 22). Either way, justice reform is a feminist value (McGlynn, 2011, p. 825). Several academics connect together the basic values of feminism and RJ because both movements seek to improve access to justice for survivor-victims (Kasparian, 2014, p. 401; Ptacek, 2010, pp. 23-24). Some even go so far as to call RJ a feminist vision of justice, as truth-telling and emotional expression are valued activities in RJ and are tools used in feminist praxis to address patriarchal systems and toxic masculinity (Presser & Gaarder, 2000, p. 182). Howard Zehr asserts that in the context of sexualized violence, RJ could be a possible solution to the feminist request that communities actively participate in the dismantling of rape culture (2015, p. 26).⁸ Mary Koss believes that the anti-violence movement could find it empowering to take more ownership of the justice response to sexualized violence through partnership with RJ (2014, p. 1656).

2.6 Intersectional perspectives

Intersectional perspectives, by which it is understood that people who have different identities or experience different marginalisations will experience sexualized violence differently, are essential to the exploration of RJ, as different experiences of sexual assault will result in diverse needs and different desired outcomes (Crenshaw, 1991, pp. 1242-1243). This section will address the tensions around race within both the RJ movement and the feminist movement. It will then explore some of the needs of specific communities. Finally, it will address some concerns about access to RJ.

⁸ Rape culture refers to the existence of a group of beliefs enacted in so that sexualized violence is permitted, normalized, and encouraged. (Buchwald, Fletcher & Roth, 2005, p. vii).

Discussions around gendered and sexualized violence have been critiqued for failing to take an intersectional approach, (Cameron, 2006a, p. 494). RJ has also been critiqued by feminists for failing to take an intersectional approach to understanding the different needs of participants (Cameron, 2006b, p. 53). It is an intersectional point of view that sexualized violence cannot be addressed without addressing racism and neo-colonialism that help perpetuate that very violence (Ptacek, 2010, pp. 16-17).

There are tensions within the feminist community around intersectional perspectives and RJ, as gender-focused perspectives tend to focus on the survivor-victim and race-focused perspectives tend to focus on the offender (Daly & Stubbs, 2006, p. 19; Hudson, 1998, p. 238). This leaves those at the various intersections of race, gender, and sexuality with little support and appreciation for their specific experiences. Harsh penal measures regarding gendered violence are employed more often in marginalised communities (Hudson, p. 255). Some women of colour and Indigenous women experience the burden of wanting to realise their desired outcomes after sexual assault but not wanting to encourage racist stereotypes and further incarceration of men of colour and Indigenous men (Daly & Stubbs, pp. 20-21; Presser & Gaarder, 2000, p. 186).

Marginalised women, LGBTQ people, and gender non-binary people are more likely to be blamed for their assault as they appear to be less like the stereotype of the “perfect victim” (Johnson, 2012, pp. 625-626). This is especially relevant for sex workers who are sexually assaulted (Hughes & Mossman, 2002, p. 65). Asian women may not want to report in an effort to protect the image of the “model minority” (Presser & Gaarder, p. 186). Immigrants or non-legal residents are often too fearful of drawing attention to their residency status or unable to access the information they need in order to report sexual assault (Ptacek, 2010, p. 11). People of colour and poorer women, LGBTQ people, and gender non-binary people often see the courts and social

services as adversaries, so judicial intervention may not be appealing to them (Presser & Gaarder, 2000, p. 179; Van Wormer, 2009, p. 111). Because of this, RJ has the potential to improve reporting, especially for people of colour who have a greater distrust of the criminal justice system. This is evidenced by some research, such as a report funded by Status of Women Canada that found that participants in the Black focus group strongly supported RJ (Rubin, 2003, p. 13).

When taking an intersectional feminist lens, a response to sexualized violence should not have a disproportionate effect on race, class, disability or sexual identity (Backhouse, 2012, p. 733). That is why community interventions like RJ, rather than criminal justice interventions, may be preferable when addressing race, class and cultural concerns. It also allows for processes where members of a community can practice their culture with less concern for stereotyping or further abuse. Academics suggest that the best responses are the ones that allow affected parties to create solutions that are relevant to their experience and culture (Presser & Gaarder, p. 186).

There are many highlighted benefits to RJ when intersectional needs are considered, but there are also some concerns as well. There is concern around equal access to RJ programs, as people of colour may be less likely to be referred to a RJ program due to racist perceptions (Rubin, 2003 p. 11). A study done in Australia found that youth who were Aboriginal or from a poorer neighbourhood were more likely to go to court than to a RJ conference in their youth RJ program (Daly, 2006, p. 342). Additionally, there may not be as many accessible RJ programs in areas with less economic resources due to classism and racism (Rubin, p. 11).

2.7 Indigenous perspectives

Within Indigenous communities, the opinions and perspectives on RJ for sexual assault communities vary a great deal. First, this section will explain the relationship between Indigenous communities and RJ. Then, it will discuss some facts pertinent to the discussion of Indigenous communities and RJ for sexual assault, including the high rate of sexual assault that Indigenous women experience and the *R. v. Gladue* ruling. It will examine the groups that are opposed to RJ and the reasons for their critiques. This will be followed by the groups that support RJ and their reasoning. Finally, it will explore the reasons for the lack of consensus within Indigenous communities.

Periodically, RJ has its existence credited to Indigenous traditional justice, but the relationship between the two is much more complex. This assertion has been broadly debunked by scholars (Cameron, 2006b, p. 50; Wilson, Huculak & McWhinnie, 2002, p. 364). Indigenous communities are culturally diverse, as are their traditional justice systems. RJ values are similar to the values of some traditional Indigenous justice systems, but not all traditional Indigenous justice systems (Cameron, 2006b, pp. 50-51). The conflation of Indigenous cultures has allowed for RJ to be attributed to Indigenous people in the past. Regardless of similar values, RJ and traditional Indigenous justice systems have grown out of very different historical, cultural, and political contexts (Cameron, p. 51). Currently, there are some Indigenous communities that practice RJ. Other Indigenous communities regard RJ's Mennonite background as an indication of Western-style justice rather than traditional Indigenous justice. Some prefer to practice Aboriginal justice, which focuses more on self-governance and self-determination (Cameron, p. 51).

It is necessary to understand the relation of both RJ and sexual assault in an Indigenous context when examining Indigenous perspectives. Both Statistics Canada and the Native Women's Association of Canada's research shows that the sexual assault rates for Indigenous women are three times higher than for non-Indigenous women (Noll, 2005, p. 244; Sheehy, 2012, p. 486). The high rates of sexualized, gendered and family violence in Indigenous communities derive from the long history of colonisation and marginalisation in Canada (Cripps & McGlade, 2008, p. 242; Daly, 2002, p. 7). While there has not been a great deal of documented work done with RJ and sexual assault in Indigenous communities, save for the Hollow Water Community Holistic Circle Healing Program, the R. v. Gladue ruling from 1999 clarified that judges must consider the background of Indigenous offenders in sentencing (Turpel-Lafond, 1999, p. 34). Mary Ellen Turpel-Lafond contends that the ruling endorsed RJ as a justice measure (p. 35). R. v. Gladue ruled that RJ sanctions can function in the same way as the court system with denunciation, deterrence, and rehabilitation (Wilson & Prinzo, 2002, p. 67). In addition, negotiated protocols between Canadian government and Indigenous communities allow for RJ programs and pilot projects. These programs are usually diversionary, like the Hollow Water Community Holistic Circle Healing Program, rather than a joint program with the criminal justice system (BC Association of Specialized Victim Assistance, 2002, p. 6).

Critique

Restorative implementation in the criminal justice system is not without its critics from Indigenous communities. The R. v. Gladue ruling has been critiqued for failing to apply a gender analysis lens in the production of the ruling. While it takes into consideration the needs of Indigenous people in general, it does not necessarily translate to the lived experiences of Indigenous women (Hughes & Mossman, 2002, p. 49). There has also been critique on

judicially-convened sentencing circles in Canada, including whether they are appropriate for Indigenous communities and if they should be considered restorative processes. In specific reference to concerns related to sexualized violence, there have been times when the sentencing circles have proceeded when survivor-victims reported being pressured or coerced into participating (Cameron, 2006a, p. 503).

There are several Indigenous women's groups that have presented critiques. The Aboriginal Women's Action Network in British Columbia and Canada oppose RJ for violence against women because of a demonstrated lack of understanding of the legacy of colonialism and how it affects Indigenous women. This position was developed after consultations with Indigenous communities (Stubbs, 2010, p. 107). The Naukana Native Women's Association of Vancouver Island is another Indigenous women's group that has been opposed to RJ for violence against women due to lack of survivor-victim input (BC Association of Specialized Victim Assistance, 2002, p. 8). Critics address the presumption of healed communities, which refers to the belief that once the RJ process is complete, the participants will be able to return to communities which do not have systemic issues of sexualized violence and are able to support them. Other Indigenous women worry about pressure to participate in RJ processes that deal with gendered violence and the potential loss of access to Canadian law protection (Ney, 2014, p. 176). They would prefer formal interventions from systems that they deem harmful rather than inadequate safety measures and the potential for coercion into participation.

Support

Not all Indigenous women are of the opinion that RJ is another flawed response to sexual assault. The Native Women's Association of Canada has offered conditional support for RJ when

Indigenous women are fully included in the planning and their needs are met (Stubbs, 2010, p. 108). There are examples of successful RJ processes that dealt with sexual assaults in Indigenous communities. Healing circles have been successful in Indigenous communities where there is community support for the survivor-victim (Van Wormer, 2009, p. 110). The Hollow Water Community Holistic Circle Healing Program was supported by many Ojibway women as it was seen as a safe and healthy alternative (Cameron, 2006b, p. 56). In Australia, Indigenous reports have identified the Hollow Water Community Holistic Circle Healing Program as a model for implementation in their communities (Cripps & McGlade, 2008, pp. 241-242). In fact, Australian research shows that Indigenous women support RJ more than non-Indigenous women (Daly & Stubbs, 2006, p. 21; Naylor, 2010, p. 677)

Lack of consensus

There is a great lack of consensus regarding RJ and sexual assault with Indigenous communities in Canada, just as there is in feminist communities. The diverging opinions exist because some Indigenous women prioritise self-governance, while some prioritise the immediate safety of Indigenous women and children. Some Indigenous women believe that RJ is viable but has been poorly executed in their communities. Others believe that RJ theory is flawed and cannot appropriately be applied to sexualized violence (Cameron, 2006b, p. 57-59; Stubbs, 2010, p. 113). These different positions reflect different understandings of gender and race (Cameron, p. 50). The research reinforces the assertion from Indigenous communities that their communities in Canada and Indigenous communities globally should not be viewed as a homogenous entity but as distinct cultures with different histories of justice systems and different justice needs. It has been suggested that if RJ is used in Indigenous context, it should be reworked out of a Western justice model. To avoid imposing further neo-colonialist justice systems, it should not

be adopted formulaically (Daly & Stubbs, 2006, p. 20). Additionally, if restorative approaches are promoted in Indigenous communities, such as with the R. v. Gladue ruling, there is a need to make sure the communities are supported, especially with financial support, so that justice system processes are not offloaded on Indigenous communities and become unfairly burdensome (Turpel-Lafond, 1999, p. 48).

2.8 Supporters and critics

This section will focus on the reasoning behind the support and critiques of RJ for sexual assault within academia. It will first discuss the supporting arguments, including the ability to meet the needs of the participants and the demand for other options besides the criminal justice system. It will follow with the critiquing arguments, including the tendency for RJ to focus on the offender's needs and the potential for re-traumatisation. Lastly, it will explore the uniting goals that both sides prioritise.

Support

The supporting arguments for RJ's use with sexual assault come from a variety of academic backgrounds, including RJ theory, feminism and criminology. The following are some of the main arguments of support around RJ and sexual assault.

The potential outcomes in these cases are lauded. Some authors assert that RJ in cases of sexual assault can better meet many of the needs of survivor-victims and can better support offender reintegration than the alternatives that exist (Cripps & McGlade, 2008, p. 247; Naylor, 2010, p. 688; Wychreschuk & Boland, 1999, p. 29). Both survivor-victims and offenders are often more willing to come forward to seek a RJ process rather than a criminal justice process (Daly, 2006, p. 352). Survivor-victims can avoid the re-traumatising experience of the criminal justice system

through RJ (Marsh & Wager, 2015, p. 339). RJ can condemn violence more meaningfully for some, as offenders are able to witness the validation of the survivor-victim's experience by others, rather than the victim-blaming and shaming they witness elsewhere in the community (Hudson, 2002, p. 625; Marsh & Wager, p. 339).

There are those who support RJ for sexual assault based on its potential for Indigenous communities. They believe that justice for gender-based violence should prioritise the people it affects, not the laws that were broken. Based on the experience of the Indian Residential School Settlement model and discussion on the needs of survivor-victims of the sexual abuse that took place within the residential schools, it has been argued that a restorative approach would allow for a better understanding of how these violations affected individuals and how they relate to communities and institutions. This would allow for better practices in line with the traditions of specific Indigenous communities (Hanson, 2016, p. 2).

The structural benefits are greatly supported. The communal participation in justice processes provides the opportunity for communities to revisit community values and develop the skills to address social issues and enhance consenting interactions. (Elliot, 2011, p. 75). This could be considered as a method of dismantling rape culture as community participation is necessary to reshape the social structures that allow for sexualized violence. Additionally, it provides space for people who might be driven to vigilantism and it prevents vigilantism by creating confidence that communities are able to address sexual assaults (McAliden, 2005, p. 386). Due to the hardships that survivor-victims face in the criminal justice system, RJ is an option for the many survivor-victims who are left out of the criminal justice system or that do not want to be involved with the criminal justice system (Marsh & Wager, 2015, p. 340). Ultimately, it is argued that it

would not be a feminist response to deny any option to a survivor-victim who desired it, including the option of RJ (Martin, 1998, p. 185).

Critiques

The majority of the critiques of RJ come from anti-violence, feminist and victim-oriented literature. The following are some of the main concerns that exist around RJ for sexual assault.

Procedural methods and outcomes are of concern. These restorative processes can focus excessively on the offender's rehabilitation rather than the survivor-victim's needs. Sometimes the survivor-victim can be used as a prop to meet the offender's needs rather than an equally important or priority participant (Cripps & McGlade, 2008, p. 251). These processes do not ensure that survivor-victim stories and assault statistics end up in the public record (Hanson, 2016, p. 2; Presser & Gaarder, 2000, p. 175). Because RJ is less accountable to the public, there is opportunity to harm marginalised populations (Wychreschuk & Boland, 2000, p. 9). The volunteer-based nature of many RJ organisations can mean that the processes are facilitated by people who do not properly understand the impacts of sexualized violence and trauma (Rubin, 2003, p. 110). There is a potential for re-traumatisation, especially if the offender attempts to use the process to manipulate or blame the survivor-victim (Marsh & Wager, 2015, pp. 340-341). There is also concern that participants will be coerced or pressured into participating, reaching an agreement, or forgiving the offender. This is especially of concern in smaller communities, where community members do not want the offender to be charged or sentenced. In other instances, survivor-victims may be pressured into participation from others who believe RJ would be their best option (Marsh & Wager, p. 340).

There are also several gender-based critiques. First, as communities are often complicit in gendered violence, the RJ presumption that all communities can deal with gendered violence through community-based justice is considered to be theoretically flawed (Cripps & McGlade, 2008, p. 251; Rubin, 2010, p. 81; Wychreschuk & Boland, 2000, p. 9). A specific manifestation of this concern consists of participants involved discussing harmful beliefs about sexual assault during a dialogue. Second, even though RJ is not a “soft on crime” approach, the public perception that it is a lenient punishment persists. Because of this, the public perception could consider RJ to take sexual assault much less seriously than it should and could potentially cause more violence (Curtis-Fawley & Daly, 2005, p. 624-625). This is often referred to as the potential for “decriminalisation” (Wychreschuk & Boland, p. 4). Additionally, some argue that through RJ, women, LGBTQ people, and gender non-binary people are expected to manage the issues of sexualized violence impacting them without state assistance. There is also concern that the use of RJ will raise demands on sexualized violence services without additional support for them (Rubin, 2003, p. 23). Finally, there are feminist and RJ advocates concerned that by using RJ more frequently, it would curtail the pressure on court system reform to better address sexual assault

Joint understandings

The supporting arguments and critiques are largely based on theory and have a polarising effect. However, even those who advocate for it recognise the limitations of the practice and do not consider it a panacea (Martin, 1998, p. 186). Additionally, there are critics who do not fundamentally oppose RJ for sexual assault but are waiting for further research that assuages concerns before offering support (Cameron, 2006b, p. 66). Both supporters and critics have the

goal of ensuring that the Canadian justice system provides safety and dignity for survivor-victims and treats offenders without discrimination (Cameron, 2006a, p. 509).

2.9 Best practices

In the final section of the literature review, a collection of best practices will be provided. It will present best practices within six specific areas: survivor-victims, offenders, practitioners, process formats, tensions within best practices, and broader needs. The literature provides a thorough look at best practices. Some come as conclusions after theoretical research, some from concrete programs, and some from pre-existing reviews of best practices. Not only do best practices allow practitioners engaged in research to develop their skills, it provides insight as to where the state of practice is at in recent years.

Survivor-victims

The best way to inform survivor-victims of their options after a sexual assault is in a proactive manner. This involves providing clear and complete information on all their options on a consistent basis. The offer of RJ needs to come with a guarantee of voluntary participation on the part of the referrer (Van Camp & Wemmers, 2016, p. 430). Referrals can be done by anyone involved in the case (Ikpa, 2007, p. 319). Referrers should avoid suggesting that one process is superior to other processes but should support self-determination and encourage survivor-victims to feel empowered to make decisions themselves (Wychreschuk & Boland, 2000, p. 16).

It is important to avoid positioning the survivor-victim as a tool to further offender rehabilitation (Mercer & Madsen, 2011, p. 21; Wychreschuk & Boland, p. 7). The priority should be focused on welcoming survivor-victim back into the communities from which they feel excluded (Herman, 2005, p. 598). Reintegration of the offender into the community does not need to

involve the survivor-victim, it can be a separate process (McAlinden, 2005, pp. 374-375). There should be no emphasis on or pressure to forgive or reconcile (McEvoy, 2008, p. 157; Randall, 2013, pp. 473-474). There should be a focus on giving a voice to the survivor-victim. This involves them having a deciding role throughout the process rather than simply being a participant, especially in the planning stages (Stubbs, 2010, p. 115; Van Wormer, 2009, p. 110). Survivor-victims should always consent to the various elements of the process (Skinnider, 2014, p. 130). If an apology is given, survivor-victims do not need to accept the apology if they do not want to (McGlynn, Westmarland & Godden, 2012, p. 228).

Some suggest that the survivor-victim attend therapy or counselling during or after the process, as it can be draining and difficult on survivor-victims to relive the memories of the assault (McGlynn, Westmarland & Godden, p. 228-229). Others are not as adamant about therapy or counselling but suggest that practitioner should be evaluating the need regularly and discussing the emotional pressures in the preparation stage. While the process can be therapeutic, the boundaries between RJ and therapy or counselling should be clearly defined (Mercer & Madsen, p. 45).

Offenders

It is almost always suggested that the offender must take responsibility for the sexual assault at some point in the process (Skinnider, 2014, p. 130). With RJ for sexual assault, a sophisticated understanding of responsibility is required. It may be very difficult for offenders to take responsibility due to shame or immaturity. Some level of responsibility should be required, but the extent depends on the survivor-victim's needs. Some survivor-victims will want to witness a

full admission of responsibility. Others will emphasise their time to speak and will not require a full discussion of accountability (Mercer & Madsen, 2011, p. 26).

There is a need to ensure that due process rights and just outcomes are guaranteed for offenders (Braithwaite, 1999, p. 73). Offenders should have clear expectations about legal outcomes including charges, criminal records, and sex offender registries (Naylor, 2010, p. 671). It is suggested that the offender has a support person with them during any dialogue. This allows for another person to oversee the offender's rights. When not possible, then the facilitator should debrief with them afterwards (McGlynn, Westmarland & Godden, 2012, p. 230). The offender's support people who are present should not be there to defend them, but to help them take accountability (Randall, 2013, p. 483). Some suggest that men's presence will better help to hold male offenders accountable (Daly, 2002, p. 17). Offender remorse should not be interpreted alone as a commitment to stop further violence, so additional support may be needed, as taking responsibility is a difficult process for many (Edwards & Haslett, 2010, p. 901). This is why sex offender therapy is often recommended in addition to the RJ process (Mercer & Madsen, p. 32).

Process formats

There are several models of RJ that are highlighted as being most relevant to gendered violence: victim-offender conference, family group conferencing, healing circles, and community reparations (Van Wormer, 2009, p. 107). If the survivor-victim does not want to be physically present in a dialogue with the offender, other formats can include surrogate survivor-victims, surrogate offenders, or indirect contact like letters (Marsh & Wager, p. 344). The ability to blend multiple processes together can suit the needs of participants rather than make participants fit the

process. Many articles caution that practitioners should not blindly apply generic RJ processes to sexual assault cases (McGlynn, Westmarland & Godden, 2012, p. 235; Stubbs, 2010, p. 115).

Preparatory sessions should be in-depth and should not have a forced pace (Mercer & Madsen, 2011, p. 36). The sessions should focus on expectations, feelings and clarifications of boundaries (Van Wormer, 2009, p. 110). It can be beneficial to rehearse what is going to be said. Often survivor-victim will not get a satisfactory response to their question of why they were assaulted, so it is important to prepare them for that experience (Mercer & Madsen, 2011, p. 37). It is suggested that a basic script is developed with participants to establish who speaks at what time and on what issues so that participants can prepare, ensure they will discuss all relevant points, and feel secure in the dialogue. Some suggest that the offender speaks first, as having an admission of responsibility right away helped set the tone (McGlynn, Westmarland & Godden, p. 227).

Along with sufficient preparation, there needs to be effective screening and risk assessment (McGlynn, 2011, p. 831). Victim advocates could be included in the screening process (Curtis-Fawley & Daly, 2005, p. 628). Others suggest standardized screening procedures (Presser & Gaarder, 2000, p. 187). It is recommended to include victim advocates, rape crisis counsellors or experts on sex offending and victimisation as supports for the survivor-victim in the process. They can also speak generally about the effects of sexual assault, they can quickly recognise potentially harmful situations, and they can help manage expectations (Marsh & Wager, 2015, p. 341; Martin, 1998, p. 187; McGlynn, Westmarland & Godden, pp. 229-230; Stubbs, 2010, p. 115).

Practitioners

Proper training is one of the most emphasised best practices in the literature (Karp, Shackford-Bradley, Wilson & Williamsen, 2016, pp. 40-41; Jülich, Buttle, Cummins & Freeborn, 2010, p. 65; Skinnider, 2014, p. 130). Training will allow RJ processes for sexual assault cases to be run by qualified, attuned practitioners who are well-versed in the specifics of sexual assault, including the needs of participants and the dynamics at play. Some suggest feminist involvement in the development and delivery of the training (Daly, 2002, p. 17). Additionally, practitioners should be mindful of the different experiences that come with rural and urban areas (BC Association of Specialized Victim Assistance, 2002, p. 3). There is a specific need to understand that survivor-victims might have very small or specific communities in the aftermath of the assault (Rubin, 2003, p. 71). Practitioners should be also able to recognise and work with trauma & post-traumatic stress disorder (Mercer & Madsen, 2011, p. 23).

Tensions in best practices

There are some best practices that have equally compelling counterpoints. Often one point will come from the experience or desire to keep the survivor-victim safe and the counterpoint will come from the experience of success through a flexible and empowering process. A fundamental best practice involves ensuring that no further harm is done to the survivor-victim (Wychreschuk & Boland, 2000, p. 7). However, this would mean that practitioners may have to reject or stop a RJ process despite the informed wishes of a survivor-victim (Mercer & Madsen, 2011, p. 20). Some believe that RJ may be more appropriate for relatively isolated incidents of sexual assault rather than ongoing intimate-partner violence that included sexual assault. This is not because of the level of severity but because of the characteristics that are involved in those types of cases

(Randall, 2013, p. 477). Others believe that it is up to the survivor-victim to determine if they want to use RJ.

There are also procedural tensions within best practices. Some think that a formal apology from the offender will catalyze their reintegration (Kasparian, 2014, p. 407). Others suggest it may not be effective or appropriate to require an apology from every offender but suggest allowing survivor-victims to decide how they want to proceed. Some suggest that the facilitator work is best done in gender-balanced pairs, meaning one male and one female practitioner (Joyce-Wojtas & Keenan, 2016, p. 60). However, this may not be what best suits some processes. It is also a gender-binary framework that may exclude gender non-binary practitioners and omits the experiences of gender non-binary participants. Some suggest the development of standard practices and state oversight to ensure harm is not being done through these processes (Randall, p. 490). However, the flexibility that comes from a lack of standard practices allows practitioners to best meet participant needs.

Broader needs

These following broader needs are less focused on specific best practices, but more focused on the best practice frameworks needed for RJ for sexual assault to thrive. RJ for sexual assault needs to function as both an expressive and instrumental form of justice, just as the criminal justice system is intended to function (Hudson, 1998, p. 246).⁹ There is a need for public education on RJ to ensure that it can function as an expressive form of justice and is more likely to be recommended to survivor-victims (Curtis-Fawley & Daly, 2005, p. 618; Rubin, 2010, pp. 92-93). Some suggest active feminist leadership and community organisation to create public

⁹ Instrumental justice refers to the function of law that provides incentives and punishments to behave in certain ways. Expressive justice refers to the function of law that shapes group values and norms which influence individual behaviours (Nadler, 2017, p. 60).

support for survivor-victims, close collaboration with the state to encourage these crimes to be taken crimes seriously, and active political organising to accomplish this (Herman, 2005, p. 599). RJ options should be developed in conjunction with and separate from the criminal justice system so that survivor-victims can access RJ inside and outside of the criminal justice system referrals (Kasparian, 2014, p. 403). External settings can include sexual assault centres, schools, neighbourhoods, and prisons (Koss & Achilles, 2008, p. 10). There should be an analysis of the cost of RJ for sexual assault, which should include any potential for downloading financial burdens to communities and whether any cost savings will go back into to the communities (Rubin, 2003, p. 23). Organisations can implement monitoring and evaluation of their programs to see if they are impacting the demand for other services in their communities (Wychreschuk & Boland, 1999, p. 39).

Overall, these best practices are not meant to be strictly prescriptive, but rather are meant to encourage practitioners to use a careful, thoughtful and flexible approach so that each case is conducted safely and appropriately (Mercer & Madsen, 2011, p. 22). The more that practitioners are educated on the options within RJ for sexual assault, the better they will be able to tailor their process to meet the needs of the participants.

Chapter 3: Methodology and methods

In this chapter, the methodology and the methods applied in this study will be provided. First, the methodology and research design will be discussed (3.1). It will focus on the qualitative framework, grounded theory, and the exploratory approach taken in this study. Following, the data collection process (3.2) and the methods of analysis will be reviewed (3.3). The ethical considerations that were required of this study will be provided and explained (3.4). Subsequently, the limitations and delimitations will be reviewed (3.5). Finally, an overview of the participant collection process and resulting participants will be provided (3.6).

3.1 Methodology & research design

This research study is built on a qualitative framework. Certain types of experiences cannot be properly expressed through numerical data or a quantitative approach, including the nuances of justice processes that address complex and sensitive situations such as the sexual assault cases this study seeks to explore (Berg & Lune, 2012, p. 3). With the qualitative approach that this study takes, it has started from an inductive position and sought to build up concepts and reasoning throughout the process.

This study has based its design and execution in grounded theory. Grounded theory focuses on generating a theory based on data collected from participants who have all experienced the process being researched. This theory allows for a general explanation of a process shaped by the views of the participants (Creswell, 2012, pp. 83-84). Grounded theory was chosen in an effort to move away from the traditional means of research where knowledge is situated solely with the researcher. It aims to create a reciprocal means of research between the research and the researched where the production of knowledge is situated with the researched (Denzin &

Lincoln, 2011, p. 148). Grounded theory is suggested as a theory for social justice research (Denzin & Lincoln, p. 359). While this study does not take a social justice-specific lens to the issues, it is undeniable that the prevalence of sexualized violence is a social justice issue and the work done in the area of RJ and sexual assault is considered by many as social justice work.

This research project is taking an exploratory approach. As there is little research that has already been conducted on the current use of RJ as an approach to addressing sexual assault in Canada, it is a relatively new subject. There is only a working hypothesis in this research design indicated by the direction of the research question; it seeks mainly to explore the opportunities available in the area of RJ. As this is a complex and controversial subject, the study will aim to understand if this is an area worth further exploration and development or if there are better opportunities elsewhere on which research should be focused. This will allow for the development of future studies that are sensitive and well-founded; two important elements needed for this subject matter if future data collection will be involving sexual assault survivor-victims and offenders. This will also allow for a refinement of future research questions to engage in more pointed areas of knowledge (Shields & Rangarajan, p. 110).

As an exploratory approach often entails descriptive analysis, the data collected was descriptive in nature. The interview questions were designed to gain a broad picture of the experiences of practitioners in Canada and to answer the primary and secondary research questions. See *Appendix A* for the interview questions. Question 3 drew specifically from the recent work of Kathleen Daly. She suggested that a focus on victim satisfaction is not specific or comparable enough to best understand what needs are or are not being met with RJ for sexual assault cases. Daly broke down the types of survivor-victim needs into three categories: justice needs, survival and coping needs, and service and violence prevention needs (2014, pp. 386-389). This study has

chosen to focus on justice needs, as they are the most applicable to the framework of this study. The specific justice needs that were overviewed in the Daly paper were used as examples in the interview question. See *Appendix A* for interview questions.

3.2 Data collection

The sole method of data collection in this research project was through interviews. Other secondary methods of data collection, including focus groups and surveys, were considered. However, due to the qualitative and in-depth nature of the study, they were deemed to be potentially less effective. The interviews conducted were elite interviews, meaning that they were conducted with participants who are experts on the research topic. These types of participants can provide key information and highly-valuable perspectives (Flick, 2014, pp. 119-120). Interviews were conducted individually to assure privacy and sensitivity. These interviews were semi-structured, where a standard set of questions was asked, but there was room to probe for more information and to ask follow-up questions after intriguing responses (Berg & Lune, pp. 112-114). Each interview was conducted for approximately one hour. The transcriptions were provided upon request after the offer was given post-interview. There were no major alterations done to the transcripts. Only names, locations, and other identifying features were removed.

3.3 Methods of analysis

The data collected were analysed using a thematic analysis framework. The thematic data analysis process included thematic coding; a comparative manner of coding that allows for comparison of specific topics in interview cases and a holistic overview of the data (Flick, 2014, pp. 183-185). This comparative manner of coding is based in grounded theory's comparative levels of analysis. Data sets were compared to other data sets to create some of the coding topics

(Denzin & Lincoln, 2011, p. 361). Other topics were chosen in order to specifically respond to the research questions. Through the coding, the consistent content topics that occurred in throughout the data were identified. They were noted on every occasion in which they occurred, and any outliers were included so that the differences and similarities found in the data could be examined. Codes were grouped together to create categories (Denzin & Lincoln, p. 361). The content topics found in the data will be presented in the *Results* and will be grouped into themes in the *Discussion* chapters in order to respond to the research questions set out for this study. See *Appendix B* for the list of thematic codes. The thematic analysis was done as objectively as possible. The researcher recognises that no researcher is able to completely remove their biases from an analysis, but the project aimed to avoid interpretation of the data until the *Discussion* chapter had been written in order to avoid false conclusions.

3.4 Ethics

There were several ethical considerations involved in this research project, as the sole method of obtaining data was through interviews in which the subject matter could be of both a sensitive and confidential nature. The Human Research Ethics Board at the University of Victoria issued a certificate of approval after a review of the research project. Those contacted for participation were selected through publicly available contact information, contacted on behalf of the researcher by other practitioners, or contacted through information provided by other practitioners. This ensured there are no ethical concerns over methods of contact. Full disclosure of the subject was provided. The initial contact email attempted to avoid biasing potential participants by specifically stating that the project is looking for any related experience or perspectives, not solely from those who were in favour of RJ processes used for sexual assault cases. See *Appendix C* for the email script sent out to potential participants and *Appendix D* for

the information letter that accompanied the email. The confidentiality of the cases discussed in the interviews was an additional ethical consideration. As professionals in the field are well-versed in sharing general experiences without going into specifics, it was not foreseen to be a major issue after they had already agreed to the interview. Responding practitioners were given the opportunity to review transcripts to ensure they were confident that confidential information would not be used in the research project.

Each responding practitioner reviewed and signed an informed consent form before the interview began. See *Appendix E* for the consent form. The initial email contact had the consent form attached. This was done to ensure that practitioners were aware of all the risks and how this research study would attempt to mitigate them. The description of confidentiality was detailed on the informed consent waiver. The type of confidentiality applied kept confidential the identity of the participant, the identity and location (including province or territory) of their organisation, the identity of anyone specifically mentioned during the interview and any specific organisations related to the topic mentioned during the interview. Generic descriptors were used in lieu of actual names. The generic type of organisation was used rather than the specific title. Use of direct quotations that do not reference specific identifying features was permitted with the signing of the informed consent waiver. The data collected was permitted to be shared only between the researcher and her supervisor but will be saved for potential future research.

3.5 Limitations and delimitations

Limitations

There were two main limitations of concern in the design of this study. The first limitation was the lack of data available on the number of RJ processes that addressed sexual assault cases in

Canada. There were discussions within the RJ community that demonstrated that it is being practised, but the extent is unknown. The researcher was concerned that if these cases were fewer than predicted, it could have resulted in a smaller than proposed sample size due to lack of experienced practitioners. However, the number of responding practitioners (12) ended up slightly surpassing the approximate number desired in the design (10). The second limitation was the logistics. If there was no possibility of meeting in-person for an interview with some participants due to travelling distance, relying on video conferencing or phone calls could have been a limitation as it could have rendered the flow of an interview more difficult, and unforeseen technical difficulties may have made the process challenging. In the end, five interviews were conducted in person and seven were conducted over the phone or through video-conferencing, but there was no noticeable difference in the quality of the interviews.

Delimitations

In terms of delimitations, the scope has been limited to Canada. The researcher recognises that there are many RJ practices in many countries but has chosen to narrow the scope to a country that has a strong RJ presence but is studied less frequently than other areas like Australia and the United States. Additionally, the scope has been limited with regards to the types of sexual assault. It will not be addressing cases of sexual assault within domestic violence (intimate partner violence or family violence) or sexual abuse among family members. As has been noted by academics, it is essential in discussions on RJ and gendered violence to distinguish between types of gendered violence in order to avoid distorted understandings (McGlynn, 2011, p. 833). While both of those types of sexual assault are worthy of study, they each bring additional dimensions that the scope of the study would not be equipped to handle. Additionally, neither survivor-victims or offenders of sexual assault that have experienced a RJ process were chosen

as participants because of the ethical difficulties of reaching and interviewing those subjects and the emotional difficulties that may ensue in the interview process. The researcher hopes the study will assist in building a solid foundation on which interviews such as these may be conducted in the future, but recognises that for now, it is more appropriate to focus on practitioner interviews. Observation was not chosen as a method due to the immense difficulty of gaining access to RJ processes as an outsider, especially for the purpose of research. This is especially relevant in cases of sexual assault, as the researcher did not wish to affect the process in any negative manner.

3.6 Participants

There were three sampling methods used. The first and primary method was purposive sampling, where participants are selected based on their ability to answer questions relevant to the primary research question through publicly available information. The second method was snowball sampling, where participants are discovered through referrals made by other participants (Berg & Lune, 2012, p. 52). Snowball sampling was done in this project during initial contact and after prior interviews where the participants were asked if they wished to refer anyone else to participate in the project. The third method was through emails lists from RJ umbrella organisations who agreed to send out a request for study participants.

There was one type of subject selected for interviews in this research project: RJ practitioners currently working in Canada. The practitioners needed to have experience facilitating or participating in a RJ process that dealt with sexual assaults that fit the parameters of the study. They were contacted through listings available to the public, such as the Restorative Justice in British Columbia directory and the Canadian Inventory of Restorative Justice Programs and

Services. The research project aimed to recruit participants from a variety of provinces and territories, but it was dependent on practitioner experience and willingness to participate. There was a total of 12 participants from four provinces. Indigenous practitioners and organisations were contacted through all three sampling methods. However, there were no Indigenous practitioners who participated. There were some direct requests to Indigenous practitioners that were unanswered, but there were also several responses from practitioners who explained that they did not have the relevant experience or that their organisation did not take on sexual assault cases.

Due to the nature of the sampling methods, it is impossible to know exactly how many practitioners received the participation request. A lack of a response does not indicate that they either do or do not practice RJ for sexual assault. However, the 14 organisations or individual practitioners contacted for participation who did respond in the negative to the request for participation declined for several reasons. Two had never facilitated a RJ process for sexual assault, nine did not take on sexual assault cases, and three did not think their sexual assault cases were inside the parameters of this study.

All the responding practitioners identified as RJ practitioners when given the option between “RJ practitioner”, “community justice practitioner”, “Aboriginal justice practitioner”, or “another type of practitioner”. Ten responding practitioners were staff practitioners, one was a volunteer, and one was a combined staff-volunteer. The average experience of the responding practitioners was 10.75 years, with 2.5 years being the lowest amount of experience and 20 years being the highest. All of the practitioners currently work or had previously worked for a RJ community organisation except for one practitioner who works for a national RJ program that addresses cases of severe violence. Only one of the community organisation-based practitioners worked for

a dedicated RJ and sexual assault program, the rest of the practitioners took on a wide variety of cases including sexual assault.

Chapter 4: Results

This paper uses the language of “topics” and “themes” to help organize its findings. The thematic coding process identified certain categories of information that are relevant to the research questions and were raised most frequently in the interviews. If a particular category of information was discussed in at least four separate interviews, this paper classifies it as a “topic”. The six interview questions that were asked of each of the 12 practitioners raised a wide range of topics.

Exact numbers will be used to illustrate the frequency with which each topic arose, but to be clear, the frequency is not the total number of times a topic was referred to within the interviews, but the number of interviews in which the topic came up.

Occasionally, in the course of the interviews, two or three practitioners might discuss a similar experience. While that experience was not raised often enough to qualify as a topic, occasionally it will still be worthy of note, often because of its relation to perspectives and findings raised by other academics and noted in the literature review. In these instances, it will be indicated through the noted number of interviews that this category of information did not meet the threshold of “topic”.

In the *Discussion* chapter, the topics found in the results will be classified into six “themes” that respond to the research questions. Themes are the overarching and unifying ideas that emerged from all interviews.

Throughout, specific experiences of the individual practitioners will often be described in order to illustrate topics to call attention to a notable experience that will enrich the reader’s perspective.

There is diversity in the practice of restorative justice and the practice appears to be steadily evolving. Though many practitioners touched on the same broad topics, they individually spoke of diverse aspects or elements within the topics most relevant to their practice, creating varying responses within topics. As such, the interviews revealed that there is diversity in the way practitioners design and implement RJ processes, but also that these diverse approaches are in service of common goals, including responsiveness and safety. Ultimately, the picture emerges of a cohesive practice across Canada.

This chapter will begin with an overview of the case experiences by looking at case completion numbers, ages of participants, the nature of the sexual assaults, the relationships between the participants, and the types of RJ processes used. The topics resulting from the thematic coding process have been grouped together through the six interview questions. Each sub-heading under an interview question represents a topic. The six interview questions and topics were:

1. How did the cases you facilitated or participated in unfold?

Topics (14): referrals, length of time, in-person and remote dialogues, police presence, parental presence, process outcome measures, agreements, sexual education, Indigenous communities, racialized communities, disability, mental health, level of education, and gender.

2. What process formats do you use to encourage an effective and safe experience for participants?

Topics (12): supporters and community members, preparations, responding to diverse needs, level of formality, counselling and therapy, safety through choice, safety planning, addressing the potential for re-traumatisation, trauma-informed practice, pressure and coercion, shame, healing, forgiveness, and apology.

3. Did the restorative justice processes you facilitated or participated in have the capacity to address one or more of survivor/victim's justice needs (ex: participation, voice, validation, vindication, offender accountability, etc.) and to what extent did it do so?

Topics (3): types of justice needs, dialogue format, and offender accountability.

4. In the specific cases you worked on, did the restorative justice processes work as a preventative measure by reducing offender recidivism and/or increasing community safety and accountability?

Topics (2): preventing recidivism and community safety and accountability.

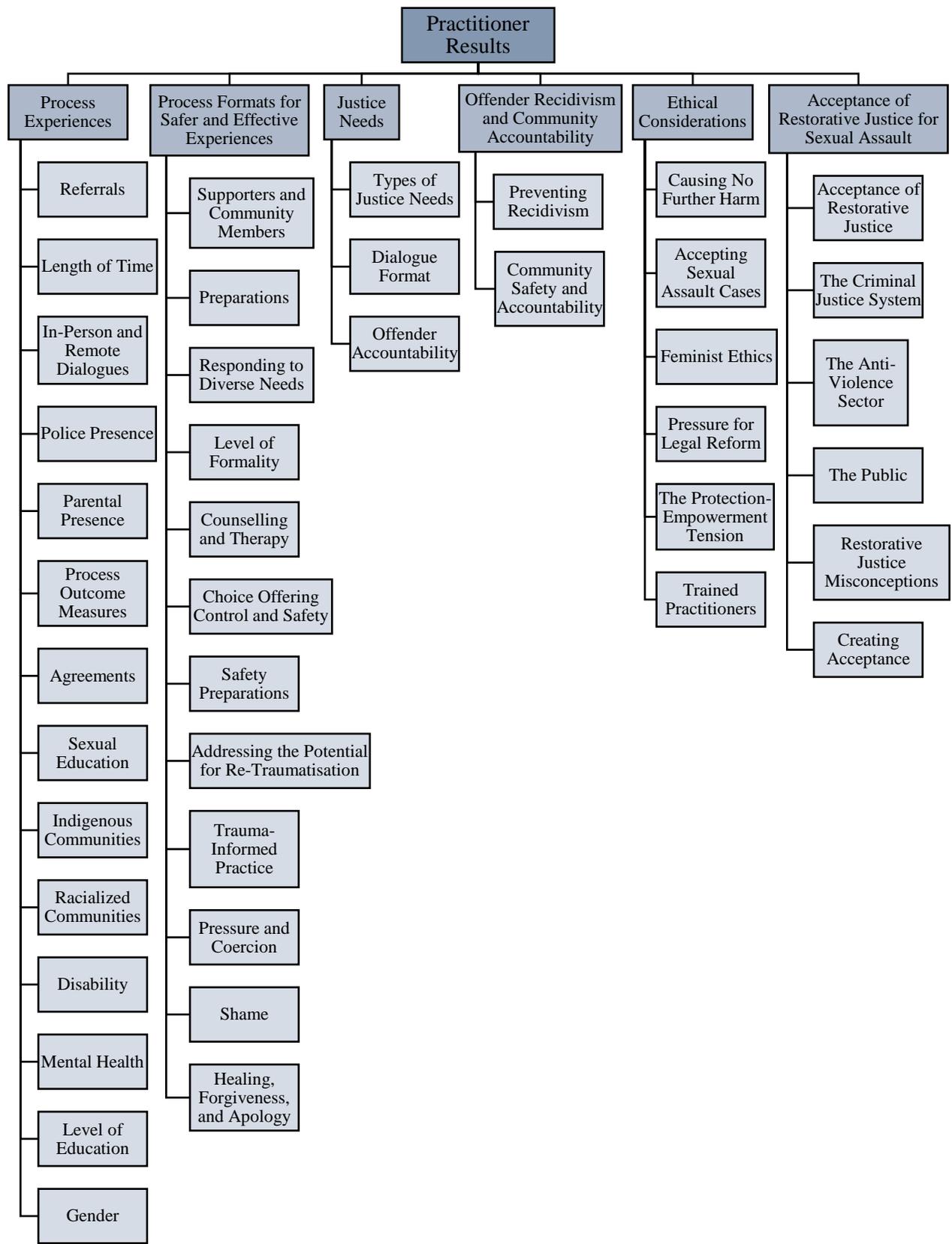
5. What ethical considerations are involved in this type of process?

Topics (7): causing no further harm, accepting sexual assault cases, funding, feminist ethics, pressure for legal reform, the protection-empowerment tension, and trained practitioners.

6. In your experience, does your regional justice culture currently accept restorative justice for sexual assault as valid and ethical forms of justice?

Topics (6): acceptance of restorative justice for sexual assault cases, the criminal justice system, the anti-violence sector, the public, restorative justice misconceptions, and creating acceptance.

For more details on the interview questions, see Appendix A. The following chart is a visual outline of the interview topics that will be discussed in this chapter. It will be repeated at the beginning of each section of the chapter with the relevant section highlighted.



4.1 Overview of the case experiences

The 12 practitioners interviewed for this study had undertaken a total of approximately 84 RJ sexual assault cases. This number is approximate as some practitioners provided approximate numbers themselves and there was some overlap in cases that were discussed by practitioners who work for the same organisations. Individual practitioners had conducted between one and 20 cases. Of these cases, 67% were completed and 33% were commenced but not completed. Cases are characterised as incomplete when they were:

- still in progress at the time of the interview,
- returned to the referring agency, or
- terminated after one or more meetings with participants due to lack of cooperation or unsuitability.

This does not include cases that were reviewed by the practitioners and deemed inappropriate for RJ before meeting with either a survivor-victim or an offender.

The practitioners sometimes worked with particular age groups:

- two practitioners worked mainly with youth (18 and under),
- three practitioners worked mainly with adults, and
- seven practitioners worked with both youth and adults.

In three instances in this study, cases involved both an adult and a youth who were close in age.

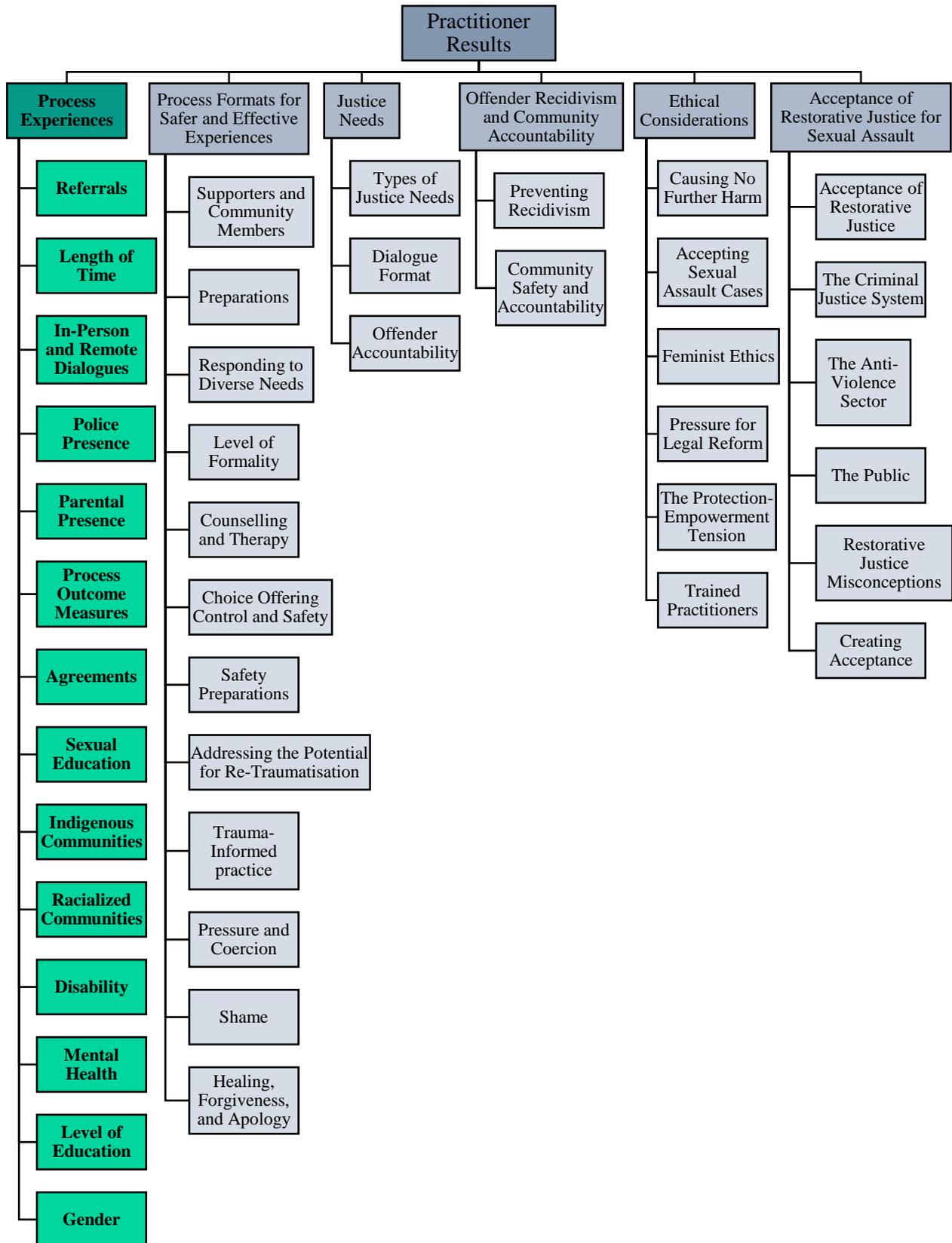
The nature of the sexual assault addressed in the RJ processes varied. The types of sexual assault that fell under the Criminal Code of Canada definition of sexual assault included unwanted

sexual touching, sexual interference, sexual invitation, child sexual abuse by non-family members, forced or drug-induced sexual penetration, and sexual exploitation. RJ was also used to address other types of sexual assault that do not fall under the Criminal Code of Canada's definition of sexual assault, including the sharing of sexual photographs without permission and the use of sexually inappropriate language. Individual practitioners tended to take on cases involving similar behaviours, as some practitioners primarily worked with unwanted sexual touching cases, some mainly worked with child sexual abuse by non-family member cases, and others with forced or drug-induced sexual penetration cases.

In terms of the relationship between the parties, sometimes the offender was a stranger to the survivor-victim, but in many cases the offender was an acquaintance, friend, or co-worker. Most offenders were males under 18 or adult males and most survivor-victims were females under 18 or adult females. Only two practitioners mentioned sexual assault cases between people of the same gender, though there may have been more that were not explicitly stated. One case involved two adult men, and another involved two adult women.

The types of RJ processes used by practitioners also varied. They included: facilitated dialogues, family conferencing, community conferencing, victim-offender conferencing, healing circles, individual-focused healing circles, and indirect contact through letters and shuttle processes. Practitioners would often combine different types of processes to suit the needs of the participants.

4.2 Topic: Process experiences



Interview question #1:

How did the cases you facilitated or participated in unfold?

Many different topics appeared in the interviews related to experiences during the process. The RJ process is defined as a series of interactions that begins with the referral to a practitioner and ends after the agreement terms are performed by the offender. These interactions in the process also includes intake, preparations conducted before a dialogue or other form of communication, the dialogue or other form of RJ communication, the reparation stage (if included), and any follow-up required. Some of the topics to be discussed in this section were focused on the establishment and composition of the dialogues: referrals, length of time, in-person and remote dialogues, police presence, and parental presence. Other topics dealt with outcome-related issues: process outcome measures, agreements, final outcomes, and sexual education as an outcome. The topic of identity, either relating to survivor-victims, offenders, or practitioners, was considered. The different aspects of identity discussed were: Indigenous communities, racialized communities, disability, mental health, level of education, and gender.

4.2(a) Referrals

Referrals came to the practitioners from a wide range of sources. They are organised from most to least occurring in the interviews. This is not an exact indication of all 84 cases, as the practitioners did not all discuss referrals in the same way. Of those who did respond regarding the sources of referrals:

- Six practitioners listed cases referred by the police or Crown counsel.

- Three practitioners listed cases from community referrals from institutions like post-secondary schools.
- Two practitioners listed cases from specialised integrated teams that focus specifically on child protection or sexual assault and included police, social workers, medical professionals, and victim services.
- Two practitioners listed cases referred by medical professionals or private therapists.
- One practitioner listed cases that were self-referrals.
- One practitioner listed cases referred from other community organisations.
- One practitioner listed cases referred from correctional services.

Though practitioners could only speak to their perception of why cases were referred to them, the motives for referrals were varied. Practitioners believed that cases were primarily referred to RJ organisations from the criminal justice system because they were deemed by the referring police or Crown counsel likely to be unsuccessful in court due to lack of evidence or the victim-survivor's inability or unwillingness to testify. Two practitioners had cases referred by police to RJ when charges were not approved, but the practitioners speculated that police still wanted to see accountability addressed in some manner. Other referrals came from the police or Crown counsel at the insistence of the survivor-victim or their family. One case in the study was referred at the request of the survivor-victim who reported to the practitioner that they had already undergone a sexual assault trial and did not want to participate in another trial. Another practitioner reported that a family requested a RJ process. They had been informed by Crown counsel that there would not be enough evidence for a conviction, but they wanted to see the offender take accountability for the harms caused. A few practitioners reported that schools

provided referrals to RJ when they felt the need to address incidents of sexual assault when charges or expulsion were not available options.

While discussing the topic of referrals, two practitioners shared similar experiences with police referrals. Some cases were referred to these practitioners when police did not believe that charges were appropriate or that the offender deserved to be charged. In these cases, offenders could have potentially been prosecuted under the Criminal Code of Canada, but the police officers chose not to. With some of these cases, practitioners believed that police viewed the offence as a mistake rather than a crime and thought that the court process would not be beneficial for the offender. This pervasive perception of sexual assault as a mistake rather than a crime exists because sexual assault is often treated as a misunderstanding between two people rather than a violation of one's body and one's legal rights. In other cases, the police reasoned that, because it was a first-time offence and because the offender did not correspond to their conception of a sex offender, they did not want to charge the offender with a sexual offence. One practitioner summarized their experience as:

“I feel like restorative justice is still so often seen as, it's being made as the alternative for the lower level offences, because they want to give the offender a second chance. It's framed from a very offender-centric way, the police see it as “oh he's a good kid, we don't want to charge him, let's go this way”, or “this person, first-time offence, let's go this way””.

Though these experiences only came up in two interviews, I believe that they are worthy of note because of the troubling implication that police referrals are influenced by misunderstandings about sexual assault and RJ.

4.2(b) Duration

The length of time that the cases took to complete varied. Some practitioners described case duration in terms of months from start to finish. The cases varied from two to eighteen months to complete. Other practitioners described duration in terms of the number of meetings held. The number of meetings held varied from four to ten meetings. One practitioner described the length of time in terms of cumulative hours of meetings, with their cases ranging from ten to twenty hours. Depending on the referral source, some practitioners felt pressure to complete a case more quickly than was feasible. Three practitioners said they felt pressure from the court system to fit its timeline. Two of those practitioners elaborated that they had three months to complete a case under their memorandum of understanding with Crown counsel so that Crown counsel could still proceed with charges if the offender was non-compliant in the RJ process. However, that timeline was not always realistic because of the significant amount of time that RJ processes needed for a sexual assault case, and those two practitioners found it impossible to meet a three-month timeline. The cases that were post-conviction did not have that same time pressure, as there was no referring source that had a tight timeline that needed to be met.

4.2(c) In-person and remote dialogues

The RJ processes were conducted either in-person, where the survivor-victim and the offender met together in the same physical space, or they were conducted in ways that did not involve an in-person dialogue. These latter methods included letters or video messages between participants, shuttle processes where the practitioner would bring information to and from participants from separate rooms, and conference calls. Two practitioners struggled with the effectiveness of dialogue options that were not in-person. In some cases without an in-person

dialogue, they believed it could have been more successful if it had been conducted in-person. When they were working with survivor-victims to decide on the dialogue format, they were unsure of whether and how to share these concerns. Practitioners worried that discussing less successful cases involving remote dialogues could pressure participants into a process that might feel unsafe, but they also wanted to share their learning from past cases to improve future cases.

4.2(d) Police presence

Police presence during the dialogue was another topic of note, with six practitioners discussing it. Police would participate as supporters or community members depending on their relation to the participants in the process. Several survivor-victims requested a police officer's presence as a community member in their dialogue, mainly to enhance their sense of safety and occasionally because the survivor-victim had developed a close relationship with the officer. In a few different dialogues, police requested to participate and were permitted with the survivor-victim's consent. One practitioner noted that the police presence was beneficial because the officer had interviewed the survivor-victim after the assault, so they were able to contribute to the discussion of the impact. However, another practitioner believed that police should not be present in such cases. When asked if there were ever police in attendance, they said that,

“Not in these [sexual assault cases]. We do for other ones, in some of them it's a really powerful thing to have police involved, but with such intimate, personal crimes, I don't think they have a right to be there. ... Hypothetically speaking, I still don't think we would have had the police be the support person because I think that could have created a difficult dynamic.”

This practitioner did not provide more detail regarding the dynamic they deemed to be “difficult”.

4.2(e) Parental presence

Parental involvement was a more complicated topic for practitioners, with six practitioners bringing it up. In one case, the survivor-victim requested that the parents leave the dialogue for a time, so they could participate in discussions that they were not comfortable having in front of their parents. The practitioner said that this segment of the discussion was the most effective part of the dialogue, and so they ultimately had had a positive experience in that case with the parental involvement. Another practitioner had mixed experiences with parental involvement. This practitioner had facilitated a case where the parents were very effective in helping their child take accountability. This practitioner had also facilitated another where the parents were so afraid of the consequences that their child might face that they actively participated in victim-blaming during the preparation phase. Although the victim-blaming did not occur in the dialogue, it still affected the offender’s process of taking responsibility for their actions.

4.2(f) Agreements

Often, the RJ processes would conclude with “agreements”, which are a set of reparations that the offender has agreed to complete. Some agreements are formalised in writing and practitioners require evidence that they have been completed. Other agreements are unwritten and agreed upon in good faith. Five practitioners discussed the level of importance of the agreements within their specific RJ processes. Three of the practitioners responded that survivor-victims felt that it was quite important that the offender fulfil the agreement terms. They also wanted to be informed of the progress along the way. Two practitioners had worked with survivor-victims

who were satisfied after the dialogue and did not prioritise the creation of agreement terms. In one case, the practitioner noted that the offender had already done much of the work that might have been specified in the agreements. In the dialogue, the survivor-victim had witnessed the level of progress already accomplished by the offender and did not feel the need to follow-up with additional agreements. Similarly, a few other cases had unwritten agreements, where the offenders committed to continuing their path of growth without the need for evidence that comes with written agreements. One practitioner responded that while some survivor-victims were content with the process without agreements, other supporters (often authority figures like school principals or police officers) wanted to see the agreements instituted and fulfilled. One practitioner noted that the offenders that they had worked with had requested more agreement terms than anyone else in the processes. This practitioner believed these requests came about because the offenders wanted to try to absolve themselves of the shame that they felt.

4.2(g) Process outcome measures

The practitioners identified four process outcome measures:

- whether the process met the survivor-victims' justice needs,¹⁰
- whether the process impacted offender recidivism,
- whether an agreement was reached, and
- whether an agreement was performed.

Though they did not often formally assess the success of a process in the interviews, they did discuss which outcomes that they considered to be more successful than others. This often

¹⁰ Justice needs are the specific needs that survivor-victims seek to have met in order to feel as though justice was in some way accomplished for them. These needs include participation, voice, validation, vindication, and offender accountability (Daly, 2014, pp. 386-389). They will be discussed in further detail in 4.4.

occurred naturally in the interviews as they were discussing how the cases unfolded, and the success of the case was considered based on their experience with other cases. The outcome of a RJ process is a complex element to ascertain, as survivor-victims and offenders may experience different outcomes and desired outcomes will vary amongst participants. However, it was clear from the interviews that, to the practitioners, some case outcomes were more successful than others. Those cases and the reasoning as to why they were deemed successful or not are worthy of note. There were many cases that stood out for practitioners as being very successful. They were considered successful when practitioners perceived that the survivor-victim's needs were met and that there were perceived positive impacts on the offender. Practitioners reported that survivor-victims were better able to resume their lives, as they felt more confident returning to school or walking around town without fear of encountering the offender. There were also cases that practitioners considered unsuccessful. These cases remained of concern to the practitioners, with some of the practitioners ruminating over them years later. One case in particular exemplifies this concern. The practitioner was aware that the survivor-victim and their family were very satisfied with the outcome, but the practitioner themselves had mixed feelings on the success of the process because they were disappointed by the lack of accountability taken by the offender. The practitioner was worried that the survivor-victim's reported satisfaction was due to low initial expectations. This was not what that practitioner would consider a successful experience, as they hoped to have achieved more for the survivor-victim.

4.2(h) Sexual education

Based on the discussions in eight interviews, it was clear that RJ processes were functioning as a sexual education tool as a strategy to prevent future offences. Six practitioners elaborated that, when they first started the RJ processes, most of the youth and young adult offenders that they

worked with were unaware of or unsure about consent law and its real-life applications. Two practitioners believed that in their cases, this was largely due to exposure to a family with unhealthy sexual dynamics or an emphasis on male dominance. This lack of education was addressed to assist the offender in developing healthy, respectful, and legal understandings of sexual activity and consent, therefore reducing potential recidivism. To address this lack of knowledge, one practitioner often encouraged offenders to participate in the sexual assault education course offered by their organisation. Other practitioners expanded their conversation with offenders beyond focusing solely on sexual assault to broader conversations around consent and healthy sexual activity. One practitioner illustrated this well in their interview:

“He had a lot of questions, he had found someone that was going to actually talk to him openly and honestly, so, he had a lot of questions. We talked about everything from the physical side of sexual encounters, to [the] emotional [side], to you know looking at what is each party’s responsibility in that and taking into consideration what each party desired in that. So, he learned a lot actually, a lot surprised him.”

In addition to the conversation on RJ as a sexual education tool, three practitioners hesitantly raised concerns over the potential impact of the scrutiny placed on a young offender’s sexual activity during the RJ process on their ability to engage in healthy sexual activity. While as noted, RJ functioned as a form of healthy sexual education for many, there were a few cases where practitioners worried the intense scrutiny of the case meant that they would refrain from engaging in healthy and consensual sexual activity even though they were capable of it. Though they raised these experiences, none of these practitioners discussed any possible mitigating techniques. I surmise that the noted hesitancy was due to concerns that their work on healthy

sexual activity might be conflated with a lack of condemnation regarding the offender's sexual assault.¹¹

4.2(i) Indigenous communities

Four practitioners discussed their experiences working with Indigenous communities. Two of those practitioners noted that these cases were often referred to Indigenous justice organisations in their communities, so they did not have much experience working with Indigenous peoples. However, the practitioners who did have experience working with Indigenous people demonstrated a discerning understanding of their role in these contexts. For instance, one practitioner acknowledged that their success with Indigenous cases was in large part due to the external community organisation support programming they used to make sure the RJ process was culturally-relevant. Another practitioner brought up their perspective on their role as a White RJ practitioner in cases that involved Indigenous people. They would be involved in managing the case from the initial referral, but they would bring in Indigenous facilitators to lead the dialogues and they would participate as requested. In addition, they took their cues from others, which included whether they participated in the circle process or simply bore witness, in order to respect the need for processes that reflected the cultural identity of the participants.

4.2(j) Racialized communities

The specific experiences and needs of racialized communities were raised by three practitioners.

¹² Notably, one practitioner who had worked with newcomer communities shared that they had brought in a supporter from the ethnic community of the offender's family specifically so that

¹¹ As discussed in 4.6(d) and 4.7(e) in the sections on feminist ethics and RJ misconceptions.

¹² Racialized communities are communities of people that describe themselves as non-Caucasian in race or non-white in colour. They often experience discrimination because of racism, xenophobia, and religious intolerance.

the offender's mother, who spoke minimal English, could have someone to support her.¹³ This supporter also helped to challenge cultural stereotypes of male dominance with the offender. Though other practitioners acknowledged the varying needs of diverse ethnic communities, they did not provide many examples.

4.2(k) Disability

Challenges and successes relating to disability were also discussed in the interviews. Practitioners worked with survivor-victims and offenders with developmental disabilities. One practitioner worked with survivor-victims with developmental disabilities where the families often participated as a representative of the survivor-victim. This practitioner seemed to indicate that this was a relatively successful practice. In contrast, another practitioner had difficulty working with a youth offender with a developmental disability. Because this offender's parents were trying to protect their child, as they were afraid that their child would be returned to the court process, they minimised the offender's behaviour. The practitioner did not believe that this was helpful in the RJ process, as the young offender received mixed messages about the gravity of their actions.

4.2(l) Mental health

The mental health of survivor-victims and offenders could be a source of concern. It was treated seriously by practitioners in the interviews when the topic arose. In one case, the practitioner stopped the process before the dialogue because it would have been hazardous to the mental health of the survivor-victim to meet with the offender at that time. However, it could also be a source of growth for participants. In a different case, the offender reported to the practitioner that

¹³ Newcomer communities are communities of people who have recently moved to Canada as immigrants or refugees.

the RJ process was the motivating factor to start treatment for their mental health and substance abuse issues.

4.2(m) Level of education

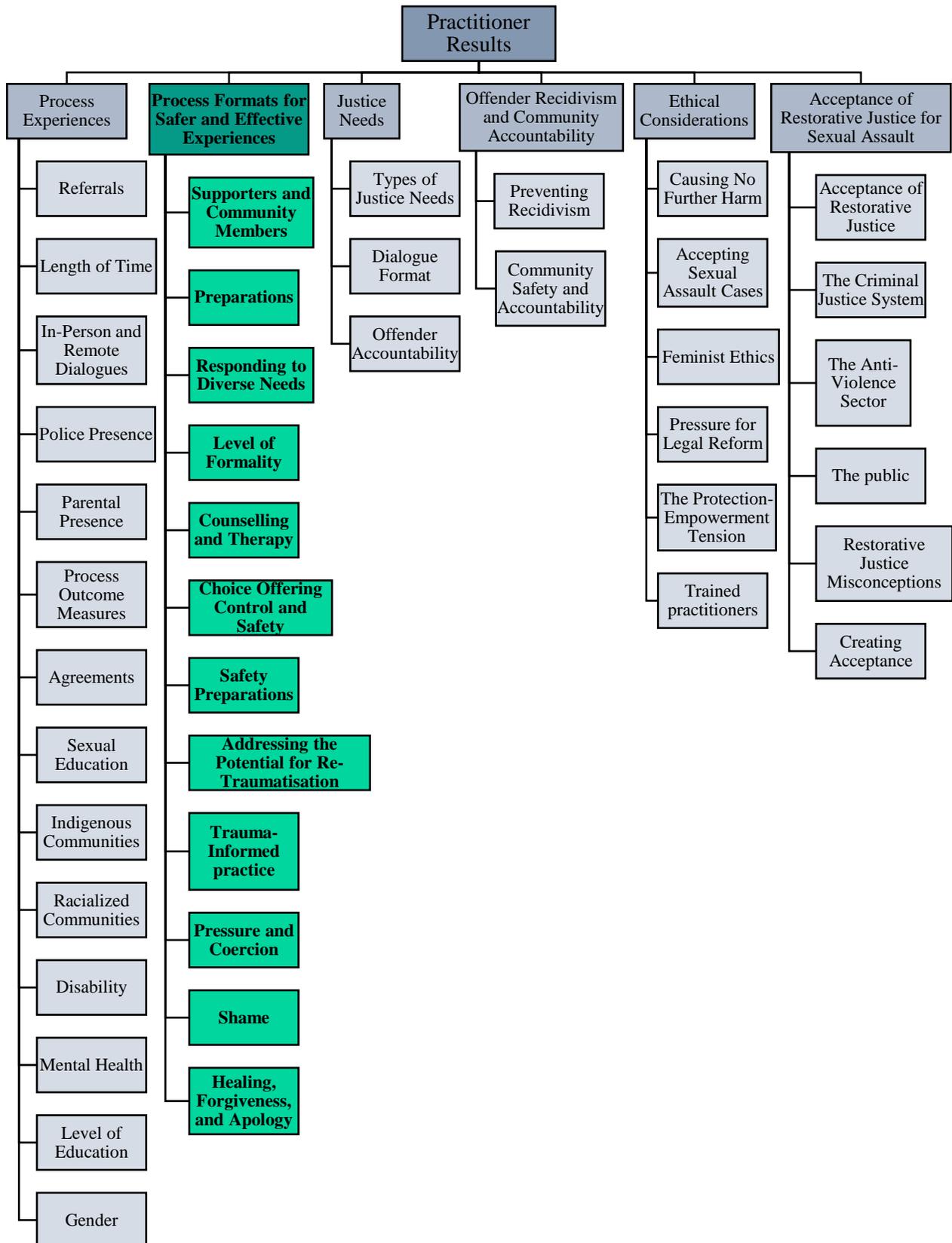
Both practitioners and survivor-victims occasionally had to adjust their expectations of what offenders with lower levels of education were able to articulate. One practitioner noted the importance of bearing in mind that less-educated offenders may not be able to speak to their accountability in a way desired by the survivor-victim. In one case, this practitioner worked with the survivor-victim so that the survivor-victim was able to understand that the offender was demonstrating their accountability through their behaviour rather than verbally, as the survivor-victim had originally desired.

4.2(n) Gender

In the interviews, practitioners considered their gender in relation to the process. It was the self-identified male practitioners who spoke on gender the most, with each of the three male practitioners mentioning it at least once. Two of the male practitioners were mindful of how their gender might affect their ability to understand certain elements of the case, so they actively worked to ensure that happened as infrequently as possible. Another male practitioner discussed how he framed the RJ process as a way for men to combat gendered violence. He used the processes to challenge notions of male supremacy through his own responses and to validate survivor-victims' experiences by listening to the survivor-victims in a supportive manner. One male practitioner believed that RJ processes that address sexual assault should use a co-facilitation model that includes one male and one female facilitator. The two other male practitioners had used a gender-balanced co-facilitation model with their processes but did not

state if they believed this model was necessary. The only time a female practitioner raised the subject of her gender was in relation to a discussion about feminism, where she discussed the ethics of being a woman working with gendered violence and with sex offenders.

4.3 Topic: Process formats for safer and effective experiences



Interview question #2:

What process formats do you use to encourage an effective and safer experience for participants?

In the interviews, practitioners provided descriptions of different process formats that allowed them to create safer and effective experiences. Some examples provided were focused on general procedural practices, including the use of supporters and community members, preparations, responding to diverse needs, the level of formality, and counselling and therapy. Some were safety-related, including choices that offered control and safety, safety preparations, addressing the potential for re-traumatisation, and trauma-informed practice. Other examples were focused on the management of emotions and the mitigation of potentially damaging experiences, including pressure and coercion to participate, shame, and the pressure to heal, to forgive, or to accept undesired apologies.

4.3(a) Supporters and community members

In many of the RJ processes discussed in the interviews, supporters were present to assist the survivor-victim or the offender through the process. Supporters included counsellors, friends, parents, partners, mentors, victim service workers, and sexual assault centre workers.¹⁴

Community members in the RJ process were also sometimes present to act as representatives of the community that was harmed as a result of the offence. Every practitioner but one reported having supporters in some of their cases. Three cases had mentors for both survivor-victims and

¹⁴ Mentors are dedicated volunteers or staff that help participants prepare for the dialogue and are present to support them in the dialogue and after the dialogue.

offenders. One practitioner did not yet have a mentor program in place but was looking to establish one.

Supporters and community members participation in the preparations and dialogues met some specific needs of participants. For instance, with school-based incidents, teachers, principals, and school counsellors often acted as either supporters or community members. In some youth cases, there were social workers present as supporters. With the victim-offender conferences, some participants brought supporters with them to preparation meetings, but not to the conference. When there were no supporters or very few supporters, three of the practitioners noted that they acted as both facilitator and mentor for either the survivor-victim or the offender in order to provide any needed support.

Two practitioners had notable experiences relating to supporter or community member participation; one with the offender's lawyer (acting as a supporter) and one with the owner of the building where the assault took place (acting as a community member). The lawyer acting as the offender's supporter was experienced with RJ and sexual assault. The practitioner involved elaborated on the case by saying that the lawyer was well-balanced in their duty to advocate for their client and in holding the offender accountable and calling out the offender when they were trying to minimise their own actions. The practitioner involved in the second case with the building owner said that the owner's participation was a powerful factor as it brought in a type of community member's perspective that is not often present in the cases they had facilitated.

4.3(b) Preparations

“Preparation” includes all steps taken before the RJ session convenes. It is the process element considered most important by the practitioners. The preparations would often start with

reviewing police and Crown files to determine if bringing together participants in a process would be beneficial as well as an intake process if the case was accepted. Other preparation work includes discussions and meetings on needs, expectations, possible outcomes, and practice dialogues. Some preparation work was done over the phone between the practitioner and participants, but it was mainly done in-person. Some participants had mentors supporting them in the preparation stage.

In the preparations, the practitioner typically provided the questions that would be asked of the participants, discussed why they would be asked those questions, and practiced participant responses. Preparation also included a discussion of what breaks would be needed and how practitioners will know to call breaks. In the preparations, practitioners would run through best-case and worst-case scenarios. Best-case scenarios may have included the survivor-victim receiving all the answers that they were seeking, seeing genuine remorse from the offender, ending the dialogue with the belief that the offender would not reoffend, and having the offender complete all their agreements promptly. Worst-case scenarios may have included an offender who decides they no longer wish to take responsibility for their actions or an offender who is unable to answer the survivor-victim's questions.

4.3(c) Responding to diverse needs

Practitioners universally emphasised the importance of procedural flexibility, where the process could have many outlines and many different elements incorporated and where practitioners attempted in their work to meet the unique needs of participants. These elements could include the length of time of the dialogue and the timing between the stages of the process, the location of the dialogue, who took part of the dialogue, what safety precautions that they would take, and

what physical items would be present to create a sense of safety. The interview results had a focus on the process meeting the needs of the participants, especially for survivor-victims. The majority of the practitioners designed the process together with the survivor-victim using basic guiding principles, which would include a discussion of the effects of the sexual assault on the survivor-victim, the offender taking responsibility for their actions, and the option for reparations. In two cases, practitioners reported that the survivor-victims preferred to have the practitioners design the process with decisions being reviewed and approved by survivor-victims.

Four practitioners spoke of specific needs of survivor-victims that had stood out for them because they were able to meet those needs as a result of procedural flexibility. For example, in order to minimise potential trauma, some survivor-victims working with one particular practitioner requested that the dialogues not begin in the typical manner, that is, with the offender detailing the offence. Additionally, one practitioner held the initial meeting with the survivor-victim in the survivor-victim's residential area as opposed to holding the meeting at the practitioner's distant community office. Another practitioner facilitated a second dialogue when requested by the survivor-victim, whereas typically only one dialogue would take place.

When practitioners were discussing difficulties that they had faced while trying to respond to diverse needs, some would spontaneously produce innovative solutions to the problems that they were describing. The production of these innovative ideas occurred with four different practitioners, who during the time of the interview, brainstormed methods to address the issues that they were discussing. They made explicit statements such as "*I'm just sort of thinking of this now*" to demonstrate the spontaneity of their comments. One practitioner suggested survivor-victim participation through speakerphone if the survivor-victim was not comfortable being present in the same room as the offender but wanted to participate in a dialogue. In that same

scenario, another practitioner suggested holding separate circles; an accountability circle for the offender and a healing circle for the survivor-victim. These are both options for cases where there is significant potential for re-traumatisation but the survivor-victim wishes to proceed with RJ.

4.3(d) Level of formality

The level of formality of the process was a topic of discussion for five practitioners. Less-formal models consisted only of a basic outline of the process, which was altered and further developed as needed. More-formal models followed a more detailed and specific structure in every case. The three practitioners who used a more-formal model were some of the practitioners with the most sexual assault case experience who had developed a process they believed worked well for them and their clients. However, the practitioners who used less-formal models were sceptical of the ability of a formal model to be flexible enough to meet the needs of the participants. The practitioners who did use more-formal models still discussed taking into consideration the needs of participants. In order to do so, they would refer cases to other agencies that could meet participant needs better, would offer several options within the model, or were still willing to tailor some process elements.

4.3(e) Counselling and therapy

Of all the various supporting programs that RJ practitioners utilised during their processes, counselling and therapy were the most consistently discussed supports. Therapy and counselling were some of the most common agreement terms that came from the reparation stage of the dialogue. As 11 practitioners spoke of it, counselling and therapy as part of the RJ process was an almost universally-discussed topic. One practitioner emphasised the need for counselling after

the dialogue so that any emotional needs arising from dialogue could be addressed. In these cases, counsellors supported both survivor-victims and offenders during the length of the RJ process and occasionally acted as supporters in the dialogue. Some survivor-victims worked with counsellors before commencing the RJ process, and so the dialogue was the last step in their healing or justice process. Four practitioners would not take on cases without counselling in place for either the survivor-victim or the offender, though practitioners varied on whether it was the survivor-victim or the offender who was required to participate in counselling.

4.3(f) Choice offering control and safety

Because of the complex nature of bringing together a survivor-victim and an offender in a restorative process to deal with a sexual assault case, the physical and emotional safety of the survivor-victim was paramount. For six of the practitioners, the main method of creating a safer environment for survivor-victims was through choice. This was done to empower survivor-victims to regain a feeling of control over their lives. This meant allowing the survivor-victim to make decisions on many components such as participation, the location, the process format, and the logistics. The location of the dialogue was often a safety component for the participating survivor-victims. Sometimes a neutral spot where they had not yet been would be chosen and other times it would be where the survivor-victim and the practitioner met for the preparations. Logistics would include the timing to ensure that the survivor-victim and the offender did not arrive at the same time and that the survivor-victim had time to prepare in the space for the dialogue. It was important to some survivor-victims to have that time to prepare in order to avoid appearing weak or vulnerable in front of the offender. One practitioner said of safety:

“I think safety is such a... It’s something that is simultaneously so tactile and so ephemeral and fleeting. I think that the navigation as a facilitator is to constantly

understand where I can make really concrete things that will give them a sense of safety and then when can I be in tune enough to be able to catch the fleeting moments of insecurity and unsafety and things like that.”

This need for choice extended to the decision to participate in a RJ process. Eight practitioners specifically stated that survivor-victims should be considered the expert in their own experience and needs. Overall, the practitioners were pleased that RJ is increasingly becoming an option offered to survivor-victims when deciding how they would like to proceed in the aftermath of a sexual assault. They were also aware that some cases are inappropriate for RJ, such as when an offender is a danger to themselves or others. There were mixed impressions of victim-advocates' views on survivor-victims as capable of making decisions for themselves. One practitioner had a positive outlook, as the victim support workers that worked with this practitioner treated survivor-victims as having final authority on matters relating to their own needs. However, another practitioner did not have that experience. This practitioner believed that victim advocates still impose what they believe is best on survivor-victims, which does not always align with the needs of the individual survivor-victims.

4.3(g) Safety preparations

Violence risk assessment and safety planning are both forms of safety preparation. Violence risk assessment focuses on the potential of an offender to behave violently in dialogues in order to screen out the offenders who are not suited to RJ, whereas safety planning focuses on the survivor-victim to ensure they feel as safe as possible, physically and emotionally, and to create solutions when they are not feeling safe. Although several academics in the literature discussed safety planning, only one practitioner explicitly described the work that they do regarding safety

as “safety planning”. For this practitioner, safety planning included a review of the ways in which participants were going to care for themselves during and after the process. Additionally, only one practitioner discussed violence risk assessments in regard to safety. Many of the other practitioners undertook similar strategies even though they were not explicitly referred to as violence risk assessments or safety planning. For example, during the preparation stage, practitioners assessed the survivor-victim’s needs, determined how the offender could meet these needs in the dialogue, and determined if there was any potential for re-traumatisation. Another practitioner said that, through preparation, they could also work with the offender so they do not blame the survivor-victim or minimise their own actions. Many practitioners facilitated in pairs, while others worked independently. The practitioners that worked in pairs planned and strategized amongst themselves to make sure they could meet the needs of the participants and anticipate what scenarios could arise in the circumstances and how they would be managed.

4.3(h) Addressing the potential for re-traumatisation

The discussions in the interviews indicate that the practitioners were well-aware of the potential for re-traumatisation in these cases, as it appeared in nine interviews. These practitioners were also well-versed in handling potential re-traumatisation. They would decline to accept cases if there was an indication of potential re-traumatisation. Potentially re-traumatising acts include denying that the sexual assault took place, placing blame on the survivor-victim, and insinuating that the survivor-victim is of lesser value for having been assaulted. One practitioner shared that they would ask survivor-victims to list behaviours that could trigger re-traumatisation so that the practitioner could notice them quickly in a dialogue. Three practitioners would stop the dialogue after one indication of re-traumatisation. One practitioner said that they “*do not even look for red flags, [they] look for orange flags*”, indicating that they would stop the dialogue if they saw signs

that might lead to an act of re-traumatisation. Four other practitioners would work with offenders in the preparation stage to prevent them from using re-traumatising tactics in a dialogue with the survivor-victim. They would also stop the dialogue if the offender did start to employ those tactics. Two practitioners stated that they were also concerned about the potential for re-traumatisation from supporters and community members as well as the offender. In order to counteract this potential, one of these practitioners suggested that any community support used in a RJ process must be informed of this potential and taught how to avoid re-traumatising the survivor-victim.

4.3(i) Trauma-informed practice

In the interviews, the topic of trauma came up for six practitioners. Only two practitioners specifically indicated that they work from a trauma-informed perspective.¹⁵ Three practitioners focused their discussions on trauma as it relates to survivor-victims. For example, one practitioner believed that RJ is well-equipped to address sexual assault-based trauma, as RJ provides a space for survivor-victims to have their experiences validated and questions answered. This helps to alleviate the trauma-reinforcing self-blame that comes after a sexual assault, as survivor-victims are able to hear from the offender that they are not to blame for the assault. Three other practitioners focused on the trauma manifested in the offenders' lives. One practitioner commented that there is value in helping offenders to work through past trauma, as it could have contributed to their decision to commit sexual assault. Another practitioner explained why they believed that assisting offenders is part of a victim-centered RJ model:

¹⁵ "Trauma-informed practice" refers to a practice of any social program that incorporates an understanding of how traumatic experiences affect people's behaviour and how to lower the chances that that social program will cause any re-traumatisation (Randall, 2013, p. 491).

“I’ve never heard a victim say, to me anyways, “I don’t care if the offender gets better.” ... What I hear is “I don’t want this to happen to anybody again”. Then that means the offender has to heal, to recover, to get access to the help they need to not do this again. So, our priorities, [the work we do with] offenders also having a chance to recover [is done] in terms of what victims are wanting in their own safety.”

4.3(j) Pressure and coercion

Nine practitioners discussed the potential for survivor-victims to be pressured or coerced into participating. Practitioners used several methods to attempt to alleviate this potential. For four practitioners, the main method of mitigating the risk of coercion was a continuous offer of an exit plan. Should the process stop feeling acceptable for survivor-victims, an exit plan would allow them to end the process as easily as possible. Practitioners had different exit plan strategies. Some practitioners focused on empowering participants to choose to halt the proceedings themselves, some offered to facilitate discussions with unaccepting supporters, and other practitioners offered themselves up as an excuse should the survivor-victim decide they wanted to end the process so that the survivor-victim would not face any repercussions. A second method of mitigation involved practitioners reviewing with the survivor-victim all options they had available to them, including RJ and the court process, to make sure they had an informed understanding of what they were electing and declining to do after the sexual assault. Even though it was a noted topic of concern in the literature, no practitioner spoke of direct experience with coercion in a rural community. However, they were aware that pressures are heightened in those communities and suggested that it may not be possible to fully minimize the risk.

Three practitioners used case examples to explain why they did not believe that any choice a survivor-victim makes can be entirely free of pressure. One practitioner asserted that the survivor-victim chose RJ because the survivor-victim saw it as the lesser of three evils (between the court process, RJ, or dropping the case all together), not because they wanted to use the RJ process. Another case was described as being the only option for the survivor-victim because Crown counsel would not take the case to court and the survivor-victim was seeking any form of justice.

4.3(k) Shame

Shame was a topic that six practitioners touched upon. In the processes, shame could be a powerful tool and it could also be quite debilitating. As a tool in the process, one practitioner incorporated a discussion into the sexual education segment of the process on how survivor-victims experience shame. In terms of the debilitating effects of shame, practitioners spoke of the need to manage the risk of shame-driven death by suicide for both offenders and survivor-victims, as the discussions of painful experiences or shameful behaviours could trigger feelings of isolation and despair. In order to counteract these debilitating effects, the emphasis in the interviews focused on managing shame properly. As one practitioner elaborated:

“There was a point where he felt very much ashamed. So, we let that sit, I let that sit for a few weeks. That’s because my belief is there’s a reason and you need to work through that a little bit. Then what I did then, I worked with him around the concept of shame so that he could be released of the shame, because the goal here is not to have him leave this process and then for the rest of his life feel shame. He will always be aware, he will always remember that that was important to him, he actually stated that, but we have no wish to put anyone in a state of shame where it is

going to affect his life to the point where, ... in order for him to cover and hide and erase his shame, he may do it again.”

Two other practitioners also similarly described the process of managing shame. They first worked with the offender to feel shame over their actions. Then, they reframed that shame as an awareness of their actions in the effort to prevent future reoffences. One of those practitioners stated that it would be otherwise unethical to leave the offenders with debilitating shame after the RJ process was over.

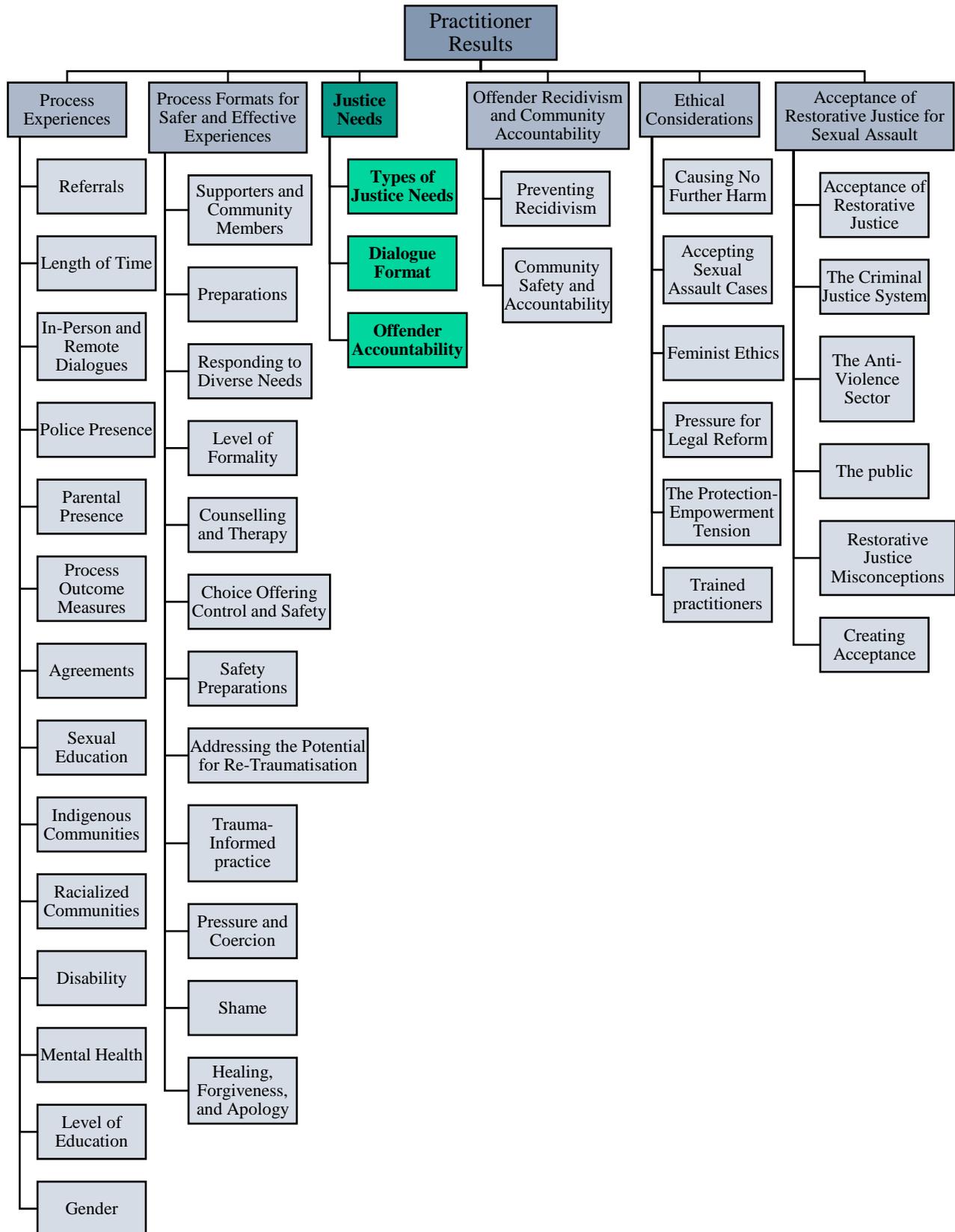
4.3(l) Healing, forgiveness, and apology

Though the controversial RJ applications of concepts like healing and forgiveness have often been discussed in prior literature, these concepts did not often appear frequently in the interviews. Only two practitioners problematized the concepts of healing and forgiveness. One practitioner stated that they did not use the word “healing” because of its potential to signify a variety of meanings depending on the experiences and needs of the survivor-victim and could cause survivor-victims to feel pressured into experience that they did not desire. Likewise, one practitioner did not use the word “forgiveness” because they believed that survivor-victims have varying desired outcomes and should not feel pressured to forgive. They listed these varying desired outcomes as forgiveness, growth, forward movement, and closure. Three other practitioners used the term “healing” in their interviews where there was no discussion around the use of the word. Only one practitioner noted that they believed the RJ process should contribute to healing.

With regards to forgiveness, one practitioner noted that, in their experience, forgiveness was more common in cases where the sexual assault took place in the context of a close relationship.

When the offender was a stranger or an acquaintance, the act of forgiveness in a RJ process was less common. The complexities of the use of apology in the RJ processes were brought up by two practitioners. One practitioner elaborated on a specific case where the offender was warned not to expect an acceptance of the apology that they wanted to offer. In this case, the survivor-victim was asked in the preparations if they would want to hear an apology and was assured that they did not need to accept it even if the offender offered an apology.

4.4 Topic: Justice needs



Interview question #3:

Did the restorative justice processes you facilitated or participated in have the capacity to address one or more of survivor/victim's justice needs (ex: participation, voice, validation, vindication, offender accountability, etc.) and to what extent did it do so?

The desired outcomes of survivor-victims from a RJ process often include what Kathleen Daly has termed “justice needs”. These are the specific needs that survivor-victims seek in order to feel as though justice was in some way accomplished for them, including participation, voice, validation, vindication, and offender accountability (2014, pp. 386-389). Practitioners discussed which justice needs were held by survivor-victims and which needs were able to be met during the processes. They considered the impact of a dialogue format (in-person or otherwise) on the ability to meet justice needs. The justice need most discussed was offender accountability, and as such, merited its own section below (see 5.4(c)). Practitioners discussed different levels of accountability and shared their processes for moving between levels of accountability.

4.4(a) Types of justice needs

Practitioners were asked if they believed the process that they had participated in was able to meet the survivor-victim's justice needs. Overall, the practitioners interviewed believed that their RJ processes met the justice needs of survivor-victims. Seven responded that they did believe that, broadly, their processes met the justice needs of survivor-victims. The other five practitioners discussed specific justice needs in their responses rather than providing a broad answer. Ten practitioners touched on the specific individual examples provided in the interview question on justice needs (interview question #3). The examples were: “participation”, “voice”, “validation”, “vindication”, and “offender accountability”. The one other justice need

consistently raised by participants that was not included in the examples was the need to feel confident that the offender would not sexually assault anyone again; the process had worked as a preventative measure. This justice need was discussed by five practitioners.

4.4(b) Dialogue format

With the in-person dialogue cases that were deemed to have successfully met the justice needs of survivor-victim by practitioners, there was consensus that RJ met the needs of survivor-victims when it came to voice and offender accountability. Often, participation and validation were also included, but there were two practitioners who did not include them in the list of the justice needs that were met by their RJ processes. Four practitioners responded that vindication was not a need held by survivor-victims, but two others responded that it was a need that some survivor-victims had during the process, and that it was met during the process.

With the dialogues not conducted in-person, practitioners reported varying levels of success regarding justice needs. The dialogues that were not in-person were unable to provide the same level of participation for the survivor-victims. As these processes were conducted without an in-person dialogue due to the survivor-victim's wishes, it left the practitioners unable to increase the experience of participation. Another practitioner thought validation was less accomplished in processes that were not in-person. Despite the difficulties with participation in these dialogues, other justice needs were still manageable. One practitioner observed that despite the lack of offender participation generally needed to vindicate the experience of the survivor-victim, vindication was still feasible through the facilitators and supporters. This type of vindication can occur when facilitators and supporters explicitly denounce the actions of the offender and denounce sexualized violence in general. From this condemnation, survivor-victims feel

vindicated as they become aware that there are others who believe the sexual assault was unjust and harmful.

4.5(c) Offender accountability

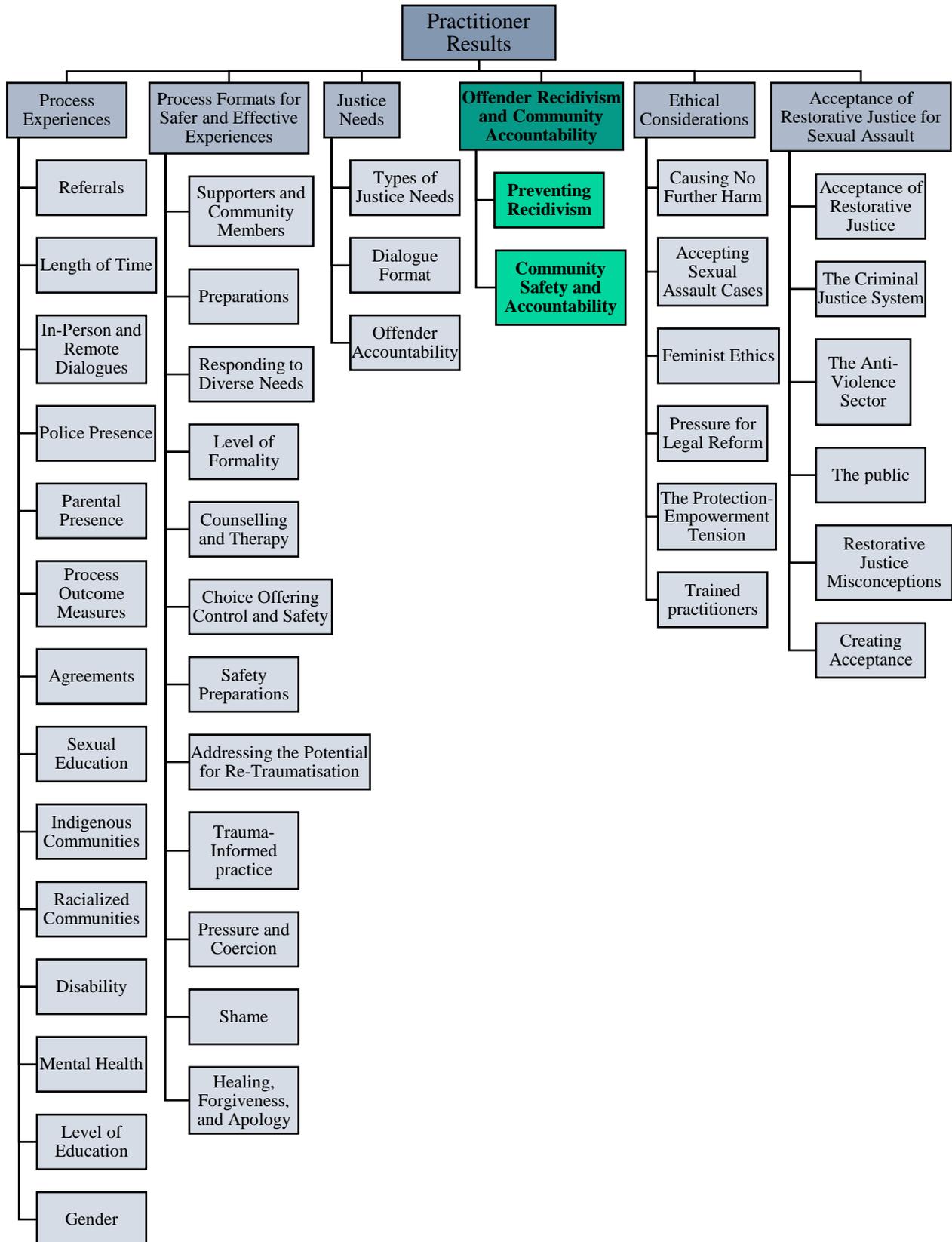
A central component of the RJ processes in this study involves offender accountability and responsibility-taking for the harms they had caused. This was especially important because of the nature of these cases, as survivor-victims of sexual assault often seek the offender's admission of responsibility as validation and vindication of their experience. Accountability was a universal topic throughout all the interviews. The diversionary and community referral cases placed a significant amount of emphasis on accountability, whereas the post-conviction cases did not emphasise accountability as much, as the court had already deemed them responsible for the crime. In the post-conviction cases, other needs like answers to specific questions of the survivor-victim, were a higher priority for participants because they were not necessarily seeking an admission of responsibility.

Eight practitioners discussed some form of a two-level accountability requirement in place. Two-level accountability operates as follows. If the case was accepted, the offender initially had to demonstrate some understanding of wrongdoing or accountability (the first level of accountability). The second level of accountability, also considered to be full accountability, was generally required before any dialogue between the survivor-victim and the offender took place. As outliers, two practitioners indicated that they looked for close to full accountability from the beginning. In addition to two-level accountability, one practitioner distinguished between overall accountability and meaningful accountability. This practitioner noted that meaningful accountability must go beyond apologies and admissions of guilt. They believed it occurs when

the offender demonstrates that they understand the impacts of their actions, they are working on changing themselves, and they have the supports in place to do so.

For many, getting to full accountability was part of case development. Especially with youth or people with cognitive impairments, some offenders were not able to articulate full and meaningful accountability right away. The offenders needed time to trust the practitioners and to be able to have honest conversations with them. This was especially difficult with the shame and condemnation that comes from being labelled a sex offender, as it would prevent some offenders from openly admitting to being responsible for the sexual assault even if they were aware of their responsibility. One practitioner suggested that offenders should be allowed to change their story without judgement to create the trust needed to take accountability. The majority of practitioners required full accountability (second-level accountability) before going into a dialogue. One practitioner believed that full accountability could not come until the offender had a chance to meet with the survivor-victim and truly witness the impact of their actions, so this practitioner required only high-level accountability, not full accountability, by the time of the dialogue. However, some other practitioners disapproved of the use of a dialogue to create full accountability.

4.5 Topic: Offender recidivism and community accountability



Interview question #4:

In the specific cases you worked on, did the restorative justice processes work as a preventative measure by reducing offender recidivism and/or increasing community safety and accountability?

This question elicited more succinct responses than other interview questions, most likely due to a lack of concrete experiences within their cases. With regards to recidivism prevention, practitioners held nuanced perspectives. They maintained hopeful perspectives due to their largely successful and positive interactions with offenders while acknowledging their inability to truly predict recidivism levels. Additionally, in response to the interview question, practitioners spoke to their positive experiences with community member accountability. They brought up and responded to critiques regarding community participation.

4.5(a) Preventing recidivism

RJ's ability to prevent offenders from committing future offences was explored in the interviews by 11 practitioners. Only one organisation (as represented by responding practitioners) involved in this study had attempted a formal evaluation of recidivism with their cases, and their sexual assault case numbers were not large enough to form a significant data set. The rest of the responses were based on qualitative experiences. Practitioners recognised that there was neither easily-accessible data nor guarantee of preventing recidivism after a RJ process, but they believed that successful processes had prevented behaviours from being repeated or escalating. Several reasons were provided for these beliefs. Some believed that the offender's act of taking responsibility and seeing the impact of their actions would inform future behaviours. Others pointed to the work that the offender had done while learning about consent and the growth they

had experienced from that learning process. Another practitioner saw the depth of the impact of the process on the whole family of the offender and believed that the family would help hold the offender accountable and prevent future reoffending.

At the same time, practitioners maintained a nuanced view on potential recidivism. One practitioner highlighted their perceived difficulties of relying on RJ processes as a deterrent for future sex offending as it is only one instance of intervention in an offender's life. A different practitioner was not sure that they could claim any lack of reoffence was due to the RJ process. Three other practitioners re-emphasized the previously-stated sentiment by expressing that there were many variables at work and that they could not isolate the impact of the RJ process to take credit for what was often a combined effort with other programs, psychologists, and religious groups. They believed that reoffence prevention is a holistic endeavour that is better accomplished with as much support for sex offenders as possible.

4.4(b) Community safety and accountability

Four practitioners spoke of the experiences that they had when supporters and community members actively provided their support for survivor-victims during the process. These supporters and community members condemned the sexualized violence that took place and demonstrated to survivor-victims that they should not be ashamed of their assault. Additionally, approaches like reintegrative shaming and healthy male role-modeling were used as community accountability mechanisms for offenders.¹⁶ Practitioners noted that community members were able to bring the knowledge gained from the process back into their communities to work on

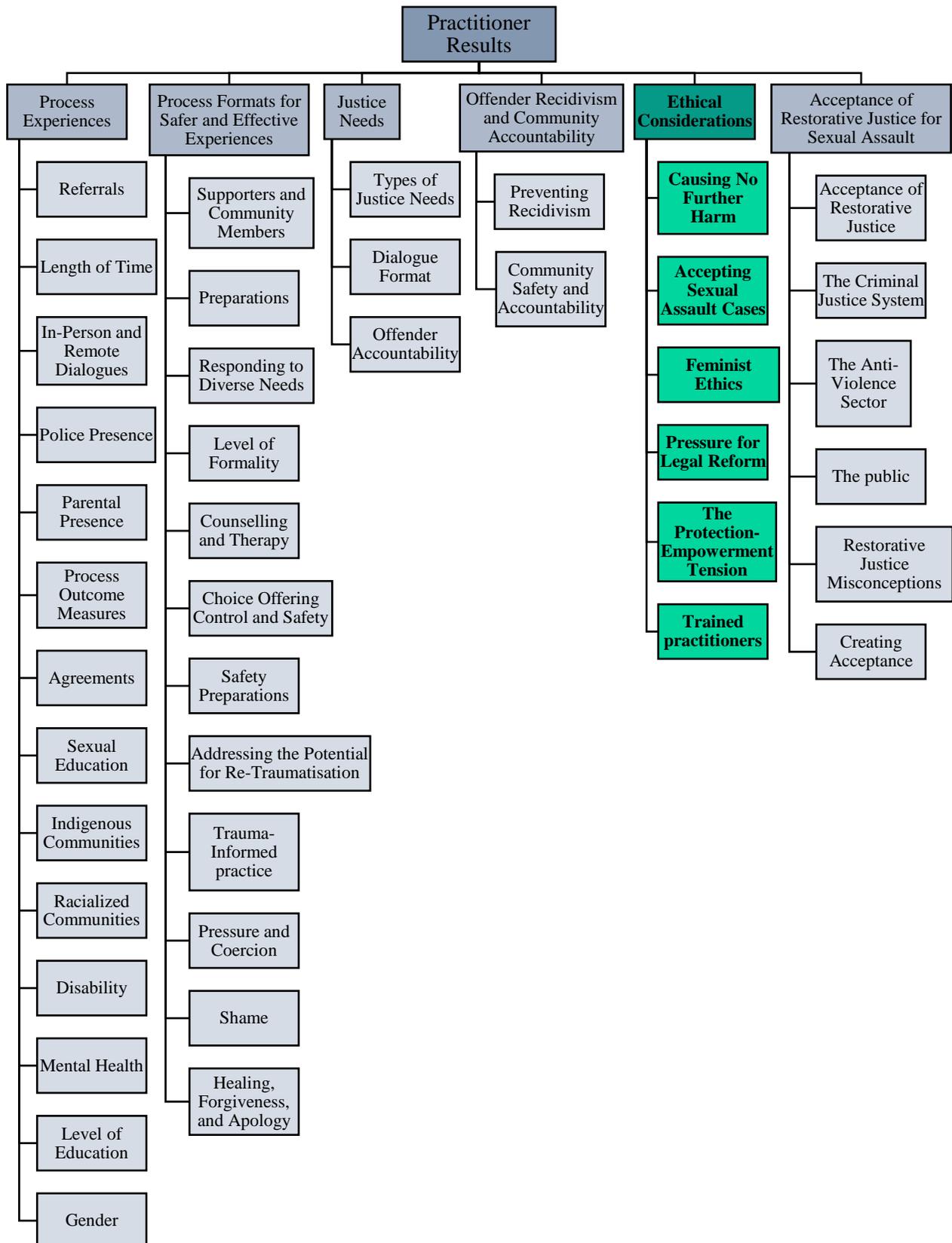
¹⁶ "Reintegrative shaming" employs shame so that the choice to commit assault is condemned rather than the offender as a person. Rather than rejected from the community as a part of the shaming process, the offender is welcomed back into the community once they have taken responsibility and worked to repair the harm

reducing sexualized violence. For example, one practitioner shared a story of a community member who, through the RJ process, realised that they had previously been reinforcing victim-blaming stereotypes with their own children and pledged to change their behaviour.

There were 10 practitioners who raised or responded to critiques that they were aware of regarding supporter and community member participation. One practitioner critiqued the belief that supporters will only provide positive contributions. This practitioner believed that the best mode of operation to address this perspective was to review the positive aspects and the negative aspects of supporter participation with the participants and allow them to make the decision for themselves. With regard to the concern raised by some academics that community members may bring in harmful beliefs about sexual assault to the RJ process, one practitioner noted that their community member participants were volunteers in different capacities with their organisation, so they were especially familiar with and sensitive to the needs of sexual assault cases.

Additionally, three practitioners spoke of the need to properly prepare the supporters and community members to participate in the dialogue so that they did not engage with the process in a manner that was harmful to the survivor-victim.

4.6 Topic: Ethical considerations



Interview question #5:

What ethical considerations are involved in this type of process?

The practitioners detailed many of their ethical considerations during the interviews. Several topics arose in the interviews that were of a joint practical-ethical nature, where procedural choices engaged ethical decision-making. This section will begin with ethical perspectives on the responsibility to cause no further harm, the decision whether or not to accept sexual assault cases, and the discussion of feminist perspectives as an ethical decision. Practitioners' concern about the potential for RJ to curtail reform efforts regarding sexual assault law and criminal justice processes will be reviewed. Lastly, two considerations discussed in the interviews that involved ethical decision-making within procedural topics will be detailed: the protection-empowerment tension and the need for trained practitioners.

4.6(a) Causing no further harm

When asked about ethical considerations, the primary topic that arose for four of the practitioners was their responsibility to cause no further harm. Further harm was not just discussed as physical harm, but mental and emotional harm as well. One practitioner said:

“I can hear this voice in my head saying, “do no harm, do no harm”. That’s an ethical thing that I just have first and foremost on my mind all the time. So, when I’m starting to read these files and go through them, that’s constantly playing in my head. Is this going to be a healing process or is this going to be one that could potentially be harmful? ... I think that’s [something] a practitioner needs to ask themselves that over and over, just double check all the time while working through

the process and getting ready for either a healing circle or victim-offender
[conference].”

Another practitioner said that they felt that cases of gendered violence were the most important type of RJ case to ensure no further harm occurred, because survivor-victims have already experienced such trauma from the assault and most likely from community responses as well.

4.6(b) Accepting sexual assault cases

For five practitioners, the decision to accept sexual assault cases was an ethical dilemma due to the lack of organisational mandate, support, and resources. For instance, one practitioner’s organisational policy stipulated abstention from sexual assault cases, though they did not share why that decision was made. However, the few times that this practitioner did end up taking on sexual assault cases occurred because the referring agencies were seriously seeking to have the assault addressed in some manner but were not able to do so on their own. Another practitioner faced a similar dilemma. This practitioner was unsure if their organisation was equipped to handle the cases of sexual assault referred to them, but also felt the need to facilitate these cases because of the push from the referring agencies.

4.6(c) Feminist ethics

Three practitioners discussed feminist perspectives in their interviews as part of their ethics. The first practitioner relayed that they spoke of feminism in one of their dialogues so that they could connect the sexual assault with broad patriarchal systems to communicate the dynamics that encourage men to perpetrate sexualized violence. The second practitioner, when explaining the extensive preparation process that they had facilitated with a specific offender, mentioned that they had the offender research feminism and reach out to a sexual assault centre for information

on gendered violence. A third practitioner discussed the experience of having others question their ability to identify as a feminist while working closely with sex offenders. The previously-mentioned second practitioner also identified this as a struggle that they faced, though it was not in the specific context of feminism, but rather a general questioning of their character based on their decision to work closely with sex offenders.

4.6(d) Pressure for legal reform

For eight practitioners, the concern about the potential for RJ to mitigate or curtail reform efforts regarding sexual assault law and criminal justice processes was an ethical dilemma to which they gave considerable weight. This concern addresses the possible outcomes where the public could become more complacent about improving access to justice for survivor-victims and the criminal justice system might use the availability of RJ as an excuse to avoid reforming their processes if RJ became a more common justice process. Two practitioners believed that it was a valid concern, while four practitioners were not very concerned by this potential and preferred to see it as an opportunity for growth. Two practitioners remained undecided. One practitioner recognised that there was value in meeting the needs of survivor-victims, while still remaining disheartened about the potential to curtail reform efforts. Two practitioners saw it as an ethical question: was it best to serve the needs of the survivor-victims that came to them or best to decline their cases in service of the broader good? The practitioners unconcerned by this potential provided several reasons why:

- Regardless of an uptake in RJ processes, there would still be survivor-victims who prefer to use the court system, therefore there will still be pressure on the criminal justice system to better meet survivor-victim needs.

- Because the criminal justice system is slow to change, working at the individual level is a positive way to contribute by ensuring one more persons have their needs met.
- As long as there continues to be substantial issues in the criminal justice system regarding sexual assault, offering RJ is an ethical practice.
- RJ could potentially inform criminal justice reform rather than hinder it.

Finally, practitioners considered this concern on a macro scale. There were two practitioners who suggested that if RJ and the criminal justice system worked together more collaboratively, this would not be an issue anymore. Additionally, two practitioners emphasised that the ethical onus is on all processes that address sexual assault to be conducted responsibly, rather than focusing on one or the other.

4.6(e) The protection-empowerment tension

There was a particular tension that was brought up by seven practitioners which this study has termed the protection-empowerment tension. This tension occurs when the efforts to protect survivor-victims from re-traumatisation and the efforts to empower them through choice and decision-making in the RJ process come into conflict with one another.¹⁷ Practitioners noted they did not have a definitive solution, as they were not sure which option to prioritize. Six practitioners described how, in order to protect the survivor-victim, they struggled to decide whether or not to stop a process from proceeding if there was either the potential for re-traumatisation or if the offender was not sincere in their accountability. It risked having none of the survivor-victim needs met. Otherwise, practitioners could empower the survivor-victim to decide what level of accountability they desired and decide whether or not to proceed. However,

¹⁷ This tension can also be seen in the literature review and is discussed in 2.9 under “*Tensions in best practices*”.

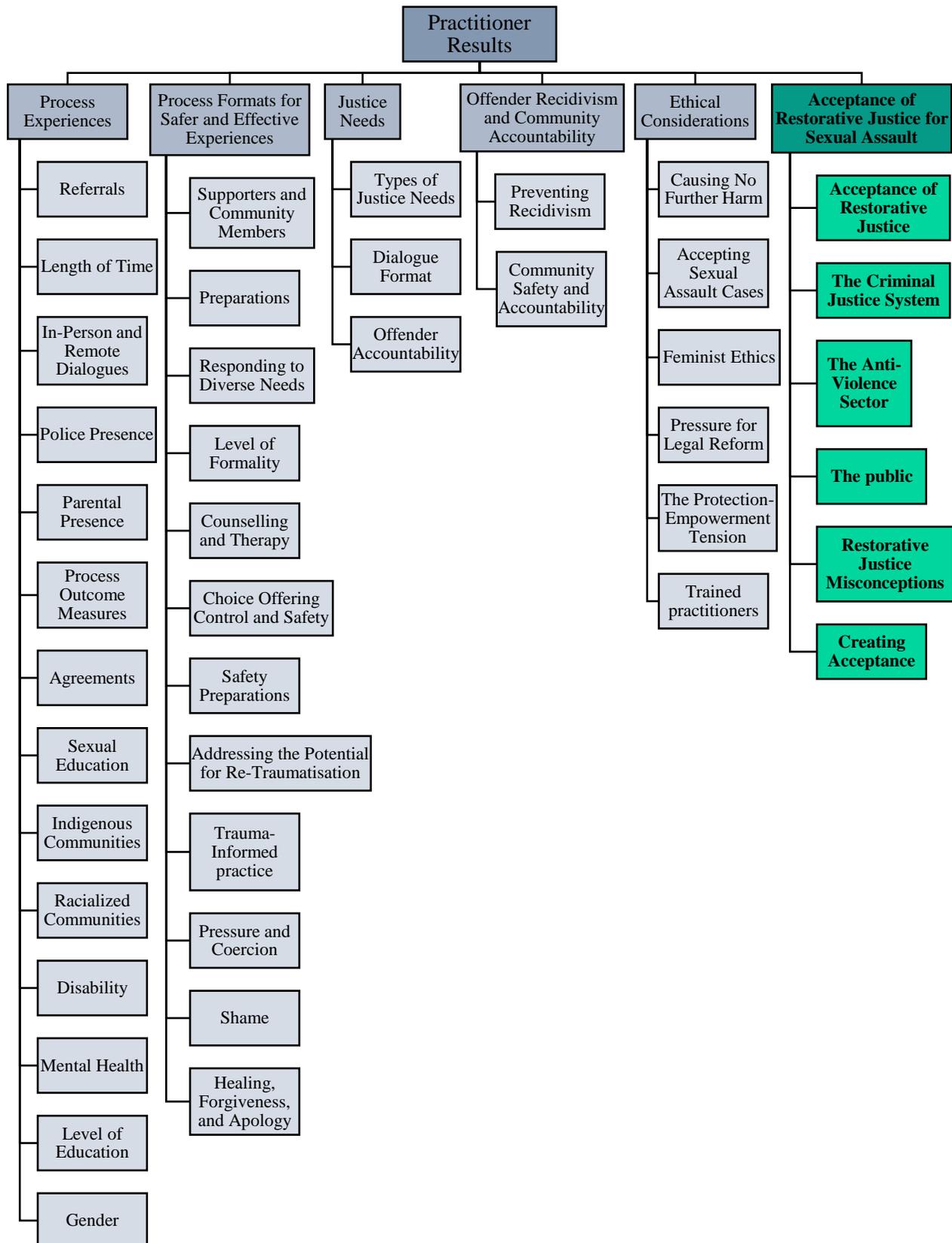
this risked the potential of re-traumatisation. Notably, the practitioners who were most aware of this tension were those who had allowed dialogues to take place without full offender accountability because of the wishes of the survivor-victim. From the perspective of the practitioners, some of these dialogues had poor results. In contrast, when practitioners made the opposite decision, and chose to stop the RJ process after seeing signs of potential re-traumatisation, they did not seem as concerned by this tension, but survivor-victims in these cases could have been disappointed that their needs did not end up being met through this process. Based on the experiences of the practitioners in this study, re-traumatisation was a greater concern than survivor-victims being unable to meet their justice needs through the RJ process.

4.6(f) Training and qualification of practitioners

The need for practitioners to be properly practised, knowledgeable, and trained was the second joint practical-ethical topic for practitioners. Not only did they believe that less experienced practitioners would be less able to properly facilitate these cases, three practitioners considered it unethical to take on sexual assault cases without the proper kind and quantity of experience because of the potential for lasting damage. One practitioner suggested that levels of experience should correspond with the level of trauma associated with the sexual assault. Practitioners indicated a high level of respect for the ability of their colleagues who were properly trained. One practitioner spoke of the faith they held in their colleagues who were properly trained and experienced: *“I know all of my colleagues, ... and I would be entirely comfortable sharing a case or transferring a case to any of them, in terms of their ethics and integrity and the quality of care that victims and offenders would experience with my colleagues, for sure.”* This topic extended to the design of RJ programs that address sexual assault. The need for extensive time to research,

consult, and design was highlighted by two practitioners as both a practical need and something needed to have confidence that they were operating ethically.

4.7 Topic: Acceptance of restorative justice for sexual assault



Interview question #6:

In your experience, does your regional justice culture currently accept restorative justice for sexual assault as a valid and ethical form of justice?

When considering their experience of general acceptance of RJ for sexual assault, practitioners were generally disheartened. In these discussions, three specific groups emerged: the criminal justice system, the anti-violence sector, and the public.¹⁸ Misconceptions about RJ were pinpointed as a specific reason for the lack of acceptance. Counterarguments to disprove the misconceptions were offered. Practitioners did demonstrate the desire to encourage further acceptance of the practice and offered suggested methods to do so.

4.7(a) Acceptance of restorative justice

Most practitioners did not believe that their regional justice culture supported RJ for sexual assault. When asked if practitioners believed their regional justice culture was accepting of it, only two practitioners said “yes”. One said, *“it warms my heart to know that we’re entering a new stage of compassion and empathy and I’m excited about that.”* Seven practitioners said “no”. One elaborated that *“I think we have some real champions who want to see it go forward and we have some case by case successes, but overall as a culture I don’t think we are quite there.”* Another said that *“I think there is secret support and then there are people who absolutely wouldn’t support it even if they had knowledge of its success, and then you’ve got people in the middle who don’t think it’s a great thing because they don’t know about it.”* This notion of individual champions and secret supporters also appeared in several other interviews. Three specific groups were discussed within the broader frame of justice culture: people who

¹⁸ The anti-violence sector includes sexual assault centres, transition house programs, and feminist organisations.

work in the criminal justice system, people who work in the anti-violence sector, and the public. The following three subsections will examine more closely each group.

4.7(b) The criminal justice system

Under the umbrella of the criminal justice system, the practitioners focused discussions on police and Crown counsel. Generally, practitioners believed that those who work in the criminal justice system, especially police and Crown counsel, consider sexual assault to be too serious for diversion programs. Practitioners listed two reasons why Crown counsel did not send cases to RJ; they either thought it was inappropriate or it was not even considered. However, they asserted that the opinions regarding the RJ process as a better alternative than the court in some cases is slowly increasing in popularity. Practitioners have witnessed this increase in popularity of this opinion through the uptake in Crown counsel and police cases sent to RJ programs. One practitioner believed the increase in popularity is leadership-dependent, as they had experienced the most support from police and Crown counsel when the senior management encouraged the use of RJ as a diversion process. They believed that some police have recognised the dysfunctions of the criminal justice system in addressing survivor-victim needs. One example provided was a police officer who had approached RJ practitioners with the request to scale up their efforts with sexual assault cases, as this police officer was seeing a need for these services. However, there are still many cases where RJ is not considered as a viable option.

4.7(c) The anti-violence sector

The anti-violence sector discussion mainly focused on sexual assault centres. Several RJ practitioners had held or were planning discussions with sexual assault centres about their work with RJ for sexual assault. Practitioners found that some sexual assault centre workers were open

to alternative processes, while others were more reluctant. Those who were reluctant were still willing to support the choice of the survivor-victim, as they did not want to remove any decision-making power from the survivor-victim. Two practitioners reported that the sexual assault centre workers who were hesitant before being directly involved in various RJ processes would be more supportive of it after their involvement, when they heard from survivor-victims or witnessed a dialogue. One practitioner shared their experience that, for both the criminal justice system and the anti-violence sector, *“if you speak privately to someone off the record, versus in a group in front of their colleagues, they also tend to see it as more valid and ethical.”* This statement echoes the previously mentioned sentiment of secret supporters, where people see value in RJ, but are unsure of the reaction of their colleagues based on the belief that many would not be supportive of RJ.

4.7(d) The public

Four practitioners thought that the Canadian public is becoming more informed about RJ in general and regarding sexual assault specifically, so RJ in cases of sexual assault is becoming more broadly accepted. In contrast, seven practitioners stated that they believe the public apprehension around RJ for sexual assault persists because sexual assault is considered a crime too reprehensible for RJ. One practitioner noted that, based on their encounters, they thought that the difference between people who are inclined to support it and people who are not inclined is *“[because] it is ... a [supportive] person who tends to see things in a more complex way, like in a more grey-scale world, than like somebody who is a bit more black and white, that’s a theme I see a lot.”* Here, the level of support is related to the ways people conceptualise justice in relation to sexualized violence.

4.7(e) Restorative justice misconceptions

Practitioners believed that there are many incorrect assumptions made about RJ that permeate current discourse. These misconceptions inform some of the criticism faced by RJ practitioners, causing lower acceptance of the practice. In the interviews, practitioners often rebutted these stereotypes with their experience with RJ. For instance, RJ is frequently considered to be a soft-on-crime alternative that allows offenders to avoid the punishments they deserve. This was the first misconception addressed in the interviews. When it came to the soft-on-crime stereotype, practitioners spoke of the intense and emotionally-difficult process that required offenders to face the person they had harmed and take accountability for their actions. To the practitioners, this was not a soft-on-crime experience. Practitioners described that some offenders would start participating in the RJ process because they believed it would be easier than a court process. However, in most cases, the practitioner would not approve the case proceeding, or the offender would drop out once they grasped how much was required of them. One practitioner explained:

“Sometimes we’ll get an offender who is doing it maybe for the optics of being seen, to be the guy who is doing this, that maybe comes up a little bit. But ultimately, this stuff is, working in the serious crime area, this stuff is too hard for people doing it for optical reasons. Eventually they just, if that’s what’s going on, they seem to just generally sort of run out of steam at a certain point. It’s hard work and, me and my colleague, we’re... people describe us as intense people, so we’re not a lot of fun to spend a lot of time with, ... we’re asking a lot of hard questions.”

Another misconception addressed by two practitioners was the belief that RJ is offender-focused, where practitioners focus more on the offender’s rehabilitation than the survivor-victim’s needs. One practitioner acknowledged that there are some RJ practitioners that are offender-focused in

their work. This practitioner stated that they believe those practitioners are not suitable to practice RJ for sexual assault. However, in the interviews, there was significant emphasis on victim-centered mandates. Practitioners worked for victim-centered organisations that prioritise the survivor-victim's needs and involve them as active participants in the process rather than be used evidence to prove an assault was committed. Additionally, several practitioners distinguished that the act of working with offenders is not inherently offender-focused nor is it condoning of their behaviour. Rather, it is a way of achieving the important task of getting these offenders to hold themselves accountable.

4.7(f) Creating acceptance

There was a clear desire to further the acceptance of RJ for sexual assault within the Canadian justice culture. It was often framed by practitioners as the need to tell the stories of RJ processes that dealt with sexual assault, or alternatively as the need for better education about RJ in order to dismantle misconceptions. One practitioner touched on the idea that many people, whether they work in the criminal justice system, the anti-violence sector, or are a part of the public, would be better convinced of RJ's potential if they were able to observe a dialogue. As they recognised the impracticality of that suggestion, this practitioner as well as others suggested various other methods to further RJ education, from dedicated public relations staff in RJ organisations to participants and volunteers sharing their experiences with their communities. Practitioners noted several reasons as to why they had difficulty sharing their experiences with RJ and sexual assault. Some suggested it was from humility and a lack of ability to self-promote, others said it was due to the secrecy around taking these types of cases and the difficulty gauging who will be receptive to this aspect of their work, and others still because of their caution around confidentiality.

Chapter 5: Discussion

The facilitation of RJ for cases of sexual assault requires a holistic framework and an understanding of many subjects including RJ theory, the legal context, systemic oppression, and sophisticated practical skills. The results of the interviews with RJ practitioners have yielded six themes that will be explored here. Each theme draws on several of the topics from the *Results* chapter. The themes are:

- 5.1 Practitioners report that they are able to meet the varying needs of survivor-victims through procedural flexibility.
- 5.2 Practitioners are knowledgeable about the practices that can make the RJ process safer.
- 5.3 Practitioners struggle with the practical and ethical tensions that arise in their work, but these tensions are manageable, and they are committed to working with them.
- 5.4 RJ is being used by practitioners as a vehicle for sexual education of offenders.
- 5.5 The experiences and perspectives of practitioners differ from those described in the literature on a small number of notable topics.
- 5.6 Misconceptions about RJ and sexual assault held by professionals and the public are impeding buy-in of the practice.

The six themes discussed in this chapter respond directly to the primary research questions. Several themes respond to the secondary research questions, while the others present notable experiences of the 12 practitioners involved in this study. The *Conclusion* chapter will provide an overview of how the research questions were answered.

5.1 Theme: Practitioners report that they are able to meet the varying needs of survivor-victims through procedural flexibility

Survivor-victims of sexual assault have a variety of needs that they seek to have the justice process meet and those needs differ between survivor-victims. The needs identified in the literature include participation, voice, validation, vindication, offender accountability, public condemnation, being relieved of the emotional burden, information, support, and violence prevention (Daly, 2014; Joyce-Wojtas, & Keenan, 2016; McGlynn, 2011). Many of the needs identified in the literature were also raised by practitioners. These needs include RJ reparation agreements, sufficient case duration for participant preparation, the different justice needs of survivor-victims, preventing recidivism, and the ability to make decisions about the process. In the discussion of this theme, I identify diverse needs raised in the interviews and describe how the practitioners respond to them. In this study, practitioners reported that they were able to meet the varying needs of survivor-victims through procedural flexibility.¹⁹

5.1(a) Meeting needs through procedural flexibility: Agreements

The results of this study support previous research indicating that survivor-victims have varying needs when it comes to agreements. For example, some survivor-victims required that reparation agreements be completed in order to feel that they had achieved personal closure. In contrast, there are others who did not need to reach an agreement, but who required only the dialogue, or even simply the preparation stage, to feel as though their needs were met.

The data from the interviews has broadened the understanding of agreements from the context of offenders. One practitioner noted that offenders were frequently requesting more extensive

¹⁹ Procedural flexibility speaks to a process that can have many outlines and many different elements incorporated and where practitioners attempt in their work to meet the unique needs of participants.

agreements, which meant that they were requesting more forms of reparation or reparations that would require more effort and involvement. This request occurred if the offenders wanted to continue their prosocial behaviour or if they were still feeling shame and desired a form of punishment to help them be relieved of that shame.²⁰ The former speaks to the ability of RJ to encourage offenders to seek full accountability. However, caution should be taken if the latter is the case, as RJ is not meant to be a punitive process. Reparations are meant to make restitution for the harm caused as best possible. If they continue to see reparations as punishment, this can indicate that they are still feeling shame. A more productive perspective would focus on learning to reframe shame as the motivation to prevent future harm. Ideally, offenders should be able to complete the RJ process with the drive and the supports needed to reintegrate into the community where they can be law-abiding citizens. Shame can be a deterrent to this reintegration if it is not properly managed, which increases the chance of reoffending (McAlinden, 2005, p. 374).

5.1(b) Meeting needs through procedural flexibility: Case duration & resources

Practitioners affirmed that case duration can affect the results of the RJ process. When it came to timing, practitioners often focused on ensuring that the survivor-victim had enough time to prepare and was not feeling rushed. They suggested that it can also be beneficial to ensure that the offender is not rushed in their responsibility-taking efforts. The benefit of time in the process was clearly demonstrated in a case where the survivor-victim left the country for a year before the dialogue took place. The practitioner was able to spend a lengthy amount of time working with the offender; time that they might not otherwise have had to work on accountability. It was

²⁰ Prosocial behavior is a type of voluntary behavior in which the actions taken by the individual exhibiting the behavior are meant to benefit others (Bierhoff, 2002, p. 9).

apparent from this practitioner's interview that the extensive preparation work with the offender was a key reason that the case was successful. A lengthy RJ process with in-depth preparation is understandably resource intensive. As RJ organisations often face difficulties operating with small budgets and finding stable funding, devoting this level of resources may mean that they have to take fewer sexual assault cases or fewer cases in general. Though it does not immediately solve these issues, it is interesting to compare the level of resources needed to complete a sexual assault trial with the resources needed for a RJ process, as there is usually more time, money, and personnel involved in a trial (Cripps, & McGlade, 2008, p. 248; Curtis-Fawley, & Daly, 2005, p. 618; Jülich, Buttle, Cummins, & Freeborn, 2010, p. 6). While RJ should not be used in inappropriate cases or forced upon anyone for the sake of cost savings, the use of some criminal justice funding to divert sexual assault cases to RJ would help provide more resources to RJ organisations for these cases and reduce the caseload in an overburdened court system.

5.1(c) Meeting needs through procedural flexibility: Justice needs

Of the justice needs identified, "vindication" was the most contentious amongst practitioners, demonstrating a need for further education on the concept. Vindication was defined by four practitioners as revenge or desire for punishment (*vengeful vindication*). Therefore, these practitioners did not incorporate vindication into their processes, either because they would manage expectations with the survivor-victim or because it was not a need of the survivor-victims. Contrary to this, two other practitioners viewed vindication as an affirmation that the survivor-victim is believed and is not blamed for the sexual assault (*affirming vindication*), following the definition provided by Daly (2014, p. 388). These practitioners indicated that vindication was a part of their processes. Practitioners should avoid mistaking *affirming vindication* for *vengeful vindication*, as they could fail to meet the need for affirmation. This

disparity shows the need for further education on the specific needs of survivor-victims of sexual assault. It is understandable that some practitioners reacted to the term “vindication” as they did, as RJ seeks to avoid vengeful vindication. However, affirming vindication has a valuable role in the RJ process, and should be understood as such (Daly, p. 388).

The need to feel confident that the offender would not offend again (also described as prevention of future assaults) was a justice need discussed in the interviews. Though it is not on Daly’s list of justice needs, it is raised in other research (Koss, 2014, p. 1642). Some Canadian women’s rights organisers believe that survivor-victims should not have to take on the burden of prevention. In practice, practitioners do not characterize it as an imposition of responsibility but as a desired outcome (Wychreschuk & Boland, 2000, p. 7).

As asserted by leading theorists and practitioners in this study, preventing reoffence should not be a primary goal of RJ, as the space that RJ creates for survivor-victims to have their needs met and offenders to take responsibility should exist regardless of recidivism rates (Zehr, 2015, pp. 13-16). However, this does not negate the value of the research on this subject, as it has become apparent that prevention can be a survivor-victim’s justice need. The question asked of practitioners in the interviews about recidivism was not constructed to provide quantitative data on recidivism within RJ for sexual assault cases. It was meant to create an understanding of the ways in which practitioners view their work within the context of recidivism and it led to the conclusion that survivor-victims wanted to be involved in preventing any reoffences. Overall, the practitioners had an optimistic and favourable opinion on preventing future offences and linked their experiences with the needs of survivor-victims. The emotional work done in RJ was the primary reason cited by practitioners as to why RJ can prevent reoffences. The sincerity of emotions often expressed by all parties can deter offenders from reoffence and the intensity of

participating in the emotional process can act as a deterrent from future offences. One practitioner described why they were confident in this assertion:

“I think that because it is such an intensely intimate and vulnerable position to be in and a process to go through, that even for the person who has caused the harm, it would be difficult for them to go through a process like this again. Most of them talk about how distressing it was, it was uncomfortable for them, it was a reality check. They used a whole range of phrases and language to describe what the process was, but it was never “easy”.”

Seven practitioners detailed their perspective on the best ways to prevent an offender’s future reoffences. Two cited an integrated and holistic response accomplished by connecting offenders with other services, while the others focused on the process having a major impact on offenders, as demonstrated in the previous quote. The emphasis on preventing future offences should not eclipse other focuses in the RJ process lest it become too offender-centered, but it should be valued as a need held by some survivor-victims.

5.1(d) Meeting needs through procedural flexibility: Choice

In order to empower survivor-victims to regain control in their lives, they should be offered choices in the aftermath of a sexual assault, especially regarding options for how they wish to proceed when disclosing. After the assault, they can choose to disclose to the criminal justice system, self-refer to an RJ program, participate in therapeutic programs and healing programs, or chose to take no further steps. Once they disclose to the criminal justice system, they may have less choice over the proceedings of the case. However, Van Camp and Wemmers argue for a proactive approach to the offer of RJ, where they are offered the option of RJ along with third

party reporting and reporting in hopes of proceeding with a trial²¹ (2016, p. 433). This does not mean that the survivor-victim chooses whether charges are laid and a trial proceeds, but it does mean that they more consistently have the choice of participating in RJ. Given the issues that have arisen in this study regarding police and Crown counsel decisions to refer to RJ (decisions that are based on sexual assault myths and for the sake of the offender), this format could address these issues. It is also aligned with a victim-centered perspective where it is understood that survivor-victims are best suited to know which process will meet their needs the most if given the information to make an informed choice.

Practitioners in this study demonstrated the same type of assertions as did the literature on survivor-victims' need for choice. The ability to make informed choices and the feeling of having control in a situation allows survivor-victims to feel like their experiences are being honoured (Stern, 2010, pp. 14, 101). Both practitioners and academics from the literature review are aware that RJ is not appropriate for all cases but can also be the best option in some cases. Though both practitioners and academics indicate that RJ is increasingly being offered as an option to survivor-victims, there are still many impediments in the way of all survivor-victims being made aware of their choices. These impediments include a lack of service providers within the criminal justice system and the anti-violence sector who are aware of RJ or are willing to suggest it as an option to survivor-victims.

RJ functions both within the legal system and outside of the legal system. Where the process occurs in lieu of criminal charges or in conjunction with them, there is an emphasis on creating

²¹ Third party reporting refers to the act of reporting a sexual assault to the police through a third party, often a victim service worker, to provide the facts of the assault without identifying one's self. The third party acts as a liaison if a suspect is identified or other survivor-victims come forward (BC Ministry of Public Safety and Solicitor General & BC Ministry of Justice, 2017).

better collaboration between RJ and the traditional legal system in both the literature and the interviews. I believe, like some of the practitioners, that this collaboration could improve the experiences of survivor-victims. However, I will also note that it should not be forgotten that many survivor-victims are afraid of reporting sexual assaults to the criminal justice system for fear of violence from the police, fear of deportation, or fear that their immigration status may be jeopardized (Koss, 2014, p. 1650; Presser & Gaarder, 2000, p. 186; Van Wormer, 2009, p. 110). Additionally, many survivor-victims are hesitant to report their assault to the criminal justice system because of the way that other survivor-victims have been treated when reporting or during the trial process. These are compelling arguments as to why RJ options that can address these gaps through an entirely community-based response should also be explored further. RJ referrals can come from community-based referrals like community organisations and non-profit organisations, as well as from self-referrals. Some RJ organisations do receive some government funding, but they also receive funding through fundraising and non-profit grants, which means that they have avenues to raise funds for community and self-referrals. There is space for both separate and collaborative processes. Survivor-victims should be able to access the justice processes they feel most comfortable engaging with, based on their needs. Until the many issues that prevent marginalised survivor-victims from accessing the criminal justice system are resolved, RJ may be able to fill that gap in service by making themselves more present within marginalized communities that are seeking alternative forms of justice processes. This could be accomplished through targeted outreach, more advertising of services, and through public clarification of RJ. However, these endeavours could be a strain on RJ organisations without further funding and resources.

5.2 Theme: Practitioners are knowledgeable about the practices that can make the restorative justice process safer

Safety is a crucial part of the RJ process, but it is not always a tangible concept. The definition of safety and the experience of safety differ between people and depending on circumstances.

Nonetheless, it is especially relevant with sexual assault cases. Practitioners are knowledgeable about many of the practices that can make the RJ process safer. First, this section will examine the practitioners' actual emphasis on safety and their understanding of the concept of safety. This section will then discuss the topics relating to safety that arose in the interviews in which practitioners demonstrated their knowledge. These topics are: supporters and community members, mental health safety, shame, and Indigenous cultural safety. Following the discussion on the topics in which practitioners showed that they possessed significant knowledge, this section will also examine two topics - trauma and the experience of racialized communities with the police - where practitioners demonstrated moderate or lower levels of knowledge.

5.2(a) Practices to make RJ safe: Safety as a concept

Each survivor-victim understands and experiences safety differently, but general markers of safety as defined in this thesis include: a lack of fear for their lives and their family's lives, an uncompromised ability to earn an income and socialize, mental health and physical health that will not be compromised, and comfort in sharing their experiences and emotions. Two practitioners discussed briefly discussed survivor-victims' general fear, but there was no discussion of fearing for one's life in the interviews. Based on the comprehensive care that practitioners took to ensure the safety and willingness of participants, I believe it is reasonable to say that a RJ process would not proceed if a survivor-victim feared for their life at any point.

There was also little discussion regarding referral criteria and screening protocols, as no practitioner listed the set of criteria that they would apply in cases of sexual assault. Violence risk assessments screening was only mentioned by one practitioner. Specific referral criteria were discussed in relation to other topics, and included: the avoidance of further harm, the accountability of the offender, and voluntary participation. Discussions on specific safety measures and considerations came up often in the interviews, but safety as a concept was not as emphasised as expected based on its relevance in the literature, where the concern over the safety of survivor-victims has remained relevant for years. Only one practitioner described safety as their main priority. Based on the discussions of specific safety practices and considerations in the interviews, my understanding is that the topic of safety did not require overemphasis because it was an essential part of the process for practitioners. It has become second-nature for practitioners to address and the potential for harm is managed sufficiently well. However, as can be seen in section 4.7 of the *Results* chapter, there is still a need for the reassurance that safety is always being considered in order to create more acceptance for RJ as an option within the justice culture.

5.2(b) Practices to make RJ safe: Supporters and community members

Supporters and community members were generally considered to be a valuable component of the RJ process by practitioners because they were able to meet some specific needs of participants. For many participants, they were an essential part of making experiences feel safer. There are many different ways that supporters can contribute to safety; they can accompany participants so that they are not alone at a particular stage, they can pick up on cues that might otherwise be missed, and they can be a trusted figure in a situation where some participants are not trusted. In the interviews and the literature, attention would often fall on the survivor-

victim's supporters. However, two practitioners did emphasise that supporters are equally as important for offenders as they are for survivor-victims. Offenders were less likely to have supporters in this study. This was not due to a lack of consideration or effort on the part of the practitioners, but rather because offenders were less willing to seek out supporters due to the stigma of being a sex offender, a lack of supporting people in their lives, or the belief that they did not need support during the process. One practitioner said:

“Going back, I think if there was anything I would change regarding the mentor situation with that youth [offender], I think it would have been better for him to have a mentor so that he also felt like there was one person there who was solely there to support him. He did such a good job and there was no defensiveness, it was incredible, but I do not know what was going on in the inside for him.”

There are multiple benefits when an offender has a supporter or mentor. A supporter can be beneficial for the mental health of the offender as someone with whom to share their experiences and emotions. They can also help to encourage accountability. Based on the experiences of the practitioners in this study, supporters can often assist the accountability-taking process. A supporter helps to diminish feelings of isolation and can challenge behaviours that are counterproductive. This is not only a benefit to the offender, but to the RJ process as a whole.

For critics of RJ for sexual assault, the presence of supporters and community members raises the concern that community members may be unable to properly support survivor-victims. Community member participants may introduce or support harmful internalized ideas about consent and victim-blaming, causing further harm to survivor-victims (Rubin, 2010, p. 81; Wychreschuk & Boland, 2000, p. 9). This is a crucial reason why having supporters or

community members participate may not be appropriate depending on the case. The appropriateness of supporters and community members can be evaluated on an individual basis based on their perspectives on sexual assault and discussions held in the preparations. However, this concern does speak more broadly to a larger societal lack of education regarding the experiences and needs of survivor-victims of sexual assault.

In this study, two practitioners facilitated specific preparation stages for supporters and community members to mitigate this potential for harm. An understanding of how best to hold offenders accountable and how to avoid using blaming or minimising language can be developed in the preparation stage. In contrast to the critiques, supporters and community members in the dialogue can be a positive presence by potentially helping meet the survivor-victim's need for affirming vindication and validation. This works to repair the harm caused by the external community that shames, blames, and discredits the survivor-victim. However, this cannot address the concern in the literature that RJ assumes the existence of a healed community in which survivor-victims can return to a life without violence after the RJ process. (Cripps & McGlade, 2008, p. 251). Rather, this is a broader ethical question that continues to be deliberated and cannot be answered in this thesis.

5.2(c) Practices to make RJ safe: Mental health safety

As listed in the general markers of safety, uncompromised mental health is a component of a safer process. In the interviews, the emphasis on the need for counselling as a supporting factor during the process - often through referrals to outside counselling - demonstrated a prioritization of mental health safety. The RJ process can come with risks to the mental health of participants, as does any process where an in-depth discussion of a traumatic event occurs. It is dependent on

the current mental health of the participants and how the assault has affected them. If not managed properly, there is a risk of mental health deterioration, self-harm, and death by suicide for both survivor-victims and offenders (Campbell, Dworkin, & Cabral, 2009, pp. 225-226; Levenson, D'Amora, & Hern, 2007, p. 557). This emphasis on counselling was similar to the more-established RJ programs in the United States and Australia. For example, the RESTORE program in Arizona had a mandatory one-year sex offender therapy process. The Special Youth Justice Co-ordinators in South Australia often refer youth offenders to a sexual abuse counselling prevention program after a conference process (Daly, Bouhours, Broadhurst & Loh, 2013, p. 245; Koss, 2014, p. 1631). Though the over-reliance on counselling was of concern to one practitioner, the demonstrated need for therapeutic programs across the interviews shows that it can be met through the RJ process. RJ practitioners are often reminded that they are not counsellors. In order to prevent the RJ process from becoming a counselling session, separate counselling can be used when needed to make sure these roles do not blend together. In addition, a collaborative relationship between RJ organisations and local counsellors and therapists could potentially encourage more psychological professionals to suggest, when appropriate, the option of RJ to their clients who are dealing with a sexual assault.

5.2(d) Practices to make RJ safe: Shame

Shame is a complex topic within RJ for sexual assault. Just as with re-traumatisation, shame can jeopardize the mental health safety of participants. In the interview discussions on shame, the emphasis was on the offender's experience. Although not all RJ practitioners chose to use reintegrative shaming techniques while working with offenders, there is no doubt that shame is one of the most potent feelings within the context of sexual assault and can be harnessed in the pursuit of growth. For offenders, shame is both a valuable part of the process and an emotion that

must be managed to prevent self-harm and future reoffence. However, shame should also be understood in the context of survivor-victims. Survivor-victims experience shame because they are often blamed by others for their assault, they blame themselves for their assault, and they are not believed when they disclose their assault (Randall, 2010, pp. 412, 430). Feelings of shame can arise when discussing their experiences of the assault and should be addressed to avoid any effects on their mental health. RJ can be a tool to work through survivor-victim shame. If survivor-victims experience validation and vindication, two of the justice needs previously discussed in the *Results* chapter, it can help to reduce those feelings of shame. Survivor-victims are validated when they see that others believe that their experience is legitimate. They are vindicated when they see that they are not blamed for their assault. Even if the process does not incorporate a dialogue with the offender, healing circles and other similar processes can be used to meet the validation and vindication justice needs of survivor-victims, thereby effectively managing survivor-victim shame as well as offender shame.

5.2(e) Practices to make RJ safe: Indigenous cultural safety

Cultural safety is defined as an environment where there is no challenge or denial of identity and needs, where knowledge and experiences are shared in the process of learning together, and where people are treated with dignity and respect (Williams, 1999, p. 213). Indigenous cultural safety considers the social and historical contexts of inequalities faced by Indigenous peoples because of the historical and on-going effects of colonisation (Ward, Branch, & Fridkin, 2016, pp. 29-30). The results of the interviews demonstrate that many practitioners are using culturally relevant methods in cases with Indigenous participants. This is primarily accomplished by Indigenous justice organisations providing RJ services for Indigenous communities, including dialogues, healing circles, sentencing circles, and healing programs (to address addiction issues).

There were also non-Indigenous RJ organisations co-facilitating dialogues with support from Indigenous community organisations and facilitators. Not only is it important to recognise the unique experiences and needs of racialized communities, especially in the context of RJ, it is also important to understand that they will experience sexualized violence differently than White communities (Crenshaw, 1991, pp. 1242, 1250-1251). Indigenous women in Canada are three times more likely to be the victim of a violent assault, which includes sexual assault (Brennan, 2011, p. 5). One practitioner who often worked with Indigenous offenders spoke to this when the impact of sexualized violence from residential schools was discussed. The offenders that worked with this practitioner were either survivors of residential schools or had experienced intergenerational trauma because of residential schools.²² Due to the prevalence of the victim-offender cycle in Indigenous communities, where a significant number of offenders are also survivor-victims of past sexual assault, an understanding of the needs of blended offender-victims is especially relevant when working with Indigenous communities (Noll, 2005, p. 244).

5.2(f) Practices to make RJ safe: Trauma-related needs

In this study, the level of practitioner familiarity with the trauma-related needs of survivor-victims is moderate. Several of the RJ practitioners came from a psychology or counselling background. Two practitioners specifically indicated that they had been trained in trauma-informed practice. In the literature, it is emphasized that RJ practitioners who work with sexual assault cases should be systematically trained in working with trauma. As there is still a public lack of awareness around sexualized violence-based trauma and because of the great potential for re-traumatisation, it is unwise to practise RJ for sexual assault without an understanding of

²² The effects of collective trauma (such as war or genocide) can be transmitted across generations from those who were originally victimized to their children and grandchildren. This is known as intergenerational trauma (Bombay, Matheson & Anisman, 2009, p. 6).

sexual-based trauma. There are potential opportunities for practitioners who are beginning their work with RJ and sexual assault to develop their understanding of sexual-based trauma. It is important to note that many people, including the practitioners in this study, do not subscribe to the idea that certain types of sexual assault are inherently more traumatising than others. With that being acknowledged, depending on the level of trauma that the individual survivor-victim has experienced, there may be potential for less-traumatising experiences to be facilitated by less practiced practitioners. This would allow for a safer and ethical development of skills and knowledge.

5.2(g) Practices to make RJ safe: Racialized communities and the police

When it came to the discussion of other racialized communities besides the specific needs of Indigenous communities, there was a gap in practitioners' demonstrated awareness. This was especially apparent in the lack of nuanced discussions of the relationships between racialized communities and the police, which are often characterized by distrust and fear. This observation is based on the frequency with which police collaboration was discussed without any examination of how different participants may react to police presence. This is distinct from the manner that other marginalised identities were discussed, as these discussions demonstrated understanding and nuance. In cases where the dialogues take place in police stations or other criminal justice facilities, it is crucial to make sure that neither the survivor-victim nor the offender feels threatened in that location. As RJ is not meant to be punitive in nature, obliging an offender to enter a facility that they associate with violence against their community is counterproductive. It will not help to repair the harm that the offender has caused the survivor-victim.

5.3 Theme: Practitioners struggle with the practical and ethical tensions that arise in their work, but these tensions are manageable, and they are committed to working with them

The RJ work with sexual assault is complex and often involves negotiating between competing ethical choices. These tensions were highly visible from the interviews. Practitioners struggle with the practical and ethical tensions that arise in their work, but these tensions are manageable, and they are committed to working with them. Several tensions were topics of discussion, as the topics appeared in many interviews. These topics were: the protection-empowerment tension, pressure and coercion, the potential for re-traumatisation, and process model formality. Others were more minor topics. Though they are still relevant to the theme of practical and ethical tensions, they appeared in fewer of the interviews. These topics were: gender-balanced co-facilitation models, the balance of timing, spontaneous innovative solutions, and pressure for legal reform.

5.3(a) Managing practical and ethical tensions: The protection-empowerment tension

The protection-empowerment tension was the most visible tension in the interviews. This tension occurs when the efforts to protect survivor-victims from re-traumatisation and the efforts to empower them through decision-making in the RJ process come into conflict with one another. For example, a survivor-victim may express the strong desire to meet the offender in person so that the offender can hear the impact of the assault. However, despite the offender's progress in taking responsibility, the practitioners note that is the possibility that they may revert to placing some of the blame on the survivor-victim in a dialogue. The practitioners have to decide if denying the survivor-victim the desired opportunity to meet with the offender, therefore removing some of their agency, is better or worse than risking the potential for re-traumatisation

if the offender does start to blame the survivor-victim despite the factors in place to prevent that occurrence. Practitioners struggled with the ethical implications of this tension in their practice. In their work, practitioners addressed this tension on a case by case basis.

The protection-empowerment tension can easily become polarising within the different perspectives on RJ and sexual assault. One could argue that the protection of survivor-victims from re-traumatisation must be upheld at all costs and that re-traumatised survivor-victims may wish they had had someone prevent them from participating in a RJ dialogue. The opposing argument could claim that removing the decision-making power from the survivor-victim is overly paternalistic and that allowing the survivor-victim to make their own choices is a crucial part of any process that deals with sexual assault. Many academics believe that best practice involves ending a RJ dialogue if there are signs of re-traumatisation and preventing the dialogue from occurring if that potential is present. However, as the encouragement of victim-centered practices grows, and survivor-victims are expressing their needs more vocally, it can be difficult to deny their opportunity to meet with the offender if requested. Based on this dynamic and the experiences of practitioners addressing this tension on a case by case basis, I believe that the best path forward is to use a balance of probabilities. By this I mean that with each case where the protection-empowerment tension is present, the case should be examined for the probability that the offender behaves in a way that could re-traumatise. A 10% probability is much more reasonable to proceed forward if desired by the survivor-victim than a 50% probability, in which the termination of the RJ process is reasonable. Though the practitioner might have to be the decision maker, as they are responsible for preventing re-traumatisation, it should still be discussed with the survivor-victim to include them in the decision.

With regards to the protection-empowerment tension, I will also suggest avoiding a mediation-style process as a method to address the tension, where participants want to participate in a RJ process, but cannot agree on the events that took place, so an attempt to mediate an agreement of events prior to the dialogue is conducted. From the discussions held in the interviews, the cases that had the poorest outcomes consisted of an offender who would not take full responsibility for the assault and a survivor-victim who insisted on participating in the dialogue because they were seeking an opportunity to share how the assault had impacted them. In one case, the practitioner tried to use a mediation-style process in order to accommodate both participants who wanted to participate in a RJ process but did not agree on the nature of the harms that occurred. The nature of mediation was not conducive to successful outcomes with this case, as the attempt to mediate an agreement on the responsibility of events of the sexual assault was at best unproductive and at worst re-traumatising. While the practitioner was prioritizing the participation needs of the survivor-victim, this case is a demonstration that mediation-style processes have not been successful in the past. Other options that work with these tensions may have better results, such as holding a separate offender-accountability circle and a healing circle for the survivor-victim.

The desire to cause no further harm may not be consistently feasible when working with survivor-victims of sexual assault and is better framed as a high standard of care. Four practitioners cited the goal of causing no further harm. Though admirable, it becomes complex in practice. For instance, a situation where, despite best efforts to prevent it, a survivor-victim experiences some re-traumatisation but also accomplishes their desired outcomes, it is difficult to characterise this as having done no further harm. As evidenced by the literature, there are some who believe that the potential for re-traumatisation should disqualify the practice of RJ for sexual assault because any potential for re-traumatisation is too dangerous (Balfour & Du Mont, 2012,

p. 723; Cameron, 2006b, p. 59; Rubin, 2003, p. 102). It stands to reason that for these academics, it is insufficient that some survivor-victims feel their needs have been met if some of them have been re-traumatized. However, I submit that other processes are not held up to this standard. It does not seem to apply to the criminal justice system, as many survivor-victims who have reported the assault to police or have been through a trial later report re-traumatization (Koss, Bachar & Hopkins, 2003, pp. 387-388). Though the criminal justice system is criticized for its re-traumatizing results, the discussions often focus on how to improve it, rather than if it should be permitted to operate. I do think that a high standard of care is necessary in all processes addressing sexual assault, so long as the efforts to attain this high standard do not prevent individual survivor-victims from accomplishing their desired outcomes. It remains to be seen if there is a process that does not ever risk re-traumatization as there is always going to be a chance of re-traumatization when working with survivor-victims.

The premise of causing no further harm is not only difficult in practice, but it comes with further consideration for practitioners to situate their work within the larger framework of acting for the good of the individual versus the broader good. For example, the use of RJ for sexual assault that helps many survivor-victims experience their desired outcomes would benefit the individuals, even if re-traumatization occurred in some cases. However, the development of a process that did not risk any re-traumatization would benefit survivor-victims in the long run (the broader good) though survivor-victims might have less access to justice processes while this ideal process is being developed. These considerations require much further reflection.

5.3(b) Managing practical and ethical tensions: Pressure and coercion

As can be seen from the results, practitioners in this study are aware of the potential for survivor-victims to be pressured and coerced into RJ participation and do their best to mitigate it. Though the literature implies that the potential for pressure and coercion can be eliminated, it has become apparent to practitioners that there may not be a definite solution to potential pressure and coercion. As suggested by one practitioner, if RJ and the criminal justice system worked together more collaboratively, the potential for pressure and coercion might be less frequent. This practitioner supposed that a lower frequency might result from survivor-victims being able to participate in both processes, meaning that they would not have to choose between them. Before a decision is made by a survivor-victim to participate in a justice process, some academics worry that survivor-victims may be pressured into participating in RJ by members of their community so that the offenders are not charged and sentenced with a sex crime. However, in the reported experience of practitioners, it was more common that survivor-victims described having to pick from options when none fully suited their needs or that survivor-victims described feeling as if they must pick one option in order to have some of their desired outcomes accomplished. If the survivor-victim is not satisfied with any option available, there is no option that is truly pressure-free.

Although the focus on pressure and coercion is mainly out of concern that survivor-victims will be pressured into participating in a RJ process, there is also the potential for the opposite, where they may be pressured out of participating in RJ. One practitioner had witnessed this type of pressure on survivor-victims. This practitioner had seen the decisions of survivor-victims to participate in RJ criticized rather than supported, which could have led to feeling pressured into reversing a decision that they had made for themselves. The practitioner noted that this

behaviour places the onus of defending one's choices onto the survivor-victim. Based on this discussion in the interview, I believe that this potential should also be kept in mind while discussing pressure and coercion because it can otherwise reinforce the perception that survivor-victims have no agency of their own.

5.3(c) Managing practical and ethical tensions: Potential for re-traumatisation

A major ethical question that arises after reviewing the literature and the results is the following: do we bar all RJ processes from addressing sexual assault because of the potential for re-traumatisation or do we allow them to proceed because the potential for re-traumatisation is often well-handled by professionals? It could also be framed in the opposite: do we prevent some survivor-victims from having their justice needs met or do we allow that some survivor-victims may be re-traumatised so that more survivor-victims can access a variety of justice processes? Provinces like Nova Scotia have chosen the former option through the implementation of a moratorium on RJ and sexual assault. The practitioners in the study have chosen the latter option by practicing with the risk of re-traumatisation. Is it more acceptable that some survivor-victims are going to be re-traumatised in RJ processes or that there will be no further re-traumatisation at the loss of a process that might bring a sense of justice to some survivor-victims? This led me to consider further questions. Even though the criminal justice system is not held to a standard of 0% re-traumatisation, should RJ be held to this standard? Is it possible for RJ to have a 0% chance of re-traumatisation? If RJ cannot have a 0% chance of re-traumatisation, will there ever be a process that does? Neither RJ nor the criminal justice system have a 0% chance based on the evidence that we currently have. I do not believe that there will be a future process that will have a 0% chance because there is always a risk of re-traumatisation when working with survivor-victims by virtue of working with people who have been sexually assaulted. Because of

this, I believe that we should continue to explore and improve processes for survivor-victims that respond to their needs. This is not to say that clearly harmful processes should be allowed to continue to operate, but rather to acknowledge that it is a complex determination of when a process is likely to do more good than harm because of the varied experiences of survivor-victims. A harm reduction perspective is a potential response to these complexities when working with survivor-victims who are asserting their need to participate in a particular process.

5.3(d) Managing practical and ethical tensions: Process model formality

The question of process model formality was a tension in practitioners' work.²³ In general, academics emphasise that formal RJ processes developed to address all types of cases should not be applied blindly to sexual assault (McGlynn, Westmarland & Godden, 2012, p 235). However, as seen in the interviews, formal processes can be tailored to the specific crime of sexual assault. With regards to level of formality, it was clear from the interviews that it was a contentious issue for practitioners. Nine of the practitioners preferred to use a less-formal model. Three practitioners used a more-formal model. Neither group of practitioners specifically discussed any disadvantages with the model that they use. However, based on practitioner responses and academic research, there are possible benefits and disadvantages with both models. More-formal processes allow for consistent measures to be put in place, ensuring better safety measures and thorough designs, but potentially inhibiting the fulfilment of individual needs. Less-formal processes allow for many needs to be accommodated but run the risk of omitting some safety measures. There are three possible outcomes regarding the level of formality. If more-formal processes are deemed less effective than processes designed for each individual, then it would be

²³ Less-formal models consist only of a basic outline of the process, which is altered and further developed as needed. More-formal models follow a more detailed and specific structure in every case, often with with scripts and invariable stages.

logical to prioritise those less-formal processes. If less-formal processes are far riskier when it comes to safety, then more-formal processes may be the ethically-sound option. If they are equally as effective and safe, I suggest that practitioners should use whichever model they are most comfortable with, so that they can provide the best possible processes. The context of the sexual assault could also be considered, and if there is a higher risk of re-traumatisation, a more-formal process could be used. There was no data from the interviews that could demonstrate which of these three possibilities was most likely.

5.3(e) Managing practical and ethical tensions: Gender-balanced co-facilitation models

A gender-balanced co-facilitation model has both positive attributes and implications worth considering. In cases of gendered violence, the gender of the RJ practitioners can be impactful. In the cases where the offender is male, and the survivor-victim is female, the gender-balanced co-facilitation model allows for a supportive female figure to be present for the survivor-victim and a positive male role model for the offender. However, there are several concerns that I think should be considered when discussing the gender-balanced co-facilitation. For one, a gender-balanced pair of practitioners may not be feasible in some areas due to a lack of practitioners of a specific gender. Additionally, it assumes that practitioners and participants identify in the gender binary of male or female, meaning that it is assumed that there are no practitioners who identify as gender non-binary. Finally, this model does not allow for the flexibility to meet a participant request for a practitioner of a specific gender. When the situation is right, the gender-balanced co-facilitation can be very effective, but there still should be room for other facilitation models.

5.3(f) Managing practical and ethical tensions: Balance of timing

Balancing different timing needs was also a tension. For instance, one practitioner noted their struggle between two different timing needs. This practitioner wanted to spend the time that the process required to carefully work through all stages of the process, while avoiding a lengthy process that stalls the lives of the participants and inhibits the survivor-victim from making any progress that they might have otherwise done. Additionally, it is possible that the preferred paces of the survivor-victim and offender can vary. Practitioners also believed that a balance must be struck to ensure the most successful outcome where the offender does not feel inhibited in their responsibility-taking by feeling rushed into a dialogue.

5.3(h) Managing practical and ethical tensions: Spontaneous innovative solutions

When practitioners were discussing the tensions that they had faced, some would spontaneously produce innovative solutions to the problems that they were describing. These occurrences speak to the need for reflection after facilitating sexual assault cases. This is not to say that the practitioners did not already take the time to reflect after the fact. Rather, this subject of discussion is meant to identify that some of the most creative and adaptive ideas in the interviews came after the practitioners had a chance to reflect on new knowledge and previous experience. This type of reflection will certainly be beneficial for the future practice of RJ cases.

5.3(i) Managing practical and ethical tensions: Pressure for legal reform

Practitioners shared their perspective on the ethical implications of the potential that RJ may curtail reform efforts regarding sexual assault law and criminal justice processes.²⁴ While there are some practitioners who found the potential troubling, there were others who raised points as to why they are not preoccupied with it. This was another instance where practitioners believe that they were choosing between the individual good and the greater good. Despite the concern about reform efforts in both RJ and anti-violence circles, there is not a great deal of literature that reviews the issues and possible options and outcomes. There was, however, one area of similarity between interviewed practitioners and academic writing. Two practitioners believe that this concern would become a non-issue if the criminal justice system and RJ worked in a more collaborative manner. This is mirrored in the literature by the recent assertion that the RJ field should move away from the oppositional restorative-retributive framework (Daly, 2014, p. 378). It will allow for more processes that meet the wide variety of survivor-victim needs and encourage a more comprehensive justice system in Canada.

5.4 Theme: Restorative justice is being used by practitioners as a vehicle for sexual education of offenders

Based on the discussions in the interviews, it was clear that RJ is being used by practitioners as a vehicle for sexual education of offenders, especially with younger offenders. Teaching consent in sexual education courses is a vital part of developing wide-spread understandings of respectful and consenting sexual relationships. Though the emphasis on teaching consent in schools is

²⁴ If RJ became a more common justice process, there is concern over the potential that the public would become more complacent about improving access to justice for survivor-victims and the criminal justice system might use the availability of RJ as an excuse to avoid reforming their processes.

continuously growing, there is still a lack of understanding of consent as well as evidence that the complexities of consent are not always addressed in sexual education (Canadian Women's Foundation, 2015; Jozkowski et al., 2014, p. 904; Smylie, Maticka-Tyndale, & Boyd, 2008, p. 25). The use of RJ as a sexual education tool was an unexpected theme in the interviews, as it did not appear in the literature review. This section will discuss the potentially successful aspects of this practice as a concentrated form of consent education, the implications of its presence as a remedial form of education and its preventative functions, and some current options from RJ programs that lend themselves to this type of work.

There are two types of sexual offenders discussed by practitioners in the interviews: those who were actively aware they were committing sexual assault and those who were ignorant of the need for consent or how consent explicitly needed to be communicated (the latter was especially common with youth offenders). A lack of proper education can cause this type of ignorance or misunderstanding. Patriarchal norms of male dominance and negative social conditioning can become substitutes to foster false and harmful ideas on appropriate and consensual sexual encounters. RJ itself can function with either type of sex offender if the offender is willing to take accountability, but the use of RJ as a sexual education tool applies mainly to the second type of offender as seen in these interviews.

5.4(a) RJ as sexual education: Ability to effectively teach consent

When sexual education occurs in a RJ process, it allows for an in-depth form of education, as the conversations will generally take place between a small group of people where the content, language, and delivery can be tailored to meet the educational needs of the offender.

Additionally, within the RJ process, practitioners have already undertaken steps to build a

relationship with the offender. This will allow for an educational space where offenders are more likely to feel comfortable asking questions and engaging in discussions about consent. This is especially beneficial when working with young offenders, as they may be otherwise reluctant to engage in conversations about sex and consent. The potential for its inclusion as a regularly-offered part of the RJ process could be a benefit to the process as a whole.

5.4(b) RJ as sexual education: Remedial and preventative functions

Based on the interviews, I contend that RJ is acting as a substitute in situations where sexual education is not taught or not taught effectively. This is evidenced by the number of cases discussed by practitioners where young offenders demonstrated a lack of awareness around the legalities of consent and the practical applications of consent, which necessitated practitioners to engage in a form of remedial sexual education. As two practitioners discussed, this educational component of RJ can function as a preventative component. This is most likely beneficial in the cases where the offenders were unsure or wilfully ignorant of the non-consensual nature of their actions and could later identify consensual situations after the RJ process and understand why consent is necessary. If the sexual education component of the RJ process is conducted from a feminist perspective by discussing sexual assault in the context of systemic sexualized violence often faced by people of marginalized gender identities rather than as isolated incidents, this will better allow offenders to understand and question the patriarchal norms of male dominance that may have led them to commit sexual assault in the past.

Discussions around healthy sexual activity and sex offenders can be controversial but are necessary to explore in the aim of preventing future sexual assault. It was perceived that practitioners broached the topic with hesitation. As persisting attitudes encourage harsh

punishment for sex offenders, it is often with trepidation that the healthy sexual activity of offenders is discussed for fear that it would seem like their behaviour is being excused. However, there is room in the field of RJ to explore how to condemn sexual assault without condemning all sexual activity. Some practitioners were already engaging in these conversations. A condemnation of sexual assault without the support to develop an understanding of healthy sexual activity may leave offenders confused about what is and is not appropriate sexual activity. If offenders have been poorly educated in the past, this may leave them more vulnerable to reoffending. This demonstrates the need for proper sexual education that explores consent, boundaries, and healthy sexual activity to prevent sexual assault. Though RJ is often seen as the beacon of reoffence prevention, with regards to sexual assault, fulsome and accessible sexual education is a more effective and less resource-intensive prevention method (Zehr, 2015, p. 16).

5.4(c) RJ as sexual education: Restorative sexual education options

While RJ is not necessarily responsible for acting as a substitute for sexual education, there are sexual education programs being developed that take a restorative approach. The Campus PRISM Project in the United States has developed a preventative education model based on restorative justice theory and values. It uses community-building restorative circles to counteract rape culture by exploring sexual norms and harm, narratives about sexual assault and masculinity, and commitment to prosocial behaviour. This model goes beyond consent workshops and bystander workshops, which can increase awareness but are not always sufficient to change behavioural patterns. This model can bridge information sharing, education, reflection, and community building to create more effective programs. The restorative approach to sexual education uses the same types of information as other sexual education programs but allows communities to further engage through facilitated peer-support groups, which use positive peer

influence to reduce violent behaviour and involve members in the development of prevention strategies (Karp, Shackford-Bradley, Wilson & Williamsen, 2016, pp. 16-17). While many RJ organisations lack the resources to implement such a program, if the practice of RJ as a sexual education tool becomes increasingly apparent, targeted implementation could reduce the number of sexual assault cases that RJ or other justice mechanisms must address.

5.5 Theme: The experiences and perspectives of practitioners differ from those described in the literature on a small number of notable topics

Much of the experience of the practitioners in this study corresponds with the experience described in the research and serves to further substantiate the current body of literature. However, the experiences and perspectives of practitioners differed from those described in the literature on a small number of notable topics. These topics were: accountability, preparations, healing and forgiveness, the anti-violence sector, feminist frameworks, and staff and volunteer facilitators. First, with the topics of accountability and preparations, the experience of practitioners provided more detail than current research. With the topics of healing and forgiveness, the anti-violence sector, and feminist frameworks, the experience of practitioners lacked in detail when compared with the literature. Lastly, with the topic of staff and volunteer facilitators, the experiences were simply different than that of current research.

5.5(a) Practitioner and literary perspectives: Accountability

When compared with the practitioners' experiences, there were gaps in many of the academic discussions of offender accountability. Full accountability requires offenders to address the harms that they have caused by acknowledging that they had committed the harms, understanding the impact of the harms through an empathetic lens, and being willing to take

steps to make reparations and restitutions (Zehr, 2015, pp. 24-25). Academics mainly discuss a simple version of accountability, where the offender takes full responsibility of their actions from the initial meeting. This is unlike the two-level version often presented by the practitioners, which takes a nuanced perspective on accountability.²⁵ While the literature does demonstrate that accountability is needed to prevent re-traumatisation, academics do not often elaborate on the efforts involved. As indicated by practitioners, there is a significant amount of work that goes into developing this two-level accountability, as it is difficult for some offenders to take full responsibility of their actions of their own accord without any support or guidance.

There is a specific risk with two-level accountability, where the offender is unable to take full accountability after the RJ process begins and may negatively affect the survivor-victim.

Although this happened in one case discussed in the interviews where the offender actually regressed in their accountability, the levels of accountability developed in preparation stage were for the most part remarkable. Almost all practitioners made the decision to permit the offender into a dialogue only once full accountability had been taken. Only one practitioner decided to use the dialogue as the final method of guiding the offender to develop full accountability. The use of the second option is a common decision made in other RJ processes, especially those dealing with less violent crimes. With regards to sexual assault cases, many of the practitioners disagreed with the approach of using the dialogue as the final method of taking full accountability that was employed by one practitioner. Two questions remain that were unanswered by practitioners: Can all sexual assault cases that start with some level of accountability develop into full accountability before the dialogue? If not, should these cases be excluded from RJ, left to the

²⁵ With a two-level version of accountability, the offender initially had to demonstrate some understanding of wrongdoing or accountability. The second level of accountability, full accountability, was generally required before any dialogue took place between the survivor-victim and the offender.

survivor-victim to decide on whether or not to proceed, or decided on based on a balance of probabilities regarding re-traumatisation?

5.5(b) Practitioner and literary perspectives: Preparations

There are discrepancies between the literature and the data from this study as it pertains to the emphasis on preparations. Though the literature examines different elements involved in the preparation stage, it places much emphasis on the dialogue as the intensive component stage of a RJ process.²⁶ However, it has become clear from interviewed practitioners that the preparation stage required equal or more work to be accomplished. As an example of the intensive nature of preparations, three practitioners discussed running through the dialogue process with participants so that all parties were aware of the questions that would be asked and the answers that would be given. There were few practitioners who left any element unclear before the dialogue. This is an underestimated safety feature, as it allows participants to enter the dialogue with a full understanding of each step so that it can feel as familiar and safe as possible.

5.5(c) Practitioner and literary perspectives: Healing and forgiveness

There is concern from critics in the literature about the pressure for survivor-victims to heal themselves or to forgive the offender, but there was less emphasis on these two concepts in the interviews. These critics identify that many survivor-victims do not heal in a linear path (when the difficulties they face lessens linearly as time progresses) but rather healing occurs more sporadically, with periods of time that are more difficult than others and is very dependent on each survivor-victim's personal experiences. They also identify that some survivor-victims do

²⁶ "Dialogue" indicates any form of RJ process discussed in the interviews where the participants participated in a discussion, either in person or through different means. "Preparation" includes all steps taken before the RJ session convenes.

not want to forgive the offender. Many academics believe that neither healing nor forgiveness should be included as a necessary component in the justice process (Cripps & McGlade, 2008; Elliot, 2011; Herman, 2005; Marsh, & Wager, 2015; McEvoy, 2008, Randall, 2013; Zehr, 2015). The study results indicate that the concept of healing is not as problematized with the practitioners. There is far less emphasis on the use of apologies in the interview cases compared to the larger programs studied in the literature. Working through the complex and controversial topics of healing and forgiveness seems to still be a work in progress for some practitioners.

As it is important to better understand the experiences of survivor-victims (including healing and forgiveness), this does demonstrate the need for further sexual assault-specific knowledge acquisition. Though the time and resources needed to develop specific knowledge is a burden on RJ practitioners who are often struggling with small budgets and few staff in their organisations, there are a few ways that these types of important learning experiences can be developed to make the best use of time and resources. One option focuses on some sexual assault-specific training done with all practitioners in an organisation, so that there is less pressure to research quickly during a case. This would also assist in developing relationships with sexual assault centres and other similar organisations. Another option consists of a practitioner within an organisation becoming the specialist in sexual assault cases, so that they can lead these cases with a solid base of knowledge.

5.5(d) Practitioner and literary perspectives: The anti-violence sector

When the anti-violence sector was discussed in the interviews, practitioners assumed that anti-violence workers from feminist organisations hold values that are inherently opposed to the work that RJ is doing with sexual assault. However, these values are not as polarised as they may

believe, as demonstrated by the literature. For instance, Kasparian and Ptacek note similarities in the basic values of RJ and feminism, such as a respect for all people, and argue that the desire of both movements to improve access to justice for survivor-victims provides a foundation for their relationship (2014, p. 401; 2010, pp. 23-24). The devotion towards realising survivor-victims' desired outcomes runs throughout all feminist and RJ circles. Within the feminist movement, it is the recommended courses of action that differ. There are organisations in Canada, especially Indigenous women's organisations, that do not believe RJ is an appropriate route to address sexual assault because of previous attempts at alternative dispute resolution in cases of gendered violence that have failed to address the needs of Indigenous women. (Cameron, 2006b, p. 59; Stubbs, 2010, p. 115). However, as is seen in the literature, there are many feminist scholars who not only see the value in RJ for sexual assault, they advocate for it (Backhouse, 2012; Daly & Stubbs, 2006; McGlynn, 2011; Randall, 2013). One practitioner noted that:

“What we find is in terms of victim services culture and victim organisational culture, they're tending less and less to select out sexualized violence as off-limits, and I think part of that might be, what I hope is informing it, is that they're listening to victims say, “this is what I want, I don't care if this is off-limits for you, I want to get involved in this”. So, it seems to me that victims' voices now matter in a way that they didn't culturally 25 years ago.”

This assertion is supported by other practitioner interviews when they discussed their interactions with sexual assault centres. Though the sexual assault centre workers were sometimes hesitant, they were willing to support the survivor-victim on their path to justice and were often willing to engage in conversations on the work with RJ organisations.

5.5(e) Practitioner and literary perspectives: Feminist frameworks

Feminist literature suggests that RJ processes for sexual assault should use a feminist framework. However, only two practitioners in this study spoke of employing a feminist framework in their practice. It is quite possible that some RJ organisations would not be willing to apply a feminist label to their work for a variety of reasons. More important than the label of feminist practice is the understanding with RJ practice that patriarchal systems and misogyny foster sexualized violence. I could see that this understanding was present from the framing of discussions in several of the interviews. Additionally, it is equally as important to understand and acknowledge that individual offenders should be held accountable for their actions and their contribution to the prevalence of sexualized violence, but not for the phenomenon of sexualized violence as a whole.

Feminist values were discussed occasionally in the interviews. As detailed in the results, there were two practitioners who discussed their acts of working with sex offenders despite criticism. As some parts of the feminist movement have led the push for harsher punishment in a retributive system in order to deter potential offenders and demonstrate societal condemnation for sexualized violence, the restorative process of working closely with offenders can seem counterintuitive to some (Backhouse, 2012; Martin, 1998; McGlynn, 2011; Ney, 2014).

However, these practitioners explained that their model of justice necessitates that offenders are held accountable for their actions, which they did not believe happened often within the criminal justice system. Even if offenders are found guilty by law, the court system does not foster a climate where personal admission of wrongdoing and responsibility-taking is encouraged (Naylor, 2010, p. 677). In order for offenders to be held accountable, there must be people willing to work with them. One practitioner specifically detailed that:

“I see it as that we have an obligation to women and to victims to see men or perpetrators of violence as human beings, because I think the more we put them into boxes and the more we dehumanize them and just basically refuse to engage with them, the greater the perpetuation of violence is going to be. I think ... by doing a disservice to offenders, we are doing a disservice to the victims.”

This sentiment is echoed in the literature where supporters of RJ for sexual assault connect their beliefs in feminism and justice through RJ (Ptacek, 2010, pp. 23-24).

5.5(f) Practitioner and literary perspectives: Staff and volunteer facilitators

Both the practitioners in this study and the body of literature emphasise the need for properly practised, knowledgeable, and trained facilitators. However, opinions diverged on whether facilitators must be paid staff to work with sexual assault cases. Academics emphasise the need for paid staff in these cases, as paid staff are more likely to be properly qualified and trained (Kasparian, 2014, p. 402; Mercer & Madsen, 2011). However, there are a few organisations in this study who use volunteers as facilitators. One practitioner outlined how their organisation selects and prepares volunteers.

“In the last two years, we have developed facilitated dialogue training and so what we did is we took senior ... volunteers who have worked with people who have offended [or people] who are survivors of sexual violence and [the volunteers have] grown in that expertise. They may also be volunteering with our mediation program and have taken transformative mediation. So those individuals are then invited to take a facilitated dialogue training and we have begun carrying up lead facilitators that are staff with community volunteers.”

The above quote reflects the typical standard of care that practitioners put into training if they had volunteer facilitators work on cases of sexual assault.

5.6 Theme: Misconceptions about restorative justice and sexual assault held by professionals and the public are impeding buy-in of the practice

Throughout the interviews, practitioners identified various public misconceptions concerning the practice of RJ. Based on these misconceptions and the issues around the acceptance of RJ identified by practitioners, it is clear that practitioners believe that misconceptions about RJ and sexual assault held by professionals and the public are impeding buy-in of the practice. This section will first look at some of the misconceptions identified by some practitioners and perpetuated by other practitioners. Then, it will demonstrate how misconceptions can affect the practice of RJ by looking at referrals. Finally, it will examine how misconceptions reinforce a lack of acceptance of restorative justice for sexual assault cases.

5.6(a) Misconceptions about RJ and sexual assault: Restorative justice misconceptions

Despite practitioners believing that the main misconceptions about RJ had little bearing towards sexual assault cases, some practitioners unconsciously reinforced two misconceptions throughout the interviews. Two practitioners, even while asserting that the soft-on-crime stereotype was a falsehood, still unconsciously perpetuated this misconception. They would make comments implying that the offenders that they had worked with were fortunate to be given the option of RJ. While these practitioners were endeavouring to contrast the punitive criminal justice system with RJ, this phrasing still reinforces both the soft-on-crime and offender-focused misconceptions. It implies that offenders will face lesser repercussions for their actions because they will not be facing the possibility of criminal charges. Simply because the repercussions are

not punitive in nature does not mean they should be taken lightly. It also centers the RJ process on its value for the offender, rather than the value for the survivor-victim and the community. Additionally, in their efforts to soothe public concerns over RJ and sexual assault, practitioners in the study would emphasise that RJ is not solely a diversionary program. While this is a fact, as there are several types of joint restorative-criminal justice processes, I considered that it is in some ways problematic to direct public attention away from diversion and community referral cases, as it does not build support for them. I am in agreement with Blair Crew who argues that in order for justice processes to better reach out to the survivor-victims who do not report their assault to police to avoid the court process, support is needed for cases that do not use criminal sentencing along with RJ, such as diversion or community referrals (2012, p. 219). This issue of focusing public attention away from diversion to the exclusion of many survivor-victims is noted in the literature (McGlynn, 2011, p. 826). If efforts are continued to educate the public on RJ and sexual assault, caution should be taken to ensure these misconceptions and the exclusion of survivor-victims are not further promoted.

5.6(b) Misconceptions about RJ and sexual assault: Referrals

Some practitioners described sexual assault case RJ referrals that were offender-centric in nature or were occurring when no other justice option is available, accessible, or permitted. These cases were being referred because it would benefit the offender in some way, not because the survivor-victim initiated RJ. This is a concerning implication as it indicates that the needs of offenders are being prioritized over the needs of the survivor-victims, who, as those harmed by the sexual assault, rightfully deserve to be prioritized in a justice process. Additionally, this could be an indicator that the referrals from police and Crown counsel are still being shaped by the myths

and stereotypes of sexual assault, as the insistence on prioritizing the wellbeing of the offender over the survivor-victim is a common occurrence within rape culture.

Practitioners also pointed to referrals to RJ that were being made after a case was deemed unlikely to be successful in court by police or by Crown counsel. Firstly, this raises the question: If the criminal justice system elects to not pursue a sexual assault case in court due to a low chance of successful conviction, is it ethical to send that case to an RJ process? Though the decision of sending a case to trial is complex, it could be argued that if police and Crown counsel believe that the accused is guilty, they have the responsibility to try the case in court. If the option of RJ is available, it could mean that police and Crown counsel are less likely to place effort into building a successful case and succeeding in trial than they might have if RJ was not an option. However, offenders may not feel like they have been subjected to double jeopardy because RJ results in different outcomes than the possibility of incarceration and a criminal record, and participation in the RJ process is not meant to be punitive. It could also be argued that a referral to RJ in cases less likely to succeed in court can prevent the risk of re-traumatisation of survivor-victims, as it can be a damaging process to be involved in a trial that does not result in the conviction of the offender.

Separate from the previous ethical implications, this motive for referral indicates that RJ processes were still considered to be inferior to other processes and were only to be referred when there was no other option available within the criminal justice system. This demonstrates a lack of understanding of the RJ process by police and Crown counsel and that the decision to pursue RJ is not coming from the survivor-victim. Instead of following best practices as suggested by the research of Tinneke Van Camp and Jo-Anne Wemmers, where survivor-victims are offered all available options and are allowed to choose what is best for them, survivor-

victims are often recommended to RJ, where their only choice is between participation in a RJ process or exclusion from any justice process when a court process has been deemed unviable (2016).

5.6(c) Misconceptions about RJ and sexual assault: Acceptance of restorative justice for sexual assault cases

The acceptance of RJ for sexual assault cases in Canada's justice culture, including the public perspective and professional perspectives (like the criminal justice system and the anti-violence sector), primarily varies depending on location and exposure. The noted pattern that much of the acceptance comes from individual champions and secret supporters indicates that there is a fear of supporting what is believed to be widely opposed. Based on these experiences and the literature, it is likely that the field is still being held back by the history of poorly used alternative dispute resolution to address gendered violence (McGlynn, 2011, p. 829).

Not only is the need for better education on RJ and sexual assault necessary for its acceptance within the justice culture, it is a matter of access to justice. The more that survivor-victims are aware of RJ, the more they will be able to request it should they determine it is the right option for them. It is unfortunate that this places some of the onus on survivor-victims to improve their own access to justice. To avoid placing this burden on survivor-victims, a proactive offer of RJ would increase the knowledge of the RJ process. The proactive offer of RJ, which is the ideal introduction to the possibility of RJ as outlined by Van Camp and Wemmers, would be more likely become more commonplace when there is greater acceptance of RJ in the many sectors of the justice culture (2016).

As pointed out by one of the practitioners, in order for these misconceptions to be debated and rebutted, there needs to be more dialogue among RJ practitioners and those who have influence within the Canadian justice culture. The clearest path forward requires practitioners to seek further opportunities to speak about their work with sexualized violence in ways that will dispel myths, encourage discussion, and break down the silence that currently exists around the work. If survivor-victims decide they too would like to share their experiences, this should be encouraged, but not forced in any way. The act of sharing one's sexual assault and aftermath can be part of a healing process if desired. As mentioned by several practitioners, an effective way to change opinions and clear up misnomers requires that others be included in the RJ dialogue or process. This would be a practical and ethical improbability, but it speaks to more effectively share the need to share the stories of these cases. This is a task with which the broader RJ movement already struggles. The struggle to improve the acceptance of RJ for sexual assault mirrors the struggle of RJ in general but is all the more heightened because sexual assault is an emotionally-fraught subject within public discourse. However, a recently released report on the Canadian Department of Justice's provincial and territorial stakeholder consultations on transforming the Canadian criminal justice system shows that support for RJ in cases of sexual assault is growing. The report offers a collection of suggested improvements regarding the use of RJ, including the application of RJ in more serious cases. The report suggests an examination regarding the ending of the moratorium on RJ for sexual assaults and cites research of the effectiveness of RJ in cases of serious interpersonal crime (Department of Justice Canada, 2018, p. 22). This is a great shift in cultural perspectives from 20 years ago and is indicative of a cultural that is more open to this practice the more it is understood and considered in public discourse.

Chapter 6: Conclusion

As a result of the interdisciplinary and flexible nature of RJ for sexual assault, the different themes explored in this thesis have been wide-ranging. Though this thesis has found many variations in its practice due to the complex nature of sexual assault and the desire to meet survivor-victim needs, I have attempted to clarify our understanding of the practice in Canada.

While there are still issues in the practice, this thesis has demonstrated that practitioners involved in the study were well-versed in prioritising survivor-victim needs and creating safer and effective processes. Practitioners were also knowledgeable and conscientious when it comes to critiques, concerns, and ethical dilemmas. This thesis will conclude with responses to the initial research questions, suggestions for future research, and future-oriented closing thoughts.

Research questions

Main research question:

Based on the experiences of the interviewed practitioners, what do the resulting themes convey about the current and future practice of restorative justice for sexual assault in Canada?

This study was able to collect information from 12 practitioners regarding their experience facilitating or participating in approximately 84 cases. Based on the interviews, I conclude that RJ is being practised safely and effectively overall in this study. In the cases that were deemed less effective by practitioners, they had still endeavoured as best as possible to create safer and effective processes. As each process varies in its safety and effectiveness, I note that the possibility of re-traumatisation exists in the practice as a whole. It is more likely that the practice will continue to develop processes to reduce the possibility of re-traumatisation rather than eradicate the risk entirely. The practitioners believe that the unavailability of RJ has potential to

harm survivor-victims just as does the potential for re-traumatisation. Practitioners chose to engage in RJ and allow survivor-victims to guide them forward in order to respond to their needs.

The conclusions drawn in this thesis demonstrate success in the practice and potential for future use. Practitioners engage in sensitive victim-centric work while treating offenders fairly and thoughtfully. Practitioners are aware of most of the specific needs of survivor-victims of sexual assault and are generally able to operate with an intersectional lens, though they may not name it as such. The support felt by practitioners for these RJ processes from Canadian communities is modest but slowly growing. The recognition of respecting survivor-victims' desire to participate in these processes is also growing. Based on all of these factors, there is the potential for this practice to reach more survivor-victims through safer and effective processes.

Secondary research questions:

How does the experience of interviewed practitioners substantiate and diverge from previous research and literature?

The study and practice of restorative justice and sexual assault are deeply intertwined, informing and pushing forward one another in cautious, incremental steps. Restorative justice practitioners rely on research and education to advance their practice and academic research subsequently evaluates these advances. The experience of practitioners in Canada largely supports the current literature and existing research. There are a few topics where Canadian practitioners demonstrated less awareness of the nuances and applications when compared with the literature, such as with the concepts of healing and forgiveness, but there are also topics that practitioners discussed with more depth and nuance compared to the literature, such as the use of the

preparation stage within the process. Unlike the research in the literature, where the bulk of RJ work is being done in concentrated programs or pilot projects, the majority of the work done in Canada is through community organisations that take on sexual assault cases as well as other types of cases.

How do practitioners consider, respond to, and deal with concerns or critiques raised by academics, advocates, other professionals, and the public?

Practitioners demonstrated a comprehensive knowledge of the existence of concerns and critiques, a thorough understanding of their various dimensions, and thoughtful reflections on how they navigate these concerns and critiques through their practice. Overall, critiques and concerns are not viewed as impediments, but rather as opportunities to explore the tensions in their practice and to operate in a way in which practitioners feel is ethical. They also recognize that some concerns and critiques are founded on misconceptions or exist because of a lack of education and are continuously seeking accessible ways to address these issues.

Which procedural strategies are used to encourage a safer and effective experience for participants?

Procedural flexibility was the most consistently discussed and emphasised process element in the interviews. There are many innovative methods to address the needs and concerns of participants, from conducting RJ dialogues without in-person contact to providing mentors for survivor-victims and offenders as support people in the process. The flexibility of the RJ processes allowed practitioners the opportunity to implement these methods according to the needs of participants. To create a safer and effective process for survivor-victims, they were empowered to make decisions themselves based on their needs. Not only did the specific choices

made by survivor-victims allow them to feel safer by choosing what felt most appropriate for their experience, the act of decision-making allowed them to regain a sense of control that was often lost or diminished after the assault.

Future research

This section will first highlight some research suggestions from the literature and then I will provide some of my own suggestions for future research.

Literature-based suggestions

From the body of writing explored in the literature review, two articles expressed the desire for more research in qualitative methodology. One article specifically pointed to narrative research and the other suggested phenomenological and discursive research to better understand gender and other social relationship aspects within RJ (Daly & Stubbs, 2006, p. 16; Rubin, 2003, p. 8). There was also a call for research that examines other measures of success besides the measure of “justice” and considers the practical issues that concern survivor-victim (Jülich, Buttle, Cummins & Freeborn, 2010, p. 64). One article recommended a long-term study that focused on the aftermath of a RJ process by analysing offender behaviour changes and the extent of impact on healing for survivor-victims (Cripps & McGlade, 2008, p. 244). Another article suggested a research project that compared male offenders and female survivor-victims in RJ in gender-based crimes and non-gender-based crimes (Hughes & Mossman, 2002, p. 129).

Personal suggestions

Based on the research done for this thesis, there are many areas for potential exploration in research. Three will be suggested here, as they could help to answer some of the significant

questions in the thesis. First, there is much work to be done on the tensions raised in this paper through theoretical and practical analysis. The protection-empowerment tension seems to be the most pressing challenge that requires further research. Second, conducting long-term quantitative recidivism studies on RJ and sexual assault would develop further our understanding of RJ's impact on recidivism. Third, there is the possibility of an in-depth look at, in the context of RJ, the relationship between the public institutionalisation²⁷ of RJ processes, neoliberal perspectives on crime, and feminist pressure to better address sexual assault in the justice system. Those three concepts came up often in relation to one another in the literature and several times in the interviews, but a further analysis was outside the scope of this thesis.

Several reports cited in this thesis were authored by women's organisations based on their research on RJ. These reports were from over a decade ago and resulted in moratoriums on RJ for sexual assault because of the perceived inability for RJ to properly address survivor-victim needs at the time. There is further data now that could change the perceptions of the practice. It is crucial work with Canadian feminist and women's organisations to develop support for RJ in cases of sexual assault, as it will allow for better collaboration between RJ practitioners and organisations supporting survivor-victims, resulting in better processes for survivor-victims. It will also help to increase public support for RJ in cases of sexual assault in Canada. For this support to develop, there needs to be more research conducted by feminist and women's organisations to provide further evidence in support of this work. However, for the research to take place, there needs to be more data to research. My hope is that this thesis will continue to invigorate the possibility of conducting pilot projects that are carefully implemented and monitored so that more research can be conducted. This is in hopes that more support will grow

²⁷ In this case, public institutionalisation of RJ refers to the consistent and widespread funding and offering of public RJ programs as an option for pursuing justice in the aftermath of a crime.

for the RJ processes that can safely and effectively meet survivor-victim justice needs. If the use of RJ for sexual assault continues to grow and to develop innovative mixed-methods practices, there will be a need for the academic evaluation and the theoretical discussions of the ethical considerations that accompany any effort to scale-up these initiatives.

Concluding thoughts

Research conducted in grounded theory pivots between analysis and data collection (Denzin & Lincoln, 2011, p. 361). The research and practice of RJ for sexual assault exemplify this theory. The close relationship between research and practice allows for the practice to grow incrementally so as to ensure that safety concerns and ethical concerns are continuously being considered. This thesis is one more addition to the body of research. Hopefully, this growth will be continued through informed practitioners, the small scaling-up of appropriate RJ processes, and more research that follows.

Based on the themes presented in the discussion, this research study has found that the 12 practitioners interviewed are practicing restorative justice in cases of sexual assault in a manner that meets the needs of survivor-victims and with a respect to the safety of all parties involved. Though practitioners struggled with the tensions present in their work, they did not seem to consider these tensions as reasons to disqualify the validity of the practice. Because of the effect that public and professional misconceptions were having on the practice, the practitioners pointed to education on RJ as a method of clarifying misconceptions and creating more support for the practice of RJ in cases of sexual assault. This study concludes that restorative justice for sexual assault is an innovative and viable justice practice that should be offered as an option to survivor-victims to choose whether it would be appropriate for their justice-seeking process.

This is ethically-complex work to consider as a researcher and to facilitate as a practitioner. This thesis began from a survivor-victim-centred framework, in which it was understood that survivor-victims have diverse needs, and the best response is to provide a broad range of options for them after a sexual assault. This thesis will end with an encouragement towards a survivor-victim-centered framework as well. As long as we prioritise the well-being of survivor-victims by recognising their diverse needs and continuing to listen to their voices, this will act as our ethical beacon guiding us into the work that lies ahead.

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Appendix A: Interview questions

Restorative justice and sexual assault: Canadian practitioner experiences

To confirm, none of the cases you will be drawing on today include sexual assault within intimate-partner violence and family violence or sexual abuse between family members?

Set-up Questions: These questions will be used to create a profile that does not risk anonymity but will provide a breakdown of the interview participant experiences. You may request that any of these answers be marked as “did not wish to share” in the study.

1. Are you a staff or volunteer practitioner?
2. How long have you been a restorative justice practitioner?
3. Would you like to be identified as a restorative justice practitioner, a community justice practitioner, an Aboriginal justice practitioner, or another type of practitioner in this study? If you identify as an Aboriginal justice practitioner, can you confirm whether or not you permit your experiences to be identified as Aboriginal or Indigenous in order to contextualize your answers?
4. How many sexual assault cases have you handled as a restorative justice practitioner, both completed and uncompleted.
5. In the sexual assault cases you handled as a restorative justice practitioner, were the participants youth, adults or a combination of both?

Primary Questions:

7. How did the cases you facilitated or participated in unfold?
 - a. What were the nature of the cases (ex: type of sexual assault, type of restorative process)?
8. What process formats do you use to encourage an effective and safer experience for participants?
 - a. Do you have examples of how aspects of the process worked?
 - b. Are there things you would like to do differently now or would have changed in the past?
 - c. How did you format the processes so that they were specific to the needs of your community?
9. Did the restorative justice processes you facilitated or participated in have the capacity to address one or more of survivor/victim’s justice needs (ex: participation, voice, validation, vindication, offender accountability, etc.) and to what extent did it do so?
 - a. Where there any specific connections between process formats and ability to address justice needs in these cases?
 - b. What are your thoughts on restorative justice’s capacity to meet the justice needs of sexual assault survivors-victims generally?
10. In the specific cases you worked on, did the restorative justice processes work as a preventative measure by reducing offender recidivism and/or increasing community safety and accountability?

- a. Did you take or do you suggest additional steps to increase prevention beyond the restorative justice process (ex: therapy, accountability groups, etc.)?
 - b. Do you have more generalized thoughts based on your broader experience, discussions with other practitioners, theory or research you've read?
11. What ethical considerations are involved in this type of process?
- a. For you personally?
 - b. For your organisation?
12. In your experience, does your regional justice culture currently accept restorative justice for sexual assault as valid and ethical forms of justice?
- a. How does it compare to restorative justice for other crimes and other types of justice for sexual assault in its acceptance?
 - b. Do the justice cultures in Canada currently accept restorative justice for sexual assault as valid and ethical forms of justice?
 - c. Could it thrive on a larger scale?

Follow-up Question:

1. Is there anyone else you think would want to or should participate in this study?
2. Would you like to see the transcript of this interview when it is completed (no alterations will be done unless a matter of confidentiality arises)?

Appendix B: Thematic codes

Please note that some topics may have evolved during the coding or the writing stages so they may be starting points rather than the exact topics in the *Results* and *Discussion* chapters.

| <i>Category</i> | |
|---|---------------------------------|
| Code | Topic |
| <i>Responses to concerns or critiques</i> | |
| RJS | Restorative justice stereotypes |
| MED | Mediation |
| R | Re-traumatisation |
| CT | Controversial topics |
| PC | Pressure or coercion |
| <i>Process</i> | |
| RF | Referrals |
| PREP | Preparations |
| PMN | Process meeting needs |
| SP | Supports |
| LT | Length of time |
| <i>Gendered violence</i> | |
| CSV | Choice for survivor-victims |
| GD | Gender |
| FM | Feminism |
| GV | Gendered violence |
| HAS | Healthy sexual activity |
| CI | Community involvement |
| LE | Lack of education |
| <i>Criminal justice system</i> | |
| OCP | Opinion on court process |
| <i>Results</i> | |
| PR | Preventing reoffences |
| JN | Justice needs |
| AG | Agreements |
| CAD | Case accepted or declined |
| OT | Outcomes |
| <i>Intersectionality</i> | |
| FN | Indigenous |
| CC | Communities of colour |
| SES | Socio-economic status |
| <i>Justice culture</i> | |
| TS | Telling stories |
| SAC | Sexual assault centres |
| PP | Public perceptions |
| CJS | Criminal justice system |
| TLS | Thrive on larger scale |

| | |
|---------------------------------|---------------------------|
| Y/N | Yes or no (acceptance) |
| <i>Practical topics</i> | |
| II | Innovative ideas |
| AC | Accountability |
| SF | Safety |
| PI | Parent involvement |
| POI | Police involvement |
| OPT | Other practical topics |
| <i>Ethical topics</i> | |
| POR | Pressure off reform |
| DNH | Do no harm |
| OET | Other ethical topics |
| <i>Practical-ethical topics</i> | |
| SN | Skills needed |
| PE | Protection or empowerment |
| <i>Psychology</i> | |
| SH | Shame |
| TR | Trauma |
| CN | Counselling |

Appendix C: Email script

Hello,

My name is Taryn Burgar and I am a Master's student in Dispute Resolution at the University of Victoria. I am working on my thesis, which is called *Restorative justice and sexual assault: Canadian practitioner experiences*. I am looking to interview practitioners who have had experience facilitating restorative justice processes that dealt with sexual assault cases. I will be looking at completed or uncompleted files. I will not be addressing cases of sexual assault within domestic violence (intimate partner violence or family violence) or sexual abuse between family members. If you have facilitated or participated in restorative justice processes that dealt with sexual assault that fit the profile and are willing to participate in the study, please let me know.

As I recognise that these types of facilitated processes are especially sensitive, the interview would be around general experiences, not specific cases. Also, I will not be specifying names, the organisations that participants belong to, or in which province they are located, for anonymity's sake. If you would like more information, I have attached here the consent form (page 2) which details the measures I will take to ensure this is a confidential process.

The interviews would be an hour in length. With time to coordinate the interviews, this would take up no more than two hours of your time in total. I will either come to you for the interview or conduct it over Skype or by phone depending on your preference. I am currently planning on conducting interviews in mid to late March, but I am flexible if your schedule requires it.

If you are able to participate in this study, I would be so appreciative. You may at any time withdraw your participation or your interview. I am looking for related experience from any practitioner, not solely those who are in favour of restorative justice processes used for sexual assault cases. In times like these where it is becoming so apparent that we need to find better responses to sexual assault, I believe it would be of great benefit to the restorative justice community and Canada at large to continue researching the potential of restorative justice for sexual assault. If you know of other practitioners or organisations that would be interested in participating as well, please pass along this email and my contact information.

Thank you for your consideration.

Sincerely,

Taryn

Appendix D: Information letter for participants

Hello,

My name is Taryn Burgar and I am a Master's student in Dispute Resolution at the University of Victoria. I am working on my thesis, which is called *Restorative justice and sexual assault: Canadian practitioner experiences*. I am looking to interview practitioners who have had experience facilitating restorative justice processes that dealt with sexual assault cases. I will be looking at completed or uncompleted files. I will not be addressing cases of sexual assault within domestic violence or sexual abuse between a child and a family member. If you have facilitated or participated in restorative justice processes that dealt with sexual assault that fit the profile and are willing to participate in the study, please let me know.

As I recognise that these types of facilitated processes are especially sensitive, the interview would be around general experiences, not specific cases. Also, I will not be specifying names, the organisations that participants belong to, or in which province they are located, for anonymity's sake. If you would like more information, I have attached here the consent form (page 2) which details the measures I will take to ensure this is a confidential process.

The interviews would be an hour in length. With time to coordinate the interviews, this would take up no more than two hours of your time in total. I will either come to you for the interview or conduct it over Skype or by phone depending on your preference. I am currently planning on conducting interviews in mid to late March, but I am flexible if your schedule requires it.

If you are able to participate in this study, I would be so appreciative. You may at any time withdraw your participation or your interview. I am looking for related experience from any practitioner, not solely those who are in favour of restorative justice processes used for sexual assault cases. In times like these where it is becoming so apparent that we need to find better responses to sexual assault, I believe it would be of great benefit to the restorative justice community and Canada at large to continue researching the potential of restorative justice for sexual assault. If you know of other practitioners or organisations that would be interested in participating as well, please pass along this email and my contact information.

Thank you for your consideration.

Sincerely,

Taryn

Taryn Burgar
Master of Arts Candidate, Dispute Resolution
University of Victoria, Class of 2017
[REDACTED]

Appendix E: Consent form

Participant Consent Form

Restorative justice and sexual assault: Canadian practitioner experiences

You are invited to participate in a study entitled *Restorative justice and sexual assault: Canadian practitioner experiences* that is being conducted by Taryn Burgar.

Taryn Burgar is a graduate student in the School of Public Administration at the University of Victoria and you may contact her if you have further questions by emailing her at either [REDACTED].

As a graduate student, Taryn is required to conduct research as part of the requirements for a Masters of Arts in Dispute Resolution. It is being conducted under the supervision of Professor Jerry McHale. You may contact her supervisor at [REDACTED].

Purpose and Objectives

The purpose of this research project is to explore the use of restorative justice to address sexual assault cases in Canada by looking at the practical and ethical themes that arise for restorative justice programs in Canada while facilitating restorative justice processes for sexual assault cases.

Importance of this Research

Research of this type is important because the possibilities of restorative justice for sexual assault are opening up in practice and in academia, which requires more research in order to ensure these processes are ethical and effective. Based on needs articulated by victims and survivors of sexual assault, it is important to understand what possibilities are available in the aftermath of sexual assault to heal and to seek justice.

Participants Selection

You are being asked to participate in this study because you are a restorative justice practitioner in Canada who has experience facilitating or participating in processes that addressed sexual assault. You were selected through publicly available information or through referrals from other practitioners.

Process

If you consent to voluntarily participate in this research, your participation will include one hour of interviewing and up to one hour of logistics coordination and preparation. If the interview takes place in-person, it will be at the location of your choosing. If the interviews do not take place in-person, you may choose whether you prefer it be conducted over the phone or through a video-conferencing platform.

The researcher will ask you a series of questions that will have been emailed to you a week prior. Audio-tapes and written notes will be taken. A transcription will be made. The transcriptions will be provided upon request, but there will be no alterations done unless a matter of confidentiality arises. In the aim of

valuing the time of the participants, a copy of the thesis will be provided several weeks before the defense takes place.

Inconvenience

Participation in this study may cause some inconvenience to you, including having to devote approximately 2 hours to the project as a whole and having to prepare ahead of time to ensure that you fulfil their requirements of confidentiality to their organisation and clients.

Risks

This research is defined as minimal risk research, where “*research in which the probability and magnitude of possible harms implied by participation in the research is no greater than those encountered by the participant in those aspects of their everyday life that relate to the research.*”

The only two risks identified are the following:

1. Due to the small size of the restorative justice community in Canada,
2. Although practitioners are well-versed in maintaining client confidentiality, there is the potential for practitioners to accidentally disclose confidential information.

Mitigation of risks:

1. Please see “Anonymity” below for all the ways these risks will be mitigated.
2. Practitioners will be given plenty of time to answer slowly and thoughtfully in order to respond without breaking client confidentiality. They will have the chance to review the transcripts to ensure that nothing confidential will make it into the thesis.

Benefits

The potential benefits of your participation in this research include:

1. A benefit from knowledge gained after the study by being able to apply it to your practice.
2. A societal benefit from a better understanding of the pros and cons of restorative justice for sexual assault cases in order to move to better processes to deal with sexual assault.
3. A benefit to the state of knowledge from continuing to advance research in a still-developing area of study.

Voluntary Participation

Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will be used only if you give permission. If you do not give permission, it not be used and will be destroyed.

Anonymity

In terms of protecting your anonymity, the identity of the participant, the identity and location (including province or territory) of their organisation, the identity of anyone specifically mentioned during the interview and any specific organisations related to the topic mentioned during the interview confidential. Most likely, replacement descriptors will be used in lieu of actual names (Practitioner A, B, C, etc.) and the generic type of organisation will be used rather than the specific title. Use of direct quotes that do not reference a specific client will be permitted with the signing of this informed consent waiver. If you identify as a Indigenous practitioner, you will be asked to confirm whether you permit your experiences to be identified as Aboriginal or Indigenous in the study in order to contextualize your answers and provide better insights into Indigenous peoples’ experiences.

Confidentiality and Storage of Data

Data from this study will be kept on a secure hard drive. It will not be shared with anyone besides the researcher and her supervisor. It will be saved for potential future research conducted by Taryn Burgar. See below for future use of data. If participants do not consent to future use of their data, that it will be destroyed in three years.

Dissemination of Results

It is anticipated that the results of this study will be shared with others through a published thesis. There is the potential that the results of the study will be shared through a published article, through scholarly presentations or through blog postings, in which case, the same levels of anonymity and confidentiality as described above will be kept.

Contacts

Individuals that may be contacted regarding this study include Taryn Burgar and Professor Jerry McHale. Please see the beginning of the form for their contact information.

In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study, that you have had the opportunity to have your questions answered by the researchers, and that you consent to participate in this research project.

Name of Participant

Signature

Date

Future Use of Data

PLEASE SELECT STATEMENT:

I consent to the use of my data in future research: _____ (Participant to provide initials)

I **do not** consent to the use of my data in future research: _____ (Participant to provide initials)

I consent to be contacted in the event my data is requested for future research: _____ (Participant to provide initials)

A copy of this consent will be left with you, and a copy will be taken by the researcher.