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**THE JOURNEYS OF COMPLAINANT WITNESSES FOR SEXUAL VIOLENCE
CRIMES IN THE NEW ZEALAND JUSTICE SYSTEM**

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ABSTRACT

When a person survives an act of sexual violence, they are often left traumatised by the experience. If they are one of the minority of sexual violence victim/survivors who report the assault to police, and one of the fewer still whose case is taken to trial, they are often surprised to encounter a justice process that in some cases causes almost as much distress as the original assault. This research aimed to improve understanding of the experiences of these complainant witnesses going through the New Zealand justice system, from reporting the offence through to sentencing and the early post-trial period. Specific foci of the research included understanding what the most negative and most positive aspects of the process are, as well as what supports are most beneficial for complainant witnesses. This was a qualitative study, in which nine complainant witnesses and four support staff were interviewed about their experiences of the justice process and their perception of complainant witness' experiences, respectively. Four topics were identified: Experiences of the justice process, impact on self, support, and recommendations for change. Within these topics, a total of 15 themes were identified, and related generally to overall negative experiences of the justice system, with some positive aspects. The main negative experiences were related to delay and experiences within the courtroom, in particular, cross-examination. There was an overall negative impact on complainant witness' physical and mental health as a result of the stress of the trial, and although the supports offered were deemed necessary and good in quality, the general consensus was that support agencies were under-resourced. The findings of this research indicate that despite some positive attempts at reform in the past twenty years, the experiences of complainant witnesses in sexual violence trials remain predominantly negative. Recommendations for change from participants included suggestions to reduce delay; to introduce specialist training and specialist courts for sexual violence trials; to have judge only trials; to improve access to support; to improve access to alternative modes of evidence; to allow feedback to the court from complainant witnesses; and to abandon the adversarial model for sexual violence crimes. The recommendations from the research participants are in line with current and past recommendations from experts in the area, including the New Zealand Law Commission, and suggest that much can and should be done to improve the way that sexual violence victim/survivors experience the justice process.

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CHAPTER ONE: INTRODUCTION

When a person reports a sexual violence offence to police, a chain of events is set in motion that may eventually result in the person offended against being required to take part in a criminal trial as a “complainant witness”. Often the complainant witness is both a victim of the alleged crime, but also its only witness. Thus they are at the centre of events: as victim, as initiator of the complaint, and then as the person who gives the pivotal evidence at trial.

The experiences of complainant witnesses within the justice system have been recognised by those in the legal and academic professions to be predominantly negative (Ellison, 2001; Ministry of Women’s Affairs, 2009; Thomas, 1994). The reasons for this include a lack of communication during an often lengthy pre-trial period, which can contribute to anxiety and perpetuate post traumatic symptoms (Ellison, 2001; Temkin, 1999; Wheatcroft, Wagstaff, & Moran, 2009). The experience of cross-examination, in which the complainant witness’ account is vigorously tested by the defence lawyer is typically challenging, and for many results in feelings of hurt, anger, and humiliation (Belak, 2012; Ellison, 2001; Jordan, 2011; Westera et al., 2017).

Within the last few decades, there have been some positive reforms within the justice system in New Zealand, particularly in regards to the way that police handle sexual violence cases (Jordan, 2011; McDonald & Tinsley, 2011a). Within the court itself, reforms include restriction of the use of information about the complainant witness’ prior sexual history within the trial, the introduction of special measures such as a screen to protect the complainant witness from seeing the defendant in the court room, and the ability to give evidence via closed circuit television (CCTV) in some cases (Evidence Act, 2006; New Zealand Law Commission, 2013). Although these reforms are certainly positive, it appears they may be insufficient to adequately protect complainant witnesses from suffering distress as a result of the process (McDonald & Tinsley, 2011a). Furthermore, New Zealand may be falling behind other countries with similar legal systems (such as the United Kingdom and Australia) in regards to adopting more victim-focused reforms (McDonald & Tinsley, 2011a; New Zealand Law Commission, 2013).

In the last ten years, there have been several attempts to implement further changes in the way that the New Zealand justice system deals with sexual violence, including a discussion paper by the Ministry of Justice (2008), recommendations from the Taskforce for Action on Sexual Violence (2009), and recommendations from McDonald and Tinsley (2011a). All of these reports appear to have struggled to gain traction. More recently, the New Zealand Law

Commission has also produced a comprehensive report and recommendations for reform (New Zealand Law Commission, 2015), many of which echo those in the earlier reports. At the time this thesis was initiated, the report was still under consideration by the New Zealand Government.

The present research is part of a wider research project which focuses on the experiences of child complainant witnesses in the justice system. It is hoped that this research programme will contribute to reforms in New Zealand to ensure that vulnerable witnesses are provided with more protection within the justice system. In particular, the research reported in this thesis was initiated in order to describe the experience of the justice process for adult women and to identify the aspects of the process which they experience as most harmful. It also aimed to identify the aspects which are of the most benefit, or at least, those which reduce the distress. In considering the justice system in respect to complaints of sexual violence, the voices of those who contribute most directly to the process – complainant witnesses – have to date been lacking.

This chapter provides an overview of the literature regarding the experiences of sexual violence victim/survivors. The adversarial legal system (which is used in New Zealand) is described, along with current and past recommendations for change both in New Zealand and other jurisdictions. Finally, the current research is outlined.

Sexual Violence

Definition of Sexual Violence

Definitions of the various forms of sexual violence are given in the legislation relating to crimes. Sexual violation refers to a set of sexual offences, and includes both penetrative and non-penetrative offences which involve touching the victim/survivor's body. The definition of sexual violation from the Crimes Act (1961) and Crimes Amendment Act (2005) is quoted below:

s 128 Sexual violation defined:

(1) Sexual violation is the act of a person who — (a) rapes another person; or (b) has unlawful sexual connection with another person.

(2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B's genitalia by person A's penis,— (a) without person B's consent to the connection; and (b) without believing on reasonable grounds that person B consents to the connection.

(3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B — (a) without person B’s consent to the connection; and (b) without believing on reasonable grounds that person B consents to the connection.

(4) One person may be convicted of the sexual violation of another person at a time when they were married to each other.

Rape is one type of sexual violation, and refers to “unwanted oral, anal, or vaginal penetration against consent through force, threat of force, or when incapacitated” (Brown, 2012; Koss, 2006). At a wider level, ‘all sexual offences’ includes rape, sexual assault, and also a range of non-touching offences including indecent exposure (Brown, 2012; Daly & Bouhours, 2010; Reddington & Kreisel, 2005).

The World Health Organization (2006) defines child sexual abuse as “the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society”. The Crimes Act (1961), with some sections repealed and substituted in the Crimes Amendment Act (2005), at s 132 states that sexual conduct with a child is that with a person under the age of 12. This includes sexual connection and attempted sexual connection, and it is not a defence that the child consented or was thought to be over the age of 12. The same Act s 134 states that sexual conduct with a young person is sexual connection or attempted sexual connection with a person under the age of 16.

Describing Those Who Have Experienced Sexual Violence

Across the literature, people who have experienced sexual violence crimes are variously referred to as victims, survivors, or sometimes victim/survivors. The reasoning behind the use of ‘survivor’ as a descriptor is based around giving a feeling of power back to the person. It is argued that the use of the term ‘victim’ pathologises the situation of the person who has experienced the sexual assault. However, it is also important to note that in a legal sense, and certainly immediately following an assault, a person is a ‘victim’ of crime, and many do not consider themselves ‘survivors’ until they are much further through the process of recovery from the assault. Some find it upsetting to be referred to as a ‘victim’, while others may find it offensive to be referred to as a ‘survivor’ when they do not feel that they are yet at that stage of recovery. In the interests of holding both viewpoints in equal measure, this literature review will refer to victim/survivors throughout, except in certain contexts where the use of either ‘victim’ or ‘survivor’ is appropriate or necessary.

Prevalence Rates for Sexual Violence

Rape and other sexual violence crimes are commonly assumed to be perpetrated by a stranger, with the use of a weapon, and resulting in visible victim/survivor injury. However it is much more common that sexual violence is committed by someone with whom the victim/survivor is acquainted, and which leaves no physical injury as evidence of lack of consent (Daly & Bouhours, 2010; Mossman, Jordan, MacGibbon, Kingi, & Moore, 2009; Stern, 2010). New Zealand figures from a Crime and Safety Survey (Ministry of Justice, 2014) indicate that 23.8 percent of women and 5.6 percent of men had experienced sexual violence of some sort over their lifetime, with 73 percent for women and 54 percent for men perpetrated by a current partner, friend, or family member (Mayhew & Reilly, 2009; Wellington Law Centre, 2006). The most recent estimate for total sexual offences is for 2013, and sits at around 186,000 (Ministry of Justice, 2014). Women between the ages of 15 and 24 are at the highest risk for sexual victimisation (Mossman et al., 2009; Wellington Law Centre, 2006). These statistics are consistent with USA data, which estimates that between 17 and 25 percent of women experience sexual violence in adulthood (Campbell, 2008; Reddington & Kreisel, 2005).

The most recent data available from the New Zealand Police shows that between February 2016 and February 2017, there were 5,979 reports of sexual assault and related offences, based on the outcome of investigation at 30 days post-report (this timeframe was chosen as it allows for obvious false allegations and unsubstantiated claims to have been investigated and removed from the figures). Of these, 77 percent were offences against women, 11 percent were offences against men, and the remainder did not specify gender. Of those offended against, 36.2 percent were European, 21.1 percent were Māori, and the remainder either did not state ethnicity or were from Asian, Indian, Pacific Island, or other ethnicities (all with percentages under 5 percent) (New Zealand Police, 2017b). Māori women are subjected to sexual violence at as much as double the rate of non-Māori women (Mossman et al., 2009). There are several theories regarding why this is the case. These theories include a relationship with higher levels of family violence among Māori in New Zealand, and a relationship with a low socio-economic status (an area which Māori are also over-represented in). Both of these theories are related to historical colonisation issues causing negative changes in Māori society (Mossman et al., 2009).

For child sexual abuse (CSA), figures show that around one in four New Zealand women report experience some form of CSA (van Roode, Dickson, Herbison, & Paul, 2009)

which is in line with international research which finds similar prevalence for women, and a prevalence of one in seven for males (Dube et al., 2005). Research by Fanslow, Robinson, Crengle and Perese (2007) found that within a random sample of 2,855 New Zealand adult women, between 23.5 and 28.2 percent had experienced CSA with prevalence higher for Māori women. Most of these assaults were committed by a male family member (Fanslow et al., 2007). These figures are slightly higher than worldwide statistics, which estimate that around 20 percent of women and eight percent of men experience CSA (Berber et al., 2013). The most recent data available from the New Zealand Police shows that of a total of 5,979 reported sexual violence offences, 25 percent of these were against children aged 14 and under, with 20 percent against girls and the remainder against boys (New Zealand Police, 2017b).

While both men and women can be perpetrators of sexual violence, the perpetrator of sexual violence against adults is predominantly male, and the victim/survivor is predominantly female (Mossman et al., 2009; Reddington & Kreisel, 2005). It is for this reason that this literature review and the ensuing research will focus on sexual violence cases where the perpetrator is male and the victim/survivor is female. While male victim/survivors of sexual violence suffer similar repercussions due to the assault, this group is much smaller than that of female victim/survivors.

Impact of Sexual Violence on Mental Health and Social Repercussions

Sexual violence is traumatic for those who experience it. Rape, over and above other forms of sexual assault, is widely regarded as being one of the most significant and impactful traumas that a person can experience (Campbell, 2008; Campbell, Sefl, Barnes, Ahrens, Wasco, & Zaragoza-Diesfeld, 1999; Mossman et al., 2009). Women who are raped have their sexual integrity and personal autonomy violated (Wheatcroft et al., 2009). They experience acute trauma and often acquire long term psychological trauma symptoms (Mossman et al., 2009; Temkin, 2002; Wheatcroft et al., 2009). There are a variety of negative mental and physical health outcomes that are known to be highly prevalent among rape victim/survivors, including post-traumatic stress disorder (PTSD), depression, substance abuse, suicidal ideation and suicide attempts, sexual victimization, and somatic problems (Campbell, 2008; Campbell et al., 1999; Wheatcroft et al., 2009). Rape victim/survivors are listed in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) as having the highest prevalence of post-crime PTSD out of any crime victim/survivors, and many of these victim/survivors spend years recovering from the trauma of the assault (American Psychiatric Association, 2013; Ministry of Women's Affairs, 2009).

For CSA victim/survivors, there are a multitude of possible negative outcomes in adulthood, including a doubled likelihood of the development of a psychiatric disorder, a higher risk of re-victimization, a higher likelihood of becoming a sexual abuse perpetrator, poor physical health, poor academic performance, poor coping style, suicidality, substance abuse, and other trauma related sequelae such as insecure attachment styles, and higher risk of depression and anxiety (Berber et al., 2013; Dube et al., 2005; Fanslow et al., 2007; Flett et al., 2012; Freshwater, Leach, & Aldridge, 2001; Igarashi et al., 2010; Lalor & McElvaney, 2010; Wilson, 2010). Research has shown that there is no logical pattern in regards to whether a CSA victim/survivor develops negative outcomes, or which negative outcomes they may develop (Wilson, 2010).

Barriers to Reporting and Attrition during the Justice Process

In New Zealand, research indicates that approximately ten percent of adult sexual violence victim/survivors report the incident(s) to police (McDonald & Tinsley, 2011a; Mossman et al., 2009). This matches fairly closely with British research which suggests that up to 85 percent of rape victims never report the offence to the police (Brown, 2012). New Zealand research by Kingi and Jordan (2009) found that out of 37 cases of sexual violence reported to Police, charges were laid in 51 percent of the cases, with two thirds of this percentage proceeding to trial, and with guilty pleas being made in the cases compromising the remaining one third.

Research in Australia, Canada, England, Scotland, and the USA has found several common reasons that victim/survivors do not report sexual violence (Brown, 2012; Daly & Bouhours, 2010; Jordan, 2011; McGlynn & Munro, 2010; Mossman et al., 2009). These include not viewing the assault as rape or assuming that the assault was not sufficiently serious to warrant a police response, and/or fear or distrust of police and the criminal justice system. Related to this are fears that they will be blamed or not believed by friends/family, the wider community and the police and justice system (Daly & Bouhours, 2010). Many victim/survivors experience a significant amount of shame and guilt in relation to the offence, and this may deter them from speaking about what occurred. Finally, some victim/survivors may fear retribution from the offender, or may have divided loyalties, particularly if the offender was a romantic partner (Daly & Bouhours, 2010). This reasoning is reflected in New Zealand research by Kingi and Jordan (2009), which found that the main reasons that victim/survivors would not report an assault were fear that they would not be believed (49 percent), concerns about negative effects on their family (46 percent), shame (34 percent), and fear of the offender (34 percent).

When victim/survivors do report a sexual violence offence to the police, they are sometimes discouraged from pursuing the process (Campbell, 2008). Delays in reporting often mean that the victim/survivor's report is viewed with scepticism by police and prosecutors, as they may view the delay as an indication that the offence was not very serious, or that the victim/survivor may be lying. Delay may decrease the likelihood that the case is pursued through the criminal justice system (Bunting, 2014; Campbell, 2008; Jordan, 2011).

Research also indicates that a substantial proportion of children do not disclose abuse at the time it occurs, and often not during childhood. Some may disclose in adulthood, or others, not ever (London, Bruck, Ceci, & Shuman, 2005; London, Bruck, Wright, & Ceci, 2008). Research by Connolly and Read (2006) undertaken in Canada found that there was an average delay in reporting CSA of 14 years, with the majority of victim/survivors waiting between five and 22 years to make a report. When victim/survivors do disclose the abuse to an adult, only a small percentage of these disclosures are reported to the authorities, and often these reports happen years after the offence (Bunting, 2014; London et al., 2005; London et al., 2008). For CSA victim/survivors, the most common reasons given for not reporting the offence(s) included feeling ashamed, feeling that the matter was too personal to tell anyone about, being afraid of the perpetrator, feeling responsible for what happened and an associated fear of being blamed, worry that they would not have been believed, and a reluctance to break promises made with the perpetrator to keep the abuse a secret (Brown, 2012; Connolly & Read, 2006; Jordan, 2011; Paine & Hansen, 2002; Pipe & Goodman, 1991; Roesler & Wind, 1994). Factors related to longer delays include older age when the abuse occurred, intra-familial abuse, situations where the victim/survivor felt some responsibility for the abuse, and when the victim/survivor expected negative consequences as a result of their disclosure (Connolly & Read, 2006; Goodman-Brown, Edelstein, Goodman, Jones & Gordon, 2003).

Reporting delay may have consequences for the prosecution and trial of CSA due to the common lack of evidence, and concerns around the reliability of memory after long time periods (Bunting, 2014). However, delay in reporting has been found to have an effect on outcomes in judge only trials, but not jury trials (Connolly, Price & Gordon, 2010; Read, Connolly, & Walsh, 2006). Furthermore, it appears that assumptions of credibility are highest either when the offence had been reported immediately, or when the offence is reported once the victim/survivor is an adult: that is, adult witnesses are likely to be viewed as more credible in their report than children or adolescents, even if the offence had occurred decades ago when they were a small child (Connolly et al., 2010; Read et al., 2006).

Attrition during the justice process is a clear issue for sexual violence cases. Research by the Ministry of Women's Affairs (2009) found that 34 percent of reported sexual violence offence files were closed with an outcome of "no offence" (McDonald & Tinsley, 2011a). This group included cases where there was no offence found to have occurred after investigation, those where there was insufficient evidence to proceed, those where the offender was unable to be identified, and also cases where the victim/survivor withdrew from the justice process (McDonald & Tinsley, 2011a). Around 20 percent of cases were terminated by the victim/survivor during the investigation stage, with reasons for this given such as the victim/survivor wanting to report the crime but not wanting criminal action to be taken, the report being made by someone other than the victim/survivor, not feeling able/ready to proceed, and retraction of the allegation (McDonald & Tinsley, 2011a). Attrition also occurs during the trial process, for similar reasons (McDonald & Tinsley, 2011a). The relationship of the victim/survivor to the defendant appears to be the most significant predictor of attrition. Those victim/survivors who have a previous sexual relationship with the defendant are most likely to retract their allegation (Brown, Hamilton & O'Neill, 2007).

In summary, it is clear that sexual violence results in significant negative outcomes for the victim/survivor. Many women (and men) who experience sexual violence are left with long-term psychological distress, and negative social repercussions including relationship difficulties. Unfortunately, there are a range of misconceptions held by many people which impact on a victim/survivor's experience after the assault, and may result in her deciding not to report the offence. For those who experience sexual violence as an adult, these include beliefs that a victim/survivor may have been responsible for being raped due to being intoxicated or dressing in a provocative manner, beliefs that women may make false allegations in a moment of regret or revenge, and misconceptions about the seriousness of stranger rape versus non-stranger rape. Such beliefs have been described as "rape myths" and are discussed in more detail in a later section. For those offended against as children, there may be concerns about whether they are a credible witness, as well misconceptions about the rate of false allegations of CSA. These issues contribute to the very low rate of reporting of sexual violence offences, and subsequent high rate of attrition from the justice process.

The Justice Process

The New Zealand legal system is modelled on the British adversarial model of law, which is also used by many other countries, such as the USA, Canada, Scotland, and Australia. This section will describe the adversarial model and the specifics of the New Zealand justice process in order to provide a basis for understanding the terminology and concepts used and discussed throughout the rest of this thesis.

The Adversarial Legal System

The adversarial legal system essentially pits the case for the prosecution against the defence of the accused, with lawyers for each side appearing as rivals presenting evidence in support of their case, via a process of examination and cross-examination (Ministry of Women's Affairs, 2009; Salhany, 2006). The theory underlying the adversarial system is that "if one pits two equal champions in a process of the examination and cross-examination of witnesses who have information about a fact in issue, truth will probably emerge" (Salhany, 2006). This discovery of truth takes place within the courtroom (Salhany, 2006). Typically the decision as to whether the defendant is guilty or not guilty is made by a jury, although some trials will take place with a judge only.

The standard order of proceedings in an adversarial legal system is as follows: once an offence is reported to police, a statement will be taken from the victim and any other witnesses. The alleged offender will be questioned and evidence gathered, and if police believe that a crime has been committed, the case will be referred to a prosecutor. The prosecutor will make a decision as to whether the case should be taken to trial. If a case is committed to trial, the prosecutor and defence counsel both present the evidence which supports their case. For the prosecutor, this is evidence that the offence did take place, and was committed by the defendant. For defence counsel, this means presenting evidence that either proves that the defendant did not commit the offence, or evidence that instils "reasonable doubt" in regards to this. This is completed in a process (with each witness) of examination-in-chief by the prosecutor, followed by cross-examination by defence counsel, and then re-examination by the prosecutor (McDonald & Tinsley, 2011a). This process is explained in more detail in the New Zealand Justice Process section.

Under the adversarial system, the investigation of a crime is handled by the police, and the judge is expected to have no knowledge of the evidence prior to trial (Salhany, 2006). Judges within the adversarial model are expected to remain essentially silent throughout a trial except to ask a witness to repeat an answer or to give clarifications, resolve misunderstandings,

and rule on the admissibility of evidence or procedural issues (Salhany, 2006). The judge and jury make their decisions based solely on the evidence that is presented to them by both the prosecution and defence counsel.

The adversarial legal system assumes the right of the defendant to “have evidence heard against him or her in an open court (meaning the court is open to the public) and tested by cross-examination” (Ministry of Women’s Affairs, 2009). One of the tenets of the system is that “the offence must be proved beyond a reasonable doubt” (Ministry of Women’s Affairs, 2009). In addition, a foundation of the adversarial system is the principle of orality, which requires that witnesses give oral testimony in regards to disputed facts which they have knowledge of (Ellison, 2001). The importance of giving oral evidence is related to the assumption that this is the best way to test information sources.

s 83 of the Evidence Act (2006) details the standard process of giving evidence as follows:

(1) The ordinary way for a witness to give evidence is,— (a) in a criminal or civil proceeding, orally in a courtroom in the presence of— (i) the Judge or, if there is a jury, the Judge and jury; and (ii) the parties to the proceeding and their counsel; and (iii) any member of the public who wishes to be present, unless excluded by order of the Judge; or (b) in a criminal proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if both the prosecution and the defendant consent to the giving of evidence in this form; or (c) in a civil proceeding, in an affidavit filed in the court or by reading a written statement in a courtroom, if— (i) rules of court permit or require the giving of evidence in this form; or (ii) both parties consent to the giving of evidence in this form.

(2) An affidavit or a written statement referred to in subsection (1) (b) or (c) may be given in evidence only if it— (a) is the personal statement of the deponent or maker; and (b) does not contain a statement that is otherwise inadmissible under this Act.

Cross-examination is regarded by many (especially within the legal profession) as being essential to discovering whether a witness account is credible and truthful (Belak, 2012; Zajac & Cannan, 2009). It is also regarded as essential in order for the accused to receive a fair trial, as cross-examination gives defence counsel the opportunity to question the prosecution’s account of what happened (Zajac & Cannan, 2009). The Canadian Supreme Court found that the right to cross-examine a witness is “inseparable from the truth finding process” (Belak, 2012).

In a judge only trial, the judge's role is to determine the outcome of the trial based on matters of both law and fact. In a jury trial, on the other hand, the judge only makes decisions based on matters of law, while the jury makes decisions regarding the facts of the case. In both of these cases, the judge acts as a neutral referee between the parties (Ministry of Women's Affairs, 2009).

There are several aspects of the adversarial legal system that have clear benefits in terms of giving the accused a fair trial. These include judicial impartiality, the legal equality of the parties involved, the consistency of the system, and the democratic nature of the process, particularly when there is a jury trial (Ministry of Women's Affairs, 2009). There are also limitations to the adversarial model. These include the fact that the prosecution must disclose all of their evidence to the defence prior to the trial starting, while the defence does not have a similar obligation, thus drawing into question the principle of equivalence between the two sides of prosecution and defence (Salhany, 2006).

In summary, the nature of the adversarial system is a competition to try to disprove the other side's version of events. The description "adversarial" refers to the two sides (prosecution and defence) being adversaries or opponents. Within an adversarial system, the main point of a criminal trial is not to determine the truth, but rather to make a decision as to whether the prosecution has proved their case beyond a reasonable doubt (Thomas, 1994). A benefit of the system is that the accused offender has a right to have whatever charge has been placed against him or her proved beyond reasonable doubt (Belak, 2012; Ministry of Women's Affairs, 2009). This sets the stage for the process of the legal system, by placing the focus on trying to either prove that the offence occurred (in the case of the prosecution) or prove that the offence did not occur (in the case of the defence) regardless of whether the offence actually occurred or not (Thomas, 1994). What this means is that there is no pressure from defence lawyers for the accused to accept responsibility for his or her actions. The current culture of the New Zealand legal system is such that an offender is often recommended to plead not guilty and put the case to trial - even if they clearly committed the offence - on the chance that the prosecution is not able to prove the offence beyond a reasonable doubt (Thomas, 1994).

Justice Process in New Zealand for Sexual Violence Allegations

This section details the specific process that victim/survivors of sexual violence will experience should they report an offence.

When a victim/survivor of sexual violence makes a report to police, there are several things that the police will do. Firstly, they will undertake a preliminary interview in order to

gain the basic facts about the alleged offence. A forensic medical examination may be arranged and undertaken with the consent of the complainant. Following this, the police will take a detailed statement from the individual (McDonald & Tinsley, 2011a). For most, the complainant will be questioned by a police officer who is specially trained in dealing with sexual violence victim/survivors, however this is not always possible, particularly in rural areas where there may only be one or two police officers available. Victim/survivors will be asked to recall what happened during the event in detail, a process which itself can be traumatic. This process is made even more difficult if they are asked inappropriate questions, or the police officer appears to be unsympathetic or disbelieving in regards to the victim/survivor's report (Patterson, 2011).

Following questioning of the complainant, police may undertake investigations of the scene, and question any other witnesses. They will question the suspect, and if they believe there is enough evidence, they will arrest and charge the suspect, and make a decision to prosecute (McDonald & Tinsley, 2011a). If the police make a decision to refer the case to the prosecutor, which they do in only 30 percent of reported offences (Mossman et al., 2009), the prosecutor will then make a decision about whether the case should be taken to trial. The prosecutor may question the complainant again regarding the alleged assault in order to make this decision. If the prosecutor decides that the case has a chance of conviction, then the case will go to trial unless the defendant makes an early guilty plea (Campbell, 2008; Campbell et al., 1999; Daly & Bouhours, 2010; Wellington Law Office, 2006).

There is a possibility once the offender has been charged that a committal hearing can be requested in which a judge makes a decision as to whether there is enough evidence to validate the need for the defendant to be committed to a jury trial, as well as decisions about bail for the defendant, admissibility of particular evidence, name suppression, and alternative ways of the complainant witness giving evidence such as a screen in the court room or CCTV (McDonald & Tinsley, 2011a; Wellington Law Office, 2006). Since 2013, changes to criminal trial procedure mean that committal hearings are reasonably uncommon (Community Law, 2017). Once a complainant's case against the perpetrator has been committed to trial, they are henceforth referred to as a "complainant witness".

Once the defendant has had their first court appearance, there will usually be contact made with the complainant witness by a Court Victim Advisor, who is an employee of the courts tasked with explaining the court process to the complainant witness, along with providing familiarisation with the court room and waiting area (Wellington Law Office, 2006).

This usually takes place in the week prior to the trial commencing, which means the complainant witness is often left out of the process for as long as it takes for the case to come to trial; typically a matter of months, and more often greater than a year. In most cases, it is the Police Officer in Charge of the case who will maintain intermittent contact with the complainant witness during the delay period to inform them of progress of the case and in particular information about likely trial dates. In some cities there are independent agencies that provide sexual assault counselling and support services that some individuals are able to access early in the process and can continue using until completion of the trial.

Once the main trial starts, the complainant witness will be called to give evidence. When this happens, the court will be closed to the public for the duration of the time the complainant witness is giving their evidence. Court staff, any witness support person, police, prosecutors, defence lawyers, the accused, and of course the judge and jury remain within the court room (Criminal Procedure Act, 2011; Wellington Law Office, 2006).

Initially, the complainant witness gives evidence-in-chief. This consists of the Crown Prosecutor asking the complaint witness questions in order to present evidence and detail of what happened (Criminal Procedure Act, 2011; Westera et al., 2017). The complainant witness will usually be asked to point out or name the accused, and may be asked to identify or refer to photos or other pieces of evidence (Wellington Law Office, 2006).

Following evidence-in-chief, the defence lawyer has an opportunity to ask questions, commonly referred to as cross-examination, and in doing so may also present additional evidence (Criminal Procedure Act, 2011). The defence lawyer's task is to show reasonable doubt in the complainant witness' version of events. This process can involve quite intense and intrusive questioning of the complainant witness (Wellington Law Office, 2006). Questions that cannot be asked in cross-examination include those about the complainant witness' sexual experiences with anyone other than the accused, or about their sexual reputation, unless with the permission of the presiding judge (Wellington Law Office, 2006).

After cross-examination, the prosecutor has another chance to ask questions and clarify anything that may be unclear; a process called re-examination (Criminal Procedure Act, 2011). These questions can only be in relation to issues that were brought up in cross-examination (Wellington Law Office, 2006).

Once all evidence has been presented and cross-examination and re-examination completed, the prosecutor gives a closing address, followed by defence counsel, to which the prosecutor has no right of reply (Criminal Procedure Act, 2011). The jury then retires to

consider the verdict. This verdict is delivered, and the defendant either “walks free” if the verdict is not guilty, or is committed for sentencing if found guilty (Community Law, 2017). During the time between the trial and sentencing, the defendant may either be incarcerated or on bail. Sentencing is decided by the judge, and may occur some time after the trial (Community Law, 2017). The complainant witness has the opportunity during the sentencing hearing to present a Victim Impact Statement (Victims’ Rights Act, 2002), which the judge may take into account when deciding the sentence.

If found guilty, the defendant and their lawyer have the right to appeal both the conviction and/or the sentence. If there are found to be grounds for retrial, then the complainant witness may be required to appear before the courts again in service of this process.

A notable consequence of this process for the complainant witness is the number of times they must relate the details of the alleged offence to authorities. If a complainant reports the offence to police, and is believed, and the case is referred to the prosecutors, and the prosecutor agrees to take on the case, the complainant witness faces questioning at each step of the process. When they initially report to police, they will be questioned extensively in regards to the details of the event, which is necessary for the police to determine whether or not there is sufficient evidence to proceed to further investigation and/or prosecution. During police questioning, the complainant witness may be asked questions about what they were wearing when assaulted, about their sexual history and about whether they were intoxicated at the time of the assault, all of which are details that may be upsetting to talk about (Campbell, 2008). For those who have their cases prosecuted, they will be subject to more questioning: by police to further build the prosecution case, by prosecutors, and then in the trial itself. They may also be subject to further questioning if there is a mistrial leading to retrial.

In summary, the justice process in New Zealand follows an adversarial model of law very similar in nature to that of Britain. Following reports of a sexual violence offence, complainant witnesses can expect to be questioned by police, typically more than once, and then again by prosecutors and defence counsel as part of the trial process. Due to the nature of the adversarial legal system, complainant witnesses are expected to give evidence in person, except in certain situations, which often means that they are speaking about the offence in the presence of the defendant. The time from reporting an offence to the commencement of a trial can be more than a year, and although complainant witnesses are referred to Court Victim Advisors prior to the trial starting, they are often left with little information about the process

until this occurs. In cases where there is a guilty verdict, the complainant witness may then take part in the sentencing portion of the trial, via a victim impact statement.

Issues with the Justice Process for Sexual Violence

There are multiple issues specific to the adversarial system that have been reported in the literature. These include the challenges of managing the needs of a victim/survivor with the requirements of a witness, issues with the impact of cross-examination on sexual violence victim/survivors, delays in the justice process, detachment from the prosecutor, and the lack of judge intervention (McGlynn & Munro, 2010).

Issues with Prosecuting Sexual Violence

One of the most significant barriers for sexual violence cases is the difficulty in prosecuting the offence. This difficulty in prosecuting sexual violence crimes is borne out in the statistics which suggest that out of the approximately 10 percent of victim/survivors who report the offence they have experienced to police, only 30 percent proceed to prosecution, with only 20 percent proceeding to a court trial (Campbell, 2008; Campbell et al., 1999; Daly & Bouhours, 2010; Krahe, Temkin, Bieneck, & Berger, 2008; Wheatcroft, Wagstaff, & Moran, 2009).

As the victim/survivor of the offence is almost always the only witness to the offence, and is often the only person able to provide evidence that the offence occurred, that victim/survivor (as a complainant witness) and their evidence becomes the main focus of the efforts of the defence to disprove the case (Kebbell, O'Kelly, & Gilchrist, 2007; Konradi, 1996). In addition, physical evidence is often not available if the victim delayed reporting the offence to police. Because of this, the trial becomes a case of the defendant's word against the complainant witness', and this requires of the complainant witness the ability to withstand the hardships of the process (Westera, Zydervelt, Kaladelfos, & Zajac, 2017). There may be a reluctance to prosecute a case due to prosecutors not wanting to take on cases which they expect to lose, but also due to an aversion to putting a victim/survivor through the distressing justice process if they do not feel that there is likely to be a positive outcome for that victim/survivor. Prosecutors must also make decisions about whether to carry a case through to trial based on their organizational requirements, which often include a requirement that they maintain a high conviction rate (Reddington & Kreisel, 2005). If the witness is not consistent in their account of the offence, or the prosecutor has other concerns regarding their credibility then they may make a decision not to carry the case forward (Reddington & Kreisel, 2005).

Victim/Survivor Needs versus Witness Requirements

The treatment of victim/survivors for maintaining and recovering wellbeing is in stark contrast to the treatment received in the court process, particularly the treatment that arises from the confrontational nature of the adversarial legal system. A victim/survivor requires support and empathy, whereas as a witness they will be questioned thoroughly – and often unsympathetically - so as to test the accuracy and truthfulness of their account of events (Ministry of Women’s Affairs, 2009; Temkin, 2002). In interaction with a victim/survivor, the interviewer (most often a counsellor or therapist) is empathetic and supportive, treating them with care to avoid traumatising them with overly intrusive questions, whereas as a complainant witness, questions will be asked questions directly and the questions will often be intrusive. Furthermore, they are talking about a significantly traumatic experience and are re-living an experience in which they were violated in physical and emotional ways (Taskforce for Action on Sexual Violence, 2009; Temkin, 2002; Thomas, 1994). For witnesses in criminal trials involving sexual violence, their treatment in the court process may differ significantly from that of a witness for other crimes due to the nature of the deeply personal information they are required to share about themselves, their bodies, and their choices when being questioned on the stand.

Rape Myths

Historically in Western culture, and remaining so in some other cultures even today, rape was not viewed as a serious offence, and in any case women were often assumed to hold at least some of the blame for being raped. In most countries, non-consensual sex in a marital relationship was not deemed to be rape until recent decades, and remains the case in many other nations. It follows then, that some of these outdated beliefs (or “rape myths”) still remain prevalent in society. A useful definition of rape myths by Lonsway and Fitzgerald (1994) is that rape myths are “attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women”. Given that it is likely that belief in at least some of these rape myths remains prevalent amongst the New Zealand population, it is also likely that there will be jurors and legal personnel in sexual violence cases who hold some of these beliefs. When people who believe rape myths become judges or jurors, these beliefs can have a significant effect on their decision making process and the way that they perceive and treat the complainant witness. This can cause issues not only for the complainant witness, but also in regards to the verdict of the trial. In the following section, several common rape myths are described.

Simple rape versus real rape. One rape myth arises from a belief in two different ‘kinds’ of rape that have been distinguished, albeit on the basis of common understandings. “Real rape” is rape perpetrated by a stranger, with a weapon, and resulting in visible physical injuries which evidence a lack of consent (Campbell, 2008; Mossman et al., 2009; Winkel & Koppelaar, 1991). “Simple rape” (or non-stranger rape) is rape perpetrated by someone known to the victim/survivor, where a variety of methods of coercion are used. This second type of rape is less likely to leave physical injuries, which often means that less physical evidence of non-consent is available compared to “real rape” (Campbell, 2008; Mossman et al., 2009; Winkel & Koppelaar, 1991).

While many people (members of the public and legal professionals alike) have a perception of “real rape” being the most common and most believable type of rape, in fact up to 80 percent of rapes are perpetrated by someone known to the victim/survivor (Campbell, 2008; Jordan, 2011; Mossman et al., 2009; Reddington & Kreisel, 2005). It is argued that in cases of “real rape”, police, lawyers and judges are more likely to take the allegation seriously, and these cases are more likely to have an outcome resulting in conviction (Daly & Bouhours, 2010; Jordan, 2011; McDonald & Tinsley, 2011a; Patterson, 2011; Winkel & Koppelaar, 1991). On the other hand, in cases of “simple rape”, the offence is less likely to be reported in the first place, when reports are made they are less likely to be believed and more likely to be ignored by police and prosecutors (possibly due to the difficulty of proving non-consent), and the victim/survivor is also more likely to be accused of making a false allegation (Daly & Bouhours, 2010; McDonald & Tinsley, 2011a; McGlynn & Munro, 2010; Patterson, 2011; Winkel & Koppelaar, 1991).

This myth of “real rape” being more serious and more credible than “simple rape” is one that is unfortunately held by lay people and legal personnel alike (Kennedy, Eastal, & Bartels, 2012). This becomes a concern when taking into account that judges and jury members with these beliefs may be making decisions about the admissibility of certain evidence, as well as sentencing, both of which could be affected if there is a perception that “simple rape” is less serious. In particular, this rape myth may have influence on a judge’s decision about whether to admit sexual history evidence about the complainant witness. A safeguard against this is New Zealand rape shield legislation which states that a complainant witness cannot be asked about her sexual reputation or sexual history with anyone other than the accused unless the judge gives permission for this to occur (Evidence Act, 2006; Mossman et al., 2009). While most judges would hopefully not allow this type of evidence, a judge who holds the opinion

that someone who was raped by a friend or partner was less credible or trustworthy may rule that questions about sexual reputation could be asked.

Clothing, intoxication and promiscuity. Further commonly held rape myths include the belief that if women dress in revealing or ‘sexy’ clothing, they are ‘asking’ to be victimized, and should accept some of the responsibility for enticing the offender to commit the act towards them (Jordan, 2011; Krahe et al., 2008; Reddington & Kreisel, 2005). A similar belief is that women who are intoxicated or have passed out before the assault occurs should accept responsibility for the assault (Jordan, 2011; Reddington & Kreisel, 2005). Figures from the Scottish Government indicate that in 2007, between 26 and 32 percent of people thought that a drunk woman held at least partial responsibility if she was raped, and also if she wore revealing clothing or had been flirting with the person who raped her. A further 18 percent thought that a woman held responsibility for being raped if she was known to be promiscuous (TNS System Three, 2007).

Expected versus actual emotional responses. A further misconception relates to assumptions made about how a victim/survivor responds to sexual violence. In the immediate aftermath of sexual violation, it is commonly assumed that a victim/survivor will react in a highly emotional and distressed manner. In reality, there are two types of emotional reactions that are often seen in rape victim/survivors. The first is the “emotional victim” who displays the expected visible distress, and the second is the “numbed victim” who keeps their emotions suppressed and under control, usually as a coping mechanism (Klippenstine & Schuller, 2012; McGlynn & Munro, 2010; Reddington & Kreisel, 2005; Winkel & Koppelaar, 1991). This second reaction is likely to be closely linked to dissociative reactions in seen in other trauma victim/survivors as well as those who have been subjected to sexual violence. These reactions often persist long after the actual rape, with some victim/survivors still tearful and emotionally labile when they reach the time of the criminal trial, and other victim/survivors still presenting as subdued and composed, despite the trauma they have experienced.

The level and type of emotionality expressed by a sexual violence victim when they are giving evidence as a complainant witness can and does influence some decision makers’ evaluations of the evidence (Callander, 2014; Klippenstine & Schuller, 2012; McGlynn & Munro, 2010; Reddington & Kreisel, 2005; Rose, Nadler & Clark, 2006). Interestingly, research has shown that sexual violence victim/survivors often attempt to reconcile the perceived emotional “rules” for both a sexual violence victim and a witness in a criminal trial, with the former perceived as someone emotionally “damaged”, and the latter perceived as

necessitating a neutral, controlled and polite demeanour (Klippenstine & Schuller, 2012; Konradi, 1999). Unfortunately for sexual violence victim/survivors, it seems that witnesses who portray a limited or neutral emotional state are often perceived as being less credible than those who portray an emotional state more congruent with what is “expected” of a sexual violence victim, such as overt distress (Callander, 2014; Kaufmann, Drevland, Wessel, Overskeid, & Magnussen, 2003; Klippenstine & Schuller, 2012; McGlynn & Munro, 2010; Rose et al., 2006; Smith & Skinner, 2012).

False allegations. A further myth is that false allegations of sexual violence are common. Those who believe this myth assume that women are likely to make a false allegation of rape for two possible reasons. This first assumption is that a woman may feel guilty or regretful about a sexual encounter, and therefore accuse her partner of rape to protect her innocence. The second assumption is that a women may make a false rape allegation in order to exact vengeance on a former partner who has wronged her (Reddington & Kreisel, 2005). While it is certainly possible that some rape allegations fall under these categories, research suggests that the rate of false allegations for all forms of sexual assault and sexual violence is likely to fall somewhere between two and ten percent, which is a very small percentage of total rape allegations (Lisak, Gardiner, Nicksa, & Cote, 2010).

Misconceptions about CSA. In addition to commonly held rape myths, there are also commonly held beliefs regarding CSA victim/survivors that may have a detrimental effect on their treatment by legal professionals during the criminal justice process (Berber et al., 2013). These misconceptions are relevant in historical sexual abuse trials where the adult complainant witness gives an account of events during childhood. Common myths relevant to such trials include that a victim of CSA would tell someone straight away, that they would not continue a close relationship with the offender, that false allegations are common in childhood, that allegations are the result of suggestibility and that memory of childhood events is unreliable (Goodman-Delahunty, Cossins, & O’Brien, 2010).

Research in the United Kingdom (UK) has indicated that belief in rape myths has remained common among the general public, and that these continue to influence the legal profession (Burman, 2009). Research suggests that men are more likely to have rape myth beliefs than women (Krahé et al., 2008; Temkin & Krahé, 2008).

Delays and Lack of Communication

Victim/survivors of sexual violence trying to navigate the justice process often find that they are not given an adequate level of information about what is happening with the case, and

in particular about information that is pertinent to them as a witness, for example in regards to the various options for giving evidence (McDonald & Tinsley, 2011a). They often have very limited time with the prosecutor in the case, and have often spent months (or years) “in limbo” before this occurs. Complainant witnesses often lament the lack of time spent with the prosecutor, which leaves them feeling anxious and unprepared for the trial process (McDonald & Tinsley, 2011a).

Issues with Cross-Examination

Much research suggests that cross-examination is not an effective way of determining the accuracy of a witness’s account, particularly due to the use of leading questions (which are known to compromise evidence accuracy) and the confrontational nature of cross-examination (Belak, 2012; Westera et al., 2017). The ‘gold standard’ for questioning witnesses is to use open questions which allow the witness to freely recall information, however despite this, defence lawyers in particular often continue to use closed questions and other strategies (to be discussed further) which are not in the best interests of the quality of the evidence (Westera et al., 2017). Those who disagree with the use of cross-examination as a truth finding tool have gone so far as to describe cross-examination as a process designed to “impugn the credibility of the witness so as to persuade the fact finder that it would be unsafe to rely on anything the witness has said in chief” (Ellison, 2001, p.88). Jordan (2008; 2011) appears to agree with these statements, asserting that the cross-examination process is one where the complainant witness’ credibility and behaviour come under intense scrutiny, often to the detriment of the witness.

The main aim of cross-examination is often referred to as “discrediting the evidence” (Evans, 1995). Cross-examination typically involves defence counsel attempting to show both external and internal inconsistencies in regards to the witness testimony. External inconsistencies are differences between what a witness says on the stand compared to what they have said prior to their courtroom testimony. Internal inconsistencies are those which occur between examination-in-chief and cross-examination (Salhany, 2006). If there are inconsistencies in the witness’ testimony, then defence counsel will be more likely to be successful in arguing that the witness is unreliable or dishonest (Salhany, 2006). In this regard, the accuracy of memory plays a central role. Many people, lay-people and legal professionals alike, will assume that a person will remember a traumatic incident that has occurred, and be able to detail this incident on the witness stand. Unfortunately, the nature of memory generally, and memory of traumatic events in particular, is such that some events can be lost. During a traumatic incident, memory functions differently, and often the incident will be remembered

primarily in the form of images, sensations, and emotions, rather than verbally (Brewin, 2014). This makes it difficult for a victim/survivor to verbally express what happened to them (Brewin, 2014). In addition, memory is reconstructive, and false memories of peripheral details can be created (Strange & Takarangi, 2015). Finally, a longer interval of memory retention can have negative effects on the reliability of memory (Ellison, 2001). Not unsurprisingly, these aspects of memory are often used by defence counsel to their advantage to reduce witness credibility.

There are two common approaches by defence lawyers to try and instil doubt regarding the credibility of the complainant witness. The first involves casting doubt as to whether the offence took place at all, and the second involves suggesting that sexual activity occurred, but that the complainant consented (Jordan, 2008). Both of these approaches insinuate that the complainant is lying, either regarding whether the offence took place or regarding whether she did or did not consent to the sexual activity (Burman, 2009; Thomas, 1994).

Specific tactics used to instil doubt regarding credibility include asking a question over and over again without giving the complainant a chance to respond, using an intimidating or hostile tone of voice, and outright calling the victim/survivor a liar or timewaster (Burman, 2009; Jordan, 2008; Smith & Skinner, 2012). Other tactics that defence lawyers use to discredit the witness include asking questions about peripheral or irrelevant aspects that were not central to the crime, and which the witness may not have a clear memory of. This has the effect of reducing confidence in the witnesses' memory in general (Kebbell et al., 2007). Defence lawyers will often interrupt the witness with questions, which has the effect of distracting the witness, reducing their ability to remember information and also leads to a feeling of intimidation (Kebbell et al., 2007).

Despite research that suggests that the use of open questions is the best way to ensure accurate or 'best evidence' from complainant witnesses (Westera et al., 2017), defence lawyers often use closed and leading questions, which suggest or imply the response that the defence lawyer is wanting. This can affect the accuracy of the witness' responses, as there is a tendency for people to provide the expected answer, especially when being questioned by someone they perceive as having power or authority (Kebbell et al., 2007). Questions that include double negatives, or double-barrelled questions with two different answers are also particularly confusing for witnesses being cross-examined, and can result in inaccuracies in the evidence (Kebbell, Deprez & Wagstaff, 2003).

Lawyers will often use trick questions, of which there are several types. The ‘pinning out’ techniques involves getting a witness to commit themselves to a position on something before the lawyer gets to the main point of the argument. ‘Prefatory remarks’ are a technique where the lawyer makes a statement before asking a question, and ‘slippery slope’ involves redefining a witness’ answers in order to make the lawyer’s narrative appear more likely (Kebbell et al., 2007).

Summary

It now appears to be generally accepted among writers and researchers from a variety of backgrounds that the process of being a complainant witness in a sexual violence criminal trial is a difficult, stressful, often harrowing and sometimes traumatising experience. The negative consequences of this experience have been described as secondary victimization: victimization which occurs as a result of the responses of individuals and institutions towards the victim/survivor, and how these responses negatively affect the victim/survivor (Belak, 2012; Patterson, 2011). Although some women have a negative experience at the police level, the trial process is where women who have experienced sexual violence are most likely to experience secondary victimization due to the nature of that process, particularly cross-examination. Research indicates that at least half of all sexual violence victims experience some form of secondary victimization (Campbell, 2008; McGlynn & Munro, 2010; Patterson, 2011).

There are a number of factors that have been identified as contributing to difficulties for complainant witnesses in sexual violence allegations. These include “victim blaming” by family, friends, police and court staff, and disbelief (or belief in rape myths) by these same people. Being discouraged from reporting an assault (which may make the woman feel that their experience was not significant), a lack of privacy when reporting the assault or when waiting to report or give evidence at the trial, demands to tell and retell their account of events and a lack of information regarding the process are further problematic factors. In addition, being subjected to inappropriate questioning (and other problematic issues during cross-examination), a lack of control regarding how the story is told, very long delays and uncertainty in the criminal justice process can also contribute to secondary victimization (Burman, 2009; Ministry of Women’s Affairs, 2009; Patterson, 2011).

Additionally, there may be a denial of rights or fair treatment to particular groups of victim/survivors such as those from minority ethnicities or cultures, and those who have had prior involvement in the justice system as offenders, often relating to such issues as prostitution

or drugs and alcohol (Belak, 2012). Unfortunately, none of these factors are uncommon, although some (such as a lack of privacy, being discouraged from reporting, and long delays) may not be intentional, or at least may not be intended to cause harm (Ministry of Women's Affairs, 2009). Research indicates that those who have been sexually violated by a partner are more likely to experience secondary victimization, as are those whose cases have been dropped or whose case does not result in a conviction (Patterson, 2011).

Temkin and Krahé (2008) argue that regardless of the well-intended work to improve sexual violence legislation, the way that the adversarial system operates is essentially unable to effectively provide justice for sexual violence victim/survivors. In conclusion, it seems relevant to quote Justice Ted Thomas, from his paper *Was Eve merely framed; or was she forsaken?:*

My perception is that a woman who has been raped suffers a violent ordeal which is a denial of her humanity and that, when she gives her evidence in the courtroom, she suffers a further traumatic ordeal which is also a repudiation of her humanity. I would claim that it is the fact that a woman's essential humanity is recognised and that she is seen as a living person and not as a passive object of the criminal justice system, which generates the desire to improve the present system. Having been a victim of male savagery once, the violated woman should not be victimised a second time (Thomas, 1994; p. 369-270).

Complainant Witness' Self-Reports of the Justice Process

Although there is a range of literature from both social scientists and legal professionals in regards to the challenges and benefits of the justice process for sexual violence, there are relatively few studies that report the experiences of the complainant witnesses themselves, and fewer still are qualitative analyses. The majority of this type of research uses surveys or short interviews with quantitative analysis of the coded data. Given that complainant witnesses are the ones who experience the various aspects of the process, it seems pertinent to hear what they have to say about the process: the positives, the negatives, and the effect that the justice process has on their lives. For this reason, I have only included studies in this section which are similar in format to the current study, that is, interviews with open questioning, and thematic or similar analysis of the data.

There are several studies that have looked at the qualitative experiences of complainant witnesses in sexual violence trials, and the findings of these studies will be discussed in this section.

Research which is particularly relevant to this study was conducted by researchers at Victoria University (Wellington, New Zealand), under contract from the Ministry of Women's Affairs. This research investigated various interventions for adult victim/survivors of sexual violence in order to determine what was most effective (Kingi & Jordan, 2009). There were a number of objectives of the study, including identification of factors that assist victim/survivors to continue the justice process, helpful and unhelpful part of the process, their access to support systems and their views on what promoted recovery, resilience and strength. For this study, 58 victim/survivors were interviewed and another 17 completed surveys about their experiences post-disclosure of a sexual violation to professionals such as police, support agencies or counsellors since 2000. Fourteen of the participants gave evidence in a trial.

In 2008, Jan Jordan released a book detailing the experiences of the victims of a New Zealand convicted serial rapist, Malcolm Rewa. She extensively interviewed 15 of his victims about the entirety of their experience, from the assault and right through the justice system (Jordan, 2008). It is important to note that the assaults detailed in this book took place mainly in the 1990's, and therefore the experiences of the victim/survivors may not be reflective of some of the reforms that have occurred in New Zealand since then. For example, I have not included much data about the interactions with police, as police procedures and training have improved significantly since this time, and I feel it would not be reflective of current victim/survivor experiences in New Zealand. The Kingi and Jordan (2009) study mentioned previously is a better reflection of current police processes.

In Australia, Success Works (2011) were commissioned by the Department of Justice in Victoria to carry out an evaluation of the Sexual Assault Reform Strategy (SARS). As part of this project, 83 victim/survivors of sexual violence were interviewed (74 female and nine male). The interviews used a narrative approach, with two standard questions related to who the victim/survivor first told about the assault and whether they would recommend someone close to them to report a sexual assault to police.

Research conducted by Wheatcroft, Wagstaff and Moran (2009) investigated rape victim/survivors experiences of the UK legal system, via semi-structured interviews with victim/survivors, police, and victim support experts. There were a total of five participants interviewed: two adult female rape victims, one police officer and two university lecturers with significant experience in the area of sexual assault and rape crisis support services.

Although now somewhat dated, research by Temkin (1999), again in the UK, is widely regarded as an important and relevant piece of qualitative research in this area, which deserves

inclusion in this section. Temkin interviewed 13 adult female victim/survivors of rape and 21 police officers involved in investigating rape cases in London. The format of the interviews is unclear, but interviews lasted up to two hours, and were analysed using thematic analysis.

Interactions with Police

Most victim/survivors who participated in New Zealand studies reported that their interactions with police were “understanding”, “professional”, “warm”, “considerate” and “respectful” (Jordan, 2008; Kingi & Jordan, 2009). A small minority found police interactions to be “cold”, “insensitive”, “clinical” or “disbelieving” (Kingi & Jordan, 2009). Similarly, most interactions with police in the Australian study (Success Works, 2011) were found to be positive, with a few exceptions.

Most victim/survivors who participated in Temkin’s (1999) research also felt mainly positive about their interactions with police, with most participants finding the police officer taking the statement to be “sympathetic”, “supportive” and “friendly”. In line with other research, a small percentage found police to be “disbelieving” or “cold” (Temkin, 1999).

Delays in the Trial Process

Delays are rife in the criminal justice process, with many complainant witnesses in sexual violence trials waiting many months or more than a year after the original offence to give evidence. Some participants in the Kingi and Jordan (2009) research reported that they had considered withdrawing from the justice process, with one of the reasons for this being delays in the justice process.

Women who were interviewed by Jordan (2008) experienced a delay of 22 months from the time that the perpetrator was arrested to the start of the trial. Some women experienced delays of five years from the time that they had reported the crime until the trial commenced. Some of the women interviewed found it hard to “get on with life” during this time, and found that it was a “rollercoaster” with a significant level of uncertainty which was hard to manage.

Many who took part in Australian research were concerned by the amount of time that the court process took, and in particular were surprised by the number of adjournments (Success Works, 2011).

Lack of Communication

Previous research has identified a range of issues that complainant witnesses in sexual violence trials find challenging. Temkin (1999) found that a significant issue for complainant witnesses was a lack of communication from police and courts, which led to exacerbation of

feelings of powerlessness. Most victim/survivors in Temkin's research were at least partly unsatisfied with the follow up they received from police, with the main complaint being a lack of communication.

Australian research by Success Works (2011) also found that the main issues that victim/survivors had with police, particularly during the investigation and pre-trial phase, were the length of time that the investigation took and the lack of communication provided during this time.

Similarly, women interviewed by Jordan (2008) and Kingi & Jordan (2009) found that there was a lack of information provided to them by police and the court in the time between the reporting of the offence, arrest of the perpetrator, and commencement of the trial. It is important to note, however, that when the women in the Malcolm Rewa case complained about this issue, police and prosecutors were proactive in their response, and made significant efforts to improve this (Jordan, 2008).

Interactions with the Prosecutor

In the UK study by Temkin (1999), complainant witnesses found the lack of communication and interaction with the Crown Prosecutor to cause distress and confusion in the court room as the witnesses felt anxious dealing with someone with whom they had no real relationship. In Australia, many complainant witnesses experienced a lack of communication with the prosecutor, and were unable to meet with the prosecutor in advance of the trial, which created confusion and uncertainty (Success Works, 2011). Those who were able to meet the prosecutor in advance of the trial reported a much better experience, and that this positively influenced their ability to give evidence. Some witnesses also found that the prosecutor spoke in language that was difficult of them to understand.

In New Zealand, in relation to interactions with the prosecutor in the case, most participants met the prosecutor either the day before or on the day of the trial itself. Most found the prosecutor to be understanding, professional and pleasant (Kingi & Jordan, 2009).

The women involved in the Malcolm Rewa case had a different experience, as prosecutors and police worked together in the run up to the trial to ensure that the women were well informed and prepared for the trial (Jordan, 2008). Prosecutors met with each woman individually several months prior to the trial starting, which the women reported appreciating.

Issues with Modes of Evidence

Research in Australia found that although complainant witnesses were entitled to access special considerations such as giving evidence via CCTV, many found that they were not able to due to a lack of facilities in the courts (Success Works, 2011). Those who did give evidence via CCTV felt that this was empowering, and many reported that they would not have felt able to give evidence in person (Success Works, 2011).

In the research by Kingi and Jordan (2009), out of 11 interviewees who gave evidence in court, only one was able to access a screen to block her view of the defendant, and only two were offered this option. None were offered the option of giving evidence via CCTV or any other alternative modes of giving evidence. All of those who gave evidence in the court room (including the one person who had a screen) spoke of it as a negative process, with responses including “embarrassing”, “degrading”, and “traumatic” (Kingi & Jordan, 2009).

Cross-examination

Many complainant witnesses in sexual violence trials have reported that they feel “on trial” during evidence-in-chief and cross-examination, with specific concern around the ways in which defence counsel act towards the witness, which often include undermining, intimidation, and challenges to character. It is not uncommon for complainant witnesses to describe the process of cross-examination as traumatic and report that they found the trial to be as distressing as the original offence. Complainant witnesses often described the experience as humiliating, distressing, and that they felt like they were the ones who were on trial (Jordan, 2011; McDonald & Tinsley, 2011a; Wheatcroft et al., 2009).

In New Zealand, Kingi and Jordan (2009) found that although rape victim/survivors in New Zealand had mixed experiences with police during the investigation (some positive and some negative), every single one of the research participants reflected that they found the trial process to be variously “degrading” and “traumatic”. All of the 14 participants who gave evidence in a trial spoke of this experience negatively, reporting that it was “traumatic” and “degrading”. Many found the most difficult aspects of the process to be “defence attorney bullying” as well as being in a close proximity to the defendant (Kingi & Jordan, 2009).

Similarly, women who were interviewed by Jordan (2008) found cross-examination to be gruelling, and several commented that they felt that they were on trial, as opposed to the defendant. One referred to the experience as “degrading” and “horrific”, and another felt that

no amount of preparation could have helped her to deal with the reality of the experience (Jordan, 2008).

Many victim/survivors who took part in Australian research by Success Works (2011) found the process of cross-examination unpleasant. Interestingly, since the introduction of the *Charter of Advocacy for Prosecuting or Defending Sexual Offence Cases*, which places limits on the type of questioning that a defence lawyer can undertake, fewer victim/survivors have reported the experience as significantly distressing. Judges also reported that there had been a noticeable reduction in the aggressiveness of defence questioning (Success Works, 2011).

Complainant Witness Support

In the study by Kingi and Jordan (2009), all participants spoke of the importance of good support throughout the process, and several pointed to this as the reason that they continued with the justice process, even when they found it particularly difficult. Participants in this research found that the most useful support sources were family/whanau and specialist sexual violence support agencies. Specialist support agencies had a more significant role in regards to the more formal aspects of the justice process, whereas counsellors were more helpful at later stages. Participants all reported these support sources to be helpful, although reported that there was usually not as much support offered as they would have liked. Some found it difficult to access support services when they were needed most acutely, and some reported a lack of culturally appropriate support (Kingi & Jordan, 2009).

Women involved in the Malcolm Rewa case were able to have support people in the court with them, and all appeared to have appreciated this support (Jordan, 2008). They gave differing reports of their experiences with community support agencies, with some appreciating the supports offered, while others felt frustrated by counselling styles and attitudes from support staff.

Summary

It is clear when reviewing previous research in this area that the experiences of complainant witnesses in New Zealand and further afield are predominantly negative, and have been for a long time. Common areas of experience across the research include positive experience with police and mainly positive interactions with prosecutors, although some found there to be a lack of communication from both police and prosecutors, which led to increased anxiety for the complainant. Clear commonalities exist in regards to negative experiences, which include issues with lengthy delays in the justice process, problems with accessing

alternative modes of giving evidence, and significant negative experiences of cross-examination.

Reforms in New Zealand

There have been several changes to legislation in New Zealand over recent decades aimed at improving the experience for victim/survivors of sexual violence and CSA as complainant witnesses in criminal trials, and thereby contributing to their ability to give best evidence. This section details these legislative changes and also discusses the work of community support services, which although not a legislative change, offer a specialised service which contributes to improving complainant witness experiences of the justice process.

Recognition of Victim Rights

The Victims' Rights Act (2002) details a number of rights that are intended to ensure that victims are provided with support, information and assistance throughout the justice process. These include the right to dignity, privacy and courteous treatment, as well as access to any necessary services and supports (e.g., a support person). There are also rights in relation to information, including being informed about the progress of the police investigation, the court process and the outcome of the case. There are also rights in regards to input, for example giving your opinion about bail conditions, providing a victim impact statement and participating in Parole Board hearings. Unfortunately, most of the above rights are not legally enforceable, however a victim can lay a complaint with the appropriate authority if they feel that their rights as a victim have been breached.

Initial Interviews and Investigative Stages

At the initial stages of the justice process, including reporting and Police investigation, a number of changes have been implemented to assist in improving the experience for sexual violence victim/survivors. Such changes include the introduction of specialist police units for sexual violence and the use of trained forensic interviewers. These changes were set in motion after a Commission of Inquiry into Police Conduct was established in 2004 as a result of a sexual violence survivor, Louise Nicholas, bringing significant issues with the police handling of sexual violence cases to public awareness. A report from this commission was released in 2007 (Bazley, 2007), with all of the recommendations accepted. A follow up report was released in April 2017 detailing the progress that police have made in regards to implementing those recommendations (New Zealand Police, 2017a). A Code of Conduct for the handling of sexual violence cases was implemented in 2007, and through 2007 and 2008, 292 police

investigators were given specialised Adult Sexual Assault (ASA) investigation training (New Zealand Police, 2017a). Through 2008 and 2009, mandatory ethics training was implemented across the police force. In 2009/2010, the ASA investigation guidelines were updated, the training programme has continued to be updated regularly, and since 2013, content from the ASA training has been included in all police recruit training (New Zealand Police, 2017a). This includes an online training package regarding the appropriate attitude and response to survivors of sexual violence, which must be completed by all staff members who deal with the public (New Zealand Police, 2017a).

Support, Information, Education, and Preparation for the Trial

Sexual violence victim/survivors have some specific needs in regards to support post-assault. The first is the need to feel safe, in particular from further assault by the perpetrator. The second is the need to express how they are feeling about what has happened to them, and to do so in a non-judgemental environment. The third is a need to have information about what to expect, both in terms of her recovery from the assault and in regards to what she should expect from the criminal justice process, should she choose to pursue this avenue (Reddington & Kreisel, 2005).

Recognition of these needs is encapsulated in some recent reforms. Complainant witnesses are permitted to have a support person with them when they give evidence (Victims' Rights Act, 2002). Different agencies deal with the aforementioned needs of sexual violence victim/survivors. In regards to safety issues, these are most likely to be dealt with by the police. Allowing the victim/survivor to process their emotions about the assault is most likely to take place with a rape crisis counsellor, either with a specific agency (usually a Specialist Sexual Violence Agency) or with an ACC accredited counsellor or psychologist. Finally, the need for information about the justice process is most likely to be facilitated by Court Victim Advisors.

Court Victim Advisors are court staff with specialist training. Victim Advisors contact the witness at the time of the defendant's first appearance at court, following a referral by police. At this stage, the witness is sent information such as brochures about available supports, and contact information for the Victim Advisors. These Victim Advisors provide case information to the witness as well as liaison with the various parties in the trial, and ensure that witnesses are well informed of their rights (Mossman et al., 2009). They also assist the witness with court familiarisation, court education, and ensure that the witness has transport to attend court. They then support the witness throughout the court process, including during the sentencing and appeals processes.

Unfortunately, these Victim Advisors are usually only able to offer this support in the last week or two before a trial starts due to case load and uncertainty around trial dates. This means that the victim/survivor is often under-informed regarding the trial process until directly before the trial starts, which is likely to cause anxiety regarding what the victim/survivor should expect. The support offered by Victim Advisors is also limited to the victim/survivor's interactions with the court. When there are long waiting times between the accused being committed to trial and the trial actually occurring (sometimes upwards of one year), the complainant often spends the majority of that time in a kind of limbo waiting for the trial to commence, and for most of that time is in the dark as to what to expect.

Community Support Services

Community support agencies are able to offer a more extensive range of supports and services to victim/survivors of sexual violence than Victim Advisors (Mossman et al., 2009). Research suggests that those victim/survivors who are supported by an advocate such as those available through community support agencies are less likely to experience secondary victimization (Patterson, 2011).

Currently the community support available differs between regions, and all community support agencies are seriously underfunded. In Auckland, the largest city in New Zealand, the HELP Foundation fulfils the role of community rape crisis support agency. As of August 2014, HELP received funding for one and a half full time equivalent staff members to provide support through the legal process for all of the rape and CSA victim/survivors in wider Auckland (population 1.42 million at last census in 2013). As discussed by Jordan (2011), a lack of funding for these services leads to an inability of these services to provide effective support to all of the people who need it. In the case of providing support to rape and CSA victim/survivors going through a trial, HELP Auckland end up being forced to focus only on the most serious cases where victim/survivors have significant emotional or mental health distress, which unfortunately leaves a significant proportion of the rape and CSA victim/survivors in Auckland with either limited or no support. Other services throughout the country face similar situations, and several of these do not receive funding to provide support for those going through a trial process. Victim/survivors in rural centres fare even worse. For example, in Otago and Southland, both regions with predominantly rural and isolated communities, the only rape crises centres are based in Dunedin (Rape Crisis Dunedin) and Invercargill (Rape and Abuse Support Centre Southland). For victim/survivors outside of these cities, this may mean a drive of up to three hours to access services.

HELP Auckland offer a range of supports for victims of sexual violence, including a crisis helpline and face-to-face counselling. The most relevant aspect of their service for this research however is the court support role as mentioned previously. Police make referrals to HELP when cases are in the early stages of prosecution, although witnesses can also self-refer, or be referred by a counsellor. Given that there is essentially only one full time court support person, these referrals are usually limited to those witnesses who have high and complex needs such as significant mental health issues and vulnerability.

The main role of the court support person at HELP Auckland is in regards to both practical and emotional preparation. They offer support before, during and after the trial. Witnesses may be prepared for the type of questioning they will encounter during evidence-in-chief and cross-examination, although these support people are very careful not to discuss the evidence. Support during the trial includes waiting with the witness, being their support person in the court room or in the CCTV room and assisting them during breaks. After the trial, the support person may meet with the witness to discuss the outcome and debrief about the experience. If there is a guilty verdict, the support person will also assist the witness in writing a victim impact statement. They will also constantly be assessing emotional distress and risk throughout the process, and making referrals to counsellors/psychologists and mental health teams if there are safety issues.

Another service in New Zealand, the Accident Compensation Corporation (ACC), has a Sensitive Claims pathway through which sexual violence victim/survivors can access government funded counselling if they have sustained a “mental injury” as a result of the sexual violence (ACC, 2008). This funding has just been extended to cover as many sessions as required for the victim/survivor, and also to cover the full cost (whereas previously the funding only covered \$80 per counselling session). This is a significant improvement, however the criteria for a claim to be accepted includes the requirement that the person making the claim has been diagnosed with a clinical mental disorder. Clearly this is likely to exclude victim/survivors who have experienced trauma but who are presenting with sub-clinical symptoms of distress, trauma, or other mental health issues.

The main differences between the role of the HELP court support person and a Court Victim Advisor are in the length of involvement and the addition of emotional and psychological support offered by the HELP court support person. HELP can be involved from the very start of the prosecution process, and their support can extend as far as a couple of months past the sentencing portion of the justice process if necessary. The Court Victim

Advisors are limited by legislation to providing their service only between the first appearance of the defendant and the completion of the justice process.

Modes of Evidence/Special Considerations

There are a range of special considerations that have been put into place in recent decades in jurisdictions across western society in order to reduce the distress for vulnerable complainant witnesses giving evidence in sexual violence trials. These include the use of screens that block the witnesses view of the defendant, clearing the courtroom of non-essential people (closed court) while the witness is giving evidence, the use of pre-recorded evidential videos and cross-examination and use of real-time CCTV in place of appearing in court in person, and in some countries, the examination of the witness via an intermediary (Kebbell et al., 2007; Plotnikoff & Woolfson, 2015).

The Evidence Act (2006) s 103 includes provisions for alternative ways of giving evidence for witnesses in criminal proceedings. The Act refers to the need for the presiding Judge to have regard for the need to provide a fair trial for the defendant, while also minimising the stress on the witness and promoting the recovery of the complainant (in cases of sexual violence, the complainant witness) from the alleged offence (Evidence Act, 2006). The range of alternative ways of giving evidence (also referred to as special considerations) include the use of a screen to ensure that the witness is unable to see the defendant, the giving of evidence from outside the court room (usually via CCTV) provided that the Judge, lawyers and defendant are all able to see and hear the witness, and by giving evidence via a video recording made before the hearing of the proceeding (Evidence Act, 2006). The Judge can direct that a witness should give evidence in an alternative mode based on a range of criteria which includes: a younger age and/or lower level of maturity; any physical, intellectual, psychological, or psychiatric impairment; the level of trauma and distress experienced; fear of intimidation by the defendant; cultural background or religious beliefs; and the type of the evidence that the witness is expected to give, among other criteria.

Most child and adult witnesses in general criminal trials have their investigative interviews video-recorded. While most child witnesses have their investigative videos played as evidence-in-chief, this is not usually allowed for adult witnesses (McDonald & Tinsley, 2011b). Adult witnesses in sexual violence cases since the Evidence Act came into force have however been able to give evidence (rarely) via pre-recorded video, although it appears that the preferred method is in the courtroom behind the screen, with a small percentage permitted to give evidence via CCTV (McDonald & Tinsley, 2011b). McDonald and Tinsley argue that

all vulnerable witnesses should be afforded the full range of alternative evidence options, rather than just children.

Other jurisdictions have more victim-friendly legislation including in ACT (Australian Capital Territory) where complainant witnesses give evidence via CCTV unless they request to do otherwise (Kennedy et al., 2012). The United Kingdom and Scotland likewise allow witnesses in sexual violence trials access to a wider range of alternative modes of giving evidence, and Scotland in particular deems all complainant witnesses in sexual violence trials to be 'vulnerable witnesses' (Callander, 2014; Ellison, 2001).

A significant special measure available in the United Kingdom is the use of intermediaries for adults with significant impairment of functioning due to physical or mental health issue. Intermediaries assist complainant witnesses by communicating the questions from the lawyers and judge to the witness in a clear manner, and vice versa (Ellison, 2001). Eligible witnesses under this Act include those under the age of 17, those with a mental, physical or social impairment significant enough to negatively affect the quality of their evidence and those who may be expected to experience fear or distress that would be significant enough to affect the quality of evidence (Ellison, 2001).

Limits on Cross-examination/Rape Shield Legislation

Rape shield legislation is intended to prevent the admittance of evidence regarding the victim/survivor's sexual reputation and sexual experiences with anyone other than the accused. The reason that sexual reputation evidence is no longer allowed in trials is that sexual reputation, while perhaps relevant in some regards to the overall "story" of the offence, is not relevant to the actual rape itself (Kennedy et al., 2012; New Zealand Law Commission, 2013). Although information about the victim/survivor's sexual history with anyone other than the defendant is not permitted, the victim/survivor may be asked about consensual sexual acts with the defendant, and in fact may be asked about other sexual history if it is deemed relevant and/or appropriate by the judge (Reddington & Kreisel, 2005).

In New Zealand, a complainant witness' sexual reputation could be brought up in proceedings with few limitations until 1977, when rape shield legislation was introduced in s 23A of the Evidence Act 1908. This legislation provided some protection for complainant witnesses in regards to limiting discussion of the complainant witnesses sexual history to that with the defendant only, unless the judge permitted otherwise. This initially applied only to rape cases, however was extended to include all cases of a sexual nature in 1985, and the most recent version of this legislation is to be found in s 44 of the Evidence Act (2006) (New Zealand

Law Commission, 2013). Although this is certainly an improvement, other jurisdictions go as far to exclude any sexual history evidence, including that with the defendant, unless it is of direct relevance to the case, and the decision to include this evidence must be made by the judge (New Zealand Law Commission, 2013).

Current Recommendations for Reform in New Zealand

There have been a range of recommendations for further reform of the way that sexual violence is prosecuted, and in particular in the way that complainant witnesses are treated within the justice system. In 2007, an interdepartmental Taskforce was introduced in order to “lead and co-ordinate efforts to address sexual violence”, with support from a nationwide community sector group called Te Ohāki a Hine – National Network Ending Sexual Violence Together (TOAH-NNEST) (McDonald & Tinsley, 2011b). A discussion document was released by the Ministry of Justice (2008) entitled *Improvements to Sexual Violence Legislation in New Zealand*. The following year, the Taskforce for Action on Sexual Violence made recommendations around funding a sexual ethics course and public education programme. Neither of these attempts gained serious traction (Vaughan, 2016). The catalyst for this flurry of activity were the actions of Louise Nicholas, a woman at the centre of a historical rape case against members of the New Zealand Police Force, who decided to give up her anonymity and speak about the issues with the prosecutorial process in her case (McDonald & Tinsley, 2011a; McDonald & Tinsley 2011b).

Following these attempts at reform, the former President of the New Zealand Law Commission, Sir Geoffrey Palmer, suggested that the issues with sexual violence crimes being prosecuted in the criminal justice system would not be solved by changes to evidentiary protocol. He suggested that the main issue lay with the use of the adversarial legal system, and recommended investigation into whether the justice process should be altered or replaced for sexual violence cases. This led to an investigation by the New Zealand Law Commission, in conjunction with research by McDonald and Tinsley (2011a).

The Law Commission is an independent body established in order to complete “review, reform, and development of law in New Zealand” (New Zealand Law Commission, 2015). In 2015, the Law Commission completed and released a report on the justice system’s response to victims of sexual violence. The Law Commission made 82 recommendations as part of this report, and those relevant to this research have been detailed below. Of note, the data collection for this research had been completed prior to the release of the Law Commission report, and therefore the participants and I were unaware of what the specific recommendations would be.

It was recommended by McDonald & Tinsley (2011a) and the Law Commission (2015) that adult complainant witnesses should be able to give their evidence in an alternative way (as per the Evidence Act 2006), and that they should be consulted in regards to their preferred method of giving evidence. This is in line with recommendations in England that that video-recorded statements be allowed as evidence-in-chief in adult cases (they are currently only allowed in youth cases in England) (Belak, 2012).

McDonald and Tinsley (2011a) also recommended that the prosecutor should meet with the witness at least a week before trial in order to introduce him/herself and answer questions that the witness may have. Studies have suggested that those victim/survivors who have more thorough preparation and a good understanding of the adversarial legal system are less likely to experience secondary victimization and other negative repercussions as a result of the stress of the trial process (Belak, 2012).

McDonald and Tinsley (2011a) suggested that trial by jury should be discontinued in cases of sexual offending given the specific challenges of counterintuitive issues in sexual violence cases. (McDonald & Tinsley, 2011a). Recommendations in other jurisdictions support this idea, with suggestions that sexual violence trials should be heard by judges only, rather than a jury, and further that these judges should be female if at all possible (if the complainant is female) (Brown, 2012; Krahe & Temkin, 2009).

Both McDonald and Tinsley (2011a) and the New Zealand Law Commission (2015) made recommendations that prosecutors, judges and defence counsel involved in sexual violence trials should have specialist training and experience. It was also recommended that defence counsel should meet specified competence and experience levels in order to be able to act as legal aid in these trials. These recommendations are in line with similar recommendations in other jurisdictions, such as introducing a legal requirement for both prosecutors and defence lawyers to undergo specialist sexual violence training in appropriate interviewing techniques to use with victim/survivors of sexual violence and childhood sexual abuse (Belak, 2012; Wheatcroft et al., 2009). Judges in England are now specially trained in the hearing of cases of sexual violence, and these cases are only heard by judges with this specialist training (Belak, 2012). In Victoria, Australia, The Office of Public Prosecutions has a Specialist Sexual Offences Unit, which provides specialist prosecutors for sexual offences. These are multidisciplinary teams with specialist prosecutors, lawyers and social workers working on cases as they move through the criminal justice process (Success Works, 2011).

Recommendations were made by the New Zealand Law Commission (2015) to implement a specialist sexual violence court, with the objective of the court “to bring specialist judges and counsel together in a venue that enables robust fact-finding without re-traumatising the complainant; and to facilitate a coordinated and integrated approach among the various organisations and people who deal with complainants in sexual violence cases”. The Law Commission report (2015) details specialist sexual violence courts in South Africa, Australia, England, and New York, with some running since 2002. These specialised courts have had a range of evaluations, with some having ambiguous results, although overall they appear to result in improvements to the process, particularly in regards to reducing delays. For example, research evaluating the Court for Sexual Offences in Bloemfontein, South Africa found that the court does reduce overall secondary trauma for complainant witnesses, however there remain issues with defence counsel and offenders intimidating witnesses (Walker & Louw, 2005).

In regards to delay, both McDonald and Tinsley (2011a) and the New Zealand Law Commission (2015) recommend that sexual violence cases should be “fast tracked” where possible/appropriate. If the trial is not able to be fast-tracked, then the witness’s evidence should be pre-recorded.

The New Zealand Law Commission (2015) and McDonald and Tinsley (2011a) both recommend that funding should be made available for courthouses to provide separate waiting rooms, entrances and facilities for witnesses in sexual violence trials. Witnesses should be consulted in situations where the courthouse does not have these facilities as to whether the trial should be moved to a different courthouse.

Both McDonald and Tinsley (2011a) and the New Zealand Law Commission (2015) recommend that witnesses should be consulted in regards to gaining their views in advance of making submissions about changes of trial venue, alternative modes of giving evidence, altering charges, and admission of sexual history.

Recommendations by the New Zealand Law Commission (2015) relating to increased support for complainants include suggestions that the Ministry of Justice should extend the role of specialist sexual violence victims’ advisors, and also fund an up-to-date guide for people in regards to the process for investigation and prosecution of sexual violence offences. The New Zealand Law Commission also suggested the development and implementation of training and education programmes across the sexual violence sector, and the development of a Sexual Violence Commission with a number of responsibilities, including coordinating of the scope

and nature of services provided, and promoting communication and consultation across the sector.

McDonald and Tinsley (2011a) recommend that Independent Sexual Violence Advisors should be allocated to any victim of sexual violence from the first contact with any relevant agency, with the purpose of providing support, advice and assistance throughout the justice process or resolution of the complaint. Better communication and interaction with community support services is commonly recommended in international literature, as is an increase in funding for these victim/survivor services, in order to be able to offer adequate support to complainant witnesses before and throughout the trial process (Belak, 2012).

Both the New Zealand Law Commission (2015) and McDonald and Tinsley (2011a) recommend that there should be requirements around the use of expert evidence or that a written statement with the purpose of educating the jury in regards to myths and misconceptions should be provided in sexual violence cases. This is in line with recommendations in England, where the Home Office recommended in a consultation paper that expert evidence be permitted in rape cases so that jurists (as well as lawyers and judges) can be informed regarding the range of different behaviours and emotional responses exhibited by rape victim/survivors (Belak, 2012; Brown, 2012). It is suggested that this would help reduce the influence of rape myths and prejudice in the court room.

In June 2016, the New Zealand Government published a short paper titled *Government Response to the Law Commission Report on the Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* (New Zealand Government, 2016). In it, the Government recognised the need for change to improve the court experience of the victims of sexual violence, and that more could be done in regards to reducing re-traumatisation and improving support for victims. The Government agreed to work through the proposals in regards to this in the interest of developing a programme for change. The Government also agreed that social support for victims both within and outside of the court process was in need of improvement, and recommended that the Law Commission report be considered as part of a wider plan to improve social support for victims of both sexual violence and family violence.

In October 2016, it was announced that a Specialist Sexual Violence Court Pilot would take place at the Auckland and Whangarei District Courts. This court pilot commenced in December 2016. The court will sit on a regular day within the existing District Court facilities, and will take Category Three sexual violence cases which are proceeding to jury trial (as opposed to judge only). One of the anticipated benefits of this pilot is to reduce the delays

currently experienced by those involved in sexual violence cases. The court will run under a group of “Best Practice Guidelines” (Doogue, 2016), which aim to improve case and trial management of sexual violence cases. Of note, judges who wish to preside over these cases must undertake specialised training (District Courts, 2017), which has commenced at the time of writing, and includes some preliminary findings from this research in order to illustrate the challenges of the justice process for complainant witnesses.

At the time of writing, the Government had directed the Ministry of Justice to further analyse the remainder of the Law Commission’s recommendations, with a view to provide a final response once this work has been completed.

Introduction to this Research

It should be clear from this literature review that while some improvements have been made in terms of the experience of sexual violence victim/survivors engaged in the criminal justice system, there remains advocacy for further reform. However, in this regard the voices of those who appear as complainant witnesses are underrepresented. This study aimed to gather in depth information from New Zealand rape, sexual assault and adult CSA victim/survivors regarding their experiences within the New Zealand legal system, in the hopes of obtaining a better understanding of what their experiences are like, and in particular to understand the various aspects of the process that impact on their experience. Complainant witnesses from trials conducted at Auckland and Whangarei during 2015 and 2016 were interviewed following completion of the trials in which they appeared. In addition several key informants were interviewed: counsellors and Victim Advisors whose work involves engagement with complainant witnesses. It is hoped that this study will provide information to professionals in the legal, political and academic worlds regarding changes that need to be made in order to reduce distress in the experience of complainant witnesses and thereby allow them to participate more fully in the legal system, and improve in particular their ability to provide best evidence.

Specifically, the aim of this research was to improve understanding of the experiences of complainant witnesses in sexual violence trials going through the New Zealand justice system, from reporting the offence through to sentencing and the early post-trial period. Specific foci of the research included understanding what the most negative and most positive aspects of the process are and why, as well as what supports are most beneficial for complainant witnesses.

CHAPTER TWO: METHODOLOGY

This study involved interviews with complainant witnesses and support staff. The focus of the research was on the experiences of complainant witnesses taking part in sexual violence trials. As noted in the previous section, the intention was to better understand both the aspects of the process which were negative and distressing for complainant witnesses, as well as those that were beneficial.

A small number of support staff working with victim/survivors of sexual violence were interviewed. This was done with the purpose of obtaining their perspective of complainant witness' experiences, and in so doing, gain a representation of a wider range of witness experiences than was possible with the relatively limited number of complainant witnesses that were able to be recruited during the time frame of this study.

This chapter will cover the methods used to collect and analyse the data for this study. The methodological framework will be discussed, followed by reflections on the impact that my own motivations and beliefs may have on the research. Information in regards to the specifics of the research protocol are detailed, and finally, ethical issues are discussed.

Methodological Framework

A qualitative approach using semi-structured interviews was utilised in this study. Qualitative approaches examine experiences as opposed to facts and numbers, and take into account the meaning of the experience in relation to its context. Qualitative methods of research are, by nature, very diverse and complex (Braun & Clarke, 2006; Holloway & Todres, 2003). A qualitative approach to research allows for both a broad and deep analysis of experiential phenomena (Good & Watts, 1996). In the context of this study, a qualitative approach is ideal as it allows us to gain a good understanding of both the broad issues for complainant witnesses in sexual violence trials, and also to follow up on particular topics to gain a deeper understanding of these, such as the importance of support in sexual violence trials.

Importantly, qualitative methodology is not focused on the use of set measures such as questionnaires or psychometric tests. These measures tend to limit the range of experiential data that can be obtained from a participant, and can entirely miss certain aspects of the experience if these were not already known to the researcher. Qualitative approaches on the other hand, such as semi-structured interviews, can take into account individual experiences while also ensuring coverage of the relevant known topics. Depending on the skill and awareness of the researcher, these can also be adapted during the interview process to do so.

The epistemological approach for this research was influenced by critical realism, which is described by Braun and Clarke (2006, p.81) as “the ways individuals make meaning of their experience, and, in turn, the ways the broader social context impinges on those meanings, while retaining focus on the material and other limits of ‘reality’”. In more straightforward terms, this means that the researcher acknowledges that, while focusing on the material, it is essential to also acknowledge the influence of the participants, the researcher, and the political, social, historical and cultural context of the meaning and perspectives gleaned from the data.

The method of data analysis used for this research was thematic analysis. Thematic analysis is used to identify patterns or themes within a data set, which can then be analysed and reported in a detailed manner (Braun & Clarke, 2006). Thematic analysis allows for the interpretation of this data, often (but not always) from a particular epistemological perspective.

The steps used for conducting the thematic analysis in this research were informed by the writings of Braun and Clarke (2006), and the data was organised into codes and themes using an inductive approach.

Subjectivity and Reflexivity

In order to remain consistent with the parameters of qualitative research, it is important to reflect on the impact of the researcher on all aspects of the research process, from the choice of research topic through to data collection and analysis. It is not possible to complete qualitative research that is in no way impacted by the researcher, and in fact this is often an important aspect of the qualitative research process. It is important for the qualitative researcher to take into account the ways in which they might impact the nature and outcome of the research in order to mitigate these issues where necessary.

My personal motivations and experience had the potential to influence the analysis of the data. Prior to commencing this research, I worked for nearly three years in a residential drug and alcohol treatment programme. During this time I worked with many victim/survivors of sexual violence, and developed a desire to be able to assist victim/survivors of sexual violence in the future. Being highly aware of this bias towards wanting to assist victim/survivors was essential in both the interview and analysis portions of the study as bias during the interview or analysis could skew the interview content and interpretation.

In addition, I had become aware prior to commencing this research that the experiences of sexual violence victim/survivors in the court system were predominantly negative, and as

such I was interested in the possibility of positive reform in this area. I have a preference for conducting action-oriented research, and therefore conducted this research with an underlying hope that the research would be useful in regards to improving the experiences of these victims/survivors. Clearly this also could skew my collection and analysis of the data, however I was careful to counter any potential bias by maintaining an open and curious stance during interviews, and throughout the data analysis and writing process. This was achieved by the use of very open and wide ranging questions during interviews, with a balanced focus on both positive and negative aspects of the process. In order to further minimise bias in the analysis of the data, my analysis was reviewed by my supervisor on multiple occasions.

I have not experienced sexual violence myself, nor appeared in court as a witness in any form, and therefore my understanding of the experiences of my participants was limited to what they told me, as opposed to a deeper personal understanding. In order to increase my understanding of my participant's experiences, I was careful to maintain an open and curious stance during interviews, which ensured that I did not limit the collection of the data, and was able to follow up on specific points in each participant's reports. In addition to this, I ensured that I had a thorough knowledge and understanding of the appropriate literature, and spoke with relevant researchers prior to commencing the interviews in order to ensure I had the best understanding possible.

Being that I may have been seen as someone in a position of power or authority, and given that all of my participants have experienced some form of violation and powerlessness as part of (or as a result of) the sexual violence they experienced, it was possible that this dynamic would alter their interactions with me. It was important that I remained fully aware of this dynamic in my communication with participants, during the interview, and after the interview. In order to offset this, I worked hard to maintain a warm and empathetic stance in all communication with participants and was careful to follow up with most participants after the interviews to ensure their wellbeing.

Given the distressing content of some of the interviews I was careful to ensure that I did not complete interviews immediately one after another. I also utilised my supervisor's support in regards to debriefing about some of the interview content.

Finally, prior to and during the data collection and analysis portions of this study, I spoke informally with several experts in the area, including current and former prosecutors and sexual violence advocates in order to gain perspectives of the process from people with

extensive legal expertise and detailed understanding of the challenges faced by complainant witnesses.

Ethical Issues

Safety and wellbeing. Safety and wellbeing were carefully managed in this project, due to the potential for distress for participants when recounting experiences in the court room that they found traumatic. In addition, several participants had current or previous mental health diagnoses, and at least two had engaged in para-suicidal behaviours or suicidal ideation with intent during the trial process, so I was aware of avoiding any potential triggers for these issues.

In order to minimize risk with participants, the support staff recruiting participants initially assessed whether the potential participant was in an emotionally stable state, and possessed coping mechanisms for distress. The recruiting staff were asked to not invite anyone to participate who they felt might be at risk of significant psychological or emotional distress. At each stage through the recruitment process following the invitation to participate, the complainant witnesses were reminded of the potential for distress and advised to withdraw from participation if they felt that they may not cope. I checked with the participant as to their emotional state immediately before commencing the interview, and again at the end of the interview.

Although the format of the research meant that there was only one interview conducted with each participant with no need for further contact, I followed up on the wellbeing of most of the complainant witness participants in the study, with their permission. This was to ensure that nothing in the interview process had triggered distress or mental health issues. I did not undertake this follow up with the support staff interviewed as it was determined that these participants would have the training and emotional capacity to deal with any issues themselves. Some complainant witness participants declined a follow up phone call, but all of those who were contacted post-interview reported either that they had not experienced any negative outcomes as a result of taking part, or that they had experienced positive outcomes. Several complainant witness spoke of the interview process as being “cathartic”.

I conducted all of the interviews. Readiness for the possibility of distress responses included my previous training in clinical interviewing, as well as experience working with trauma victims, and training in crisis intervention. Further to this, a plan was put in place with my supervisor to be available for phone contact during interviews, as well as an arrangement with HELP Auckland to refer any distressed participants to them for counselling and support. This referral process was not required.

Cultural Advice. A Māori clinical psychologist was consulted during the development stages of the study in order to ensure that any potential cultural issues for Māori participants were identified and planned for in advance of the interviews. As part of ethics approval, we were required to have a Māori interviewer available if necessary for any Māori complainant witness clients. Both of the complainant witnesses who identified as Māori declined to have a Māori interviewer.

Method

Participants

There were two groups of participants for this study: complainant witnesses and staff from support agencies. The main participants were adult female complainant witnesses in sexual violence trials in New Zealand courts, who had given evidence in trials within the 12 months preceding the commencement of the study interviews. A complainant witness is the prosecution witness in a criminal case, and is the person who has made a formal accusation against the defendant. In this study, the complainant witnesses had made accusations including rape, sexual assault, and historical child sexual abuse.

Complainant witness participants. In order to be included in the study, complainant witnesses needed to be aged 18 or over at the time of the interview, be female, and to have given evidence in a sexual violence trial within the previous 12 months. Women of any culture were eligible to take part. The inclusion criteria for women was purposefully kept quite open in order to ensure that a wide range of complainant witness backgrounds and experiences were included in the research data.

A more informal limitation on participation was emotional and psychological stability and ability to cope with the potential distress of talking about the court experience. This was mitigated by recruiting participants via support staff that were trained and able to assess potential participants' emotional stability. Furthermore, clear warnings about potential interview effects were presented in the information sheets and during further assessment by the researcher during pre-interview contact. (See Appendices C through G for examples of the participant information sheets, consent forms, and permission to contact forms).

Initial goals for complainant witness participation were between 20 and 30 individuals, however it became apparent that this was an overly optimistic goal, and that recruitment would be difficult. In total, nine complainant witnesses took part in the research. Reasons for low participation in the study included potential participants being regarded by support staff as too

emotionally unfit to take part and therefore they were not contacted, or they indicated when contacted that they had “moved on” from the experience and were not interested in talking about it further. It is not known how many victim/survivors declined of those with whom contact was made. Of these nine, the age range was 20 to early 50s (some participants were not willing to divulge their specific age). Two participants identified as Māori, with all others identifying as European. The majority of participants were located in Auckland, with two participants located in Northland. No further demographic details will be discussed, in order to protect the identities of these women.

Despite the difficulties in recruiting the originally intended number of complainant witness participants, the analysis of the interviews suggested that data saturation was achieved. This is evidenced by the fact that there were no new codes or themes emerging over the final few interviews.

Support staff participants. Support staff from both HELP Auckland and the Victim Advisors at Auckland District Court were interviewed. The main area of interest with these participants was their perspective on the experiences of the complainant witnesses that they support. Given the limited number of complainant witness participants, it was hoped that speaking with support staff would offer an overview of the wider experiences of all complainant witnesses. Four support staff were interviewed; two from HELP and two from the Victim Advisor teams.

Procedure

Ethics. Ethics approval for this study was applied for and granted by the University of Auckland Human Participants Ethics Committee. Ethics approval details were included on all relevant documentation for the study, including Information Sheets and Consent forms (see Appendices C-G). Separate ethics approval was sought and gained from the Ministry of Justice in order to allow Victim Advisors at the Auckland and Whangarei District and High Courts to assist with participant recruitment.

Recruitment. Participants were recruited via two separate teams of support staff: HELP Auckland and Victim Advisors at the Auckland and Whangarei Courts. The HELP Court Support staff and Victim Advisors introduced the study to potential participants after the end of their trials in order to ensure that the research had no influence what so ever on the way they gave evidence or their perception of the experience. Generally, potential participants were contacted after sentencing was completed, and interviews took place six weeks post-sentencing in order to ensure any possible appeals had been filed and it was clear that the complainant

witness would not be required in court again. In some cases, complainant witnesses for whom the process had been completed several months earlier were contacted and given information regarding the study. As stated above, the support staff only approached complainant witnesses who they felt would be able to cope emotionally with participation in the research.

The HELP staff and Victim Advisors introduced the study verbally to potential participants and then provided a Participant Information Sheet if the person showed interest in participating. If the complainant witness still showed interest at this stage, they were asked to sign a Permission to Contact form. This was passed on to me, and I then contacted the complainant witness within a reasonable time frame. During this follow up phone call or email, I further explained the research and the process of the interview. Usually this contact took place after sentencing of the defendant, and the interview was deferred until six weeks after the sentencing date in order to account for any possible appeal processes. Potential participants were contacted again close to the interview date to confirm participation, and were reminded at this point that they could have a support person attend the interview with them.

Support staff and legal staff who were interviewed for the project were generally recruited via their participation in the project as recruiters of complainant witnesses, or via word of mouth.

Interviews. Interviews with complainant witnesses were conducted at a location convenient to the participant. These locations were usually the University of Auckland Tamaki or Auckland City campuses for complainant witnesses, however some interviews took place at the offices of support staff.

Before commencing interviews, the purpose of the research was explained again, and the participant was given the opportunity to ask any questions they felt necessary. The participant was reminded that the interview could be stopped at any time if they felt distressed, and that they could withdraw from the study at any time. If they were happy to continue, they were then taken through the consent form point by point and asked to sign it.

As already stated, the participants were given the opportunity to have a family member or support person present during the interview, although no participants chose this option.

The semi-structured format of the interviews meant that I was able to cover all the theoretical and practical necessities, and also follow up on specific aspects of the experience and points of interest where it was appropriate. I used a conversational but professional style

of interviewing, with the purpose of helping the participant to feel comfortable in talking about topics which could be particularly sensitive.

The interview schedule (full schedule listed in appendix A) for complainant witnesses was designed to ensure that all relevant information about the complainant witnesses' experience of the court processes was covered. The semi-structured interviews covered the following topics, which had been identified in previous literature as areas of interest and importance: overall experience of the trial process, details regarding the forms of support received and how useful that support was, the nature of the interactions with various people within the court system, details regarding the experience within the court room including giving evidence-in-chief and cross-examination, and the post-trial experience.

Within the aforementioned general topics, specific questions covered whether various aspects of and interactions within the court system were positive or negative and why, which forms of support were helpful, and specifics regarding the court room experience, including what the participant found positive and negative about the court room experience, and special considerations given.

I was careful in conducting the interviews to avoid inadvertently directing the interviews by starting with specific topics. Therefore, the opening question for every interview was "What was your overall experience of the trial process?", thus I did not assume a negative experience for every participant. This was followed by questions about whether their experience was predominantly positive, negative or neutral, and about the main reasons why their experience was skewed in any of these directions. After these open questions, more detailed questions were asked, including specifics about the nature of support, and interactions with the prosecutor, defence counsel, and judge. The participants were asked to talk through the process they experienced in the court room itself, with specific questions about whether they found particular aspects of the process (examination-in-chief and cross-examination) to be positive, negative or neutral, and why this was the case. Finally, participants were asked about the impact of the trial process on their life and ability to continue to function as they had previously. As per the ethics requirements, participants were not asked directly about their mental health status, however many spontaneously spoke about this during this portion of the interview. I conducted the interviews with the assumption that the offence reported did occur, including in those cases where there was a not-guilty verdict. I felt it was important to remain neutral in these cases and therefore did not question at any time the validity of the allegations. It is important to note in relation to this that although international statistics suggest that up to

ten percent of rape reports may be false allegations, it seems fairly unlikely given the very small percentage of cases that are taken through to trial by police and prosecutors (and the level of evidence required for this to happen) that any but an incredibly small number of false allegations would make it to trial.

Support staff were asked very similar questions to the complainant witnesses, however were asked to speak from their perspective of the experiences of the complainant witnesses (see Appendix B for the support staff interview schedule). In addition, they were asked about the nature of the support that they offered to complainant witnesses.

Importantly, all participants, both complainant witnesses and support staff, were asked about what they felt would be beneficial in regards to reform of the court process, if anything. This was asked given that it makes sense that those people who are experiencing the process directly are most likely to be able to speak as to which reforms would be the most beneficial for future complainant witnesses.

Data Analysis

All interviews were transcribed verbatim by a professional transcriber who signed a confidentiality agreement. Hard copies of transcripts were stored in a locked filing cabinet at the University of Auckland. Electronic versions were password-protected and stored on a secure server at the University. All transcripts were coded to remove any identifying information from the transcripts, including names of individuals and places. Participants were assigned a number which was used to refer to them in the research.

The interviews were analysed using the six-step method detailed in Braun and Clarke (2006). Transcripts were read at least twice each in order to increase familiarity with the data, and to begin noting initial themes. Data was then organised into initial codes by cutting and pasting data into an excel spreadsheet. Several variations of coding were tried in order to ensure that all possible ways of viewing the data were covered. The set of codes was then checked again to ensure that they matched the victim/survivor's stories as closely as possible.

Once codes had been finalised, they were grouped into themes and subthemes, which were reviewed and revised several times. Codes were combined or removed if it appeared that they were either closely related or did not contain enough information to justify a single code. Themes were revised in a similar fashion. Throughout the process, I was careful to ensure that no important information was missed. Ongoing discussion with my supervisor assisted in the understanding of the data, and helped to guide the analysis.

In order to ensure the integrity of the analysis (Morrow, 2005), my supervisor checked all of the coded and themed material for validity, including whether each code, theme, and subtheme was adequately present in the data, and whether these had been appropriately described. Any issues were discussed and changes were made as necessary. Only once we were in agreement that each code, theme, and subtheme adequately represented the data were they finalised.

As the focus of qualitative methods is not numerical data, the prevalence of each code, theme, and subtheme was determined, rather than the frequency. The prevalence (noted as “all participants”, “most participants”, “many participants” and “some participants”) was reported in the research in order to allow the reader to determine the pervasiveness of the themes.

CHAPTER THREE: FINDINGS

The findings discussed below have been grouped into topics, themes, and subthemes. The topics were predetermined and correspond to the areas covered in the interviews with participants (see Appendices A and B for the interview schedules). The topics included Experiences of the Justice Process, Impact on Self, Support, and Recommendations for Change. Within each topic, thematic analysis of interview transcripts identified a range of related themes and subthemes, as noted in Table 1. Within the topic Experiences of the Justice Process, themes included both negative and positive experiences, with subthemes relating to issues with communication, delay, and cross-examination. Within the topic Impact on Self, themes mainly related to negative effects on physical and mental health. The Support topic included themes related to difficulties accessing support and the under-resourcing of current support agencies, as well as praise for support staff. Finally, the Recommendations for Change topic included themes of having specially trained legal staff, specialist courts, more support for complainant witnesses, and reducing delays.

Throughout the following section, complainant witness participants will be referred to as “witnesses” (with quotes denoted by W1-9), and support staff participants will be referred to as “support staff” (denoted by S1-4).

Topic: Experiences of the Justice Process

The witnesses had a range of experiences during the time that they were involved with the justice process. The majority of these experiences were negative, although there were some who reported positive aspects of the process (or at least aspects of the process that lessened the distress for the witnesses). Support staff largely reported the same challenges as the witnesses, however sometimes gave a different perspective on the issues.

Theme One: The Overall Experience is Negative

All witnesses and support staff were asked whether they felt their overall experience was positive or negative, and this answer was then followed up with questions about which aspects of the process were positive (if any) or negative. In line with previous research, the overall experience for witnesses was predominantly negative. Although some witnesses were able to find positive aspects of the trial - for example, that they now had closure - every witness but one reported that the overall experience was negative.

Table 1

Topics and themes

Topic	Theme
Experiences of the justice process	Overall experience is negative Delay Issues in court There were positive aspects
Impact on self	Negative effect on physical and mental health
Support	Support is essential during the justice process Issues with accessing support/lack of support The support I was able to access was very good
Recommendations for change	Decrease delays/speed up trial process Specialised training/ specialist courts Better court support Adversarial system and alternatives Mode of evidence No feedback process at court A Judge only option

Witnesses often used strong language to describe the overall experience, including words such as “horrific” (W5), and “fucked up” (W2). One witness (W1) who had experienced a particularly harrowing offence and difficult path to trial commented, “It was brutal, yeah it was huge”, and “like being in a washing machine for three years, it was horrendous”.

A few witnesses talked about the overall experience (and in particular the court room experience) being as bad as or worse than the original offence, although one witness did note that this was more likely to be the case where the original offence was less severe.

Nobody should have to go through it. The event, the original event in the first place, but the court process is almost, in ways it’s as bad or even worse than the actual event which is also all manners of fucked up. But if you don’t have that support I can’t imagine someone would be able to make it through; essentially being told that it was all their fault all the way along and having their wishes ignored. (W2)

Support staff also talked about the overwhelmingly negative experiences that witnesses have as a result of taking part in the justice process, and elaborated on the reasons for this.

It makes it unfair that the, it just creates again the conditions for the witness to experience a traumatic experience again. Being exposed the way we're exposed when one experiences sexual abuse or sexual assaults. Being challenged on the truth. What they fear is not to be believed, being put in a place of being a liar or making it up. And the trauma of sexual abuse there's a lot of self-blame, and lots of questions of how, I should have done something different to avoid this. So part of me is responsible, which is a very distorted, distorted thought. But it is, yeah common to every single person going through this traumatic experience. And so all of that is playing out again in the courtroom and the process. (S1)

All witnesses spoke to varying degrees about a loss of faith in the justice system - which is described in more detail later - in regards to protection of the victim of crime, and loss of trust in many of those who work within the justice system.

Yeah, like you sort of, I don't know your faith in the justice system does disappear.... Yeah it's just like the system right now is just evil, it is actually designed to destroy people. It is not designed to have victims come out the other side of this. (W1)

If you experience something, if you have to go through something that makes you want to kill yourself or the process of which makes you wanna kill yourself it kind of suggests that the process or the system is not quite right and that there's issues. (W2)

All participants were asked whether they would go through the process again or would recommend a loved one to go through the justice process if they were a victim of sexual violence. Around half of the witnesses were unsure whether they would recommend to someone in a similar situation to go through the trial process. Some witnesses felt that they would only recommend it in the case of more serious offences (e.g., rape as opposed to a more minor sexual assault).

If it happened to me again though, if it was something worse I probably would report it. If it was essentially the same thing I really would have to think about whether I would do anything or not about it because now I know what it's like. (W2)

And I'm pleased I've done my bit and he's locked away. But has that process tainted my, you know, me wanting to see my loved ones go through it. I, yeah, I can honestly say yes, it's made me second guess how important it is to, like, can the, does the crime outweigh the justice. (W5)

Others felt that it was easier to get over the sexual offence and move on if they did not go through the court process. This was particularly salient for one witness whose trial ended in a not guilty verdict.

Because it drags things out and I feel that you can actually get over it quicker just doing, you know in your own ways. And the fact that obviously it came out to be a waste of time in the end anyway. It's a very long process and it's a very stressful process, and yeah I just, I don't know, coz I do and I have always, like if something's wrong you have to stand up and say it. But yeah, I don't know, I don't know if I would encourage people to actually go through that process or not. Or whether to just focus on their own, like you know like get, focus on getting themselves help rather than trying to draw it out, because yeah it doesn't always work. (W4)

One witness spoke of feeling that they would not want to recommend the process to others due to how difficult it was, however felt that it was important for people to go through the process and speak out about it in order to bring about positive changes.

My heart says "no", that I would tell them not to do it because I care about them too much for them to have to go through it. But the other side of me wants to say "yes" because the more people go through it the quicker this will hopefully change and the quicker that this will hopefully stop happening and people will realise they can't get away with it or even changing attitudes. So I guess it's maybe sacrificing for the greater good in a way is one way to put it. I don't know the answer to that. (W2)

Some support staff were clear that they would only recommend going through the process if the witness had a good level of support, an ability to handle the emotional challenge of the trial, and a good understanding of what to expect from the process. One felt that a witness needed to be going to court with the right motivations.

If it's someone that I know who's very fragile, doubting their ability to handle, and knowing that we cannot be sure about the outcome, and that it could be a negative outcome. Okay let's put it that way, I would never advise someone to go through this process by themselves, yeah. (S1)

I would never sell it to somebody. I would never say I think that this is a really good idea for you to go through it. It's really about putting out the reality of everything and then supporting them to come to their own conclusion. And I think the time's when, right at that very early reporting stage, starting to work with clients to say why are you

here? And if you're here because your brother, mother, sister, or somebody has brought you along, and that's the only reason why you're here, then it's not a good enough reason to be here. Are you here because you want justice? And if you are, then you need to think carefully about it because you may not get what you hope for as justice at the other end. Are you here because you want to hold this person to account and no matter what happens at this other end at least you've told a story? And the things that they're needing then is to be believed, and that can happen in lots of different ways as opposed to just the outcome at the other end. It's gutting when you get there, ha, and get a not guilty, it's absolutely gutting. But at least with that early stages of making decisions based on why am I here? And it's got to be because I want to be here, it helps to give a better outcome whatever it is at the other end. (S2)

Another was adamant that she would not recommend the process to loved ones. She felt that she may recommend something less distressing such as restorative justice, but not the court process in its current form.

I have two girls and if they are ever offended against I would not let them go through the court process, no. Whether I would consider restorative justice, I don't know, but the court process is really, really ... as it stands now the whole adversarial system, no. (S3)

In summary, both witnesses and support staff were clear that the overall experience of the justice process was negative. For some witnesses and support staff, their experience of the justice system was so negative that they reported a loss of faith in the justice system, and many reported that they would not recommend loved ones to go through the justice process if they experienced sexual violence. While the overall experience of the justice process was described as negative by most, the court room process was experienced as particularly negative in the accounts of both witnesses and support staff. The following themes address a range of specific aspects of the justice process that complainant witnesses find distressing or challenging, including cross-examination.

Theme Two: Delay

Issues with long delays between reporting the offence to police and completing the trial process were mentioned by every witness and all support staff. In addition, the propensity for the trial date to be delayed further with little notice meant that participants who had worked hard to emotionally prepare themselves once again returned to a waiting game. One participant

waited six years for the trial to begin from the time that she initially reported the offence. The average time frame for witness participants was about two years.

Yeah absolutely by the end because I had to consider my own sanity. Now I think people having to wait four years, I couldn't do that, I don't think I could even wait two years. I'd like to think I have a life that I'd like to get on with. (W2)

Witnesses talked about the lack of information concerning trial dates causing significant issues in regards to taking leave from work to attend the trial, arranging childcare, and the ability for support people to attend the trial.

To the actual trial date, we did have a backup or a reserve trial kinda thing there for a little while, but I got sick of that coz it was, I didn't even know on that day as to whether I was going to court or not. And for work it was really hard as well coz I'm like getting e-mails at 12 o'clock going "oh no it won't be today, but it might be tomorrow" like. So we didn't know if we were meant to have casuals in to cover me or anything like that, so that was really hard. (W4)

The effects of these delays were exacerbated by lack of communication from both police and court staff, which left them feeling unsure and vulnerable during the often multi-year wait for the trial to occur. This process resulted in what several witnesses referred to as an "inability to move on" and difficulties in functioning in everyday life. Many witnesses spoke of the lengthy delays causing a significant emotional toll due to the pressure to continuously be prepared for the trial, which included keeping the details of the offence at the forefront of their memory.

Because of the anxiety and I didn't hear anything for a while and it kind of died down but it was never ever completely gone because in the back of my mind I still had this court process to deal with and it kept coming and going. It's just a rollercoaster of emotions I guess. A bit like a paperclip, if you bend it too many times backwards and forwards it's gonna snap at some point. (W2)

Waiting to be called up was quite stressful; not knowing what was going, you know, when you were going to be called up. Yeah I'd say the waiting was stressful coz you're thinking about it, it's ticking over in your mind all the time. And you're trying to actually forget about it, to actually move on. (W3)

Many witnesses spoke about the lack of communication in the period between reporting the offence and the trial itself occurring leading to feeling "out of the loop" and unable to

adequately prepare. For some, when the trial date was eventually notified, they experienced the time given to make final preparations as too short.

It was pretty much, I didn't have any communication until the week before and then the detective was like "oh yeah it's gonna be next week, just wanting to have a meeting with you". And so then I had to go over to Whangarei, have a meeting after work with him and the prosecutor lady person. But other than that it was kinda like, I felt as though it was kinda like last minute. (W4)

Support staff also spoke about this, in particular about delays and witnesses not being updated about ongoing trial processes.

At the beginning of the process, entering the process, there can be lots of frustrations about not being updated, (staff) always being on leave. Or there's a hearing, and waiting for the outcome, and no one's there, "I haven't been even updated by the officer in charge". Or there are some detectives that are, that can be quite absent or not giving the best updates or communicating with them during the process, yeah. (S1)

Compounding the difficulties in communication for some witnesses was their struggle to understand the information that they were given by police, and later on, by prosecutors. They found it difficult to understand legal language, and felt that sometimes these people forgot to speak in terms that lay people would understand. This was an issue for witnesses during the investigation stage, the pre-trial meeting with the prosecutor, and (as discussed below) during questioning by both the prosecutor and defence lawyer on the stand. During the pre-trial meeting, this might mean that the witness would not adequately understand the trial process that they would undertake, and would therefore be overwhelmed on the day of their testimony.

In summary, delay is a significant issue for complainant witnesses taking part in the justice process. This is due to the impact of prolonged anxiety and insecurity about the approaching trial, compounded by a lack of communication from courts and police during this period. A secondary outcome of delay is that complainant witnesses feel unable to move on with their lives, and the longer the delay extends, the more significant and debilitating this impact becomes.

Theme Three: Issues in Court

Witnesses and support staff were all asked about the types of experiences and interactions that witnesses have had in the courtroom. Almost all witnesses found the court room experience to be significantly distressing, and discussed a number of issues that

contributed to this being a particularly harrowing part of the overall justice process. For many witnesses, their interactions with the defence lawyer were the most distressing aspect of the whole justice process. In addition to cross-examination, difficulties covered in the several sub-themes below include their experience of the prosecutor, feeling upset that the judge did not step in soon enough when the complainant witness was distressed, the use of legal language which the complainant witness struggled to understand, experiencing disregard from court staff and prosecutors, distress related to being in the same room as the defendant, feeling powerless/on trial, worrying about impression management with the jury, and negative experiences during the sentencing portion of the trial.

Aspects of their experience constitute several subthemes as follows.

Prosecutors appeared disinterested in the witness. Several witnesses lamented that their prosecutor seemed too busy to put much effort into the case, both in the lead-up to the trial and in the court room. They talked about feeling that they were an “annoyance” to the justice system. Their disappointment with the prosecutor appears partly at least to arise from the common misunderstanding held by both complainant witnesses and the general public in regards to the role of the prosecutor. Some assume the prosecutor is the lawyer for the victim, which is not the case; the prosecutor is the lawyer for the Crown, and the victim is a witness in the case. When complainant witnesses are not adequately informed regarding this, it may cause them to feel let down by the prosecutor.

Yeah if it was any other police and the lawyer as well that I happened to get was a really, really good lawyer, unfortunately the last court case I ended up with a different lawyer because he was busy and I did not like that lawyer one bit. I don't think he actually tried so that made it really disheartening to sit in this box and see him question me like he didn't even care. (W6)

He was nice enough but again it seemed like it was just his (the prosecutor's) job. It's not like, I don't know, I can see that is his job to deal with multiple cases, but it would be nice if the prosecutors kind of not necessarily cared a bit more. But yeah it seems they were - again anything to do with the courts - it kind of seemed a bit like an annoyance to them almost, that this whole thing was happening and that it hadn't been resolved (W2).

Several witnesses talked about feeling that the justice system was “faceless”.

The courts are almost like a big faceless corporation almost like. They're there, they exist but there's no real human aspect to it. It's all numbers and faceless people. I mean they're people but you might as well be talking to a brick wall. (W2)

Negative experiences during cross-examination. Every witness interviewed for this research found the process of cross-examination to be distressing. Although giving evidence-in-chief was difficult, they all reported that cross-examination was far worse, mainly due to the way that they felt defence lawyers acted towards them while on the stand. This included the defence lawyer accusing some witnesses of "lying" or "asking for it", and using specific strategies that appeared to be designed to confuse the witness or cause them to make technical mistakes. All of this resulted in many of the witnesses feeling anxious, distressed, judged, and humiliated. Perhaps contributing to their distress was a lack of knowledge on the part of some witnesses of the role of defence that includes an obligation to test the truthfulness of the witness and the veracity of their specific allegations. Several witnesses indicated understanding of this role, that it was, as one (W4) put it, "just his job". Likewise, another (W4) said, "And I know that that's their job to make it look like you're lying, but I didn't like that". However, even when they had this understanding, they considered that the defence lawyer could have "tame(d) down the line of questioning". For example, W5 said: "Yeah, I thought he was an arsehole, I know that was his job, but man".

Oh very like, because I know it's his job as well so I couldn't take it personally but it's just like wow, I can just say wow. It was yeah very hard to be treated that way. (W7)

Most witnesses talked about feeling upset by the manner in which the defence lawyer questioned them and behaved towards them while they were undergoing cross-examination. One (W5) put this fairly bluntly, stating "he was, he's a horrible person". Another also expressed a strong opinion on the impact of the defence's manner in the courtroom:

So defence counsel, man they've got a lot to change. Because they, they destroy people. Like they actually destroy people. (W1)

She added that it felt like they were able to "put whatever spin they want on something that's been the most traumatic thing of your life". Another witness with a similar experience felt that the defence lawyer had acted like a "bully" towards her.

Yeah. No. Just that it was over, yeah, no, there was no, there was nothing in there where I was like "oh he's alright" or anything like that. He was just a bully, it felt like. (W4)

Some who had felt they knew in advance it would be difficult nevertheless found the level of the defence lawyer's questioning to be more intense than they were expecting.

Even though I prepared myself for the defence to pick holes and hammer my statement, and I was still taken aback at the level at which they did that. (W4)

It was nasty. Nasty, nasty, nasty. I mean I had to walk out of court six times because of the anxiety and the way that he was cross-examining me. (W9)

Most witnesses felt that the defence lawyer had intended to "pick on", intimidate, and humiliate them during cross-examination, and that this was done on purpose to "mess with" them.

He kept on laughing at my answers. I don't know, that was just really getting to me. It's not funny, like, and like coz he would say something, right, coz he says "oh you're a well-educated person, you work at (place of work). So of course you, you know the rules around rape and all that kind of stuff, why didn't you say anything?" (W4)

It was tough but I guess you get that from any defence lawyer who's trying to get their client off their charge. I wouldn't expect anything less but I felt that he was just intimidating. (W9)

Many talked about finding it very hurtful to have the defence lawyer accuse them of not telling the truth. They felt judged by the defence lawyer, and embarrassed and upset that they were being accused of lying in front of the jury.

My heart broke inside when I was trying to tell my story which was the truth and to have someone backlash at you and tell you you're lying or you are making this up, you know, it was really hurtful, really, really hurtful. And that was the hardest part of it all. (W8)

He, he didn't believe, he thought what I'd said in my statement, in my affidavit was, I'd made it all up. (W3)

Support staff talked about the reasons witnesses react so negatively towards defence lawyers. This included hostility due to the defence lawyer's association with the perpetrator, and the way that defence lawyers use the above-mentioned strategies when questioning witnesses.

The fact that they are the lawyers of the defence, so already even before we meet them or see them on the screen, there's already hostile feelings towards the defence lawyers. And all the lawyers have, every lawyer's got different strategies to challenge the witnesses. So, but I've noticed that every, every witness, every single witness has the same aversion for, for defence lawyers. So interactions, the nature of their response is

then, it all depends on their coping strategies and their way of managing their emotions. But most of the time they're going to be very angry, angry at them, very angry, hating them. It raises violence in them, yeah, yeah. (S1)

They also spoke about the triggering nature of not being believed for sexual assault victim/survivors. Most people who have experienced sexual violence have a fear of not being believed by others (a reason why so few ever report their experiences), and a defence lawyer accusing them of lying in front of respected legal staff and members of the jury is traumatising and upsetting.

Because the trigger is to not be believed, and this kind of, the nature of sexual abuse, the most common fear is to not be believed. And so when the defence comes with it didn't happen, you made it up, or you're a liar, or there was someone else, or you changed your mind, or whatever. And their word is questioned and challenged, and the truth is challenged, their truth, it is a trigger in itself. (S1)

Support staff also talked about the loss of control experienced by witnesses, both during the original offence and then again during the court process, but in particular during cross-examination.

The fact that when you are sexually abused or sexually assaulted you lose the control, you're not in control anymore. And the person who's abusing has got the control, so the system does the same thing. Witnesses and clients are not in control, everything, they're not in control at all, they don't know what's gonna happen, when it's gonna happen. (S1)

Some witnesses experienced the defence lawyer's suggestion that they had "asked for it" by virtue of their behaviour, and felt particularly upset by this. Such a suggestion relates to the legal issue of consent; if the defence lawyer is able to convince the jury that the complainant witness did consent to the sexual activity, then the defendant is likely to be found not guilty. However, the suggestion is itself difficult for the witness, and the manner in which the suggestion is put to them was also experienced as offensive.

Saying that I'm the one that was flirtatious, it's my fault for him coming into my room and doing this, it was basically being accused for the next five hours to make me feel like the - that is worse than the actual experience. That was three minutes of my life, I can deal with that, but then having to sit in a room and get judged and accused and quite viciously, yeah, that's horrible. It's fucking horrible. (W2)

They imply that you enjoy it, that you were asking for it. That you'd said yes, but actually, or that it was normal, that this is how it always was. (W1)

Some witnesses felt upset by other strategies that the defence lawyers used during cross-examination, for example jumping around between different topics and questions, a strategy which they perceived as being intended to confuse and trick them into saying the wrong thing.

Yeah they'd try all of those interweaved angles and they'll jump. They'll jump from, like they do it on purpose, to try and disorientate you or trick you, or to make you angry or upset and then you know, like it feeds into the jury. (W1)

Other witnesses talked about defence lawyers adding false information in order to confuse the account of the witness.

They tried an interesting strategy of going along with what actually happened but interspersing that with things that they made up to make it sound like what happened wasn't what happened. (W2)

Other strategies described by witnesses included attempts by the defence lawyer to capitalise on issues with memory of events from many years ago. Some witnesses felt that the defence lawyer capitalised on small memory lapses, and asked the same questions repeatedly, with the assumed intentions of finding inconsistencies in their statements and/or to wear the witness out.

It was the consistent, the consistent undermining of my statement by hammering or trying to get clarification of completely irrelevant details. And I was like, you know, it was a mind game more than a fact finding mission. (W5)

It's almost like they want the victims to say it over and over and over because then any time there's a, the defendant, the person misses, forgets to admit something or mentions something new that they didn't mention last time, the defence will immediately jump on that and say ah-ha, we've got you there. It just comes down to simple human memory. How can I be expected to remember every detail 18 months after this event that I'd rather forget? Or for other people I have to remember every single detail four years later. I can't remember what I had for lunch last week let alone being able to tell and describe to someone every sensation and taste. So I have to try to remember this actually traumatic memory, that's not right. I do appreciate that it's important to have an unbiased view and prove beyond all reasonable doubt, that's important. But there

has to be a balance. It's almost like they just want the victim to tire themselves out. It's not cool (W2).

This witness (W2) felt that the use of this strategy essentially amounted to the defence attempting to cast doubt on the overall evidence by focusing on these memory lapses and other "minor technicalities".

Yeah from the get-go they're trying to trip you up just on a minor technicality of the fact that you can't remember and I even had that in court with the statements. They were talking about parts of the conversation that they said it's printed there and saying why can't you remember it? Well it was fucking seven years ago. How do you expect me to remember a conversation I had with someone that long ago. (W2)

Some witnesses described the defence lawyer trying to confuse them and cause them to make a mistake in their testimony, which could then be used against them.

It was terrible, it was really horrible because again as much as, yeah it was terrible because of what I was saying about the whole thing. He would just throw ammunition to deter me away from you know against what I had made in my statement. (W9)

Other witnesses talked about their concern in regards to the jury hearing the defence lawyer making false claims or focusing on irrelevant details, and the fact that this may influence the jury's decision, even if the jury were subsequently told by the judge to disregard that information.

In a way that's doing emotional damage to me but at the same time that's four and a half hours that the jury is sitting there listening to this, having to think this is all relevant, but then the judge at the end goes this is not relevant essentially. You can't expect a jury to just suddenly wipe the last four and a half hours from their memory. Whether it has a point or not they're gonna remember it, which can potentially impact on which way they decide. (W2)

Several witnesses talked about what they perceived to be an imbalance of power between themselves and the defendant, and related this to feeling like they were on trial, as opposed to the defendant.

Maybe because of my history of convictions, what I brought up to a lot of negligence against, that's all I'm going to say about that, and I'm pretty sure, and again it's only my opinion and I may be assuming but I felt like I was the perpetrator rather than the victim because of my history. (W9)

Support staff agreed that witnesses often had the experience of feeling like they were the ones on trial, instead of the defendant.

Yeah, watching the EDA again and feeling by themselves, because they are actually by themselves. The exposure, feeling exposed in the courtroom, feeling judged, being on the stand. So really distortion about who is on trial and who's judged. (S1)

There's generally a process of coming out of the room in shock, "what just happened there"? Of anger, or "how dare he call me a liar", "he made me feel like shit", "he made me feel like I was the one on trial". So all of those kind of first reactions and responses. (S2)

It's like they're on trial basically. And you say look, it's not personal. (S3)

Support staff expressed shame on behalf of the justice system for the way that defence lawyers cross-examine the witnesses. They felt that no matter what rationale and preparation they gave the witnesses, it was never enough to truly prepare them for what they would experience on the stand.

Absolutely disgusting to even have to think about it in that way, but that's the reality, to be able to support them to understand why the defence lawyer's going to be coming at them like a bull at a gate. And I will often sit there feeling mortally ashamed of our criminal justice system as I'm watching this play out. (S2)

Language. Some witnesses found it difficult to understand legal language, and felt that sometimes these people forgot to speak in terms that lay people would understand. This was an issue for witnesses during the investigation stage and the pre-trial meeting with the prosecutor - as discussed above - and also during court room questioning by both the prosecutor and defence lawyer. During evidence-in-chief and cross-examination, some witnesses reported not understanding questions, and as a result they gave what they thought to be incongruent answers, which could then be used by the defence lawyer to show inconsistencies in their testimony.

Yeah and they're, we're down here, they're up there as in, like sometimes intelligence-wise, and they forget to come back down to earth. (W3)

All of it was pretty hard, like I'm not, I've never been in that kind of situation but yeah because I'm not too clued up on all that stuff and I just felt like I didn't understand most of the questions, and they had to ask again and stuff like that. I guess that's just what happens. (W7)

Judges not stepping in. Several witnesses talked about what they perceived to be a lack of judicial oversight in regards to limiting the more upsetting or unnecessary questioning by the defence lawyer.

Also it comes into I think oversight as well, judicial oversight is quite lacking as well, how judges can make these arbitrary decisions that for them have a small impact on them and the trial, but on the lives of the victims and even the maybe the defendants, it has quite a big impact. (W2)

Specifically, witnesses felt that there should be limitations around what the defence lawyers were allowed to state or imply, and how long they were allowed to continue questioning about particularly sensitive issues. Most accepted that the questions needed to be asked, but resented being asked the same upsetting question multiple times when they had already given an answer, and thought this was a case where the judge should have intervened.

And she made, she implied everything and it's just like holy shit that should not be allowed. That should not be allowed, that they can just keep going on about that one thing again and again. You know, when they say "did you enjoy it?" and you say "no", that should be the end of it, you know. It shouldn't go over four hours. Yeah that's where it's really wrong. (W1)

Some felt that although the judge in their case eventually stepped in to stop some lines of questioning, this often occurred hours into the cross-examination, by which point witnesses were often distressed and exhausted.

Perhaps there could be measures or the judge could have got involved a bit earlier and said, rather than waiting until half an hour before the court closes, basically at the end of the day. I certainly would have appreciated it because that was fucking stressful. (W2)

And it was, yeah, I just thought that, you know, possibly someone could've intervened earlier. Maybe loftier brains than mine think the dimensions of the door were relevant, or, you know, whatever. I don't know, but it wasn't. (W5)

Support staff also talked about this issue, but discussed it in the context of understanding judges' dual role in regards to ensuring a fair trial for the defendant, while also attempting to limit the opportunities for appeal.

And the courtroom procedure is often about appeal proofing, as opposed to following protocol. And so judges are sitting listening to some of this stuff and they are, they may

be, the Crown might, what's the word, object, they may well object. And it may be overruled and it's like why did you overrule that? And the only sense I can make is appeal proofing, and that's what I've been told over the years, is that judges will, in terms of the spectrum. You've got the grey area, they will generally allow anything that sort of sits in the grey area. (S2)

Being in the same room as the defendant. Every witness (except for the two who gave evidence via CCTV) talked about the significant distress caused by giving evidence while in the same room as the defendant, regardless of whether there was a screen in place to protect them from seeing the defendant.

And being in the courtroom with the predator is actually really, for me anyway, it was really distressing. I got really nervous, I got really anxious and, and I did get quite distressed and upset about it. (W2)

The distress and the, being uncomfortable, and not being, and actually seeing him for the first time in years, it was quite distressing. (W3)

Although most witnesses were able to have a screen in place in the courtroom to block their view of the defendant, many spoke of this not being enough. Some were able to hear the defendant making comments or dismissive sounds (despite this not being allowed), which was very upsetting.

The process would have been way better for me if I couldn't hear the person that you were taking to jail. That was another thing. When I was talking through the mic(rophone) all I heard was "mm", "yeah", "whatever", and that really upset me. That really upset me because I was sitting there and no harm to no one, just sitting there telling my story. How dare you say anything, you know. He's not even supposed to say anything. Like the whole court proceeding, not supposed to say anything to the witness, he is not supposed to say anything to you. (W8)

And I didn't want any fuss, but I still had that same horror of seeing someone who not only had creped me out at the time, but had done those things. So it was more about, I wouldn't wanna look at, even if I'd no relationship with the case, I think that personally, I wouldn't just, would not wanna make eye contact with someone. (W5)

Even witnesses who were able to give evidence via CCTV, and therefore were not in the same room as the defendant, found the experience discomfoting, knowing that the defendant was able to see them and was nearby.

And also being there, I couldn't see him, but he could see me and that's what made me feel really uncomfortable as well. (W7)

Some witnesses spoke about the screen not being arranged in time for the trial, which meant that they had to undergo evidence-in-chief and cross-examination in full view of the defendant. In some cases the witness had originally declined the screen, usually in order to show strength, however found it too overwhelming and changed their mind on the day, at which point a screen was no longer available. In other cases, the screen was not applied for by police or prosecutors in time for the trial. In all of these cases, the witnesses talked about the significant aversion and distress they felt when in the court room with the defendant.

We were just told where the, the plaintiff was gonna sit and where we would be sitting to give our evidence, and the judge, and the jury, and the lawyers. And the fact that we, for me, and for most of us actually, we didn't wanna look at him, and we, and some of us couldn't, didn't have time to get a screen up. (W3)

Yeah but I thought I would be strong enough and obviously I just wasn't, I was just a little bit too weak to be able to, so I had to really concentrate on them and not on him, and jury. And I was looking at the jury as well, you know to not look at him. (W3)

Those witnesses who were able to give evidence via CCTV talked about choosing this option because they felt very intimidated by the alleged perpetrator.

We got to choose the decision of whether we get to sit in the court on the stand or go behind surveillance (CCTV). And we choose to go behind surveillance only because we felt really intimidated. That we were going to do something really, really tough and because of the family we were dealing with, very intimidating. So we thought to do that, to go through that whole process without going insane I thought we would have to go through the surveillance. (W8)

Support staff also talked about the significant distress caused by having to give evidence in the presence of the defendant.

Distortion is really, yeah, important. The fear of the offender, so knowing that he's going to be there even if they have the screens in place. It's a huge thing for most of them, most of them. And in any case, with any relationship to the offenders, any nature of relationship to the offender is something difficult to have them in the courtroom. (S1)

They also referred to difficulties in getting applications accepted for the use of CCTV to give evidence for adult witnesses.

For adults, yes it's not systematic. Yeah so I wouldn't be able to tell because the officers in charge make the application, the Crown make the application, so we're not updated about that. But I know that it came back a few times, I supported this application and it was not granted. (S1)

Because if you look at the grounds on which an application can be granted for an alternative mode of evidence, its age is one of them. So because of the child's age already you are one up on an adult. Okay, it's age, culture, religion. There is a whole list of grounds on which that application can be granted but age immediately puts the child into a different category, more vulnerable, so that's why. It's open to both children and adults but it's just easier (for children). (S4)

Witnesses who were able to use CCTV talked about how beneficial this was in terms of their mental health and ability to give evidence.

Yes. Surveillance TV where they just only see you and in the court they can only hear you and see you by screen, yeah, so that's what we did. It was still crucial. You still feel like you are in there with everyone in the courtroom but you are just in this boxed room with your support person to your left, another lady sitting to your right that does the oath and you are just sitting there in front of these two monitors and this camera and it feels really intimidating, like all eyes on you. That was an alright experience. I would rather that than sit in court and look at the perpetrator, you know what I mean. That would kill me even more definitely. I chose that. And it was easy. I thought it was easy. (W8)

Several witnesses talked about significant difficulties in accessing the CCTV option, stating that it usually gets turned down for adults, most commonly due to age being part of the criteria for use of CCTV.

They offer that to you but then in the next breath they tell you that it's the hardest thing to get. And unless you're like 5 years old, no, sorry, there's no money, it's not going to happen (W1).

They say they do request it but it always gets turned down because there's no funding and people, yeah so again it was like I knew both side of it, yeah. And that's just disgusting, because it should be automatic you know? (W1)

Overall, witnesses and support staff agreed that it was incredibly challenging to be in the same room as the defendant, even when a screen was used to block the witness' view of the

defendant. Some witnesses would likely have benefitted from giving evidence via CCTV, however this remains difficult for adults to access.

Worrying about impression management. Many witnesses spoke of the added pressure while on the stand of feeling that they needed to “make a good impression” and “perform” in front of the jury members in order to have a chance at “winning” the case.

It’s a very lonely place to be when you’re sitting there. It very much feels like, well it is, the eyes on you and you’re pressured even more to perform essentially. You have to perform. Again, it shouldn’t be like that but you have to perform to make sure that your story is heard and believed essentially. (W2)

However every single time I got dressed in the morning it was like is my skirt too short, am I showing too much stuff, is my face like too much make-up, do I look too shitty if I don’t do anything and that makes it look like I’m not taking this process seriously. (W6)

Several talked about feeling they needed to manage their emotions in order to appear professional and competent on the stand, but at the same time feeling concerned that they would seem “too cold” and that this would result in a negative trial outcome.

It was almost implied that I should make sure that I was well presented and make sure I gave concise answers and try and be as unemotional as possible. (W2)

No, but I was like, you know, I just started to get very, and then I worried a little bit that because I’d got a bit prickly, that it, you know, maybe I’d, maybe the jury wouldn’t like that I’d got a bit, cos I didn’t want to be prickly. (W5)

Both witnesses and support staff spoke about expectations that adult witnesses should give evidence in the court room rather than via CCTV, and that it is more effective for an adult witness to give evidence in person, even though this is not the most comfortable way for them to give evidence.

Yeah, I was always kind of led to believe that if I didn’t actually sit in that box and give verbal evidence in person that it would be less effective, which if that’s true whatever, like if that is true, like legit, was trying to be as effective as possible, but it’s kind of frustrating that like this is the best way even if you’re more comfortable this way. You can do it the way that you’re more comfortable with but it’s less likely that you’ll get your outcome. (W6)

Yeah because maybe, yeah I've often wondered because Crown looks from the perspective of because you've got to consider what is the jury thinking, or they do, as we look from the perspective of the victim and solely so. The Crown has a case to prove. So what is the jury going to think if we have an adult in the CCTV room or an adult with a screen? (S3)

Witnesses often feel obliged to "act in a certain way" in order to make a good impression on the jury. This concern is not entirely unjustified, and is often reinforced by prosecutor's suggestions that they need to appear professional and competent while on the stand. Also, witnesses form the impression that they should appear in the court room rather than give evidence via CCTV. This dilemma would be removed if, as has been done in other jurisdictions, there is a presumption that complainant witness evidence in sexual violence trials is given via CCTV.

Sentencing and not guilty verdicts as a final injustice. Most witnesses talked about feeling the process had not been worth it in the context of the distress they experienced and the long term disruption to their mental health, family relationships, and general ability to continue a normal life. This was particularly salient for those witnesses whose court cases resulted in a not-guilty verdict or a perceived inadequate sentence for the defendant.

Because what we expected as the outcome is not what we got and we went through the whole procedure three times to see if we were going to get what we got and what we want, you know, we did it all for nothing pretty much. (W8)

And then sentencing, that's kind of like the final nail in the coffin. Because he got 8 years, and there were 8 counts.....And I realised, like I felt like I'd been kicked in the stomach. It's like is that all I'm worth? Are you serious, he's destroyed my soul, and what, it's one year for every count, is that what I'm worth? (W1)

Yeah, I still feel very like there was not enough justice but you know because there was a previous conviction and all this stuff that the man had gone through. Yeah, and I felt like he was off, he'd gotten off quite lightly, yeah. (W7)

Several witnesses and support staff talked about sentencing as a further source of distress in the justice process. For some, further distress was due to writing the victim impact statement, which requires again remembering upsetting information about the offence.

Then once it's over then comes the next thing of having to write the impact statement. In ways it's like a cathartic thing to do but it's still a form of re-traumatisation coz

you're still talking about it and you're still bringing back memories and how it's affected you and you're now at that point where you have to think of every single moment of anxiety and every freak out and every attack you've had for the last 18 months. That's bringing back all these horrible feelings, like your life is ending to write this thing to give to the judge and then the judge reads it and disagrees with half of it and says that's fine but I think you're going overboard, which isn't for him to say. (W2)

Support staff referred to difficulties related to sentencing taking place in an open court, as opposed to a closed court during main trial proceedings, meaning that witnesses who attend are exposed to the defendant's family/supporters, and also to other aspects of the evidence that they may not have previously been exposed to.

Sentencing is a whole new ballgame and not as protected as the trial would have been if you've had screens for instance. It's an open court. You could be sitting in court with the defendant's supporters. You have the judge setting out the facts of the offending whereas you had a closed court when you gave your evidence. Now it's now an open court because it's sentencing. So that is part of the court process. Yeah, phew that is done, now sentencing, high stress again. And then after sentencing a phone call from me, he's appealed. Up goes the stress again. Appeal, another eight months to 12 months to longer than a year. (S3)

Two of the witnesses had trials that resulted in a not-guilty verdict. One of these (W6) had given evidence in two previous trials that had resulted in a hung jury before the final trial that resulted in the not-guilty verdict. Both of these witnesses talked about the devastation of a not-guilty verdict, and the fear of knowing that the defendant has been released back into the community.

There was 10 charges and I went into court four or five times and three times we made it through to the end and every single time it was hung jury and not guilty. Hung jury, not guilty and then or not guilty in the last one. But I think the first one that it was all not guilty and a hung jury, I literally collapsed because stubborn me, I wanted to sit in the courtroom to hear first-hand what the jury was going to say. (W6)

In summary, negative experiences in the court room during the main part of the trial were significantly distressing for witnesses, and were for most the most difficult part of the justice process. In particular, all participants found the experience of cross-examination to be distressing, for reasons of being accused of lying or "asking for it", being "bullied" by the

cross-examiner, and feeling upset, confused, and exhausted by defence lawyer tactics such as prolonged focus on seemingly irrelevant case details.

Further challenges included feeling “let down” by the judge and prosecutor, particularly where they felt that the judge or prosecutor did not make enough effort to protect them or step in with the defence lawyer’s cross-examination. Many found being in the same room as the defendant to be particularly upsetting, and struggled to manage their anxiety around this. On top of this, many witnesses felt an additional need to manage their emotions in order to make a good impression on the jury, which was often difficult in their emotionally vulnerable state.

Sentencing and not guilty verdicts are difficult parts of the justice process for complainant witnesses. For some, they felt that the sentence received by the defendant was not adequate given the seriousness of the offence, while others struggled with the victim impact statement. The sentencing occurring in an open court where they may be confronted with the defendant’s supporters and members of the public was also felt to be a difficult experience.

Theme Four: There Were Positive Aspects of the Process

Witnesses and support staff were asked specifically whether they could identify positive aspects of the justice process. Despite their significant negative experiences, most of the witnesses were able to identify some positive aspects of the process. These included getting an outcome from the process (a guilty verdict), and/or having the opportunity to tell their story, regardless of the outcome. Several spoke of the trial being a healing process, an opportunity to bookend the offence and justice process and move on from it. Some spoke of positive interactions with judges, prosecutors and police, with the police in particular providing a lot of the support throughout the pre-trial period, and often in the court as well.

Getting an outcome. Most of the witnesses in trials where there was a guilty verdict felt that it was positive to receive this outcome, given the distress that they had endured to go through the trial.

Okay, positive was the fact that we got an outcome. The negative was that we had to go through a lot of hoops to be able to get that outcome. That was the negative side for me, yeah. The positive was that we did get a good outcome to what, you know for what we went through, yeah. (W3)

Yes, well it’s made me clean. And it’s making me face all this stuff that’s been the devil on my shoulder and also accepting that it wasn’t my fault. And the fact that he’s now in jail serving a sentence is very rewarding. Put the bastard away. (W9)

Others felt that it was positive to have finished the process, and to have made an effort to ensure that the defendant was not able to offend again.

So yeah, anyway, the positives, yeah, were doing my bit to hopefully make sure that people like that don't get any traction. (W5)

Ah the positive thing during the trial or whatever was just afterwards really. Like finding out after the whole thing had been done went very well. (W7)

Those witnesses in whose cases there was a guilty verdict felt that this was a positive outcome, and it often felt rewarding that the defendant was now unable to hurt others.

Trial as a healing process. Regardless of the outcome of the trial, some witnesses found a positive and validating aspect of the trial was to have the opportunity to tell their story in front of the judge and jury.

It was in between because some of it was positive, like you know giving my evidence, my side of the story was a positive. Being accused of something that I didn't do was the negative side of it. But it's a vicious cycle we weave for everybody and you have to just, yeah. So I, I did, I did get, I got through it, you know. (W3)

Support staff also talked about some complainant witnesses feeling a sense of relief when their participation in the trial was completed.

I've had a couple who have come out and we've sat down here and debriefed and then there is just like a wave coming over and they've said "oh my god, my shoulders are lifted." There is a whole lot gone. It doesn't happen all the time. When I've spoken to some later on they've said "you know, you were right, you said you might get that release but it might take a while". Boy do I feel good because I did it, but others... (S3)

Until we have finished cross-examination the tension is there, they don't know what to expect, they're really fearful. And we cannot let go in any way, but once it's finished there's a huge relief for all of them, a huge weight off their shoulders. Because it's just the pressure is over, and they even forget about the outcome, like I remind them. "Okay I don't wanna stay anymore, I just wanna go, that's it, I've done my part of the job, I'm just relieved, yeah." (S1)

One witness described the trial as a healing process, in that she had taken part in the process and was now able to move forward with her life.

Coz the healing part to me is the most important part of this whole process, you know, you have to go through the nightmare to be able to get through the other side.... But for

me it's actually, it's healing, I keep saying that all the time, but it is. If he'd got a not guilty I'd be really angry, and I would hope that in some ways we could, you know do it again to be able to get him, to get a guilty verdict. And I would really push for, push for it, but yeah I would do it anyway, I'd do it, if a not guilty I'd do it again anyway, yeah. (W3)

Support staff also spoke to the idea of the witness telling their story to the jury and finding that process cathartic.

I've never had somebody said that it has been ... yeah that the process has been positive. However at the end of it, all I can think of was the one complainant said to me actually, and that was just prior to cross-examination, she said "you know what, I can actually feel some release in me. Something is happening in me. The fact that I am telling my story to the jury. As afraid as I was, as clammy as my hands were, once I could focus on the prosecutor and start telling my story, I don't know what it is but something is happening because I am telling the jury and I know he's behind that screen but he's in the dock and I am telling the jury what happened to me. Something is happening." So in that sense positive. But while she was doing it she was in tears the whole time, but she has told me that that has been positive. (S4)

Support staff also described the process as healing for some witnesses.

And it can be healing. It also shows them that they can stand up for themselves in front of the defence lawyer. Then everything is put on the table and there's no shame, and there's no blame, it's just the process. (S1)

Some witnesses found the trial process to be healing in some ways: an opportunity to tell their story and an opportunity to be able to start the process of recovery.

Police and prosecutors do a good job. All participants were asked about their interactions with the various people involved in the justice process, including the police officer in charge of their case and the prosecutor. Many witnesses spoke about their positive interactions with police.

Several witnesses reported that the police officer in charge of their case was very supportive, for example by checking on how the witness was coping emotionally, and ensuring that the witness was kept up to date in regards to the justice process.

Oh she was wonderful, yeah, she was really good, she talked about, she, initially when I first decided, when we first decided that we were gonna lay charges she brought each

of us in one after the other over a couple of week period. And she told us what was gonna happen and, you know that it would take a long time for what was gonna happen to happen. And that if we had any questions we were to get hold of her and, you know she was going to be there day and night. And when I went for my interview, when I went for the interview and gave my statement she was right there. And she was really good, very supportive, she stayed with us the whole time through the trial, and even after the trial she still keeps in contact with us. Make sure that we're alright, yeah. Her follow-ups were amazing, and it makes a difference because it was a female, believe it or not. (W3)

Oh very positive. Very good yeah. The officer in charge, I can't remember, like when he would call he'd make sure that things are alright and yeah. Tell me how everything was going. Yeah. And just making sure like how yeah, if I'm alright doing this stuff and all that. Yes sometimes they wouldn't be able to disclose any information which I understand now but it's like, oh okay, but besides that I think that they did the best that they could in telling me what they needed to tell me. Yeah. (W7)

Other witnesses appreciated that the police officer in charge of their case was clearly compassionate and did not treat the witness as just "another file".

The policewoman who handled the trial was amazing. So that was a really positive, that they were very compassionate and engaged. And totally engaged, you know, not just like, "oh god, another file", you know? And really had genuine compassion for the victims. So they were, I guess trying to take the rough edges off the whole process the whole time, but it was what it was. And it was actually a real positive to address it. (W5)

(Name) was absolutely brilliant. I was so lucky. I know I'm so lucky. If I didn't have someone like (name) I don't know it would have gone the way, well that I would have had the strength to continue, to keep going as I did, and all of that stuff because he was lovely. I reckon he went above and beyond. (W6)

Other witnesses spoke of feeling grateful that the police office in charge of their case "had their back" so to speak, and treated them as equals.

Oh he was funny, he was so funny and I would love to go and find that man and buy him a box of chocolates and flowers because he did so much work for us this detective. His name was (name) and he is just the upmost loveliest man you could ever meet and

especially in this crucial situation when you are going through hard times talking about harsh things that you didn't ever want to talk about. He was so supportive on it. He talked to us like we were a normal human, you know, he didn't look down at us like we were something wrong. He actually treated us equally. Treated us like we were someone and he wanted to fight for us just exactly like if we were his daughters. He was that supportive. He was like our back the whole time and he was awesome, really awesome. I couldn't have asked for a better detective. He did a lot for us. I didn't even have the chance to say thank you to him. (W8)

Support staff also talked about overall positive interactions with the police officer in charge, reporting that most often a less positive interaction was the result of a personality mismatch as opposed to any general problem with police conduct.

In two years' time doing this job I had only one bad interaction with the officer in charge. Well there was no match between the same charge and the client, that didn't work at all. There was no reciprocal understanding, but apart from that they're very dedicated. And there's a special relationship that comes out of the time that they spend on the case updating the survivors and working with them. So they are important to them, I think. I've had a lot of clients wanting to see the officer in charge in the back of the courtroom. Being able to see them and having them there, and feeling good to have them there, especially when it's a male officer in charge, which could be surprising. (S1)

Love it, good. A good officer will develop a good strong relationship with the survivor to hold that and that's really, that's been one of the most valuable things I've seen for survivors getting through the court system, is solid relationships built and trusting. (S2)

Most witnesses had positive interactions with the prosecutor in their case. They usually only met with the prosecutor once prior to the trial taking place, and this was often soon before the witness was due to give evidence.

Yeah if it was any other police and the lawyer as well that I happened to get was a really, really good lawyer. (W6)

Oh, she was good, our, the prosecutor, yeah, yeah. Sorry I get them confused (laughter). Yeah she was, she was good, very blunt, very to the point, very factual. If we had any questions we were best to go through to the, our, the officer in charge. (W3)

Several witnesses found that they appreciated the prosecutor's more gentle line of questioning, in comparison to the defence lawyer.

Oh yeah, she was, like a met her a couple of days before and she was really nice, like she was easy to talk to and that. And I noticed the difference. Like I didn't really notice it to start with, coz I was nervous anyway, coz she questioned me first. But then after the other guy questioned, and then they got back to her, I was kinda like oh yeah I know you. But, you know, so it was, yeah, and she was yeah, she was quite nice, yeah. (W4)

Others found it positive that the prosecutor made time to explain the trial process to them.

I'd said what I'd said, it had been collaborated, there was no need for her to, and she just told me to tell the truth, you know, and just to not be afraid to ask people to repeat questions. She just gave me the general, told me what she would be doing. And I mean, I think she even said, she asked me about two things. So, she was, yeah, she was fine. (W5)

Some witnesses felt supported by prosecutors who they perceived to be attentive and supportive, for example by challenging the defence lawyer's questioning and asking for breaks when the witness was distressed.

I just think that you know he did his job well in trying to protect me I guess. Stick up for me. Just like when I was getting a bit distressed and when I was being cross-examined he would pick up on that and then ask for a break or something and just like, say I think this man is a bit out of line or whatever, or something like that, yeah. And then yeah so, and something else and it was very good (W7).

I was like, oh my gosh, this man is so on our side. He is so supportive. The questions that he asked me, harsh, they were down to detail but they were just awesome. He was so sensitive with us. He knew how to talk to us, how to approach us. He was just so lovely that man. (W8)

Support staff agreed that interactions with prosecutors are generally positive. They talked about the relief that witnesses feel once they meet the prosecutor, knowing that there is going to be someone they perceive to be on their side.

The dealing with the prosecutors are pretty positive most of the time. They are actually relieved because they haven't heard from them for the whole process. Some of them didn't even know that they would have a lawyer in a way. And so they feel really relieved to meet them face to face just before the trial and know that someone's gonna

be in charge for them in a way, and someone's on their side. So all, most interactions were positive. (S1)

Some judges are sensitive to victim needs. Some participants spoke about positive experiences with the judge in their case. Most found it particularly helpful when the judge paid attention to their distress, was considerate, and made an effort to give breaks when needed.

I did once and he was very good, he made, he actually made the, even though I was, you know nervous, distressed and all the rest of it he made, he just made you, just took the slight, the point off it. You know he just took that little bit away to make it, you know you feel a bit more comfortable. To me that's all I needed, to be able, coz I knew that if I looked at him then I would be everything, he had that courtroom under control and that was important. (W3)

However, the judge I really liked. He was sensitive. He knew when I was hyperventilating, he knew when my anxiety started to lift so he would ask for breaks. He'd send me out knowing. I was allowed one support person in the actual room which was my daughter which was quite trying for her. She didn't know anything about it. We weren't allowed to look at each other or anything. (W9)

Others spoke of the judge in their case offering supportive words after the case was over and there had been a not guilty verdict.

The first time we went down, the last time we went down we had a beautiful judge. I forgot his name. I don't know what his name was but he was a beautiful man. The only words he said to me was just live life; after everything is done he said just live life and just be happy or try and find the happiness. That is really hard but at the end of the day you are two strong girls that can go a long way and don't ever let this person or anything else get you down. That was the most beautiful thing I could ever hear from a judge because you don't really talk to a judge. They just sit there and they sit there and listen and they watch you. And you feel really intimidated. You've got this judge looking at you, they think he's believed you, but he's actually on your side. And all our judges, all three of them, we felt it, they felt our story. They had to sit there and hear it for eight hours from me. (W8)

Support staff talked about the potentially positive influence that judges can have on the witnesses experience in the court room.

Judges are an important part of the process though because they're gonna make the witness feel more comfortable, or less comfortable in the process depending on how sincere they are, how considerate they are. Yeah clients are really very sensitive to judges, yeah..... Judges that are considerate and sensitive to clients usually are able to see that they need a break very quickly, and that's very precious. So when they're getting upset the judge will say do you need a break before anyone else, offer the break to the witness. And that's, that makes a huge difference as well. The, really I think they are looking for support in the courtroom, any sign of support. So when the jury's smiling at them, when the Crown is smiling, when the judge intervenes to tell the defence lawyer off about the way they put the questions of whatever, it matters, it does matter to the witness, yeah. (S1)

In summary, most of the complainant witnesses found some aspect of the justice process to be positive. Such aspects included getting a positive outcome (a guilty verdict), being able to tell their story, finding the trial itself to be part of their healing process, and having positive interactions with the judge, prosecutor, and police. All of these aspects of the process help to make the overall experience less aversive for complainant witnesses, although unfortunately do not outweigh the negative aspects for most complainant witnesses.

Topic: Impact on self

All witnesses reported significant impact on their physical and (especially) mental health as a result of their involvement in the justice process as a complainant witness. The witnesses were all asked if they felt the justice process had had any effect on them emotionally. Most participants had already divulged mental health issues by choice before this question was asked, and participants were instructed both before the interview and at the time this question was asked that they were not required to divulge any mental health issues in accordance with the ethics requirements in the approval of the research.

Theme One: Negative Effect on Physical and Mental Health

All of the witnesses spoke in some form about the negative effects of the justice process on their mental and physical health. Many also commented on these being long term effects that are difficult to recover from.

Yeah because the things that, when something's traumatising your soul that affects your physical body too. It affects your health, it affects everything. Like I can't even afford

to go to the doctor, it's just ridiculous. And it's sort of like one humiliation after another really. (W1)

I guess you can never 100% recover from shit like that, that it always is just intertwined in your being, like it just is part of your history. (W6)

Two witnesses found the trial process so distressing that they made suicide attempts or engaged in para-suicidal behaviours. Both of these participants attempted suicide or engaged in para-suicidal behaviours in the pre-trial period, which perhaps sheds a light on the significance of the stress and anxiety experienced during this period.

As discussed earlier, the delay to trial produced stress for most witnesses as a result of uncertainty but also of having to keep the memory of the offence fresh and then having to repeat that story multiple times. This often meant by the time of the trial, their mental health had deteriorated even in comparison to when the original offence occurred.

Yeah I mean shit, the defendant, they only have to do one statement. They give their statement to the police and then that's it. When it gets to trial they can choose to put themselves on the stand and maybe they would have to tell it again, but they can choose not to do that so they tell the story once, that's it. Whereas the victims have to do it again and again and again and again, especially with someone with PTSD that's what PTSD is, recurring memories of it. This is just making the recurrent thing even worse than it already is. I don't see the point of having to repeat over and over and over. (W2)

Some witnesses found that this process of keeping the memories alive prior to the trial resulted in them being unable to function effectively in day to day life.

I did not want to have to put my life on hold for this court case but then you kind of do need to with how it is because you can't actually participate in life properly while trying to deal with that court case. Could not participate in life properly. But I didn't want to put my whole life on hold and for that to like dictate my whole life and like be my whole life. (W6)

When it came to the trial itself, many witnesses spoke about this as a trigger for emotional distress and mental health issues. Those people who had pre-existing mental health difficulties either relapsed or experienced worsening of symptoms during the trial process.

It's a fucking harrowing experience and that was the biggest retrigger of essentially the PTSD since the actual event. (W2)

I get panic attacks and all that shit but actually legit, like debilitating anxiety attacks and all of that shit, like a week prior.... I felt absolutely broken. I didn't think that I could like do life by myself. I didn't want to live by myself. I didn't want to get up in the mornings. I suffered with quite severe depression and I literally didn't get out of bed until like two o'clock. Get out, make breakfast and get straight back in bed. (W6)

The challenges of giving evidence in front of the defendant and others in the court as well as the difficult experience of cross-examination often resulted in significant anxiety on the stand for witnesses.

Quite traumatising. I was full of anxiety and fear stepped in as soon as I was in the courtroom on the actual day. The overall, I'm still suffering to this day where I'm seeing a psychologist once a week so it had actually festered up old stuff that was quite suppressed. (W9)

I was prepared but I wasn't imagining it would be like that. I had to dose up on my anti-anxiety medication before I could go back, which essentially, essentially it chills you out and will put you to sleep. I had to take a huge dose of that so I could manage to get through the rest of the day. It shouldn't be like that. You shouldn't have to put your own health at risk for this to go ahead. (W2)

Some witnesses spoke of the experience directly as a re-victimisation: a further loss of power and violation of their emotional and physical wellbeing with severe consequences for their wellbeing.

Yeah exactly it's about 20 to 30 per cent of people get found guilty. So you've got a 70 per cent chance of going to the police, telling the police, spending the next two and a half, three years, whatever, going through this process that dehumanises you, re-victimises you, stresses you out, pushes you to breaking point. (W2)

They also spoke about the mental and physical exhaustion experienced during and after their court appearance.

There's very few times in my life that I've been that tired by the end of those five hours. I went home and I went straight to bed. I was just physically, emotionally and mentally just exhausted. That was just a one-day testimony. (W2)

Yeah, it's just a feeling of the court was draining, draining the whole time. Each time we went down there was the same stuff all the time and each time three times was enough to drive us through the wall. (W8)

Some witnesses talked about the difference between sexual violence and other offences. Specifically, they talked about the nature of sexual violence as a violation of a person's safety, both physically and emotionally, and accordingly, it has greater impact.

Burglary is not a nice thing. I wouldn't wish it on anyone, but it's not something that necessarily is going to impact your life. It will short-term but you'll generally probably get over it. I'd say mostly you'd get over it, quite fine and relatively quickly. Whereas something more serious like sexual assault or rape or something that affects you as a person, it's not necessarily the physical act it's more of a, I guess, a power thing you know. It gets to you as a person, not necessarily physically but mentally at your core.
(W2)

Support staff agreed that the trial was often a traumatic process for the witnesses, due to feeling exposed, being accused of lying, and the loss of control that witnesses experience within the justice system. They talked about the process as requiring another healing process, secondary to their healing process from the original offence.

So the average complainant who comes out of court would be coming out feeling gutted, feeling what's this justice system about? Feeling from the defence like they were on trial, feeling re-victimised and re-traumatised, would most likely have an experience of a further healing process from this experience. So they have the rape, or whatever, the sexual violence they're having to cope with and get their heads around that. And then this court experience would then give them yet another wounding to heal from, yeah. (S2)

In summary, the majority of complainant witnesses suffered from mental and physical health problems that were either triggered or worsened by the stress and distress of the justice process. They related some of this distress to having to keep the memories alive, the necessity of having to repeat their story multiple times, as well as the experience of cross-examination.

Topic: Support

As part of the interview process, witnesses and support staff were asked about the presence of support during the justice process, the nature of that support, what they found useful, and where/when they felt they may have benefitted from more or different support.

Theme One: Support is Essential during the Justice Process

Most participants, both witnesses and support staff, spoke of the necessity of support during the justice process, from the initial reporting to police right through to sentencing, and

beyond. This applied to professional support from agencies such as HELP Auckland, Court Victim Advisors, as well as emotional support from family and friends.

And then six weeks building up (HELP support staff) and I saw each other a couple of times a week, so yeah it was really good. And then the fact that she was there all day during the trial, you know she was with me the whole time and even had lunch with me. That was very, very, very important. Yeah like she, like to the day I die she's one person that forever, like I almost owe my life to her. You know, it's huge. (W1)

Some spoke of the importance and necessity of support from family and friends. They talked about the trust among family and friends that is difficult to replicate with support staff.

And the support of my family and my husband was really, it was actually super important to me coz I wouldn't have been able to do it without them, mmm. Whanau's really, really important to me, yeah. (W3)

Support from my friends was the main thing for me. My friends are like my adopted family. (W2)

Support staff spoke about the importance of having a combination of both family and professional support, noting that family and friends are able to support the witness long after the trial is completed, whereas professional support is time-limited.

Both family support and professional support, both, yeah. The love and the support and the hope of the family that they're holding as a family and the bigger picture that they're holding as a family, we're gonna be there afterwards, nothing's gonna change about you. We love you anyway, we believe you anyway, so there's unconditional love that they need. And the preparation, emotional preparation that they could get from professional support, yeah. (S1)

In summary, all participants stressed the importance of support as part of the justice process, with some noting that the process would be incredibly destructive to go through alone. This includes both professional and family/friend support, the latter of which of course fills the gaps that professional support will never be able to fill.

Theme Two: Issues with Accessing Support/Lack of Support

Most witnesses talked about difficulties with accessing an adequate level of support for the duration of the justice process. Some spoke about issues accessing support during the pre-trial period.

But it was still quite lacking in that they essentially left you to your own devices and didn't really have a way of monitoring that everything's kind of okay with you through the process. I'm not saying that's for victim support to do, it's not necessarily what I would imagine their role to be because they're not counsellors but at least some form of something. (W2)

Others talked about the support ending quite abruptly when the trial was complete, and the difficulty of trying to cope with what they had been through without the professional network that had been present throughout the trial process.

But the other bit at the end of it too is how it just drops you out. It just dumps you out of the system like nothing. That's just cruel, you know? (W1)

They could probably offer a lot more support than what they do, even though you've got your Victim Advisors and you've got Victim Support. And, but your Victim Support only goes for so long, you know. (W3)

Some witnesses spoke about New Zealand women wanting to appear strong and able to cope, and therefore initially denying their need for support, only to then find it difficult to access support for themselves when they needed it later on in the justice process.

Yeah, so the last thing you can do is ask for practical help. You don't want to, and because you're only just holding on to trust and survive that, you know, you don't want to have to keep asking, you don't want to be the needy one. (W1)

Others had difficulty accessing the support available due to time limitations related to childcare and work, for example not being able to get time off work to attend counselling appointments, or not being able to find or afford childcare during available appointment times.

I found it hard with HELP because I've got a daughter. I started going to HELP a couple of times but I had to bring her in the room and that was just ineffective like ineffective. Didn't have enough family support to get her watched while I went there, lack of transport, struggled to get there as it was. Lack of time, juggling life and trying to get there. Probably could do with a bit more counselling but it just doesn't work. I need her in day-care. I need transport, like I do have some of these things now but it's also the time thing. (W6)

Most felt that although there was some support available (HELP Auckland, Victim Support, Court Victim Advisors) and that this support was generally good, the support available was not

enough. Some witnesses felt that they needed more psychological support during the process, and a more inclusive wrap-around type support service.

It's almost like you need to have someone live with you, like, I don't know. I think you need a lot more psychological support, you know. I think it needs to be treated more like a physical injury, you know in some ways. (W1)

I'm glad that's in place but I still think the courts could do more, have much more support. Like perhaps have someone, perhaps like a court counsellor, not necessarily to counsel you but just to, you know, every time you hear something from the court, from the advisors, they then ask someone that you can talk to about and that could perhaps be the way. (W2)

Some felt that counselling should be compulsory, or an "opt-out" rather than "opt-in" service.

I just think that maybe every victim of sexual assault should have 10 hours. You get 10 hours of counselling time, and they're gonna ring you on this date, or they're gonna come and see you. Because, you know women can be quite strong as well. Got it sorted, all under control, fine. I actually don't think any woman who has been sexually assaulted has it sorted. (W5)

Just counselling I think would have been the best support option. So nobody recommended somewhere like Help Auckland or anything like that? No I never heard of it before. (W7)

Support staff talked specifically about issues with under-resourcing and unmanageable caseloads, which limited their ability to offer the level of support that they felt was necessary for all witnesses.

I think more is always better, the offering, having the capacity to have more support. Coz at the moment we have very limited supports throughout the country for court support and so to have the support offered and for the clients to understand what that support is about. And, which is very much is about building relationship with clients so that they can develop a trusting relationship with the court support worker that goes on to help them. (S2)

So some victims are going to suffer as a result (of staff unavailability). So yes, more support. Another Victim Advisor would be good because something is going to give and it's going to be the victim at the end of the day. (S4)

They also discussed problems with practical issues such as uninviting or unavailable rooms for complainant witnesses to rest and recuperate during the trial.

So, and having the ability to take breaks, so as they come in and out of the courtroom. The rooms that they are given to have those breaks in. Some are great and some are really stark, and barren, and really client unfriendly, so it's not comfortable. Sometimes there's no tissues available and if I as a court support person has forgotten the tissues (laughter) you've got someone who's kind of streaming. And we've gotta figure out how to stop the water, and so just on practical terms. So having available a victim room somewhere that's close by, there's the CCTV rooms which are a little bit more prepared for clients to go into, but of course often they're, if you're not, yeah they're often being used. So that's an aspect that could be improved significantly. (S2).

Some support staff talked about problems with underfunding and under-resourcing leading to a reliance on Victim Support (a voluntary organisation who provide support for victims in the aftermath of a traumatic experience).

How are we going to resource the agencies to get people in? And in specialist agencies, as opposed through Victim Support, yeah and we've got lots of the bigger areas that have got specialist agencies that if they were resourced appropriately, could provide that service. At the moment the fall-back position is often to Victim Support people who are really well intentioned. And generally voluntary, and don't have the trauma counselling and understanding that's required for holding a person through this process. (S2)

Support staff also spoke of making referrals for specialist counselling (through ACC, for example) in relation to the sexual assault, and that this is often declined by witnesses early in the process as they do not feel that they need it initially.

When I offer ACC counselling and it's declined I will always confirm with them this will never expire. If you decide you need to pick it up or get it that's fine. Just give me a call down the track and we'll sort you out, just so that they know that there is something there. (S4)

Some witnesses talked about issues regarding support in the court room. The main issue mentioned was that although they were allowed to have a support person on the stand with them, they were not able to look at or touch this person. Many found it difficult to understand

the reasoning for this, stating that these rules meant that the support person was not able to offer any meaningful support such as holding hands or offering a quiet word of support.

I guess for some it's nice to know that they're there but you still feel alone. It might be nice if they could sit next to you. Not necessarily in the box because they wouldn't fit, but next to you, next to the box or maybe in front of you or maybe on the other side of the room at the jury box. That's the one person I'm not allowed to look at. I can look at the judge, I can look at the jury, I can look at the defence lawyer, the prosecution lawyer. I can look at the defendant who is the one who fucking assaulted me, but I'm not allowed to look at the one person that's there to get me through this. So put them on the other side of the room at the jury box. Obviously they're not allowed to say anything but that's fine. I can understand that they're not allowed to say anything but not being allowed to even turn around and look at them and know that what you're doing is right. (W2)

I mean it's quite intimidating having juries sit there and look at you and take notes. It's pretty daunting that you've got a defence lawyer and your bloody perpetrator right next to you and you can't grab your daughter for a hug or hold her hand, but that's what they do. See I'm getting goose bumps now. (W9)

In summary, support for complainant witnesses during the justice process was considered to be essential to assist them in getting through the often lengthy and distressing process. There were significant issues identified by both witnesses and support staff in regards to complainant witnesses being able to access support during the justice process. Both witnesses and support staff identified a lack of support available during the pre-trial period, and due to resourcing issues, often only those with the highest need are able to access pre-trial assistance from agencies such as HELP Auckland. Witnesses reported that during the trial itself, although complainant witnesses are able to have a support person with them on the stand, they were not able to look at or touch this person, which limited the amount of support this person can actually provide.

Theme Three: The Support Available was Very Good

All witnesses who were able to access support from HELP Auckland were very appreciative of the support they were offered.

Well like, I mean that's where HELP have come in and they've been really, really good. (W1)

Yes at HELP. She's fantastic as well. She's another one I need to get her a block of chocolate to say thanks for. She was great. I didn't have much to do with her at the start, but I think as things got close to the trial she became quite important and she actually was the one that helped me write the victim impact statement. Yeah it would have been her. So she was really helpful in that kind of suggesting how to do it and not rushing into it, making sure I was ready to do it and talking me through it and giving me support through that process, which is really great. It really, really helped a lot. (W2)

Similarly, all witnesses who dealt with the Court Victim Advisors in either Auckland or Whangarei District and High Courts found the support that they were offered to be invaluable.

The support lady from the court was quite good, yeah I liked her. Yeah and she was really helpful, and ran around, and got in contact with the detectives and all that kind of stuff, so she was really good. (W4)

She was lovely. Yeah she was a nice person and probably because I spoke to them so much because I was in there so fucking often, started to like get a little bit of a connection with them which in a way is hard as well. (W6)

The Victim Advisors role is an educational one for the most part, however they often find themselves providing emotional support and advocacy for complainant witnesses, especially those who have not been able to access any other form of support.

Advising us of our legal rights as victims, keeping us up to date with what was going on. And she was actually quite a trustworthy person too, and yeah, and just keeping us informed and up to date, for me which was as important, you know. You need to be kept up to date, you need to know what's going on, coz you're not allowed in that courtroom before or after. (W3)

Support staff tended to lament the under-resourcing of their services, stating that although they try their hardest to provide a good service for all who are referred to them, they are not always able to do this due to their huge caseloads and limited number of staff.

Interactions with Victim Advisor is usually very positive once they meet with them. When it's over the phone it can be really on and off, it depends on the clients, and victim advice can be really the place with lots of protection, and then they get protection. But once they meet with them just before the trial it just goes beautiful. Yeah I've never heard any negative feedback, yeah. (S1)

With the Victim Advisors I think that that's getting better with having specialist ones, but in Auckland of course the work volume has increased and the specialists are getting less and less time to dedicate to what they initially were set to do in terms of the dedication. So, and I know that coz in project restore I notice that there's less contact from the Victim Advisors. And I'm picking that that's because of their workload and I kinda hear through the grapevine, and they tell me, so I think that that's an issue. (S2)

One support staff participant spoke to the under-resourcing in regards to not being able to provide the full service that she would like to be able to provide for witnesses. The Victim Advisors role is to support the witnesses but due to under-resourcing and only being connected to witnesses at a late stage in the process, they often feel that they have not been able to offer the range of support that would be most beneficial for witnesses.

But that's not my role. I am not supposed to do that, and that is Rolls Royce, and that's what I don't have the capacity for, but that would be Rolls Royce, to be able to gently ease somebody in or assist somebody into that process because you know it can be helpful. Because our role says we must inform them of counselling and that's it, but you know I often feel I've got to do, I can't just leave it hanging. (S4)

In summary, all witnesses found the support that they received was very good, although there appeared to be issues with under-resourcing which were particularly apparent to support staff interviewed. Witnesses appreciated the support staff advocating for them, and going somewhat above and beyond in regards to offering emotional support. Support staff talked about doing the best job that they could given the significant under-resourcing prevalent in the support agencies.

Topic: Recommendations for Change

Both witnesses and support staff were asked specifically what they would recommend as beneficial changes to the justice process. This question was asked in a completely open fashion, with no suggestions or ideas offered to the participants. There were several clear areas in which change was recommended, including reducing delays in the trial process for sexual violence trials, having specially trained staff and specialist courts available for sexual violence trials, and increasing the amount and range of support available for victims of crime going through the justice system and trial process.

Theme One: Need to Decrease Delays

Some participants spoke about the need to reduce the current significant waiting times for sexual violence trials to reach court. Some suggestions included instigating a maximum timeframe for these trials, and a plan to prioritise cases with a higher “human cost” such as sexual violence, murder, and general assault cases.

It might be an idea to just speed the process up and impose maximum timeframes on how long a potential trial can go without going to trial. (W2)

Yes say for sexual violence cases it has to happen in X number of weeks, months, whatever, days. A general assault has to happen in another timeframe, maybe bigger and the less of the human cost or sorry, the greater the human cost the quicker the trial should be dealt with so that everyone can move on I think would be a good thing that wouldn't be hard to implement I can't imagine, depending on the severity. (W2)

Theme Two: Specialised Training/Specialist Courts

Witnesses felt that specialised training for justice system staff was needed. This particularly applied to prosecutors, defence lawyers, judges, and even juries.

Or a trained jury personally, and it has to be a trained judge because it can't just be any judge because then again they may have biases and they need to be. For me I think they need to be trained not to let those biases dictate the outcome. (W6)

Support staff felt that there needed to be a better understanding among these professions in regards to the effects of sexual violence on a person, and how to treat a sexual violence victim with the necessary care, while also ensuring an effective and fair trial.

But it would be wonderful to have more training in the programmes to help people understand sexual violence, sexual violence dynamics, both survivor side, and offender side. Coz often we get trained and come into the agencies with a very blinkered focus of survivor issues without the other side. And if you miss the other side then you're missing a whole heap of stuff for your survivor coz you are sitting blinkered with just half of the picture. (S2)

Support staff hoped that this specialist training would include changes to the style of questioning being used, or at least better monitoring of this.

The style of questioning being monitored, and also having specialist counsel, so specialist defence lawyers that are trained and understand the dynamics of what they're doing. And know what they're doing, and the same with the Crown, and the same with

judges. I'm really an advocate for specialist training for anybody who has anything to do with sexual violence cases. (S2)

Some suggested that specialist sexual violence courts would be beneficial, in that the staff who chose to work in these courts would have an interest in sexual violence cases, and would have specialist training. There was hope that this option might also reduce the waiting time for sexual violence trials, which would eliminate a significant source of stress for complainant witnesses.

Yeah exactly. I think having a sexual violence court would be a good idea, especially if everyone there, the judge and everyone there, had gone through some form of training. (W2)

The introduction of specialised sexual violence courts and specialised training for legal staff were clear recommendations from both complainant witnesses and support staff. Both of these groups felt that sexual violence was unique in relation to most other crimes, and that legal staff needed to be trained in how to work with sexual violence victims appropriately.

Theme Three: Better Court Support

As noted previously in the Support section, many participants felt that both HELP Auckland staff and Court Victim Advisors did a great job, but were seriously under-resourced. Many witnesses felt that an increase in the number of specialist support staff would be significantly beneficial for victims of sexual violence navigating the justice system.

I'm glad that's in place but I still think the courts could do more, have much more support. Like perhaps have someone, perhaps like a court counsellor, not necessarily to counsel you but just to, you know, every time you hear something from the court, from the advisors, they then ask someone that you can talk to about and that could perhaps be the way. (W2)

That they could ensure that people got the one on one victim support that I was lucky enough to receive. That they continue to do all that good stuff, like the orientations and things. Yeah, that they provided a better environment, potentially while the court case is on. (W5)

Support staff agreed that more resourcing to allow more staff to be hired would be beneficial.

I think more is always better, the offering, having the capacity to have more support. Coz at the moment we have very limited supports throughout the country for court support. (S2)

Yes, more staff for sure, more staff. Ideal world they would all have a supportive family. The family, the work, the support that provides a supportive family, cannot be replaced by what we're doing. It is huge, so that would be the ideal world, would be that they all have a supportive family in this. (S1)

So yes, more support. Another Victim Advisor would be good because something is going to give and it's going to be the victim at the end of the day. (S4)

Another suggestion from support staff was increased resourcing for culturally specific support, particularly during the trial, and especially when there were language barriers and other significant cultural differences.

In terms of professional support, more, I would say also more culturally appropriate support for every culture. I think that when you're going through such a difficult process it comes at the end of such a difficult experience and traumatic experience. When you have someone who speaks your language, who understands your cultures, your culture, your boundaries, your needs, your way of communicating. Emotions as well are different from one country to another, the way we deal with them. So I guess if the staff was also culturally appropriate that would make a difference, yeah. (S1)

Support staff also spoke about problems coordinating support between the three main agencies involved in the justice system support process: Police, Court Victim Advisors, and HELP Auckland Court Support staff. They talked about a lack of communication and coordination between the three agencies, and felt that some sort of official collaboration or perhaps multidisciplinary team approach would be helpful.

I feel as far as the whole process is concerned from police through to prosecution, police prosecutions court process. If that could be more a, what would you call it, so that there's more cooperation between the different legs or phases, so that a person can feel supported throughout by one team as it were as opposed to this is a police thing, this is a Victim Advisor and this is a Crown thing and so I think that could help, so that it's not fractured and who is this new person. (S3)

Truly we talk about a wraparound service very easily, lip service, but a true wraparound service from get go, from the get go, so that you have ongoing support for a victim of sexual offending from the get go.... But pie in the sky, the first would be a multidisciplinary, a person dedicated people involved from the start throughout, where you can then if you've got somebody supporting that complainant and family, because

of course that is another dynamic is managing the concerns of the family of the complainant throughout. So as I say it's just ... but yes something ongoing, something constant, something like that. (S4)

Another suggestion was to introduce trained independent advocates to work with complainant witnesses.

Yeah and independent advocate, I think they're calling them independent sexual violence advocates, something like that, sexual violence independent. Elisabeth McDonald and Yvette Tinsley, in their book, in their research they came out using that title which we kind of all have come along with, we'll use (laughter). And it seems to have been picked up in the Law Commission work and using the title of independent sexual violence advocate, or something of that nature. So the independence is the key, yeah, yeah. (S2)

In summary, there were a range of recommendations in regards to support, including better resourcing of staff so that all complainant witnesses can be adequately supported. The importance (and current lack) of culturally appropriate support was commented on, as were recommendations in regards to improvement of coordination between the various agencies involved in the justice process and the introduction of independent advocates.

Theme Four: Adversarial System is Destructive and Another Option Should be Considered

Another set of recommendations was centred around changes to the legal process for sexual violence trials. Support staff talked about the possibility of using an inquisitorial rather than adversarial system for these types of trials. That is, using a model of enquiry and investigation rather than a confrontational and victim-blaming system. They talked about this being a "more gentle way" of deciphering the truth in a sexual violence case.

Well when they're looking at the alternative trial systems that the Law Commission looked at in the past, it's more the exploratory enquiry of the unfolding of what happened. And when I was listening to Warren Young talking about that it felt so much more of a gentle way of doing it. So let's hear your story, let's hear your story and where does it meet, and where is it?

To move from an adversarial to an inquisitorial, that, because that is totally different, that takes a lot of the conflict away. (S4)

Support staff acknowledged that making the change from an adversarial to an inquisitorial system would be a very complex process, however still felt that this was the preferable option.

And how that might translate into an adversarial system is obviously a very complex thing where you've got rules of evidence that are coming out of our ears because of all sorts of reasons. So I think a more explorative investigative style, which is not a blaming or an adversarial confrontational thing for the survivor, which is often what we hear and what we see, which is. (S2)

Witnesses spoke of the unfairness in regards to requirements for the prosecution to provide information to the defence, while the same rule does not apply in return. They felt that a fair system would require reciprocal exchange of information, and that this would better allow the complainant witness to be emotionally prepared for what they may be confronted with on the stand.

I think it was pretty unfair how we, like from a legal side of things how we had to hand everything over and we had no idea what he was. You know like to me that was kind of, it was as though I was the one on trial because I had to like okay this is what I'm gonna say, and you've got all my information. But you can't get, like you know even beforehand I'm like so is anybody else standing up like as a witness or anything? And they're like oh we don't know, like even when I left the court on the Wednesday and I still didn't know if anyone was going to stand up or anything like that. So I was like I think yeah, I don't see why they should get, I suppose coz they're innocent until proven guilty. I don't know, I think it should be both ways that communication thingy, yeah. (W4)

It is, the other thing that I found immensely fucking aggravating is that we had to disclose everything we wanted to say to the defence, however they did not need to disclose anything that they wanted to say. That's, it should be either be both open or both closed. And it's not so much that I would have liked to prepare the answers to questions but at least expect what was coming because I had a whole bunch of questions about my mum and dad's relationship like when I was like five. That actually has no relevance to something that happened when I was 13 and that was an absolute side fucking curve ball that I never expected. Like that was just ridiculous for me. (W6)

It was clear from the above responses that both witnesses and support staff feel that the adversarial model of justice is not appropriate for use with sexual violence victim/survivors, at

least in its current format. There were suggestions for the use of another system, and alterations to the current system to make it less upsetting for sexual violence victim/survivors.

Theme Five: Mode of Evidence – Special Considerations are Crucial

Many participants, both support staff and witnesses, talked about the importance of having easier access to special considerations such as a screen between themselves and the defendant, and the use of CCTV to give evidence-in-chief and cross-examination. As discussed earlier, it is often very distressing for complainant witnesses to be in the same room as the defendant, and these measures provide some level of protection in this regard.

Screens and CCTV, yeah, work, I mean I don't know if we could do better in that probably. But in the current system it's something that works out really well and it's very important. (S1)

Both witnesses and support staff participants felt that CCTV should be available for all adult witnesses, but particularly those who had high and complex needs, such as those with pre-existing mental health conditions, experiencing significant distress, and issues with intimidation from the defendant.

For some adults I think that that's, that is a good fall-back position. I also think that, I haven't thought about this too much coz there's been so many other things I've been fighting for, ha, in terms of supporting the safety of giving evidence. But I think even for adults, for them to have the opportunity to have a CCTV room is not a bad thing. Some adults are saying well I'm fine, people with high capacity, high emotional competence, can deal with the courtroom, maybe with a screen if they wanted that. But those vulnerable clients where there's high complex needs, high PTSD and mental health issues, it's incredibly difficult (S2).

In terms of protecting the victims from the defendants, CCTV room is pretty good. I think that knowing that they can see, the defendant can see the victim and hear what they're gonna say is a big thing for them, it's a big thing, yeah. (S1).

Several witnesses felt that screens or CCTV should be either compulsory, or based on an "opt out" rather than an "opt in" format. They felt that some witnesses would either underestimate the difficulty of giving evidence in front of the defendant, or want to appear strong, and thereby miss out if they changed their mind later.

Cos that's the problem when you give people too many options. They evaluate their, whether it's, you know, whether they're worthy of the option. I sometimes think that

that choice isn't always a good thing. If it was just carte blanche, there was a screen, or, you know, he's just sitting behind two-way glass or something, whatever, you wouldn't have to make that choice. (W5)

Support staff agreed with this, stating that the use of screens or CCTV should be automatic, with witnesses able to choose not to use them if they felt able to cope without them on the day.

I think it needs to be in place as a given and then if the survivor on the day wants to move away any of the shields, then that would be her choice on the day. (S2)

In summary, witnesses and support staff stated a preference for special considerations in the court room to be more widely available. Several recommended that they be compulsory or have an "opt out" arrangement, to ensure that complainants are well supported and not subjected to undue or unnecessary stress during the trial process.

Theme Six: No Feedback Process at Court

At least one witness discovered during the pre-trial process that there is no straightforward way for a complainant witness to give feedback to the court in any form, be it complaint or praise. She felt that this was a significant limitation to what should be a transparent system, and that it was important for victims/survivors to be able to give feedback in order for the system to improve.

On what's happening, when the next date is, what everything means and even closer towards the end almost kind of advocating for me because I got to the point where I was trying to find somewhere where I could make a complaint about the whole process, but that place doesn't exist. There is no way you can write, you can't write to the Ministry of Justice and say hey, which that seems for a theoretically open and transparent system to be very opaque. (W2)

Understandably, this participant felt surprised and upset that she was experiencing what she felt was an unsatisfactory level of care and communication from the justice system, and had no way to give feedback either directly to the judge or to the Ministry of Justice.

Theme Seven: Sexual Violence Trials should be Judge Only

Some witnesses felt that sexual violence trials should not be jury trials, for several reasons. They felt that it was very distressing for a complainant witness to talk about extremely intimate information in front of strangers, who they then might later see in public. They were concerned that in emotionally volatile cases, jury members who did not have legal training may

be swayed by defence tactics more so than in more straightforward cases, and that jury members may have biases that could come into play in regards to the trial outcome.

I would choose the judge only option, particularly because I don't like the jury system anyway. I mean it's interesting; lawyers pick and choose the jury based on how they think they look. I mean I can see why they do it, for their own points of view and all the rest of it, but that's not really like a random sample of society. It should be like a completely random sample of society rather than going that person looks like they're gonna go my way or not. (W2)

Personally I don't think we should actually have a jury for cases like this because of the fact that they pretty much want to DNA test with sperm found inside the vagina to be beyond all reasonable doubt. It's ridiculous. You can't do that especially with a lot of these cases, historical cases because most people can't talk about it when it happens. Most people don't talk about it full stop let alone if you do start talking about it's normally delayed. It's very rare for people to scream out the day after and the fact that it's normally from people you love and trust it makes it even harder to peak out. And it's quite hard as well because with a jury you never know what their life is, like maybe they have been or a good friend has been accused of something that never actually happened so then they're going to have bias towards it without realising it necessarily. (W6)

It is clear that complainant witnesses find the process of giving evidence to be significantly distressing, and to do this in front of a jury of strangers is particularly harrowing and humiliating for many. It is no surprise then that some participants recommended that sexual violence trials should not involve a jury.

CHAPTER FOUR: DISCUSSION

This research aimed to improve understanding of the experiences of complainant witnesses in sexual violence trials going through the New Zealand justice system, from reporting the offence through to sentencing and the early post-trial period. Specific foci of the research included understanding what the most negative and most positive aspects of the process are and why, as well as what supports are most beneficial for complainant witnesses. It was hoped that from this information I would be able to delineate clear and useful areas for improvement in regards to needs of complainant witnesses in sexual violence trials, which could in turn be used by professionals in the legal domain and clinicians who might be working with complainant witnesses in mental health settings. Ideally, this research will contribute in some way towards improvements in the justice system which will allow for reductions in the distress experienced by complainant witnesses, which will in turn allow them to participate more fully in the legal system.

A total of nine adult female complainant witnesses and four support staff were interviewed for this research. The complainant witnesses were recruited via HELP Auckland and Court Victim Advisors. The semi-structured interviews were between one and three hours long. Complainant witnesses were asked about their overall trial experience, the support that they received during the process, their interactions with various legal personnel, their experience in the courtroom during evidence-in-chief and cross-examination, the effect of the trial on their emotional state, and the post-trial experience. Support staff were asked a similar range of questions to the complainant witnesses, and were asked to draw on their experience of working with a large number of complainant witnesses.

The interviews were transcribed professionally, and these transcribed interviews were then analysed using thematic analysis. This involved coding the data from the transcribed interviews, and then determining themes and sub themes from these codes. The main findings from this analysis were grouped into four topics: Experiences of the Justice Process, Impact on Self, Support, and Recommendations for Change. Within these topics, a range of themes were identified, and in some cases, related subthemes.

In speaking with the complainant witnesses, I worked on the assumption that the offence they reported had taken place. This approach was dictated by the necessity of building rapport and maintaining a focus on their experience of the justice process regardless of the trial outcome. Thus I did not question whether or not the alleged offence had occurred, or indeed talk directly about the alleged offending at all. While this assumption was supported by guilty

verdicts in seven of the nine cases, the remaining two received not guilty verdicts. Although a not guilty verdict can indicate that the offence did not take place, it may also be that the sexual violence occurred but was not proven “beyond reasonable doubt”, which is a high threshold. In sexual violence cases, and particularly historic sexual abuse cases, reaching this threshold is made difficult by the absence for most of any physical evidence or other witnesses.

In regards to experiences of the justice process, the majority of complainant witnesses found the process to be mainly negative. This was also reported by support staff to be the common experience of complainant witnesses that they work with. The reasons for these negative experiences included delays in the justice process and distress caused by issues in the courtroom, regarding cross-examination in particular. Complainant witnesses did however identify some positive aspects of the process, including positive experiences with police and some prosecutors and judges, as well as the justice process providing “closure” for some.

Many complainant witnesses spoke about the negative impact that the justice process had on their physical and mental health, with a common refrain being anxiety and distress caused by or worsened by the justice process, and the limitations that the drawn out process places on their ability to move on with their life as it was prior to the offence. Most participants who received professional support spoke highly of the quality of this support, while also lamenting the limited availability of these services. All felt that family/social support was necessary in order to traverse the justice system. Most complainant witnesses and support staff would not recommend others to attempt the process without adequate support, and some felt that they would not recommend their loved ones to engage in the justice process at all.

All complainant witnesses and support staff were asked what they would suggest in regards to changes to the justice system that would have benefitted them or made the process less distressing. Recommendations included the need to reduce delays and/or expedite the process for sexual violence trials, to introduce specialist training for legal personnel and specialist sexual violence courts, to increase access to the use of special considerations in giving evidence and to properly resource support agencies. Some suggested that the adversarial model was not suited for use with sexual violence crimes and felt that an alternative model should be used, while others thought that sexual violence trials should be judge only rather than jury trials. Finally, some participants lamented the lack of a robust and transparent feedback system for witnesses in the justice system, and felt that this needed to be remedied in order to allow for the development of a less distressing process in the future. Of note, some of their recommendations, such as the importance of access to special considerations, reduced delays,

specialised training, specialist sexual violence courts and increased availability of court support, are in line with recommendations made by the New Zealand Law Commission in regards to sexual violence trials (the interviews had been conducted prior to the release of the New Zealand Law Commission report).

In the following sections, I will discuss the reasons participants regarded the justice process as mostly negative. Following this, I will detail what the research participants reported as being most beneficial in improving their experience in the justice system. I will then discuss the implications of these findings in relation to past reforms and recent recommendations for reform, with a particular focus on the New Zealand Law Commission recommendations which are currently being considered by the Government. Following this are reflections on the implications of this research for clinical psychologists, the strengths and limitations of this research project, and possible directions for future research.

Why is the Justice Process Negative for Most Complainant Witnesses?

The findings of this research reflect that complainant witnesses in the New Zealand justice system have predominantly negative experiences, despite the reforms of the last few decades. Similar findings have been made in earlier research (Ellison, 2001; Jordan, 2008; Kingi & Jordan, 2009; Ministry of Women's Affairs, 2009; Thomas, 1994) suggesting that while some progress may have been made, change is insufficient. The present research identifies a range of reasons for this.

Participants in the present research, both complainant witnesses and support staff, identified the adversarial nature of the trial proceedings to be stressful. The first and arguably most significant issue is the nature of the adversarial legal system. Simply put, the practice of two sides arguing to prove or disprove (or at least, instil reasonable doubt) an alleged offence in the case of a sexual violence offence is unsurprisingly a difficult experience for the complainant witness when they are usually the only witness (and also victim), and therefore it is their evidence and theirs alone which is under scrutiny (New Zealand Law Commission, 2015). The concept of orality within the adversarial system means that complainant witnesses are expected (except in certain circumstances) to give evidence in person, which often means being in the same room as the defendant (Ellison, 2001). This is very distressing for many witnesses, as many of them will have experienced significant trauma at the hands of the defendant, and the trial is often the first time they have seen him since the offence. Many participants in this research found this to be more upsetting than they had expected prior to

entering the court room, and some significantly regretted not asking for a screen or CCTV to be used in the courtroom.

One of the core components of a criminal trial within an adversarial legal system is the right of defence counsel to cross-examine a witness about their evidence. Cross-examination was for most complainant witnesses in the present study the single most distressing and destructive aspect of the entire justice process, a finding consistent with reports of the support staff interviewed and previous research (Belak, 2012; Ellison, 2001; Jordan, 2011; Kingi & Jordan, 2009; McDonald & Tinsley, 2011a; Temkin, 1999; Westera et al., 2017; Wheatcroft et al., 2009). Many witnesses, including those who took part in this research, feel that they were talked down to, intimidated, accused of lying, humiliated and subjected to unnecessary questioning while on the stand (Jordan, 2011; McDonald & Tinsley, 2011a; Wheatcroft et al., 2009). In addition, although the court is cleared of unnecessary people during the process of examination-in-chief, cross-examination and re-examination of a complainant witness, many find it incredibly distressing to be speaking about intimate and highly traumatic events in front of legal personnel, a jury, and the defendant (Kingi & Jordan, 2009; New Zealand Law Commission, 2015). Despite knowledge that the use of closed, leading questions and a confronting style of questioning negatively impacts on a witness' ability to give best evidence, defence lawyers continue to use these methods during cross-examination, and are permitted to do so (Westera et al., 2017; Zajac, 2009).

One way of mitigating the distress of giving evidence in trials is the use of alternative modes of evidence. Although there have been reforms in regards to availability of alternative modes of giving evidence such as the use of screens in the courtroom and CCTV, these are often difficult for adults to access (particularly CCTV), and this was found to be so in the present research by report of the complainant witness participants and support staff. The Evidence Act (2006) gives clear possibility for the use of CCTV in trials where the complainant witness is vulnerable. There are significant benefits for the complainant witness when giving evidence via CCTV, the main one being the reduction of distress that they experience through not being in the court room with the defendant. Some research has shown that giving evidence via CCTV does not have an effect on jury outcomes (Callander, 2014), however there is also research that suggests that jurors may be less receptive to witnesses who do not give their evidence in the courtroom, and in general, evidence given in person is perceived more favourably than that given via CCTV (Callander, 2014). As noted earlier, jurors and other decision makers often have preconceived ideas about how a sexual violence victim should react

emotionally. The use of alternative modes of evidence can reduce distress for a complainant witness, which is its purpose, however if they are then calmer during evidence-in-chief and cross-examination, this may negatively affect their credibility, particularly in the eyes of the jury (Callander, 2014). If prosecutors hold the view that the complainant witness will have greater impact on jurors by giving evidence within the courtroom, they are unlikely to request alternative modes of evidence.

A further argument for the use of alternative modes of evidence is the impact on quality of evidence. A benefit of pre-recorded evidence for adult vulnerable witnesses is more accurate preservation of information that may otherwise be forgotten when a witness is under stress in the courtroom, and reduced likelihood of distortion of their memory. Modes of evidence that lead to reduction in stress assist witnesses to give best evidence (McDonald & Tinsley, 2011b).

The present research also found that the significant delays between reporting and trial experienced by most complainant witnesses in sexual violence cases has significant negative impacts on complainant witnesses. Long delays contribute to a raft of problems, including issues associated with having to keep the memory of the event alive, an inability to “move on” with their life and begin recovery from the sexual violation, and significant anxiety about the upcoming trial (see also, Ellison, 2001; New Zealand Law Commission, 2015; Temkin, 1999; Wheatcroft et al., 2009). Unsurprisingly, participants in this research stated that reducing the delay for sexual violence trials would be significantly beneficial for complainant witnesses navigating the justice system. This corresponds with the recommendations from McDonald and Tinsley (2011a) and the New Zealand Law Commission (2013).

Anxiety is often increased substantially when complainant witnesses receive limited communications from police and court staff. Witnesses in the present research reported a range of experiences with police communication, with some receiving what they regarded as inadequate communication about the trial, while others received regular updates from the officer in charge. Those who received regular updates reported less anxiety about the process, as they felt supported and more prepared for the upcoming trial. Court Victim Advisors were usually more reliable in regards to their communications with witnesses, however they were involved only at later stages of the pre-trial period.

Participants in this research reported significant negative impacts on their mental, physical and social wellbeing as a result of the justice process, which is reflective of the experiences of complainant witnesses in adversarial legal systems around the world (Jordan, 2011; McDonald & Tinsley, 2011a; Wheatcroft et al., 2009). These impacts can be attributed

to the aforementioned issues with delays in the justice process (leading to anxiety and insecurity) and the significant distress of giving evidence in the presence of the defendant, as well as often being accused of lying or “asking for it” by defence counsel. Given that one of the main fears of a sexual violence victim/survivor is that they won’t be believed (Kingi & Jordan, 2009), these accusations or insinuations can be particularly devastating.

One aspect of participant responses in this research that is of particular concern is that most said that they either would not recommend to a loved one going through the justice process, or would only recommend it if the offending had been severe. Several (particularly those who had a not guilty trial outcome) felt that it would be preferable to just “move on” from the original offence without taking part in the justice process. This suggests that although there have been a range of reforms within the system designed to improve the process, they have not gone far enough. The very low reporting rate for sexual violence offences has often been lamented, and the responses in the present research clearly reflect that this is unlikely to change while the justice system remains in its current state.

What is Helpful to Complainant Witnesses?

There are several aspects of the justice process that complainant witnesses find positive and/or helpful. The actions and reactions of legal personnel can have a very significant impact on the experience of the complainant witness. The majority of participants in this study reported positive interactions with police. This is in line with recent research in Australia and the UK which found most police interactions to be positive, with UK complainants stating that police were “sympathetic”, “supportive” and “friendly” (Success Works, 2011; Temkin, 1999). In the present study, most felt supported and stated they had been treated with respect during the initial reporting and investigative stages. Those who reported the best experiences with police felt that the police officer in charge of their case was invested in the process and cared about the outcome of the trial and the complainant’s well-being.

In respect to the trial itself, the majority of complainant witnesses in this research spoke in a positive manner about their interactions with police and their prosecutor. Several spoke about positive interactions with the judge. Support staff reported that a positive interaction with the judge was one of the most important aspects of the court room experience in regards to reducing a complainant’s distress while on the stand. Judges and prosecutors were positively acknowledged for paying attention to the complainant’s level of distress and reacting by suggesting a break, and/or carefully monitoring and challenging (when appropriate) the way that the defence counsel questioned the complainant during cross-examination.

The findings of this research suggest that support external to the trial itself, as offered by both specialist sexual violence agencies and friends/family, is likely to be the most important influence on the ability of a complainant witness to cope with the justice process. Participants, both complainant witnesses and support staff, stated that they would not recommend taking part in the justice process without adequate support. However, all stated that while the official support offered via agencies such as HELP Auckland and the Court Victim Advisors is very good, these services are under-resourced and therefore not available to all of the complainant witnesses who would benefit. For example, HELP Auckland is funded for one full time and one part time court support role for the entire Auckland population (one and a half million people) and therefore is only able to offer their service to those victim/survivors with the highest needs. Participants in this research also referred to the importance of mental health support, with those who had later received counselling suggesting that there should be more mental health support offered to complainant witnesses. It is well known that experiencing sexual violence can contribute to significant mental health issues (Mossman et al., 2009b; Temkin, 2002; Wheatcroft et al., 2009) and so it is no surprise that counselling was beneficial for those who received it.

Finally, a significant positive outcome for some complainant witnesses in this research was having the opportunity to tell their story, and the importance of this to their recovery process. This must of course be considered alongside the reports from other complainant witnesses of an entirely negative experience. In some cases, although the witness felt to some degree empowered by telling their story, the rest of the process was so negative that on that balance they would not recommend others to go through the process. This suggests that it is possible for the justice process to be an empowering experience, at least for some complainant witnesses, if other aspects of the process can be improved.

What does this say about Previous Reforms?

While reforms such as the introduction of rape shield legislation, changes to the Evidence Act 2006 to allow for alternative modes of evidence, and improvements in the availability of court support may appear to be steps in the right direction, it seems clear that these reforms do not go far enough in alleviating the distress experienced by complainant witnesses in sexual violence trials.

With regard to access to alternative modes of evidence, although available, these seem underutilised. The Evidence Act (2006) s 103 allows for witnesses to give evidence by alternative means, including the use of pre-recorded evidence and/or or via CCTV based on

their age or maturity; physical, intellectual, psychological, or psychiatric impairment; level of trauma suffered; fear of intimidation; linguistic, cultural, or religious beliefs; the nature of the proceeding and the nature of the evidence (Evidence Act, 2006). The judge must take into account the need to ensure that there is a fair trial for the defendant, while also taking into account the need to minimise the stress on the witness and the need to promote the witness' recovery from the alleged offence (Evidence Act, 2006). However, although this legislation is regularly used for children (see Randell, 2017) and those with significant cognitive difficulties, it is quite rare for an adult witness to be granted permission to use these alternative modes. Most adult complainant witnesses are able to access protective screens which block their view of the defendant while they are giving evidence, however these need to be applied for in advance by police or prosecutors, and cannot usually be arranged at short notice.

When considering the wording of the Act in the context of the participants in this research project, it seems likely that many of them should be eligible to give evidence via pre-recorded testimony and/or CCTV. Greater access to alternative modes of evidence is supported by recommendations from McDonald and Tinsley (2011a) and the New Zealand Law Commission (2015), who make the argument that all sexual violence complainant witnesses should be able to give evidence via alternative methods, including the use of screens, CCTV and pre-recorded evidence.

It seems that while section 103 of the Evidence Act (2006) is in itself a useful piece of legislation, with potential benefits for complainant witnesses in sexual violence trials, this piece of legislation is not implemented in cases where it would be beneficial for the complainant witness and thereby to the quality of the evidence they are able to give. Lack of access to these measures appears to be due to concerns about the possibility of appeals and a lack of facilities for using alternative methods of evidence. It would be useful to engage in an enquiry as to the reason for low utilisation of these measures: whether it is because judges are reluctant to use these measures, or whether judges are willing to give access but the special measures are not being requested by the prosecution.

The introduction of Court Victim Advisors appears to be a step in the right direction, which has improved the experience for complainant witnesses immediately before and during the trial process. Unfortunately, due to under-resourcing, the service is not currently the wrap around service that Victim Advisors would like it to be.

Overall, although these reforms have all been positive movements toward improving the process for complainant witnesses, this research and other studies over the last decade (e.g.,

Kingi & Jordan, 2009) show that complainant witnesses still have a predominantly negative experience. The New Zealand Law Commission has made a series of recommendations which would go further to improving the experience. The New Zealand Government is considering which of these to implement at the time of writing.

What are the Implications for Future Reform?

The participants in this research made a range of recommendations for change in the justice system based on their experiences. I will discuss the recommendations that they have made for future reform in the context of recommendations from other research. This research shows clear support of the findings and many of the recommendations of McDonald and Tinsley (2011a) and the New Zealand Law Commission (2015).

The first recommendation from participants in this research was to reduce the delays between reporting and trial for sexual violence trials. The reduction of delay in sexual violence trials was also recommended by McDonald and Tinsley (2011a) and the New Zealand Law Commission (2015), who suggested that sexual violence trials should be fast-tracked where possible, and that alternative modes of evidence (such as pre-recorded evidence and cross-examination) should be used in situations where trials cannot be expedited.

Participants in this research recommended improvements in court support options. This is in line with recommendations from McDonald and Tinsley (2011a) who suggested that Independent Sexual Violence Advisors be allocated to sexual violence victim/survivors from the first report of an offence. The New Zealand Law Commission (2015) similarly recommended that the Ministry of Justice expand the role of sexual violence victim advisor's roles, and also invest in improved education and training for staff within the sector and for people who are considering taking part in the justice process.

The importance of and improvement of access to special considerations/alternative modes of evidence was also a recommendation from the participants in this research. Some stated that the use of screens in the courtroom should be an "opt-out" rather than "opt in" measure for complainant witnesses, and some also suggested that CCTV should be mandated for all sexual violence trials. An implication of this is that sexual violence trials could only then take place in courtrooms with appropriate facilities available, which may have resource implications. This recommendation for greater access to screens and CCTV is in line with recommendations from McDonald and Tinsley (2011a) that adult complainant witnesses should have access to alternative modes of evidence as a rule, rather than an exception. Allowing adult complainants to give evidence via CCTV or using pre-recorded evidence would

bring New Zealand into line with other jurisdictions such as some Australian states, the UK, and Scotland (Callander, 2014; Ellison, 2001).

Many participants in this research questioned the need for the level of intrusive, repetitive and sometimes irrelevant questioning used by defence counsel during cross-examination. This led some participants to question why the judge did not step in sooner, or at all, when the complainant witness was clearly distressed due to the nature of the questioning. Judge intervention would entail limiting the use of closed leading questions, interrupting intimidating interrogation, and challenging defence counsel on seemingly irrelevant lines of questioning. The provisions of the Evidence Act (2006) allow for judges to exclude evidence which is prejudiced and to intervene in proceedings if the questions being asked by the defence are misleading or unnecessarily repetitive. McDonald and Tinsley (2011a) have made recommendations in regards to amending the Evidence Act (2006) to strengthen judges' ability to intervene when questioning is overly intimidating. Nevertheless, there are provisions available for judges to moderate the behaviour of defence counsel, and some do so. It may be prudent to investigate the reasons why judges do not exercise this moderation more consistently in sexual violence trials.

Some participants also questioned the appropriateness of the adversarial model in sexual violence trials. However, the government has made it clear that replacing this model with an inquisitorial one is unlikely due to the numerous and complex issues associated with changing a legal system, particularly for only one type of trial.

Participants also recommended the introduction of specialist training for legal personnel and the introduction of specialist sexual violence courts. Both McDonald and Tinsley (2011a) and the New Zealand Law Commission (2015) recommended the implementation of specialist training for legal personnel, and the New Zealand Law Commission recommended the introduction of specialist sexual violence courts. In accordance with this, the Government has recently commenced sexual violence pilot courts in Auckland and Whangarei. These courts are specifically intended to assist in reducing unnecessary delays for these trials. As part of the pilot, judges who wish to sit for these trials must undertake a sexual violence training programme. As yet however, there is no indication that associated training for prosecutors or defence lawyers will be provided. Several other countries have specialist sexual violence courts operating, including in South Africa, where they have been successful in reducing secondary victimisation for complainant witnesses (Walker & Louw, 2005).

A further recommendation from the participants of this research was for sexual violence trials to be conducted exclusively as judge only trials. This is in line with a recommendation by McDonald and Tinsley (2011a) who suggested that sexual violence trials should be judge-only due to the influence of jurors' misconceptions about sexual violence.

In summary, future reforms recommended by participants in the present research that are also supported in other reports include improvements to the support available to complainant witnesses; for specialist sexual violence courts to be rolled out nation-wide; for specialist training to be required for judges, prosecutors, and potentially also defence counsel; for wider access to special considerations (especially CCTV) to be granted; for more work to be done to determine the best way to carry out cross-examination in a sensitive way without affecting the defendant's right to a fair trial and improvements to communication between the legal system and the complainant witness throughout the process.

What are the Implications for Clinical Psychology?

There are a range of implications from this research for psychology and clinical psychologists in particular (as well as counsellors and other mental health workers). Clinical psychologists may find themselves working with sexual violence victim/survivors before, during and after the victim/survivor takes part in a trial. Most sexual violence victim/survivors who present to a clinical psychologist will have been referred for ACC sensitive claims counselling, perhaps by the police, a rape crisis service, a GP or another secondary mental health service. However, psychologists working in public mental health services may also find themselves working with sexual violence victim/survivors who have presented with significant mental health issues.

In regards to the period prior to a victim/survivor reporting an offence and taking part in a trial, a psychologist may be in a position where they are assisting the victim/survivor to decide whether to carry on with the process. In this situation, the psychologist having a good understanding of the negative aspects of the justice process will assist the victim/survivor to make that decision. Similarly, this understanding may assist the psychologist to adequately support the victim/survivor and prepare for the negative emotional repercussions that may result from the process. Of course, the psychologist needs to be very careful in supporting a victim/survivor not to influence the victim/survivor's testimony in any way. The nature of the justice process and anticipation of having to give evidence in the presence of the defendant can be overwhelming for some, and the pre-trial period can be a time when witnesses may experience increases in anxiety, depression and even suicidal ideation. This is especially likely

if the witness is lacking in social and emotional support from family and friends, which may happen if, for example, the sexual violence was between a husband and wife and the family has split in regards to allegiance.

If the victim/survivor is not involved with a specialist sexual violence service such as HELP and ACC counselling, then a psychologist can be instrumental in making such a referral. If the victim/survivor is already engaged with such a specialist service, or they subsequently become engaged, then it is important to not double up on interventions but rather work together to create a “wrap-around” service which will better support the victim/survivor.

During the trial process, it is important for a psychologist to be prepared for the expected negative emotional responses to the trial process, and in particular to be aware of the possibility of mental health disorder relapses, including suicidal ideation and suicide attempts in some cases. It is very likely that someone who was suffering from mental health issues prior to the trial will experience an increase in the severity of symptoms immediately prior to and during the trial. In addition to the psychologist being prepared for this, it is also important for the psychologist to prepare the witness for this likelihood, and put in place measures to assist with minimising the effects and increasing the witness’ ability to cope with the process. A psychologist may be in a position to advocate for a victim/survivor to access special considerations/alternative modes of evidence, given their intimate understanding of the victim/survivors mental state and ability to cope with the trial process.

Post-trial support is another area in which psychologists can offer a significant benefit to clients who have been complainant witnesses. Due to resourcing limitations, specialised support staff are often unable to extend their services much past the end of the trial process, but psychologists may stay involved for quite some time. Complainant witnesses seem to benefit from the ability to de-brief after the trial process, and often find this cathartic. Assistance in managing any mental health issues/relapses is also a very important role that psychologists can help with, as well as processing the trauma experienced during both the original assault and the trial process.

A psychologist who has a client involved in the justice system as a complainant witness can access a range of resources in order to further their understanding of the process and improve their ability to support their client. This thesis provides such a resource, and agencies such as HELP Auckland, Court Victim Advisors and experienced police who have worked on similar trials also provide valuable resources.

Strengths and Limitations of the Research

There are a range of strength and limitations of this research. In regards to the strengths of the research, the most important arises from the qualitative nature of the study, and in particular the open ended nature of much of the questioning, which allowed the participants to provide rich and detailed information about their experiences of the justice process. This has allowed for a range of insights into the experience, which may not have been possible with a quantitative approach.

In regards to limitations, this was a small sample of complainant witnesses, due to the difficulty in recruiting compounded by the time limits for completion of a doctoral thesis. However, it is usual in qualitative research for samples to be relatively small when compared with other approaches such as survey methods, but the payoff is in depth of information versus volume of participants. Nevertheless, the aim had been for a larger sample than was achieved here. The difficulties in recruitment stemmed from several areas. I was unable to recruit directly, and needed to rely on support staff to carry out recruitment. It is not known how many eligible participants were approached. Staff will have deemed at least some potential research participants to be unable to cope with the potential distress of talking about their experience due to the presence of mental health issues, ongoing emotional distress associated with the trial and/or lack of community support. It also not known how many were approached and then declined due to such reasons as having busy lives and/or not wanting to discuss the trial for fear that it would be too upsetting.

Another potential limitation with respect to the sample recruited is that participants may not have been representative of the larger group of complainant witnesses. For example, there may be bias in terms of the fact that people who agree to participate in such research as this are those influenced by the nature of their experiences being significantly negative. I did however try to offset this possibility by interviewing support staff, who were able to give a perspective of the general experiences of all complainant witnesses. It is of note that support staff perspectives matched closely with the complainant witness reports, so it appears likely that the complainant witnesses in my study represent the wider group fairly well.

It is also important to note that both the complainant witness and support staff participants in this study were recruited from only two cities (Auckland and Whangarei), and therefore the sample may not be representative of the experiences of complainant witnesses nationwide.

Directions for Future Research

There are several directions which future research could (and should) take. Firstly, a qualitative study with a longer time frame should be conducted in order to obtain a larger sample size of complainant witnesses. The time limitations on this particular study meant that I was unable to continue recruiting. With a more open time frame, a larger and potentially more diverse group of participants could be recruited. Similarly, conducting the research in a range of locations in New Zealand would allow for a larger group of research participants, and also a better picture of the range of experiences of complainant witnesses in sexual violence trials throughout New Zealand. It would be beneficial if similar research could be conducted with male victim/survivors of sexual violence, as their voices are seldom heard in the literature. This may occur as a factor of having a larger group of participants, but it seems important to make a targeted effort to recruit male complainant witnesses in order to ensure that their views are included in the literature.

Further to this, a follow up qualitative study should be conducted as a measure of evaluation of the specialist sexual violence court pilots in Auckland and Whangarei. Given that the data for this research was collected around one year prior to the commencement of the pilots, a similar study conducted once the pilot has been operational for a year would provide a useful comparison of the experiences of complainant witnesses before and after the pilot. In particular, it would be beneficial to evaluate the experiences of the complainant witnesses, the impressions of support staff and the experiences of the legal personnel taking part in the trials, including judges, prosecutors and defence counsel.

There are several other areas which warrant further research. It would be useful to conduct research with police, prosecutors and judges in regards to the reasons why adult complainant witnesses are so rarely able to access alternative modes of giving evidence such as CCTV and pre-recorded evidence. With understanding of the reasons for this, perhaps researchers will be in a better position to give advice regarding potential changes to access to these alternative measures. Similarly, investigation into the reasons for the significant delays for sexual violence trials would be beneficial, in regards to either assisting the justice system to mitigate these delays or being able to provide clear information and reasoning for complainant witnesses as to why the process takes so long.

In summary, there are a range of directions for future research. It is clear from the findings of this study and other research in the area that the justice process is predominantly negative for complainant witnesses in sexual violence trials. Given this knowledge, it makes

sense to expand the group of complainant witnesses interviewed in order to ensure that the data includes participants who are diverse in regards to gender, culture, ethnicity and geographical location within New Zealand. Research similar to this study should be conducted with complainant witnesses who take part in the new specialist sexual violence court pilots in Auckland and Whangarei in order to evaluate the success of these changes. Finally, further research into specific areas of the justice process including access to alternative modes of evidence and the reasons for delays would be beneficial in regards to improving specific aspects of the justice process.

APPENDICES

Appendix A. Interview Schedule for Complainant Witnesses

Semi-structured interview schedule for complainant witnesses

Section headings indicate areas that will be covered in the interview. The questions listed under each of these headings will be used as prompts where necessary during the interview. The questions will be asked in an order that is appropriate for the participant and in a sensitive manner.

Overall experience

- What are your overall views of the trial experience?
- Was your overall experience positive? Why?
- Was your overall experience negative? Why?
- If positive, what was the most positive aspect
- If negative, was the most negative aspect
- What was the lead up to trial like?

Support

- Did you have support of any sort?
- Who from? (e.g. friends, family, HELP, other service, therapist, GP, victim advisor, OC, prosecutor)
- What form did the support take? (e.g. moral support, mental health support, information and education)
- If you had support (e.g. HELP, Rape Crisis, Victim Support) what did they do to support you?
- What aspects of that support did you find the most helpful? Least helpful?
- What support do you think would have been beneficial for you?

Interactions

- What was your experience like with the court victim advisors? Was the service useful? Why/why not?
- What was your experience like in dealing with the officer in charge of the case? What was positive/negative about your interaction with them? Did you feel supported?
- What was your experience like with the prosecutor? What was positive/negative about your interaction with them? Did you feel supported?
- What was your experience like with the defence lawyer? What was positive/negative about your interaction with them?

Court room experience

- What happened in the court room? (talk me through the process as you experienced it)
- Was your experience in the court room mostly positive/negative/neutral?
- What did you find most difficult about your court room experience? Easiest?
- Were you supported in the court room? Who by? What was useful about that support?

- Were you given any special considerations? (e.g. CCTV evidence, shield screening from accused, court room cleared). Did you feel these were beneficial?
- What was your experience of giving evidence-in chief?
- What was your experience of cross-examination?
- What changes (if any) to the court process do you think would have been beneficial for you?

Impact of court process

- Do you think that the process had an impact on you emotionally? Was this positive or negative?

Post-trial

- What happened after the trial was completed? Did you receive any contact from prosecutor/Officer in Charge? Did you feel adequately supported?
- Would you recommend others go through the trial process? Why/why not?
- Was the overall experience something that you are glad you took part in? Why/why not?

Appendix B. Interview Schedule for Support Staff

Semi-structured interview schedule for support staff

Section headings indicate areas that will be covered in the interview. The questions listed under each of these headings will be used as prompts where necessary during the interview. The questions will be asked in an order that is appropriate for the participant and in a sensitive manner.

Support

- What form of support do you offer to complainant witnesses?
- When does this support begin (at what point during their justice system journey?)
- When does this support end?
- Are there areas in which you feel more/less support would be beneficial?
- What form would support for complainant witnesses take in an ideal world?

Interactions

- From your perspective, what is the experience like for complainant witnesses deal with various people during the court process e.g. prosecutor, defence attorney, judge, police.

Court room experience

- What is an average experience in the court room for complainant witnesses, from your perspective?
- Do you think that the complainant witness's experiences are mostly positive/negative/neutral?
- What do you think is the most difficult aspect of the court room experience for complainant witnesses? Easiest?
- What are your opinions regarding the use of special considerations? (e.g. CCTV evidence, shield screening from accused, court room cleared). Do you feel these are beneficial for complainant witnesses?
- What do the complainant witnesses report to you about their experiences of giving evidence-in-chief and being cross-examined?

Post-trial

- What happens after the trial is complete? Do you continue to offer support to the complainant witnesses?
- Would you recommend someone go through the trial process? Why/why not?

Overall experience

- What are your overall views of the trial experience for complainant witnesses?

Appendix C. Consent Form for Complainant Witnesses

SCHOOL OF PSYCHOLOGY



The University of Auckland
Private Bag 92019
Auckland, New Zealand
Telephone 64 9 373 7599
Facsimile 64 9 373 7450

CONSENT FORM**(This consent form will be stored for a period of six years)**

Project Title: The experiences of adult sexual assault and sexual abuse complainant witnesses within the NZ court system

Principal Investigator: Professor Fred Seymour (Clinical Psychologist)

I have read and I understand the Information Sheet for volunteers taking part in the study designed to examine the court experiences of adult sexual assault and sexual abuse complainant witnesses. I have had the opportunity to use whānau support or a friend to help me ask questions and understand the study, and have had time to consider whether to take part. I am aware that if I participate in this study, I will be expected to take part in a one hour interview with a researcher, which will take place at a time and location convenient to me and the interviewer.

- I understand that taking part in this study is voluntary (my choice) and that I am free to withdraw myself and my information at any time up to four weeks after participation without giving a reason.
- I understand that my participation or non-participation will not affect the services I receive from the HELP Foundation or any court/legal staff, and that this has been confirmed by both HELP and the Crown Prosecutors.
- I am aware that talking about my experience may be distressing. I have been advised that I should not participate in the study if I feel that talking about my experience may cause me significant distress. I am aware that referral to a relevant supportive service such as HELP can be made if I am experiencing significant distress.
- I understand that my interview will be audio-recorded and that I have the right to turn off the tape at any time.
- I understand that I am able to request a copy of the audio recording from the researcher at any time prior to completion of the study.
- I understand that I am able to have a support person attend the interview with me.

- I do/do not wish to receive a summary of the findings at the conclusion of the study. Please provide a valid email address if you would like to receive a summary:

Email address: _____

- I understand that I can request to view and edit the transcript of my recording within two weeks after the interview takes place. I do/do not wish to view and edit the transcript of my recording.
- I understand that the data from this study will be used in Rebecca Parkes' doctoral thesis, and may also be used in journal articles, reports, and presentations.
- I understand that my participation in this study is confidential and that no material that could identify me will be used in any reports on this study.
- I understand that this consent form will be stored separately to any other data related to me. These will be stored in a locked filing cabinet in Professor Fred Seymour's office at the University of Auckland for a period of six years.
- I understand that the information in the transcript will be coded so that I cannot be identified.
- I understand that if I disclose any issues related to the safety of me or others, the researchers are obligated to report this to the relevant authorities as outlined in the participant information sheet.
- I understand that I will be reimbursed for my travel costs up to the amount of \$40.
- I identify as Māori: Yes/No

I _____ hereby consent to take part in this study.

SIGNED: _____ DATE: _____

If you have any questions, please contact me (Rebecca):

Rebecca Parkes, rpar078@aucklanduni.ac.nz, 0210405959, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

For any other queries you may contact:

Professor Fred Seymour, (09) 373 7599 x 88414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 01-Dec-2014 FOR A PERIOD OF 3 YEARS, REFERENCE NUMBER 013070.

Appendix D. Consent Form for Support Staff

DEPARTMENT OF PSYCHOLOGY



The University of Auckland
Private Bag 92019
Auckland, New Zealand
Telephone 64 9 373 7599
Facsimile 64 9 373 7450

CONSENT FORM – SUPPORT STAFF**(This consent form will be stored for a period of six years)**

Project Title: The experiences of adult sexual assault and sexual abuse complainant witnesses within the NZ court system

Principal Investigator: Professor Fred Seymour (Clinical Psychologist)

I have read and I understand the Information Sheet for support staff taking part in the study designed to examine the court experiences of adult sexual assault and sexual abuse complainant witnesses. I have had the opportunity to use whānau support or a friend to help me ask questions and understand the study, and have had time to consider whether to take part. I am aware that if I participate in this study, I will be expected to take part in a one hour interview with a researcher, which will take place at a time and location convenient to me and the interviewer.

- I understand that taking part in this study is voluntary (my choice) and that I am free to withdraw myself and my information at any time up to four weeks after participation without giving a reason.
- I have been advised that I should not participate in the study if I feel that talking about my experience may cause me significant distress. I am aware that referral to a relevant supportive service can be made if I am experiencing significant distress.
- I understand that my interview will be audio-recorded and that I have the right to turn off the tape at any time.
- I understand that I am able to request a copy of the audio recording from the researcher at any time prior to completion of the study.
- I understand that I am able to have a support person attend the interview with me.
- I do/do not wish to receive a summary of the findings at the conclusion of the study. Please provide a valid email address if you would like to receive a summary:

Email address: _____

- I understand that I can request to view and edit the transcript of my recording within two weeks after the interview takes place. I do/do not wish to view and edit the transcript of my recording.
- I understand that the data from this study will be used in Rebecca Parkes' doctoral thesis, and may also be used in journal articles, reports, and presentations.
- I understand that my participation in this study is confidential and that no material that could identify me will be used in any reports on this study.
- I understand that this consent form will be stored separately to any other data related to me. These will be stored in a locked filing cabinet in Professor Fred Seymour's office at the University of Auckland for a period of six years.
- I understand that the information in the transcript will be coded so that I cannot be identified.
- I understand that if I disclose any issues related to the safety of me or others, the researchers are obligated to report this to the relevant authorities as outlined in the participant information sheet.

I _____ hereby consent to take part in this study.

SIGNED: _____ DATE: _____

If you have any questions, please contact me (Rebecca):

Rebecca Parkes, rpar078@aucklanduni.ac.nz, **0210405959**, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

For any other queries you may contact:

Professor Fred Seymour, (09) 373 7599 x 88414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON for 3 years, Reference Number...../.....

Appendix E. Permission to Contact Form

SCHOOL OF PSYCHOLOGY



The University of Auckland
Private Bag 92019
Auckland, New Zealand
Telephone 64 9 373 7599
Facsimile 64 9 373 7450

PERMISSION TO CONTACT FORM

Court experiences of sexual assault and sexual abuse witnesses

A research team led by Professor Fred Seymour (Clinical Psychologist) at The University of Auckland is currently undertaking research looking at the experiences of complainant witnesses in sexual assault and sexual abuse trials in the NZ court system. This study hopes to better understand these experiences through interviews with adult complainant witnesses. The main researcher for this study will be Rebecca Parkes, a Clinical Psychology doctoral student, and the information gained will be used in fulfilment of her doctoral thesis.

The aim of this project is to better understand the experiences of these complainant witnesses, and to contribute to evidence which will support positive changes in support services and court processes.

The research team requests permission to contact you to discuss the research further, answer any questions you have and invite you to participate. Your participation will consist of one interview conducted by a member of the research team lasting approximately one hour. The interviews will take place at a time and place of your convenience.

If you agree to be contacted by the research team, you may still decline participation when they contact you. If you do take part in the study, any information you provide will be coded so that you cannot be identified from the data.

If you are happy to be contacted please provide the following details:

Name:
Home Phone:
Mobile Phone:
E-mail:
Address:
I prefer to be contacted by: (please circle preference)
<input type="checkbox"/> Phone <input type="checkbox"/> Email

Signed: _____ Date: _____

Name: _____ (please print clearly)

If you have any questions or would like to discuss participation, please contact me (Rebecca):

Rebecca Parkes, rpar078@aucklanduni.ac.nz, 0210405959, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

For any other queries you may contact:

Professor Fred Seymour, (09) 373 7599 x 88414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 01-Dec-2014 FOR A PERIOD OF 3 YEARS, REFERENCE NUMBER 013070.

Appendix F. Participant Information Sheet for Complainant Witnesses

SCHOOL OF PSYCHOLOGY



Te Whare Wānanga o Tāmaki Makaurau

The University of Auckland
Private Bag 92019
Auckland, New Zealand
Telephone 64 9 373 7599
Facsimile 64 9 373 7450

PARTICIPANT INFORMATION SHEET

Project Title: The experiences of adult sexual assault and sexual abuse complainant witnesses within the NZ court system

Principal Investigator: Rebecca Parkes

Supervisor: Professor Fred Seymour (Clinical Psychologist)

My name is Rebecca Parkes and I am a clinical psychology doctoral student at The University of Auckland. Professor Fred Seymour and I are currently carrying out a study looking at the experiences of adult sexual assault and sexual abuse complainant witnesses within the NZ court system. This study is part of a wider investigation of the experiences of vulnerable witnesses engaged in the NZ court system, by Professor Fred Seymour, Dr Emily Henderson, and Dr Suzanne Blackwell.

About the Study

Research indicates that victims of sexual crimes often experience significant re-traumatisation and distress during the process of being a complainant witness in court cases against the alleged perpetrator. Despite significant developments and improvements in the way the NZ court system treats victims of sexual crime, research indicates that there is still some way to go in regards to reducing the negative impact of the court process on complainant witnesses.

The aim of this study is to gain an in-depth understanding of the experiences of complainant witnesses in sexual assault and sexual abuse cases in the NZ court system. We will be investigating the overall trial experience, the type and amount of support received by complainant witnesses in these cases, perceptions of the effects of trial participation on participants life (including mental health, relationships, work, and physical health), and also what support or changes to the process participants feel would have been beneficial for them in order to have a more positive experience.

Participation

You are invited to take part in this study. You do not have to participate in this study, it is your choice, and you may withdraw at any time up until two weeks after participation.

You may have a friend or whanau member support you during the interview, and help you understand the study. If you agree to participate, we will ask you to sign a consent form and you will be interviewed in person about your experience. You may have a support person with you during the interview if you wish. Each interview will be audio-recorded and the recordings will later be transcribed. Transcripts will be made available to you upon request, as will your interview recording. You may stop the interview or ask to have the audio-recorder switched off at any time and you do not have to answer all the questions. The interviews will be approximately one hour long and we will do these at a time and place to suit you. At the conclusion of the study, the researcher is able to provide a summary of the findings of the study to you, should you be interested. You can request this on the consent form. You will be reimbursed for travel expenses up to the amount of \$40.

We will not directly ask you about the sexual assault or sexual abuse incident(s) that you experienced. You will only be asked to talk about your experience of the trial process (before, during and after the trial). If talking about the experience causes significant distress for you, we can stop the interview, and we will offer referral to HELP. Please consider the level of distress you may feel about the process before agreeing to take part in this study. If you feel that talking about your experience will be significantly distressing, then we would advise that you do not take part in the study.

Both HELP and the Crown Prosecutors offer assurances that your participation in this research will not affect the services that you receive from them.

Storage of information

The tapes of the interviews will be stored securely while they are being transcribed and then will be destroyed. Transcripts and any other information related to you will be kept in a locked filing cabinet at the University of Auckland for six years, and then be securely destroyed.

Confidentiality

All the information you provide will remain confidential and any research assistants employed (e.g., transcribers) will be required to sign a confidentiality agreement to this effect. The transcripts of your interview will be coded so that there is no way you could be identified from the information in the transcript. No material that could personally identify you will be used in any reports on this study. The only time the researchers may break confidentiality is if you disclose information regarding risk of harm to yourself or others.

Withdrawal

You are free to withdraw from the project at any time without giving reasons. You may also withdraw any data related to you until four weeks after participation, whether or not you have viewed or edited your transcript. In this case please contact a member of the research team, and any documents related to you will be shredded.

Risks and benefits of participation

The benefits of taking part in this study include:

- Possibility of the process being an opportunity to debrief regarding your experience.

- Providing information that may be used to help make improvements to support services and the court process that will help others in the future.

The risks of taking part in this study include:

- Possibility of experiencing psychological distress when talking about your experiences. Note however, that we will offer referral to HELP should you need further support.

Thank you for making the time to read about, and consider taking part in this study.

If you have any questions or would like to discuss participation, please contact me (Rebecca):

Rebecca Parkes, rpar078@aucklanduni.ac.nz, 0210405959, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

For any other queries you may contact:

Professor Fred Seymour, (09) 373 7599 x 88414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

Professor William Hayward, (09) 923 8516, w.hayward@auckland.ac.nz, School of Psychology, The University of Auckland, Private Bag 92019, Auckland.

For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Participants Ethics Committee, The University of Auckland, Research Office, Private Bag 92019, Auckland 1142. Telephone (09) 3737599 extn. 87830/83761. Email: humanethics@auckland.ac.nz.

APPROVED BY THE UNIVERSITY OF AUCKLAND HUMAN PARTICIPANTS ETHICS COMMITTEE ON 01-Dec-2014 FOR A PERIOD OF 3 YEARS, REFERENCE NUMBER 013070.

Appendix G. Participant Information Sheet for Support Staff

SCHOOL OF PSYCHOLOGY



Te Whare Wānanga o Tāmaki Makaurau

The University of Auckland
Private Bag 92019
Auckland, New Zealand
Telephone 64 9 373 7599
Facsimile 64 9 373 7450

PARTICIPANT INFORMATION SHEET – SUPPORT STAFF

Project Title: The experiences of adult sexual assault and sexual abuse complainant witnesses within the NZ court system

Principal Investigator: Rebecca Parkes

Supervisor: Professor Fred Seymour (Clinical Psychologist)

My name is Rebecca Parkes and I am a clinical psychology doctoral student at The University of Auckland. Professor Fred Seymour and I are currently carrying out a study looking at the experiences of adult sexual assault and sexual abuse complainant witnesses within the NZ court system. This study is part of a wider investigation of the experiences of vulnerable witnesses engaged in the NZ court system, by Professor Fred Seymour, Dr Emily Henderson, and Dr Suzanne Blackwell.

About the Study

Research indicates that victims of sexual crimes often experience significant re-traumatisation and distress during the process of being a complainant witness in court cases against the alleged perpetrator. Despite significant developments and improvements in the way the NZ court system treats victims of sexual crime, research indicates that there is still some way to go in regards to reducing the negative impact of the court process on complainant witnesses.

The aim of this study is to gain an in-depth understanding of the experiences of complainant witnesses in sexual assault and sexual abuse cases in the NZ court system. We will be investigating the overall trial experience, the type and amount of support received by complainant witnesses in these cases, perceptions of the effects of trial participation on participants life (including mental health, relationships, work, and physical health), and also what support or changes to the process participants feel would have been beneficial for them in order to have a more positive experience. In addition to interviewing complainant witnesses, we will also be interviewing support staff who have worked directly with complainant witnesses, in order to gain a further perspective.

Participation

You are invited to take part in this study. You do not have to participate in this study; it is your choice, and you may withdraw at any time up until two weeks after participation.

You may have a friend or whanau member support you during the interview, and help you understand the study. If you agree to participate, we will ask you to sign a consent form and you will be interviewed in person about your experience. You may have a support person with you during the interview if you wish. Each interview will be audio-recorded and the recordings will later be transcribed. Transcripts will be made available to you upon request, as will your interview recording. You may stop the interview or ask to have the audio-recorder switched off at any time and you do not have to answer all the questions. The interviews will be approximately one hour long and we will do these at a time and place to suit you. At the conclusion of the study, the researcher is able to provide a summary of the findings of the study to you, should you be interested. You can request this on the consent form. You will be reimbursed for travel expenses up to the amount of \$40.

As a person working with complainant witnesses, we expect that you will have training and supervision around the difficult subject matter that you deal with every day in your role. However, if you do feel distressed during the interview please inform the interviewer and we can stop the interview.

Storage of information

The tapes of the interviews will be stored securely while they are being transcribed and then will be destroyed. Transcripts and any other information related to you will be kept in a locked filing cabinet at the University of Auckland for six years, and then be securely destroyed.

Confidentiality

All the information you provide will remain confidential and any research assistants employed (e.g., transcribers) will be required to sign a confidentiality agreement to this effect. The transcripts of your interview will be coded so that there is no way you could be identified from the information in the transcript. No material that could personally identify you will be used in any reports on this study. The only time the researchers may break confidentiality is if you disclose information regarding risk of harm to yourself or others.

Withdrawal

You are free to withdraw from the project at any time without giving reasons. You may also withdraw any data related to you until four weeks after participation, whether or not you have viewed or edited your transcript. In this case please contact a member of the research team, and any documents related to you will be shredded.

Thank you for making the time to read about, and consider taking part in this study.

If you have any questions or would like to discuss participation, please contact me (Rebecca):

Rebecca Parkes, rpar078@aucklanduni.ac.nz, 0210405959, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

For any other queries you may contact:

Professor Fred Seymour, (09) 373 7599 x 88414, f.seymour@auckland.ac.nz, School of Psychology (Tamaki Campus), The University of Auckland, Private Bag 92019, Auckland.

Professor William Hayward, (09) 923 8516, w.hayward@auckland.ac.nz, School of Psychology, The University of Auckland, Private Bag 92019, Auckland.

For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Participants Ethics Committee, The University of Auckland, Research Office, Private Bag 92019, Auckland 1142. Telephone (09) 3737599 extn. 87830/83761. Email: humanethics@auckland.ac.nz.

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