
Hearing the voices of Victorian conferencing practitioners – views on neutrality

Kathy Douglas, Nadia Sager and Rachael Field*

Conferencing is a restorative justice process that is used in the criminal justice system in Australia to deal with a variety of offences. In this article, the authors analyse research into the understandings of conferencing practitioners regarding the issue of the neutrality of the third party in facilitating the process. The research was conducted using a qualitative methodology with a small group of practitioners in Victoria. In the semi-structured interviews the practitioners described and discussed their understandings of the concept of neutrality in conferencing and their thoughts regarding practice issues. The analysis of the study results indicates a need for further research in this area.

INTRODUCTION

The practice of restorative justice conferencing, whereby victims and offenders meet with other members of the community to resolve a criminal conflict, reflects a shift in philosophy in our legal and justice systems.¹ Australian studies such as the South Australian Juvenile Justice project and the Re-integrative Shaming Experiment,² have found that conferencing can achieve positive outcomes for both offenders and victims. International research has established that a range of positive outcomes for offenders result from participation in a conferencing process,³ and also for victims in that some degree of emotional closure relating to the offence may be achieved.⁴

An important question in relation to the practice of restorative justice conferencing is whether it is possible for conference facilitators (also known as convenors) to maintain a “neutral” stance. Conferencing, by its very nature, involves vulnerable participants – offenders, victims and sometimes their respective families.⁵ Conference facilitators have immense power over the proceedings, a power which must be used appropriately and ethically if just outcomes are to be achievable through the process. A well-developed capacity to understand and work with the notion of neutrality in the conferencing process, and also its limitations, is therefore a critical skill of restorative justice practitioners.

Notwithstanding the importance of this practice issue in conferencing, facilitators’ understanding of neutrality has not been sufficiently researched or analysed. This article, in providing the results of a small preliminary study of Victorian facilitators’ experiences of neutrality, aims to draw attention to the importance of the issue. First, the article provides a brief overview of the theoretical foundations for the conferencing process and discusses the issue of neutrality. Secondly, the methodology and limitations of the study are described. Thirdly, the authors analyse the results of the study, and offer a recommendation for further research in this area.

* Kathy Douglas: Senior Lecturer, RMIT University; Mediator, Dispute Settlement Centre of Victoria. Nadia Sager: Community Services Victoria. Rachael Field: Senior Lecturer, QUT. This article draws from Nadia Sager, *The Issue of Neutrality of Facilitators of Group Conferencing*, unpublished thesis RMIT University, (2008).

¹ King M, “Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice” (2008) 32 *Melbourne University Law Review* 1096. For definitions of restorative justice and conferencing practice, see Law Reform Committee, *Inquiry into Alternative Dispute Resolution and Restorative Justice* (May 2009) Ch 7. For the philosophical underpinnings of this shift see Daly K, “Restorative Justice: The Real Story” (2002) 4 *Punishment and Society* 55.

² For a summary, see King M, Frieberg A, Batagol B and Hyams R, *Non Adversarial Justice* (Federation Press, 2009) Ch 3.

³ Sherman LW and Strang H, *Restorative Justice: The Evidence* (Smith Institute, 2007).

⁴ Strang H, Sherman L, Angel C, Woods D, Bennett S, Newbury-Birch D and Inkpen N, “Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-experimental Analysis”, (2006) 62(2) *Journal of Social Issues* 281.

⁵ Presser L and Hamilton C, “The Micropolitics of Victim-offender Mediation” (2006) 76(3) *Sociological Inquiry* 316.

RESTORATIVE JUSTICE AND GROUP CONFERENCING

Restorative justice is a relatively new process in the criminal justice system. It is a process whereby an offender and a victim of crime attempt to reconcile as part of a sentencing disposition or as part of a diversion program. The process may also be used once an offender has been sentenced.⁶ The resolution of conflict associated with crime away from the legal system or courts in a more informal setting is becoming increasingly popular in the Australian justice system.⁷

Group conferencing is one process associated with the philosophy of restorative justice whereby some type of reparation of harm is attempted. Another such process is victim-offender mediation.⁸ The key difference between the two processes is that in conferencing a wider group of participants will attend (including the family of the offender and various support workers), whereas in victim-offender mediation, usually only the victim and offender are present. In Australia, conferencing has been adopted mainly in the juvenile justice jurisdiction, but with some States offering adult programs.⁹ Although they are different approaches, conferencing and victim-offender mediation share similar values and philosophical underpinnings focused on the resolution of crime-associated conflict in a non-harming manner.

New Zealand was one of the first jurisdictions to adopt a conferencing model. An important influence on the increased use of conferencing in New Zealand was the passing in 1989 of *The Children, Young Persons and their Families Act 1989* (NZ). Efforts in Australia in conferencing, beginning with a police-run process known as the *Wagga Wagga* model,¹⁰ have evolved their own practices with a variety of third-party approaches adopted. Some models are closely connected with institutions and use the police as facilitators, while other models utilise third parties from welfare backgrounds. Many programs draw from the philosophy of re-integrative shaming articulated by Braithwaite.¹¹ This approach argues that processes such as conferencing can reduce recidivism as well as ensure that the offender is neither stigmatised nor labelled for his or her crimes, but is instead re-integrated back into the community.

Conferencing can potentially “deal with a spectrum of crimes up to and including homicide and sexual offences, but the majority deal with less serious offences (property offences, minor assaults, and public order offences)”.¹² In Victoria, the site of the research under discussion, there has been a small conferencing program operating in the juvenile justice jurisdiction since 1995.¹³ A pre-sentence diversionary pilot program began in the Melbourne Children’s Court and was operated by a non-government organisation (NGO). Conferencing in Victoria continued through a variety of NGOs and was significantly expanded in October 2006 to become a State-wide program.¹⁴ Initially conferencing was offered in Victoria without a specific legislative base. However, as part of reform of the Children’s Court, conferencing was explicitly added as a sentencing option under s 415(1) of the

⁶ Zehr H, “Commentary: Restorative Justice: Beyond Victim-offender Mediation” (2004) 22 *Conflict Resolution Quarterly* 305.

⁷ Daly K, Hayes H and Marchetti E, “New Visions of Justice” in Goldsmith A, Israel M and Daly K (eds), *Crime and Justice: A Guide to Criminology* (3rd ed, Lawbook Co., 2006) pp 441-446.

⁸ Law Reform Committee, n 2, pp 193-195. Restorative processes can be pre-charge, post charge pre-sentence and post sentence (p 194).

⁹ Maxwell G and Hayes H, “Restorative Justice Developments in the Pacific Region: A Comprehensive Survey” (2006) 9(2) *Contemporary Justice Review* 127.

¹⁰ Law Reform Committee, n 2, p 189.

¹¹ Braithwaite J, *Crime, Shame and Reintegration* (Cambridge University Press, 1989); Braithwaite J, *Restorative Justice and Responsive Regulation* (Oxford University Press, New York, 2002).

¹² Roche D, “Dimensions of Restorative Justice” (2006) 62 (2) *Journal of Social Issues* 217 at 221.

¹³ Law Reform Committee, n 2, p 202. The Victorian program does not deal with homicide or sexual assault offences.

¹⁴ Law Reform Committee, n 2, p 202.

Children, Youth and Families Act 2005 (Vic). This legislative change came into operation in April 2007, after the gathering of the data for this research, but the process of conferencing remains largely the same in its practice.¹⁵

To participate in group conferencing in the juvenile context there must be a plea of guilty or an offender must have been found guilty of an offence, the court must be considering a probation or supervision order as a sentence, and participation must be voluntary.¹⁶ Additionally, Victoria has a pilot program of conferencing for young adult offenders as part of its Neighbourhood Justice Centre.¹⁷ Recently, the Victorian Association for Restorative Justice (VARJ) has written best practice standards for conferencing practice as part of a voluntary accreditation system.¹⁸

Arguably, the ways that conferencing have been practised, both in Victoria and Australia-wide, has been given less academic attention than evaluations of the effectiveness of the process for victims and offenders.¹⁹ One issue amongst a range of practice concerns is the issue of neutrality, discussed below.

GROUP CONFERENCING AND FACILITATOR NEUTRALITY

The role of a facilitator in the conferencing process is complex. Similar to the process of mediation in the civil jurisdiction, the third party must ensure an even-handed process to ensure that parties do not have a perception of bias in the third party. In mediation in civil matters, the concept of “neutrality” of the mediator has been critiqued by many commentators.²⁰ There are competing views as to whether a mediator can confine his or her influence to the process of a dispute and not impact on the content of the conflict between the parties, or the outcome of the process.²¹ Boule sees neutrality as “allowing each side adequate opportunity to speak, approximate equality of attention, consistent application of the ground rules and no overt displays of favouritism to any side”.²²

Using postmodern and social constructionist theory, Bagshaw has argued that understanding mediation as a process whereby parties shape their conflict experiences through language and wider societal discourses allows us to appreciate that a third party in that process is not neutral.²³ She argues that a mediator does impact upon the unfolding story of a mediation. Mediators therefore must be reflexive in their practice. Reflexive practice requires mediators to reflect on their own personal and political history and their interaction with the parties.²⁴

Astor has argued that neutrality is an important construct in mediation practice. She deconstructs and then reconstructs the term as she sees value in mediators framing their practice through the

¹⁵ For a discussion of the process, see Department of Human Services, *Victoria Youth Justice Group Conferencing Program Guidelines* (2007).

¹⁶ Law Reform Committee, n 2, p 204.

¹⁷ Law Reform Committee, n 2, pp 212-213. This conferencing program was not part of the research for this article. Forms of dispute resolution conferences are also available in relation to child protection matters in the Children’s Court and are also not part of this study.

¹⁸ VARJ, *Accreditation Scheme for Restorative Justice Facilitators* (2009), http://www.varj.asn.au/pdf/VARJ_Accreditation.pdf viewed 1 May 2010; VARJ, *Best Practice Standards for Restorative Justice Facilitators* (2009), http://www.varj.asn.au/pdf/VARJ_Best_Practice.pdf viewed 1 May 2010.

¹⁹ For a summary of relevant evaluations, see Law Reform Committee, n 2, Ch 9. Recently, a large study of conferencing facilitators has been undertaken in New South Wales: Bruce J, *Facilitating Restorative Justice: A Study of Conference Convenors* (PhD dissertation, UNSW, 2008).

²⁰ For example, Field R, “The Theory and Practice of Neutrality in Mediation” (2003) 22 *The Arbitrator and Mediator* 79; Bagshaw D, “Self Reflexivity and the Reflective Question” (2005) 24 *The Arbitrator and Mediator* 1; Astor H, “Mediator Neutrality: Making Sense of Theory and Practice” (2007) 16 *Social and Legal Studies* 221; Douglas S, “Neutrality in Mediation: A Study of Mediator Perceptions” (2008) 8 *QUT Law and Justice Journal* 139.

²¹ Astor H and Chinkin C, *Dispute Resolution in Australia* (2nd ed, LexisNexis, 2002) pp 149-157.

²² Boule L, *Mediation: Principles Process Practice* (2nd ed, LexisNexis, 2005) p 35.

²³ Bagshaw, n 20, at 1-2.

²⁴ Bagshaw, n 20 at 2-4.

concept of neutrality. In her view, mediation is a storytelling process where dominant narratives may colonise alternative narratives. The mediator should act reflexively to address power issues in the mediation to ensure the hearing of diverse voices in the process.²⁵ Field has argued that neutrality is an illusion that cannot support truly ethical practice for mediators, and that a shift to a contextual ethical approach in mediation is necessary, supported by reflexive practice.²⁶

Douglas' recent study of mediators' views of neutrality in community mediation indicated that mediators clearly adopt neutrality as "a guiding principle of their practice", but struggle with the requirement to remain focused only on the process of mediation, and to limit their influence on the content and/or outcome of disputes.²⁷ In particular, mediators subjugated the notion of neutrality to a concern to ensure that party self-determination was made possible for each of the parties. In circumstances of power imbalance, this resulted in mediators accepting an expanded notion of neutrality, one sitting outside their own articulation of the boundaries of neutrality, in order to actively intervene to address the power imbalances between the parties. Douglas' analysis of the mediators' perspectives led her to re-frame neutrality *in relation to party self-determination*, moving away from neutrality as a binary, absolute construct, but avoiding abandoning the notion completely.²⁸

Issues relating to conferencing practice mirror concerns raised in mediation practice in civil matters. Field posited that the concerns raised regarding neutrality in the mediation context are also of relevance to conferencing practice.²⁹ Roche has argued that "the ADR literature contains much more sustained and critical analysis of the role of the mediator than the restorative justice literature".³⁰ Thus, as in mediation in civil matters even though a conferencing facilitator may intend to conduct a "neutral" procedure, the choices a facilitator makes during the conference will impact upon the content as well as the process.

After an offender is initially assessed as suitable to become a party to a conference, the facilitator is generally involved in the preparation, communication and action phases of the group conference. The facilitator generally has the responsibility to conduct intake with the parties and prepare for the conference, facilitate the dialogue in the conference and follow up on any plan made due to the conference.³¹ As Braithwaite noted, the role of the third party in conferencing requires the balancing of a variety of needs that include not only those who were party to the crime, but those who are present in the conference who have been affected by the offence.³² Actions taken by the facilitator will affect the unfolding story of the conference and will affect the experiences of the various participants. A facilitator's culture and identity will affect his or her practice in conferencing – as will his or her perception of neutrality.³³ Therefore it is important to research the stories of conferencing facilitators regarding their perceptions of neutrality in their practice.

THE STUDY: METHODOLOGY, LIMITATIONS AND DESCRIPTION

For this research study, a qualitative research methodology was chosen. Qualitative data can give detailed insights into practice that data gathered solely by quantitative methods generally cannot provide. Semi-structured interviews, which are largely open-ended, allow a researcher the opportunity to gather stories of practice.³⁴ The aim of the research was to explore the facilitators' views of

²⁵ Astor, n 20.

²⁶ Field R, "Ethics for a Mediation 'Profession': An Answer to the Neutrality Dilemma?" (2007) 10(2) *ADR Bulletin* 23.

²⁷ Douglas, n 20 at 140, 144-149.

²⁸ Douglas, n 20 at 149.

²⁹ Field R, "Victim Offender Conferencing: Issues of Power Imbalance for Women Juvenile Participants" (2004) 11(1) *Murdoch University Electronic Journal of Law*, <http://www.austlii.edu.au/au/journals/MurUEJL/2004/12.html> viewed 1 May 2010.

³⁰ Roche, n 12 at 226.

³¹ For a discussion of the skills, knowledge base and processes required, see the Best Practice Standards, VARJ, n 18, pp 23-38.

³² Braithwaite J, "Doing Justice Intelligently in Civil Society" (2006) 62(2) *Journal of Social Issues* 393.

³³ Douglas, n 20 at 140-143.

³⁴ Bryman A, *Social Research Methods* (3rd ed, Oxford University Press, 2008) p 318.

neutrality, its importance to them in their work and their views on how it can be achieved. The study participants were asked a number of questions to open up the discussion in the interview including questions about their understanding of the meaning of neutrality in their conferencing practice. Participants were asked to give non-identifying examples to assist them in their reflections. Whilst it is a limitation of this study that it was focused on a relatively small number of participants, the qualitative interviews offer a specific and rich understanding of the experiences and perspectives of the facilitators interviewed. Another limitation is that the study was conducted only in Victoria and, as such, is limited to that jurisdiction and to the model practised in Victoria which does not include police as third party facilitators, although police may be present at a conference.

The interviews for this study were gathered in 2006. The participants were selected for the research by an approach to the NGO in Victoria. At the time of this research this agency provided many of the conferences that were ordered as part of Children's Court proceedings for criminal matters and the majority of practitioners working for this agency were interviewed. Four conference facilitators from this agency agreed to be interviewed and one facilitator working within a rural context also agreed to participate. This last participant was recruited through the non-government agency conferencing co-ordinator. Of the five participants, four were male and one was female. The age of participants ranged from their 30s to 50s. In regards to educational background, four participants had a social work degree and one participant had training in youth work. One participant had also completed two units of a Graduate Certificate in Conflict Resolution. All were practising as facilitators or had practised previously in conferencing. The work of the facilitators was confined to the juvenile justice jurisdiction.

Each of the participant's interview lasted 30 to 60 minutes and was transcribed and analysed; a number of themes emerged from the data.³⁵ To ensure anonymity, the identities of the five participants were separated from the data and coded with the alphabetical letter A through to and including E. The following section of this article discusses selected themes from the research.

SELECTED RESULTS OF THE STUDY

Neutrality in practice

The overall perception from the responses was that neutrality was an issue for facilitators, yet there was little uniformity in their answers in terms of how they perceived neutrality and how they dealt with the concern in their practice. Participant A stated that his understanding of neutrality was not showing bias and understanding both sides. Participant B believed that it was important for a facilitator to keep their body language in check to avoid projecting bias. Participants C, D, and E all stated that it was important to consider the goals of the conference, that is, to rehabilitate the offender, and that this goal affected their view of neutrality. Each facilitator acknowledged they did see neutrality as part of their practice but they went on to comment that they struggled with the concept. Most described the concept of neutrality through the process of conferencing.

Participant A stated that neutrality was possible to achieve due to the conferencing facilitators practice. When neutrality is an issue, a facilitator should "*[r]efocus your objectives, tasks, jobs – clarify why he [the offender] is there*".

Participant B said that neutrality was possible because a facilitator took the parties in the conference through a defined process. Participant C argued that neutrality was possible "*because you present yourself as neutral*".

For Participant D, neutrality was the "goal" of the process and for Participant E neutrality was possible due to professional practice. Thus, the overall perception of the research participants was that neutrality was possible due to the process of conferencing. Although participants struggled to define neutrality as such, they all expressed confidence in their ability to maintain neutrality in practice. For

³⁵ Data relating to the education of the conference facilitators was also gathered as part of this research but discussion of this data is beyond the scope of this article.

example, for Participant A, the fact that group conferencing is a short process that is structured by policy and procedure decreased the opportunity for bias: *“Everyone is asked same questions. Tends to minimise problems of neutrality.”*

For another, participant preparation – the process leading up to the conference where, amongst other activities, a facilitator develops rapport with victims – was a critical factor in maintaining neutrality. However, the majority of participants also acknowledged that maintaining neutrality was difficult and depended on different situations. Participant D stated that neutrality was a goal, yet *“[c]ertain situations make you feel empathetic [on a] subliminal level”*.

For Participant E, it was very important to have a professional forum in which facilitators can discuss neutrality. Team meetings provided this participant with the opportunity to discuss cases or clients in a professional setting and to be challenged by peers. Exploring cases within these environments lowered the possibility of bias occurring: *“Maintain that you need to have supervision. Always have professional forums.”*

For some facilitators in this study, a difficulty with maintaining neutrality in practice was due to the funding of the process by the State. In Victoria, NGOs offering conferencing are funded by the government and the perception of some of the facilitators was that the focus of the process was therefore upon the offender. For example, Participant C stated that part of his role could include elements of case management. It was necessary to focus upon the offender because they could be the most vulnerable in the process and his or her needs were put first:

[There are] elements of being a case manager to a young person. [The] most vulnerable is the young person and addressing their high-risk needs. [I] spend more time with them – won’t necessarily involve the victim.

Participant D stated that he also tended to “support young offenders over victims”. Similarly, Participant E stated that:

Funding is not about the victim but about the offender – takes away from neutrality. [The] responsibility and duty of care more focused on young person.

Practice interventions

Participants were asked to consider times they found it hard to be neutral and how they had dealt with this issue in practice. Each facilitator gave a different answer to this question, and ways of approaching the issue. For Participant A, it was important to understand the values at the beginning of the conference. Thus due to the structural policy and procedure of the conference, problems of neutrality were minimised.

For Participant B, practice regarding neutrality centred upon not aiming to influence by not affirming a perspective. He stated that it was also important to consider the role of the facilitators. Their role is not a legal one, but to facilitate a resolution and provide rehabilitation for both the offender and the victim. Reflecting on this philosophy helped to keep this participant detached from the parties. Additionally, this participant stated that it was important to be mindful of taking an even-handed approach in the conference: *“Not affirming anyone’s comments in particular. Aiming not to influence at all.”*

Participant C stated a variety of responses to this question including being clear about the process and what is would be discussed. Similarly, the actual process of the conference and the procedure for setting up a conference was important to maintain neutrality for Participant C: *“Convenors make decisions about who is coming to the conference.”*

For Participant D, the training of the discipline of social work gave insight into how to practise neutrality:

[In] team meetings – [facilitators] speak about these issues. [Neutrality is assisted by] social work training – don’t personalise the problem.

As noted, Participant E believed that professional forums were important in maintaining neutrality. This participant argued that too much practitioner time or travel spent in isolation could inhibit neutrality and it was important to be able to touch base with other facilitators to be challenged

about practices and thus avoid bias. Facilitators discussing cases and also being aware of being assigned cases that could be distressing or too difficult was also important.

Non-identifying examples of neutrality concerns

The question was posed to each participant “can you give examples (non-identifying) of where it was ‘hard’ to be neutral?” Four of the five facilitators provided differing examples of times when they felt concerned about neutrality.

Participant A was of the opinion that the preparation period could compromise neutrality. As the process building up to a conference is relatively short term, the opportunity for partiality was limited. However, the preparation period could be affected if the individual facilitator was under pressure as work practice could suffer:

Preparation period – work practice is affected – under pressure – could affect neutrality. Do things you may not necessarily [normally] do.

For Participant B, it was the demographic location that caused the most concerns regarding neutrality. Being part of a country town, the participant was concerned that there was the possibility of knowing the offender or the victim, which “[b]rings into play a large range of areas that are not in context”. Knowing the offender, victim or a relevant party in the matter could cause the facilitator to feel sympathy or, alternatively, to experience a negative reaction to a party. Living in a close community opened up unique issues for this participant, compared to those living and working in metropolitan areas.

Participant C discussed a situation where an offender involved in a burglary denied he had a major role in the crime. However, when confronted in a group conference, he admitted he did play a part and was in fact a “big” player in the crime. This left the offender open to the possibility of more charges being laid. The offender had embraced the process and had admitted the truth when confronted with the victim. This created a moral quandary for the facilitator who expressed concern that a conference operated within the legal system, that is, “dealing in an adversarial system in a restorative way”.

Similarly, Participant E had concerns about the way that conferencing operated within a legal system. This participant argued that being unable to discuss certain aspects of a case impacted upon neutrality. This facilitator stated that he often learned parts of a case yet due to the legal implications of the information was unable to discuss all relevant details in the conference.

Ones that are hard are the ones that are gagged. [The facilitator] can’t offer victims enough. Not enough support.

For this participant, the concept of repairing harm in an adequate way to provide restitution to the victim was difficult and frustrating. This participant stated that he could see how unfair it was and was frustrated by the lack of opportunity to repair harm. Knowing this, and the constraints of the legal system, could impact on neutrality on a subconscious level, and more attention could be focused on the victim, rather than resolving the conflict and rehabilitating the offender. This participant was extremely supportive of group conferencing as a means of resolving conflict, yet expressed a level of frustration when it came to repairing harm to a victim. This was often due to the offenders’ attitudes to the conference or reluctance to participate effectively throughout the actual process.

DISCUSSION AND CONCLUSION

Neutrality is an important practice concern in conferencing practice. Facilitators in this study expressed confidence in their ability to be neutral although they struggled to describe consistently the meaning of neutrality. The study established that the facilitators largely believed that neutrality was possible due to the conferencing process itself, with its defined stages and the preparation with parties. Facilitators also commented upon the issue of the funding for the programs in Victoria coming from the government and the effect that this funding arrangement had upon their framing of practice. The facilitators’ focus tended to be upon the offender rather than the victim and this affected whether they perceived themselves to be able to maintain neutrality. A method of ensuring neutrality offered by one of the participants was to engage in professional forums to discuss practice issues, such as neutrality.

The data shows an understanding of neutrality in this small sample of facilitators as largely involving impartiality or a freedom from bias. The more nuanced understanding of neutrality as described by mediator commentators, such as Bagshaw, was not evident in the discussions of the facilitators in this study. The facilitators did not discuss neutrality as an illusion and nor did they indicate the view that they impacted upon content as well as the process of conferencing. The facilitators therefore did not articulate concerns regarding the impact of their choices upon the conference, nor did they generally provide examples of their own identities affecting choices in the conference process. The exception related to the sympathy that they might feel for either a victim or offender due to the nature of legal and justice implications of the conference. The backdrop of the law might mean that an offender might give information that could later be used to his or her detriment or a victim may not be given sufficient information regarding an offence. These larger systemic concerns worked to compromise the facilitators' sense of neutrality due to a sense that the system was operating inappropriately.

From this small sample, there was some support for the view that training and ongoing professional development can assist with conferencing facilitators' neutrality. Appropriate funding was also a key concern as to whether both the victim and the offender can be given the necessary time in the conferencing process. Also of importance was the option of not being involved in a conference if there is the possibility of knowing the parties to a degree that may mean that there is an inappropriate level of sympathy.³⁶

The data does not support the view that the facilitators in this small sample understood neutrality as an impossible construct in conferencing practice. This mirrors, to some extent, Douglas's findings in relation to mediators in community mediation.³⁷ A key difference is that in the study of community mediators, self-determination was the frame of mediators' practice when considering neutrality. In the context of this study of conferencing, the frame of practice was found to be on the rehabilitation of the offender. The priority given to the offenders' rehabilitation may mean that the practitioners may not have sufficient time and attention to give to the victim throughout the process. The Victorian Law Reform Committee has recently called for training for facilitators regarding victims' rights and needs.³⁸ As noted, this study was a small sample of a now expanded program in conferencing in Victoria. Due to the small sample size in this research, the findings must remain tentative at this stage. Therefore, in order to understand more fully the issues surrounding facilitators' understanding of neutrality, the authors recommend that a further larger study, including facilitators in all States, be undertaken. This study could consider facilitators' training as well as practice and the best way to assist facilitators to engage with the contested nature of neutrality and achieve ethical practice.

³⁶ This issue was also raised in a recent study of rural and regional mediators in Victoria: Gibson F and Rochford G, "Dispute Resolution in Rural and Regional Victoria" (2010) 21 ADRJ 111 at 115.

³⁷ Douglas, n 20.

³⁸ Law Reform Committee, n 2, p 285.