

Youth Court Judges' National Conference

Auckland, 16 - 18 March 1995

restorative justice issues

Judge FWM McElrea questions for discussion

1. What is restorative justice ?

see handout for Howard Zehr's definition and for resources

2. What is distinctive about our Youth Court model?

At the New Zealand Law Conference in March 1993 I identified three radical changes that made the new system distinctive:

"One, the transfer of power from State, principally the courts' power, to the community. Secondly, the Family Group Conference as a mechanism for producing a negotiated, community response. And thirdly, the involvement of victims as key participants, making possible a healing process for both offender and victim."
(Transcript pp 1,2.)

3. Do we reinforce or undermine restorative justice in the Youth Court?

Using the three features above as a framework:-

A. How do we facilitate the transfer of power to the community?

(1) What proportion of FGC plans do we accept?

(2) When should the Information be withdrawn?

- (3) How quickly do we get the case out of court and off to an FGC?
- (4) Proceedings as a last resort - s 208(a). Questioning arrests : s 214(1)
- (5) Avoiding jargon and other "exclusive" techniques

B. Does the FGC produce a negotiated community response?

- (1) Do the family feel they are participants when in your Court?
- (2) When should we make court orders (ie impose the outcome)?
- (3) Absence of pleading in the Youth Court model. Section 246.
- (4) Community solutions preferred - s 208(d)

C. Healing for both offender and victim

- (1) How often do victims attend FGC - how can we help?
- (2) Do young people participate - how can we help?
- (3) Section 4(f) - accepting responsibility. See Zehr video excerpt.
- (4) Effectiveness reports s 320 - has there been healing?

4. Interest in our Youth Court model for adults - here and overseas.

Howard Zehr towards the end of the video cassette "Restorative Justice: Making things Right" (Mennonite Central Committee US):

"From a structural justice standpoint, one of the more fundamental needs is to hold offenders accountable in a meaningful way. I have conversations with judges sometimes and they say, 'Well, but I need to hold the offender accountable' - and I agree absolutely, but the difference is as to how we understand accountability. What they're understanding by it, and the usual understanding is 'you take your punishment'. Well, that's a very abstract thing. You do your time in prison and you're paying your debt to society, but it doesn't feel like you're paying a debt to anybody - basically, you're living off people while you are doing that. You never in that process come to understand what you did, and what I'm saying 'accountability' means is understanding what you did and, then taking responsibility for it; and taking responsibility for it means doing something to make it right, but also helping to be part of that process."