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Restorative Justice for Adult Offenders: Practice in New Zealand Today

F. W. M. McElrea

Introduction

For historical reasons, New Zealand interest in restorative justice has been driven primarily by practitioners, not by policy makers or academics. Three or four years before the term 'restorative justice' had become known in New Zealand, the Children, Young Persons, and Their Families Act 1989 introduced the family group conference for young offenders. The Act applied to Youth Court proceedings dealing with offenders of or over the age of 14 and under the age of 17. One of the primary objectives of the Act was to strengthen the ability of families to hold their young people accountable and encourage them to develop in law-abiding and socially productive ways.

Those like myself working with the Act soon saw the family group conference concept, talked about it and wrote about it as a new model of justice. When in 1993 I returned to Cambridge on sabbatical leave and read Howard Zehr's *Changing Lenses* (1990) it seemed he was describing a very similar approach. In early 1994 I wrote two papers, the first assessing our youth justice model as a restorative model and the second arguing for the application of its central principles to adults through community group conferences. From late 1994, these adult conferences were held on an informal, non-statutory basis encouraged by several like-minded judges with the blessing of successive Chief District Court Judges. There are currently some 30 restorative justice schemes in different parts of the country receiving some government funding, mostly set up by the Crime Prevention Unit[1] but also including the court-based scheme operating in four courts, including my own, the Auckland District Court.

The principal model of restorative justice used in New Zealand is the restorative justice conference – either a family group conference (for young people) or a community conference (for adults). A typical restorative conference involves the prior admission of responsibility by the offender, the voluntary

1 The Crime Prevention Unit was previously part of the Prime Minister's Office, but is now within the Ministry of Justice.

attendance of all participants,[2] the assistance of a neutral person as facilitator, the opportunity for explanations to be given, questions answered, and apologies given, the drawing up of a plan to address the wrong done, and an agreement as to how that plan will be implemented and monitored. The court is usually, but not necessarily, involved.

In the youth justice sphere, about one-third of conferences are not directed by the court but are diversionary conferences, initiated – and attended – by the police. If agreement can be reached as to an outcome that does not involve the laying of charges, then no charges are laid – so long as the outcome is implemented. I see the concept of a community resolution centre as able to operate in a similar way for adults, as explained below.

In this chapter, I discuss how restorative conferences operate in the adult criminal justice system. In particular, I discuss the Sentencing Act 2002 and the Victims' Rights Act 2002, which provide the legal mandate for restorative justice for adults. I then discuss some of the schemes that have developed for providing restorative justice programmes to respond to offending by adults, and how restorative justice has impacted on the sentencing process in New Zealand. Finally, I outline a proposal for the development of a more community-based model of restorative justice through the concept of community resolution centres.

Sentencing Act 2002

In 2002, a new Sentencing Act was introduced that explicitly recognised restorative justice for adults. The scheme of the Act is permissive rather than mandatory, but where restorative justice processes have been followed the courts must take them into account in sentencing.[3]

The Act contains provisions that explicitly endorse restorative justice or the principles on which it is founded. They are in many ways remarkable and (as far as I know) unprecedented.

Section 7 lists eight purposes of sentencing. While they are not listed in any order of priority, the first four support the restorative approach, while the first two come directly from the language of restorative justice. This is the complete list of purposes:

2 Participants include victim, offender, their supporters, community representatives and (ideally) a police officer.

3 A fuller account of the provisions of the 2002 Act is in Eaton and McElrea (2003).

(a) to hold the offender accountable for harm done to the victim and the community by the offending; or

(b) to promote in the offender a sense of responsibility for, and an acknowledgement of, that harm; or

(c) to provide for the interests of the victim of the offence; or

(d) to provide reparation for harm done by the offending; or

(e) to denounce the conduct in which the offender was involved; or

(f) to deter the offender or other persons from committing the same or a similar offence; or

(g) to protect the community from the offender; or

(h) to assist in the offender's rehabilitation and reintegration; or

(i) a combination of 2 or more of the purposes in paragraphs (a) to (h).

Likewise, the section dealing with principles of sentencing (section 8(j)) requires the court to "take into account any outcomes of restorative justice processes that have occurred". More explicitly, section 10 requires the court to take into account any offer of amends made to the victim, any agreement between them as to how the wrong or loss may be remedied or to ensure it will not recur, any measures taken by the offender or their family to compensate the victim, make an apology, or "otherwise make good the harm that has occurred", and the extent to which such matters have been accepted as "expiating or mitigating the wrong". (This last aspect was also present in the previous legislation.)

Other principles of the Act are also relevant but are not new, for example, the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community (section 16(1)).

Very important also is section 27, which allows a defendant to call one or more people to address a sentencing court on:

(a) the personal, family, whanau, community, and cultural background of the offender:

(b) the way in which that background may have related to the commission of the offence:

(c) any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence, involving the offender and his or her family, whanau, or community and the victim or victims of the offence:

(d) how support from the family, whanau, or community may be available to help prevent further offending by the offender:

(e) how the offender's background, or family, whanau, or community support may be relevant in respect of possible sentences.

Section 27 is a greatly expanded version of its predecessor (section 16 of the Criminal Justice Act 1985), with the contents of paragraphs (c) and (e) being entirely new.[4]

Section 25 allows the court adjourn sentencing until any such measure has been implemented. Alternatively, under section 110 a defendant may be ordered to come up for sentence if called on at any time within 12 months, and if the court specifies conditions that it expects to be fulfilled in that time then the non-performance of such conditions can result in the defendant being summonsed back to court to be sentenced.

Alternatively – and sometimes in addition – restorative conference outcomes can become elements in court sentences of supervision (as special conditions of supervision), community work (especially where the conference has recommended a particular type of work or a particular community sponsor), or even imprisonment (as special conditions of release in a sentence of 2 years or less). In the case of longer sentences of imprisonment, the Parole Board may require restorative justice elements to be fulfilled as conditions of parole. The Corrections Act 2004 is also relevant in this regard.

Victims' Rights Act 2002

At the same time, section 9 of the Victims' Rights Act 2002 reinforced parliament's intentions as expressed in the Sentencing Act 2002, by requiring all judicial officers, defence and prosecution lawyers, court staff and probation officers to encourage the holding of a meeting between victim and offender "to resolve issues relating to the offence", provided the victim and offender agree, the resources are available for holding such a meeting and a meeting of that kind is practicable and appropriate. While section 10 provides that such a responsibility (to encourage the holding of victim–offender meetings) is not legally enforceable, it is nevertheless among the principles that should guide the treatment of victims.

4 Section 16 of the Criminal Justice Act 1985 referred merely to "the ethnic or cultural background of the offender, the way in which that background may relate to the commission of the offence, and the positive effects that background may have in helping to avoid further offending".

Community restorative justice trusts

Since 1995, restorative justice trusts have been formed throughout the country, often with the support of the Crime Prevention Unit. These programmes differ somewhat in their practice model, the types of cases they receive and how they are funded, but all espouse at least some restorative justice principles and all accept referrals from their local District Courts.

First in time was the Te Oritenga Restorative Justice Trust formed by the Reverend Douglas Mansill, following his facilitation of the first adult restorative conference in Auckland in 1994.[5] This group operated without government funding or support, and was the model for other groups of trained volunteers providing facilitation services, mainly in Auckland. All of these groups brought together victims, offenders and others in a community setting, and remain within the core model of restorative justice.

The first government funding came from the Crime Prevention Unit and supported three pilot schemes for community diversion of adult offenders. These were Project Turnaround in Timaru, Te Whānau Awhina in Waitakere, and the Community Accountability Programme in Rotorua. The first two began operating in 1996, and the last some time later (as the Second Chance Restorative Justice Programme). They were not initially referred to as 'restorative justice', possibly because the then Department of Justice was not actively supporting restorative justice, but they applied some restorative justice principles.

The first two such programmes are still in operation today, although they have always operated somewhat differently from each other.[6] In Project Turnaround, on the offender's first appearance at court the judge may divert them to Project Turnaround and, if the subsequent community panel meeting is attended by the offender and if the plan agreed to there is completed, the offender makes no further court appearance and the police withdraw the charges. The panel members in Project Turnaround are volunteers who are selected to represent the community and they are the principal decision makers. A police officer is normally present at the meeting and the victim can also be present. At the panel meeting, the offender is confronted with their offending and its consequences. The plans from these meetings usually involve making amends to the victim and the community and making arrangements of both a reintegrative and rehabilitative nature.

5 See further Hayden (2001, section 2.6).

6 For more detail, see Smith and Cram (1998) and Maxwell et al. (1999).

As in Project Turnaround, offenders at Te Whanau Awhina are referred to the scheme by the judge at a court hearing. However, offenders who appear before a panel at Te Whanau Awhina are not necessarily diverted from further court appearances and court-imposed sanctions. Another important difference is that at Te Whanau Awhina, the panel typically consists of three or four members of the marae (Māori community centre), including one who takes the role of kaumatua (elder) and chairs the proceedings. The elders are the decision makers. The police do not usually attend the meetings at Te Whanau Awhina, nor usually do the direct victims, although those facilitating the meetings identify both the offender's family and the Māori community as victims. The whānau and friends of the offender, on the other hand, are likely to attend.

The focus of the panel meeting is first and foremost one of 'challenge': confronting offenders with the consequences of their offending for them, for their victims, for their family and whānau, and for the Māori community. The second main focus of the meeting and of the subsequent outcome is that of 'embrace': reintegrating the offender back into their family and whānau and into the Māori community and finding employment. The focus is reparation to victims and to the community and reintegration with family and whānau, and with the Māori and the wider communities. Thus, outcomes typically include plans relating to obtaining employment or job training and participation in marae-based programmes and activities as well as responses to victims.

Te Whanau Awhina has a strong ethnic base (specifically Māori), draws widely on Māori tikanga (culture), and is offered predominantly to Māori offenders. In contrast, Project Turnaround has no ethnic element (possibly reflecting the much lower Māori population in Timaru than in Waitakere), but draws on a panel of volunteers of varied backgrounds and skills, selected for the particular case. While having other admirable attributes, neither scheme (in my view) scored highly in the central restorative justice objective of involving victims, but since the 'restorative justice' label has been attached to the Crime Prevention Unit–funded groups, their attention to victim involvement appears to have increased.

It is also questionable how far a scheme in which the decision makers are panel members can be truly restorative. The ideal is for all participants, including victims and offenders, to be partners in the formulation of an agreed outcome. The notion of empowerment of the victim, in particular, does not sit comfortably with decisions being made by panel members.

The results of evaluation show that both schemes are effective in leading to the expression of remorse by those who offend, leading to them undertaking actions to repair the harm that they did, meeting victims' needs (when victims

were involved), and reducing both the probability of reoffending and the costs to the justice system. (See, for example, Bowie, 2003; Maxwell et al., 1999; Smith and Cram, 1998.)

Subsequent community diversion programmes assisted by the Crime Prevention Unit have developed in several different ways. As at January 2006, the Crime Prevention Unit funded 19 community-based programmes of which eight offered the community panel model, seven offered victim–offender conferencing, and four offered both models.

Court-referred restorative justice pilot

Broad outline

The court-referred restorative justice pilot was initiated in 2001 and has now been professionally evaluated (Crime and Justice Research Centre and Triggs, 2005). Even though it is no longer a pilot, the scheme continues to be funded by the Ministry of Justice. Broadly speaking, the scheme, which operates in the Auckland, Waitakere, Hamilton and Dunedin District Courts, covers moderately serious offending where a guilty plea has been entered and both the defendant and the victim wish to take part in a restorative conference. Several 'provider groups' are approved by the Ministry of Justice (previously the Department for Courts), and these groups in turn have several conference facilitators trained by the ministry who arrange and manage restorative conferences. For this, the provider group is paid a fee by the ministry. Within each of the four District Courts involved, a restorative justice coordinator is the link between the court and the community.

Suitability of the defendant

Counsel for a defendant need to discuss with the court coordinator whether the defendant is regarded as suitable for restorative processes. Most are regarded as suitable, but the coordinators will not accept defendants who have pleaded guilty but do not accept responsibility for the offence (that is, are still 'in denial'), or who would pose a risk to the victim, for example, through mental instability.

Attitude of victim

If the defendant is regarded as suitable and (as nearly always then occurs) the court grants an adjournment and refers the matter for a restorative justice conference, the coordinator appoints a provider group to handle the case, which

group may be selected for its particular suitability for the case. A facilitator from that group will approach the victim(s) to see if they wish to take part. If some victims do wish to participate and some do not, the conference can go ahead with those who do want to be involved.

Reports and monitoring

A report is sent to the court as to the outcome, if any, of the conference. If the court then adjourns for a conference outcome to be implemented, the facilitator sends a supplementary report as to the completion of the matters covered by the conference agreement. (However, the actual monitoring of the outcome is done by people other than the facilitators and they should be named in the conference report.)

As noted, the court must take the report of the conference into account, in accordance with section 10 of the Sentencing Act 2002.

Results of the evaluation

The latest evaluation of restorative justice for adults (Triggs, 2005) is described as a 2-year follow-up of reoffending. It showed a 17% reduction in the use of imprisonment coupled with a 9% reduction in reoffending measured after 2 years, and a 50% reduction in the seriousness of offences where participants did reoffend.[7] The 2-year follow-up did not measure victim satisfaction at that point, but in the earlier (main) evaluation very high rates of victim satisfaction were recorded, as has been shown in youth justice studies as well.

Impact of restorative justice on criminal law practice

I would like to tell you that the provisions of the 2002 Act have brought about a vast difference in the way the courts approach sentencing, but the truth is that progress is slow. We have very far-sighted legislation, but lawyers (including judges), prosecutors, government advisers and others are slow to give up their old court-based, adversarial mindsets. Much of the impetus for change is to be found, as it was 20 years ago, in the impatience of the community with the formal system, and my view is that we need to develop a parallel but interlocked

7 The figures just given are not stated in the evaluation but were calculated by me from the raw data provided. I respectfully disagree with the author's view that the results were not statistically significant, and have said so publicly.

system of community resolution centres that will become the first or 'default' system. I return to this below.

Despite the slowness of the general body of criminal justice practitioners to change, the impact of restorative justice on sentencing has been significant. One of the best accounts of this is a paper written by a visiting scholar from the United States, Yael Shy (2006). She discusses several cases from all levels of the New Zealand courts and suggests that restorative justice is in fact changing the jurisprudence of sentencing law in New Zealand.

Although initially the Court of Appeal[8] appeared to treat a restorative justice outcome as merely a mitigating factor in sentencing, to be set against traditional factors such as deterrence, Shy (2006) notes that several judges since then have applied the concept in a more comprehensive manner. She remarks (p. 17):

> Judges are also beginning to see restorative justice as a way to synthesise seemingly opposing sentencing values within these different areas. Accountability, responsibility, healing, denunciation and the opportunity for restitution are all being recognised to co-exist within one successful restorative justice conference, lessening the very difficult task of judges to ensure these goals and requirements are met through sentencing.

Let us therefore consider five specific goals or requirements of sentencing to see how this works in practice.

Remorse

It is often difficult for a court to assess things like the degree of remorse experienced by a defendant or the sincerity of an apology, or to understand a victim's feelings about the case. The report of a restorative conference can make such aspects real to the court in a way that other means, for example, victim impact statements, simply cannot. As one illustration, take this extract from the decision on appeal in *Feng v Police*.[9] Here the defendant had been sentenced to imprisonment and denied leave to apply for home detention. He appealed to the High Court.

> [17] In the present case a factor telling against the appellant is his driving record. However, that is, in my view, not sufficient on its own to justify a refusal of leave [to apply for home detention]. There is no doubt that the appellant has displayed extreme remorse for his actions.

8 *R v Clotworthy* (1998) 15 CRNZ 651.

9 *Feng v Police* HC Auckland A127/02, 4 September 2002, Justice Salmon.

> He attended a restorative justice conference. The facilitator of that conference records in his report the appellant's expressions of remorse. The report records that the appellant missed his friend and that every night he cried in bed and that he felt it was unfair that he was still alive when his friend was gone. He said that he was very, very sorry and was willing to receive whatever punishment was coming.
>
> [18] In response to that, the mother of the dead young man said:
>
> We are not here to punish you or judge you. That is for the law to decide.
>
> She said she hoped that the appellant would have a good future.
>
> [19] The facilitator records, under the head of Conference Outcomes, that the family of the deceased acknowledged the appellant's remorse and accepted his apology. The family said they were open to future visits by the appellant to their home, especially to see the album that they had compiled on their son's life. The appellant made arrangements to contribute to a trust which the parents have set up in memory of their son.

No judge, I suggest, could be given a clearer and more personal account of the remorse actually felt by an offender, and its impact on his victims. (The defendant was granted leave to apply for home detention, so he could serve his prison sentence in that form.)

Accountability

Accountability has often been equated with punishment in Western criminal justice practice, but it is a much wider concept. What restorative justice allows is a very personal, face-to-face form of accountability that requires personal interaction, a willingness to explain one's actions, and the opportunity to make an apology and an offer of amends. Punishment may still play a part, but not the dominant part it has in Western criminal justice systems. (See further McElrea (2006) on the issue of accountability and punishment.)

The objective of accountability is illustrated by a prosecution brought under the Resource Management Act 1991, *Auckland Regional Council v Times Media Ltd.*[10] The case involved offensive fumes from a printing works at Warkworth, a country town north of Auckland. The restorative conference outcome included these elements:

10 *Auckland Regional Council v Times Media Ltd* DC Auckland CRN2084004885, 16 June 2003, District Court Judge McElrea.

- an apology to be published in the local newspaper;
- a donation to the local college for a native tree planting project;
- payment for regional council testing of health factors;
- a planted barrier around part of the site;
- a new odour entrapment device installed within 2 months; and
- payment of regional council costs.

Before imposing fines (at a reduced level) the court acknowledged (paragraph 20) that the defendant had been prepared to meet its victims face to face, to make an apology, and to be accountable for its actions; it had acknowledged the victims' concerns and agreed to a range of measures to try to meet those concerns. The court added that while it is there to see that justice is done, some crucial elements of justice had already been fulfilled.

Promoting a sense of responsibility

The *Times Media Ltd*[11] case showed how restorative conferencing can promote a sense of responsibility in offenders in a very personal way. However, it is another advantage of restorative justice that a wider focus of responsibility can be considered. Although there were no previous convictions against the defendant there was a long history of infringements against the Resource Management Act 1991, and some of the residents' concerns were directed at the perceived failure of the regional council to properly enforce the requirements of the law. Indeed, the judgment comments (paragraph 44) that the defendant's lack of previous convictions:

> may be more a reflection on the slowness of the [Auckland Regional Council] to prosecute and its willingness to continue dealing with a persistent offender by way of infringement notices and abatement notices.

It is not uncommon at restorative justice conferences for the spotlight to go on 'officials' whom the victims feel have let them down – which I suggest is a healthy and democratic feature, making for a more accountable enforcement regime.

Interests of victims

One of the major short-comings of the Western, court-based adversary model of criminal justice is that victims are largely excluded from the process. By

11 *Auckland Regional Council v Times Media Ltd* DC Auckland CRN2084004885, 16 June 2003, District Court Judge McElrea.

contrast, in the *Times Media Ltd*[12] case a large number of local residents turned up for the conference – more than could be accommodated in the room booked for the occasion. It was significant that some of the residents also attended both parts of the sentencing hearing – there having been an indication of likely sentence, and then an adjournment to allow the plan to be carried out before sentencing occurred. It was some of those present in court who explained to the presiding judge that an apology was agreed to be published in the local newspaper printed by the defendant because the newspaper had refused to publish letters to the editor complaining about the offending behaviour. (This illustrates another strength of restorative justice – the much greater variety and flexibility of outcomes than the court process provides.)

Deterrence

The courts have in the past regarded deterrence primarily as a matter of the severity of punishment. Restorative justice is changing that. Examples of restorative outcomes that have a public deterrent effect include apologies and articles written in local or ethnic community newspapers (for example, *Auckland City Council v Raniga*[13]) and community work of an educative type, such as where a young drink-driver spoke to more than 8,000 secondary school students about what it was like to kill his two best friends by driving drunk. As one of the appeal judges asked in that (Canadian) case, "How is the principle of general deterrence better served [in such a case]?".[14] The appellate court upheld the sentence of community work, partly for that reason.

Working with the community

A key feature of community policing found in several cultures, including those of the Pacific and in South Africa, is the notion of police and community working together pro-actively to find solutions to community problems, particularly crime. This finds its expression in local police stations that serve a neighbourhood with which the police are expected to be familiar. New Zealand has some of that community-policing element, but it is still underdeveloped compared with the practice in other societies. However, restorative justice can provide the means by which such partnerships are forged. I refer here

12 *Auckland Regional Council v Times Media Ltd* DC Auckland CRN2084004885, 16 June 2003, District Court Judge McElrea.

13 *Auckland City Council v Raniga* DC Auckland CRI2006-004-023-004-023560, 2 April 2007, District Court Judge McElrea.

14 *R v Hollingsky* (1995) 103 CCC (3d) 472.

particularly to the practice where, in some areas, youth justice coordinators work closely with the specialist Youth Aid police officers to involve the community.

This was done brilliantly by a youth justice coordinator (Allan MacRae[15]) and a senior Youth Aid officer in the Wellington areas in the late 1990s. They set out to increase community involvement in youth justice conferences. As well as family members and police, selected representatives of relevant agencies and/or voluntary organisations, perhaps two or three for a given conference, depending on the particular dynamics of the offending and the community, would be invited to attend and be part of the solution. Over this period, youth offending in the area dramatically reduced, because conferences were better informed as to the needs of both victim and offender, and better placed to find the local and state resources to deal with the issues.

Proposal for community resolution centres in New Zealand

The following is the outline of a proposal I have made for the development of community resolution centres in New Zealand, and is currently under discussion. The topic is one I first advanced in Florida in 1998. (Until now, I have called these community justice centres, but that term has a different meaning in South Africa and the United States.) If established these would help us to get away from our heavy reliance on the courts, and would make victim-initiated restorative justice a reality.

The object of the proposal is to provide a community-based and consensual alternative to the courts for dealing with a substantial number of civil and criminal matters, using mediation for civil matters and restorative justice for criminal matters. This work, and disputes that might not have gone to court (such as neighbour disputes and alleged harassment or bullying), would be handled through community resolution centres that would operate as a partnership between local and central government, the police, the voluntary sector and various existing agencies. A pilot working in at least two different types of area would be ideal.

As far as civil disputes are concerned, the mediation function of the Disputes Tribunals would still be available for claims up to $7,500, but a community resolution centre would have no monetary limit. Agreements resulting from mediation would be enforceable through the courts if they were

15 Co-author of *The Little Book of Family Group Conferences* (MacRae and Zehr, 2004).

not honoured. For example, the claimant would be able to get judgement based on a signed settlement agreement, without having to prove the original claim.

For the category of 'disputes that might not have gone to court (such as neighbour disputes and alleged harassment or bullying)', the community resolution centre would serve more of a preventative or peace-keeping and peace-building function, thereby building safer communities and reducing the need for dispute resolution or the courts.

For criminal matters, the essential concept is that of diversion, but operating at a much more significant level than existing police diversion for first offenders. This is the major gap in criminal justice services for adults at the moment. It would not be limited to first offenders or to minor charges. It would use the proven New Zealand model of restorative justice, with offenders having to admit their responsibility and the matter proceeding only if there is the consent of victim and offender, and a trained facilitator able to supervise the process. The restorative conference would involve supporters of the parties and some relevant community representatives, selected for their ability to assist in the particular case. Lawyers would be entitled to attend, but as advisers rather than as advocates.

The police would be key people in this process. It is hoped that a community resolution centre would be located near a community constable's office. A police officer (for example, the community constable or the officer in charge of the case) would be entitled and encouraged to attend every conference, and for agreement to be reached as to outcome, all parties present, including the police, would have to be in agreement. It should be explained that there is no corruption in our police force, so I have no hesitation in requiring the support of a police office in each case. In most cases an agreed outcome would not involve charges being laid in court (provided the outcome is completed). However, in a particular case it might be agreed that charges should be laid in court – for example, to obtain an order disqualifying the offender from driving, or where a sentence of imprisonment cannot be avoided – but the outcome would be available for the court to take into account on sentencing.

As in the case of youth justice diversionary conferences, charges may have to be laid in a few cases to preserve time limits, but without requiring the defendant's attendance at court if the charges are ultimately withdrawn on completion of the conference plan.

The community resolution centre would oversee the monitoring of any outcome, civil or criminal, so that if agreements are not honoured the matter can be taken to court in the usual way. The courts would therefore act as a backstop

for consent cases and a first stop for cases where there is no consent to the mediation or diversion process.

It would be ideal if the community resolution centre was located within or close to a complex that provided other community-based services, such as a community constable, social services, a Citizens Advice Bureau or community law centre.

Referrals to the community resolution centre could come from any source. In the case of criminal offending, this would fill a long-standing need for victim-initiated restorative justice cases, or indeed offender- (or even community-) initiated conferences. However, it is likely that the bulk of the referrals would come from the police, at least in early years. In that respect the process would be similar to diversionary family group conferences for young offenders, which are initiated (and attended) by police Youth Aid officers.

There would, therefore, be no 'gatekeepers'. No judge, police officer or other 'official' would say who could or could not enter the process. Whether a case continued on the restorative route would be decided by those taking part in the particular conference, on a case-by-case basis. Apart from homicide, treason and other cases that can be dealt with only by the High Court, all types of cases could be referred to the community resolution centre, although cases that require specialist skills (for example, domestic violence or sexual abuse cases) that are not available at the time, could not be accepted.

The essence of the proposal being community based, the initiative has to come from the community. This might be expressed through a local body (for example, a city or district council) or some other community organisation such as (for Māori) an iwi authority. The local body would have to take responsibility for providing accommodation for the centre and servicing a community committee to run the centre. This committee would have representation from all relevant sectors; for example, Victim Support, the local body (perhaps through its Safer Community Council or local ward committee), local mediation and restorative justice provider groups, central government (for example, the Crime Prevention Unit), a neighbourhood law office or Citizens Advice Bureau, the police, and representatives from churches and other community groups. Existing interagency initiatives could also have a focus at the community resolution centre, especially those dealing with conflict and the problems that produce conflict.

It would be necessary for the community resolution centre to employ some permanent staff (perhaps two people) and to contract the services of mediators and restorative justice facilitators on a case-by-case basis from suitably skilled and trained service providers. Because the community resolution centre will be

reducing the need for the courts (and, indirectly, for corrections facilities), I feel it is appropriate that central government provides funding for such costs, and for some offender or victim programmes not available locally. A variety of other services may be provided by other agencies at no cost or by volunteers. In this category could be the monitoring of agreements, mentoring and the provision of community service projects or counselling services.

The primary tasks of the staff will be to provide information to the public, manage the flow of cases, ensure monitoring arrangements are in place, keep records of all matters dealt with, and generally act at the direction of the management committee.

Conclusion

Already in New Zealand, restorative justice conferences have proved their value both in the youth and adult criminal justice systems. However, in the adult system, referrals still occur through the courts as pre-sentencing options. I would suggest that the adult criminal justice system could benefit by an increased use of restorative conferences as diversionary options before a court appearance.

If restorative conferences were regularly used when offending is admitted and the victim and offender agree to meet, then the community representatives who are present along with the prosecutor could build case by case on the information gained about offending in the local area, and shape the outcomes of conferences towards crime prevention rather than punishment for its own sake. The outcomes are likely to be a further reduction in the use of the courts, reduced reoffending, lower imprisonment rates, and a society in which victims will increasingly become real partners in making safer communities.

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