

Biography of Fred McElrea and Some Milestones of Restorative Justice during His Career



Born in Dunedin, New Zealand, Fred McElrea graduated with an LLB and an MA (first class honours) in philosophy from Otago University then an LLM from London and a DipCrim from Cambridge University. After 18 years in civil litigation in Auckland, he served as a judge of the District Court (1988–2013), the Youth Court (1990–2001) and as an Alternate Judge of the Environment Court (2001–2013), all also in Auckland. He sat on the Supreme Court of Tonga for three months in 2004. Other appointments besides those in restorative justice have included:

- Part-time lecturer in Criminal Law/Advanced Criminal Law and in Civil Procedure at the University of Auckland
- Member of the New Zealand Council of Legal Education
- Council member of the Legal Research Foundation
- Chairman of the Representation Commission (an independent statutory body responsible for redrawing New Zealand's electoral boundaries) for two elections
- Chairman of the Executive of the Auckland City Mission, an Anglican charitable trust

McElrea and New Zealand's Early Lead in Restorative justice

McElrea discovered restorative justice through his work as a judge in the youth jurisdiction. Fortuitously, he took up his warrant the year that the Children, Young Persons and Their Families Act 1989 introduced Family Group Conferences (FGCs), rather than prosecution, as the default process for offending by 14- to 16-year-olds that the offender did not deny. On sabbatical back at Cambridge in 1993, McElrea realised that to a large extent this home-grown FGC model, which had strong Māori roots, embodied and extended “restorative justice”. That term was new to him and to New Zealand; yet the country now led the world in legislating for it – for youth – all but in name.

Thus McElrea found himself on one of the branches of a burgeoning international restorative justice tree which would flourish in academia and, to a lesser extent, in practice around the

world over the rest of his career. Drawing on, and being quoted by, academic and policy research, McElrea nevertheless emphasised practice over theory. He wrote the first papers of this collection in 1993. He began making contact with restorative justice pioneers around the English-speaking world, including the American “grandfather of restorative justice”, Dr (later Professor) Howard Zehr, who first came to New Zealand in 1994. For the next two decades, McElrea continued advocating for the adoption, improvement and extension of restorative justice.

Restorative justice in McElrea’s judicial capacity

Some of this work was carried out as a judge. McElrea enjoyed the support of fellow judges like Stan Thorburn and several Chief District Court Judges (including Ronald Young, David Carruthers [both later knighted] and Russell Johnson, who died in office) and Principal Youth Court Judges (including Mick Brown [later CNZM] and Andrew Becroft). From 1994 he took a judicial lead in applying the restorative justice provisions of the Sentencing Act 2002 to adults, integrating those provisions with traditional sentencing principles, and developing the restorative justice jurisprudence in environmental offending. He was the Restorative Justice Liaison Judge and addressed conferences of Justices of the Peace and District Court, High Court and Court of Appeal judges. In 2011 he received a Prison Fellowship International Certificate of Recognition for “exemplary work as a public official in significantly advancing restorative justice”. McElrea continues to stress the role of the judiciary both in court and outside court in leading legal opinion and practice towards whole-hearted, well-resourced restorative justice.

Restorative justice in his non-judicial capacity

Mostly, though, McElrea has spoken or written in a non-judicial capacity, as a well-informed private citizen. As a skim of the paper titles reveals, he addressed audiences in New Zealand, Australia, the UK, Europe, the Americas and South Africa. He gave interviews, talked to politicians, contributed book chapters and articles in peer-reviewed journals, was sought out by postgraduate students, and consulted on restorative justice to people in the places just mentioned plus Russia, Israel, Ireland and Japan. McElrea chaired and co-founded the Advisory Board of Massey University’s Centre for Justice and Peace Development. He was a founding member of the AUT Restorative Justice Centre in Auckland.

In 1994 McElrea proposed introducing Community Group Conferences as an equivalent for adults of Family Group Conferences for youth. The first such conference was organised by Revd Douglas Mansill in Auckland. McElrea soon developed plans for dedicated Community Justice Centres (later called Community Resolution Centres) to be the venue for such conferences. He would continue to flesh out the proposal into civil as well as criminal areas and advocate it as the new default where offending is admitted.

McElrea has also been a keen advocate throughout his career of reducing reliance on prisons, which would go hand-in-hand with such a switch of default. He was a founding member of the board of directors of the International Corrections and Prisons Association for the Advancement of Professional Corrections.

New Zealand stalls then rallies with a legislative initiative

In the mid-1990s the New Zealand government sponsored pilot restorative justice programmes for adults. However, the country gradually fell behind and McElrea and others criticised this. Then in 2002–2004 a second wave of legislation led by the Sentencing Act 2002 expressly brought some provision for court-referred, pre-sentencing restorative justice into the mainstream adult system. Latterly, in 2014, the Sentencing Amendment Act has made it compulsory for District Court judges to consider restorative justice where a suitable forum exists – though notably not as a default, not as a form of complete diversion from court, not in the High Court, and without committing resources to match the new demand and prove whole-hearted commitment. Also in 2014, Victoria University of Wellington established New Zealand's first chair in restorative justice, which was awarded to Dr Chris Marshall.

Retirement and personal

McElrea retired altogether from judging in 2013 – he had gone part-time in 2008 – and with his wife, Margaret, moved to a lifestyle block out of Wanaka in Central Otago. Against the backdrop of the Southern Alps, they variously run chooks, a small flock of sheep or a few head of cattle, and enjoy a cheeky Cairn Terrier named Georgie. They love their visits from five adult children and six grandchildren and they get up to Auckland several times a year. Though now land-locked and no longer skippering his own boat as he did while living in Auckland, McElrea still finds the odd chance to sail with friends, and keeps a sailing dinghy in his garage for use on Lake Wanaka. Recently he enjoyed ten days volunteering as a builder's labourer for Habitat for Humanity in southern India, rode in a Central Otago Cavalcade, and he generally enjoys adventures! He is actively involved in the Anglican Church, both in his local parish and at a diocesan level. McElrea still helps the occasional postgraduate student and is always keen to encourage the study and especially practice of restorative justice.

Nudged by Margaret, an experienced librarian, to “do something about all those great papers you wrote”, McElrea has been collaborating with David Thompson, a freelance Auckland editor and trained lawyer, and Napier Library. The result is the McElrea Restorative Justice Collection, to be formally launched in late 2017.

David Thompson

David Thompson, BA, LLB Hons (first class), is a freelance Auckland writer, grant writer, editor, proof-reader and researcher. He tutored at Victoria University of Wellington and Auckland law schools, worked a stint at a large law firm and for over a decade headnoted judgments for Brookers (now ThomsonReuters). Since 2012 Thompson has worked mostly for academics and an NGO, but clients also include publishing (and other) companies. His own writing has been published in *Metro*, *North & South*, *New Zealand Lawyer Magazine* and *Good Magazine*, and on scoop.co.nz.

Like many law students, Thompson graduated knowing almost nothing of restorative justice. However, he has been firmly convinced by McElrea's lucid arguments and the efflorescence of other material on the subject, and likewise hopes for further adoption of McElrea's proposals.

He is very happy to receive and relay any reader feedback on the McElrea Collection:
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