

Updated proposal for pilot Community Justice Centres in New Zealand
Judge FWM McElrea, for his own reference
April 2006

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 justice centres (CJCs) 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 areas 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 CJC would have no monetary limit. Agreements resulting from mediation would be enforceable through the courts if they were not honoured. For example, the claimant would be able to get judgment 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 CJC 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 CJC would be located near a community constable. A police officer (eg 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. 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 – eg so as 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 CJC 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 backstop for consent cases and first stop for cases where there is no consent to the mediation or diversion process.

It would be ideal if the CJC was located within or close to a complex that provided other community-based services, such as Community Constable, Plunket, Citizens Advice Bureau or Neighbourhood Law Office.

Referrals to the CJC 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 would be potentially able to be referred to the CJC - although cases that require specialist skills (eg in 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 (City or District Council), or some other community organisation such as 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 – eg Victim Support, the local body (perhaps through its Safer Community Council or local Ward Committee), local mediation and restorative justice provider groups, central government (eg the Crime Prevention Unit of the Ministry of Justice), a Neighbourhood Law Office or Citizens’ Advice Bureau, NZ Police, and representatives from the churches and other community groups. Existing inter-agency initiatives could also have a point of focus at the CJC, especially those dealing with conflict and the problems that produce conflict.

It would be necessary for the CJC to employ some permanent staff (perhaps two persons) 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 CJC will be reducing the need for the courts (and, indirectly, for corrections facilities), I feel it is appropriate that central government provided 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 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 that monitoring arrangements are in place, keep records of all matters dealt with, and generally act at the direction of the management committee. Some of these skills are already possessed by restorative justice co-ordinators at the four restorative justice “pilot” District Courts.