Customary values, restorative justice and the role of prosecutors: a New Zealand perspective

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Introduction

It is a real pleasure to be in your great country, the home of Archbishop Desmond Tutu, and to be speaking here and learning about restorative justice. I bring you the good wishes of all those in Aotearoa New Zealand who are involved with you in this vital piece of work, reshaping our systems of justice.

You have from within your own ranks some wonderful expressions of the meaning and value of restorative justice. One that I read in preparation for this visit was the judgment of Mr Justice Bertelsmann in ***State v Joyce Laluleke*** (High Court of SA, Transvaal Division, Case No. CC83/04, 13/6/06). By the time I speak to you those general principles will have been well traversed and I will not repeat them. However let me contribute one little gem from an English academic, Dr Nigel Biggar formerly of Oriel College, Oxford. He wrote this in his essay "Can we reconcile peace with justice?"

> *...justice is primarily not about the punishment of the perpetrator but rather about the vindication of the victim.* (in *The World of Forgiveness* vol.2 No. 4, May 1999, page 27)

That notion of vindication of the victim, I suggest, can be common ground on which customary and formal justice systems work together.

I have been asked to bring here a New Zealand perspective and to talk to you about the role of restorative justice in my country in integrating customary principles and practices into the law, with particular emphasis on prosecutions. Perhaps I should say at the outset that there are no customary courts in New Zealand, and restorative justice is limited to dealing with admitted offences. (Defended charges are resolved through the adversary system with all the protection of "due process" that is found in the western model of prosecutions.) Even so, restorative justice is making a real impact on the way in which criminal charges are handled, and there is the potential to do so much more, even under our present legislation.

The New Zealand perspective – one based on experience

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 ("FGC") for young offenders. The 1989 Act applied to Youth Court proceedings dealing with offenders aged 14-17 and one of the primary objectives of the legislation 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 it, talked about it and wrote about the FGC concept as a new model of justice. When in 1993 I returned to Cambridge on sabbatical leave and read Howard Zehr's *Changing Lenses* 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 a number of like-minded judges with the blessing of the Chief District Court Judge. 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 principal model of restorative justice used in New Zealand is the restorative justice conference – either a FGC (for youth) or a community conference (for adults). A typical restorative conference involves the prior admission of responsibility by the offender, the voluntary 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. (However New Zealand does not subscribe to the practice in some parts of Australia, Canada and the UK of having the police run the conferences. There is always an independent facilitator in charge.) 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.

The Sentencing Act 2002

In 2002 a new Sentencing Act was introduced, which 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.

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

[1] previously part of the Prime Minister's Office, but now within the Ministry of Justice
[2] victim, offender, their supporters, community representatives, (ideally) the presence of a police officer,

Section 7 lists eight purposes of sentencing. While they are not listed in any order of priority the first four will be seen to support the restorative approach. This is the complete list of purposes:

> *(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 (s 8) requires the court to "take into account any outcomes of restorative processes that have occurred". More explicitly, s 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 his 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.). Section 25 allows the court adjourn sentencing until any such measure has been implemented.

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

Very important for today's purposes is s 27 which allows a defendant to call one or more persons 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 (s 16 of the Criminal Justice Act 1985), with the contents of paras (c) and (e) being entirely new.[3]

Impact of restorative justice on criminal law practice

I would like to tell you that these provisions have brought about a vast difference in the way we 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 mind sets. 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 system of community resolution centres that will become the first or "default" system. I return to this later.

Despite the slowness of the general body of the 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 *Restorative Justice Jurisprudence in New Zealand (1998-2005)* written by a visiting scholar from the USA, Ms Yael Shy. 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[4] appeared to treat a restorative justice outcome as merely a mitigating factor in sentencing, to be set against traditional factors such as deterrence, Ms Shy notes that several Judges since then have applied the concept in a more comprehensive manner. She remarks:

> *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.*

I have Ms Shy's paper for any one who might be interested to see the details of a range of cases, from courts at various levels. I refer to just one case that she mentions, ***Feng v Police*** (High Court, Auckland, A.127/02, 4 September, 2002, Salmon J). 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. 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*

[3] Section 16 of the 1985 Act 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".

[4] ***R v Clotworthy*** (1998) 15 CRNZ 651

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.

The defendant was granted leave to apply for home detention, so he could serve his prison sentence in that form.

Restorative justice evaluations

The latest evaluation of restorative justice for adults showed a 17% reduction in the use of imprisonment coupled with a 9% reduction in reoffending measured after two years, and a 50% reduction in the seriousness of offences where participants did reoffend. Very high rates of victim satisfaction were recorded, as has been shown in youth justice studies as well.

These figures are for a court-based restorative justice scheme, and my view is that even better results are likely in a community-based model.

Restorative justice and customary processes in New Zealand

Maori are the first peoples of New Zealand but comprise only 14% of its population. Other Pacific Island people are nearly half of that figure (6%) and have many cultural features in common with Maori. Asian people now make up 9% of the population, and nearly all of the rest (about 70%) are of European descent – in the main from the UK and Ireland, but with some recent arrivals from South Africa.

We have no equivalent in New Zealand of the customary courts that you have, able to deal in some cases with disputed facts and to hear evidence before deciding on guilt, as well as deciding sentence. The possibility of such courts was implicit in s 71 of the New Zealand Constitution Act 1852[5], but was never taken up by the settler governments of the times.

[5] *And whereas it may be expedient that the Laws, Customs and Usages of the aboriginal or native Inhabitants of New Zealand, so far as they are not repugnant to the general Principles of Humanity, should for the present be maintained for the Government of themselves, in all their relations to and Dealings with each other, and that particular Districts should be set apart within which such Laws, Customs, or Usuages should be so observed: It shall be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, from Time to Time to make Provision for the Purposes aforesaid* ... No such districts were ever created.

The closest there has been to this concept is the holding of restorative conferences on marae - the traditional meeting places of Maori– often in the "wharenui" or great house. This occurs in an *ad hoc* way from time to time in different parts of New Zealand, but it is far from common. Two, more systematic, instances of "marae justice" are (i) the work with offenders done by Dr Pita Sharples at Hoani Waititi marae in Waitakere City, which does not always involve victims but strongly reinforces traditional Maori values; and (ii) for a short time in the 1990s, the marae-based work of Aroha Terry working with sexual offenders, and using culturally significant penalties such as the stripping of offenders of their kaumatua (elder) status. In both cases the offending is admitted first, and involvement is entirely voluntary.

Although we have no "Maori courts", or anything like that, customary values and procedures are able to be expressed through restorative conferences – and this is one of the great strengths of such conferences: they are sensitive to different cultures.

I have with me an early video about a family group conference, called *Stephen's Whanau.* (The term *whanau* refers to the wider family group including, as well as parents and children, the grandparents, uncles, aunts, cousins and perhaps in-laws.) The video demonstrates, better than I can describe, not only the procedures of the FGC but also the impact of the Maori culture on that particular conference. The FGC is not a Maori process but it has strong similarities to a whanua conference, and it allows Maori values to be expressed. The video illustrates at least the following cultural features: the important role of the wider family or whanau, the acknowledgement of the ancestors, the respect shown to the elders and their leadership in matters of protocol, the central place of the victim, the importance of apology and remorse, the search for consensus rather than a majority view, and the unifying role of waiata (song) in completing the encounter.

It is the beauty of the restorative conference that it can be adapted to any culture, and involve any community. Perhaps this is because the values that it embodies are universally proclaimed: participation, respect, honesty, humility, interconnectedness, accountability, empowerment, and hope.[6] In addition, restorative processes can express deep spiritual values of Christianity and other faiths, like repentance, forgiveness, renewal, healing, reconciliation and growth. And so restorative justice can acknowledge and work with the whole person, heart mind and spirit. The offender is not just a theoretical construct from a narrow, utilitarian model of human behaviour, waiting to be deterred or reformed.

Father Henare Tate in New Zealand writes of those spiritual values that find expression in a Maori approach to justice. More recently Brian Fitzpatrick[7], in the context of restorative justice and Maori theology, has written of the roles of tapu (sacredness), mana (esteem, respect), noa (right relationships), utu (balance), hohou

[6] These are the core values that Dr Chris Marshall brought together for the Restorative Justice Network, published in 2004 by the Ministry of *Justice in Restorative Justice in New Zealand: Best Practice*:

[7] *Restorative Justice; a Vision of a New Way Forward* (2006), a paper towards a Degree in Theology at Auckland University, New Zealand, quoted by permission.

rongo (forgiveness), whakama (shame), pono (honesty), tika (right process) and aroha (love).[8]

First Nations people of North America apply spiritual values, as Rupert Ross has shown. The Hebrew people saw justice as flowing from the creator like a river that waters the land. The indigenous peoples of South Africa have a spirituality and culture that finds expression in restorative justice in this country. What interests me greatly is that the indigenous values that link African traditional justice processes and restorative justice, are virtually the same values that link indigenous peoples in New Zealand to restorative justice. I refer for example to the nine features identified in South Africa by Ann Skelton:[9]

- Both processes aim for reconciliation, the restoration of peace and harmony.
- They promote a normative system that stresses both rights and duties.
- They highly value dignity and respect.
- Neither process makes a sharp distinction between civil and criminal justice.
- … the forum is not bound by previous decisions.
- Both are typified by simplicity and informality of procedure.
- They encourage participation and ownership.
- They have a powerful process that is likely to bring about change.
- Both value restitution and compensation, including symbolic gestures or actions.

In my view it is the experience of indigenous peoples, especially in our respective countries and in Canada, that have converted the two-party victim-offender mediation model previously identified with restorative justice into a more appropriate, three-party process that includes the community. I recall Howard Zehr leaving New Zealand after speaking at the 1995 Legal Research Foundation conference *Re-thinking Criminal Justice*, saying that the North American model needed to be adapted to include this element.

Examples from other Pacific cultures to be found in New Zealand

In 2004 I lived and worked for three months in the Kingdom of Tonga, and visited neighbouring Samoa. New Zealand has significant populations of both peoples, In Tonga I learned that informal mediation is sometimes performed (at the request of both sides) by either the local noble, or a Town Officer (there is one in each village, paid for by the government) or a church minister. The deputy commander of police told me that recent statistics showed that one third of complaints do not go to court, largely because the complainant comes back to the police and says that he and the offender have reconciled and he has forgiven the offender and does not want to take it any further.

The traditional ceremony of reconciliation in both countries (in Samoa it is called *ifoga*) is done on a family to family basis, not on a offender-to-victim basis, and is primarily aimed at keeping the peace, ie preventing retaliation. However I was told

[8] Such translations are necessarily only approximate – more like clues.
[9] As reported in *Charting Progress, Mapping the Future: Restorative Justice in South Africa* (2006), Ann Skelton and Mike Batley, page 16

that this process often does not deal with the real needs of the victim, especially if he or she is not a senior member of the community, as all decisions are made by the family - not by the individual victim or offender.

In Samoa the ifonga process is a prerequisite to obtaining bail in some cases, particularly where a death has been involved -- and this is a matter of the safety of the defendant.

Lawyers told me that customary justice in Samoa had certain things in common with restorative justice as I had described it. In particular, the spreading of the responsibility to the whole community and not just placing it on one individual, getting everybody involved, and requiring consensus -- although this can be very time-consuming. It can take all day to achieve, but it does bring the village together.

Working with the community

A key feature of your concept of community prosecution, as explained in the conference brochure, is the notion of police and community working together pro-actively to find solutions to community problems, particularly crime. There is no direct equivalent in New Zealand, and I commend you for this exciting initiative. However there are some strands of law enforcement in New Zealand that may be of relevance.

The notion of community policing, is of course common to many countries, and finds its expression in local police stations that serve a neighbourhood with which the police are expected to be familiar. (This is opposed to centrally based police operating largely from patrol cars). New Zealand has some of that community policing element, but not much. So I will leave it at that.

More importantly, specialist police called Youth Aid officers, who handle all youth offending, often have close links with their communities and adopt a proactive approach to youth offending. Instead of arresting offenders, they can ask a Youth Justice Co-ordinator (employed by Child Youth and Family Services) to convene a diversionary FGC. (And remember, that every FGC is attended by a Youth Aid officer). The trick lies in knowing how to involve the community best. This was done brilliantly by Allan MacRae[10] when he was Youth Justice Co-ordinator for Wellington. As well as family members and police, Allan would invite 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. He achieved a dramatic reduction in youth offending in his area, because his 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.

While this approach is the ideal, and is recognised as best practice, I have to admit that the performance of most Youth Justice facilitators falls far short of this ideal.[11]

[10] Co-author with Howard Zehr of *The Little Book of Family Group Conferences*

[11] This is due to inadequate training and resourcing, and because Youth Justice has been left as the poor cousin of the social work side of Child Youth and Family Services. (As you might guess, I do not support the way our Youth Justice system is administered.)

Usually diversionary conferences do not result in charges being laid in court, and the matter is dealt with in a way that assists all three parties – victim, offender and community. For example, the conference may identify a problem with the lack of proper lighting in a shopping area where people are being robbed, and someone is deputed to contact the local council responsible for street lighting. Or the offending may be symptomatic of a lack of supervision of young people while their parents are at work, and local churches might be prepared to become involved.

The Youth Aid officers who attend FGCs are not court prosecutors, but they do have the discretion as to whether to make an arrest and charge in court, or to proceed to a diversionary conference. That discretion – whether to charge in court – is one that you may consider a prosecutorial function. The discretion is strongly circumscribed by statute – ie the statute makes community diversion the preferred course.[12] Even so, in marginal cases the element of discretion is very real, and somewhere between one-third and two-thirds of all FGCs have been of the community diversion type.[13] Thus our Youth Aid officers, who are amongst the most professional of all the youth justice professionals, have played a key part in making a system of community diversion work.

The key to their professionalism, in my respectful view, is the fact that they are a body of police who work full-time with youth offenders, and are well trained in this specialty. The absence of any equivalent group of police officers dealing with adults, who are trained and well practiced in restorative justice, largely explains the slow take-up of restorative justice thinking in the wider police force. (A similar comment could perhaps be made about lawyers and the judiciary who inevitably reflect their education and practice within an adversary model - apart from those who have specialised in Youth Court work.[14])

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 today I have called these community justice centres, but that term has a different meaning in South Africa, and in the USA.) If established these would help us 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 harrassment or bullying) would be handled through community

[12] Thus no arrest can be made unless it is necessary to prevent further offending, or the absconding of the young person, or the interference with evidence or witnesses (s 214, Children Young Persons and their Families Act 1989)

[13] Interestingly, in the early years of the 1989 youth justice legislation the proportion was 2:1, but over time, as the delays experienced with Child Youth and Family Services (or its predecessors) became worse, the ratio has changed to 1:2 (diversionary to court-referred FGCs).

[14] I acknowledge also the strong leadership in restorative justice provided by recent Chief District Court Judges.

resolution centres (CRCs) 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 CRC 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 harrassment or bullying)", the CRC 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 CRC 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. 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 – 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 CRC 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, social services, Citizens Advice Bureau or Neighbourhood Law Office.

Referrals to the CRC 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 CRC - 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 (for Maori) 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 CRC, especially those dealing with conflict and the problems that produce conflict.

It would be necessary for the CRC 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 CRC 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.

Conclusion

The concept of community prosecution, as explained to me since my arrival here, is essentially one of targeted law enforcement, using the key position of prosecutors in South Africa to better deal with crime in a way that is meaningful to the particular community. Thus stated, restorative justice is not part of community prosecution. And yet it could be, and I suggest that restorative justice could enhance your results and provide a sound mechanism for community liaison. However, to achieve this in South Africa I suggest that prosecutors should take the place that police play in New Zealand conferences.

If restorative conferences were regularly used where offending is admitted and 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. If our experience is anything to go by, you would find a reduced use of the courts, reduced reoffending, lower imprisonment rates, and a society in which victims become real partners in making safer communities.