

5 July 2000

His Honour Judge RL Young
Chief District Court Judge
Chief Judges Chambers
DX SP23510
Wellington

His Honour Judge DJ Carruthers
Principal Youth Court Judge
Chief Judges Chambers
DX SP23510
Wellington

Dear Ron and David,

Restorative Justice: England visit 21-28 June 2000

As you both had a hand in my recent visit to the UK this report is sent to you jointly - with a copy to the Chief Justice as you suggested, David, by way of Addendum to your recent Youth Justice report to her.

My visit was sponsored and paid for by the **Ditchley Foundation**, a very substantial charitable trust which owns the 600 acre Ditchley Park in Oxfordshire and hosts there about 20 conferences a year for UK and foreign parties. On this occasion there were 40 people present - from NZ (1), Australia (2), Canada (3), USA (6) and UK (28). They had been selected for their ability to contribute to a three day "think tank" type of conference on Restorative Justice. Attached is a list of those who took part. Lords Auld, Warner and Windlesham in particular currently have significant responsibilities in the criminal justice system, but many others made impressive contributions. House rules require that no comments are attributed to individual speakers, but a resume of the conference will eventually be published.

Wider Picture

Not surprisingly there was a special interest in what RJ might have to offer Britain, and the views of those with practical experience of the subject were sought out. I was one of two speakers to open the conference with an account of the different models of RJ operating, their differences, common features and underlying principles. The other opening speaker was Charles Pollard, Chief Constable of the Thames Valley Police responsible for a population of 2.5 million where RJ has been introduced by police across the board at the cautioning stage. A similar scheme applies across Canada through the Royal Canadian Mounted Police, but the difference there is that they are now starting to use people other than police to facilitate conferences.

I was already aware that there are some hundreds of RJ schemes operating in the USA and Canada, and I learned that mediation has been operating even for quite serious

criminal matters in parts of Britain for many years – some before our Youth Justice reforms of 1989 were introduced.

One abiding impression I have of the proceedings at Ditchley is of the potential use of RJ in various contexts. A prison governor spoke of its use in prisons, a teacher of its use in schools, and a police officer of its use in disciplinary/complaint procedures. All of these already have some NZ counterpart, except the last - but I understand the Auckland District Law Society uses a form of mediation for some complaints. I will be contacting the Police Complaints Authority with information on this topic.

More than one speaker commented on the significance of 2000 as the UN's International Year for the Culture of Peace, and the relevance of RJ in that context – a point which was central to the *Just Peace?* conference recently held in Auckland.

Research Results

The conference heard some results of the Re-integrative Shaming Experiment [RISE] nearing its conclusion at A.N.U., Canberra. This has involved some 1300 cases randomly assigned, half going through the courts and half going to conferences. The conference cases are showing lower rates of recidivism, with the best results [a one-third reduction] being in cases of violence. Significantly, the conference procedure also yielded higher levels of perceived procedural fairness than the court procedure, and lower levels of victims' fear of re-offending. Some of these conclusions are supported by the more limited Youth Justice research done in NZ by Maxwell and Morris. The RISE results are available on the Web at www.aic.gov.au/rjustice.

It was recognised of course that criminal justice reform is always difficult, especially with a hostile media, but research from Australia, Canada and England has shown that the public are less punitive than the media assume, and the courts are heavier sentencers than the public assume. (In any event, as one senior legal officer put it at Ditchley, while there may be no votes in such reforms it is in the end a moral issue.)

RJ allows a place for punishment, and for the concept that more serious offending requires a more serious response. Nevertheless, research which I read on the flight back home shows that punishment of the offender is far from the first priority of victims. Thus Umbreit and Roberts in 1996 showed that of victims taking part in mediation, 73% wanted an apology, 80% wanted answers to questions, and 90% wanted to tell the offender about the impact of the crime. Most victims took part because they wanted the offender to stop reoffending. These figures are entirely consistent with the NZ experience in the Youth Justice field.

New Zealand's reputation

New Zealand still has the most comprehensive RJ legislation for young people and is regarded as the world leader in this regard. Indeed the fact that half of all District Court judges are also Youth Court judges and have that experience of a RJ system has no doubt played a part in judicial attitudes to the subject in this country. However, poor practice and inadequate conferencing training within our Social Welfare Dept [now Child Youth

and Family Services] was justifiably criticised by one Australian speaker, and an Australian writer and practitioner Charles Barton has recently referred to it as “reprehensible”. The lack of good community-based programmes is another serious problem, though I note David that you have taken certain important initiatives in these areas to help overcome the terrible DSW legacy.

On the other hand there is considerable respect for the many initiatives that have been taken in this country for adults. Especially relevant here is Timaru’s Project Turnaround, which has produced both lower imprisonment rates and lower crime rates for Timaru. This project, one of several funded by the Crime Prevention Unit of the Prime Minister’s Office, won an International Community Justice Award in London earlier this year. Although called an Adult Panel Diversion Scheme it is fact an excellent RJ model and is recognised as such.

Victims’ interests

A clear message at this conference, as at all others I have attended in seven countries since 1997 [none at NZ’s expense, I stress] has been the documented inadequacy of the traditional western court system to deal with victims’ interests. This is essentially because it is a two-party system (State v Defendant) that prevents meaningful interaction between victim and offender and imposes outcomes that may do nothing for the good of either of those key parties. The legal system cannot ignore these concerns because involvement in the State’s justice system is voluntary, in the sense that there is no legal obligation to report crime to the police, with the result that (a) some victims have such low regard for the legal system that they do not report crime and receive no justice at all – rape is a case in point, where it was said in 1996 that in NZ only 10% of rapes are reported to the police; and (b) if the legal system cannot provide alternative processes under its own umbrella it risks losing public patronage (in the same way as ADR now competes with the civil courts) or encouraging self-help solutions or calls for separate justice systems. Indeed some victim advocates are already calling for a separate but parallel system for victims.

It was stressed that victims’ and offenders’ rights have to be safeguarded in any RJ system. This requires in my view the right to legal representation of offenders, and the assistance of Victim Support or equivalent groups. However where participation is voluntary and the outcome must be agreed to by victim and offender - as in all adult schemes that I am aware of – there are extremely few reported cases of abuse of such rights.

The community building aspects of RJ are well known and were emphasised. Indeed the three working groups on the second day looked respectively at offenders, victims and community interests.

Judicial Support

No-one present was suggesting that RJ could simply replace the adversary system or present sentencing regimes, but many saw it as able to supplement those in important ways provided the courts were willing to accommodate it. Judicial leadership was seen

by most as having been an important factor in Canada and NZ. Here of course there has been the early support of the Courts Consultative Committee for the adult pilot which I proposed in 1994, the active support of both of you, the work which some District Court judges have been involved in for many years, the encouragement of the present Governor-General, the occasional helpful comments of some High Court judges over the years and the guarded comments of the Court of Appeal in *Clotworthy*. In Canada there are several Provincial Court judges taking a similarly active role, and more recently the Supreme Court in *R v Gladue* (1999) 23 C.C.R. (5th) 197 has taken two lines out of their Criminal Code as supporting RJ and have stressed the obligation on all courts to seek non-custodial ways of dealing with aboriginal offenders – whose numbers in prisons, like Maori in this country, are hugely disproportionate to their population.

It is hoped that the new Chief Justice of England, Lord Woolf, may be supportive of RJ initiatives in that country. You will recall that he wrote the Foreword to the 1994 Cambridge book on Relational Justice to which I contributed a chapter.

Other contacts

For completeness I should mention that on arrival in England I spent two days with the Thames Valley Police and took part in a public seminar in Oxford; and after leaving Ditchley Park I spent two days in London at my expense, one day in which to relax and the other to visit the Sherbourne House probation programme and Professor Roger Graef who has a RJ book in the pipeline and has made some powerful documentaries on the subject in the UK and USA. He is interested in coming to NZ.

I am happy to discuss any aspect of this report further if required.

Kind regards

Yours sincerely

Judge FWM McElrea