

## **Restorative justice in prisons – a New Zealand experience**

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### **Part One**

Jackie Katounas

Facilitator, Hawkes Bay Regional Prison Restorative Justice pilot scheme.

In 1992 I was released from an Australian Prison after serving a three-year prison sentence - one of several in my chequered past which had seen me involved in criminal activity for the best part of 20 years.

Little did I realise at that point in time, that eight years later I would be employed to work within the prison system facilitating conferences between willing victims and offenders and educating inmates about restorative justice.

I returned to my hometown in New Zealand in 1992 with a determined desire to overcome my addiction to heroin and associated criminal activities. A personal experience of meeting face to face with a victim of one of my crimes was a turning point for me and began the long slow journey of personal recovery and rehabilitation, which had never occurred for me "on the inside".

In 1996 I joined a community group called Hawkes Bay Restorative Justice, who were exploring the possibility of offering restorative justice processes within our local area. Within 2 years I had been trained as a facilitator in this type of work, for which I have a passion and commitment born out of personal experience and proven success.

In August 2000 Hawkes Bay Restorative Justice secured funding for a project through the Crime Prevention Unit of the Prime Minister's Office, to take restorative justice into the Hawkes Bay Regional Prison where already a number of successful conferences had taken place. I was employed as the educator/facilitator for this project and so began what has been for me both a privilege and a challenge in pioneering the first project of its kind in a New Zealand prison.

For over four years now I have been facilitating restorative justice conferences, many of which have taken place within the confines of the prison environment where, despite the degradation and desolation, I have witnessed on numerous occasions examples of reconciliation, forgiveness and healing.

As an ex-inmate myself I can offer a unique experience to those imprisoned and because of my own past I bring a credibility to the work that many others cannot offer. Having made positive changes in my own life, I have now been given the opportunity to speak to inmates of this prison about my own experiences of offending and imprisonment, in a way that they understand. I am able to talk about the harm that results when they offend and to challenge them to look at the wider consequences. Very often it is the first time

they have really heard and begun to understand the impact that their actions have caused. I am able to share that, like many of them, when I was offending I never gave my victims a second thought - so absorbed was I in my own self-centred world.

I encourage them that in order to have a positive future, they may need to "put right" some of their past - hence the name of the prison project, "Whakatikatika", which is Maori for "putting things right".

Since the project began 13 months ago, I have received 82 referrals and facilitated 15 conferences between perpetrators and victims of a wide variety of offences ranging from manslaughter, rape, kidnapping, armed robbery to threatening to kill, burglary and injure with intent.

Every conference has had a positive outcome. Every agreement made in those conferences, except one, has been fulfilled. This one exception involved sexual offending towards a child. While the offender agreed in the conference to participate in a programme designed to address this type of offending, he later refused to go and in spite of a reconvened conference with all parties concerned there was no satisfactory resolution.

This has been one big lesson, in terms of conferencing these types of offences which require very careful preparation. It is now my belief that such offenders should complete a programme aimed at addressing the roots of their offending behaviour, before consideration for restorative justice.

Unfortunately, many prison conferences have been unable to proceed due to the fact that the victims do not live within the wider Hawkes Bay area. In such cases, letters of apology have often been sent after victims have indicated a willingness to receive the same. Alternatively I have made contact with other Restorative Justice groups throughout the country to see if a conference could be facilitated by them once the inmate has been released and returns to his community.

While I know I have a credibility and affinity with prison inmates, due to my past, that enables me to challenge offenders to be more accountable for their actions, I am always at pains to emphasise that it is the rights and the place of victims, who are largely excluded from our existing criminal justice processes, that must also be restored.

While many people tend to focus on Restorative Justice as a pre-sentence option, I also have a first hand appreciation of the benefits of restorative justice in the post-sentencing phase. Often, given the seriousness of some crimes, a significant time lapse can be vitally important in enabling a measure of reflection and healing to take place both for victims and certainly for inmates.

I have also seen the less obvious benefits that can result when inmates really take responsibility for their offending - such as improved relationships and respect between prison staff and inmates. It is thus my belief, that restorative justice has the potential to

effect positive change well beyond simply the conference environment where victims meet offenders.

## **Part Two**

Judge Fred McElrea

Auckland District Court

I am delighted to add a footnote to this piece by Jackie Katounas. I know Jackie from her work with Hawkes Bay Restorative Justice Group and have visited Hawkes Bay Regional Prison and talked to those involved with her work there. All speak of the Whakatikatika project in the highest terms. This includes the Manager of the prison who spoke of the support of prison staff for the restorative justice process both before and after conferences, and a retired Commissioner of Police who is involved in the Sycamore Tree Prison Fellowship initiatives using surrogate victims in Arohata and Wellington prisons.

My own involvement with restorative justice started when I became a Youth Court Judge in 1990 and realised that the New Zealand Youth Justice legislation used a new model of justice. In 1993 on sabbatical leave as a visiting scholar at the Institute of Criminology, Cambridge I started writing about the connections between that Youth Court model based on the family group conference, and restorative justice as described by Howard Zehr in his seminal work *Changing Lenses*. Since 1994 I have been encouraging restorative justice conferences involving victims and offenders as a preliminary to the sentencing process in cases of adult offenders where all parties are agreeable. New Zealand now has 20 or more groups of trained volunteers able to convene and facilitate such conferences, some on a paid basis and some unpaid. Four of our District Courts have just commenced a three-year pilot scheme for restorative justice in cases of moderately serious offending, such as aggravated robbery, assault with intent to injure, or dangerous driving causing death. The court side is moving ahead in a careful but encouraging way.

Much of Howard Zehr's work has been with offenders and with victims of serious crime. His wonderful photographic study *Doing Life: Reflections of Men and Women Serving Life Sentences* (Good Books, Intercourse, PA 17534, USA, 1996) is a wonderful testament to the possibility of redemption and renewal even for those serving very long sentences of imprisonment, although that book is not itself about restorative justice. More recently Howard Zehr has produced *Transcending: Reflections of Crime Victims* (Good Books, Intercourse, PA 17534, USA, 2001) which looks at the same scene from the other side of the glass. Together they have confirmed my belief that the deeper the hurt the greater the need for healing for both victim and offender, and therefore the greater the need for them to communicate with each other.

Restorative justice is of course not a technique, and nor is it limited to criminal justice. It is an approach to conflict resolution that has application in many spheres of life. In New Zealand and Australia it has now been trialled in schools. It has close parallels with alternative dispute resolution in civil cases. It has been applied in industrial, commercial and international contexts. Our four day conference last year *Just Peace: peace making*

*and peace building for the new millennium* held at Massey University, Auckland, surveyed the many links between these various spheres, and the underlying principles.

Restorative justice is much more than the chance for offender and victim to communicate directly with each other. It can also be a chance to produce changes in their lives that have benefits beyond the restoration of their own senses of dignity and worth. One specific New Zealand (and Canadian) contribution to restorative justice has been the use of community representatives as participants in conferences and as a resource for outcome plans. That is, restorative justice here is a multi-party, not just a two-party, process. There are different ways in which the community can be involved and I am not arguing for any one model. Community involvement is of course subject to the obligations of confidentiality that are spelled out at every conference. What is important is that we consider what role the community might play in prison conferences.

This is a question that I have encouraged Jackie to address in the Hawkes Bay Regional Prison pilot scheme. For example, Victim Support personnel might be able to suggest someone from the community able to offer practical advice with a victim problem related to the offence, such as home or family security. Where the prisoner has particular needs, eg help in addressing an addiction or a family problem, there may be someone whose presence at a conference would help produce some worthwhile proposals. Local church or other community groups could be a valuable resource in providing that sort of input, and helping to see conference plans through to completion.

Prison chaplains may have a role to play as facilitators, but only with training and on a non-religious basis. Indeed it was a former prison chaplain, now a Presbyterian minister, Rev Douglas Mansill, who facilitated the first restorative justice conference for adults in New Zealand and formed the first facilitator support and training group, Te Oritenga. He would confirm that while restorative justice certainly has its spiritual dimension, it is a dimension that is not confined to any faith or creed.

Where can we go with the concept of restorative justice in prisons? Looking ahead a few years I see no reason why every prison should not have the services of a restorative justice facilitator. That would be consistent with the growing trend to support victims' rights and to see the possibility of healing as one of those rights. It would be consistent also with the desire to help prisoners deal with their own needs for reconciliation and forgiveness, for renewal and change. Further, some crimes are unlikely to leave a victim ready to meet the offender before sentencing, and a post-sentencing conference may be the only possibility. And there is the option of having both a pre-sentence conference and a reconvened conference in prison where there is a desire on both sides to continue the dialogue in this way. Where a conference has first occurred in prison a reconvened conference could be part of a parole period of supervision - or done quite independently of parole.

In short, we are only just touching the fringes of the many possibilities for restorative justice in dealing with conflict and the need for healing the effects of crime. Of all

institutions, prisons must have the greatest concentrations of people in need of restoration. Lead on, Jackie.