

Summary of observations showing features of Restorative Justice emerging from decisions of the Courts

1. General principles

- (a) Restorative justice factors were acknowledged by the Court of Appeal as relevant for sentencing.
- (b) The principles could be applied to serious offences.
- (c) There should be a guilty plea before any referral by the Court to a conference.
- (d) The Judge would retain control of outcomes.
- (e) Tension between retributive and restorative principles can be blended.
- (f) Public expectation is to be considered when determining the balance.
- (g) The Court must take into account both negative and positive results.
- (h) Application of the principles can be reflected in a reduced sentence.
- (i) Restorative justice can apply where the community is the victim.
- (j) Restorative justice conferencing can be used as a re-integrative programme upon release from prison.
- (k) A conference might be particularly appropriate where there has been offending within a family.

2. Values

- (a) Restorative Justice can provide information that is not usually available or is left untapped about the subjective effects on and needs of the individual victims and perpetrators of crime.
- (b) The conference can be an important means of giving the victim a voice in the process and can provide an environment in which an otherwise unwilling victim could be willing to participate.
- (c) A victim's views and acceptance of an offender's apology and remorse can be a powerful consideration in determining the balance of issues for the Court.
- (d) Offender attendance at a conference is voluntary and credit can be noted for that.
- (e) The conference can be an environment for an offender's remorse to be directed to the victim in person rather than notionally through submissions in Court.
- (f) An offender who meets with a victim can be performing a role of help and assistance for a victim's recovery and begin a healing process for a victim.
- (g) The conference can be a valuable source to evaluate the depth, quality and genuineness of an offender's remorse and also a victim's acceptance of that.
- (h) Conferencing can result in measures being found to repair harm and repay loss where the community is the victim through symbolic gestures of restoration by an offender.

(i) Conferencing gives both an offender and victim a means by which to re-establish integrity and good reputation.

3. Some subjective outcomes

(a) The Conference can be a place of freedom for victim expression including anger and even change of attitude and mind.

(b) Similarly for an offender, when facing one's victim in a conference an offender's attitude can change.

(c) Confronting one's victim/offender can be a hard thing to do.

(Judge S.A. Thorburn)

August 2005