

# **Restorative Justice and Sexual Abuse – a New Zealand Perspective**

a paper by **Judge FWM McElrea** for

the symposium of  
The Australian & New Zealand Association for the Treatment of Sexual Abusers

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## **Introduction**

I start with a disclaimer or two. Although I am a District Court Judge I am here to express my own views and not those of other judges. Secondly, there are others present with a lot more expertise or practical experience than I have on this topic. I refer to people like Shirley Julich, Mary Koss, and Aroha Terry. I do however have an overview of the place of restorative justice in this country, and some ideas as to where it could yet be headed. I also have 16 years experience of the traditional western court model of dealing with offenders, and am aware of its shortcomings. I presume this is why I have been invited to speak to you.

## **A wider context for restorative justice**

At a conference of the International Corrections and Prisons Association in the Netherlands 18 months ago<sup>1</sup>, I suggested that restorative justice is part of four wider transitions that are underway at present, both within and outside the world of corrections. These still hold true and are worth remembering as the wider context of restorative justice.

First, there is a world-wide movement towards the **recognition of victims rights**, and – associated with that- the need to see criminal justice as something more than a two-party process of State versus Defendant. Victims, so long excluded from the western model of justice, lie at the very heart of restorative justice.

Secondly, there is an international trend towards **the democratisation of process** and the empowerment of the community. This is part of the tendency to reduce the size and function of State institutions, and to ensure that in our emphasis on professionalism, professionals do not end up

owning the processes they are employed to serve. Restorative conferencing insists that solutions cannot be imposed “from above” - that we must listen to the voices of those most closely affected by conflict and enable them to influence outcomes.

Thirdly, there is a recent and noticeable tendency towards **holistic approaches to problems**, allowing spiritual and emotional values to be expressed, especially (but not only) where indigenous peoples are involved. Restorative justice allows a wide range of values and needs to be expressed, and culturally appropriate procedures to be followed.

Finally, we are I believe seeing a **move from procedural justice towards substantive justice**. That is, we are increasingly recognising that justice is not just about following fair procedures (eg due process, or the rules of natural justice). Rather, it requires us to produce outcomes that are fair and meet the needs of society.

### **The key values of restorative justice**

In June 2003 the Restorative Justice Network (a New Zealand association of restorative justice practitioners) produced an excellent (and short) analysis of restorative justice values and processes. It was largely the work of Dr Chris Marshall. That analysis commenced with the following introduction to the term “restorative justice”:

*Restorative justice is a generic term for all those approaches to wrongdoing that seek to move beyond condemnation and punishment to address both the causes and the consequences – personal, relational and societal – of offending in ways that promote accountability, healing and justice. Restorative justice is a collaborative and peacemaking approach to conflict resolution, and can be employed in a variety of settings (home, business, school, judicial system, etc.). It can also use several different formats to achieve its goals, including victim-offender dialogue, community or family group conferences, sentencing circles, community panels, and so on.*

The paper went on to define the values which shape restorative justice, in these terms:

*The vision and practice of restorative justice are shaped by a number of key values which distinguish restorative justice from other, more adversarial approaches to justice and conflict resolution. The most important of these values include:*

- **Participation:** *Those most affected by the incident of wrongdoing – victims, offenders, and their communities of interest – ought to be the principal speakers and decision-makers in the*

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<sup>1</sup> 19-23 October 2002, Noodwijkerhout, Netherlands.

*process, rather than trained professionals representing the interests of the State. All present in a restorative justice meeting have something valuable to contribute to goals of the meeting.*

- **Respect:** *All human beings have inherent and equal worth irrespective of their actions, good or bad, or of their race, culture, gender, sexual orientation, age, beliefs or status in society. All therefore deserve to be spoken to and treated with respect in restorative justice settings. Mutual respect engenders trust and good faith between the participants.*
- **Honesty:** *Truthful speech is essential if justice is to be done. In restorative justice, truth entails more than clarifying the facts and establishing guilt within strict legal parameters; it requires people to speak openly and honestly about their experience of offending, their feelings and their moral responsibilities.*
- **Humility:** *Restorative justice accepts the common fallibility and vulnerability of all human beings. The humility to recognise this universal human condition enables victims and offenders to discover that they have more in common as flawed and frail human beings than what divides them as victim and victimizer. Humility also enables those who recommend restorative processes to allow for the possibility that unintended consequences may follow from their interventions. Empathy and mutual care are manifestations of humility.*
- **Interconnectedness:** *While stressing individual freedom and accountability, restorative justice recognises the communal bonds that unite victim and offender. Both are valued members of society, a society in which all people are interconnected by a web of relationships. Society shares responsibility for its members and for the existence of crime, and there is a shared responsibility to help restore victims and reintegrate offenders. In addition, victim and offender are uniquely bonded together by their shared participation in the criminal event, and in certain respects they hold the key to each other's recovery. The social character of crime makes a community process the ideal setting to address the consequences (and causes) of the offence and to chart a restorative way forward.*
- **Accountability:** *When a person deliberately inflicts wrong on another, the perpetrator has a moral obligation to accept responsibility for having done so and for mitigating the consequences that have ensued. Offenders demonstrate acceptance of this obligation by expressing remorse for their actions, by making reparation for the losses inflicted, and perhaps by seeking forgiveness from those whom they have treated disrespectfully. This response by the offender may pave the way for reconciliation to occur.*
- **Empowerment:** *All human beings require a degree of self-determination and autonomy in their lives. Crime robs victims of this power, since another person has exerted control over them without their consent. Restorative justice seeks to re-empower victims by giving them an active role in determining what their needs are and how these should be met. It also empowers offenders to take personal responsibility for their offending, to do what they can to remedy the harm they have inflicted, and to begin a rehabilitative and re-integrative process.*
- **Hope:** *No matter how severe the wrongdoing, it is always possible for the community to respond in ways that lend strength to those who are suffering and that promote healing and change. Because it seeks not simply to penalise past criminal actions but to address present needs and equip for future life, restorative justice nurtures hope – the hope of healing for victims, the hope of change for offenders, and the hope of greater civility for society.*

## **The legal framework in New Zealand**

The first legislation that made possible a restorative approach to wrongdoing was the Children, Young Persons And Their Families Act 1989. Much has been written of its system of family group conferences as a restorative model, and that need not be repeated here.

We have made significant strides forward since restorative procedures first came to be applied to adult courts in an *ad hoc* sort of way in 1994. The initiatives came first from the community, and were then supported with some Government funding - through the Crime Prevention Unit (now funding about 18 groups) and the Court-referred restorative justice pilot operating in four District Courts. This experience laid the foundations for the 2002 legislation, described more fully from a restorative justice point of view in *Sentencing – the new dimensions*<sup>2</sup>. In brief, all Courts are obliged to take into account at sentencing the outcome of any restorative justice process that has occurred, and may adjourn sentencing for such processes to take place. Further, under the Victims' Rights Act 2002<sup>3</sup> the Courts and most professionals working in them must encourage victim offender meetings in appropriate cases. Restorative conferences can also influence Corrections officers administering community work sentences, and the Parole Board dealing with conditions of release on parole.

### **Exclusion of sexual abuse cases from Government-funded schemes**

I am not aware of any present scheme that deals with domestic violence or sexual abuse. I believe this is due largely to the view expounded for many years that such cases are not suitable for restorative justice because of the “power imbalance” between victim and offender. According to this viewpoint, where victims are female partners of violent men, or children within the same family group as an adult sexual offender, they are not capable of speaking or negotiating on an equal footing with their offenders, who generally hold greater power in that domestic or family environment. Government funding tends to be applied cautiously, and in the past that particular caution may have been justified, but it is time that the assumptions about power imbalance were questioned. These questions arise in my mind:

#### **1. Is there a power imbalance in a particular case?**

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<sup>2</sup> New Zealand Law Society Seminar booklet, March 2003, McElrea, FWM and Eaton, J

<sup>3</sup> section 9

There will always be exceptions to the general position just stated. A particular male or adult offender may not be a powerful figure in fact. He may be a loner, a discredited fellow with no family support. The victim may be an articulate, confident and well supported individual. Surely it is possible to make an individual assessment about the case in hand, rather than treat a generality as being the rule for all cases, so that even cases suitable for a restorative process are excluded.

## **2. Can the power imbalance be redressed?**

In a paper which I gave eight years ago to the inter-disciplinary conference *RAPE: Ten Year's Progress?*<sup>4</sup> I spoke of the legendary work of the Canadian First Nations people at Hollow Water, Manitoba, in dealing with sexual abuse within families using healing circles, in my view the most thorough-going of all restorative processes. Victim and offender are not brought together until there have been separate circle meetings held with each, in part designed to support the victim and redress that imbalance. For example, the victim needs to know that they are absolved of guilt and blame, that the offender admits that the abuse happened and accepts responsibility for it, and that he is unlikely to be sent away to prison if he completes the programme. Then at the circle when victim and offender do come together, the circle will include large numbers of supporters from their community, so that power rests with the whole group, rather than any one individual.

I imagine that when Aroha Terry worked with Maori sexual abusers on the marae, similar processes were at work. A more communally-oriented people will find this process easier, but it is perhaps the other side of the coin from elder respect which may have worked against the victim in the first place by enhancing the credibility of the offender. I see no reason why Pakeha families and their communities should not provide similar support for a victim (and indeed for an offender) in a process of open accountability. Hollow Water has much to teach people of all cultures about the creation of a safe environment for such encounters.

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<sup>4</sup> Wellington, New Zealand, 29 March 1996.

### **3. Is a balance of power achieved in the mainstream western model any way?**

The argument for exclusion of domestic violence and sexual abuse from restorative justice processes because of power imbalances assumes that the mainstream model of criminal justice overcomes or at least minimises such problems. I do not think this assumption is well founded.

Spousal immunity refers to the absolute right of any person not give evidence against their spouse. It is often relied on by victims in domestic violence cases, so often that I find it hard to recall a case where a wife has actually stood up in my court and given evidence against her husband facing criminal charges. Even where the parties are not married (so that spousal immunity does not apply) it is not common for the female partner to give evidence against the male partner. What often happens is that the police know in advance that the complainant no longer wishes to give evidence, and unless there is other evidence (eg third party witnesses, or a confession by the defendant) the case collapses before it gets started – ie police prosecutor will advise the court that no evidence is being offered, and the case has to be dismissed.

In some districts the practice is for the police to nevertheless call the reluctant witness to give evidence, so that she has to actually appear in the witness box and either claim spousal immunity or (if not married) simply decline to cooperate. Strictly speaking a witness who declines to answer proper questions commits a contempt of court, but I have not heard of a prosecutor asking for the witness to be held in contempt of court in such a situation. Judges will usually require that the witness speaks on her own to a Victim Adviser (a paid employee of the Court) who will report to the Court that this is indeed the victim's wish – not to give evidence.

What I have described is common experience around New Zealand. A notable exception is Waitakere where the WAVES programme (Waitakere Anti-Violence Essential Services) ensures that victims are given close support from outside the family, and the Court organises early dates for defended hearings. The rate of refusal by complainants to give evidence is lower in the Waitakere District Court as a result – but by the same token that very element of support would help redress the power imbalance in a restorative justice context, if that option were made available.

I do not know of any statistics about such matters, so I can only offer you my own impressions. These do not include Family Court cases, where I understand most women applying for a protection order do turn up to give evidence.

Turning then to sexual abuse cases, it is by contrast rare in my experience to have a complainant refuse to give evidence – if the matter gets as far as court. But the figures suggest that very few victims are prepared for one reason or another to make a complaint in the first place. The conference *RAPE: Ten Year's Progress?* heard from Toni Allwood of Rape Crisis that only about 10% of rape victims go to the police, and that in only half of those cases is a decision made to prosecute. On this basis only 5% of rape victims are called to give evidence, and by definition they are more likely to be the ones who are prepared to “see it through”. But what does this say about our western system for the other 95%?

Of course these figures are for all rape cases, of which probably a minority are intra-familial cases. For the majority there is no imbalance based on a family relationship between offender and victim. But does that mean there is equality of power? The defendant may well believe that the prosecution has superior power, and measured in terms of resources that is often so. Prosecutors are (in most parts of the country) funded by the taxpayer on a different basis to legal aid payments for defendants. However looking only at the complainant and the defendant, we find that:

- complainants have no legal representation (except indirectly through the prosecutor, whose duty is to the public interest, not the complainant);
- complainants have no right to silence, while the defendant can maintain silence and put the prosecution to the proof;
- defendants are cross-examined by prosecutors whose duty is to maintain balance and a sense of fairness to the defendant; complainants are cross-examined by counsel whose duty is to represent the defendant's interests, and some do this in a very aggressive manner.
- complainants have no access as victims to Government-funded counselling (except where Accident Compensation will pay), whereas convicted defendants can receive free counselling as part of a supervision sentence.

All in all, I would expect most victims to feel that while the State has plenty of power as prosecutor, it does not protect them as witnesses. The Victims' Rights Act 2002 has gone some way to redressing the power imbalance, but it does not overcome any of the four disadvantages<sup>5</sup> I have just listed.

As a result I consider that victims generally, and no less in cases of sexual abuse, do not come to our criminal courts on an equal footing with those they accuse, even where there is no "family" relationship that confers superior power on the defendant. It is therefore fallacious to assume that the adversary system removes any imbalance of power. In many ways it actually creates such an imbalance so far as victims are concerned.

Recently one of my colleagues, Her Honour Judge Jan Doogue, challenged the assumptions underlying certain provisions of our domestic violence legislation. She said this:<sup>6</sup>

*The Domestic Violence Act 1995 and s.16B of the Guardianship Act 1968 were based on the classification of violence within the power and control model. In my experience and that of other Judges this model does not fit the profile of many cases coming before the Family Court in New Zealand.*

*Research and experience supports the proposition that in New Zealand some children are being deprived of contact with a parent who has been alleged or judged to be violent when that is not in their best interests.*

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*... we need to provide a more sophisticated approach to the implementation of this legislation, all the while recognising that it is not fair or just to view all violence as fitting within the classification of the power and control model.*

In a similar vein, I respectfully suggest that we cannot generalise about power imbalances, or assume that they rule out the use of restorative justice processes. What is needed instead is an assessment in each case as to whether it is suitable for restorative justice, and a recognition that support is likely to be needed for both victim and offender to enable them to play a proper part in such a process.

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<sup>5</sup> All but the third of these disadvantages were mentioned on 12 March 2004 by victims' representatives at the Legal Research Foundation's conference, *Victims and Criminal Law: The Last 30 Years and on to the Future*.

<sup>6</sup> "The Domestic Violence Act 1995 and s.16B of the Guardianship Act 1968 – the effect on children's relationships with their non-custodial parent", a paper presented to the LexisNexis Child and Youth Law Conference, 1 April 2004, at pp 2-3.

## **The Youth Court as source of restorative justice experience in sexual abuse cases**

Professor Kathleen Daly has written extensively of the research into cases in some Australian jurisdictions. For example, the *Final Report (August 2003) on Sexual offence cases finalised in court, by conference, and by formal caution in South Australia for young offender, 1995-2001*<sup>7</sup> reaches this conclusion (p 20):

*The comparison of court and conference cases suggests that conferences have the potential to offer victims a greater degree of justice than court. The YP's [young person's] admission to the offence serves as an important public validation of the harm suffered by the victim, and the conference offers a forum for apology and reparation. For victims whose cases go to court, half will be disappointed (and perhaps angry and disillusioned) when charges are withdrawn or dismissed after lengthy proceedings. On all measures of what YPs have to do for victims (apology), for the community (community service), for themselves (Mary Street counselling), it appears that conferences outperform court. Court outcomes put YPs under a potential cloud of further legal intervention (to be of good behaviour, suspended sentences), but it is not certain how this helps victims, the community or YPs. Contrary to feminist concerns, our data suggest that the court, not conference, is the site of cheap justice.*

While some excellent research on youth justice has been done in New Zealand by Gabrielle Maxwell and Alison Morris, I am not aware of any research that deals specifically with sexual offending by young persons. This is a great pity, as anecdotal accounts suggest that very good work has been done in some family group conferences. One such case was reported back to me sitting as a Youth Court Judge in the 1990s – I won't say in which Court as it could help identify the parties. It involved a male secondary school student who had indecently assaulted two female pupils at the same school. Because the charge was not denied it had to go to a family group conference before sentencing occurred – there are no “gatekeepers” to conferences in our Youth Court.<sup>8</sup> The Youth Aid officer from the Police who was handling the case worked very hard to persuade both girls to personally attend the conference. Judges do not attend such conferences, but I heard later from that officer that it had been a wonderful experience for them, enabling them to say how the offending had affected them, to put their questions about the incidents, to receive a face to face apology, and to have a say in the outcome plan that went forward to the Youth Court as a sentencing recommendation. Part of that plan was participation in a SAFE programme. I also imposed a suspended sentence of

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<sup>7</sup> K. Daly et al, School of Criminology and Criminal Justice, Griffith University, Brisbane, Queensland.

<sup>8</sup> Contrast, for example, South Australia, where no case goes to a conference unless referred either by a Judge or the police. This however provided Professor Daly with a basis of comparison that is not available in New Zealand.

imprisonment, which as far as I know never had to be served because there was no reoffending. The Youth Aid officer had followed up on the case and reported that the conference process had really enabled both girls to put the matter behind them and move ahead in life. Of course the benefits for the offender hardly need to be stated, and the benefits for society when all three young people were restored to a place of dignity and respect, were immeasurable.

Then again at the highest judicial level, the Court of Appeal in **R v C** (CA332/95) 28 September 1995 had to deal with a case of a 14year old offender who pleaded guilty to two charges of raping his four year old cousin. He was referred to SAFE and entered its Adolescent Sexual Offenders Programme. A High Court sentence of supervision for 18 months was appealed by the Solicitor-General but upheld by the Court of Appeal. “Of particular significance,” the Court of Appeal said later<sup>9</sup>, “the parents of the victim favoured a restorative process, the mother of the victim having participated in a family group conference which appears to have been singularly successful.”

### **Adult court sentences**

Another appeal case is that of **D v New Zealand Police** (High Court, Auckland, AP161/99, 29 February 2000, Nicholson J). There a sentence of imprisonment for rape was reduced in length because inadequate weight had been given to the defendant’s voluntary confession of the offending, the victim’s wishes, and a constructive restorative justice group conference. Justice Nicholson stated that

*restorative justice philosophy and practices can make a major contribution to attaining these goals [of dealing with past offending and helping the victims of that offending and also preventing further offending and thereby sparing further victims].*

The High Court was there able to rely on another Court of Appeal decision, **R v Clotworthy** (1998) 15 CRNZ 651,661 which was not a sexual abuse case but confirmed the ability of restorative justice to lead to reduced prison sentences where prison could not be avoided. Since then, of course, the Sentencing Act 2002 has given restorative justice statutory recognition and support.

I have said enough to show that at all levels of our courts, and for both young and adult offenders, restorative conferences have been accepted as providing helpful information for

sentencing in cases of sexual abuse, and have led to outcomes that have been regarded as beneficial for all concerned. I would expect that if the research by Professor Daly and others could be replicated in New Zealand it would come to similar conclusions.

### **Vindication of the victim**

You have already at this conference heard Dr Shirley Julich speaking. I wish to pay tribute to her research with adult survivors of sexual abuse. She provided me with this quotation from a survivor of sexual abuse which was used in my 1996 paper for the Rape Crisis conference:

*Throughout the [criminal justice] process I constantly felt that the offender's rights and those of his immediate family were more important than mine: an innocent victim. I slowly realised that the results of my actions would not assist with any healing processes, mine or my abuser's, and in fact my contact with the criminal justice system was contributing to my experience of inequality and I felt it was validating my abuser, not me. **I really wanted to stand in a public place and hear a respected person within our society acknowledge that what had happened to me was a most terrible thing. I never got to hear that** [because of a successful argument for abuse of process based on delay]. **I needed to have that recognition to validate the injustice of my experience.** (my emphasis)*

Only years later did I realise the profound wisdom of this reference to validation. It tied in with what others were saying about vindication of the victim. This may be best summed up in one sentence written five years ago by Dr Nigel Biggar of Oriel College, Oxford 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.**"

As Prof Howard Zehr puts it in *The Little Book of Restorative Justice*:<sup>10</sup>

*A primary goal of both retributive theory and restorative theory is to vindicate through reciprocity, by evening the score. Where they differ is in what each suggests will effectively right the balance ...*

*Retributive theory believes that pain will vindicate, but in practice that is often counterproductive for both victim and offender. Restorative justice theory, on the other hand, argues that what truly vindicates is acknowledgement of victims' harms and needs, combined with an active effort to encourage offenders to take responsibility, make right the wrongs, and address the causes of their behaviour. By addressing this need for vindication in a positive way, restorative justice has the potential to affirm both victim and offender and to help them transform their lives.*

I have further developed this question of vindication at pp 10-12 of *Sentencing – the new dimensions* but for present purposes I note Dr Julich's comment that victims also feel vindicated when their community hears the truth about the offending and the offender,

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<sup>9</sup> **R v N** (CA499/97) 21 April 1998 per Thomas J at p 22.

especially when this is a community which has allowed the offending to occur and to which both offender and victim must return.

### **Public versus private justice**

Much has been written about the role of the State in detecting and prosecuting criminal offending, and I do not dispute that role. The problem however is that it has too often been tied in with a view of the criminal law that ignores the interests of victims and fails to acknowledge the limitations of the mainstream model.

In this country it is not mandatory to report criminal offending. This is of course why victims have a choice of going to the police, or not. There is nothing therefore in law to prevent those who see the criminal process as being unacceptable, from using an alternative process, if one is available. For this reason Aroha Terry's work with "marae justice" could not be attacked. That work was done openly, and was reported in the news media. What we never hear about are the cases that are dealt with privately, perhaps with private and uncontrolled vengeance being exacted, or possibly (and more acceptably) with a warning being given by a family member. Alternatively, the victim may choose to do nothing – the ultimate expression of a power imbalance.

What would be unlawful would be a threat to report something to the police unless certain things happened, for that could amount to extortion or blackmail. It might also be unenforceable if there were to be an agreement not to involve the police, for that could be held to be against public policy. In fact, it is my belief that the police should be invited to all restorative conferences, as representatives of the public interest. But the police have a discretion as to whether to prosecute, and in some countries (Canada and England) have used that discretion to allow suitable cases to proceed to a conference rather than to court, in what are sometimes called "diversionary conferences". (They exist also in our Youth Justice system.)

What I have proposed since 1998 is a system of state-funded Community Justice Centres. As I described this in a paper for the Second International Conference on Restorative Justice for Juveniles<sup>11</sup>, such centres would operate

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<sup>10</sup> (Good Books, Intercourse, Pennsylvania, 2002), pp 58,59.

<sup>11</sup> *The Roles of Community and Government*, Fort Lauderdale, Florida, November 7-9 1998.

*... throughout the country alongside the courts ... providing services in both the civil and criminal areas. Ultimately they could be taken over by local body or other elected local groups but at least initially they would be established and run by or under contract to the Department for Courts [now, the Ministry of Justice].*

*The ideal location for such centres would be the places where you might now find a Citizens Advice Bureau, but eventually they might be purpose built so as to house the Community Justice Centre, Victim Support, Citizens Advice Bureau, local Community Constable (if the area has one), and possibly other services such as health, child care, budgeting and recreation.*

*In areas with a strong Maori population the Community Justice Centre could be operated by the local Iwi (tribal) Social Services, either for its members only or perhaps for the public generally. The highly regarded Waipareira Trust in West Auckland is a non-tribal urban Maori organisation with a great track record in providing social services and could well be contracted to operate a Community Justice Centre in that area. South Auckland would probably have one or more such centres run largely by Pacific Island communities.*

*Each Community Justice Centre would employ one or more conference co-ordinators either full time or part time, whose function would be to operate as I have described New Zealand practice at its best (ie where a Youth Justice Co-ordinator responsible for a "patch" works closely with the police and community in developing preventative measures and providing good programs for those who do offend.) They would also convene and facilitate restorative justice conferences where matters are referred by the police, the courts or the parties, both for adult and youth justice matters. They would monitor the outcome of conference plans, or (better still) ensure that a nominated community person does so. Conferences which reached agreement that no court proceedings were necessary (and the police would usually participate at the conference) would produce a plan for the offender and a plan for the victim.*

*Some State funding of programs would be essential, but the objective would be to maximise the local community's sense of ownership of and participation in this whole process. In fact the State should not have any extra spending as there would be savings in prisons and corrections budgets. All of these savings should be channelled into the community-based system for several years to ensure it is well established.*

*On the civil side, the Community Justice Centre would be the first port of call for those with a dispute. (For larger enterprises the local Chamber of Commerce could perform a similar role). The Centre would get the parties in and through the services of trained mediators would attempt to settle the dispute there and then, failing which ADR options would be offered to the parties. Any agreement reached at or through the services of the Community Justice Centre could be registered in the courts and enforced as a judgment of the court. Cases not resolved in this way would be referred to the present Disputes Tribunal using lay mediators in claims up to \$7,500 or to the courts.*

*In short, Community Justice Centres would become the primary means of delivering justice services both civil and criminal, with a smaller lower court system in support and the upper levels of courts remaining for appeal purposes and for interpreting and*

*developing the law. Justice services would better reflect the cultural diversity of New Zealand. The community would be much more involved in the ownership and resolution of conflict. Restorative justice processes would become the primary means of dealing with disputes and enhancing peace in the community.*

If such a system were to be developed, I would expect one in each main area would specialise in cases of domestic and sexual violence, as I accept that specialist skills are needed in such cases. Those specialist centres would be doing the sort of work that Mary Koss and her team are doing in Pima County, Arizona, and possibly more serious cases as well. They could also handle conferences arranged on a post-release basis as a condition of parole, where a term of imprisonment has been served. They would work closely with an organisation such as SAFE. Importantly, they could become a focus for victim-initiated conferences, and thereby help restorative justice to become less offender focused, which is a fault that is commonly (and correctly) found with it.

How would this work in practice? A victim could call at such a centre and have a confidential discussion with a counselor about the different ways of proceeding. If the victim preferred to take this route, and knew the identity of the offender, contact could be made by the Centre with the offender to see if he/she was prepared to take part in a restorative process. This would require the offender to admit the offending, and to be prepared to take part in a restorative process. If both parties agreed, a police representative would be invited to the conference. I would hope that the police force would develop its own specialists in such cases, and that a specialist officer would attend. (Few offenders would agree to a police presence, unless the victim made it a prerequisite of proceeding down the restorative track any further – which I expect would often be the case.)

It would be desirable that an organisation like SAFE would be involved in every such conference. Prosecutions would frequently be involved, but diversionary outcomes could be agreed by the police in suitable cases. If neither the victim nor offender wanted the police involved, a conference process could still proceed but on the basis that the victim could go to the police at any time. Even though that right could not be bargained away, the incentive would remain for offenders to carry out their part of any outcome – which would be likely to involve apologies, treatment for offenders, restitution for victims, and a contribution to the community.

This is the next step for New Zealand. It would involve a partnership between State (primarily the Courts and the police), the community and voluntary agencies. It would remove a number of cases from the courts, both civil and criminal, but only where that was the wish of all concerned. It would provide a much greater experience of justice, for a much greater number of people, whether they be victims, offenders, or others affected in so many ways by wrongdoing.

It is time to step out together.