

## **Restorative Justice Conferences in Prison**

### **The Effectiveness of Victim Offender Conferences**

#### **The Overseas Experience**

Restorative justice focuses upon the harm caused to individual victims and the community while emphasizing the importance of engaging key stakeholders (victims, community and offenders) in the process of developing a restorative response to the crime. Restorative justice theory is having an increasing impact upon communities, and even entire justice systems, throughout North America, Europe and the South Pacific.

The oldest, most widely disseminated and documented practice throughout the world, and empirically grounded expression of restorative justice is victim offender conferencing. With more than twenty-five years of experience and research, involving many thousands of annual case referrals to programs in more than 1,200 known communities throughout North America and Europe), victim offender conferencing (often referred to as victim offender reconciliation or victim offender mediation) remains a strong empirically grounded pillar within the growing restorative justice movement.

A growing amount of empirical data has emerged from studies of victim offender mediation in property crimes and minor assaults, in the U.S., Canada, and England. High levels of client satisfaction with the mediation process and outcome has been consistently found over the past 18 years in studies throughout Europe and North America. It is becoming increasingly clear that the victim offender mediation process humanizes the criminal justice experience for both victim and offender; holds offenders directly accountable to the people they victimized, allows for more active involvement of crime victims and community members (as volunteer mediators) in the justice process, and suppresses further criminal behavior in offenders.

During the early 1980's, many questioned whether crime victims would even want to meet face-to face with their offender. Today it is very clear, from empirical data and practice experience that the majority of victims of property crimes and minor assaults presented with the opportunity of mediation chose to engage the process, with victim participation rates often ranging from about 60 to 70% in many programs. A statewide randomized public opinion survey in Minnesota found that 84% of citizens, including many who had been victimized by crime, indicated they would consider participating in victim offender mediation if they were the victim of a property crime. A more recent statewide survey of victim service providers in Minnesota found that 91% felt that Victim Offender Conferencing was an important service to be made available to victims on a volunteer basis and that it should be offered in each judicial district of the state.

Both restorative justice in general, and victim offender conferences specifically, tend to be associated with non-violent property crimes, and less serious assaults. Recent evidence however, challenges that assumption by providing empirical evidence that suggests that many of the principles of restorative justice can be applied in crimes of severe violence, including murder. Some would even suggest that the deepest healing impact of restorative justice is to be found in addressing and responding to such violent crime. That is certainly the experience of Prison Fellowship New Zealand.

An increasing number of victims of sexual assault, attempted homicide, and survivors of murder victims are requesting the opportunity to meet the offender to express the full impact of the crime upon their life, to get answers to many questions they have and to gain a greater sense of closure so that they can move on with their lives. In most cases this occurs many years after the crime occurred and the actual conference is held in a secure institution where the offender is located. A growing number of victims of severe violence in the United States, Canada and Europe have expressed interest in a mediated dialogue session with the offender.

### **In-Prison Victim Offender Conferences in New Zealand**

The programme involves facilitating safely-structured meetings, usually in prisons, between those who have suffered from a crime, and the actual perpetrators of that crime. Jackie Katounas has been facilitating these meetings since 1999, initially for the Hawkes Bay Restorative Justice Trust, and since 2001 for Prison Fellowship New Zealand. In the last twelve months, she dealt with 31 referrals, five of which led to victim-offender conferences. While most of the conferences are initiated by offenders, in the last twelve months four were initiated by victims. Other Restorative Justice Providers have facilitated in-prison victim offender conferences, but Prison Fellowship is the primary service provider at present.

Our capacity to facilitate victim-offender conferences is limited. There is no funding available for victim-offender conferences in prisons, and funding is met from applications to charitable trusts and private donors.

### **The Objectives of Victim-Offender Conferences**

The objectives of providing victim-offender conferences are:

- a) To provide a service which enables the Department of Corrections to comply with and implement principles relating to restorative justice as required in current legislation affecting prisoners.
- b) To provide facilitated meetings between offenders in prison and their victims in accordance with the government's *Principles of Best Practice for Restorative Justice*

*Processes in Criminal Cases and the Statement of Restorative Justice Values and Processes.*<sup>1</sup>

- c) To provide a restorative justice process which has the flexibility to accommodate different cultural practices, and in particular to provide a process which is congruent with values and processes in Maori and Pacific Island cultures.
- d) To aid the victim of a crime to recover, heal, and find resolution from the effects of the crime suffered.

## **Referrals**

In the last year, referrals have been received from:

- a) Victims;
- b) Parole Board;
- c) Solicitors (representing either the victim or the offender)
- d) Prisoners
- e) Prison Unit Managers, Sentence Planners and social workers (on behalf of offenders)
- f) Community Probation Service

## **Reasons for Not Proceeding with Conferences**

Only about one in every five referrals result in a conference. Reasons for discontinuance are as follows:

- a) The victim chooses not to proceed;
- b) The offender chooses not to proceed;
- c) It is not practicable to proceed e.g. cost (where the offender is imprisoned some distance from the victim)
- d) The offender is not considered suitable for a conference, e.g. rationalising behaviour, wrong motivation, lack of remorse.
- e) The victim is not considered ready for a conference, e.g. seriously traumatised, mentally unwell.

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<sup>1</sup> *Restorative Justice in New Zealand* [2004], New Zealand Ministry of Justice and the Restorative Justice Network.

## **Demand for Services**

Prison Fellowship has not actively promoted the service to either victims or offenders, because it is unfunded. We do not have the resources to meet the expected increase in demand. In our estimation, if we did publicise the service, we would receive between 120 and 200 requests a year in the Wellington/Hawkes Bay region, resulting in between 20 and 35 Conferences a year.

## **Research**

While there has been considerable research in New Zealand on the impact of restorative justice conferences in New Zealand, there has not been any local research on the impact of such conferences within New Zealand prisons. The anecdotal evidence available to Prison Fellowship thus far, would support the findings from overseas research, which has established that such conferences produce substantial and statistically significant benefits for victims of crime.

## **Victim Offender Conferences – Selected Case Studies**

The following story illustrates how individual victim-offender meetings can be effective with the help of a skilled facilitator:

In 1997 Peter Smith<sup>2</sup> received a life sentence for the murder of Jeremy Kern, a bank teller, during an armed robbery. In 2003 Mr Kern's sister Miriam, who lives in Sydney, asked if she could meet Peter face-to-face. Jackie Katounas facilitated the meeting between Peter, Miriam and a supportive friend, which occurred last March.

Jackie interviewed Peter at some length before the meeting, and felt that he was genuinely remorseful. "He'd been in prison some five years, and had had plenty of time to think about the impact of his action on the family. He was very grateful for the opportunity to meet the sister, but very apprehensive."

The victim-offender conference began with Jackie asking Peter to describe what was happening in his life at the time of the tragic event. Peter said he had been a gang member at the time, though he knew that he needed to take full responsibility himself for what had happened. He said he hadn't intended that anyone should die except himself.

"I didn't have the courage to take my own life, and I thought by going into the bank with a gun that the police would take me out and do the job for me."

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<sup>2</sup> Victim and offender names are fictitious

Miriam responded that while she could understand that, she and her family had been devastated by Jeremy's death. Her brother's wife and two children had also suffered serious on-going trauma as a result of losing their husband and father. However, she had undergone a healing journey, was willing to forgive Peter, and help him move on.

The meeting moved on to discussing how Peter was spending his time while in prison. Peter spoke of the technology studies he was doing and his goals for the future. He said he knew that saying "sorry" was not enough and he wanted to prove his remorse by actions rather than words.

Both Miriam and her friend felt he was genuine and wished him well. Then the possibility of expressing Peter's commitment through some kind of formal agreement was discussed. It was agreed that Peter would continue his studies and write occasionally to Miriam to update her on his progress. This would be done via the meeting facilitator. The prison chaplain (also attending) stated his commitment to mentoring Peter through the remainder of his sentence.

As the meeting concluded, Miriam and her friend gave Peter a hug and wished him well. Following the meeting, Peter burst into tears, and cried for most of the day. Within days, prison staff noticed a remarkable change in Peter's behaviour. He was positive, relaxed, and purposeful – planning for the future with confidence.

Other stories of reconciliation which have occurred recently involve:

- A man convicted of the attempted murder of an elderly woman. He provided some background to his actions, and heard that she remained anxious that he could be a threat once more. He promised that his behaviour had changed and that he would not return to the locality of the crime, if that was her wish. She accepted his reassurances and they hugged on parting.
- A man convicted of causing grievous bodily harm to his ex-wife and her new partner. Both the offender and one of the victims accepted responsibility for what had happened. A child of the offender and his ex-wife also attended the meeting and spoke of his support for his parents and pride in his father's achievements in prison i.e learning to read and write. The couple supported the offender's release into the community, as well as a reconciliation with his children and wider whanau.
- A man convicted of aggravated robbery at a family restaurant. He met with the restaurant owner, took responsibility for the crime and explained that he had been using illegal means to try to pay a huge unpaid fine, so he could buy a house for his partner and child. He had

not meant to harm anyone. The trauma experienced by an employee and the owner was explained to him. The offender apologized, the apology was accepted and the two men shook hands.

Several other victim-offender meetings are in process and are likely to occur within the next year. The meetings can be requested by offenders, victims, or the families of victims. Motives vary. In some cases victims want to seek assurance that they won't be harassed or harmed when the offender is released. In others, the victims want a chance to talk about the impact of the offence on their lives. On occasions, offenders want reassurance that they can return to their community, and be given the opportunity to reintegrate within the community, without fear of retribution from the victim or their whānau.