

# CONDUCTING A RESTORATIVE JUSTICE CONFERENCE

**Bringing accountability, healing and responsibility to criminal justice processes**

## **Introduction**

In any developed society, criminal justice processes sit within the wider ambit of social justice and the need to develop, enhance and protect the common good. Social justice covers racial, sexual, ethnic, social and religious dimensions of life into which criminal justice integrally fits.

One of the major reasons why retributive justice procedures have become counter productive is that they are too often separated out from their context as one part only of the many parts of social justice.

It is apparent that the retributive criminal justice processes we follow so slavishly through our policing and court systems are failing both offenders and the victims of crime. The community is the poorer for this in the end. The reasons for this are obvious. The whole philosophy and approach is based primarily on vengeance and punishment and provide little by way of positive help to anyone involved, least of all victims. Prisons are not called 'universities of crime' for no good reason.

Restorative justice has come to be seen as a much fuller and more productive processes of conflict resolution, especially in relation to crime, and a better way of conducting criminal justice processes. It is promoted as a parallel process to sit alongside the current court-based system, which remains a useful tool where the conditions for restorative justice are not present.

## **Seeking Social Justice and the Common Good**

Justice is based on precepts which protect, enhance and develop the common good of the wider community. Without seeking the common good, one cannot achieve social justice. Such justice is only achieved when **FOUR** basic principles are fulfilled.

### **# The principle of Solidarity.**

This recognises that we are all brothers and sisters of one another, made in the image and likeness of God. No one individual or grouping is sub-human. This was the claim of the Nazis about gypsies, homosexuals, Jews, radicals, communists. It was the claim of the apartheid regime about black South Africans. It sits at the root of all major acts of genocide in history.

### **# The principle of Subsidiarity.**

This recognises that everyone has gifts and talents which need to develop, and no one has the right to crush the potential of an individual to develop particular skills and gifts. Such gifts are for the good of the whole community. Authoritarian and dictatorial social structures are usually the antithesis of subsidiarity.

## # The protection of Human Rights.

This principle, which appears now to be self evident but was not always so, recognises that people are entitled by their very nature as human beings to basic rights. Sufficient food, shelter, medical care, education, family support, freedom of movement and association are among the most basic human rights.

## # The protection of the poor, the disadvantaged, the vulnerable, the sick.

Every society has such people among its members. No society can claim to be socially just if it neglects any of these groups. Many among such people are unable to look after themselves adequately. A just society takes care of such people.

These four principles can be seen as four legs on a racehorse. If one or two of the horse's legs is lame, then the horse cannot function as a racehorse should. All four legs have to be healthy and utilised. The requirements of social justice cannot be met if all four principles are not acknowledged. Injustice will prevail.

## **Differences between Retributive and Restorative Justice**

### ***RETRIBUTIVE JUSTICE***

Crime violates the state and law

The state owns the conflict

Justice focuses on establishing guilt

The process is adversarial

It seeks punishment

The outcome is measured by who wins and loses

### ***RESTORATIVE JUSTICE***

Crime violates people and relationships

Victims and offenders have the central roles

Justice seeks to identify needs, obligations and responsibilities

The process is through dialogue and mutual agreement

It seeks restoration and repair wherever possible

Outcome is measured by responsibilities assumed, needs met and healing attained<sup>1</sup>

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<sup>1</sup> Howard Zehr, *Changing Lenses*, Herald Press, Scottdale, PA 1990.

## **So what is Restorative Justice?**

Restorative justice is a **PROCESS**, preferably community-based, which

- # seeks to repair damage or fix harm done
- # provides a better deal for victims
- # encourages offenders to take responsibility for their behaviour
- # provides opportunity to begin a healing process
- # can offer more practical sanctions when appropriate
- # allows the possibility of forgiveness and reconciliation to begin
- # can help to gradually reduce prison numbers

## **What are the Ground Rules for an RJ Conference?**

There are **EIGHT** simple Ground Rules which should apply to all conferences

- all RJ Conferences should be voluntary
- they should be victim sensitive
- all participants should be respectful in how they speak and act
- all matters discussed are confidential to those involved
- the approach should be flexible
- it should be conducted in a safe user-friendly environment
- proceeding should be transparent, open and honest.
- Only one person should speak at a time – there should be no interruptions

## **How does an RJ Conference work?**

There are *three* important parts to a conference – preparation, the conference and follow-up.

### **A. Preparation**

This is considered a very important part. If it is not done properly, things can easily go wrong during the conference. There are **SIX** stages to it.

- referral to the RJ facilitators group. This can be done by anyone – a lawyer, judges, victim, offender, a friend.
- The suitability of the conference is determined based on the availability and willingness of key people to freely participate, and on possible outcomes
- Facilitator/s or/and a recorder are appointed. It is preferable for two people to be present to lead the process.
- The offender must indicate a willingness to take responsibility (legally termed ‘admit guilt’) before any conference is possible
- At least one pre-conference meeting is held with the victim/s to prepare realistic expectations and clarify the benefits for all

- At least one meeting is held with the offender/s to clarify process and expectations.

## **B. Restorative Justice Conference Process**

1. A welcome is given by the facilitator and introductions are made, either individually or by the facilitator. Sometimes a short reflection/poem/reading/prayer is said.
2. The facilitator states the agreed Ground Rules
3. Apology in some form is given by the offender, who might then tell the story/context of the offending.
4. Then the stories of the victim/s are told and the consequences for them relayed. In some circumstances, it may be opportune for the victim to present first.
5. At appropriate times short breaks can happen. After stories, the conference officially breaks to allow the offender and support people to adjourn and discuss what they can offer by way of going forward to help repair harm done and needs to be met. This ultimately will be forwarded to the court. Victims and their support people may also wish to do the same and bring recommendations back to the group.
6. The conference re-convenes and consensus is sought and a plan of action agreed. This is prepared for the court.
7. The conference adjourns with thanks to all participants and reminders of confidentiality.

## **C. Post Conference**

The plan of action is referred to the court. It is up to the court to make sure any plan of action is implemented, but the facilitators' group or the facilitator personally may be involved with this if requested.