

A DIFFERENT KIND OF JUSTICE

By Liz Harris, November 2000.

We Need to Feel More

**We need to feel more to understand others
We need to love more to be loved back
We need to cry more to cleanse ourselves
We need to laugh more to enjoy ourselves**

**We need to establish the values of
honesty and fairness
when interacting with people
We need to establish a strong ethical basis
as a way of life**

**We need to see more
than our own little fantasies
We need to hear more
and listen to the needs of others**

**We need to give more and take less
We need to share more and own less
We need to realize the importance of family
as a backbone to stability
We need to look more
and realize that we are not so different
from one another**

**We need to create a world where
we can all peacefully live
the life we choose
We need to create a world where
we can once again trust each other**

-Poem by Susan Polis Schutz

I was contracted as a Community Group Conference (CGC) facilitator of a community restorative justice pilot program in New Zealand. Victims of crime through the usual Court system often felt that although the Offender had pleaded guilty to the offence and charged in accordance with the Law, they, the person violated did not feel a sense of justice for themselves. This is not an uncommon occurrence and in recognition of the restoration of justice from a community perspective rather than a 'By the Book' legal process the Community Accountability Program was set up in Auckland, Rotorua and Wellington.

The CGC pilot was unique in New Zealand as it focused on the restorative lense of justice rather than the retributive lense and did not involve hierarchy of prominent debaters such as lawyers or a jury or judge.

In cases where the Offender had pleaded guilty in Court and charged accordingly, the victim of the offence had the opportunity to seek reparation outside of the Court – in their way, with their definition of what ‘reparation’ should be. As a facilitator it was essential that I was impartial therefore when I received notification of a community meeting (as opposed to hearing) I had to ensure I did not know the parties. If I did, it was required that another facilitator that did not know the parties convene that meeting. This is crucial, as it eliminated any concerns about bias or that ‘justice’ would not appear to be ‘justly delivered’.

Restorative Justice

What is the difference between retributive and restorative justice?

Restorative Justice programs address primarily within the criminal justice system but can be taken into the community and other organisations as a process for managing acts of violence. The guiding philosophy of restorative justice is a conviction that healing — for offenders, victims, and communities — comes only with truth telling. Programs emphasise accountability by offenders, safety and healing for victims, and hope, the possibility of change, for all people. Some programs provide services to individuals who have been affected by crime and the criminal justice system; others provide resources and opportunities for greater community participation in healing; others offer information and encouragement to governments and agencies attempting to reduce the abuses and enhance the effectiveness of criminal justice systems.

‘Howard Zehr’s seminal work ‘Changing Lenses: A New Focus for Crime and Justice (1990), p 211: describes:

“According to retributive justice, (1) crime violates the state and its laws; (2) justice focuses on establishing guilt (3) so that doses of pain can be measured out; (4) justice is sought through a conflict between adversaries (5) in which offender is pitted against state; (6) rules and intentions outweigh outcomes. One side wins and the other loses.

According to restorative justice, (1) crime violates people and relationships; (2) justice aims to identify needs and obligations (3) so that things can be made right; (4) justice encourages dialogue and mutual agreement, (5) gives victims and offenders central roles, and (6) is judged by the extent to which responsibilities are assumed, needs are met, and healing (of individuals and relationships) is encouraged.”¹

¹ THE NEW ZEALAND YOUTH COURT: A MODEL FOR DEVELOPMENT, p 39

In cases of workplace violence where no 'criminal charge' can be pursued, there are still options open to organisations and individuals. When I speak with Victims (and from here on in will refer to them as Targets) there is almost always a sense that even though their grievance has been heard or the 'bully' encouraged to apologise (if in fact that even eventuates) they feel no real sense of human justice.

This is for them, another act of violence upon them and only proves the case that the way the matter was handled was not viewed as just and or fair by the target.

Why Target and not Victim?

Simple, bullying and acts of workplace violence are deliberate acts with the intent to harm another individual and the only reason bullies get away with it is because they know they can. The worker has been targeted for abuse. They have been chosen purposefully by another adult who through their position within the organisation has the power to do so. Not everyone in positions of authority commit violence on their workers.

The Two Systems

'Zehr goes on (pp 211-214) to list 34 points of comparison of the two systems:

Retributive Lens

Blame-fixing central
Focus on past
Needs secondary
Battle model: adversarial
Emphasises differences
Imposition of pain considered normative
One social injury added to another
Harm by offender balanced by harm to offender
Focus on offender; victim ignored
State and offender are key elements
Victims lack information
Restitution rare
Victims' "truth" secondary

Victims' suffering ignored

Action from state to offender; offender passive

Restorative Lens

Problem-solving central
Focus on future
Needs primary
Dialogue normative
Searches for commonalities
Restoration and reparation considered normative
Emphasis on repair of social injuries
Harm by offender balanced by making right
Victims' needs central
Victim and offender are key elements
Information provided to victims
Restitution normal
Victims given chance to "tell their truth"
Victims' suffering lamented and acknowledged
Offender given role in solution

Retributive Lens continued

Offender has no responsibility for resolution
Outcomes encourage offender irresponsibility
Rituals of personal denunciation and exclusion
Offender denounced
Offender's ties to community weakened
Offender seen in fragments, offence being definitional
Sense of balance through retribution
Balanced righted by lowering offender

Justice tested by intent and process
Justice as right rules
Victim-offender relationships ignored
Process alienates
Response based on offender's past behaviour
Repentance and forgiveness discouraged

Proxy professions are the key actors

Competitive, individualistic values encouraged
Ignores social, economic, and moral context of behaviour
Assumes win-lose outcomes

Restorative Lens continued

Offender has responsibility in resolution
Responsible behaviour encouraged

Rituals of lament and reordering

Harmful act denounced
Offender's integration into community increased
Offender viewed holistically

Sense of balance through restitution
Balance righted by raising both victim and offender

Justice tested by its "fruits"
Justice as right relationships
Victim-offender relationships central
Process aims at reconciliation
Response based on consequences of offender's behaviour
Repentance and forgiveness encouraged

Victim and offender central;
professional help available
Mutuality and co-operation encouraged
Total context relevant

Makes possible win-win outcomes' ¹

Workplace Violence and Restorative Justice

The key consideration about restorative justice is that the central principle guiding the model is that the Victim or Target is paramount. At every stage of the reparation process, the Target and their needs remains central. Nothing else, not the organisation, not the Bully, not the facilitator or any support people present.

Another point about restorative justice is that it does not promote a win-lose, adversarial, victim gets lost in it all process. It does not guarantee a win-win outcome, as that is not always possible. What it does promote is the opportunity for 'true' change.

¹ JOURNAL OF JUDICIAL ADMINISTRATION, NEW ZEALAND, 1994, P.40.

An integral feature of any form of grievance administration is that everyone is treated fairly and with due consideration. This process does not mean the perpetrator has the opportunity to win, and again the target feel betrayed, as at any stage throughout the process, the target can stop the proceedings.

What I am offering here is the opportunity for Targets to be able to let the Bully hear what their abusive behaviour has had on them and what they seek in form of reparation and a sense that justice has been fairly administered. It is a process, which facilitates the healing journey of a person who have been severely abused by another.

This process also acknowledges that there are unique accounts and various levels of harm. For example, a colleague is upset and yells and puts down another colleague. This is abusive. This is also reconcilable, given the right environment to assist the relationship and people's feelings and sense of justice to be repaired.

Restorative justice is one option and not necessarily the only one, but all evidence from my own experience, has shown that Targets for once, have felt heard and in control in choosing what is fair and just as a consequence.

In cases where the abuse has been severe, the restorative justice process may indeed give the Target an opportunity to let everything out, how they felt, how they were impacted upon and perhaps even, that the only solution is that the Bully leave the organisation. The golden rule superseding any process of restoration or reparation is that the Target's wellbeing is paramount and if they do not feel safe having the Bully anywhere near them, that is their right. To remove the Target would only become another act of violation.

Primary Principles of Community Group Conferences

1. To act with Integrity;
2. To be Honest and Fair;
3. Identify Potential and nurture its growth;
4. Be respectful of Human Dignity; and
5. Seek to Serve with Excellence.

The ground rules for the CGC are:

1. The CGC will be "safe" for all parties;
2. Abusive, intimidating and/or threatening language, behaviour, and/or gesturing will not be permitted in the CGC;
3. An individual, when permitted to speak in the CGC, may do so without interruption and may be permitted to complete what is being said, provided always that the statement is relevant to the Case in hand;
4. Matters discussed within the CGC will remain confidential and will not be discussed outside the venue; and
5. All decisions are binding.

After the meeting, all case notes and decisions will be filed with the appropriate authority and the outcome followed up, monitored and instituted. There will be monthly, quarterly and annual review of all parties to ensure that the agreement reached has been carried out.

That is a brief outline of the process. Of course, it takes a little more setting up but essentially is one that can lead to a more humane way of dealing with people's experiences and offers the opportunity for true healing to begin.

If anyone would like more information or to be guided as to how to set up a process of restorative justice within their workplace please contact me for further details.

One small note – the process does have costs connected to it such as that of employing an independent facilitator, venue hireage (of the Targets choice – not any one else's), resources such as whiteboard, tea, coffee, biscuits etc, a computer and printer to type up notes and the restoration agreement and the employment of appropriate people to ensure that the reparation plan is carried out, monitored and reached over a period of time as laid out in the plan.

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