RESTORATIVE JUSTICE: LESSONS FROM THE PAST, POINTERS FOR THE FUTURE

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Restorative Justice has had a significant impact on the criminal justice system in New Zealand and is increasingly being applied in other contexts. This paper explores the history and development of restorative justice frameworks and practices, providing a reflective account of the lessons learned during this process and identifying opportunities for the future. It begins with a discussion of the origins in the youth justice arena, before moving to the adult criminal jurisdiction. In doing so, it explains the three phases during which restorative justice practices are applied, namely in the pre-trial (diversion), pre-sentence, and post-sentence phases. The paper highlights a range of local initiatives, pilot programmes and their evaluations, as well as international instruments and examples from other jurisdictions to provide context for the New Zealand experience. It also addresses the development of restorative practice in education. Importantly, it emphasises the value of restorative justice, which can have meaningful and positive impact when implemented properly. Finally, the paper concludes by providing pointers for the future. Specifically, it identifies the need to strengthen restorative justice as part of current justice sector reforms; explore appropriate and specialist responses to sexual cases; further develop restorative justice practice in education; identify opportunities in the context of police oversight; examine solutions-focused courts and community justice centres; and move towards an academic centre of excellence to inform and strengthen restorative justice in New Zealand and further afield. The greatest risk facing restorative justice today is the loss of momentum at a critical time. An informed public discourse on restorative justice, which has left its mark on New Zealand's unique legal landscape, is now required to ensure its continued role in the lives of offenders, victims, their families, and our communities.

I. INTRODUCTION

There is no universal definition of the term "restorative justice". It has been described by some as "a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights."[1] Restorative justice is, in some respects, a tripartite theory of justice: that is, it is a term used with reference to principles, methods and outcomes in any given context. First, the term "restorative justice" may be used to describe a body of core values or principles, such as respect, inclusiveness, responsibility and understanding. Second, it may be used to describe the processes or methods which participants will employ in a restorative justice setting. Such processes include face-to-face dialogue, group conferencing, community engagement, and support and reintegration processes. Finally, the term "restorative justice" may be used to describe the outcomes that flow from the aforementioned principles and processes.

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1 Suffolk University Centre for Restorative Justice *What is Restorative Justice?* <www.suffolk.edu>.

Others have described restorative justice as a "philosophy that moves from punishment to reconciliation, from vengeance against offenders to healing for victims, from alienation and harshness to community and wholeness, from negativity and destructiveness to healing, forgiveness and mercy".[2] In 2005, Daniel Van Ness (Director of the Centre for Justice and Reconciliation at Prison Fellowship International) described the evolution of restorative justice in the following way:[3]

> Restorative justice is both a new and an old concept. While the modern articulation (including the name) has emerged in the past 30 years, the underlying philosophy and ethos resonate with those of ancient processes of conflict resolution. The recent rediscovery of those processes in different parts of the world has stimulated, informed and enriched the development of restorative practices.

In the criminal justice context, Professor Zehr describes restorative justice as a process which involves "to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible."[4] In recent decades, restorative justice has been successfully applied across a range of human endeavours and in various fora, from criminal justice and educational initiatives at the domestic level through to international truth and reconciliation commissions in post-conflict societies.

II. History and Development in New Zealand

A. Traditional Significance

It is important to emphasise at the outset that restorative justice is a practice which sits comfortably in the New Zealand context. Its principles and methodologies find their roots in most cultures around the globe. The Jewish community is familiar with restorative justice practices and the work of Professor Howard Zehr explains its rich heritage. Professor Braithwaite, an eminent Australian criminologist, has stated that restorative justice "has been the dominant model of criminal justice throughout most of human history for all the world's peoples."[5]

In New Zealand, Māori customs and traditions are closely aligned with restorative justice, and they include values such as "reconciliation, reciprocity, and whānau involvement".[6] Consedine notes that, prior to European contact, Māori had a well-developed system of custom and practice

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2 Jim Consedine *Restorative Justice Healing the Effects of Crime* (Ploughshares Publishing New Zealand, 1995) at 11, as cited in Dot Goulding, Guy Hall and Brian Steels "Restorative Prisons: Towards Radical Prison Reform" (2008) 20 Current Issues in Criminal Justice 231 at 233.

3 Daniel Van Ness "An Overview of Restorative Justice Around the World" (paper presented at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, Thailand, 18–25 April 2005) <http://www.icclr.law.ubc.ca> at 1.

4 Howard Zehr *The little Book of Restorative Justice* (Good Books, Intercourse, PA, 2002) at 37, cited in Ministry of Justice *Restorative Justice in New Zealand: Best Practice* (Ministry of Justice, May 2004) at 7.

5 J Braithwaite "Restorative justice" in M Tonry (ed) *The handbook of Crime and Punishment* (Oxford University Press, Oxford, 1998) at 323.

6 Ministry of Justice *Restorative Justice in New Zealand: Best Practice* (Ministry of Justice, May 2004) at 7.

that ensured the stability of their communities,[7] one which had a great deal in common with the restorative philosophy:[8]

> Essentially the system was akin to what is now referred to as restorative justice. There were a number of important elements to this. When there was a breach, community process enabled a consideration of the interests of the whānaungatanga (social group) and ensured the integrity of the social fabric. Through whānau (family) or hapu (wider family) meetings, and on occasional iwi (tribal) meetings, the voices of all parties could be heard and decisions arrived at by consensus (kotahitanga). The aim was to restore the mana (prestige/authority) of the victim, the victim's family and the family of the offender, and to ensure measures were taken to restore the future social order of the wider community. Because these concepts were given meaning in the context of the wider group, retribution against an individual offender was not seen as the primary mechanism for achieving justice. Rather, the group was accountable for the actions of the individual (manaakitanga) and that exacted compensation on behalf of the aggrieved.

In this respect, aspects of restorative justice are regarded in this country as being yet another gift of the Māori culture to be treasured accordingly.

B. Legislative reform

1. Youth justice

The legislative shift towards restorative justice practices came in 1989 with the enactment of the Children Young Persons and their Families Act 1989. The 1989 Act was the first legislative step towards a system of restorative justice processes. Prior to 1989 a range of factors were causing concern and led to calls for legislative change. There was public dissatisfaction with the way in which the criminal justice system dealt with young people, particularly Māori, as though they were people without obligations living in communities which equally had no obligations to them. Maxwell explains that these concerns included:[9]

> Concern for children's rights; new approaches to effective family therapy; research demonstrating the negative impact of institutionalism on children; inadequacies in the approach taken in the 1974 legislation to young offenders; the failure of the criminal justice system to take account of issues for victims; experimentation with new models of service provision and approaches to youth offending in the courts; and concerns raised by Māori about the injustices that had been involved in the removal of children from their families.

As Watt explains the economic, social and political climate in the 1980s "was one of flux".[10] The Labour government of 1984 established a departmental working party to examine justice

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7 Consedine *Restorative Justice: Healing the effects of crime* (Ploughshares Publishing New Zealand, 1999) at ch 6. See also NZ Māori Council "Restorative Justice: A Māori Perspective" in Helen Bowen and Jim Consedine (eds) *Restorative Justice: Contemporary Themes and Practice* (Lyttleton, Ploughshares, 1999).

8 At 87.

9 G Maxwell "The Youth Justice System in New Zealand: Restorative Justice Delivered Through the Family Group Conference in Restorative Justice and Practices in New Zealand" in G Maxwell and JH Liu (eds) *Restorative Justice and Practices in New Zealand: Towards a Restorative Society* (Institute of Policy Studies, Wellington, 2007) at 46.

10 Emily Watt "A History of Youth Justice in New Zealand" (paper commissioned by Judge Andrew Becroft, 2003) at 17.

issues,[11] which led to the 1986 Children and Young Persons Bill. The Select Committee subsequently travelled the country to receive and consider submissions on how the Bill could be improved. In 1987, a second working party was established to consider how it could be "recast to make it simpler, more flexible, more culturally relevant, and more directed to providing resources for services rather than for infrastructure".[12] The second working party explained in its 1987 report that:[13]

> [i]n the course of its development the Bill has become the focus for frequently incompatible views concerning, among other things, state intervention versus family autonomy, the application of welfare versus justice models for dealing with young offenders, the priorities given to prevention versus intervention, and the role of "professionals" versus that of "lay" members of the community in dealing with matters affecting children and young persons.

While the Select Committee was considering the working party report, a 1988 report by Mike Doolan of the Department of Social Welfare proved to be highly influential. It recommended a separate court for young persons as a division of the District Court, as well as the use of family/whānau conferences to involve the offender, victims, and families. With respect to the potential for these proposals to resonate with Māori communities, the Doolan report marked a shift away from the 1986 Bill which had been criticised by some for its "ambivalent and confused approach to the problem of juvenile offending" which would "do little either to promote the use of diversionary strategies or to advance due process considerations."[14] When the Bill was reintroduced to the House of Representatives for its second reading, the changes reflected a process of constructive review and refinement and the Act entered into force on 1 November 1989.

Prior to the 1988 Doolan report, the Youth Court had, in fact, launched its own initiatives which, although then not formally designed as restorative justice programmes, were consistent with the principles of this approach. They were inclusive of victims, family and the community and drew their inspiration from early experiments in family decision making. I became involved in these initiatives through the first Principal Youth Court Judge M Brown, who encouraged me to undertake a pilot in the mid-1980s in Porirua. The pilot was an early example of the family group conference system, which was subsequently embedded in the Children, Young Persons and their Families Act 1989. Judge Brown's efforts at this time were critical to the success of this initiative. He emphasised the importance of identifying community leaders and thinking about how we could engage and enable them to become a central part of this process. He said to me "Who is 'the community'? Who are its strengths? How can they be involved in helping young people?". He regularly met with community groups to share his knowledge and enthusiasm for what he saw as an invaluable opportunity in this field.

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11 At 17–18, citing M P Doolan "Youth Justice – Legislation and Practice" in Brown and McElrea (eds) *The Youth Court in New Zealand: A New Model of Justice* (Legal Research Foundation, Auckland, 1993) at 20–21.

12 Michael Doolan "Youth Justice Reform in New Zealand" in Julia Vernon and Sandra McKillop (eds) *Preventing Juvenile Crime* (Australian Institute of Criminology, Canberra, 1992) at 123.

13 Department of Social Welfare *Review of the Children and Young Persons Bill: Report of the Working Party on the Children and Young Persons Bill* (Department of Social Welfare, Wellington, 1987) at 6, cited in Watt, above n 9, at 21–22.

14 A Morris and W Young *Juvenile Justice in New Zealand: Policy and Practice* (Study Series 1, Institute of Criminology, Wellington, 1987) at 41, cited in Watt, above n 9, at 20.

The innovative changes brought about by the 1989 Act introduced a philosophical sea change in the youth justice system. The Act introduced a number of core principles governing youth justice processes, which focus on:

(a) alternatives to criminal proceedings;[15]

(b) measures which are designed to strengthen families and foster their ability to develop their own means of dealing with offending by their children and young people;[16]

(c) keeping child or youth offenders in the community, so far as that is practicable and consonant with the need to ensure public safety;[17]

(d) the relevance of age as a mitigating factor in determining whether to impose sanctions and the nature of those sanctions;[18]

(e) the need for sanctions to take the form most likely to maintain and promote the development of the individual within his or her family and take the least restrictive outcome appropriate in the circumstances;[19]

(f) the need for measures to address, so far as practicable, the causes underlying an individual's offending;[20]

(g) the need to consider, when determining the appropriate measure(s), the interests and views of any victims of offending and the need for measures to have proper regard for the interests of victims and the impact of the offending on them;[21] and, finally:

(h) the fact that the vulnerability of children and young persons entitles them to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.[22]

The Act introduced detailed provisions relating to the treatment of children and young persons at all stages of the criminal justice process, from investigations to arrest, interview, detention, and final disposition in the Youth Court and the orders available in this regard.[23] The family group conference process lies at the heart of the youth justice framework under the 1989 Act. It is important to note that the conferences are mandatory for virtually all youth offender cases and the conference itself, not the court, determines the manner in which the offending should be addressed. Full decision making power is therefore devolved to the community in which the offending took place. As explained by His Honour Judge F McElrea, the family group conference procedure is as follows:[24]

> A typical restorative justice conference involves the prior admission of responsibility by the offender, the voluntary attendance of all participants, the assistance of a neutral person as facilitator,

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15 Children and Young Persons and their Families Act 1989, s 208(a) and (b).

16 Section 208(c)(i) and (ii).

17 Section 208(d).

18 Section 208(e).

19 Section 208(f)(i) and (ii).

20 Section 208(fa).

21 Section 208(g)(i) and (ii).

22 Section 208(h).

23 Sections 209–340 and 351–360.

24 Judge FWM McElrea "Customary Values, Restorative Justice and the Role of Prosecutors: A New Zealand Perspective" (paper prepared for the Restorative Justice and Community Prosecution Conference, Cape Town, South Africa, 21–23 February 2007) <www.parliament.nz> at 2.

> the opportunity for explanations to be given, questions answered, and apologies given, the drawing up of a plan to address the wrong done, and an agreement as to how that plan will be implemented and monitored. The court is usually but not necessarily involved.
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> In the Youth Justice sphere, about one-third of conferences are not directed by the court but are diversionary conferences, initiated – and attended – by the police. (However New Zealand does not subscribe to the practice in some parts of Australia, Canada and the United Kingdom of having the police run the conferences. There is always an independent facilitator in charge). If agreement can be reached as to an outcome that does not involve the laying of charges, then no charges are laid – so long as the outcome is implemented.

Although the family group conference process which found its way into the 1989 legislation is consistent with the restorative justice paradigm, it was not until the early 1990s that the concept of restorative justice, as described in Howard Zehr's seminal book entitled *Changing Lenses*, started to have a more formal impact on New Zealand's justice processes.

2. Adult courts

Following the development in the field of youth justice, the next step in New Zealand's restorative justice journey was the development of restorative processes in the adult courts. This process was led by his Honour Judge F McElrea who, in 1994 at a conference of District Court judges, presented a paper proposing the use of the restorative aspects of the family group conference model in the adult setting.[25] At that time, no centralised funding was available for new restorative justice initiatives, although from 1995 adult courts began to accept restorative justice conference recommendations on an ad hoc basis. In the mid 1990s conferences were delivered through community groups with the support of the local judiciary, without the need for substantive legislative amendment.

In 1995, three pilot schemes in Timaru, West Auckland and Rotorua were funded by the Crime Prevention Unit in collaboration with the Police and local Safer Community Councils to divert adult offenders appearing before the District Court and began operating in 1996 and 1999 respectively. An evaluation of the pilots concluded, inter alia,[26] that the programmes were "effective in preventing reoffending and result in financial savings to the justice system".[27]

The emerging practices of the mid 1990s were also recognised by courts. In *R v Clotworthy*,[28] for example, the Crown appealed the sentence of an offender who was found guilty of wounding with intent to cause grievous bodily harm. The offender had undergone a pre-sentence restorative justice process and had agreed to pay reparation to the victim. The District Court had imposed a suspended two year sentence with substantial reparation and community work. Despite taking a different approach to that of the District Court to a range of issues (including the starting point,

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25 Judge FWM McElrea "20 years of restorative justice in New Zealand – Reflections of a Judicial Participant" [2011] JCCL 44 at 49.

26 Gabrielle Maxwell, Allison Morris and Tracey Anderson *Community Panel Adult Pre-Trial Diversion: Supplementary Evaluation* (Crime Prevention Unit, Victoria University of Wellington Institute of Criminology, May 1999) at 6. The report also made a range of recommendations for improvement, including: the clarification of services being provided; development of criteria for the selection, training and practice of panellists; methods to ensure accountability and performance; exploring possibilities of integrating panel outcomes into the diversion and reparation processes in the District Court; and the development for further alternative models which incorporate restorative practices.

27 At 6.

28 *R v Clotworthy* (1998) 15 CRNZ 651 (CA).

the outcome of the guilty plea and reparation order, the offender's offer of compensation and the issue of suspended sentence),[29] the Court acknowledged the role of restorative justice in criminal cases. It concluded:[30]

> We would not wish this judgment to be seen as expressing any general opposition to the concept of restorative justice (essentially the policies behind ss 11 and 12 of the Criminal Justice Act 1985). Those policies must, however, be balanced against other sentencing policies, particularly in this case those inherent in s 5, dealing with cases of serious violence. Which aspect should predominate will depend on an assessment of where the balance should lie in the individual case. Even if the balance is found, as in this case, to lie in favour of s 5 policies, the restorative aspects can have, as here, a significant impact on the length of the term of imprisonment which the Court is directed to impose. They find their place in the ultimate outcome in that way.

The success of the pilots and the recognition of restorative justice in the jurisprudence led to the extension of funding beyond the pilot courts. In 1997, following a government request, the Ministry of Justice prepared a document entitled "Sentencing Policy and Guidance" which addressed a number of sentencing issues.[31] In the words of the then Secretary for Justice, "[i]n examining these issues, the starting point [was] the desirability of fairness and consistency, and of ensuring the state exercises its coercive powers in a humane manner in accordance with international obligations."[32] Before work arising as a result of that discussion document could be completed, however, a citizen's initiated referendum was held on the day of the 1999 general election. The referendum question asked:[33]

> Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?

Clearly the question itself, in requiring the voter to respond in a singular manner to three separate issues, was problematic. Nevertheless, 92 per cent of voters responded in the affirmative.[34] The new Labour Government committed itself to reform of sentencing practice and policy, which culminated in the enactment of the Sentencing Act 2002 and Victims Rights Act 2002.[35] Fortunately, the community infrastructure and practices were already becoming embedded in criminal justice practice and the new legislative provisions were consistent with these initiatives. The Parole Act 2002 and, later, the Corrections Act 2004 completed the circle of these wide-ranging legislative improvements. Currently, restorative justice in the adult system is now available at three key stages:

1. as part of the police adult diversion process;
2. following a guilty plea and prior to sentencing; and

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29 At 659–660.

30 At 661.

31 Ministry of Justice, *Sentencing Policy and Guidance – A Discussion Paper* (Ministry of Justice, Wellington, November 1997) <www.justice.govt.nz>. Topics included, for example: the rationales and goals of sentencing to aggravating and mitigating factors; persistent and dangerous offenders; multiple offenders; the role of victims; a Māori view on sentencing; forms of guidance; and responsibility for sentencing policy and guidance.

32 At Foreword.

33 Elections New Zealand *Elections: Referenda* <www.elections.org.nz>.

34 At 1.

35 Judge FWM McElrea, above n 25, at 51.

3. following sentence, as part of the parole of offenders and as part of reintegration back into the community.

The provisions of these statutes recognise and support a restorative justice approach. They are undoubtedly well known by members of the legal profession and of the judiciary, but some of them are repeated here to underscore the impact they have had, and will continue to have, on criminal justice processes in New Zealand. I will also reflect on the practices and developments in these areas.

C. Current Framework

1. Police diversion

For many years, New Zealand police have used a "diversion" scheme which redirects adult offenders who accept responsibility for offending away from the court but requires them to make amends for the harm caused through community work, reparation where appropriate and apologising to their victims. This diversionary process saves considerable judicial time and saves offenders, in appropriate cases, from the adverse consequences of a conviction. Importantly, a process for alternative resolutions to criminal justice issues is also in keeping with international expectations. In addition to instruments such as the International Covenant on Civil and Political Rights, non-binding instruments such as the 1986 United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), adopted by the UN General Assembly on 14 December 1990,[36] call upon states to "develop non-custodial measures within their legal systems to provide other options" and "to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender."[37] The Rules also advocate discharges in the pre-trial or pre-charge environment, where appropriate and where provided for in domestic legislation.[38]

New Zealand is making significant developments in this area. I recently had the pleasure of listening to a fascinating presentation delivered by Justice Mark O'Reagan at the 2012 International Criminal Law Congress, entitled "Criminal Justice Issues in Times of Change". His presentation addressed, in addition to traversing the Criminal Procedure Simplification Project, the detailed reforms being made to the justice sector "pipeline", as well as the Criminal Procedure Act 2011, the Policing Excellence programme and diversion.

The practice of police diversion is well known and has been in place, in one form or another, for some time in this country.[39] Policing Excellence was launched in 2009 and aims to reduce recorded crime by 13 per cent and Police (non-traffic) apprehensions resolved by prosecution by 19 per cent by the 2014/15 financial year. The programme focuses on improvements across a

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36 *United Nations Standard Minimum Rules* for *Non-custodial Measures* (The Tokyo Rules), GA Res 45/110 annex UN Doc A/45/49 (1990).

37 At [1.5].

38 At [5.1].

39 New Zealand Police *Adult Diversion Scheme Policy (Version 17.0)* <www.police.govt.nz> at 4. Success in these two areas will contribute to a 4% increase in Police's prevention output: See New Zealand Police *Policing Excellence Update* (7 September 2012) <www.police.govt.nz>.

range of police operations, one of which is "alternative resolutions".[40] The related Police Prevention First Strategy also states that one of its initiatives in the area of policing leadership will be to maximise the use of police discretion and alternative resolutions in appropriate circumstances, including when dealing with young people.[41] There have long been calls from the judiciary, the Law Commission, and others to develop better alternatives for offenders in certain cases.[42] The Commissioner of Police has described the strategy as "balanced approach which uses intelligence, enforcement and alternative ways of resolving cases enabling us to better understand and respond to the drivers of crime."[43]

Diversionary action can take place at one of three stages: the pre-arrest, pre-charge, or the post-charge stage in place of a conviction.[44] Thus far, the pre-charge warning initiative reviewed by Police has been positive, recording a nine per cent reduction in charges proceeding to court in the Auckland region.[45] The pre-charge warning scheme was rolled out nationally in September 2010 and has been able to resolve 10 per cent of since implementation, with a 12 per cent reduction in the 2011/12 financial year. In a separate but related initiative, the Police Youth Services Group has also undertaken a review of the research on police warnings and alternative action with children and young people, which includes consideration of international police youth diversion in countries such as Australia, Northern Ireland, England and Wales, Canada and the United States (Florida specifically).[46]

Part of the alternative resolutions initiatives is the trial of a Community Justice Panel in Christchurch. The trial is "an initiative where offenders are held accountable for their offending by a panel of vetted and trained community representatives."[47] The Ministry of Justice, in its *Addressing Drivers of Crime June 2011 Report Back*, explained that the panels have been in operation since January 2011 and form part of a wider cluster of initiatives.[48] The other initiatives mentioned in the July 2011 Report Back, which form part of the cluster of projects of which the Community Justice Panel is a part, include the judicially led Rangatahi Youth Courts, and the judicially led initiative at Kaikohe District Court to include a Nga Puhi service provider in

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40 New Zealand Police *Policing Excellence Update*, at 2–3. The other operational areas covered in the programme include: deployment practice; a victim focus framework; the development of a Centre for Continuous Improvement; performance management frameworks; case management centres; mobile technologies; the Crime Reporting Line; cost recovery; the use of Authorised Officers; and support services to frontline.

41 New Zealand Police *Prevention First: National Operating Strategy 2011 – 2015* <www.police.govt.nz> at 5 and 7.

42 New Zealand Police *New Zealand Police Pre-Charge Warnings Alternative Resolutions: Evaluation Report* (New Zealand Police, 2010) <www.police.govt.nz> at 18. The Evaluation Report makes reference to: Law Commission *Criminal Pre-Trial Processes: Justice Through Efficiency* (NZLC R89, 2005); Law Commission *The Infringement System: A Framework for Reform* (NZLC SP16, 2005); and Law Commission *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals* (NZLC R85, 2004).

43 New Zealand Police *Prevention First: National Operating Strategy 2011–2015*, above n 41, Foreword.

44 New Zealand Police *New Zealand Police Pre-Charge Warnings Alternative Resolutions: Evaluation Report* (New Zealand Police, 2010), above n 42, at 9.

45 At 10–13. Other benefits have been identified, including improved quality of decision making, reduction in prosecutions being withdrawn, reduced paperwork and some positive responses from victims and offenders.

46 New Zealand Police *Alternative Actions that Work: A Review of the Research on Police Warnings and Alternative Action* (New Zealand Police, 2011) <www.police.govt.nz>.

47 New Zealand Police *Policing Excellence Update* (7 September 2012), above n 39, at 3.

48 Ministry of Justice *Addressing the Drivers of Crime: July 2011 Report Back* (Ministry of Justice, July 2011) <www.justice.govt.nz> at [40].

engaging with offenders to address the causes of offending though tikanga Māori. Separate to the Christchurch pilot, Community Justice Panels have been in place around New Zealand for some time in various forms, often supported by local police. Recent media reporting of the Christchurch panel indicates that more than 100 offenders have appeared before panel, with 89 per cent complying with the order set by the panel. Only 55 of cases are reported to have been returned to the District Court system for disposition.[49]

Community Justice Panels are also used in the United Kingdom.[50] In Sheffield, Somerset and Manchester, volunteer-based panels have been identified as an effective model for dealing with certain types of crime. The evaluation considered international examples of similar panels, including the Victim Offender Reconciliation Programme which has been in operation in Canada and the United States since 1977;[51] Pennsylvania's Youth Aid/Community Justice Panels, which have been in place since the 1960s;[52] Vermont's Community Justice Panels since 1994 and the Community Justice Centre from 1998;[53] and Victoria Community Justice Panels in Australia since 1991.[54] The evaluation provided strategic and operational recommendations, including recommendations concerning strategic management, coordination, reviews, targets and measures, communications strategies, impact and implementation management, evaluation, and training.[55] In Australia, "circle sentencing" for aboriginal offenders involves a magistrate, a prosecutor, the circle sentencing project officer, the offender and their legal representative, the victim and their support people, and four elders. Technical legal language is avoided and instead aboriginal English is used.[56] The process is established under the New South Wales Criminal Procedure Act 1986 and is available for most summary offences, while part 6 of the Criminal Procedure Regulation 2010 sets out eligibility requirements.[57] This is a process which has obvious relevance and transferrable value to New Zealand's social and cultural framework.

With respect to the police diversion scheme and the work being undertaken by Police to enhance practice in this area, an issue that ought to be considered is the development of an appropriate mechanism for the monitoring and oversight of the scheme. Monitoring and oversight, both internal and external, is essential to ensure best practice consistency across New Zealand's twelve Police Districts. With respect to the Community Justice Panel pilot, a considered evaluation will be the logical next step in determining whether the initiative can achieve its desired outcomes, whilst ensuring transparency, accountability, due process, and well-managed restorative justice practices.

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49 Jo McKenzie-McLean "New Justice scheme given a thumbs-up" (20 August 2012) <stuff.co.nz>.

50 Linda Meadows, Kerry Clamp, Alex Culshaw et al *Evaluation of Sheffield Council's Community Justice Panel's Project* (Hallam Centre for Community Justice, Sheffield Hallam University, March 2010) <www.restorativejustice.org.uk>.

51 At 44.

52 At 45.

53 At 47–48.

54 At 46.

55 At 5–6.

56 Michelle Lam "Understanding, but no soft options in the circle" (2012) 50(8) Law Society Journal 27 at 29.

57 At 27.

2. Pre-sentence restorative justice

(a) The Sentencing Act 2002 and Victims' Rights Act 2002

The Sentencing Act 2002 contains comprehensive provisions for restorative justice processes. Section 7 provides the purposes for which the court may sentence or otherwise deal with an offender, many of which overlap with the purpose and outcomes of restorative justice, including: accountability for harm caused;[58] promoting a sense of responsibility for, and acknowledgement of that harm;[59] providing for the victim's interests;[60] reparation for the harm done by the offending;[61] and assisting the offender's rehabilitation and reintegration.[62] The court must take into account, inter alia, any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case.[63]

In addition to aggravating and mitigating factors provided in s 9, s 10 provides that the Court must take into account matters such as offers to make amends;[64] an agreement to remedy the wrong, loss, or damage caused;[65] and the response of the offender or the offender's family, whānau, or family group to the offending and measures committed to in response, or remedial action.[66] Consideration of these matters is facilitated by the provisions concerning adjournments,[67] pre-sentence reports,[68] consideration of the offender's cultural background,[69] reparation,[70] orders to come up for sentence if called upon and orders for restitution or compensation.[71] These provisions are central to the fair and just disposition of sentencing matters. Both individually and collectively, they provide a platform for restorative justice processes and accord them the weight they deserve in the criminal justice system. It is axiomatic that the outcome of restorative justice processes must be carefully and reasonably considered by the sentencing judge to ensure that the weight given to restorative justice outcomes is appropriate in every case.

In addition to sentencing, the Victims' Rights Act 2002 is designed to improve provisions for the treatment and rights of victims of offences,[72] and supports restorative practices. It provides clarity around the appropriate role of victims and the standards which those involved in discharging functions in this system should strive to uphold. While the principles guiding the

58 Sentencing Act 2002, s 7(1)(a).

59 Section 7(1)(b).

60 Section 7(1)(c).

61 Section 7(1)(d).

62 Section 7(1)(h).

63 Section 8(j).

64 Section 10(1)(a).

65 Section 10(1)(b).

66 Sections 10(1)(c), 10(1)(d)(i) to (iii), and 10(1)(e).

67 Section 25, particularly s 25(b) and (c).

68 Sections 26 and 62 respectively.

69 Section 27.

70 Section 32.

71 Section 110, particularly 110(1), 110(3)(a) and (b)(i) to (iii), and s 111.

72 Victims' Rights Act 2002, s 3.

treatment of victims as articulated in the Act do not confer any enforceable legal right,[73] the principle that judicial officers, lawyers, court staff, police, and others should treat the victim with courtesy and compassion and respect his or her dignity and privacy, and that appropriate services are provided, is important.[74] The Act addresses the provision of information,[75] the protection of privacy,[76] victim impact statements and name suppression,[77] and processes regarding an offender's release from prison or release to or from home detention.[78]

With specific reference to restorative justice, section 9 provides that if a person is available to arrange and facilitate a meeting between a victim and offender to resolve issues relating to the offence, a judicial officer, lawyer for an offender, member of court staff, probation officer or prosecutor should encourage a meeting.[79] Such a meeting should be encouraged if the victim and offender agree, the resources are available, and it is otherwise practicable and is in all the circumstances appropriate.[80]

The provisions of both Acts enable the court protect the fairness and due process rights of the offender on one hand, and the interests and needs of the victim on the other. I will return to the role of victims in restorative justice when I consider the lessons learned from New Zealand's restorative justice experience and identify some of the opportunities and pathways available for ongoing development.

(b) Pre-sentence restorative justice developments – international

The legislative developments in New Zealand in the early 2000s did not occur in a vacuum. At this time, momentum was gathering at the international level in the field of restorative justice. In April 2000, the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*.[81] As part of the Declaration, the United Nations member states made a number of commitments to the development of criminal justice frameworks. Of particular relevance to restorative justice are paragraphs 27 and 28, which identify the need to support victims of crime and to develop restorative justice policies, procedures and programmes by 2002.[82] The following year the Council of the European Union issued a framework which encourages the use of mediation between victims and offenders in cases where mediation is appropriate, and calls for European Union member states to ensure that agreements concluded as a result are taken into consideration in criminal proceedings.[83] In 2002, the United Nations

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73 Section 10.

74 Sections 7(a) and (b) and 8.

75 Sections 11–14.

76 Sections 15–16A.

77 Sections 17–28.

78 Section 48.

79 Section 9(1).

80 Section 9(1)(a)–(c).

81 *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century* 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10–17 April 2000, UN Doc A/CONF187/4/Rev 3.

82 At [27] and [28].

83 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) <http://europa.eu>.

Economic and Social Council adopted a resolution entitled *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, which encouraged the adoption of restorative justice practices that are consistent with international norms and standards.[84] Finally, in 2005, the Declaration of the Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders urged member states to continue developing their restorative justice policies, procedures and programmes, including alternatives to prosecution.[85] Restorative justice practices can now be seen in a number of countries around the world, from Brazil to Belgium, from France to Finland and from the USA to Scotland. I have discovered these international examples in practice during my tenure as Chairman of the Parole Board. Whilst the models are framed differently, they are nevertheless universally adaptable.

(c) Pre-sentence restorative justice developments – domestic

In New Zealand, following the legislative reforms and practice development, the Ministry of Justice initiated a continuous development framework for restorative justice. The first major development in this regard was the development of the 2004 *Principles of Best Practice for Restorative Justice* and the *Statement of Restorative Justice Values and Processes*, which pulled together the statutory and policy standards. The 2004 Principles and Statement acknowledged the Canadian Department of Justice's set of principles and guidelines for restorative justice, as well as the similar work that was then being undertaken by the United Kingdom's Home Office.[86] The Principles were developed following consultations with practitioners in 2003, while the Statement was prepared by restorative justice providers in the same year through the Restorative Justice Network.[87] The Principles emphasise the importance of voluntariness, full and effective participation, accountability, flexibility and responsiveness, the paramount importance of emotional and physical safety, effective service delivery, and the need to ensure restorative justice is only undertaken in appropriate cases.[88] The core restorative justice values articulated are participation, respect, honesty, humility, interconnectedness, accountability, empowerment and hope.[89]

Whilst the principles and values inherently make sense *in abstracto*, they can sometimes belie the complexity of restorative justice and of the need for those involved in the delivery of conferences to ensure that they adhere to these standards in practice. What is required is an ongoing and meaningful examination of what works and what does not, of successes and missed opportunities, and of possibilities for the future.

In 2001 the court-referred restorative justice pilot was launched in the Auckland, Waitakere, Hamilton and Dunedin District Courts. The Ministry of Justice evaluated 192 conferences for

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84 *United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* UN Doc E/2000/INF/2/Add 2.

85 *Bangkok Declaration: Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice* 11th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Bangkok, 18–25 April 2005. The Declaration was subsequently approved by the Economic and Social Council in its resolution 2005/15 of 22 July 2005.

86 Ministry of Justice *Restorative Justice in New Zealand: Best Practice* (Ministry of Justice, Wellington, May 2004) at 6.

87 At 1.

88 At 11–19.

89 At 24–25.

moderately serious offending between February 2002 and 2003.[90] It found increased resolution of the effects of crime for victims, with 92 per cent indicating they were pleased they took part. It also observed that the reoffending rate for conference offenders was 4 per cent lower within 12 months, concluding that conferences have the potential to meet the needs of victims and offenders and in some cases to contribute to lower reoffending rates. An evaluation of the Wanganui Community Managed Restorative Justice Project and the Rotorua Second Chance Community Managed Restorative Justice Programme (a programme using tikanga-based practices)[91] were found to be positive in many respects:[92]

> Daly (2000) has foreshadowed a time when restorative justice processes become conventional, rather than currently in "oppositional contrast" to the conventional options. Our hope is that the evaluation findings presented in this report will inform the Rotorua programme providers, and contribute to the ongoing development of New Zealand's Crime Reduction Strategy and to international debates about restorative justice.

Last year, the Ministry of Justice undertook research into the re-offending rates in 2008 and 2009 and into victim satisfaction with restorative justice. With respect to reoffending, the study found that offenders who participated in restorative justice had a 20 per cent reduced rate of re-offending than that of a similar group of offenders who did not undertake restorative justice processes.[93] The frequency of reoffending was also 23 per cent lower.[94] With respect to victim satisfaction with restorative justice,[95] 82 per cent were satisfied with the conference and for many being able to engage with an offender face to face was the best feature of the conference.[96]

Similar positive results have been observed in the United Kingdom. The New Zealand Ministry of Justice has observed that research undertaken by Professor Joanna Shapland at the University of Sheffield, which was released in the United Kingdom in 2008, found that reconvictions were reduced by 27 per cent in the two years following a restorative justice process and 85 per cent of victims have responded positively.[97] Increased use of restorative justice processes was later recommended in the United Kingdom government's green paper entitled

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90 Ministry of Justice *A Summary of: New Zealand Court-Referred Restorative Justice Pilot: Evaluation* (Ministry of Justice "Just Published", June 2005, Number 39) at 1–2. The two year evaluation of this project, including the Technical Report, is available on the Ministry of Justice website: <www.justice.govt.nz>.

91 Ministry of Justice *The Wanganui Community-Managed Restorative Justice Programme: An Evaluation* (Ministry of Justice, January 2005); and Ministry of Justice *The Rotorua Second Chance Community-Managed Restorative Justice Programme: An Evaluation* (Ministry of Justice, January 2005) at Foreword.

92 Ministry of Justice *The Wanganui Community-Managed Restorative Justice Programme: An Evaluation* (Ministry of Justice, January 2005) at 66.

93 Ministry of Justice, *Reoffending Analysis for Restorative Justice Cases: 2008 and 2009* (Ministry of Justice, June 2011) at 18.

94 At 21.

95 Ministry of Justice *Victim satisfaction with restorative justice: A summary of findings* (Ministry of Justice, September 2011).

96 At 5.

97 Ministry of Justice *Restorative Justice in New Zealand* (Ministry of Justice, December 2010) at 6. The United Kingdom research was published in both a book and four reports published by the United Kingdom Home Office and Ministry of Justice: J Shapland, G Robinson, and A Sorsby *Restorative Justice in Practice* (Routledge, London, 2011). The four separate reports, dated 2004, 2006, 2007 and 2008 are available at: <www.homeoffice.gov.uk>.

Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders.[98] Hennessey Hayes and Kathleen Daly, following an examination of a number of evaluation studies, observe that a "challenge for future research will be to elucidate the links between offender characteristics, conference experiences and re-offending".[99] They state that "[t]here is a need to develop innovative measures of how offenders understand the conference event, as well as measures that tap the social contexts within and surrounding the conference."[100]

It is important to emphasise when engaging with material of this kind that statistics can only capture elements or "snapshots" of an individual's restorative justice experience. Statistics take us a certain way along a path of critical evaluation but it is ultimately up to us to ask "why?" and "what can we do better?" Clearly there is room for improvement and it is important that meaningful analysis, of both quantitative and qualitative information, which also includes a range of voices, is undertaken both now and on a regular basis in the future to ensure that restorative justice processes continue to achieve what they are set out achieve in a manner that better meets the needs of victims and offenders alike.

As demonstrated in these studies, the Ministry of Justice has been active in evaluating of a range of restorative initiatives in the early to mid-2000s, and continues to develop restorative justice service delivery today. Current pieces of work include contributing to the Minister of Justice's *Review of Victims' Rights*, the interagency *Addressing the Drivers of Crime Initiative*, and developing services following a two million dollar funding increase over the next two financial years.[101] Beginning in July 2011, funding for restorative justice conferences for low-level offenders will be increased by 50 per cent over the next three years – that equates to $500,000 in 2011/12 and 2012/13, and $1,000,000 per year thereafter.[102] The Ministry has contracted 26 local community-based providers to provide restorative justice services.[103] It has developed a training accreditation (and re-accreditation) programme for facilitators, as well as induction training.[104]

3. Restorative justice post-sentence

The third phase in which restorative justice is applied is, as identified previously, at the post-sentence phase. I have had the benefit of observing and experiencing this process in my previous role as Chairman of the New Zealand Parole Board from 2005 to 2012. It was a uniquely challenging and enriching experience, and it was an experience which reinforced the importance of critically evaluating what we have done well and what we can do better – for offenders, victims, their families and our communities.

Section 7 of the Parole Act 2002 provides that when making decisions about, or in any way relating to, the release of an offender, the paramount consideration for the Board in every case is

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98 Ministry of Justice (UK) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* (Ministry of Justice (UK), December 2010) <www.restorativejustice.org.uk>.

99 H Hayes and K Daly "Conferencing and Re-offending in Queensland" (2004) 37 ANZJ Crim 167 at 187.

100 At 187.

101 Ministry of Justice *Restorative Justice at the Ministry* (Ministry of Justice, 2012) <www.justice.govt.nz>.

102 Ministry of Justice *Addressing the Drivers of Crime: July 2011 Report Back* (Ministry of Justice, July 2011), above n 48, at [39].

103 Ministry of Justice "Restorative Justice providers contracted by the Ministry of Justice" (2012) <www.justice.govt.nz>.

104 Ministry of Justice *Restorative Justice Facilitator Accreditation* (Ministry of Justice, 2011).

the safety of the community.[105] Included in the other principles that must guide the Board's decision is the principle that that the rights of victims are upheld, and submissions by victims (as defined in s 4 of the Victims' Rights Act)[106] and any restorative justice outcomes are given due weight.[107] When an offender is due to be released at his or her statutory release date, or to be considered by the Board for parole, the Department of Corrections must provide the Board with any reports arising from restorative justice processes, if the offender has engaged in them.[108] The Corrections Act 2004 recognises as a guiding principle that offenders must, where appropriate and so far as is reasonable and practicable in the circumstances, be provided with access to any process designed to promote restorative justice between offenders and victims.[109] The outcome of these post-sentence processes is not definitive, nor should it ever be. The aim of restorative justice in this context, however, is to repair (or contribute towards the ongoing repair) of the harm caused. To achieve this, the focus shifts away from the state and the courts towards the victims, the offender and their families and communities. A healing process is sought for both victims and offenders.

Referrals for restorative justice processes may come from the Parole Board itself, but they can also be initiated by victims, offenders, case officers, probation officers, social workers, prison chaplains, and support services. To date, a great deal of work has been undertaken in earnest by community organisations, most notably Prison Fellowship New Zealand. This work has been constructive, positive and enormously satisfying to be involved in. Prison Fellowship has been active in providing a range of services and programmes to prisoners and their families.[110] For some time in New Zealand a "disconnect" existed between organisations providing restorative justice programmes. They are now connected under the umbrella of Restorative Justice Aotearoa,[111] which should be regarded as a significant step forward for restorative justice service provision and community engagement.

An agreement now exists between the New Zealand Parole Board and the Department of Corrections, which provides for Department of Corrections funding in cases where the Parole Board recommends a restorative justice conference. The May 2002 "Guidelines for Restorative Justice Processes in Prisons" provides that the purpose of the process is to reduce the impact of crime on victims, hold prisoners accountable for the harm caused to victims, increase prisoners' involvement in dealing with their offending, and to reach an outcome agreement through consensus by all parties.[112] Importantly, the Guidelines highlight that participation is voluntary, the process must be fair and safe, participants need to be well prepared and expectations should be realistic.[113] The 2004 Ministry of Justice Principles of Best Practice are emphasised,[114] and guidelines relating to eligibility, suitability to participate, exceptions, informed consent,

105 Parole Act 2002, s 7(1).

106 Victims' Rights Act 2002, s 4.

107 Parole Act 2002, s7(2)(d).

108 Section 43(1)(b).

109 Corrections Act 2004, s 6(1)(d).

110 Prison Fellowship New Zealand <www.pfnz.org.nz>.

111 Restorative Justice Aotearoa <www.restorativejusticeaotearoa.org.nz>.

112 Department of Corrections "Guidelines for Restorative Justice Processes in Prisons" (May 2011) at 1.

113 At 1.

114 At 3.

facilitator requirements, victim contact, and involvement of Whānau Liaison Officers, Kaiwhakamana, Kaiwhakahaere, and Fautua Pasefika (amongst other things) are addressed. Importantly, the Guidelines provide that individual prisons will meet costs where possible.[115] They also establish a detailed restorative justice referral process,[116] and set out the quality assurance requirements for conference facilitators, including additional requirements for facilitators in conferences relating to sensitive cases (that is, cases of family violence, sexual or other serious violence, and cases where the victim is under 18 years of age).[117]

It should be emphasised that the work of restorative justice conferencing – at all stages of the criminal justice process – is highly professional work and no place for well-meaning but untrained enthusiasts. The risks associated with proceeding in cases where restorative justice may be inappropriate need to be taken seriously (for example, in cases where an offender denies involvement, blames others, or is affected by mental health issues affecting his or her capacity to engage in a meaningful way; or in cases where a victim is unable or unwilling to engage with the offender). Ultimately the process requires – and deserves – specialist input and experience.

I also acknowledge in this context the power of work being undertaken by community-based groups on prisoner reintegration and the proliferation of faith based communities, both here in New Zealand and further afield. These circles of support and accountability provided by members of religious congregations welcome and integrate returned prisoners. They have their origins in the Mennonite communities of Canada and are now appearing in New Zealand through the pioneering work being done by Jim Van Rensberg (principal psychologist for the Te Piriti Special Treatment Unit which deals with sexual offenders, who is from the Reformed Presbyterian Church of Bucklands Beach). Other organisations also undertake important work in this field, including Prison Care Ministries in Hamilton, the PILLARS network in Christchurch and South Auckland. Prison Fellowship New Zealand offers faith based through-care, operates a 60 bed faith unit at Rimutaka Prison, as well as reintegration, re-entry, aftercare and maintenance support.[118]

Many of the preventive detainees indefinitely imprisoned in New Zealand are recidivist sexual offenders. They have been a very difficult group to release on parole from prison because of the lack of adequate support. The formation of circles of support as described above provides a community network to support people and is a useful initiative now widely adopted throughout the United Kingdom and elsewhere overseas. In Hawai'i, for example, the Huikahi Restorative Circle is a process that draws upon public health learning principles and applied learning techniques to increase restorative justice outcomes, enabling individuals to become their own "change agents" as they plan their re-entry into the community following imprisonment.[119] The process was envisioned in 2004, introduced in 2005 at Waiawa Correctional Facility, trialled for 16 months with 21 circles, 21 incarcerated men and 123 total participants before being introduced fully in 2006.[120]

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115 At 3–5.

116 At 10.

117 At 8–9.

118 "Faith Based Throughcare" Prison Fellowship New Zealand <www.pfnz.org.nz>.

119 Lorenn Walker "Huikahi Restorative Circles: Group Process for Self-Directed Reentry and Family Healing" (2010) 2(2) European Journal of Probation 76 at 76.

120 At 78–79.

The value of faith based, or non-faith based support structures that focus on reintegration is clear. Christopher Marshall, in his book entitled *Compassionate Justice,*[121] provides an interesting account of offender reintegration. At one point Marshall draws on the work of legal scholar Thomas Shaffer who uses the parable of the Prodigal Son to commend what he calls a "jurisprudence of forgiveness".[122] He explains that the story "has not only furnished the subject matter of great literature, art, music, and theological reflection through the generations but has also surfaced frequently in discussions of crime and punishment."[123] He proceeds to explain, amongst other things, Richard Bell's observations that "contemporary philosophical discussions on the topic of justice have become stuck" in a circular discourse about the law and its applicable principles.[124] Marshall states that:[125]

> [o]ne benefit of returning to a more textured view of justice is its capacity to hold justice and mercy together in the domain of corrective or criminal justice. Justice and mercy are often viewed there as contrasting concepts, with mercy serving to forestall or moderate or bypass the delivery of just deserts. But in a thicker conception of justice, mercy is not a substitute for justice, or merely some exterior check to prevent retribution from becoming excessive. It is an integral part of the meaning of justice itself ...

4. Restorative justice in education

Thus far this paper has examined the experience of restorative justice in the criminal justice sector. The value of restorative justice as a theory of justice has a much wider application. It can be harnessed in a range of settings where conflict resolution, in one form or another, can be achieved through facilitated interpersonal engagement. The influence of restorative justice principles and practice is readily identifiable in workplace disputes and even in the area of resource management.

Importantly, it has had a major impact in this country in the field of education which, like the criminal justice system, has traditionally been focused on tariff-based deterrence and has imposed punitive responses to alternative, and at times destructive, behaviour. The importance of establishing a responsive framework that tackles issues facing individuals at the formative stages of their lives, particularly at a time when they are developing their views on society and their place in it, cannot be understated. Margaret Thorsborne, who has done a great deal of work in New Zealand, Australia and elsewhere in the field of restorative justice in education, explains that:[126]

> [r]estorative justice has much to offer those of us who are concerned with the development of well-rounded, socially and emotionally competent young people who are accountable for their behaviour and understand that there is nothing they do (or don't do) which doesn't impact on others in some way. ... Restorative justice requires a paradigm shift in thinking ... and indeed delivers

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121 Christopher D Marshall *Compassionate Justice: An Interdisciplinary Dialogue with Two Gospel Parables on Law, Crime and Restorative Justice* (Cascade Books, Oregon, 2012).

122 At 191.

123 At 1.

124 At 218.

125 At 1.

126 Margaret Thorsborne and David Vinegrad *Restorative Justice Practice in Classrooms: Rethinking Behaviour Management* (Inyahead Press, Queensland, 2004) <www.thorsborne.com.au/manuals.htm> at 8.

> outcomes that include high rates of school achievement, low rates of offending behaviour, a sense of belonging in a community and emotional literacy and competence.

Restorative justice conferencing was formally introduced into schools in New Zealand in the late 1990s as part of a Ministry of Education Suspension Reduction Initiative. The University of Waikato Restorative Practices Development Team was contracted to provide conference processes in five schools initially, with 24 schools subsequently enrolling their staff for training.[127] The group drew on the family group conference model and school suspensions fell.[128] It is appropriate in light of the University of Waikato's support of the annual Harkness Henry lecture to acknowledge the pioneering work undertaken by the University in this respect. This pilot was instrumental in contributing to the mainstreaming of restorative justice practice in the educational setting. In 2005 Sean Buckley and Gabriele Maxwell conducted an examination of the experiences of 15 schools that were making use of restorative justice practices.[129] They reported that five common restorative practices were being employed:

(a) the restorative chat (one on one conversations between staff and student);
(b) the restorative classroom (open dialogue in the classroom on specific conflicts);
(c) the restorative thinking room (a room set aside for students involved in a conflict situation who need time to think and speak with a staff member);
(d) a restorative mini conference (held for more serious conflict situations, involving the offender, the victim, a staff member and sometimes another individual); and
(e) the full restorative conference (which is loosely based on the youth justice family group conference model. Participants may include victims, offenders, staff, family/whānau, and other support persons. Planning is critical and some conferences may take several hours.

The evaluation identified that schools were consistent in their acceptance of a core set of restorative values, namely respect, inclusion, achievement, and celebration of diversity, although all schools identified different ways of making these values a reality in their unique educational context.[130] Schools, in a manner not dissimilar to the diversion processes practiced in the criminal justice system, are using conferences as an alternative or first response to offending behaviour before a disciplinary investigation is considered and the conferences often focus on the establishment of a suitable sentence, punishment, or plan of action.[131]

Since the early 1990s, in a quiet and relatively unpublicised way compared to the criminal justice sector developments, the expansion of restorative justice in schools has been remarkable. At present, there are 325 secondary schools in New Zealand. Approximately 160 secondary schools have invested significantly in restorative practice and indicate that restorative practice is a priority. The Ministry of Education, with its Positive Behaviour for Learning work, is recruiting

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127 Margaret Thorsborne and David Vinegrad *Restorative Justice Practice in Schools: Rethinking Behaviour Management* (Inyahead Press, Queensland, 2002) <www.thorsborne.com.au/manuals.htm> at 7.

128 Wendy Drewry "Restorative Practice in Schools: Far-Reaching Implications" in Gabrielle Maxwell and James Liu (eds) *Restorative Justice and Practices in New Zealand: Towards a Restorative Society* (Institute of Policy Studies, Victoria University of Wellington, September 2007) at ch 10.

129 Sean Buckley and Gabrielle Maxwell *Respectful Schools: Restorative Practices in Education: A Summary Report* (Office of the Children's Commissioner and the Institute of Policy Studies, Victoria University of Wellington, January 2007).

130 At 18–19.

131 DJ Carruthers "New Zealand's Restorative Journey from Criminal Justice to Education" *Resolution: News from the Restorative Justice Consortium* (Restorative Justice Consortium UK, Spring 2010) at 9.

24 secondary schools to pilot a new restorative practices model. The aim of the refined model is to ensure that, instead of relying upon restorative practices in response to conflict in a limited number of cases, efforts are made to ensure that relationships are placed at the heart of the learning experience. The Ministry will provide training, coaching, implementation support, and evaluation tools. The Ministry's paper, entitled *Restorative Practices in NZ: The Seven Restorative Practices*, introduces a "relational focus", whereby all members of the school community engage in restorative practice in their day-to-day engagement, in a "whole-of-school" preventive manner.[132] The system identifies three "tiers", from school-wide expectations and practices (tier one) to early intervention problem solving (tier two) and intensive interventions (tier three).[133] An evidence base, drawing on local and international material, has been produced to inform the development of a restorative practice model.[134] These developments, which will be implemented over a three- to five-year period, will involve school principals, managers and board members, school implementation leaders, and restorative practice coaches and trainers.

Similar work is being done overseas. In the United Kingdom in 2004 an evaluation was undertaken of nine local youth offending teams in 26 schools (20 secondary schools and six primary schools).[135] While there was no discernible effect on exclusions, as they were used by some schools to reintegrate students following an exclusion, 92 per cent resulted in successful party agreements and 89 per cent of pupils were satisfied with the conferences. Only 4 per cent of agreements had been broken after three months.[136] The evaluation concluded that "[r]estorative justice is not a panacea for the problems in schools but, if implemented correctly, it may be a useful resource that improves the school environment and enhances the learning and development of young people."[137] Work has also been done in the UK on restorative justice approaches in young people's residential units,[138] as well as by a group of experts at the University of Cambridge Institute of Criminology.[139]

New Zealand is one of the world leaders in this area. The successes are enormous and the commitment is considerable. The leadership must be able, strong and focused and the support and training for teachers and others who take part in the process has to be clever, professional and focused. The results are there to be seized as we move ever closer to a final and full vision of restorative processes in schools and as we foster fully restorative and therapeutic learning communities.

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132 Ministry of Education *Restorative Practices in NZ: The Seven Restorative Practices* (Ministry of Education, April 2012) <www.vln.school.nz> at 4.

133 At 3.

134 Ministry of Education *Restorative Practices in NZ: The Evidence Base* (Ministry of Education, February 2012) <http://www.vln.school.nz> at 5.

135 Youth Justice Board for England and Wales *National Evaluation of the Restorative Justice in Schools Programme* (Youth Justice Board for England and Wales, 2004) <www.restorativejustice.org.uk>.

136 At 65.

137 At 65.

138 Brian Littlechild and Helen Sender *The Introduction of restorative justice approaches in young people's residential units: A critical evaluation* (Centre for Community Research, University of Hertfordshire, February 2010) <www.restorativejustice.org.uk>.

139 The Institute of Criminology, University of Cambridge (UK) <www.crim.cam.ac.uk>.

III. Lessons Learned and Pointers for the Future

A. The Value of Restorative Justice

Notwithstanding the complexity of this area of work, there is overwhelming evidence of the value that it can yield when appropriately implemented, resourced and managed. It is also important to emphasise that restorative justice conferencing often forms part of a longer process of development for both victim and offender, as they come to terms with their conduct or experiences and identify avenues that will enable them to rebuild their lives and, hopefully, to move forward. Barbara Toews and Jackie Katounas explain that prisoners have particular needs, including opportunities to:[140]

- express their remorse, sorrow and regret for the harms done and offer apologies to the victim;
- have others, ideally including victims, accept their remorse as genuine, no matter how inadequately expressed;
- tell their story – without justifying or excusing their offending;
- gain greater insight into the effects of their offending;
- have others, including victims, realise that they, offenders, may have come from a world in which they may have themselves been victims of violence, abuse, neglect, etc;
- receive acknowledgement of their experiences with victimisation and attention to their needs as crime victims;
- experience personal growth and transformation and be able to demonstrate their new lives; and
- have opportunities to make things right and build relationships with their families and the broader community.

Prosecution and punishment, as Zehr explains, can sometimes have a disproportionately negative effect and, as such, criminal justice policies need to respond in ways that will best achieve its multilayered objectives:[141]

> If it is true ... that shame and the desire to remove it motivates much crime, then our prescription of crime is bizarre: we impose more shame, stigmatizing offenders in ways that begin to define their identities and encourages them to join other "outsiders" in delinquent subcultures. Guilt and shame become a self-perpetuating cycle, feeding one another. In fact, psychiatrist Gillian argues that punishment decreases the sense of guilt while at the same time accentuating shame, the very motor which drives offending behaviour.

The distinction between shame in the traditional criminal justice system and in restorative justice is that the former is "stigmatic shaming", while the latter is "re-integrative": "Put simply, the re-integrative shaming process attempts to shame the action rather than the actor and encourage mutual understanding, healing and forgiveness amongst all parties involved."[142] It is important to

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140 Barb Toews and Jackie Katounas "Have Offender Needs and Perspectives Been Adequately Incorporated into Restorative Justice?" in Howard Zehr and Barb Toews (eds) *Critical Issues in Restorative Justice* (Monsey, New York and Cullompton, Devon, UK: Criminal Justice Press and Willan Publishing, 2004) at 109.

141 Howard Zehr "Journey to Belonging" in Elmar Weitekamp and Hans-Juergen Kerner (eds) *Restorative Justice: Theoretical Foundations* (Cullompton, Willan, 2002) at 27, cited in Christopher D Marshall *Compassionate Justice*, above n 121, at 230.

142 Dot Goulding, Guy Hall and Brian Steels "Restorative Prisons: Towards Radical Prison Reform", above n 2, at 233.

emphasise when considering the deeper legal and philosophical questions that we do not pit the goals of justice against each other, but seek to identify ways of harmonising them to maximise outcomes for our communities. The process of restoration, rehabilitation and reintegration is not always easy. The reality of reintegration as a personal (and often difficult) journey, was provided by Professor Shadd Maruna, Reader in Criminology at Queen's University Belfast. In his presentation to the 2007 Prison Fellowship Conference in Wellington entitled "When the Prisoner Comes Home – A Community Response to Prisoner Reintegration",[143] Professor Maruna said:[144]

> There is something wonderful about the verb "re-integration". The State can be said to be in the business of "rehabilitating" or "reforming" offenders. The State, however, cannot be said to be in the business of "re-integrating" individuals. Professionals cannot re-integrate anyone no matter how much training they have. Ex-offenders can re-integrate themselves and communities can re-integrate ex-offenders. But the most that the State can do is to help or hinder this process ... . Re-integration happens "out there", when the professionals go home.

Professor Maruna referred to the excellent work of Professor John Braithwaite in Australia, in particular Professor Braithwaite's 1989 book entitled *Crime, Shame and Reintegration*.[145] Braithwaite refers to reintegration as not just physical resettlement but also as containing a symbolic element of moral inclusion. Maruna refers to this as being "restorative terrain" involving, as it does, forgiveness, acceptance, redemption and reconciliation. Whilst the journey is difficult, as explained by Professor Maruna, restorative justice can act as an important catalyst for change in an offender's road to reintegration.

Victims also tread their own path within the "restorative terrain".[146] In recent times, there has been growing disenchantment on the part of victims of crimes, and defendants, with the criminal justice system itself. Members of the judiciary and academics have suggested in the public arena that the traditional criminal court processes should not overly accommodate victims, focusing instead on the dispassionate and fair delivery of justice. The two objectives are not, nor do they need to be, mutually exclusive. At times the potential complexities of the administration of the system are seen as a reason not to pursue these otherwise valuable solutions. The law in New Zealand has, as explained earlier, expressly provided for victim involvement to varying degrees and at a number of stages in the criminal justice process. Restorative justice, when implemented properly, can be a useful tool in the legal toolbox for augmenting the support structures for victims and ensuring that the justice system, through a range of appropriately defined mechanisms, responds to all who come into contact with it. To disregard restorative justice, out of principal or due to practical concerns, or to fail to recognise its inherent value in New Zealand would be a grave loss indeed.

The work and guidance of Professor Howard Zehr, who is renowned in this field and who spent time in New Zealand with Parole Board members, is worth repeating. Professor Zehr emphasises the concept of restorative justice as a victim's right and considers that there may be

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143 Prison Fellowship New Zealand "When the Prisoner Comes Home – A Community Response to Prisoner Reintegration" (Conference, Wellington, 11–13 May 2007) <www.pfnz.org.nz/conference_2007.htm>.

144 S Maruna "Who Owns Resettlement? Towards Restorative Re-Integration" (2006) 4(2) British Journal of Community Justice 23 at 26.

145 John Braithwaite *Crime, Shame and Reintegration* (Cambridge University Press, Cambridge, 1989).

146 S Maruna, above n 144, at 31.

occasions in which the only real progress made at a restorative justice conference may not necessarily be reformation or rehabilitation but the satisfaction of the legitimate needs of victims. In many cases, of course, both will benefit and for that reason establishing robust systems that support restorative practice in its various forms should be encouraged. As Marshall proposes:[147]

> [p]erhaps the profoundest insight of restorative justice theory, and the secret to the power of its simple mechanism of bringing victims and offenders together to talk about what has happened, is its recognition that offenders and victims are on parallel journeys of dealing with the crushing impact of shame – for one, the shame of *doing* harm, for the other, the shame of *being* harmed – and that each party, paradoxically, holds the key to the other's healing.

B. Pointers for the Future

Whilst we have come a long way since the mid-1970s and the systems that were at that time failing to respond to or relieve emerging justice issues, there is undoubtedly a long way to go still. The risk, particularly at a time when global financial pressures have forced us to cut programmes across a range of sectors and when "sentencing populism" is gathering apace, is to forget where we were 30 years ago. To forget the paradigm shift that the 1989 Act and the subsequent legislative amendments made to our national legal landscape, and to think that we can achieve the same (or better) results with pared down processes or black-and-white responses to complex legal and social issues would only unravel what has been a string of real success stories in our communities. Restorative justice is in its adolescence. New Zealand, a small and closely connected country with the potential to harness the benefits of its size and structure, is hopefully looking to a future where the full potential of restorative justice in its maturity will be realised. There are a number of pointers for the future which will now be outlined for further consideration. Development opportunities for existing systems will be addressed first, followed by other areas in which we can identify untapped potential for restorative justice principles and practice.

1. Justice Sector Reform

First, in terms of existing frameworks, restorative justice should be viewed as not simply complementing the "traditional" criminal justice system, but forming an integral and mutually reinforcing part of it. In this respect, restorative justice should be enabled to move away from the periphery and take its place with other central and valued processes in our criminal justice system. It should not be left to individual enthusiasm and ad hoc decision making. To realise its full potential, it needs to be centrally positioned, adequately resourced and professionally managed.

A number of significant reforms are underway at present with respect to the role of victims in our criminal justice system and, as such, now is the time to engage in a dialogue, both public and professional, about where RJ fits in this system. The Victims of Crime Reform Bill, an "omnibus bill, which proposes to amend the Victims' Rights Act 2002; the Children, Young Persons and their Families Act 1989; the Parole Act 2002; and the Sentencing Act 2002, to implement the Government's reform package for victims of crime",[148] will undoubtedly go some way to addressing the issues victims still experience despite the legislative and policy reforms in recent

147 Christopher D Marshall *Compassionate Justice*, above n 121, at 231.

148 Victims of Crime Reform Bill (319-2) (select committee report) at 1.

years. Thought should be invested into whether, or how, restorative justice processes can form a more centralised part of our criminal justice processes. As mentioned earlier, we have heard from judges and academics about the role of victims in the criminal justice system. In her 2009 Shirley Smith address, the Chief Justice, the Rt Hon Dame Sian Elias stated that "[c]ool, impartial justice is not getting a very good press these days."[149] In this context, "cool" means considered and calm. Her Honour went on to say that:[150]

> [t]here is no question of going back to the days where victims were largely irrelevant ... [b]ut we need to consider how much further we can go without undermining basic values and whether indeed we may have gone too far in this respect already. ... Perhaps direct assistance to victims may be of more help than a sense of ownership of the criminal justice processes. I do not know whether this is right. But I would like to see some serious assessment of whether the emotional and financial cost of keeping victims in thrall to the criminal justice processes (through trial, sentencing and on to parole hearings) does help their recovery from the damage they have suffered or whether they are re-victimised through these processes.

Professor Warren Brookbanks of the University of Auckland, in his recent address at the 2012 International Criminal Law Congress, proposed that "[v]ictims' laws in New Zealand have grown rapidly, at a pace which raises questions as to whether they bear any relation to the lived experience of being a victim. As more prescriptive laws and regulations are proposed and enacted in favour of victims, ... this is occurring without regard to the measurable benefits to victims themselves."[151] Professor Brookbanks called for a moratorium on further victims' legislation, pending an evaluation of existing laws and assessment of future needs.

It is important to emphasise that no system of justice should allow processes which re-traumatise victims and their families, or hold them in the thrall of the criminal justice system. Fundamentally, the "do no harm" principle must be paramount. It should be placed at the apex of any engagement framework. There is clearly a need for fair disposition of criminal proceedings and the traditional systems of justice have a long history of principled application of processes that serve to protect due process rights. The law, as explained earlier in this paper, such as the need to take into account the views of victims and the impact of offending on them at various stages of the criminal justice process, were designed to bring the victim in to what is otherwise a process primarily focused on the state and the offender. Nevertheless, there is no reason why victims should not have a voice in this process, nor why we should avoid exploring mechanisms (including, but not limited to restorative justice) to meet their needs. Victim involvement need not be viewed as something which destabilises the court or leads to inconsistencies: the appropriate decision-making authority is vested in an impartial judiciary. Judges are ultimately able to balance all relevant factors in determining an appropriate sentence.

Any process needs to be well managed and supported by experts. Some needs may not be able to be met through criminal justice processes, either traditional or restorative. How to better support victims once the criminal process ends is another critical question, and one that is beyond the scope of this paper. It is important to emphasise, however, that goals such as denunciation and deterrence and of rehabilitation and healing need not be seen as two-track system, moving

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149 The Rt Hon Dame Sian Elias, Chief Justice of New Zealand "Blameless Babes" (2009) 40 VUWLR 581 at [10].

150 At [11].

151 2012 International Criminal Law Congress, Queenstown, 12–17 September 2012 (Speakers' Abstracts) <www.crimlaw2012.com>.

ever further away from each other, or as the two sides of a Janus-faced justice process. The closer they become, and the greater effort we invest in their harmonisation through smarter and more effective justice processes, the better our system will be for all concerned.

2. A specialist response

Second, further work is required in the area of meeting the needs of victims of sexual offences. Dr Susan Blackwell, a well-respected clinical psychologist and Honorary Research Fellow in Criminology at the University of Auckland, in her recent paper presented at the 2012 International Criminal Law Congress entitled *Juries, Justice and Therapeutic Jurisprudence: Or Why We Might Well be Concerned about Wrongful Acquittals in Child Sexual Offence Trials*,[152] examined current issues in this field of criminal law. Dr Blackwell reiterated the observation that "in no other crime is the victim subject to so much scrutiny during an investigation or at trial; nor is the potential for victims to be re-traumatised during these processes as high in any other crime."[153] She observed that, according to Ashworth and Redmayne, "the purposes of the criminal process are accurate determinations and fair procedures at all times". Dr Blackwell indicated that, from her observations and research, "in relation to charges of sexual offending against children, our current system is not routinely providing accurate determinations."[154] In addition, "anecdotal clinical reports about sexual abuse victims who have been complainants in criminal trials indicate that most would be unwilling to give evidence in court again, and this is especially the case where there has been, in their perception, a wrongful acquittal. This also means that they may be unlikely to report subsequent sexual victimisation to others, including police."[155]

These issues are also being considered elsewhere. The New Zealand Law Commission has been asked to undertake a high-level review of pre-trial and trial processes in criminal cases, with particular reference to sexual offences. In February of this year, President of the Commission Sir Grant Hammond stated that "[a] specialist court would be able to respond to the offending in a more flexible way than at present – for example, by developing programmes to require offenders to take responsibility for and address the causes of their offending before the final sentence was determined."[156] The Commission's Issues Paper on this subject states:[157]

> Due to the shortcomings of the current system for many cases involving sexual offending, there is a strong case for making an alternative process available for those who choose to use it. This alternative process could deliver a tailored response which better meets the needs of victims, outside of the traditional investigation and trial process offered by the criminal justice system. It would be necessary for any alternative process to keep a balance between the safety of the community and the rights of the accused.

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152 Susan Blackwell "Juries, Justice and Therapeutic Jurisprudence: Or Why We Might Well be Concerned about Wrongful Acquittals in Child Sexual Offence Trials" (paper presented at the 2012 International Criminal Law Congress, Queenstown, 12–17 September 2012).

153 At [29].

154 At [50].

155 At [58].

156 New Zealand Law Commission "Law Commission considers alternative trial processes" (press release, 14 February 2012).

157 Law Commission "Alternative Pre-Trial and Trial Processes: Possible Reforms" (NZLC IP30, 2012) at 51.

With respect to the merits of a system that utilises therapeutic jurisprudence and restorative justice, Dr Blackwell noted the increase in specialist courts in New Zealand and Australia, and made the following comments, which should resonate with us as we consider next steps for restorative justice in New Zealand:[158]

> Restorative justice and therapeutic jurisprudence stress the need to address underlying issues to completely resolve legal problems. They provide a contrast to the current adversarial trial system which supports a win-lose situation and in cases of alleged sexual offending by family members, exacerbates conflict between the complainants and accused by pitting them against each other in the court arena.
>
> There are many aspects of restorative justice that would need fine tuning for use in sexual assault cases, and it may only be appropriate in a very limited number of cases. There are issues of voluntary participation, power imbalance and a myriad of other factors to consider, and more research is needed about this. However ... this is a useful path to consider especially with youthful sexual offenders and "first offenders" ... . What we know is that many of these victims might not want their family members to be incarcerated, and may well be prepared to be part of a restorative justice process. Such an approach would not be a substitute for criminal justice processes, but could operate within that arena.

Dr Blackwell's observations, which are informed by her clinical and research experience, are consistent with the observations of others in this field – I too have come across victims who express the desire for a better way of dealing with offending. Ultimately, they provide us with something to seriously consider as we move towards a more responsive system of justice.

3. Restorative justice in education

Third, in relation to restorative justice in education, it is clear that a great deal has been done to develop a range of systems to not only respond to conflict but to work with a preventive focus, developing children and young people's ability to engage with each other in a constructive manner. As observed in the criminal justice setting, there is much to be gained from developing and implementing a corpus of national best practice principles, standards, and measures for restorative justice in New Zealand schools, including a definition of what restorative justice or restorative practices means in this context. A thorough process of consultation, planning, implementation and evaluation would undoubtedly assist in ensuring that any child, from Invercargill to Northland and regardless of their school's decile rating, could reap the benefits of restorative practices on an equal basis during the most formative years of their lives. Clear, national guidelines are therefore an obvious next step. An inclusive and consultative work programme similar to that which was undertaken by the University of Waikato's Restorative Practices Development Team, which included workshops, training and informative publications, needs to be continued.

4. Policing oversight

Fourth, I consider there to be at least three areas where restorative justice development could have a marked positive impact on conflict resolution methods. The first is in the area of policing oversight, something with which I am now engaged as Chair of the Independent Police Conduct Authority. In certain cases, particularly where conciliation is recommended, restorative justice processes may assist in achieving a relatively seamless resolution of the issue(s), whilst also

158 Blackwell, above n 152, at [88].

contributing to longer term goals of fostering trust and confidence in police. Consideration of the efficacy of these processes has already been undertaken in the United Kingdom. The Independent Police Complaints Commission provides complainants with information on the local resolution process, which is provided by police. Understandably, a review conducted in 2007 observed that "[f]or the police complaints system to be seen as an effective and transparent process the needs of both types of complaint [informal issues not requiring a formal record and those that do require a formal record] must be acknowledged and accommodated. If this issue is neglected there is a danger that in some forces ... some complaints will be swept under the carpet, whilst in others complaints will be cajoled into a bureaucratic process which is driven by targets rather than complainant satisfaction."[159]

Clearly there are issues with any process which is managed by the agency about which a complaint is being made and careful thought needs to be given to be best model for the specific country context. But this is an area where New Zealand could make some real change by evaluating and improving meaningful resolution of complaints. Sir Charles Pollard, Chief Constable of Thames Valley Police (the largest non-metropolitan police force in the UK) from 1991 to 2001, has gained international recognition as a pioneer of restorative justice and has engaged with leading specialists in North America and Australia. He has collaborated with leading criminologists in Australia and North America and has also spent time in New Zealand. The benefits of restorative justice practices are, therefore, there to be seized.

5. Solutions-focused courts and community justice centres

We can identify the benefits of therapeutic jurisprudence, restorative principles, and inter-agency collaboration in New Zealand's emerging specialist courts, such as the Rangitahi Youth Courts, Drug Courts, Family Violence Courts, and the New Beginnings (homelessness) court. These innovative responses to complex justice issues were initially led by judges and have now achieved some government support. They have a range of benefits which can be usefully developed to meet New Zealand's justice needs.

A natural extension of the concept of restorative or therapeutic practices is community restorative practice, whereby communities address conflicts and other issues *before* intervention by the courts becomes necessary. The United States is making use of a similar model to fix local problems such as drug use and conflict within the community. Programmes include faith based services, educational and training initiatives, support structures, and youth initiatives. In New Zealand, Judge McElrea has identified the potential value of community justice centres, which could assist with community and family disputes and related issues outside a courtroom environment.[160] In a conference address on restorative justice for juveniles he has expressed his vision in the following way:[161]

> The ideal arrangement that I foresee for New Zealand is a system of Community Justice Centres operating throughout the country alongside the courts and providing services in both the civil and

159 Independent Police Complaints Commission *From Informal to Local Resolution: Assessing Changes to the Handling of Low-Level Police Complaints* (IPCC and the Institute for Criminal Policy, King's College London, 2007) at 40.

160 Judge FWM McElrea "Roles of the Community and Government" (paper presented at Second International Conference on Restorative Justice for Juveniles Fort Lauderdale, Florida, 7–9 November 1998).

161 At 6.

> 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 … .
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> 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, Citizen's Advice Bureau, local Community Constable (if the area has one) and possibly other services such as health, child care, budgeting and recreation.
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> In areas with a strong Māori 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. …
>
> As with any process of this kind, appropriate support frameworks would need to be in place to ensure that the practices are a help and not a hindrance to safe and effective resolutions. …
>
> Some State funding of programs would be essential, but the objective would be to maximize the local community's sense of ownership and participation in this whole process. … 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.

While there will necessarily be a great deal of debate as to the best model for implementing such a proposal, it certainly warrants further consideration and meaningful debate. Like any preventive, collaborative system that engages a community at the grass-roots level, issues such as funding, ownership, management and quality assurance will be issues to consider, but as this paper demonstrates with respect to New Zealand's restorative justice history, a great number of people in our communities have the capacity and to turn this idea into a reality.

6. Academic centre of excellence

The final pointer for the future of restorative justice in New Zealand concerns the need to ground restorative justice practices in multi-disciplinary research and evaluation in an academic centre of excellence or Chair within an independent centre of research. Such a centre would enable New Zealand to harness existing capabilities through expert training to inform domestic and international best practice. Academic centres of excellence around the globe are undertaking cutting edge, progressive research into key legal, political, criminological, and sociological issues. We only need to look to the United Kingdom, Canada, Australia and the United States to see good examples of what works in this regard. New Zealand, despite being a world leader through the concerted efforts in practice, has so far failed to provide the academic underpinning for promoting and implementing restorative justice. Preliminary work is underway to establish a Chair in Restorative Justice within an independent centre of research, education and training for restorative processes in New Zealand and throughout the wider international community. If successful, this initiative would, with appropriate support and the right experts, add breadth and depth to our jurisprudence and enable us to reap the benefits of a fully functional and mature restorative justice system.

IV. Conclusion

The road to New Zealand's current system of restorative justice has been an extraordinary process of reform, refinement, and reflection. The road has not been without its twists and turns, divergent views from proponents and critics, or hurdles – both financial and political. Remarkably, what characterises this journey is the resilience of those who have worked tirelessly to turn the concept into a reality: those who, on a daily basis, bring people together in restorative

justice conferences, as well as those who commit to participating in them, sometimes following the most difficult and life changing experiences.

In 2012, as we consider the role that restorative justice may play in the future of New Zealand's social, cultural and legal frameworks, we must never forget how much we have achieved in the last three decades. In that time, we have become a world leader in transforming people's experiences of justice and the criminal justice system, of testing new approaches and evaluating our experiences, and in championing a practical and principled response to complex issues. Unsurprisingly, and in a typically New Zealand fashion, we have achieved much of this through the dedicated work of volunteers, advocates, and committed professionals who clearly recognise the value of restorative justice – both in theory and in practice.

The greatest risk facing restorative justice today is the loss of momentum at a critical time of legislative review and of social and political development. We need to ensure that public discourse is informed and measured, based on knowledge, reason and an unwavering commitment to do better. We need to ensure that our political and ideological differences work for us and not against us and that we contribute to an important national conversation on fundamental legal questions: what does justice mean to us as individuals, communities, and as a country? What does good law "look like"? Who does it serve and what principles does it uphold? What is relevant to our challenges today? These questions are not new and the answers are not always clear. At times, the answers may seem out of reach. The realities we face in our criminal justice, in education, and in other areas, however, demand that we engage in an honest discussion. Restorative justice has a great deal to offer and has left its mark on our unique legal landscape. It is now up to us to learn the lessons from the past and identify new pathways for the future.