

Restorative Justice in New Zealand Prisons – Lessons from the Past

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Rethinking Crime and Punishment

Introduction

Until recently, the major focus for adult restorative justice practise in New Zealand was in the provision of pre-sentence restorative justice (RJ) conferencing. There was however, an exception. Despite the absence of funding, Prison Fellowship New Zealand (PFNZ), with the initial support of the Department of Corrections, facilitated 65 in-prison conferences between 2003 and 2008.¹ This is the story of that journey; its processes, issues, highlights and challenges.

In taking a retrospective look, it was important to compare the approach taken by PFNZ more than a decade ago, with what is considered ‘best practise’ today. In 2003, there were no existing standards or best practise principles for the implementation of in-prison restorative justice conferences. Even today, the available literature about restorative justice in prisons is limited in scope. We were greatly assisted by a recent literature review completed by Thomas Noakes-Duncan, which included a consideration of how best practice applies to restorative justice in a prison environment and the main obstacles to achieving it.²

The Halycon Days

According to some commentators, non-indigenous restorative justice in New Zealand evolved out of our experience with family group conferences, following the implementation of the Children and Young Persons Act 1993. While they were not designed as a victim-centred process, once participants saw the powerful difference made by the presence of victims, and the way in which the important needs of both victims and offenders were met, the connection with RJ became obvious.³

¹ The author was the National Director of Prison Fellowship New Zealand from 2000 to 2008.

² Thomas Noakes-Duncan (2015) ‘Restorative Justice in Prison: A Literature Review’ an unpublished paper

³ McElrea, Judge FWM (Fred), “Restorative Justice – The Long View” - A paper to the Prison Fellowship Conference, Beyond Retribution: advancing the law and order debate, Silverstream, New Zealand, 12-14 May 2006

Adult restorative conferences evolved from 1994 as a pre-sentencing initiative in the District Courts. They eventually gained Government support for pilot funding in four courts. As a parallel measure, the Department of the Prime Minister and Cabinet's Crime Prevention Unit, funded about 20 community panel diversion schemes. For the period 1999 through to around 2004, a co-operative relationship developed between the Government officials, the Courts and the voluntary sector.

By 2002, the Sentencing Act had enshrined the principles of RJ into legislation - its place in the sentencing process seemed secure. The Act required courts to take RJ outcomes into account in sentencing, while the Victims' Rights Act 2002 required justice officials to encourage meetings between victims and offenders where appropriate. The Parole Act 2002 had provisions concerning restorative justice, and in 2004, and as the result of a submission by PFNZ to the Law and Order Select Committee, the 2004 Corrections Act included an obligation on the Chief Executive to promote restorative justice principles and processes for offenders and prisoners. The collective impact of these four pieces of legislation, could potentially have impacted on penal policy in New Zealand. But there were other forces in play.

Getting Tough on Crime

From 1990, sentencing law and practice in New Zealand gave greater priority to retributive, incapacitative and deterrent aims and prisons became more punitive, and more security-minded.

Between 1998 and 2008, prisoner numbers climbed from 4,500 to 7,700 - a 71 percent increase. By 2008, those convicted of aggravated murder had a minimum term starting at 17 years in prison up from 10, preventative detention had been applied to a wider group, and offenders sentenced to over 2 years were serving an average of 72% of their sentence, up from 52% seven years before.

The same legislation hailed by restorative justice practitioners as a world first, in that it enshrined within it, the principles and practice of restorative justice, also included a range of measures which extended prisoners sentences and restricted parole.

Restorative Justice and Legislation

PFNZ's hopes were raised when in 2004, Section 6 (1) (d) of the new Corrections Act 2004, reflected the government's support for restorative justice, by providing 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.

However, in correspondence with the Department of Corrections, about the impact of this legislation on government's future commitment to restorative justice, PFNZ received the following response;

The Ministry's view of the legislation is that the provisions do not impose obligations on justice sector agencies to facilitate, arrange, hold, or resource restorative justice processes. The reason for this view is that the necessary arrangements (that allow restorative justice processes to be considered appropriate, reasonable and practical), including accreditation of providers and funding, are not in place. ⁴

Despite the enlightened legislation, the expansion of restorative justice slowed from 2003, and continued to do so. That trend supported David Garland's view that in

⁴ Correspondence from Department of Corrections, 20 September 2005

the culture of control, RJ is allowed to operate on the margins of criminal justice offsetting the central tendencies without changing the overall balance of the system.⁵

If RJ is 'marginalised' within the criminal justice system, it would seem that in-prison restorative justice teeters on the very edge. As Noakes-Duncan observes:⁶

"It is not accidental that the primary sites of restorative justice engagements are in diversionary or pre-sentence settings rather than in post-sentence or correctional settings..... As Russ Immarigeon, one of the early pioneers, writes, "Incarceration is the institutional manifestation of the punitive impulse that restorative justice is designed and intended to challenge."⁷

In-prison RJ conferencing was able to sustain itself for six years, and did so largely incognito, unfunded, under cover, and 'hard to reach'. It was a 'ground up' initiative, and as Guidoni notes, "These projects are almost always limited in time, often marginal to prison administration, are the result of local initiatives and not supported by national policies."⁹

That it did so, is the story of one woman's persistence and courage.

One Women's Vision

The person largely responsible for the implementation of in prison conferences, was uniquely placed to do so. Triggered by her father's suicide, Jackie Katounas' crime career started at age 12. She graduated from a girl's home to Auckland Maximum Security Prison by age 16, and spent the next 20 years in and out of Australian prisons. She was addicted to heroin for 12 years, and her 138 convictions include drug dealing, armed robbery, and fraud.

Jackie's life changed when she returned to New Zealand in 1994. She received stolen furniture, only to realize that she knew the victim, a hotel owner who had been very good to her. Overcome with remorse, Jackie went to the publican, asked

⁵ Garland, David. 2001. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago, IL: University of Chicago Press.

⁶ Thomas Noakes-Duncan 'RJ ion Prison' p.1.

⁷ Russ Immarigeon, "What Is the Place of Punishment and Imprisonment in Restorative Justice?," in *Critical Issues in Restorative Justice*, ed. Howard and Barb Toews Zehr (Devon, UK: Willan Publishing, 2004), 150.

⁹ O.V. Guidoni, "The Ambivalences of Restorative Justice: Some Reflections on an Italian Prison Project," *Contemporary Justice Review* 6 (2003): 58.

for his forgiveness, and offered to get his property back. She then began a personal journey of forgiveness, redemption and reconciliation. It led to her involvement in the restorative justice movement first as a facilitator for the Hawkes Bay Restorative Justice Network and from 2003, as the Manager, Restorative Justice Services for Prison Fellowship. Over the next six years, Jackie worked with those offenders and victims who expressed a desire to meet and engage in a process which in some cases, led to expressions of forgiveness and reconciliation.

Jackie recognised at the outset that she needed to get the support of prison staff for the process to succeed. With the support of a sympathetic Unit Manager at Hawkes Bay Prison, she began to visit the prison and shared her story with both prisoners and staff. Prisoners were quick to seize on the opportunity to take up the offer of a restorative conference, and as the idea gained acceptance, she was invited to the weekly Unit Managers meetings, and meetings of the Unit PCO's (Principal Corrections Officers).

While Prison officers and management became supportive, it became clear that it would be important to limit the role and participation of prison staff, for two reasons. First, staff would be more supportive of RJ meetings, if it didn't require a significant investment in time and energy; both of which were often in short supply. Secondly, prison staff were accustomed to working within a custodial paradigm, in which decisions were usually based on security ratings and risk assessment, rather than on a person's suitability to take part in a restorative justice conference.

A local protocol was developed which confirmed the role of the Department of Corrections as an 'enabler' with the initial request being referred through the Programmes Manager to the relevant Unit Manager, and copied to the Prison Chaplain and Social Worker (a position which no longer exists). The Unit Manager had the opportunity to comment on safety and security issues, but the assessment as to suitability of the prisoner to participate in a restorative justice conference, was the primary responsibility of the RJ facilitator, who carried out a pre-conference interview for that purpose.

The process worked well within the prison, due primarily to regular discussion and communication between prison programme staff and the RJ facilitator. Separate pre-conference interviews with both the prisoner and the victim were facilitated by

the RJ Coordinator, with the first meeting usually occurring with the person requesting the intervention. As the relationship between the prison and the RJ provider strengthened, they developed a common understanding about how restorative justice would work within the prison environment.

In 2004 the Ministry of Justice produced its first set of Principles for Best Practise of Restorative Justice.¹⁰ While there was no mention of in-prison conferencing in the 1st edition of the Ministry's standards, that position was later corrected in the 2011 revision, which acknowledged that seven years after the Corrections Act included a reference to restorative justice, there were still no processes or policies in place:

The Principles focus on the use of restorative justice processes pre-sentence, and do not apply to the use of these processes after sentencing. However, the Principles are likely to be broadly applicable to the use of restorative justice processes at any point in the criminal justice process, as well as in other sectors.¹¹

PFNZ recognised that not all prisons operated in exactly the same way. If this initiative expanded, then it would be important to develop a strong local relationship between the facilitator and prison, so that there would be maximum flexibility in ensuring that local process were the subject of mutual agreement.

The Sycamore Tree Sows its Seeds

Jackie's appointment as the Restorative Justice Manager for Prison Fellowship, was not primarily for the purpose of facilitating in-prison RJ Conferences. In 1998, Prison Fellowship introduced the Sycamore Tree programme, which would today be described as an RJ victim awareness and empathy programme.

Evaluations of the Sycamore Tree programme, attest to its effectiveness in both furthering the healing of victims, and motivating attitudinal change in prisoners, with significant increases in prisoner empathy towards victims in comparison to the general prison population.¹² As the demand for the Sycamore Tree programme grew, so did the demand for personal victim-offender reconciliation. About one

¹⁰ 'A restorative justice standards discussion paper' Issue #22, *Restore*, newsletter of the Restorative Justice Network. (February 2003)

¹¹ Ministry of Justice, "Restorative Justice: Best Practice in New Zealand," (Wellington: Ministry of Justice, 2011), 11.

¹² Prison Fellowship New Zealand, (2007 "Report on the Evaluation of the Sycamore Tree Programme" <http://www.pfnz.org.nz/Site%20PDF/Sycamore%20Tree%20and%20its%20Effectiveness.pdf>

third of prisoners completing the Sycamore Tree programme requested PFNZ to initiate a personal meeting with their victims, so as to make amends.

The Faith Based Unit

The other major source of referral was the faith based unit (FBU) at Rimutaka Prison. Established in July 2003 as a partnership between the Department of Corrections and PFNZ, the unit's principles and values were firmly aligned to those of restorative practise.¹³

This more integrated approach attempted to foster restorative relationships in the pursuit of a more harmonious environment..¹⁴ In his recent literature review, Noakes-Duncan comments:

This transformative approach to prison relationships operates at many different levels: through the use of focus units within a prison; the training of prisoners as peacemakers within the prison community; equipping correctional staff with conflict resolution skills; and using restorative mechanisms in disciplinary and grievance processes.^{15 16}

The Parole Board

The other source of support was the NZ Parole Board, and particularly the Chairperson, Judge David Carruthers, (now Judge Sir David Carruthers). In its interface with offenders and their victims, it was ideally placed to identify when a victim or offender were receptive to, and would benefit from a restorative justice conference.

Meeting the Demand

¹³ PFNZ (2003) 'Faith Based Unit at Rimutaka Prison – Manual of Policies and Procedures' p.17

¹⁴ Barb Toews and Jackie Katounas, "Have Offender Needs and Perspectives Been Adequately Incorporated into Restorative Justice?," in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Devon, UK: Willan Publishing, 2004), 112.

¹⁵ Liebmann, *Restorative Justice: How It Works*, 238.

¹⁶ D. Roeger, "Resolving Conflicts in Prison," *Relational Justice Bulletin* 19 (2003): 5; cited in Ness, "Prisons and Restorative Justice," 313.

PFNZ initially planned to promote RJ Conferencing in prisons nationwide. It became clear early in the process, that it would be unwise to do, in the absence of stable funding. It responded to requests as far as resources would enable, and before long was facilitating conferences at a growing number of prisons. However, in September 2005, the Department of Corrections issued an instruction to regional prisons not to develop local protocols with restorative justice service providers, 'until the national policy was clearer'.

In September 2005, the Department of Corrections,¹⁷ advised that the Ministry of Justice was working on a large project, to investigate how restorative justice fits into the criminal justice system, and the future of in-prison restorative justice would be subsumed within that project, with funding being available in the latter part of 2007. PFNZ decided to 'hang in' but limit its delivery to existing networks.

Initial funding for both the Sycamore Tree programme and RJ Conferences in prisons came from philanthropic sources, but with an underlying expectation that funding would cease once government funding became available in 2007. When that didn't happen, some of the philanthropic trusts withdrew support. PFNZ didn't facilitate any Conferences in 2007, but found the resources to facilitate 14 conferences in 2008, and a further 20 in 2009. The level of service fluctuation was unsatisfactory, but unavoidable.

Training and Best Practise Standards

Commitment to high professional standards and training led in 2005, to Jackie Katounas and Kim Workman being awarded the Prison Fellowship International Kamil Shehade International Prize for Restorative Justice. By 2006, and in the absence of any official guidelines, PFNZ published its own standards and guidelines, which it fed into the departmental process.

Seeking Accreditation

Seeking official training accreditation became the next stumbling block, as the Ministry of Justice would only train and accredit facilitators who were members of organisations they funded. For that reason, PFNZ facilitators could not be officially

¹⁷ Correspondence from Kirsty Ruddleston, Department of Corrections, 20 September 2005

accredited. Without official sanction, PFNZ was unlikely to receive funding when it became available. At the time, Jackie Katounas was a part of the panel to develop the accreditation process, a member of the Hawkes Bay Restorative Justice Board, and mentored facilitators trained by the Ministry. In 2010, the Ministry of Justice issued new contracts, which stipulated that facilitators and board members with criminal convictions could not be involved. She had no option but to resign from the Board, and withdraw from the accreditation process.

In-Prison Facilitation

It was clear from the outset that the facilitation of restorative justice conferences involving prisoners was a far different business than pre-sentence facilitation. The prison cases were at the serious end of the offending spectrum, and often involved offenders with complex personal issues, from highly dysfunctional backgrounds. Effective facilitation required someone who had well developed insight into offending behaviour, and the social skills and maturity to deal with difficult and complex situations.

PFNZ set caveats in place, to deal with offenders and victims who were psychologically unstable, or had a history of sexual offending. Sex offenders were not considered unless they had first undergone the Department of Corrections Sex Offender's Treatment Programme. Where there were concerns about the mental state of an offender, or other issues, PFNZ took advice from prison staff and Psychological Services.

PFNZ found that experienced RJ facilitators would often avoid facilitating in-prison conferences, and often asked Jackie Katounas to conduct them on their organisation's behalf. Her personal prison experience in that situation, changed her criminal history from being a liability to an asset.

Former Offenders as Restorative Justice Facilitators

Criminological research generally supports the engagement of transformed offenders in the rehabilitative process, and most of the contracted service providers to government have staff who have committed criminal offences, some of whom have spent time in prison.

It was therefore difficult to understand why, given the abundance of former offenders involved in service delivery and rehabilitation, the provision of restorative justice should be singled out for attention. Workman, in his 2008 address to the Restorative Justice Aotearoa Conference had this to say:

Restorative Justice does not exist in a pure state – it does not have that sort of pedigree. Restorative Justice is a mongrel – it was conceived not in the ivory towers of the state, but in the dusty streets of despair and guilt. It will sleep with anyone that wants it.

Some of our most effective practitioners come from those same dusty streets – those whom Henri Nouwen called “wounded healers”.¹⁸ Their strength of character and commitment has been forged in the crucible of criminality, addiction or mental illness. Stringent conditions which require practitioners to withstand a criminal history check, deny the origins of restorative justice and its practice in the community.

Māori Responsiveness to Restorative Justice Conferencing

PFNZ did not keep a record of the ethnicity of prisoners seeking a restorative justice process, but it estimated that about 80% of those seeking restorative justice conferences were Māori. Given that 54% of prisoners are Māori, these numbers indicate a higher level of interest in, and comfort with, restorative justice as a process to restoring relationships and balance within the whānau¹⁹ and community. The relationship between restorative justice and Māori processes of conflict resolution are explored elsewhere; but the evidence suggests that those connections are extremely strong.^{20 21}

The other significant difference, was the preparedness of Maori offenders and victims to involve whānau members in the restorative justice process. Again, it was seen as an opportunity to restore right relationships across the community, rather than as an individual process of redemption and potential forgiveness.

¹⁸ Nouwen, Henri, (1979) *The Wounded Healer – Ministry in Contemporary Society* Image Books; Doubleday : New York.

¹⁹ Extended family

²⁰ Workman, Kim 'The Social Integration of Maori Prisoners' He Komako: Māori Social Work Review Issue 26 Number 1, 2014.

²¹ Toki, Valmaine, 'Is the Parole Board Working?' Or is it time for an Indigenous Re-Entry Court? *International Journal of Law, Crime and Justice* 39 (2011) 230e248

Doing the Business – Some Case Studies

At the completion of each RJ Conference, PFNZ completed a report, copies of which were sent to the Department of Corrections. A selection of these case studies provide a useful insight into motivation of those who sought RJ Conferences, and the quality of outcome for those taking part. In all cases, names of participants have been changed.

Anton Darcy, 18 March 2004

Anton aged, 18 years, received a life sentence in 1977 for murder of Jack Brown during an armed robbery. Jack's sister, Faye Furlong, asked to meet with Anton 'face to face', and on meeting, talked about the impact the murder had on her family, challenged him to change, and make something worthwhile of his future. He agreed to do so, and they discussed the education programme he was undertaking. It was agreed that she would keep updated on his progress prior to release.

Comment: This is a common scenario, with the victim wanting to get more information about the offender's motives, and to describe the suffering that the offender's actions had caused to the victim's family. The victim also wanted assurance that the offender's punishment was not in vain, and that he would make something of his life in the future.

Ian Morgan: 13th July 2005

Ian Morgan was serving a 7 year term of imprisonment for his part in an aggravated robbery along with three co-offenders. Ian had completed a Sycamore Tree programme, and requested to meet with the victim. He wanted to explain what was going on in his life, before he committed the offence, and personally apologise.

The victim shared about a staff member who was present during the robbery and had to undergo counselling, and had time off work as a consequence. Ian Morgan offered an apology for the harm that had resulted from his offending, and offered to meet the staff member and do likewise.

Comment: Many prisoners express remorse about their behaviour, and seek an opportunity to articulate that to their victim. They do not have any expectations beyond that, and in this case, the victim accepted the apology, enabling both of them to move on.

Rana Parata: 7th June 2005

This referral was lodged by a Prison PCO to consider Rana Parata for a restorative justice meeting with his two victims, his ex-wife Margy Tihai, and Anthony Waitoa. Rana Parata and Margy Tihai have 8 children together and Mr Waitoa is currently the partner of Ms Tihai. Rana Parata was charged with causing grievous bodily harm to both victims.

Rana had recently appeared before the Parole Board where he learned a letter had been sent by the victims saying that both parties wished to support Rana Parata being released back into the community.

The restorative justice facilitator felt that to proceed with this referral would be beneficial for all involved, particularly as Rana would continue to have contact with both the victims once he was released from prison. Both victims agreed to participate in a restorative justice meeting to restore the broken relationship for the sake of the children.

Rana commenced by saying that he was very sorry for what he'd done, and Mr Waitoa responded by saying that he accepted the apology and also wanted to apologise for his role in the event. He went on to say that he tried very hard to take care of Ms Tihai and the children. Ms Tihai asked her son Thomas if he would speak. Thomas said he was there to support both his mother and father that he and his brothers and sisters are proud that Rana had now learnt to read and write while in prison.

Boi Pirikahu, a Maori service provider, spoke of his involvement with Rana and Rana's efforts to control his anger. A prison officer spoke of her involvement with Rana, and the progress he had made while in prison. . She felt honoured to be invited to participate in this meeting.

Discussion focused on the issues around the children particularly the two older ones who have been affected by their father being in prison and how they have taken out their frustrations on Margy and Anthony. The conference moved on to discuss how this situation could be restored now that everyone had reached a place of unity, and a plan agreed to for future engagement.

Comment:

This meeting was triggered by a Principal Corrections Officer, as the result of a Parole Board hearing. It is an excellent example of the importance of restorative justice meetings in preparation for prisoner reintegration. As confirmed by Noakes-Duncan:²²

Restorative justice has been shown to be valuable in developing links between prisons and the outside community in ways that support successful reintegration.²³ The restorative process provides a format for prisoners to take responsibility for their actions, recognize the harm they have caused and make amends to the communities they have wronged. The process also helps victims, families and communities communicate their needs and expectations to the prisoner. Studies have shown that restorative justice processes help communities become more aware of their responsibilities in the reintegration of released offenders.

PFNZ recognised the potential of restorative justice in relation to prisoner reintegration in the early stages of its work. Its 2006 'Target Communities' programme reflect that thinking, and in 2011, Workman presented a paper to the Restorative Justice Aotearoa Conference, progressing those ideas further.²⁴

Robert Summers: 14th February 2005

In August 2003 a referral was lodged by a Community Probation officer, Veronica Lake, to consider Robert Summers for a restorative justice meeting with his victim.

²² Thomas Noakes Duncan, RJ in Prisons, p.11.

²³ Dhami, "Restorative Justice in Prisons," 435. V. Stern, *Prisons and Their Communities: Testing a New Approach, an Account of the Restorative Prison Project 2000-2004* (London: International Centre for Prison Studies, 2005).

²⁴ Workman, Kim 'Toward a Model of Restorative Reintegration' A paper presented to the 5th Restorative Justice Aotearoa Conference, and the 3rd Restorative Practises International Annual Conference, 23-27 November 2011, Amora Hotel, Wellington, New Zealand

The Parole Board had requested Robert attend a treatment programme before release and had endorsed the possibility of a restorative process with his victim.

The victim Agnes Dupree had agreed to participate in an RJ meeting. Robert was concerned that Agnes would live in fear of him, once released. Agnes was pleased for this opportunity to meet with him and had indeed been anxious at the prospect of him being released.

Robert affirmed that he had no interest in going back to his past behaviours. He said he was prepared not to go back to the community in which Agnes lived if it was something that she wanted. Agnes said she was OK with the situation and now felt safe. She did not consider that a formal agreement was necessary.

Comment: There are times when the primary outcome of an RJ Conference is to provide assurance to the victim, that he or she will be safe upon the prisoner's release. The successful meeting also provided added assurance to the Parole Board.

Robert Walker 12th June 2006

Robert Walker was sentenced to 4 years 4 months imprisonment as a result of discharging a firearm into the home of police officer Peter Cunningham.

A restorative justice referral was received from a PFNZ field worker. Robert was going to be released back into the community and wanted an opportunity to apologise and put things right with Mr Cunningham.

Constable Peter Cunningham agreed to attend the conference. Robert said that this offence had nothing to do with Peter or his family, but that he had put a shot through the Constable's window to warn him away - in hindsight it was the stupidest thing he had ever done. He acknowledged the hurt that has resulted from his behaviour and again apologised to Peter.

Peter said it had impacted on his family and in particular his eldest daughter who had received counselling as a result. He explained that she had wanted to attend the meeting, but he felt it better if she didn't.

Constable Cunningham said didn't hold any grudges towards Robert, but that when once Peter returned, he needed to keep a low profile. He offered to help Robert find work. Discussion then took place around what strategies and structures would be in place upon Robert's release. The PFNZ field worker spoke and described the support Robert would be offered, to help him reintegrate safely back into the community.

As a result of the meeting, a formal agreement was considered unnecessary. However, it was agreed that Robert would write a letter of apology to Peter's daughter, through the RJ facilitator.

Comment: RJ Conferences of this kind can play a major role, not only in the safe reintegration of offenders back into small communities, but in reducing the likelihood of future offending.

Key Issues and Challenges

There were issues that arose repeatedly over the six year period; and at times the prison's security focus and strong commitment to risk avoidance meant that clashes were inevitable. Boyes-Wilson refers to this as a "creative tension that opens space for the transformation of those institutions."²⁵ This creative tension requires a degree of adaptability by both restorative justice providers and the Correctional system, as both search out the best ways best to achieve the goals of restorative justice.

Assessing Prisoner Suitability

Experienced RJ Facilitators are able to assess the suitability of prisoners and victims following one-to one interviews, to participate in a restorative justice conference. Prison staff without a clear understanding of RJ principles and values, tended to assess suitability on the basis of other criteria, such as security classification or risk assessment.

As a result, some prison managers excluded some prisoners on the grounds that they didn't 'deserve' to take part in an RJ Conference, or on the grounds of earlier

²⁵ Carolyn Boyes-Wilson, "What Are the Implications of the Growing State Involvement in Restorative Justice?," *ibid.*, 216, as cited in Thomas Noakes-Duncan, 'RJ in Prisons' p.2

incidents, without realising that in many cases prisoners carried a heavy load of guilt and remorse, and that RJ Conferences often resulted in behaviour improvement.

In other cases, they considered prisoners to be 'high risk', and insisted that a prison officer accompany the prisoner at the conference. This was unacceptable to PFNZ as there is a need to protect and respect the confidentiality of the process to the greatest extent possible. Considering that prisoners live in such close quarters, information sharing about inmates can lead to undesirable outcomes.²⁶ This matter was settled when the General Manager of Public Prisons determined that if prisoners were considered to be too serious a safety risk to attend on their own, they should not take part at all. On the other hand, prisoners often asked that supportive prison staff be present at the conference.

Assessing Victim Suitability

The offender-focus of prisons means that the needs of victims are often not prioritised – or for that matter, assessed. Prison staff see their role as contributing to the reduction of re-offending, and do not factor into that, measures which meet the needs of victims. There were occasions when staff had to be reminded that the Victim's Rights Act 2002 required that victims be treated with dignity and respect.

Some prison staff attempted to exclude victims with criminal convictions from taking part in an RJ Conference. In 2009, the then Victim Support CEO, Tony Paine, reminded us who the victims were;

"It is very easy to talk about victims and offenders as if they were two quite separate groups (both demographically and morally). Of course the world is not that black and white.²⁷ A recent survey tells us that 50% of all victimizations are experienced by only 6% of New Zealanders and that the social and demographic indicators that identify those who are most likely to be victimized are identical to the markers for those likely to be offenders.²⁸

²⁶ Diane Crocker, "Implementing and Evaluating Restorative Justice Projects in Prison," *Criminal Justice Policy Review* 26, no. 1 (2015): 58., as cited in Thomasd Noakes-Duncan, 'RJ in Prisons', p.16

²⁷ Mayhew P., and Reilly J. (2007) *The New Zealand Crime and Safety Survey 2006*. Ministry of Justice, Wellington, New Zealand. p.46

²⁸ Paine, Tony, "Victim Support, Victim's Rights: an agenda for prevention" - an address delivered at Addressing the underlying causes of offending; What is the evidence? - Thursday 26 and Friday 27 February, Institute of Policy Studies, Victoria University

The harsh reality is that those 50% of victims come from marginalised communities, and are very likely to have criminal convictions. To exclude them from restorative justice processes on the basis of a criminal history counters the underlying values and principles of restorative justice.

Restorative Justice is a Process not a Programme

Prison Staff are well practised in the contracting of services, and the formulation of contracts within a tight set of criteria. Service providers are usually required to target a specific location, type of prison unit or offender. The programme criteria spells out at what point of a prisoner's sentence they are eligible for the service, and what criteria have to be satisfied.

Restorative Justice does not work like that. First, it is a process, not a programme. There is no 'right' time' to hold a conference, other than that all who take part are willing participants. There is no evidence to show whether RJ Conferences are of greater benefit at the beginning or end of a sentence. What we do know is that prisoners often carry a burden of guilt and shame associated with their offending. There is often a positive change in attitude and demeanour following a restorative justice conference, and that prisoners who resisted taking part in rehabilitative programmes before an RJ Conference, demonstrated a willingness to change their lives after the experience.

Noakes-Duncan comments:²⁹

Dhami et al. point to how restorative engagements can humanize the prison culture such that prisoners make more of the opportunities they have for personal transformation.³⁰ Restorative justice also leads to a less adversarial prison environment, improving the often-tenuous relationship between prison staff and prisoners. One study shows that prison staff experience reduced work-related stress after restorative justice had been introduced.³¹

Promoting the Benefits of In-Prison Restorative Justice

²⁹ Thomas Noakes-Duncan, RJ in Prisons p.11.

³⁰ Dhami, "Restorative Justice in Prisons," 435.

³¹ Edgar, *Restorative Justice in Prisons: A Guide to Making It Happen*.

It is unlikely that targeting a prison, or type of prison unit is likely to on its own generate interest and willingness to participate in RJ, unless there is considerable investment with prison staff beforehand. Our experience is that those people who participate in RJ Conferences are the best salespeople. They talk about the experience to other prisoners, many of whom will then request a conference. Prison staff who see transformational change in prisoners afterwards, are often effective ambassadors, as are victims who relate the positive impact of the experience to others. Around 90% of all victims who take part, say they would recommend the experience to another victim.

RJ Conferencing in prisons should be regarded as an organic process, with the role of prison staff being that of 'enablers', able to respond to the needs and requests of prisoners, victims and prison and professional staff.

The Key to a Successful Prison/RJ Relationship

In PFNZ's view, the key to the success of in-prison restorative justice derives from developing a culture of mutual respect between prison staff and restorative justice facilitators and service providers. That relationship recognises and affirms the expertise of RJ providers, and trusts it to make sound choices about who should participate in the process. In turn, RJ providers must be careful to consult with prison and professional staff, to consider additional information about a prisoner, especially in terms of psychological and behavioural factors. In that way, it can be a learning experience for all involved in the process.

The Demise of RJ Conferencing and the Sycamore Tree Programme

In 2009, PFNZ delivered 40 Sycamore Tree programmes nationally, and facilitated 20 Restorative justice conferences. The Department of Corrections continued to fund Sycamore Tree at the same level as in 2006; \$60,000 a year. Restorative Justice conferences were still not funded. Both services were adjudged by participants, to be highly effective. The two processes were fast becoming an integral part of the prison system.

In April 2010, the Department of Corrections made a decision to discontinue with both. There is no evidence of anything that prompted this decision, in terms of

performance, other than these two initiatives 'no longer fitted the department's purpose'.

A Glimmer of Hope

There is a current upsurge of interest in, and commitment to, restorative justice within the New Zealand criminal justice system. Government agreed to fund an additional 2,400 restorative justice conferences – totalling 3,600 in 2014/15 – following the Government's \$4.4 million investment in adult pre-sentence restorative justice as part of Budget 2013. That decision was based on local evidence that restorative justice can result in a reduction in the reoffending rate of up to 20 per cent, compared to those who don't participate.³²

A 2014 amendment to the Sentencing Act, now requires the Court to adjourn all proceedings to enable inquiries to be made as to whether a restorative justice process might be appropriate in the circumstances of the case. Government agencies have co-funded, with charitable trusts, the establishment of the Diana Unwin Chair in Restorative Justice, at the Victoria University of Wellington, which is currently filled by Professor Chris Marshall.

It is now time to bring in-prison RJ conferencing back from the outer islands of oblivion, to a place where it can join with its family members, as New Zealand explores further, the place of restorative justice in education, in policing, in community development, and offender reintegration.

³² ³² Ministry of Justice, *Reoffending Analysis for Restorative Justice Cases: 2008 and 2009 – A Summary* June 2011

