

Speech About Restorative Justice by Hilary Linton

I am going to summarize as much of the research as I can in 10 minutes. The thrust of my presentation today is that conferencing is meeting its goals, based on research from Canada, New Zealand and Australia. I picked those jurisdictions because they have the most experience with conferencing and the greatest volume of reliable research outcomes available, although conferencing takes very different forms in each place.

The situation in New Zealand is quite different from here: Charges generally cannot be laid without a “family group conference”, and no sentence can be given without a conference. About 75% of all cases are resolved pre-charge by a police warning/caution or diversion program; the remaining 25%, which are generally serious Class I and II offences, all but the most egregious violent/ repeat offences, are almost all dealt with through either pre or post charge family group conferences. In most cases, agreement is reached at the conference and fulfilled and matter never gets to court. IN the few cases where charges are laid, $\frac{3}{4}$ cases conclude with the conference recommendations being accepted by court and charges withdrawn upon completion. In cases of sentencing conferences, 80% reach agreement and 80% of those are accepted with no formal court order. (pages 6-7 of paper)

The Australian research is from a large police-based conferencing process (RISE studies) and also from an evaluation of the use of conferencing after the introduction of legislation, in 1997, enhancing the use of warnings and conferences as an alternative to court processes. This is a government funded process using trained mediators, not police officers, as facilitators.

In Canada, there is a wide range of conferencing processes; many are police-based (RCMP has done a lot of work in this area), others are offered by private or government funded agencies (John Howard Society in conjunction with Department of Justice operated one project that is included in this research), and others are provincially-operated (Nova Scotia has a very sophisticated conferencing system for youth.)

Today I will address the research around what I consider to be the three main goals of conferencing: does it repair the harm caused by crime, does it help reduce recidivism and does it reduce costs?

Repairing Harm

The primary goal of RJ conferencing is to repair the harm caused by crime. Research shows that this is happening, universally and consistently, and that it happens far more often in restorative processes than in traditional probation/court-ordered restitution/custody processes. The extent to which harm is repaired can be measured by looking at the degree of victim satisfaction with both process and outcome, and by rates of compliance with restitution agreements.

ON the first point, victims consistently rate their satisfaction with conferencing processes and outcomes very highly, and also the level of procedural justice in the process. Compared to probation/court-ordered restitution or court, victims in conferences are also consistently more satisfied with process and outcome.

In a 2001 analysis of 22 Canadian restorative justice processes, released by the Department of Justice, all but one study found greater victim satisfaction with process and outcome in conferencing than in the tradition process control group. In New Zealand, the most recent research study shows that a large majority of victims attended the conferences, and between 80-95% of them felt they had been treated fairly and had a say in the outcome. Almost all the research from every jurisdiction finds the same thing.

On the second point, rates of compliance with restitution agreements/arrangements are also consistently higher following a conference than other processes not involving restorative elements, such as probation.

Reducing costs.

There is not a lot of research. What research there is shows cost savings: and this makes sense. Conferencing processes generally use volunteers; have relatively quick

disposition times; require less legal representation (Legal Aid), and need fewer youth jails (most in New Zealand have been closed). They free the courts up a lot. However, conferencing and all successful restorative processes are time consuming and labour intensive in the training and preparation phases and there is little research on the whole piece.

Third goal: reduced recidivism

The research shows that restorative processes are capable of leading to reduced recidivism because of very specific elements that are integral to the process, and which are missing from the traditional “retributive” approach to justice. These factors include: the offender experiencing true remorse, genuine consensus being reached during the conference, support for the offender during and after the conference, offender participation in the process and the outcome, an absence of “shaming” or stigmatization or labeling of the offender, the offender having the opportunity to meet the victim in a safe environment and make an apology, and two final and very important things, the possibility of forgiveness, and being able to do something to repair the harm.

The 2001 Department of Justice evaluation that I referred to earlier found that *“restorative justice is a more effective method of improving victim satisfaction, increasing compliance and decreasing recidivism when compared to incarceration/probation/court-ordered restitution.”*

In New Zealand, where almost no youths go to court, there has been no increase in juvenile crime as a proportion of all crime since 1989 when the legislation was implemented.

One of the surprising outcomes is that RJ processes can be very effective in cases of serious and violent crime. This is important because “severity of the offence” is still a criteria for referral in Ontario to extrajudicial measures.

Australian research from the RISE project had 1 year follow up period in which to measure offending rates. It found a very significant reduction in post-conference offending rates for serious violent offenders, when compared to the year before the

conference ; this reduction in offending rates was 38% greater for the offenders who were randomly assigned to conferences compared to those who were randomly assigned to court. (In my paper at page 10, I discuss this research in more detail).

IN Canada, there was the preliminary outcome research from Collaborative Justice Project in Ottawa involving serious crimes, with 89% victims reporting that they were very satisfied with process because their needs were attended to, they had an active role in the outcome and they felt that there was an attempt made to repair harm. There was the evaluation of the Restorative Resolutions Project in Manitoba, where serious offenders were given the opportunity to participate in community-based alternatives to incarceration applying restorative principles, although not necessarily in conferences. The two-year follow up showed significant differences in recidivism rates between the Restorative Resolutions group of offenders and the control group of probation –treated offenders, including ones with a community service order. (Difference between 34.7% and 66.4 %

Another study (1995) of post-sentence victim-offender mediation.... Involving cases of murder, armed robbery—found strong support from the victims.

I deal at some length in the paper with the research around the determinants of youth crime, and how deterrence theory just does not have any impact at all on the adolescent brain, which we now know does not fully develop its capacity for judgement until age 22. I also deal with the research establishing that the “get tough on crime” approach such as that offered by boot camps not only fails to reduce recidivism; statistically it has a greater chance of causing increased offending rates. But given what we now know about what works and what does not work, there are many valid reasons to utilize conferencing processes far more often than we do, and for more serious crimes.

However, the reality is that the processes are not ready, or even available, for this influx of cases, and this is the paradox; there just isn't the funding available to get them off the ground and do the job properly.

This point is best made by the authors of a British study of 7 restorative justice projects (2 adult and 5 youth) completed in 2001: Read from paper.

“the schemes evaluated in the research were diverse in their understandings of the notion of restorative justice, their degree of focus on victims and offenders and their implementation of the interventions which they undertook. The schemes were also fragile, being vulnerable to funding cuts, and were often dependent on work “beyond the call of duty” by small numbers of exceptionally committed individuals.

Whatever its precise form, restorative justice is a labour-intensive and time consuming activity, ... it can involve weeks of preparatory and exploratory work and even then many cases do not reach the desired conclusion. This situation raises some doubts about the future potential of mediation as a mainstream service capable of processing large numbers of cases within or outside the criminal justice system.

However, the results were encouraging..... the young offenders showed substantial improvements in attitudes towards victims and towards offending in general. The programs could benefit from clearer, more systematic and more developed understandings of a number of key areas of their design and delivery, namely aims, organization, staffing and training, referral criteria, victim and offender protocols, interventions and closure, follow up and evaluation.”

All of these concerns remain alive in Canada today, to varying degrees. That is one reason why Justice Canada has released an excellent set of Values and Principles of Restorative Justice in Criminal Matters, and an excellent set of Program Guidelines, which are not mandatory but are a very good example of best practices in this field.

I hope this research review has been helpful and thank you for your time today.