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Seeing things differently: restorative justice and school discipline[1]

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> ... helping to incorporate the principles of human rights, democracy, tolerance and mutual respect, the rule of law and peaceful resolution of conflicts into the daily practice of teaching and learning ...[2]

Bullying, harassment, anti-social behaviour, drug abuse—in recent years many safety issues concerning student behaviour confront school authorities. How should schools respond to behaviour that threatens school safety? Much discussion surrounds school responses and the levels of stand-downs, suspensions and expulsions. There is debate also concerning the pre-emptive measures, such as searching and drug testing, introduced by schools in an attempt to guard against such behaviour. The question needs to be asked: Why do young people behave badly in school? Is it that the majority of students feel that schooling is something that is 'done to them' rather than a process in which they are active valued and significant participants? Should schools be moving towards more meaningful involvement of students not only in building the school community but also in solving problems within that community? There is a currently a great deal of research in New Zealand and the comparative jurisdictions concerning both the teaching of citizenship in formal education and the introduction of school cultures which embrace the right to participation of young people. This article picks up on the theme of citizenship in schools by considering processes by which conflict and safety issues may be dealt with by the school community as a whole, based on the restoration of relationships rather than punishment. It looks particularly at restorative justice practices such as peer mediation in the case of student conflict and school community conferencing.

Introduction

Traditionally the main feature of the student/teacher relationship is control. School principals, teachers and administrators make, administer and enforce the rules. Where students engage in anti-social behaviour which results in a breakdown of relationships within a school community and school safety is threatened, school authorities react by imposing sanctions on the culprit—exclusion from school, for example. Pre-emptive measures, such as searching or drug testing, are introduced into schools in an attempt to guard against such behaviour. There are indications that these measures have little beneficial effect on the safety of the school environment, and in fact they may be harmful to good relationships within the school community.

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Research into school exclusion, particularly in relation to zero tolerance practices in the US, suggests that if students are disengaged from school there is a strong likelihood of their going down the path which has been referred to by researchers as the 'schoolhouse to jailhouse track'.[3] There is a strong argument that because the present system fails to hold students who misbehave truly accountable for their actions, there is a high risk of their repeating the behaviour to the detriment of the community. Should schools be moving towards more meaningful involvement of students in building the school community and in solving problems within that community?

In 1999, the United Nation's Economic and Social Council adopted a resolution encouraging member states to use mediation and restorative justice in appropriate cases. It called on the Commission on Crime Prevention and Criminal Justice to consider the development of guidelines for the use of such programmes.[4] This article considers processes by which conflict and safety issues may be dealt with within school communities, adapting the restorative models used in the wider community. It looks particularly at peer mediation in the case of student conflict, and restorative justice practices as alternatives to school exclusion. Underlying such processes are democratic principles based on individual and community responsibility. The effective use of such practices in schools requires a culture change from the authoritarian, control-based system that predominates in school communities today.

Keeping kids in schools and keeping schools safe: a contradiction?

Today there is much discussion surrounding problems with ensuring school safety and dealing with disruptive and anti-social behaviour by students. At the same time, New Zealand statistics show that an ever-increasing number of students are being stood-down[5] from school and, despite the establishment of the Suspension Reduction Initiative (SRI) in 2001, schools in less than half the school regions are showing a reduction in the numbers of suspensions.[6] In 2004, 2.8% of the national school population was involved in stand-down cases and 0.7% in suspension cases, an increase from 2003. The most common reasons to stand-down and suspend students were continual disobedience (which suggests anti-social behaviour), physical and verbal assault, and drugs.[7] Many schools, it would seem, in New Zealand as well as elsewhere, continue to focus on 'getting rid of troublemakers', or on dealing with 'bad' behaviour by standing-down, suspending or expelling students. In recent years, however, there has been increasing attention paid to two alternative dispute resolution processes for dealing with student conflict and behavioural problems. These methods, which have been trialled by some schools in New Zealand and in the comparative jurisdictions, are based on the concept of responsibility and on the restoration of relationships rather than on retribution. Their focus is on renouncing the anti-social act while supporting both the victim and the offender. The wider aim is to effectively empower students to play a part in

keeping their schools safe, while enabling all students to remain engaged in formal education in schools.

The term '*alternative dispute resolution*' encompasses a wide range of techniques that are outside the traditional 'court process' model which has traditionally been applied to school disciplinary processes. It covers the resolution of disputes through negotiation and mediation. The first approach that is considered here focuses on mediation. The second approach uses the restorative justice model of conferencing much the same as the model which has been applied in New Zealand since 1989 in the context of youth offending.[8]

Peer mediation

Mediation is a process that has been introduced for alternative dispute resolution in a wide range of areas in New Zealand, such as family law, residential tenancy and employment matters.[9] It has been defined as:[10]

> The process by which parties, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives and reach a consensual settlement that will accommodate their needs.

Under the Human Rights Act 1993 (NZ) and the Privacy Act 1993 (NZ) strong emphasis is placed on the use of mediation procedures with tribunal determination as a last resort. In the school context the process is generally referred to as '*peer mediation*' as it relies on the positive involvement of trained students acting as mediators in disputes between other students.

Peer mediation is seen to offer a positive approach to problems of conflict between students in schools. The rationale behind peer mediation is that it empowers students to work out differences constructively and to work towards solutions on their own rather than through school disciplinary mechanisms. The research conducted by Nairn and Smith of the Children's Issues Centre of Otago University concluded that:[11]

> The second strategy of mediation is one that is considered to be a more constructive problem-solving approach. There are variations in this approach but broadly speaking it is concerned with hearing both sides of a bullying incident with the students together or apart, and proposing a resolution that both sides agree to. Sharp and Cowie (1994) discuss in detail the ways in which students might be empowered to respond to bullying themselves rather than rely on staff interventions. Student-centred strategies become more significant in the light of students' claims that bullying is impossible to stop (20 mentions) [among the students surveyed] or that students 'expect teachers to do nothing' (10 mentions) [among the students surveyed].

In New Zealand some schools have developed conflict resolution strategies which incorporate student participation through a programme known as 'Cool Schools', initiated by the Peace Foundation. This programme was initially set up in 12 primary and intermediate schools in Auckland in 1991 and has now been more widely introduced into schools at all levels, including many secondary schools.[12] More

recently, peer mediation has been suggested as a form of restorative justice using the model set out in the Restorative Conferencing Manual of Aotearoa.[13] It suggests that the following process be adopted. First, senior students are trained in the mediation process. In each specific instance thereafter, the incident of bad behaviour is identified and the mediator speaks independently with both the wronged and the wrongdoer to get their version of the story and their willingness to participate in the mediation process. A mediation meeting is then held. Each participant tells his or her story. Points of agreement are noted and the mediator guides the discussion as to what should come out of the mediation. The focus is on positive changes in the relationship between the wronged and the wrongdoer. When agreement is reached, it is recorded and signed by both parties.

In the US, also, the peer mediation approach has been introduced into a number of schools and the reports are encouraging. Researchers there suggest that successful peer mediation programmes can serve to:[14]

- offer students a chance to see conflict as a positive opportunity to learn more about others;
- provide a structure for students to handle conflicts;
- teach acceptance of responsibility;
- develop a life skill that enables students to treat others with more respect and communicate more effectively;
- promote understanding and sensitivity to the needs of others;
- increase student interest in the justice and legal system;
- promote a higher level of citizenship activity;
- help build a better school environment;
- reduce discipline referrals; and
- increase teaching time.

The benefit of the peer resolution process is that it focuses on student involvement in a positive culture within the school environment. One such scheme was put in place in Jackson Intermediate School in the US and is discussed by commentators Kajs, Thomas, Wilson and Zambon in the *Education Law Association Notes*.[15] There the scheme became operational immediately after student training and implementation, with student mediators handling a significant number of student-to-student conflicts. The experience showed the approach to be extremely effective in addressing conflict between students. The commentators concluded:[16]

> School administrators are faced with acts of peer-to-peer student conflict on district campuses. While these administrators must act responsibly to these incidents following established investigative and disciplinary procedures, they also should take a proactive approach to address conflict and its symptoms. If conflict-causing behaviour is ignored and not taken seriously, it is likely to continue and even become worse. Prevention of conflict by educating students about mutual respect, dignity, and equality is the best medicine [Sattel, S. (1995) Sexual harassment of students: a guide to prevention, intervention and investigation, 4.33, at 4.3]. Research has demonstrated that peer

mediation programs, e.g. Peer Assistant Leader (PAL), provide a viable method of reducing the number of student conflicts[17] and discipline referrals.[18]

There is a general feeling from commentators in the US who have observed the peer mediation system in operation in schools that it brings about many positive changes to school culture. There is, as yet, an absence of clear data relating to the success or otherwise of such schemes in reducing violence, anti-social behaviour and student conflict. The general feeling seems to be, however, that at the very least such programmes have a positive spin-off in introducing a culture of student empowerment which attempts to address the power imbalance which exists within schools. The changes are described by Stern and Hill as follows:[19]

> The introduction of peer mediation programs may help shift schools along the continuum from the authoritarian, paternalistic and punitive culture with the characteristic trademarks of excessive bullying and resentful students to a mediation culture in which respect and empowerment are the hallmarks.

In Australian schools there are moves towards alternative dispute resolution, in which peer mediation is included. These are discussed by John Stewart in his article 'What schools can learn from the ADR Movement'.[20] He discusses the implementation since the early 1990s of such programmes in American schools (as above). He says that the feedback generally from these programmes is that they are proudly promoted by the schools involved as being positive and supported by most students. The positive effect of student-to-student intervention in student conflict is also highlighted by Stewart and Russo as one of their recommendations for maintaining safe schools.[21] They put forward the view of the Australian researcher Ken Rigby that such programmes can help students turn their energies to positive activities.[22]

Australian researcher John Braithwaite, however, points to research which reinforces the view that in order for peer mediation processes to be truly effective in controlling and reducing anti-social behaviour, a whole-school approach is needed. This means that the school has a culture of not simply dealing with individual incidents but, more importantly, of using them to affirm the disapproval of the whole school community to such behaviour.[23] This leads to consideration of whole-school approaches that combine mediation with whole-school community responses such as restorative justice.

Restorative justice and community conferences: lessons from the criminal justice system

> Restorative justice sees things differently … Crime is a violation of people and relationships … It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation, and reassurance.[24]

The term '*restorative justice*' describes a response to wrongdoing which focuses on people and relationships rather than on punishment and retribution. In common usage, restorative justice involves the convening of a conference of all parties with a

stake in the particular event for the purpose of working towards a collective resolution of the aftermath of the offence and its implications for the future. A Canadian researcher, Susan Sharpe, has proposed five key principles of restorative justice. These are:[25]

- Restorative justice invites full participation and consensus. This means that not only those who are directly involved in the actions but others who feel that they are also affected in some way may voluntarily participate.
- Restorative justice seeks to heal what is broken, not only for the victim but also for the offender.
- Restorative justice seeks to make the offender fully and directly accountable, by not only facing up to their offending but by confronting those who have suffered as a result.
- Restorative justice seeks to reunite what has been divided. This goes further than positive interaction between the offender and the victim, to include reintegrating both into the wider community.
- Restorative justice seeks to strengthen the community in order to prevent further harm. While focused on dealing with particular incidents this may, as suggested by researcher Morris, be looked at in a much wider context as working towards addressing inequities within the community in order to make it a more just and safe society.[26]

Restorative justice is used largely within the criminal justice system and over recent years it has become influential in that area in New Zealand, Australia, the UK and Canada. The restorative justice model is used in the New Zealand Youth Court process in the form of family group conferences. In the context of youth offending it was first provided for under the Children, Young Persons and Their Families Act 1989 (NZ), and it has operated successfully since its institution. Under that system, a youth who has offended will be required to attend a conference with their family and members of their extended family (if the young offender is Maori, this is referred to as their 'whanau'), and the victim is able to attend.[27] It focuses on reparation in that it generally requires the offender to attempt to repair any damage caused by his or her behaviour. The conference may also agree on some kind of punishment, such as community service. It is intended to provide a framework for disciplinary procedures to ensure that young offenders confront their behaviour. It is also intended to empower families to deal with their youth offenders. Together with the peer mediation processes outlined above, it is an alternative dispute resolution method that addresses both the problems of the child and the needs of the victim.

In New Zealand, restorative justice processes have been embraced in the area of criminal offending significantly as a means of investing decision-making processes with cultural values. Through the vehicle of a conference, wider family groups (whanau) are able to have a greater say in the outcome. This process incorporates the Maori 'hui', or meeting, concept. In addition, the venue used for the conference and the procedure adopted, by being culturally appropriate, may add more relevance to

the process for all involved. Thus, restorative justice is seen to be an attempt to establish a means of addressing offending which is between the white, Anglo-Saxon, bureaucratic and formal criminal justice system, and indigenous justice practices. This is made clear by Maxwell and Morris:[28]

> A distinction must been drawn between a system which attempts to re-establish the indigenous model of pre-European times and a system of justice which is culturally appropriate. The New Zealand system is an attempt to establish the latter, not to replicate the former. As such, it seeks to incorporate many of the features apparent in whanau [Maori extended family] decision-making processes and seen in meetings on marae [Maori community centre] today, but it also contains elements quite alien to indigenous models.

Since the 1980s a foremost advocate of the use of restorative justice processes in response to offending has been Australian, John Braithwaite.[29] In 2002, he undertook a comprehensive re-examination of the implementation of restorative justice in light of what he refers to as its 'extraordinary explosion ... [in] ... innovation and evaluative research' in recent years. In his preface he states simply:[30] 'My reading of the evidence of restorative justice is that it can reduce criminal violence and school bullying in particular, but other kinds of crime as well.' He summarizes the empirical evidence about the effectiveness of restorative justice under three hypotheses, which are relevant in consideration of restorative justice practices in schools. These are, firstly, that restorative justice restores and satisfies victims better than existing criminal justice practices. Secondly, restorative justice restores and satisfies offenders better than existing criminal justice practices. Thirdly, restorative justice restores and satisfies communities better than existing criminal justice practices. Each one will be considered here in turn.

In considering the effectiveness of restorative justice in the restoration of victims, Braithwaite acknowledges that the fundamental problem lies in the differing needs of each individual victim. He refers to a study undertaken by Heather Strang of the victim-restoration aspect of restorative justice processes in Canberra.[31] This study identified a range of victim preferences from that of a less formal atmosphere where their views count, full participation and being treated respectfully and fairly, to material and emotional restoration, the latter including an apology. Strang concluded that despite the range of victims' needs generally, the results in relation to victim satisfaction were encouraging in comparison to those in the traditional criminal justice system. Any dissatisfaction there was resulted largely from bungled administration of the process, rather than the process itself. This result is not surprising in light of the fact that historically the traditional formal system pays little heed to the restoration of victims. It is the case also within the existing traditional school discipline procedures that victim restoration is largely ignored, such matters presumably being left to the policies of individual schools. Victim consultation, participation and restoration are not required by the procedures in the Education Act 1989 (NZ), the Education Amendment (No 2) Act 2000 (NZ) or the Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999 (NZ). Within the school context, material restoration may not be so much of an issue, for example in

the case of bullying or harassment. However, failing to allow for participation in the system by victims may be depriving them of the emotional or symbolic restoration, which much of the research has shown to be of more importance to them.[32]

In relation to the second hypothesis—that restorative justice practices restore and satisfy offenders better than existing criminal justice practices—Braithwaite concludes that research shows clearly a high level of offender satisfaction accompanied by a low level of re-offending.[33] He cites studies conducted in Germany, Australia, Singapore, the US and New Zealand which show a significant reduction in recidivism particularly in relation to youth justice. The positive offender-restoration effect in the case of youth offending was made particularly clear in a 2000 study conducted by Sherman, Strang and Woods from the RISE restorative justice experiment in Canberra, Australia.[34] There, 1300 cases involving violent juvenile and young adult offenders were randomly assigned either to court or to a restorative justice conference. There was a sharp decline in officially recorded repeat criminal offending of those assigned to a conference in contrast to those assigned to the court process. This result adds weight to the argument for greater implementation of restorative justice practices in schools, including those cases of peer violence.

The third hypothesis put forward by Braithwaite is that restorative justice practices restore and satisfy communities better than existing criminal justice practices. In the school context, the positive effect of conferences could be seen to be related to the giving of other members of the school community a voice in deciding how to make their school safer and a more decent place in which to be educated. He refers to a restorative justice conference where supporters of a boy offender and girl victim of sexual assault agreed to work together to confront a culture of exploitive masculinity in an Australian school.

The practice in criminal offending provides a valuable lesson for its implementation in schools. Research conducted by Maxwell and Morris in 1993 and 1996 showed a high percentage of offenders and their parents (84/85%) were satisfied with the outcome, compared with only 50% of victims. An examination of the sources of dissatisfaction on the part of victims shows a perception that the outcomes were too lenient or they were simply not informed of the outcome, and that the offenders did not show themselves to be truly sorry.[35] Thus, it is important that in the implementation of restorative justice practices in schools there is careful consideration given to both the facilitation and the desired outcomes of the process in consultation with all stakeholders.

School community conferencing: its implementation

The idea of restorative justice in schools is borne out of a general feeling that the traditional forms of discipline such as school exclusion are failing both in preventing serious misconduct, such as bullying, and in protecting the victims. Research has established that bullies generally have low levels of empathy, that they tend to be highly impulsive, and that they retaliate when punished.[36] Braithwaite points to the evidence provided by several studies which have looked particularly at restorative

anti-bullying programmes in schools. He refers to these programmes as being based on a 'whole-school' approach,[37] stating that the most impressive was a programme in Norway where a 50% reduction in bullying was reported.[38] In recent years, both New Zealand and the comparative jurisdictions, particularly Australia, have seen increasing interest in restorative justice practices in schools and tentative moves towards their acceptance.

Judge F.W.M. (Fred) McElrea, a Judge of the Youth Court and District Court of New Zealand, is a strong proponent of the restorative justice model for school discipline. He sees the key to it as empowering the individuals involved to solve the problem at its source by constructively and flexibly reaching a solution. It provides an opportunity for the perpetrator to recognize the harm, to take responsibility for it and to be obliged to repair it. He says:[39]

> By taking the culprit out of the neighbourhood or school community (by imprisonment, or expulsion/suspension) we think we have removed the problem. In fact it has usually been simply relocated in time and place—and in the process, it is often exacerbated.

Applied to the school context, restorative justice shifts the emphasis from seeing anti-social behaviour as challenging the authority of the school to seeing it as damaging to relationships within the school. The effect is then that it allows a way forward for the individuals concerned because, rather than their having to bow to authority, they are required to take responsibility for repairing the damage to those they have hurt and to the school community as a whole.

In 2000, Restorative Conferences in Schools (Te Hui Whakatika) was developed by the Ministry of Education in conjunction with the University of Waikato. A series of seminars travelled around New Zealand at that time to inform schools of the model. Two projects on restorative conferencing were undertaken recently by a team of researchers from the School of Education at Waikato University in Hamilton. The objective was to develop and trial processes for school suspension hearings using restorative justice practices and principles. The project was first initiated in five schools in the Waikato[40] using a process which was a combination of traditional Maori hui (meetings) for resolving conflict and conferencing used in the criminal justice system for youth offending. The project was evaluated by a team of researchers from the University of Auckland who found that there was 'substantial satisfaction' among participants in the process.[41] The researchers reported, however, that despite the apparent success of the trials and the huge interest from schools, there has been no systematic introduction of restorative justice in schools. While there could be many reasons for this, the suggestion is that it is simply seen by already over-stretched educators as too hard and too consuming of both energy and resources. Amendments to existing legislation relating to school exclusions, along the same lines as the provisions of the Children, Young Persons and Their Families Act 1989 (NZ), should be considered to compel implementation of such procedures by schools. Such provision would necessarily be accompanied by the allocation by central government of sufficient resources to schools to enhance their chance of success.

In the meantime, the challenge is for school authorities to develop procedures within their existing resources for using the restorative model within the requirements of the Education Act 1989 (NZ) and the Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999 (NZ). In December 2003, the Restorative Practices Development Team from the School of Education at the University of Waikato published a booklet entitled *Restorative Practices for Schools*, which is invaluable both for background information and for the comprehensive material on implementing the processes that it contains.

Obviously, the process would need to be overlaid with principles of natural justice. At the outset they need to establish the facts of the event or behaviour. Depending on its seriousness, they need to consider whether restorative justice is appropriate, or whether the problem warrants stand-down, suspension or expulsion. Research referred to by Braithwaite[42] suggests that there is an argument for restorative justice practices even in the case of most violent offending, irrespective of its seriousness. The challenge for schools is to use the restorative process in a way that optimizes the reintegration of the student wrongdoer into the school community while not undermining the right of the wronged person to a safe and secure learning environment.

The same experience abroad: enthusiastic reports but slow implementation

In Australia, a 1998 report of the Australian Law Reform Commission entitled 'Children in Education'[43] addressed the question of alternative dispute resolution in schools. It refers to a number of submissions which raised the need for neutral mediation processes to resolve school disputes. Importantly, the report refers to a trial of what is termed 'community accountability conferencing' carried out in Queensland schools between April 1995 and April 1996. It states[44]: 'The Inquiry considers that community accountability conferencing has considerable potential as a means of dealing effectively with school disputes and of reducing exclusion rates.'

The first school community conference, referred to above, was held at Maroochydore State High School following a serious assault at a school dance. Such conferences have been implemented in many schools since that time. A study was conducted involving a total of 119 schools using community conferences to deal with serious cases of harmful behaviour, such as assault, use of drugs, damage to school property and theft, and serious victimization. The first findings of the Queensland Education Department in 1996 included the following:[45]

- Participants were highly satisfied with the process and its outcomes
- High compliance rate with the terms of the agreement by offenders
- Low rates of reoffending
- A majority of offenders felt they were more accepted, cared about and more closely connected to other conference participants following conferencing
- A majority of victims felt safer and more able to manage similar situations than before conferencing

- The majority of conference participants had closer relationships with other conference participants after conferencing
- All school administrators felt that conferencing had reinforced school values
- Most family members expressed positive perceptions of the school and comfort in approaching the school on other matters
- Nearly all schools in the trial reported they had changed their thinking about managing behaviour from a punitive to a more restorative approach.

Researcher Thorsborne concludes from the Queensland experience that, on a practical level, restorative justice processes result in much greater participant satisfaction, a greater sense of justice and a greater feeling of support for all those involved. Predominantly, they focus on the consequences of behaviour by one person towards another and force the offender to take responsibility in a way that punishment does not. In the words of Cameron and Thorsborne:[46]

> School behaviour management plans have focused largely on what should happen (penalties and tariffs) to offenders when (school) rules are broken, with only limited understanding of the impact on those in the school community of the offending behaviour. Restorative justice in the school setting views misconduct not as school rule-breaking, and therefore violation of the institution, but as a violation against people and relationships in the school and wider school community.

Also in Australia, a further study was concluded in 2001 by the Centre for Restorative Justice at Australian National University in ACT into restorative justice, particularly in addressing school bullying.[47] The study draws on research that shows shame management as an important mediating variable in the understanding of bullying and victimization[48]. The study develops a Responsible Citizenship Programme as a learning unit for primary schools in ACT. It states:[49]

> The proactive intervention programme developed here aims to bring together (a) community building, (b) conflict resolution, and (c) shame management under one conceptual umbrella. The unit aims to give students conflict resolutions skills based on the principles of restorative justice.

The programme was developed for Year 5 students and was entitled REACT as an anagram of the five principles:

- Repair the harm done
- Expect the best from others
- Acknowledge feelings/harm done
- Care for others
- Take responsibility for behaviour/feelings

Responses to the questioning of those students and teachers involved in the programme proved that it was viable and effective in three respects:[50]

> First, all the parties involved in the development of the programme found the programme to be of benefit to the students ...

> Second, the programme met our theoretical objectives of (1) creating a fun and safe community for students; (2) developing the student's conflict resolution skills; (3) developing the student's shame management skills . . .

> Finally, the programme's objects of building a practical and adaptable programme, based on principles of restorative justice were fulfilled.

The researchers concluded as follows:[51]

> Restorative practices, though valuing relationships, challenge everyone involved. This is an important challenge. To sustain any shift in the way schools operate [,] lies in each party questioning, in the most fundamental way, their own beliefs and practices. The central, dominant theme to be addressed is the use of punishment and control in achieving behavioural compliance.

As Australian researcher, Brenda Morrison, remarked:[52] 'Restorative justices processes offer us the opportunity to get off the seesaw between punitive and moralistic approaches to addressing school bullying.'

However, more recently, in June 2003, a report was undertaken by Dr Ken Rigby and Dr E. Barrington Thomas for the University of South Australia, funded by the Criminology Research Council.[53] The study was of the approaches to bullying of a sample of 50 schools throughout Australia, both primary and secondary. The researchers found that, while there was a wide variety in the approaches used by schools, only one of the schools studied had used any form of school community conferencing. This shows clearly that despite the volume of rhetoric which surrounds the application of restorative justice practices to schools, there is a long way to go, at least in Australia, before the idea will meet with general acceptance. This view mirrors that of the New Zealand researchers above.

The findings from projects involving the introduction of restorative justice practices in schools in Canada and in the United Kingdom are encouraging. In the Canadian province of British Colombia, two educators have, over the last five years, embarked upon a mission to educate school teachers, administrators and policy makers about the potential for restorative justice practices in schools. While stating that they are yet to research the effectiveness of these practices, they state that anecdotal evidence indicates 'high satisfactions levels and less repeat conflicts'.[54]

In the United Kingdom, there has recently been completed a national evaluation of restorative justice practices introduced in 32 schools in nine pilot areas across England and Wales. These practices included formal and informal mediation and conferencing. The evaluation involved surveying students and staff prior to the introduction of the practices and then one year after their introduction, post-conference interviews with 650 conference participants and interviews with school staff. The first interviews showed high levels of victimization, behavioural problems and feelings of lack of safety in schools. Youth Offending Teams were then given the responsibility of implementing restorative justice practices in the schools. Despite reporting that implementation of these practices has been 'patchy' due to factors such a staff resistance to change from punitive practices, the latter interviews revealed a high level of satisfaction in those schools in which the practices had been

successfully introduced. The interviews indicated that 95% of all disagreements, disputes and conflicts had been resolved through mediation and conference, and significant reductions in the levels of bullying and victimization leading to an increased perception that the school was safe.[55]

Conclusion

In the last decades, three themes have predominated discussion on education in all the comparative jurisdictions. The first relates to school safety and student behaviour issues. The second is concern over the high numbers of school suspensions and exclusions and the hugely detrimental effect of disengagement with formal education both for the student concerned and for society generally. Thirdly, and more recently, is the debate relating to how best to educate for responsible citizens in a democratic society. An education system that embraces greater student participation in school decision making and restorative justice practices offers a perfect opportunity to work towards addressing all these concerns in a cohesive and holistic manner.

Such a system, however, requires a different mindset on the part of educators and makers of educational policy. Its implementation requires a cultural shift in the way in which providers of education perceive themselves and are perceived by others.

Despite the introduction of the restorative practices discussed above, implementation of them has been patchy. Research suggests that school processes, including behaviour management, are still, in all the comparative jurisdictions, largely based on the authoritarian hierarchical model of 'them and us'. A change in culture may be achieved only gradually. It requires policy development at a national and school level, followed by training at teacher education level and training of existing staff to widen the view from teaching to practising democratic processes. Student participation generally, in order to be effective, must be seen by all to be meaningful and authentic, not tokenism. It requires:

- That there is a focus on young people as members of the school community.
- In turn, the focus is shifted from teachers as authority figures to teachers as human beings and members of the school community.
- School authorities do not adopt one-sided views and attitudes to consultation, and the views of all members of the school community are incorporated.
- There is a move from the rigid enforcement of rules and systems to all the community working together to achieve the best result for all.
- Notions of punishment by exclusion are cast off, and instead the focus is on repairing relationships and inclusion.
- The concentration is on relationships within the school community rather than on individuals.

The process of formal education operates in an ever-changing world. Many of the old perceptions relating to systems and relationships within education are being challenged. There are many reasons behind the imbalance of power that exists in

school relationships. Many teachers and parents justify their dominion over their charges as being in their best interests and necessary for the keeping of order and control within the school environment. Any change is scary.

Those attending schools are in their most formative years. Thus it may be said that the school influences, to no small extent, the norms and patterns of behaviour which people carry out of the school gate. There is a strong argument that a school culture that values the worth of each young person, by encouraging their participation in all matters within the school community, not only creates healthy school communities but also immeasurably benefits the future direction of society.[56]

There is clearly a tension in schools between the need to ensure a safe educational environment and conflict resolution which prioritizes the need to keep all students engaged. There is little evidence to suggest that schools are becoming safer as a result of the wide range of reactive responses which are being employed by school authorities in their attempts to ensure safety. There is, however, an increasing body of evidence which points towards both the need for change and the success of restorative justice practices in keeping students in school and keeping schools safe.

The United Nations Convention on the Rights of the Child states that education should be directed to:[57]

> ... the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among peoples, ethnic, national and religious groups and persons of indigenous origin.

The careful use of restorative practices in conflict and behavioural management in schools provides a positive path towards fulfilling this objective.

Notes

1.   This article follows on from an article by the author entitled 'Citizenship in schools: the gap between theory and practice', which considered the case for greater student participation in school decision-making generally. This article is the Part Two referred to in the above article published in the previous issue of *Education and the Law*.
2.   Council of Europe (2004) Education for Europe, retrieved from http://www.coe.int/T/E/Cultural_Co-operation/education
3.   Cavanagh, T. & Foster, A. (2005) Building a school community of caring and trust rather than zero tolerance, paper presented at the US Embassy, Wellington, 10 March 2005 and currently being reviewed for publication in *Kappa Delta Pi Record*.
4.   Van Ness, D., Morris, A. & Maxwell, G. (2001) Introducing restorative justice, in: *Restorative justice for juveniles: conferencing, mediation & circles*, A. Morris & G. Maxwell, Eds (Oxford, Hart).
5.   Stand-downs were introduced in 1999 as short-term school exclusion measure.
6.   Ministry of Education (2005) *Report on stand-downs, suspensions, exclusions and expulsions for 2004*, Wellington, NZ, retrieved from http://www. minedu.govt.nz
7.   The above report notes, at p. 2, that as some students were stood-down or suspended more than once, the number of students is less than the number of cases.
8.   Pursuant to Section (S) 245 Children, Young Persons and Their Families Act 1989 (NZ).
9.   S8 Family Proceedings Act 1980 (NZ) and the Employment Relations Act 2001 (NZ).

10. Fohlberg, J. & Taylor, A. (1990) *Mediation: a comprehensive guide to resolving conflicts without litigation* (San Francisco, CA, Jossey-Bass).

11. Nairn, K. & Smith, A. (2002) Secondary students' experiences of bullying at school and their suggestions for dealing with it, *Childrenz Issues*, 6(1), p. 13.

12. The Peace Foundation website, http://www.peace.net.nz/coolschools.htm

13. Distributed by the New Zealand Department for Courts.

14. Kajs, L.T., Thomas, D., Wilson, L.J. & Zambon, D. (2001) *ELA Notes*, 36(3), 4–6, 10, at p. 5.

15. Kajs, L.T., Thomas, D., Wilson, L.J. & Zambon, D. (2001) The use of the peer mediation programs to address peer-to-peer student conflict in schools: a case study, *ELA Notes*, 36(3), 4–6, 10.

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18. Wilson, L.J. (1998) *Conflict resolution and the Houston independent school district: peer mediation vs non-peer mediation approaches for resolving student conflict in elementary and middle schools 5*, unpublished MA thesis, University of Houston, Clear Lake, pp. 1–91.

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21. Stewart, D. & Russo, C.J. (2002) Maintaining safe schools, *ELA Notes*, 37(1), 14–18, at p. 15.

22. Rigby, K. (1996) *Bullying in schools: what to do about it* (Melbourne, Australian Council for Education Research Limited); also Rigby, K. & Barrington Thomas, E. (2003) *How Australian schools are responding to the problem of peer victimization in schools*, a report undertaken by the University of South Australia, funded by the Criminology Research Institute.

23. Braithwaite, J. (2002a) *Restorative justice and responsive regulation* (Oxford, Oxford University Press).

24. Zehr, H. (1990) *Changing lenses: a new focus for crime and justice* (Scottdale, PA, Herald Press), p. 181.

25. Sharpe, S. (1998) *Restorative justice: a vision for healing and change* (Alberta, Edmonton Victim Offender Mediation Society), p. 7.

26. Morris, R. (1994) *A practice path to transformative justice* (Toronto, Rittenhouse).

27. S245 of that Act provides that proceedings, for which the Youth Court has jurisdiction, may not be instituted against a young person (under 17 years) unless the Youth Justice Coordinator has been consulted and a family group conference convened. S272 of that Act sets out the jurisdiction of the Youth Court as to hear any offence other than murder and manslaughter, in which case the preliminary hearing only shall be before the Youth Court, but the substantive trial will be by jury.

28. Maxwell, G. & Morris, A. (1993) *Family, victims and culture: youth justice in New Zealand* (Victoria University, Wellington, NZ, Social Policy Agency and the Institute of Criminology), p. 4.

29. Braithwaite J. (1989) *Crime, shame and reintegration* (Cambridge, UK, Cambridge University Press).

30. Braithwaite, J. (2002a) *Restorative justice and responsive regulation* (Oxford, Oxford University Press), p. ix.

31. Strang, H. (2000) *Restorative justice programs in Australia: a report to the Criminology Research Council* (Canberra. Centre for Restorative Justice, Research School of Social Sciences, Australian National University).

32. Braithwaite, J. (2002a) *Restorative justice and responsive regulation* (Oxford, Oxford University Press), p. 52, referring particularly to Retzinger, S.M. & Scheff, T.J. (1996) Shame and the social bond, in: Parker, D., Dalziell, R. & Wright, I. (Eds) *Shame and the modern self* (Melbourne, Australia, Australian Scholarly Publishing), p. 6.

33. Note 33 at p. 54.

34. Sherman, L.W., Strang, H. & Woods, D. (2000), p. 20, referred to in Braithwaite, J. (2002a) *Restorative justice and responsive regulation* (Oxford, Oxford University Press), p. 57.

35. Maxwell, G. & Morris, A. (1993) *Family, victims and culture: youth justice in New Zealand* (Victoria, Social Policy Agency and the Institute of Criminology, Victoria University, Wellington, NZ), p. 120.

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41. Drewery, W. & Winslade, J. (2003) Developing restorative practices in schools: flavour of the month of saviour of the system?, paper presented at the *AARE/NZARE Conference*, Auckland, New Zealand, December.

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43. ALRC 84, 10.

44. Above at para. 1075.

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