

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Alternative Justice, Testing the Waters

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I have been invited here to speak to you about alternative justice and I am grateful for the opportunity to share my experiences with you and some thoughts.

I realize that you are law students and will be leaving these classrooms some day to begin your own career as lawyers. You will no doubt, be faced with the same reality that many new lawyers are faced with at that time and that is that you don't really get taught everything that you will need to know to be a practicing barrister or solicitor. There are things that are left for you to discover on your own to be assimilated into your already vast legal memory banks. Such things as legal aid billing forms and form letters and negotiating a claim out of court are examples of things that for many of you will be new experiences that don't get explained in the legal training of law school. Another such matter is relatively new yet old concept of Restorative Justice AKA alternative justice.

Maybe I am wrong on this but I would bet that not too many schools yet have this as a formal part of law school training. For me I can say that when I heard the term it seemed vague and uncertain and even when you hear someone explaining it, it sounds some how made up or unreal. I think this is so because it is something that is not from what can be called the conventional sources of learning. Academic writing normally comes from highly educated professionals who are well known for their published legal theories about things like mens rea or evidence or constitutional matters. Restorative Justice however has had a different beginning that seems to come from the needs and concerns of ordinary citizens.

When I read through Judge Stuart's report of Aug. 1996 entitled "Building Community Justice Partnerships, Community Peacemaking Circles, A description of the Yukon Experience" it became clear to me that this was not a theoretical essay but rather a report based on his experience with people. His ideas and solutions fascinated me. I have tried to follow his advice in my town of Prince Rupert where I am a sitting Provincial Court Judge. Restorative Justice is really at its base a criticism of the current justice system. Whereas the movement towards finding alternatives to the existing system seems to have begun within First Nations communities, it seems to have grown to a search for an alternative for all Canadians. It begins with the proposition that the current system is not working well. It is too expensive, it is too complex, it is not inclusive, it takes too long to get results, it ignores the needs of victims, it is adversarial in nature, it does not promote harmony or wellness in the community or family from which the offender is from, it requires specialists to travel in and interpret the inner workings of the system. These are but a few of the complaints levied at the current justice system not only in Canada but also in the USA, Australia, Japan, and many others. The central concern is that Canadians have abdicated their responsibility for managing conflicts within their families and their respective communities. That they are now outsiders watching a slow, incomprehensible system deliver what seems to them to be injustice and not justice? That the system's high cost is not justified when one examines the results, that is the crime rate, and the recidivism rate. Proponents of restorative justice want this power or ability to manage conflict locally restored to them through what are called peacemaking circles. The circle is made up of member of the community who sits together and works out a solution that is alternative to the typical jail sentence imposed for criminal behavior. They see jail time as a short-term solution that only delays the inevitable problem, which is to heal the relationship between the offender and the victim. Jail is a costly solution, that doesn't work. It does

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not bring about rehabilitation, nor does it reduce the crime rate and reduce the prospect of reoffending. Restorative justice is about restoring to family and community the responsibility for sustaining healthy relationships and harmony by locally managing conflicts.

If all of this sounds too hairy fairy to you, well at first blush it does sound that way, but I can tell you that I am now a believer. Now I don't want to leave you with the impression that I am an expert on this subject because I am not, nor should you think that because I am aboriginal that I have any better knowledge of restorative justice methodology than anyone else, but I can say that I think I understand it and am willing to give it a try. So here is what I have done so far.

First of all I am aware of the sentencing principals in the Criminal Code which now have restorative justice aspects to them. I have read the *Gladue* decision and realize that as a Judge in the Provincial Court I can ask for certain things regarding alternatives that may exist in First Nations communities before passing sentence on Aboriginal offenders. I have attended the lectures given by her Honour Judge Turpel Lafond in which she explains the process, the dos and don'ts of sentencing post *Gladue*. When I raise this issue however with other players in the court system they seem mystified or perhaps uncertain about what I am saying as if I am speaking a different language or at least with an accent that they cannot understand. There seems to be a reluctance or maybe a fear to try these alternatives, like circle sentencing.

Anyway there I was in court one day and it was a family matter in which the children, four of them were now in the hands of the Director for family and child serves. The question was whether they should be returned to the mother or not and in this process the First Nation has a right to be heard. Counsel for the First Nation requested that we move to the Community Hall to allow more members to attend since the courtroom could only accommodate twenty people. I thought, what a good idea, lets go to the community to hear from the people in their own turf, perhaps we can get a dialogue going about local solutions to these kinds of problems. Well the first issue came from the director who did not wish to attend to the community hall and if was directed to attend would not speak. I said that that was fine, but that we were going. Then counsel for the mother asked who was going to speak could anyone speak and in what order? I said that I did not know, but that since it was their request we would be following their protocol.

That afternoon, we moved the whole court, sheriffs, clerk, witnesses and lawyers to the local community hall where people were already gathering. It was a basketball gymnasium with one side of the room for seating. The main floor was taken up with chairs and they had set up a semi-circle of chairs for the lawyers and clerk on one side, the hereditary chiefs on the other side and me in the middle. The Chiefs wore their button blankets and cedar hats. The proceeding began with a song and prayer. The main chief, then addressed the gathering in his own language and then in English. Elders in the audience also wore their button blankets and sat, watching and listening with great interest. Every now and then someone would bring coffee to them as they sat and waited. Then I spoke briefly about why we were there and what we hoped to accomplish. We were there to hear from the people. These children were from their community. The mother was one of their own as family member and community member. They were all well aware of her situation and the history of the Ministries involvement. Individual members were now given an opportunity to address the court through a microphone placed in the center of the room.

First the other chiefs spoke about their community and the history of their village. Then mothers took the floor, to talk about how they had been taken by the ministry as children and how that effected their lives. They spoke of how the ministry had then taken their children and how that effected them. Mothers openly wept as the lawyers and court staff watched in total silence. One speaker was the local bus driver who spoke about the mother and how the kids looked every morning. Another spoke of how helpful the mother was during funeral feast and gatherings. That she always arrived with food for the family and helped clean the home for the visitors. Other tribal chiefs spoke of how they have tried to get children returned without success. The session went on to about six o'clock, when one of the chiefs remarked that the elders were getting tired and cold. We adjourned to the next day. The speakers came to court and continued for the entire morning speaking on behalf of the mother.

I really did not know what to expect from this approach. I didn't know if they were going to suggest a solution or not. What did occur however was that their feelings on the matter were heard. They held long term resentments for past treatment by the ministry for family and children. If nothing else they finally felt

like they were a part of the process. What happened in the end was that they did develop a solution that was accepted by the ministry. I don't know if it was because of the community hall experience but I like to believe that that experience made a difference.

What I think is all too often overlooked is that this system of conflict resolution was brought here and imposed on the Aboriginal People who don't feel like they are part of the process. What we are beginning to hear from the main stream is that they too feel the same way but for different reasons. Alternative justice is about bringing the community back into the picture if that is what they desire. It's about allowing communities to find their own solutions to problems that are local and on going.

The justice system can not be all things to all people but it can open its doors and invite others in to help offer alternative solutions to long term problems. A healing circle can bring in those parties that have been affected by the incident face to face to air out their concerns. The offender can hear and see the pain that he or she has caused. Other family members can accept responsibility as well as the offender in some cases like young offenders so that that person isn't standing alone. Restoring the harmony becomes much more important then punishment. Reconnecting the offender with family and friends can do a lot more for the recivism rate then yet another probation order to do community work service. Any justice system that aims at resolving conflicts is only as good as the support and respect it enjoys from the people it intends to service. We really need to re-examine our current system to make it user-friendly, accessible, understandable and ultimately fair and just.

Before concluding I would like to share another example of this process that I have experienced. I was in court on a youth criminal matter and about to deliver my sentence on the young man when a call came in from the Chief of the youth's community. She asked me if I would consider moving the hearing to the community to allow the elders to participate. I agreed. Two weeks passed and I found myself with the court staff and one sheriff on a small plane heading to the remote village on the west coast of B.C. The boy had plead guilty to cutting in half two logs that were being prepared for a feast hall. He had also thrown into the salt water two chain saws that were the property of the First Nation. The elders wanted a public apology in a traditional feast called a shame feast to occur. When we arrived we were greeted by the Chief and her father who was their hereditary chief. He welcomed us and thanked us for coming to their community which had no roads or cars only a warf for boats and planes. Inside the community hall where court was to be held, they had tables set up in a feast fashion with dishes and bread already on them. I got ready and the sheriff announced "all rise" and when I entered every seat was taken up by family and community members. Once again the proceeding was begun with a prayer and a speech from the hereditary chief and then court commenced. The young man (accused) came forward with his family and made his public apology. The elders listened and then they each spoke to him. They gave him advise and thanked him for following through with their old ways. I was advised that he had to gather the food for the meal and the gifts that had to be given out as part of the potlatch. He made a commitment to replace the logs from his families land and to replace the saws. At the end just before the meal his grandfather spoke. He cried for his grandson and he too apologized to the elders for the boy's actions. He commented how it had strained their relationship and was glad that this was now done. He crossed the floor and embraced the old chief and both wept. It was a very moving and solemn moment that seemed to last a long time. Everyone watched in silence. After that the meal commenced I changed to my street clothes and joined the others at one of the tables. The boys family began to bring out the meal which included clams, fish, potatoes, home made bread, fruit and much more. Just when I thought it was ended, a speaker got up to speak for the young man, and his family and friends openly pledged assistance both financial and otherwise for him to complete his obligation to the elders. Then his family came and gave to each guest a small gift to take home to remember that this happened. I still remember with laughter the moment when the sheriff asked me if he could keep his gift. I explained that he must keep it otherwise the family would be offended.

This kind of reconciliation would not have been possible if I had merely given another period of probation and perhaps restitution. The offender was reconnected to his family and to the community at large. In the end he accepted responsibility as did his family for his actions. It was all very good. My intention was to speak with you briefly about Restorative Justice and then to share with you two of my experiences with trying to implement that which I have learned. What I discovered is that I have a lot of learn. I hope that you have learned something today. Thank you for listening. Thank you.

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