

## Restorative justice, sexual assault & family violence

### History

I am going to go back to the beginning of the discussion about whether you can have dispute resolution, restorative justice or conferencing in relation to sexual assault and family violence (and I am not going to get involved in what we call the sessions because I think that is a whole other conversation and we have at SECASA changed what we call them several times and people who make referrals recently also call them different things such as 'A restorative process'.) The reason I am going to talk about the history of this project is because when I was at Uni I had a History Professor who used to tell us that if we did not know where we came from we would never know where we were going.

My first real contact with the concept of restorative justice was in August 2008 through an invitation from the Victorian Association for Restorative Justice (VARJ) to attend a meeting entitled **Sex Offending and Family Violence: A restorative approach – a facilitated roundtable dialogue**. The invitation came with an very impressive list of participants including academics, Magistrate's, bureaucrats, researchers, defence force personnel and members of religious organisations.

However impressive the list of participants my first response was to indignantly refuse to attend. I mentioned this Roundtable to other CASA Managers and they were equally if not more indignant. Our comments were along the lines of surely these people understand how long and hard we have fought for sexual assault and family violence to be taken seriously in the criminal justice system. Here we are just when it looks as though we might be having some success with the system people want us to look at other options. I then remembered the **Guidelines for Meetings Arranged for Adults to Confront the Alleged Offender** and the sessions I ran at SECASA for a few of our clients who appeared to be unable to move on until they had spoken to their offender, alleged offender, their immediate or extended family. I started running those particular sessions in 1994 and had slowly developed how they were conducted without any idea there was a whole world out there dealing with restorative justice.

I attended the Roundtable and at the end the question was asked of everyone "What will you do from here?" I said I would do two things. I have never learnt to stay quiet at such times which gets me into doing far more work than I want to many times. Anyway I said that I would arrange for Peter Conliffe, then President of VARJ to talk to the Victorian Centres Against Sexual Assault Forum, the Peak Body for the 15 CASAs, to explain why restorative justice might be appropriate in sexual assault and family violence cases. It really was rather him than me as the general response at that time from the CASAs was not positive. Secondly I said I would present at the Victorian Offenders Treatment Association (VOTA) conference on this topic as I knew it would force me to give the matter of sexual assault, family violence and restorative justice some serious thought in order to be able to write a conference paper.

This is eight years ago and there has been a lot of activity in this area since, some of which you are probably more aware of than me but I just want to talk briefly about the developments that impacted on SECASA and our practice.

- In 2008 the Law Reform Committee of the Victorian Parliament (LRC) conducted an enquiry into alternative dispute resolution and restorative justice and recommended that **The Victorian Government, in consultation with practitioners and the Victorian Association of Restorative Justice, should develop a list of core skills and attributes required by restorative justice practitioners**. (LRC Inquiry into ADR and RJ. LRC Parliamentary Paper No 184 May 2009 p307)
- VARJ released a Best Practice Standards manual for Restorative Justice Practitioners' and an Accreditation Scheme which has moved forward in the past decade.
- The State wide Steering Committee to Reduce Sexual Assault asked for a report to be prepared by Bronwyn Naylor about alternate pathways to the criminal justice system although this report disappeared into the bureaucracy and has never been seen again as far as I know
- The Centre for Innovative Justice at RMIT prepared a report for the Attorney-General released in 2014 on alternative approaches to dealing with the crimes of sexual assault and family violence **Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community**
- Until she became a Commissioner on the Royal Commission into Family Violence Marcia Neave headed the Courts' Restorative Justice for Victims Advisory Group which was concerned about listings and historic cases of sexual assault and finding a better solution than a court case for such hearings
- The Australian Institute of Judicial Administration ran a panel discussion in November 2013 on **Restorative Justice Alternatives to the Criminal Justice System for Certain Kinds of Sexual Assault Cases** – and brought Project Restore from New Zealand to talk about their approach to conferencing.

- The Michael Kirby Centre for Public Health and Human Rights developed a pilot restorative justice project based at SECASA which I will talk about more in a minute
- The Defence Department had a high profile report published by DLA Piper about sexual assault in the armed forces and the Defence Abuse Response Taskforce (DART) was created.
- RMIT ran a forum about the recommendations of the Centre for Innovative Justice Report

As you can see a large amount of interest and activity around restorative justice and alternate dispute resolution. I was involved in a number of these activities and realised at the time that there were a number of competing agendas several of which did not fit with what SECASA was doing and what the CASA Forum thought would be helpful. Also some of the ideas around did not fit with what had slowly, in my case, developed into a practice that I thought was useful for victims and was victim driven and victim centred.

### How this started for me

So how did this start for SECASA. In 1994 we had a 14 year old client, who we will call Sue, who had told her best friend what had been happening after netball with her father for 3 years – from 10-13 years of age. The best friend told her mother that night and the next day at school the mother told the form teacher. The Principal rang the Department of Human Services as they were then. By the end of the day the father was in custody, the victim's mother was distraught and the two younger siblings, a five year old girl and an 11 year old boy, were distressed. This is not to mention the 14 year old. The father pleaded guilty and was bailed with conditions of no contact with the family. The 14 year old's counsellor kept telling me that the young woman wanted to talk to her father. We ignored this for several months. Finally DHS rang and said that they had removed all the kids because the situation was spiralling out of control and, by the way, could we help the 14 year old talk to her father. I said certainly not as we did not talk with offenders as we were a victim service also there was the issue of the bail conditions.

Finally I agreed to run this session without any experience or training both to help the 14 year old and to stop the counsellor popping in every few days to tell me about her client's increasing distress and the phone calls from DHS asking us to do something else to assist with the situation. Sue met with her Dad and she told him she had not intended him to go to gaol but had wanted him to stop raping her in the car on the way home from netball. I would like to report this session was a great success but to be honest the father was not that responsive (which was my first lesson in this area – always treat each party the same and spend time with them all to make sure we are all clear what we are doing) but Sue felt she had explained what had happened and this session became part of how she dealt with the abuse.

I cannot even say that it has all been plain sailing since then as the family environment had been physically abusive as well as sexually. However, Sue was able to move on with assistance and we did not stay stuck with the issue of her speaking to her father. She visited him a few times in gaol, finished year 10, married, has 3 boys and appears from a distance to be living a good life. Twenty-two years later she updates me on her life when something significant occurs such as having another baby or a special birthday. I wonder about this because I have seen clients regularly for many years whom, when we finally finish our sessions, move on as they should. But the session with the young woman and her father clearly left an impression with this young woman.

Since running this session I have run many other sessions at SECASA. I learnt after that first experience and a subsequent one (I can be a slow learner) that you need to prepare everyone for the session including the offender, alleged offender or extended family. These sessions can now take most of the day if there are a number of people involved. Over the twenty-two years of running these sessions I have run more involving immediate or extended family rather than offenders and victims. Each time I have settled on a set of instructions the situation has changed for a session. I attended David and Alik's training some two or three years ago and found it extremely useful. After the training I became very clear that we should sit on chairs in a circle and this has worked very well in a number of cases. Prior to the training I actually approached sessions in a more formal manner with, most of the time, a table and chairs. Just as I settled to a circle of chairs a victim insisted she wanted a table between her and her father and mother with whom she wanted a discussion about her brother who had abused her. I now work out what would be best for the situation I am dealing with at the time.

The sessions I have run in past years have included

- A 40 year old woman wanting to talk to her terminally ill 70 year old mother about resuming their relationship. The 40 year old had been abused by her father in her adolescence and he had committed suicide after being interviewed by the Police. Mother and daughter had had no contact for 20 or more years. The mother had known about the abuse but was physically abused by her husband and had felt unable to do anything about it. I spoke with the mother and her new husband separately and then the daughter. After some discussion everyone came to what I thought was a good arrangement about contact and off everyone went. A month later the counsellor told me that the daughter just wanted me to know that the session had been very useful and she had decided she never wanted to see her mother

again. I had to give that some serious thought as I was rather put out having rather liked the first solution. Another lesson. It is not my solution. It is theirs whatever I think about it.

- A young woman in her mid-twenties asked to meet with her father who had abused her in her early to mid-teenage years. I meet with both parties and although the father was somewhat puzzled about why she wanted to talk with him now both parties were happy to meet. The young woman explained to her father the damage that the sexual abuse had caused in her teenage years. She had left school early, acted out and used drugs. Her father responded with surprise and said that he had never connected the abuse with her behaviour and had just thought she was a rebellious adolescent. He actually said "A ratbag kid." He finally, after some discussion, apologised to her and offered to go to the Police Station and confess. She said no and said that it would just make things worse but she was happy she had been able to tell him what had happened to her and have an apology.
- A 21 year old, with her boyfriend as a support, asked to speak with her mother, father and two older brothers about having been raped twice by her uncle, her father's younger brother, when she was 16 years old and working in the uncle's factory during the summer school holidays. The reason that this had become an issue was that she avoided family occasions and in this family that was not really acceptable. Also her uncle had started sending her suggestive texts and the uncles two daughters were approaching the age of 16 and she was worried he might sexually assault them. The 21 year old told her family members what had happened. Her father said he would deal with his brother and tell him he had been told about the rapes and that if she was uncomfortable with his presence at their family events the uncle would not come again. He subsequently telephoned me and said that their mother, the girl's grandmother, had also been told what had happened and she had dealt with it by making it clear that her younger son would never again be allowed to attend family events.

These sessions have always been driven by the needs and wishes of the victim with no concern for the criminal justice system or court cases. Sexual assault files have an unusual protection under the Section 32 (c) of the Evidence Act which is we can contest their being subpoenaed so I have always assumed that these sessions are also protected. This has never been tested in court.

Then the pilot project started with The Michael Kirby Justice Centre early this year. Alikei and David have trained four of the counsellor/advocates at SECASA in the Conflict Transformation through Conferencing course to be able to run restorative justice sessions in case we get an influx of cases and I cannot manage. Also it is not a good idea to have all the expertise in anything sitting with just one person in an organisation. I might decide to retire to a remote island without any notice. So at the moment there are five people who have been trained to run these sessions.

The pilot requires that 30 sessions are conducted over some twelve months. Participants are provided with evaluation surveys after the conference and then some six months later. The purpose of the pilot is to identify how

- 1) The restorative justice conferencing process and
- 2) A supporting administrative program

Can deliver a sense of justice and tangible healing for victim-survivors of sexual offending who report to a Centre Against Sexual Assault.

The pilot got off to a slow start and I realised after a few weeks that I have never minded, or even taken any notice, of how long it took to set up a session because they just happened in their own good time. But with a pilot project there are academics asking questions about how long and how many. We have now come to an understanding that this process is exactly that a process. Also taking part in the research is not a condition of being involved in a restorative justice session. To date I have run three sessions and have one arranged but have not finalise the details. I am going to tell you about them because I find it odd that having formalised the process the cases referred to me have been different and more immediate than many in the past.

- The father of a woman in her early twenties has recently been given a gaol sentence for sexual assault. She has not really spoken with her father since he was charged. She has requested a session to talk to him in gaol and he has agreed. I am negotiating with the prison as to how we manage to do this session.
- I was asked by their mother to facilitate a 17 year old and her 14 year old sister talking to their father who had unexpectedly confessed to sexually abusing the 17 year old. The Police had taken out an intervention order on the spot and he had not been able to return to the family home or contact the family. I had the intervention order varied and, as the father had moved interstate, ran a skype session for the young women to talk separately to their father. I firstly spoke with him about expectations of the session and also, given the age of his daughters, his behaviour as I knew he was distressed and depressed. This man will be sentenced shortly.
- Another CASA asked if I would facilitate a session for a woman in her late twenties to meet with a man who had raped her some two months earlier. The woman wanted to talk with him about the consequences for her and also wanted to ask him why he thought what happened would have been OK. This was a difficult session with heightened

emotions. Usually the sessions deal with events further way in time.

- A mother and her daughter attended to initially discuss wanting to have a large family conference about the attendance of one family member, who had sexually assaulted the daughter, at family events and festivals. They did not want him banned but wanted the young woman to be asked first. After the initial discussion they decided that they knew how to sort out the situation themselves and the session did not proceed.

The range of sessions remains broad. I think this poses more of a challenge for the researchers and the pilot project than for SECASA. I will continue to run these sessions. The other workers will start to run sessions and we have finally incorporated this into the range of services SECASA offers. We will continue to do this as our commitment to victims not to assist the criminal justice system, reduce court lists or assist offenders. For CASAs it is, and will remain, a totally victim focussed process.

Carolyn Worth

17.7.16