

“Court in the Act”

**The Youth Court; The Children, Young Persons, and their Families Act 1989;
And topical issues arising for NZ Youth Justice practitioners**

*A newsletter co-ordinated by the Principal Youth Court Judge for the
Youth Justice community*

Youth Court Website: <http://www.courts.govt.nz/youth/>
(Now includes a database of reported and unreported Youth Court cases)

No. 21, March 2006

*“Young people are fitter to invent than to judge; fitter for execution than for counsel;
and more fit for new projects than for settled business.”
Sir Francis Bacon (1561-1626)*

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This Month in “Court in the Act”

Principal Youth Court Judge A J Becroft

THE New Year is underway and, as ever, youth justice continues to make headlines. You might have noticed stories about increases in serious violent youth offending in the media. This is cause for concern as violent offenders often have intractable problems requiring intensive intervention.

But, on a more positive note, *Court in the Act* this month includes news of new interventions and other useful discussion to assist the youth justice community. For example, we include news of Schools Inclusion Projects (page 5) and the “High on Life” partnership which is helping secondary school students beat drug and alcohol addictions and stay in school (page 6). Mike Doolan questions whether too much focus on restorative justice processes is weakening youth justice practice in New Zealand (page 2 and 12), and we feature improvements to Youth Court processes (page 8).

Please feel free to send contributions, feedback and letters to the Editor to Rhonda.Thompson@justice.govt.nz. We have collated a significant database of those receiving *Court In The Act*. If you know of others who should be on the list please contact my PA, Lavina Monteiro, ph. (04) 914 3446.

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1. Guest Editorial: Youth Justice Capability Review

By Mike Doolan, formerly Chief Social Worker for Child, Youth and Family Services and currently a consultant on Family Group Conferences and kinship care. Mike is a senior fellow at Canterbury University's Social Work Department.

AS I understand it, at the core of this review is the question of how Youth Justice services should be managed and developed into the future. I am concerned about how Youth Justice is increasingly being seen as something that can or should stand alone. I have a concern that an undue preoccupation with Restorative Justice approaches (victim/offender mediation to the exclusion of almost all else) has weakened YJ practice in this country, and a practice paradigm has developed which is not what the law intends.

I am suggesting that the YJ Capability Review should be anchored in the intentions and provisions of the Children, Young Persons and Their Families Act 1989 ("CYPFA"). In particular, I think that machinery of Government decision-makers, particularly Treasury, State Services Commission and Ministry of Social Development, need to be guided by the Objects of the Act and the duties of the Chief Executive that spring from these, in respect of children and young persons who break the law. (I am not aware of any will or intention to write new law or fundamentally alter the legal scheme).

Objects

The relevant object in relation to Youth Justice is section 4(f) CYPFA, which states:

- (f) Ensuring that where children or young persons commit offences:
 - (i) They are held accountable, and encouraged to accept responsibility, for their behaviour; **and**
 - (ii) They are dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible and socially acceptable ways.

The law expects that both these things will happen in all cases (even those cases managed by Police without referral for a FGC).

Interpreting Object s4(f) for YJ Services in CYFS

The following all need to be borne in mind:

- a) The majority of children and young persons referred for FGC will either have committed serious offences where an informal response is inappropriate, or they will have exhibited patterns of behaviour indicating the development of a worsening criminal career. Some will belong to both groups.
- b) Those who have more than one FGC (about 60% have only one) will almost certainly be from disordered, unsettled backgrounds.
- c) An approach accenting accountability and responsibility for offending **alone** will not have much positive effect with this latter group **and** is not what the law intends.
- d) The law intends service provision that addresses the life situations of these young people in order to turn them from a criminal career
- e) While Youth Justice FGC plans can address needs issues, sometimes, the Department may need to invoke the civil powers (Care or Protection) it derives from the Act in order to secure appropriate service provision for young people involved in Youth Justice proceedings – admission to residential treatment facilities, foster care, drug and alcohol treatment programmes, and the like.

This is why Care or Protection and Youth Justice provisions, though separate legal jurisdictions, are in the one Act, and inter-face the way they do. Adolescence is recognised as effectively the last opportunity to divert children and young persons from negative lifestyles, and the Department is given powers **that do not exist for adult offenders** in order to ensure this is attempted. The Objects of the Act clearly show the intention that criminal (accountability and responsibility) and civil (addressing needs and developmental requirements) procedures are both engaged in the Youth Justice programme, and a YJ capability review should have this as its basis.

Duties of the Chief Executive

The duty relevant to the above is section 7(1) CYPFA, which states:

- (1) It is the duty of the Chief Executive to take such positive and prompt action and steps as will in the Chief Executive's opinion best ensure:
 - (a) That the objects of this Act are attained; and
 - (b) That those objects are attained in a manner that is consistent with the principles set out in sections 5 and 6 of this Act.

Thus, the Chief Executive is responsible to ensure Object s4(f) is attained, consistent with the principles.¹ There is no other statutory official with this responsibility. The Police Commissioner, for example, does not have this responsibility in relation to whether Youth Aid Services are being provided according to Object s4(f) – it is a responsibility that rests with the CE of CYFS (although to my knowledge never exercised in relation to police services).

Management of Youth Justice

Separate management of Care & Protection and YJ services was never envisaged historically, because of the significant interface between the two systems. Setting up a separate YJ service could be an example² of organisational structuring that addresses the preferences of professionals and agencies without necessarily benefiting service users. It is not statutory functionaries the Act is intended to serve, but children and young persons who offend, and their families, and the communities from which they spring. What is best for them should drive operational decisions, not what is best for the operators. It is difficult enough now to ensure the coordination and alignment of powers and services to meet child and family needs and deeds. Distancing Youth Justice from other Departmental services could render these problems insoluble. Organisational energy,

¹ Section 6 CYPFA does not apply to the criminal jurisdiction. It does, however, apply where the Department uses its civil processes and powers in relation to providing services for children and young persons who offend, when the services needed are outside the parameters of Parts IV and V of the Act. Compulsory provision of services can only be done through the civil powers exercised by social workers and/or the CE.

² Another example is how we develop social work structures that require families to be passed from worker to worker, along an assembly line as it were, when research shows their clear preference is to have a relationship with one social worker over time.

professional know-how and the machinery of Government (i.e. Treasury and SSC processes) all need to be focused on, and directed by, what the law intends. The CE of CYFS has a particular responsibility to hold this system together and get it functioning *in the interests of children, young persons and their families, and the wider community*, and for no other persons or reasons.

Mike Doolan

November 2005

See also, Mike Doolan's article "Restorative Practices and Family Empowerment: both/and or either/or? on page 12.

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2. Conference on Children's Rights and Youth Justice: Belfast



BELFAST is to host a major international conference on promoting the protection of children's rights and the progress of youth justice from 27 August to 1 September 2006.

The conference will be of particular interest to New Zealanders as Northern Ireland has recently implemented a restorative justice regime that draws heavily on the New Zealand model. The programme will incorporate addresses by a superb range of international speakers with plenary sessions, workshops, poster displays, round table discussions and presentations. It will provide a unique multi-disciplinary forum for participants to listen, exchange information and have their voices heard.

Issues dealt with will include the administration of justice as it affects the main influences on

children and youth: family, community, society and youth justice will be considered within the context of a set of themes that reflect the rights enshrined in the United Nations Convention on the Rights of the Child and other relevant international human rights instruments. Discussions will stimulate individual reflection and provide an impetus for the application of those instruments.

There will be a strong New Zealand flavour to the proceedings which will incorporate keynote addresses by the Principal Youth Court Judge, His Honour Judge Andrew Becroft, and by Youth Court Judge, His Honour Judge James Rota. It will also feature an appearance by the world-famed Hip-Hop Cops!

The World Congress will be of significant interest to judges, magistrates and all those whose work connects with the courts in supporting the welfare of children and families including:

- Barristers
- Solicitors
- Youth Justice workers
- Psychiatrists
- Psychologists
- Educators
- Social Scientists
- Academics
- Representatives from Government Departments
- Human rights organisations
- Community groups and welfare agencies

Details of the Congress programme and online registration can be found at www.youthandfamily2006.com

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3. The Paomnehal Pweor of the Hmuan Mnid

Aoccdnrig to a rscheearch at Cmabridge Uinervtisy, it deosn't mttar in what oredr the ltteers in a word are, the olny iprmoatnt tihng is that the frist and lsat ltteer are in the rghit pclae. The rset can be a tactl mses and you can still raed it wouthit porbelm. This is bcuseae the huamn mnid deos not raed ervey lteter by istlef, but the word as a wlohe.

Amzanighuh?

4. Family Group Conferences at Work

Rhiannon Symmons of CYFS sent in a Youth Justice Co-ordinator's account of an effective Family Group Conference

FOUR Samoan boys who participated in serious offences against youths unknown to them were arrested and charged with wounding with intent to injure and robbery. The offences were completely unprovoked.

What was outstanding in this case was the way the boys decided to apologise to the victims and their families. In addition to making face-to-face apologies to the victims and their families at the FGCs, they arranged and prepared a dinner for the victims and their families, their own families, the Youth Aid Officer, Youth Advocates and CYF staff. They also put on a concert at the dinner. The songs they chose to sing were popular tunes but they changed and personalised the words to show the level of remorse and sorrow they felt for the victims and their families.

The show was videotaped and many who have seen the tape are amazed by the efforts the four young people have put into their apology. Judge Becroft heard about the video and requested permission to play it in Youth Court.

The apologies were accepted by the victims and their families. The plan for each young person stipulated other activities such as anger management training, community service, reparation, and the provision of mentors to support change.

As a result of the FGCs and the efforts the boys have put in, three of the four offenders have completed their plans and received a section 282 discharge. One has continued to offend and more effort is required to bring about change.

This is a story about how Youth Justice Co-ordinators can respond to innovative and creative ways young people have for addressing the hurt they have caused. The preparing and sharing of a meal is entirely relevant to the Samoan culture and enabled the boys to utilise the knowledge, experience and wisdom of their culture to show remorse for what they had done. It did not minimise the offences but required the boys to walk in the

shoes of their victims to understand the hurt they inflicted.

YOUR TURN!

Coming up with innovative FGC plans can be difficult amidst the pressure of heavy workloads. There is a danger that “off-the-shelf” FGC plans may start to be recycled regardless of a young person’s particular situation.

Do you have a FGC plan that stands out from the crowd in some way – particularly innovative, relevant to the young person for example. If so email the (anonymised) details to Rhonda.Thompson@justice.govt.nz for inclusion in *Court in the Act*. We’d love to have a “FGC of the Month” slot!

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“We constantly focus on the boy’s personal efforts and improvement rather than performance. It takes the focus away from our judgement and approval, and transfers the focus to the boys”

Henare O’Keefe, U-Turn Youth Programme for at risk teenaged boys

5. Top of the Cliff Intervention: The Schools Inclusion Project

Rhonda Thompson, Research Counsel to Principal Youth Court Judge A J Becroft

AN ENGLISH youth worker, now resident in New Zealand, says schools inclusion projects are an important “top of the cliff” intervention.

Sally Johnson, an Education Advisor working for NETS (the Non-Enrolled Truancy Service), formerly worked with a schools inclusion project in Bristol in the United Kingdom.

Ms Johnson said: “Rather than exclude young people with re-occurring problems from school, the schools inclusion program tries to keep them engaged in school while dealing with their issues and helping them to think about what they want to do after school.”

The UK pilot program involved two weekly sessions with a small group of year 9 and 10 pupils referred by their school due to re-occurring behavioral, abuse or petty theft issues.

Weekly sessions included group work, games, work shops on issues such as drug abuse, sexual health and careers and a one-on-one counselling session with each young person.

Ms Johnson, who has a degree in youth and community studies, says at least 50% of the young people went on to vocational courses after the program when many had been planning to just “drift” prior to the intervention.

“What made the difference was that the intervention was not being done by a teacher and the young people were not there because they had done something wrong,” Ms Johnson said.

Government Funded Youth Service

The pilot schools inclusion project was funded by the UK Education Department to allow the local youth club and school to work together.

Ms Johnson says that the government funded youth service in the United Kingdom provides a coherent infrastructure, currently lacking in New Zealand. This service funds myriad youth clubs through the UK and there is a “huge youth club culture”. Ms Johnson argues that this culture is pivotal in keeping young people out of trouble with the law.

Working in the youth club service is seen as a profession in England where the focus of the clubs is on keeping good kids “good” rather than on being the ambulance at the bottom of the cliff. In contrast, Ms Johnson says working with youth in New Zealand has meant dealing with more young people in crisis and doing more social work than was necessary in her job in the United Kingdom.

More information about the United Kingdom National Youth Agency is available on www.nya.org.uk.

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6. High on Life: An Effective Partnership Between Schools and the Community

By Liz Langham, A&OD Early Intervention Practitioner, Good Health Wanganui & Mark Corrigan, Special Education Facilitator, Ministry of Education

Why it all Began

Our communities have some hard-to-beat problems with alcohol and other drugs. We know half our young people experiment with cannabis by the age of 16, and that 55% of 17 year olds report binge drinking within the last month. Schools value the “no drugs at school” boundary and have traditionally caught and punished students with drug problems. Suspension from school solves the issue from the school’s end, but often pushes the student towards further drug use.

Students with drug problems have often been encouraged to seek alcohol and other drug (“A&OD”) help. They’ve needed to refer themselves to a mental health service to get to talk one-on-one to a sensible adult about their problem. Schools, A&OD services, and other community agencies have not often worked closely together.

We wanted to address these problems, and also to help all young people to make health choices as they grow up in a drug using world – by drugs we mean legal and illegal drugs from cannabis to party pills to alcohol and tobacco.

The 'High on Life' approach

The High on Life message to students has been:

- That it’s OK to ask for help. Students can approach the A&OD worker, a teacher they trust, or the health nurse for help without fear of punishment. (Every student receives a promotional wallet card with this offer.)
- That weekly A&OD clinics (for groups or individuals) are run in school, and that it’s OK to support your mates in contemplating or changing their alcohol or other drug use.

The High on Life message for school staff has been:

- That the way we respond to young people’s alcohol and other drug issues is vital, and that students can and do change.
- That most school drug incidents happen in the harvest season, and that when students present with drug issues, it’s not always an insult to the school and the values it stands for.
- That good drug education is part of the health curriculum and is important for all students. (The harvest season is a good time to do this drug education.)

We’ve also kept parents and the community informed through newsletters, parenting programmes, and forums. The involvement of our health promotion team has helped the focus on reducing the harm from alcohol and other drugs across the community.

“We know half our young people experiment with cannabis by the age of 16, and that 55% of 17 year olds report binge drinking within the last month.”

Success Stories

Since the introduction of the High on Life philosophy, it has increasingly become a matter of course for such students to be referred to the A&OD Practitioner in their school if they are involved in drug-related incidents at school - which is great.

Students really enjoyed the small group change process. Students reported (via the confidential evaluation) that it gave them a chance to change their A&OD use and that things generally improved at home and school. Engaging groups of students this way is an honest and effective process. Feedback from schools is that students are increasingly able to respect the “no drugs at school” boundary.

Retention in school is hugely important because, for many of these students, being at school is a huge protective factor in their lives. If a student is at school, they are not (usually!) drinking or using drugs whereas if they are suspended, the chances are quite high that their use of alcohol or other drugs will increase due to facts such as boredom, easier access to substances, the influence of peers who are also not at school.

As well as some of the personal experiences of the A&OD Practitioners with students, Ministry of Education statistics show that drug-related suspensions in Whanganui have halved since High on Life was put in place.

Another 'success' in the High on Life strategy has been getting all the schools to sit around the same table and openly discuss alcohol and other drug issues which those working with schools may recognise as a significant achievement. Some of the training and professional development events which have been run for different groups of staff (health teachers, counselling staff, and general staff) have also been very well received and so the High on Life team are pretty confident that young people in Whanganui are getting some of the most up-to-date and effective health education and counselling intervention in the area of A&OD. The value of the High on Life approach has been recognised by other areas around New Zealand, with the concept introduced into Taranaki in 2004 and interest also expressed by Horowhenua.

It would seem that people have generally been very grateful to have some support around what, for schools, is often a really difficult issue. There has been particularly positive feedback from school staff about the school clinics as they now feel that they have an easily accessible avenue they can use to support students with A&OD-related issues. The number of students who make use of the clinics also gives us some indication of how welcome the A&OD Practitioners are to be there! High turnouts at all the training events the High on Life team have provided have also been encouraging. The last event, a half-day workshop, was attended by over one hundred people from schools and community agencies - not bad for a small town!

How it all began

'High on Life' began to take shape at the end of 2003. Mark Corrigan, Special Education Facilitator at the Ministry of Education in Whanganui, proposed an initiative to address the high drug-related suspension rates in secondary schools in the area, and Good Health Wanganui appointed an A&OD Early Intervention Practitioner. Other people were invited to become involved and were gradually drawn into a working party which included staff from the Ministry of Education, Good Health Wanganui Alcohol and Other Drugs Service, the local Public Health Unit, police, Youth Services Trust, and the four state and integrated secondary schools in Whanganui.

A little later, the town was fortunate to secure one of the CAYAD (Community Action on Youth and Drugs) contracts so staff from Taumata Hauora Trust (CAYAD) became involved as well. This group has continued to meet at least once a term for the past two years. A small working group made up of staff from Good Health Wanganui's Alcohol and Drug Service, the Public Health Unit and Taumata Hauora (CAYAD) meets more frequently to 'action' decisions made by the wider group.

Challenges to the High on Life way of working

Of course it hasn't all been plain sailing. Each school involved in High on Life has its own way of working, so the community agencies have had to be sensitive to that and try different strategies to suit their different needs. The original hope was that students would be referred to A&OD services *before* being stood down from school but this hasn't always happened. What has happened, though, is that many students are returning to school and finding A&OD support waiting for them when they get back.

The future

Two years on, some major shifts in schools' and community agencies' practice have occurred. The challenge is to keep the momentum of the project going in order to make the most use of the relationships which have been established, with the ongoing goal being improving community wellbeing by reducing alcohol and other drug-related harms in school communities. Having focussed particularly on students and staff in the past two years, with some events run for parents, the plan for 2006 is to include more training for boards of trustees as well as to seek the involvement of a greater number of schools in the Whanganui region.

If you would like to know more, the High on Life team would be happy to share their experiences with you. You can email Mark Corrigan at mark.corrigan@minedu.govt.nz.

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7. Improvements to Youth Court Processes

Gerard Clark, Senior Policy Analyst, Ministry of Justice

Work is underway to improve Youth Court processes to better meet the needs of young people. The Judiciary are working with the Ministry of Justice (and others where applicable) on a number of projects, including:

Template for Section 283(n) Orders

When an order for Supervision with Residence is made under section 283(n) of the Children, Young Persons and Their Families Act 1989, the Court is required (if practicable) to provide to the young person a written statement outlining the reasons why the order has been made. This written statement should be provided while the young person is still at Court. This has proved administratively difficult to achieve because of the time involved in obtaining a transcript, collating the reasons, and obtaining the Judge's signature, while the Court is still sitting.

To overcome this, a template is being developed for Judges to fill in when there is no argument being made against the order. This will provide a summary of the reasons, with the full copy of the decision remaining as the full and official record of the reasons. The template is currently receiving its final consultation and should be circulated in the near future.

Appointment System in the Youth Court

A notice to hand out to each young person as they leave the Youth Court, outlining the time they should next attend, and emphasising that they need not and should not attend earlier, has been pioneered by Judge O'Driscoll and Judge Harding. Work is underway to determine whether and how to expand this system nationally.

Registrar's Powers in the Youth Court

For some time, there has been a question as to the extent of Registrar's Powers in the Youth Court. This impacts on any attempts to improve case management in the Youth Court. A legal opinion is being sought to determine the extent of the powers.

Youth Court Stamps

Judges have now agreed on the final form for the stamps to be used in the Youth Court. Once the stamps have been produced they will be circulated to all Youth Courts.

Readability of Youth Court Orders

Several concerns have been expressed over the Youth Court orders that are provided to the young person and others. These are currently being refined so that they are more readable by the young person, and include any information that will help them understand what the order means and what they need to do.

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----Legal Focus----

8a. Youth Court has no power to remand young people to prisons: Crown Law Opinion

THE Youth Court cannot remand young people to penal institutions according to a Crown Law Opinion obtained by the Principal Youth Court Judge.

Although authority for such a remand appears to exist under section 142 of the Criminal Justice Act 1985, this section applies once a young person has been either committed for trial or sentence to the District or High Court, or has been convicted and ordered to be brought before a District Court for sentence under s283(o) CYPFA.

Section 238 of the Children, Young Persons and Their Families Act 1989 prescribes the Youth Court's jurisdiction to make orders in relation to the custody of a young person appearing before it as follows:

- “(1) Where a child or young person appears before a Youth Court, the Court shall –
- (a) Release the child or young person;
 - or
 - (b) Release the child or young person on bail; or

- (c) Order that the child or young person be delivered into the custody of the parents or guardians or other persons having the care of the child or young person or any person approved by a Social Worker for the purpose; or
- (d) Subject to section 239(1) of this Act, order that the child or young person be detained in the custody of the chief executive, an Iwi Social Service, or a Cultural Social Service; or
- (e) Subject to section 239(2) of this Act, order that the child or young person be detained in Police custody.”

Clearly, this provision contains no power to remand young people to penal institutions. Between 30 June 2002 and 30 June 2004 the Youth Court did have a limited power to remand young persons between the ages of 15 and 17 to penal institutions (s238(1A) to s238(1C) and s239(3) Sentencing Act 2002) but this expired without extension. A clause in the CYPF Amendment Bill (No 4) 2004, if passed as presently drafted, would restore this power until 30 June 2008.

Section 46 Summary Proceedings Act 1957

Where a defendant is liable upon conviction to imprisonment or has been arrested, the defendant may be remanded in custody for the period of the adjournment pursuant to section 46 SPA. However, although section 46 is applicable to the Youth Court (Schedule 1; s321(1) CYPFA), as it is inconsistent with s238(1) and as it must be read subject to the provisions of the CYPFA, section 46 SPA would have no application to the Youth Court.

Section 142 Criminal Justice Act 1985

Similarly, section 142 CJA contains no powers for the Youth Court to remand a young person to a prison for a number of reasons including:

- Section 142(4A) is subject to, inter alia, the CYPFA (s142(3)). As there is no power to so remand a young person under s238, there can be no power to remand a young person in this way under s142(4A).
- Section 142(2) is expressly stated to apply despite other enactments. However, given that the language of the provision is restrictive, it could not have been

Parliament’s intention, in enacting s142(2), to create a power to remand in custody where one did not otherwise exist. This view is supported by principles such as s208(d) CYPFA – the principle of keeping youth offenders in the community as far as practicable and consonant with the need to ensure the safety of the public.

- Parliament gave the Youth Court power to remand young people to prisons via s238(1A) to (1C) despite the existence of s142 CJA. This suggests Parliament did not consider that s142 conferred jurisdiction to make such orders on the Youth Court.

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----Legal Focus----

8b. Cancellation of Community Work Orders

Rhonda Thompson, Research Counsel to Principal Youth Court Judge

A RECENT case raised the issue of when community work orders may be cancelled and substituted in the Youth Court. In *Police v DTA* (Unreported, YC, Upper Hutt, 12 December 2005, CRI-2005-292-470, Judge Grace), the Police argued that a community work order made under s283(l) CYPFA could be cancelled and substituted with an order transferring the matter to the District Court because section 299 CYPFA states such an order may be made “at any time”. The order stated that the work must be completed *within* 6 months, not that the order expired after 6 months.

CYFS were of the view that the order had already expired, as six months had elapsed, and consequently the order could not be cancelled and substituted with another order.

Section 298(2)(a) CYPFA states that community work orders shall –

“Be performed within such period not exceeding 12 months as the Court shall specify.”

However, the fact that the order is not completed within the period allotted by the Court does not mean it has expired.

Judge Grace held that the Court must have jurisdiction to deal with cancellation applications “at any time” because to allow otherwise would be to allow young people to “thumb their noses at the justice system”. A young person who persistently absconds or avoids their community work until the period given under s298(2)(a) has expired does not thereby avoid the order altogether. In *Police v DTA* the community work order was cancelled and the matter was transferred to the District Court.

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9. Hemi's Homework: A Short Story

*By Viv Blucher, Whangarei
businesswoman and freelance writer*

HEMI lay on his mattress with the sounds of yet another crisis filtering through the walls of his room. Two brothers in jail and now his sister Hiria seemed to be in some kind of trouble.

There was always arguing, but nothing ever changed. As if there were no choices. She was probably pregnant, another kid to join Ana's two.

Hemi would just spend more time at Grandfather's place. Grandma made the best rewena anyway. Hemi always did his homework at their place. He liked school, but didn't know how to respond to his brothers' and cousins' teasing.

"Eh, trying to be a Pakeha, eh?" "You'll grow too big for your pants, man." "Ehoa, us Maori won't be good enough for you if you do all that stuff."

Hem went along with them, pretending to agree, not wanting to offend. He picked up some writing paper, stuffed it inside his shirt, and walked through the kitchen to the back door.

"Where you going, boy?"

"Grandfather's." He came and went as he pleased anyway. Sixteen-year-old Hiria

crouched on the back steps, snivelling. Hemi squeezed past.

"Piss off."

"I am."

Hemi had an assignment to do on the solar system. He knew he could ask Grandfather this one. How often had he heard Grandfather speak about the moon and the stars and the sun. And the Earth. That's what the teacher had been going on about.

"Tell me about the stars, Grandfather."

"What do you want to know, boy?" he asked, although he already knew what he would tell Hemi.

"Everything," said Hemi, stretching his arms out wide.

"It's a long story, eh." The old storyteller's eyes were glowing.

"Good, but talk slow, 'cos I've got to write it down."

"Eh?" Grandfather clamped his jaw on his pipe and frowned thoughtfully. "Well, you better, 'cos once you start boozing and smoking that Pakeha puha like your brothers you'll forget alright." He's seen too many of his mokopuna go that way.

"It's for my teacher."

Grandfather settled into his story. His old face folded into even more wrinkles as it screwed itself up into the effort to give birth to the past again. This was his role in life now. At least one of his mokopuna wanted to listen.

"Te Rangi, boy - you got that? It's the whole universe." While Grandfather talked, Hemi wrote, each aware of the importance and the rightness of this time together. The soft aroma of Grandma's rewena wafted around them, adding a special seal to the growing bond between them. "Ra, the sun, whetu, the stars, and marama the moon..."

Grandfather importantly adjusted his baling twine belt under his ample puku before continuing to put it all together in the timeless legend. "Ao is Mother Earth, where all life comes from..."

Grandma came over with a pile of still steaming rewena, lumps of butter melting into it.

"Here boy, you're looking a bit pale. Get this into you, or you'll be the only one we can see if the sun goes out." She finished each sentence with a giggle. Grandma always did

that when she wasn't mad. When she was, you didn't hang around.

Grandfather stopped talking and Hemi stopped writing while they tucked into the bread. When they resumed Hemi wrote furiously and only asked Grandfather about some of the Maori words, pretending to understand the rest.

Afterward, Hemi wrote his story out neatly, asking questions to fill in the gaps where he couldn't read what he'd scribbled down. Three pages. The most homework he'd ever done. Grandfather really was clever; there wasn't much he didn't know about.

Hemi proudly placed his essay on the teacher's desk. He'd left nothing out. The story was the same old one told to mokopuna right back through the generations.

Just before the bell, Mr Evans called Hemi up to his desk. He'd been marking the assignments. Hemi's heart pounded as he waited for Mr Evans to speak.

"What's this?"

He took a short breath to answer, but Mr Evans didn't wait.

"This... this nonsense!"

Hemi's brown eyes widened in sudden fear and embarrassment.

"I asked for a scientific explanation of our solar system and you give me some fairy story!" Mr Evans tore the assignment in half, screwed it up and fired it at the rubbish bin. "Do it properly, and I want it on my desk first thing in the morning."

Hemi turned and fled, pausing at the door only long enough to turn and yell, "up you!" As he ran away he could hear his classmates' laughter and Mr Evans shouting to regain control. He couldn't go home like this, and Grandfather would ask what was wrong. He ran across an empty stony next to the river, and slumped down behind a wall. With his knees drawn up and his head resting on his arms, Hemi allowed himself to cry.

When he looked up there were four kids, a little older than himself, watching him. Hemi rubbed his eyes with his fists, scared that he might have to use them. He wiped his nose on his arm and made to get up and run. One of the kids had moved closer and squatted in front of him, holding out his hand.

"Having a hard time, eh bro? Want a puff?"

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Special Feature:
***Restorative Practices and Family Empowerment:
both/and or either/or? By Mike Doolan, former Chief
Social Worker of Child Youth and
Family Services***

TODAY in the mail I received a notice about a 2003 conference in The Netherlands called “Building a global alliance for restorative practices and family empowerment”. The title set me thinking about the relationship between these two concepts.

Readers will know that the family group conference was introduced into law in New Zealand in 1989 as a decision-making method for determining appropriate responses to offending by young people (and for care or protection concerns as well). The law gives the victims of offences by young people the entitlement to attend family group conferences, and as an entitled person, a victim becomes one of a number of persons who must agree to a plan for it to be accepted as an alternative to prosecution of the young person who has offended. This measure was later hailed as an example of restorative practice, and while I think it is capable of delivering on restorative aims and objectives, this was not the reason it was introduced. Those of us who were involved in the policy development process leading up to the new law had never heard of restorative justice (indicating some deficits in our research approach, as there was a body of literature available on the subject even then) and the law was not crafted to embody restorative aims. The law was about restoring to family networks control over the decision-making about their young people who, for some reason or another, had come under the notice of the statutory child welfare agency. The history of such contacts, for Maori and Pacific Peoples in particular, had seen the customs, values and beliefs of these communities as having little relevance alongside the customs, values and beliefs of the dominant white culture. Massive alienation of Maori and Pacific Peoples’ children from their families as a result of child rescue ideology imposed by the dominant culture, and the heavy concentration of Maori children in welfare institutions and correctional facilities, all pointed to a system that was institutionally racist.

***Victims were originally included in FGCs to assist public acceptance of
the “radical” new system***

Significant political and social change in New Zealand in the 1980s led to a determination to rectify unjust and culturally abusive professional practices. Changing the way decisions were made about children in the notice of the authorities was seen to be the key to this. The family group conference puts the child, the child’s parents and the child’s extended family, at the centre of the decision-making process. The way that decisions are made will reflect the decision-making practices of the family’s culture. This is where the notion of empowerment arises, and unlike restorative principles, empowerment principles were explicit in the policy on which the new law is based. Up to this point in time, all the power about what happened to children under the notice of the statutory agency rested with the agency’s professionals. I do not believe that professionals can give power to families – that is not the basis of the approach. Rather, families will take power and become “power-full” when professionals create the right conditions for this to occur, and this is far more likely when people are culturally safe than when they are struggling within an alien cultural context.

So the family group conference in the New Zealand youth justice system was established with a family empowerment aim. Families could regain control of situations over which they had lost control and plan for the future of their young people with professionals assisting them in this process.

Why were victims included in this process? Simply, to enable the process to attain public credibility. This was a radical departure from previous child welfare decision-making practices. Politicians, police and members of the general public were understandably nervous about it.

As policy makers, we had had the benefit of talking with Maori, Pacific Peoples and other cultural groups about the proposals, which had emerged through public debate within these communities about how they might regain the power that was rightfully theirs. We had little doubt that this process would work. It seemed important, though, that the public had some way of assessing this for itself, and thus the notion of involving victims arose. It was felt that if victims received justice for themselves in this process, if victims saw that the process was rigorous and not a soft option, and that if victims were satisfied with the outcomes, then these attitudes would begin to permeate New Zealand society.

Over time, youth justice practitioners in New Zealand became exposed to the restorative justice literature, and there was an embracing of the principles of restorative practice. I recall being asked on a number of occasions to declare the New Zealand practice in relation to young people who offend, a restorative justice approach. I declined to do so, in the early stages because I did not know enough about restorative justice to make an informed judgement and as my understanding grew, because I had doubts about whether the family empowerment principles of the law and restorative justice principles were compatible.

By definition, restorative justice is victim-centred, as distinct from offender-centred, work. A central tenet of restorative justice is to shift the focus from the management of offenders to the harm that has been experienced by victims. If justice is to be harm focussed, then victims have a central role in defining the harm issues and how these may be ameliorated, either with or without direct contact with the offender. The focus of offender management will then be on ensuring that offenders, through their activity, enable victims to have restored to them, in fact or in kind, that which was taken from them when the offence was committed. Restorative work over time has shown that victims, if they are to experience a restoration, must be able to tell their own story about what happened to them, be able to ask questions relating to what happened and why, achieve vindication through restitution of their property and sense of well-being, and be assured of safety in the present and in the future. All these can be achieved without face-to-face contact with the offender but are likely to be more wholly achieved where contact does occur.

It seems likely also that face to face contact will have a more powerful effect on offenders in leading them to an understanding of the impacts of their behaviour, than reparative activity without such contact.

However, I believe that some caution needs to be applied in considering the full restorative model as a response to offending by young people, particularly where the young persons lack capacities of personal insight, guilt and remorse that makes the restorative approach such a powerful influence on offenders generally. A youth justice system focussed primarily on victim harm will fail to impact sufficiently on this hard to manage group and could result in a loss of public confidence in the entire system, given that these young people, although relatively small in number, contribute significantly and out of all proportion to offence statistics.

“I suspect that in primarily restorative approaches, “family” will mean Mum, and Mum will experience the blame”

A youth justice system exists at all only because it is recognised that childhood is the period of life when life-course persistent offending potential is created or emerges, and that it is the time of life where it is possible, through service provision, to turn things around. If we did not believe this, we would have a common justice system for children and adults. While we might be prepared to abandon the disordered adult to sanction and custody as the sole response to their offending, we are less inclined to do so with young people.

The New Zealand approach to managing the young person who offends centres around the family group conference, where it is possible to develop plans that address the offending and put matters right, as well as institute plans that address the chaos in young people's lives. The purpose of the family group conference in youth justice is primarily related to offender management, with the aim of shutting down the development of offending careers by energising family systems as the change agent. It is a whole child, whole family approach. A victim may achieve restorative justice in this process, and this should always be sought, but this is not the purpose of the family group conference process. This is recognised increasingly now by advocates of the full restorative model who have renamed their approaches Restorative Conferences, Mediation Conferences or Victim/Offender Conferences, and who no longer seek the involvement of extended family as a priority.

While I can see that a family empowerment approach can have a restorative effect for victims, I am less sure that a restorative approach will have an empowering effect for families. I suspect that in primarily restorative approaches, "family" will mean Mum, and Mum will experience the blame – just like she has always done in traditional child welfare systems. Perhaps we could have some debate about this.

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Feedback please!



Mike Doolan has called for debate on this fundamental issue. We would be interested in your views and would like to publish them in order to encourage this important debate. Email your comments to Rhonda.Thompson@justice.govt.nz.