COURT IN THE ACT

TE KŌTI TAIOHI O AOTEAROA • THE YOUTH COURT OF NEW ZEALAND

IN THIS ISSUE:

ABOUT THIS NEWSLETTER

Court in the Act is a national newsletter dealing with youth justice issues. It is coordinated by research counsel to the Principal Youth Court Judge.

We welcome your suggestions, feedback and contributions. Please email:
courtintheact@justice.govt.nz

EDITORIAL: FACING THE CHALLENGE

Principal Youth Court Judge John Walker

Judge Walker

Tēnā koutou. It is an honour to have inherited this editorial space from Judge Andrew Becroft, my predecessor in title, colleague and friend. Judge Becroft began this publication back in 2001, addressing a gap in the provision of information relating to the youth justice sector. It is testimony to Judge Becroft's energy and vision that Court in the Act is now into its 74th edition, with more than 2,000 subscribers.

The biggest challenge of all

Coming into the role of Principal Youth Court Judge, I think the biggest challenge for all of us is the complexity of the young people we deal with. I think they have always been complex, but we are now more alert to the wide range of underlying causes of offending behaviour.

By the time young people reach the Youth Court, typically they are 14 to 16 years of age, and things have already gone seriously wrong.

Only about 20% of young offenders will reach the Youth Court. These are often the most complex, most difficult, most damaged of our young people who offend. We are presented with a young person whose behaviours have origins which go back at least a decade and in many cases, to the beginning of their lives. The underlying causes of the offending behaviour are well entrenched and the Youth Court Team must fashion responses to try and turn around, or at least ameliorate, these causes.

In the Youth Court we are all confronted by young people with serious health issues. These are sometimes chronic issues which have gone untreated and are recognised by the professionals in the team, or are discovered during assessments. The young people are often disengaged from school, where we might otherwise expect such issues to be noticed. We see those with alcohol and other drug dependencies, with depression and other mental illnesses. We often see these issues in combination.

What we have become acutely aware of in the past five years is the staggering prevalence of neurodisabilities in the youth offending population. In 2012, the Children's Commissioner for England published a report entitled 'Nobody Made The Connection: The Prevalence Of

Judge Walker speaking at the Youth Court Judges' hui

Neurodisability In Young People Who Offend'. In brief, we know that the prevalence of neurodisabilities such as learning disabilities, communication disorders, FASD and traumatic brain injury is much higher in the youth offending population. Many of the characteristics associated with neurodisability— such as hyperactivity, impulsivity, aggression— increase the likelihood of criminal behaviour, and affect the young person's ability to engage with youth justice responses.

I am proud to say that we are starting to take steps towards identifying and addressing neurodisability, but we have a long way to go. In the best of worlds we would have full mental health screening for all our young persons who offend so that there could be earlier interventions and plans that were better informed.

"We need to harvest as much information as we can about the young people in court"

We need to harvest as much information as we can about the young people in court if we are to be effective in fashioning responses which have a chance of changing behaviour. The introduction of Education Officers into many Youth Courts has been a great step forward. Their reports provide very important background information. The introduction of information sharing between Youth and Family Courts enables the Care and Protection history and reports to be available to the Youth Court. The more information the court has at its disposal, the more able it is to connect young people to effective responses.

However, there are other subsets of the youth offending population to which we must also turn our attention.

I have already mentioned the overrepresentation of Māori in the youth justice system, which is an enduring challenge.

A further challenge is young female offenders. Young female offenders present particular challenges— for example, they tend to have had higher rates of exposure to violence and sexual abuse, more challenges in relationships with their parents, and higher rates of depression. In a youth offending population that is majority male, there is the risk that we will cater our responses to the majority at the expense of the minority. We need to ensure that our systems are attuned to the particular difficulties faced by young women, and that there are programmes in place to address these issues—for example, programmes addressing the impact of chronic sexual abuse.

The complexity of our young people is not a challenge that Judges can, or should, face alone. The criminal behaviour of some of our young people is not only a justice issue, but also a social issue, a health issue, a welfare issue; the list goes on. We Judges touch these cases for maybe 15 minutes every few weeks; the hard work in delivering interventions takes place outside the court room.

But as Judges we can, and should, be leaders in the team approach which is the mark of the Youth Court process, and which is the only answer I can see to the complex issues we encounter. In that spirit, I encourage you to be in touch should you wish to contribute to this publication. I hope this can continue to be a place where we exchange ideas and information as part of a wider community. I look forward to working with you all.

In this edition

Upon being appointed Principal Youth Court Judge, I inherited a Triennial Youth Court Judges' Conference programme that featured a rich array of informative and lively speakers.

More detail on the Conference can be found on page five, but I would like to mention three presentations in particular that we Judges had the pleasure of hearing.

The first was by **Hana O'Regan**, of Ngai Tahu, and concerned the negative stereotypes and narratives that young Māori must contend with.

The second was by **Dr Hinemoa Elder**, of Ngāti Kuri, Te Aupouri, Te Rarawa and Ngāpuhi, and examined statutory references to "whānau, hapū and iwi" in the context of court report writing.

The third was by **Khylee Quince**, of Te Roroa/Ngāpuhi and Ngati Porou, and concerned how we can justify and provide a targeted approach for young Māori offenders.

The topics of these presentations, although different, share the similarity of being about delivering targeted justice for Māori rangatahi. Exploring this topic is crucial in today's Youth Courts, where the overrepresentation of Māori is increasing, not decreasing. As the three reports cumulatively demonstrate, targeted justice for Māori rangatahi is not only just, but is mandated by law and supported by empirical studies. With the presenters' permission, we have included their presentations in this edition. I trust that you will find them insightful and thought-provoking.

John Walker
Principal Youth Court Judge

YOUTH JUSTICE NEWS

PRESS RELEASE: District Court decisions published online

Chief District Court Judge Jan-Marie Doogue
2 August 2016

A new website, www.districtcourts.govt.nz, has started publishing judicial decisions from the District Courts.

The website is run from the Office of the Chief District Court Judge and marks a significant milestone in the modernisation of New Zealand's District Courts.

About 200,000 criminal, family, youth and civil matters come before the District Courts every year, where 160 judges make about 25,000 decisions, sentences or orders.

This calendar year, the website expects to publish about 2500 decisions, rising to about 4000 next year.

Chief District Court Judge Jan-Marie Doogue said that from now on, a Publications Unit working under an editorial board of senior judges, will select for online publication those decisions considered of high public or legal interest and which meet criteria for publication. This calendar year, the website expects to publish about 2500 decisions, rising to about 4000 next year.

Chief Judge Doogue believes the website will provide timely access to a wide range of significant decisions across all jurisdictions. It is hoped this will improve understanding of the court process and contribute to the open administration of justice.

"The information will serve the profession and legal community as well as the general public, by providing access to accurate, complete information about significant cases without the need to navigate individual court registries," Chief Judge Doogue said.

Criteria for publication in the criminal jurisdiction include sentencing notes and reserved decisions from judge-alone trials in cases of more serious offending, or cases where there has been discussion of high-level principles.

In the civil jurisdiction where volumes are much lower, the aim is to publish all reserved judgments and costs awards, injunction decisions, judgments discussing interpretation of the District Court Rules, appeals from tribunals, and decisions related to professional bodies.

In the Family Court, selection criteria differ depending on the legislation that proceedings are brought under. For the Youth Court, while criteria of public or legal interest will apply, there will also be emphasis on points of law on which there is little or no previous authority.

For the Youth Court, there will be emphasis on points of law on which there is little or no previous authority.

All decisions resulting from proceedings brought under the Harmful Digital Communications Act 2015 will be published automatically because this is a requirement of that legislation.

Chief Judge Doogue says the large volumes of cases in the District Courts mean not all decisions can be published, and she stresses that the service is not intended as a substitute for news media attending court.

Where there are statutory reporting prohibitions or suppression orders, such as in some Youth Court and Family Court proceedings, the website uses different names or initials and removes all identifying information.

The website was developed on time and under budget. ■

Home page of the new District Courts website: www.districtcourts.govt.nz

YOUTH JUSTICE NEWS

Rangatahi Court Successes: IPANZ Award

Tony Fisher, Audrey Sonerson and Judge Andrew Becroft with Michelle Hippolite, TPK Chief Executive, who presented the award.

The 2016 Institute of Public Administration New Zealand (IPANZ) Excellence Awards were held on 6 July 2016 at a ceremony in Wellington. Ngā Kōti Rangatahi – marae-based youth courts – won the Crown- Māori partnerships award.

"These awards recognise and celebrate outstanding performance in the public sector, and the difference public sector professionals make to the lives of New Zealanders," said Prime Minister John Key.

"We are tremendously proud of all the work our people do every day, and these awards and nominations recognise the commitment, initiative and leadership shown across a wide range of the Ministry," said Audrey Sonerson, Acting Chief Executive and Secretary for Justice.

The 14 marae-based Youth Courts are a collaboration between the judiciary, the Ministry of Justice, and whānau, hapū and iwi. These have been incredibly well received and there are indications that they are effective at helping to reduce reoffending and support Māori youth.

Re-connecting Māori youth with their culture and sense of identity were key to achieving increased engagement in the the Youth Court process and to reduce re-offending by Māori, said Tony Fisher, Director Māori Strategy.

"Since Judge Heemi Taumaunu led establishment of the first Rangatahi Court within the Youth Court in 2008, the courts have become a vibrant and valued part of the justice landscape," said former Principal Youth Court Judge Andrew Becroft, who jointly received the award with Tony Fisher.

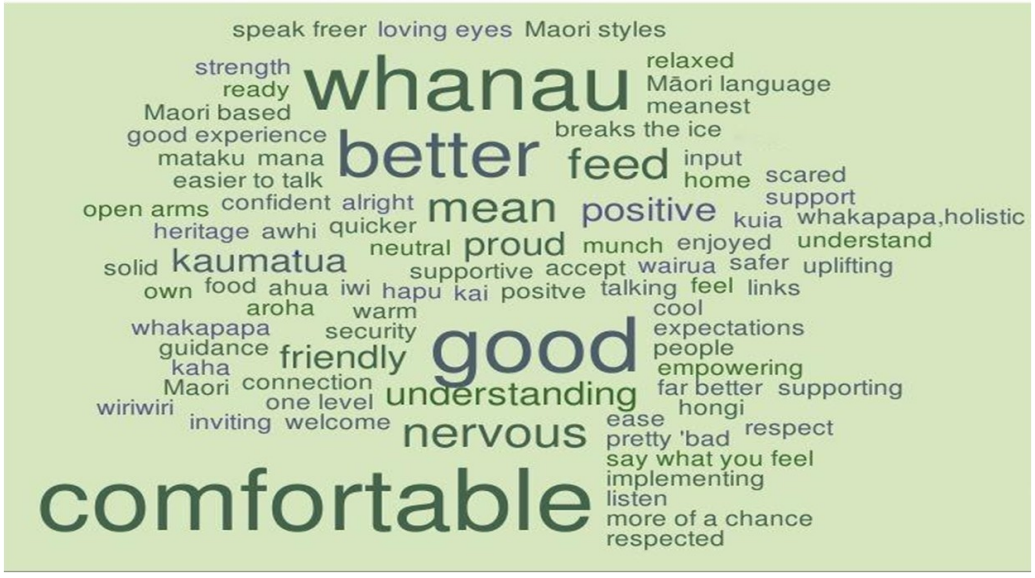
"This is not a separate system," says Judge Becroft. "The Rangatahi Court exemplifies exactly what Parliament envisaged in the 1989 Children, Young Persons and Their Families Act, and the initiative breathed life into that legislation."

"The way Māori and Pasifika communities have embraced marae-based courts is testament to the value of a culturally appropriate and inclusive approach for addressing the underlying causes of behaviour and increasing respect for the rule of law," says Chief District Court Judge Jan-Marie Doogue. ■

ABOUT IPANZ

IPANZ is a not-for-profit that promotes improvements in public policy, administration and management across New Zealand's public sector.

The IPANZ awards celebrate outstanding performances and significant achievements of organisations and project teams in the public sector, showcasing the significant contribution the wider public sector makes to meeting the needs of New Zealanders. The awards recognise and promote excellence in terms of vision, innovation and results.



What young people say about Rangatahi Court

YOUTH JUSTICE NEWS

TRIENNIAL YOUTH COURT JUDGES' CONFERENCE

Christchurch, 10—12 August 2016

From the 10th to the 12th of August 2016, more than 40 Youth Court Judges gathered in Christchurch for the Triennial Youth Court Judges Conference.

The Conference is a rare opportunity for Youth Court Judges from across the country to meet one another, exchange ideas and develop their Youth Court practice in a collegial atmosphere.

Judge Lynch and Judge Cook presenting at the Conference

This year, Youth Court Judges spent the first day of the Conference at Ngā Hau e Whā marae in Christchurch, where the Judges were treated to a wonderful feast thanks to the generous hospitality of local iwi. Ngā Hau e Whā marae had housed the Christchurch Youth Court at the time of the 2011 earthquake. Local Youth Court Judge Jane McMeeken told of her experiences holding Court in the wharenui, then retiring to a "Judges Chambers" consisting of a caravan out the back.

The second and third days of the Conference were spent in the city centre, at a venue next door to Christchurch's crumbling cathedral. The Judges had the opportunity to hear presentations from a range of speakers, four of whom are profiled in the next few pages.

One of the highlights was a digital "walk-through" of the new Justice Precinct being built in Christchurch, which will feature a Youth Court with a separate entrance and courtrooms tailored to the Youth Court format. ■

REFLECTION ON THE CONFERENCE: Resilience in the Courts and in Christchurch

Judge Mary O'Dwyer

Judge O'Dwyer

I am grateful for the opportunity to provide my reflections following three stimulating days of this conference.

I have been reflecting on the importance of resilience. Resilience is the theme that emerged for me in listening to the presentations and through being in this city, Christchurch.

Resilience is that quality that enables someone who has been knocked down in life to overcome adversity. Rather than letting failure drain resolve, a resilient person finds a way to rise again and come back stronger.

The young people in our courts rarely demonstrate resilience. They have all experienced considerable adversity in their childhoods and many of them lack self esteem and hope. Every time they are knocked down they fall further. When they appear in the Youth Court they are at a point of crisis. Will they emerge more responsible and resilient, or increasingly negative and hopeless?

In the short time that we have to work with a young person and their family we may have the opportunity to create change.

Hana O'Regan (*see p 13*) described the negative perceptions that many Māori young people have of themselves, perceptions built from their personal experiences and how they are represented. We have been challenged to reframe their perceptions by identifying each young person's strengths and potential, and strengths within their whānau, hapū and iwi, to give reasons for hope. These are the building blocks of resilience.

View over Christchurch from the Conference venue

Christchurch is a resilient city. I would like to thank the education committee for choosing Christchurch as the venue for this conference and pay tribute to the Christchurch judges who continue to show so much strength rebuilding the courts after the crisis. It has been exciting to be here 5 years after the earthquake to see creative ideas emerging in the city and strong initiatives to help young people.■

SPECIAL REPORT

Mana-festations of Justice for Young Māori Offenders

Khylee Quince
Senior Lecturer at the University of Auckland

Section 208(c) of the Children, Young Persons and Their Families Act 1989 (the CYPF Act) is the principle that any measures for dealing with offending by children or young persons should be designed—

Khylee Quince

(i) to strengthen the family, whānau, hapū, iwi, and family group of the child or young person concerned; and

(ii) to foster the ability of families, whānau, hapū, iwi, and family groups to develop their own means of dealing with offending by their children and young persons.

Khylee Quince was asked, by former Principal Youth Court Judge Andrew Becroft, to address the Judges' hui on s 208 (c) of the CYPF Act, and what this provision means in respect of forging a targeted approach for young Māori offenders.

Reproduced below is Khylee's address to the judges.

"I want to make three key points.

Firstly, section 208(c) - along with other provisions in both domestic and international law - provides a legal footing upon which to ground a targeted approach for young Māori offenders.

For Māori there is a direct connection between justice and restoration of mana.

Secondly, I want to examine exactly what we mean by a targeted approach for young Māori offenders. Who and what are the focus of the target?

Thirdly, I think we need to pay particular attention to the impact of inequality and marginalisation both as an underlying cause of offending behaviour and as a barrier to resolution and rehabilitation. "Justice" as a goal can take many forms (or manifestations), but for Māori there is a direct connection between justice and restoration of mana. In sum, this is the target.

To remind ourselves of what we mean by mana, I return to the work of my uncle the Ngapuhi tohunga Maori Marsden. Uncle Maori defined "mana" as "potential" – remembering that he was a church man, he referred to mana as the "lawful permission delegated by the gods to their human agent to act on their behalf and in accordance with their revealed will." In the youth justice context I would translate that to mean recognition of the inherent potential of rangatahi Māori – for growth, for success, for maturity. I would submit that this is our overarching goal.

Uncle Maori also recognised the connection between mana and justice back in the 1980s, when he declared that "social justice will only be finally achieved when a renewal of authentic being, of mana, takes place."

Point 1: Norms and Standards

As legal practitioners, we ground our advice and decision making by reference to norms and standards set in domestic and international frameworks. In the context of rangatahi Māori, the relevant international instruments include the United Nations Convention on the Rights of the Child (UNCROC), the Declaration on the Rights of Indigenous Peoples, the Beijing Rules and the Riyadh Guidelines.

Taken together, these international instruments promote norms and standards for young people and for indigenous peoples that should inform our local youth justice practice. These include norms and standards that codify the requirement for a targeted approach to young Māori offenders.

International rights are not to be restricted by a Eurocentric view of the child or young person.

UNCROC promotes rights of protection, provision and participation for all young people. These rights should be interpreted in ways that are culturally appropriate for Māori rangatahi — for example, the Article 12 right to express views in any proceedings affecting them, should be considered in the New Zealand context to include the views of the young person in the context of their whānau, hapū and iwi. The rights are not to be restricted by a Eurocentric view of the child or young person as an individual rights holder.

The preamble to the Declaration of the Rights of Indigenous Peoples recognises the special status of indigenous

peoples and their rights to self-determination and development in accordance with their own needs and interests. This theme is embedded in Article 5 of the Declaration, which requires its adherents to:

> ... maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining the right to participate fully if they so choose, in the political, economic, social and cultural life of the State."

The specific youth justice instruments carry on these themes – the Beijing Rules (Rule 1.2) require special attention to be given to:

> "...positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, including schools and other community institutions, for the purpose of promoting the wellbeing of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law."

Similarly, the first rule of the Riyadh Guidelines promotes the engagement of young people in "lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life" with a view to developing non-criminogenic attitudes.

The central Treaty of Waitangi bargain is encapsulated in international rights instruments.

At a domestic level, we can add the local touchstone of Te Tiriti o Waitangi, and tikanga models of wellbeing. I would venture to say that the central bargain of the Treaty is encapsulated in the various rights protected in the international instruments – the right to equality and non-discrimination (Article 3) and the right to development and self-determination (tino rangatiratanga as expressed in Article 2).

Within the specific framework of the 1989 Act, these rights and guarantees are expressed in s208(c), with the ability to receive relevant information via the lay advocates or others pursuant to s327 and s330.

Lawyers love words – we're all about playing with semantics – searching for meaning, purpose and intention. If a word or phrase is present (or indeed if it is not) – it is for a reason, and our task is to interpret that reason.

As the people who work with the 1989 Act on a daily basis you know that its language is unlike any other in our jurisdiction – the explicit use of Māori terminology of whānau, hapū and iwi; the aspirational language of the Act's principles and objects – but particularly in the use of active verbs in relation to the roles and responsibilities of decision makers: "strengthen", "foster", "promote", "develop", "encourage".

The language of the CYPF Act is unlike any other in our jurisdiction... particularly in the use of active verbs.

Scholar Christopher Williams has conducted a meta-analysis of the changes in the verb phrase in legislative English across common law countries, and makes two relevant observations – the first being that compared with "ordinary" English, legislative English is far more "nouny" than "verby" – (those are his technical terms, not mine!), and secondly, that the use of active verbs is a modern phenomenon traceable to the plain language movement in drafting. In relation to the use of active verbs, Williams asserts that this reflects the hypothetical world of the law, which takes us to the goal of the 1989 Act as "prescriptive engineering" of the communities and contexts in which children and young people who offend can thrive and develop – which are not necessarily the ones they bring with them to the court. In my view this is close to a legislative steer to judicial activism; those active verbs require judges to ***do things***.

Point 2: The Target

I want to start by making the obvious point that we can be looking at the very same thing and be thinking very different things about that thing, due to our cultural, social, religious or other backgrounds or belief systems.

I think this point may apply to our desire for a "targeted approach for Māori." A Pākehā definition of a "target" might involve zoning in on an individual; focusing on the centre of the concentric circle.

For Māori, the "target" is the bigger picture— the outer rings of the concentric circle.

For Māori the target is the bigger picture – the outer rings of the concentric circle – and this is what s208(c) is speaking to. A Māori concept of self (or in our context, our concept of legal personality) is defined by membership, belonging and the duties and obligations that bind group members together as a corpus.

It is worth reminding ourselves that "whānau, hapū and iwi" also have the meanings of giving birth, being pregnant and conceiving – the group size being converse to the activity – conveying the message that the smaller is encompassed within the greater. The gift of whakapapa is to place the individual within those networks. Whakapapa is the key organisational principle of tikanga Māori; the knowledge of who we are, where we fit, and what our rights and obligations are, which derive from particular territories, resources and histories.

I trust that the legislature took notice of this cultural difference, in making specific reference to "whānau, hapū and iwi" ten times across the youth justice provisions of the 1989 Act and "whānau and hapū" in a further instance. This should be the focus of a targeted approach to Māori offenders. The kaupapa and practice of nga Kōti Rangatahi in particular give life to that approach.

Point 3: Addressing Inequality

How might you address such a major macro-level social issue as inequality in the context of youth justice?

The revival of provisions enabling the lay advocate role has been a game changer in the Rangatahi Court process. The importance of the role is less about the provision of information, than it is about establishing and maintaining a rapport and relationship between the various parties – and when most effective, about affirming and building upon their respective mana. In this sense, mana is like justice in that it is not a finite goal but is reflective of a process and a relational ethic.

The lay advocate role has been a game changer in the Rangatahi Court process.

While it is important to recognise and value these concepts of mana, whānau, hapū and iwi in their original context, it is also essential that we find a place for them in our contemporary identities, and that we are able to change and adapt to our circumstances. Criminologists isolate and identify risk factors and protective factors associated with offending behaviours – and targeted interventions are often aimed at what they term "criminogenic factors" – factors that are dynamic or changeable. Mana is one such factor – we are born with inherited status by whakapapa, citizenship status from territory, while our reputation, authority, charisma, influence, prestige and self esteem – our mana tangata—ebbs and flows as a result of our human activities.

Many young Māori who engage in offending behaviours lack the knowledge of each of the aspects of inherited and activity or achievement-based mana. This is a barrier to them reaching their authentic self and potential.

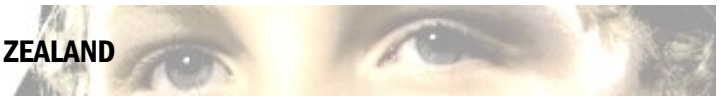
This "recharacterisation" of mana or aspects of tikanga Māori as criminogenic is not entirely new. My cousin, the recently deceased psychologist Garry McFarlane-Nathan, developed the world's first ethnic penal assessment tool, the "Maori Cultural Related Needs Index" (MACRNs), for the Department of Corrections some 16 years ago. Garry recognised the connection and synergies between Western methodologies and a Māori analysis of the causes underlying offending behaviours.

In my view, it is useful to find the connections between Western and indigenous epistemologies.

Although there are those who would disagree, in my view it is useful to find the connections between Western and indigenous epistemologies and methods for several reasons. For one, this approach embodies the spirit of biculturalism and partnership established in the Treaty of Waitangi. Second, it also references the "what works" or "evidence-based" policy and practice that is entrenched in law, policy making and resource allocation in contemporary government. Rather than relying on moral and ethical arguments for taking account of a Māori analysis, process or method, economic and scientific arguments are also usable.

Finally, if we look specifically at the frameworks underpinning the solution-focussed courts approach, addressing inequality fits within that method. As Judge Taumaunu has reiterated many times in respect of nga Kōti Rangatahi for example, the kaupapa of the court is to strengthen the knowledge, connections and self-esteem of its participants – to whakahoki their wairua* and to affirm and nurture their mana. This allies with the solution-focussed courts' kaupapa of processes and outcomes that are strengths-based, family-focussed, and culturally appropriate.

*return (whakahoki) their spirit/soul (wairua)



Maintain a commitment to those active verbs (in the CYPF Act)— strengthening, fostering, promoting, developing.

In my view the court and its personnel are doing an admirable job of responding to the individual needs of the young people who present with offending behaviours. The next step is an appreciation of the impact of inequality and marginalisation both as causes of these behaviours and as barriers to resolution and the recognition and affirmation of mana. Within the current setup that means maintaining a commitment to the requirements of those active verbs – strengthening, fostering, promoting, developing, encouraging.

It also means advocating for the resources, programmes and interventions to enable you to do those things and implement Parliament's express intention. However I want to reiterate that the availability of programmes and interventions is not everything; that the processes you use, the ethic of your encounters, your ways of being and doing are important in the goal of recognition and affirmation of mana – this is what cultural change looks like.

The Youth Court sees the children, young people and family groupings that are most affected by inequality and marginaliation.

The Youth Court sees the children, young people and their family groupings that are most affected by inequality and marginalisation. My friend and colleague, criminologist Tracey McIntosh speaks of this phenomenon as living lives of restriction and constraint, including restricted opportunities and the normalisation of negative outcome pathways. We see rangatahi in the Youth Court who are what McIntosh describes as a "socially submerged population". Māori psychiatrist Mason Durie would view this as a lack of civic engagement or participation in society – within his Te Pae Mahutonga framework for Māori wellbeing (*see* www.hauora.co.nz *for details*).

I think the Rangatahi Courts have done a magnificent job at attempting to recognise and ameliorate some of the effects of inequality on the lives of the young people who come to that forum. This is done by way of the leadership shown by the judges, and the forging of a community of care around a young person, when their blood kin may not have the cultural, social or economic capital to do so. I've been to a number of Rangatahi Court sittings in a number of venues, and I think I've seen *one* traditional two parent partnership turn up in support of their young person.

However, in monitoring only, you are restricted to the FGC plan that has already been forged. In my view, the bifurcation of the 1989 Act into "justice" and "care and protection" created a legal fiction that these legal processes and responses dealt with different populations – and we know that they do not. The emergence of the cross-over lists (for young people with both youth justice and care and protection issues) is a positive move in recognition of this. However, I think we could go further in acknowledging that the ethic of community responsibilisation that underpins the conferencing process does not work for the most vulnerable in our communities. You might say that FGCs are an example of tino rangatiratanga or self determination, but self determination doesn't get you very far when you don't have the resources to capitalise on it. In Treaty terms we can say that the breach of the Article Three equal citizenship guarantee needs to be addressed before we can launch off into our self determined futures.

The ethic of community responsibilisation that underpins the conferencing process does not work for the most vulnerable in our communities.

How, then, might we further take account of these inequalities? My challenge is to expand the magic of the Rangatahi Courts beyond their current monitoring role to an involvement in the substantive FGCs. It might be considered a radical or a retrograde step, but I would advocate for a conferencing process that is more aligned with the solution-focussed court methodology – a therapeutic team approach with hands on judicial leadership. To critics who might say that this is paternalistic I would say that this is a response that is necessary and appropriate for many rangatahi Māori – as a means of responding to inequality. As youth justice personnel I think you can be both respectful and involved, as a form of assisted self-determination.

Nga Kōti Rangatahi were founded and operate on the whakaaro expressed in the whakatauki:*

> **Ka pū te ruha, ka hao te rangatahi.**
> *The old net is cast aside, the new net goes fishing.*

To unpack that metaphor, the old net is made and used with the resources that the fisherman has available to him. Surely we do not expect a new and improved net to be manufactured without all of the knowledge, expertise and resources available to follow through on the promises made in our legislative framework? To make those resources available - *that* is restorative justice. ■

*the thinking (whakaaro) expressed in the proverb (whakatauki)

SPECIAL REPORT

Whānau, hapū and iwi: Reflections of a Māori Court Report Writer

Dr Hinemoa Elder MBChB, FRANZCP, PhD
Consultant Child and Adolescent Psychiatrist

Dr Hinemoa Elder

Dr Hinemoa Elder has had a great deal of experience providing s 333 "medical, psychiatric and psychological" reports to the Youth Court. However, when asked to provide a s 336 "cultural or community" report, Dr Elder found herself in unfamiliar waters. This prompted reflection on the concepts of whānau, hapū and iwi codified in the CYPF Act, and what these mean for court report writers generally.

Being asked to assess a taiohi and write a report under s 336 of the Children, Young Persons and Their Families Act 1989 (the Act) prompted considerable reflection. This was the first time I had been asked to write a report under s 336 in my 10 years as a Consultant Child and Adolescent Psychiatrist. After discussing this with my peers it seemed that this was not something they were familiar with either.

This was the first time I had been asked to write a s 336 report.

Section 336 provides broad scope for assessment. Under s 336, a Youth Court judge may require ***any person*** to report to the court on –

a) the heritage and the ethnic, cultural, or community ties and values of the child or young person or the child's or young person's family, whānau, or family group; and /or

b) the availability of any resources within the community that would, or would be likely to, assist the child or young person or the child's or young person's family, whānau, or family group.

I reflected on how my approach to writing a s 336 report – requiring regard for whānau, heritage, culture, ethnic ties and values – might differ from my approach to writing "medical, psychiatric or psychological" s 333 reports.

This led me to broader questions about my work as a court report writer. How could the "section 336 approach" inform my work writing s 333 reports? What else is said, in the Act, about the relevance of whānau?

Indeed, a lot is said in the Act not only about whānau, but also about hapū and iwi. By section 5 of the Act, any person exercising any power under the Act is to be guided by a number of culture or community-oriented principles, including the following:

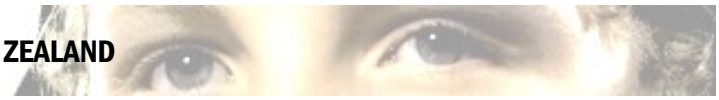
A lot is said in the CYPF Act not only about whānau, but also about hapū and iwi.

- The principle that, wherever possible, a child's or young person's family, **whānau, hapū, iwi**, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, **whānau, hapū, iwi**, and family group.
- The principle that, wherever possible, the relationship between a child or young person and his or her family, **whānau, hapū, iwi,** and family group should be maintained and strengthened.
- The principle that consideration must always be given to how a decision affecting a child or young person will affect the stability of that child's or young person's family, **whānau, hapū, iwi,** and family group.

Section 208 then codifies a number of youth justice principles that serve as guidance for **any person** who exercises any youth justice related powers. By these, **any measures for dealing with offending** by children or young people should be designed:

- to strengthen the family, **whānau, hapū, iwi,** and family group of the child or young person concerned; and
- to foster the ability of families, **whānau, hapū, iwi,** and family groups to develop their own means of dealing with offending by their children and young persons.

Additionally, by s 208, **any sanctions** imposed on a child or young person who commits an offence should take the form most likely to maintain and promote the development of the child or young person within his or her family, **whānau, hapū**, and family group.



I began to reflect on how I could engage with and fulfill these principles, in my role as a court report writer for the the Youth Court. This first required an understanding of how we can interpret the terms whānau, hapū and iwi.

Defining whānau, hapū and iwi is not a simple exercise. There are a number of views about what these constructs might mean in any given context.

Hapū were the primary political unit in traditional Māori society. They were usually named after an ancestor or event in history. A number of hapū with common interests, shared or adjacent land, linked by descent or intermarriage were often considered parts of an iwi or waka (Benton, Frame & Meredith, 2013). Scholars contest that the prevailing modern translation, "sub-tribe", may misrepresent the importance of hapū.

The prevailing modern translation, "sub-tribe", may misrepresent the importance of hapū.

Furthermore, the seemingly linear whānau, hapū, iwi structure is more complex that it might first appear. Authors of a comprehensive compendium of Māori customary law state that the term hapū has been used interchangeably with iwi, or translated as "tribe" and that "the term 'sub-tribe' has usually been dropped... as it hardly fits with the new understanding of the hapū's perceived role as effective, independent political unit of pre-contact Māori society" (Benton et al., 2013).

The word **iwi** is a general term for a defined group of people, akin to 'nation' or 'a people'. Initially 'tribe' was conveyed by words hapū and waka; more recently 'iwi' has been used in this way "at least partly as a result of the extensive use of the word in the classification of kin groups by government officials" (Benton et al., 2013).

Affidavits from High Court proceedings reveal a variation in understandings of the concept of iwi:

> "I have been asked to talk on what is iwi and how is it represented. That is a problem because **traditionally iwi meant just 'the people'**. It was regularly used as 'te iwi Māori, me te iwi Pākehā', 'the Māori people and the Pākehā people.'"—*Affidavit: John Winitana. See Benton et al., 2013, p 10.*

This view is in contrast with another perspective:

> "The meaning of iwi as I understand it is that it is **a collection of sub-tribes who trace their descent to a common ancestor**. In my view, with out kinship links, no group can purport to call themselves an iwi."— *Affidavit of Sir Robert Mahuta. See Benton et al., 2013, p 18.*

The word **whānau** has been expanded from the original meaning of giving birth to now include configurations of family groupings. Identified aspects of whānau include a shared living environment, being recent descendents of a recognised ancestor, and some common commitment for the sustainability of the group. The whānau was recognized as the primary economic unit of Māori society (Benton et al., 2013).

However, in more contemporary times the concept of whānau has taken on other meanings exemplified by this quotation:

> "We acted like a whānau. It was our actions and feelings, our wairua, which knitted us together as a whānau. We made conscious, unified effort to protect Māori values, and nurture them in the urban environment." - *Te Whānau o Waipereira (Wai 414) Wai tangi Tribunal 1998 (Benton et al., 2013).*

This is a good example of 'kaupapa whānau', a commonly used phrase to described a group whose members work together for a common purpose as if they were close kin as compared to a whakapapa whānau where there are blood ties (Lawson-Te Aho, 2010).

Whānau Ora is a well recognised policy, service provider model and a call to action for self-determination for Māori (Turia, 2011). How Whānau Ora relates to the concept of whānau used in the Act has not yet been explored.

How can we now apply our understanding of whānau, hapū and iwi to the s 5 and s 208 principles? For example, how can and should court report writers **seek views from whānau, hapū, iwi,** as required by s 5? Seeking a whānau view is relatively common and familiar, and requires the use of cultural protocols including karakia and whakawhanaungatanga. Seeking the views of hapū and iwi is not a familiar activity either for court report writers, or indeed – in many cases – for the court itself. The principle invites consideration of which iwi and hapū are pertinent to the young person and their whānau and how to elicit information from these entities where no consistent conduit of dialogue currently exists for this purpose. This principle also underpins moves by hapū and iwi to strengthen mechanisms for reaching into these legal processes in order to improve outcomes for their mokopuna (through the Rangatahi Courts, for example).

Seeking the views of hapū and iwi is not a familiar activity for court report writers, or indeed—in many cases—for the court itself.

How, too, can court report writers help to **maintain**

and strengthen the relationship between a child or young person and their whānau, hapū and iwi, as per s 5? Maintenance and strengthening factors within hapū and iwi are not commonly assessed by court report writers. This is not necessarily part of the court report writer's training, or sense of purpose – but in my view, it is our responsibility to attempt to respond to these principles and to advocate for their fulfilment.

How do we assess the effect of decisions on **the stability of whānau, hapū and iwi,** as required by s 5(c)? Defining the concept of stability itself is no simple matter. This may be interpreted as balance, cohesion, durability, permanence, strength or determination, to use just a few synonyms. Assessing to what extent a decision may affect stability is also exacting. It might be that some iwi take the view that state service involvement with any mokopuna undermines iwi stability.

The **youth justice principles under s 208** (see above) also present challenges. These principles demand assessment and consideration of any strengthening and fostering features which might promote collective means of dealing with offending as well as promoting development of mokopuna within whānau, hapū and iwi.

Six key considerations could be detailed in a court report to recognise and give effect to these principles in a consistent way, after identifying who whānau, hapū and iwi are for that particular situation:

1. What are the whānau, hapū and iwi views? And how have these been taken into account in report recommendations?

2. What are the identified relationship maintenance and strengthening factors between the child and young person and their whānau, hapū and iwi? How can these be enhanced?

3. How might recommendations about the child or young person affect the stability of whānau, hapū and iwi? How might destabilising factors be mitigated?

4. In what ways will recommendations strengthen whānau, hapū and iwi?

5. How can the ability of whānau, hapū and iwi be fostered to develop their own ways of dealing with offending by a child or young person?

6. How will recommendations promote the development of a child or young person within his/her whānau, hapū and iwi?

Overall, my reading of s 336 and of the principles of the CYPF Act was that I was explicitly required to ensure the s 336 report brought the voice of the tamariki mokopuna and their whānau, hapū and iwi to the fore.

I was explicitly required to ensure the s 336 report brought the voice of the tamariki mokopuna and their whānau, hapū and iwi to the fore.

The additional challenge was to bring the approach for writing s 336 reports to the conventional prescribed s333 reports, thereby providing a richer cultural dimension and deeper intergenerational understanding of the issues at play.

Importantly, the experience of writing a s 336 report has modified my practice in the direction of increasing the visibility of cultural resources to the court. This has potentially better outcomes for the taiohi and their whānau. It also invites greater awareness of and detailed communication with hapū and iwi structures to ensure the mobilization of cultural initiatives for prevention and early intervention.

Finally, although my focus has been on improving my work as a court report writer, the same s 5 and s 208 principles apply to any service that is governed by the Act. This means that consideration of principles relating to whānau, hapū and iwi is critical for all youth justice responses. ■

Are you aware of research or publications that should be included in this collection?

Email us at:
courtintheact@justice.govt.nz

SPECIAL REPORT:

"When I grow up, I'm going to go to prison" — How to reframe the perceptions of Māori youth to achieve positive change

Hana O'Regan | Director at Christchurch Polytech Institute of Technology

Hana O'Regan

Hana O'Regan was invited to the Judges' hui to speak about the challenges of effectively dealing with and communicating with Māori young offenders.

With 65% of young people appearing in the Youth Court being Māori, this is a significant challenge for our sector.

Hana's reflections are reproduced below.

In 2010, when my son was six years old, he told me he wanted to be four again, "Because when I turned 5, I turned bad."

Later on in that same year, he told my mother, his Pākehā grandmother:

"And when I grow up, I am going to go prison, cause that's where all the bad Māori boys go, and only bad Māori boys go to prison …
But I don't care, cause in prison they only get to eat mashed potatoes and I like mashed potatoes!"

"When I grow up, I am going to go to prison, cause that's where all the bad Māori boys go."

Now I am pretty confident that I can do a lot to ensure that my son will never be one of the Māori youth to appear in the Youth Court; in fact I will do everything I can to do prevent that from happening… but I would like you to reflect on the point that this six year old child had already been exposed to the message that if you were labeled bad and were a Māori boy, then you were destined for prison. This child with no knowledge at that time of people in prison, with a grandfather who is a 'Sir', parents who were educated, role models galore in his immediate associations; this child who had who had already travelled the world, was bilingual, and had a strong sense of himself as a Māori – all of these factors could not combat the crude messages from society about 'what being Māori meant'. I have the language and knowledge available to me to be able to paint another picture for my son: to reframe his understanding of what it means to be Ngai Tahu and Māori; to set expectations that reflect his potential and his own aspirations. Six years on, he is now talking about being a doctor – but for those that don't have access to another narrative, another schema – what can they do?

For those that don't have access to another narrative, another schema— what can they do?

If my son is not immune to these messages of what is means to be Māori— and if he could, even momentarily, associate his ethnicity with negative outcomes— what of the child who doesn't have the supports that he has? What of the child who is hungry, has no security of shelter or food, and lacks a safe home environment? What of the child who suffers abuse and neglect? How do they possibly reconcile the messages that society shares about their identity as Māori, with their sense of self, their potential and ability to defy the destiny prescribed by the stereotype?

I would argue that the greater the disadvantage the child experiences, the harder it is to convince them that there is hope – that there is another way, that they might be treated fairly, that they are worthy of respect. And – the more important it is for us to do so, if we want to change their trajectory.

As well as being bombarded with stereotypes about themselves, our Māori rangatahi are bombarded– daily— with the message that the police and the courts don't care. So, youth justice practitioners aren't just battling the issues inherent in the way young Māori feel about themselves – they are battling a constant diatribe echoed

Negative stereotypes Māori youth grow up learning about their culture.

in wider society about negative treatment of Māori in the justice system.

Hana O'Regan speaking at the Triennial Conference.

I believe these are areas that require attention from all parts of our society, from the individual and whānau level through to the highest institutions and organisations. But as judges and leaders in your communities, there are things you can do.

Firstly, you can educate yourselves. Take the time to learn why negative self perception exists and how that has developed. Learn about the experiences of Māori youth in your local community and beyond. Find out about the messages that our Māori youth are continuously exposed to concerning the justice system.

Secondly, you can control how you communicate with our rangatahi. Show them what "good" looks like. Show that you believe in their potential. Acknowledge that there have been negative influences in their lives. Model empathy—show them that you care.

Do you lead by example, in terms of valuing the Māori language and culture(s), pronouncing the reo correctly, and confidently engaging in it?

Thirdly, you can influence the perceptions of those around you. Ask yourself the question: do you have the tools and knowledge at your disposal to confidently create a new picture of Māori in the minds of colleagues, whānau and friends? Do you lead by example, in terms of valuing the Māori language and culture(s), pronouncing the reo correctly, and confidently engaging in it? Do you know about the experiences of your Māori staff and clients?

The Rangatahi Courts are an important step in showing Māori youth that their culture is valid and respected, and that things can change for the better. In the words of Judge Taumaunu, "It enhances respect for the rule of law when the law is speaking in the language of the people that it is dealing with".

I believe that the youth justice community can be proud of this recent shifts in court practice. However, I believe an even greater shift will take place when we challenge ourselves to look at how we might be influenced, in our everyday lives, by the same negative stereotypes my son learnt at age five – and to hold ourselves to account. To acknowledge that these stereotypes exist, and that they have a direct impact of the people we engage with every-day. And to focus what attentions we can to the task of creating a different story; one that shows we understand, we care, we believe in the potential of our rangatahi, and we are committed to a path that supports their own cultural-reframing. A story that puts hope back on the horizon for our young people. ■

Create a different story; one that shows we understand, we care, and we believe in the potential of our rangatahi

SPECIAL REPORT: "Young people in custody - current state and future opportunities"

Chris Polaschek | General Manager: Youth Justice Support and Residential Care and High Needs Services | Child, Youth and Family

Chris Polaschek

The number of young people being held in custodial remand has increased over the last five years.

Chris Polaschek was invited to speak at the Judges' hui about young people in custody. Chris' observations are reproduced below.

"Since 2010 we have noticed a steady decline in the number of young people serving supervision with residence orders. Conversely we have seen a steady increase in occupancy of residential beds by young people on remand which is now between 70 and 80% of admissions depending on the day.*

Offending rates

Offending rates (i.e. number of offenders per 10,000 population) for young people aged 14 to 16 years have dropped by 54%. This drop has been the greatest for European New Zealanders at 62%. For Pasifika young people it's 54%, and for Māori, 50%. The number of young Maori apprehended is down by around 3,000, so that is a significant reduction; however it was off a very high baseline.

The percentage of 14—16 year old young people proceeded against for medium to high offences (i.e. burglary, theft, robbery and violence) has increased from 24% to 29%. At the same time the numbers appearing in Court have halved from 4,600 to just over 2,200.

Custodial remands

The percentage of 12 to 16 year olds remanded in custody after appearing in Youth Court has increased from 17 to 29% (in real terms by 69%) although the actual number of young people remanded in custody has remained around about the same (594 in 2010, 578 in 2015). Two thirds of those remanded in custody were for burglary, theft and robbery. Causing injury accounted for 13%. In terms of the increased remand population, Māori young people make up 80% of the increase.

Residential admissions

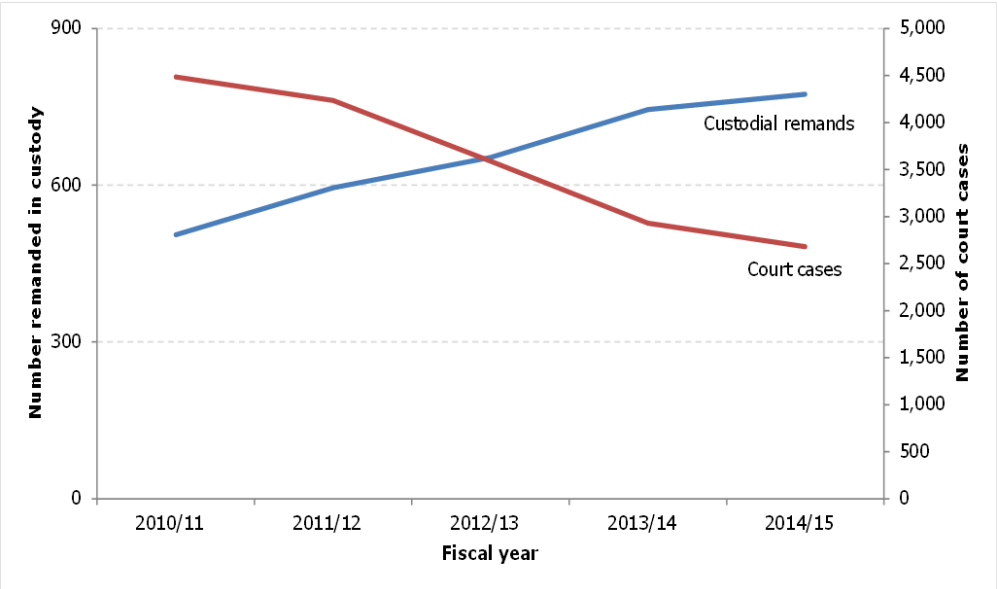
Māori young people now account for 68% of residential admissions due to a custodial remand.

When it comes to residential admissions due to a custodial remand over the same time period, we have seen a significant increase in females; up by 129%. Māori young people now account for 68% of these admissions. 60% of individuals only come in once. Some of these will have "aged out" (i.e. become too old for the youth justice system). Others will not come back for a variety of reasons.

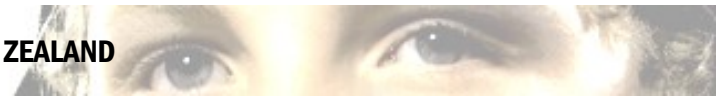
The remaining 40% of young people make up 67% of all remand admissions. A small cohort of that group (5%) each had more than five admissions in the period 2010 to 2015, and in total comprised 18% of all admissions.

Remands for period of more than 30 days have remained steady over the period although there has been an increase for young people coming in on an arrest status.

Child, Youth and Family have increased the number of options available, which is intended to reduce the num-



*Except where otherwise indicated, the data used in this paper comes from the period 2010 to 2015. The primary sources of data are the Ministry of Justice and the iMSD group (the latter completed an analysis of custodial remands).



ber of custodial remands in residence. As well as increasing bed capacity by 20 beds since 2010 (an increase of around about 80% of capacity), 309 supported bail programme places were made available in 2015, although in that year 420 were actually used. Electronically monitored bail increased up to 60 placements this year.

We have also increased other community-based options. For example, there are the two Lighthouses in Auckland, which offer 10 beds.* We have many placements for "dual status" young people: young people who have both care and protection proceedings in the Family Court and youth justice proceedings in the Youth Court. Nationwide, we have 76 one-to-one placements, 47 places in non -Child, Youth and Family Group Homes, and 30 offered in national bed night providers. There are other options that come up as one-off situations.

Should we be concerned?

The data indicates that we, as a youth justice sector, use a lot of remands in custody at a time when numbers appearing in court have more than halved. There has been a small increase (5% increase) in the seriousness of offending, but this does not account for the number of custodial remands remaining steady (so in effect increasing significantly *as a percentage* of those appearing). We have provided a significant number of supports to keep young people out of custody and although these are well utilised, they have not improved the situation. Finally, most young people who are remanded into custody come in only once but there is a second group who provide a challenge to the system.

As the youth justice sector we are concerned about the use of custodial remands. The Expert Advisory Panel reviewing Child, Youth and Family identified this as a systems issue. One of the key actions of the Youth Crime Action Plan is reducing the use of custodial remands.

Placing a young person in a residence is not a 'care option'; it is a denial of liberty.

Placing a young person in a residence is not a 'care option'; it is a denial of liberty where that young person is contained behind a 5 metre fence. Some languish on remand for long periods, many over 40 days, others over a 100.

We should all be concerned about placing young offenders together where they can network with young people with attitudes and values that support "offending - thinking" and potentially learn new skills to visit on their communities and those around them. It runs counter to our objectives of creating safer communities by reducing crime and intervening effectively with young people to provide opportunities for them to get back on track and have a positive future.

Secondly the trend over recent years has been to increase alternative placements to residence but these seem to have led to net widening rather than reducing the number of young people on remand in residence.

Opportunities

We can improve our practice by limiting first-time admissions both in numbers and in time spent in custody.

There are opportunities available to address this issue. Firstly, we can provide more community-based support options, and secondly, we can all focus on being more effective in our practice. The work programme that has emerged from the Expert Advisory Panel's recommendations in the Youth Justice area include trialling alternative community based options for young people requiring support and supervision as an alternative to residence. It is proposed that there will be an option or options being trialled by 1 April 2017. The door is open as to what those models might look like and work is underway to explore options at this time. These could include partnering up with agencies and iwi to provide placement options. It may be these are safe and supported bail placements. The challenge is to provide these options without increasing the number of young people coming directly under the supervision of the state.

We can also improve our practice by limiting first-time admissions both in numbers and in time spent in custody. We can be more robust in testing the custodial decision by making sure that we are only using custody when it is absolutely necessary, balancing the short term gain against the potential long term cost.

Where we do need to remand in custody we can shorten the periods of remand so as to encourage more focussed work to find alternative placements and to create safe plans for young people that enable them to be returned to the community. We can be better and more transparent with our risk management so those involved in making decisions about the best options for the young person are well informed of the risks and what mitigating factors are to be put in place. ■

*Lighthouses are intensely supervised non-secure care facilities.
See www.youthorizons.org.nz for more information.

ARTICLE EXTRACT: Section 333 reports

Recommendations for How Best to Utilise a s 333 Report

Dr Ian Lambie, Charlotte Best, Dr Julia Ioane, His Honour Judge Andrew Becroft and Chris Polaschek

The following is an extract from the article "What Every Judge and Lawyer Needs to Know About Section 333 Psychiatric/Psychological Court Reports", originally published in the New Zealand Law Journal ([2016] NZLJ 24).

1. A section 333 assessment should be available at the earliest point of engagement with the youth justice system so that each step of the process is guided by the findings of the report. Assessment does not always need to be intensive, and in many cases should not when offending is minor. However, some form of assessment should be completed for all young people and decisions then made as to how the information gathered should be used for each individual young person. As discussed, there are certain groups with known serious clinical profiles within the young offender population and so offenders in these groups may require more intensive and extensive assessment.

FGC co-ordinators frequently feel unduly constrained by the 21 day timeframe without realising the inbuilt statutory flexibility that is available.

2. Under s 5(f) of the CYPFA, one of the general principles of the Act is that decisions affecting the young person should, wherever practicable, be made and implemented within a time-frame that is appropriate to the young person's sense of time. To reflect this, under s 249 of the CYPFA, a family group conference (FGC) must be convened no later than 21 days after the youth justice coordinator has been notified, unless specifically extended by the Court. This principle must be considered when completing a s 333 report as it is essential that the report is completed within this time frame to ensure it is available at the FGC. A report is of no benefit if it is completed after the FGC has already been conducted.

3. It may be that, in order to comply with the timeframe requirements, the typical length of a s 333 report should be reduced. The crucial information that is needed in a s 333 report is the young person's risk to self, risk to others and risk from others, as well as the presenting problem of the young person and the relevant recommendations. A shorter report, for example 5 pages, that contains this information may be considerably more useful than one that is 15 pages long but is not completed in time for the FGC or one that a judge does not have time to read.

4. Under section 249 of the CYPFA that deals with timeframes, an FGC ordered by the Court must be completed within 7 days after it has been convened, unless there are special reasons why a longer period is required. A special reason would certainly include the need for a detailed section 333 report. If it is clear to the report writer that the matter is complex and that more time than the total 21 day timeframe for convening and completing an FGC is required, then the report writer should, in writing, inform the FGC co-ordinator of the special reason why the timeframe should be extended. This flexibility is not well understood by FGC co-ordinators who frequently feel unduly constrained by the 21 day timeframe without realising the inbuilt statutory flexibility that is available. Thus, report writers should be crystal clear and strong in their views that the timeframe should be extended on the basis of complex section 333 issues.

5. As previously noted under s 192 of the CYPFA, the Court may order that a report, or any part of a report, not be disclosed to a person specified in the order where such a disclosure would, or would likely, be detrimental to the physical or mental health or emotional well-being of the young person or other person to whom the report relates. At present it is often not clear what parts of a report should or should not be disclosed. This is a matter which would benefit from input from the report writer. Where possible, report writers should clearly specify which parties, in the report writer's opinion, should receive the report and also specify any restrictions on provision of any part of the report and to whom.

6. If no further action is taken with regard to the recommendations outlined in the s 333 report it will be of no benefit. When a report sits in the young person's file with no further action by the system this can cause the young person to be at a greater risk of reoffending and of not having their needs met. A s 333 report will also be of limited use if there are no services available to meet the needs of the young person in their local area. If services are not implemented at the level of intensity or duration to meet the needs of the young person and their family, this will also be problematic. This is particularly so if specialist counselling services are required. Appropriate funding to implement the recommendations and follow-up to ensure they are implemented is crucial.

7. Collaboration and consistency between multiple agencies and systems is also essential to any success in the youth justice system. Section 333 reports can only be released by the Judge, often following consultation with

ARTICLE EXTRACT: Section 333 reports

the report writer(s). It is always important that this report is presented to the treatment provider; however because it is a specialist report, consultation with the report writer(s) to ensure a good understanding of this report is necessary.

One of the key elements of a successful intervention plan is ongoing communication between professionals, the young person and their family. Professionals need to be very clear amongst themselves as to the purpose of their involvement with the young person and their family. The young person and their family need to be well informed about the plan and be regularly consulted with regard to their progress in the plan. The timeframe of an intervention is likely to be significant given the complex needs of the young person and their family, therefore resourcing and funding these interventions can be expensive. However, herein lies the challenge – the youth justice system is a response tempered by justice principles and as such, sanctions imposed must be proportionate to the magnitude and frequency of the offending.

A young person should not automatically receive a more intrusive or extended intervention simply because they have mental health needs.

A young person should not automatically receive a more intrusive or extended intervention simply because they have mental health needs. The Youth Justice provisions of the CYPFA allow for young people to agree to participate in treatment programmes or regimes (a preferred option) and still be discharged under s 282 "as if the charge was never laid". There are also more intrusive sentencing options available where court orders can be used for more serious offending behaviour. At the top end of the sentencing tariff scale these include residential placements for up to six months under s 311 of the CYPFA or through a Supervision with Activity Order, where undertaking treatment can be directed as an activity under s 307. Both of these options can be followed by periods of supervision for a minimum of six further months. In instances where longer term treatment is needed it would be appropriate to consider using the Care and Protection provisions of the CYPFA, either instead of, or in conjunction with, a Youth Justice pathway, depending on the nature and magnitude of the offending behaviour. ■

WHAT DO YOU DO? Mark Stephenson, Speech and Language Therapist

A conviction achieved without the accused person understanding the language of the legal process or unable to express themselves effectively is unsafe at best – and is certainly not justice.

Mark is a teacher and speech-language therapist who, for the last 9 years, has worked as a teacher within secure youth facilities in South Auckland. Mark became increasingly concerned at the high percentage of young people he encountered who appeared to have significant oral language and communication difficulties.

Several years highlighting these issues to those working with the young people gave way to his enrolment in a research Masters in Speech Science at the University of Auckland. He aims to develop a communication assessment tool to be used by those working with young people in the legal system.

Recent studies indicate that across the UK, Australia and the USA, 50-60% of young males who offend have clinically significant levels of language impairment.*

There is emerging data suggesting that figures in New Zealand may be similar, if not worse. In a 2009 study of 60 young male offenders, 91.6% exhibited some form of language difficulty. In a 2014 study of 33 young people in youth justice residences, 63% were reported as having an oral language impairment.

Mark Stephenson

Oral language difficulties in young people caught up in the legal system create barriers at numerous points, both for them and those that work with them. Currently there is no oral language assessment tool for practitioners working in the legal system here. Mark's tool will identify potential communication issues and highlight the need for modified practice on the part of professionals and agencies so that young people are included in, not isolated from, our justice system.

Mark is supported in his studies by his employer, Creative Learning Scheme and the University of Auckland through his supervisor, Dr Linda Hand. As the recipient of the Vodafone World of Difference Fellowship for 2016, the Vodafone Foundation and SYHPANZ provide both financial and professional support in this project. Mark also works with Talking Trouble Aotearoa New Zealand alongside Sally Kedge.

Contact: m.stephenson@cls.org.nz

*See Bryan, Freer & Furlong, 2007; Snow & Powell, 2008; Sanger, Ritzman, Schaefer & Belau, 2008.

YOUTH JUSTICE RESEARCH AND PUBLICATIONS

COMMENTARY

This edition's selection of resources features the second edition of Nessa Lynch's youth justice textbook, which is the essential black letter law research and reference point for youth justice practitioners.

In the UK section (overleaf), a number of articles are drawn from an issue of the UK-based Prison Service Journal focussing on young people in custody. The journal is available at: www.crimeandjustice.org.uk.

NEW ZEALAND

Youth Justice in New Zealand: Second Edition

Authors: Nessa Lynch
Available: ThomsonReuters, Wellington, 2016
Abstract: This text critiques law, theory and practice in the New Zealand youth justice system. Reflecting on the unique challenges of children and youth, it analyses the principles, legislation and policies governing the operation of the youth justice system in New Zealand, including practice and procedure in the distinctive Youth Court jurisdiction. The new edition incorporates significant developments that have occurred since the first edition was published in December 2012 including the introduction of the Youth Crime Action Plan and the implementation of the Criminal Procedure Act 2011 and the Youth Court (Jurisdiction and Orders) Amendment Act 2010, along with common law developments in the area of police questioning and investigation. There is specific content expansion on youth justice custody and the Rangatahi/Pasifika Courts.

The Views of the Public on Youth Offenders and the New Zealand Criminal Justice System

Authors: Craig Barretto, Sarah Miers and Ian Lambie
Available: (2016) International Journal of Offender Therapy and Comparative Criminology 1
Abstract: This study compares the views of those who have been victimised by youth offenders and those who have not, on what could be improved in managing youth offending in New Zealand. Public sentiments favoured addressing systemic issues and providing rehabilitation as main emphases followed by more punitive measures, prevention, and restorative justice. Victims were over-represented on sentiments of prevention whereas non-victims were over-represented in support for more punitive measures and restorative justice. There was also considerable support for a multi-facetted approach that utilised a number of the approaches above, suggesting that the solution is as complex as the offender's circumstances. These findings are in line with the youth justice system's emphasis on diversion and rehabilitation.

An Invisible Population? The Needs of Young Women Offenders and Why Gender Deserves Consideration in the Aotearoa New Zealand Youth Justice System

Author: Allanah Colley
Available: (2015) 3 NZLSJ 471
Abstract: This paper explores the relationship between gender and patterns of offending, as well as how young women offenders have historically been treated. The paper argues that young female offenders (both Māori and non-Māori) are currently an invisible population in the New Zealand youth justice system, who have different needs to male offenders, and explores avenues for remedying this invisibility.

Fitness to Stand Trial in the New Zealand Youth Court: Characterising Court-Ordered Competence Assessments

Authors: Caleb Armstrong and Susan Hatters Friedman
Available: (2016) 23(4) Psychiatry, Psychology and Law 538
Abstract: Characteristics of young people referred for assessment by Forensic Mental Health Services are infrequently studied, particularly in Australasia. International literature must be treated with caution, as the legal context varies greatly between jurisdictions. Over one year, a total of 366 individuals between the ages of 12 and 17 were referred to the Regional Youth Forensic Service (RYFS) in Auckland for assessment. This report provides information relating to the nature of these referrals and the characteristics of those referred.

'To Have and To Have Not': The Retention of DNA for Criminal Justice Purposes in New Zealand

Authors: Nessa Lynch and Liz Campbell
Available: [2016] 2 NZLR 320
Abstract: Developments in technology have led to the rapid expansion of state-controlled databanks, containing individuals' intrinsically personal information. New Zealand has had such a databank since the mid-1990s, but legislative reforms have expanded its remit considerably. This article considers the conceptual and operational issues relating to the retention of DNA in New Zealand, including in the youth justice context, and makes recommendations on the ambit and governance of the databank.

Offender case management: Reducing the rate of reoffending by Māori

Authors: Trudy Sullivan, Michelle McDonald and Sergeant T Thomson
Available: (2016) 49(3) Australian & New Zealand Journal of Criminology 405
Abstract: "In New Zealand, the number of offenders who continue to commit crime after leaving prison or completing community-based sentences is high, with the likelihood of reoffending much higher for Māori. This article presents the results of Project Kete, a joint

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initiative between A3K (an organisation that provides support for Māori clients), the Police and the Department of Corrections. Sixteen high-risk Māori offenders nearing the end of their sentences received intensive support and supervision to help them reintegrate into the community. The results are encouraging. All 16 offenders remained out of prison as at December 2014 – a 100% reduction in the expected reimprisonment rate – and the 1-year reconviction rate was 33% versus a predicted rate of 48%.

UNITED KINGDOM

Supporting looked after children and care leavers in the Criminal Justice System: Emergent themes and strategies for change

Authors: Dr Claire Fitzpatrick, Patrick Williams and Darren Coyne
Available: (2016) 226 Prison Service Journal 8
Abstract: The offending rates of children in care are around 4 times higher than those of all other children. The authors initiated two multi-agency roundtable discussions which were designed to place the issues facing children in care and care leavers in the criminal justice system firmly on the policy and practice agenda. A number of key themes and challenges emerged as a result of these discussions. The article focuses on two of these key themes — that of identification and promoting a cultural change.

Disabled Inside: Neurodevelopmental impairments among young people in custody

Authors: Nathan Hughes and Kate Peirse-O'Byrne
Available: (2016) 226 Prison Service Journal 14
Abstract: Research consistently highlights the high prevalence of neurodevelopmental disorders among young people in custody. This illustrates that the youth justice custodial estate has become the primary service provider to a large number of young people with significant neurodevelopmental impairment, which suggests considerable challenges for practices and interventions within custodial institutions. This paper reflects upon these challenges and offer reflections on their implications for practice reform.

Formal and informal learning in custodial settings for young people

Author: Dr Caroline Lanskey
Available: (2016) 226 Prison Service Journal 3
Abstract: What do young people learn from their time in custody formally and informally? This article considers this question with reference to comments from young people about their time in secure settings in England and Wales. It draws on data from interviews and focus group discussions with young people who were or had recently been in custody. The data were collected during two research projects, one between 2012 and 2014 and the other between 2006 and 2008. Across the different custodial contexts and time periods some common themes about young people's formal and informal learning in custody emerged. These are discussed.

Traumatic brain injury and offending: An Economic Analysis

Author: Michael Parsonage
Available: https://www.centreformentalhealth.org.uk/traumatic-brain-injury
Abstract: Over a million people in the UK live with the consequences of traumatic brain injury (TBI), at a cost to the economy of around £15 billion a year. This figure includes lost work contributions, premature death and health and social care costs, but does not include the costs of TBI on people's well-being and quality of life. The report finds that a head injury doubles a per-son's risk of later mental health problems, even if the person had no prior history of mental ill-health.
The links between TBI and offending are significant – 60% of adult offenders have experi-enced a traumatic brain injury, six times the rate of the general population. Indeed, this report finds that a TBI increases the likelihood of crime by at least 50%. Adolescence is a peak period for both offending and head injury, and thus provides a key opportunity for early intervention, both in offering preventive measures against the occurrence of head injury, and in the early provision of evidence-based treatment for head injury.

Now I know it was wrong: Report of the parliamentary inquiry into support and sanctions for children who display harmful sexual behaviour

Available: www.barnardos.org.uk
Abstract: There is a strong link between displaying harmful sexual behaviour at a young age and perpetrating abuse in adulthood, including child sexual exploitation. Equally, children who sexually abuse other children have often already suffered abuse and trauma themselves. In other cases, children make mistakes as they start to understand and experiment with their sexuality; criminalising or stigmatising them as a 'sex offender' risks increasing their propensity to reoffend.
On 23 February 2016, Nusrat Ghani MP (UK) convened an Inquiry into the support and sanctions currently in place for children who display harmful sexual behaviour, in order to provide Parliament, Government and other decision makers with a better understanding of this issue. Whilst in some cases a criminal justice response is inevitable, all children in this situation must receive high-quality therapeutic support to address the underlying causes of their behaviour, prevent them from causing further harm to themselves or others, and enable them to achieve positive outcomes in adulthood.
This report is based on an analysis of the evidence received, which represented a wide range of views on a number of complex issues. ■

Notices

Talking Trouble Workshops

These workshops are about listening, talking, vocabulary, getting across thoughts and ideas, expressing emotions, making friends and learning.

Oral language is part of what we all do every day and plays a key role in successful participation and learning at school and in the community. It is the foundation needed to develop literacy and it is also a protective factor for well-being and successful relationships. For some vulnerable children and young people, talking and understanding others' talk are challenging tasks. Spotting who those children and young people are and having a tool box of practical strategies to help is the aim of this workshop. Case studies of children and young people of a range of ages, practical examples, activities and videos will be used.

The workshops will be facilitated by speech-language therapists from Talking Trouble Aotearoa NZ (TTANZ). TTANZ is concerned with the language skills of vulnerable children and young people. They are involved in research at The University of Auckland, provide training to professionals who support vulnerable children and also provide clinical speech-language therapy services in education, care and protection and youth justice settings.

General workshop: For a general audience of those who work with vulnerable children/ youth.

19th August 2016 or 21st October 2016

Extension workshop: For those who have already attended a TTANZ general 1 day workshop. This workshop will focus on practical tools for the care and protection and youth justice contexts.

4th November 2016

Time: 9am – 3.30pm, lunch will be provided

Location: Lynfield Room, Fickling Centre, 546 Mt Albert Rd, Three Kings, Auckland

Cost: $200 (includes GST) per person. A $50 discount applies if you book the General and Extension workshops at the same time.

Book: To arrange a booking and payment by invoice or Paypal, email contact@talkingtroublenz.org

TTANZ can also design and deliver a bespoke workshop for your organisation or group of professionals. Contact us on contact@talkingtroublenz.org

www.talkingtroublenz.org

Notices

The Capital and Coast DHB Regional Youth Forensic team supported by the Werry Centre Child & Adolescent Mental Health Workforce Development are *pleased to host:*

Youth Forensic Mental Health Hui

Government agencies working in partnership with communities to improve outcomes for vulnerable youth.

Naku te rourou, nau te Rourou
Ka ora te tangata

Friday 7th October 2016
9.00 am – 4.00 pm
NAPIER

This hui is being convened by the Capital and Coast DHB Regional Youth Forensic team. It will bring together people in Hawke's Bay who work with vulnerable youth, in particular youth who have mental health problems and engage in antisocial behaviour. The principal aim of the hui will be the building of strong bonds between government agencies and the communities they serve, with a view to strengthening existing partnerships, creating new partnerships, and identifying gaps in service delivery.

The target audience comprises the main government agencies involved in this work (Health, Police, MSD, Corrections, Education) and a broad range of NGOs and community groups who foster, supervise, teach, support, counsel and mentor young people.

There will be a particular focus on the needs of Tangata Whenua youth, as they are over-represented in the criminal justice system, and have comparatively poor outcomes with regard to assessment and treatment of mental health problems.

Invitation to the hui is open, and there is no cost to attend, but koha will be gratefully received. Although our primary interest is in bringing together members of the Hawke's Bay community, delegates from other parts of Aotearoa are welcome to attend and join our conversation.

This hui will provide a useful training opportunity for clinicians who work in mental health services, and as such, is being supported by the Werry Centre.

Catering will be provided.
There is no cost to attending the day, but koha is welcome.

Account Name: Capital & Coast District Health Board
Account Number: 03-0584-0198101-02
Please Quote Reference: 8357-5700
Remittance Advice to: accounts.receivable@ccdhb.org.nz

TO REGISTER FOR THIS EVENT PLEASE VISIT
www.werrycentre.org.nz