"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.
Contributions, feedback and letters to the Editor are not only acceptable, but are encouraged.

Youth Court Website: http://www.courts.govt.nz/youth/ **No.19, November 2005**
(Now includes a database of reported and unreported Youth Court cases)

When the newspapers have got nothing else to talk about, they cut loose on the young. The young are always news. If they are up to something, that's news. If they aren't, that's news too.

Kenneth Rexroth

In this Issue …

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Why Publish "Court in the Act"?

Principal Youth Court Judge A J Becroft

NEWSPAPERS often focus on the negative side of youth justice. Serious crimes and violence make for good copy but as "Court in the Act" readers know, this is only a tiny part of the story. There are plenty of good news stories all around New Zealand thanks to the dedication of a wide variety of youth justice professionals. Court in the Act is designed to tell the whole story about youth justice and inform this youth justice community.

As there is no other national youth justice publication dealing with current issues, relevant cases, and important overseas developments, I will continue to produce "Court In The Act" – but simply as a foretaste of a more organised and regular publication to come. Until the arrival of a new publication, my office will act as a "clearing house" for all matters of interest regarding youth justice. I am happy to send out any items of national interest that people want to send me.

We have also 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: Jail Not the Answer to Youth Crime

Rod Morgan, Chair of the United Kingdom Youth Justice Board argues that improved community and family services are the way to tackle youth crime.

This "think-piece" first appeared in The Guardian on 24 August 2005.

LISTENING to young people talk candidly about why they are in custody – some have committed very serious crimes, others are prolific offenders – may lead many viewers of a Channel 4 documentary to be shown tomorrow night to conclude that locking up more young offenders sooner rather than later, and for longer, will save us a great deal of grief in the long run.

This is not the solution. If you listen very carefully to what the young people say about their lives, you'll see that in addition to causing trouble, these young people are highly troubled and traumatised.

The characteristics of young people in custody suggest that effective crime prevention should be a matter for every public service. Two-thirds have been excluded from education and nearly half of school-age children in custody have literacy and numeracy levels below those of the average 11-year old. Over a quarter cannot read, write or count as well as an average seven-year old. Four in 10 have been in the care of a local authority. Almost a fifth have been on a child protection register, while 40% say they have been dependent on drugs or alcohol at some point in their lives. Just under a third have significant mental health problems.

These are some of the most deprived and marginalised young people in our society. They have multiple problems and many have been failed by their families and public services. We cannot make excuses for their behaviour: they are causing real problems in their communities and must take responsibility for their actions. But it's time we asked a fundamental question: is locking them up really the answer?

The number of children jailed in England and Wales has risen by 90% since the early 1990s, despite British Crime Survey figures that show an overall fall in crime of 39% since 1995. There are a number of reasons for this increase in incarceration: both adults and children are committing more violent crime, and are using more alcohol and illegal drugs. The courts have also become much more punitive: we now lock up more children than almost any other country in Western Europe.

Is it possible that crime is falling because more young people are locked up? There is no evidence to support this. Clearly the minority of offenders that are caught and imprisoned cannot commit crime while they are in custody. But a stubbornly high percentage of young people re-offend when they are released.

So what is the long-term answer? The earlier we tackle the root causes of crime, the more likely we are to divert children and young people away from it. *Youth Justice Board* (YJB) research shows that if a young person has not offended by the age of 14, they are unlikely to offend in future. So early intervention is critical.

The government has recently increased funding to expand targeted crime prevention programmes pioneered by the

YJB. These projects engage children at risk of offending, and in some cases their families, too. They help ensure that vulnerable and troubled young people get access to mainstream services.

We have also provided courts with another option for dealing with persistent and serious offenders: courts now have access to an intensive community sentence that combines surveillance with a sustained focus on addressing the causes of offending.

But there are no easy answers: by the time most children and young people reach the youth justice system, the majority are already damaged and deprived.

So what can be done? First, we must re-build community youth services. We must engage more young people in education and vocational training, and not resort to "zero tolerance in the classroom". We need to make sure that mainstream services meet the needs of children already on the edge of society. Second, we need to work with parents who, for whatever reason, are ill-equipped to provide a structured, caring environment for their children.

Too many commentators seem to think that preventing youth crime is a matter primarily for the criminal justice system. It is not. Too often we're told that longer, harder spells inside will cure the nation of its youth crime ills. They will not. Preventing youth crime is an issue for everyone – politicians, teachers, doctors, youth workers and parents.

Only by listening carefully to young offenders, and looking hard at the role that our mainstream services must play, will we make real progress.

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2. Insurance Companies and Consequential Loss

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

AN ARGUMENT gaining acceptance in some quarters is that insurance companies have no right to reparation payments ordered under the CYPF Act and that their views should not be considered at Family Group Conferences. The claim is that reparation to insurance companies amounts to a consequential loss and that the CYPF Act limits reparation to cover direct losses only. As insurance companies cannot be described as victims, they should not get reparation and should, instead, sue for the amount in the civil Courts.

Section 283(f) CYPF Act allows the Youth Court to make a reparation order to compensate for emotional harm or loss of, or damage to, property caused by a youth offender. Section 287 states:

> Any sum ordered to be paid pursuant to section 283(f) of this Act in respect of the loss of or damage to property shall be limited to the cost of replacement or (as the case may require) the cost of repair, and *shall not include any loss or damage of a consequential nature*. (emphasis added).

The Family Court may also order that reparation be made to compensate for damage caused by a child offender (section 84 CYPF Act). This is subject to section 84(2) CYPF Act which excludes consequential loss in similar language to section 287.

The argument that reparation to insurance companies amounts to consequential loss appears to suppose that insurers are third parties and not the person who has suffered the loss or damage. This is incorrect because under the doctrine of subrogation, the insurer stands in the shoes of the insured and is not a third party in relation to loss or damage to the property insured. Thus, the insurance company suffers direct loss to the full extent that loss is suffered by the insured. Therefore, there is no reason why a Family Group Conference cannot consider reparation to insurance companies or perhaps why an insurance company cannot attend the Family Group Conference as a victim.

For completeness it is noted that, in law, consequential damage or loss usually refers to pecuniary loss, such as loss of profits, that results from physical damage. A commonly claimed consequential loss in cases of damage to goods is loss from being unable to use goods during the repair period (cf. *The Laws of NZ*, Butterworths). Reparation orders cannot compensate this type of loss.

Feedback on this issue is welcome and can be sent to Rhonda.Thompson@justice.govt.nz.

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3. Yomping for Change!

This article was written by Rory McCallum of the U-Turn youth programme. The 15 week programme is run by Henare O'Keefe and Rory McCallum and caters for 10-13 "at risk" teenaged boys aged between 14 and 17 years. Flaxmere-based U-turn aims to give the boys the skills to turn their lives around and either head back to school or find full-time employment. The programme pushes the boys outside their comfort zones through outdoor challenges such as kayaking, abseiling and "yomping". But it's not all wilderness based – the young men also take part in activities such as grooming, presentation, independent living, public speaking, CV preparation and achieving their drivers licence. The CYFS-funded programme gives the boys the opportunity to gain a New Zealand pool lifeguard award, a first aid certificate and NZQA unit standards.

On Wednesday morning at 0230 hours I was lying outside the three U-turn cadet tents (unbeknown to them) on a cloudless calm night gazing up at the enormity of the Milky Way.

The twelve young men had finally fallen into a deep slumber. I had convinced myself that this was my last U-turn course. I had basically had enough!

21 years in the British Royal Marine Commandos had afforded me with incredible hardships and amazing highs. The privilege of working with men of strength, integrity and compassion helped forge my own standard of what it is to be a decent human being.

My old Sergeant Major, one of my many mentors had told me many years ago, "continually question the path you're on and if it's not taking you where you want to go, then have the balls to jump off!"

The day before

0545 hours. I rolled into the Flax Rock Adventure Centre at my usual time to fulfil my managerial obligations before I swap hats and become an instructor/matua on the U-turn course. My best mate, business partner and fellow Matua, Henare O'Keefe, is up North wowing hundreds of children with his amazing repertoire of skills as the complete entertainer he undoubtedly is.

Today is the day the U-turn cadets go on their first expedition, a three-day excursion into the beautiful but unforgiving Mohaka Reserve. We normally embark on this challenging excursion in week six but decided, due to the miraculous metamorphosis shown in the boy's behavior on previous courses, to attempt it two weeks earlier. Change comes at a price, which is to see the boys at times at their very worst. I make the final preparations and await the boy's arrival. Henare had jacked up a replacement for himself, a local Police Constable by the name of Brad Clarke. I had never met the bloke but my first impression was a very good one, and over the next three days he exceeded my expectations proving a great man with a cracking sense of humour.

After a full breakfast of bacon and eggs cereals etc. we set off arriving at the drop off point (D.O.P.) for the start of the yomp, the lads had to carry all their equipment which averaged out at 45 pound packs. A 3.5k warmer took us down to the river where we attempted to cross the mighty Mohaka using the three-man chain system. Unfortunately half way across common sense got the better part of valour, as the river was running too swiftly, we made a timely retreat and from the waist up we were still dry. Yomping is 90% mental stamina, as it's a constant fatigue that promises never to go away. That's why it's so

effective at stressing these young men who only understand instant gratification. 400 metres up a steep hill the first crack appeared and the lad (psychologically) could go no further. Brad pushed and I pulled the somewhat large 123kg frame. Encouragement and firm affirmation soon did the trick, years of self-doubt faded away and new belief slipped in and the first U-turn of the day was stuck forever in the complex psyche of a young man's brain. He managed the remaining 14k with ease. The rest of the boys puffed and panted up steep escarpments, all moaning and groaning in their unique way. I was vilified as the ogre, being the perpetrator of the worst day of their lives. Again many U-turns unfolded some quietly and some not, the group "pain" experienced created a sense of shared achievement and yet unseen closeness with the lads. They all knew they had achieved something great. The role of a Matua is complex - it's not about lecturing and attempting to impart years of wisdom but knowing when the time is ripe for affirmation, encouragement and gently challenging the boys' perceptions of themselves and the world they live in.

It's about … knowing when the time is ripe for affirmation, encouragement … challenging the boys' perceptions of themselves and the world they live in.

We arrived at the beautiful Everet campsite (no other intrepid campers infringed on our solitude). The mood of the group was fatigued but jubilant. It was an incredibly hot afternoon (5pm) and the boys were taken to swim in the icy waters of the Mohaka. I preferred to utilize my skills of observation and remain on the bank! The boys had a fantastic time frolicking in the water, watching them lark around with one another as mates, it became clear that they had overcome the need to hold up previous facades with one another. The method of hard work followed by reward is a constant feature of the programme. Boys are wired to have fun through physical activity and through this medium they learn more than they know.

Then followed 30 minutes of circuit training up a steep grassy bank, my excuse to them was this was the best method for removing lactic acid from weary limbs, although unconvinced they met the challenge. The boys then put up their tents and were issued with stoves, pots and food and set about creating their own gourmet meal. For many it was their first experience of cooking, one confused lad earnestly asked who would be cooking his evening meal!

We then all played American gridiron football until it was literally too dark to see the ball or for that matter the opposition. We waited until it was pitch black and then ferried the boys 1.5k up a small track. The object was to get the boys to walk back to the campsite alone at 5-minute intervals. Three staff were placed along the route to observe. This is incredibly challenging for the lads, as most have never experienced this type of darkness and sense of aloneness. The sky was peppered with stars and the boys saw many shooting stars and were totally blown away by the experience. On safe return to base we debriefed the day and sent the lads off to bed.

This fantastic day was marred by a serious incident. On the way back to the tents three of the boys were involved in high-spirited play, which erupted into aggression, resulting in two of the boys being kicked by another. Understandably distressed Brad (the copper) and I set about resolving the situation, unbeknown to us one of the boys who'd been kicked slipped into the darkness and armed himself with a small branch and struck the instigator over the head. No physical damage occurred but the seriousness of the situation was obvious. Brad came into his own as the group were assembled and he explained the consequences of assault with a weapon e.g. 7 years incarceration! These scenarios are obviously alarming but with skill the situation can become an incredibly powerful tool for addressing deeply entrenched but dysfunctional ways the boys manage their conflict. All the boys retired to their tents. To ensure no further incidents occurred I decided to sleep in the open within close proximity to the tents, so close I could hear all activity. To refer to my opening words, the content of the lad's conversation that went on well into the small hours of the night made me seriously question what I was trying to achieve with these young men. I learnt more about their lives and the manner in which they view the world in this period of time and to be frank I was heavy in heart. Once again my old Sgt Majors words came back resoundingly clear, "**get over it**"!!

The boys were woken at 0730 and had to make breakfast, be prepared and ready by 0830. The problems from the night before had dissolved and the three boys were now the best of mates. They failed to meet the deadline and the consequence for this was 30 minutes of hard physical training on the now notorious grassy knoll! A small 2k yomp to the transport saw us embark to the mighty Mohaka Bridge for the challenging 150ft abseil to the cold water below. Matua Henare joined us at this stage of the trip. It was great to have him back and his presence lifted my spirits. This is one of the best abseil sites, as it offers wonderful exposure and 360 views up and down the river, whilst being completely safe. The lorries thundering over-head towards Taupo ensure that shaking adds the perfect final touch. The art of the adventure-training instructor is to create perceived risk, which in turn evokes fear, and consequently when overcome invokes wonderful personal growth. The young men were magnificent - all but three completed the challenge. On return to base, which included another 2k yomp the boys cooked themselves lunch which was followed by a 5k riverside walk to the old copper mine. The mine is absolutely teeming with Weta's. Unfortunately, I forget to tell the boys this so when they were all cosily stood at the back of the mine we turned on the head torches! The boys repaid us with the desired reaction (you've gotta get your laughs where you can). Near the cave is the most beautiful deep swimming hole, a high diving competition ensued, with the writer taking top honours with a winning dive followed closely by Brad.

Once back at base the boys again prepared their evening meal. This was followed by a debrief on the past two days, each boy giving their own account of the highs and lows of their experiences. Several hours of spotlight took them up to a thankfully peaceful and uneventful bedtime.

Unable to meet the deadline of 0830 breakfasted and packed ready to leave, the grassy knoll had gained even greater notoriety than the knoll in Dallas, Texas! Once back in Flaxmere the remainder of the day was spent cleaning and returning stores.

Back at Flax Rock Adventure Centre

Friday was a magical day with the U-turn cadets. For the first time they worked as a complete unit, launching themselves into the day's activities with incredible commitment. Henare had liaised with Te Tairawhiti District Health Board staff that wished to visit for the day, and observe the boys in action. The lads rose to the challenge and were proud to be centre stage. The last hour of Friday was spent in the pool undergoing N.Z. Pool Life-Guard Training. Henare and I witnessed something special; yes the boys were working hard but between lengths they were all stood in the water at the poolside, talking quietly, smiling, laughing with arms draped over one another's shoulders. They were all different, they had shared something special. A band of brothers.

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4. Opening of New Youth Justice Facility Te Puna Wai o Tuhinapo

TE PUNA Wai o Tuhinapo, a new Child, Youth and Family youth justice residence at Rolleston, opened in early October.

Te Puna Wai is a purpose-built youth justice facility for up to 32 young people, replacing the youth justice wing at Kingslea Residential Centre.

The facility was opened by Child, Youth and Family Minister, Ruth Dyson and attended by over 300 guests including the Principal Youth Court Judge A J Becroft, CYFS staff, local community members, Members of Parliament, and representatives from the Canterbury youth justice sector.

Speaking at the opening, Ruth Dyson highlighted the importance of a purpose-built youth justice facility.

"Most people agree that it is better for young people to be in specialised, separate youth justice facilities. Current demand means that at times young people are held in Police cells, alongside adult offenders. Clearly this situation is not acceptable," said Ruth Dyson.

"Te Puna Wai will allow South Island young people to remain in the South Island, near their families and whānau, in specialised care and out of Police cells."

She also thanked the Rolleston community for their support and acknowledged their importance to the facility.

"The development of this facility is testimony to the importance of partnership between Government and communities in arriving at good outcomes for all concerned.

"We are standing here today because of the goodwill and commitment on the part of the Rolleston community to welcome this facility and involve themselves in shaping its place in their community," said Ruth Dyson.

Child, Youth and Family Chief Executive Paula Tyler also addressed the opening and paid tribute to staff and their work. She emphasised the importance of a purpose-built facility in supporting that work.
"Staff are the basis on which the residential service is built, their work is crucial to its success. This new, purpose-built facility will support them in this work." said Ms Tyler.

"The modern, safe facilities of Te Puna Wai allow staff to concentrate on the job of helping young people to make changes in their lives.

"The physical environment provides improved opportunities for participation in education, recreation and rehabilitation. Security is extremely modern and frees up staff to focus on providing efficient, effective and quality care services to our residents," said Ms Tyler.

The facility's full name is Te Puna Wai o Tuhinapo. Tuhinapo is the name of the Hakatere (Ashburton) River mouth. "Puna Wai" is a water spring but in terms of the name, the most accurate translation would be "The Spring of Life of Tuhinapo" or "The cleansing spring of Tuhinapo". The intent of the name is to give a sense of bathing in or having one's wairua cleansed by the waters of the area.

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"Our life is what our thoughts make it"

Marcus Aurelius (AD121-180)
Roman Emperor

From a sign on a wall in a youth justice residence that runs a reducing youth offending programme

5. Police Cell Remands Reach Crisis Point

TOTAL nights spent in Police cells by young people on remand skyrocketed to 359 in September. And March was also a busy month with 250 nights spent in Police cells. As at the end of September, 562 young offenders had spent a total of 1969 nights in Police cells compared with the full-year 2004 total of 1464 nights (by 523 young people) and 1871 nights for 2003 (by 574 young people).

The problem is a difficult one to fathom given that youth offending statistics are very stable and Police apprehension rates for under 17 year olds decreased in the last year. Similarly, numbers of young offenders appearing in the Youth Court are very stable and there is nothing to suggest that offending by young people is becoming more serious – for example, numbers of aggravated robberies and violent assaults remain relatively unchanged. Add to this the fact that CYFS residential secure bed space has increased from 75 beds (January 2004) to 102 beds (November 2005), and the fact that numbers of young people in Police cells have reached crisis proportions is even more perplexing.

There are a number of possible causes for this problem including:

1. A shortage of residential beds given predicted demand.
2. Increased use of the Supervision with Residence sentence (CYPFA, s283(n)) and, therefore, fewer beds available for remand purposes. There has been a proportionate increase in the use of Supervision with Residence (SWR) orders and a corresponding decrease in the number of Supervision with Activity (SWA) orders in recent years.
3. A gradual erosion of community placements available to take the pressure off residential beds, both in respect of the SWA sentence (as a true alternative to SWR) and in respect of remand placements
4. A further difficulty may be section 18 of the Sentencing Act 2002, which prohibits a sentence of imprisonment on under 17 year olds, except for "purely indictable offences". This means that a small group of offenders are subject to repeat SWR sentences as they cannot be convicted

and transferred to the District Court for a sentence of imprisonment

5. Slow progress through the youth justice system while on remand, including issues such as delays in obtaining specialist reports - eg psychiatric/psychological reports

Judge Becroft suggests the increased use of SWA orders as a true alternative to SWR. This would involve developing suitable community programmes where SWA orders could be effectively carried out. Other suggestions include:

- an Intensive Supervision and Surveillance Programme (ISSP), with young offenders effectively subject to "home detention" wearing "ankle bracelets" rather than being contained in a CYFS residence.
- supervised bail programmes.
- bolstering community-based resources and homes to enable the "containment" of young people on remand.
- faster access to specialist psychological/psychiatric reports to enable cases to progress more quickly through the youth justice system.
- reduce the time taken to complete depositions hearings.

The only sure fire way to solve the problem of lengthy police cell remands and residential bed shortages is to find an extra 30 temporary beds over the next three years. However, some or all of these alternative solutions could be implemented to resolve the problem.

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6. Relationships not Reading

Dr Bruce Perry recently addressed the "Little-ees Lobby" at Parliament and argued the development of strong social and emotional skills in a child's early years was a vital precursor to educational achievement.

RAPID brain development in the first four years of life provides a "great biological gift" according to Dr Bruce Perry. In his recent address to the "Little-ees Lobby" in Parliament, Dr Perry focussed on the importance of developing strong social emotional skills in the early years. These emotional and relational skills are the precursor to optimal cognitive development in the brain meaning that, in the early years, the focus should be on relationships and not on the traditionally vaunted skill of reading.

Dr Perry argues that in the hunter/gatherer clan the ratio of developmentally mature people for each child under the age of six was 4:1 but modern childcare settings define best practice as 1 adult to 4 children, Dr Perry describes this as "biologically disrespectful" and "insane" giving the brain a tiny proportion of the relational interactions it requires for social emotional development.

This situation is worsened by the home situation - in the year 1500 the average living group was 20, by 1960 it was five and in 2003 the average living group in the United States was down to three people. Dr Perry argues that children need interaction with more neighbours, aunties, uncles, fathers and younger and older children. Positive interactions with these people allow the child to grow into an adult capable of selflessness, sharing and creativity.

> ***"Biologically disrespectful child rearing has caused the materially wealthy West to become impoverished in relationships"***

"Biologically disrespectful" child rearing has caused the materially wealthy West to become impoverished in relationships, argues Dr Perry. He concludes that governments need to make "biologically respectful" decisions that take account of factors such as early brain development and the need for strong relationships. On an increasingly crowded planet with limited resources it is vital that people are able to build strong relationships and share. And once children have laid down a strong social emotional foundation they are then able to learn to read, write and think effectively.

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7. NetServe: Non-Enrolled Truancy Service

Datacom Employer Services hosts the NETSERVE operation for the Ministry of Education.

NETSERVE comprises 35 full time and part time NETS advisors located to cover the New Zealand school community and a small HO team in the NZ Post Building in Wellington.

Each day NETSERVE receives approximately 15-20 referrals via the Ministry of Education. In most cases the original referrer is the school, which after trying to get the student back into school for 20 days refers the case to the Ministry of Education.
After checking its other registries for exemptions and alternative education approvals the Ministry of Education refers cases of concern to Datacom's NETSERVE. Cases are sent to Datacom's local NETS advisers.

The key tasks we carry out are:

1. Find the student

a.) We talk to the original referrer
b.) We talk to neighbours and extended family members
c.) We follow up leads with the NZ Police, WINZ, Housing NZ Corp, NZ Immigration Service and CYFS.

2. Help the student back into school or some other lawful education

a.) We talk to the student, their families and school and find out why the student is not at school.
b.) We work out which school or program will suit the students needs

Outcomes:

In 2005/06 Datacom closed 3,300 cases.
• Approximately 1,300 (40%) students were found in other schools.
• Approximately 1,000 (30%) students were assisted back into school or other legal placement
• Approximately 500 (12%) turned 16 while we were searching for them or placing them.
• Approximately 130 (4%) were unsuccessful assignments owing to parental of student refusal.
• Approximately 130 (4%) were unsuccessful assignments because we could not locate the child or the family. We run a 'Cold Case' process from time to time to try to revive these cases.
• The remaining 10% of cases are foreign student, home school exceptions, in residential care, with CYFS, the Police or under age 6.

Our demographic profile:

• 76% of our referrals are secondary age students
• 58% of our referrals are Maori
• 13 % of our referrals are Pacifica students
• 52% of our referrals are male, 48% are female
• 50% of our referrals are from Auckland.

Our goals are:

• to begin action on a case within 7 days of referral

• to close a case within 30 days of referral. In 2004/05 we fell short of this because of the back log in July 2004. Currently we achieve these goals in about 50% of the cases, but with the additional resources approved from the Ministry of Education we are catching up.

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----Legal Focus----

9. Powers of JPs and Community Magistrates in the Youth Court

In the last edition of "Court in the Act" we included a brief note about the powers of Justices of the Peace and Community Magistrates in the Youth Court. In response to requests we now include a more detailed article on the issue by Rhonda Thompson, Research Counsel to the Principal Youth Court Judge.

THE YOUTH Court is a specialist division of the District Court established by the Children, Young Persons and Their Families Act 1989. As such, the Youth Court exercises criminal jurisdiction in an innovative way that emphasises diversion away from courts and

custody while endeavouring to rehabilitate young people and hold them accountable for their crimes. There is a clear statutory emphasis that Youth Court work be conducted by specialist Judges and Youth Advocates who are selected because of their particular attributes and training to work in this highly specialised field. Consequently, the role of the Justice of the Peace and Community Magistrate in the Youth Court is important but limited.

1. First Appearance after Arrest

When operating in this specialist Court environment a Justice of the Peace or Community Magistrate ("JP/CM") should be aware of section 321(5) of the Children, Young Persons and Their Families Act 1989 ("CYPFA") which reads:

> [For the avoidance of doubt, it is hereby declared that, in any case where a child or young person *first appears* before a Youth Court *following his or her arrest*, the following powers may be exercised in relation to the child or young person by a Justice [or Community Magistrate]:
> (a) The powers conferred by section 238(1) of this Act:
> (b) Where the child or young person is legally represented in the proceedings, the powers conferred by section 246(b) of this Act.]

Thus, JP/CMs may only exercise powers under section 238(1) CYPFA when a child or young person *first appears* before the Youth Court *following their arrest.* Section 238(1) enables the JP/CMs to remand the child or young person at large, on bail or in custody pending further hearing. Where the child or young person is legally represented and indicates a plea of "not denied", powers to direct a Family Group Conference under section 246(b) CYPFA may also be exercised at the young person's first appearance. Section 246(b) enables the JP/CM to direct a Youth Justice Co-ordinator to convene a Family Group Conference (FGC) and adjourn proceedings until that FGC has been held. Generally, an FGC should not be directed unless the Police have all the relevant information on their file such as the summary of facts and the name and address of the victim. If not available, this can seriously hamper the work of the Youth Justice Co-ordinator. It should be stressed that these powers only relate to the young person's first appearance. JP/CM powers appear to be further limited in that where a young person who has not been arrested first appears before the Court after a "pre-charge" Family Group Conference, the JP/CM has no power to deal with that young person. Although typically, such young people will be remanded into the regular Youth Court list – over which JP/CMs cannot preside in any case.

Thus, the remand powers of JP/CMs are limited to a young person's *first Court appearance following their arrest*. This raises a difficult issue because remands of young people in Police cells should ideally not be for longer than 24 hours at a time, except in weekends. They should be reviewed daily. This is best practice and has been adopted by the Youth Court. Despite the fact that the number and length of Police cell remands is increasing, small, rural centres often find themselves without a Judge. However, a JP/CM cannot step in to conduct these reviews as they amount to second or subsequent appearances in Court and, as noted, JP/CM power is limited to first appearances. Daily reviews of Police cell remands must therefore be dealt with by a Youth Court Judge, if necessary by telephone conference. JP/CMs should resist an invitation by Court staff to preside over such proceedings if they take place following the first hearing after an arrest. Youth Court Judges have a clear protocol and knowledge of how to get accurate information concerning bedspace in youth justice residences and also protocols designed to keep up pressure on those responsible for bed availability in such residences. For the avoidance of doubt we stress that JP/CMs should only remand for 1 day unless the hearing takes place during the weekend or a public holiday.

2. Preliminary Hearings

JP/CMs may be called upon to conduct preliminary/depositions hearings under section 274 CYPFA where there is no Youth Court Judge or District Court Judge "available" in the case of:

a) **Murder/manslaughter by a child or young person**;
b) **Purely indictable offences by a young person** (except offences that involve sexual violation: see Summary Proceedings Act 1957 section 185B). JP/CMs should only do this in rare cases, however, as highly complex jurisdictional and procedural decisions are likely to arise. These may concern the taking of a plea (for example under the Summary Proceedings Act section 153A), decisions

resulting from a youth being jointly charged with an adult and the complex decision involved in whether to exercise the discretion which allows a young person Youth Court jurisdiction (CYPFA, s275, s276). In *S v District Court at New Plymouth* (1992) 9 FRNZ 57, the High Court held that two JPs had failed to give S (14) the opportunity to be dealt with in the Youth Court under section 275(1) CYPFA on grounds that were "too simplistic". S was charged with aggravated robbery, unlawful discharge of a firearm and assault - charges that the JPs considered were too serious to allow the making of a section 275 offer. However, remitting the matter back to the JPs and directing that they should give S the opportunity to be dealt with in the Youth Court, the High Court held that the JPs had failed to give sufficient weight to the principles in sections 4, 5, and 208 of the CYPFA. That the JPs had based their decision solely on the severity of the offence was "too simplistic". Further, the benefit to S of a speedy trial in the Youth Court far outweighed the desirability of having him tried jointly with his co-offender, G, who was to be tried in the High Court. This all shows that the "jurisdictional decision" at the end of depositions is highly complex and should ordinarily be exercised by Youth Court Judges.

c) **Offences where there may be an election of trial by jury by a young person** (i.e. offences where there is liability on conviction to three or more months in prison, s66 Summary Proceedings Act 1957). These will be infrequent, as a young person rarely elects trial by jury and invariably chooses to remain within the Youth Court jurisdiction.

3. Bail

A JP/CM cannot exercise any of the powers conferred by section 34 of the Bail Act 2000 as to variation, revocation or substitution of any bail condition. This is consistent with JP/CM powers being limited to first appearances. Under section 35 of the Bail Act, JP/CMs *must reconsider* the bail of a young person who the Police have arrested believing they have absconded, may abscond or have contravened, or failed to comply with, any condition of bail. It is difficult to see how a JP/CM could *reconsider* bail without then varying, revoking or substituting the young person's bail. However, as the young person is likely to have been arrested, albeit a second time, before section 35 will apply, their appearance may arguably be described as a "first appearance" since that second arrest, giving the JP/CM authority to make orders under s238(1). Thus, only in this circumstance, it appears that the JP/CM in *reconsidering* bail, may be authorised to vary, revoke or substitute bail.

4. Further Powers

JP/CMs may also issue search warrants for children and young persons who abscond from residences or places of care, under section 386 CYPFA. In addition, Justices have the same powers in Youth Court as they do in the District Court under the provisions of the District Courts Act 1947, Summary Proceedings Act 1957 ("SPA") and Bail Act 2000 that apply to Youth Court proceedings. These include:

- To issue summons and arrest warrants for young people under section 19(1)(a) & (b) of the SPA.
- To issue summons for witnesses under section 20(1) of the SPA.
- To withdraw arrest warrants for defendants and witnesses, under section 23(1) of the SPA.
- To make "emergency" adjournments, under section 45(2) of the SPA. In this case the powers in sections 46 and 47 to deal with the custody of offenders on adjournment do not apply but, instead, the principles set out in sections 238 and 239 of the CYPFA apply. This may present difficulties in the case of a depositions hearing conducted by a JP where the young person had already appeared before the Youth Court on the given charge. If an emergency adjournment was required, the JP/CM would appear to have no power to make a section 238(1) order for the custody of the young person as they are no longer on their first appearance.
- To order a rehearing under section 75 of the SPA (which is modified for Youth Court purposes by clause 2(g) of Schedule 1 CYPFA, so that the defendant need not have been convicted, but rather the charge "proved").

5. Conclusion

Justices of the Peace and Community Magistrates have an important function in dealing with young people appearing before the Youth Court although it is necessarily statute limited. Nevertheless, JP/CMs continue to provide a significant boost to the work of the Youth Court.

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Special Feature:

Reflections on the English Youth Justice System by His Honour Judge A J Becroft

Principal Youth Court Judge Andrew Becroft recently travelled to London to speak at the Commonwealth Law Conference and to study the English youth justice system. Here, he reflects on his observations of the English system made during his September 2005 trip.

Ten views of the New Zealand system reinforced by the trip:

1. The New Zealand Youth Aid Police commitment to diversion/alternative action is outstanding. Up to 80% of young offenders do not come to Court, and do not need to come to Court, provided they are given firm, prompt, efficient and community-based interventions. Most will not re-offend. *Question:* Could our diversion/ alternative action rate be even higher?

2. The New Zealand Family Group Conference System (as a disposition mechanism) has in it the seeds of genius. When practised well, there is nothing better.

3. Youth Justice FGC Co-ordinators need to be "sector leaders" and must be given adequate time not only to properly prepare for FGCs but also to establish community links and contacts.

4. Our specialist youth advocates play a pivotal role and make a fantastic contribution. Their value is easily under-estimated. Many lawyers appearing in the English Youth Courts seem to not fully understand youth law or procedure.

5. Specialist Youth Court Judges, drawn from a pool of District Court Judges and who take a leadership role, as in New Zealand, are a great strength.

6. Continuity of Judge for young offenders will reap dividends and ensure better case progress and management.

7. A clearly structured appointment system for Youth Court appearances will avoid the development of "Junior Adult List Courts", as in England.

8. The ability to refer young offenders into the care and protection system of the Family Court is vital: see s280 Children Young Persons and Their Families Act 1989. The "radical" separation in England between youth justice and care and protection (never the twain shall meet) is counter-productive.

9. So far since 1989, our youth justice system has avoided political swings of the pendulum and knee jerk reactions. It is a highly principled system, and is sound in its structure and philosophy.

10. A highly punitive approach, is counter-productive in the long term, especially for serious young offenders who, paradoxically, are most in need of having their lives rebuilt.

Ten Ideas/Innovations we could learn from the English system

1. The “ASSET” suite of risk and needs assessments, a compulsory set of tools to assist police and youth justice social workers, is said to have a 78% success rate in predicting re-offending, and is very impressive. New Zealand could benefit from such a co-ordinated, cross departmental “tool” and, in my view, its use should be mandatory.

2. Remands in Police cell custody could be avoided through the use of “Ankle bracelets” that are worn by young people remanded on bail to their own homes. This would be a viable alternative to section 238 (1)(e) orders and could free up very scarce residential beds. BUT: only if the family is supportive and the home environment is suitable.

3. Supervision with residence could be delivered by a form of home detention, again using an ankle bracelet. Judges would give leave for the detention component of the sentence to be served at home, with CYFS to make the final decision and institute arrangements, where appropriate.

4. Supervision with residence could be extended to allow for an up to six-month residential component, followed by an up to twelve-month supervision component – tailored to suit the needs of the individual young offender.

5. A new sentence – Intensive Supervision Surveillance Programme (ISSP). In England this is very impressive giving comprehensive home based supervision to young offenders, short of a residential custodial sentence.

6. “Community members” trained and drawn from a panel, perhaps two at a time, could be entitled persons to attend at a Family Group Conference. This would provide community input, and more importantly, draw on wider community resources – employment, training, mentoring – to ensure the best chance of preventing re-offending.

7. England has a stronger and better managed system – with a strong managerialist approach to all aspects of the process. For instance, there is a minimum standards booklet, with clear directions and expectations for youth justice social workers, police officers etc. to adhere to at all stages of the process.

8. Youth Inclusion Programmes - The Youth Inclusion Programme in England is made up of 72 projects based on high crime, high deprivation neighbourhoods across England and Wales. Projects aim to prevent youth crime in those neighbourhoods by targeting the 50 most at-risk young people in the area (the core group), assessing their needs and providing meaningful interventions aimed at addressing those risk factors. Young People typically are either on the cusp of offending or are already involved in low level offending (around one third of core group members generally have an arrest history). In order to engage with the 50 most at risk young people, projects work with around another 100 peers and siblings of core group members.

9. Parenting Orders made by the Youth Court directing parent(s) to obtain counselling and assistance to improve their parenting skills.

10. Statistical analysis of youth offending (regional differences/trends etc) and internal communications within the English youth justice system and between sectors of the system is far superior to New Zealand. We must improve.