"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 to those involved in the Youth Justice community. Contributions, feedback, letters to the Editor, are not only acceptable, but encouraged

Youth Court Website: http://www.courts.govt.nz/youth/ No.10, May 2004

"Fifty years from now it will not matter what kind of car you drove, what kind of house you lived in, how much you had in your bank account, or what your clothes looked like. But the world may be a little better because you were important in the life of a child."

Anon
(from "Project K" publicity material)

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New Zealand Youth Justice Conference – May 17-19, 2004, Wellington

Final planning for the Conference is now completed. A Conference brochure is available in hardcopy from Child Youth and Family Services (CYFS) or on the CYFS website at www.cyf.govt.nz .

Registrations are huge and over 500 participants are expected. This will be a very significant national conference. It really is a "must attend" for all those directly or indirectly involved in youth justice within New Zealand. Our last similar conference was in 1998. It is well overdue. I think there will be items of interest for everybody and it will be a good chance to consider the challenges and directions for youth justice in the years ahead. I urge you to attend, even at this late stage, assuming there are still places available. If not, you may be able to visit for a day or half a day to hear some of the plenary sessions at the Wellington Town Hall.

A Light on Blue Light

This material is provided by Brendon Compton – National Co-ordinator, New Zealand Blue Light

"Blue Light has been established now for 27 years and is continuing to expand with four new branches registered since January this year. This now brings the total number of registered and active branches in New Zealand to just under 60.

Blue Light is continuing to focus on the organisation of social, cultural, sporting

and educational events free from drugs, alcohol and violence with the aim of reducing youth crime whilst at the same time building positive relationships between the Police, young people and the community.

Although Blue Light committees have historically had only Police staff involved with them there has been over the past several years positive changes to this structure with local community groups such as Rotary and iwi groups as well as other interagency involvement such as staff from CYFS's and Truancy on these committee and the running of localised events.

This interagency and community involvement with Blue Light has shown to be very successful bring together like-minded and youth orientated people with a range of skills and expertise.

National events scheduled for this year include a road safety poster competition, the holding of the largest simultaneous under age dance ever held in New Zealand, a PCT Fear factor competition to be shown on the children's television show "What Now" and the 10th annual Rainbows End Funday with an estimated 5000 children to be attending.

This years Blue Light AGM and Training Conference is being held in Whangarei from May 27th to 30th and as in the past will focus extensively on event management, youth facilitation training, risk management training and working with youth at risk. This conference is open to all interested persons regardless of whether they re currently a blue Light member or member of the Police.

For details of the conference or to register contact either Brendon Compton – National Co-ordinator, New Zealand Blue Light on Ph: 021 453 500 or nzbluelight@xtra.co.nz "

Database of Youth Court Decisions

I have tried unsuccessfully to encourage the two legal publishers – LexisNexis (formerly Butterworths) and Brookers, to produce a Youth Court Report Series (YCR). For the moment, I do not think this will eventuate. Both publishers are however interested in developing an on-line database of Youth Court cases. There is no such database currently available.

We are working on creating such a database in my office, which will be posted on the Youth Court website within the next two-three months. This will be available to all Youth Court users. My research counsel, Clare Needham, has this project in hand. It is still not too late to send us relevant cases that you may have – even dating back to 1989! It still concerns me the cases that I have never heard of, all very relevant, are produced at various Youth Court hearings. They do not seem to be part of the "national pool" of important cases and are not reported anywhere.

If you have any of those cases, please don't hesitate to send a copy of them to Clare for inclusion at Clare.Needham@justice.govt.nz My hope is that once the database is up and running, then eventually all cases will be scanned into the database.

I also confirm that LexisNexis will report all relevant Youth Court decisions **only** in the District Court series (DCR). Similarly, Brookers will

publish relevant Youth Court decisions **only** in the Criminal Reports of New Zealand (CRNZ). This seems a sensible decision. After all, Youth Court decisions are primarily about youth justice and involve criminal or quasi-criminal issues. At present they are scattered throughout a variety of reports including the Family Court Report series, which is very confusing and means that relevant decisions are frequently overlooked.

Risk and Needs Assessments

This will be a workshop topic at the National Youth Justice Conference. I set out below a note from Judge Chris Harding of Tauranga, which emphasises the importance of risk and needs assessments and the current Child Youth and Family (CYF) Policy as to when risk and needs assessments are required. You will see in probably 80% of the cases they should be carried out and available for a FGC.

If we are serious about addressing the causes of criminal offending and preventing a life of reoffending, then a risk and needs assessment is essential in any constructive decision making at a Family Group Conference (FGC).

Risk and Needs Assessments…

A note from
His Honour Judge C J Harding

A Vital Tool

For those involved in dealing with young people who commit offences, knowing the risks faced by the young people and their needs, is a vital part of working out an appropriate outcome which both holds the offender accountable, and endeavours to ensure that offending will not be repeated.

Youth Court Judges routinely need to know what those assessments have shown, and to ensure that the results of such assessments are placed before Family Group Conferences to enable the conferences to be fully informed when making recommendations to the Court.

Child Youth and Family have a clear policy as to when such Risk and Needs Assessments should be carried out.

Policy

The Ministry's policy requires Risk and Needs Assessments to be carried out in four situations.

1. On any repeat offender – that being any young person appearing in the Youth Court who has committed an offence or offences within the previous six months, or a young person referred to a Youth Justice Co-Ordinator who has committed any offence or offences within the previous 12 months.

2. All young people detained under s.238(1)(d) or s.238(1)(e).

3. Whenever a Youth Justice Co-Ordinator, during the process of convening a Family Group conference, feels as a matter of discretion that such an assessment should be done.

4. Where social work reports and plans will be recommending orders under s.283(k), (l), (m), or (n), of the CYP&F Act 1989. (Supervision, community work, supervision with activity, or supervision with residence.)

The tools used for such assessments include Cage Kessler, Suicide Screens, and Well Being Assessments.

The sort of detail which can reasonably be expected in cases where the policy applies is illustrated below.

The writer interviewed B on 21 July 2003 and completed a Cage Kessler and Well Being Assessments the outcome of this assessments is as follows:

"The Cage Screen Assessment *(identifies drug and alcohol abuse)* indicated that there are no drug and/or alcohol abuse issues with B.

The Kessler Screen Assessment *(identifies any psychological distress)* this assessment indicated that B's psychological state of mind needs to be immediately assessed by experts in Psychological and Sex Offender's field as a result of disclosure of sexual abuse.

The Suicide Screen Assessment *(which recognises any risk of suicide)* indicated that further assessment was not required.

The Well Being Assessment *(which identifies the wellbeing of a young person)* indicates that B is an assertive young man. He is aware of his surroundings and the current situation; he is not oblivious to the serious charges that he is facing and the penalties that each charge carries."

Council of Youth Courts – South Pacific

I have just returned from the annual meeting of the Council of Youth Courts (South Pacific). The heads of the Youth Courts for all Australian States and Territories, New Zealand, Fiji, Samoa and Papua New Guinea attended. We are looking next year to include the Cook Islands, the Solomon Islands, Kiribati and Vanuatu.

These workshops are a valuable way of finding out what are the youth offending issues in other jurisdictions and what innovative tools are being used in response.

New Zealand is still unique in its statutory FGC system, which must be applied to <u>all</u> young offenders coming to the Youth Court who do not deny the charges or in respect of whom the charges are proved after a denial. New South Wales is increasingly using a FGC approach, but only in cases considered suitable. South Australia and Victoria make significant use also of a Family Group Conferencing approach. Perhaps because of much fewer numbers, my impression is the FGC process is better resourced and better practiced in Australia.

New Zealand is also the only jurisdiction, apart from Sydney, (which pioneered this approach), in adopting a Youth Drug Court approach. Most other States and Territories will soon follow.

My feeling on return from the Conference is that our system remains fundamentally sound both in theory

and practice. But there is much we can learn from the other jurisdictions. For instance, in Queensland, a new approach, called "Intensive Supervision" is being used for 10-13 year olds - what we would call "child offenders". The philosophy behind this approach is that the most intensive and comprehensive response should take place at the earliest possible stage. And it is simply too late to use "Intensive Supervision" as that sentence is practiced in Queensland, when a young person reaches 15.

The next conference is planned for July next year, in Fiji. This is the first time the Council of Youth Courts will have ventured outside of Australia or New Zealand.

SPECIAL FEATURE

Some Recent Youth Court Decisions of Interest

Elsewhere in this Newsletter, the proposed database of relevant Youth Court cases is discussed. In the meantime I draw your attention to some very relevant recent Youth Court decisions, which I understand will be reported by LexisNexis in its District Court (DCR) series.

In this Special Feature some important recent decisions from the Youth Court are highlighted.

- **What to do if a Court ordered FGC is not convened and held within statutory time limits.**

Two recent cases are important.

In ***Police v S*** (unreported, Youth Court Lower Hutt, 30 January 2004, Judge Walker), Judge Walker addresses the issue of failure to comply with the time limits in s249 for convening and completing a family group conference. He distinguishes the effects of non-compliance in respect of an intention to charge FGC (namely, invalidating the Information subsequently laid - as per ***Police v H*** [1999] NZFLR 966, 974) and non-compliance in respect of a Court-directed FGC (the Information is not rendered invalid but rather non-justiciable, it not being possible to make orders under ss282 and 283 without FGC input). Most interestingly, Judge Walker demonstrates a new way in which non-compliance may be addressed (other than dismissing the matter). Where a Court-directed FGC is not held or is delayed beyond the s249 time limits, a Judge may exercise his or her discretion to allow leave to withdraw (and later re-lay) the charges. In the case before him, Judge Walker allows leave to withdraw the Information where the delay in question was not due to systematic failings.

In ***Police v R H*** (unreported, Youth Court Wellington, April 2004, Judge AP Walsh), Judge Walsh was faced with an identical issue. Judge Walsh carefully analyses the statutory framework and accepts in principle the approach taken by Judge Walker in ***P v S*** (above). He noted that he did not consider it an abuse of process to grant Police leave to withdraw an Information where a Court ordered FGC has not been convened within the statutory timeframes. After all he noted, there is a specific power to do so in s.36 of the Summary Proceedings Act 1957 which is available to the Youth Court. It is a matter of discretion in every case whether to grant leave to withdraw or not. Judge Walsh agreed with Judge Walker that the granting of leave to withdraw an Information should be declined in circumstances which could be view as a "backstop" upon which the Police could rely to cure a breach of time limits, leading to a relaxed view of the need for timeliness. He particularly emphasised:

> *"That discretion must be exercised on a principled basis and will always depend upon a particular facts of each case. Where it is established there has been systemic tardiness the Court is unlikely to grant leave to withdraw".*

In this case the catalogue of delays was unacceptable and despite the potentially negative impact on the victim, Judge Walsh felt there was no option but to dismiss the Information, rather than give leave to withdraw it.

Both these cases seem to take a new approach to the issue. Previously it was assumed that breaches of the timeframes for Court ordered FGC's should be treated in the same way as timeframe breaches for intention to charge conferences which was the situation confronting Smellie, J. in ***H v Police*** [1999] NZFLR 966.

- **Section 214: Restrictions on Police Right to Arrest without Warrant.**

In ***Police v L*** (unreported, Youth Court Upper Hutt, January 2004, CRN 3278011342-4, Judge Grace), Judge Grace addresses the issue of the interaction between s214 of the Children, Young Persons and Their Families Act and s35 of the Bail Act 2000. He holds that the Police power of arrest in s35 is subject to the pre-conditions in s214; Police may not arrest a young person for breach of bail unless the requirements of s214 are satisfied. In the case before him, Judge Grace finds that the arrest was unlawful because, although the young person was in breach of a curfew that was a condition of his bail, the arrest was not for the purpose of preventing further offending.

Therefore the charges of assault on Police and resisting Police in the execution of their duty were dismissed, as an unlawful arrest could not be considered part of an officer's duty.

Police v HG (unreported, Wellington Youth Court, March 2004, Judge A P Walsh). It concerns a dispute as to whether or not a young person was arrested and, if so, whether there were grounds to do so lawfully under s214 of the Children, Young Persons and Their Families Act 1989. This case should be read alongside Judge Grace's decision in ***Police v Langi*** (unreported, Upper Hutt Youth Court, 22 December 2003), discussed above.

The young person was charged with burglary. The morning after the burglary occurred, the Police constable who, the night before, had taken a witness statement describing the suspects, spotted two young people who appeared to match that description. He followed one of them, then confronted him - holding onto his shirt, telling him his rights, and questioning him about the burglary, until a back up patrol car arrived. Charges were subsequently laid without any of the procedures required by s245 being followed.

There were two issues in Court:

- Had the Police officer arrested the young person when he stopped, held and questioned him?

- If so, was the arrest lawful in terms of s214?

Judge Walsh examined what constituted arrest according to case law, in particular ***R v Goodwin*** (No. 1) [1993] 2 NZLR 153. He held that the Policeman's actions, in particular restraining the young person by holding his arm, advising him he wished to discuss the burglary, cautioning him and giving him his rights, not advising him he was free to go and did not have to go to the police station, arranging for him to be taken to the police station, "cumulatively and effectively constituted an arrest on the basis formulated in ***R v Goodwin***" (paragraph [43]).

Judge Walsh then looked at the ways in which the arrest without warrant could be validated under s214 (i.e. by satisfying one of the grounds in s214(a) and demonstrating that proceeding by summons against the young person could not achieve the same aim) and found that there had been no compliance with that section (paragraph [46]) In particular, he noted that:

(A) The Policeman no attempt to ascertain details of where the young person lived/worked; nor did the young person attempt to flee. Section 215 sets out procedures that must be followed if Police wish to question a young person; these were not followed in this case. So the ground in s214(a)(i) was not made out.

(B) Although the Policeman had reasonable grounds to suspect the young person of the burglary, this did not amount to evidence that arrest was necessary to prevent further offending (under s214(a)(ii)).

A final issue was what was the effect of non-compliance with s214. Judge Walsh noted two lines of reasoning in past cases in relation to this issue. One held that, if an unlawful arrest was made under s214, it was not possible to then pursue the matter via s245. The other held, conversely, that if the s214 route was incorrectly pursued, the s245 alternative could then be followed (paragraph [36]). Judge Walsh followed this latter line of reasoning, adopting the dicta of ***Pomare v Police*** and *Police v PA* [1995] DCR 204, and held that, as the s214 procedure was not properly followed "the police had to rely on the alternative procedure available under s245(1)", but, as they did not follow that procedure, the Information was invalid and must be dismissed.

• Delay: s.322 of the Act

Police v AT

The first case is ***Police v AT*** (unreported, Wellington Youth Court, 3 March 2004, Judge A P Walsh). It concerns an application under s322 of the Children, Young Persons and Their Families Act 1989 to dismiss proceedings for delay.

The charge of assault with intent to injure was laid in respect of events that took place on 23 March 2003. The matter first came to Youth Court on 28 January 2004, after an intention to charge FGC, which was held on 13 January 2004.

Police carried out an investigation into the matter, which stalled in June 2003 when Police attempted to persuade the young person to take part in an interview, which she declined (through her lawyer) to attend. Her lawyer also indicated to Police that if they chose to arrest the young person, she would contest the lawfulness of this action under s214 CYPF Act.

In the end, the Police did not meet with the young person, nor did they attempt to arrest her. The matter was referred to Youth Aid in September 2003 and steps were taken, in mid November 2003 – after delays occasioned by staff absences and heavy workloads - to convene the intention to charge FGC.

In his judgement, Judge Walsh sets out in some detail the principles that apply to a s322 application and revisits the relevant case law. Then, he makes the following findings:

(1) It is not established that the young person and her family actively tried to avoid contact with the Police - they kept in contact via the young person's lawyer (paragraph [14]).

(2) The Police could have proceeded with the intention to charge process rather than insisting on talking to the young person/possibly arresting her. They could have done so at any time after (at the latest) July 2003 (paragraph [21]).

(3) Staff shortages and heavy workloads are not justification for excessive delay – although in this case those factors were not the only reason for a finding that there was such delay (paragraph [26]).

(4) Overall, the delays in this case were unnecessarily protracted; while specific delays may have been explicable, the totality was "unnecessarily protracted" (paragraph [27]).

(5) Prejudice to the young person's rights was a factor in considering whether delays were "unduly protracted" (paragraph [27]); in this case the young person's rights in relation to conducting a defence to the charges were compromised to a considerable degree by the delay of nearly a year between the offence and the hearing (paragraph [28]).

Judge Walsh considered the public interest and the interests of the victim, but found that these were outweighed by the delay in this case. He dismissed the charges because of the "unnecessarily or unduly protracted delay" in accordance with s322 (paragraph [30]).

Police v Puru & Randell

The second delay case is ***Police v Puru & Randell*** (unreported, Manukau Youth Court, 22 January 2004, Judge DJ Harvey). In that case, the two accused were charged with aggravated robbery that allegedly occurred in October 2002. The charges were laid in October 2003.

The facts demonstrated delays in the Police investigatory process (including 3 periods of time during which nothing was being done on the partially investigated files) due to under resourcing and a surge in crime in the particular Policing area.

While Judge Harvey was particularly mindful of the Police resourcing issue, in the end, he held that it did not justify the delays that had occurred, which, he held, were unnecessarily and unduly protracted (paragraph [54]) and caused prejudice to the accused - in particular, depriving them of the opportunity to go through the Youth Court process, they having turned 17 by the time the charges were laid against them (paragraphs [55] to [58]).

Judge Harvey granted both applications to dismiss the charges under s322. In reaching this decision, Judge Harvey made the following comments:

(1) When considering a s322 application, a Judge must answer the following questions: (a) was there delay? if so, (b) was it unnecessarily or unduly protracted?, if so (c) was any prejudice caused to the defendant, if so (d) was that delay and prejudice on the facts of the case "significantly serious to warrant the extreme step of halting [the] proceeding" (paragraph [8])?

(2) The seriousness of an offence should have no impact on whether or not a s322 application is granted; if an offence is very serious, this is not a justification for delay that would otherwise give rise to the dismissal of a charge (paragraphs [35] & [36]).

(3) Every delay application must be considered on its particular facts. There should be no application of a formula, such as: 9 months or more constitutes undue delay justifying dismissal of proceedings (paragraph [50]).

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An Apology with a Difference

You will know of our concern to improve the quality of apology letters. In my view a four or five sentence note scribbled on a tawdry piece of paper is unacceptable. In these cases young people should usually be asked to do the apology letter again. There is a very helpful guide / template produced by Sergeant Dick Spenderlow the South Auckland Police Youth Aid Court Officer which sets out the sort of material which could be usefully included in a fulsome apology letter (this is included on the next page). Of course, some young offenders have great difficulty reading and writing, but my firm view is that most can do much better and that we need to expect more from them.

Set out below is an apology with a difference. It is actually the words of a song, that were cut into a CD disk and played to the victim. I am told it was a very moving experience.

"I'm sorry for all the pain that I caused
Putting your family though something I could never have stopped
And now I'm staring at the stars thinking what have I done
Something stupid of course what was I thinking of
Looking for my mentality but that was lost
Back in the days BC id be pinned to a cross
But instead im writing this rhyme because you gave me a chance
So in the words tha I write
You should know that they came from my heart
You opened my eyes dispising what I had done
Look above and find the strength to carry on

Verse 2

The stupid things ive done in my life
Creating enemies that want to bring a lot of strife
We'd fight
On the streets
Is probably where you would see me
Drugged out struggling to breath
But now im down on my knees
With a million apoligies
Please time freeze wish I could turn back the time
Rewind but its all over and done
A new error begun
The sun has risen
And its shining through
This song i compose is dedicated to you."

LETTER OF APOLOGY.

You are required to write a letter of apology . Below is the information you will need to help you understand why you must write the letter, and how you should write it. If you have problems writing this letter after reading the information below, then you should ask someone who can help you (like a parent, a relative, or a Police Officer) or read the example letter on the other side of this page.

Why do I have to write this letter ?

Victims of Crime can feel hurt, scared, and confused. These victims can also have many questions like "why did this happen to me?". A letter of apology will help answer these questions, and help these people to deal with what has happened to them. This letter can also be used to show that you are sorry for your actions. By writing this letter, you will help the victim move on with their lives without feeling hurt and scared. If someone hurt you, you would want to have your questions answered too.

How do I write this letter?

Below is the information that you should include in you letter. Under each heading are suggestions to help you write your letter

- Tell the victim about yourself
  - Your name: What is your full name, what does it mean, where is it from Why did your parents give you these names, were you name after someone or was there another reason why you were given this name?
  - Do you play sport, if not why not, if you do what do you play, do you have any hobbies ?
  - Do you go to school and if so what class and subjects do you take?
    If you do not go to School, why not? What do you like best about School? (there must be something you liked) What do you want to achieve from your education?
    What type of job or work would you like to do?
  - What qualifications do you think you will need to get that type of job or work ?
    What do you see yourself achieving in the next five years, ten years and then 20 years?

- Tell the victim about your family
  - How many people are there in your family, where does your family come from, what area do you live in?

- Talk about your offence
  - What was your part in the offence that brought you to the attention of the Police? What started the incident and why? Why did you behave like that?

- Talk about how you and your family fell about what you have done
  - What does your family think of your behaviour? What do you think of your behaviour now? What would you think of a person who did the same thing to you? What are your feelings now about your behaviour? Are you sorry for what you did? What will you do in the future if you find yourself in the same

circumstances again as the ones that led you to come to the notice of the Police?

It is important that your letter is a neat and tidy. Remember if your letter is not neat, tidy and on clean paper it will look like you don't mean what you are saying.