“Running Interference”

Principal Youth Court Judge John Walker
Blue Light International Conference

Friday 18 October 2019 - Rydges, Queenstown

E ngā mana, e ngā reo

Ki ngā karanga nō ngā hau e whā

Tēnā koutou, tēnā koutou, tēnā koutou katoa

Greetings to you all.

Introduction:

Over the course of this conference you will be hearing about many of the initiatives and programmes being developed and implemented to prevent youth crime and increase safety in our communities.

I am a strong believer in early intervention, as we all will be. Early intervention is integral to developing a safe society and ensuring that our vulnerable young people have the best possible opportunity to progress down positive pathways. We need to be running interference at every opportunity.

It is a reality that the role of the Youth Court can at times feel to be a final attempt. A last chance to redirect life trajectories in a positive way. It is a setting in which we are often trying to play "catch up" on a lifetime of learned behaviours, exposure to family violence, sexual and physical trauma, dislocation from schooling, fetal alcohol spectrum disorder ("FASD"), acquired brain injury, and other neuro-disabilities. For many of our young people all other interventions and programmes prior to this point have not been successful. The cases we have in the Youth Court are the high needs complex cases often with serious offending.

Joseph Malins wrote a poem about the benefits of early intervention in 1895. The final segment reads:[1]

> "Then an old sage remarked: "It's a marvel to me
>
> that people give far more attention
>
> to repairing results than to stopping the cause
>
> when they'd much better aim at prevention.

[1] Joseph Malins "The Ambulance Down in the Valley" (1895).

Let us stop at its source all this mischief," cried he,

'come, neighbours and friends let us rally;

if the cliff we will fence, we might almost dispense

with the ambulance down in the valley."

I do not see the Youth Court as an "ambulance down the valley. There is a significant opportunity in the Youth Court for change and improvement in the young lives we are faced with. However, I am well aware of how effective change can be when instilled prior to this point of intersection with the criminal justice system. We are dealing with children and young people for whom initial preventative measures have not worked, who have complex and multifaceted life experiences and disabilities preventing them from realising their full potential without assistance. We do our very best to rehabilitate and respond to the issues, but the possible outcomes are significantly narrower than they would have been at an earlier time.

I know I can speak for all Youth Court Judges when I express my gratitude for all the work that is done to prevent youth offending in New Zealand. We are fortunate to have a system with the legislative framework and mindset to enable it. By this I am referring to police youth aid, diversion and alternative action, and the proactive work that is done by Blue Light and other organisations to assist those children and young people to find a better and safer path.

I want to touch on some of the challenges that we face in the Youth Court in New Zealand. I understand that some of you will have travelled from Australia, parts of the Pacific, the UK and US to be here for this conference, so I will paint a picture of what we see each day.

When I refer to "young people" in the Youth Court, I am talking about those who appear in the Youth Court, the majority of whom are aged 14-16. 12 and 13-year olds who commit serious offending also will appear before a Youth Court Judge, as will 17-year olds who have committed low level offending. This was a legislative change in July this year. However, where 17-year olds commit serious offences, they will be transferred to the District Court. Murder and manslaughter are always transferred out of the Youth Court.

Important features of our youth justice system in New Zealand are diversion, alternative action and the engagement of a wide range of professionals, family and whānau in the family group conference which will be held prior to court engagement. This means that "minor offending", might never make it to a court room. The young people whose offending does necessitate court

engagement are very often complex, challenging individuals with a wide range of influences and factors culminating in the offending behaviour.

In 2018 the Office of the Prime Minister's Chief Science Advisor released a report entitled "It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand".[2]

The report identifies the following mental health and developmental disorders typical of young offenders:[3]

- Mental health concerns
- Heavy drinking and drug use
- Brain injury and learning problems
- PTSD
- Trauma, abuse and family violence
- Dislocation from schooling and culture

In my view exposure to family Violence is the big one. We know that in New Zealand there are approximately 130,000 family harm investigations by NZ Police in a year.[4] That is 40% of total police front line call outs. A call to police in relation to family violence, on latest figures, every 4 minutes. Those figures are disturbing enough but an estimated 76% of family violence incidents are not reported to police.[5]

Other disturbing figures:

- On average each year over 33,000 incidents are referred on to Women's Refuge for immediate follow-up.[6]

On average every night, 201 women and children need a safe place to sleep.[7]

[2] Professor Ian Lambie, Office of the Chief Science Adviser "It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand" (12 June 2018).
[3] Above n 2 at Table 2.
[4] New Zealand Police National Headquarters. Family harm statistics — data supplied on request, 3 October 2018. Wellington, NZ: Police National Headquarters; 2018.
[5] New Zealand Crime and Safety Survey: 2014 (2015).
[6] Women's Refuge Annual Statistical Report 2014-15.
[7] Above n 2.

Too often, children and young people are present when family violence is occurring. Violence in the home has a profound effect on children whether they see it, hear it or just know about it.

- Of the 121,747 family harm investigations by NZ Police in 2017,[8] children have been present at 2/3 of these.
- 14% of young people report being hit or physically harmed on purpose by an adult at home in the space of one year.[9]
- Most (87%) young offenders aged 14-16 have had prior reports of care and protection concern made to OT.

A Scottish commentator has wisely said "If you bring a child up in a warzone you will end up with a warrior."

Children who grow up in homes where there is violence are likely to suffer a range of behavioural and emotional disturbances. These can also be associated with perpetrating or experiencing violence later in life. They are also more likely to be exposed to drugs, alcohol and gang influences.

We now know from the brain science that exposure to the trauma of family violence happening in the home will have an effect on brain development.

Add to these issues the fact that many of the children and young people who come into conflict with the law have been affected by drugs and alcohol prior to birth. FASD is a major issue in our Youth Court. Other neurodisabilities are also present in large numbers.

- Meta-analyses from 42 international prison studies found that 30% of youth offenders have clinically diagnosable ADHD.[10]
- 60-90% of young people in custody have a communication disorder (versus 1-7% general population).
- Recent international analysis confirms that young people with FASD are at high risk of becoming involved in the legal system and staying involved.

[8] New Zealand Police National Headquarters. Family harm statistics — data supplied on request, 3 October 2018. Wellington, NZ: Police National Headquarters; 2018.
[9] Clark, T. C., Fleming, T., Bullen, P., Denny, S., Crengle, S., Dyson, B., Fortune, S., Lucassen, M., Peiris-John, R., Robinson, E., Rossen, F., Sheridan, J., Teevale, T., Utter, J. (2013). *Youth'12 Overview: The health and wellbeing of New Zealand secondary school students in 2012*. Auckland, New Zealand: The University of Auckland.
[10] Young et al, 2016.

- UK study found that 23-32% of young people in custody have a generalised learning disability. This is in comparison to 2-4% of the general population.

Another issue is disconnection from culture, no sense of identity and place in the world.

So how do we respond to these issues?

We know the risk factors, the signs and the indicators that a child or young person is at risk of travelling down a path to crime. Exposure to family violence is a red flag — a warning of risk. At the 130,00 call outs for family violence we need to be asking ourselves, who is looking out for the children who are present?

The child peering around the door frame when the police arrive should be seen as waving a red flag. Where children are in homes where family violence is identified, that is an opportunity for intervention. As I have said early intervention requires seizing every opportunity to do so. This is one such opportunity.

New Zealand Police use the YORST — the Youth Offending Risk Screening Tool to assess whether a child or young person is likely to reoffend. I encourage and push for its use at each and every apprehension. Within this cohort of the diverted, subject to alternative action, is the future serious offender I see in the Youth Court. We ought not wait until they do so before delivering effective intervention.

Youth Court — New Zealand context

Once the child reaches the Youth Court, they bring with them the host of neuro-disabilities, trauma and negative life experiences that I have discussed. These inhibit their ability to engage, both in the Court process and with any interventions proposed. We take steps to address this.

A horse shoe shape brings the child or young person into the fold. It emphasises the role that the team of experienced professionals plays. These steps are part of a broader move to remove the barriers to engagement and participation. We need to consider and encourage all youth justice professionals to be thinking the same way, ensuring that the child or young person is enabled to fully engage in the process that is about them and their behaviour. This includes recognising the importance of inclusiveness in our approach, clarity, simplicity of language and ensuring real understanding by young people and their whānau.

We also now have greater legislative tools to deal with and respond to offending by children and young people. On 1 July of this year (2019) significant changes to the Oranga Tamariki Act 1989, our governing framework, came into force.

The new legislation has enhanced principles and considerations to assist decision-making under the Act. For example, there is greater importance placed on the mana tamaiti or mana tamariki meaning the intrinsic value and inherent dignity derived from a young person's whakapapa and their belonging to whānau, hapū, iwi or family group in accordance with tikanga Māori or its equivalent in the culture of the child or young person.

Any decision-making under the Act requires consideration of a number of principles. First and foremost is s 4A — the primary considerations. Guiding the application of these are the general purposes of the Act, s 5, and s 208 for youth justice matters. There is an onus upon Oranga Tamariki to recognise and provide a practical commitment to the principles of Te Tiriti o Waitangi when adopting or implementing policies relating to youth justice.[11] This is part of a greater goal to address disproportionate representation of young Māori in the Youth Court.

There are several principles and sections in the Oranga Tamariki Act 1989 which highlight the importance of early intervention in regard to youth:

- Principle 208(a): that criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter;
- Principle 208(f)(ii) that actions imposed should take the least restrictive form appropriate in the circumstances;

These support wider frameworks for police diversion, alternative action, and employing family group conferences to consider all possible options available that may be less restrictive that Youth Court intervention.

[11] Section 7AA Oranga Tamariki Act 1989.

Young Adult List — Porirua pilot

The other question which has consumed much of my time is in regard to the disabilities and trauma that these young people experience. Why do we act as though their limitations expire at age 18?

Cognitive skills and emotional intelligence that mark the transition from childhood to adulthood continue to develop at least into a person's mid-20s. Traits such as impulsivity, high susceptibility to peer pressure, tendency to be overly motivated by reward seeking behaviour, do not conclude at 17 or 18. Further, protective factors such as marriage, educational milestones and meaningful employment are happening at a later stage in a young person's life. This contributes to an extended transitional phase from immature delinquency to maturity.[12]

As such, decisions and actions undertaken by 18–24 year olds may be mitigated by their lack of maturity and sanctioning them like fully mature adults could have life-long consequences that harm the young person and communities and negatively impact on public safety. This is the driver behind my thinking in regard to the development of the young adult list court.

It is my view that we need to recognise that there remains a separate cohort of defendants in the District Court who require, as a matter of procedural fairness, a different approach and for whom a different approach is necessary for the delivery of effective interventions. If the court is to deliver an effective intervention we need first to have the engagement of the young person in the process, and all involved need to know of the challenges facing the young person so that responses are properly tailored to recognise those challenges.

Pulling this group of young people in the District Court into one time block, screening for neuro-disabilities, engaging specialist professionals with a youth focus, seems to many people to be "common sense". It has not been difficult to acquire the support of leaders within applicable ministries, and as a result, preparations for this pilot are progressing well.

This is not limited to this one pilot court. There are things that all of us in the criminal justice system can do to ensure participation and engagement. We can speak slowly and clearly. We

[12] Sibella Matthews, Vincent Schiraldi and Lael Chester "Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System" Justice Evaluation Journal (2018).

can use simple language that is understood. We can educate ourselves about the prevalence of neuro-disability and traumatic brain injury in the criminal population.

I thank you once again for the work that you do to recognise these issues I have spoken about, and to seek solutions to them. Our rangatahi and tamariki and so our communities will be all the better for it.

I wish you all the best for this conference, and the discussions ahead.

"Ko te kai a te rangatira he korero"

dialogue is the feast of chiefs.

No reira, ki a tātou katoa, tēnā koutou, tēnā koutou, tēnā koutou katoa.