

# “Court in the Act”

Issue 2: September 2001

For Your Country ...

If you plan for a year - sow paddy

If you plan for a decade - plant trees

If you plan for a future - nurture youth

(Indian Proverb)

## **MY JOB DESCRIPTION**

The role of Principal Youth Court Judge comes with no job description. It appears that theoretically I am responsible to no one, although of course in practice I report to the Chief District Court Judge! In conjunction with David and Pat Mahony, we have formulated a job description, accepted by the Executive Judges (whose meetings I attend). The job description is attached. I intend for David and Pat to review my performance each year. If you have any suggestions, comments or criticisms, I would really like to know!

## **WHAT HAPPENS TO YOUNG PERSONS SENTENCED TO IMPRISONMENT?**

This was a frequently asked question at the recent National Youth Court Judges' Conference which I undertook to answer. After discussions with the Chief Executive of the Department of Corrections and Child Youth & Family Service, I am clear about the position. It is not what some of you thought!

- (a) All young persons sentenced to imprisonment (as with adults), fall under the authority of the Department of Corrections.
- (b) A sentenced young person **may** be transferred from a prison to a social welfare residence, with the approval of the Chief Executives of Child Youth & Family Service and the Department of

Corrections - see ss142 & 142A of the Criminal Justice Act 1985. There is only **one** residential facility operated by CYFS, namely Kingslea Residential Centre in Christchurch, which is deemed to have a secure facility that can house sentenced

young persons. **There are only six beds available at Kingslea for use by the Department of Corrections.**

- (c) At any one time there are usually more than six young persons sentenced to imprisonment, so **not all inmates under 17 can be transferred to Kingslea.** Each case is considered on its merits and a decision on placement agreed upon between the two Departments. The Department of Corrections usually considers a needs assessment recommendation produced by the receiving prison before making placement decisions. There are at least eight relevant factors usually considered when deciding whether to transfer to Kingslea:
  - Length and nature of the sentence.
  - Nature of the offences.
  - **Any recommendation made by the sentencing Judge.**
  - Reasons offered as to why all or part of the sentence should be served in an approved Child Youth & Family Service residence.
  - Wishes of the inmate and their family/whanau.

- The ability of Child Youth & Family Service to safely manage and detain that child or young person within an approved Child Youth & Family Service residence.
- The capacity of the Child Youth & Family Service to provide this service.
- The ability of the Department of Corrections to safely manage and detain that child or young person in a penal institution.

**Note:** Obviously if you have strong and clear views as to whether a young person you sentence to prison should be placed at Kingslea, you should state this. See the sentencing notes of Judge Ian Thomas, in **Police v T** (attached) which does exactly that.

- (d) Gender mixing occurs at Kingslea. From the Department of Corrections' perspective, this practice is problematic: it can cause problems for the management of the inmate.
- (e) When a young person at the Kingslea Residential Centre reaches the age of 17 years, they are transferred back to a prison.
- (f) A young person not transferred to Kingslea will almost certainly be held in one of the four new specialist Youth Units attached to a prison, at least until they reach the age of 17. Those youth units are:
- Rimutaka Youth Unit
  - Christchurch Youth Unit
  - Waikeria Youth Unit
  - Hawkes Bay Youth Unit
- (g) Youth Units **do not** exist for women. Therefore female young persons not transferred to Kingslea, are held in one of the three female adult prisons.
- (h) As at 20 August 2001, sentenced inmates under 17 years were located as follows: -
- Kingslea Residential Centre (2 males and 2 females)
  - Arohata Women's Prison (1)
  - Rimutaka Youth Unit (3)
  - Christchurch Youth Unit (4)
  - Waikeria Youth Unit (4)
  - Hawkes Bay Youth Unit (2)
- (i) For your **additional information**, not all prisoners aged 17 and under 20, can be placed in a Youth Unit. Priority is given to those assessed to be "vulnerable" in a main stream prison. As at 20 August, there were 271 sentenced male inmates aged 17-19 years. Of those, 80 were held in one of the four youth units. The remaining 191 young male inmates were held in a variety of mainstream units. Corrective trainees were held at Christchurch Prison.

### **Conclusion:**

You cannot be sure that any young person you sentence to imprisonment will be located at a CYFS Residence, ie Kingslea. **If this is your recommendation, you should say so.** If the young person is a male, you can be virtually certain they will at least serve their sentence in a Youth Unit. If female, they may be housed at a women's prison. When they reach 17, only the most vulnerable males will then be housed in a Youth Prison.

## **OPPORTUNITY FOR VISITATION**

The Department of Corrections is happy to facilitate a visit for you to any of the four Youth Units. If you would like to arrange such a visit, please contact Phil McCarthy, General Manager, Public Prison Service, telephone 04 474 8805.

## **H.M.S. PINAFORE**

You will all remember the moving performance by part of the Aorere College Choir, from Mangere, at our recent Conference. I accepted their invitation to attend the school's opening night performance of Gilbert & Sullivan's H.M.S. Pinafore, together with Judges Simpson and Blackie. It was an inspiring night. Not only was it a wonderful performance, which I doubt that many other schools in New Zealand, or even the world, could have emulated. But it was also hugely rewarding to see the looks of proud achievement on the performers' faces during the curtain call. I was told later that many of these students were not performing in other areas of school life, but derived tremendous self worth from their contribution to the school's production. Ninety percent of the school's roll is non-European. Incidentally, you would have been startled and surprised to hear Charles and Heather joining in with rousing enthusiasm, to the chorus of "I am an Englishman"!

## **WAIPAREIRA TRUST**

In August I was formally welcomed to the headquarters of the Waipareira Trust in Henderson, Auckland. I am told that this is the largest urban Maori Authority in Auckland, New Zealand, if not the world! Matt Hakiha, a Trustee and member of the Ministerial Task Force on Youth Offending, was a wonderful host. I had no idea of the size or breadth of the Trust's operation. Included are legal, medical, physiotherapy, dental and other health services, alternative education courses and employment training, to name but a few.

One of the training course is in design and printing. I am going to have my business card designed and printed by that group of unemployed young Maori trainees. Wait for the result!

### **AS OTHERS SEE US ...**

It is always interesting to know what others think of us. An Assistant USA Federal Prosecuting Attorney recently visited New Zealand as a visiting Fellow in Public Policy. I attach two articles he wrote while here:

- 1 The first is a survey of New Zealand Youth Justice Coordinators. What is of most interest is that more than half the responding Coordinators (58%) felt that Youth Justice should not be delivered by CYFS.
- 2 The second, entitled "A Modest Proposal to Reduce Crime Rates in New Zealand" is a very interesting insight into a suggestion for crime reduction throughout the country.

### **JOINT MINISTERIAL TASK FORCE ON YOUTH OFFENDING**

Most of you will know of the Task Force's work. It consists of three strands:

- 1 The formulation of a comprehensive national strategy to reduce future youth offending. The CEO's of all relevant Government Departments meet regularly in Wellington to work on this strategy.
- 2 The development of specific initiatives to meet pressing immediate needs. These include more coordinated psychiatric services, a pilot Youth Drug Court, a Pacific Island Court Liaison Officer in South Auckland, better coordination of funding applications and allocations, the development of national guidelines for mentoring, the introduction of a longer and more comprehensive Youth Court sentence over and above Supervision with Residence.
- 3 Regional visitations throughout New Zealand to consult with Police Youth Aid, CYFS and the community as to particular regional problems and issues. After each visitation a comprehensive written report is prepared and forwarded to all relevant Government Departments.

At each regional visitation there have been interesting and thoughtful comments about delivery of services by the Court Court.

Separately, I will send you a copy of the relevant report on the regional visitation to your area. This will be of great assistance when you convene inter-agency meetings for the Court for which you are responsible.

I have recently chaired the Task Force's visitations to New Plymouth, Wanganui, Palmerston North and Masterton. I will also chair the visitations to the Hutt Valley, Wellington and Porirua. Then only a half-day consultation with community groups in Blenheim remains.

What is really beginning to stand out from my point of view, is that there is no overall national coordination of the delivery of effective programmes. For instance, some regions have excellent alternative education programmes, some don't. Some have very good community-based work training schemes, some don't. Some have very good psychiatric services and there are forensic teams present in every Youth Court, some don't. There needs to be accountability to some national body, so that every region has best practice educational, psychiatric, drug and alcohol, employment training, family counselling etc delivery services.

It is expected the Task Force, under David's leadership, will report before the end of the year.

### **WHAT SCHOOLS ARE SAYING ABOUT DRUGS AND SMOKING**


I enclose herewith an excerpt from the Principal of Kristin College's newsletter to parents regarding the decriminalisation of cannabis debate. He is a close friend. It makes for interesting reading. I know that his views are shared by many State School Principals in Auckland, Wellington and Christchurch. I think it is important that we

know the views of senior educators on this topic.

A survey of 30,000 fourth formers last year by the anti-smoking lobby group ASH shows that one-in-six girls and one-in-seven boys smoke daily.

That is nearly a third higher than 10 years ago and ASH said the Government must put more money into the anti-smoking message.

(Cuttingedge No 54)



## **SPECIAL FOCUS: "ONE JUDGE - ONE COURT"**

As you will remember, we discussed this new proposal for Youth Court administration at our recent conference. There has been no real opposition to the concept and I would like to trial it for at least a year. Included with this newsletter is a list of every Youth Court in New Zealand and the Judge who will be administratively responsible for it. All the Youth Court Liaison Judges have approved of this arrangement.

Can I stress it is **not** intended that the Judge responsible for a Youth Court will always sit in that Youth Court, or indeed usually sit in that Youth Court. Of course, those Judges in the provinces will almost always sit in that Youth Court. But for Judges in the larger cities, this may not be possible and is not expected.

It **is** expected however, that you will take responsibility for the Youth Court you are assigned and that you will ensure that it is effectively and efficiently organised. In other words "the buck stops with you". Naturally it is still expected there will be consultation with the other Judges in your area and with the local Youth Court Liaison Judge if any serious problems emerge.

In particular, there are two areas that I hope you can give particular attention to in the Youth Court assigned to you.

### **1 The Appointment System**

Sections 331 & 332 of the Act make clear that if at all possible, young persons awaiting a Youth Court hearing should be kept apart from each other and from other adults attending the Court, and that waiting time for young persons and their families should be kept to a minimum.

In other words, the thrust of the Act is that a Youth Court should not operate as an adult List Court. The solution that has been adopted in most Courts is the use of an appointment system. In my view there **must** be an appointment system in every Youth Court, and it must have integrity.

In some areas the appointment system is working very well. Typically there is one appointment every 10 or 15 minutes. Some cases take longer, some take less. Over the course of a morning/day, timing is generally on track.

In other Courts, the appointment system works much less well. Regrettably, one of the most frequent criticisms of the Youth Court I receive is from parents, usually from larger metropolitan areas, who have been kept waiting sometimes for 2-3 hours for their child's case to be heard. I think we would all agree that this is simply not good enough.

I leave it to you to organise the details of your own appointment system. If it is to work, then the Youth Court Registrar will need to be up to speed with what is expected. In this respect, I am meeting with Wilson Bailey to make sure that all Court staff clearly understand the requirements of the Act.

Obviously we all need to be careful to ensure that when a young person's case is remanded to a future date, there will be sufficient time to hear it. If it is a jurisdictional argument, then up to an hour may be required and should be set aside. If it is just for monitoring, then it may be that two such matters could be included every ten minutes.

Generally however, I think that one appointment every 10 minutes is ideal. If we are to take seriously s10 of the Act, which imposes on the Court a duty to explain the nature of the proceedings in language that can be understood by the young person and, where an order under s283 is made, a duty to explain the nature and requirement of the order etc, I do not see how it is possible to do this in less than 10 minutes.

As you will understand, I feel strongly about this point. I have carefully discussed it with all the Executive Judges. If, as a result of the appointment system being kept to, additional sitting time is required, it will be given. Of course this is a last resort and as discussed under the next heading, there may be other solutions to reduce the length of the list.

I am also scheduled to discuss this matter with the New Zealand Law Society Youth Advocates' Sub-committee. It seems to me that Youth Advocates can easily torpedo the appointment system by asking for their cases to be called out of order. Again, with some fore-thought, when Youth Advocates have their cases remanded to the next Youth Court, they can easily be remanded in blocks of time.

In the Youth Courts that operate the best appointment system, there is usually no

problem with all of this. Over time, young persons and their families begin to realise that the appointment system means what it says and gradually the message gets out.

Regular and meaningful "inter-agency" meetings can also address this issue.

From my point of view, if we as Youth Court Judges are to take a lead in ensuring that the Youth Justice system works well locally and nationally, then we must ensure our own "back garden" is tidy, and that we are complying with the spirit of the Act.

## **2 Inter-Agency Meetings**

The other area in which I hope you can take the initiative is to ensure that regular "inter-agency" meetings are held in your Court. That is a rather grandiose title for what are really meetings between Police Youth Aid, CYFS, Youth Advocates and the Court, to informally discuss issues relating to both the operation of the Court and the delivery of Youth Justice Services in the area the Court serves. In many Courts around the country, these meetings are already being held very successfully. However, in other areas they are not being held.

In my visits around the country and from my involvement in the Ministerial Task Force, it is clear that these meetings are enormously appreciated by all those involved.

I would envisage they would be held at least quarterly. They are also a real opportunity to invite other interested community groups to be involved and to discuss areas of concern.

I have also come to the view that even in the smaller Courts, these meetings are valuable. For instance, while I used to be involved in inter-agency meetings in Wanganui, I did not take any initiative in convening them in Marton, which I thought was too small. However, there is a Youth Aid Constable stationed there and there are several organisations providing community programmes to reduce youth offending. The Marton Youth Court sits once a month. I now think that quarterly inter-agency meetings in that Court would be very useful. (This will be exciting reading for Tony Walsh!)

As you know, Carolyn Henwood has been enthusiastic about the concept for some years. Set out below are some golden rules she has formulated. I have made some additions. I hope you find these helpful.

## **3. Inter-Agency Meetings : Some Golden Rules**

### **Setting up the Meeting**

1. Ask the Registrar, or your Personal Assistant, to organise a convenient time with CYFS, Youth Aid and Youth Advocates.
2. Lunchtime on a Youth Court day is usually best, as everyone is present in any case.
3. Ask the Court to order and provide lunch (always a drawcard).
4. Venues thereafter may rotate. It is often helpful to visit the different agencies, with them organising the lunch and agenda - if there needs to be one. Actually, a venue away from the Courthouse may work better in the long run as there is less onus then on the Judge to "lead" the meeting.

### **"Do's" & "Don'ts"**

- Do not chair the meeting (Carolyn is strong about this. I think a Judge could chair the first couple of meetings, especially if there hasn't been a meeting before, but I would then hand it over to someone else).
- Do not discuss particular cases.
- Do not engage in personal criticism or allow non-constructive criticism of the Judge!
- Be there to support the inter-agency team.
- Make creative contributions to try to identify difficulties you might be facing and to offer solutions.

### **Role of Inter-agency Meeting**

- Identify issues for your Court
- Try to find solutions, ie - Do you have big Court lists? Try to identify the reasons for this.
- Goal/strategies to reduce list size. Some could be:
  - Too many remands
  - Unnecessary prosecutions
  - FGCs delayed
  - Not enough sitting time
  - Difficult files - need more professional attention
  - Consider appointment times
  - Waiting times at Court for families and counsel
  - Consider a callover at 10.00 am or 2.15 pm.
  - Prompt NG hearings - delays can mean young people are left still offending.

**Work together to "trouble shoot" problems:  
for example -**

- Congregation in foyer
- Gangs
- Hot spots of crimes
- School holidays
- Liaise with mayor and local council
- Education reports (discussed in the next newsletter)
- Psychological reports
- FGC outcomes
- Vision of Act to be kept alive
- Bail conditions
- Special sittings
- Schools, training, reading and writing
- How to access community support
- How to be more useful as professionals

***PERSONAL***

I am still living in Wanganui. Not that there is anything wrong with Wanganui - it has been a wonderful home for the family. However, the rigours of commuting to Wellington are not ideal. Until we sell our house, it will be difficult to leave. We have a conditional agreement, hopefully soon to become unconditional, with settlement and transfer to Wellington scheduled for 5 October. We live in hope!

***P.S.***

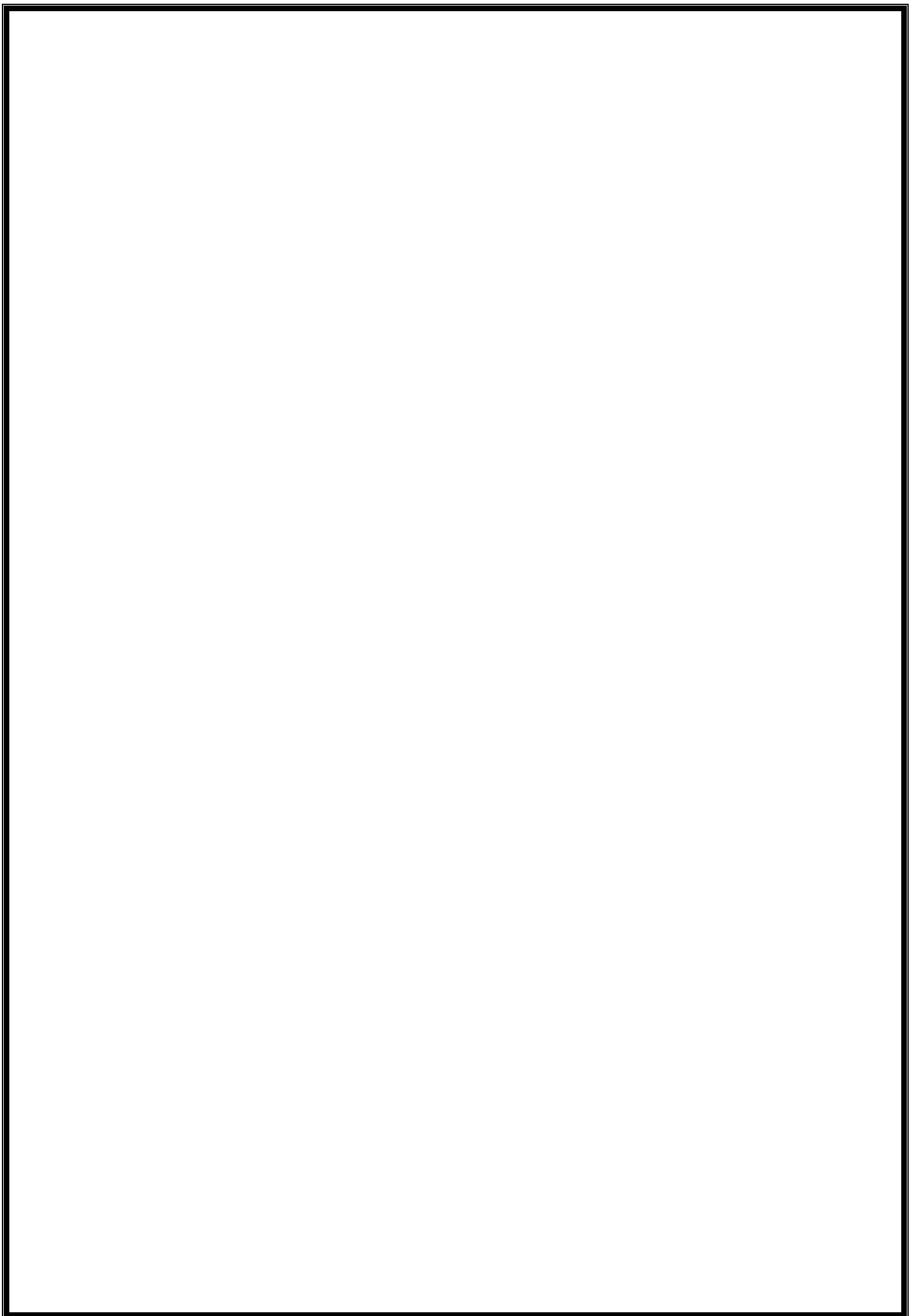
Carol Turner is my Personal Assistant in the Chief District Court Judge's Office:

Direct Dial: - 04 914 3446.

Liz James is my Personal Assistant in Wanganui:

Direct Dial - 06 349 0763

My Direct Dial - 06 349 0745





**JUDGES RESPONSIBLE FOR EVERY NEW ZEALAND YOUTH COURT**

<b>North Island</b>	
Kaitiaia Kaikohe Whangarei Dargaville	Judge Jane McMeekin
Albany	Judge Laurence Ryan
Waitakere	Judge James Rota
Auckland	Judge Peter Boshier
Manukau	Judge Heather Simpson
Papakura	Judge Jane Lovell-Smith
Pukekohe	Judge Stan Thorburn
Thames Huntly Morrinsville Hamilton	Judge
Waihi	Judge Peter Rollo
Tauranga	Judge Ian Thomas
Whakatane Opotiki	Judge David McKegg
Gisborne	Judge
Rotorua Tokoroa Taupo	Judge Paul Whitehead
Te Awamutu Te Kuiti	Judge
Palmerston Nth Taumarunui Ohakune Taihape	Judge Barry Lovegrove
New Plymouth Hawera	Judge Chris Harding
Wanganui Marton	Judge Anthony Walsh
Fielding Dannevirke	Judge Greg Ross
Levin	Judge Grant Fraser
Napier	Judge Paul van Dadelszen
Hastings	Judge Mark Perkins
Waipukurau	Judge Geoff Rea
Masterton Porirua	Judge Geoff Ellis
Upper Hutt	Judge Ian Mill
Lower Hutt Wellington	Judge Carolyn Henwood

<b>South Island</b>	
Nelson	Judge John Walker
Blenheim	Judge Pat Grace
Greymouth Hokitika Christchurch	Judge Trish Costigan
Ashburton Timaru	Judge Ed Ryan
Omaru Dunedin Balclutha Alexandra	Judge Oke Blaikie
Invercargill Queenstown Gore	Judge Phil Moran