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Christmas Message from the Principal Youth Court Judge

I pass on my warm Christmas greetings to all of those involved in the youth justice system. I acknowledge your hard work, your energy and enthusiasm, and your dedication to providing an appropriate and positive response to young people who break the law.

This year has been a challenging and busy year. This is particularly so with the change in the Children, Young Persons and Their Families Act 1989 as from 1 October. We now have to deal with 12 and 13 year olds in the Youth Court (although none have yet been charged), the use of longer and hopefully more effective court orders for serious young offenders, and also a new range of additional interventions including mentoring orders, drug and alcohol orders and parenting orders.

It will be important next year to consolidate on all the gains that have been made and to ensure that the new "Fresh Start" approach to youth justice is bedded down in a way that provides enduring rehabilitation for our most challenging and problematic young people.

One of the standout achievements in the youth justice sector this year is the establishment of the Youth Justice Learning Centre (youthjustice.co.nz). This web-based resource is an excellent example of inter-agency collaboration and is already proving to be a valuable asset.

We also look forward to continuing to build on the work of the first wave of Rangatahi Courts and to increase the use of lay advocates in all Youth Courts.

Thank you again for all that you have done this year.

Season greetings to you all. I hope you can have a restful, refreshing and meaningful family time together over Christmas.

Warm regards,
Andrew Becroft.



New Criminal Simplification Bill - Implications for the Youth Court

The Government has decided to drastically reform the law governing the procedure in criminal cases before the Courts. The Criminal Procedure (Reform and Modernisation) Bill 2010 (the Bill) makes sweeping changes to the way different offences are dealt with by the court system, as well as to the procedure in Court an before a case can come to trial. As a result of these changes, Part 4 of the Children, Young Persons and Their Families Act 1989 (the Act), which is the legislation that governs the work of the Youth Court, will undergo a major renovation.

By **Tim Hall, Research Counsel to the Principal Youth Court Judge.**

The Bill was recently introduced into Parliament under its current title, but for many in the justice sector, the project to reform the law in this area was always known as 'The Criminal Simplification project'. Without passing judgment on the effects of the Bill on other parts of the criminal justice world, it seems plain that the Bill will, at least, live up to its early billing, and simplify many procedures in the Youth Court.

No more purely indictable offences

The Bill removes references to all shades of 'summary' and 'indictable' offences. There are now 4 categories of offences:

- Category 1 – offences not punishable by imprisonment
- Category 2 – offences punishable by up to 3 years imprisonment
- Category 3 – offences punishable by more than 3 years imprisonment, but not including offences in Category 4 (jury trial electable)
- Category 4 – serious offences only triable in the High Court (including murder and manslaughter) (jury trial electable, except for murder or manslaughter)

For Youth Court purposes, this means that:

- Young people charged with offences, except murder and manslaughter, must be dealt with by a Youth Court, unless they elect jury trial (category 3 and 4 offences only, except murder and manslaughter);
- The Youth Court will deal

with pre-trial processes (up to and including being "designated ready to proceed") for young people who are charged with murder or manslaughter, or who elect trial by jury;

- The scope of the jurisdiction over 12 and 13 year olds charged with serious offences will not change;
- As all offences (except murder and manslaughter) are 'in' the Youth Court as of right, the child or young person who has elected jury trial must be offered Youth Court jurisdiction-
 - If the Youth Court gets to the point where it proposes to designate the proceeding 'ready to proceed'; or
 - When a child or young person indicates to the Court that they wish to plead guilty to the offence.

Some category 3 offences will be deemed to be 'protocol offences', which means that, if a young person elects jury trial, the trial could take place either in the District Court or the High Court. All other category 3 offences must be tried in the District Court. All Category 4 offences (murder and manslaughter) must be tried in the High Court.

No more committal when a charge is denied

The extent of the Youth Court's pre-trial obligations (if a child or young person elects jury trial for a category 3 or 4 offence, or if the charge is murder or manslaughter) will focus on designating the proceeding 'ready to

proceed' under the new Criminal Procedure (Reform and Modernisation) Act 2010. That Act will largely replace the Summary Proceedings Act 1957.

The Youth Court must designate a proceeding ready to proceed once pre-trial matters have been dealt with. Many provisions of the Bill dealing with pre

<i>Hon Simon Power</i>	
Criminal Procedure (Reform and Modernisation) Bill	
Government Bill	
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- trial matters (such as case management, notification of issues in dispute, sentence indications, and place of trial) do not appear to apply to the Youth Court.

No more jurisdictional discretion

If a Youth Court Judge proposes to designate a proceeding ready to proceed, the Court must first give the young person the chance to forgo their right to a jury trial and have their case heard before a Youth Court Judge instead. This opens the door to many more defended hearings for serious charges being heard in the Youth Court.

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The Youth Court still retains its ability to convict and transfer young people (but not children) to the District Court if a charge is found to be proved. The current 5 year cap on sentencing for those convicted and transferred to the District Court (s7 Summary Proceedings Act 1957), has been removed due to that Part of the SPA being repealed. The lower limit for charges that are amenable to s283(o) (conviction and transfer) is category 3 where the maximum penalty includes life imprisonment or for at least 14 years.

Jointly charged rules

The Bill introduces a presump-

tion that a young person who has not elected jury trial will, nevertheless, be tried by a jury if they are jointly charged with another person who is to have a jury trial. A Youth Court Judge can however order otherwise, in the interests of justice.

In the case of an adult who is jointly charged with a child or young person, and who does not, or cannot elect jury trial, the Bill sets up the presumption that the adult will be tried in the Youth Court, unless the Judge decides otherwise.

Still no non-imprisonable traffic offences in the YC

One area where the Bill fails to simplify procedure for young people is the case of so-called

'non-imprisonable traffic' offences. Despite their status as minor offences, these charges would be better dealt with in Youth Court. Currently, young people facing minor traffic charges often appear as part of a general District Court list.

Submissions on the Bill are due in mid February 2011, and the Justice and Electoral Committee are scheduled to present their report on the Bill by the end of April. Copies of the Bill, including the proposed changes to the Act can be downloaded from the Government's free legislation website

<http://www.legislation.govt.nz/bill>

New longitudinal study releases its first report

In November Auckland University released the first report from *Growing Up in New Zealand*, a new longitudinal study involving more than 7000 babies, their mothers and their fathers.

About the longitudinal study

One of the special features of this study is that subjects were recruited before they were born. Pregnant women in the Auckland, Counties/Manukau, and Waikato regions were recruited, and have volunteered their time over the next 21 years to provide insights into their lives and those of their children. The mothers' current partners were also invited to participate in the first data collection point.

Key findings from the first report

This first report focused on baseline information collected before the children's births. The key findings at this early stage are—

- Whilst New Zealand continues to have a high rate of teenage pregnancy, the average age of a parent having children is now greater than

30 years;

- 1 in 3 children is born to at least one parent who did not grow up in New Zealand;
- 4 out of every 10 children in the cohort are born into a family living in the most deprived areas of New Zealand (that is representative of all families currently having children in New Zealand);
- Over half of all families moved more than twice in the last five years;
- 60% of pregnancies were reported to be planned;
- 1 in 10 mothers continued to smoke during pregnancy;
- 17% of mothers with a planned pregnancy and 31% of mothers with an unplanned pregnancy consumed alcohol during the first three months of the pregnancy. Those figures dropped to 15% and 12% respectively for the later months.

The study's potential for the youth justice sector

A range of specific research questions have been developed to shape the design of the longitudinal study throughout its 21 years. The following are examples of the questions which may produce some interesting results for the youth justice sector—

- How does an individual's biological profile, and the environment in which they grow, mutually interact over time to influence development?
- What are the key determinants of the developmental trajectories that lead to psychosocial competence?
- How do children's experiences of family/whānau vary and what factors confer resilience or present risks to their development?

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- How involved are fathers in children's lives, and what are their influences over time on children's development and wellbeing?
- How are culture and ethnic

identity understood and shaped for children and their families, and what developmental trajectories are associated with different cultural upbringings across the life course?

- What effects do mass media, communications, and new technologies have on children's health and development?



Study connects youth justice involvement with educational engagement

Massey University Researchers Dr Jackie Sanders and Professor Robyn Munford (et al) have recently published an interim report on educational issues confronting young people coming into the youth justice system in New Zealand. This report is part of The Pathways to Resilience Project, conducted by the Resilience Research Centre, Dalhousie University. That project is a series of studies that began in Canada in 2007, and in which Massey University is one of a number of international partners. The project will continue until 2014 and seeks to understand the role services and supports play in helping to build the capacities of young people that are associated with resilience and how collaboration between services and supports can address the risk factors young people face. More information on the project can be found at <http://www.resilienceproject.org/>.

The Study

This study collected data from 946 young people, residing in Auckland, Manawatu/Kapiti, Greater Wellington, or Dunedin. The young people were drawn from two sources—

- 342 young people identified as high service users (meaning that they were involved in two or more of the following services—Youth Justice; Care and Protection; Mental Health; or Education (non-mainstream education services));
- 604 young people were not high users of those services.

The Findings

Engagement with the mainstream school system

- Young people who were not involved in the youth justice system were 9 times more likely to be currently enrolled in the mainstream school system.

Progress through the school system

- Young people who were not involved in the youth justice

system were twice as likely to complete higher levels of schooling (above year 9) or to be currently enrolled.

- Young people who were not involved in the Care and Protection system were also twice as likely to complete the higher levels of school.

School attendance

- Young people who were not attending school were four times as likely to have high involvement in the youth justice services (District Court, High Court, or sentenced to a youth justice residential facility).
- Young people who had not moved beyond Year 9 were twice as likely to have high involvement in youth justice services.

Feeling connected to school

- The more a young person reported a sense of belonging at their school, the lower their engagement with the youth justice system.

Questioned by Police

- Being questioned by Police once or never meant the young person was 3 times

more likely to still be enrolled in mainstream school than if they had been questioned 2 or more times.

Alternative action or diversion

- Being involved in restorative justice, community service, alternative measures programmes, or diversion once or never meant the young person was twice as likely to still be enrolled in mainstream school than if they had been involved twice or more.

Sentenced or on remand at a youth justice facility

- Of the 84 young people who had been at a youth justice facility, only 7 were currently enrolled in school.
- Most of the 84 young people, had not gone beyond Year 9.
- 86% of those young people had been stood down, 80% had been expelled.
- Only 20% had been held back at school or repeated a year to allow them to catch up on missed learning.
- Almost half of these young people hoped to complete a post-school certificate or diploma.

Youth sector organisations join forces—Ara Taiohi

On 17 November 2010 it was announced that New Zealand Aotearoa Adolescent Health and Development (NZAAHD) and National Youth Workers Network Aotearoa (NYWNA) will join forces to become a new national umbrella organisation called AraTaiohi.

Between them, NZAAHD and NYWNA include more than 250 local and national organisations representing thousands of people working with young people.

NYWNA chair Rod Baxter said there are around 3000 paid youth workers throughout the country, as well as many volunteers who need better support, training and standards. He considers Ara Taiohi is the best chance for youth workers to clarify their professional identity.

NZAAHD president Trissel

Mayor said that Ara Taiohi would bring the youth sector together, raise the bar for service delivery, and provide a cohesive voice on youth development and youth issues. "It will help us make the best use of resources, reduce duplication, and create something better and bolder to increase the well-being of young people in Aotearoa", he said.

It is expected that when Ara Taiohi is fully up and running, both NZAAHD and NYWNA will wind up, probably in January 2011.

I think this is an excellent, exciting and strategic initiative. Congratulations on the width of your vision and your very clear and committed purpose for this new organisation.

Judge Andrew Becroft

Ara Taiohi at a Glance

Kaupapa	Mo te oranga o nga rantatahi me nga kaitiaki e mahi ana mo rätou. <i>For the wellbeing of rangatahi and all the people who support them.</i>
Mission	To support people who work with young people.
Values	<ol style="list-style-type: none"> Kaitautoko kaiärähi: support and lead at the same time. Inclusive: embracing diversity. Responsive: evolving with the sector.
Purposes	<ol style="list-style-type: none"> Connect the sector by fostering a nationwide movement with local networks, caucuses, hui, forums (including e-based). Raise the standards by providing quality information and research, self-assessment tools, training, and a professional body for youth workers. Champion youth development including youth health, education and justice, by promoting young people, youth development and the work of the youth sector.
Principles	<ol style="list-style-type: none"> Treaty-based: The whole organisation will demonstrate a collective commitment to Te Tiriti and kaupapa Maori. Leadership will include a kaumätua to provide cultural advice, kaihautu to sit alongside board chairperson, and Maori caucus. Youth development is shaped by the big picture and connectedness of young people, and comes from a strengths-based approach, quality relationships, full participation and good information.

Christmas greetings from the Principal Youth Court Judge... youth style

Hey
FYI, xclnt yj work this year
BTW Merry Xmas
Soz I not seen u enuf
TBH, a busy year
IMHO, Gr8 progress
G2G
TTYL
LOL
L8r
Thx heaps 4 yr efforts
AJB

Fetal Alcohol Spectrum Disorder in the Youth Court: Undiagnosed and Unrecognised—Part 2

In the last edition of Court in the Act we examined the manifestations of Fetal Alcohol Spectrum Disorder (FASD) and why it is important that the Youth Court increases its skill base in this area. In the next three pages we look at specific recommendations for dealing with young people affected by FASD in the Youth Court.

Objects and Principles of the Act

The objects and principles of the Children, Young Persons and Their Families Act 1989 (the Act) are the guiding lights of the youth justice system. Of particular relevance to FASD are -

- Section 4(f)(iii) - that children and young people who commit offences must be dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways; and
- Section 208(fa) - that any measures for dealing with offending by a child or young person should so far as it is practicable to do so address the causes underlying the child's or young person's offending.

Consequently, there is an onus on any person exercising powers under the Act in relation to a child or young person who may be affected by FASD, to understand-

- the way in which FASD affects the child or young person;
- how FASD contributed to the offending; and
- how FASD impacts on the provision of opportunities for that child or young person to develop in responsible, beneficial and socially acceptable ways.

General advice for youth justice professionals

The following advice comes from Christine Rogan at Alcohol Healthwatch. It was originally intended as advice for Police but may well be helpful to many youth justice professionals.

- FASD results in permanent brain injury and someone who is affected may not have any obvious physical signs. They will need your help and understanding.
- You are not expected to diagnose FASD but you can raise the question "Could this person be affected by FASD?" and approach the situation differently.
- Diagnosis needs to be done by a team of medical professionals. Working with FASD requires inter-agency support.
- If you are dealing with an individual who you suspect is affected by FASD, treat them the same as you would when dealing with a brain-injured person.
- Ask if they have an advocate or guardian before questioning them. FASD individuals may have trouble understanding their rights and may not be able to understand the concept of waiving their rights.
- Do not ask leading questions or coach the person (people affected with FASD are usually eager to please).
- If possible videotape interviews and statements.
- Indicate in your recommendations to the Crown that you suspect that you are dealing with an individual who may be affected by FASD.
- If possible, enlist help when preparing an interview or if you would like additional information for your investigation, you can contact Christine Rogan, Alcohol Healthwatch Trust ph (09) 520 7037.



Interpreting the behaviour of individuals affected by FASD— What Youth Court professionals need to know

The following advice was produced by the Police Service, Edmonton Canada.

What we SEE	What we THINK	What's REALLY GOING ON
NON-COMPLIANCE (eg. Not obeying rules, trying to make me mad)	Resistant and controlling Attention seeking Stubborn Manipulative	Difficulty translating verbal directions into actions Does not understand Slow cognitive pace Unable to remember, over-stimulated
REPEATEDLY MAKING THE SAME MISTAKES (eg. A repeat offender)	Doing it on purpose Manipulative Impulsive	Cannot link cause to effect Cannot see similarities Difficulty generalizing from one event to another Has difficulty remembering
OFTEN LATE	Lazy, slow Poor parenting Doing it on purpose	Cannot understand the abstract concept of time Tries hard, exhausted or can't start, needs assistance getting organised and remembering
NOT SITTING STILL	Seeking attention Bothering others / resisting Doing it on purpose	Neurologically-based need to move while learning Sensory overload Doesn't understand, has difficulty in paying attention
POOR SOCIAL JUDGEMENT	Takes the blame Poor parenting Abused child Doing it on purpose Uncaring Untruthful	Easily led by others Not able to interpret social cues or know what to do in social settings Impulsive—unable to perceive consequences of their actions Fills in the blanks An adult with FASD may be articulate but have the functional capacities and judgement of an average 8 year old
OVERLY PHYSICAL	Uncomfortable body language Inappropriate sexual behaviour	Does not understand social cues regarding boundaries Hyper—or Hypo-sensitive to touch (feels things too much or not enough)

Sentencing young people with FASD

The following principles were developed by Retired Judge A.P. Wartnik who has been heavily involved in FASD issues at the University of Washington since 1994.*

Judge Wartnik states that the presence of FASD may impact on sentencing in the following ways—

- It may reduce culpability for the criminal conduct;
- It may require different measures to reduce the chances of recidivism; and
- It may mean that there are significant difficulties functioning in adult society which a particular sentence may either aggravate or alleviate.

*Judge A.P. Wartnik 'Stopping the Revolving Door of the Justice Systems: Ten principles for sentencing or other disposition of people with FASD' (October 2007)



Ten principles for sentencing young people with FASD

- 1** Consider whether the disability entails reduced culpability and thus warrants a less severe sentence
- 2** Avoid lengthy (or any) incarceration in favour of longer periods of supervision
- 3** Use milder but targeted sanctions
- 4** Impose, recommend or arrange for a longer term of supervision
- 5** Use the Judge's position of authority (stature) with the defendant
- 6** Obtain a sponsor or advocate for the defendant
- 7** Create a structure in the defendant's life
- 8** Write out, simplify and repeat rules/ conditions of supervision
- 9** Make sure the probation officer understands FASD
- 10** Don't overreact to probation violations, particularly to status offences

What YJ Coordinators think about FGCs—Comment from Gabrielle Maxwell

The previous edition of *Court in the Act* highlighted a recent doctoral thesis by Christine Slater called 'Second Chances: Youth Justice Co-ordinators' perspectives on the youth justice family group conference. Amongst other things, the study found that Youth Justice Co-ordinators (YJCs) believed the youth justice family group conference process was effective for the majority of people who encounter it, but that it was less effective for offending at either end of the seriousness scale. Senior social policy researcher Gabrielle Maxwell, provided the following comment on the perspectives of Youth Justice Co-ordinators.

Issue 50 of *Court in the Act* reported on the very good thesis recently completed by Chris Slater. Her work is both interesting and helpful. However there is one point on which I would like to suggest that the views of co-ordinators may not be a good guide to best practice.

There are many examples where practitioners views and client outcomes do not coincide, for example—

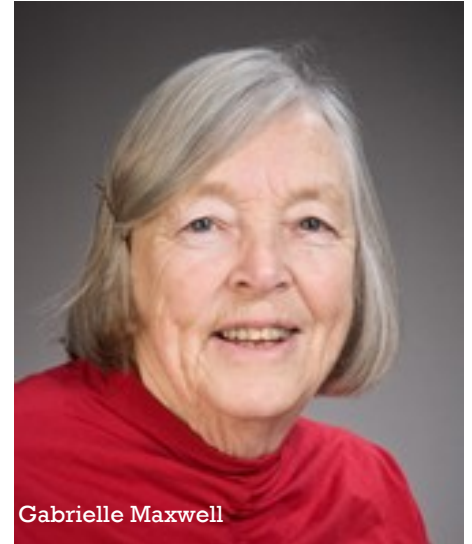
- In boot camps the managers of the programmes often believed that they were doing a fine job;
- Residential staff often believed that young people would do better if they stayed in the residence longer;

- In the UK where conferencing is only used for minor offences practitioners think it won't work for more difficult cases.

In none of these case does the evidence support these views.

For those reasons it is not possible to have confidence in the coordinators views when they conflict with evidence from post-FGC outcomes. The data from the research carried out by my colleagues and I indicates that family group conferences work best with the more difficult cases and the more serious offences.

Indeed, often it seems that it is the crisis provoked by serious offending that leads to the investment of families and communities in making a difference and provides the young person



Gabrielle Maxwell

with both the motivation and opportunity to make a fresh start. But of course the FGC alone will often not be enough – the ongoing support of family, whanau and services will be essential for these young people.

Gabrielle Maxwell

18 November 2010

Maori criminal offending— Comment on a provocative paper

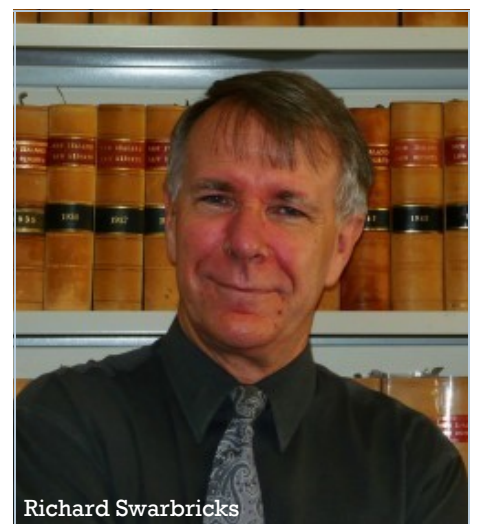
The previous edition of *Court in the Act* also reported on an paper written by Danette Marie, of the University of Aberdeen, United Kingdom entitled *Maori Criminal Offending: A Critical Appraisal*. In the paper Ms Marie criticises the Department of Corrections for adopting an approach to offending and rehabilitation that assumes that Maori over-representation in prison and other justice statistics is directly related to the loss of cultural identity due to colonisation. She claimed that this approach is not based on historical evidence and has not reduced Maori offending rates. Richard Swarbrick, a Youth Advocate from Te Awamutu provided the following comment on that paper.

I would like to comment on your report about Dr Danette Marie's paper, particularly her warning about ethnically-based punishment and related outcomes.

The "Maori as Victim" philosophy can be an issue in Care and Protection FGC's and I have encountered that very recently. Responses to Declaration Applications can get quite politicised at times and although the causes are many and complex, aware-

ness of the Australian experience through the "Stolen Generation" has I think contributed to some very real resistance particularly when Declaration proceedings are equated automatically with the loss of children.

I practice in a country town both in the Youth and Family Courts, the former as a Youth Advocate the latter often as Lawyer for



Richard Swarbricks

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Child.

I find the YJ FGC's to be very different in character from the Care and Protection conferences, partly because there are different issues at stake but mainly because, as another of your articles recounts for the umpteenth time, the "typical" YJ offender has a different family "landscape" from the average. Many YJ FGC's see professionals outnumbering whanau, and the whanau can often turn out to be an exhausted grandmother, a bewildered mother, and possibly an older sibling or two. The gender imbalance is often the most notable feature. There is rarely if ever any energy left over for politicised complaints about the Treaty or about systemic failure.

It is the collapse of the family unit, often brought about by the withdrawal of male figures, that is the main predictor of youth offending.

To what extent loss of identity has brought that about I cannot say, because while for some a course under a Supervision with Residence Plan is both necessary and successful, the causes of youth offending are far more likely to be socio-economic. In fact the similarities between pakeha and maori young offenders are far greater than the differences, and I have represented pakeha lads whose loss of identity (which is often accompanied by father-withdrawal) is every bit as damaging.

We need to focus on two things-

1.) Early detection using truancy

statistics which you can often couple with literacy levels.

2.) Proper resourcing for remedial work, given that every young person is unique. Too many Plans are resource-driven rather than needs-driven especially the further out you get from the cities. Yes, identity-repair is often needed, and yes, iwi-based providers can be ideal resources, but we need to get to the bottom of the socio-economic causes of youth offending, and those causes I suspect are not ethnicity-based. Those causes may be likened to a hypothermic wind. It may be Maori kids have fewer layers of clothing. But we need to find out.

Richard Swarbrick

14 November 2010

Remember the Youth Court website

For back issues of Court in the Act, summaries of Youth Court decisions, and lots of other youth justice information can be found on the Youth Court website.



"Court in the Act"

is published by the office of the Principal Youth Court Judge of New Zealand.

We welcome contributions to the newsletter from anyone involved in youth justice in New Zealand or internationally.

Back copies of the newsletter can be viewed or downloaded from our website.

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