

“Court in the Act”

More Youth Court information on
www.justice.govt.nz/youth

The latest issues facing the Youth Court and Youth Justice practitioners in New Zealand
A newsletter co-ordinated by the Principal Youth Court Judge for the Youth Justice Community

Special points of interest:

- Last Chance to Register for International FGC Conference
- Meaning of “Detained in Custody” s238(1)(d) (p9)
- Art a Useful Tool for Youth Offenders (p6)
- Don't forget—Youth Court website features summaries of reported and unreported cases www.justice.govt.nz/youth/decisions

Editorial

Welcome to the new look “Court in the Act” newsletter.

This month we focus on Family Group Conferences in honour of Child, Youth and Family Service's International FGC Conference happening in Wellington next week.

Last minute registrations are still possible so see the ad on page 7 for details of what

Stewart Bartlett National Manager of FGCs for CYFs kicks this issue off with an article on youth justice principles.

Much of our material is sent in by youth justice professionals “in the field” so please feel free to send us contributions, feedback and letters. Send them to Rhonda.Thompson@justice.govt.nz.

[govt.nz](http://www.justice.govt.nz). (Research Counsel to the Principal Youth Court Judge)

We have collated a significant database of those receiving *Court in the Act*. If you know of others who should be on the list please contact Judge Becroft's PA, Lavina Monteiro, ph. (04) 914 3446.

Section 5—the “Big P” Principles

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Stewart Bartlett
National Manager, FGC Co-ordinators, Child, Youth and Family Services

I have been a lawyer for Child, Youth and Family for 15 years. Recently I have migrated within CYF to become the Manager of the Family Group Conference.

As with any human being attempting to make sense of new surroundings I have, in moments of doubt and discomfort, sought comfort and solace in that which is familiar to me.

In other words, I've read the Act again. I know the Children, Young Persons and Their Families Act pretty well

and there are parts of it which I know as well as anyone else. I have a reasonable understanding of what it's all about.

The discomfiting and revelatory fact is that I see the Act a little differently now. This is probably a question of perspective as much as anything else. Some sections or parts previously viewed telescopically are now the subject of more rigorous contemplation.

One thing that has particularly engaged me is the relationship between the principles of the Act and the mechanisms that drive the youth justice system.

Section 5 is top of the pops insofar as youth justice is concerned. These provisions must be known to every person exercising powers under the Act. This must include every judge, police officer, social worker and Co-ordinator operating in the youth justice system. Of particular note is s 5(c) which has within it the only imperative command in either ss 5 or 208 –

“consideration must always be given to how a decision affecting a child or young person will affect the welfare of that child or young person and the stability of that child's or young person's family,

Section 5—the “Big P” Principles (cont’d)

whanau, hapu, iwi, and family group.”

“... the focus remains solidly around the FGC as the primary means of planning and giving effect to changes in young people’s lives”

Consideration must always be given to the effect of one’s decisions on the welfare of the young person. In the youth justice system? Quite so. Is this known to every person in the system? I do not know. Is the system driven with this in mind? Sometimes it seems to be other times I’m not so sure. What answers would be given in respect of the rest of the s 5 principles. I do not know. If they are not known or not considered then there is every chance that powers are being exercised unreasonably, unfairly or illegally.

It is one of the challenges inherent in the legislation that powers are not granted in the main to organisations but to statutory offices. Judges, police officers and co-ordinators exercise their

powers with varying degrees of independence. Judicial independence of course has a special quality which must always be respected and sedulously fostered.

Independence cannot, or at least should not, be used as a shield behind which sloppy decision-making should be hidden. Mistakes and errors of judgement will occur – that is to be expected in this extremely human environment. Ignorance of the principles or wilful blindness to their proper application does not strike me as being tolerable.

It goes without saying that organisations such as CYF and the Police must assist their staff to do their jobs well. Understanding across organisations and even between different positions

in the same organisation must be promoted.

An enormous amount of work is being put in by CYF in order to improve its youth justice activities. At the heart of this is getting families to attend properly advised and informed Youth Justice Family Group Conferences in order that FGCs can make decisions and plans which give full effect to the principles of the Act. Those principles are about accountability but are also about creating environments in which young people are less likely to re-offend. While there is new thinking about how this can be done, the focus remains solidly around the FGC as the primary means of planning and giving effect to changes in young people’s lives.

By Rhonda Thompson, Research Counsel to the Principal Youth Court Judge.

Teen Stunned by Victim’s Kindness

Sent to us by a North Island FGC Co-ordinator...

A young person is now under permanent “supervision” (at least morally) by his victim following a rather unusual and moving FGC.

The teen is a 16 year old who has been in CYFs care since an early age and who had previously appeared before the Youth Court. The teen was advised by his social worker that his recent behaviour had been so good that, if it continued, CYFs would discharge him from his custody order.

Regrettably and inexplicably, a short time later the teen stole a handbag and ran away. He was chased and caught by a member

of the public. A Youth Court appearance followed and an FGC was directed. The victim attended the FGC with her husband and two teenage daughters.

After the young person admitted the charge, the victim explained that the family had not attended the FGC to seek retribution but to explore the potential the youth had and how he could use it to better himself. The victim did not want any punitive sanctions and did not request any monetary reparation. The teen presented the victim with some flowers and genuinely and sincerely apologised.

After private family deliberations it was decided

that the teen should pay \$100 to a charity of the victim’s choice. The victim returned and refused the idea. She then took an envelope out of her handbag and walked across the room and asked the youngster if he would accept the contents of the envelope. She explained the envelope contained the money that had been in the handbag at the time it was stolen and that her family would be grateful if he would accept it as a gesture from them that there are more important things in life than money. Not surprisingly, the teenager was speechless. He then spent 10 minutes alone with the victim’s family and is now “tied” to the victim, who will be taking an ongoing interest in his life.

Should 17 year olds be treated as youth offenders?

THE UNITED Nations Convention on the Rights of the Child (UNCROC) defines a “child” as “... every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”. New Zealand ratified UNCROC, one of the most widely ratified international conventions in history, in 1993. Only Somalia and the USA have not signed it.

The age of majority is not “attained earlier” than 18 years in New Zealand. The Age of Majority Act 1970, s4 makes clear that a person shall attain full age on attaining the age of 20 years. Having ratified UNCROC, New Zealand has yet to fully implement it. 17 year olds do not come within the jurisdiction of the youth justice

process.

New Zealand is significantly out of step with many other western world countries who include 17-year olds in their youth justice systems. In England, 17-year olds are within the Youth Court jurisdiction and this is also true of many Australian states. For example, Victoria amended its legislation in 2005 to include 17-year olds.

17-year olds are not adults and are still in the process of physical, emotional and cognitive maturation. They are particularly vulnerable to self-harm, adult influences and reckless risk-taking.

The United States Supreme Court, for instance, has recently recognised this by ruling the

death penalty to be unconstitutional for under 18-year olds (see *Donald P Roper, Superintendent Potosi Correctional Centre v Christopher Simmons* (1 March 2005) 543 US 551.

Custody Rates Skyrocket in United Kingdom

THE UNITED KINGDOM has one of the highest rates of juvenile detention in Western Europe – and it is a rate that is increasing despite a long-term decline in crime levels. An editorial by Dr Willie McCarney in the *International Association of Youth and Family Judges and Magistrates’* publication (July 2006), charts political inaction in the face of skyrocketing levels of incarceration of both children and young people in the United Kingdom and states that politicians there have responded to media pressure to lengthen prison sentences.

Around 53% more offenders have been given prison sentences despite the falling crime rate and knife crime and cannabis possession are the crimes posing the most concern. This has led to huge overcrowding and massive expense to keep young people in UK prisons. This is despite studies showing that almost

70% of young offenders are reconvicted within two years of their release.

A number of initiatives have been introduced such as the establishment of the supervisory Youth Justice Board in England and Wales. And the UK government plans to introduce a “custody plus” sentence this month which will give magistrates the option to give petty criminals a short prison taster before a community sentence.

However, these initiatives have been undermined by the introduction of civil orders aimed at reducing urban nuisance. The effect of these orders has been to bring a whole range of mainly young people within the scope of the criminal justice system and, sometimes, behind bars (see also page 6 of this publication).

But on the bright side – UK Youth Offending Teams are

doing well

Intensive Support and Surveillance Programmes (ISSPs) are offering education and treatment to serious and persistent offenders and early evaluation is promising.

Youth Inclusion and Support Panels (YISPs) identify children requiring early intervention and involve a range of agencies from social services to sport clubs to assist in diverting children away from a criminal careers.

“We do not want a system that shuts people outside society, once they have left the prison gates.”

Lord Woolf, former UK Lord Chief Justice

“Around 53% more youth offenders have been given prison sentences despite falling crime rates”

XVII World Congress of Youth and Family Judges and Magistrates—Belfast

Judge P J Callinicos

Youth Court Judge, Wanganui



City Hall from Donnegall Square, Belfast

I was fortunate to attend the XVII World Congress of Youth and Family Judges and Magistrates which was held in Belfast in the last week of August 2006.

The Conference focused upon the plight of children and young people in various parts of the world attracting registrants from every corner of the planet. There were representatives of countries where children and young people are facing acute and serious harm, such as being forced into labour, forced to pick up arms as child soldiers or forced into child prostitution and pornography.

At the other extreme were the "western" countries such as New Zealand where the issues were perhaps not as acute but were nonetheless significant within our culture and society.

There were several very interesting keynote presentations together with a wide range of workshops that one could attend. Indeed, such was the selection of workshops that it became difficult to choose which to attend. The workshops were of high standard and approached issues at a pragmatic level. I found two of the workshops to be particularly beneficial. One was presented by Judge Len Edwards, a retired Judge from Santa Clara County, LA, USA. Judge Edwards developed the concept of wraparound services in the

United States and gave a detailed and thought provoking address on how these wraparound services can address dysfunction within an individual, and more often within the family surrounding that individual.

The wraparound services are of course nothing new in New Zealand but it was rewarding to see them being pushed to the forefront of techniques to address youth offending and other consequences of poor function within a family. His presentation emphasised the need for wraparound services to be supported by tangible and adequate resourcing, failing which they can indeed make matters worse.

Another workshop I attended was a Youth Forum at which young offenders from Northern Ireland presented their perspective on a variety of various issues. An aspect that I had been hoping to glean from my visit to the Conference was in seeing whether there were parallels between the experience of youths from the Nationalist (Catholic) Community and the perspective of young Maori in New Zealand. Members of the Nationalist Community have grown up in an environment where "the establishment," including services such as the Police, Social Work and so forth, have been by and large comprised by significant proportions of members of the Unionist community. I pondered whether there was something to be learnt from

that experience which could assist young Maori in embracing services and supports offered by agencies that they might see as being quite alien to them.

I spoke to three young offenders, two of whom seemed to be quite close friends notwithstanding that one was of Nationalist background and one Unionist. The aspect they felt best assisted them in engaging with Police Officers and other persons in a position of authority, was to be treated with honesty and respect regardless of whether that Police Officer was Catholic or Protestant. The overriding view offered by them was that any success in engagement with support systems was allied with higher levels of mutual respect.

In terms of the keynote presentations, New Zealand delegates were certainly standout performers. First of all there was the delegation from the New Zealand Police comprising of four Youth Aid Officers and Inspector Chris Graveson from National Office. The delegation was popular and those Officers were central personalities of the whole Conference. Their warmth and personality endeared them to persons from all nations. Their presentation was impressive. I later heard one Youth Services Worker speaking to some young offenders telling them she wished the Police in

"The agencies in Belfast seemed so cohesive because the communities had to create them themselves and actually own them."

World Congress: Key Points

- Wraparound services pushed to the forefront in Los Angeles
- What Works for Nationalist (Catholic) Youth Offenders
- New Zealand Youth Aid Officers steal the show
- Judge Becroft takes the stage with Cherie Blair!
- Nationalist communities forced to run their own services

northern Ireland were just like the New Zealand Police Officers.

In addition to the input of the Youth Aid Officers, I observed the tireless energies of Inspector Chris Grayson who was perpetually searching out new ways of doing things and improving things for young people in New Zealand. All these Police Officers certainly served New Zealand proud.

In terms of our own Principal Judge, Andrew Becroft, his keynote address was clearly one of the best, if not the best paper of the Conference. Notwithstanding that he shared the stage with Cherie Booth (aka Blair), his presentation was powerful and considered with his choreography possessing a pzazz surpassing that of the 'First Lady'. His well-known commitment to the welfare of young people came through within his presentation and he represented the interests of the New Zealand Youth Justice System to the highest level. It was clear he gained the respect of the audience.

In terms of extra curricula activities that I am able to disclose, I took the opportunity of visiting a community agency known as the Glen Parent Community Complex. This is a Community Trust that established a variety of Social Agencies in an old bacon factory in a Catholic

area of town. It is an aspect of Belfast society that the Catholic/Nationalist Community have over the past decades created their own social agencies as the 'troubles' made it difficult for the Government operated agencies to operate within certain parts of the city. While in New Zealand some agencies might feel embarrassed to provide their facilities in an old bacon factory or a flax mill, these concerns do not arise in Belfast where the focus is on what has been provided rather than the ascetics. Within this factory I saw an amazing amalgam of social services being provided, all under one roof, the one organisation was able to provide to families in need and holistic wraparound service for the individual or the family in strife. The Complex operated a Youth Services group including three Youth Services Workers and a Counselling Service of such quality that it trains Counsellors on Government contract. In the basement of the old factory there were four counselling rooms, all of which were set up like a family lounge, complete with settees, TV set in the corner, coffee table, lamps and so forth. This created an environment whereby people being counselled would immediately feel at home. There was a computer training facility where some three thousand people have

obtained computer literacy certificates in the past eight years. There is also a youth suicide strategy operated by this agency.

This was a remarkable facility and very much highlighted a point made to me by Inspector Chris Graveson when he opined that it stood out to him how the agencies in Belfast seemed to be so cohesive because the communities had to create them themselves and actually own them.

If there was a disappointing aspect of the Conference it was that there was an overriding drive by the Conference organisers for each workshop to develop a resolution on some particular topic, basically revolving around how the Convention of the Rights of the Child could be enhanced. The problem that this created was that much of the time allocated for workshops was absorbed by the need to come up with a resolution rather than deal with the more pragmatic aspects that attendees wished to hear. This approach meant that some of the energies at the Conference were distracted onto political rather than practical issues. Given that there was such a large congress of Judges, Magistrates, Social Workers, Psychologists, Lawyers, Police Officers and such like there was substantial opportunity missed to draw



Counselling and suicide prevention are undertaken by the Nationalist community.

“The Youth Aid Officers were popular and the central personalities of the whole conference”

Some Useful Acronyms!

AFK = Away from keyboard
BRB = Be right back
BTW = By the way
ROTFL = Rolling on the floor laughing
WADR = With all Due Respect
TTFN = Ta Ta For Now
YMMV = Your Mileage May Vary (meaning, “this was my experience, yours might be different”)
WYSIWYG = What you see is what you get (pronounced “weesy-wig”)

Youths "Demonised" in United Kingdom

Summary of NZ Herald article and other information on "Anti-Social Behaviour Orders"

"There are adverse consequences in fixing a mark of Cain to a child's forehead ... give a dog a bad name then the dog may live up to the name"

THE UK's chief advisor on youth crime has cautioned against "demonising" a generation of British children because of a wave of hysteria over teenage crime.

The New Zealand Herald reported (24/4/06) that Professor Rod Morgan, Chairman of the Youth Justice Board, warned against placing the "mark of Cain" on children as young as 10 because of the furore in the UK over anti-social behaviour. Prof Morgan called for a radical rethink on how unruly teenagers are dealt with.

The concern arises in the wake of "ASBOS" or Anti-Social Behaviour Orders that the current Labour government considers a successful element of their law and order strategy.

The orders have been in force since 1999 and can ban individuals from entering certain areas or carrying out specific acts for a minimum period of two years. Applications for ASBOS may be made to magistrates by police, councils, housing action trusts and registered social landlords. Applications are granted for "behaviour which causes or is likely to cause harassment, alarm or distress to one or more people who are not in the same household as the perpetrator". Interim orders may also be made.

Critics argue that, as the application is a civil process, there is no jury and hearsay evidence is admissible. If breached, the individual has committed a criminal offence and this carries a maximum penalty of five years in prison.

ASBOS have resulted in record numbers of children being sent to court despite levels of youth

offending being stable in the UK.

Prof Morgan was reported in the NZ Herald saying: "There are adverse consequences of fixing a mark of Cain to a child's forehead ... The argument is that if you give a dog a bad name then the dog may live up to the name".

The Herald further reported that Liberty, the human rights group, is threatening to expose the Government's poor record on how children are treated in Britain when it reports to the UN next year.

Shami Chakrabati, Liberty's director, said that criminalising children had become a national "obsession". "I get more hate mail for sticking up for kids than for terror suspects," she said. See also: "ASBOS - Dictating the Right Terms of Behaviour?" by Andrew Glennie, UK barrister, in the New Law Journal, 16 December 2005 at 1929.

Art a Useful Tool for Rehabilitating Youth Offenders

Arts Access Aotearoa has the largest Aotearoa youth justice system to include or improve arts programmes for youth offenders.

Arts Access Aotearoa, *Whakahauhou katoa o hanga*, is a national charitable arts organisation established in 1996. It focuses on ensuring access to the arts for everyone and particularly those who are disadvantaged or disabled.

Arts Access advocates for the role of arts in providing constructive alternative opportunities for young offenders and argues that at present there is only a limited amount of arts activity available to young offenders.

Arts programmes tend to be

one-off, sporadic projects that are not part of any strategic view of how the arts could be used on a wider level.

Mei Hill, Arts Advocate-Justice stated: "Successful outcomes are most often achieved when a range of agencies, organisations and individuals work together; our challenge is to work with others within the youth justice system to develop meaningful arts-based projects that produce positive results for these young people." Research shows the constructive impact of arts projects within prison settings, including having a positive impact on offender behaviour, skills learning and building individuals' self-confidence. Art can provide an outlet for communication and expression for those with limited

communication skills..

Arts Access is currently involved with story writing and educational programmes at the new Northland Region Corrections Facility and at Mt Eden and Christchurch Men's prisons.

The Arts Access website is available at:

<http://www.artsaccess.org.nz/>



*Coming Home
Te Hokinga Mai
International Conference on the Family Group Conference*

Time is R

Last Minute Registrations still possible for the International Conference on the Family Group Conference to be held at Wellington Town Hall, New Zealand from 27–29 November 2006!

See cyf.govt.nz for details or contact Sheila Burgess at Sheila.Burgess007@cyf.govt.nz

News in Brief

Submissions on Victims' Rights in the Youth Court

Parliament's Justice and Electoral Committee is conducting an inquiry into victims' rights in New Zealand. In view of the significant confusion as to whether the Victims' Rights Act 2002 applies to the Youth Court, Judge Becroft, Principal Youth Court Judge, has made submissions to the Committee on this issue. The submission highlights some of the reasons for the confusion and calls for the Legislature to clarify the position, if necessary through amending legislation.

Keeping Teens Netsafe

They don't call it a "web" for nothing. Sticky and invasive but practical and, well, almost beautiful (when you can grab that information without leaving the house!) the internet is a big issue for young people. Information for young people and those keeping an eye on their internet usage is available at the Netsafe website on http://www.netsafe.theoutfitgroup.co.nz/articles/articles_children.aspx.

US Judge opts for Rehabilitative Approach

Judge E A Moore, Oakland County Family Court, Michigan, USA opted for a juvenile disposition for a 13 year old convicted of a second degree murder that took place two years earlier when the boy was just 11. The Judge chose the juvenile disposition in spite of the boy's trial and jury conviction as an adult because of his view of the relative merits of the two systems for a child just entering adolescence. He said:

"Prevention and rehabilitation are the foundational elements of the juvenile system. The

precious commodity. They are our hope for the future. If we prevent the criminal mindset from taking hold of our youth, then we, in turn, prevent adult criminals from coming into existence. If we rehabilitate those youths who have committed criminal acts, we are making ourselves safe both now and in the future."

"If you keep on this way you're headed, you can only end up in the cemetery or the penitentiary"

"Screaming out Loud"

Story from Hume, 1996, 38-39 quoted in Fiona Beals, "Screaming Out Loud, Johnny Jordan Bailey Kurariki, the System and You", VUW

"The kid is silent, sullen, staring at his hands as [Judge] Dorn lectures. The judge doesn't seem to notice. His eyes are darting around the courtroom now, where several mothers and fathers are nodding and whispering to their children to listen to the man. One father whispers "That's a good Judge. That's what the boy needs." Someone else calls out "Amen," as if she were in church, and a slight smile spreads across Dorn's lips at this. His voice grows even louder and deeper."

"You're stealing from yourself,

no one else," he tells Robert. "You're stealing your own future. If you keep on this way you're headed, you can only end up in one of two places; the cemetery, or the penitentiary."

He pauses then, lowering his voice, taking off his glasses. "I can send you to a place where you have to go to school every day, but I can't make you learn, son. You have to want to learn. I think the world of you, son. I love you. I'm sending you to camp to give you a chance to decide to help yourself. Because I love you."

... whether or not it had any real impact on Robert, this heartfelt lecture of Dorn's was a bravura performance. Certainly, the parents were impressed, maybe a few of the kids, even the often-jaded prosecutor ...

But the scene is marred in the end by one slight jolt of mundane reality, a little thing, really, that nevertheless seems emblematic of the despair and futility that inhabits this courtroom so much more often than hope, a stark reminder that the crush of juvenile crime can reduce this system to an anonymous assembly line.

After sentence has been pronounced the clerk grabs Robert's file - one of sixty cases the judge will hear this day - but Dorn suddenly realises he forgot some minor point, and he asks for it back.

He stutters oddly as he does this, and it takes a second for those present to understand why. Then it becomes clear: though he may indeed love Robert, Judge Dorn does not know his name."

Secondary School Principal's Forum

Senior Sergeant Anthony Aitken, Christchurch Police reports on a recent Principals' forum

At our recent Principals' forum, about 23 Secondary schools attended, although a number of the principals sent a representative along. It was very valuable afternoon. We did a short presentation introducing the Youth Offending Team (YOT) members and their roles individually, then followed that up with what YOT is and what it does. We then broke into small groups (with YOT members in each group) and did an exercise where we had the attendees share what they see as the problems and issues they face, and how they think

we can best help them.

These were then fed back to the main group. We got a wide range of responses, with lack of coordination between agencies, and lack of funding & resources being regular themes. There was also considerable frustration with the delays in dealing with expelled students, and with alternative education.

Overall it was very valuable for the YOT to hear these problems, and it gave us a coalface 'snapshot' of the problems that are occurring in the area. From the attendees perspective, the feedback was that it was valuable for them to meet with us and they now have direct lines of contact,

and also they were pleased to know that there is a group (YOT) looking at these issues on a city-wide basis.

The challenge for us is to address the issues. To that end we had a presentation last week about the truancy initiative 'Rock On' (Jackie Talbot and Karen Henrikson) which was very well received. Education in particular were quite taken by the presentation. The are positive about it and we want to run it here in Christchurch. All going well I would like to see us have a pilot in place later this year, or at least ready to start in the first term of next year.



Legal Focus: Meaning of “Detained in Custody” - s238(1)(d) CYPFA

By Rhonda Thompson,

THE MEANING of the phrase “detained in the custody of...” in section 238(1)(d) of the Children, Young Persons and Their Families Act 1989 was considered in the Lower Hutt Youth Court recently.

A young person who was addicted to “P” and who had a serious offending history had been remanded under a s238(1)(d) order by the Youth Court.

Apparently pursuant to section 362 CYPFA, the young person was placed with a CYFS caregiver. The caregiver was out at work all day and consequently the young person signed a contract saying that he must be out of the house between 7am and 7pm every day. Thus, despite his offending and addiction history, the young person was entirely unsupervised all day. The young person did not return to the caregiver’s house by 7pm one night and was found by Police and charged with escaping (s120(1)(c) Crimes Act 1961).

The young person’s counsel subsequently raised an issue as to the meaning of “detained in custody” in s238(1)(d). She argued that although the legislature did not spell out the restrictions required under s238(1)(d), that at all times custody should have sufficient controls to equate to “detaining” the young person.

The Police argued that a 12-hour curfew amounted to “partial control” and that this

was sufficient for s238(1)(d). Judge Walsh canvassed the relevant statutory provisions and precedents and noted section 385 CYPFA states a young person cannot “escape” as per s120 CA “unless that ... young person was being *detained*”.

In *Police v T* (23/11/05, YC, Hamilton, CRI 2005-219-000046 available at www.justice.govt.nz/youth/decisions) Judge McAloon had rejected an argument that a young person had not escaped from CYPF’s custody because “detention” and “custody” in s238(1)(d) could be split and as the Chief Executive of CYFS was still entitled to custody, even after the absconding, the young person had not escaped. Judge Walsh concurred with Judge McAloon’s rejection of this argument and found that the two concepts could not be split. Thus, the concepts of detention and custody must be considered together.

Having considered the meaning of “detained” in the CYPFA and generally, Judge Walsh concluded that the young person should have been in a controlled or supervised placement in custody at all times.

As this did not occur, the young person could not be said to have “escaped” and the charge was dismissed.

This decision raises some interesting issues which will have ramifications throughout the Youth Justice system. It will allow a Youth Court, when considering

escaping charges, to analyse whether a young person was being “practically” detained. It will also necessitate an analysis as to whether arrangements made by CYFS for the custody of a young person on remand under s 238(1)(d) constitute a “detention.”

Young people remanded under a s238(1)(d) order may be placed with any person or organisation CYFS “considers suitable to provide for that ... young person’s care, control, and upbringing” (s362, s361 (g)). However, given the wide interpretation of “residence” in the CYPFA, which includes “any residential centre, family home, group home ...”, the young person could arguably have been placed in the home under section 242.

Section 242 states:

“The making of an order under s238(1)(d) of this Act for the detention of a child or young person in the custody of the chief executive shall be sufficient authority- (a) For the detention of the child or young person in a residence under this Act”.

If there had been such a placement, would this have constituted a “detention” arrangement?

See *Police v CAP* (16 October 2006, YC, Lower Hutt, CRN-062320073, Walsh DCJ).

A copy of this decision is available from Rhonda Thompson at the Office of the Principal Youth Court Judge.

“Despite his “P” addiction and serious offending history, the young person was entirely unsupervised all day”

Family Support Service Whanganui Trust

From Tim Metcalfe,
Manager Family Support
Service Whanganui Trust

The Family Support Service Whanganui Trust works to strengthen and support families and whanau to ensure the safety and well-being of children.

The Service uses several programmes for parents including the "Incredible Years", the "White Water Years" and "Anger Change" for mothers who are

experiencing anger and are concerned that they will take this anger out on their children. The Incredible Years programme is a training series for parents, teachers, and children and is designed to promote social competence and prevent, reduce, and treat aggression and related conduct problems in young children (ages 4 to 8 years).

The interventions that make up this series—parent

training, teacher training, and child training programs are guided by developmental theory concerning the role of multiple interacting risk and protective factors (child, family, and school) in the development of conduct problems. The Family Support Service website is at www.fss.org.nz and the Incredible Years website is at www.incredibleyears.com.

The Missing Expert: Development Audits with Challenging Youth

From an article by: Larry
Brendtro, Lesley du Toit,
Howard Bath, and Steve
Van Bockern

Larry Brendtro was recently brought out to New Zealand by Praxis to do a series of workshops on the RAP philosophy; an approach aimed at helping practitioners with youth in crisis to identify and respond to needs, rather than reacting to problems. This extract outlines the basis for the Developmental Audit, a new approach to assessment of young people, which has been developed and used with a number of high profile youth justice cases in the USA. Praxis is considering bringing Larry Brendtro out again in March 2007, please contact Lloyd@praxis.org.nz to register your interest in being kept in the loop about this event.

The Developmental Audit is a new strength-based

assessment model for youth who are in conflict in home, school, or community. Developmental Audits involve collaboration with young persons who are seen as experts on themselves. Discussing challenging life events provides a window on the young person's private logic and goals. The audit scans relationships in the youth's ecology and focuses on strengths and solutions. This article highlights how Developmental Audits are conducted and describes evidence supporting this approach.

What is a Developmental Audit?

The Developmental Audit blends research on positive development with best psycho-educational practices to evaluate the unique problems of a specific young person. The ultimate expert on a youth is that individual person, but traditional assessment

fails to tap the youth as a primary data source. The Audit also reviews records and taps perspectives from others in the child's life space to tell this young person's personal story. When completed, the Audit provides answers to these key questions:

- How did this young person come to this point in his or her life?
- Where should we go from here to create a restorative outcome?

Schools, courts, and treatment programs are encountering an increasing number of very troubled and troubling children and adolescents who confound all efforts of intervention, producing great financial and human costs to schools, youth juvenile justice systems, and mental health systems (Mitchell, 2003). The Audit is a particularly powerful tool for planning restorative

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outcomes with youth whose destructive behavior or chronic problems put them at risk for punitive interventions such as school exclusion or placement in restrictive settings.

After a recent airline accident, a federal aviation official declared: "It is important that we learn everything we possibly can about what went wrong so something like this does not happen again." When an airplane crashes, there is an elaborate system of determining what went wrong in order that future problems can be prevented. But when young lives crash, many lack procedures to learn from these crises. If a youth disrupts schools or communities, the common reaction is to assign blame and administer punishment. In a climate of zero tolerance, emotion trumps reason.

Traditional assessments diagnose pathology and assign labels for disorders. But deficit based approaches provide scant information about the function or purpose of the behavior and the interventions that might produce growth and change (Buetler & Malik, 2002). In contrast, the Developmental Audit focuses on strengths. Problems are seen as self-defeating coping strategies. The young person is enlisted in a reflective process to understand and

overcome difficulty and develop strength and resilience.

Youth in conflict often distrust adults and resist the assessment process. Without cooperation from the young person, the assessment loses its most important source of data. Therefore, the Developmental Audit employs specific strategies to create an alliance between the adult and youth who collaborate to develop the Audit report. Audits have successfully engaged young persons who have thick case files and long histories resisting assessment, education, and treatment methods.

The Developmental Audit applies to a wide range of settings including education, child welfare, juvenile justice, mental health, and child and family service. The Audit is built on universal principles that apply across cultures and ages of development. The Developmental Audit is particularly useful in planning interventions with young persons whose serious or chronic problems place them at risk for exclusion, expulsion, or placement in more restrictive settings. The Audit may be used as a stand-alone assessment or in conjunction with other diagnostic and assessment tools.

The Developmental Audit provides a new standard for

planning interventions when life-altering decisions are being made by school, courts, child welfare authorities, and treatment programs. A clear understanding of the problems and strengths of a young person provides the basis for effective intervention.

The Missing Expert

The ultimate expert on how a young person sees his or her world is that individual youth, but that voice is absent from many traditional assessments. One may accumulate batteries of tests and gather observations of surface behavior without ever being aware of a child's private thinking, feelings, and motives. Mark Freado, director of the American Re-Education Association, suggests that the tendency is to react to the *outside kid* instead of getting to know the *inside kid*. For example:

- The justice system is more adversarial than analytic. Minnesota Chief Public Defender John Stuart (1997) describes how procedures focus narrowly on identifying and adjudicating delinquents and administering punishment. These may be essential to justice, but fail to show what went wrong in the life of a child. Even when the trial is over, nobody really knows what

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happened. Youth do not take responsibility for offenses, and victims are not healed. Guilt is established, but the court is blind to what might work in prevention or restoration.

- The mental health system is better at diagnosing deviance and disorder than it is at finding restorative solutions. Rather than learning what behavior means to a youth, many impose their own meanings by assigning test scores and diagnostic labels. A half century ago, pioneering child psychiatrist Leo Kanner noted that "research has contributed much to knowledge of delinquency and very little to the understanding of boys and girls who are delinquent" (Kanner, 1957, p. 680). To understand the cause of a behavioural crisis, he suggested studying the train of events leading to the problem. Similarly, Alfred Adler (1932) said that a real understanding of behaviour requires listening to the story of the youth's "lifeline" to discover private logic and goals.
- Educators face serious challenges with disruptive students. Special education legislation requires that schools identify behavioural problems

related to disability and provide such students positive support. To understand behaviour, a "functional assessment" is made, using the ABC sequence of *Antecedents > Behaviour > Consequences*. The goal is to develop a hypothesis about the meaning of the behaviour to inform intervention. Such assessments typically include observation, reviews of case records, and interviews with significant persons. While functional assessments are a mainstay in special education, the troubled student's perspectives of the problem are often omitted since such youth are not seen as valid sources of data.

Since youth may try to conceal their real problems, even behavioural observation can yield false impressions. "They think they have me figured out but they don't know crap!" is a typical expletive of an angry youth in a contest with adults. We are on the horns of a dilemma: Young persons have critical inside information about the thinking and emotions beneath their behaviour; but they will not communicate openly with adults whom they do not trust. Further, they resist diagnostic examinations that probe for deficit and deviance but overlook strengths (Brown, 1997).

The Developmental Audit remedies these omissions. Alfred Adler (1932) suggested that if the child's "private logic" and goals are not understood, interventions are likely to fail. Following Adler's approach, one can seek to understand the private logic and goals which underlie behaviour problems.

Fritz Redl contended that assessments of youth should be based primarily on discussions of timelines of life events. This is the most efficient way to identify the values, thinking, and emotions related to coping strategies and problem behaviour (Long, Fecser, and Brendtro, 1998). For reliability, perspectives of youth are *triangulated* with traditional data sources of observations, case records, diagnostic reports, and interviews with persons who know the youths' history. Timelines of events do not replace other ways of gathering data, but they do provide a rich source of qualitative data for formulating hypotheses about the meaning of behaviour. In the final analysis, one's theory about a problem shapes the intervention.

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