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THE YOUTH COURT OF NEW ZEALAND | TE KŌTI TAIOHI O AOTEAROA

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Editorial

The journey to Te Ao Mārama, the enlightened world, has begun in the District Court as we endeavour to respond to the decades of calls for transformative change. The vision of how the adult criminal courts should be has been much influenced by how the Youth Court has operated since 1989. There is good reason for that when the statistics are considered. In the year before the Oranga Tamariki Act came into force in 1989 there were 10,000 young people in the youth justice system and about 900 of those in custody. Within a year, with the emphasis on alternative action and diversion from court, the number in the system had dropped to 2000. Today, there are about 750 young people in the Youth Court of New Zealand and about 100 in custody.

The number of young people in court has been steadily decreasing, but those who we do have are those with high and complex needs and serious offending. It is as well that we have the time and resource to spend on these challenging situations. The young people who appear in court are those who we, as communities, have failed. We have overlooked opportunities for intervention and we have ignored warning signs that a young person is at risk of becoming involved with the justice system. The Youth Court is not where we want young people to be. Involvement with the justice system is deeply difficult, confronting and traumatising. If we are agreed on this, then we must surely agree that steps must be taken to ensure that young people do not become involved with the justice system.

I wish to highlight two such opportunities for early intervention. Firstly, when a young person becomes disengaged from education, and secondly, when a young person is exposed to family violence. I will focus first on education. Recent research from Oranga Tamariki has shown that in the years leading up to a young person's first Youth Justice Family Group Conference, school disengagement increases, including increased proportions of truancy, stand-downs and suspensions. The connection between school disengagement and involvement with the justice system is clear. Young people missing school is often a signal that there is an underlying issue in their life, and that very same issue may mean that there is an increased likelihood of them offending.

We should not wait until children are before the Youth Court to deliver effective interventions.

The second area of risk is exposure to family violence. This includes not only witnessing family violence, but also hearing, intervening in, or experiencing the results of violence in the home. Growing up around violence can have an effect both on a child's learned behaviours and on their brain development. Exposure to family violence, whether it happens once or frequently, is a traumatic experience that can have a significant effect on, and cause physical changes to, the brain. Further, children who grow up around violence are more likely to be exposed to drugs, alcohol and gang influences. The combination of these factors can put them at risk of becoming

involved in the justice system, whether this is as an offender or a victim, or both.

In 2018, there were around 130,000 family harm investigations by Police. Children were present at two thirds of these. Given that only around 20 per cent of family harm incidents are reported, the real number is much higher. The recent Oranga Tamariki research referred to earlier also showed that most young people referred to their first Youth Justice Family Group Conference had previously been involved in care and protection reports of concern and/or family violence notifications.

Every school suspension, every family violence call out and every report of concern should be a red flag, a warning of risk, and an opportunity for intervention. When children miss a significant amount of school, rather than simply saying "put them back in school", we should be asking ourselves why they were out of school, and what underlying issues there may be. Failing to address these issues will only cause the cycle of disengagement to continue and may, as the research shows, lead to youth justice involvement. Similarly, the child hiding behind the doorway in a family violence call out should be a red flag and viewed as a chance to look for and meet the needs of that child. I have previously referred to children exposed to family violence as the "silent victims" of family violence, often forgotten about while the focus remains on the primary victims and perpetrator. We cannot continue to let them stay silent.

Research has shown the links between school disengagement and involvement with the justice system, and similarly between exposure to trauma (including family violence) and involvement with the justice system. Further, research indicates that young people who end up in the Youth Court have often had contact with a multitude of government ministries and agencies prior to entering the youth justice system. This clearly indicates that there are many chances, before involvement with youth justice, where a cross-agency approach could provide young people with interventions and wrap-around support.

The team in the Youth Court is used to working in a joined-up way. This was highlighted during the height of the Covid-19 pandemic in 2020, where the existing relationships between youth justice stakeholders meant that cross-agency discussions on our response to the challenges arising from the pandemic were easily facilitated and decisions could be swiftly made. The framework is already there, and it should not be too arduous a task to extend that framework and the existing way of working to help support children and young people before they enter the Youth Court. I have confidence that youth justice stakeholders are dedicated to this ethos and have the skills to see it put into action.

In the Youth Court, we are often playing "catch up" on a lifetime of trauma, exposure to violence and other underlying issues. We should not wait until children are before the Youth Court to deliver effective interventions. Our current responses need to be improved significantly, so that young people never become involved in the justice system. The number of young people in the Youth Court has been steadily decreasing since the Oranga Tamariki Act 1989 came into force (then called the Children, Young Persons, and Their Families Act). Credit is due to the hard work of all those involved in the youth justice system, looking at options and alternatives to the formal court setting. However, we must not rest on our laurels. We must continue seeking to decrease the number of people who ever come before us in court. I urge us all to move forward together on this issue, and to look for every possible opportunity for early intervention.

Judge Walker
Principal Youth Court Judge for New Zealand

Pōwhiri for Judge Michael Mika

On Thursday 8 April, Judge Michael Mika was welcomed onto Waiwhetū marae as a resident judge appointed to the Hutt Valley. His Honour also made history as the first Pasifika District Court judge appointed outside of Auckland.

Judge Mika was born in Lower Hutt and raised in Upper Hutt. His Honour studied law at the University of Otago and was admitted to the bar in 1996. He had an illustrious rugby career, including playing for Otago, the Highlanders and Manu Samoa. As a lawyer, he primarily practised in Otago and Southland. Prior to joining the Bench, he was a Director of Preston Russell Law, the Crown Solicitor's Office, in Invercargill.

The pōwhiri at Waiwhetū marae was attended by members of Judge Mika's aiga, representatives from the Hutt Valley Pasifika community and iwi including Te Āti Awa, colleagues, government ministers and other dignitaries, and students from Upper Hutt College. It was a warm and welcoming occasion. The Cultural Group from Upper Hutt College, the Judge's old school, gave an inspiring performance. Speeches were given in Samoan, Te Reo Māori and English, and Judge Mika and other dignitaries were adorned with lei and ulafala necklaces.

Judge Ida Malosi, New Zealand's first female Pasifika judge, attended and spoke of the momentous occasion. It had been 19 years since the first Pasifika male judge, Judge A'e'au Semi Epati, was appointed in Manukau. Judge Malosi spoke of the missed opportunities over those two decades. Chief District Court Judge Taumaunu spoke of how the appointment of Judge Mika represents Te Ao Mārama, the transformative vision for the District Court. It was a joyous occasion on a beautiful Wellington day.

Pōwhiri begins

Judge Mika and family

Students' performance

Judge Ophir Cassidy - Swearing-In

On Saturday 17 April, there was a special sitting of the Manukau District Court, beginning with a pōwhiri, for the swearing-in of Judge Ophir Cassidy. The swearing-in took place at Te Kura Māori o Ngā Tapuwae, where Judge Cassidy was formerly a student before serving there as a teacher and Deputy Principal. The location of the sitting was important to Her Honour, who said that she hoped she could inspire young students in South Auckland to achieve their dreams.

After her teaching career, Judge Cassidy began her legal career at King Alofivae Malosi, the first Māori and Pasifika female law firm in Manukau. She practised as a Lawyer for Child and Youth Advocate, most recently being the principal of the firm Manukau Law. Her Honour was also appointed as Counsel to assist the panel on the Waitangi Tribunal for the urgent Oranga Tamariki inquiry, and senior Counsel to assist on the Royal Commission of Inquiry into Historical Abuse in State and Faith based Care.

Judge Cassidy and her aunt

Taking the oath

Judge Cassidy was appointed to the Waitākere District Court with a general jurisdiction warrant, and to sit as a Youth Court judge. She will also lead Ngā Kōti Rangatahi at Hoani Waititi and Ōrākei Marae. Her appointment brings the total number of Māori District Court judges to 32. Judge Cassidy is fluent in te reo. Her iwi are Ngāti Porou and Ngāti Whātua ki Kaipara. Judge Cassidy's clear links to the community are an embodiment of Te Ao Mārama, the Chief District Court Judge's vision for the District Court.

Case Watch

NOTE: Youth Court decisions are published in anonymised form on the District Court of New Zealand website. These cannot be republished without leave of the court, and no identifying particulars of any child or young person, or the parents or guardians, or the school they attended, may be published.

New Zealand Police v JH [2020] NZYC 396

This case concerned the validity or lawfulness of the arrest of brothers JH and RH. The two young people willingly accompanied police to the police station following an alleged altercation. In the car, the Sergeant received a phone call, following which he arrested JH and RH. The Judge found that the motive to arrest JH and RH was to enable court bail conditions to be imposed, which was a misapplication of the Oranga Tamariki Act 1989 and did not accord with the provisions of the UN Convention on the Rights of the Child or the concept of mana tamaiti. The Judge referred to the Sergeant's obligations as set out in the Act, including obligations to give effect to the principles of Te Tiriti o Waitangi and UNCROC. The Judge found that each arrest was unlawful and the charges were dismissed.

New Zealand Police v AN [2020] NZYC 609

AN was charged with wounding with intent to cause grievous bodily harm. The issue was whether she should stay in the Youth Court and be subject to an order of supervision with residence, or be convicted and transferred to the District Court for a sentence of imprisonment. The Judge noted the 2019 amendments to the Oranga Tamariki Act 1989, which require a more comprehensive approach to sentencing. His Honour noted that AN's status as a kōhine means she is entitled to special rights and protections. A supervision with residence order was made, allowing AN to remain at the residence where she had been for the past eight months, where she could access age-appropriate programmes taught by suitably trained staff. The Judge concluded with a letter written directly to AN.

R v PG [2020] NZYC 550

PG was charged with a number of offences, including sexual connection with a young person and strangulation. The issue was whether to convict PG and transfer him to the District Court for sentence. The Judge took into account numerous factors, including the seriousness of the charges, that there was little in the way of rehabilitative options for PG in the Youth Court, and the risk he would pose to others in the community without a successful intervention. For those reasons, PG was convicted and transferred to the District Court on the charges.

New Zealand Police v TD [2020] NZYC 414

TD was charged with sexual violation, aged 16 at the time of offending. He did not deny the charge. A Family Group Conference was held, and a plan made for the young person to attend the STOP programme, continue at school and do community work. The progress reports from STOP were positive, as were the reports from the young person's high school. The police submitted that a s 283(a) discharge should be considered due to the seriousness of the offending. However, the Judge found that a s 282 discharge was appropriate.

Letter to a Young Person

The following letter was included at the end of New Zealand Police v AN [2020] NZYC 609. It is a letter written directly from the Judge to AN, the young person charged. The full decision can be found on the District Court of New Zealand website.

For [AN]

Tēnā koe [AN],

Before deciding what to do at the sentencing I needed to try and learn as much about you as I could by reading everything on your files. Although that does not mean I really know you, it was a start and it helped me decide what to do so far.

I cannot imagine how hard it has been for you to go through the things you have in your life, but I am sure that if I had gone through what you have, I would have made mistakes and bad choices too.

The truth is we all make mistakes, every single one of us. People are more likely to do that at your age especially if they are not being looked after or treated properly.

One thing you have heard people talk about a lot is the risk that you will keep making mistakes and bad choices in the future. None of us actually know for sure what will happen in the future and so the best we can do is look at what has happened in the past and decide how likely it is that it will keep happening. That is what we call risk.

An important lesson I have learnt as a judge is that just because someone is at risk of making more mistakes does not mean they will actually do that. Risk is not the same thing as destiny. Just because someone has made bad choices in the past it does not mean they keep doing that in future. People change. I have seen that happen so many times before. With the right help and support anyone can change the pathway they have been on. It can happen for you and I believe it will as long as you are willing to work at it.

The sentence I gave you is for what you did, not who you are. What you did to [NV] was a terrible thing but it does not define you or describe who you are as a person. The people who know you talk about someone who has many good qualities; they know you to be

clever, thoughtful, cool and talented and many other good things. Your special talent for [activity deleted] means that you have at least one pathway you can take to a better, brighter future.

Learning to trust people will probably not be easy at first. You have some really good people wanting to help you and I think you need to start working with at least some of them a bit more. In relation to your next court hearing, I hope that you will at least trust your social worker Katie Harris who has been doing a great job for you.

Before your next court hearing a plan will be prepared by Katie for the supervision order I must make in March next year. That plan will be about what will happen in your life for a year. I want you to be involved in putting that plan together so that it is not just something made up by people who do not know you.

This could be the most important plan ever made in your life so far because it should support you on a good pathway forward to help you achieve your hopes and dreams for the future. Every part of your life needs to be covered by the plan. Your true identity, your relationship with your whānau, hapū and iwi, where you will live, your physical, mental and emotional health, the type of work or education you want to do, supporting your interests and talents and anything else needed to make the plan complete for you.

What I want you to start thinking about [AN] are your goals for the next year, and beyond that as well, so that they can be included in the plan. Although I cannot promise that all your wishes for the plan will come true, the realistic and affordable ones should. You could write them down and discuss them with Katie and Maggie Winterstein and I will be talking to you about them in March next year when we meet again.

Thank you for taking the time to read this.

Noho ora mai,
Judge FitzGerald

Recent Research and Publications

NEW ZEALAND

Report title: Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response[1]

Authors: Charlotte Best, Julia Ioane and Ian Lambie.

Abstract: Young female offenders comprise approximately one fifth of the New Zealand youth offender population; however, they remain an understudied population of offenders. This paper aims to provide a current overview of the key characteristics of this population and recommendations for how the youth justice system could better cater to this population. These recommendations include more training of professionals (specifically judges, youth advocates and justice coordinators) and practitioners (specifically social workers, psychologists and youth workers) in the youth-justice system in matters specific to young female offenders. A gender-responsive and trauma-informed approach to addressing offending behaviour is also necessary. There is a need for new empirical research in the New Zealand context on young female offenders and the best way to address offending by this group. Finally, a focus on the diversity of young female offenders is a priority, given the over-representation of indigenous and ethnic-minority communities in justice jurisdictions worldwide.

AUSTRALIA

Report title: Initial impacts of COVID-19 on youth offending: An exploration of differences across communities[2]

Authors: Molly McCarthy, Jacqueline Homel, James Ogilvie and Troy Allard.

Abstract: A number of international studies have found that the initial stages of the COVID-19 pandemic were associated with reductions in crime, primarily due to changes in the routine activities of the population. However, to date there has been no targeted exploration of how COVID-19 may have influenced youth offending, which may be more heavily impacted by the changes heralded by COVID-19 containment measures. This study examines changes in youth offending in an Australia jurisdiction, Queensland, following the implementation of COVID-19 containment measures from the period April to June 2020. Additionally, differences in impacts across community types were explored. Findings from the panel regression indicated significant declines in youth property offending, offences against the person and public order offences in this period, but no significant changes in illicit drug offences. There were also significant differences across communities according to socio-economic status, per cent Indigenous population, and the extent of commercial or industrial land use. Findings are explored with reference to environmental crime theories and the potential impacts of social, economic and policing changes that occurred in this period.

1 https://doi.org/10.1080/13218719.2021.1894258
2 https://doi.org/10.1177/00048658211005816

Report title: Investigative interviewing of youth with ADHD – recommendations for detective training[3]

Authors: Kimberley J. Cunial, Leanne M. Casey, Clare Nell and Mark R. Kebbell.

Abstract: Attention deficit hyperactivity disorder (ADHD) in youth can lead to a trajectory of early and repeated contact with the criminal justice system (CJS), where such youth face significant challenges due to the nature of their diagnosis and the lack of specialized detective training in this area. This article reviews Australian detectives' perceptions regarding contact with ADHD-affected youth, ongoing contact of such youth with the CJS, and the impact of ADHD on interviewing time efficiency and quality of information gathered. It explores detectives' perceived impact of ADHD on components of the Cognitive Interview (CI). It overviews detectives' perceptions regarding their own skill/ability, training availability and future training preferences regarding the interviewing of ADHD-affected youth. The authors highlight best practice in specialized detective training, as well as in working with ADHD-affected youth. Recommendations are made regarding the design features of a potential specialized training programme for detectives interviewing ADHD-affected youth.

UNITED KINGDOM

Report title: Sentencing explanations provided via judicial remarks made within the English magistrates' youth court: Towards a better global understanding[4]

Authors: Max Lowenstein.

Abstract: This article qualitatively explores the English judicial approach towards sentencing explanations via remarks made within the magistrates' youth court. First, the extent of their correlation with the three known purposes behind sentencing explanations is considered within a wider introductory discussion. Second, judicial interviews provide new insights regarding the extent of their alignment with the introductory discussion by indicating degrees of correlation. Third, the English judicial approach towards sentencing explanations and the degrees of correlation are concluded upon. Finally, recommendations are made to assist in a better understanding of sentencing explanations globally, particularly in jurisdictions where their publication has increased.

Report title: The Sentencing of Young Adults: A Distinct Group Requiring a Distinct Approach[5]

Author: David Emanuel QC, Claire Mawer and Dr Laura Janes.

Abstract: This article examines the impact of the remarkable recent progress of the criminal justice system in recognising that young adults aged 18–25 years should be treated as a distinct category of defendant for the purposes of sentencing. The authors chart the historic treatment of this issue and consider the growth of a substantial body of sentencing authorities which have established the particular importance of age and lack of maturity as a mitigating factor for young adults. These developments are now reflected in the Sentencing Council's expanded explanation of "age and/or lack maturity" as a mitigating factor, with significant implications for practitioners.

3 https://doi.org/10.1080/13218719.2020.1742241
4 https://doi.org/10.1177/14732254211004764
5 https://howardleague.org/wp-content/uploads/2021/03/CLR_Sentencing_young_adults.pdf