Court in the Act

A regular magazine for the entire youth justice community

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

Christmas Edition

Nau mai Welcome

to the 71st edition of Court in the Act.

In this issue

Editorial

Determine that the thing can and shall be done and then we shall find the way
(Abraham Lincoln)

It is often said that 26 years after the introduction of the Children, Young Persons and Their Families Act 1989 (the Act) its full potential has not yet been realised. While there is much to celebrate about the Act, and it certainly ushered in a new paradigm in youth justice, in my view, we still have not yet extracted all that we can from the Act. Much of its promise remains undelivered.

One example is the number of times the Act refers to "whānau, hapū and iwi" as being pivotal in the aims and operation of the youth justice system. For instance, s 208 (c) of the Act provides as follows:

> (c) the principle that any measures for dealing with offending by children or young persons should be designed—
>
> > (i) to strengthen the family, whanau, hapu, iwi, and family group of the child or young person concerned; and
> >
> > (ii) to foster the ability of families, whanau, hapu, iwi, and family groups to develop their own means of dealing with offending by their children and young persons:

Upon reflection, in some respects it would appear that we have restricted our focus to the young person and his or her whānau/family, without considering hapū and iwi, as the Act mandates. Until recently, I too have not often reflected on how a measure imposed on the young person to stop his or her offending might also be said to "strengthen hapū or iwi" of the young person. The original drafters of the legislation knew what they were doing. They put a line in the sand: in youth justice, "whānau, hapū and iwi" are interrelated. Any youth justice processes should involve and strengthen whānau, hapū and iwi, allow them to be significant participants in the youth justice process, and must foster the abilities of whānau, hapū, iwi and family groups to develop their own means of dealing with offending by their own children and young people (s 208(c)(ii)).

Court in the Act

A regular magazine for the entire youth justice community

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

Another example where the statutory opportunities available to hapū and iwi have not been fully realised is in the role of Lay Advocates. This position effectively lay fallow for 20 years until the development of the Rangatahi Courts. We now have over 100 lay advocates in New Zealand, whose role is to act as cultural, whānau and community advocates. Interestingly, the statutory job description of a lay advocate includes:

> (b) to represent the interests of the child's or young person's whanau, hapu, and iwi (or their equivalents (if any) in the culture of the child or young person) to the extent that those interests are not otherwise represented in the proceedings.

Again, the words "whānau, hapū and iwi" are used together in the sense that a lay advocate must advocate for the interests of these three groups, whose interests are envisaged to be closely inter-related. The role of the lay advocate is to provide a voice and representation for not only whānau, but also hapū and iwi in the youth justice process and in the Youth Court in particular.

These are challenging principles for us. They deserve real consideration. All of us in youth justice should be asking whether we are fully involving whānau, hapū and iwi in our decision-making, operating processes, and in our rehabilitative responses.

Seen in this light, the development of the Rangatahi Courts is very much in line with the statutory injunction regarding hapū and iwi involvement. Rangatahi Courts have grown out of hapū and iwi concern about the youth justice system, and their keen desire to participate and respond meaningfully to youth offending.

These youth justice principles came to mind on my recent visit to the Northland Youth Courts, particularly our most northern Youth Court in Aotearoa – Kaiataia. There, north of the Mangamuka range, it very clearly emerged in Youth Court operations, and in my meetings with key members of the youth justice team, that the "by Māori, for Māori" approach not only works extremely effectively but, in an area with less resources than many, is really the only way that progress can be made. In my experience, the iwi of the Muriwhenua area are determined, well organised and particularly focussed on working with young people, especially young offenders. As we talked over lunch and shared some of our plans, I couldn't help but think how consistent these discussions were with those principles of the Act that require responding to youth offending by empowering whānau, hapū and iwi.

There is much work for us to do in this area, and to develop the truly bi-cultural partnership in working with young Māori offenders that the Act provides for. As we approach the Christmas season, I encourage you all to reflect on those parts of the Act still not yet implemented and utilised to their full potential. In 2016, let us redouble our efforts to get even more out of the Act.

Heoi anō, ngā mihi maoiha ki a koutou mo te wā whakatā - my warm Christmas greetings to you all.
Ngā manaakitanga,

Andrew Becroft

Principal Youth Court Judge of New Zealand
Te Kaiwhakawā Matua o te Kōti Taiohi

The Kaitaia Youth Justice team

Court in the Act is a national newsletter/ broadsheet dealing with Youth Justice issues. It is coordinated by research counsel attached to the office of the Principal Youth Court Judge. It receives wide circulation and we are keen for the recipients to pass it on to anyone they feel might be interested.

We are open to any suggestions and improvements. We are also very happy to act as a clearing-house, to receive and disseminate local, national and international Youth Justice issues and events.

If you would like to contribute an article, report or link to current research, please email all contributions to courtintheact@justice.govt.nz

Law Corner

Update: Five legal issues clarified

1. A condition that the young person does not reoffend while a supervision order is operative has no lawful basis

- It is not lawful for a formal condition of a supervision order to be that the young person does not reoffend.
- The only conceivable statutory basis to impose a condition that the young person does not reoffend might be found under s 306 (f), which allows the Court, as an additional condition of a supervision order, to impose any condition that the Court thinks fit to reduce the likelihood of further offending by the young person.
- However, s 306(f) allows for specific and tailored conditions to be imposed in order to address the underlying causes of offending. Simply imposing an additional condition that the young person does not reoffend does no more than state the purpose and basis for imposing an additional condition. It does not set out any way of achieving the reduction in reoffending. In other words, it confuses the ends with the means. Section 306(f) allows for certain conditions to be put in place to achieve the goal that the young person does not reoffend.
- In any case, the law requires everyone in Aotearoa New Zealand to not offend.

2. Options available to the Court when there is new offending while an existing order for previous offending is in place

- A young person may reoffend while a s 283 order is operative (e.g. while a supervision order is still in force). There are only two options available under s 297 once the new charges have been proved (either by admission at an FGC and confirmed n Court, or after a Judge Alone Trial):
    - Make a separate and additional s 283 order; or
    - Revoke the original order and substitute a new s 283 order.
- These options apply once the new charges have been proved. The legislation does not provide for an existing order to be varied to take into account new alleged or proved offending. In every case, the new charge must be the subject of a fresh FGC, unless it falls within the complicated s 248 exceptions.
- The breach, variation and cancellation provisions in ss 296A – 296F exist quite separately to s 297. These provisions apply when a young person has breached a formal condition of the prescribed orders. It is for CYF to initiate these procedures (and in limited circumstances, the Police). This procedure is quite different than that under s 297.
- As outlined above, any requirement that "the young person does not reoffend" has no lawful basis as a formal condition of a supervision order. Any *proved* charge is an offence in and of itself, rather than a breach of an existing court order. Any alleged offending by a young person who is already the subject of a s 283 order will be subject to the proper due process, either by way of alternative action or FGC. Fresh offending should not impact an existing order unless s 297 is engaged after the new charge is proved.
- It may be the case the young person allegedly breaches a condition of the supervision order during the course of reoffending. For example, a young person may be apprehended by Police at night for alleged offending. In such a case, the alleged breach might be for curfew restrictions in the supervision order, rather than for the alleged offending itself. In this case, the ss 296A – 296F provisions for variation or cancellation of the supervision order may be invoked once the breach has been proved.

3. Making a limited s 238(1)(e) order until a s 238(1)(d) placement is available

- The legislation is not entirely clear about interplay between ss 283 (1)(d) and 283(1)(e). Section 238 seems to provide for five discrete orders with respect to the custody of a young person pending hearing.
- An issue can arise, for example, when a s 283(1)(e) order is made on a Saturday because no bed is available at a youth justice residence, or a bed becomes available after the s 238(1)(e) order is made but before the next Youth Court day. In such a situation, there is no way for the young person to be remanded to residence under a s 238(1)(d) order until the next sitting Youth Court day, or until a Youth Court Judge is available to rescind the s 238(1)(e) order and make a s 238(1)(d) order.
- Arguably, in such circumstances, a Judge may make a s 238(1)(e) order and remand the matter to the next Youth Court day on the express basis that the (e) order will expire once a bed becomes available, and in its a place a s 238(1)(d) order will take then effect. Such an approach may help ensure that remands in Police cells do not continue for longer than is absolutely necessary.
- The above comments must be understood in the context that a s 238(1)(e) Police cell remand is an absolute last resort. Ordinarily, a s 238(1)(e) remand will never be made for more than 24 hours. Unless impracticable (because of unavailability of Judges on weekends and public holidays) the Youth Court protocol requires daily review of s 238(1)(e) orders.
- All those involved in youth justice must use every endeavour to limit the occurrence and length of Police cell remands. The comments made above are specifically made for the purpose of reducing the length of Police cell remands, rather than as encouragement to use s 238(1)(e). The procedure outlined above should be usually be reserved for a s 238(1)(e) remand made on a weekend or public holiday.

Law Corner

Update: Five legal issues clarified

4. Reparation orders not subject to the 12 month repayment requirement

- A reparation order made pursuant to s 283(f) is not constrained by the 12 month limitation imposed on an order to pay a fine under s 283(d). The court is precluded from making an order for a fine unless it is satisfied that the young person has the capacity to pay that fine within 12 months (s 285(2)). However, no such restriction exists for a reparation order made under s 283(f).

- There is also nothing precluding a reparation order being made with the condition that the young person and/or their whānau begin payment after a period of time (e.g. when a young person is released from residence).

5. Premature termination of Youth Court orders at 18th birthday does not preclude such an order being made in the first instance

- A number of formal Youth Court orders expire when a young person attains the age of 18 years, per s 296:
    - Order to come before the court if called upon within 12 months (s 283(c));
    - Parenting or education order (s 283(ja));
    - Mentoring order (s 283(jb));
    - Alcohol or drug rehabilitation order (s 283(jc));
    - Supervision order (s 283(k));
    - Community work order (s 283(l));
    - Supervision with activity order (s 283(m));
    - Supervision with residence order (s 283(n));
    - Intensive supervision order (s 296G)); or
    - Custody order (s 307(4)).

- However, the fact that the order is terminated prematurely by the young person's 18th birthday does not affect the legal validity of making such an order in the first instance. All s 296 appears to do is provide a statutory mechanism to extinguish the order once a young person attains the age of 18.

- For example, an order for 6 months supervision may be made for a young person aged 17 years 9 months. This order is legally valid. However, the length of that order will be restricted to the 3 month period before the young person turns 18.

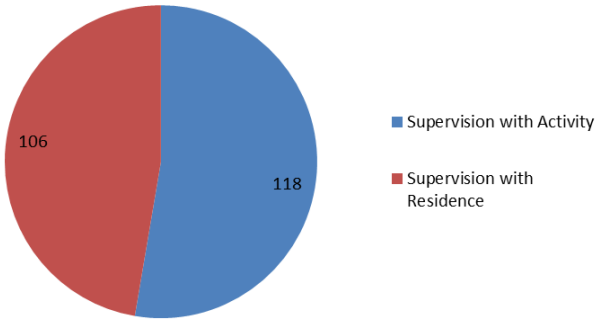
- Therefore, when deciding whether such an order is adequate, the Judge will consider the efficacy of the truncated length of the order.

Statistical Update

Statistical Update - Child, Youth and Family Operational data: 2015 (financial year)

For the first time in Youth Court history, the number of supervision with activity orders has overtaken the number of supervision with residence orders.

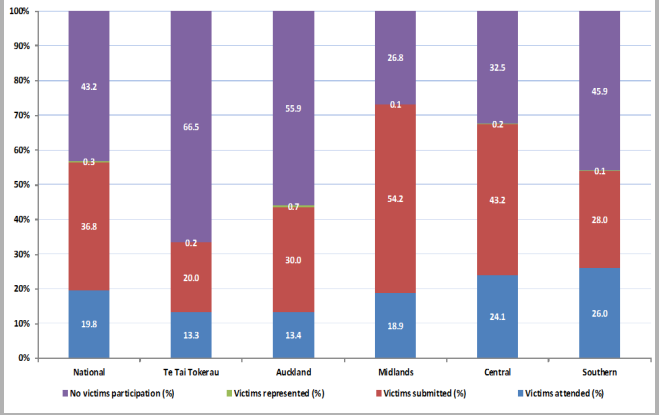
According to CYF data, in the 2015 financial year, 118 s 238(m) supervision with activity orders were made, while only 106 s 238(n) supervision with residence orders were made. This has been a long-term aim in the youth justice system.



F2015

Victim attendance and participation at FGCs continues to be a challenge. Last year, only 19.8% of victims attended a FGC in person, while 36.8% submitted a written statement to be read at the FGC. You will note the regional variation in percentage of victim attendance at FGCs.

Percentage victim attendance and participation by region for F2015



Case Brief

DP v R [2015] NZCA 476

In the High Court case of *R v DP & RP* [2015] NZHC 1765, Lang J declined permanent name suppression for a child convicted of manslaughter. This decision was appealed to the Court of Appeal. On Thursday 8 October, the Court of Appeal overturned the High Court's decision and ordered permanent name suppression in favour of D. Clear expression was given to relevant international instruments, including the United Nations Convention on the Rights of the Child. A summary of Harrison J's decision on behalf of the Court of Appeal in *DP v R* [2015] NZCA 476 is provided below.

Summary

In *DP v R* [2015] NZCA 476, the Court of Appeal overturned the decision of the High Court and ordered the permanent name suppression of a child convicted of manslaughter.

Harrison J, on behalf of the Court of Appeal, held that when applying the general principles applicable to all applications for name suppression, the Court must recognise the United Nations Convention on the Rights of the Child (UNCROC) and s 25(i) of the New Zealand Bill of Rights Act 1990 (NZBORA) in cases where a child or young person is charged with a criminal offence.

The Court of Appeal held that the High Court Judge erred at both stages of the two-stage inquiry under s 200 of the Criminal Procedure Act 2011 (CPA):

- First, the High Court Judge failed to give primary consideration to D's particular characteristics, as mandated by UNCROC and the NZBORA, when assessing whether publication would likely cause D extreme hardship; and
- Second, that the High Court Judge erred in principle when finding that the discretionary factors favoured publication.

Background

In June 2014, D stabbed a shopkeeper to death in the course of a failed robbery. D was aged 13 years old. He was charged with murder but was found guilty of manslaughter following a trial before Lang J and a jury in the High Court. D's accomplice, aged 12 years, was acquitted on a charge of manslaughter. D was convicted and sentenced to six years imprisonment with a minimum term of three years and three months.

Lang J ordered interim name suppression of D's name pending trial but, following trial, declined D's application for permanent name suppression. Lang J was not satisfied that D would be likely to suffer extreme hardship if his name was published or, even if that criterion had been met, that he should exercise his residual discretion to order name suppression. However, any visual or photographic image which might lead to D's identification was suppressed.

D appealed the application for permanent name suppression on the basis that Lang J erred at both stages of his inquiry when assessing the likely effect of publication of D's name given his age and personal characteristics.

Law

The Court's power to suppress publication of the name of a person convicted of an offence is governed by s 200 of the CPA, which provides:

> **200 Court may suppress identity of defendant**
>
> (1) A court may make an order forbidding publication of the name, address, or occupation of a person who is charged with, or convicted or acquitted of, an offence.
>
> (2) The court may make an order under subsection (1) only if the court is satisfied that publication would be likely to—
>
> (a) cause extreme hardship to the person charged with, or convicted of, or acquitted of the offence, or any person connected with that person; or
>
> …
>
> (6) When determining whether to make an order or further order under subsection (1) that is to have effect permanently, a court must take into account any views of a victim of the offence conveyed in accordance with section 28 of the Victims' Rights Act 2002.

Case Brief

Section 200 of the CPA mandates a two-stage inquiry. The first question considered by Lang J was whether D had established the jurisdictional prerequisite of proving that publication would likely to cause him extreme hardship. Although this is a very high threshold of hardship connoting severe suffering, the Court of Appeal emphasised that this stage of the inquiry is fact and context specific and must focus on D's personal circumstances.

The second question was, if D met this jurisdictional threshold, whether after weighing the competing private and public interests Lang J was satisfied that D's name should be suppressed. D's personal characteristics must be balanced against other factors such as the seriousness of offending, the public interest in open justice and, where relevant, the views of the victims and his family.

Principles

The Court of Appeal outlined the general principles that apply to all applications for name suppression made by young persons:

- There is a settled presumption in favour of open reporting, open justice and freedom of expression;
- Publication of a name is an element of the penal process and public accountability;
- Section 200 of the CPA introduced objective and arguably more onerous criteria than those under the Criminal Justice Act 1985, including the test of extreme hardship; and
- Parliament has not expressly placed a young person in an exempt category for the purposes of name suppression. Where a young person is dealt with in the High Court, that Court's rules and procedure apply (*R v M* (CA689/11) [2011] NZCA 673 at [43]).

However, the Court of Appeal found that, in cases where a child or young person is charged with a criminal offence, s 200 of the CPA must be interpreted in a way consistent with the Court's obligations under UNCROC and s 25(i) of the NZBORA:

- Both UNCROC and NZBORA place children in a different category from adults by recognising that they require special protection when appearing before criminal courts. In all respects concerning children, including publication of name, the child's best interests shall be a primary consideration (UNCROC, art 3.1: *Pouwhare v R* [2010] NZCA 268, (2010) 24 CRNZ 868 at [82]);
- UNCROC reinforces the desirability of promoting a child's reformation and reintegration into society, based on the assumption that he or she is capable of fulfilling a constructive role as an adult (UNCROC, art 40.1);
- Section 25(i) of the NZBORA guarantees that a child charged with an offence be dealt with in a manner that takes account of his or her age.

Referring to *Churchward v R* [2011] NZCA 531 the Court summarised the justifications for the special need for protection of young people recognised by UNCROC and s 25(i) of the NZBORA:

- With respect to criminal culpability, young people suffer deficiencies in their decision making ability due to the relatively unformed nature of the adolescent character. There are age-related neurological differences between young people and adults;
- During the development process the adolescent brain is affected by psychological, emotional and other external influences contributing to immature judgment:
  - Harrison J added that this could also include, where relevant, family instability and alcohol and drug abuse;
- Young people are more impulsive than adults, and are less orientated toward the future than adults;
- Young people have greater capacity for rehabilitation, particularly given that a young person's character is not as well formed as that of an adult. The weight to be given to the rehabilitative capacity diminishes where the offending is serious;
  - Harrison J added that, nevertheless, the existence of serious offending does not equate with a conclusion that a child is beyond redemption;
- Offending by a young person is frequently a phase which passes fairly rapidly and thus a well-balanced reaction is required in order to avoid alienating the young person from society.

The Court referred to three High Court cases delivered between 2010 and 2014 in which name suppression was granted for children or young people convicted of manslaughter, and which relied on domestic commitment to UNCROC and the NZBORA provisions (*R v UGT* HC Rotorua CRI-2011-263-73, 21 July 2011; *R v MG* HC Gisborne CRI-2010-016-84, 7 December 2010; *R v Q* [2014] NZHC 550: in *R v Q* the young person was discharged without conviction after initially being charged with manslaughter, and pleading guilty to a charge of assault after the manslaughter charge was subsequently amended).

Decision as to extreme hardship

At sentencing in the High Court, Lang J took a number of personal factors into account when assessing whether D would suffer extreme hardship if his name were published, including that:

- D will be sheltered from the adverse effects of any publicity while he remains in a youth justice facility for the next three years at least;
- Publication of his name is unlikely to affect his rehabilitative progress in that period;
- Those who know D and his family are likely to know his involvement in Mr Kumar's death in any event;
- D's risk of self-harm associated with publication was not decisive; and
- Publication would not have an unduly adverse effect on D when he is released.

The Court of Appeal held that Lang J failed to give primary consideration to D's particular characteristics when assessing whether name publication would be likely to cause him extreme hardship.

It was the Court's view that a young person is likely to suffer a greater degree of hardship than an adult because they lack the requisite maturity to deal with the attendant publicity. The question then becomes whether and where along the spectrum the degree of likely hardship arising from name publication reaches the requisite level of extremity. It was noted that, while the effect for a child who has not suffered the same deprivation as D might not meet the threshold, in this case the Court was satisfied that D's circumstances qualify.

The Court of Appeal departed from Lang J's views in four material respects:

1. First, expert evidence at trial concluded that D had sustained a significant traumatic brain injury. Consequently, D is vulnerable, brain damaged and has a susceptibility to instinctive or impulsive reactions in difficult or complex situations. D's brain injury, coupled with all the environmental and familial disadvantages of his upbringing, place him in a special category of vulnerability, and without appropriate mechanisms to deal with the added burden of publication.

The Court of Appeal did not favour Lang J's views that the likely effects of publication when D is released from custody, and that D's confinement in the youth justice residence will adequately shelter him from that risk in the interim. It was the Court's view that the predictive evaluation has to be more immediate. The risk, and even the fear of the risk, of others in the youth justice residence learning of the particular and highly publicised circumstances of D's offending, would likely cause him hardship.

2. Second, Lang J rejected a submission based on D's risk of self-harm, observing that while the risk exists, this did not require much weight and would be something for the youth justice facility to monitor. Citing *Roberston v* Police [2015] NZCA 7 and *R v Suttie* [2007] NZCA 201, the Judge accepted that Courts have declined to suppress an offender's name even when there is significant risk of suicide.

The Court of Appeal clarified that in *Robertson* simply noted that there was no evidence of a significant risk of suicide in that case. In this case, the level of risk established for D was not ameliorated by the care available during his detention. The Court also clarified the position in *Suttie* insofar that while a risk of suicide is not a determining consideration, it is certainly a relevant consideration and justifies particular weight for a young and vulnerable offender.

3. Third, Lang J made a distinction between suppression of publication of any visual or photographic image which might lead to D's identification, which was granted, and name suppression, which was not. The Judge's rationale was that people are more likely to remember a face than a name.

The Court of Appeal departed from this analysis on the basis that it implies an acceptance that identification of D by facial recognition would cause him extreme hardship. Once extreme hardship is established, there can be no principled distinction between the nature of the recognition, whether facial or by name. The Court also noted that internet search engines are such that a person's name can uncover images and data about that person within seconds, making a partial suppression ineffective.

4. Fourth, the Court of Appeal did not accept Lang J's assessment that D's exposure to the adverse effects of publicity once released from the youth justice residence will not cause undue hardship if his transition is properly supported by the state. It was the Court's view that publication would likely severely compromise D's prospects of rehabilitation and reintegration back into the community. D, and the wider public, would be reminded of serious offending which occurred when he was at a vulnerable state of developmental immaturity, and which would preclude him from moving forward and adjusting to life in the community.

Lang J referred to two cases where the names of young offenders who had committed serious crimes were published, including that of Bailey Kurariki (*R v Rawiri* HC Auckland T014047, 16 September 2002). The Court noted that constant attention has been given to Mr Kurariki by the media since his release from imprisonment on parole. Frequent references have been made to his status as the country's youngest convicted killer. The same practice of placing young people in a special and highly publicised category has not been adopted for adult prisoners released on parole; the media has given little if any publicity to Mr Kurariki's older co-offenders who were convicted of murder.

The Court of Appeal concluded that the publication of D's name would likely cause him extreme hardship.

Decision as to discretion

The Court of Appeal held that Lang J erred in principle when finding that the discretionary factors favoured publication.

It was the Court's view that the balancing exercise required that D's best interests be a primary consideration, and that the treaty and statutory rights conferred to a child under UNCROC and the NZBORA do no end with the completion of a trial. While the Court agreed with Lang J that New Zealand's treaty obligations do not of themselves require an order for suppression for young offenders, they must play a central part in the discretionary analysis in a case such as this.

Two important counter-balancing factors were acknowledged:

- Public interest in open reporting: It was noted however, that this case had been fully reported, both throughout the trial process and afterwards. There is a distinction between something being of interest to the public and being in the public interest. The public interest was in knowing D's personal circumstances including his deprived upbringing, his brain injury and the effect of his offending, not his name. This information had been fully traversed in the media; and

- Seriousness of the offending: The nature of D's culpability was found to be a function of his age, physical and neurological disability and fatigue. It was held that D had been sentenced to a term of imprisonment and there is no need to hold D further accountable to the community by publishing his name.

It was concluded that, when the balancing exercise is undertaken from the correct legal foundation and on the jurisdictional premise that D is likely to suffer extreme hardship if his name is published, D's name should be suppressed. Society's interest in promoting D's reintegration and rehabilitation outweighs any interest in knowing his name.

Case Brief

Police v S M

(Youth Court Masterton, CRI-2015-235-000025, 6 October 2015, Judge Tony Walsh)

Key title: unlawful arrest s 214, validity of charging document, interplay with s 245

Facts and Issues

S voluntarily went to the police station in order to disclose the location of some stolen property. In the course of making this disclosure, S was arrested and charged with burglary.

The Judge considered two substantive issues and an additional policy issue

1. Was S's arrest under s 214 lawful?
2. If so, does the unlawful arrest invalidate the charging document used to bring criminal proceedings under s 214?
3. The Judge also considered as a matter of policy (and on an obiter basis), if charges are found to be invalid on the basis of an unlawful arrest, are police still able to pursue proceedings under s 245?

Issue one: Was the arrest lawful?

Section 214 of the CYPF Act provides a code for the lawful arrest of a young person. In this case, the police officer's submission was that S was arrested to prevent further offending (s 214(a)(ii)), and to prevent the loss and destruction of evidence (s 214(a)(iii)). The Judge observed that there must be a compelling nexus between the need to arrest and the probability of further commission of offences, such as where violence is occurring and is likely to continue unless there is immediate intervention. In the present case, the police officer did not have detailed knowledge of the offence or S's role, if any, in the offending. Accordingly, there was no such compelling nexus. With respect to the risk of loss and destruction of evidence, there was no evidence suggesting that S attempted to conceal or destroy evidence. On the contrary, S had come to the police station voluntarily, indicating she wished to disclose information relevant to the burglary. Consequently, the statutory threshold for arrest under s 214(2) was not met and the arrest was held to be unlawful.

Issue two: Does an unlawful arrest affect the validity of the charging document used to bring proceedings under s 214?

The Judge noted that there is currently some uncertainty surrounding the consequences of an unlawful arrest on the validity of the charging document used to bring proceedings. There appears to be two conflicting lines of authority on this point:

1. An unlawful arrest renders the charging document invalid (see *Pomare v Police* High Court Whangarei, AP 8/02 12 March 2002, *Police v HG* (2004) 20 CRNZ, *Police v PA* [1995] DCR 204, and *Police v DK* Youth Court Auckland CRI-2009-004-000161, 10 August 2009); and
2. An unlawful arrest does not invalidate the charging document per se (see *Police v R* [1999[NZFLR 312, and obiter dicta statements made by Mallon J's in *YP v the Youth Court at Upper Hutt* High Court Wellington CIV-2006048501905, 30 January 2007).

The Judge considered that the correct approach to the interpretation and application of ss 214 and 245 is to follow the approach consistent with that adopted in *Pomare v Police*, having regard to the following factors:

1. Section 214 provides a code specifically devised for the arrest of a child or young person without a warrant;
2. Section 214 was enacted to give particular effect to the s208(h) principle that the vulnerability of children and young people entitles them to special protection during any criminal investigation;
3. As observed by Fisher J in *K v Police*, s 214 limits the power to arrest young people to those cases where arrest is considered "unavoidable"; and
4. In accordance with Judge Aitkin's observations in *New Zealand Police v DK*, the purpose of s 245 is to define a procedure that must be followed where a young person has *not* been arrested. It does not apply where a young person has been lawfully arrested:

"I acknowledge that s 245 provides, on its face, for a procedure "*unless the young person has been arrested*" but take the view that that must be interpreted as "*lawfully arrested*". To find otherwise would permit the police to arrest on every occasion and, lawful or not, to circumvent the requirements of s 245. That cannot have been Parliament's intention."

Issue three: If charges are found to be invalid on the basis of an unlawful arrest, are police still able to pursue proceedings under s 245?

Although such an application had not been made in this case, the Judge considered that if a charge is dismissed at a hearing because of non-compliance with s 214, it would amount to an abuse of process to permit the charge to be re-laid under the s 245 Intention to Charge FGC procedure.

It was further noted that, where it appears that an arrest is unlawful for non-compliance with s 214, if police intend to pursue prosecution, the alternative procedure under s 245 must be invoked *before* a hearing is conducted to test the lawfulness of the arrest.

Conclusion

The arrest of S was unlawful. Accordingly, the charging document laid by the police was invalid and was dismissed. In obiter dicta, the Judge noted that subsequently invoking the s 245 procedure would amount to an abuse of process.

Rangatahi Courts receive international award

In November 2015, it was announced that the Rangatahi Courts initiative will be the recipient of the Australasian Institute of Judicial Studies (AIJA) Award for Excellence in Judicial Administration.

This nomination was made on behalf of the Chief District Court Judge and Principal Youth Court Judge of Aotearoa New Zealand, with support from the Ministry of Justice. The nomination was made in respect of the eight Māori, and single Pasifika, District Court Judges in Aotearoa New Zealand who, over the past seven years, have established a series of Rangatahi Courts as part of the New Zealand Youth Court and wider youth justice system. These Judges are:

Judge Heemi Taumaunu	District Court and Youth Court Judge
Judge Louis Bidois	District Court and Youth Court Judge
Judge Denise Clark	District Court and Youth Court Judge
Judge Greg Davis	District Court and Youth Court Judge
Judge Francis Eivers	District Court and Youth Court Judge
Judge Greg Hikaka	District Court and Youth Court Judge
Judge Alayne Wills	District Court and Youth Court Judge
Judge Eddie Paul	District Court and Youth Court Judge
Judge Ida Malosi	District Court and Youth Court Judge

This award recognises the significant contribution of all the Judges who sit in the Rangatahi and Pasifika Courts, the court staff who support these courts, and whānau, hapū and iwi Māori who have embraced the kaupapa and who are assisting their own young offenders to achieve youth justice.

A more detailed feature about the award will be published in the next Rangatahi Courts Newsletter. The award will be presented in May, 2016.

A young person stands to deliver his pepeha to the presiding Judge and kaumātua at Te Kōti Rangatahi o Ōtautahi at Ngā Hau e Whā Marae. He is supported by his lawyer, Lay Advocate and whānau. Police and other government agency stakeholders sit around the table and contribute their perspectives.

Special Feature

Zoe's Story

Periodically, Court in the Act features creative works, letters or stories produced by young people as part of their Family Group Conference plan. For the first time, this Special Feature has been written specifically for Court in the Act by Zoe,* a recent recipient of a s 282 discharge from the Youth Court. Zoe shares her story, time in the Youth Court and involvement with Nga Rangatahi Toa.

*Zoe's name has been changed. It is to her absolute credit that she is willing to share her story anonymously

I come from a background of drugs alcohol and gangs, I grew up around family violence. I grew up thinking it was normal to hurt people and get drunk and high. I always thought to myself 'Is that what I want to do for the rest of my life?' But that didn't change anything, all I wanted to do was fit in. Then things for me got worse. I started drinking more and going out till late. My dad didn't know where I was - I wonder if he even cared? I started smoking drugs more, getting into fights and stealing from people.

Saturday 11th of October 2014 was the night I got arrested and put in the custody of the Youth Court. To be honest, it was the worst feeling. I was scared but I didn't show fear. I cried all night and prayed for a miracle to happen in my life. I didn't want to end up like my sisters, pregnant at 15 and brought home by the police almost every night.

The next day I woke up for my first court appearance. I never knew that going to court was so scary, people talking and judging you right in front of your face. After my court case my social workers come to get me from the holding cells then drove me to the Auckland airport and put me on a plane to Christchurch.

I was in Christchurch for two months. Juvie wasn't so bad but I knew that I didn't belong behind walls. Two months went by and I finally got what I wanted, a chance to leave. They flew me back to my home city Auckland. When I arrived my social workers told me that they were placing me with my Aunty in West Auckland. I wasn't too keen for that but it was better than being in juvie.

Mural painting with Emory Douglas

When I got to my Aunt's house I remembered the last time I was there things weren't that great. I hadn't been around this side of my family for years. I walked inside and they had a munch ready for me, oh it was so good, but I was still very shy. It was weird being in a different living environment.

Everything was so different from where I came from, everything was positive. A few days later I was put on 24/7 curfew, I was put on the bracelet. It was annoying having that around my ankle, I felt like a real criminal with that on. It reminded me of my dad.

Weeks after I got to my Auntie's house things were getting better. I felt comfortable and a whole lot happier. My Aunty got me involved with sports, she was playing indoor netball and waka ama, so I started playing for a few weeks but it wasn't what I wanted to do.

My Youth Justice social worker came to visit me and told me about a creative arts course called Nga Rangatahi Toa. She told me that my judge wanted me to participate in the course so I had no choice but to.

Late February was the first time getting together with Nga Rangatahi Toa. I was involved in the project Art ACTion Tuatahi, part of the Auckland International Arts Festival. I was scared to meet everyone, I was shy and wouldn't talk much that day. I met Sarah the Executive Director, she greeted me with the most warming smile ever so I knew that I was around

Special Feature

Yoga and Mindfulness Manawa Ora 2015

nice and kind people. I also met the mentors, Todd, Dominic and Anke, the intern from Belgium. I met Amadia the youth mentor and Selina. I also met the famous Black Panther Emory Douglas. I met the rangatahi, Kita, Ray, Freddie, Neville, and Bonnie. I met Helen, Neville's mother. They were the most kind, loving and supportive people I've been around for a very long time.

I started to open up more when we started to create a mural with Emory and I got to know everyone a bit better. I helped design and create a mural with Emory, Kita, Bonnie and Ray. It was about peace in our communities. Once it was finished we displayed the artwork and it now sits in the Mangere town centre.

Nga Rangatahi Toa helped me get into a sports and recreation course at Best Pacific Institute, in New Lynn. It started off really well, I got really close with my course mates. That was until I got into a relationship with a guy on the same course. A few weeks later I had a pregnancy scare, I started freaking out and didn't want to tell my Aunty. Then one day I decided to tell her. She was so angry and disappointed! She made me take a pregnancy test. It came up negative and I was so happy. However, then I went into a depression. I stopped eating and never came out of my room. I lost my family's trust. It was the worst feeling in the world. I felt like I let myself and my family down. My Aunty stopped talking to me so she wouldn't say anything stupid or hurt me. One day I was crying in my room and I think my Aunty heard me. She came into my room and hugged me, she told me she was sorry, and told me she wants me to have a life before I create a life.

During my depression my confidence got worse. When things got better at home I didn't want to leave. I hated being around people, I would panic and shake.

In March of this year the second Nga Rangatahi Toa project started, Art ACTion Tuarua, and it was good. I really missed them. I also met more people! I met new mentors Mzwetwo and Bill, I met the new rangatahi Yvonne, Feleti, a nd Vneesha. It felt good to be around old faces and meet new ones.

I started making a music track with Yvonne, Vneesha, Neville, and our two mentors, Mzwetwo and Todd. Everyone was writing raps about their communities, and how no one understands them. I don't rap so I sang the hook, I sang about how I needed someone to help me. I was still shy and didn't want anyone to hear me sing, however in the end I ended up singing for them and I got a lot of compliments that made me feel good about my voice.

After the Art ACTion project I started to hang out with everyone outside of Nga Rangatahi Toa, and got to know them a lot better.

In April I got to meet William, Neville's younger brother. Out youth mentor, Todd, had designed a music collaboration project just for us. I heard a lot about William but never met him

Brainstorm from Art ACTion

Special Feature

until then. He was not what I expected! It's good because I thought William was into gangs and drinking but I was wrong. He was the only one involved with Nga Rangatahi Toa and still in school. He was awesome, he made me feel comfortable.

Nga Rangatahi Toa helped me to start completing my community service hours as part of my plan from my FGC. They gave me an internship. I worked in the office on Mondays and Tuesdays, cleaning, blogging and just helping out. That helped me a lot with my hours that are now finished.

In early October, Manawa Ora started. I was meeting a lot more people than on previous projects. I got to meet Shortland Street star Teuila Blakely, and my mentor Anika Moa. It was scary being around a lot more people, I got very shy. But then I started writing a song with my mentor about my parents and how they were never there to support me. I was so proud of myself for finishing the song. I was still shy, however I was having fun and my confidence was slowly growing.

My last court appearance was during the Manawa Ora workshops. Going to my last court case was overwhelming. I had the support of my Aunty, my social workers, Sarah, Shane (Sarah's son) Vne esha, and her mentor Coco. I couldn't believe they were there to support me, I was so thankful. My judge read out all my charges and then numbers that I didn't understand. I was crying the whole time and I made my Aunty cry. My judge eventually told me that when I walk out of court I'm officially free to live my life happily without having to come back. It took so much weight off my shoulders. I didn't have to carry that burden anymore. When court was over I stopped blaming myself for what I had done, I stopped keeping myself trapped in the past.

On opening night of Manawa Ora there was a huge audience, over 180 people in the theatre. It was scary! I felt lost, I

Prince Charles visits Nga Rangatahi Toa

was thinking 'what am I doing here?', 'do I even deserve to be here around such amazing people?' I kept telling myself I couldn't do it and I let fear get the best of me. I didn't perform that night. After the show I was glad it was over, even though I was happy. I walked out into the foyer to talk to the audience and I felt a hand touch me… I turned around and it was my judge from court! I couldn't believe it. I didn't think he was going to come. I thought it was just a job for him but he took his time to come watch me. I was amazed. When I saw him I knew that he really cared about me and believed in me.

For the first few shows of the Manawa Ora season I kept telling myself that I couldn't do it, until I started telling myself I could do it. And guess what? I did it! I felt so great after it. After Manawa Ora I felt a lot more confident, like I could do whatever I wanted, just as long as I believed in myself. That what being in Nga Rangatahi Toa has taught me.

A few weeks later, we had a Royal visit from Prince Charles, we hosted him at the Auckland Town Hall. It was such a privilege to meet royalty, and I even got to perform for him. When I met the Prince he was not what I expected. I thought he would be quiet and think very highly of himself, but he was solid. He's the coolest prince I've met so far.

Next year I'll continue being involved with Nga Rangatahi Toa. I'll be doing a music video to the song I wrote during Manawa Ora. That is going to be dope I can't wait. Nga Rangatahi Toa has helped me to believe in myself and that I can achieve things. They have showed me that there is more to life than crime and being on the streets. They've opened my eyes up to so much more and have given me opportunities I never thought I'd get in my lifetime. They always find a positive solution to things and I would not be where I am today if it wasn't for their support. They are lifetime friends that I will never forget. They are a lifetime family who I will always be there for, and they will be there for me. One day in the future I wish to repay them for what they have done for me. I love my family at Nga Rangatahi Toa forever and ever. Te amo mi familia.

NRT
NGA RANGATAHI TOA

Special Feature

Power comes from risking yourself in creation
– Friere

Nga Rangatahi Toa exits because we believe that every human deserves the opportunity to fulfil their potential, no matter what their life situation. We believe that every human is creative, and that this creativity is key to building strong humans, strong whanau and strong communities. We believe that critical conversations about race and social justice need to be had, and that systemic change in our education system is required to make this happen.

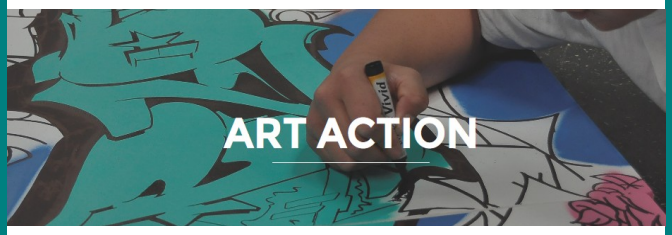
Challenging and chaotic lives do not eliminate a human's hopes and dreams, but they certainly silence them. Our kaupapa is grounded in giving those hopes and dreams voice again, by re-establishing connection and prioritising relationship through an intense process of community cultural development. We walk with our rangatahi and their whanau, providing an environment in which they can return to a basic trust in the world, in themselves and in others.

Nga Rangatahi Toa will open our first classroom in 2016, in Otara.

ngarangatahitoa.co.nz

https://www.facebook.com/Nga-Rangatahi-Toa-131913710197577

Manawa Ora is an annual, performance-based, inter-arts project that matches rangatahi with the top creative talent of New Zealand on a one-to-one ration. Each partnership works together to explore, reconsider and ultimately celebrate the sometimes chaotic lives of rangatahi via a 10-day, intensive workshop. At the end, a piece of music, theatre, spoken word or visual art is performed by each of the rangatahi in a season hosted at Auckland's Herald Theatre.



Art ACTion is a twice-weekly, term-time group-mentoring programme based on the A.C.T.I.O.N program from DreamYard in the Bronx (one of the Out of School programs honoured by the US President's Committee on the Arts and the Humanities). Guest speakers, field trips, performances and on-hand mentors are all part of the process rangatahi undertake, in order to consciously examine and respond to their present circumstance and to successfully navigate future pathways. The six-week programme culminates in an exhibition or live performance.

Special Feature

World Congress on Juvenile Justice 2015: Synthesis of workshop findings

by Marie Wernham, International Child Rights Consultant, on behalf of the Synthesis Committee

Principal Youth Court Judge Becroft: *One of the real highlights of the World Congress on Juvenile Justice in Geneva at the beginning of this year (see Court in the Act Issue 69), was the conference summing-up and collation of key themes. The way in which this review was put together and presented was the most creative, engaging and compelling presentation of its type I have ever heard. So often, conference reviews are a hastily patched-together list of bullet point recommendations. This review was written as if through the eyes and experiences of the young offenders who were the subject of the congress. It poses a challenge to all those involved in youth justice to reconsider these key themes from the perspective of a young offender. The Synthesis of Workshop Findings is reproduced in full and is an interesting, refreshing and challenging read.*

I am a child. My name is Marie, Marietta, Amal, Fabrice, John, Joao, Xinmin, Béatrice, Bolaji…

1. Gender and children in street situations

Am I a boy? Am I a girl? Am I an ethnic or sexual minority? Am I indigenous? Am I living or working on the streets? Do you even care? Do you understand? As a boy or as a minority or as a street child, I am over-represented in the justice system. As a street-living child I miss out on your clever diversion and restorative justice measures. There's nobody to pay my bail or call a lawyer and I don't want to tell you where my family is for a family group conference because I ran away in the first place. Spare a thought for me in your projects and plans. As a girl it is apparently my fault for being sexually abused and I should be criminalised and even locked up - for my own protection, for my word not being strong enough against his, for being forced to sell myself just to make it through the day. As a boy nobody talks about the sexual abuse I suffer. It is taboo.

2. Brain research / child development / worst violations

My brain is still developing. I take risks. I overestimate reward and I underestimate risk. I'm sometimes like a car with only the accelerator pedal and no brake. I can become a remarkable person, filling the world with music and love and a cure for cancer, but my reasoning skills need help to develop. I need to learn how to take responsibility. I need to learn from my mistakes. Please don't kill me for them. Don't lock me away for life, for life without parole, for an indeterminate time or at the 'pleasure of the President'. A year for me is like six or seven years for you grown-ups. My perception of time is time is different. I experience isolation and torture differently. Please – help me, don't hurt me. I've already been hurt enough in my life. In some ways I may look and act older than I am, but it's only on the outside. I have to act tough to survive. Please raise the minimum age of criminal responsibility. If you're not sure of my age, if I can't prove it, give me the benefit of the doubt. Assume I'm a child. I certainly am on the inside.

3. Culture, family and community ties

Understand where I come from. Who I am. My culture, family, extended family, friends and community. Understand what helps me and harms me in these relationships.

4. Role of professionals and the justice system / sensitising public opinion

Whether you're a judge, a lawyer, a police officer, social worker, psychologist, probation officer, doctor, NGO worker or anyone else – protect me, become a part of my support network, help me grow. Understand my past, help me in the present and guide me towards a positive future.

Work strategically with the media and social media to sensitise everyone about my situation, rights and needs – families, communities, professionals and the general public. Make sure these messages reach right into the deepest, remotest rural areas.

5. Training / capacity building / case management / victims/survivors and witnesses

To do this you will need to work together, as a team, be trained together, have the same goals, have codes of conduct you comply with, have mutual respect for each other and for me, whatever my contact with the law – whether I'm an offender or victim. After all, let's face it, I'm usually both. Learn not only about the technical stuff with your head, but change the attitudes in

your heart and put it into action through your hands. Make your systems as efficient and smooth as possible so you can spend more time helping me and less time on paperwork. Please don't make me keep telling my story again and again, moving me from place to place. I'm confused and vulnerable enough already. Provide me with a 'one-stop shop' where I feel safe and listened to. I need you to be professional, accountable, but above all human.

6. Traditional and non-formal justice

I have a vision that one day I –and all the children in the world like me - will be treated fairly, sensitively and compassionately, with the same high standards that they call 'international human rights, standard and norms'. I have a vision that the processes that I have to go through, and the people that I meet at this difficult time will be 'child-friendly'.

I have a vision that to get to this wonderful, warm place, different justice systems will work together in clever and innovative ways. That the good bits of the traditional justice systems of my village and of my people will be acknowledged and integrated into modern systems. Traditional and formal systems need to work together towards the same vision. They both need to leave behind the practices which aren't compatible with this vision, like a butterfly shedding its cocoon. You might find it useful to better define what you mean by 'traditional', 'customary', 'non-formal' and 'informal' justice. But maybe this isn't so important seeing as we want to create something integrated and new. Just make sure the time you spend on your theories doesn't take you away from my realities. The butterfly is still beautiful, no matter what it is called. I know this will take time, but – for my sake – please make sure that, step by step, wing-beat by wing-beat, you keep moving forward in the right direction.

7. Prevention and diversion

I hope I never get to meet people like you, as lovely as you are. I hope that you can get political will on your side and improve my social, economic, educational and cultural situation and that of my family and friends so I never have to come into contact with this scary thing that I don't understand, laughingly known as the so-called 'justice' system. Please, please, do all that you can to keep me away. Primary or 'universal' prevention as you would say. Get better at identifying and reaching me when I'm particularly at risk – your secondary or 'targeted' prevention. If you fail in this – and believe me, it will be a failure – then reach me quickly the first time I make a mistake, to stop me doing it again – your tertiary or 'specific' prevention. Above all, please, please help keep me away from the escalator that leads to my life being further damaged or even ruined: the escalator that leads to detention. Divert me whenever and however you can to restorative processes and outcomes. If you can't keep me away altogether, then make sure your system is flexible and that your measures and interventions don't automatically have to lead one way only, regardless of my particular circumstances.

8. Role of the police

If I get into trouble or someone hurts me, the first person I see will probably be a police officer. I can't ignore him or her, and neither should you. Please make sure they know how to act. Just 30 minutes ago they were arresting a man with a knife or gun, adrenaline pumping, maybe scared for their own lives. You can't expect them to suddenly act differently with me unless you show them how and help them. Don't pressure them to get a confession at all costs and then be surprised when I complain of torture. Hold them accountable, yes, with systems in place, but work with them and support them before blaming them for everything. Although some of my cousins live in urban areas and slums, I live in a village hundreds of miles away from your specialised police units. They're no good to me out here, although they're great if you have them nearby. Specialisation is important, but *all* your police need initial and ongoing training about how to engage with me – and I do mean engagement, not enforcement as a first step. They need both competence and compassion. My meeting with them should be an opportunity to help me, not a problem. I am all the risk factors you've been looking for. Make the most of it.

9. Detention

If you've done your jobs well then in nearly all cases I shouldn't end up in detention at all. You should make it as hard as possible to put me here, particularly before, but also after sentencing. Detention has to be the most difficult and complicated, awkward and annoying thing for professionals to apply to me. It really shouldn't be so easy, in law or practice. It must be the absolute rare exception, not the default norm. But even if that's the case, even in the ideal, warm future I imagine, there will still be some of us children who end up there because we are so troubled and our problems are so complicated that we have done truly terrible things to others. In these relatively tiny, few extreme cases, these facilities should be small and intimate, with a good ratio of experienced, compassionate, patient, well-trained staff, and mental health care professionals. Separate me from adults and older children. Don't put me in detention within detention – isolation, segregation. Help me maintain contact with my family, friends, people. Have well-resourced independent monitoring mechanisms to check on me, and safeguards so I can talk to prison monitors without being beaten in reprisal. If this doesn't happen I will continue to be humiliated, raped, beaten, staring at a blank wall, alone, isolated, rocking myself towards a sleep that doesn't come, killing myself or being killed – all in the name of your beloved detention. If this doesn't happen, then continue to cry and weep at the photos of me in the lobby

Special Feature

[Congress photo exhibition] – in your rich countries, as well as the poor. End this culture of repression and impunity. For God's sake – sound the alarm.

10. Data

You want to count me. You need better data. Just be sure what you're counting and why. Is it in my best interests? Will it ultimately help me and protect my rights? Don't try to compare your own numbers with those in other countries. We children have been counted in such different ways that it's not useful. If you're just starting on the data journey, then learn from the mistakes of others who've already been down this road. I hear there's going to be a Global Study [on Children in Detention]. It sounds good. Try and contribute to it if you can.

11. Budgets and cost-effectiveness

You're spending an awful lot of money to turn me into a criminal by scaring, degrading, humiliating and even torturing me. You're giving me excellent vocational training - in crime, my apprenticeship supervised by the best inmates the criminal justice system has to offer. Stop. Review your spending. Move your money away from detention and invest more, much more in prevention, diversion and restorative justice. They tell me there is a far off country called 'Peru' where I can find some clever software – a concrete tool for State planning of juvenile justice budgets. That sounds useful!

12. Migration and humanitarian contexts

The world is changing. I'm getting more and more mobile, migrating within and across borders, in search of better opportunities, with or without my family, or displaced by conflict and disasters. It may not be my own government that needs to take responsibility for me. The international community needs to take responsibility as well. I'm so vulnerable. If I get into trouble, please keep me with my family and friends and work hard to find a solution in my best interests. International instruments exist but they need to be ratified by more countries. In crisis situations, work towards at least the minimum standards – things that can be put in place on the spot, like guidelines for security forces on simple restorative justice. Try to better prepare countries before it reaches a crisis situation. Protect me from revenge once the conflict is over.

13. Vision, innovation, inspiration and creativity

I'm sorry if I've upset you. I didn't mean to bring you down. After all, you're here. You came from all over the world. You're listening to me and to each other. The bad and the sad things which have happened to me, which are happening to me and which will happen to me in the future – it doesn't have to be that way. Focus on the butterflies. Share my vision of international norms and standards. Many of you have already helped me so much. Every day. In so many ways. Thanks to you I found a way forward. Thanks to you, I am one of the few who never got on the escalator, who turned their life around. Mine is a message of hope and of thanks. Let us be inspirational and visionary. Let us show the world what is possible.

I am a human being. I believe, like the Universal Declaration of Human Rights, that we are all born equal in dignity and rights. That we are endowed with a spirit of conscience and reason and that we should act towards one another in a spirit of brotherhood and sisterhood.

I am a human being. I am a child. I deserve the best you have to give. I am a child. My name is Bernard, Fabrice, Amal, Marie, Jo…….and, with your help and guidance, I fill the world with music, love and a cure for cancer.

Judge Becroft presenting to the Congress on the role of the family in youth justice

You can view video footage of the New Zealand Judges' Congress presentations on YouTube:

Judge Taumaunu:
https://www.youtube.com/watchv=DJa7SvRcBX8&feature=player_embedded
(begins at 153:05)

Judge Becroft:
https://www.youtube.com/watch?v=hg0IbE3ZUQ4
(begins at 6:00)
https://www.youtube.com/watch?v=DJa7SvRcBX8&feature=player_embedded
(begins at 22:10)

Special Feature

Neurodisabilities and Youth Offending

by Judge Tony Fitzgerald

Introduction

Law has not been keeping pace with science. Perhaps it has never done so. In the fourth century BC, Plato, the great scientist and thinker, observed;

> "What is happening to our young people? They disrespect their elders and disobey their parents. They ignore the law. They riot in the streets inflamed with wild notions. Their morals are decaying. What is to become of them?

Despite that ancient statement implicitly recognising that young peoples' behaviour had features distinguishing it from adult behaviour, it would not be until the late 19th century that most western nations stopped convicting and punishing children in adult courts for their errant behaviour.

Now that neuroscience confirms what Plato saw – children's brains are different from adult brains, and thus they behave differently –, no one could sensibly suggest that we not cater for those differences. To provide a separate system of justice for young people is fair for them given that most will outgrow the immature, impulsive, risk-taking behaviour that leads them into the youth justice system. It is also fair for society at large because we know that responding to such behaviour without "criminalising" the young person greatly reduces rates of recidivism.

Today it is *also* well-established in the scientific world that brain damage affects behaviour in a way that predisposes young people with an impairment to enter the youth justice system and, once there, to become deeply entrenched in it. Despite widespread scientific recognition of this issue, it does not yet seem to have gained traction in the youth justice systems of most countries. However, the very same logic that applies to catering for the differences between young people and adults must surely be applied to catering for the differences between those young people with a neurodisability and those without, for the following reasons.

The vast majority (80%) of young offenders will grow out of crime, but they will not all do so at the same rate. Some are more likely to desist than others. The small number of young offenders who will persist with their offending into adulthood are responsible for a disproportionate amount of crime. For these "persisters", the documented wisdom that young people tend to grow out of crime does not apply. Age, therefore, is too blunt an instrument for determining responses to offending. This is supported by neuroscience and genetics, which point to neurological variation, not only between young people and adults, but also within any given age group. A child with a Fetal Alcohol Spectrum Disorder ("FASD") for instance, is less capable than a child without FASD to regulate emotions, link cause and effect, or perceive the consequences of his or her actions. Treating brain-damaged children in the youth justice system in the same way as neurologically typical offenders of the same age is analogous to responding to youth offending in the same way we respond to adult offending. The science on this issue is so solid that one author has suggested it is now intellectually dishonest to treat individuals as being equally free to 'choose' or 'choose not' to offend when significant evidence refutes this idea.

Identifying and responding to neurodisability is about delivering justice for all concerned. The young person is the blameless victim of the neurodisability, whatever the origin of it, and should receive a response that takes that into account when their deeds and their needs are addressed by the Court. By the time the young person reaches an age when he or she is criminally liable for behaviour, the interests of victims and the community must also be considered. Society at large should expect that the true underlying cause of the offending will be identified and properly addressed so as to reduce, if not remove, the risk of further offending.

Traditional assumptions

One major challenge to delivering justice in this respect is overcoming some current and traditional attitudes toward offending. A related issue is that the presence of a neurodisability will most likely be invisible to the untrained because the behaviour characteristic of a neurodisability parallels that typical of offenders without one. Many young offenders have disengaged from education, are in the care and protection system, lack good judgment, engage in impulsive and thrill-seeking behaviour, abuse substances, and have mental health concerns. Not all will necessarily have a neurodisability. In all likelihood, a large percentage will. What is important is to recognise the signs, to check whether one is present, and to respond appropriately.

Special Feature

Yet another challenge is that the behaviour of those with a neurodisability is easily mistaken as evidence of disobedience, deliberate non-compliance or aggressiveness Rather interpreting the actions of those with a neurodisability in light of their impairment, many assume them to be determined, recidivist offenders who lack remorse and fail to comply with court-imposed conditions due to a bad attitude and disrespect for the justice system.

Under this assumption, that only 'bad people' offend and 'really bad people' continue to do so, . This is especially so where offenders have been provided with the opportunity to attend good, evidence based therapeutic programmes. However, such programmes cater for young people *without* any disability, from which a brain-impaired youth will be able to derive little or no therapeutic benefit. It is then the 'really, really bad people' who not only continue to commit crimes in such circumstances, but then show their disrespect for the court by repeatedly failing to attend appointments, turn up to court on time or comply with curfews, although the reason for that may be a cognitive inability to manage simple organisational tasks or to understand the abstract concept of time. For such behaviour, increasingly severe sanctions are imposed. This punitive and primitive response is not based on a scientific understanding of human behaviour, but simply provides the quickest, easiest, and most convenient means of dealing with the problem.

It is important to recognise that a person does not grow out of a neurodisability; it is a lifelong affliction. This is apparent when one looks at the profile of the adult criminal population. In one study of adult male offenders, 31% had been identified in childhood as having a learning disability. The same study found learning disabilities, Attention Deficit Hyperactivity Disorder ("ADHD") and Traumatic Brain Injuries ("TBI") are indicators which can be used to predict general recidivism. Evidently the connection between offending and neurodisability extends into adulthood.

If we identify neurodisabilities, and intervene appropriately at an early stage, we have the opportunity to turn young people from the path of criminality. Ideally, appropriate supports and interventions would be provided early enough to prevent most young people with neurodisabilities from ever entering the Youth Justice system at all.

Prevalence

So, what sort of numbers are we talking about? In New Zealand, at least, we do not have exact data because local prevalence studies have not been carried out. However, the opinion of some who are qualified to comment is that rates here would not differ significantly from those found in a study carried out by the office of the Children's Commissioner for England.

This study was an extensive, structured literature review of research from a variety of relevant academic disciplines, as well as evidence published by key health and justice organisations, and central government departments. The report primarily examined research involving youth offenders in custody, largely from overseas jurisdictions including the United Kingdom, United States of America and Scandinavia. The following table sets out the results of that research:

"Nobody made the connection: The prevalence of neuro-disability in young people who offend"

Report of Children's Commissioner, England, October 2012

Neurodevelopmental disorder	Young people in general population	Young people in custody
Learning disabilities	2 – 4%	23 – 32%
Dyslexia	10%	43 – 57%
Communication disorders	5 – 7%	60 – 90%
Attention deficit hyperactive disorder	1.7 - 9%	12%
Autistic spectrum disorder	0.6 - 1.2%	15%
Traumatic brain injury	24 - 31.6%	65.1 - 72.1%
Epilepsy	0.45 – 1%	0.7 - 0.8%
Foetal alcohol syndrome	0.1 – 5%	10.9 - 11.7%

These results show a striking relationship between the identified neurodisabilities and offending. Other research illustrating the extent of the problem includes a large-scale study that found approximately 60% of adolescents and adults in the FASD population to have been in trouble with the law. Engagement with the legal system was found to be problematic for this population, their numerous (and often invisible) deficits placing them at a significant disadvantage. The observation was made that, in the absence of early identification and the necessary support, individuals with FASD typically get caught in the justice system's revolving door.

It is also important to note that comorbidity of different neurodisabilities is common. In some cases comorbidity may be explained by the fact that individual symptoms do not fit neatly into one diagnostic category. In others, comorbidity of distinct conditions may be the result of shared risk factors such as genetic vulnerability, pre- or post- natal complications or disadvantage. In other cases, one neurodisability may increase the risk of developing another neurodisability. For example there is a strong link

between traumatic brain injury (TBI) and the presence of other neurological disorders. TBI has been found to increase the risk of developing other neurodisabilities such as a learning disability or communication disorder.

The New Zealand context

Only about 20% of young people suspected of committing offences in New Zealand are charged and brought to Court. Generally they are either facing serious charges and/or are repeatedly offending. Many have a complex range of issues underlying their offending including neurodisabilities. The other 80% are diverted away from the Youth Court by the police taking alternative action. That high rate of diversion, together with the Family Group Conference ("FGC") as the primary decision making process, sets the New Zealand Youth Court apart from any other court in the world.

The Judges, lawyers, lay advocates, and personnel from the various agencies involved in the Youth Court, are all specially qualified and trained. Amongst other things, the Court is required by statute to ensure that a young person's needs, and the underlying causes of his or her offending, are addressed (in addition to being held accountable and having the victim's interests considered).

In recent years there has been growing awareness of the range and complexity of needs that young people coming before the Court have, as well as the issues underlying their offending. This in particular includes neurodisabilities and the implications they have for young people in the Youth Justice context.

There is also a statutory obligation on judges and counsel to explain to young people what is happening in the proceedings in a manner and language they can understand and to be satisfied they do understand. Judges and counsel must also encourage and assist young people to participate in the proceedings. In this respect we also recognise the obligations we have under the international conventions to which we are a party. That includes the UN Convention on the Rights of Persons with Disabilities ("the Disabilities Convention"), ratified by New Zealand on 30 March 2007. Article 7 of the Disabilities Convention requires state parties to ensure that all children with disabilities have the right to express their views freely on all matters affecting them on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right. Article 12 requires that those with disabilities have legal capacity on an equal basis with others and that they receive the support required to exercise their legal capacity. Article 13 requires effective access to justice by providing procedural and age appropriate accommodations in legal matters.

Given the prevalence of neurodisabilities and what we now know about the associated learning disabilities and communication disorders, effective practical steps must be taken to comply with these obligations. To that end work is now underway to review all of the means by which the Youth Justice system, including the Youth Court, facilitates communication with young people. To begin with, it will require efficient and effective methods of screening and assessing for the presence of such disabilities and disorders. Training is required for judges, lawyers, police officers, social workers and various other professionals dealing with or interviewing young people. The content, language and style of documents and forms used must be revised. Enabling appropriate and effective verbal communication with young people is necessary. The layout of courtrooms and other places where young people are required to engage needs to be considered. Providing suitably qualified and accredited communication assistants or intermediaries for young people who require such help will be essential. This must extend beyond the courtroom to other forums in which young people are required to participate, such as the FGC.

Fitness to stand trial

For young people with neurodisabilities at the high end of the range, fitness to plead and stand trial will be an issue. The extent of the problem in this respect has become apparent in New Zealand over the past decade as a result of a law change that took effect on 1 September 2004. Until then, the only basis on which a person could be found unfit to plead or stand trial was if he or she had a mental disorder.

The Criminal Procedure (Mentally Impaired Persons) Act 2003 ("CP(MIP) Act") and the Intellectual Disability (Compulsory care and rehabilitation) Act 2003 ("ID(CCR) Act") came into force on 1 September 2004. Section 4 of the CP(MIP) Act defines a person as being unfit to stand trial if he or she is unable, due to mental impairment, to conduct a defence or instruct a lawyer to do so and includes someone who, due to mental impairment, who is unable to plead, adequately understand the nature, purpose or possible consequences of proceedings or communicate adequately with counsel for the purposes of conducing a defence.

The term "mental impairment" is not defined in the CP (MIP) Act. It includes a mental disorder which is defined, in relation to any person, as meaning an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it :

- Poses a serious danger to the health or safety of that person or others; or
- Seriously diminishes the capacity of the person to care for him or herself.

We also know it includes an intellectual disability which is defined in the ID(CCR) Act as a being a permanent impairment that;

- Results in an IQ of 70 or less (with a confidence level of not less than 95%);and,
- Results in significant deficits in adaptive functioning; and
- Became apparent before he or she turned 18.

As the law has developed over the past decade we also know that "mental impairment" includes a range of other impairments that do not satisfy the definitions of mental disorder or intellectual disability but nonetheless render a young person unfit to plead or to stand trial.

Another significant group to emerge are those young people who are found fit to stand trial, but still have significant disabilities. This group make up one of the most challenging cohorts for the Court and other agencies involved. They make up a large portion of the recidivist offenders. Most also have other vulnerabilities which typically include care and protection status, dislocation from education, and abuse of substances.

Since the 2004 law change, I have heard many cases in the Youth Court where a young person's fitness to stand trial has been raised. Very few have involved young people with a mental disorder. Only marginally more have had an intellectual disability. In fact the number of cases where a young person has had either a mental disorder or an intellectual disability is so small they could easily be counted on the fingers of both hands. By contrast, I have well and truly lost count of the number of severely impaired young people, whose profile did not tick the diagnostic boxes for mental disorder or an intellectual disability, but were still very impaired and in need of significant supports and services. Many have had neurodisabilities. Some were found fit, others were not. Whatever the outcome was in that respect, the problem has been the same in all cases; there was no access to funding, care or rehabilitative support to cater for their needs nor to address the primary underlying cause of their offending.

The barrier preventing most young people with neurodisabilities from being found intellectually disabled under the ID(CCR) Act, is the requirement to have an IQ of 70 or more. If a young person has an IQ even marginally over that threshold, they are not eligible for the supports or services provided for the intellectually disabled even if their adaptive functioning scores are very low. A study involving 62 adults with FASD found that only 34% had an IQ score below 70 but 81% required a moderate to high level of care indicating severe deficits in adaptive skills. Other studies looking at the IQ and adaptive skills of individuals with FASD have also noted the gap between the two.

There is also the question as to whether immaturity in some young people might be regarded as a mental impairment for the purpose of fitness proceedings. There has been academic writing on the issue but no case that has specifically dealt with it as such. However, it is in reality an underlying feature of many cases, particularly when fitness is in issue, and predominantly in those cases where other vulnerabilities are present.

Findings made in a recent study of young peoples' fitness to stand trial in the New Zealand Youth Court tend to bear out these issues and concerns. The study carried out in Auckland over the year from February 2012 to February 2013, involved a total of 366 young people aged between 12 and 17 years who were referred to the Regional Youth Forensic Service. Formal reports were requested in 119 cases. The findings included;

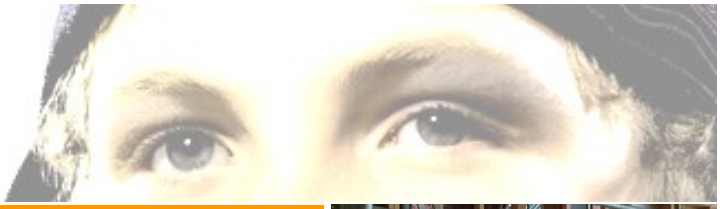
- Only a small number were opined unfit to stand trial (14) and the most common diagnosis amongst them was mental retardation (in two thirds of those cases).
- Comorbidity, substance abuse, dislocation from family and educational structures was common amongst youth referred to forensic services for assessment.
- Only one evaluee had a primary diagnosis of a psychotic condition. In that context the report refers to other studies which have found that most juveniles found unfit did not have a mental illness and that mental retardation is an important factor in undermining competence to stand trial in youth.
- The population of youth referred for assessment regarding their competence to stand trial in Auckland NZ is predominantly male, of Maori or Pacific Island heritage, poorly engaged with education and accused with a broad range of offences. The factors that may undermine the trial competence of young people include developmental immaturity, which does not lend itself to either of the approaches available to the Court to deal with those determined to be unfit. This presents particular difficulties for assessors and the courts in responding appropriately to those youth whose inability to participate meaningfully in proceedings against them stems from developmental and cognitive immaturity.

Conclusion

Plato also said, "Science is nothing but perception" and that "No law is mightier than understanding."

True understanding of behaviour that results from brain damage is now possible with the perception science provides. As law catches up with what science tells us about the connection between neurodisabilities and offending, greater justice for all concerned becomes possible.

Special Report

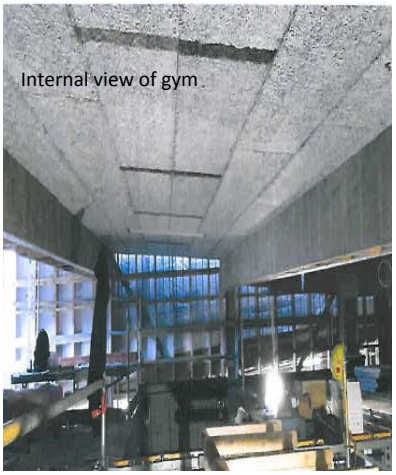


NGA TAIOHI:
SECURE YOUTH FORENSIC INPATIENT MENTAL HEALTH SERVICES

Some Court in the Act readers may be unaware that a nation Youth Forensic Inpatient Unit is being built in Wellington on the grounds of Kenepuru Community Hospital in Porirua. This is a giant step forward. It will fill a longstanding and severe gap. No longer will young people in Youth Court with mental health issues who need secure residential care have to be placed in youth justice residences. At times, such placements have resulted in virtual solitary confinement due to the risk posed by the young person's often volatile condition. There will now be a specialist, purpose built therapeutic placement for these young people. This national unit will service the whole country.

On 16 November, Judge John Walker (resident Youth Court Judge, Porirua) and I visited the construction site to see the unit's progress firsthand, and to hear of the initial plans for the use of the facilities. It is a significant and impressive facility with secure bedrooms, common areas with kitchens and lounges, whānau accommodation, staff facilities, recreation areas, gymnasium, and outdoor courtyards.

The Chief Executive of Capital and Coast District Health Board (CCDHB) Ms Debbie Chin, Judge Walker and I were guided by Dr Nigel Fairley, Director of Forensic Mental Health Services for CCDHB. Dr Fairley has been a key agent in the national youth forensic movement. We note that CCDHB was the first to develop a youth forensic service entirely from its then existing budget in the early 1990s **- Judge Becroft**



Internal view of gym

External view of gym

External view leading to courtyard

The name "Nga Taiohi", meaning Our Youth, was given to the service by the Kaumatua, Taku Parai, of Ngati Toa.

Nga Taiohi is the 10 bed Youth Forensic Inpatient Mental Health unit being built at Kenepuru Hospital. Nga Taiohi will provide inpatient services for youth offenders aged 13 – 18 years with severe mental health and/or alcohol and other drug (AOD) problems. The philosophy of care for Nga Taiohi is founded on a bicultural approach incorporating an overarching Te Whare Tapa Wha framework, Trauma-Informed Care and mainstream clinical models of multidisciplinary care and treatment.

Nga Taiohi will be an integral part of the Capital & Coast DHB Mental Health, Addictions & Intellectual Disability Service. The unit is co-located with other adolescent services – Hikitia Te Wairua, another national service, for intellectual disabled young offenders and the central region adolescent mental health facility, Rangatahi. The medical services will be provided by Kenepuru Hospital.

Referrals, admissions and discharges will be through Mauri-Tu (the virtual team) which is co-ordinated by the Nga Taiohi Resource Coordinator and is made up of representatives from each of the Regional Youth Forensic Community Services. Rangatahi referred to Nga Taiohi will primarily come from the Youth Justice facilities and prisons.

Treatment programmes, education and cultural programmes will be part of a rangatahi treatment plan. The provision of these programmes will also include the rangatahi whanau/ family. Specialist and contracted staff will be employed to provide these programmes. Innovative technology and video solutions have been developed to support whanau/family contact with their family member, and whanau accommodation on the hospital grounds will also be available.

The construction commenced in April this year and is on target for completion on 30 March 2016. Nga Taiohi is scheduled to be officially opened on 21st April 2016.

- Dr Nigel Fairley

Special Report

A group of St Thomas of Canterbury College (Christchurch) high school students who created a detailed report on young people in custody in New Zealand say they wanted to be a voice for the voiceless.

The six students from St Thomas of Canterbury College produced a 40 page report based on data they obtained from Government agencies through the Official Information Act. The group found that youth justice facilities had high reconviction rates and that more than half of the young people apprehended for imprisonable offences were Maori.

Other key findings in the report were that 69 percent of under 20s who are incarcerated are reconvicted, and 45 percent end up back in prison. The project leader, 18-year-old Lincoln Harrison, said the group aimed to shed light on the issue of youth in custody.

"We wanted to find solutions for an issue in New Zealand and so we came about and realised that there's a lot of young people in custody in New Zealand. "We decided to provide a voice for them and gather some information and gather together a report."

School principal Christine O'Brien said the school was pressured not to release the report by some Government agencies that the students investigated.

The full report can be seen here: http://www.erjustice.org.nz/justice-system-reform

Not many may have heard of the "Edmund Rice Youth Custody Index". The Index has been prepared annually since 2014 by a group of students from St Thomas of Canterbury College, Christchurch. The Index is designed to provide New Zealanders with an insight into how young people are detained in custody in Aotearoa New Zealand, and what conditions they are subject to.

On 13 August, I attended the launch of the Youth Custody Index at the Ngā Hau e Whā Marae in Christchurch, together with Professor Ron Paterson, Ombudsman.

The first thing to say is that the Index is a fine piece of work and very revealing as to both offending statistics and trends in use of custody, and the conditions which young people are subject to while in custody. This includes details previously unknown to me, such as the type of menu prepared and food that is available to young offenders. There is also a breakdown as to budget and costs.

It is an outstanding piece of work. It is worth reading by anyone within the youth justice community. Even more remarkable is that this Index is produced by a group of year 12 and 13 students from a Christchurch high school. These young men spoke at the launch, indicated why they were interested in this topic, and showed compelling enthusiasm for ensuring that their research and conclusions were made available for all New Zealanders. In one sense, they impressed as being quite unlike the young people that we deal with in the Youth Court. However, all exhibited a strong social conscience and a realisation that, but for the grace God, they could have gone that way also. It was inspiring, if that is not too trite a word, to see a group of young people so concerned with a group of another young people.

My attendance at the launch was one of my personal highlights of the year, and it ought to be a great encouragement for all those involved in youth justice. Please obtain a copy of the Youth Custody Index. Take the time to read it, absorb it, and reflect upon it. And, most of all, reflect on the fact that it was young people who prepared it. What an encouragement.

Ngā mihi,

Andrew Becroft
Principal Youth Court Judge

Principal Christine O'Niell, Judge Andrew Becroft, Professor Ron Paterson , Paul O'Neill of Canterbury Community Law Centre and students from St Thomas of Canterbury College

Latest Research /Articles

Title: Sex Differences in Antisocial Behaviour: Conduct Disorder, Delinquency, and Violence in the Dunedin Longitudinal Study (Cambridge Studies in Criminology)
Author: Terrie E. Moffitt, Avshalom Caspi, Michael Rutter and Phil A. Silva
Source:http://www.amazon.com/Sex-Differences-Antisocial-Behaviour-Longitudinal/dp/0521010667
Abstract: In this book, a multidisciplinary team of authors address the causes and consequences of sex differences in antisocial behaviour.

Title: National Scientific Council on the Developing Child website
Source: http://developingchild.harvard.edu/science/national-scientific-council-on-the-developing-child/
Abstract: This website links to reports, working papers, videos and other resources created by the National Scientific Council on the Developing Child. The Council's work marries neurodevelopmental science with communications research.

Title: What Mass Incarceration Looks Like for Juveniles
Author: Vincent Schiraldi
Source: http://www.nytimes.com/2015/11/11/opinion/what-mass-incarceration-looks-like-for-juveniles.html?_r=0
Abstract: The author, who previously ran corrections departments in Washington and New York City, provides valuable insights concerning the appalling conditions and abuse he witnessed in youth correctional facilities during his career. He considers such conditions to be endemic rather than exceptional, and argues that they are bred by a culture of binge-incarceration.

Title: Teenagers and the Justice System
Author: Interview of Nathan Mikaere Wallis by Kathryn Ryan for Radio NZ
Source: http://www.radionz.co.nz/national/programmes/ninetonoon/audio/201777503/nathan-mikaere-wallis-teenagers-and-the-justice-system
Abstract: Nathan Mikaere Wallis, founder of X Factor Education in Christchurch, talks to Kathryn Ryan about the issues can cause teenagers to end up in the justice system. Mikaere Wallis was formerly with the Brain Wave Trust and has lectured at the Christchurch College of Education in human development, brain development, language and communication and risk and resilience. He says that there are two categories of teenage delinquents: those who fall off the rails, and those who don't have any rails in the first place.

Title: Palmerston North Boys High School Haka for Mr. Dawson Tamatea's Funeral Service
Author: Palmerston North Boys High School
Source: https://www.youtube.com/watch?v=M6Qtc_zlGhc
Abstract: This is a video of a very powerful and emotional Palmerston North Boys High School haka for a well-respected teacher, Mr Tamatea, whose funeral was held at the school. This moving tribute from 1500 boys received a huge amount of on-line attention around the globe. It is both a positive affirmation of what young people are capable of and a profound example of our bicultural community.

Title: Factors for Persistent Delinquent Behavior among Juveniles: A Meta-Analytic Review
Author: Assink, M., van der Put, C.E., Hoeve, M., de Vries, S.L.A., Stams, G.J.J.M. & Oort, F.J., Risk
Source: *Clinical Psychology Review* 42 (2015) at 47-61. PDF download available at: http://www.researchgate.net/publication/281449340_Risk_Factors_for_Persistent_Delinquent_Behavior_among_Juveniles_A_Meta-Analytic_Review
Abstract: This review examines the effect of several risk factors for life-course persistent offending, based on a series of meta-analyses of 55 different studies. Relatively large effects were found for the criminal history, aggressive behavior, and alcohol/drug abuse domains, whereas relatively small effects were found for the family, neurocognitive, and attitude domains. The physical health, background, and neighborhood domains yielded no effect.

Title: 'Little support' for young offenders - lawyer
Author: Sophie Ryan
Source: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11490065
Abstract: In this article, the lawyer who represented the 14-year-old sentenced to six years imprisonment for the manslaughter of shopkeeper Arun Kumar calls for the Youth Court to deal with cases for young people aged up to 20. Maria Pecotic said the Youth Court systems were working well for young offenders, and when the young offender turns 17 services for them drop off. "There is very little in the way of rehabilitation services and support for people between the ages of 17 and 20," she said.

Title: NCJFCJ Resolves to Stop Shackling of Children in Juvenile Court
Author: National Council of Juvenile and Family Court Judges (NCJFCJ)
Source: http://www.ncjfcj.org/about/resolutions-and-policy-statements
Abstract: The National Council of Juvenile and Family Court Judges (NCJFCJ), which is based in the United States, has released a resolution on the shackling of children in juvenile court. Resolutions represent the united front of approximately 1600 Family Court judges across the US. "The presumption should not be only innocent until proven guilty but also a child should be presumed to be able to manage their behaviors in such a way in court as to not indiscriminately require shackling for their court hearings," said said NCJFCJ President Judge Darlene Byrne. The resolution details the position reached by the NCJFCJ.

Title: In Love or In Trouble: Examining Ways Court Professionals Can Better Respond to Victims of Adolescent Partner Violence
Author: Judge Eugene M. Hyman, Wanda Lucibello, and Emilie Meyer
Source: Juvenile and Family Court Journal 61, Fall 2010.
Abstract: This 2010 article explores adolescent partner violence and responses to it from the legal system. Research suggests that as many as 45% of high school students have experienced some form of adolescent partner violence. Despite these findings, the legal response to domestic violence has focused on assisting adult victims and has often excluded adolescents. This article examines the innovative approaches of two of the country's first adolescent-oriented domestic violence courts and uses the lessons learned from these courts and the research to suggest a larger role court professionals can play in responding to adolescent partner violence.

Pānui/Notices

Talking Trouble Aotearoa NZ presents

Communication Needs of Vulnerable Children and Young People:

Are we doing enough? Dr Judy Clegg

This presentation is designed for professionals who support vulnerable children and youth e.g. teachers, psychologists, social workers, mentors, health staff, police, lawyers and others.

4 - 6pm
Wednesday, 9 December 2015
Tamaki Campus, The University of Auckland
Building 732 Room 201

Free to attend but places are limited. Please register at: https://www.eventbrite.co.nz/e/communication-needs-of-vulnerable-children-and-

He'll be OK

10th Anniversary Edition of Celia Lashlie's international bestseller

"Celia understands you cannot hope to change the life of boys with mistrust, over-supervision and punishment… They worked with Celia because they knew she had a deep respect for their lives"
– Foreword to the 10th Anniversary Edition, by Michael Thompson, PhD

Celia Lashlie's work in men's prisons in New Zealand, coupled with her experience raising a son, left her with a strong sense of the vulnerability of adolescent boys. How do you raise boys to become good men in a world where trouble beckons at every turn? How do you make sure they learn the 'right' lessons, stay out of danger, to find a path to follow? How do you ensure they'll be OK? These are the questions Celia Lashlie addressed in her international bestselling text, *He'll Be OK*.

Sadly, Celia passed away on February 16th 2015 from pancreatic cancer. The tenth anniversary edition of *He'll Be OK* is a fitting tribute to Celia's work and to its timeless relevance. The new edition of Celia's honest, no-nonsense book includes a foreword by Michael Thompson PhD, an American clinical psychologist and co-author of the best-selling *Raising Cain: Protecting the Emotional Life of Boys;* an introduction by Celia's son, Gene Hyde; and a selection of summarised letters from parents which represent many of the concerns Celia dealt with during her years as a speaker and author.