

Connecting the pieces

Address to

Activity Centres and Engage in Their Future Conference

Te Ara, Tuesday 3 April 2018

Judge John Walker, Principal Youth Court Judge

Te Kaiwhakawā Mātua o te Kōti Taiohi

E ngā mana, e ngā reo	<i>All authorities, all voices</i>
E ngā rangatira, e kui mā, e koro mā	<i>All nobles and elders</i>
Tēnā koutou katoa	<i>Greetings to you all</i>

I am honoured to be asked to speak to you today.

I begin by thanking all of you for the work you do with our tamariki and rangatahi. The importance of education in the development of our

young people cannot be overstated. Disengagement from schooling continues to be a persistent factor that we see in the young people who come before us in the Youth Court. For many, mainstream schooling has simply not been able to address their needs.

Activity centres, and the specialised, targeted learning that you provide, is so valuable for these young people. You are providing them with best possible opportunity for re-engagement. I am always conscious as a Judge that I touch these cases but briefly, I always hope in a meaningful way. But it is you, the teachers, mentors, support workers and staff, who are working with these young people day in, day out. It is an area not without its challenges, and I am sure that I can speak for all judges when I express my thanks and my admiration for all that you do.

What I have to say to you this morning comes from my experience in the Youth Court, what we Judges are seeing, how we are endeavouring to address the complexity of offending by children. When I talk about complexity I am referring to the conglomerate of underlying issues which often contribute to the offending behaviour which brings a child

into conflict with the law. Neuro-disability, FASD, physical and sexual abuse, alcohol and other drug use. These are issues which have been there, and identifiable, for many years, maybe even from birth.

In many facets of society, we have become preoccupied with efficiency, with accelerating the processes and achieving the desired results more quickly. In the Youth Court, we know that this does not work. We know that the long-term protection of communities from offending behaviour, and the reclaiming of young lives, requires recognition of what lies beneath the behaviour, and addressing that effectively. It starts as early as possible, and for many, the same risk factors that have led to their involvement in Activity Centres, are those same underlying issues that result in conflict with the law.

In that sense, we have a shared focus.

The Youth Court

So, let me begin by painting the picture of the Youth Court. The Youth Court is an example of a solution-focused court, and it has operated in

that way before that term was invented. While I have been engaged in the development of solution-focused judging in the District Court, developing therapeutic jurisprudence, I was, perhaps unwittingly, bringing the practices of the Youth Court into the mainstream.

It may explain why, as a judge, I am most comfortable in a Youth Court.

The solution-focused approach requires the identification of what it is that is causing the offending, usually multi-faceted, and then using a multi-disciplinary team to endeavour to address those underlying causes, and using the authority of the court to engender and maintain motivation to engage in interventions. Drug Courts, Family Violence Courts, are examples of this approach. It is an approach open to all judges whether in a specialist court or not.

So, what are we seeing in the Youth Court?

In summary: increased serious offending, particularly in areas of high population density and high levels of deprivation. An increase in young

girls offending violently, increased identification of neuro-disability, mental illness, dislocation from school, the effects of traumatic brain injury, the effects of the trauma of sexual abuse and being brought up in a climate of family violence, alcohol and other drug dependency. So worrying is the emerging trend of violent offending among girls and young women that last year my office initiated a multi-agency conversation to put this on the agenda and encourage the development of effective responses.

I recently considered the cases of our most serious, high-risk, high needs offenders. They confirm what many of you will know about the complexity of the issues facing young people, issues that have compounded over a lifetime. But they also remind me of why we do what we do. The intensive wrap-around services happening for these young offenders give me hope for the future of our communities.

These are young people who at the age of 10 or 11, we viewed as vulnerable and in need of care and protection. Now at 15, 16, they are viewed differently by society. We are right to be deeply concerned

about their actions, yet this offending behaviour emerged out of the very same vulnerability. I believe that the children before the Youth Court are those who we, as a society, have profoundly failed in their early years. It is our duty to address this. Keep this in mind, as I talk through the serious, often entrenched issues that are part of the daily lives of these young people.

Neurodisability

We now know that the prevalence of those disorders grouped as neurodisabilities (FASD, intellectual disability, dyslexia, communication disorder) is significantly higher in those who come to court than in the general population. A UK study found that while 2-4% of the general population has a general learning disability, 23-32% of young people in custody have a generalised learning disability. While 1-7% of the general population has some form of communication disorder, this jumps to 60-90% of young people in custody. I could go on – traumatic brain injury, FASD, ADHD – these are all hugely overrepresented in youth custodial populations. There is increasing mental illness presenting in our courts and issues of fitness to stand trial

are becoming common place rather than a rarity. We have become more alert to the possibility of neuro-disability and mental illness. We have forensic screening available in almost all our Youth Courts and full assessments and reports can be ordered. Forensic nurses are observing presentation and interactions and hearing what is happening and will see concerning things (or red flags) that nobody else will see.

We are starting to confront the communication / cognition issues that may accompany neuro-disability by the provision of skilled communication assistance in the court room where that is required. In the same way that mainstream educational demands may not meet a young person's needs, the Youth Court cannot have a one-size fits all approach to offending. Communication assistance enables the young person to overcome any limitations, and to fully participate in their youth justice process.

Our legislation requires that they be enabled to participate

Education

On this point, many of those coming before the Youth Court are disengaged from education and often they have been out of school for years. Almost 50% of young people in New Zealand who offend are not enrolled, excluded, suspended or simply not attending school. Getting them back into school or a meaningful alternative is essential. Being in school is a major protective factor against offending, but often the underlying causes of offending are also what had resulted in their disengagement from school. The value of the work that is done in Activity Centres to try and re-engage these young people, does not easily translate to graphs and statistics of decreased offending down the track. But we know that it has a profound effect on the lives of some of these most at-risk youth, and I thank you again for this.

One of the greatest advances for the Youth Court in recent years has been the introduction of education officers. These officers are provided by the Ministry of Education and they provide the court with very valuable information on education history, and provide a link with schools and can help to smooth the pathway back to school. Facilitating

this provision of information can ensure that the right decisions are made for the young person at every stage of the process.

Cultural disconnection

Young Māori are disproportionately represented at every stage of the youth justice process. In 2017, Māori accounted for 24% of the 10-16 year old population, but made up **66%** of young people appearing in the Youth Court. This overrepresentation continues into our adult prison population, with just over 50% of the total prison population identifying as Māori.¹ We need to do more for our young Māori, and the starting point is assisting them to build on their sense of belonging, and having pride in Māori culture and history.

This need has given rise to the development of Te Kōti Rangatahi, Rangatahi Courts, where the Youth Court sits on a marae. It is not a separate court but the Youth Court sitting at a different place, to monitor the FGC plan and bring the enhancement of cultural identity

¹ 2017 Corrections statistics state that 50.7% adult prison population identify as Māori.

to that plan. The Rangatahi Court works with Kaumatua and the broader community, with a focus on helping the young person to learn more about marae protocol, where he or she comes from, and connecting with their tribe and ancestors. And there will be the delivery of interventions. With the opening of the Rangatahi Court in Whangārei in February of this year, there are now 15 such courts, and 2 Pasifika Courts.

A challenge for these courts is the development of accompanying interventions that will support the work being done by the Court – for the cultural intervention, and sense of community, cannot be provided by just a couple of court appearances. In developing these courts, we are very strongly focused on the establishment of resources to support the work of the Court – such as tikanga wananga – a meeting over several days, in which the young person is fully immersed in Māori culture at a marae.

It will soon have been 10 years since the opening of the first Rangatahi Court, and we need to pay attention to the lessons we can learn from

Rangatahi Courts . I am hoping that in the future we may have a Iwi liaison role in our Youth Courts to assist Young people , their whanau , social workers and Judges to make the necessary connections to provide options to custody for young people.

In both Rangatahi Courts and our mainstream Youth Courts we have developed the role of the Lay Advocate. They are not lawyers. The Lay Advocate is a person of standing in the culture of the Young Person who can bring to the court the cultural background and advocate for the family, and bring in wider family to assist. This role is provided for in the Oranga Tamariki Act 1989, but the provision enabling lay advocates lay dormant for many years before we started to realise its potential – and give effect to that potential.

Family Violence

Family Violence continues to be a pervasive factor in the lives of those who come before the Youth Court. In 2011 a study of young people in NZ aged between 10-24 years who had committed a violent crime

found that 66% of the young people who had committed a violent offence had had a police family violence notification, meaning they had been exposed to family violence as a victim, witness or offender at some stage of their offending history. A higher percentage of repeat offenders (72%) had also been exposed to family violence compared with non-repeat offenders (56%).

The Youth Offending Risk Assessment Tool, or YORST, is a world-leading tool designed and implemented by Police Youth Aid, our specialist youth police, for use with young people, to determine the risk of reoffending of young people they apprehend. It has shown that around 80% of children and young people who offend have experienced family violence (either directly or indirectly). We want to support the roll out of this Tool, to help youth aid identify at-risk young people, who may have committed a low-level offence, *before* they progress to more serious and violent offending. It is at this stage that we want proactive support strategies to be implemented. One of the red flags is the clear correlation between exposure to family violence and going on to commit serious violent offences.

When one steps back to consider the implications of exposure to violence, the statistics are of no surprise. In the last few years I have been heavily involved in District Court – led initiatives to improve the way we respond to family violence in the District Court. Severe family violence towards a partner, or children in the household, behaviour that takes place inside the home and is often repeated over and over again occurs most frequently in areas where we subsequently see the most serious violent offending by the young.

In 2016 alone, there were 119 , 000 family violence investigations by NZ Police. There is a call for Police services in relation to family violence every 6 minutes.

When we consider the evidence that only about 20% of family violence is ever reported, these numbers become even more gravely concerning. Tens of thousands of children in New Zealand are growing up in a climate of violence. And the effects of being subject to violence within the home, or of witnessing or hearing such violence, are severe:

physically, emotionally and developmentally. Anxiety, fear, depression, PTSD; these effects will play out in other aspects of their lives and affect them in the long term.

There are also more subtle consequences of experiencing or witnessing violence in the home. A child may learn that violence is normal, is an effective way of getting what you want, and is a marker of power and prestige. A child may learn to disrespect women with violent actions and words, or that violent behaviour is part and parcel of an intimate relationship.

A research project conducted in 2011 in the Tasman district (The Girls Project) examined the origins of violent behaviour by school age girls. It noted that familiarity with family violence meant these girls were more apt to form relationships with partners who exhibit similar behaviour, to be more accepting of that behaviour and as a result, more likely to end up in violent intimate relationships.

Breaking this cycle is no easy feat. The family is key to socialisation. It is where children learn strategies for dealing with conflict and challenges. We cannot address youth violence – including that which escalates to the adult criminal justice system – if we do not address family violence.

The more we learn, the more we realise how much needs to be done. It used to be thought that a child was safe in the womb – not so. In addition to the effects of alcohol consumption in pregnancy – FASD, the effects of exposure to family violence can be filtered to the child through the mother. While in utero, if the mother is subject to family violence or the fear of violence, the constant release of a mother's stress hormone – cortisol – can have a damaging effect on brain development of the fetus when elevated to excessive levels.

I agree with the view that if you bring a child up in a war zone you end up with a warrior.

So, those are the complexities. Bring any one of those complexities into a young life, the neuro-disability, FASD, the traumatic brain injury, the alcohol and other drugs, out of school, exposure to family violence, the mental illness, and often there will be more than one, and we begin to understand why a young person has offended as they have. Often I will finish reading a psychological report detailing the tumultuous background of a young offender, and the question I ask is: ‘So why is anyone surprised about what happened?’

In the Youth Court we would rather not be the ones playing “catch up”. We want to proactively support and encourage the implementation of early-intervention strategies to effect lasting change.

Continuity of care

A challenge that no doubt presents itself in the education space also, is how we can address these complex issues in the long-term. Our young people, whether they are in alternative education, behavioural programs or residences, will often make huge progress on addressing the issues that are personal to the young person, their education, their social interactions, their health needs. Regaining a sense of control

through living a structured life, receiving positive support, learning and developing are all significant steps forward.

But what of their life at home? In many cases, that family environment may perpetuate the underlying causes of offending itself, hindering the progress that can be made.

If the home is still subject to the pressures of deprivation, continues to be a place of alcohol and other drug use, where family violence or gang violence still feature, can we really expect a young person to put into effect what they are learning? If they are being shown their potential, then it is only fair that a pathway to realising that potential is opened up for them, and they are well-supported down that path. We need to do what we can, to adopt an approach which will effect change for the young person's whole home environment.

For young people who offend, Youth Courts and the Judges who sit in them can have a powerful role in this. Engagement between courts and the communities they serve very often enables community resources to

come to the court. I am thinking of mentoring, literacy, employment, training and opportunities. Programmes that address the transition of a young person from education programs, or residences back into their home environment, and give consideration to the factors present which may contribute to offending. Never underestimate the impact that you may have as a mentor and role-model to a young person.

When we look at the complex issues confronting a young person, which will have confronted them for many years before coming to court, we cannot expect that change will happen just because a programme has been completed. Intervention needs to be in for the long haul. We may have one chance to make a difference. We should not squander the opportunity by thinking that a one-off, short-term intervention will be all that is required.

The sad fact of the matter is that often by the time we get to pay attention in the Youth Court, when an offence has been committed, when victims have suffered, it is late in the piece. Their behaviours and coping mechanisms, their delayed development and disengagement

from school – are well entrenched. But not only that, legally – it starts to be “their fault”. They are the same children with the same underlying disabilities and life course. Society stops wanting to take responsibility. They are no longer “children” in the eyes of many. Instead, they are dangerous teens – on their way to becoming dangerous adults.

If we allow that view to go unchallenged, then we allow our communities to abrogate responsibility for what has gone wrong. Māori concepts of justice in pre-colonial New Zealand regarded socially harmful behaviours to have been caused by an imbalance in social equilibrium, and responsibility for offences was collective rather than individual.² So, there is nothing new in what I am saying . The victim, too, was seen as a collective – as criminal actions affect not only the individual or individuals directly victimised by the offending, but also the whānau, hapū and iwi of the offender and the victim. Māori principles and processes of dispute resolution focus on acknowledgement of harm, hearing from the affected parties and

² Lynch at [1.2.2].

attempting to forge an outcome that restores all parties' mana.³ This is the basis of our Family Group Conference system.

I argue that the view of collective responsibility for offending better reflects what is truly behind a child or young person's offending.

No one is born bad.

The behaviours we are seeing may stem from factors outside of the young person's control. The disabilities are all well established by the time a young person comes in to the Youth Court, and addressing them early provides the best chance of change. These children do need to be helped to take responsibility for their offending. But wider society needs to take responsibility too.

Conclusion

In the Youth Court we are often playing "catch up", trying to turn young lives around by dealing with issues which have been there for many years, maybe even from birth. In my view, taking collective

³ Cleland and Quince at [2.7.2].

responsibility for the plight of those who fall onto paths of crime – and taking collective responsibility for the effects of their behaviour – is a crucial step to take in fashioning effective, lasting responses.

Activity Centres, and the work that you do to re-engage our young people in education, are integral to a holistic approach to helping youth. We want to assist their development into confident, contributing members of society. We must remember that the earlier we identify the underlying issues, the greater the impact we may have on redirecting their life trajectory. This will require ongoing recognition of what lies beneath the behaviour.

I thank you for all the work that you do every day, and I encourage you to keep pushing forward as we endeavour to reclaim young lives.