

## **The Youth Justice Co-Ordinator's Role – A Personal Perspective of the New Legislation in Action**

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The Children, Young Persons, and Their Families Act 1989, unlike so much of our law, sets forth its aims, objects and principles and then stipulates how these will be achieved. I believe that any human endeavour which is to be successful must first identify its vision; if all participants have a clear view of the goal, then the methods of achieving it are able to be defined – are almost inherent in the vision. They can be continuously scrutinised against it, and any wrong action or direction becomes immediately apparent.

Having had the opportunity to observe criminal courts in action over many years, I had come to believe that to seek justice in an adversarial system is a contradiction in terms. Justice, to be real, must be based in a search for truth. Whilst this may be the aim in theory, observation of the practice of our adversarial system in adult courts reveals that the truth is frequently obscured when we delegate that responsibility. Police, lawyers and judges fulfil their appointed roles, which have evolved as our society has grown in numbers and complexity. You and I, no longer inhabitants of village-sized communities, have created these roles and empowered these systems to act on our behalf, when an offence is committed against us. We have empowered politicians to define the rules by which we live, and created mighty systems to deal with those who do not obey them. Attitudes, beliefs, views and traditions have grown over time, and are expressed by our delegated caretakers of justice, as *our* views. My observations in three years of facilitating Family Group Conferences, show that those views frequently do not accurately reflect the views of our society.

The crux of the Youth Justice system is *direct* involvement of the offender and the 'offended against', eyeball-to-eyeball. In the processes of the Family Group Conference, the young offender in the presence of his family is confronted directly by the people his actions have affected.

The violated person is able to express her/his anger and resentment directly to the violator; the 'victim' has begun the process of being back in control, of being "re-empowered" – something *s/he* was robbed of by the event of the offence. This is the first step in the healing process.

The offender's reaction to this event is clearly visible to all present. The most frequent response, clearly demonstrated by her/his demeanour, is one of shame and remorse. When the victim stops speaking there is almost always a most powerful silence, a stillness, while the eyes and thoughts of all those present are focused on the young person. Occasionally, a spontaneous verbal response will happen; more often, after a time, I will ask the young person how he feels about what has been said. This will elicit an indication of shame – even the *most* inarticulate will admit to feeling "stink". I may ask them whether there is

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anything they want to *say* to the victim. The majority will then proffer an apology. The victim then has the opportunity to accept the apology and often in doing so begins to display the first signs of forgiveness, and compassion. They will often now say what it is they want from the offender, by way of reparation – not just in the financial sense, but what is needed to “make things right” between them. In situations where the victim has suffered physical harm, or is left with a residue of fear from the offence, they will need reassurance that they are not going to be at risk from the offender in future, and they will need time to recover their confidence. If they wish, this can be addressed by further contact with the young person, or reports as to her/his progress, or provision for a further meeting together when time has passed.

By focusing on the needs of victims for healing, *their* need to be restored to the feeling of being in control of their own lives, of being re-empowered, the young person and her/his family when proposing a plan to deal with the matters can offer a creative, constructive solution. The best solution is that proposed by the young offender, through his family, having taken into account the requirements of the victim. Constantly in my work, where the behaviours and situations of our young people, many jobless and ill-educated, have the potential to induce a depressing effect on my own outlook on life, I am affirmed in my belief in the innate goodness of people by the common sense, the compassion, and the cooperation of victims. A conference without victims present lacks the power (and consequently sometimes the effectiveness) of a conference where they *are* present. I always regret a victim’s absence as a healing opportunity lost.

For various reasons occasional conferences do take place without victims, and I am always left with the impression that despite the constructive input of all the other participants the young person may be left with the feeling of having been “lectured” by a group of adults. The participation of a victim, on the other hand, brings about an inescapable and direct involvement of the young person in the process. It is virtually impossible for the offender to remain aloof, to distance himself from the accusation, the demands for explanation, and the expressed need of the victim for a response from the young person and for *appropriate* sanctions to be applied. I have learnt, along with the Youth Aid Officers who attend, that our preconceived ideas of what meets the situation in terms of reparation (not just financial) and penalty, may be completely different from the victim’s own views. We are thus *relieved* of this delegated responsibility by the presence and contribution of the victim, and some extremely creative solutions have been proposed by victims themselves. Aside from the possibility of victims offering their own homes or businesses as venues for community work penalties, we also frequently see them waive financial reparation when made aware of a young person’s financial situation. Some involve themselves in the young person’s plans and maintain contact beyond the expiry date and plan completion.

One young man from an impoverished background, who had left school with no qualifications and was leading a day-to-day hopeless existence, was facing his third Family Group Conference. He was introverted, showed no confidence or self-esteem, and displayed an emotionless response to Family Group Conference proceedings. He had threatened another young person with a knife. The victim’s family attended with their son. The father of the victim happened to mention that he was a computer tutor, to which the

boy responded that he was interested in computers. Arrangements were made for him to receive personal tuition for several months from the victim's father, and he was found to have an exceptional talent. He is now on his way toward a career in computer graphics and has not re-offended.

Another youth, charged with burgling a supermarket, was confronted by the store Manager, who suggested he should carry out a penalty of unpaid work at the supermarket. If he did so successfully he would have a part-time job there offered to him on completion of his hours. To protect his dignity the Manager required him to ring and ask for an appointment to enquire about a position at the store. He then underwent a normal interview situation and did his hours with only the Manager and himself knowing the true situation. He was eventually successful in achieving a paid position there. Such solutions, with a long-term prognosis of success and no further offending, are only possible with the involvement of victims.

The second prong of the Youth Justice process is the involvement of offenders' families in decision making. From my observation of the pre-1989 legislation families were involved only peripherally in the decisions affecting their children. They would be described frequently in negative and judgemental ways in social work reports, were often not fully informed, and as they received little recognition were powerless to contribute to outcomes for their offending children. Young people themselves were so removed from the procedures of the Court that on enquiring from them what had happened we often received the information that they had been 'astonished and discharged' (admonished and discharged).

The new legislation, which forces all concerned to view young persons within the framework of the family to which they belong, ensures that social workers, police, lawyers and judges, cannot ignore the knowledge, wisdom, experience, resources, and rights of families, when dealing with young people. Bringing together extended families, although admittedly sometimes difficult, ensures a more constructive outcome than dealing with young persons in isolation.

At times, social workers and co-ordinators must address reluctance by a caregiving parent to enable wider family to be informed of a young person's situation in facing charges. There may be a history of family disruption, poor relationships and alienation, or the parents' sense of failure or shame that their young person is in trouble. Sometimes I do sit down in conference with the young person and just one parent, but in these situations we will attempt to discover a close neighbour, a school counsellor, somebody to support the lone parent.

If the young person re-offends, necessitating a second conference, then further efforts will be made to overcome the lone parent's resistance and to locate other family members. Generally the parent can be helped to see that the young person has a right to, and needs, the support of other blood relations in the situation. Sometimes we have, with the agreement of all concerned, located natural parents for an adopted child, and organised a 'family reunion' as part of the process of addressing the reasons why a young person is offending. (In those situations, sometimes young persons are 'acting out' as they move through the adolescent identity crisis.)

The most obvious and measurable success of family involvement has been the closure of the previously myriad Social Welfare residences. Previously young people were placed in these institutions in a very cavalier fashion, were often left to languish there, and were able to develop and hone socially unacceptable behaviours during their frequently unnecessary stays. Now family placements are in order, and while of course not 100% successful, certainly avoid the separations, the anguish, the resentment, the weakening and loss of family bonds and negation of parental responsibility, which occurred previously. Families almost always acknowledge that the conference is a good way of working.

I am not trained in clinical research, and have no head for statistics – someone else would need to confirm the figures presented here. However, I have convened about 700 conferences since I began my work. Of these I estimate that 80% come via police referrals – the rest through court, via arrests. I would guess that 15% of our referrals have more than one conference, and that perhaps five per cent are persistent offenders. Even amongst these, with persistent work and family involvement, there is success. I have a sense of personal failure when young persons are convicted and transferred to a District Court for sentence – the severest penalty available in the Youth Court – and our team works hard to present viable options and prevent this outcome. The Youth Court has demonstrated also that given sound family support, and practical plans with appropriate penalties, even purely indictable matters may remain within the Youth Court jurisdiction and be brought to a successful conclusion. Since prison does nothing to rehabilitate offenders, and certainly is not a “crime prevention measure”, this opportunity for young persons charged with serious offending is enlightened and bodes well for our society.

The spirit of teamwork which has evolved among the various professionals involved with the Act has also contributed greatly to the success of the process. Youth Aid Officers and Co-ordinators have forged excellent relationships over three years of working together, developing an appreciation of, and insight into, each other’s roles.

I am saddened that Youth Aid Officers within the Police Force are apparently accorded low status, and that the highly developed skills of the officers in dealing with juvenile offenders do not appear to receive the recognition they deserve. Despite – or perhaps because of this – the position on the whole attracts people with commitment and interest in young persons, who have demonstrated in the last three years their willingness to participate in the process of the conference itself. From an initial stance of arriving with a preconceived view of the appropriate penalties they have moved into a position of willingness to listen, to negotiate, and to enable the plans of families and victims to be actioned. Their good faith is mostly borne out and the bonus is that young people (and their families) have their negative perceptions of the police challenged. This “public relations benefit” for the police is a possibly unacknowledged offshoot of their work. Perhaps a change of title for these police specialists in juvenile justice would address their standing within their own ranks. I still perceive some difficulties for frontline officers in dealing with the Act, but with the greater emphasis given it in Police College this will change in time.

In the Auckland Youth Court we are fortunate in having a team of Youth Advocates who

also display a real interest in the young people they represent. Initially also, for them, I believe there were difficulties in overcoming their training in the adversarial approach, leading to an inclination to become mired in technicalities at times. They too, whilst carrying out their obligations to represent their young clients, have learnt to participate in ‘the search for truth’ which leads to real justice.

Under the old legislation, I sometimes observed that a lawyer’s only objective was to ‘get the client off’. Achieving this by focusing on technicalities and loopholes meant that young clients sometimes did not have to take responsibility for their actions and walked away from wrong-doing. The lessons learnt from these situations were beneficial to no-one in the longer term – neither to the young offender, nor to the victim, and certainly not to society. Now, in the spirit of co-operation and negotiation, and having developed trust in the integrity of the other participants of the conference, and in the process itself, Youth Advocates can still discharge their legal responsibilities and make a constructive contribution to their clients’ future as well. The appointment of Maori and Pacific Island Advocates to this team would enhance it still further.

The Auckland Youth Court judges have been notable for their humanity and their real interest in the young people who appear before them. They have made themselves accessible to the other players in the team and are meticulous in ensuring that our young people comprehend the processes of the Court and the decisions taken.

Occasional informal lunch-break meetings to discuss relevant issues have been well attended, and have led to the development of excellent working relationships. Judge MJA Brown (Principal Youth Court Judge) is currently addressing the issue of communication in the Court setting as we strive to empower our families in their dealings with the Court, and to ensure that their human dignity is not trampled in their unfamiliar setting.

I am constantly aware that our involvement in the lives of young offenders, their victims and their families, is minimal in terms of actual time, but is a maximum intervention, especially in terms of its potential for disruption. It is important therefore, that our dealings with them should be conducted with integrity and sensitivity, and that we should avoid adding to their anxieties and the pressures confronting them. It is all too easy to unintentionally exclude people from full participation, by the use of jargon unfamiliar to the uninitiated.

I have written at length of the professionals involved with the legislation. Now I pay tribute to all those other dedicated people we loosely label ‘community groups’. In designing the legislation there was clearly envisaged a partnership of ‘Director-General’ and ‘Iwi Authorities’. It appears to me that it was intended that the statutory responsibilities were to be equally shared, if not to be interchangeable, between these two partners. I must have missed the wedding! Now, with the division of the Department of Social Welfare into three ‘business units’, the Community Funding Agency has responsibility for granting ‘approval’ and financial resourcing to community groups. In accepting funding those groups also accept responsibility for accounting for it – not an unreasonable expectation. However the criteria for ‘approval’ are set by the Agency, and community groups are faced with the task of fitting square pegs into round holes – describing themselves and their work according to definitions set by others.

This situation carries an inherent risk of creating a myriad mini-institutions wherein the drive, the vision, the creativity of the instigators may be flattened by the rubber-stamp of bureaucracy. Such 'Iwi' Authorities' as have gained tentative recognition, have yet to gain the full recognition accorded them by the Act, and much work remains to be done in this area.

Where young people are placed in community residential facilities or under the supervision of community workers it is a fact that the *real* work, the 24 hours-a-day work, will be done by *these* people. Without the goodwill and commitment of these folk, *truly* overworked and underpaid, struggling with the vicissitudes of unruly adolescents far beyond the coping ability of their families, the outlook for some young people would be grim indeed. I have seen magnificent work done by groups and individuals in rehabilitating young people – work which goes largely unrecognised and unappreciated. The contribution of the community cannot be underestimated, and will continue to be of primary importance in achieving the goals of the Act.

Whilst we can demonstrate measurable success after three years, there are still shortcomings. The Mason Report addressed those which were identified during that enquiry\* and I am heartened that the New Zealand Children and Young Persons Service and others are taking serious measures to remedy them. Constant vigilance is needed by all the participants charged with carrying out the legislation to improve and upgrade the standards of work being done. Two areas are presently of particular concern to me for the future. One is the lack of facilities for emotionally disturbed young persons bordering on, or diagnosed as having, psychiatric symptoms. The Mental Health and Social Welfare interface must address the gaps in the net, through which these young people are slipping.

Further, I believe that a small number of young persons are being sent on to the High Court and incurring prison sentences because no viable alternative for them exists. Although I privately wonder if *every* possible community alternative has been explored before this step is taken, perhaps we need to acknowledge a need for a secure residential facility where education and therapeutic programmes, tailored to the young person's needs, can be provided for a longer term than the three months Supervision with Residence currently available in the Youth Court. If we are seriously committed to the principle of justice for our youth then we should not go on incarcerating young persons in prisons simply because the state has not provided a suitable facility to meet their distinctive needs.

This has been my very personal view of the Act in action. Although I am frequently exhausted by the size and demands of the workload we carry I am constantly impressed by the commitment of colleagues – police, lawyers, judges and Department staff and community workers.

Inevitably when I have entertained notions of resigning and escaping to my retreat at the beach, I have run another family group conference and come away heartened yet again

\* Review of the Children, Young Persons, & their Families Act 1989: Report of the Ministerial Review Team to the Minister of Social Welfare, February 1992. This report recommended, in this area, the need for better staff training, for better information to be available to those attending family group conferences, for neutral venues to be used, for evaluation of outcomes, and for primacy of the young person's interests.

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by the events in which I am privileged to participate. When victims and families farewell each other with smiles, handshakes, and embraces, I know that justice has been served. When people express initial scepticism, but depart as enthusiastic converts and believers in the conference process, I know our society has been enriched.

I look forward to the day when we are sufficiently enlightened, and truly committed to achieving justice for all our society, that all offenders and all victims have the opportunity to participate in the only process which can truly achieve it, the process of the Family Group Conference.

On my wall is a quote from that prolific writer ANON, "Justice can never be unjust, but love can be misguided". I treasure the final comment of a victim who said in the closing round of a conference, "Today I have observed and taken part in justice administered with love".