RANGATAHI COURTS OF AOTEAROA / NEW ZEALAND – AN UPDATE

His Hon Judge Heemi Taumaunu
Ngāti Pōrou, Ngāi Tahu
Hoani Waititi Rangatahi Court Judge - Waitākere

> Throughout the generations, prominent Māori leaders and respected elders have stressed the importance of Māori holding fast to the Māori language, protocols, and culture, to ensure the survival of Māori people into the future. This message is based on the premise that if the Māori language is lost, then the Māori culture will inevitably follow, and ultimately, so will the Māori people.
>
> It is a tragedy that most Māori youth who appear before the Youth Court have no knowledge of their own Māori language and have no idea of who they are and where they are from. Most do not know what tribe they belong to, what marae they originally come from, what mountain and river they belong to. They have no idea of the rich treasures left to them by their ancestors. Their language and culture is often borrowed from Black American hip-hop culture. Most of them live for the present, they exist in a vacuum, where the 'here and now' is all that matters. For these young Māori to have any sense of purpose in the future, they need to start by knowing where they have come from and who they are. It is difficult, if not impossible, for any Court to attempt to point young people in the right direction if they are without this knowledge.[1]

Introduction

The Treaty of Waitangi was signed by the Crown and Māori in 1840. Prior to the signing of the Treaty of Waitangi, Māori whānau (extended families), hapū (sub-tribes) and iwi (tribes) conducted their affairs in accordance with tikanga Māori (Māori customary protocols). As a consequence of the signing of the Treaty of Waitangi, the English legal system was established as the legal system of New Zealand.

From 1840 until 2008, courts exercising criminal jurisdiction in New Zealand operated in a mono-cultural manner and did not incorporate tikanga Māori. Although te reo Māori (the Māori language) was recognised as an official language of New Zealand in 1987, te reo Māori was rarely used in courts exercising criminal jurisdiction in New Zealand.

Since the mid 1950s, when the Māori population began moving from rural areas to cities, the Māori rate of imprisonment sky-rocketed. Māori are disproportionately over-represented in the criminal justice system of New Zealand. Māori currently comprise 50% of all defendants, prisoners and victims of crime in New Zealand.

[1] Judge H Taumaunu "Rangatahi Courts of New Zealand – Kua Takoto te Mānuka, Auē Tū Ake Rā", Chapter 16, *"The Treaty of Waitangi – Always Speaking*" – Huia Publishers – 2011 – Editors; VeronicaTawhai and Katarina Gray.

In January 2008, the Gisborne Youth Court held a stakeholders meeting. At that meeting, experienced youth justice professionals expressed concern that they had witnessed successive generations of Māori defendants make their way through the Youth Court to the District Court and then to prison. It was agreed at that meeting that the Youth Court should adopt a new approach and the idea of the Youth Court sitting at a local marae (a traditional Māori meeting place) was mooted. Between January 2008 and May 2008, numerous meetings were held with local iwi and local iwi leaders to discuss whether there was any support for the idea of the Youth Court sitting at a local marae. It became evident that there was strong local iwi support for the Youth Court to sit at Te Poho-o-Rawiri marae. Numerous further meetings were held with local iwi and hapū leaders, including the late Sir Henare Ngata, Dr Apirana Mahuika, Mr Temepara Isaacs, Mrs Olive Isaacs, Mr Bill Aston, Mrs Rawinia Te Kani, and my father Mr Hone Taumaunu, to discuss how te reo Māori, tīkanga Māori, and marae kawa (ritualistic ceremony on the marae), could be incorporated in an appropriate manner with the criminal legal processes applicable to young people appearing in the Youth Court. These discussions shaped the processes adopted by the Rangatahi Court at Te Poho-o-Rawiri marae.

The first Rangatahi Court sat at Te Poho-o-Rāwiri marae, Gisborne, on 30 May 2008 with myself presiding. For the first time, a New Zealand court exercising criminal jurisdiction, applied the same law in the usual manner, but also incorporated te reo Māori, and tikanga Māori, held the sitting of the court at a marae, and observed marae kawa as part of the process of the court. The establishment and development of Rangatahi Courts was fully supported and encouraged by the Principal Youth Court Judge Andrew Becroft, the Chief District Court Judge at that time, the late Chief Judge Russell Johnson, and now the current Chief District Court Judge Jan-Marie Doogue.

The Rangatahi Courts have proved that a court exercising criminal jurisdiction can successfully, and, appropriately, apply bi-cultural processes. The recently released evaluation of Rangatahi Courts concludes, amongst other things, that this leads to enhanced engagement with young people and their families and an increased level of respect for the legitimacy of the justice system.

Since 2008, nine other Rangatahi Courts have been established throughout the North Island. The Manurewa Rangatahi Court was launched on 23 September 2009 in South Auckland with Judge Greg Hikaka presiding; the Hoani Waititi Rangatahi Court was launched on 10 March 2010 in West Auckland with myself presiding; the Orakei Rangatahi Court was launched on 22 June 2010 in Central Auckland with Judge Eddie Paul presiding; the Owae Rangatahi Court was launched on 26 June 2010 at Taranaki with Judge Greg Hikaka presiding; the Kirikiriroa Rangatahi Court was launched on 7 August 2010 at Te Ohaki Marae in Huntly with Judge Denise Clark presiding; the Mataatua Rangatahi Court was launched on 11 June 2011 at Wairaka Marae in Whakatane with Judge Louis Bidois presiding; the Pukekohe Rangatahi Court was launched on 30 September 2011 with Judge Greg Hikaka presiding; the Papakura Rangatahi Court was launched on 1 October 2011 with Judge Frances Eivers presiding; and the Te Arawa Rangatahi Court was launched on 2 December 2011 with Judge Louis Bidois presiding. On 22 March 2014, the Christchurch Rangatahi Court will be launched at Ngā Hau e Whā Marae with Judge Heemi Taumaunu presiding.

In essence, Rangatahi Courts monitor the performance of Family Group Conference Plans (FGC) by young people who have committed offences. However, Rangatahi Courts have additional components over and above monitoring FGC plans. Because many of the young people who appear in Youth Court have lost touch with their sense of identity as Māori, emphasis is placed on the young person learning who they are and where they are from, and learning significant aspects of their Māori tribal history. This is approached by expecting each young person who appears in the Rangatahi Court to learn a pepeha (a traditional tribal saying) and a mihi (a greeting in the Māori language). Many of the young people who appear have never spoken te reo Māori prior to their appearance in the Rangatahi Court and their efforts can result in an intense personal journey of discovery. This emphasis on knowing "who you are, and, where you are from" draws on traditional Māori beliefs based on whakapapa (genealogy) and whakawhanaungatanga (making connections and relationships). The underlying rationale for Rangatahi Courts is neatly summed up in the famous saying "E Tipu e Rea", advice that Sir Apirana Ngata gave to his young niece; encouraging young people to achieve success in a modern world, to be proud of who they are as Māori youth, and to recognise and respect a higher power.

Outline

Rangatahi Courts are part of the Youth Court of New Zealand. This paper will consider the overall framework for the Youth Court for all young people who commit offences. It will consider the steps that a young person in the Youth Court will go through and the legal requirements that accompany each step. This will include consideration of Youth Court principles, Youth Court jurisdiction, Youth Court processes, detection of offending, charging, purely indictable charges, Family Group Conferences, monitoring of Family Group Conferences, Youth Court orders, newly introduced orders, enforcement of orders, restricted combinations of orders, care and protection issues, and the Youth Court terms "Not Denied" and "Proved by Admission".

The extent to which Māori youth and adults are disproportionately over-represented in the criminal justice system, historical imprisonment rates, likely future trends, and potential solutions, will be considered.

The Rangatahi Courts and their protocols and processes, will be explained to give readers a fuller understanding of how these specialist Courts operate within the present day context. Finally, this paper will set out significant findings of the recently released Evaluation of Rangatahi Courts commissioned by the Ministry of Justice and undertaken by Kaipuke Consultants.

Youth Court Framework

Principles

New Zealand's youth justice system recognises that young people are not simply "mini-adults" and warrant different treatment. This is in line with brain science

research, which shows that adolescent brains have not fully matured,[2] and that adolescents are more prone to impulsive, risk-taking, emotionally responsive behaviour.[3] Our legislation also recognises that young people in trouble with the law are in a vulnerable position, and that it is important for family, whānau and communities to take responsibility for young people in trouble.

The part of the Children, Young Persons and their Families Act 1989 devoted to youth justice begins with a statement of specialist principles, which follows:[4]

- Unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter.
- Criminal proceedings should not be instituted against a child or young person solely in order to provide any assistance or services needed to advance the welfare of the child or young person, or his or her family, whānau, or family group.
- Any measures for dealing with offending by children or young persons should be designed –
  (i) to strengthen the family, whānau, hapu, iwi, and family group of the child or young person concerned; and
  (ii) to foster the ability of families, whānau, hapu, iwi, and family groups to develop their own means of dealing with offending by their children and young persons.
- A child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public.
- A child's or young person's age is a mitigating factor in determining –
  (i) whether or not to impose sanctions in respect of offending by a child or young person; and
  (ii) the nature of any such sanctions.
- Any sanctions imposed on a child or young person who commits an offence should –
  (i) take the form most likely to maintain and promote the development of the child or young person within his or her family, whanau, hapu, and family group; and
  (ii) take the least restrictive form that is appropriate in the circumstances.
- Any measures for dealing with offending by a child or young person should so far as it is practicable to do so address the causes underlying the child's or young person's offending.
- In the determination of measures for dealing with offending by children or young persons:

---

2 See for example Sir Peter Gluckman "*Improving the Transition: Reducing Social and Psychological Morbidity During Adolescence"* (Wellington, Office of the Prime Minister's Science Advisory Committee, 2011) at 24. <www.pmcsa.org.nz/wp-content/uploads/2011/06/Improving-the-Transition-report.pdf>.

3 See for example Laurence Steinberg *"Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science"* (2007) 16 Current Directions in Psychological Science 55 at 56.

4 Children, Young Persons and Their Families Act 1989 (NZ), s 208.

(i) consideration should be given to the interests and views of any victims of the offending (for example, by encouraging the victims to participate in the processes under this Part for dealing with offending); and
(ii) any measures should have proper regard for the interests of any victims of the offending and the impact of the offending on them:

- The vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.

These principles must guide professionals' dealings with young people throughout the entire youth justice process.

Recent case law has also considered the applicability of these principles to young people in the higher courts.[5] The position as it stands is that though youth justice principles do not generally apply for young people appearing in adult Courts, the United Nations Convention on the Rights of the Child and the Bill of Rights Act do apply, and contain some provisions which detail some special requirements for young people in the criminal justice system.[6]

Jurisdiction

The Youth Court of New Zealand is a division of the New Zealand District Court established by section 433 of the Children, Young Persons and Their Families Act 1989 ("CYPFA"). It deals almost entirely with young people aged 14 to 16 years inclusive.

Child offenders – those aged 10 to 13 years inclusive – are mostly dealt with in the Family Court. This is because child offending is seen as symptomatic of care and protection issues. However, from 1 October 2010 child offenders aged 12 or 13 may also be dealt with in the Youth Court if the offence with which they are charged carries a maximum penalty of at least 14 years, (or 10 years and they have previously offended in a serious way). To date, around 28 child offenders have been heard in the Youth Court. The Youth Court has the power under s 280A of the Children, Young Persons and their Families Act to transfer these cases out of the Youth Court and back to care and protection proceedings if required. Recent records from the Ministry of Social Development suggest that to date eight children have been referred back to the Family Court using this section, eight have received a discharge from the Youth Court (under either s 282 or s 283(a) of the Children, Young Persons and their Families Act) and twelve matters remain open.

---

5 See *R v M* (17 November 2011, Court of Appeal, [2011] NZCA 673, O'Regan P, Wild and Heath JJ) at [41] - [48], applying *Pouwhare v R* (16 April 2010, High Court, Whanganui, CRI 2010-483-11, Justice Miller) at [82] - [83].

6 For example art 40 of the United Nations Convention on the Rights of the Child and s 25(i) of the Bill of Rights Act 1990. Both describe the need for a young person to be dealt with in a manner that takes account of their age. Art 40 also details States Parties recognises the need for young people to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. It then elaborates on specific ways in which States must achieve this end.

All children and young people charged with murder or manslaughter have their cases resolved in the High Court.

Process – Detection of Offending

The Youth Court process begins with Police detecting alleged offending by a young person. Where this occurs, an enforcement officer has three options:

1) To give an on the spot warning or otherwise deal with the matter informally, then release the young person. Around 23% of youth offending is dealt with this way.[7]
2) To notify the Police Youth Aid division, who will refer the young person to a diversionary programme or "alternative action". About 40% of all offences are dealt with in this way.[8] The limits of what may be used as a form of alternative action are the limits of the imaginations of those involved. The best Police Youth Aid workers spend considerable time and effort tailoring solutions that satisfy victims, prevent re-offending and re-integrate young people into their communities. It is usually locally based, often involves members of the community, and is overseen by Police Youth Aid.
3) To arrest the young person. There are significant limitations on when the Police can arrest a young person (in legislation and supported by case law).[9]

Upon arrest, the Police may:

- release the young person without charge; or
- charge the young person, in which case he or she may be released with or without conditions to appear later in the Youth Court; or
- in some situations, charge and detain the young person in custody for longer than the standard 24 hour maximum, in which case he or she must be brought before the Court as soon as practicable.

Charging

If the Police arrest the young person, they can then proceed to lay a charge in the Youth Court.

If the Police have not arrested the young person, but intend to charge, they must first hold an "intention to charge family group conference (ITC FGC)." More information is provided on this in the section on Family Group Conferences (FGCs) below.

---

7 Statistics New Zealand "Calendar Year Apprehension Statistics" – "National Annual Apprehensions for the Latest Calendar Years" table <http://stats.govt.nz/tools_and_services/tools/TableBuilder/recorded-crime-statistics/ASOC-apprehension-calendar-year-statistics.aspx#national>.

8 Statistics New Zealand "Calendar Year Apprehension Statistics" – "National Annual Apprehensions for the Latest Calendar Years" table <http://stats.govt.nz/tools_and_services/tools/TableBuilder/recorded-crime-statistics/ASOC-apprehension-calendar-year-statistics.aspx#national>.

9 See Children, Young Persons and their Families Act 1989, s 214. In the recent decision *Police v CG and TP* (9 July 2012, Youth Court, Upper Hutt, CRI-2012-278-002, 003, Judge O'Dwyer), the Judge reinforced the high threshold in s 214 and the need for "the gateway" through which young people must pass before coming to the Youth Court to be vigilantly guarded, citing the decisions *NZ Police v LM* Youth Court Wellington, CRI-2009-285-000023, 21 April 2009 and *EM v Police* [2008] DCR 399.

Following the ITC FGC, the Police can only lay a charge in Court if the FGC has decided that this is an appropriate course of action.

If the charge is laid in Court, the young person is required to indicate whether the charge is "denied" or "not denied".

If the charge is "not denied" a court-directed FGC must be convened (see below for more information on FGCs). At the FGC, the young person is asked to "admit" the offending, and if so, the Youth Court will then consider the plan formulated in the FGC.

If the charge is denied, the matter is the subject of a defended hearing, conducted in the normal adversarial manner as for adults under the provisions of the Summary Proceedings Act 1957. If the charge is dismissed, the young person is free to go. If it is proved in the Youth Court, an FGC must be convened to consider sentencing options.

Purely Indictable Charges

Purely indictable charges (and charges where an election is made – ie where the offence attracts a potential penalty of over three months imprisonment: s66 Summary Proceedings Act) are not within the jurisdiction of the Youth Court, other than for the holding of depositions.

However, the Youth Court may offer Youth Court jurisdiction at any stage prior to or during depositions if:

- a young person indicates a desire to plead guilty; or
- at the conclusion of depositions, the Youth Court Judge thinks it appropriate to do so.

If the young person elects Youth Court jurisdiction, the charge remains in the Youth Court and is dealt with entirely according to Youth Court procedure.

If Youth Court jurisdiction is not offered, or the young person elects a jury trial instead, the charge is dealt with as for a purely indictable offence.

Case law has added that when considering whether Youth Court jurisdiction should be offered, the discretion must be positively considered and exercised judicially,[10] and the Youth Advocate and Prosecutor are entitled to be heard.[11]

Family Group Conferences

Family Group Conferences (FGCs) are the lynchpin of the New Zealand youth justice process. An FGC is a conference at which the offender, together with their family/whānau and other attendees such as the victims/s, Police, the social worker and Youth Advocate,[12] is required to formulate a plan aimed at addressing past

[10] *S v District Court at New Plymouth* [1992] 3 NZLR 508.
[11] *R v Police* (1990) 6 FRNZ 538.
[12] For a detailed list of who can attend an FGC, see s 251.

offending, repairing present harm and meeting future needs. A range of outcomes are available.[13] The Youth Court is required to consider the plan, but is not obliged to adopt it, although it does in the vast majority of cases.

FGCs occur in several situations, but the two key situations for the purposes of this paper are:

"Intention to charge Family Group Conference"(ITC FGC):

If Police seek to lay a charge (and there has been no arrest), an ITC FGC is held. Usually such an FGC will recommend a voluntary plan for the young person to undertake, outside of court. If it is satisfactorily completed, this will usually be the end of the matter. If not, then a charge may be laid in the Youth Court. Alternatively, the FGC may recommend that a charge be laid in the Youth Court without a plan.

"Court ordered Family Group Conference":

Once a charge is laid, a young person will appear in the Youth Court and may "deny" or "not deny" a charge. If the young person does not deny the charge, they will be directed to a FGC. If they then "admit" the charge at the FGC, the FGC will again usually formulate a plan for the young person to undertake. In about 95% of the cases, the Youth Court Judge accepts this plan and the case is adjourned for the plan to be completed. If the plan is satisfactorily completed, the young person is often absolutely discharged with no record of the offending.[14]

In recognition of the need to consider a young person's sense of time, there are time limits for the convening of FGCs (between 7-21 days, depending on the type of FGC).[15] There has been some discussion in case law regarding the effects of non-compliance with these timeframes. In the case of ITC FGCs, the Court has determined that non-compliance invalidates the FGC and removes the jurisdiction of the Court to consider the information.[16] In the case of a court-directed conference, the Court has posed a list of factors to consider when determining whether or not the non-compliance was sufficiently serious to justify dismissal.[17]

Monitoring FGC Plans

As mentioned above, once the FGC has decided upon a plan, the Youth Court Judge will consider it and usually will accept it. The Youth Court Judge may then monitor the young person's progress with the plan, calling them up before the Youth Court on a regular basis to see how they are progressing.

13 Children, Young Persons and Their Families Act 1989, s 260.
14 Pursuant to Children, Young Persons and Their Families Act 1989, s 282.
15 See Children, Young Persons and Their Families Act 1989, s 249.
16 *H v Police* (HC, Hamilton, AP 71/99, 13 October 1999, Smellie J).
17 *Police v V* [2006] NZFLR 1057 (HC).

Youth Court Orders

Most young people who appear before the Youth Court do not receive formal orders. The usual course is for a plan to be formulated at an FGC and, if this plan is successfully completed, the young person may receive a complete discharge and leave the Court with no criminal record.[18] However, the FGC may request that an order be made. The Youth Court may also make an order if the FGC Plan is inadequate, or if the young person has failed to comply with the FGC Plan.

The orders available to the Youth Court include lower end orders (eg discharge with a record of the discharge,[19] admonishment[20] and forfeiture of property,[21] orders to attend mentoring, parenting, drug and alcohol programmes[22] or orders to do community work.[23] The Youth Court can also make higher end orders of supervision[24] (placing the young person in the care of the chief executive or any other organisation), supervision with activity,[25] or supervision in a youth justice residence.[26] The most serious order that the Youth Court can make is a conviction and transfer to the District Court for sentence.[27] Once in the District Court the young person may receive a sentence of imprisonment of up to five years.

The Court must not impose an outcome "unless satisfied that a less restrictive outcome would, in the circumstances and having regard to the principles in section 208 and factors in section 284, be clearly inadequate."[28]

An interesting question has been the relevance of Youth Court orders in the adult jurisdiction. The District Court has made it clear that a Youth Court order (other than a conviction and transfer to the District Court for sentence under s 283(o) is not a "criminal conviction" for an offence.[29] Any person who has been the subject of a Youth Court order is entitled to say that they have not been convicted of an offence. However, higher Courts have stated that matters dealt with in the Youth Court, and any steps taken to assist a young person there, form part of an offender's "behavioural history" and, as such, may be relevant in determining an appropriate sentence in the District Court or High Court.[30] In one case, the Judge suggested that, though Youth Court orders could be taken into account, more regard should be had to the particular circumstances of the case than might be appropriate in regard to an adult conviction.[31] In a further case in the District Court, the Judge subjected Youth Court history to an even higher degree of scrutiny, by offsetting the young person's offending history against the discount that might otherwise have been given for his youth.[32]

---

18 Pursuant to Children, Young Persons and their Families Act 1989, s 282.
19 Children, Young Persons and their Families Act 1989, s 283(a).
20 Children, Young Persons and their Families Act 1989, s 283(b).
21 Children, Young Persons and their Families Act 1989, s 283(h).
22 Children, Young Persons and their Families Act 1989, ss 283 (ja)-(jc).
23 Children, Young Persons and their Families Act 1989, s 283(i).
24 Children, Young Persons and their Families Act 1989, s 283 (k).
25 Children, Young Persons and their Families Act 1989, s 283 (m).
26 Children, Young Persons and their Families Act 1989, s 283 (n).
27 Children, Young Persons and their Families Act 1989, s 283(o).
28 Children, Young Persons and their Families Act 1989, s 289.
29 *Timo v Police* [1996] 1 NZLR 103.
30 *Kohere v Police* (1994) 11 CRNZ 442.
31 *Docherty v Police* HC Invercargill AP25/01, 7 September 2001.
32 *R v Putt* [2009] NZCA 38.

Newly Introduced Orders

The FreshStart reforms of 2010 introduced several new orders, namely:

- parenting education programme order: an order requiring a parent, or a young person if he or she is or is soon to be a parent, to attend a parenting education programme of up to six months;[33]
- mentoring programme order: an order requiring the young person to attend a mentoring programme for up to 12 months;[34]
- alcohol/drug rehabilitation programme order: an order requiring the young person to attend an alcohol or drug rehabilitation programme for up to 12 months; and[35]
- an intensive supervision order (if a young person fails to comply with a judicially monitored condition of a supervision or supervision with activity order)[36] see "Monitoring and Enforcement of Orders" for more information.

The potential duration of supervision, supervision with activity and supervision with residence has also been lengthened.[37]

Enforcement of Orders

The 2010 reforms introduced an enforcement regime for non-compliance with conditions of certain orders. This applies to:[38]

- the newly introduced orders (parenting, mentoring, drug and alcohol and intensive supervision);
- supervision;
- supervision with activity; and
- community work orders.

If a young person fails to comply with conditions of any of these orders, without reasonable excuse, the Court has the ability to make a declaration to that effect[39] and:[40]

- cancel the order, and make any other order under s 283 that the Court thinks fit;
- suspend the order;
- impose a further condition on the order;
- vary the order; or
- make an intensive supervision order (if the requirements for this are met).

---

33 Children, Young Persons and their Families Act 1989, s 283(ja).
34 Children, Young Persons and their Families Act 1989, s 283(jb).
35 Children, Young Persons and their Families Act 1989, s 283(jc).
36 Children, Young Persons and their Families Act 1989,s 296G.
37 Children, Young Persons and their Families Act 1989, ss 283(k), 307 and 311.
38 Children, Young Persons and their Families Act 1989, s 296A.
39 Children, Young Persons and their Families Act 1989, s 296B(1)-(2).
40 Children, Young Persons and their Families Act 1989, s 296B(3).

The Court is also empowered to order statutory judicial monitoring of a condition of an order if the following requirements are met:[41]

- the order is a supervision or supervision with activity order; and
- the Court made the order after a declaration was made that the young person had breached a term, condition or other requirement of a supervision or supervision with activity order; or
- the Court made the order after a charge against the young person was proved before the Court and the young person had previously been the subject of an order made in respect of another offence and that previous order was a supervision order or a more restrictive order than a supervision order; or
- the young person has previously been convicted and sentenced by an adult Court to a community-based sentence, a sentence of home detention, or a sentence of imprisonment.

Statutory judicial monitoring requires the young person's compliance to be monitored not later than three months after the direction was given and at three monthly intervals after that.[42] The young person is required to attend the Court. A social worker or constable can apply for a summons for the young person to appear before the Court, and the Court may issue a warrant to arrest the young person if he or she fails to appear in answer to a summons.[43] Written progress reports are also provided to the Court by the young person's social worker.[44]

If the young person then fails to comply with a judicially monitored condition of a supervision or supervision with activity order, the Court can make an order of intensive supervision.[45] These orders can include a number of conditions above and beyond those contained within a regular supervision order, including electronically monitored curfews and requirements to attend programmes.[46]

Restricted Combinations of Orders

In making orders, the Court is bound by provisions restricting which orders can be combined.[47] One interesting result of these restrictions is that supervision or supervision with activity orders and community work orders cannot be imposed concurrent with, or cumulative upon, any of the following:[48]

- any community-based sentence (as that term is defined in section 4(1) of the Sentencing Act 2002; or
- any sentence of home detention imposed under section 80A of the Sentencing Act 2002; or
- any sentence of imprisonment.

41 Children, Young Persons and their Families Act 1989, s 308A(1).
42 Children, Young Persons and their Families Act 1989,s 308A(2).
43 Children, Young Persons and their Families Act 1989, s 308B.
44 Children, Young Persons and their Families Act 1989, s 308C.
45 Children, Young Persons and their Families Act 1989, s 296G.
46 Children, Young Persons and their Families Act 1989, s 296I.
47 Children, Young Persons and their Families Act 1989, s 285.
48 Children, Young Persons and their Families Act 1989, s 285(5).

The exception to this is if the order which will be concurrent or cumulative will expire not later than 14 days after the date of the making of the first-mentioned order.

However, there do not appear to be any restrictions of this kind placed on intensive supervision orders. It therefore appears that an order for intensive supervision can be imposed concurrent with, or cumulative upon, any of the following:[49]

- any community-based sentence (as that term is defined in section 4(1) of the Sentencing Act 2002; or
- any sentence of home detention imposed under section 80A of the Sentencing Act 2002; or
- any sentence of imprisonment.

It is not clear whether or not this was the legislative intent, and it is possible that this is simply an unintended gap in the legislation.

Care and Protection Issues

If, at any stage of the hearing of any proceedings, it appears to the court that the child or young person may be in need of care or protection (as defined in section 14), the matter may be referred to a care and protection co-ordinator and the proceedings adjourned until the matter can be resolved by use of the care and protection provisions of the CYPFA.[50] In this case, the matter may be discharged under s282 of the Act.

"Not Denied" & "Proved by Admission"

The Children, Young Persons and their Families Act does not use the language of "guilty" or "conviction" (except in the context of a conviction and transfer to the District Court pursuant to s 283(o)). An issue with which case law has grappled is what interpretation can be made of the language that is used: namely, whether an indication of "not denied" in the Youth Court coupled with an "admission" at an FGC, can equate to the criminal standard of proof (and thus would be sufficient to support a conviction in an adult Court).

In *C v Police*,[51] Hammond J was asked to consider this question. He stressed the importance of the presumption of innocence, and the fact that legal language generally has well settled meanings. Considering the term "admits", he stated that one can admit to the facts of the offence but not the legal responsibility (whereas a plea of guilty is an admission to all necessary elements of the charge, according to law). Therefore, his view was that a non-denial in Court and an admission in the FGC could not amount to the criminal standard of proof. A similar finding was made in *Police v S.*[52]

[49] Children, Young Persons and their Families Act 1989, s 285(5).
[50] Children, Young Persons and their Families Act 1989, ss 280 and 280A.
[51] [2000] NZFLR 769.
[52] [2000] NZFLR 188.

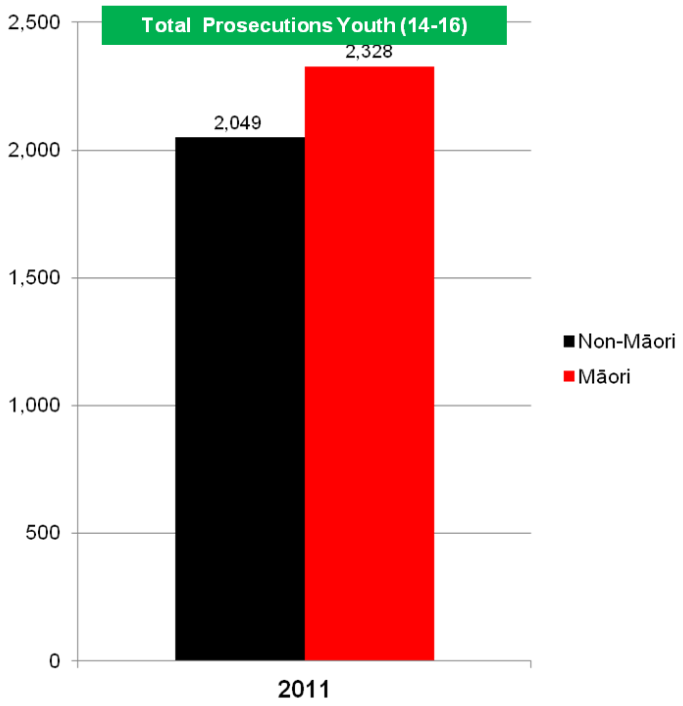
In other cases, the Court has considered there to be a distinction between "not denied" (meaning that the young person did not deny that the factual scenario took place) and 'admitted' (meaning that the young person admitted all necessary elements of the charge), and that by entry of the notation 'proved by admission at FGC' a finding of proof in the Youth Court was made.[53]

[53] See for example *Police v JL* [2006] DCR 404; *Police v M* [2001] DCR 385; and *Police v B* [2001] NZFLR 585.

Māori Disproportionate Over-representation

Māori youth comprise approximately 22% of the general population aged 14, 15 and 16.[54] Approximately 6% of the total of Māori youth who have attained Youth Court age, appear in the Youth Court.[55] Maori youth make up 51% of apprehensions of 14-16 year olds[56] and around 53% of Youth Court appearances (over 90% in some areas of high Maori population).[57] Māori youth offenders are sentenced to 60% of supervision with residence orders and 53% of conviction and transfer orders in the Youth Court.

Table created using figures from Ministry of Justice Youth Court Quarterly Report for the year ended 2011. <www.courtsofnz.govt.nz/from/statistics/quarterly-statistics>.



Approximately 13% of the adult population is Māori.[58] Māori made up 41% of adult police apprehensions[59] and 37% of court appearances.[60] 50% of people sentenced to imprisonment in 2011 were Māori.[61] Māori accounted for 26% of convictions and less

54 Statistics New Zealand "Māori Population Estimates" <http://stats.govt.nz/browse_for_stats/population/estimates_and_projections/maori-population-estimates.aspx> and InfoShare "Population" <www.stats.govt.nz/infoshare/> , for the mean year ended 31 December 2011.

55 See footnote 39 for detail on the limitations of the Youth Court Quarterly Report's counting of people.

56 Statistics New Zealand "Calendar Year Apprehension Statistics" – "National Annual Apprehensions for the Latest Calendar Years" table <http://stats.govt.nz/tools_and_services/tools/TableBuilder/recorded-crime-statistics/ASOC-apprehension-calendar-year-statistics.aspx#national>.

57 Ministry of Justice Youth Court Quarterly Report for the year ended 2011. <www.courtsofnz.govt.nz/from/statistics/quarterly-statistics> (note the Youth Court Quarterly Report calculates the number of young people heard in the Youth Court each quarter. By combining the quarters to reach a monthly total, some young people may be double counted).

58 Ministry of Justice "Trends in Conviction and Sentencing" (Wellington, 2011) <www.justice.govt.nz/publications/global-publications/t/trends-in-conviction-and-sentencing-in-new-zealand-2011-1> at 5

59 Statistics New Zealand "Māori Population Estimates" <http://stats.govt.nz/browse_for_stats/population/estimates_and_projections/maori-population-estimates.aspx> and InfoShare "Population" <www.stats.govt.nz/infoshare/> , for the mean year ended 31 December 2011.

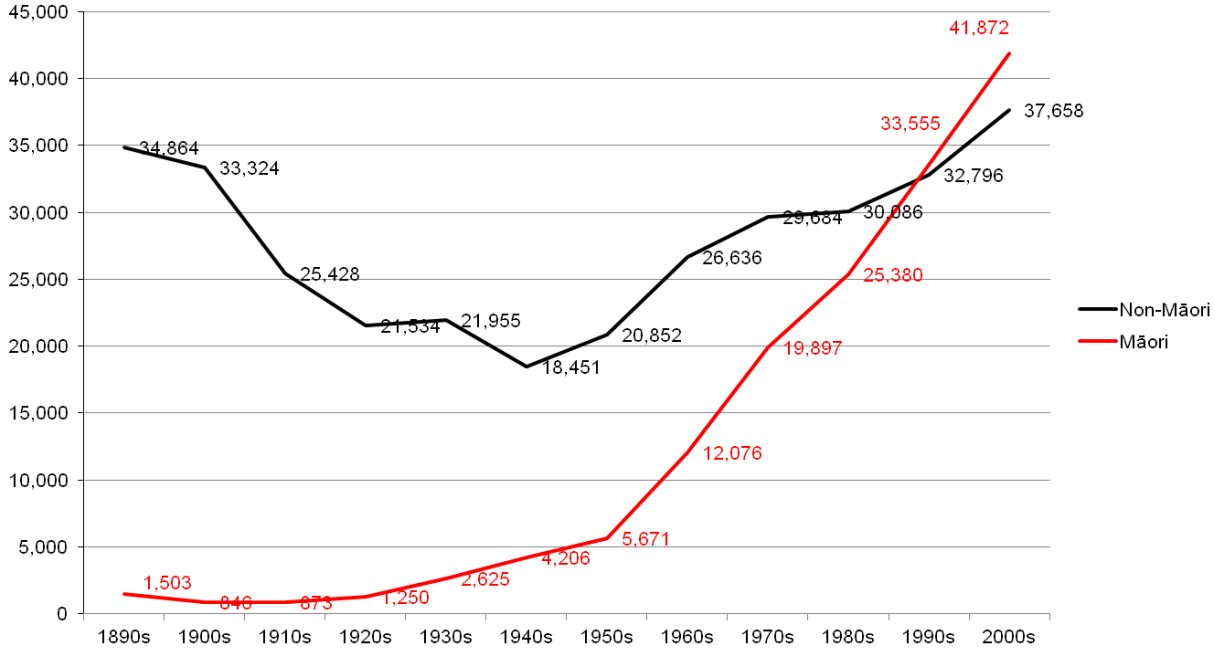
60 Ministry of Justice "Trends in Conviction and Sentencing" (Wellington, 2011) <www.justice.govt.nz/publications/global-publications/t/trends-in-conviction-and-sentencing-in-new-zealand-2011-1> at 5

61 Ministry of Justice "Trends in Conviction and Sentencing" (Wellington, 2011). <www.justice.govt.nz/publications/global-publications/t/trends-in-conviction-and-sentencing-in-new-zealand-2011-1> at 8

than 40% of convictions in every offence category (except unlawful entry with intent/burglary, breaking and entering: 56% of convictions in this category were in respect of Māori offenders).[62]

Māori and Non Māori Imprisonment Rates (By Decade)[63]

The graph below illustrates the trends of Māori imprisonment over each decade since 1890. The escalating trend since the mid 1950s is concerning. This escalating trend constitutes a major problem for Māori, but just as importantly, it constitutes a major problem for the whole nation. With the Māori population set to increase into the future, serious efforts are necessary to address and correct this problem.



Solutions

In 1988, the *Puao-te-Ata-tu* report[64] was produced by John Rangihau and his team. That report highlighted the issues of disproportionate over-representation of Māori in the criminal justice system and made recommendations about how that problem could be addressed. As a result of that report, and of general community anxiety with increasing levels of youth incarceration and institutionalisation, the Children, Young Persons, and Their Families Act 1989 was enacted.

---

62 Statistics New Zealand "Convicted Offenders by ANZSOC". <http://wdmzpub01.stats.govt.nz/wds/TableViewer/tableView.aspx?ReportName=Justice/Convicted%20Offenders%20by%20ANZSOC>. Note that this table records the main (most serious) offence of which each person was convicted only.

63 This table was created using National Yearbooks from Statistic's New Zealand's "Digital Yearbook Collection" <www.stats.govt.nz/yearbooks> and Justice Department Reports to Parliament (available from the National Library).

64 Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare "Puao-te-Ata-tu" (Wellington, 1988). <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoteatatu.pdf>.

The position of Māori disproportionate over-representation at that time was, in terms of statistics, similar if not identical to the position now. However, there has been no marked improvement since then in terms of Māori disproportionate over-representation statistics. If the same processes for Māori in the criminal justice system continue, no change in disproportionate over-representation should reasonably be expected. The Rangatahi Courts represent a change in processes for Māori in the Youth Justice system, but it is clear that other changes are required to address the problem.

For young Māori offenders, the underlying causes of their offending can be linked to powerful societal problems such as poverty, lack of educational achievement, unemployment and boredom, alcohol and drug abuse, and dysfunctional family dynamics. Other underlying causes include a lack of self-esteem, a confused sense of self-identity, and a strong sense of resentment which in turn leads to anger, and ultimately leads to offending. The enormity of the problem confronting the Youth Court and Rangatahi Court speaks for itself. Although the Courts are directed by law to attempt to address the underlying causes of offending, it is unrealistic to expect the Youth Court and the Rangatahi Court to comprehensively solve the underlying causes of offending and fix the problem of disproportionate over-representation of Māori offenders. It is unrealistic to see the Courts as the sole agents responsible to fix the problem. A wide ranging Governmental and community strategy is required to deal with the underlying causes. Part of the strategy could focus on the Youth Court and Rangatahi Courts becoming reserved for only the most serious of youth offenders. Although this was always the legislative intention, there may need to be a renewed effort on the part of the youth justice community to ensure this occurs for Māori youth in particular.

The pre-charge part of the youth justice process has the most scope for real impact on the issue of disproportionate over-representation of Māori youth in the youth justice system. The longer the entry of a young person into the Youth Court can be delayed, the higher the likelihood of that young person remaining out of the Youth Court altogether. The Youth Court and Rangatahi Court should be seen as part of the solution, but the overall solution requires involvement of agencies across a wide range of sectors. The Rangatahi Court should be seen as a first step in the right direction, not a complete answer in and of itself.

Rangatahi Courts of Aotearoa / New Zealand

Process

A Rangatahi Court is a Youth Court that is held on a marae and the Māori language and Māori protocols are incorporated as part of the Court process. The purpose of the Rangatahi Court hearing is to monitor the young person's completion of his or her FGC Plan.

The FGC plan is, amongst other things, designed to:

- hold the young person accountable and responsible for their offending;
- provide for the interests of the victims of the offending; and

- deal with the risks and needs of the young person, while at the same time attempting to address the underlying causes of their offending.

A young person can be referred to the Rangatahi Court for monitoring of the FGC plan if the FGC agrees and if the young person and his or her family wishes to do so. A victim who attends the FGC is able to participate in the decision as to whether or not the young person should be monitored in the Rangatahi Court and effectively holds a power of veto. If the victim disagrees to the referral to the Rangatahi Court for monitoring, the Youth Court will not refer the young person to the Rangatahi Court. Victims are able to attend the Rangatahi Court in the same manner as they are able to attend the Youth Court.

Although Rangatahi Courts are open to all young people regardless of ethnic background, Rangatahi Courts are designed to deal primarily with Māori young people.

Law

The same law applies in the Rangatahi Court as in the Youth Court. Section 4(4) of the District Courts Act 1947, provides that "a Judge may hold or direct the holding of a particular sitting of a court at any place he deems convenient." This means that legally, the Rangatahi Court functions with all of the same powers and responsibilities as a mainstream Youth Court. The Judge has the right, for example, to discharge the young person once they have completed their Plan or make a more formal order if they do not complete it.

There is an emphasis on holding a young person accountable for their offending behaviour and at the same time dealing with their risks and needs. Recently the law has made explicit that the Court needs to attempt to deal with the underlying causes of the offending behaviour and, to the extent possible, this will be reflected in the tasks that the young person must complete as set out in the FGC plan.[65]

What happens at the Rangatahi Court?

The Rangatahi Court commences at the marae with a powhiri (a ritual ceremony of welcome). The presiding Judge, court staff, police, social workers, youth advocates, lay advocates, victims if present, young people appearing before the Court and their whānau and supporters, wait at the gate to the marae until they are all called onto the marae with an exchange of karanga (traditional calls of welcome and reply). Once everyone is seated, a karakia (blessing) is usually performed, and then whaikōrero (formal speeches of welcome and reply) are exchanged between speakers on behalf of the marae and on behalf of the visitors. Waiata (songs) are sung at the end of each speech. At the conclusion of the speeches, all of the visiting group exchange hongi (formal pressing of noses) with the people of the marae to signify the visiting group becoming people of the marae for the time that they remain on the marae. According to a Māori cultural viewpoint, the participants in the powhiri have entered a state of tapu (a state of spiritual restriction) and must be made noa (free from tapu) at the conclusion of the powhiri. Food and drink is used to remove tapu, and all participants

[65] Children, Young Persons and their Families Act 1989, s 208(fa).

in the powhiri share morning tea at the conclusion of the powhiri. Once this has occurred, each young person is called into (one by one) the wharenui (meeting house) of the marae for their appearance. Kaumātua and kuia (male and female respected elders of the marae) commence each case by performing a brief *mihi* (a traditional greeting in the Māori language) to the young person and whānau present. The kaumātua and kuia are present throughout each hearing, and will speak to the young person during their hearing. They do not play a legal role, but they will often give the young person valuable personal advice, or will be able to tell the young person about their whānau and connections to the marae.

As part of the process, the young person is required to learn and deliver their mihi. The Judge will call on them to do this. This is a challenge for many of the young people, who may not speak Māori. They will not always be expected to do this at their first appearance – or they may improve and build on it as they proceed through the monitoring process.

The young person will be appointed a lay advocate for the duration of the Rangatahi Court process. Any Youth Court is legally entitled to appoint a lay advocate for a young person,[66] but this is standard practice for young people in all Rangatahi Courts. The role of the lay advocate is to ensure that the Court is made aware of cultural matters relevant to the proceedings and to represent the young person's whanau, hapu or iwi.[67] This will usually involve producing a written report for the court. The lay advocate will usually help the young person prepare their mihi, and research their family background. This again helps to connect the young person to their culture, and provides a valuable insight to the court. The young person's progress in completing his or her FGC Plan will be monitored during the Rangatahi Court hearing.

In summary, Rangatahi Courts allow Māori youth who appear before them an opportunity to learn about who they are and where they are from; an opportunity to participate in Māori protocols and customs; an opportunity to understand where they fit in as young Māori people in New Zealand. Rangatahi Courts also provide greater opportunity for kuia, kaumatua, and local marae communities to contribute to, and participate in, the operation of the Rangatahi Court.

Rangatahi Court Programmes

Although Rangatahi Courts have only been in operation for a short period of time, there has been and will continue to be, keen interest in ascertaining what benefits, if any, the Rangatahi Courts can and do deliver. Some of this will depend on the effectiveness of interventions and programmes developed and delivered to complement the Rangatahi Court.

The major challenge for the future is to establish such programmes to be run in conjunction with Rangatahi Courts. Any programmes designed to run in conjunction with Rangatahi Courts need to perform a combination of tasks: provide accountability and responsibility components; deal with alcohol and drug issues, anger management issues, anti-social attitudes, personal therapy issues; provide Māori interventions, te reo, tikanga, kapa haka, waka ama; provide educational or training opportunities;

66 Children, Young Persons and their Families Act 1989, s 326.
67 Children, Young Persons and their Families Act 1989, s 327.

provide support to the young person, whānau and community to deal with the underlying causes of the offending; provide successful transitions for the young person when the programme is completed; create and maintain robust evaluation procedures to continually gauge and assess performance and to identify areas in need of improvement. So far, tikanga programmes have been established in conjunction with the Rangatahi Courts at Hoani Waititi marae and Te Poho-o-Rawiri marae. It is hoped that further tikanga programmes will be established in 2013 in conjunction with Rangatahi Courts at other marae.

It is obvious that programme providers must work with the whānau and community of the young person at the same time as working with the young person individually. This is because the underlying causes of the offending will often involve dynamics within the whānau and community. The underlying causes are rarely, if ever, confined to the young person individually.

Perhaps the greatest challenge for Rangatahi Court programme providers will be for them to design and implement successful transitions for the young person, at the end of the programme, back to the young person's whānau and community. This will involve the development of a successful career and educational pathways for the young person. This will also involve the development of support and safeguards within the young person's whānau and community.

Evaluation of the Rangatahi Courts

In 2012, the Ministry of Justice contracted Kaipuke Consultants Ltd to prepare a qualitative initial evaluation of the Rangatahi Courts. Five of the ten Rangatahi Courts were visited by the researchers during the course of the evaluation. The evaluation report, entitled "Evaluation of the Early Outcomes of Ngā Kooti Rangatahi" was published on 19 December 2012. The Evaluation Report made the following findings:

- Operational processes guiding the implementation of Ngā Kooti Rangatahi are being delivered consistently across the five sites (with some courts implementing additional strategies considered by the evaluators to be good practice);
- Rangatahi have experienced positive early outcomes, both expected and unexpected. This included, for example:
  - high levels of attendance (by both rangatahi and whānau);
  - Rangatahi feeling welcome and respected, understanding the court process, perceiving the monitoring process as legitimate, and having positive relationships with youth justice professionals and the marae community; and
  - Rangatahi showing improved positive attitudes and behaviour, and demonstrated responsibility for their offending and its impact.
  - Rangatahi nearing the end of the monitoring process established connections with the marae and took on leadership and mentoring roles.
- Whanau, agencies and marae communities have experienced positive early outcomes, such as:
  - Whanau feeling respected and welcomed at Court, and understanding the Court process;

- a number of whanau reporting a sense of being supported in their parenting role;
- enhanced communication and strengthened relationships within whanau;
- agencies reporting having had the opportunity to develop networks with the wider Māori community; build relationships with whānau; and increase their own cultural competency;
- the marae venue, marae community, kaumātua, kuia, lay advocate involvement, incorporation of tikanga Māori and te reo Māori, validates the mana of the young people and their whānau, while still holding them accountable and responsible. The Rangatahi Courts are not seen as an easy option.

The report also suggested some good practice responses to key challenges faced by Ngā Kooti Rangatahi such as:

- having representation from the Ministry of Education (MoE) at court sittings and having Child, Youth and Family, the Ministry of Health and MoE taking a "triage" approach to assessing education and health needs of rangatahi prior to their court appearance (in response to the issue of young people's education and health needs not being adequately considered/addressed prior to rangatahi appearing before the court);
- the provision of tikanga programmes by host marae (in response to a current lack of programmes);
- the provision of support programmes and services affiliated with the marae that rangatahi are able to be referred to on completion of their FGC plan (in response to a current lack of programmes).

Although the procedure for each Rangatahi Court is similar, each is unique and each has distinctive qualities particular to each marae and to each local community. In summary, all of the Rangatahi Courts have been successfully established and well supported by their respective marae and local communities. The commitment and dedication of all the people who contribute to the operation of Rangatahi Courts is outstanding. Every person plays an important role and the Rangatahi Courts cannot operate without the collective support of everyone involved.

Nō reira, ka nui aku mihi maioha ki a koutou, ngā kaitautoko o ngā Kooti Rangatahi o Aotearoa. Hei kōrero whakamutunga, nā rātou te kī;

"Ehara taku toa i te toa takitahi, he toa takitini, he toa takimano!"

Therefore, I extend my warmest regards to all of you who play a supporting role in Rangatahi Courts in New Zealand. As a concluding comment, I refer to the ancestral saying;

"My strength is not based on my individual strength, it is based on the strength of the many, the strength of the multitudes!"

Judge Heemi Taumaunu
Waitakere District Court
March 2014