

Column for New Zealand Herald's feature article on Youth Justice

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Judge Fred McElrea

Youth Court work is tremendously important. This court deals with young offenders (aged 14,15 and 16). They are still in their formative years. If society is not prepared to work hard at encouraging a change for the better, everybody is the loser. If we fail, the downstream costs are huge - in extra court time, prisons, welfare benefits and lost productivity - not to mention the heavy personal and social costs for offenders, victims, their families, police, and communities. The great thing about family group conferences (FGCs) is that all those groups are able to be represented at the FGC and have a say in the outcome.

The role of the Youth Court is to decide on those few charges that are not admitted (using the same process as for adults), and to rule on the outcome of all cases (admitted or proved) that come to court. Here the court always has the recommendation of a FGC. These must be unanimous or the court decides the outcome. For the judge it is important that the recommendation has the support of the victim and the police. It should also be reassuring to the public. Most recommendations of FGCs are accepted by the court.

The court's role is therefore largely supervisory, recognising that the real work is done at the FGC. In adult courts there is no community group asked to make a recommendation to the court.

Is the Youth Court any better? I believe so. Young offenders can be held accountable in a way that adults usually aren't. By law they must be encouraged to take responsibility for their actions. They usually make an apology. They have to meet their victims face-to-face and experience their hurt and anger - often too their understanding, and sometimes their forgiveness. Punishment plays a part, but not the overwhelming part it plays in adult courts.

Restitution to the victim is usually the first item in the FGC plan. Overseas research shows that payment is much more likely than under court orders. Very often the family present at the conference volunteers to provide the money, and get it back from the young person later. That is part of family accountability.

What about repeat offenders? We are not stuck with them. They can be transferred into the District Court and dealt with there, as often happens. It would help if there was a greater power to dispense with FGCs in such cases. But they are also often the cases where the right plan and a suitable community programme can turn a young life around, almost against the odds, and produce a productive citizen for tomorrow.

On a day when the Youth Court seems full of difficult cases I sometimes remind myself that we don't see the easy ones. Many others go through diversionary programmes where a FGC agrees court proceedings are not necessary. The real success stories are often the youngsters who never come to court - or perhaps only once. But of course they aren't newsworthy.