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Access to Youth Justice in New Zealand: "The Very Good, the Good, the Bad and the Ugly"

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I INTRODUCTION

The term "access to justice" defies precise definition. The search for a standard, internationally accepted definition has been akin to the search for the Holy Grail. Access to justice has been used in socio-legal research in a variety of contexts, often interchangeably and generally without explicit explanation of its meaning.[1]

As good a recent definition as any (but still with limitations) was provided by the United Nations in its work in Timor-Leste, where the following was adopted in 2011 by the Justice Sector Strategic Plan:[2]

> Access to justice can be defined as the right of individuals and groups to obtain a quick, effective and fair response to protect their rights, prevent or solve disputes and control the abuse of power, through a transparent and efficient process, in which mechanisms are available, affordable and accountable.

Even that definition arguably fails to address explicitly the importance of access to justice within the context of the criminal justice system. Perhaps also it serves to emphasise that the debate about access to justice always takes place in the context of a particular country and time. And so the search for a sufficiently comprehensive definition continues.

Typically "access to justice" debates are predicated upon the existence of "unmet legal needs" (another notoriously difficult term to define). In any discussion of "unmet legal needs", there is analysis of the extent to which barriers exist that inhibit or deny access to justice. These barriers include, but are not limited to: the extent to which lawyers are available in an area to provide advice or representation; how accessible and affordable legal advice is; what protections there are in the legal system to protect minority groups

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1 Louis Schetzer, Joanna Mullins and Roberto Buonamano *Access to Justice and Legal Needs: A project to identify legal needs, pathways and barriers for disadvantaged people in NSW* (Law and Justice Foundation of New South Wales, Background Paper, August 2002) at 6.

2 Ministry of Justice of Timor-Leste *Justice Sector Strategic Plan for Timor-Leste 2011–2030* (12 February 2010) at 35.

(such as those who are disabled); and the geographical proximity of courts. The extent to which these posited barriers exist is said to be the extent to which there are unmet legal needs, and — so the argument goes — establishes the degree to which access to justice is impeded or denied.

The early "access to justice" discussions in the 1960s and 1970s took place in the context of the civil and public law arena. This conventional "access to justice" debate was predicated upon the acceptance of a citizen's right to use the legal system to obtain remedy for wrongs, vindication of rights or resolution of conflict. As such, "access to justice" was (and is) seen, at least partly, as an aspect of the rule of law. But the point is that these early discussions assumed volitional choice by a citizen to use the legal system for personal or group advantage.

As the "access to justice" debate widened in the 1980s it became clear that one could not easily fit "access to criminal justice" let alone "access to youth justice" into the conventional framework of "access to justice" discussions. Primarily this was because involvement in the criminal justice system could hardly be said to be a matter of choice, other than the small matter of a person choosing to offend in the first place. Whether there is subsequent "involvement" in the criminal justice system then depends upon the actions and decisions of others, typically law enforcement officers: whether the offending is detected; whether the offender is apprehended; and if so, whether charges or other actions result. The point is that access to the criminal justice system is essentially involuntary, invariably unwanted and something over which the person has little control.

Sensing this difficulty, theorists in the 1970s and 1980s widened the "access to justice" debate to apply it to the criminal justice arena. A recent summary of how that debate and thinking developed in the criminal justice context was provided by The Department of Justice in Canada.[3] Drawing on the work of the Florence Access-to-Justice Project, which identified three waves of access to justice reforms in civil justice, the Canadian Justice Department suggested that it was possible to identify similar "waves" of development in the criminal justice context:[4]

> Thus, recent decades have witnessed "first wave" changes to make legal representation of accused persons more effective (such as legal aid for accused persons); as well as "second wave" changes which have provided improvements to criminal trials (such as requirements of prosecutorial disclosure), a broader range of sentencing options (such as formal cautions and conditional sentences), and some recognition of the impact of criminal activity on victims and communities (such as victim impact statements). In such a context, recent developments in restorative justice for criminal law matters appear to be "third wave" reforms ...

3 Mary Jane Mossman and Patricia Hughes *Re-thinking Access to Criminal Justice in Canada: A Critical Review of Needs, Responses and Restorative Justice Initiatives* (Research and Statistics Division, Department of Justice Canada, March 2001).

4 At 3 (citations omitted).

At least the first two of these "waves" were reflected in the New Zealand youth justice system in the 1970s and 1980s, and all three "waves" came together in the seminal Children, Young Persons, and Their Families Act 1989. It seems that this took place first in New Zealand, before any other country in the world.

With respect to "access to youth justice", this paper will assess the extent to which New Zealand's system is youth focused and is responsive to (and protective of) the needs of young people apprehended for criminal offending, and will generally address the issues facing young people involved in the system. It will also briefly examine the position of young offenders' families and victims against this benchmark. The paper will also analyse structural and procedural aspects of the youth justice process to examine the extent to which they might be said to advance, support and protect the interests of participants of the system once they are involved in it. In doing so, there is a temptation to provide a scorecard as to the health of the youth justice system as a whole. Such a task is outside the scope of this paper. This short paper, as part of a contribution to an "Access to Justice Seminar" will concentrate on aspects of the youth justice structure and system that promote principled "access" for young people and for other participants in the system.

In the access to justice debate, there are also important questions as to the meaning of "justice" (at its crudest form, justice can simply mean "the then prevailing legal system"); what "access" is; and, whose job it is to ensure it is provided. Those topics are outside this paper.

This paper now turns to the question of whether New Zealand's youth justice system is one that ensures access to justice for young people. It is also pertinent to examine whether the system is one that promotes access to justice for families of young offenders and for victims. Discussion is grouped around the following headings: a separate, youth-focused, victim-aware system (the very good), ten factors that promote access to youth justice (the good), three factors that restrict access to youth justice (the bad), and three areas in which access to youth justice is denied (the ugly).

II A SEPARATE, YOUTH-FOCUSED, VICTIM-AWARE SYSTEM

The more I am exposed to other systems of youth justice worldwide, the more I am convinced that New Zealand has one of the world's most specialised and developed youth justice systems. If a starting point in the assessment of access to youth justice is the need for a specialised system enacted with the understanding that young people are not just "junior adults" but developmentally almost a different species of human being, with markedly different responses to adults, then the New Zealand system passes with flying colours.

The world-class standard of our youth justice system is a secret in New Zealand. It is rarely talked about or acknowledged, and our system is

operated largely under the radar. (In fact, it is only in the last two years that The University of Auckland, New Zealand's first university to do so, has taught a full, specialist undergraduate law course in youth justice. And it has been oversubscribed both years.)

Several factors lead to the conclusion that our system is a success. Undoubtedly the first is that our youth justice system operates under its own principled and, at the time of its enactment, visionary legislation: the Children, Young Persons, and Their Families Act 1989 (the Act). Many nations, in particular some of our South Pacific neighbours, do not have any specific youth justice legislation.[5] Young people are essentially treated as junior adults in the adult courts. New Zealand's Act was born out of enormous community concern that the then current system was "court-centric", it institutionalised too many young people, excluded victims, was dominated by professional decision-making at the expense of supporting families and in particular delivered very negative outcomes for Māori. Interestingly, the Act and the United Nations Convention on the Rights of the Child (UNCROC) were developed and finalised within months of each other.[6] Coincidentally, they are remarkably similar documents and harmonise well with each other. It might be said that they are twins — but born from different mothers. In particular, the principles of the Act for youth justice provide a platform for qualitatively different responses for young people by recognising their vulnerability, providing them with additional protections over adults and involving their families and their victims.[7]

A further key strength of the New Zealand system, which enhances access to justice, is that it is the only country in the world with a specialist, trained police force, which focuses on appropriate and evidence-based interventions for young offenders. In fact, the New Zealand Police Youth Aid division, of about 240 uniformed constables, is more highly-trained and better paid than other New Zealand divisions.

Furthermore, the state funds specific specialists to work in youth justice, such as the coordinators of youth justice Family Group Conferences, youth justice social workers, youth advocates (lawyers who specialise in working in the Youth Court) and lay or community advocates (who advocate

5 Examples of Pacific nations without separate youth justice legislation are Vanuatu, Solomon Islands, Kiribati and Tonga.

6 The Children, Young Persons, and Their Families Act 1989 was assented to on 27 May 1989 and came into force on 1 November 1989. The United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 26 January 1990, entered into force 2 September 1990) was adopted on 20 November 1989.

7 The principles in s 208 (in summary form) are: not instituting criminal proceedings against a child or young person if there is an alternative means of dealing with the matter, unless the public interest requires otherwise; not instituting criminal proceedings solely for the purpose of providing assistance to advance the welfare of the child/young person or their whānau; strengthening whānau and fostering their ability to deal with offending in their own way; keeping the young person in the community so far as practicable; treating age as a mitigating factor when considering sanctions; imposing sanctions that are the least restrictive possible and maintain and promote development of the child/young person within their whānau; taking measures which address the causes underlying offending; considering and involving victims in the determination of measures for dealing with offending; and respecting the vulnerability of the child/young person through entitling them to special protection during any investigation of an offence. For more detail, see Children, Young Persons, and Their Families Act, s 208.

for the young person's family or whānau and can raise cultural matters relevant to the young person's case).

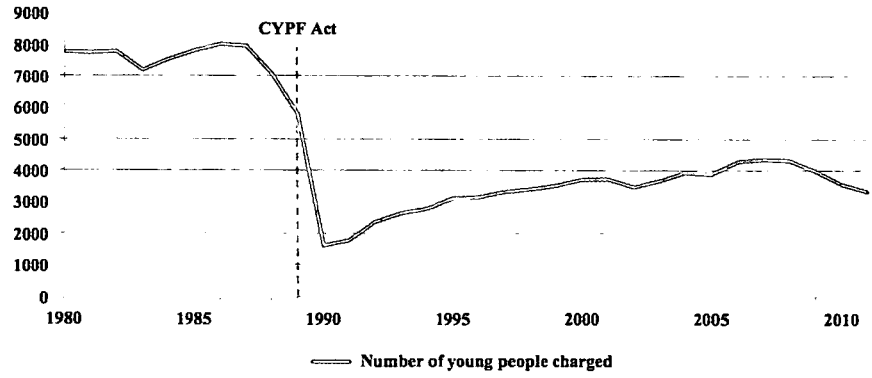
And it should not be overlooked that New Zealand's Youth Court judges are all District Court judges — not, as in other countries, the lowest tier judicial officers (such as Justices of the Peace/Community Magistrates). New Zealand's Youth Court judges have, in a very real sense, acted as guardians of the system and have helped to ensure that access to youth justice is guaranteed for all those participating in the system.

III TEN FACTORS THAT PROMOTE ACCESS TO YOUTH JUSTICE

First, Limitation upon Charging Children and Young People

There was a quiet revolution in 1989, superbly depicted in Figure 1, showing the enormous drop in cases coming to the Youth Court after the passing of the Act:[8]

Figure 1: Number of young people charged in the Youth Court



The (then new) Act emphasised that, unless the public interest required otherwise, criminal proceedings should not be instituted against a child or young person if there was an alternative means of dealing with the matter.[9] Between 1989 and 1990, the number of cases involving young people appearing before the court promptly plummeted from around 10,000 to just over 2,000. Thankfully, despite an increase in 2006, recent figures suggest that the number of cases appearing before the Youth Court is again decreasing.[10] Furthermore, New Zealand has consistently reached (approximately) 80 per

8 Supplied directly by the Ministry of Justice using data from the Justice Sector Data Warehouse.

9 Section 208(a).

10 Ministry of Justice *Trends for Children and Youth in the New Zealand Justice System 2001–2010* (March 2012) at 9.

cent diversion rates, meaning that four out of five young offenders are never charged.[11] They are dealt with by the police in the context of firm, prompt, community-based intervention.

No other country in the world even remotely reaches that point. It has been said that we could aim even higher, and strive for 90 per cent diversion rates. Such a target is probably obtainable and appropriate. Police-led community-based interventions work better than court responses. Almost all young offenders respond better to community-based responses (they do not reoffend at anything like the same rates as those who appear in Court). Once young offenders appear in the Youth Court, experience shows it is very hard for them to extricate themselves from the formal criminal justice process. Too many of them (there are no accurate statistics available) reappear in the Youth Court and continue into the adult courts.

Second, Youth Advocates

Youth advocates are universally available to all young people charged in the Youth Court, free of charge and irrespective of the means of the young person and his or her family.[12] It gives the Youth Court bar incredible strength. There are upwards of 150 specialist youth lawyers who bring a "youth-centric" approach with them.

When I sat and watched sessions in the Hammersmith Youth Court in London, I saw English lawyers, representing young people, playing the same adult games played by lawyers the world over: those of delay, adjournment and avoiding plea or hearing. It was a most depressing experience to see a collection of under 18-year-olds churning through the system with little truly being resolved, represented by well-meaning lawyers whose entire experience was in the adult courts, and who (unsurprisingly) brought that adult court mind-set with them.

Third, Lay Advocates

The 1989 legislation was far-sighted. It enabled state-funded advocates to represent and advocate for the young person's whānau or family and to provide a cultural input, again free of charge and irrespective of means.[13] No other country known to the author allows for non-legally trained advocates to play a role equal to lawyers in court proceedings and FGCs. The only regret is that for 21 years this provision lay "fallow" and was effectively unused. It is now being activated with exciting results: lay advocates are currently being used in some Youth Courts in the North Island. They provide a whole new dimension and are adding enormous value to the process.

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11 At 8.

12 Children, Young Persons, and Their Families Act, ss 323–325.

13 Sections 326–328A.

Fourth, Timely Decision-making and Resolution of Charges

Scientific research consistently presents to us the idea that a young person's sense of time is different to that of an adult.[14] This means that in most circumstances, a protracted legal proceeding will seem longer to a young person than it will to an adult and this can directly impact on both the young person's ability to present at the proceedings and the impact of the proceedings on the young person. The legislation expressly acknowledges this by providing that wherever practicable, decisions affecting a child or young person should be made and implemented within a time-frame appropriate to the child's or young person's sense of time.[15] Furthermore, the legislation recognises the potentially detrimental effects of a significant delay in proceedings. It enables a Youth Court Judge to dismiss any information charging a young person with the commission of an offence if the Judge finds that the time elapsed between "the commission of the alleged offence and the hearing has been unnecessarily or unduly protracted".[16]

Fifth, Duty on Court (and Lawyers) to Encourage Participation by Young People in the Youth Court Process

There is a statutory duty upon lawyers representing a child or young person in the Youth Court, where necessary and appropriate, "to encourage and assist the child or young person to participate in those proceedings to the degree appropriate to the age and level of maturity of the child or young person".[17] This helps to ensure both accountability and a sense of meaningful involvement for the young person and as such must surely be said to promote access to justice.

Sixth, Delegation of Decision-making from Youth Court to Family Group Conference

The Family Group Conference (FGC) is a restorative, non-judicial procedure that engages the young person, their advocates, their family/whānau, the victim and other selected people in a meeting to determine a plan for the young offender to follow.[18] In New Zealand, we delegate decision-making to two types of FGCs.

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14 See *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [11]. The court acknowledged a clinical psychologist's report that stated that young people have "less future orientation" than adults and (at [87]) discussed the need to consider a young person's sense of time. See also James E Bruno "Time Perceptions and Time Allocations Among Adolescent Boys and Girls" (1996) 31 Adolescence 109; and BJ Casey, Rebecca M Jones and Todd A Hare "The Adolescent Brain" (2008) 1124 Annals of the New York Academy of Sciences 111 at 118 and 122.

15 Section 5(f).

16 Section 322.

17 Section 11.

18 Section 251.

1 Intention to Charge Family Group Conference

When a young person is alleged to have committed an offence but has not been arrested, the police may decide that they intend to charge the young person with the offence.[19] If this is the case, the matter must be referred to a FGC.[20] At the FGC, participants can either decide to charge the young person or not to charge the young person (in which case they will come up with a plan to address offending).

2 "Not Denied" Court-ordered Family Group Conference

If the young person is arrested and charged, and appears before the Youth Court, he or she will be asked whether they "deny" the offence. For every young person who does not deny the offending, it is mandatory that key decision-making (subject to later Court approval) be delegated to a FGC.[21] The plan that the FGC creates in this instance is effectively a sentence for the offender. The Judge in the Youth Court will usually approve, and from then on, monitor adherence to this plan. If the young person does deny the offending, it proceeds to a defended hearing. The twin combination of 80 per cent diversion (including "intention to charge" FGCs) and Court-ordered FGCs for the most serious 20 per cent, over 21 years, has proved to be not just a workable solution to youth offending but a highly effective one.

This means, at least in theory, that the core of decision-making, that emphasises both accountability and rehabilitation, is delegated not to judges but to communities and families. These groups are empowered to use their knowledge to come to a meaningful and feasible solution for the young person. Done well, FGCs are the jewel in the crown of our whole justice system.

Seventh, Section 282 Discharge if Family Group Conference Satisfactorily Completed

If an FGC is completed, there is an opportunity for a discharge without conviction as if the charge were never laid. This means a young person can enter adult life with a clean slate, a "second chance", reducing the risk of "labelling" the young person an offender for life.

Eighth, Free Access to Reports

Judges in the Youth Court have the right to order a host of specialist reports about a young person, namely medical, psychological, psychiatric,

19 But see s 245(1)(a). The police must first be satisfied that prosecution would be "in the public interest".

20 Section 247(b).

21 Section 246(b).

educational, drug and alcohol, and social work reports,[22] provided that the report is privileged.[23] However, the reports are not given to the Judge only: every person entitled to appear and be heard in the proceedings is entitled to a copy of the report, as well as any other person whom the Court considers has a proper interest in receiving the report.[24] This ensures that all parties can be thoroughly aware of and involved in the case.

Ninth, Victims

When first enacted, the Act was quite forward thinking about victims and the role that they should play. All victims have the right to speak in and contribute to FGCs. Research suggests that although victims only attend around half the FGCs that are held,[25] those who do attend have a high level of satisfaction. Of 58 victims surveyed in a 2001 study, 90 per cent reported that they were treated with respect, 88 per cent reported an understanding of what was going on, 83 per cent reported that they had a chance to explain the effect of the offending on them, 86 per cent reported having had the opportunity to say what they wanted and 71 per cent claimed that their needs were met.[26] However, this success has been overtaken slightly by changes to the adult jurisdiction in the form of the Victims' Rights Act 2002. This Act sets out clearly the rights pertaining to victims and requires the prosecutor to make all reasonable efforts to obtain a victim impact statement from the victim.[27] Some of these rights will be extended to young offenders through the Victims of Crime Reform Bill (if enacted).[28]

Tenth, "Therapeutic Jurisprudence" Approach

An ever-developing strength of New Zealand's youth justice system is its commitment to therapeutic jurisprudence. Therapeutic jurisprudence addresses the issues underlying offending: a clear aim for the youth justice system confirmed in the 2010 reforms to the legislation.[29] The nationwide proliferation of "problem solving courts" is testimony to the therapeutic focus of our system. Stellar examples are the Youth Drug Court in Christchurch and the Intensive Monitoring Group (IMG) Court in Auckland, which is available to young people assessed as having moderate to severe mental health concerns and/or alcohol or drug dependence, and at medium-to-high risk of reoffending. In the IMG system, the young person appears before

22 Sections 333–339.

23 Section 338.

24 Section 339, which provides that s 191 of the Act applies. Section 191 lists those who are entitled to reports.

25 Gabrielle Maxwell and others *Achieving Effective Outcomes in Youth Justice: Final report* (Ministry of Social Development, February 2004) at 84.

26 Maxwell and others, above n 25, at 155.

27 Section 17.

28 See Victims of Crime Reform Bill 2011 (319-2), cls 32–39 for amendments to the Children, Young Persons, and Their Families Act.

29 Children, Young Persons, and Their Families Act, s 208(fa).

the Court on a continuous basis and his or her Family Group Conference Plan is monitored not only by a Judge, but by a team of professionals such as social workers, Regional Youth Forensic Services workers and providers of mental health and addiction treatment services. Prior to each hearing, the team discusses the young person's file together. This ensures that a focused, wraparound service, which targets the young person's needs, is provided.

IV THREE FACTORS THAT RESTRICT ACCESS TO YOUTH JUSTICE

First, Non-imprisonable Traffic Offences and Enforcement of Fines Not within Youth Court Jurisdiction

Curiously, non-imprisonable traffic offences (unless arising from the same incident as imprisonable traffic charges) and enforcement of fines are *not* within Youth Court jurisdiction. This creates bizarre anomalies such as the fact that a burglary offence may result in an absolute discharge, but careless driving may result in a lifetime conviction in the adult court. The original rationale for this exclusion may have been that the framers of the Act were reluctant to have the full force of the FGC "wasted" on what were considered to be essentially minor matters. The anomaly could be easily corrected by a "default" position that FGCs would not be required for such minor traffic charges, unless there were special circumstances or if all parties agreed otherwise.

Second, Murder and Manslaughter Excluded from Youth Court Jurisdiction

When a child or young person is charged with murder or manslaughter, the committal process takes place before the Youth Court.[30] However, after committal, the young person is transferred to the High Court. Some would also argue that in order to have a fully self-contained youth justice system, the Youth Court should have jurisdiction for all offences, including murder and manslaughter, as occurs in Western Australia.[31]

Currently the twin exclusions of non-imprisonable traffic offences on the one hand and murder and manslaughter on the other do not sit well in terms of access to a specialised system for all young people charged and brought before the court. These are of course matters properly for politicians,

30 Sections 272(2) and (4).

31 Children's Court of Western Australia Act 1988 (WA), s 19(1) provides that the Children's Court has "exclusive jurisdiction to hear and determine a charge of an offence alleged to have been committed by a child". "Child" in this Act means anyone under the age of 18 years (s 3). However, in some circumstances, the young person can elect to be tried by the Supreme or District Courts (s 19B) and the Court maintains the right to transfer the charge to the Magistrate Court in cases where a young person is charged jointly with an adult (s 19C) or if the young person has turned 18 after the offending (s 19D).

not judges. One cannot help but observe that few have the confidence to argue for a fully self-contained system and that goal is elusive.

Third, No Youth Advocate or Lay Advocate Representation for "Intention to Charge Family Group Conferences"

There is no youth or lay advocate representation at this "species" of FGC, because a youth advocate is only appointed once a young person is "charged with an offence".[32] This has long been considered to be an anomaly.

V THREE AREAS IN WHICH ACCESS TO YOUTH JUSTICE IS DENIED

First, Exclusion of 17-year-olds from Youth Justice System

New Zealand excludes 17-year-olds from its Youth Court jurisdiction. It does so in open demonstrable breach of the UNCROC, the most signed international instrument in history (with Somalia and the United States of America being the only non-signatories). In so doing, access to youth justice is denied to an age cohort that is within the definition of child in the UNCROC, where adulthood is defined to start at 18. In fact, in the course of this paper so far, we have not addressed the question of how we define a young person. New Zealand's definition may be considered unduly narrow and has been the subject of clear international criticism.

It is, of course, outside the province of a Judge to comment on whether legislative amendment is required. This is a matter for Parliament. However, it is perhaps appropriate to set out some of the issues.

New Zealand's age definition is also inconsistent with the brain science. Existing research makes plain that at 17, the brain is still very much in a state of development.[33] It is suggested that "maturity of judgment" measures (such as responsibility and perspective) are not fully attained until, on average, 20 years of age.[34] Areas of the brain that deal with higher-level executive functions (such as impulse control, judgement and management of strong emotion) do not fully mature until well into the twenties.[35] Seventeen-year-olds, as adolescents, are more prone than adults to risk-taking behaviour and peer pressure.[36] Judges receive specialist training to work with young people

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32 Children, Young Persons, and Their Families Act, s 323.

33 Peter Gluckman *Improving the Transition: Reducing Social and Psychological Morbidity During Adolescence* (Office of the Prime Minister's Science Advisory Committee, May 2011) at 24; Sarah-Jayne Blakemore and Suparna Choudhury "Development of the adolescent brain: implications for executive function and social cognition" (2006) 47 Journal of Child Psychology and Psychiatry 296 at 300; and Sara B Johnson, Robert W Blum and Jay N Giedd "Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy" (2009) 45 Journal of Adolescent Health 216.

34 Gluckman, above n 33, at 25.

35 At 24.

36 At 24.

in the Youth Court.

In excluding 17-year-olds from Youth Court jurisdiction, we ignore developments in the rest of the western world. All of Australia (except Queensland), Canada, Great Britain and 38 states of the United States of America allow 17-year-old offenders the right to appear before a Youth Court.[37]

Bringing teenage offenders before the Court is a less effective approach. Negative consequences can result, such as giving the young person a "badge of honour", labelling them an offender for life or exposing them to "deviant peer contagion" (negative influences from other offending youth). By refusing 17-year-olds access to the youth justice jurisdiction, those who could benefit from it are prevented from accessing the world-leading, community-based diversion process, which, there is good reason to think, could halt their offending. This is a glaring issue in the access to justice debate and arguably means we fall short of a truly principled, self-contained youth justice system. Of course, if 17-year-olds were included in our youth justice system, all options to deal with the most serious of these offenders, such as imprisonment, could be preserved. This is exactly the situation in other countries where 17-year-olds are included.

Second, Inclusion of Some 12- and 13-year-olds (since 1 October 2010)

Conversely, since 1 October 2010, we have lowered the entry threshold for the jurisdiction of the Youth Court. The jurisdiction of the Youth Court now extends to 12- and 13-year-olds who commit purely indictable offences or who seriously reoffend. This was done despite trenchant criticism from the UN Committee on the Rights of the Child. New Zealand, along with countries such as Azerbaijan and Mongolia, featured on a list of countries asked to address deficiencies in their legislation.[38]

Again, judicial comment on the appropriateness of this amendment is out of place. However, it should be noted that some have argued that these offenders (who are considered "child offenders") can have their needs better met by the Family Court (which manages all other offences committed by 10- to 13-year-olds except murder and manslaughter). In the Family Court, these young people are dealt with on the basis that their needs are care and protection, rather than punishment.

Third, Māori Over-representation

No paper on access to youth justice would be complete without addressing the figures, unacceptable in any civilised community, relating to Māori

37 See Australian Institute of Criminology *Australian crime: Facts and figures 2010* (2011) at 82; Youth Criminal Justice Act SC 2002 c 1, s 2, definition of "young person" for the jurisdiction of the court; Crime and Disorder Act 1998 (UK), s 117, definition of "young person"; and Robert M Regoli, John D Hewitt and Matt DeLisi *Delinquency in Society: The Essentials* (Jones and Bartlett Publishers, Sudbury (MA), 2011) at 414.

38 Committee on the Rights of the Child *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: New Zealand* (CRC/C/NZL/CO/3–4, 11 April 2011) at [56].

involvement in the criminal justice system. Although Māori only constitute 22 per cent of New Zealand's 14–16 age group,[39] they make up 51 per cent of police apprehensions for offences committed by this age group,[40] and make up approximately 53 per cent of those who appear in the Youth Court.[41] Approximately 60% of those who receive supervision with residence orders (the highest order a Youth Court can give before convicting and transferring to the District Court) are Māori.[42]

There are new and culturally based approaches being taken to address this issue, such as the creation, so far, of ten Rangatahi (as well as two Pasifika) courts. Rangatahi court hearings are held on a marae. They directly engage kaumātua and kuia of the community in the process and require young persons to express or establish their own cultural ties, for example through delivering their pepeha in te reo. And they are in demand. But, obviously, a change of location and process is not enough. These initiatives require supporting programmes that are meaningful and engaging for the young people and whānau involved. Furthermore, the Act contains several currently unused or underused mechanisms that could help make the youth justice system more meaningful and appropriate in a cultural sense. For example, the Act has always allowed for a young person to be taken into the custody of an iwi or cultural social service (rather than, for example, the Chief Executive).[43] Yet, this is never done. Lay advocate use could also be increased, and hopefully will remain on the rise nationwide.

VI CONCLUSION

New Zealand has an enviable reputation in the "access to justice" field, no less in youth justice. We can rightly be humbly proud of New Zealand's 21 years of youth justice jurisprudence, but there is much more to be done. And until the "ugly", the three main areas of glaring concern, are addressed, it would be hard to say we can hold our heads high as a beacon internationally for youth justice.

39 Calculated from Statistics New Zealand "National population estimates, mean year ended 31 December 1991–2011 — tables" (15 February 2012) <www.stats.govt.nz>; and Statistics New Zealand "Māori Population Estimates: mean year ended 31 December 1991–2011" (15 May 2012) <www.stats.govt.nz>.

40 See Statistics New Zealand "National Annual Apprehensions for the Latest Calendar Years" <www.stats.govt.nz>.

41 See Courts of New Zealand "Youth Court Quarterly Report 2011 — Quarter 4" (2012) Quarterly statistics <www.courtsofnz.govt.nz> at "2011" table for "all quarters".

42 See Statistics New Zealand "Most serious Youth Court order" (26 June 2012) Child and youth prosecution statistics: 1992–2011 tables <www.stats.govt.nz>; and Statistics New Zealand "Multiple offence type Youth Court order" (26 June 2012) Child and youth prosecution statistics: 1992–2011 tables <www.stats.govt.nz>.

43 Children, Young Persons, and Their Families Act, ss 234(c)(ii), 238(d) and 307(4).