A New Model of Justice

*FWM McElrea**

In October 1990 Allison Morris and Gabrielle Maxwell[1] wrote a paper entitled "Juvenile Justice in New Zealand: A New Paradigm". My present purpose and object is to affirm from the point of view of a District Court judge[2] (one with an interest in criminology) that we definitely do have a new model or paradigm of justice in New Zealand, and indeed one that turns the old model on its head.

In his paper written for this publication, Mr MP Doolan argues that the Youth Court now operating in New Zealand is based on a modified version of the justice model, rather than the (earlier) welfare model. I agree with this thesis, but would go further: we have essentially a new creature together, I believe – a model of responsible reconciliation.

This proposition might best be explained by a comparison between the system of Youth Justice now prevailing under the Children, Young Persons, and Their Families Act 1989[3] and that which it replaced. Such a comparison I now approach from a variety of perspectives. In so doing I draw on my experience of the Youth Court principally at Auckland and Henderson (West Auckland), two of the busier courts in New Zealand and both (I believe) well served by effective Youth Justice Co-ordinators.

1 THE COURT

In the old model the court was at the centre of things and it was expected to be the principal means of dealing with young offenders. Now the court is a place of last resort. The published figures that are available suggest that about 90% of young people's offending is diverted away from the court – and (significantly) without any increase in youth offending as a result. The statutory basis for the court's new position is s 208. It sets out as the first of several guiding principles for youth justice

> *"the principle that, 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".*

Different mechanisms are recognized to achieve this result. Warnings[4] and formal police cautions[5] are given statutory recognition, but there is nothing new about those. The new and primary means of diversion is the family group conference. Unless the police make an arrest, proceedings are not to be instituted against a young person unless a family group

* MA (1st class Hons) LLB(Otago), LLM(London), DipCrim(Cantab), District Court Judge, Auckland.

1 Of the Institutes of Criminology at the University of Cambridge and Victoria University of Wellington.

2 The views expressed are purely personal; I do not and cannot speak of behalf of other judges.

3 Any references hereafter to legislation will be to this statute unless otherwise stated.

4 Sections 209, 210.

5 Section 211.

conference has been held.[6] This is convened by a Youth Justice Co-ordinator, a new creature of statute whose facilitating role demands the exercise of new skills. The conference will or should be attended by the young person, family members, the victim (and, possibly, supporters), a police officer (usually from the Youth Aid section), the Youth Justice Co-ordinator, and perhaps a lawyer (Youth Advocate). If that conference can come up with a scheme to solve the matter without proceeding to court, then that is the preferred option.

As a result of this realignment there has been a drastic reduction in the number of cases coming to court – a reduction in the order of 75–80% – with consequent savings in costs and resources.

The court does not relinguish all control. It can refuse to accept the recommendation of a family group conference. It is a rare case where this happens but it does occur. Judges have had to resist the temptation to substitute their own view of an appropriate outcome for that of the family group conference.

It is therefore, I believe, inherently unfair to criticize family group conference procedures on the grounds that sometimes they impose outcomes more onerous than the court would have imposed – just as I think a similar criticism of the police diversion process for adults in unfair. In both cases what is overlooked is that sentencing is not an exact science and there can be considerable disparity between the sentences imposed by different judges in similar cases; we do not therefore say that judges should not be involved in sentencing. In point of fact outcomes under the new regime are generally more creative, more community-based, less dependant on custodial solutions, than those that the courts imposed. In any event, in an extreme case (of either excessive leniency or excessive harshness) the judge can refer the matter back for reconsideration at another family group conference, or can simply decline to accept the recommendation. The fact that this is a rare occurrence suggests that judges have accepted that the primary responsibility no longer lies with them.

2 THE JUDGE

In the old model of justice the judge is in control, representing the State and exercising authority given by the State either to impose punishment or to direct intervention in people's lives for "welfare" reasons. By contrast, in the new model the principal task of the judge is to facilitate and encourage the implementation of solutions devised through the family group conference procedure, and to act as a back-stop if those solutions are not implemented. Again the statutory basis is found in one of the principles laid down in s 208 to govern youth justice, specifically

> *"the principle that any measures for dealing with offending by children or young persons should be designed –*
>
> *(i) to strengthen the family, whanau, hapu, iwi[7] and family group of the child or young person concerned; and*

6 Section 245.

7 For those not familiar with these terms, an approximate translation is wider family (whanau), sub-tribe (hapu) and tribe (iwi).

(ii) to foster the ability of families, whanau, hapu, iwi, and family groups to develop their own means of dealing with offending by their children and young persons".[8]

Some of the techniques embodied in the new Act had been tested in a pilot project in the Porirua District Court by Judge David Carruthers. He in turn built on work that had been done in West Auckland by Judge MJA Brown, now Principal Youth Court Judge, whose advice to Judge Carruthers had been this:

> *"There are three questions you must ask: Who is your community? What are its strengths? And how are those strengths best made use of?"*

That concept of a judge trying to facilitate the strengths of others and bring them to the fore is radically different to the controlling position of the traditional judge.

The difference is not merely structural. It is seen in many ways. Under the old system the judge has an elevated position – literally. The benches are up high and indeed one talks about somebody being "elevated to the Bench". Around that judge are found the trappings of power, ritual and mystique with which we are familiar, reinforced by the fact that virtually only prosecutors and lawyers talk to the judge. In such circumstances it is not surprising that the uninitiated do not feel involved.

In the Youth Court of today the judge is, if not on a level with other people, only very slightly raised above them – enough so as to be seen! S/he generally welcomes the presence of others in the court-room. I make a point of welcoming the family and thanking them for being there. I also encourage them to speak – by asking them to tell me how they found the family group conference procedure, for example. So the participation of others is welcomed. The right to speak is not limited to lawyers. Families often will have a spokesperson who will talk to the judge – often a very powerful spokesperson. It can be a moving experience to hear from a grandmother who has been working closely with a wayward grandson and in the process has let her own son know how he has let the youngster down. In addition to provision for legal advocates, the Act makes provision for the appointment of lay advocates, who have a role to play particularly concerning cultural questions.

In short, the judge's position, far from being one of exclusivity and control is much more one of partnership, with the feeling that the court is working together with a number of other people towards a common end.

3 FAMILY

The offender's family used to have a very low priority in the old way of doing things. It was not often consulted. It did not have much say. It was not encouraged to take any great part. Families were expected to hand over their young offenders for others to deal with. Now the family and whanau (wider family) are centre-stage, and the family group conference is the mechanism by which their role has totally changed.

8 Para (c).

The old paradigm was individualistic. It focused on the young person – *his* misdeeds, and the consequences for him of further offending. The new model stresses the young person's membership of a family and community and rather than concentrating on the consequences for him of offending, it is the consequences for the wider family to which he relates that is under consideration. The offender is affected more closely because his whole family is brought into it. For a lot of families their young people's offending is a matter of shame, and if that shame is experienced by family members with the youngster at the conference, he cannot just shrug it off. I remember reading of one young man explaining that it was easy to be "staunch" or "cool" in court (and indeed to take some pride in being there) but at a family group conference, he explained, *"You're just a flea, man – you're nothing!"* The family group conference brings home to him his responsibility not only to the victim[9] but also to the community to which he most closely relates.

But by the same token one of the great values of the family group conference is that it can also put the parents "on the mat", particularly when people outside the nuclear family are present. If the wider family is there (grandparents and/or aunts/uncles) and they hear that the young person was in trouble because he was out at three in the morning and was not expected to be home, then the family dynamics are under the spotlight and it can often be the grandparents that will say to the parents, "What have you been doing about this?" Thus problems within the family that have been related to the offending can come notice of the wider family.

By putting the spotlight on the young person's membership of a family and community, the new model affirms the authority of the family to take responsibility for their young. This concept is so old fashioned it is almost radical. We have, I suspect, been tempted to stray from it by adherence to the myth that the State can take over from the community the responsibility for delinquency and for dealing with delinquents. This is perhaps symbolized even in the way we cite a criminal case in western legal systems – *The State* (or *The Queen* as representative of the State) *versus* the *individual* (delinquent).

Different considerations may well apply where the family is the perpetrator of abuse (physical, sexual or emotional) against the young person. These cases are dealt with by the Family Court under the Care and Protection provisions of the Act – not by the Youth Court. The contributors to this publication do not address that quite separate issue.

4 THE VICTIM

This layer of distinction is perhaps the most exciting of all – the position of victims. Curiously enough the statutory basis is the somewhat anaemic principle found in section 208(g)

> *"that any measures for dealing with offending by children or young persons should have due regard to the interest of any victims of that offending."*

That proposition could have been stated 20 or 50 years ago. Apart from the fact that victims are entitled to attend family group conferences, there is practically nothing else said in the Act that reflects the crucial role which in fact they play under the new system.

9 See separately below.

It is for this reason that our experience of the Act must be considered, in addition to its contents.

Under the predecessor to the Act[10] the position of victims was much the same as their position in an adult court today. The Victims of Offences Act 1987 requires the court to have regard to the position of victims, to be supplied with a report as to the impact of the offending on the victim, to consider whether reparation might appropriately be ordered in favour of the victim, and so on. The reality of it, though, is – in most cases – that it is a very cold and remote process. Six months or more after the offence a piece of paper is handed up to the judge relating to what the victim said to the police officer when being interviewed the day after the offence. It is usually out of date and often inadequate. *"I got a black eye and I spent the night in hospital. I feel fearful because the offender might come back and assault me again. My jeans got ripped and they cost me $85.00"*. That is a paraphrase of a typical Victim Impact Report for the average minor assault case, outside of the Youth Court.

The difference in the new model is that the victim is invited to the family group conference and, more than invited, is *encouraged* to be there.[11] The young person therefore has to confront the victim. The victim is often very angry about what has happened, and it is important that such anger be expressed to the offender so that he can see the hurt that he has caused. For him it may simply have been a case of taking a car belonging to some faceless person whom he thought (if he thought anything) could get by without it for a while. It is a little different when the owner explains that his car was uninsured and now that it is inoperative he has lost his job, or he cannot visit and support his old mother – or (more mundanely) that the car cost him 18 months of overtime earnings and he now has no overtime with which to replace it.

A Victim Impact Report read out in court means very little to an offender. He does not know the victim and therefore does not care about him. Brought face to face with the victim in an environment where he cannot escape his responsibility, he finds the victim to be a *real* person. When these things are explained face to face they have a different impact.

The Mason Report[12] in its Introduction quotes Robert Ludbrook:

> *"Our juvenile justice system prior to the 1989 Act had the effect of cushioning young people from the human, social and economic consequences of their behaviour. By parading young people before a line of public officials – Police, Judges, lawyers, social workers and residential care workers, they were sheltered from the consequences of their misbehaviour. They often came to see themselves as victims of the system rather than as the cause of suffering and anxiety to ordinary people in the community. Both the welfare and the punishment philosophy stressed the role of the young offender as 'victim'. . ."*

All that changes when the offender meets the victim in an appropriate environment.

10 Children and Young Persons Act 1974.

11 If this has not occurred, many judges will require that the matter go back to another family group conference.

12 Review of the Children, Young Persons, and Their Families Act 1989: Report of the Ministerial Review Team to the Minister of Social Welfare, February 1992.

The realization of harm done is only part of the equation. There is the opportunity for the offender to make an apology to the victim. And of equal importance but perhaps greater significance there is the possibility for the victim to make a response to the offender. A victim may start off with an entrenched position, saying perhaps that the young person should be in prison as far as the victim is concerned. In one amazing case the victim of an armed hold-up of a small shop, a woman of 60 years of age, originally asked for one of the young offenders to be referred to the High Court for sentence as she believed the Youth Court would merely "smack him on the hand". There were in fact three family group conference meetings. Her attitude changed after the youngster's mother visited the shop twice personally to apologize for her son's actions but put no pressure on the victim whatsoever to express any particular view. The outcome eventually was that she supported a non-custodial sentence and wanted the youngster to come and live in her family and work in the shop so that he could experience "a more regular household and normal discipline".

That is an extreme example but there are many where the victim is genuinely impressed by a sincere expression of remorse and wishes to do something to help the young person recover his dignity and move forward in life, perhaps by offering unpaid work in lieu of receiving reparation, or even paid work to provide a legitimate source of money.

Judges are not allowed to attend family group conferences but hear about them if they ask. It is quite clear that the presence of victims at conferences is the key to their success. With the victim present there is the possibility of a growing understanding on the part of the offender, of an experience of repentance or remorse, of an expression of that contrition, and of an acceptance of that by the victim. If all of this happens, the offender who has been ashamed can also be uplifted and reconciled, both with the victim and with his family. The young person can experience not only the anger but also the support or forgiveness of the victim. And there the healing process can begin. These things do happen.

What is perhaps curious is that victims are made part of the small community group which takes responsibility (in more than one way) for the offender. It is surely revolutionary, that victims should in a sense start to take responsibility for offenders; they are the *last* people that should feel the need to do so, but they experience that responsibility because they are made part of the group which tries to reach a unanimous decision on the outcome for the offender. This legislation therefore gives victims a lot of power – just as it gives families a lot of power, or indeed the police – anyone attending the family group conference can refuse to agree with any particular outcome with the result that the matter is left to the court to decide. In this way victims can and do start to take responsibility for young offenders as members of their community. It did not happen under the old system because they never came face to face. They never saw each other as people, and that is the difference – victim and offender now see each other as people, and the reaction – the chemistry – can be quite different.

One visitor to this country, an English criminologist,[13] said to me he had made a special study of systems of law dealing with victims' rights and he thought that the family group

13 Dr Harry Blagg.

conference system was probably the best he had seen anywhere. I have even had a victim attending at court to support the recommendations of a family group conference, and the loving concern on the part of that victim was a very moving experience for all concerned. Is it not extraordinary that a legal structure should make this possible? The nearest equivalent structure outside of the Youth Court is the Emotional Harm Reparation Report available under s 22 of the Criminal Justice Act 1985, but it is a poor cousin by comparison. A probation officer tries to arrange a face-to-face meeting between victim and offender. Often the victim declines to attend. The offender's family is not present. The context and the object of the meeting is quite different and overall it is a little used facility.

5 THE POLICE

Under the old model the police, like the judge, had great power and therefore assumed a dominant role in the proceedings. They could without having to consult anybody make arrests or simply issue a summons to take people to court. Now under s 245 they cannot issue a summons without there being a family group conference to discuss the matter first, and if the conference agrees that it be dealt with in some other way, then no summons will issue. It must be remembered though that the police are represented at the conference by a (police) Youth Aid officer and therefore have the power to veto any recommendation of the conference. Agreement is reached, however, in something over 90% of all family group conferences – a remarkable result given the diverse interests represented there.

Further, the police power of arrest has been limited by certain principles which are set out in s 214 of the Act. They must be satisfied that an arrest is necessary to ensure the young person's attendance before court or to prevent him from committing further offences or the destruction of evidence. (Those are the main restrictions). And there are other restrictions on their manner of dealing with young people, in particular relating to the procedures for questioning them. These are presently undergoing some amendment and are not dealt with in this publication.

All in all the police have a lesser role than pre-1989. They, like the courts, have had to abandon some of their power in order to facilitate the transfer of responsibility to the community – principally to the offender's family, but other parts of the community are frequently involved through the programme recommended by the family group conference to address the young person's situation.

I wish to conclude this reference to the police by stressing that the position occupied by Youth Aid officers is one of very considerable influence and should not be underestimated. It is a valuable role carried out with much professionalism in the great majority of cases. They have entered into the spirit of the Act and made its success possible.

6 THE EXPERTS

In the old days the Social Welfare Department really dominated the Children and Young Persons Court system. They wrote reports all the time. The Court was always calling for a report from a social worker. They ran institutions. Their reports recommended the use of these institutions. Young people were sent there for correction and training, for rehabilitation of one sort or another. Courts tended to rely quite heavily on them and the

tendency was for "welfare" considerations to intrude into sentencing so that there were mixed motives.

Under the new Act there is now a very clear separation between Youth Justice on the one hand and Care and Protection proceedings on the other , being the responsibility of the Youth Court and Family Court respectively. Even within the Youth Court environment s 208 lays down for the guidance of all concerned

> *"the principle that 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 person or young person or his or her family, whanau, or family group."*

In the old system the reports of experts tended to explain the offending in terms of shortcomings in the offenders's environment – hence the experience of offenders as being "victims", to which Robert Ludbrook refers. The new paradigm puts the emphasis on accountability and responsibility for one's own actions. One of the express objects of the Act is to promote the wellbeing of children, young persons, and their families and family groups by –

> *"Ensuring that where children or young persons commit offences, –*
>
> *(i) They are held accountable, and encouraged to accept responsibility, for their behaviour, and*
>
> *(ii) they are dealt with in a way that acknowledges their needs and will give them the opportunity to develop in responsible, beneficial and socially acceptable ways".*[14]

To ears becoming accustomed to the old song this is almost heresy, that young offenders should be "held accountable, and encouraged to accept responsibility, for their behaviour"! It is not to deny the reality of an oppressive environment for many young offenders but rather to encourage them to take control of their own lives, to take responsibility for themselves. It is a message that many young people want to hear and can respond to with some guidance and support.

So the role of experts is very different. They are there now to advise families at family group conferences, not to instruct them and tell them what is good for the family. They can offer advice and suggestions, but that is all. The central role of the social worker has been taken over by the new creature of statute, the Youth Justice Co-ordinator previously mentioned. S/he is not there as an expert to tell the family what to do but simply as facilitator and a co-ordinator.

In line with the move away from institutional care where young people were locked up and kept together, most of those institutions have now closed under the new Act. It is a development that has since been paralleled by the new mental health legislation in New Zealand[15] which places the emphasis squarely on treatment in the community rather than in institutions.

14 Section 4(f).
15 Mental Health (Compulsory Assessment and Treatment) Act 1992.

7 THE ADVERSARY SYSTEM

The old model used a modified form of the adversary system which I have already partly described in terms of the elevated and controlling role of the judge and the individualistic focus of the proceedings. It used an adversarial atmosphere where people operated from fixed positions and the court imposed a solution on behalf of the community.

You will by now understand that under the new model the victim has a central role and in effect says, *"Look, forget about the State – I am the one who suffered the hurt, I am the one who wants to be heard, and I should have some say in what happens to this offender."* We would do well to remember that the western system under which we have operated evolved from a jurisprudence where compensation of the victim was at the core of criminal law. Ponder, for example, the ancient system of bot, wer, and wite.[16] Those medieval systems may have something to teach us which the intervening central power of the State has obscured.

Instead of having people operating from fixed positions in an adversarial situation where the judge is expected to produce almost by magic a right outcome, the new model produces solutions which grow out of a living, healing process. I say "healing" because there are wounds on both sides and if there can be that element of reconciliation and growth, of moving forward as well as taking account of the past, then that is a distinctly different element. The adversary system tends to drive people apart. It forces them towards extremities where they are taking strong positions. The new system tends to bring them together and to look for a solution in their responses to each other. It is reconciliatory in that sense.

It is also a consensus model because of the requirements for agreement amongst all participants at the family group conference, whereas there is nothing of consensus about the adversary system – it thrives on a strong statement of opposites.

I can mention a case in point where this new element was thrown into focus. It arose when a youth advocate took exception to the police prosecutor expressing disagreement with the recommendation of a family group conference which had the support of the police Youth Aid officer who had attended that conference. I was asked to rule that the prosecutor could not take a different stance to that adopted by the Youth Aid officer. I declined so to rule. First, I felt it was a matter for the police themselves to settle. But more significantly –

> *"it is important, however, that Youth Aid officers do not go into family group conferences with a pre-conceived or pre-determined position which they are going to hold to. There is a danger that if the court were to say that the prosecutor cannot disagree with the Youth Aid officer then Youth Aid officers might be given riding instructions by prosecutors as to what they can accept and what they cannot accept*

16 "In early law bot was compensation for harm done, at first an alternative to and later in substitution for the exaction of harm or blood in return, by way of blood-feud. Some offences, such as treason, were botless, ie, non-compensable. Wer or wergeld was the money value set on a man, according to his rank and status, for the purposes of compensating various kinds of wrong to him. Wite, later called amercement, was a penalty exigible by the King, in addition to bot payable to the injured party. If a wrongdoer failed to pay bot and wite he became an outlaw." (*Oxford Companion to Law,* p 145.)

> *at a family group conference, and I think that would be a retrograde step and would be contrary to the spirit of the Act. The family group conference is a crucial piece of the mechanism of this new Act. It is a revolutionary development and the limited experience that we have of it at this stage, suggests that part of its value is that the outcome of the conference is in a very real way a product of a consensus reached by a group of different people with different interests who listen to each other with an open mind and work their way if they can towards a common solution. It may well be that they cannot agree at the end of the day and that is perfectly acceptable but the important thing is that they approach it with an open mind and that they do not make up their minds until the end of the conference. If people were to go in with fixed views to start with then the brilliantly successful conferences that the Court has heard about from time to time would never have of occurred.*[17]

In a number of the respects I have mentioned the new model uses indigenous features. The family group conference is very much a Maori way of proceeding. Long before this Act came into being there were whanau conferences – it is a distinctively Maori and Polynesian way of dealing with offenders. The consensus model is also indigenous – and has a very practical value: a solution which all parties do not support is unlikely to work. This rules out the possibility of "majority rule" or an imposed solution. Also strongly embedded in Maori culture, I understand, is the coupling together of shaming and reintegration, upon which Professor Braithwaite places some emphasis elsewhere in this publication.

And so we can see the new model as introducing indigenous features and turning them to great strengths. The old model is not entirely discarded however because a young person who denies the charges against him is entitled to a hearing with the full rigours of the criminal law for his protection. He is entitled to "due process". Evidence is called in the usual way. The case must be proved beyond reasonable doubt. He is represented by a lawyer (a youth advocate) and the judge decides the case in the same way as any other case. In other words, the western model of justice is retained for what it does best, ie deciding issues of liability. If the charge is proved at a hearing then the matter is referred to a family group conference for recommendations as to disposition, so the new model is always used at some point.

8 THE YOUNG OFFENDER

Under this heading I can bring together the contrasts which will be most apparent to the young person at the centre of the proceedings.

Under the old system he tended to be "put down" and given homilies whereas under the new system he is both shamed and affirmed. More importantly the message he receives comes principally from those he is most likely to respect and listen to.

Further, under the old system he was often not aware of his rights. His legal representation might have been haphazard. He did not necessarily or often understand properly what was going on. He had to fit into "court time" which was a different time sense altogether to his own time. He could ignore the victim (and often did) and indeed he could see himself as victim.

17 Police v Pati – unreported, Auckland Youth Court, CRN Number 1204003983, 4 October 1991.

By contrast under the new model he must have representation by a youth advocate and in Auckland that is one of a small group of well trained people who are doing this work a lot of the time. Advice as to his rights is given from the outset by police who might deal with him, by Youth Justice Co-ordinators and by lawyers. Section 5(f) of the Act enjoins the court to adopt the principle that decisions affecting a young person should, wherever practicable, be made and implemented within a time-frame appropriate to the young person's sense of time. (Thus for example, a family group conference ordered by the court must be convened within two weeks, or seven days if the young person is held in custody).[18] Similarly s 10 imposes a duty on the court and on counsel to explain proceedings, and requires this to be done in a manner and in language that can be understood by the young person – who is also (by virtue of s 11) encouraged to participate in the proceedings. It is not intended that he be a passive observer of his fate, and this is consistent with the provisions already referred to encouraging him to accept responsibility for his own behaviour. As we have seen, the young person cannot ignore the victim and is much less likely to see himself as "victim".

In his Inaugural Lecture (*"Mind or Person"*) delivered before the University of Otago on 5 September 1961 Daniel Taylor as Professor of Philosophy gave a solid philosophical basis for what is now the "new" attitude to offender responsibility:

> *"To accept responsibility for one's feelings, actions and beliefs is to exercise one's personality. To fail to accept such responsibility is to refuse to be a person . . . Silence and lying are not in another world from insanity, they are near the threshold. Peter's betrayal of Christ is a self-betrayal. Peter weeps for himself."*[19]

CONCLUSION

I said at the outset that the new model turned the old one on its head. This came home to me most forcibly when in preparation for a lecture on this subject I listed the participants in order of importance under the two models – excluding the young person who, of course, is central to both. Under the old model I saw the order as: Court (Judge), Police, Social Welfare Experts, Victim, Offender's family. Then I wrote down a separate list for the new priorities: Family, Victim, Youth Justice Co-ordinator, Police, Court (Judge). What I had unwittingly done was to completely reverse the order. Only then did I realize how dramatic was the change we have experienced.

The new paradigm does not easily fit within the old parameters – liberal/conservative, justice/welfare, punishment/rehabilitation, justice/mercy. It cannot be described in those terms because it requires a new way of thinking, and of doing justice.

My conclusion therefore is that we indeed *do* have a new paradigm of justice. It is not simply an old model with modifications. A new start has been made, new threads woven together and a new spirit prevails in Youth Justice in New Zealand. It is a spirit which I would characterize as *responsible reconciliation*. The term "reconciliation" connotes a positive, growing process where strength is derived from the interaction of victim, offender and family in a supportive environment. It is a "responsible" process in that those

18 Sections 245, 247, 249.
19 Pages 15–17. The context was not criminological.

most directly affected take responsibility for what has happened and for what is to happen. In the process most of the power previously vested in the court is transferred to the local community which now carries this new responsibility.

Perhaps when the real strengths of the new model have been understood we will be able to take it beyond the Youth Court, find a mechanism for defining a relevant community group for adult offenders, involve victims and the wider community in finding solutions, and in the process remove from the courts and our prisons much of the burden of unrealistic expectation under which they labour.