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**THE INTENSIVE MONITORING GROUP [IMG] AND
YOUTH JUSTICE**

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ATTESTATION OF AUTHORSHIP

I declare that this submission is my own work and that to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements) or material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

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ABSTRACT

The IMG is one of several new initiatives for dealing with youth offending in New Zealand designed and administered by the Youth Courts. Other initiatives include the Christchurch Drug Court and the Marae Youth Monitoring Court at Poko-o-Rawiri Marae in Gisborne.

Established in 2007, the IMG seeks to reduce youth offender recidivism by targeting the small number of youth offenders [about five per cent (Lovell and Norris, 1990; Moffit, 1993)] responsible for the greater number of crimes. The intervention addresses the underlying issues described by Judge Becroft as creating a significant overlap between risk factors for offending, background of family dysfunction and disadvantage, psychological disorders such as conduct disorder and learning disabilities, and drug/alcohol dependence/addiction (Becroft, 2009, McLaren, 2000).

This study asked the research question ‘what are the key features of the IMG that enhance the rehabilitation of youth offenders and reduce recidivism?’

To address this question the thesis located the IMG intervention within the theoretical framework of therapeutic jurisprudence (Winick and Wexler, 2003) whereby court sanctions are used not simply to punish but to effect behaviour change (Walker, 2001). Using a combination of phenomenology methodology and case studies the research sought to develop a more holistic understanding of the experiences of the key actors in the IMG (Polit and Hungler, 1995), and identify the key features of the IMG intervention that make it effective in reducing youth offender recidivism.

The case studies in this thesis indicated that the IMG intervention reduced the chances of the youth offenders re-offending. The key to the effectiveness of the intervention is the dedicated team of professionals working intensively with the youth offenders, providing coordinated services that address the individual needs of the youth offender, on-going regular monitoring that is supportive but holds the youth offender accountable, thus actively engaging them in their rehabilitation. However, the IMG faces a number of challenges, such as the limitation of resources which makes it difficult to extend the intervention to larger groups of youth offenders, lack of understanding of the role and functions of the IMG both by the general public that seems to take a retributive rather than rehabilitative position with regards to youth offenders, and even within significant government departments that work with youth offenders. There is also the challenge of creating post-IMG opportunities for the IMG graduates to move into, such as employment, training and on-going mentoring so that they do not go back to the environment of dysfunction and crime. These challenges are examined and some recommendations provided as to how the IMG intervention could be enhanced.

CHAPTER ONE

INTRODUCTION TO THE STUDY

This study asks the research question: What are the key features of the IMG that may enhance the rehabilitation of youth offenders and reduce recidivism? Consideration of this issue is important because of public debate regarding the need to develop effective strategies for reducing youth offending, hence the title of this M.Phil thesis. By examining available literature, documentary data, the views of key informants and observation of the processes facilitated by the IMG, this inquiry has sought to address the research question and identify how the IMG provides effective strategies for reducing youth offending.

The Intensive Monitoring Group [IMG]

Understanding the role and function of the IMG and the background that contributed towards its formation is an important prerequisite for consideration of effective strategies for addressing youth offending. Youth Courts were established in this country during the late nineteenth century to provide different strategies for dealing with youth offending from those which were employed to deal with adults. The Children, Young Persons, and Their Families (CYPF) Act (1989) introduced a new justice model to replace welfare approaches that were dominated by professionals, costly to administer and ineffective (Walsh, 2001).

Subsequent research has expressed some reservations about the effectiveness of these legislative provisions for addressing youth offending. For instance, Maxwell and Morris (1993) asserted that professionals still tended to dominate the outcomes of family group conferences; families were not always informed about family group conference processes; the rights of young people were not always protected; victims were not always fully included in family group conferences and resources were not always available to support the implementation of decisions made at family group conferences. In addition, Youth Justice social workers have been unable to effectively supervise high caseloads and young people have avoided accountabilities decided by Family Group Conferences.

In July 2007 Judge Fitzgerald initiated the IMG as an experimental attempt to resolve these issues. The charter of the IMG states that the IMG's purpose and goals are to:

- (a) Honour and apply the objects and principles in the CYP&F Act (1989)
- (b) Hold the young person accountable and ensure victims' issues and interests are addressed
- (c) Treat the underlying cause of the young person's offending behaviour
- (d) Find solutions that are strength-based, child-centred, family-focused and culturally appropriate
- (e) Promote and maintain inter-agency co-operation and accountability
- (f) Keep communities safer by reducing recidivism.

The function of the IMG is unique. The IMG seeks to combine positive aspects of the 1989 CYPF Act with aspects of therapeutic jurisprudence and a more personalised approach, to provide an effective youth court strategy for addressing youth offending.

Justification for this study:

The IMG is one of several new initiatives for dealing with youth offending that have been designed to be administered by the Youth Courts. Other initiatives include the Christchurch Drug Court and the Marae Youth Monitoring Court at Poko-o-Rawiri Marae in Gisborne initiated in 2008 by Judge Taumaunu.

Consideration has been given to replicating the IMG in courts other than the Auckland Youth Court. Mooney (2010) has provided the only other known study that has attempted to assess the effectiveness of the IMG as a youth court intervention. This study aims to add to Mooney's (2010) research by providing further knowledge about the IMG as a court intervention for reducing youth recidivism. This knowledge will aid the development of effective strategies to assist with:

- (a) Enhancing the personal wellbeing and rehabilitation of young offenders and their families;
- (b) Reducing the levels of youth offending;
- (c) Ensuring that young offenders do not progress into the New Zealand adult regulatory systems;
- (d) Maintaining the safety of the wider community; and
- (e) Assessing whether the IMG constitutes an effective use of public funding.

By researching these issues, this thesis will assist government administrators, members of the judiciary and key workers with youth offenders to develop effective future interventions for addressing youth offending.

Scope of this study

This study does not seek to provide a comprehensive inquiry into all aspects of the IMG's functioning. Issues such as the comparison of the IMG's effectiveness with other youth justice initiatives and its specific effectiveness for dealing with Maori youth offenders were not considered by this study. The primary focus of this thesis is concerned with identifying the unique character of the IMG. In particular this inquiry focused on the special interface between the Presiding Judge, youth forensic workers, social workers, the police, legal professionals and representatives of non-governmental agencies and clients of the IMG. The study then examined the effectiveness of these interactions as a model for reducing youth offending.

Emergence of themes and structure of this study

Five themes were identified during the course of this research and these are noted as follows:

Theme One: How does the IMG work?

Theme Two: How does the young person enter the IMG?

Theme Three: What makes the IMG successful?

Theme Four: In what specific way has the IMG contributed to reducing youth offending?

Theme Five: What are the challenges faced by the IMG?

These themes were developed in a logical form commencing in chapter two, which provides a historical overview of the development of Youth Justice within overseas jurisdictions and in New Zealand. This chapter outlines how youth justice services were introduced into the United States of America, Great Britain, New Zealand, Australia, Canada, France, Belgium, Hungary, Austria and Argentina. This description is followed by a brief summary of the historical development of Youth Justice Services in New Zealand Youth Courts. The chapter concludes with a historical overview of the Children, Young Persons, and Their Families Act (1989) and how this legislation provided the basis for the administration of the New Zealand Youth Justice System. While these themes are not directly addressed until chapter five, chapters two, three and four provide a discussion of conceptual developments/ debates within Youth Justice.

Chapter three introduces background literature regarding youth offenders, restorative justice and the criminal justice system that supported the development of this study.

This review considers issues such as: influences on youth offenders, recent initiatives for addressing youth offending, pre-court intervention processes and the roles of the personnel in the Youth Court. The chapter concludes with an examination of the historical development of restorative justice and a brief consideration of key elements of restorative justice processes.

Chapter four outlines the methodological approach and methods of data collection that were employed for this study. The chapter describes qualitative approaches that framed this research and then proceeds to describe the use of case study observation and interviews with key performers that were employed for data collection. The chapter concludes by describing methods of data analysis that were employed for this study.

Chapter five describes how the Intensive Monitoring Group functions. The chapter provides a brief overview of the origins of the IMG, the interrelationship between the CYPF Act (1989) and the functioning of the IMG. The chapter then describes the processes by which a young offender is accepted into the IMG programme and how the IMG professional team seeks to address issues that impinge on the young person's life. Role descriptions of each member of the IMG team are included within this discussion.

Chapter six discussed the effectiveness of the IMG and reports on the findings of three case studies and observation of the IMG processes. The chapter found that the operation of the IMG, and restricted caseloads, provided higher levels of accountability for young offenders and the professionals engaged with them. With the introduction of continuous monitoring, the observation of the IMG processes noted a less formal approach for dealing with young offenders. Instead there was a blend of formality and informality in which all participants in the IMG process were required to be accountable and developed trust with each other. The chapter concludes by identifying some potential flaws in the IMG processes and considers the value of specialised Youth Courts for addressing issues related to youth offending.

Chapter seven of this M.Phil thesis returns to the question that was posed at the beginning of the study: what are the key feature of the IMG that enhance the rehabilitation of youth offenders and reduce recidivism? This chapter seeks to answer the research question by presenting the findings of this research and providing a brief summary of their relationship to the key themes of this study. The chapter concludes by identifying areas of further research that will help provide a more comprehensive understanding of strategies to address youth offending in New Zealand.

CHAPTER TWO

THE DEVELOPMENT OF YOUTH COURTS AND THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT (1989): A HISTORICAL OVERVIEW OF YOUTH JUSTICE

During the late nineteenth and early twentieth centuries, Western countries such as the United States of America, New Zealand, Australia, Canada, Great Britain and France, began to establish separate regulatory jurisdictions for children and young people. Rather than punishment in adult courts, the welfare, interest, care and protection of young people became the centre of interest (Watt, 2003). These developments were shaped by a growing awareness that criminal behaviour in young people stemmed from social and family circumstances and led to a growing realisation that youth offenders should be separated from their adult counterparts.

Juvenile courts were established as early as the late 19th century in Illinois [1899] and South Australia [1895] (Freiberg *et al.*, 1998). Other jurisdictions followed in the early 20th century, namely England and Canada [1908], France and Belgium [1912], Hungary [1913], Austria and Argentina [1919], as well as Germany and Brazil [1923] (Juvenile and Family Court Journal, 1998). New Zealand formally established a separate Youth Court in 1925 (Watt, 2003). These initiatives received international support. The League of Nations' Declaration on the Rights of Children (1924) and the United Nations Declaration of Children's Rights (1959) recognised this development as a topic of international concern. These declarations were followed by the United Nations Convention on the Rights of the Child (1979), which in article 40, set out key principles for enacting the rights of children and young people.

States Parties recognise the rights of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth ... and the desirability of promoting the child's reintegration and the child assuming a constructive role in society (article 40).

In 1955, the United Nations Standard Minimum Rules for the Treatment of Prisoners stipulated that young offenders should not be imprisoned and, if they were, that they be separated from adult offenders (adopted by General Assembly resolution 40/33 of November 1985).

Early Youth Courts in the United States of America

During the late nineteenth century, United States of America State Legislatures adopted approaches which established obligations towards children. For example, in 1899 the State of Illinois initiated a commitment towards welfare approaches for young offenders and by 1925 every state in the United States of America with just two exceptions had implemented juvenile courts, and by 1950 all were established. Judge Julian Mack a distinguished well-respected American Judge in the late 19th-early 20th century criticised the application of adult criminal law concepts to children, and took the view that reformatory rather than punitive approaches should be implemented for young people. Mack argued that juvenile court philosophy should focus on the needs of children and the requirements necessary to address these issues, rather than simply punishing young people for offences committed.

Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offence, to find out what he is, physically, mentally, morally, and then if it turns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen (Mack, 1999).

In the early 1970s, teen or youth court initiatives such as the Naperville Peer Jury (1972), the Texas Grand Prairie Teen Court (1976) and the New York Horseheads Youth Court (1976) were implemented in various parts of the United States of America. These programmes are now referred to as the Youth Court, Peer Court and Youth Peer panels respectively.

The Horseheads Youth Court was representative of these developments. In this initiative, youth offenders were judged by their peers and held accountable for their actions. The Horseheads programme aimed to provide an alternative to the County Family Court system for dealing with young offenders by creating interventions dealing with delinquent and criminal behaviour involving juveniles, reducing incidents of anti-social behaviour and preventing repeat offending. A group of teenagers presided over court hearings and they adjudicated cases involving their peers. Young people who appeared before this panel were usually first time offenders who had committed minor

crimes, acknowledged their guilt and accepted responsibility for their actions. They were required to consent to assessments of punishment imposed by this jury of peers who could impose sanctions within a fixed range of tariffs, usually involving counselling, community service or restitution. The Horseheads programme was designed as a diversion strategy that gave first time juvenile offenders a chance to avoid entering the criminal justice system or Family Court, an experiment that has been replicated in more than half the states of the United States of America. Every state within the United States of America operates some form of juvenile justice forum to address offending committed by young people despite the on-going debate regarding the implementation of juvenile justice.

Early Youth Courts in Great Britain

The British legal system introduced different treatments for young offenders from the 1850s onwards, when reformatory and industrial schools were first introduced. In addition to the creation of new punitive measures for dealing with the young, laws were passed removing children from certain areas of industry and restricting their activities in others (Bradley, 2008). The Children's Act (1908) legislated for special juvenile courts in England and Scotland together with the use of informal procedures for young offenders.

These processes, however still functioned within the framework of a criminal trial which sought to determine guilt or innocence and little attention was given to the personal needs of young offenders who appeared within these jurisdictions. The courts did not recognise the rights of children and judges were allowed wide discretion regarding the disposal of young people. This situation frequently led to sentencing inconsistencies as well as class and racial discrimination (Doolan, 1989). The British Home Office (1927) reiterated the importance of maintaining the use of adversarial procedures for young people on the supposition that criminal trials provided young offenders with the opportunity to counter charges that were made against them. These processes helped to reinforce the gravity of the offending behaviour and they imparted the lesson that "doing wrong" was "followed by unpleasant consequences"

The English Children and Young Persons Act (1969) raised the age of accountability for young people from ten to fourteen years, abolished borstals and detention centres, replaced adversarial processes with 'care proceedings' and expanded the use of

diversionary methods to replace custodial options for youth offending (Fionda, 2001). However, the approach of the 1969 Act was ineffective for dealing with recidivist offenders. By its advocacy for public protection and a return to deterrent as well as retributive strategies contributed to a shift away from the therapeutic and welfare emphasis of the 1926 Children and Young Persons Act. The English Criminal Justice Act (1982) re-instigated a focus on due process and accountability for dealing with young offenders.

In Scotland, the Social Work Act (1968) abolished the juvenile courts and replaced them with a system of non-criminal Children's Hearings. Children Hearings were independent tribunals, which focused on the welfare of the child. The following key principles underpinned their decision-making processes.

- The welfare of the child is the paramount consideration in most decisions being made by courts and children's hearings (unless members of the public need to be protected from serious harm);
- No court should make an order relating to a child and no children's hearing should make a supervision requirement unless the court hearing considers that to do so would be better for the child than making no order or supervision requirement at all; and
- Children should be given an opportunity to express a view and if they do so, consideration should be given to the child's view – children of twelve or over are presumed to be sufficiently mature to be able to form a view (Scottish Government Publications, 2003).

In Australia, the first youth court was established in Adelaide, South Australia in 1890 following a recommendation by the Way Commission in 1885 (King *et al.*, 2011).

History of New Zealand Youth Courts

Prior to 1989, New Zealand followed English law and welfare practice for dealing with young people. Legislative provision for youth offenders frequently paralleled similar strategies for dealing with adults. However, New Zealand also followed international trends by establishing separate courts and reformatories to regulate children's behaviour.

Doolan (2008) suggests that three theoretical constructs underpinned New Zealand attempts to regulate the behaviour of young offenders: notions of the economic, indigent

and state young person. The economic young person was a product of early British settlement in New Zealand. Before 1880 the law seldom distinguished between young people and adults and youth offenders were dealt with in the same legal jurisdictions as their elders (Pratt, 1992). Children were valued for the contribution that they could make towards their families and communities, rather than any future potential for which they could be prepared. Young people were regarded as economic units “who were employed in an economic drive for survival” (Doolan, 2008). After 1880, as increasing urbanisation began to influence social life in New Zealand, the concept of the indigent young person came to the fore. Young people came to be regarded in terms of their asset value to society rather than their economic worth, and legislation began to recognise the need to make separate provision for youth and adult offenders. During this period, welfare practice reflected a strong “rescue mentality” and social services for young people employed strategies such as industrial schools to regulate behaviour by removing them from unsavoury and dangerous family environments (Doolan, 2008).

A most significant legislation was the Juvenile Offenders Act (1906) which shifted youth court processes from adversarial contests to investigate tribunals and also established that young offenders were victims of their environment and in need of help rather than punishment (Walsh, 2011). This legislation aimed to “save children from the degrading influences and notoriety inseparable from the administration of justice in Criminal Courts” (Watt, 2003). It also established private hearings for juveniles and Magistrates were instructed to assign a ‘special hour’ for hearings of charges against persons under the age of 16 years (Seymour, 1976) which often led to children who came before the court being dealt with in the privacy of the Magistrate’s room.

A major shift during this period occurred with the Statute Law Amendment Act (1917) which provided statutory recognition for the appointment of Probation Officers with the primary objective to avoid placing juveniles in institutions and keep them in a ‘natural home’ where ever possible. This was further strengthened by the Prevention of Crime (Borstal Institutions) Establishment Act (1924) aimed to avoid sending male young offenders aged between fifteen and twenty-one to adult prisons. The Child Welfare Act (1925) introduced the understanding of the ‘state young person’ by establishing state responsibility for the welfare and oversight of young people. This legislation remained in force for the next 55 years. Youth offenders were regarded as products of detrimental environments and therapeutic interventions sourced in Western theorists such as Freud,

Jung and Erickson underpinned professional interventions for dealing with young offenders (Doolan, 2008).

A number of key developments characterised this period focusing on the role of state protection to ensure the welfare of young people in the justice system. In 1957 a juvenile crime prevention section of the Police was established. In the same year Justice of the Peace Act (1957) gave Justices of the Peace [JPs] jurisdiction to preside over children and young persons in respect of summary offences. Penalties for anti-social behaviour were severe allowing JPs to impose sentences of fines, imprisonment or whipping. The Crimes Act (1961) increased the age of criminal liability from seven to ten years (s 21) and the Guardianship Act (1968) s 23 established the principle that the interests of the child or young persons shall be of paramount consideration¹.

The Children and Young Persons Act (1974) maintained the welfare principles of the Child Welfare Act (1925) while at the same time offering a more comprehensive approach for dealing with young offenders. The legislation legally distinguished between children and young persons. Children were defined as being young people under the age of fourteen years, and young persons between the ages of fourteen and seventeen years. The age of legal accountability applied to children aged between ten and fourteen except for the charges of murder or manslaughter. The 1974 Children and Young Persons Act aimed to divert young offenders from court proceedings where ever possible and the legislation was premised on the understanding that issues affecting juvenile offenders were symptomatic of family difficulties which could be treated by social work assistance and therapy. Considerable emphasis was placed on the use of diversion as a strategy for minimising the involvement of young offenders with the court. Children's Boards and Police Youth Aid interventions, aimed to ensure that the court was to be the last resort for dealing with youth offenders. These Boards had the authority to implement care plans for young offenders and to enforce complaint proceedings or whether some informal action should suffice (Watt, 2003).

The strategies for controlling youth offending contained in the 1974 Children and Young Persons Act were not particularly effective. The continued employment of intrusive and coercive therapeutic interventions failed to meet the needs of Maori and Pacific Island young people, who remained "fundamentally more at risk" because of their implementation (Doolan, 1993). The predominant composition of Children's

¹ This same principle was reinforced in the Children, Young Persons, and Their Families Act (1989).

Boards consisted of officials from New Zealand European backgrounds. Power for making decisions remained firmly in the hands of the Police who continued to deal with youth offending by making arrests and bringing young people before the courts because they had no confidence in these diversionary processes (Morris and Young, 1987; Brookers Online, 2011). The Department of Social Welfare as well as community representatives were unable to do more than make suggestions or recommendations. The continued use of these models for dealing with youth offending resulted in the “large scale alienation of children from ‘unsuitable’ families, high rates of State care, fostering institutionalisation and an active adoption regime” (Morris and Maxwell, 1993; Brookers Online, 2011).

The Royal Commission on the Courts recommended in 1978 that the Family Court should be subject to the provisions of the 1974 Children and Young Persons Act. The influence of the International Year of the Child (1979) resulted in formation of the New Zealand Committee for Children and a National Advisory Committee on the Prevention of Child Abuse (Watt, 2003). By the early 1980s the welfare focus of the 1974 Children and Young Persons Act had achieved only limited success in addressing youth offending, which led to the amendment of the Act in 1982 to ensure that the courts must refuse to hear complaints until they had been processed by Children’s Boards. The amendment also granted Police extra powers to deal with young people who were considered to be at risk, and children could also be tried for murder. A separate Family Court was created in 1980 and the Criminal Justice Act (1985) determined that children under the age of 16 years could not to be imprisoned except for purely indictable offences.

These developments in the third construction laid the foundation for the development of youth-focused justice within the New Zealand criminal justice system which was pioneered by the 1989 Children, Young Persons, and their Families Act. This Act has significant influence on the work of the Intensive Monitoring Group within the Youth Court, which is the subject of this research.

The Children, Young Persons, and Their Families Act (1989)

The Children, Young Persons, and Their Families Act (1989) [CYPF Act] came into effect in November 1989. The principles and procedures contained in this legislation revolutionised youth justice processes in New Zealand and had significant influences on

other countries. The primary objective of the Act is to promote the well-being of children, young persons and their families. With specific regard to this research the legislation established the principle that unless the public interest required otherwise, criminal proceedings should not be instigated against a child or young person if there was an alternative means of dealing with the matter (CYPF Act, (1989) s.208(a)).

Historical Influences

The Children and Young Persons Bill was introduced to Parliament in December 1986. The first draft of the legislation followed the recommendations by a Ministerial Working Party and maintained some aspects of the welfare approach to youth offending. (Refer to Conclusions). The proposed legislation abolished the Children's Boards and Youth Aid consultations, did not adopt the recommendations of the Ministerial Working Party for Youth assessment panels, and made diversion the sole responsibility of the Police, contrary to the working party's view which argued that:

The central duties of the Police are the prevention, detection and control of criminal behaviour. The normal outcome of successful police action is a prosecution. To ask the Police to act as the main agency for keeping young people out of court creates a conflict in the various roles to be played by an individual police officer and may lead to conflict with his or her colleagues (p.41).

The progress of the Bill was delayed because of objections both by members of the public and some members of parliament about what they perceived as excessive police powers without adequate checks and balances. Care and protection issues also received critical reviews in public submissions, especially concerns over child abuse and the quality of care in Department of Social Welfare homes (Wittman, 1995). Other areas of concern included provisions for cultural appropriateness and the proposed powers and composition of Child Protection Teams. A number of submissions objected to the proposed split jurisdiction of the Child and Young Persons Courts, preferring a one court system under the jurisdiction of the Family Court.

These criticisms and the strength of dissatisfaction resulted in the new minister, Dr Michael Cullen, commissioning a second working party to review the 1986 Bill. The second working party acknowledged conflicts that the new legislation had to resolve observing that:

In the course of its development the Bill has become the focus for frequently incompatible views concerning, among other things, state intervention versus

family autonomy, the application of welfare versus justice models for dealing with young offenders, the priorities given to prevention versus intervention, and the role of professionals versus that of 'lay' members of the community in dealing with matters affecting children and young persons (Watt, 2003).

The second working party's recommendations did not address two issues of concern. A key Labour M.P. on the Select Committee on 12 April, 1988 noted: first, the need to find a suitable balance between the formal powers and structures required to meet the child's needs for care, control and protection, and the extended family's rights and responsibilities in relation to their children. The second unresolved issue was the need to develop flexible, culturally appropriate structures which harness effectively both the formal and informal resources available to resolve family difficulties and to care for, protect and control children and young persons (Wittman, 1995). The very limited number of submissions from Maori and Maori interest groups also concerned the Select Committee. In an attempt to overcome this, the committee travelled throughout the country to marae and Pacific Island centres seeking opinions on how to recast the Bill.

The Department of Social Welfare's Working Party was influenced by a 1988 report by Mike Doolan, the National Director of the Department of Social Welfare (Youth and Employment). Following a three month study tour in the United Kingdom and North America, Doolan produced a report entitled *From Welfare to Justice (Towards New Social Work Practice with Young Offenders)* which identified a number of key goals for youth justice. Doolan argued that:

Given that most young people grow out of their offending behaviour by adulthood and intervention by way of prosecution does have harmful effects... and can be demonstrated to increase chances of reoffending. A Youth Justice service would strive to confine prosecution to those cases where it is clearly in the public interest to prosecute, reduce to a minimum the number of occasions young persons lose their liberty, and control the negative effects of professional activity (Doolan, 1988).

Doolan's report had significant influence in the final recasting of the CYPF Act (1989) and his proposals were new to New Zealand law. For example, his goals were transcribed into the CYPF Act (1989) s208 (a) as a guiding principle:

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 (CYPF Act (1989) s208(a)).

Doolan suggested that there should be a separate court for young offenders as a branch of the District Court, and the Youth Court should be separated from the Family Court and a principal Youth Court Judge should be appointed to develop and encourage the philosophy of the goals of Youth Justice. Family Group Conferences involving both offender and victim, are convened by a Youth Justice Coordinator to empower families (whanau) in decision making processes affecting young people. By suggesting suitable diversion resolutions, they were suggested as a means to resolve offending matters without prosecution. However, he argued that diversion should be implemented without giving too much power to the Police. This new system was designed to create spaces for more active Maori involvement, more culturally appropriate processes in the decision making, and also to facilitate more equitable power sharing between the judge and the community where possible.

The final draft of the Bill was the result of two government working parties over a period of four years with more than nine hundred submissions (Wittman, 1995). Between 1987 and 1989 the Select Committee worked with the Department of Social Welfare to recast the Bill taking into account the reports of the government working parties and public submissions to the select committee. The Bill had its second reading in April 1989, and was passed with little objection on 1 November 1989 resulting in the New Zealand Children, Young Persons, and Their Families Act (1989). The role of the Youth Court is clearly stated in the CYPF Act (1989) Section 208 sets out the principles which guide and frame the functions of the Youth Courts:

Subject to section 5, any court which, or person who, exercises any powers conferred by or under this Part or Part 5 or sections shall be guided by the following principles:

- (a) 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:
- (b) 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 child or young person, or his or her family, whanau, or family group:
- (c) 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, and family group of the child or young person concerned; and

- (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:
- (d) The principle that 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:
- (e) The principle that 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:
- (f) The principle that 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:
- (fa) The principle that 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:
- (g) The principle that—
 - (i) in the determination of measures for dealing with offending by children or young persons, 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:
- (h) the principle that 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.

Section 208(fa): inserted, on 1 October 2010, by section 6(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 208(g): substituted, on 1 October 2010, by section 6(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

McElrea asserted that “prior to 1989 the court was at the centre of things and was expected to be the principal means of dealing with young offenders. Now the court is a place of last resort” (McElrea, 1993). This shift in emphasis is explained by Judge Brown who stated that the objective was to reduce the role for the state and strengthen family and community engagement:

In the Children, Young Persons, and Their Families Act (1989) there is a clear statutory intention to attempt to strengthen families, church or school associations, sporting links and residential communities to exert informed social control and nullify the excesses and inflexibility of crude state intervention (Brown, 1993).

Nevertheless, there will still be situations where state intervention is required.

Doolan further argues that the CYPF Act sought to correct a system that was somehow unsympathetic to the values and cultural contexts of Maori and Pacific peoples:

The law was about restoring to family networks control over the decision-making about their young people who, for some reason or another, had come under the notice of the statutory child welfare agency. The history of such contacts, for Maori and Pacific peoples in particular, had seen the customs, values and beliefs of these communities as having little relevance alongside the customs, values and beliefs of the dominant white culture. Massive alienation of Maori and Pacific People's children from their families as a result of child rescue ideology imposed by the dominant culture, and the heavy concentration of Maori children in the welfare institutions and correctional facilities, all pointed to a system that was institutionally racist (Doolan, 2003).

The Puao-te-ata-tu (daybreak) Report on the Maori perspective provided recommendations to the Department of Social Welfare which included “ensuring legislation which recognises social, cultural and economic values of all cultural groups and especially Maori people” (Recommendation 2 (c)).

Recommendation 4 (c) suggested

“The Children and Young Persons Act 1974 be reviewed having regard to the following principles

- (i) That in the consideration of the welfare of a Maori child, regard must
- (ii) be had to the desirability of maintaining the child within the child's hapu. :

The CYPF Act (1989) may be considered in the context of the historical debate concerning the effectiveness of welfare and justice models for dealing with youth

offending. The justice model requires accountability, determinate sentences relative to the offence and formal procedures. It focuses on offending, not the offender and requires equality of sanction, not individual treatment, and determinate sanctions rather than indeterminate rehabilitation (Maxwell & Morris, 1993). The justice model has been criticised for its lack of focus on substantive justice. It has been argued that sentencing options which aim to implement consistent penalties for young offenders have not provided effective long term solutions for dealing with youth offending, but rather tend to harden the young offender making their rehabilitation even more difficult (Watt, 2003).

Public perceptions about the protection of the community together with political rhetoric about zero tolerance against crime lead to arguments that the welfare approach is a soft touch. Judge Walsh suggests that:

The issues arising out of the "Justice Model v Welfare Model" debate are not new and are discussed from time to time. As time goes by, however, the need to address the issues has intensified. At times and for reasons of expediency and resourcing, it is convenient to deal with young persons using only the Youth Justice Model but ultimately such approach is short-sighted. Where there are young people with clearly identified care and protection issues, there needs to be a better balance between the Youth Justice Model and the Welfare Model; each model can be used to support the other (Walsh, 2011).

This supports Judge Becroft's argument that:

Responses to youth offending that are focused on deterrence, supervision and punishment are often ineffective. There will be times when in the interests of protecting the community, punitive responses and prison will be necessary. The point is that these responses do not work in the sense of reducing re-offending and may in fact make the situation worse. Treatment is a vital component of most youth offending responses. Many approaches, such as intensive supervision and drug testing, only effect change in the young person's behaviour if they are coupled with a rehabilitative element (Becroft, 2006).

From a welfare model interventions to address youth offending need to take a multi-sector approach incorporating education, work skills, mental health and attitudinal issues such as anger management, as well as incorporating and engaging with significant people in the young person's life, such as family, peer group and school (Becroft, 2005).

CHAPTER THREE

YOUTH OFFENDERS, RESTORATIVE JUSTICE AND THE CRIMINAL JUSTICE SYSTEM: A REVIEW OF BACKGROUND LITERATURE

Who are the youth offenders?

Principal Youth Judge Andrew Becroft described youth offenders in New Zealand as characterised by male (83 percent) although the number of young women involved in violent offending seems to be increasing. Most of the offenders (70-80 percent) have drug and/or alcohol related issues including dependence/addiction. Most offenders (70 percent) are not engaged with school either not enrolled or chronically truant. Most experience family dysfunction and disadvantage, lack positive role models, would have a history of abuse and neglect, and previous involvement with Child, Youth and Family Services. Many may have some form of psychological disorder such as conduct disorder and learning disabilities e.g. dyslexia. At least 50 percent of young offenders are Māori and in some Youth Courts in areas of high Maori population, this could rise to 90 percent (Becroft, 2009)

Becroft further claimed that “every single young boy that we have dealt with has been abused as a child” and there is “a significant overlap between risk factors for offending and poor mental health among young people, so it is unsurprising that the Youth Court sees many people with mental health problems” (Becroft, 2009). Furthermore, in the absence of positive role models youth gangs become proxy family units providing support and meeting social needs for young people who cannot get this from their own families (Auckland Support Network, 2006).

Other research also show that many young offenders who appear in the Youth Courts come from troubled backgrounds or homes where domestic violence has occurred, or have experienced multiple placements within the Child Welfare Services. Many young offenders also experience a range of issues including substance abuse, criminal behaviour, accommodation difficulties, poverty, unemployment, mental health problems, violence, neglect and abuse, and poor education. In a Submission to the Law and Order Select Committee on the Young Offenders (Serious Crimes) Bill dysfunctional families was discussed as follows:

A review of the age of criminal responsibility must not be in isolation, such a review

Must include an inquiry into the role and suggested remedy of dysfunctional families. It is time parents accepted their role in their children's behaviour – their role as part of the problem- and their role as part of the solution (2006: 3.2).

The Ministry of Youth Affairs, (2000) identified a number of risk factors for offending namely:

- Having few social ties (being low in popularity, and engaging in few social activities),
- Mixing with anti-social peers,
- Having family problems, particularly poor parental monitoring of children and negative parent-child relationships,
- Experiencing barriers to treatment, whether low motivation to change, or practical problems such as difficulty in attending appointments due to lack of transport and work hours,
- Showing poor self-management, including impulsive behaviour, poor thinking skills and poor social interpersonal skills,
- Showing aggressiveness (both verbal and physical, against people and objects) and anger,
- Performing and attending poorly at school, lacking positive involvement in and feelings about school,
- Lacking vocational skills and a job (for older offenders),
- Demonstrating antisocial attitudes that are supportive of crime, theft, drug taking, violence, truancy, and unemployment,
- Abusing drugs and alcohol,
- Living in a neighbourhood that is poor, disorganised, with high rates of crime and violence, in overcrowded and/or frequently changing living conditions,
- Lacking cultural pride and positive cultural identity (Ministry of Youth Affairs, 2000).

The pattern of youth offending shows that most young people (75 percent) never offend (Lovell and Norris, 1990; Moffit, 1993). Of the 25 per cent who offend, approximately 80 per cent offend only once or twice but will settle into a law-abiding lifestyle by their mid-twenties (Moffit, 1993). Therefore, only a small number of young offenders are responsible for the greater number of crimes. McLaren (2000) identified correlates associated with young repeat offenders as follows:

- **Early life experiences:**
 - not being cared for as a child
 - having a young parent and parents separating or living apart
 - showing signs of psychological disturbance
 - family having little money, living in many places
 - parental criminality and involvement in the use of drugs
 - harsh physical punishment, physical, sexual and/or emotional abuse
 - witnessing family violence, being a victim of bullying
 - family not knowing where their children were when they went out, or not supervising children's leisure activities
 - not having a relationship with their father
- **Early negative outcomes:**
 - being a problem child at home and school
 - early detected and self-reported offending
 - not being involved in sport, not having constructive spare time occupations
 - doing badly at school, not having school qualifications
 - early involvement in sex
- **Family group conference events:**
 - young person and parents feeling shamed at the family group conference
 - not being remorseful
- **Subsequent life events:**
 - not gaining employment after the family group conference
 - not having a job or close friends since the family group conference
 - not having had some training since the family group conference

(McLaren, 2000).

McLaren further identified a number of risk factors for young people aged six-to-eleven years old who were most likely to go on to commit crimes at ages 15-25 if at this younger age they:

- had previously committed a non-serious offence
- were using alcohol, drugs or tobacco
- were male
- came from a family of low socio-economic status

- had antisocial parents (involved in crime, violence or showing psychopathology)
- were aggressive (verbally, physically), towards people or objects (McLaren, 2000).

For young people in the age group 12-14 McLaren suggests that the strongest predictors of criminal behaviour for this age group once they reached 15-25 years old were (in order of statistical significance):

- lack of social ties (low popularity and few social activities)
- mixing with antisocial peers
- having committed a non-serious offence (McLaren, 2000).

It is noteworthy the way the risk factors change as the young person moves through developmental stages associated with puberty and reaching adolescence. General antisocial behaviour (substance use and non-serious offences) and family factors (poor and/or antisocial parents) give way to interpersonal factors outside the family as the child ages – popularity, social activities and mixing with antisocial peers and adults. Committing non-serious antisocial acts is the only risk factor the two age-groups share. Thus Judge Walsh argued that:

...inserting a separate part of the law for child offenders that would straddle the two models, and decrease the to-ing and fro-ing. The reality is that a young person, from the background of care and protection issues that range back over a long period of time, it is almost wishful thinking to think that in the Youth Court we can deal with those issues. Nine times out of ten whatever youth justice issues there are, there will be care and protection issues as well (NZ Herald, 2010).

These factors converge in very tragic ways that constitute serious risks to the young person, their community and society at large. The New Zealand *Weekend Herald* reported a number of cases that the courts were dealing with in 2009. The age group of these young persons ranged from 12 years to 17 years old. The most chilling case that highlights the convergence of these factors was a 14 year old who was described as ‘clinically depressed’.

He had multiple head injuries, has been sexually abused by family members, had witnessed and been a victim of physical abuse, has hurt animals and sometimes dreamed about his death and murdering people. Apart from all the abuse in his life, another extremely worrying trait is that he loves lighting fires. He set fire to a

shop and stayed and watched until the sirens came. It was his best work yet, he said in his forensic assessment, his 'masterpiece' (Weekend Herald, 2009).

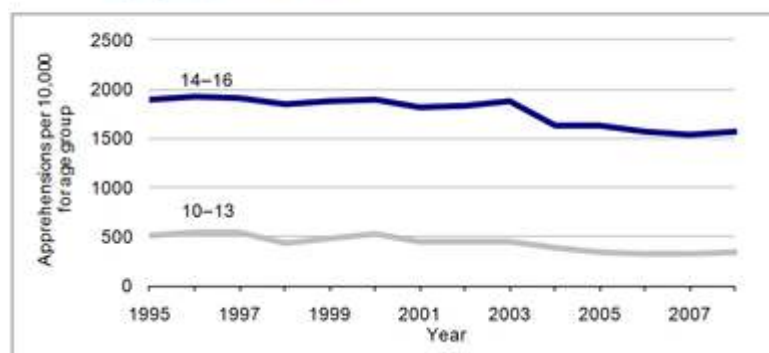
This is a typical example of the young offenders described in the literature above, and responsible for more than 90 percent of youth offences examined in the next section.

What is the nature of youth offences?

The Ministry of Justice (2010) reported trends in Police apprehension rates for children aged 10 - 13 years old, and youth aged 14 to 16 years for the period 1995 to 2008. This is presented in figure 1.

The child apprehension rate was highest in 1996 at 543 per 10,000 dropping to 336 in 2008. The youth apprehension rate was also highest in 1996 at 1,926 per 10,000, declining to 1,572 in 2008. Property offences consistently comprised the largest proportion of child and youth apprehensions during this period. In fact 14 - 16 year old youth had the highest apprehension rate of any age group for property offences. In 2008, 69 percent of child apprehensions and 61percent of youth apprehensions were for property offences. Both children and youth apprehension rates for violence were high with youth apprehension rate for violence in 2008 at 198, which was 13 per cent above the average for the period 1995 - 2008. Aggravated robbery rose 50 per cent, while grievous serious assault rose 44 per cent (Ministry of Justice, 2010).

Figure 1: Police apprehension rates per 10,000 population for non-traffic offences, by age group, 1995 to 2008



Source: Ministry of Justice (2010a) Summary Document

Table 1: Police apprehension rates per 10,000 population for non-traffic offences, by offence category and age group, 2008

Offence category	0 to 9	10 to 13	14 to 16	17 to 20	21 to 30	31 to 50	51+	Over all ages
Violence	1	39	198	305	225	127	18	101
Other against persons	0	8	46	90	60	34	6	27
Property	8	232	964	836	355	119	15	192
Drug	0	8	71	189	120	59	6	49
Against justice	0	1	21	121	87	44	4	33
Against good order	1	41	221	390	172	71	12	82
Miscellaneous	0	7	50	222	77	25	5	35
Overall	10	336	1572	2153	1097	478	66	519

Source: Ministry of Justice (2010) Table 2.1

The number of young people discharged under section 282² increased markedly in the period 1992 to 2008 period from a low of 28 per 10,000 population in 1992 to a high of 104 in 2008. In 2008, 1,208 young people had a proven outcome resulting from a Youth Court order. The rate of young people who received Youth Court orders increased from a low of 41 per 10,000 population in 1992 to a high of 67 in 1999. The rate in 2008 was 64 per 10,000 population. The number of young people who were convicted in the District or High Court for all offences decreased from a high of 370 in 1997 to a low of 174 in 2008, the lowest in the period 1992-2008 (Ministry of Justice, 2010).

Recent Initiatives to address Youth Offending

The Children, Young Persons, and Their Families Act (1989) was amended in 2010 to provide extended options for dealing with youth offenders. Termed ‘A Fresh Start for Young Offenders’ the changes sought to create new ways of addressing issues relating to the worst 1,000 youth offenders with extremely violent offending which the previous system could not address. The 2010 amendment provided greater legislative flexibility and wider sentencing options both to make young offenders accountable but at the same time focus on the underlying causes of their offending. Youth courts have power to order parenting education, mentoring, and drug and alcohol rehabilitation. In addition court-supervised programmes require young offenders to comply with their Family Group Conference plans, which also address the needs of victims, and provides an innovation fund to encourage communities to come up with new solutions to youth offending was established.

² The Children, Young Persons, and Their Families Act (1989) gives Power of court to discharge information.

The Act now allows for residential sentences up to six months, followed by up to 12 months supervision. The youth could be placed in a military style activity group programme. Section 307 (i) provides that:

if a charge against a young person is proved before a Youth Court, the Court may make an order placing the young person under the supervision of the chief executive, or any person or organisation specified in the order, for a period not exceeding 6 months, and (subject to section 29A) imposing either or both of the following conditions: (a) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and for any number of months the Court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre; (b) that the young person undertake any specified programme or activity (CYPF Act (1989) s 307(i)).

Child, Youth and Family Services [CYFS] has worked with the New Zealand Defence Force to develop appropriate military-style residential programmes, targeting about 40 of the most serious and recidivist young offenders. Supported by therapeutic interventions, these camps are not designed to punish, but rather to train young offenders about personal responsibility through developing self-discipline. The camps are followed up with nine months of mentoring and other programmes to address the root causes of offending such as drug and alcohol treatment, and basic education.

Pre-Court Intervention Processes

The New Zealand Law of Summary Offences distinguishes between young persons and adults. The Children, Young Persons, and Their Families Act (1989) provides for principles of intervention in order to give support and guidance in breaking the cycle of offending behaviour for children and young persons through early intervention.

Early intervention is a form of prevention. The Youth Justice system aims to identify persistent offenders and enter them into effective intervention programmes. There is some disagreement among Australian researchers about the best age to identify persistent offenders. An analysis of cost effectiveness undertaken by Coumarelos (1994) concluded that intervention after the first court appearance is not cost-effective. She argued that the greater proportion of young people will turn out to be non-persistent offenders and leave the justice system at first appearance. She suggested that chronicity of offending become clear only after a number of appearances (often taken as five). However, Coumarelos did not investigate the possibility of using risk prediction

strategies to identify persistent offenders even at first court appearances. Focusing on high risk young people at an earlier stage in life provides the greater impact and eliminates future appearances in court.

Intervention programmes in Australia are similar to New Zealand. Programmes such as the treatment of child sexual assault offenders under NSW Pre-trial Diversion of Offenders Act (1985) allow for youth offenders who successfully complete the course of treatment to have charges not proceed to finality. The South Australia Young Offenders Act (1993) s12 provides for the child to be dealt with by a family conference rather than the courts; and the West Australia Young Offenders Act (1994) s25 allows certain matters to be referred to a juvenile justice team for determination rather than the criminal justice system.

Early intervention seeks to assist the young person to address the problem before they develop into serious issues. It aims to enhance the offender's development, provide support and assistance to the family and to maximise the potential positive outcome for the young person, their family and society. Early intervention may focus on the young offender alone, their family or both; it may be remedial or preventative. The success of intervention depends on a number of factors including the time and thought spent on its development as well as the efforts to ensure that it is implemented as intended (Nicholas & Broadstock, 1999). These factors support the young person to succeed in their personal efforts, hold them accountable for their behaviour, and support them to develop skills and values.

Effective interventions are multifaceted and multi-modal, that is they target multiple causes of offending using multiple techniques. McLaren (2000) has indicated that good outcomes need good people, that is, mentors who are able to relate to young people. It means making sure that young offenders spend most of their time with people who respect the law and provide good role models for them. The Youth Court relies on auxiliary personnel to assist them in directing young offenders from the criminal justice system. The following section discusses the support given by these auxiliary personnel.

Family Group Conference Coordinator

Family group conferences employ participatory negotiation processes to provide pre-court interventions for young offenders. Family group conferences are the fulcrum upon which the restorative justice plans and recommendations are made and submitted

to the Youth Court for approval. Family group is defined by the CYPF Act to include extended family-

- (a) in which there is at least 1 adult member –
 - (i) with whom the child or young person has a biological or legal relationship; or
 - (ii) to whom the child or young person has significant psychological attachment; or
- (b) that is the child's or young person's whanau or other culturally recognised family group (CYPF ACT, (1989) s2).

The court may also require further FGCs to enable it to consider a young offender's progress, and where necessary, may also initiate changes to the original FGC plan. Family Group Conference Coordinators have an important role in facilitating effective outcomes from FGC meetings.

The CYPF Act (1989) s426 defines the duties of the Family Group Conference co-ordinator as being authorised or required to convene or reconvene a family group conference, seek agreement to decisions, recommendations and plans of family group conferences, receive reports and referrals where any enforcement officer believes that any child is in need of care and protection in the case of children between 10 years and under 14 years of age. The coordinator also meets with the police to explore alternatives to instigating criminal proceedings. The Act states that before convening any family group conference the coordinator shall:

- (a) consult with a care and protection resource panel, and
- (b) make all reasonable endeavours to consult with the child's or young person's family, whanau, or family group in relation to:
 - (i) the date on which, and the time and place at which, the conference is to be held: and
 - (ii) the persons who should attend the conference, - and
 - (iii) the procedure to be adopted at the conference, and subject to section 22 (Persons entitled to attend), shall, so far as it is practicable and consistent with the principles of this Act, give effect to the wishes of the child's or young person's family, whanau, or family group in relation to those matters. (CYPF Act (1989) s 21 (a)).

The coordinator submits the report of the conference to the social worker. The plans and/or recommendations contained in the report are presented to the advocate representing the child or young person, where appropriate to any such persons who may

be directly affected by any decision, recommendation, or plan detailed in the report such as iwi, social services or cultural social service with respect to the child or young person (CYPF Act (1989) s30). Because of their critical role in the success or failure of the Family Group Conference, FGC coordinators' personal skills, training and experience are important attributes.

The Role of the Police

The Act requires that a formal Police caution may be given by a Police Officer normally above the level of position of sergeant (CYPF Act (1989) s211 (2) (b)). The Police Officer in charge of the case will normally attend the family group conference to support the implementation and monitoring of the FGC plan. The active engagement of the Police Officer reinforces to the young person the seriousness of the offence. In determining whether to instigate criminal proceedings, the Police Officer is required to consider the seriousness of the offence, the nature and the number of previous offences committed by the child or young person. These details help to determine if a warning would be sufficient and/or appropriate.

An arrest may be effected if the Police Officer is reasonably satisfied that the young person constitutes a danger to themselves and/or the public, or to ensure that the child or young person appears before the court; and/or to prevent them from committing further offences, or prevent the loss or destruction of evidence relating to the offence committed. In all instances the child or young person's family as well as the youth justice coordinator are expected to be actively engaged in the process.

One of the objectives of the Family Group Conference is for the young person and their family to understand the impact of their offending from the perspective of the victim. The expectation is that the young person will accept responsibility for their actions, provide an apology and expression of remorse to the victim. The CYPF Act (1989) states that:

(1) every family group conference convened under this Part ... shall seek to ascertain whether the child or young person in respect of whom the conference is held admits any offence alleged to have been committed by that child or young person.

(2) Where the child or young person does not admit the offence or the family group conference is unable to ascertain whether the child or young person admits

the offence, the conference shall not make or formulate any decision, recommendation, or plan if that decision recommendation, or plan cannot be made or formulated without assuming that the child or young person committed the offence (CYPF Act (1989) s259).

However when the offender admits any offence for the purposes of the Family Group Conference, the admission is not binding if the matter has to be determined later in Court. The apology to the victim is not only to acknowledge the harm caused to the victim but to recognise that the behaviour is unacceptable to the community.

The active engagement of the young person's family is significant in achieving successful outcomes for any intervention. When the Family Group Conference discussions have taken place, the professionals and witnesses leave the family and the young person for a private discussion to construct possible legal outcomes and repairing the harm of the offence. The victim's participation is also important in helping the young person recognise the consequences of their offending and has the potential to break their cycle of offending.

Despite its potential, the FGC within the Youth Justice system has its shortcomings. Judge A.P. Walsh argues that:

One of the concerns about the Youth Justice FGC process arises from the fact that at times dysfunctional parents and family members can be part of the FGC process where the focus is on holding a young offender accountable for his or her actions. Often the participants themselves lack the insight as to what has caused that young person to offend and how care and protection issues may be intertwined with the causes of that offending. Sadly, those participants may be the very people who have created the care and protection issues in the first place. Inevitably if these care and protection issues remain unaddressed, it is only a matter of time before the young person repeats offending and ends up back in the Youth Court process, which is then repeated (Walsh, 2011).

Maxwell and Morris also noted five concerns about FGC processes:

The tendency for professionals to take over and thereby undermine the FGC process; the vulnerability of families through a lack of information on both the processes and the possibilities; inadequate protection of the rights of young people at all stages of the proceedings; the failure to ensure that victims are invited, given adequate notice of meetings and informed about what might happen; and the lack of resources and support services to meet the needs of

both families and young people which can undermine the FGC decisions (Maxwell and Morris, 1993).

The Intensive Monitoring Group [IMG] seeks to adopt a rational, measured and scientific approach to the continuing problem of youth offending. Chapter Five examines the formation and function of the IMG within the context of the Youth Court. In the following section we examine restorative justice within the New Zealand criminal justice system. Although not specifically stated in the Act, restorative justice is one of the key underpinnings of the CYPF Act, (1989).

Restorative Justice: A Historical Overview

Restorative approaches to justice administration have ancient origins having been recorded to operate as far back as in ancient Babylon, Egypt, Greece and Rome (Van Ness and Strong, 2002). In these societies, crime was regarded as a breach of the common welfare and “offenders and their families were required to settle accounts with victims and their families” and communities were required to take responsibility for addressing wrongs as well as punishing offenders (Van Ness and Strong, 2002). This model of justice administration existed alongside a diverse range of other regulatory practices such as blood vengeance and retribution (Bottoms 2003; Sylvester 2003). Nevertheless restorative practices were “the dominant model of criminal justice throughout most of human history for all the world’s peoples” (Braithwaite, 1999).

Although restorative justice processes are not unique to Maori, they have strong alignment with Maori values such as reconciliation, reciprocity and whanau involvement (Ministry of Justice, 2003). In New Zealand prior to European settlement, Maori employed regulatory processes akin to restorative justice to order the life of their tribal communities. Marae and whanau hui based on ancestral precedent involved victims, offenders and their extended families in participatory negotiation processes, which resembled many aspects of contemporary restorative justice. Maori tribal models of social control required extended families to be responsible for repairing disrupted balances caused by breaches of mana and tapu by making compensation for damage or harm and paying attention to the needs of injured parties and ensuring the correction of offenders (Quince, 2007).

The modern restorative justice movement within Western legal jurisdictions is considered to have begun in Canada in 1974 with the introduction of victim-offender

reconciliation programmes (Peachy, 1989). Victim-offender reconciliation programmes brought convicted offenders into face to face meetings with their victims frequently to explore interpersonal reconciliation and build plans for reparation (Alper and Nichols, 1981). By 1995, over 100 victim offender reconciliation programmes had been established in Canada, the United States of America, England, Germany, France, Finland and Holland (Zehr, 1995).

In New Zealand the Children, Young Persons, and Their Families Act (1989) established the first legislative authority for employing restorative justice processes in New Zealand's regulatory systems by authorising the use of family group conference. These processes provided a significant cornerstone for administering the Youth Justice system in New Zealand. They helped to influence the development of restorative practice by providing opportunities for the Courts and Police to implement the aims and objectives of the Children, Young Persons, and Their Families Act (1989) (MacRae and Zehr, 2004).

At the time of their introduction into the New Zealand Youth Justice System, Family Group Conferences were not recognised as restorative justice. These processes were intended to facilitate the implementation of a justice model for youth offenders, which required accountability for their behaviour and empowered families to participate in decision making processes (Doolan, 2006). During the early 1990s, however, as awareness of restorative justice was introduced into New Zealand, family group conferences were seen to contain elements of restorative justice practice such as encounters between victims and offenders and the empowerment of participants to make decisions following occasions of youth offending.

The outcomes of family group conferences were formulated into plans, which judges were required to accept subject to the sentencing provisions required for indictable offences which are subject to a full-time custodial sentence (CYPF Act, (1989), s248 (b)). Successful completion of these plans enabled diversion from prosecution.

Defining Restorative Justice: the debates

Restorative justice theorists such as Zehr (2002) and Zernova and Wright (2007), assert that restorative justice processes might be facilitated through a variety of models such as victim restorative justice conferences and sentencing circles. These theorists question

the value of establishing complete and rigid definitions for restorative justice. They argue that the essence of restorative justice is not the adoption of one form in preference to another. Rather, restorative justice occurs when facilitation models employ values and principles that are able to achieve restorative justice objectives and outcomes. Hayden (2001), Zehr and Toews (2004), Roberts (2004), Sharpe (2004) assert that these values include interconnectedness, individuality and particularity, which emphasised context, culture and personality, but above all respect (Zehr, 2002).

While restorative justice theorists and practitioners do not agree on precise definitions for restorative justice, attempted definitions usually focus on a process which involves all those affected by harm, injury or damage and aims to repair the harm caused by the offending³. The following three definitions are representative of these attempts to describe restorative justice.

- 1 Restorative justice is:
both a way of thinking about crime and a process for responding to crime. It provides an alternative framework for thinking about wrongdoing which, along with the values and principles underpinning this framework, suggests new ways of responding to offending (New Zealand Ministry of Justice, 2003).
2. Restorative justice is:
a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible (Zehr, 2002).
3. Restorative justice is:
a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implication for the future (Marshall, 2007).

Pre-sentence conferencing appears to be the most common restorative justice process operating in New Zealand. Restorative justice processes may be employed, however, at a variety of different stages in the criminal justice system including after an offender is sentenced and prior to release from prison. Achilles (2004, p.64) noted that “the promise of restorative justice” was the elevation of victims to the position of stakeholders in a justice system that starts immediately from the point of harm. Restorative justice, therefore, empowers offenders and victims “by giving them a sense of inclusion in and satisfaction with these processes and practices; they should enable

³ The Sentencing Act (2002), Parole Act (2002) and Victims Rights Act (2002) contain provisions for restorative justice use within adult jurisdictions. None of the Acts, however, make any attempt to define restorative justice.

victims to feel better as a result of participating in them; and they should hold offenders accountable in meaningful ways by encouraging them to make amends to their victims” (Barton, 2000).

Restorative Justice and the Criminal Justice System

Western state-controlled justice systems such as those in New Zealand, Canada, the United States of America, Great Britain and Australia employ adversarial processes to focus on offenders, their behaviour and retributive outcomes. However, Zehr (2000) argues that retributive and punitive practices fail to reduce offending or provide satisfaction for victims of crime. Retributive theory asserts that pain would vindicate, but in practice punishment was often counterproductive for both victim and offender. Zehr’s assertions are supported by Bakht (2005) who suggests that experience of imprisonment has a negative effect on lower risk offenders and that imprisonment should not be used with the expectation of reducing criminal behaviour.

In most Western justice systems victims are often provided little opportunity for face to face encounters with offenders. In the court victims give evidence and are cross-examined by the offender’s legal counsel, whereas defendants (offenders) usually do not have to speak. In addition, legal instruments such as non-association orders encourage remoteness between victims and offenders and allow contact between the two parties only through legal counsel. Restorative justice, on the other hand, provides an alternative paradigm for dealing with criminal offending. Restorative justice regarded crime to be a fundamental violation of people and interpersonal relationships, and restorative processes aim to heal the harm caused by crime and put right these wrongs (Zehr, 1990).

Victims may suffer from the impact of offending in a variety of ways including anger at the intrusion on private property, inconvenience from damage or loss of personal possessions, emotional trauma following the stressful event and lack of remorse from the offender. Restorative justice provides an opportunity for face to face encounters that do not take place within adversarial court processes. People harmed by offending behaviour are able to confront the perpetrators regarding impact of their actions. In return, offenders are given the opportunity to express genuine remorse accompanied by a sincere apology which would help to ease the hurt of the offence. Restorative

outcomes are concerned with restoring the victim to the position they were in before the offence occurred. While such restoration is not always possible, a variety of actions could be taken by offenders to help heal past wrongs including paying for the repair of damaged property, contributing towards medical expenses and other forms of reparation to the victim. These actions are often more significant for victims than sentences of imprisonment or the payment of fines to state authorities.

By facilitating these processes, restorative justice contrasts markedly with retributive justice solutions such as imprisonment for dealing with crime. Restorative justice seeks to address the causes of offending, focusing on repairing the harm caused by the offending through dialogue and negotiation among the parties, whereas retributive justice focuses on punishing the offender, and is marked by adversarial relations between parties. Restorative justice provides opportunities for members of the community to take a more active role in dealing with the underlying causes of offending. Maxwell observes that restorative justice aims:

to repair the damage created by criminal offending and restore the balance of relationships within the society. In practice, this can be achieved by the participation of all parties affected by the offending in a process that aims to ensure that wrongdoing is acknowledged and harm is repaired. The aim of the restorative justice model is also to create conditions that can lead to the (re)integration of all within the social group. Such an approach is seen as necessary if hurts are to be healed and wrongdoing forgiven” (Maxwell, 2007).

Van Ness further notes that:

Restorative justice seeks to repair the harm caused by crime and misconduct. This is best done by the affected parties as they meet voluntarily to cooperatively find a resolution. When that happens, transformation of people, perspectives and structures can follow (Van Ness, 2005).

Bazemore and Walgrave (1999), Zehr and Mika (1998) describe Restorative Justice as repairing harm that has been caused by a crime, and this means working to heal victims, offenders and communities that have been directly injured by the offending. Under the restorative justice umbrella there are also differences between those who see restorative justice as, essentially, a form of diversion from the formal criminal justice system, and those who view it as a potential alternative to that system and thus as something that could supplant the existing system in toto (see Bazemore & Walgrave, 1999). Whatever the specific differences, it appears that the central thread underlying restorative justice is the spirit within which ‘justice’ is undertaken – the intent and outcomes of the process is

meant to be primarily oriented toward repairing harm that has been caused by a crime, and this means working to heal victims, offenders and communities that have been directly injured by the crime (Bazemore & Walgrave, 1999a; Zehr & Mika, 1998).

Sharpe argues that restorative justice reflects self-determination at a community level by:

- putting key decisions into the hands of those most affected by crime;
- making justice more healing and transformative;
- reducing the likelihood of further offending;
- providing greater satisfaction for victims;
- enabling offenders to understand the impact of their behaviour on others and take responsibility for these actions; and
- allowing actions for repairing harm, addressing the causes of offending and providing closure for victims and offenders (Sharpe, 1998).

Marshall further argues that retributive justice systems could benefit by moving as far as possible towards processes that are restorative, noting that:

It is now commonplace (and not to be politically expedient) for restorative justice proponents to emphasise that there will always be a need for retributive mechanisms, that restorative justice is not an alternative to retributive justice but a complement to it (Marshall, 2007).

Thus Zehr suggests that restorative justice is “neither a panacea nor necessarily a replacement for the legal system” or “an answer to old situation even in an ideal world” (Zehr, 2002). State controlled justice systems and restorative justice practice are not necessarily incompatible with each other. As far as possible, restorative justice “can and should be integrated... with criminal justice as a complementary process” that improves “the quality, effectiveness and efficiency of justice as a whole” (Zehr, 2002). Nevertheless, within this restorative system the state still has a continuing role to protect and provide safeguards for the outcomes of restorative practices. In some cases, restorative practices and solutions might not be possible while in others, genuinely restorative processes and outcomes might be attained. Barton notes that the status quo disempowers the primary stakeholders in the criminal justice disputes:

Namely, the victim, the offender, and their respective social circles of support and care, which, typically, consist of their respective families, close friends and colleagues”. These people were the primary stakeholders because they had the most to gain or lose from a criminal justice intervention and its outcomes. Their empowerment to meet, discuss and resolve criminal justice matters should be sought, not because they had the most to gain or lose from the success or failure

of the intervention, but because, they happened to have the best chance of achieving three important objectives, which “should be pursued in any criminal justice response:” eliminating the underlying cause of the unacceptable behaviour to prevent re-offending; reducing, as far as possible the harmful consequences of the criminal wrongdoing to the victim; and helping the parties achieve closure (Barton, 2000).

Restorative Justice and the Youth Justice System

Although the CYPF Act (1989) did not mention the term restorative justice, this legislation provided for the implementation of restorative justice in New Zealand’s youth justice system. The Act aims to promote the wellbeing of children, young persons and their families, and requires young people to be held responsible for their offending behaviour and to ensure that they are dealt with in a manner which provides them with the opportunity to develop in “responsible, beneficial and socially acceptable ways” (CYPF Act (1989) s4). Seven goals underpinned these intentions:

- Diversion of young people from the courts, which prevents them from being labelled as offenders;
- Accountability, which requires young people to accept responsibility for offending behaviour;
- Participation of victims in decision making processes;
- Involvement, empowerment and strengthening of families, as an important aspect of decision making processes;
- Consensus decision making in which agreements would be reached by participants and not imposed by professional workers;
- Cultural appropriateness, which allows for cultural processes to be employed to suits the needs of participants; and
- Due process, which requires preservation of the young person’s rights (CYPF Act, (1989) s4:1(a-g); MacRae and Zehr, 2004).

The legislation provides for family group conferences to be employed as instruments for meeting these objectives, provide family groups with the opportunity to take leadership roles and work with state-employed professionals to resolve concerns and formulate plans to promote the wellbeing of young offenders (Doolan 2008; CYPF Act (1989) s245-271).

Family group conferences were originally intended to function within a justice model of regulatory control for young offenders. Doolan (2006) asserts that while family group conferences contain elements of restorative justice and participants might experience

restorative outcomes, these processes were not designed with restorative perspectives in mind. Family group conferences were defined in law to “recognise different cultural understandings of family, uphold dignity for victim and offenders alike, and restore connectedness for offenders and their whole families (Doolan, 2006).

Despite Doolan’s claim, family group conferences are conducted on the presumption that victims, offenders and their respective communities of interest are all affected by offending behaviour. Family group conferences employ negotiation processes to encourage young offenders to face the consequences of their actions, accept responsibility for their behaviour and become part of a process of making recommendations about their disposition.

They allow for flexibility of process to resolve these issues and give community representatives an opportunity to speak on behalf of broader community as well as participate in developing conference agreements. They also empower families and involve victims as well as communities of interest in these decision making processes. The restorative justice processes contained in family group conferences provide an opportunity to implement diversionary processes for young offenders. Satisfactory completion of conferences results in a discharge from further engagement with the court and cessation from further engagement with the youth justice system.

Although family group conferences were designed to operate within a justice model for young offenders their focus on processes of consultation, negotiation and participant empowerment places them within the parameters of restorative justice theory and practice (Maxwell and Morris, 1993). It is within the context of the restorative justice processes that the Intensive Monitoring Group [IMG] operates to work with young offenders to be accountable for their offending. Chapter Five critically examines how the IMG functions but the methodology and methods of data collection used in this study are explained in the following chapter, Chapter Four.

CHAPTER FOUR

METHODOLOGY AND DATA COLLECTION

Methodological approaches

This study is qualitative. The word ‘qualitative’ denotes an emphasis on the qualities of entities, meanings and processes that are not experimentally examined and measured in terms of amount or frequency. The focus of this thesis research is to understand how the Intensive Monitoring Group [IMG] works as a restorative intervention with young people who come before it.

A qualitative approach has been chosen because it is interpretive, pragmatic, and grounded in the lived experiences of people (Marshall & Rossman, 1999). Qualitative research therefore raises questions about the nature of humans and questions social policies that enhance the well-being of humans (Higgs, 1997). This means it deals with issues of feelings and emotions of people as opposed to quantitative approach which is mainly about figures and quantities (Polit & Beck, 2004). To this end the objective is to undertake a systematic inquiry to help understand the nature of transactions (Polit and Hungler, 1995) that take place within the framework of the IMG with young offenders that enables the reduction of recidivism.

Within the qualitative approach this study uses phenomenology to help understand the structure and essence of the phenomenon [IMG] (Polit & Beck, 2004). Phenomenologists believe that knowledge and understanding are embedded in our everyday world, and that truth and understanding of life can emerge from peoples’ life experiences. In other words they do not believe knowledge can be quantified or reduced to numbers or statistics (Walters, 1995). Many early philosophers found the scientific method too reductionist, objective and mechanistic, therefore they advanced phenomenology as a preferred method to discover the meaning of life experiences (Spiegelberg and Schuhmann, 1982). Phenomenology thus enables this study to develop a more holistic understanding of the actual lived experience of those who participate in the IMG (Polit and Hungler, 1995). In this study, the phenomenological approach allows and presents an opportunity for participants to share their lived experiences and gain understanding of the functions and effectiveness of the IMG as a restorative intervention with young offenders.

Data collection

The primary data was collected using court observation by the researcher at which field notes were made of the operations of the IMG; semi-structured interviews with the key participants in the IMG, namely the IMG Judge, the IMG social worker, the IMG prosecutor, the IMG forensic social worker from Youth Horizons, two barristers working as youth advocates with the IMG; and analysis of documents relating to the purpose and functions of the IMG. The study did not interview any of the young persons coming before the IMG. While it would have been useful to speak with the young persons to understand their perspectives on functions and effectiveness of the IMG, this study was not necessarily an evaluation of the IMG, but rather an attempt to understand the perspectives of the IMG professionals working with the young people within a restorative justice framework. Moreover, as the majority of the young offenders coming before the IMG were minors under the age of 18 years, there were a number of ethical considerations associated with researching them directly. Following extensive consultation it was agreed that this would not be necessary.

Case Study

In order to understand the context of the work undertaken with young offenders the study focused on three young offenders who were undergoing the IMG process. This consisted of sitting in the IMG court when these cases were being heard by the judge as well as observing all the processes that went on between the judge and the professionals before the young person appeared in court before the judge. The objective was to undertake an empirical inquiry into how the intervention was organised among and between the professionals working with the young person, and the young person's responding appreciatively in body language and dialogue with the court's direction, whereas in the standard Youth Court the reaction was less noticeable.

Case selection

Information-oriented [purposive] sampling was used rather than random sampling. Three cases were chosen to enable the study more fully understand the complexity of the process, and also to have some form of representation from the different groups of young offenders by gender, age and ethnicity. It was also important to select cases for

their validity in terms of collecting accurate information at the three court observation sessions.

Case Study One was a 14-year old young Tongan girl who had drifted in and out of care due to circumstances at home and within her family, committed a number of offences but was not involved in serious offending. Case Study Two was a 17-year European young person who was amongst the group of those unresponsive to any sort of rehabilitative intervention. Case Study Three was a 15-year old Maori young person who had been involved in a number of offences and was influenced by antisocial peers and home and community environments. Each case study was selected because the quality of available information was more likely to clarify the deeper causes behind the offending problem and its consequences rather than how frequently the offending occurred.

The case studies were empirical inquiries that investigated the phenomenon of young offenders and recidivist juvenile offenders within their real life context. The case studies of those young offenders were typically qualitative in nature and focused on developing an in-depth rather than a generalizable understanding.

There was no direct contact between the researcher and the case study youth offenders. All information was obtained from interviews with the professionals and observations of the IMG Court sessions. The final interview with the IMG Social Worker was conducted 18 months after the first court observation, and at least 6 – 9 months after all three case study young persons had completed their FGC plan and treatment programmes.

Individual interviews were audio recorded and transcribed. Data analysis and data collection were done concurrently in order to allow the researcher some flexibility to address more pertinent questions that were generated as the research project began to take shape. This was done and achieved by talking to different professionals and the presiding IMG Judge, and in some cases going back to the professionals for follow up interviews to cross check information.

I worked closely with my supervisors for guidance and support on matters of facilitation, maintaining neutrality during interviews and respect for the participants' views and values. During the discussions, all relevant major points were noted and the researcher compiled preliminary summaries after each interview.

Three court observations were undertaken. The first was to enable me become more intimate with how the IMG works and identify possible cases for intensive case study. Eight cases were observed including first meeting with the IMG Judge to be briefed on the nature and processes of the IMG. This was followed by observation of the judge meeting with the team of professionals, before observing the IMG in full session. Two further observations were conducted, each one month apart respectively. Each of these started with the judge meeting with the team of professionals and followed by the open IMG Court.

Data Analysis

Data analysis and data collection were done concurrently to enable a deeper understanding of the issues raised in the research and an opportunity to further develop issues in interviews and observations as the data collection progressed. Key themes arising from the data were identified to help understand their patterns, classes and characteristics as the research unfolded (Schatzman & Strauss, 1973). The emergent themes from the analysis, notes and summaries became the foundation for clustering the data.

The research followed Marshall and Rossman (1999) six-stage process of organising data. These six stages are as follows:

1. Stage One: Organise the data. This was done at the end of data collection. This was achieved by reading through the transcripts several times in order to comprehend it and to begin to reduce it into readable formats. This process compacts the data and allows the researcher to capture important and relevant information without highlighting only the interesting and vivid events (Miles and Huberman, 1994).
2. Stage Two: Generate categories, themes and patterns which came out as a result of continued immersion in the data. This consists of identification of categories, themes and patterns which become ‘baskets’ into which information is placed (Marshall and Rossman, 1999).
3. Stage Three: Data coding. This is the stage of “formal representation of analytical thinking” (Marshall and Rossman, 1999) where the different themes, patterns and categories are allocated codes that identified them for further analysis. As the process of coding continued, more relevant

data was generated, as further comprehension of data was achieved. Different codes were used to identify similar patterns within the text.

4. Stage Four: Testing emergent understandings in relation to the research question being explored. This is the point where the research findings are discussed in the context of extant literature to identify similar and contrasting patterns and fit them into the general discussion as necessary.
5. Stage Five: Searching for alternative explanations for patterns that were apparent in the research study and then presenting an argument that linked the patterns to previous research. At this stage the study presents the most conceivable explanation of the findings and offers assertions about the data, provides substantial evidence for those assertions, and builds a logical interrelationship among them and related assertions to future research.
6. Stage Six is the report writing where the research information is interpreted and given meaning and shape.

The study was undertaken over a period of three years from 2009 to August 2012. This length of time was deliberate to provide opportunity to follow the progress of the young offenders for at least six-to-nine months after they had completed their treatment to enable a more accurate reflection of the effectiveness of the IMG intervention on the young offenders' recidivism. The outcome of each of the three case studies is reported in Chapter Six. The next chapter explains how the IMG works, and the role of the professional team that supports the intervention.

CHAPTER FIVE

HOW THE INTENSIVE MONITORING GROUP WORKS

Therapeutic jurisprudence as a framework for the IMG

The Intensive Monitoring Group [IMG] came out of the original plan to set up a Youth Drug Court in Christchurch to provide early intervention for drug dependent young offenders appearing in the Youth Court. The objective was to reduce crime associated with drug and alcohol use by addressing the underlying causes of individual youth offenders, their background and social problems, provide support to their families through a collaborative approach with offenders' families that does not happen with the conventional criminal system. This comes within the theoretical framework of therapeutic jurisprudence. In the context of the youth drug court, Judge Walker suggested that therapeutic jurisprudence would consist of:

the use of the court and sanctions available to it in conjunction with treatment programmes to effect a reduction in reoffending. It is a new role for a judge attempting to change behaviour and acting in a preventative way by intervention” (Walker, 2000)

David Wexler described the underlying philosophy of therapeutic jurisprudence as: a perspective that regards the law as a special force that produces behaviours and consequences. Sometimes these consequences fall within the realm of what we call therapeutic: other times anti-therapeutic consequences are produced. Therapeutic jurisprudence wants us to be aware of this and wants us to see whether the law can be made or applied in a more therapeutic way so long as other values such as justice and due process, can be fully respected (Wexler, 1999).

The therapeutic approach is supported by Miller and Flaherty (2000) who argue that clinical experience and treatment outcome studies strongly suggest that coercion is fundamental to addiction treatment and favourable outcomes from therapeutic intervention. The alcohol/drug abuser must be given an opportunity to feel, face or experience the ‘consequences’ of their addiction before the motivation for treatment can be developed. Effective therapeutic intervention and long-term recovery are more likely to succeed if avoiding ‘alternative consequences’ are contingent upon compliance with addiction treatment. Wexler suggests that the use of ‘behavioural contracts’:

where the offender enters into an agreement to follow certain protocols, for example, a judge deciding whether to grant probation could conceptualise the conditional release not simply as a judicial order but as a ‘behavioural contract’ where the offender’s involvement and participation are an integral part of the process. Where the hearing for such an offender serves as a forum of public commitment, that perhaps even family members may attend, compliance is likely to be enhanced (Wexler, 2001).

The Law Commission suggested that adopting a therapeutic approach focused on problem-solving provided a number of positive outcomes:

One benefit of using a problem-solving approach in criminal justice is that offenders who complete treatment programmes are less likely to reoffend than if they were sent to prison. They are held accountable and face swift consequences for failing to comply with court orders, the cost of providing treatment is less than the cost of imprisonment; and these courts promote an effective co-ordination of services (Law Commission, 2004).

When the young offenders successfully complete their treatment and other activities recommended in the Family Group Conference plan they are discharged without conviction. The Youth Court Judge plays an important role in the overseeing and monitoring of the young person on a regular basis.

It is within the framework of therapeutic jurisprudence that Judge Fitzgerald set up a similar programme in Auckland focused on youth offenders generally, rather than simply drug offending. The initial concept was to set up a drug court similar to the Christchurch programme, but the lack of support from key stakeholders including the Ministry of Justice and Community Alcohol and Drug Service [CADS], led to a change in strategy. His view was that in order to effectively address the pattern of youth offending it was best to work with young offenders before they became hardened criminals. By bringing together a team of professionals in their fields of expertise they work with a selection of young offenders in the context of the Intensive Monitoring Group. Using therapeutic jurisprudence combined with restorative justice process they support young offenders to address the root causes of their offending. Judge Fitzgerald argues that beyond the lack of support for the drug court a number of other factors were triggers for setting up the IMG Court. The following long quote from Judge Fitzgerald summarises these key factors:

I guess the other thing was from my point of view sitting in the Youth Court when I came to Auckland was, it was so frustrating that justice simply wasn’t being done.

It wasn't unusual in these days to 2005 to 2006 to have up to 50 in a list. The Youth Court was run really like a district court for young people, just high volume in conveyor belt pumping the cases through, lack of attention, with no more attention given to a case that was very complex, to one that was straight forward. For example, it was a great concern to approve a plan that read very well on paper setting out all the therapeutic interventions that were needed but have the case come back three months later or six months later to find that absolutely nothing had happened. Some often relatively small issues had arisen that caused some part of the plan to falter and nobody had the will to do anything about changing that, and so something really needed to be done to address that concern. The other thing was that the lists themselves were just really inefficient, those numbers were so big a lot of the time because of churning cases through for no particular purpose. One of the things that I was finding talking to people in Auckland was that one of the reasons that some were supportive of the Drug Court was a feeling that in Auckland the issue underlying a lot of offending in serious cases went deeper than just drug related issues. What we were seeing, and it's no secret, was that one of the frustrations was that plans approved by the court and agreed to by Family Group Conferences were very often not being implemented and the more complex were the worst. The factor in that was the – I guess the lack of social work resource out there to adequately monitor things and keep them on track. So a factor in setting this up was to have a means of monitoring not just the young person's progress in what they were doing but those who were meant to be providing the services, doing it in a collaborative way as part of a team but leading to address this significant issue that things weren't happening out there in the real world the way they were meant to be and we needed a better method of seeing that that happened (Interview, 04th October 2011).

It may be argued that young offenders require rehabilitative intervention, and it is the state's responsibility to provide for the care, custody and supervision of those on aftercare or parole. The Youth Court therefore walks the fine line between holding the young offenders accountable for their offences, protecting the public, and providing frameworks for their rehabilitation and reintegration into society.

The aim of this thesis is to investigate how the Intensive Monitoring Group application of restorative justice processes within a therapeutic jurisprudence framework enhances the rehabilitation of young offenders in its efforts to reduce recidivism.

The CYPF Act (1989) as a starting point for the IMG work

The CYPF Act (1989) seeks to promote the well-being of children and young persons through alternative interventions other than criminal prosecution recognising the harmful effects of imprisonment except in those cases where it is clearly in the public interest to do so. Section 208 (a) provides 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 (CYPF Act (1989) s208 (a)).

This recognises the basic principle that most young people will grow out of offending behaviour and when kept out of prison and with appropriate interventions, they are most likely to keep out of the criminal justice system. On the other hand custodial situations tend to dramatically increase young offenders' chances of incarceration in adulthood (Submission 14, New South Wales Public Defenders office, 2007; Hamilton and McKinney, 1999).

Furthermore, the CYPF Act (1989) provides that to ensure their safety 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 that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways (CYPF Act (1989) s4 (f)).

It is within the context of these provisions that the Intensive Monitoring Group was set up within the Youth Court to balance the requirements of justice with the welfare needs of young offenders and to divert them from incarceration.

The Intensive Monitoring Group charter states that its purpose and goals are to:

- (a) Honour and apply the objects and principles in The Children, Young Persons, and Their Families Act (1989)
- (b) Hold the young person accountable and ensure victims' issues and interests are addressed
- (c) Treat the underlying cause of the young person's offending behaviour
- (d) Find solutions that are strength-based, child-centred, family-focused and culturally appropriate
- (e) Promote and maintain inter-agency co-operation and accountability

(f) Keep communities safe by reducing recidivism (IMG Charter, 2009)

Judge Fitzgerald argues that due to the number of young people going through the system the youth court is not able to provide the individual attention and monitoring to effect behavioural change of young offenders:

the Youth Court was run like a district court for young people, just a high volume in 'conveyor belt, pumping the cases through, lack of attention, with no more attention given to a case that was very complex, to one that was straight forward (Fitzgerald, Interview, 04th October 2011).

To effect the desired behavioural change that addresses the recidivism of young offenders requires regular and constant monitoring by specialist professionals who may not be available within the general Youth Court system. Moreover, because of family dysfunction and other negative factors such as peer influences, parental neglect, substance abuse and exposure to violence which all contribute to youth offending, (Loebar and Farrington, 1998) part of the process of rehabilitation is to create an alternative environment to the one the young offender comes from.

Judge Fitzgerald further argues that in the case of Auckland being a big city the problems were magnified because of the complex mix of factors including access to service provider agencies, high caseloads, and the high and the complex needs of the young offenders themselves. Thus for the young person's problems to be addressed, specialised units within the conventional Youth Court system were required. Such units would provide wraparound services that ensure the young person is provided appropriate support as the court works with them to take responsibility for their actions.

For example, in the general Youth Court the FGC may provide plans for the young person arising from a Family Court proceeding in a 'Care and Protection' issue. But unbeknown to the Youth Court Judge due to high caseloads and lack of communication between the various departments and service providers, these plans often fail because of the lack of close monitoring, mentoring and home/family circumstances. A holistic approach through therapeutic jurisprudence using court sanctions in conjunction with treatment and other forms of intervention through expert professionals appears to have great potential to change behaviour and reduce recidivism.

How the IMG Functions

One of the unique features of the IMG is the blend of justice and the welfare of children and young people within the court environment. Welfare is not restricted to material well-being but includes the young person's health, spiritual well-being and happiness. The IMG considers the welfare of the young offender while still requiring accountability for the offence. The accountability is where possible directly to the victim. The IMG is still a Youth Court and the young offender is aware that by continuing to offend, the judge can send the offender to the District Court for sentencing.

Lederman and Osofsky (2004) described a typical court environment for young offenders, which also applies to the New Zealand IMG Court:

Despite the thousands of adults and children who pass through the courts it is rare to witness an expression of caring, love or contrition from a parent to a child. Unlike the positive and hoped for "good enough" parent-child relationship (Winnicott, 1987), the courtroom is rarely the scene of a parental caress, a gesture of concern, or an expression of maternal or paternal pride. The juvenile courts in this country are teeming with dysfunctional families, emotional impoverishment and every conceivable form of deprivation a child can endure (Lederman and Osofsky, 2004).

It is this 'uncaring' environment that the IMG seeks to transform through therapeutic jurisprudence.

How a youth offender is accepted in to the IMG

The young person's case is separated out from the regular Youth Court after a 'non-denial', or a charge having been proved, and disposition withheld in order to monitor his/her compliance, response, progress and rehabilitation in light of specialty services provided over the period of a Family Group Conference plan which includes a treatment plan. All young people considered for the IMG Court are assessed using a standard battery of measures for mental health issues, drug/alcohol dependency and risk of re-offending together with the other information routinely obtained when preparing a forensic report. There is a follow up assessment after six months and again at twelve months after termination of the plan. If the result of the forensic assessment or a medical, psychiatric, and psychological report (CYPF Act (1989) s333) is assessed by

the Regional Youth Forensic Service [RYFS] of the Auckland District Health Board the young person meets the entry criteria above they are eligible for acceptance into the IMG. A copy of this report is presented to the court.

Judge Fitzgerald explains the relationship between the IMG and Family Group Conferences [FGC] as follows:

The forensic assessment (or s333 of the CYPFA report) and treatment plan is considered at the FCG together with other available information. An FGC plan is prepared which includes the means of addressing the victim's needs and concerns, accountability issues, the young person's treatment plan and other relevant matters (educational, cultural reports). The IMG Judge then considers and approve the FGC plan and may offer the young person the opportunity of taking part in the IGM. If the offer is accepted the young person will be remanded on appropriate bail terms to reappear on an IMG Court day, and thereafter as directed on a fortnightly basis. The frequency of appearances enables the IMG to follow the progress of the young person and his/her adherence to the plan (Interview, 04th October 2011).

The Police Prosecutor reported that taking young offenders into the IMG was primarily determined by the level of their offending, usually reserved for those in the high risk area. He stated:

The criteria are medium to high risk of reoffending and secondly you have to have a conduct disorder or alcohol problems. But in saying that the IMG charter is an open document which you can, if we all sit down and agree to modify the criteria to possibly allow others to come in. So previously when we first started there had to be a forensic report sought and identification of issues of conduct disorder and a recommendation that this person would be eligible for the IMG. Once that eligibility criteria is met then Dave Brown Social Worker and the Youth Forensic would go and see them and conduct a suitability interview because as much as they may have the eligibility criteria met, we need to find out 'are you willing to do what is required, Yes, are you willing to come to the IMG every two weeks, Yes', and then we can talk about and place them on. If they say no to one of these, they are out and they do the normal court process (Interview, 27th October 2011).

The Forensic Social Worker confirmed the requirement for high risk, but went further to suggest the requirement for the young person and their family to demonstrate

commitment to the overall IMG process which requires regular on-going treatment plus fortnightly court appearances to monitor progress:

How it works is that we get clients referred to originally from the forensic service which they have concerns about mental health, drugs and alcohol and/or the seriousness of their offending for the IMG eligibility. We might screen all young people who go to the Auckland Youth Court and meet eligibility criteria, the catchment of young people. Eligibility of young people who are considered to be of high risk of reoffending and with severe mental health problem of moderate to severe substance abuse problem. Their high therapeutic needs as well as being high risk. --- It is both the suitability assessment, is there a therapeutic plan which is suitable, is funding available, is there space for the therapeutic plan, the motivation for the young person to (a) participate in the therapeutic plan, and (b) participate in the IMG which is fortnightly court appearances with family motivation for the therapeutic plan and for the IMG, and lastly the professional buy in (Interview, 26th July 2011).

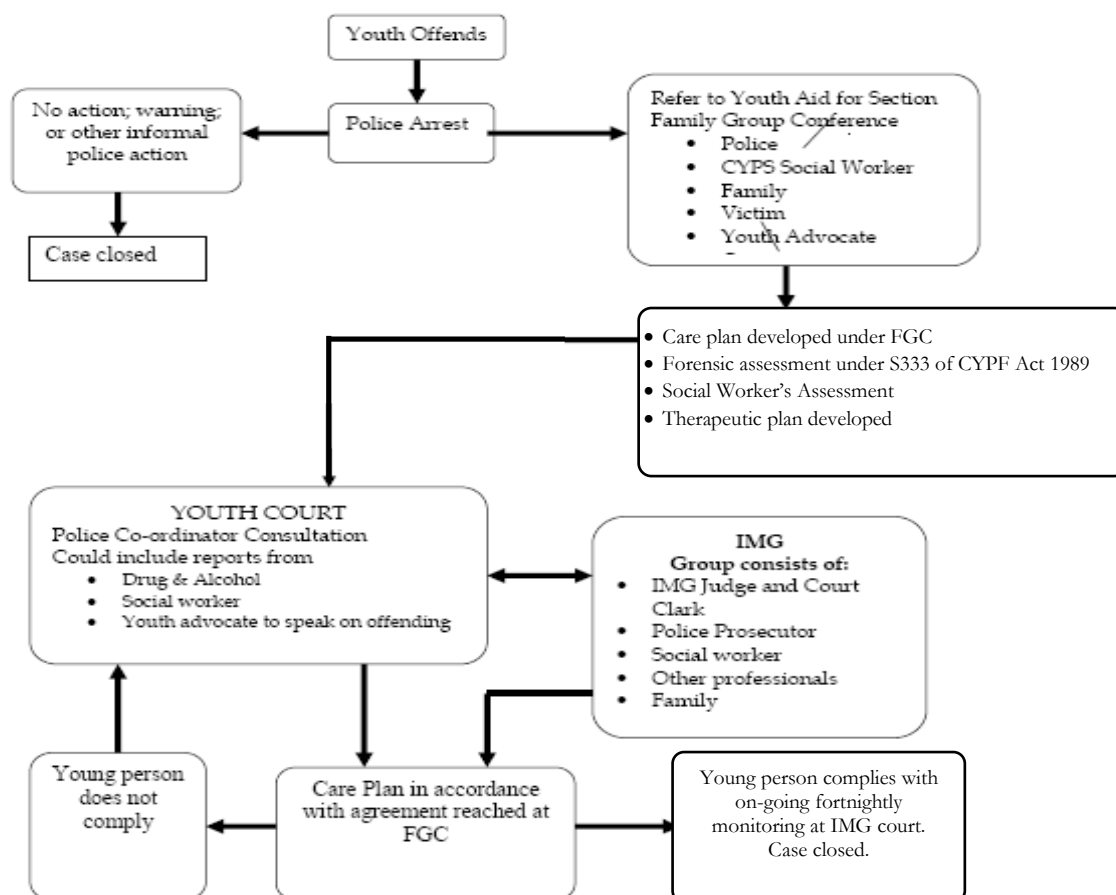
From both publicly available documents and further discussions with professionals it was clear that the initial referral may come from the Family Group Conference, while the main referral comes from the Forensic Mental Health worker which is usually accepted. However, the final acceptance comes from the Judge after consultation with the team of professionals, but it also requires consent from the offender's parents and the young offender. The focus is on 'high risk' offenders to divert them from becoming potential adult criminals entering the criminal justice system. The diagram in figure 2 provides an overview of the process of how the young offender gets into the IMG programme.

The diagram in figure 2 is best summarised by the following description of the process by the Police Prosecutor who described the process of young offenders entering the IMG in very clear terms as follows:

Starting with the young person, once they get charged with the offence and they admit the offending, they are sent off to the Family Group Conference, they come up with the plan. They ask for a forensic screen, identify that there is some sort of conduct disorder, drug related issues and they want to make some recommendation as part of the plan for the therapeutic intervention to help them and they may make a recommendation as well as to this plan should be monitored by the IMG. That plan will then come back to the court and will be approved by the judge and if he agrees to that, this young person should be monitored because of the, I suppose, the quite involved therapeutic needs of this young person, he will

then send that person to the next IMG hearing date and from that day forward they will be monitored (Interview, 27th October 2011).

Figure 2: Relationship between the IMG and FGC in the Youth Court Process



Source: Developed from discussions with the IMG Judge, Fitzgerald, IMG Professionals.

Once the young person has accepted the plan, there is unbroken continuity of involvement of the Judge in monitoring their progress. The IMG requires continued participation and commitment by the young person. Failure of the young person to comply means a return to the normal youth court process and whatever sanctions the court may impose. Successful completion by the young offender of the FGC plan and treatment will normally be the end of the matter as agreed to at the FGC in the first instance.

How the Professional Team Works

One of the key features of the IMG is the assembly of a team of professionals dedicated to the IMG Court. The team of professionals working to support the IMG Court may be described as the ‘backroom intelligence’ of the court. They provide the presiding IMG Judge with in-depth reports from their own observations and counselling of the young offenders in question. It consists of a Clinical Social Worker with the Regional Youth Forensic Service division of the Auckland District Health Board, an experienced social worker from Child Youth and Family, a division of the Ministry of Social Development who has been specially assigned to the IMG, the prosecutor from the police assigned specifically to the IMG team, a member of Youth Horizons Trust, a not-for-profit organisation working with young people with complex behavioural and/or mental health issues, Youth Court advocates for the youth offender appearing on that day. In principle, the police prosecutor is independent of the team but follows the team’s processes.

The name ‘Intensive Monitoring Group’ is well chosen. Monitoring of the young offender *is* intensive. The young person appears at the IMG Court fortnightly to discuss his or her progress with the Judge. In addition members of the professional team monitor the young offender regularly during the intervening period between court appearances, and receive positive comments from the team where appropriate, encouragement and approval for the efforts made. This has a dramatic effect on the young person where concerns for their wellbeing may have been absent throughout their life. This statement is qualified by the observations made by the professionals in the IMG Court. Judge Fitzgerald explained:

Kiri did a presentation for us at one of the quarterly meetings we had about that phenomenon of attachment. Most of the young people involved would have never had an attachment experience, most of the people to whom they got attached in the past would have left them and we had to be quite careful and responsible about how we conducted the court so as not to have the young people attached to the court, because it was felt that often it might be one of the few occasions they had been experiencing, letting them when they had failed and praising them when they did well. (Interview, 04th October 2011)⁴.

In addition, in some cases a dedicated social worker (officially dedicated to that particular young person) will phone daily or drive the young person to special events and appointments.

⁴ See further at Chapter Seven: Addressing the challenge of youth attachment.

However, the assembly of the team of professionals has not been an easy task. Judge Fitzgerald explains that:

I wanted to have someone suitably qualified to be at the court every single list day to be able to provide screening assessments for the issues that we might need to get more in depth reports about. [But] It would be fair to say that the hardest thing to do in the early stages was to create a team. Things work very well now but it was a challenge to start with just because people were coming to the process from different professional cultures and backgrounds and different perspectives. Once that was well organised it is the strength of the process but to start with it was a challenge. Now it's a pleasure to be there and the quality of information provided definitely helps better decision-making and just makes me aware of how much important information filtered out for judges in the conventional process because the way things are measured within the Justice System. The strength of the IMG type of approach is the factors of health and education can bring to the meeting and to see things that I would not from my position be aware of and it's often the case that especially in the early stages when we are looking at progress that we may be concerned about some things not happening the way we thought they were meant to be (Interview, 04th October 2011).

The IMG Social Worker confirmed Judge Fitzgerald's explanation above when he said that:

I will take you back to the very beginning of the IMG. When I first started as a dedicated role and six months into it we were first starting to have honest discussion with the group of professionals. I think with any group of any professional together, it takes time for people to start speaking out and the trust and building relationships, and now we can have some decent robust professional discussions and disagreements about our case management at times and nobody takes it personally and we go out for coffee afterward and it's a healthy way to work. It can get into personalities very quickly but one of the benefits of this process of the IMG is that it's contained. There is a good level of support and we are a group that has been together for over three years now and there is trust there (Interview, 30th September 2011).

The IMG's professionals will receive a list of offenders on the Friday prior to their court appearance on the following Monday. The professional team is also notified of any young person whose presence has been excused by the court and also given a list of

prospective candidates for the IMG Court. The team of IMG professionals meet two hours prior to the opening of the IMG Court. The meeting involves the social worker assigned to the young offenders' case that has been accepted into the IMG. The social worker is required to have filed a written progress report on the young person in relation to compliance with the plan and related issues. This report is prepared prior to the day of the professionals' meeting and court appearance. Each of the professionals receives the report which is a 'Privileged Communication'. The team discuss the best way to handle the young person about to appear. A copy of the Court orders, including the young offender's court appearance is distributed to the IMG team immediately after each IMG Court day.

The dedicated team of professionals, in effect, take the place of the family unit, by support and encouragement, and ask the young person to be honest with the court and do their best to attend to the activities set out in the plan. Their genuine interest in the progress of the young person is felt by the young person who often adopts the group as their own whanau or family⁵. This was apparent in observing the IMG Court when on one occasion the young offender offered the judge some sort of trinket that he had spent some time making. The judge in return showed appreciation of the gift. It was apparent that appreciation for effort was not given at home. It was also observed that on the first appearance at court the young person's demeanour is negative and perfunctory. As the court appearances progress the demeanour often changes, with the young person becoming more responsive, respectful, and showing appreciation of the team's complimentary comments. Each of the members of the professional team has specific roles and report to the judge fortnightly. These roles are explained in the following sections.

Youth Advocates

Where a child or young person appears before a Youth Court they are represented by a youth court advocate. The CYPF Act (1989) provides for lay advocates but in practice a youth court advocate is a lawyer with a practising certificate who is qualified to appear in court. Their role is to show demonstrable interest in the young person, empathy for the social and cultural background of the child or young person, skills and knowledge to assist the young offender, and provide guidance and direction to the other professionals.

⁵ Refer Chapter seven: addressing the issue of attachment.

The Act refers to advocates representing the young person in court but they are involved at the earliest stage of their involvement with police. Youth Court advocates are appointed at the time of questioning by the police, and the young offender has the support of the advocate throughout the process. The advocate is present at the Family Group Conference and further conferences until the Youth Court appearance, if it goes that far. The aim of the intervention of Family Group conferences is to prevent the case going that far. The Youth Advocate at the IMG describes their role as follows:

The role of a Youth Court Advocate needs to relate to young people. You have got to be able to talk to them in language that they do understand. You probably do have to have patience. --- You try and get the police on side and negotiate it beforehand and that's what is beautiful about the IMG. The prosecutor, he is of the same view, we have the one prosecutor, [--], he is very sensible and will withdraw things and is very reasonable about things and you can negotiate and discuss things with him (Interview, 29th September 2011).

Youth Court advocates are appointed by the registrars depending upon a roster. The same principle applies to Duty Solicitors and the system is to be fair and without bias. However, in the case of the IMG there are usually two dedicated advocates who work with all the young offenders. The general expectation is that they have experience working with young people, be able to go to trial if required, take instructions from their clients, but also have an understanding and empathy for the IMG processes as explained by the IMG Social Worker:

Do you have a youth advocate who knows what the IMG is and trusts that they are going to get a good service? And prior to the new legislation that came in last year [2010] in October some lawyers have the attitude, why would my client want to do a 12 month IMG plan when I can probably get them banged up in IG North for a couple of weeks and get a three months supervised order and they can be done with it in five months. Why should I ask my client to be sentenced to double the sentence if not more, double the risk of reoffending while in the court plan and they are going to have to come back to court and at everybody's inconvenience fortnightly; that was how some of the advocates looked at this earlier (Interview, 30th September 2011).

Youth Advocates dedicated to the IMG have a better understanding of the holistic approach which is not simply looking at the sentence, but a treatment plan that addresses the root causes of the offending.

The Police Officer

The role of the police starts at the time they become aware of an offence by a young offender, and the enforcement officer considers the seriousness of the offence, the nature and the number of previous offences committed by the child or young person, and whether to warn the offender or instigate criminal proceedings. When an arrest has been effected, the Police Officer in charge of the case is entitled to attend the family group conference. The Police Prosecutor described his role as follows:

We provide the police input and we are monitoring our FGC plans and we can update them and any bad breaches so my main role was to provide the police perspectives of any concerns that we may have had and just adding it into the conversations and discussions with all the other professionals. --- I think Youth Aid Officers probably work with the families and the young people where the role of the Youth Court prosecutor – we don't get to work with the families, we get to deal with the plan that comes to court (Interview, 27th October 2011).

At the IMG Court, the Police Prosecutor is part of the professional team who monitor the young offender and report fortnightly to the IMG Judge. He would normally have intimate knowledge of the offender's history and current behaviour which he shares with the other professionals. The Police Prosecutor reports on any issues or problems the other team members may not be aware of such breaches and non-compliance with aspects of the FGC plan, if the young person had been involved in any criminal activities in the intervening period, and also provide the police perspectives of any concerns they may have to add to the conversations and discussions with all the other professionals. Having listened to the professional discussions, and assessed the progress made and in consultation with other professionals and the judge, the Police Prosecutor has the power to ask the court to send the young offender on to the District Court should he deem it necessary.

The Social Worker

The role of the statutory social worker is contained in the CYPF Act (1989) s7 (2) (b) (i) and s7 (e) which state that the Chief Executive shall promote –

(i) the establishment of services (including social work services, family support services, and community-based services designed to advance the welfare of children and young persons in the community or the home);

(e) establish procedures to ensure that the cases of children and young persons in respect of whom action has been taken under this Act are regularly reviewed in order to assess the adequacy and appropriateness of that action.

The IMG Social Worker describes his role as providing the required social work support for the young persons:

I think I am the only participant of the IMG who is full-time dedicated specifically to service that. So in some ways, I am not only a statutory social worker but a little bit of a service delivery coordinator as well especially when CYFS have to take an emergency role and it can be quite difficult doing that, to take a facilitatory role at statutory meetings (Interview, 30th September 2011).

Specifically with regard to the young people with the IMG Court and the on-going monitoring, the Social Worker explains that often his role is to support the young person to achieve the positive outcomes of the intervention.

People say to me, 'what is your job like?' I say it is a combination of being a supportive uncle and a grumpy headmaster and I will be supportive of you as long as I need to be but when you need to be in front of the headmaster for a telling off I will tell you off but I won't do it in a way where you will be belittled. I won't do it in a way where I will attack you personally. I will attack your behaviour and say that that is not acceptable and I expect more (IMG Social Worker, Interview, 30th September 2011).

This comes with experience and the fact that the Social Worker had extensive experience over a considerable number of years has enhanced the role in many ways. All the professionals interviewed for this study emphasised that the social worker's role is particularly central to the work of the IMG. One of the Youth Advocates commented that:

The handle that [the Social Worker] has on the young ones, he spends quite a lot of time, he builds up a rapport with them, the support, like the specialist report and that monitoring (28th October 2011).

In fact one of the Youth Advocates suggested that the central figure in the success of the IMG intervention was the Social Worker:

I suppose it's a combination because you have [Social Worker] who is really very experienced excellent social worker and he does things with them (Interview, 30th September 2011).

As indicated by the Social Worker himself the role involves coordination of a number of other people and activities. This often range from working with families of the young offender, supporting and mentoring the young offender, advising and coordinating the work of other professionals such as the forensics, accommodation providers, treatment centres as well as community members who provide opportunities for the young persons to engage in specific experiences such as job training. It often also means being a 'taxi driver' for the young person taking them to appointments to ensure that they keep up with the requirements of the FGC and treatment plans.

The Regional Youth Forensic Services Social Worker

Another key professional in the work of the IMG is the Clinical Social Worker from the Regional Youth Forensic Services of the Auckland District Health Board. As discussed in the previous section, the eligibility criteria for acceptance into the IMG are high risk of reoffending, severe mental health issues and moderate-to-severe substance abuse.

These come under section 333 of the CYPF Act (1989), whereby:

The court may obtain a psychiatric or psychological report under this section in respect of a young person for the purpose of assisting the court in determining

- (a) Whether the young person is unfit to stand trial within the meaning of section 4 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (b) If the young person is insane within the meaning of section 23 of the Crimes Act 1961; or
- (c) The type and duration of any order that it is empowered to make under Part 4; or
- (d) The nature of any requirement that it might impose as part of, or as a condition of, any order that it is empowered to make under Part 4 (CYPF Act (1989), s333).

The report becomes a central feature for the development of FGC and treatment plan and the monitoring of the young person's progress. The Regional Youth Forensic Service Social Science Worker is central to the initial assessment of the young offenders, attends all the IMG court appearances and provides reports to the IMG on the progress of each young offender. The Forensic Service Social Worker stated that:

I will do all the IMG assessments, I do all the suitability assessments if they are eligible I liaise with [IMG Social Worker] you might get three months in your FGC plan, then write up a suitability assessment and that it goes to court and the Judges go from there (Interview, 26th July 2011).

The IMG Social Worker confirmed the centrality of the Forensic Social Worker when he stated that one of the key actors in the IMG is:

the Youth Forensic Service, because the charter says quite clearly in the methodology that they need to have a mental health assessment by way of a forensic screening or a section 333 psychological report where they make a set of recommendations, and they have a broader trial then that they can make statutory recommendations that would be useful for family to go alongside that but primarily their focus is a therapeutic plan. At that point we start to engage in a therapeutic process (Interview, 30th September 2011).

The Forensic Service Social Worker perspective on the progress, attitude, and efforts of the young offender is very valuable to the discussions and decisions of the IMG professional groups, but most especially to the IMG Judge. For example even when the situation seems desperate her intervention tends to provide a context for the final decisions. If her assessment is that the young person should be given more time, or the approach to the intervention should be altered to better meet the needs of the young person, the professional team and the judge usually respect that position. For example, at one of the hearings when the judge was about to make an order, the Forensic Clinical Social Worker suggested that:

Well, could I ask you to be patient on this issue for a while because given where they are up to therapeutically at the moment with this mental health issue or their dependency in fact what they are managing at the moment is pretty good? If you hang in there a while longer we are sure that it will improve (Judge Fitzgerald, Interview, 04th October 2011).

There seems to be very good working relationship between the professionals and the judge, which appear to be based on level of trust developed over a period of time. Other professionals who may not be at every meeting of the IMG Court but who make important contributions to the outcomes of the process include the professionals from service providers such as Youth Horizons and Odyssey House.

The Youth Horizons Trust is a not-for-profit organisation that works with young people with complex behavioural and/or mental health issues such as conduct disorder and antisocial behaviours. Youth Horizons is funded by the Ministry of Social Development and the Ministry of Health to look after young people with challenging behaviour resulting in multiple failed placements and youth justice involvement. Youth Horizons

Trust has been involved in the IMG since its inception. The psychologist is a member of the IMG professional team. Sometimes they are involved in the FGC process for the young persons who come to their service, though this is not always the case. The psychologist described their role on the IMG thus:

Before a young person comes on our programme, the programme supervisor will meet with the young person on their own. The focus of that meeting is really future orientated what are you interested in, what are you good at, what do you want to achieve coming out of our Programme? Because our programme is really about not what you did before but how you're going to make it work now. So that is our focus. With our IMG boys our focus is really about completing the youth justice that will take care of their reoffending. So that would be the initial meeting, then we meet individually with them and their caregiver when they come into the programme we have a process for the young person and their family when they come in to care, so welcoming them to our organisation. In between we have lots of contact. With the IMG boys very often myself or my colleague will transport them to the IMG because I don't have time to meet with them (Interview, 26th July 2011).

Youth Horizons also provides residential and foster care as well as other programmes that seek to empower young people, reintegrate them into their families, and transition them to independent living. This means that for young offenders within the IMG programme they are able to receive a range of services that address their needs, and if required their families may also be part of the programme as many of these young offenders have dysfunctional backgrounds. It is therefore important that they have some form of stability and direction to enable them gain the full benefits of the rehabilitative intervention offered over the period of their IMG monitoring. The psychologist from the Youth Horizons reported that part of their role was to provide a nurturing environment for the children and young person:

What we are really doing is parenting. Parenting is as much about care and nurturing as it is about setting appropriate limits and where young people have failed to have appropriate limits set by their parenting systems they are going to bash against the limits of society (Interview, 26th July 2011).

Conclusion

This chapter has examined how the IMG works, first examining the rationale for setting it up as a special unit of the Youth Court, explaining how a young offender is admitted

to it, and then examining how it functions and the role of the professional team working with the judge to develop and implement the interventions. The next chapter analyses the factors that make the IMG intervention effective, and in Chapter Seven the findings are further examined in the context of extant literature.

CHAPTER SIX

THE EFFECTIVENESS OF THE IMG

The aim of this study is to investigate how the IMG application of therapeutic jurisprudence enhances the rehabilitation of young offenders and reduces recidivism. As a new initiative established in 2007, the IMG is a special unit of the Youth Court that takes on some of the most difficult young people with high and complex needs, primarily serious mental health issues, drug and/or alcohol dependence, and at serious risk of re-offending.

This chapter reports on the findings of the three case studies young offenders nine-to-twelve months after they had completed the IMG intervention. The focus of the analysis is on the effectiveness of the intervention, what factors contributed to the outcomes as reported by the professionals engaged with the young persons. The chapter begins with a brief summary of each of the three case studies.

Case Study One

The first court observation was also Case Study One's first IMG appearance. She was accompanied by members of her family, mother, grandmother and sister. She was confident, co-operative and composed. Her mother read a prepared statement to the court in a plea for her to return home. She was under 'care and protection'⁶ because of family circumstances.

At the second court observation she did not display the same confidence observed a month earlier. She was nervousness and seemed agitated. The judge engaged her and it soon became clear that she was grieving the loss of a friend through suicide, and had asked and was granted leave from counselling sessions. The Judge empathised with her, gave her some words of encouragement, and a book present. The judge also directed the professional team to revisit the situation to ensure that counselling and other personal and family support were provided.

⁶ The Children, Young Persons, and Their Families Act (1989) s.14.

She was involved in drama/performance production and the judge asked for details of date, time and venue to enable him to attend and support her. This helped to establish a personal relationship with her, to take a personal interest in her school and extra curricula activities.

At the third observation she had regained her confidence and it was reported that she was making good progress with the FGC plan and treatment, and was scheduled to graduate from the programme in July and the judge promised that he will organise a graduation gift for her.

Eighteen months after the first observation and 13 months after completing the FGC plan and treatment programme Case Study One had not re-offended. The IMG Social Worker reported that:

She has still got the family links, she is still home every weekend and that's consistent. She is self-sourcing a course in adult training course. She is motivated to do that herself. She has only left school three weeks ago. She is still under care and protection and has had no youth justice matters since IMG. She has huge potential. I am sure it is going to be tapped into at some stage, it might need some more maturity, and it might need a few more years before it is tapped into (Interview, 31st August 2012).

Case Study Two

At first court observation he was supported by his mother and sister. He had been on the IMG monitoring for a few weeks and while things were not great he was making slow progress, although still using drugs. The situation at home had not improved much and the judge imposed further bail conditions including keeping him away from antisocial friends and 9pm-to-7am curfew.

Good progress was reported to have continued at the second court observation and the FGC plan and the treatment were on track. At the third court observation, while there were some few issues developing such as behaviour at school deteriorating, probably due to taking a fall and experiencing concussion, he was still on track

Eighteen months after the first court observation and 14 months after completing the IMG intervention he was reported to be doing very well.

He came onto the programme for a relatively short period of time, did very well, never offended again. A lot of the gains he made were self-directed. I asked him 'What do you want?' He said 'I can't be at home with Mum anymore, I love my mum. I don't want to be separated from my siblings but Dad is no good for Mum and Dad is no good for me

because I want to protect my mother' [Case Study Two] is not a violent boy, he was forced into violence (IMG Social Worker, Interview, 31st August 2012).

Case Study Three

On the first day of observation of the IMG Court Case Study Three was reported to be not doing too well, although had good relationship with mother. There was no engagement with school work [Correspondence School] but judge was asked to keep to the positive aspects of his plan. He had a part-time job and negotiated with the judge to reduce his community service hours to allow him do the part-time work.

At the second court observation Case Study Three had re-offended on the day of the proposed Family Group Conference, which had to be cancelled. This caused a month's delay in the implementation of the FGC plan. The Youth Forensic Services reports were supportive. At the IMG Court appearance Case Study Three told the judge that he had a very stressful week and carefully explained the situation to the judge. The judge listened attentively, after which he encouraged the young man in a friendly but firm manner to keep his FGC plan and treatment.

At the third court observation Case Study Three had moved in at Youth Horizons and was doing very well and was described as being 'cooperative and positive' and had not re-offended.

Despite his extremely difficult childhood and adolescence 18 months after we first observed him in court, and almost a year after he completed the IMG intervention, Case Study Three had not re-offended. The IMG Social Worker reported that:

[Case Study Three] has been neglected from birth so he really struggles with his physical appearance. He has got depression, his mother is borderline personality disorder and he has got some mental health crossover from that (Interview, 31st August 2012).

Despite these challenges the IMG intervention gave him the skills and networks to make a positive change in his life. Post-IMG the Social Worker reported that he:

Has got his girlfriend pregnant. I think probably by now he will just about be a father. He rang me up and said 'I just want to get some advice. He said 'My girlfriend's pregnant and I don't know how to handle it. I don't know if I am going to cope being a father, can you come and see me and can we talk about that?' He is planning to take his girlfriend and his new baby and start a new life with a relative over in Australia. He has finally identified [the Auckland suburb he lives in] is not a good community for him

to be in and that the temptations of his antisocial peers in that community are too strong (Interview, 31st August 2012).

All three case studies had positive outcomes. None of the three had re-offended post IMG intervention. Although we took only three case studies we were able to observe all six young people that appeared regularly at the IMG Court over the four month period of the court observation and the two years that the professionals worked with them. Of the six in this particular IMG cohort, only one had negative outcomes and been back in the youth justice post-IMG. International studies show that four-out-of-five young persons on supervised orders re-offend, and at least half will go on to prison as adults (Lynch, Buckman and Krenske, 2003). While the case study young offenders in this study had only been out of the programme for about 12 months, the findings indicate the potential for long-term positive outcomes from the IMG intervention.

So what are the key factors that make the IMG intervention effective?

Factors contributing to the effectiveness of the IMG

A number of key themes emerged from the data collected from interviews with the judge and the professional team, as well as court observations over the period of the study. These were coordinated service delivery approach, the dedication and accountability of a professional team, on-going regular monitoring, the supportive features of the IMG Court, and case workloads.

Coordinated service delivery

One of the major failings of the youth justice system is the lack of service coordination among the wide range of agencies working with young people. Judge Fitzgerald for example, argued that this was a major factor for the lack of justice in the youth justice system:

One of the things that I have never understood and was a feature of the conventional court was that when I was knocking on doors it was in 2005 or 2006 no-one in any one agency really knew anyone in any other and or certainly there wasn't any relationship between most. Which is a bit silly really. The process really demands some cooperation and coordination of services. So that was one of the problems (Interview, 04th October 2011).

The IMG Court brings together professionals from a range of service provider agencies not only to provide their own service but to discuss how they can work together to meet the needs of the young person. The Social Worker explained that:

One of the keys to the IMG is all the players are in the same room at the same time fortnightly, 26 times a year. All that information is there, up to date information and discussed openly frankly and with trust. If I was trying to do that as a statutory social worker outside the IMG, I would have to organise that meeting, I would have to ring everyone up, I would have to organise like a Family Group Conference, that's administration tasks. I am not paid to be an administrator; I am paid as a statutory social worker with therapeutic intervention (Interview, 30th September 2011)

This is one of the key factors of success of the IMG. Not only are the professionals providing their service, they have the opportunity to share and debate ideas and critique each other's and their own practice to ensure their activities and decisions are timely, as explained by the Psychologist from Youth Horizons:

The third aspect which is very helpful is the forum for inter-agency cooperation. That's very helpful. The close monitoring by the court is very helpful and I think our experience has been, as well with the IMG it is much easier to get decisions from CYF and it is much easier to get decisions made quickly because every two weeks the professionals are meeting and plans being progressed. I think all those things are very helpful (Interview, 26th July 2011).

Thus the professional team meet regularly every fortnight to review the work done over the previous two weeks and plan and develop strategies to move the intervention forward over the following two weeks. This often involves examining the nature and quality of activities as well as the young person's responses and engagement. The process allows each professional to hold themselves accountable as the Social Worker explained:

What you have got to think about in a professional meeting is that it holds them to account. It is one of the greatest things I have seen in the IMG. I am not going to turn up and say to the court in two weeks, two weeks ago I said I would do this – I have forgotten, I dropped the ball. I don't want to be ridiculed by my colleagues. I want to be seen as a professional and everybody does. Professionals are not held to account in a lot of organisations. In other organisations you can get away with being shoddy. You don't get any of that crap at the IMG because no one wants to do it and nobody does it. It is pretty much a good model (Interview, 30th September 2011).

The Police Prosecutor reinforced this when he suggested that where the professionals probably do not measure up the Judge would call them to order:

Judge Fitzgerald initially indicated that one of the purposes of the IMG was to make sure that things happened, and to hold people accountable as well as the young person if they weren't actively participating. So what we do is all the professionals that are involved in that process, in that plan, meet early in the morning and we discuss what has happened during the previous two weeks and the judge monitors the progress of the young person and again if there are issues around some of the plan, if we talk about it, the judge talks to those who aren't doing their job (Interview, 14th October 2011).

As stated by the Police Prosecutor, the issue of accountability does not apply only to the professionals, but equally to the young person. Judge Fitzgerald stated that one of his frustrations with the youth justice system was the failure to effectively monitor the implementation of the FGC plans, which was in fact undermining the integrity of the youth justice system:

When I talked about the frustration of plans coming back and nothing done and that was all aspects of the plan. So if there was reparation to be paid, it wasn't paid, if there was community work to be done it wasn't done. So the accountability of things being done so justice for the victim in terms of the young people actually being held accountable and realising that if they are told to do something, that they have to do it. Also none of the therapeutic things were happening either. So I would say that the concerns were right across the board. One of the things that really bothers me was, what a nonsense it made of the court to have young people in and you talk to them and you say this is what is going to happen, this is the plan, it is going to do this, this and this and nothing would happen. I am pretty sure that was the expectation in life experience that most of young people and their families coming in, that we were full of hot air, that we would never actually follow through on things we were going to do (Interview, 04th October 2011).

Thus another key factor that makes the IMG effective is the on-going regular monitoring of the young person's progress and compliance with the FGC plan and treatment.

On-going regular monitoring

The fortnightly sessions of the IMG Court provide both support and monitoring for the young offender on the programme. One of the challenges faced by the youth justice system is the lack of attention given to the individual needs of each of the young persons. The volume and complexity of the issues faced by young people entering the youth justice system make it difficult to tailor the service to meet individual needs. This often marginalises the most vulnerable youth with deep seated issues that may underpin the offending. Consequently FGC plans often target the symptoms rather than the root causes of the offending. Thus the Clinical Social Worker at the Regional Forensic Services suggested that:

I think that the youth justice taken in the normal court with my therapeutic hat on, I think the plans are not structured. I don't think there is the understanding of why they have offended. The other weakness is that the plans are often looking at the offence rather than the bigger picture, so that, I don't think there is the understanding of why they have offended (Interview, 26th July 2011).

The lack of understanding by the youth justice system and consequently the failure to address the root causes of offending was reiterated by the IMG Social Worker who argued that:

I always think that offending is usually a symptom of something else going on. It's a small minority of kids who are bad as we call them, mad bad, and I think it's a small percentage of kids who are bad. Usually offending in my opinion is a symptom of something else that's gone on right through their life. It's their peers or lack of parental supervision, those are often in there. But I think often the problems are more complex. Most human beings don't wake up or when they are able to walk and start offending. I try to simplify it down for myself and say 'Okay you are stealing cars and running away from the police but what else is it?' I think the purpose of the IMG is to try and answer some of those questions, 'what else is going on for you that is causing this behaviour?' Rather than just treating the behaviour as a symptom of anti-social behaviour, if we are really serious about reducing your risk of offending you probably need to be treated and at least we need to know what the cause is, certainly you need to be engaged in a much deeper level (Interview, 30th September 2011).

This was one of the key issues raised by Judge Fitzgerald who described the situation as 'incredibly primitive', which needed to be changed, and has been central to the work of the IMG:

It was equally a concern for me the ridiculous situation we have, it just seems to me to be incredibly primitive, our justice system that we would just process cases through, treating everything as a justice issue even if it was obvious that the causes of the offending wasn't something a court could order to effect change but was something that required health involvement to properly address. I guess that was one of the issues we wanted to achieve and having a therapeutic type of court to have a good method of screening for the causes underlying the offending to help inform better decisions and FGCs so that the plans were, once we could be more confident that we could address both the offending and the underlying causes, but to ensure that these plans were carried out have a regular meeting to monitor what was happening (Interview, 04th October 2011).

Therefore, from the point of assessment of the young person through the FGC Plan, and treatment, the IMG puts in place a regime of regular on-going monitoring of the aspects of the young person's life. This ranges from family circumstances, school, education and training, peer relationships, health and the overall well-being of the young person. These issues are interrogated in depth at every fortnightly meeting of the professional team with the judge. The key issues raised for each young person are carefully worked through. The judge and the professional team then agree on how to move forward.

When the young person appears before the judge at the IMG Court hearing they are asked to report on their activities relating to the FGC plan and treatment. The judge also asks them about any personal issues they may be facing that may impact on the plan and treatment. It is during these interrogations at the monitoring sessions that previously undisclosed issues become apparent. For example a young person who responded to the Judge's apparently simply question 'how was last week?' with a loaded one-word answer 'stressful' and gives the judge the opportunity to further interrogate the 'stress' factors.

This enables the judge and the professional team to better understand the context of the young person, adjust the plans, and in some cases prescribe alternative approaches. For example, in some cases the judge required the young person to be moved into residential care for a period of time, in another to alter community service hours to accommodate part-time work, and in another required urgent action from CYFS to provide funds for essential personal items for a young woman. Effective on-going monitoring is made possible because the number of cases within the IMG Court is necessarily restricted to ensure the professional team can effectively meet the needs of

the young persons under their care. Therefore, another key factor in the effectiveness of the IMG intervention is the size of caseload.

Size of Caseload

Judge Fitzgerald suggested that one of the reasons for the failure of the youth justice system was the large number of young people coming through the Youth Court system run with 'high volume in conveyor belt pumping cases through'. There is only limited opportunity for individual attention in situations where there may be as many as 50 children and young persons on list. The IMG Social Worker refers to practice which does not provide opportunity for professionals to engage at a deeper level with clients, especially social workers with children and young persons, as 'paid by number social work'. The problem with high caseload is endemic, and cannot be blamed on individual case workers as accurately pointed out by the Youth Horizons Psychologist:

It is not so much about the social worker, it's about the caseloads. I think because with a lot of our cases, just by their nature they are quite complex and where you have a social worker with high caseload all different kind of cases, like babies who are being abused, this young person who has troubles himself actually is low priority, so that's a very important aspect of the IMG (Interview, 26th July 2011).

This is one of the main reasons why the number of cases coming to the IMG Court at this stage is set at a maximum of ten young persons with high and complex needs. The professional team are able to engage with them at a deeper level, on a more regular and sustained basis over the period of the IMG intervention. Judge Fitzgerald noted that while it would be wonderful to reach a large number of young persons the resources were currently limited.

The IMG Court does not have its own independent funding [budget] but is rather funded by the Youth Court. All the professionals with the IMG are seconded from other agencies and organisation. Judge Fitzgerald explains:

We are still operating just within the existing resources that everyone had, but regrouped to accommodate the court. So we didn't for example within the court, we didn't get extra sitting time we just had to reorganise how the work was scheduled to free up the time that the IMG takes. And CYPS were good enough to free up [the IMG Social Worker] to be the social worker but just had to

reorganise their social work, reorganise their resourcing to make his time available for him to do the work (Interview, 04th October 2011).

In fact the IMG Social Worker is the only member of the professional team that is full-time on the IMG. All others are part-time. Even for the full-time Senior Social Worker, it will be difficult to carry a workload of ten young offenders with high and complex mental health, drug and alcohol issues:

I cannot manage ten highly complex cases in a therapeutic plan and expect to give them the same level of service that I am giving five kids if they are on it. --- Some of the plans are for six months; some of them are for nine, some of them for longer. We had one sexual offender on the IMG till he was 19. He was on for three-and-a-half years (Interview, 30th September 2011).

The size of caseload is important even just from the perspective of time management. To give each young person the required attention the judge reviews each case file before each sitting. Then he meets with the professional team from about 9:00 am to 11:00 am. The IMG Court session runs from about 11:30 am to about 2:30 pm. Even if each young person is given only 30 minutes in court, the IMG Judge can effectively attend to only six cases without breaking for lunch.

In addition to the actual IMG Court time the professionals spend considerable amount of time liaising with service providers, supporting the young persons at different appointments such as hospital/doctors', schools, dealing with the young persons' families, the young persons' personal crises, and being the family that the young person probably does not have. Judge Fitzgerald often also takes on the role of the 'uncle', attending school functions and extra curricula activities that some of the young persons are involved in, buying presents for graduations, books on special topics relevant to the young persons' needs, and even also remembering birthdays.

The attention to the personal needs of the young persons is an important factor in the effectiveness of the IMG intervention. This is further reflected in the way the IMG Court is set up, and the interactions between the judge, the young persons, and the professionals.

The Environment of the IMG Court

The IMG Court judge has liberated his court from what Lederman and Osofsky describe as a lack of "expression of caring, love or contrition from a parent to a child"

(Lederman and Osofsky, 2004). The set up and the dynamics of the IMG Court blend formality and informality, combine genuine care for the needs of the young person with firmness and authority, providing support while setting clear boundaries.

The IMG Court room is set up to be intimate, to bring the young person as close as possible to the Judge to have direct eye contact. Rather than standing in the dock with court officials and/or police officers besides them, the young person sits on a relatively comfortable chair just a few meters away from the judge [see picture in figure 3].

Figure 3: Judge Fitzgerald and a young person at the IMG Court



Source: New Zealand Herald, 2009.

As the young person comes into the IMG Court, the judge acknowledges and greets them by their first name. He inquires about their week showing genuine interest as they discuss the young person's activities in the preceding two weeks after the previous IMG Court monitoring session. This naturally moves on to addressing specific issues that the young person may raise that were probably discussed at the meeting of the judge and the professional team, without prompting. At this point even though the judge may already have been briefed by the professional team, he asks each of the team members to comment on the issues raised by the young person.

Comments from the professional team focus on the positive developments, highlighting areas that the young person has made progress, identifying areas that have not been achieved or target not met, and providing opinion on what needs to be done to progress the FGC plan and treatment. The judge continues the engagement with the young person, clearly setting out the framework and targets to be achieved over the following two weeks against which both the professional team and the young person would be held accountable.

All the professional team members commented on the importance of the supportive and caring environment. Judge Fitzgerald argued that:

People will engage and take responsibility readily if you engage with them on a more human level rather than the sort of antagonistic role the court has conventionally taken. We know that it doesn't really work for judges to order young people to pull up their socks and behave, as opposed to getting them to accept responsibility for the wrong they have done and the responsibility for turning things round. People can be remarkably accepting of things that they don't want to have to do if they are able to do and actually engage in the process, they are probably the two key features of the IMG type of approach that make it different from the conventional approach (Interview, 04th October 2011).

The IMG approach is not about being soft. The judge is reported to be quite firm in setting clear boundaries. The Police Prosecutor for example, stated that the young person is made to understand that they are entering into a contract when they get on the IMG programme because:

They have been interviewed for suitability and they consent and say 'I am willing to do all these things and willing to be monitored' and obviously that's what the Judge does from the bench. He says 'Okay you have consented to do this so we are going to be mostly on your back and we are going to make sure that things happen but you have to come to the party because there are a lot of resources here. There are people willing to help you but it is not going to work if you don't get involved with commitment. And the more commitment you give it the quicker you are going to be actually out of here (Interview, 27th October 2011).

The Youth Advocate confirms the authority of the judge as expressed by the Police Prosecutor:

Judge Fitzgerald lets the young ones know when they have gone off the rails and he is not impressed but he always leaves the door open (Interview, 27th October 2011).

Just like a caring parent the IMG Court processes:

Set limits and put in place consequences to prevent young people from exceeding the limits that society sets for them and suffering much bigger and much more serious consequences. --- I think it's helpful for the young people to feel that the judge is on their side, actually represents authority and renders them to account (Interview, 27th October 2011).

The environment of the IMG Court invites the young persons to experienced personalised individual attention that supports them to actively engage in their rehabilitation. This is especially important because of the family contexts of some of the

young offenders, many who come from quite dysfunctional family backgrounds where very few responsible adults have taken genuine interest in them. Appearances in court are often unsupported by the presence of their parents. Individualised supportive attention builds trust between the young person, the judge and the professional team working with them.

Conclusion

This chapter has reported the evidence from the data which explain some of the key factors that contribute to the effectiveness of the IMG intervention. Obviously there are issues that the IMG Court faces in providing the intervention, such as those identified by research participants, including lack of funding, the limits of parental/family participation, the participation of critical agencies such as the Ministry of Education, the extent and sustainability of community networks to support the young person into employment, and the longer-term post-IMG support of the young offenders when they complete the programme. These are discussed in the final chapter, Chapter Seven, which also provides some conclusions and recommendations.

CHAPTER SEVEN

DISCUSSION, RECOMMENDATIONS AND CONCLUSIONS

Introduction

This study seeks to address the research question ‘what are the key features of the IMG that enhance the rehabilitation of youth offenders and reduce recidivism?’

To address this question this thesis located the IMG intervention within the theoretical framework of therapeutic jurisprudence. Academic literature frame therapeutic jurisprudence as a problem-solving approach (Winick and Wexler, 2003) whereby court sanctions are used not simply to punish but to effect behaviour change (Walker, 2001).

Victims of crime and offending include the person who is the direct target of the offending, the community, society, and in fact the individual who commits the crime and their family. To effectively address the impact of offending restorative justice practices are important aspects of therapeutic jurisprudence. Thus this study also explores the context of the IMG as a restorative intervention.

The IMG is a special unit of the Youth Court in Auckland, established by Judge Fitzgerald in 2007, and operates within the framework of the provisions of the Children, Young Persons, and their Families Act (1989) [CYPF Act]. The underpinning principle of the IMG intervention is that to effectively reduce youth offending and recidivism the underlying causes of offending must be addressed. This involves understanding the young person’s family context, their social background, mental health, alcohol and drug issues, and other environmental factors that may help inform a more holistic approach to interventions to address their offending behaviour.

Using the framework of therapeutic jurisprudence, the IMG intervention combines a therapeutic treatment plan that runs alongside a statutory intervention plan, the Family Group Conference [FGC] plan. Some of the key features of the IMG intervention include a coordinated service delivery approach using a team of professionals working intensively with the young person, holding the young person accountable while providing on-going support and regular monitoring in a supportive environment.

As with many innovative approaches, the IMG faces a number of challenges. At the theoretical and conceptual level, the concept and application of therapeutic

jurisprudence is contentious. For example some authors argue that what is defined as 'therapeutic' in therapeutic jurisprudence is often not clearly determined (Slobogin, 1995), while Blagg (2008) describes the approach as paternalistic and Stewart (2005) found it offender focused.

For the purposes of this thesis study therapeutic jurisprudence was defined to mean addressing the physical, emotional, mental and social well-being of the young offender (Wexler and Winick, 1996). The plans arising from the FGC together with the treatment plan developed from forensic assessments focus on the holistic well-being of the young person.

Youth offenders accepted into the IMG often come from dysfunctional families, and require clear boundaries to prevent them from facing more serious consequences in their adult life. Moreover, the justice system is inherently paternalistic anyway, and as Toki argues in the case of Maori, if therapeutic jurisprudence is successful in reducing [youth] offending rates then positive outcomes would justify the paternalistic means (Toki, 2005).

The focus of the IMG intervention is the youth offender. Therefore invariably therapeutic jurisprudence in this case will be offender focused to address the underlying causes of youth offending. However, the needs of victims, the community and society are addressed through the statutory intervention FGC plan.

Another theoretical and conceptual challenge relates to how recidivism is measured and presented. One of the reasons why the Ministry of Justice did not support a Drug Court for Auckland was that an evaluation of the Christchurch programme did not show that 'it was successful in reducing recidivism'. Recidivism is not uniformly defined in the literature. Although commonly accepted as repeat offending, different studies measure repeat offending using different criteria. For example, the number of offences within a time frame (Myner *et al.*, 1998), a dichotomous measure of any post-commitment referral (Quist and Matashazi, 2000; Sharkey *et al.*, 2003), patterns of arrest frequency (Lattimore *et al.*, 2004), and any length of time until arrest (Niarhos and Routh, 1992).

For this study we define recidivism simply as the reoffending in the post-IMG intervention period. The time period we used was between the time the youth offender completed the IMG intervention between July-September 2011 and the last interview with the IMG Social Worker on 31st August 2012.

Has the IMG reduced youth offender recidivism?

This thesis study has shown that all three case study young persons had not reoffended 12 months post-IMG. Furthermore, only one of the six young offenders on the IMG cohort on the first day of our court observation in February 2011 had been back into the youth justice system. This is impressive considering that international literature suggests that on the average four-out-of-five youth offenders on supervised orders reoffend (Lynch, Buckman and Krenske, 2003; Sturrock, Chungui, 2009). Forty per cent of conference participants in South Australia re-offended within eight-to-12 months (Hayes and Daly, 2003), while the figure was 66 per cent for Queensland (Hayes and Daly, 2004). For the state of New York, Frederick reported that “Twenty six per cent were arrested within three months, 42 per cent were arrested within six months, and more than half were arrested within nine months (Frederick, 1999). Thus while this study is qualitative and has not followed a large cohort of youth offenders the small number of cases followed gives an indication of the potential for the IMG intervention to reduce recidivism.

However, reducing recidivism cannot be achieved by one-off six-to-nine months’ programmes. While the IMG intervention works with youth offenders to support their personal transformation there is much more work required to transform their circumstances. Given the family contexts that many youth offenders come from it takes much more intensive on-going work beyond the six-to-nine months’ IMG intervention. Judge Fitzgerald explains the family context of one youth offender:

His life history was such that you would need a lot more than six months’ worth of work to really effect the type of change that would significantly reduce his risk of reoffending because he was unable to live anywhere within the family who were, I guess the source of most of his trouble. And that was often the biggest problem. There is only so much you can do to reduce the risks but if you can’t get them options to move beyond the living situation which they are in which is likely to see them return to trouble, we just do the best we can (Interview, 04th October 2011).

There is literature that argues for sustained long-term wraparound programmes that target the youth offender and their family (Henggeler *et al.*, 1997; Pullmann *et al.*, 2006) through multi-systemic approaches which provide for:

Clinical therapy, substance use treatment, special education, medication, caregiver support, public assistance, employment, housing, medical health care,

mentorship programmes, transportation and coordination of services such as juvenile justice and child welfare (Pullmann *et al.*, 2006).

The IMG intervention should be seen as only the starting point for more sustained systematic approach to reducing youth recidivism. It is not *the* solution to youth reoffending rather part of the process.

Any evaluation of the IMG therefore must recognise the limits of its reach. For example, the professional team working with the youth offender limits how far the IMG intervention can go. Thus Judge Fitzgerald suggests that “I would love to have all five government agencies properly represented at the [IMG] table”, probably referring to Education, Health, Justice, Social Development, and Housing. As at the time of completing this thesis study the Ministry of Education, Housing New Zealand, and Ministry of Health, except the Regional Youth Forensic Services of the Auckland District Health Board [ADHB] were not part of the IMG professional team.

Post-IMG Support

Another challenge for the IMG intervention is what happens to the youth offender post-IMG? My argument is that personal transformation is unsustainable where youth offenders have no opportunity to move beyond the social environment in which they had lived (Frederick, 1999). Programmes such as employment, mentoring and on-going monitoring have the potential to sustainably decrease reoffending because with:

... those sorts of opportunities then when it came time to graduate we weren't simply returning them to the home in which they have always lived or the situation had always been. It was highly likely they would end up slipping back into old ways (Judge Fitzgerald, Interview, 04th October 2011).

Frederick (1999) argues that without on-going mentoring the lessons learned during the period of intervention may not apply in the everyday social environment to which the youth offender returns, be that the home or the peers on the street.

Therein lies the importance of community buy-in to the IMG intervention so that there is a network of individuals, organisations, agencies and businesses that can engage the young person post-IMG. A number of youth offenders employed post-IMG were reported to be doing remarkably well. One of the business people that employed three graduates of the IMG was reported to have been so impressed with the high standard of one of the young persons that he exclaimed ‘if this is what we are going to get from

high risk offenders give me more'. A year later Judge Fitzgerald was invited to a ceremony where one of the young persons had achieved NZQA qualification for on-the-job training. Another IMG graduate continued in his job despite regular weekly drug testing at work. The challenge for the IMG is to develop and diversity community networks that will create opportunities for effective post-IMG engagement for these young people.

Alongside these networks is the challenge faced by the youth offender returning to a dysfunctional home environment. As reported in Chapter Six all three youth offenders that form the case studies for this thesis research were from highly dysfunctional families. My research found that the family structure remained the same, or probably got worse. Such home environments could not effectively support the behaviour change post-IMG to keep them from reoffending. Hence international studies argue that "interventions that address [family contexts] have shown to reduce recidivism by fifty per cent compared to therapy that focuses on the youth alone" (Frederick, 1999, p.21).

Wraparound programmes such as those provided by Youth Horizons Trust which combine therapeutic work with the young offender, with work with the family to create a better environment and better skills for parents and caregivers to manage youth behaviour using multi-systemic therapy and functional family therapy approaches are part of the IMG intervention. Wraparound approaches including addressing family contexts of youth offenders is critical in reducing recidivism at a number of levels. The most significant is that it creates a more conducive home environment to which the young person will look forward to returning post-IMG.

Addressing the challenge of youth attachment

A key issue raised in international literature with regards to recidivism is attachment of the young offender to the intervention programme (Frederick, 1999; Dawes and Dawes, 2003). Attachment refers to the practice whereby youth offenders become used to the care, support and attention they received and the positive relationship they have established with programme staff and associates that they deliberately undermine their exit from the programme. Judge Fitzgerald reported that:

One of the things that really made us aware of --- was that not too far into the process we became aware of an unstable pattern of young people graduating, sabotaging the operation in various ways. Some would reoffend but in a small way. One in particular for some months came to court every fortnight having

failed to complete the last eight hours of the community work, he was just coming back with some reason why he hadn't done that last eight hours. Another boy who just didn't turn up when he knew it was going to be his last time (Interview, 04th October 2011).

Attachment is understandable because for many of these youth offenders from dysfunctional families the care, attention, support and positive affirmation received during the IMG intervention would be the highlight of their young lives. According to the Forensic Social Worker the most important people in their lives such as parents, siblings and other close relations to whom they had been attached in the past probably left them or let them down. They probably felt that graduating from the IMG was being cut loose again, which would repeat the hurt they have already suffered in their lives. So it is only natural that they try to hang on to the good thing that they had as long as possible.

Community-based post-IMG monitoring and mentoring

Part of addressing the challenge posed by attachment is to prepare the young person for post-IMG. Judge Fitzgerald suggests that one of the strategies is:

stepping back a bit. We had been trying to strengthen their opportunities in the community for them to be well connected that is the first thing. And we had to do that early, talk about the graduation early, talk about ways that made them aware we were always going to be there and interested and they were welcome to come back and let us know how they were doing (Interview, 04th October 2011).

Some authors have argued that therapeutic jurisprudence places judges in a difficult situation. Chase and Hora for example argue that it requires judges to become a “bizarre amalgam of untrained psychiatrists, parental figures, story tellers and confessors” (Chase and Hora, 2000, p.12). Notwithstanding, the IMG intervention is more than the judge. While Judge Fitzgerald is at the helm he has assembled an excellent team of professionals working with him, experienced social workers, psychologist, lawyers and a network of others in the community and agencies that he can all on. What is required are resources to enable the IMG to become established, sustainable and long-term. For example, post-IMG mentoring and monitoring is critical aftercare which at the present does not happen. The IMG Social Worker reported that the current practice:

really is a matter of closing the file, and see you later, you are not required to come back to court and therefore Child, Youth and Family literally send out

completion letters to all the participants of the Family Group Conference and the file is closed on the computer and filed in an office somewhere in South Auckland for seven years and they are gone (Interview, 31st August 2012).

Some of the young persons have found it very difficult being on their own. The IMG Social Worker goes on to report on the two other youth offenders at the IMG Court on that first day of our court observation and how post-IMG monitoring and mentoring could have helped them:

it's a big ask to ask someone like [name of youth offender] can now manage his anger issues and manage his relationships and manage his marijuana, managing gravitating towards youth crime anti-social peers and youth gangs, and yes that is an extremely difficult ask (Interview, 31st August 2012).

[name of youth offender] has removed self from school voluntarily and now self-sourcing a course. I am sure if I was still working with [name of youth offender] and even though there was a gender difference between the two of us she would have rung and said, 'Dave, I am having trouble at school', trusting the relationship that I could deal with it on her terms to the best of my ability, tactfully, respectfully and responsibly. There would be another way to skin that cat, that would not involve [name of youth offender] being excluded or removing herself (Interview, 31st August 2012).

Youth offenders are therefore left on their own to cope with very little support. The IMG Social Workers reported that he continued to provide some aftercare support to some of the young persons where possible:

of course I am always available on the telephone for follow up and regularly follow up with young people if they phone me for help (Interview, 31st August 2012).

However this was ad hoc and informal. There is a need to develop a formal monitoring and mentoring system to support the behaviour change acquired during the programme. This may involve a community-based post-IMG mentor who provides support through regular phone calls, meetings and a reference point, as well as a role model and confidante for the youth. Such a mentor would also provide a point of contact for the IMG to monitor how well the young persons are faring in the community.

Conclusions

This study identified that the IMG is an effective intervention to reduce youth offender recidivism. It takes on a small number of youth offenders who are at high risk of reoffending, with high and complex needs including mental health and drug and alcohol issues, and using a combination of a therapeutic plan that runs side-by-side with a statutory intervention plan [FGC Plan] the regular and intensive monitoring seeks to address the underlying causes of offending. The case studies examined in this thesis study showed that the intervention reduced the chances of the youth offenders re-offending. The key to the success of this intervention is the dedicated team of professionals working intensively with the youth offenders, providing coordinated services that address the individual needs of the young offender, on-going regular monitoring that is supportive but holds the youth offender accountable, thus actively engaging them in their rehabilitation.

However, the IMG faces a number of challenges. The most significant is the limitation of resources which makes it difficult to extend the intervention to larger groups of youth offenders. This is further compounded by the lack of understanding of the role and functions of the IMG as a specialised youth Court with a more intensive programme of rehabilitation with regards to youth offenders. The evidence that the IMG intervention works provides another challenge which is supported in the international literature, that to get the most effective outcomes, it is best to intervene at a younger age. The challenge then is to provide resources that will bring together teams of professionals that will focus on the younger cohort of youth offenders. This will require expanding and extending the IMG intervention to a larger group of youth offenders and across other locations in New Zealand.

Another challenge for the IMG is getting the youth offenders and their families to agree to the intervention. For a variety of reasons including the lack of disposition for on-going frequent court visits for the monitoring, and lack of understanding of the outcomes of the programme some youth offenders and their families are resistant to this form of intervention, thus limiting the potential personal, family and community benefits of engaging with such youth offenders, especially if they are in the earlier age groups [10-14] and from highly disadvantaged, dysfunctional or impaired home environments and communities.

While the IMG intervention works intensively with the youth offender, there is the challenge of creating post-IMG opportunities for them to move into so that they do not go back to the environment of dysfunction and crime. These opportunities include employment, training, on-going mentoring that models the values the youth offender acquired during the period of intervention. This requires a network of community-based individuals, agencies, organisation and businesses that will support graduates of the programme. Thus a young woman who is described as “she presents well, she has got confidence on a good day, she has good people skills, she is a delightful young woman on a good day” requires on-going support post-IMG to attain what the IMG Social Worker described as “with life experience and maturity, climb up”.

Areas for further research

This study has focused on the professional team working with the youth offenders to understand how the IMG works and how its work reduces youth offender recidivism. Although the findings show that the intervention is effective, looking at only three case studies is quite limited. It will be useful for future studies to take larger groups of youth offenders and follow them over longer periods of time from the time they get on to the IMG programme and for up to between three-to-five years. This will provide much deeper data on which more effective evaluation of the IMG intervention would be based.

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APPENDIX 1

THE IMG CHARTER: A SPECIALISED PROBLEM-SOLVING YOUTH COURT SITTING IN AUCKLAND

The purpose of this document is to define what the IMG Court is and how it works. It is intended this be a “living document” that is updated as needs be to keep all concerned informed about the Court and its operation.

This version is as at November 2009

[1] The purpose and goals are to:

- [a] Honour and apply the objects and principles in the CYP&F Act (1989)
- [b] Hold the young person accountable and ensure victims’ issues and interests are addressed
- [c] Treat the underlying cause of the young person’s offending behaviour
- [d] Find solutions that are strength-based, child-centred, family-focused and culturally appropriate
- [e] Promote and maintain inter-agency co-operation and accountability
- [f] Keep communities safer by reducing recidivism

[2] Methodology

- [a] The young person’s case is separated out from the regular Youth Court after a ‘non-denial’, or a charge having been proved, and a disposition is withheld in order to monitor his/her compliance, responses, progress and rehabilitation in light of specialty services provided over the period of an FGC plan which included a treatment plan.
- [b] There is then a coordinated approach from a multi-disciplinary team.
- [c] It is a non-adversarial approach based on the principles of therapeutic jurisprudence involving frequent judicial reviews.
- [d] The Court oversees and monitors the provision of services for young people and their family usually within a vigilant network of community based supervision.
- [e] There is to be efficient and appropriate sharing of relevant information between agencies.

[3] Entry criteria

- [a] After the entry of a ‘non-denial’ or charge/s having been proved (see [2](a) above), the criteria for entry into the IMG are:

- (i) The presence of moderate to severe mental health concerns (including conduct disorder), as forensically assessed and/or moderate to severe alcohol/drug dependence, and
- (ii) An assessment of the young person being at medium to high risk of re-offending

[4] Process

[a] If as a result of a forensic screen assessment, or a s333 report, a young person is assessed by RYFS as meeting the entry criteria above they are eligible for acceptance into the IMG

[b] The forensic assessment or s333 report, including a treatment plan, is considered at the FGC together with other available information. An FGC plan is prepared which includes the means of addressing the victim's needs and concerns, any other accountability issues, the young person's treatment plan plus any other matters arising out of information obtained such as any educational, cultural or community reports.

[c] Ideally before the FGC, but in any event before the young person returns to Court to be considered for acceptance into the IMG, the young person's suitability for the process is to be assessed by the IMG social worker and RYFS to ensure:

- * The plan is likely to meet the young person's therapeutic needs, and,
- * The key people (both family and professionals) are in agreement with the plan.

The key elements in the suitability assessment are:

- That the appropriate therapeutic plan is proposed, and services and funding to implement the plan are available. Consultation on this prior to acceptance is required.
- Motivation of the young person to engage in the therapeutic plan
- Motivation of the young person's family to support the therapeutic plan.

Agreement and support from all key professionals involved to the therapeutic plan recommended.

[d] The IMG Judge considers the suitability assessment. If the young person has been assessed unsuitable but wants to be involved in the IMG. The Judge will hear submissions and then decide whether the young person will be offered the opportunity of being involved in the IMG. Then, if assessed as suitable, or otherwise offered the opportunity to be involved in the IMG, the Judge approves the FGC plan (if it is in order), and offers the young person the opportunity of

taking part in the IMG. If the offer is accepted he/she is remanded (usually) on appropriate bail terms, encompassing the plan, to reappear on an IMG Court day and thereafter as directed (fortnightly in most cases). The frequency of appearances is to be determined on the circumstances of each particular case.

[e] After acceptance, there is unbroken continuity of involvement of that Judge in monitoring progress of the young person with that plan. Participation requires continued commitment by the young person. Failure to comply/commit means return to usual court process and the sanctions available there.

[f] Upon successful completion of the FGC and treatment plan, the outcome or the young person would normally be in accordance with the agreement reached at the FGC.

[g] A list of young people whose case is to be called in the IMG Court on a Monday when the Court is sitting, will be sent to members of the IMG team by midday on the Friday immediately before such Court date, This includes any young person whose presence at Court has been excused or who is to attend Court by way of telephone link. In such cases the matter is still to be considered at the professional team meeting. Also, a list of prospective candidates for the IMG Court will be sent out at the same time for consideration at the professional's meeting at 9.00 am on the Monday

[h] There is a meeting of the professional team involved in the IMG at 9.00am on the day the IMG Court is sitting to go through the cases set down for that day.

[i] For the purpose of that meeting, the social worker assigned to the case of a young person who has been accepted into the IMG, is required to have filed a written progress report in relation to compliance with the plan and related issues by midday on the Thursday immediately before the IMG Court date. This report is to be copied to other members of the professional team on the condition that no-one receiving the report is to give or copy it to anyone else without the Court's prior approval. Youth Advocates, and counsel for parents/parties may discuss such reports with their clients but not give or copy it to them without the Court's approval.

[j] A copy of any minute issued with orders/directions made by the Court (including the next Court date for the young person) is to be distributed to members of the IMG team as soon as possible after each IMG Court day.

[5] The team

[a] The IMG team is made up of the following members, most of whom meet on the day of the IMG Court at 9.00 am to discuss the progress of the young people in the IMG and prepare for the day.

[i] The IMG Judge and Court clerk

[ii] The IMG Police prosecutor

[iii] Social Workers assigned to IMG work

[iv] A representative from RYFS

[v] The service providers; eg: Youth Horizons Trust and Odyssey House

[vi] Ministry of Education representative

[vii] Youth advocates

[viii] Youth justice coordinator(s)

[6] Court sittings

[a] The IMG Court sits in Auckland every Monday from 16/7/07.

[7] Evaluation

[a] All young people being considered for the IMG are assessed using a standard battery of measures for mental health issues, drug/alcohol dependency and risk of re-offending together with the other information routinely obtained when preparing a forensic report. It is intended there be a follow up assessment after 6 months and possibly at 12 months both for young people who are involved in the IMG Court and those who are not. As well as that, young people referred from other Courts for assessments who may or may not meet the entry criteria, will be considered in the evaluation process.

Participant Information Sheet

PROFESSIONALS



Date Information Sheet Produced:

01/02/2011

Project Title

The Intensive Monitoring Group [IMG] and Youth Justice

An Invitation

My name is Barrie Evans. I am a post graduate student enrolled at Auckland University of Technology and I am inviting you to contribute to my M. Phil research which investigates the effectiveness of the Intensive Monitoring Group in reducing youth offender recidivism.

In accepting this invitation you will not be obliged to complete the process should you wish to withdraw, and no further attempt will be made to seek further involvement by you.

What is the purpose of this research?

The proposed research will be conducted for my University MPhil qualification.

How was I identified and why am I being invited to participate in this research?

The key informants for this research are: Judge Fitzgerald the IMG Court Judge, Youth Court Advocates, Youth Court Judge, and professionals of engaged with the Intensive Monitoring Group. However your opinion is very important. You were selected to participate in the research because you are one of the professionals on the IMG and we believe that each of you has something unique to offer to the research.

What will happen in this research?

After the initial contact has been made with each informant and the permission has been obtained to meet and explain the nature and purpose of the research, the following will be discussed:

1. A description of what has been achieved from this research project.
2. The persons involved in this research and their areas of expertise.
3. Provision of information regarding the informant's rights.
4. Signing of consent forms.
5. The opportunity for the informant to withdraw from the project.

The interview will in time between 45-60 minutes. We will discuss your experience working on the professional team of the IMG:

- Your involvement and experience with the IMG intervention,
- Your experience of how the youth offenders get involved in the IMG;
- Your assessment of the effectiveness of the IMG as a rehabilitative process, the key factors that make it successful/effective, the challenges the IMG faces, and how these challenges may be addressed.
- Your reactions to the concept of the Intensive Monitoring Group.
- Making arrangements to conclude subsequent interviews if required.

The interview will be recorded on audio tape. Each interview will be transcribed for qualitative analysis to identify the key themes from the various participants.

At the conclusion of the study all copies of the audio tapes will be stored in a secure location at Auckland University of Technology for six years and then destroyed.

What are the discomforts and risks?

I don't envisage any discomfort or risks for you, however, should you experience any discomfort the interview will be terminated.

How will these discomforts and risks be alleviated?

Discomfort is not envisaged, however should you experience discomfort during the interview, the discussion will be suspended. Further discussion will only take place if and when you are willing and able to undertake his course of action.

What are the benefits?

The benefits of this research will be to demonstrate the value of intensive monitoring of youth offenders within the New Zealand youth justice, and especially the Youth Courts as a means for reducing youth offender recidivism.

The research hopes to contribute to a better understanding of the IMG intervention, and if possible make a case for extending the intervention in other parts of the country.

How will my privacy be protected?

Your name is already known to me. As there are only few professionals working with the IMG Court, and you all know each other and work closely together, it may not be possible for the information you provide to be anonymous. Other professional colleagues and even members of the public may be able to identify you by the information you provide.

If you wish not be identified with the information you provide please let us know and we will use a pseudonym or code names when referencing information provided by you.

However, if you wish to have your name identified within the main body of the research please indicate and this will be done.

What are the costs of participating in this research?

The only cost to you is that you are asked to contribute your time and knowledge to this research project.

What opportunity do I have to consider this invitation?

After receiving this invitation, you will be given two weeks to consider whether or not you wish to take part in the research. You may of course, reconsider your decision regarding participation at any stage during the data collection process.

How do I agree to participate in this research?

At the preliminary interview you will be provided with a consent form. No formal interview process will commence until the consent form has been signed.

If you do not wish to participate we will not proceed.

Will I receive feedback on the results of this research?

A summary of the findings and recommendations of the research will be made available to you at its completion if you wish.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Doctor Love Chile, email: love.chile@aut.ac.nz or phone 09 921 9999 ext 8312.

Concerns regarding the conduct of the research should be notified to the Executive Secretary, AUTECH, Madeline Banda, madeline.banda@aut.ac.nz , 921 9999 ext 8044.

Whom do I contact for further information about this research?***Researcher Contact Details:***

My contact details are as follows:

C/- Institute of Public Policy, AUT, Private Bag 92006, Auckland 1142.

Phone: 09-4194617

Fax:

Project Supervisor Contact Details:

Dr Love Chile

Institute of Public Policy, AUT, Private Bag 92006, Auckland

Phone: 09 921 9999

Fax 09 917 9768

Email: love.chile@aut.ac.nz

Approved by the Auckland University of Technology Ethics Committee on type the date final ethics approval was granted, AUTECH Reference number type the reference number.

APPENDIX 3

Consent Form

For Interviews with Professionals



Project title: The Intensive Monitoring Group [IMG] and Youth Justice

Project Supervisor: Dr Love Chile

Researcher: Barrie Evans

☐ I have read and understood the information provided about this research project in the Information Sheet dated 01/02/2011

- ☐ I have had an opportunity to ask questions and to have them answered.
- ☐ I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- ☐ I understand that I may withdraw myself or any information that I have provided for this project at any time prior to completion of data collection, without being disadvantaged in any way.
- ☐ If I withdraw, I understand that all relevant information including tapes and transcripts, or parts thereof, will be destroyed.
- ☐ I agree to take part in this research.
- ☐ I wish to receive a copy of the report from the research (please tick one): Yes ☐ No ☐

Participant's signature:

Participant's Name:

Participant's Contact Details (if appropriate):

.....
.....
.....

Date:

*Approved by the Auckland University of Technology Ethics Committee on **type the date on which the final approval was granted** AUTEK Reference number **type the AUTEK reference number***

Note: The Participant should retain a copy of this form.

APPENDIX 4

Project title: The Intensive Monitoring Group [IMG] and Youth Justice
Project Supervisor: Dr Love Chile
Researcher: Barrie Evans

INTERVIEW OUTLINE FOR IMG PROFESSIONALS

1. Please explain to us the key roles that you play as a [youth advocate/social worker/youth workers/police officer] working with young people in the IMG programme.
2. In what specific ways do you think your work and the IMG process help rehabilitate young offenders?
3. From your experience and knowledge, in what ways would you say the IMG incorporates the key principles of restorative justice in its functions/operations?
4. In what way would you say restorative justice programmes such as the IMG contribute to reducing recidivism in young offenders?
5. You have worked with young people within the criminal justice system for a number of years. From your experience and knowledge of the IMG, in what specific ways would you say the IMG is different from the open youth courts?

[Prompts may include what are the advantages/disadvantages, what are the challenges the professionals face, etc]

6. In your opinion what are the major challenges you face working with young people to reduce recidivism and/or prevent young people moving from petty offending to serious offending?
7. Do you think the use of restorative justice processes work in preventing young people's recidivism?
8. Could you please describe to us what you think are the key issues that bring young people to the attention of the criminal justice system?

[Prompts here may include the background of the young people who come into the IMG, the role of parents/family backgrounds, socio-cultural factors, etc]

9. Are there other comments that you would like to make about the nature, functions, and future of the IMG?

Thank you for your time and contribution to the study

Participant Information Sheet

JUDGE FITZGERALD



Date Information Sheet Produced:

01/02/2011

Project Title

The Intensive Monitoring Group [IMG] and Youth Justice

An Invitation

My name is Barrie Evans. I am a post graduate student enrolled at Auckland University of Technology and I am inviting you to contribute to my M. Phil research which investigates the effectiveness of the Intensive Monitoring Group in reducing youth offender recidivism.

In accepting this invitation you will not be obliged to complete the process should you wish to withdraw, and no further attempt will be made to seek further involvement by you.

What is the purpose of this research?

The proposed research will be conducted for my University MPhil qualification.

How was I identified and why am I being invited to participate in this research?

The key informants for this research are: Judge Fitzgerald the IMG Court Judge, Youth Court Advocates, Youth Court Judge, and professionals of engaged with the Intensive Monitoring Group. However your opinion is very important. You were selected to participate in the research because you are one of the professionals on the IMG and we believe that each of you has something unique to offer to the research.

What will happen in this research?

After the initial and obtaining your permission we will meet and explain the nature and purpose of the research. The interview will in time between 45-60 minutes and we like to discuss the following:

- Your purpose in establishing the IMG Court,
- The history of the IMG Court,
- A description of what has been achieved with the IMG Court since its establishment,
- The persons involved in the IMG and their areas of expertise, and why you chose them,
- How the youth offenders get involved in the IMG;

- Your assessment of the effectiveness of the IMG as a rehabilitative process, the key factors that make it successful/effective, the challenges the IMG faces, and how these challenges may be addressed.
- Any other areas relating to the concept and practices of the IMG that we may not have covered in our initial set of questions,
- Making arrangements to conclude subsequent interviews if required.

The interview will be recorded on audio tape. All interviews will be transcribed for qualitative analysis to identify the key themes from the various participants.

At the conclusion of the study all copies of the audio tapes will be stored in a secure location at Auckland University of Technology for six years and then destroyed.

What are the discomforts and risks?

I don't envisage any discomfort or risks for you however, should you experience any discomfort the interview will be terminated.

How will these discomforts and risks be alleviated?

Discomfort is not envisaged, however should you experience discomfort during the interview, the discussion will be suspended. Further discussion will only take place if and when you are willing and able to undertake his course of action.

What are the benefits?

The benefits of this research will be to demonstrate the value of intensive monitoring of youth offenders within the New Zealand youth justice, and especially the Youth Courts as a means for reducing youth offender recidivism.

The research hopes to contribute to a better understanding of the IMG intervention, and if possible make a case for extending the intervention in other parts of the country.

How will my privacy be protected?

Your name is already known to me. As you are the primary initiator of the IMG Court, you are associated with the IMG Court in the community and everyone who knows about the IMG knows it is your initiative. Therefore it is not possible for the information you provide to be anonymous. Other professional colleagues and even members of the public may be able to identify you by the information you provide.

If you wish not be identified with the information you provide please let us know and we will use a pseudonym or code names when referencing information provided by you. However, even this will not make it too difficult for the information to be linked to you as your views are well known in the community.

What are the costs of participating in this research?

The only cost to you is that you are asked to contribute your time and knowledge to this research project.

What opportunity do I have to consider this invitation?

After receiving this invitation, you will be given two weeks to consider whether or not you wish to take part in the research. You may of course, reconsider your decision regarding participation at any stage during the data collection process.

How do I agree to participate in this research?

At the preliminary interview you will be provided with a consent form. No formal interview process will commence until the consent form has been signed.

If you do not wish to participate we will not proceed.

Will I receive feedback on the results of this research?

AS the key initiator of the IMG Court we will give you a full copy of the thesis once it has been examined and approved to be submitted to the University Library for public access.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Doctor Love Chile, email: love.chile@aut.ac.nz or phone 09 921 9999 ext 8312.

Concerns regarding the conduct of the research should be notified to the Executive Secretary, AUTEK, Madeline Banda, madeline.banda@aut.ac.nz , 921 9999 ext 8044.

Whom do I contact for further information about this research?***Researcher Contact Details:***

My contact details are as follows:

C/- Institute of Public Policy, AUT, Private Bag 92006, Auckland 1142.

Phone: 09-4194617

Fax:

Project Supervisor Contact Details:

Dr Love Chile

Institute of Public Policy, AUT, Private Bag 92006, Auckland

Phone: 09 921 9999

Fax 09 917 9768

Email: love.chile@aut.ac.nz

Approved by the Auckland University of Technology Ethics Committee on type the date final ethics approval was granted, AUTEK Reference number type the reference number.

Consent Form

For Interview with IMG Judge



Project title: The Intensive Monitoring Group [IMG] and Youth Justice

Project Supervisor: Doctor Love Chile

Researcher: Barrie Evans

- ☐ I have read and understood the information provided about this research project in the Information Sheet dated 01/02/2011
- ☐ I have had an opportunity to ask questions and to have them answered.
- ☐ I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- ☐ I understand that I may withdraw myself or any information that I have provided for this project at any time prior to completion of data collection, without being disadvantaged in any way.
- ☐ If I withdraw, I understand that all relevant information including tapes and transcripts, or parts thereof, will be destroyed.
- ☐ I agree to take part in this research.
- ☐ I wish to receive a copy of the report from the research (please tick one): Yes ☐ No ☐

Participant's signature:.....

Participant's Name:.....

Participant's Contact Details (if appropriate):

.....
.....
.....

Date:

*Approved by the Auckland University of Technology Ethics Committee on **type the date on which the final approval was granted** AUTEK Reference number **type the AUTEK reference number***

Note: The Participant should retain a copy of this form.

APPENDIX 7

Project title: The Intensive Monitoring Group [IMG] and Youth Justice
Project Supervisor: Dr Love Chile
Researcher: Barrie Evans

INTERVIEW OUTLINE FOR IMG JUDGE

1. Please explain to us the ways in which you think the IMG process helps rehabilitate young offenders?
2. In what ways do you think the IMG incorporates the key principles of restorative justice processes in its functions/operations?
3. In what specific ways would you say the IMG has been effective in rehabilitating young offenders?
4. In what way would you say restorative justice programmes such as the IMG contribute to reducing recidivism in young offenders?
5. In what specific ways would you say the IMG is different from the open youth courts?
6. Obviously every system needs on-going improvement to make it function optimally. What do you think could be done to get the best outcomes from the IMG?
7. You have nurtured the IMG from its inception to today. You have also seen many young people come through this programme. Could you please describe to us what you think are the key issues that bring young people to the attention of the criminal justice system?
[Prompts here may include the background of the young people who come into the IMG, the role of parents/family backgrounds, socio-cultural factors, etc]
8. Are there other comments that you would like to make about the nature, functions, and future of the IMG?

Thank you for your time and contribution to the study

APPENDIX 8

Project title: The Intensive Monitoring Group [IMG] and Youth Justice
Project Supervisor: Dr Love Chile
Researcher: Barrie Evans

OBSERVATION PROTOCOL FOR MEETINGS OF THE IMG

The observation of IMG meetings will observe the roles of participants at these meetings.

The Judge:

The role of the Judge is to chair pre-IMG Court meetings where professionals report on the work undertaken with youth offenders in the two weeks preceding the fortnightly court monitoring sessions.

The researcher will observe the role performed by the Judge in this capacity.

In particular the researcher will record the nature and forms of instructions the judge gives to the professionals team, the nature of the reports and the relationship between the judge and the professionals, and between the professionals among themselves.

What did the Judge ask each of the professionals to do?

(i) The IMG Police Prosecutor

(ii) Social Workers assigned to the IMG

(iii) Youth Advocate

(iv) Youth Justice Coordinator

(v) Youth Advocates

(vi) Clinical Social Worker

(vii) At these meetings there may be other professional present invited specifically to provide reports to inform the IMG judge on the state of the young persons. These may include a professional from the Regional Youth Forensic Services, Youth Horizons Trust, Odyssey House, Ministry of Education, etc. Where such persons are invited the researcher will record their role at the IMG meeting.

(viii) Any other issues that may be of interest to the outcomes of the IMG Court proceedings and the youth offender, such as the role of family members, support persons for the youth offender, the relationship between the judge and the youth offender, etc.