

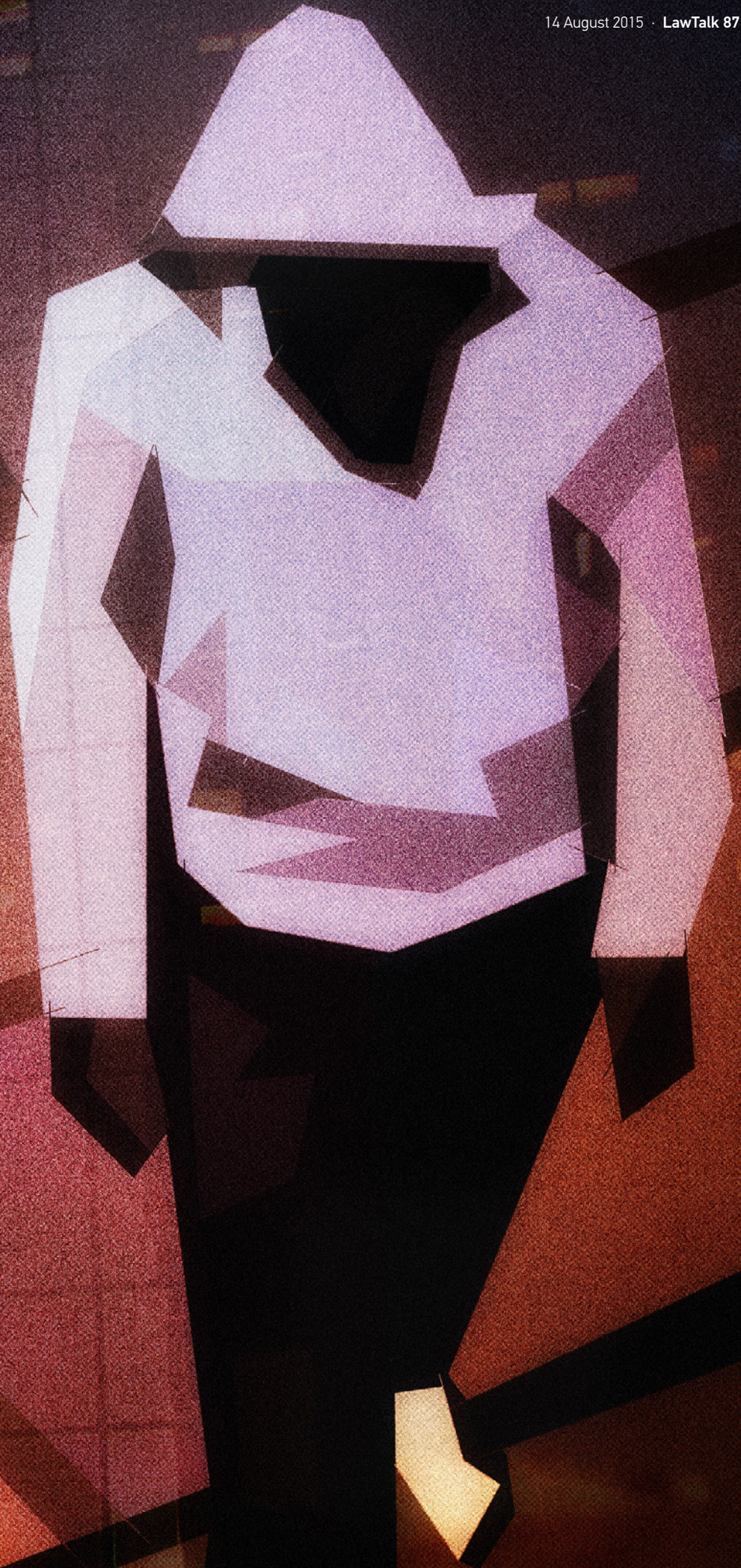
# Merchants of Hope

## THE YOUTH COURT

New Zealand's Youth Court is the "most challenging and most pivotal aspect of our justice system," Chief Youth Court Judge Andrew Becroft says. It is a place where young lives can be turned around, a place that is having a significant role in reducing reoffending. "We are the merchants of hope," Judge Becroft says. The Youth Court, and where it should be in 10 years' time was one of the key themes at the recent NZLS CLE Ltd Youth Advocates Conference. *LawTalk* journalist **Sasha Borissenko** attended the conference and looks at some of the key issues for the Youth Court, the youth advocates and the young people.



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**S**amantha, 16, went through the Youth Court for a variety of offences including driving under the influence, assault, assault on a police officer and driving while disqualified. Her judge ordered her to attend alcohol counselling, to apologise to her mother, to the police officer and all those party to her offences. “My actions weren’t going to define me and it was the Youth Court that gave me the help I needed to get on with my life,” Samantha says.

“The judge didn’t sugar coat anything. He understood my background. I was young and scared and unsure and people were there to support me and my whanau. I realised it was up to me to get my life back on track.”

Years later, Samantha has completed her studies in music and she serves as an advocate on drink driving issues and a youth mentor for her community.

Samantha told her story to NZLS CLE Ltd’s National Youth and Lay Advocates Conference held in Auckland on 13-14 July. For the very first time it brought together youth advocates, lay advocates, representatives from the public sector, police, academics, scientists, social workers, judges, and a variety of passionate people from around the country.

### Youth advocates

**Robyn Fendall** has worked at the Waitakere Youth Court since the court was introduced in 1989. She was one of four lawyers invited to work as youth advocates in the inaugural court by the late pioneering Youth Court Judge Mick Brown.

The transition into the Youth Court from the Children’s Court was virtually seamless, she says.

“I’ve always loved working with young people. You make a big difference. Kids are unusual, because if you can help them early, you can really see long-term gain.”

The Youth Court should not be seen as a last resort, Ms Fendall says.

“Sometimes parents are crying out for help and it’s only until the child gets into trouble with the law that they can access the help and services they need. Sometimes it is the best thing that has ever happened to that family.”

Ms Fendall says the court’s remaining issues include providing adequate specialist programme funding, kids coming from a huge range of different types of dysfunctional families, and systemic failures in the past around picking up on neuro-disabilities.

“There needs to be more of an emphasis on identifying up neurodisabilities. Funding is often a problem; there aren’t

“It was the Youth Court that gave me the help I needed to get on with my life

enough resources or beds for these kids. Social workers are extremely overworked, in my opinion.

“In Auckland and Christchurch we now have an excellent crossover court system to specifically cater for young people with both Family Court and Youth Court status.”

### Cognitive behavioural problems

**Many young people** coming through the courts have cognitive behavioural problems at the very least, most of which are previously undiagnosed, she says.

“It’s often easy to identify: the poor attention spans, an aggressive and impulsive temperament. All we can do is try and try and try again, and represent them to the very best of our ability.”

Many young people suffer impairments to some degree, she says. Dyslexia, behavioural disorders, ADHD, foetal alcohol syndrome, learning disabilities and health issues are common.

“You can’t understand until you realise they don’t understand,” Ms Fendall says.

### Family Group Conferences

**Family Group Conferences** are so important, she says.

“It can be difficult. You’ve got kids who come from intolerable family situations, from families who really don’t care. They’re a direct influence upon the misfortunes of their children. To get them engaged wholly

# About the Youth Court

**Ministry of Justice** District Courts Manager Tony Fisher says that in 1989, the Children, Young Persons, and Their Families Act 1989 established new objects and principles for Youth Justice and set up an innovative system for responding to the young people who offend.

“The system holds young persons accountable while focusing on their rehabilitation and reintegration, support for their families, and the needs of victims. The emphasis is on diversion from courts and custody.

“The system has been hailed as an example of a restorative approach to offending by young people,” Mr Fisher says. When a young person offends the Police can respond by (in reverse order of severity):

- issuing a warning not to reoffend;
- arranging informal diversionary responses after consultation with victims, families and young people;
- where intending to charge, making referrals to Child Youth and Family Services for a Family Group Conference; or
- arresting and laying charges in the Youth Court.

At the heart of the system lies the Family Group Conference which enables those involved in the life of the young person and the victim(s) of offending to be involved in decisions that aim to ensure accountability, repair harm and enhance well-being, he says.

“Evaluation has shown that the system is largely successful in achieving its goals and, when they are met, in reducing reoffending and promoting the well-being of young people who have offended.”

In recent years, several initiatives have been put in place aimed at improving outcomes for young offenders, such as Rangatahi Courts and the Youth Crime Action Plan.

## Rangatahi Courts

**Rangatahi Courts**, a judiciary-led initiative, were established in 2008 within the jurisdiction of the Youth Court.

They aim to provide a better rehabilitative response to Māori young offenders by encouraging strong cultural links and involving communities in the youth justice process.

They work within the existing Youth Court framework, but use a marae-based environment to help young Māori and their whānau engage with the justice system, and draw upon the resources available to the marae and iwi to address the needs of the young person and their whānau.

Primarily designed to target and deal with young Māori offenders, all young offenders – regardless of race, ethnicity or gender – are eligible for entry. While the setting is different, the same legal rules apply.

Rangatahi Courts can deal with any offence that has been processed through the Youth Court where a family group conference plan has been formulated and consent gained from the appropriate parties.

Rangatahi Courts sit in 13 locations around New Zealand, and as of 31 December 2014, 1,099 young people (14-16 years) had had their Family Group Conference plan monitored on a marae.

An evaluation in 2012 indicated that Rangatahi Courts were successfully bringing whānau, hapū and iwi together with young offenders to attempt to address the underlying causes of their offending.

The Courts have also helped connect young Māori with positive role models within their community.

is important but it’s sometimes an uphill battle.

“It’s pretty near impossible to fix kids with abusive parents who refuse to engage: whether it’s gang-related, poverty, drugs, alcohol or abuse. It sounds stereotypical but it does happen. It’s real, it exists, it matters and it needs to be addressed.

“Marijuana impacts upon motivation, like the ability to get up and go to school or a course. Synthetic cannabis is still a problem for some kids. You see kids who are like zombies when they’ve smoked. It’s dangerous.

“Alcohol is often problematic. When they get into cars I really fear for them. I’ve seen kids crash while under the influence and come out unscathed. There have been deaths and otherwise really life changing severe injuries – lost limbs and traumatic brain injuries.

“We just do what we can at the time and with the resources that are available. You never give up on your young person.

“It’s a lifestyle. You can expect calls in the middle of the night. I wouldn’t shy away from dropping one of my clients home or helping them with non-Youth Court issues. It can be desperate sometimes but I wouldn’t do anything else.

“This work is vital for that young person’s life. You have to try your hardest to help regardless if they don’t like you or trust you. You have to develop empathy.

“You get to know the kids really well. It only takes a minute or two to gauge their character. Some of the most amazing disarmingly charming young people may also be wily, naive or suffer from all sorts of anxieties. Still waters frequently run deep; hiding an absolute quagmire of

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Illustration by Surian Soosay – flickr.com/people/ssoosay

problems and issues. It's a bit of a conundrum because the better you do your job, the quicker you are out of work."

After almost 33 years in the job, Ms Fendall's work has significantly decreased in the past few years. From 50 just a few years ago, she may now only be allocated less than 10 new young offenders per year, she says.

"I suppose other lawyers just have to find other work."

### So important

**Principal Youth Court** Judge Andrew Becroft says it is disappointing that youth advocates are unacknowledged yet they, along with lay advocates, are so important because they represent the most vulnerable and less vocal members of society.

"We are the merchants of hope. It's the most challenging and most pivotal aspect of our justice system ... It's my prayer and my dream that we can be lighthouses in the justice system."

The crime bell curve is true for every country, every time and every place. It shows that offending peaks at the ages of 17 and 18 years old and 20% of youth offenders account for 60% of all offending, he says.

He hopes mechanisms will be put in place to tackle the disproportionate and increasing number of Māori appearances in the Youth Court, with 62% of those appearing being Māori. In the case of the Gisborne

Youth Court the percentage of Māori offenders is 91%.

What's more, while the rate of apprehensions for males decreased by 21% between 2006 and 2012, female rates only dropped by 14%, with 80% of young people in the Youth Court being female in 2013.

The starting point for change, he says, is education. Currently 65-70% of Youth Court offenders are not formally engaged with the education system.

"There's not a magic bullet to reduce offending but the starting point is education. Schools [are] frontline 'crime fighters'."

While the Youth Court is seen as a great success, Judge Becroft suggests that the age of offenders the court deals with should be raised to 18 and that the court should be a standalone justice system that caters to all offences, including murder and manslaughter.

Above all, Judge Becroft hopes that by 2025 there will be great understanding, response and diagnosis to neurodevelopmental disorders, which appear time and time again in unknown numbers.

"It concerns me that there is a generation of young people who have been criminalised because of undiagnosed disorders that may or may not be beyond their control."

It is his hope that by 2025 every young person in the Youth Court will have their own MRI scan, gene map and full "brain chart" revealing all known neurodevelopmental disorders. He hopes precise calculations of actual developmental age will be available.

### Misunderstood

**University of Birmingham** senior lecturer Dr Nathan Hughes explains that neurodevelopmental disabilities encapsulate genetic, pre-birth/birth/post-birth and environmental problems that impact life functioning.

He argues that whether it be learning or communication disabilities, autistic spectrum disorders or attention-deficit hyperactivity disorders, that there is a general misunderstanding about these disorders in an international context. But it is clear that those affected are disproportionately

## The prevalence of neurodevelopmental disorders

Neurodevelopmental disorder	Reported prevalence rates among young people in the general population	Reported prevalence rates among young people in custody
Learning disabilities	2-4%	23-32%
Dyslexia	10%	43-57%
Communication disorders	5-7%	60-90%
Attention deficit hyperactivity disorder	1.7-9%	12%
Autism spectrum disorder	0.6-1.2%	15%
Traumatic brain injury	24-31.6%	65.1-72.1%
Epilepsy	0.45-1%	0.7-0.8%
Foetal alcohol syndrome	0.1-5%	10.9-11.7%

These figures are from the 2012 report of the United Kingdom's Children's Commissioner on the prevalence of neurodisability in young people who offend. LawTalk was unable to find equivalent New Zealand figures.



represented in incarceration statistics across the board.

## Mental health issues

**Manukau barrister Gary Earle**, who began his career as a solicitor for the former Department of Social Welfare, and who presented at the conference, says youth advocates have the resources, experience and knowledge to ensure that “our young clients understand the system in which they find themselves and can participate meaningfully in it”.

“Yet, there is a subset of our clients who truly challenge our experience, our resources and our knowledge. These young people often leave us with a trenchant sense of failure. They are the ones for whom tried and true interventions do not seem to work, the ones who reoffend, the ones who will not engage, the ones who appear endlessly oppositional, the ones who simply seem not to get it”.

These individuals might, in fact, be subscribing to a process that they do not understand nor have the capacity to do so, he says.

“We have a very unusual [legal] process. We determine the level of involvement before we determine whether they are fit for the process.”

Mental impairment is but a fraction of the disabilities that might preclude children from being fit for court proceedings. Even so, mental impairment is difficult to define under the Criminal Proceedings (Mentally Impaired Persons) Act 2003, he says.

“The tragic thing is that kids with impairments such as this are misconstrued as

“ I don’t think we should accept that recognising neuro-developmental disorders is accepting a lower level

being defiant or having a bad attitude.

“I don’t think we should accept that recognising neurodevelopmental disorders is accepting a lower level because it provides a narrative that explains the charge. The question is, rather, if a defendant can’t choose the best course of action can they truly be said to have participated in the process?”

## Case study

**Mike Butcher**, a clinical psychologist for the Auckland District Health Board and with over 25 years of experience, says that the screening tests and legislation covering neurodevelopmental disabilities might not encompass children who fail to understand the system.

Impairments lead to offending and those impairments are diverse in nature, he says.

Throughout the conference he used the case study of a 16-year-old boy of Pacific ancestry. He lived with his mother and stepfather and there was no alcohol, cigarette or drug use during pregnancy. Alongside issues of alcohol abuse in the home, there was emotional, verbal and sometimes physical abuse.

The child struggled academically at school and at age five he was found to have a bilateral hearing loss. As a teenager he developed problems with anger and property destruction at home.

On assessment, the child was uninformative but despite various behavioural, and cognitive testing, the child didn’t meet the criteria for a mental disorder. Mr Butcher considered the child did have a mental impairment. However, the court found the child was fit to stand trial as prescribed by law.

## Action plan

**Ministry of Justice** Reducing Crime Policy Manager Graham Cowle says that in 2012 40 additional clinicians had been introduced to the Youth Courts to support decisions around mental health issues, alcohol and drugs.

The change is incorporated into a 10-year Youth Crime Action Plan (YCAP) that was introduced in 2013 to reduce crime by children and young people and help those who offend to turn their lives around.

Only a small proportion of young offenders come before the Youth Court, he says.

The vast majority are dealt with via alternative means (such as diversions and warnings), which reflect long-standing youth justice best practices and one of YCAP’s three core strategies (that is “reducing escalation,” which aims to ensure young people are dealt with at the lowest appropriate level of the youth justice system).

That said, YCAP does include initiatives to support the Court, and another of the three core strategies is “early and sustainable exits”. This seeks to provide young people who offend with the best type of intervention at the right time.

“By working together, the various components of the entire youth justice system are working hard to better help individual young offenders and address the reasons why they offend, rather than focus on just addressing the offending,” Mr Cowle says. ■

# Youth Justice Committee

The New Zealand Law Society’s Youth Justice Committee (YJC) contributes to the Society’s statutory law reform role by providing advice on issues and practice relating to youth justice.

This principally involves developing submissions on government bills and discussion papers, and working with key stakeholders to make sure legislation and supporting processes work well in practice.

The YJC welcomes feedback from practitioners about matters of national significance that they feel are not working and may warrant further discussion and progression. Contact Karen Yates, the YJC secretary, [karen.yates@lawsociety.org.nz](mailto:karen.yates@lawsociety.org.nz).