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Drugs Courts in New Zealand: the use of Restorative Justice

Interview with Judge Lisa Tremewan, Auckland District Court Judge

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The interview took place in April 2015.*

The New Zealand Drug and Alcohol Court Initiative known as *Te Whare Whakapiki Wairua* (translated as ‘the House that lifts the spirit’) began its five year pilot in November 2012 at two of the Auckland District Courts (Auckland central and Waitakere) with a view to managing 100 offenders through the process each year at a cost of \$2 million per year for the five years of the pilot initiative. The project embodied much of the international learning around drug and alcohol courts as well as a Restorative Approach to Defendants and Victims involved. The style of the programme was therefore Participatory rather than Retributive, and participants were expected to actively engage in treatment as well as community service and other measures to address the route causes of their addiction and offending. Key themes were therefore Domestic Violence and Drink driving. In December 2014 New Zealand introduced Section 24 A of the Sentencing Act 2002 and in doing so took the bold step of requiring all sentencing judges to investigate Restorative Options prior to sentencing.

Judge Lisa Tremewan was appointed to the District Court at Waitakere in 2005 and sits in the general, youth and jury trial jurisdictions. With a strong interest in restorative justice and therapeutic interventions, Judge Tremewan and her colleague Judge Emma Aitken, have overseen the introduction of the Alcohol and Other Drug Treatment (*Te Whare Whakapiki Wairua*) Court at the Waitakere and Auckland District Courts.

SH: What is the Alcohol and Other Drug Treatment (AODT) Court pilot?

LT: The AODT Court pilot arose out of an initiative that involved a review of the 3000 or so Drug Courts that exist in the USA, and applying the best of what was found to shape the AODT pilot in New Zealand. Based in Auckland, New Zealand’s largest city, the pilot programme focuses on treating the alcohol and other drug (AOD) dependency that has contributed to someone’s offending. It aims to positively impact on their health and wellbeing and help prevent them from

committing further crime. If someone is selected for the Court and agrees to take part, their case will be put on hold before sentencing to allow them to undergo intensive treatment for their addiction. If the treatment is successful, it will be taken into account by the judge when they are eventually sentenced. This is not an easy option — successfully treating an addiction will take significant commitment from the offender. Because it is a pilot, the AODT Court data about those in the programme will be included in the evaluation to assess whether the court will be continued.

SH: Has the reality of the programme matched the early vision of the pilot project?

LT: The court had five clear aims which were mandated by Parliament: There was a clear expectation that the participants would be on the programme for approximately 12 months during which time they would be actively engaged in treatment and be required to report back to the court on progress. Each court therefore manages around 50 people at any one time; we currently have 47 people in the programme with a further four coming on stream. This has been fairly consistent over the last couple of years. In practice participants have remained on the programme for around 16 months, sometime because they are waiting for treatment, sometimes because they are remanded in custody and we are awaiting assessments to be completed. We deliberately targeted offenders with high risk and high need as we wanted to see the greatest impact on some of the most serious offenders who had been in the system a long time. So we have seen most cases in the ‘moderate to severe’ category in terms of their AOD dependency.

SH: Is there a philosophical approach to the treatment process?

LT: The Programme is based on ‘abstinence’ rather than ‘harm reduction’, although there is a degree of tolerance around other forms of offending behaviour, reflective of the fact that we see people who are essentially addicted to ‘offending behaviour’ as much as the drugs and alcohol. Wherever possible we will try and involve victims and families, as they also play a big part in the process. There are five key roles: Judge,

Court Coordinator, Police Prosecutor, Defence Counsel, Case Manager (Treatment), and a culturally specific role known as the Pou Oranga (translated as Healing post). This latter role allows the court to focus on culturally specific practice but also brings a restorative element to the approach since Māori custom requires some sort of reparation and healing on the part of the perpetrator and victim of the crime. The Pou Oranga (Māori adviser) was a new role established in October 2013. The Pou Oranga gives advice on how to engage with Māori participants and works alongside the team and participants to ensure that kaupapa (cultural beliefs) Māori aspects are included in the court process and treatment plan. The role is intended to make the court more appropriate and meaningful for Māori participants. The person in the role has had a similar role in the treatment and recovery process and is well engaged in the community. He supports both the judges and respective AODT teams, giving guidance on appropriate responses to Māori. He brings knowledge of Te Reo and tikanga Māori, and opens and closes court sessions with karakia. He also works with Māori participants. Research suggests that people respond positively when judges talk to them. Interactions of more than three minutes have a real impact. It's simple psychology. If you acknowledge someone's progress, they obtain a better sense of self-worth. If you say you're disappointed in them, that's hugely crushing. In the AODTC, this translates into a real ongoing commitment to abstinence as well as getting the right support to ensure that.

SH: Given the court was based on learnings from International experience are there any differences or distinctive features of the AODT Court in New Zealand ?

LT: Distinctive features of the New Zealand AODT Court are:

- ❑ the inclusion of Māori cultural practices and support to meet the needs of Māori participants;
- ❑ the ability of the AODT Court to require participants to attend 12-step meetings (mainly Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings);
- ❑ the inclusion of case managers from the health sector and peer support workers;
- ❑ the AODT Court is a pre-sentence rather than a post-sentence initiative; and,

- ❑ the court includes participants charged with driving while intoxicated.

SH: What about the participants? What is their reason to want to participate and stay in the programme?

LT: 'Not wanting to disappoint Judge Wendy' is amongst the most popular of responses. Furthermore, the process is non-adversarial and the focus is on changing aspects of the lifestyles of the people who come through the Courts to ultimately change them. Another dimension is about getting lawyers to redefine what we mean by success. These 'addict' labeled offenders want what we take for granted — a normal life. Success then becomes successfully turning their life around.

SH: And victims? What is their part in the process?

LT: There is no formal requirement for victims to participate, and in many cases it is impractical for them to do so (a large Department store that has been subject to regular shop lifting to fund a drug users habit for example will not want to give up their time to attend court). However in every case the court will attempt to communicate with any victims that have been identified and offer the opportunity to participate. One of the measures of success long-term will be the extent to which

we build public confidence in the process. Most victims are pretty clear about what they want: 'to see the offender drug and alcohol free'. Because the programme typically takes 18 months to two years to complete most victims will inevitably have moved on at this point and are not likely to participate formally. Having said this we have had a number of conferences which have involved 'letters of apology' and in some cases offenders will attend meetings at a Marae (cultural meeting house) where the offender will be expected to reference their understanding of victim impact and look for a way of providing some form of restitution — usually by volunteering or giving back to the community in some way. Police prosecutors are now taking time to follow up with past victims to feedback participant success and any details of things like voluntary and other work completed.

SH: What is the most important aspect of this restorative work?

LT: It will vary depending on the circumstances. Almost all participants will complete around 200 hours of community work that they have chosen (we

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try to avoid making this a punitive response); they are expected to be in work, looking for work or studying as an outward demonstration of turning their lives around. Writing a 'letter of account' to explain to victims that the offender fully understands and accepts responsibility for their behaviour can equally be important.

SH: Given the fact that RJ has now become a 'mandatory' process for judges how is this impacting on the criminal justice system generally?

LT: As with any approach of this type which steps outside the more familiar judicial process there is a lot of variation in application. Many of my colleagues believed that RJ would just not be relevant in some areas. An example of this is family violence; whereas the reality is that victims are engaging in and welcome the process. Many victims are pragmatic about what happens to perpetrators and that they also need to move on with their lives. One issue will of course be access to Third Sector Organisations which have the capacity and capability of delivering RJ services — we are to some extent a victim of our own success in this area. There is huge support for the approach right across government, not just from the Ministry of Justice, equally in Health which is a key player in this space if perpetrators are to access and receive treatment.

SH: How do you think the process can improve?

LT: In many ways we are still breaking new ground. In the early years it has been very much about collaboration across departments and in areas that are traditionally not based on cooperation. For example Prosecutors and Defence Lawyers have to work together. Families are also part of this process, in the past they may have seen themselves as victims of the system, whereas now their role is to support the offender and encourage them to seek and continue in treatment.

SH: What is your perception of the reaction of participants and how effective the process has been?

LT: The Interim evaluation¹ of the pilot perhaps provides the best evidence for this:

Participant Experiences of AODT

At first, it's really daunting because it's so different, the judge is there and she addresses you as a person and [the] same as the court, you've got the lawyers and counsellors and support people sitting there but then everyone claps for you and it's supportive, and it's just different — it's humbling. (AODT Court participant 10)

I think it's good. Every time we go there we sit at the back of the court and everyone's there so we hear everyone else's story and there's some sort of strength there and support and it's really good. Even if it's not about you, it's about someone else you still connect [with] and you pick up everything from that person and it's quite different; it's good. It makes it easier, because when you go back after court you've got that energy to carry on, and everything is sort of explained. Like when you're in rehab, you have your ups and downs and everything, but when you're [in] court you have a breather and hear other people's stories, and everything sort of fits in and then when you go back you're refreshed and you can carry on. Being around the same people that are like me. (AODT Court participant 13)

It's good. This one here is a lot better than normal District Court. In District Court you get in the box or whatever but this one here they welcome you and they acknowledge you — your clean time or the good things that are going on. If I'm slacking in places, they sort of explain that I need to ... but not in a harsh way. They encourage well, and they're not hard — they're not soft either, but yeah. You feel like you want to be here but with other courts you don't want to go. (AODT Court participant 7).

1. Litmus (2014) Formative Evaluation for the Alcohol and Other Drug Treatment pilot. Available at: <http://www.justice.govt.nz/courts/district-court/documents/alcohol-and-other-drug-treatment-court-formative-evaluation>, accessed 23.5.2016.