

Issues and Challenges

**Part 1 of a joint paper presented by Judge J. Robertson,
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of Queensland, and Judge K. O'Brien, President of the Childrens
Court of Queensland at a youth justice conference
“Making the Youth Justice System Work Better”**

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One of the most significant challenges facing the youth justice system is paradoxically largely beyond the control of those who operate within the system. All of us, Judges and Magistrates, practitioners, youth workers and other family services officers work in a hot house of highly critical media scrutiny, some of which is unfair and simply wrong. Finely balanced decisions relating to placement of children at risk being painted as criminally negligent when as happens, on rare occasions, those decisions lead to tragic consequences. At such times, there is no mention of the vast majority of successful placements – no one does in-depth interviews with people who, despite a childhood in foster care, or in State institutions, nevertheless lead worthwhile and productive lives. Similarly, in the juvenile justice area, there is little media interest in successful outcomes – the young people (indeed the vast majority) who do not reoffend after receiving a police caution, or those who manage to climb out of a background of a dysfunctional family and a destructive cycle of drugs and compromised schooling, to find a job and lead a law-abiding life. When, on rare occasions, such stories are told, e.g. the ABC's Australian Story; they inspire an overwhelming reaction of sympathy, hope and inspiration. Instead, there is a focus on bad news; or on what a particular journalist subjectively believes to be bad news.

In the Sunday Mail of 9th February, there was a full page article which advanced the theory that the QPS statistics revealed a shocking crime wave by our youngest criminals aged 10–14 with a correspondingly weak, “slap on the wrist” response from police and courts. The article focussed on a piece of insightful investigative journalism – a scoop indeed. A 14 year old repeat offender “Adam” was interviewed and revealed that he did not respect the Courts or the police, and took no notice of the sentences he received. The fact that in the real world most 14 year old males, irrespective of background, would for reasons such as immaturity and hormones, react to leading questions about figures of authority with truculence and bravado, seems to have escaped the Sunday Mail. The Editorial of the same day then took up the theme of 14 year old crims wreaking havoc on our community, effectively assuming that the article had the quality of holy writ. When I was approached by the same journalist in the following week to give an interview as a result of a speech I had delivered to a graduation ceremony, I agreed and spoke to her for over an hour on two separate occasions. The result was a very small article in the Sunday Mail of the 17th February, half of which was devoted to the comments of an “anonymous” police officer who said the police were heartily sick of the weak response of the Courts. It seems to have escaped the caller, and the journalist, that the first article had been very critical of police for administering thousands of cautions to 10-14 year olds which it was argued were just a slap on the wrist. The other half of the article briefly referred to my comments about restorative justice. No mention was made of my comments concerning the drop in the number of offences committed by young people over the last 12 months, and the significant drop in the number of young people appearing before the Courts – 13% in the higher Courts which deal with only serious offences.

The point of the story is that we have to live with this reality. We operate in a system which attracts a great deal of public interest. There is no point in ignoring the media; rather it is essential that we take every opportunity to engage the media and to tell what is really happening in the system. I think that is a real challenge for the future; a challenge for every one of us.

The second part of my theme concerning issues and challenges is to do with restorative justice. Some of you are aware of my interest and commitment to the application of restorative justice methods in our juvenile justice system. The Government has committed a great deal of money as recurrent funding to provide the infrastructure for youth justice conferences throughout the State. In my Eighth Annual Report, I reported on a number of cases in which the community conference had produced outstanding results, that is when measured against the purposes of punishment. I am convinced that it is the way of the future; taking us away from an obsessive reliance on harsh punishment as a means of dealing with youth crime. I remarked recently that it intrigues me that in the 21st Century we still cling to harsh punishment such as incarceration which derives its theoretical justification from a 19th Century culture, most of whose other values, e.g. suppression of women, children and minority groups, we have long since discarded. At a pragmatic level, I think the way in which we handle the assimilation of restorative justice methods into our juvenile justice system will determine how this generation of practitioners are judged in the future. On a number of occasions, I have related the story of a young Canadian man, Kevin Hollinsky whose case in 1995 reached the highest Court in that country, the Canadian Supreme Court. An unusual sentence imposed at trial level was upheld. The story as related in a magazine article is worth repeating as it encapsulates the benefits of this approach.

“One July night in 1994, Kevin Hollinsky and four friends had a boys’ night out at a downtown Windsor bar. Several hours later, Kevin got behind the wheel of his 1985 Firebird.

On the way home, he and his buddies were trying to get the attention of a carful of girls. Kevin was driving too fast when he lost control on a bad curve. Joe Malis, Kevin’s best friend since the age of four, and his other close friend, Andrew Thompson, were both killed. Kevin was not physically hurt. The two others were injured. Kevin pleaded guilty to two counts of dangerous driving causing death. For reasons of general deterrence, the crown asked for a jail term of between eight and 14 months to serve as a lesson for other young drivers. In the words of a community police officer who worked on the case: “we knew that we had been telling audiences a very clear message – ‘You drink and drive and kill someone. You are going to jail.’ The appeal courts have said that a prison term is an appropriate sentence in almost every traffic death where there is serious negligence. But Kevin did not go to jail, both because of an extraordinary intervention from the parents of the two dead boys and because of a courageous and innovative court judge who took a risk with an alternative community sentence. What happened that day in the justice system of Windsor is best expressed in the words of Dale Thompson, Andrew’s father. He made the following submission to the court.

“Since society demands exacting a price for Kevin’s mistake, I’d like to think that price, rather than incarceration, could be a much more constructive motion ... We have been in contact with the Windsor Police Department about arranging a program in conjunction with area schools. The program would consist of Kevin, along with what is left of his car, attending at schools and speaking with the students about the events of that tragic evening. Both families have already offered to assist the Hollinskys and Kevin in his attempt to reiterate to young drivers the importance of responsible driving. I know Andrew would want it this way, I surely do.”

Kevin Hollinsky received a sentence of 750 community service hours and has spoken to more than 8,300 students in an extraordinary program that includes strong messages from the police, Kevin, Mr. Thompson and another friend who was in the car.

High school audiences are profoundly moved by the presentation which grew out of Hollinsky’s community service order. For the first time in years last summer, Windsor and Essex County had a summer without a high school student being involved in a fatal or a serious automobile collision. After hearing the presentation, one Windsor high school principal told the police he was confident it would save lives in the future. “In my 30 years in education I have never seen a presentation that has made such a dynamic impact on students as this one.”

Lloyd Grahame, a recently retired Windsor police staff sergeant in charge of community police, was initially unhappy about Kevin not going to prison. "I've got to say now that he makes the case for alternative sentencing Nobody will ever convince me now that sending him to jail was the best thing to do. You could send him to jail for five years and you wouldn't have punished him by doing what happened here.

This man was forced to live with the consequences of his irresponsibility, day after day after day. Every day he went out to speak he relived it. He touched many, many young people in this city in a way we could not. It's hard to reach teenagers. He did. Kevin showed them they are not invulnerable."

In 2001 Judge Richards adopted a similar approach in relation to a young offender and on an appeal by the Attorney-General her sentence was upheld, the President of the Court noting that although restorative justice principles are not directly mentioned in the sentencing guidelines in the *Penalties and Sentences Act* 1992, they can be invoked consistently with those guidelines¹. I have now applied the community conferencing provisions of the *Juvenile Justice Act* 1992 on many occasions with impressive results. It is a new approach to dealing with wrongdoing which takes us away from an obsessive concentration on harsh punishment, and invokes concepts of restoration, reconciliation, forgiveness and restitution. At other times, I have described these developments as a quiet revolution in criminal justice.

Can I say publicly again, what an honour it was to serve as the President of the Childrens Court of Queensland for 3½ years. My successor, and co-presenter Judge O'Brien is a fine judge with a compassionate heart and two sons and two daughters and is thereby well fitted to lead the Court into the future.

¹ *R v. Tran; Ex parte Attorney-General* [2002] QCA 21