

REVISIONING THE LAW AS A HEALING AGENT

IN THE AOTEAROA AODT COURTS

INTRODUCTION

- Consider role of therapeutic jurisprudence (TJ) as a supporting ideology for AODT courts.
- Two personas of justice. Statues outside the American Supreme Court.
- The Authority of the Law
- The Contemplation of Justice.
- How to meet the strict demands of justice while acknowledging the fallibility of human agents.
- TJ as undergirding the AODT courts. Paradigm for evaluating and giving effect to the affective and healing component of the law.

The Authority of the Law



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The Contemplation of Justice



Structure of address

- Overview of TJ as founding working philosophy for solution-focused courts.
- TJ as basis for AODT Courts
- The New Zealand AODT Court model
- Law as a healing agent
- How TJ might shape future direction of AODT courts in New Zealand.

WHAT IS TJ?

- A “revolutionary and global law reform philosophy”
- TJ offers “ new tools for dealing with the problem of crime and drug use problems that have been ineffectively addressed by current laws and jurisprudential philosophies”
- David Wexler: “[t]he study of the role of law as a therapeutic agent” .
- Focus on impact of the law on emotional life and psychological wellbeing.
- Task of TJ to identify and examine empirically relationships between legal arrangements and therapeutic outcomes.
- Also described as a ‘normative agenda’, an effort to prescribe what ought to happen.
- Applied to solution-focused courts TJ offers “ protocols and techniques for making the justice system more effective in quite specific ways’

Fresh perspectives

- Professor David Yamada – speaks of struggle to reconcile his everyday work with the ‘existential threat’ faced by Americans in the public sphere, generated from Washington DC.
- Explores how TJ may have a role in “this deeply unsettling and disturbing time” as the antithesis of how laws and policies are made in America’s capital.
- Guest BLOG by Nabeela Siddiqui on how TJ is making inroads into environmental law and protection
- Idea of TJ as a “procedural jaws of life” offering victims a meaningful opportunity for court participation, engagement and healing process.

TJ as basis for AODT Courts

- TJ offers procedural guidelines, protocols and techniques to assist in making the CJ system more effective in discrete ways.
- Wexler talks of the Therapeutic Application of the Law (TAL) having very specific applications in context of drug courts.
- Applications include, the non-adversarial approach, consistency of judges and other multi-disciplinary professionals, immediacy of treatment, court layout fostering communication, motivational judicial monitoring, and integrated team approach.
- Drug courts having a particular legal 'accent' defined by cultural and social need explains the distinctiveness of courts in their geo-political context.

The New Zealand AODT model

- Te Whare Whakapiki Wairua –The House that lifts the spirits.
- Speaks powerfully of the AODT courts as places of hope and healing.



Specialist forum

- In June 2017 former NZ Minister of Justice announced a three year extension to the Alcohol and other Drug Treatment Court .
- Court began as pilot in 2012 established in two areas of Auckland.
- Courts aim to divert people from prison whose addiction associated with serious offending.
- Offenders closely supervised by Court and undergo rigorous treatment programme.
- Those completing treatment plan and graduating the programme receive intensive supervision order under Sentencing Act 2002 (NZ).
- Sentencing process used by Court to facilitate positive outcomes for participants, reducing risk of re-offending
- AODT Court has close links to broader movements in the law emphasizing the therapeutic design and application of the law.

The Pou Oranga Role

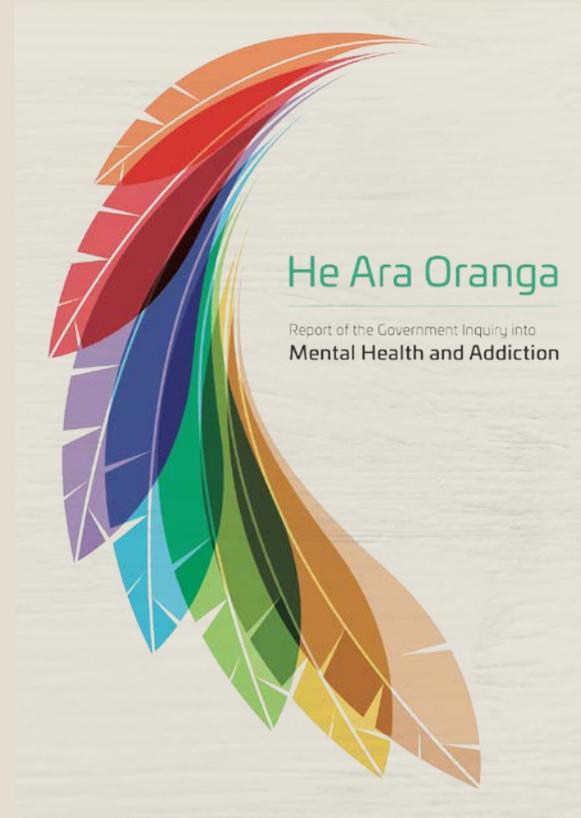
- Literally – “The healing post”.
- Central to philosophy and success of NZ AODT Courts.
- Pou Oranga – Mr Rawiri Pene – Senior Māori elder provides cultural support while ensuring effective incorporation of tikanga Māori within the AODT court.
- Role of Pou Oranga in providing support for healing of AODT Court participants.
- Pou Oranga role together with peer support and those with lived experience of addiction and substance abuse as peer support workers, cultural advisers and counsellors is the defining marque of New Zealand AODT Courts.



Law as a healing agent

- Paradox – How to balance punishment and healing.
- Importance of the perspective of clients and consumers of mental health services:
- “In this way, those who are involved in, or are subjects of, the litigation that deals with individuals with mental disabilities can share their insights into how the therapeutic, or anti-therapeutic aspects of the justice system actually play out.” (Michael Perlin).
- Success of therapeutic jurisprudence depending on degree to which “it empowers the objects of therapeutic and judicial attention.”

Inquiry into Mental Health and Addiction -He Ara Oranga





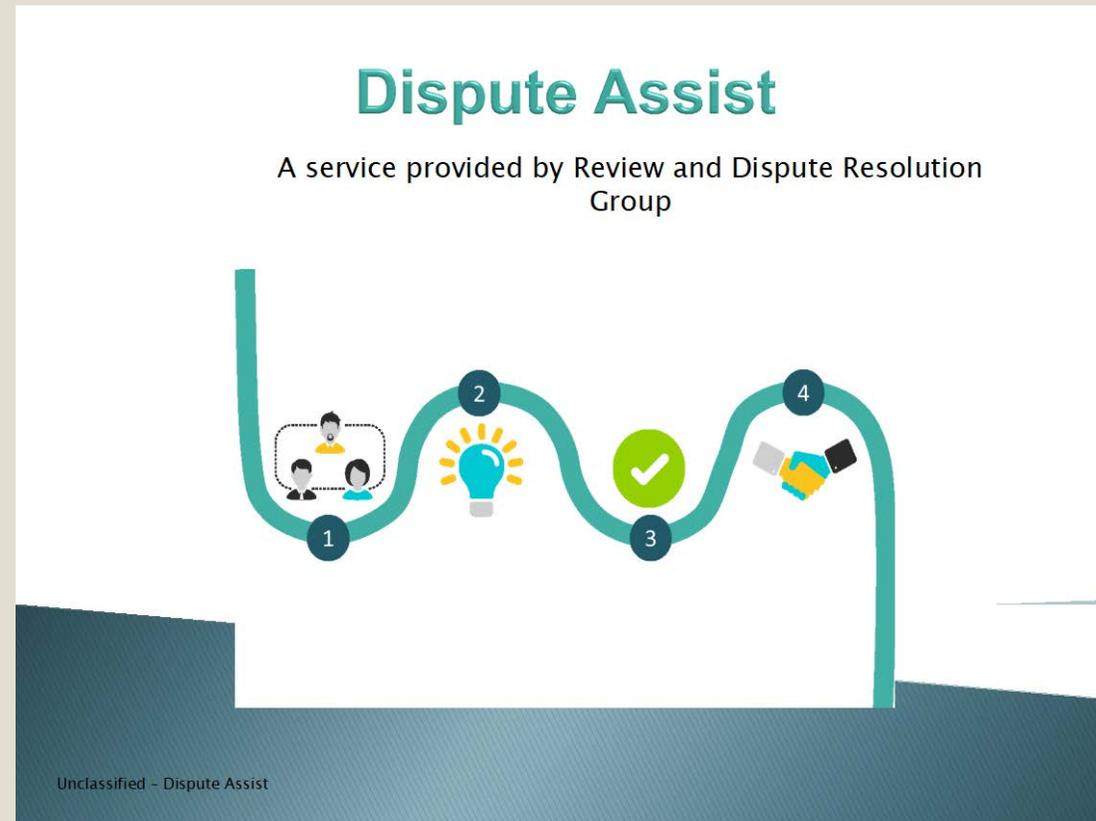
He Ara Oranga

- An aspirational charter to empower those vulnerable on account of mental illness or addiction to achieve a new and healthier focus in their lives.
- Report fundamentally concerned with role of law as a healing agent with focus on wellbeing and non-adversarial means of resolving particular areas of concern.
- Deliberate 'people first' approach taken.
- Law change as outgrowth of the knowledge and insights of those with lived experience of mental illness.
- Consumer oriented approach:
 - *"People asked for legislative reform that would guarantee human rights, minimize the use of compulsion and seclusion in patient units and require an approach to mental health and addiction that lifts the spirits and restores dignity."*
 - *"The person's concerns hopes and priorities are more fundamental than the diagnosis, treatment plan or preconceived assumptions of clinicians or caregivers."*

DISPUTE ASSIST

- Example of how TJ has impacted practice of tax law enforcement.
- Grant Cameron, inspector at Australian Taxation Office (ATO) describing the Dispute Assist model to provide tailored assistance to unrepresented individual taxpayers.
- By May 2017 the Dispute assist Pilot had finalized 28 cases through the use of Dispute Assist guides.
- Issues affecting taxpayers inability to meet tax obligations including terminal illness, addiction, suicide, family violence, financial distress and sexual abuse.
- Despite sensitivity of issues affecting taxpayers and the active pursuit of debt Guides able to provide taxpayers with confidence to engage debt officers and cultivate relationships.
- Taxpayers spoke of support received from ATO staff and 'lifting of burdens' from taxpayers.
- Excellent example of TJ principles in action.

Dispute Assist



TJ and future of AODT Courts in NZ

- Prof Michael Perlin reflecting on Auckland's Alcohol and Other Drug Courts said:
- " I have never, in such a short period of time, had the honour to observe such examples of therapeutic jurisprudence in action. In my entire career as a lawyer – spanning over 40 years , practicing ...TJ – I have only seen a handful of judges that ran their courtrooms with the level of dignity tht I observed and that showed the defendants and all othersw who came before them the level of respect I learned there."

Student testimonies

- “These were instances of a greater sense of community that I have never viewed in a mainstream adversarial court[] system. These experiences demonstrated the effectiveness of therapeutic justice and I wholeheartedly now believe that this approach is the most effective way for reducing recidivism in the criminal justice system.
- “I think this is a fantastic model, where each offender has a face and a voice, with a history and a future, instead of a file number.”
- “ ...[A]dversarial posturing didn't exist but was replaced by a collective will to combat the factors that contribute to re-offending – be that homelessness, drug use, alcohol addiction or otherwise.”

Impact

- What we witness in these moments is an intimacy and aspiring to wellbeing that is wholly unprecedented in the functioning of courts with a criminal jurisdiction. When a pilgrim through this process speaks of the restoration of relationships with whanau and iwi, the overcoming of deeply rooted addictions, the love and support of immediate family and friends, the encouragement and support offered by the court team (including the Judge), the dignity of fresh employment (or the hope of it) achieved through cultural and peer support, and the flowering of hope for a new and brighter future in a wide constellation of relationships, it is impossible not to be deeply moved.

Conclusion

- In a recent BLOG by Professor Wexler reflecting on how Adverse Childhood Experiences screening interviews can be therapeutic refers to a study examining medical records of prisoners in a Michigan facility.:
 - “By coincidence half the cells looked onto bare brick walls while others overlooked rolling farmland and trees. The group facing the countryside was 24% less likely to suffer physical or mental illness. Such a finding if produced by medication (as opposed to the soothing effect of nature), would have likely caused quite a stir in medical journals.”

