The Injustice, in Justice

An examination of the quality of legal representation young Māori men receive in the criminal justice system

PAULA BOLD-WILSON

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ABSTRACT

“We cannot run society for the privileged and allow a significant proportion of the population to be marginalized. It impacts the quality of life for all of us if we have ‘throw away’ people. A justice system which tolerates injustice is doomed to collapse.”

- Leonard Noisette

This research explored the quality of legal representation Māori men receive in the New Zealand Justice system. Drawing on interviews with eight Māori men aged 18-30, the research project challenges the discourses implicit within the terms ‘justice’ and ‘quality’. Through the utilisation of kaupapa Māori methodologies, ‘quality’ is defined by the participants, and is used to assess their experience with their lawyers in the criminal justice system. Three lawyers were also interviewed, to gain their perspectives on the young men’s construction of their experience.

Findings indicate that the men who had appeared multiple times in the justice system, had experienced social, economic, cultural and political disadvantage. Accordingly, these determinants of wellbeing are considered, in order to provide a greater understanding of the factors which have permeated and shaped their lived experiences.

In examining the young men’s experience from their initial engagement with the police, their experiences with their lawyers, through to being sentenced by a judge in court, themes of unconscious bias, unjust practices and white privilege emerged from the narratives.

In considering ‘quality’, the lawyer/client relationship was integral to their experience. The use of legal terminology, the range of legal options made available to clients, and lawyers’ willingness to defend non-guilty pleas created barriers to justice for these young men. In addition, the lawyers identified systemic issues such as inadequate resourcing, significant workloads, and problematic courtroom environments as factors which contribute to legal services which are substandard.

The thesis concludes that Māori responses to justice, such as the Hoani Waititi Tikanga Programme, Māori social workers in court and whānau support were pivotal turning points for the participants. Moreover, addressing systemic barriers, provides the answers to reducing
the disproportionate number of Māori in the New Zealand\textsuperscript{1} criminal justice system. A key factor in this research thesis is that kaupapa Māori methodology can not only provide an effective means to empower research participants, but also adds value by enhancing social justice in an area that is not widely researched.

\textsuperscript{1} The terms ‘New Zealand’ and ‘Aotearoa’ will be used interchangeably throughout the thesis.
Tēnei au, tēnei au,
Te hōkai nei i taku tapuwae
Ko te hōkai-nuku ko te hōkai-rangi
Ko te hōkai nā tō tipuna a Tāne-nui-a-Rangi
I pikitia ai ki te Rangi-tūhāhā ki Tihi-i-manono
I rokohina atu rā ko Io-Matua-Kore anake
I riro iho ai ngā kete o te wānanga
Ko te Kete Tūāuri, ko te Kete Tūātea, ko te Kete Aronui
Ka tiritiria, ka poupoua ki a Papa-tū-ā-nuku
Ka puta te ira-tangata
   Ki te whai-ao
   Ki te ao-mārama,
   Tīhei mauri ora!

Ko te Arawa te waka
Ko Matawhaura te maunga
   Ko Rotoiti te roto
   Ko Te Arawa te iwi
Ko Ngāti Pikiao rāua ko Tuhourangi ngā hapū
Ko Hinekura te marae
Ko Paula Bold-Wilson ahau
Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa
It is my greatest pleasure to dedicate this research to the men who have contributed to this project, and who have allowed me to generate some research in a field which is currently lacking investigation. Each of you have provided me with insight into your world, and entrusted me with your stories so that together we can influence change. Heoi anō, let your inner strength explore possibilities, let your hearts touch others like you touched mine, let your resilience prepare you for your future, and let your minds guide your dreams and aspirations.

I am equally grateful to the three lawyers who provided me with a greater understanding of the justice system, and the systemic barriers that Māori endure. I am also grateful to the whānau members and social workers who provided critical assistance during these men’s experiences. Never underestimate the difference your aroha and manaaki made, you were their shining light.

This thesis would not have been achievable without the encouragement and guidance of my supervisor Dr Geoff Bridgman, who continuously stood by my side, regardless of the challenges I endured over this time. Thank you to Dr Helene O’Connor who, as a Māori academic, has supported me throughout my entire academic journey and has given me the confidence and inspiration to complete my Masters’ degree. This contribution to Māori research would not have been possible without the careful eye and guidance of Dr Teorongonui Josie Keelan, who ensured my research upheld the integrity and mana of the young men, and Māori people as a whole.

I would like to thank my dearest friends Manu Joyce and Louise Stokes, who spent endless nights and weekends discussing the research with me, helping me find clarity, and ensuring my thesis remained grounded in social justice.

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Kei te mihi, kei te mihi, kei te mihi aroha ki a koutou katoa.
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CHAPTER ONE – Introduction

The purpose of this research project is to critically examine how young Māori men and lawyers working within the criminal justice system perceive the quality of legal representation within this system. In this research, ‘quality’ is defined as a subjective value given by the participants, and emerges as a reflection of their experience of legal representation in the district courts. The research was undertaken through interviews conducted with eight Māori men between the ages of 18-30 (with the support of a whānau member), who were either in the early stages of engagement with, or had multiple experiences with, the criminal justice system. The age of participants was selected in recognition that young men, especially those who have experienced social exclusion, are often more vulnerable as they experience greater challenges and barriers than older men. Three experienced criminal lawyers who practice in Waitakere were also interviewed, one of whom is Māori.

To ensure cultural congruency with this research project, a kaupapa Māori paradigm was applied, as this is the most effective framework for empowering and emancipating Māori during the research process (Smith, 1999, p. 12).

1.1 Position of Researcher

My mother is Māori and my father is Pākehā, however I grew up in a predominantly Pākehā environment, and therefore had very little exposure to Māori culture. Sadly, I grew up ashamed of being Māori, as the effects of racism and stereotyping would ultimately form my own rhetoric of my people. As a consequence, I grew up disconnected from my Māori culture and spent many years struggling with my identity. In short, I was too brown to be white, but I was too white to be brown.

In my early 20s, I started the process of decolonizing as I learnt more about Te Tiriti o Waitangi, breaches to this Treaty and the subsequent injustices which had occurred. This new knowledge elicited feelings of anger and frustration, and fuelled a passion to learn more about my whakapapa, culture and language. I would often hear racist comments being made about my people, and never had the language or knowledge to challenge these. During this time, I was fortunate to work alongside other Māori, who had a strong sense of culture and identity, and therefore worked in an environment which affirmed my cultural heritage. I was also privileged to be involved in Māori initiatives which achieved positive outcomes by Māori, for Māori.
My personal experiences and time at Unitec Institute of Technology, drew me to undertake a Bachelor of Social Practice, where I majored in community development. Community development has a dual role; to empower the community, and to challenge the systems which oppress (Ife & Teserio, 2006). Whilst it is easy to position a problem at an individual level, I have a particular interest in how global, political, cultural, social and economic influences impact on individual lives. Therefore, a passion for social justice, and for identifying, challenging and influencing systemic change, is an integral aspect of my practice.

I previously managed the Waitematā Community Law Service, a not-for-profit organization which provides legal services to those with insufficient means of accessing such services. It was at the 2011 Coalition of Community Law Centres National Hui that I heard Pita Sharples and Kim Workman present the alarming statistics of Māori within the justice and prison systems, with systemic bias and discrimination as a contributing factor. In addition, during my time at the Waitematā Community Law Service I saw cases where Māori were underserved by the legal system. Yet, it was the experience of going through the justice system with a family member that made me truly aware of how legal aid, the barriers to justice, and the quality of legal representation, could be a contributing factor to the disproportionate number of Māori in the justice system. This experience enabled me to focus in on my topic and undertake this research project.

1.2 Research Question
The question underpinning this research is to critically examine how do young Māori men and lawyers representing them, perceive the quality of legal representation within the criminal justice system. This research is set within the context of the police and legal systems and the powers exercised by professionals, within those systems. In the research, ‘quality’ is defined as a subjective value given by the participants and emerges as a reflection of their experience of legal representation in a District Court. In order to conduct the research, interviews were undertaken with eight Māori men (with the support of a whānau member), between the ages of 18-30. Four of the participants appeared in court for the first time, whereas four participants, had appeared multiple times. The interviews focussed on their experience with their lawyers, and the criminal justice system as a whole. The age of participants was selected in recognition that young men, especially those who have experienced social exclusion, are often more vulnerable as they experience greater challenges and barriers than older men. Three experienced criminal lawyers were also interviewed, one of which was Māori.
1.3 Rationale for the Research

When an individual is convicted, and subsequently receives a criminal record, there are long term effects which remain with the individual despite completing their sentence. This is commonly referred to as the ‘collateral consequences of conviction’ which have a variety of impacts. Love (2005), notes that whilst this has broader socio-economic consequences, the stigma of having a criminal record provokes wide-ranging and subtle forms of discrimination and embarrassment. According to Love, “once someone has been tagged as a criminal, it is almost impossible to get rid of the label; the public is easily persuaded that ‘convicted felons’ must be segregated and excluded from the rest” (2005, p. 2).

The inability of young Māori men to access quality legal services can generate, and/or perpetuate, social exclusion for individuals, especially when they are unaware of their legal rights (Buck, Balmer, & Pleasence, 2005). This is driven by a dominant discourse within the criminal justice system underpinned by the notion of ‘one law for all’. Dyhrberg (1994), contends that the New Zealand justice system, is primarily focused on individual responsibility and therefore disregards the role of the community and whānau in addressing criminality. Accordingly, this has resulted in a western hegemony which ignores Māori notions of collective responsibility and traditional judicial practices.

In 2010, as part of the United Nations Special Report on the Rights of Indigenous Peoples, Professor James Anaya raised specific concerns about the socio-economic status of Māori, drawing special attention to the high imprisonment rates of indigenous peoples in Aotearoa. In his report to the New Zealand Government, Anaya strongly recommended that effective measures be identified to address this issue, emphasising it as a key priority (Human Rights Commission, 2010). The over representation of Māori within the criminal justice system is also echoed by Statistics New Zealand which states:

Māori represent roughly half of all criminal justice offenders and victims, a proportion far greater than would be expected for the size of the population. There is an urgent need to address this over-representation for the benefit of Māori and New Zealand society as a whole (Statistics New Zealand, 2009, p. 22).

However, recent statistics published by the Department of Corrections (2017) highlight that little has changed since 2009. Māori men continue to make up 50.9% of the prison population, with those between the ages of 20-29, representing the highest proportion at 33%.
1.4 Outline of Thesis
1.4.1 Chapter Two – Literature Review
The literature review discusses the various influences which have contributed to the over representation of Māori in the New Zealand justice system. To provide deeper understanding, a review of the historical, cultural, political, and legal context is also undertaken. The human rights frameworks which pledge universal access to justice are examined, and literature on the quality of national and international legal representation for those with legal needs is covered. In conclusion, dominant discourses, systemic bias and discrimination are investigated to illustrate the inherent discrepancies in our justice system.

1.4.2 Chapter three – Methodology and Methods
Chapter three is a discussion of the two methodological approaches which underpin this research project. To ensure cultural congruency, and to proceed in a socially equitable manner, Kaupapa Māori methodology and a transformative paradigm are applied. These two paradigms were used to validate the interviewee’s lived experiences and to enable this research to contribute to systemic change.

1.4.2 Chapter Four – Findings
The findings chapter provides a description and the demographics of each research participant, including the various influences in their lives. Drawing on Franz Kafka’s *The Trial* (1925), who describes his experience of being lost in the justice system, chapter four discusses the themes which arose from the participant’s initial engagement with the police, the court environment, their legal representation, and what occurred in the courtroom. An update is provided on the participants, including pivotal moments in assisting the young men through their experiences.

1.4.3 Chapter five – discussion, recommendations and conclusion
The discussion chapter draws on the critical link between colonisation and urbanisation, and how these have contributed to the social, cultural, economic and political deprivation of the men in this research project. Patterns of unconscious bias, unjust practice and white privilege, illustrate that the justice system is inherently racist. This chapter alludes to the various judicial processes which create barriers including the police, court environment, changes to legal aid, lawyers’ caseloads, and the Department of Corrections. Consideration is given to the men’s experiences of their legal representation, concluding that ‘quality’ was defined by the relationship they had with their lawyer. Following this, a number of recommendations are offered, including the need for Māori response to justice as this provides the basis for change.
An overview of the research project is presented, including acknowledgement of the limitations of the research, concluding with a personal reflection by the researcher.
CHAPTER TWO - Literature Review

Introduction

Moana Jackson’s 1988 report on Māori and the criminal justice system provides an in-depth analysis of issues facing Māori within the criminal justice system. Despite being written almost three decades ago; Jackson’s report remains a fundamentally significant document in the field of criminal justice. In the report, Jackson argues that the criminal justice system is unjust, and has severe consequences for Māori. Jackson also identifies that there is limited data available which examines the way that each consecutive stage of the justice process is problematic, including how these various processes fail to work for first-time Māori defendants. Accordingly, the purpose of this research is to examine the quality of legal representation young Māori men receive within the system, but from the perspective of those entering the criminal justice system and the lawyers working within in.

The literature review is divided into four specific areas. The first section provides a review of the over-representation of Māori in the justice system and explores the reasons for this. A demographic profile is provided here, showing the risk factors relating to arrests, convictions and incarceration that are associated with being Māori. Traditional Māori concepts of justice are also discussed to illustrate how colonisation and urbanisation has undermined traditional Māori justice practices, thereby contributing to the current social, cultural and economic disadvantages Māori encounter in contemporary Aotearoa.

The second section examines the international and national frameworks which advocate for the entitlement to a fair and just legal process. I will then provide an overview of the criminal justice system in New Zealand, including content on the individual’s ability to access justice through legal aid, the duty solicitors scheme and community law centres.

The third section of the literature review considers various factors which impact on the quality of legal representation individuals receive and justice outcomes. These factors include underlying drivers of crime, social economic status [SES], and underpinning discourse issues regarding power and language. This section draws primarily on international research, as there is minimal New Zealand research which explores these areas. This section also discusses
the collateral consequences for those who are convicted of a crime, to highlight the long term, yet subtle, penalties individuals experience following a criminal conviction.

The fourth and final section investigates how penal populism, systemic bias and systemic discrimination manifest within the justice system. The literature review concludes by identifying recent Māori responses to justice which have had positive and sustainable outcomes for Māori.

2.1 The Over Representation of Māori in the Justice System

Brittain and Tuffin (2017) draw on Durie’s (2003) writing about Māori being trapped in the cycle of poverty, whereby their experience of social exclusion and marginalisation are precursors of criminal offending and incarceration. In their research, Brittain and Tuffin state that Māori who are trapped in the criminal justice system aligns with “constructions of Māori as subject to discriminatory targeting whereby Māori are arrested, charged, and imprisoned at young ages” (Brittain & Tuffin, 2017, p. 103).

In 2017, an urgent Waitangi Tribunal claim against the Crown, the tribunal found that the Department of Corrections had not taken adequate steps to address the disproportionate number of Māori reoffending. The preliminary report identified that the staggering number of Māori within our criminal justice was foreseeable, and yet over the past 20 years little has been done to address this matter (Waitangi Tribunual, 2017). The Tribunal provided an alarming picture:

As of 2016, Māori made up 50.8 per cent of all sentenced prisoners in New Zealand’s corrections system, despite comprising just 15.4 per cent of New Zealand’s population. Of all sentenced male prisoners in New Zealand, 50.4 per cent are Māori men ... Some 65 per cent of youth (under 20 years) in prison are Māori, up from 56 per cent a decade ago (p.11).

From June 2015 to June 2017, the Māori prison population has risen 54%, from 3367 to 5171. The non-Māori population has risen by a similar percentage, demonstrating the crisis that our prison system is in and its impact on Māori, the majority prison population (Department of Corrections, 2015, 2017).

Although the Department of Corrections accepted responsibility (Waitangi Tribunal, 2017), the department argued that these statistics cannot be viewed in isolation from the rest of the justice sector. In fact, Moana Jackson (1988) drew attention to the various justice processes which occur prior to Māori appearing in court, such as decisions made by the New Zealand Police. Jackson (1988) posed a number of critical questions around the discretionary powers
of those within the criminal justice system, and how these are applied to Māori. He argued that further investigation needed to look at what criteria is considered when justice officials make decisions, and whether justice processes are culturally sensitive, and/or responsive. Te Puni Kōkiri (2011) and the Ministry of Justice (2009) both state that Māori receive substantial legal representation and that this is generally culturally appropriate. This is a significantly different finding to Jackson’s work in 1988 which suggests that the provision of legal aid may not address the problem claiming if “Māori defendants were unrepresented or represented through legal aid more often than non-Māori, and if such defendants were convicted more often, the ‘crime rate’ based on conviction may reflect more than Māori criminality (1988, p. 24).

2.2 Young Māori Men
Most estimates of the size of the Māori population include people who also claim a cultural heritage from cultures other than Māori. Between 1991 and 2017, the overall Māori population (including people of dual cultural heritage) has grown by 57%, with Māori now making up 15.4% of the New Zealand population (Statistics NZ, 2017a). As a relatively young population, 58% of the Māori population is under the age of 30 (vs 40% in the general population). The median age for Māori is 22.7 years, in comparison to other New Zealanders whose median age is 35.9 years (Statistics New Zealand, 2015).

The youthfulness of the Māori population raises specific concerns within the justice arena. Jackson argued in 1988 that it was unsurprising that the majority of Māori entering the criminal justice system are young people. Bull (2009) noted that there are substantial differences between Caucasians and Māori in the resolution of offences among 14-16 year-olds. Furthermore, in 2016/17 65% of the children convicted in the Children’s Court were Māori, and 42% of the adults under 30 years convicted in adult courts were Māori (Statistics NZ, 2017b). O’Reilly (2014) highlights that 80% of Māori incarcerated were imprisoned for their first time at the age 24 and that 57% of the people in prison under the age of 19 are Māori. This aligns with general Māori crime statistics, where Māori apprehensions represent approximately between 40% - 45% of national police apprehensions, and where Māori have the highest rates per population of victimisation, and repeat victimisation (Webb, 2009). In short, whilst all young men are at risk of offending, Māori men are at greater risk of apprehension and incarceration. Moreover, the trend within these statistics is not isolated to Māori, but is also experienced by indigenous people around the world. In Australia, juvenile detention centres highlight a disproportionate number of young Aborigines who have experienced poverty, dislocation, marginalisation and oppression. For example, Beresford and
Omaji state that “The incarceration rate of indigenous youth in Western Australia is one of the highest in Australia” (1996, p. 14). Similarly, 28% of young black men in America end up spending time in prison (Bureau of Justice Statistics, 1997).

2.3 Traditional Māori Concepts of Justice
Māori are the indigenous peoples of New Zealand, and derive from their descendants Papatuanuku (Earth Mother) and Ranganui (Sky Father). Māori identity and culture is grounded in whakapapa (genealogy), which consists of their whānau, hapū and iwi affiliations. Whakapapa links Māori to their land, the spiritual and natural world, and their relationships with others. Accordingly, Māori knowledge, traditions and language, including their legal and political structures, were determined within respective iwi (tribes) and hapū (sub-tribes). Accordingly, while dominant discourses infer Māori are a homogenous group, it is important to acknowledge the diversity amongst each respective iwi and hapū. (Quince, 2007; Walker, 2004).

Māori concepts of justice are an integral aspect of Māori life and unlike traditional western models, which focus on punishing the offender, restoring balance for the victims is a central objective of Marae based justice (Maxwell & Morris, 1993). Depending on the extent of the harm, Māori traditionally applied various types of redress including utu (compensation), and in the case of more severe violations, this could result in death. Essentially, redressing harm was a collective responsibility whereby the perpetrator, victim, their whānau, hapū and iwi were involved in the process. In addressing the wrong doing, the individual could be reintegrated back into the wider hapū and iwi, and the preservation of law and order upheld (Dyhrberg, 1994; Pratt, 1992; Quince, 2007; Walker, 2004).

2.4 The Impact of Colonisation and Urbanisation
To ascertain a broad understanding of the over representation of Māori in the criminal justice system, it must be viewed with historical context. During the mid-19th century the imposition of the English legal system had devastating consequences for Māori. The application and development of colonial legislation would result in the confiscation of land, the suppression of Te Reo Māori in schools, the subjugation of Māori in their own country and the extensive marginalisation of Māori identity, knowledge and tradition (Kelsey, 1984; L. T. Smith, 1999; Walker, 2004). These colonist practices would disenfranchise collective communities of their land and traditional practices, including customs, political, economic, legal and social structures.
Whilst the reasons for Māori offending have been widely discussed (Durie, 2009; Bull, 2009; Rowe, 2009; Department of Corrections, 2007), socio-economic deprivation and social inequality have been named as primary causes. Bull (2009) contends that colonisation underpins all of this. She argues that “no one is joining the two together, though the connection seems obvious: colonisation generated broad social inequalities leading to deprivation, the deprivation causes the crime, causes the inequality, causes the deprivation” (p. 2).

At that time, following World War Two, almost two-thirds of the Māori population lived in rural areas. However, with the prospect of better employment opportunities, housing and education, more than 80% of Māori shifted to the cities (Nana, Khan, & Schulze, 2015). The post-war era, saw successive governments implementing further land confiscation and economic policies, which have had long term inter-generational affects such as criminal offending, high unemployment and the separation of Māori from whānau and from ancestral land (Jackson, 1988; Quince, 2007). Jackson summarizes the impact of urbanization by stating, “many Māori people would in fact argue that the difficulties associated with the urban shift are due in part not so much to their ‘Cultural vulnerability’, as to the inability or unwillingness of society to cater for their different kinship structures within an urban setting (1988, p. 34).

The dreams of prosperity and better opportunities offered to non-Māori New Zealand settlers, (including employment, home ownership and education opportunities) were mostly unavailable to Māori. Instead, Māori were predominately employed in lowly paid positions within the meat works, factories and forestry industry. The urban drift was accompanied by an emotional and physical disconnection from the land, and a separation from traditional Māori relationships with iwi, hapū and whānau.

As Māori became more urbanized, they became more exposed to Pākehā and the imposition of a western justice system. The imposition of the English legal system would have devastating consequences for Māori (Quince, 2007).

### 2.5 Western Justice

The New Zealand legal system is referred to as ‘the western’ system and is based on a British model widely used in English speaking countries colonized by Britain. It was introduced to New Zealand after a rapid increase in British settlers in New Zealand during the mid-19th century. One of the main tensions of western policy development has been the focus on individual social, political and civil rights. This individualist focus is a central characteristic of
the British political and legal system, and in opposition to the Māori worldview of justice which centres on collective responsibility. Collective rights have been heavily critiqued within the New Zealand state but as a consequence these have been largely ignored in any policy development (Cheyne, O’Brien, & Belgrave, 2008).

In New Zealand criminal matters fall within the jurisdiction of the District Court and are informed by the Criminal Procedure Act (2011) and the Criminal Procedure Rules (2012). The purpose of criminal law is to oversee the relationships between an organization, individuals, and the state. It incorporates rules which society has identified as unsafe behaviour, or a threat to the wider public. In addition, the Sentencing Act (2002), holds individuals accountable for their crimes and determines an appropriate punishment, including taking away an individual’s human rights to freedom, such as a prison sentence. Within this jurisdiction, the Crimes Act (1961) is applied for serious offences such as manslaughter, burglary, murder and sexual offences; the Land Transport Act (1998) for traffic offences; the Summary Offences Act (1981) for less serious offences such as fighting in a public place, wilful damage and trespass; and the Misuse of Drugs Act (1975) for use, supply and possession of controlled drugs. Jackson (1988) explains that within the justice system, power is exercised whereby arrests and charges are laid. The charge is then applied against legislation (depending on the crime), and when western justice practices individualise the offence it detaches the offenders from their wider whānau, hapū and iwi. Dyhrberg (1994) and Jackson (1988) argue that this neo-liberal lens which promotes individual responsibility, denies any community or collective responsibility for addressing the harm, and therefore contradicts Māori notions of justice.

Quince (2007) draws attention to the fact that New Zealand’s justice system does not reflect the bicultural or multicultural diversity within the society, stating “there is a clear sense among many Māori that the law and its mechanisms are not owned or shaped by Māori — it is merely a blunt Pākehā tool of coercion against Māori” (p. 345). Quince concludes that there are not enough Māori judges, lawyers, jurors and police to ensure that Māori values have an appropriate influence in the development of law reform and legal processes.

One of the strengths of the western system of justice is that it is a rights-based system, and the New Zealand Bill of Rights Act (1990) clearly outlines (in section 24) the rights of a person who is being charged with an offence. This provides a framework which authorities must uphold and guarantees individuals the rights to a fair and just process. In addition, the Bill of Rights (1990), section 24, clauses c, d, and f, makes three distinct references to legal representation including:
(c) shall have the right to consult and instruct a lawyer; and (p. 7)

(d) shall have the right to adequate time and facilities to prepare a defence; and (p. 7)

(f) shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance. (p. 8)

At an international level, New Zealand is signatory to a number of international human rights frameworks. The International Covenant on Civil and Political Rights 1966 [ICCPR], Articles 14, 15 and 16, clearly outline the rights of individuals who are being charged with a criminal offence. The articles, and subsequent clauses, attempt to guarantee individuals have access to a fair and just legal process, including the right to legal representation. The values which underpin the ICCPR promote individual rights to freedom, justice and peace, including the right to be treated equally, in a manner which upholds an individual’s dignity (United Nations Human Rights, 2017).

The New Zealand Bill of Rights Act (BORA) 1990, aligns with the principles in the ICCPR. However, prior to 1990, New Zealand courts argued that international human rights obligations had no place in domestic law. This mind-set has changed, as demonstrated in the requirement that the development of common law is consistent with human rights treaties (Elias, 2000). This paradigm shifts recognised the usefulness of applying international as guidance to domestic law (Human Rights Commission, 2017). Today, New Zealand legislation encompasses human rights standards, and any legislative amendments are tested against this framework. Thus, when legislative changes are not congruent, or in accordance with the ICCPR human rights framework, there are procedures where individuals or organizations can raise concerns at an international level. Resultantly, this process ensures that the New Zealand government meets its obligations to promote the enforcement, implementation and respect of human rights (Ministry of Justice, 2017).

2.6 Access to Justice
Both international and domestic regulations provide people accessing the criminal justice system the right to connect with a lawyer. Accordingly, individuals with insufficient means are able to access justice through legal aid, the duty lawyers scheme and community law centres.

2.6.1 Legal aid
The New Zealand Bill of Rights Act (1990) guarantees that legal aid, through legal representation, is provided to individuals with insufficient means of accessing justice representation through the Legal Services Act 2011 (New Zealand Legislation, 2011). The
Legal Services Act 2011 is the most recent iteration of legal aid provision which dates back to the Poor Prisoners Defence Act 1903 (Hansard, 1903). A number of studies have pointed to the effectiveness of legal aid in reducing crime. For example, legal aid helps gain access to restorative justice, and the New Zealand Justice Department claims that restorative justice reduces imprisonment rates by 10% (Ministry of Justice, 2016b). Similarly, Weatherburn (2016) claims that in Australia legal aid is vital for the reduction of Aboriginal imprisonment. White (2004 cited in McClure) contends that individuals who self-represent in court, could potentially jeopardise their right to a fair and just trial:

> Court proceedings are incredibly complex, incredibly intimidating and, if you don't have legal representation, you're at a significant disadvantage. For people going up against the power of the state and the capacity the state has to prosecute those who don't have resources to access legal representation themselves, there's a really significant chance of injustice (McClure, p. 1).

In order to achieve high quality legal representation, the Ministry of Justice [MOJ] developed a Legal Aid Quality Framework including a set of standards which outlines the expectation for Legal Aid lawyers (Ministry of Justice, 2017b). This ensures that those with insufficient means receive quality legal services by qualified and competent legal professionals. Professional legal services are regulated and monitored by the New Zealand Law Society by testing against the participant’s experiences with their legal aid provided (Ministry of Justice, 2017a). As Jacobs (2001) argues, clients (regardless of their SES) should be entitled to receiving the best legal representation. However, he points out that in the United States, despite expectation and legislation for lawyers to meet standards of acceptable representation for clients, legal aid services still fall short of adequate. This conclusion is supported by Rhode (2001, 2004), who also claims that although the idea of equal justice in many civilised societies around the world is inspirational, realistically those within insufficient means are frequently denied access to fair and just legal processes.

The government set up the Public Defence Service [PDS] as a pilot in 2004. The pilot was derived from a credible international model which saw a mixture of private/public legal aid delivery. The public defence lawyers work alongside the private bar, where the quality and cost of legal services can be benchmarked. Unlike legal aid lawyers, the public defence service employs criminal lawyers on an annual salary, to provide high quality legal representation in a cost effective way.

In 2009, the prospect of a $100 million bill for legal aid led to a review of the legal aid system in New Zealand. Key objectives of the review were to ensure access to justice and to reduce
legal aid costs as these had grown astronomically in the three years prior to the review (Powell, 2011; Bridges cited in New Zealand Law Society, 2015). The government’s review addressed variability in the quality of legal aid available, with the aim of achieving a fairer and more efficient legal aid system, especially for those who are unable to access justice (Ministry of Justice, 2009). In Bazley’s report she maintains;

The Legal Services Agency’s attempts to hold lawyers to account for their performance in the legal aid system have not been successful. Consequently, some poorly performing lawyers (and what appears to be a small but significant number of corrupt lawyers) have been able to stay in the legal aid system, to the detriment of their clients, the courts, and the legal aid system as a whole (Bazley, 2009, p.6).

According to the Ministry of Justice (cited in New Zealand Law Society, 2015) the PDS initiative has generated a number of positive outcomes for legal aid provisions and the criminal justice system. However, others have been less positive about the consequences of the reduction in legal aid expenditure, including a fixed fee for legal aid lawyers. This has effectively impacted on lawyers’ caseloads, and impinged on their capacity to provide quality representation to their clients. This concern was raised by the Vice-President of the Criminal Bar Association Noel Sainsbury, who argued that since the changes to legal aid, the system is “completely in disarray and [he takes] particular umbridge at the fixed fees for lawyers and the expansion of PDS” (New Zealand Law Society, 2015, p. 1). Rodney Harrison QC, lead counsel for the Criminal Bar Association, alluded to this in 2010, following the proposed changes to legal aid:

The new fee structure would deny prospective clients their right to a properly resourced defence, and was ‘inadequate’ when it came to complex cases ... the new fees were inconsistent with the statutory regime, which required access for all to ‘high quality’ legal aid services (Harrison cited in Hannah, 2010, p. 1).

Gallavin (cited in McClure, 2014) contends that the reduction in legal aid fees and the increase in paper work coupled with a bureaucratic system, has resulted in lawyers withdrawing from undertaking legal aid work. As a consequence, this could see more people representing themselves in court, rather than carrying the financial burden of paying for legal advice.

This trend of reducing legal aid expenditure is evident in the United States. Bibas (2012) and Blackwell and Cunningham (2004) identified that over a number of years, there has been a greater focus on efficiency, which has subsequently contributed to a criminal justice ‘machine’. In this ‘machine’, decisions such as plea bargains are often made without the accused being privy to these decisions. Thus, the criminal justice ‘machine’ incites a behaviour whereby
lawyers deal with cases quickly, often to the disadvantage of the accused, the victims and the wider society.

Another key change in the legal aid reforms is the shift from individuals choosing their legal aid representative to the government allocating a lawyer on behalf of the defendant. Moreover, to access legal aid, applicants may be required to repay some or all of their legal costs which accumulate interest if not paid (Ministry of Justice, 2017c). This puts additional financial pressure on low SES families. Additionally, it also raises concerns regarding a client’s right to ‘choose’ their legal representative when required to pay for legal aid services. All this puts a strain on the client-lawyer relationship, which in turn can impact on the level of representation received. For Māori facing economic hardship, the cost of repaying legal aid at the end of their appearance could result in individuals pleading guilty, rather than defending their case. At the 2011 National Community Law Centres Conference, MOJ representatives declared that those most affected by the legal aid changes would be young Māori men (S White, personal communication, August 2011). In the United States, Rhodes argues that:

> Government legal aid and criminal defence budgets are capped at ludicrous levels, which make effective assistance of counsel a statistical impossibility for most low-income litigants. We tolerate a system in which money often matters more than merit, and equal protection principles are routinely subverted in practice (2004, p. 14).

Whilst ‘quality’ in this research project is defined by the client, Abrams et al. (2007) state that measuring quality in legal ability is challenging, especially when lawyers are assigned to a client, rather than the client choosing their representative. As mentioned earlier, The Ministry of Justice (2017b) provides a quality framework and practice standards for legal aid lawyers. However, any evaluation which guarantees that lawyers have met the minimal standards is limited, if individuals evaluating the lawyers have underdeveloped literacy skills or are unaware of the complaints process.

### 2.6.2 Duty lawyers

Access to justice is also provided through the duty lawyers scheme, which ensures that individuals who are required to appear in court for an offence, and who do not have legal representation, have access to legal advice. It is the role of the duty lawyer to ascertain whether the individual intends to plead guilty or not. However, duty lawyers are unable to represent an individual if they enter a not-guilty plea. In such cases the defendant will therefore need to seek a private or legal aid lawyer to represent them in court (New Zealand Ministry of Justice, 2017).
2.6.3 Community law centers

Community Law Centers [CLC] in Aotearoa play an integral role in providing free legal advice to those with insufficient means to access justice. There are 24 law centres nationally, with three specialist services for Youth Law, Disability Law and Ngai Tahu Māori Law Centre. These respective centres are members of the Community Law Centre of Aotearoa [CLCA], a national organization which represents the views of law centres (Community Law, 2017). Currently, there is no law centre specific to Māori in Aotearoa. However, as part of CLCA obligations to Te Tiriti o Waitangi, Nga Kaiwhina Māori Hapori o te Ture [NKMHT] works in partnership to strategically address the high unmet needs of Māori. NKMHT members consist of national Māori governance and staff members who contribute over and above, their respective paid roles (Community Law, 2017).

In order to respond to the unmet legal needs of Māori, the Waitemata Community Law Centre initiated Kaupapa Māori legal services, which consisted of a Roia Hapori (Māori lawyer), and kaihāpai (Māori community worker) to deliver culturally appropriate legal services to Māori in their region (Waitemata Community Law Centre, 2017). This team provides legal services at marae, within Kaupapa Māori organisations, and collaborates with key stakeholders including the New Zealand Police.

2.7 Legal Representation

Abrams et al. (2007) identify that determining the quality of legal representation is complex due to the many variables which influence a lawyer’s performance. In their research, which examined 11,866 felony cases from 2003 to 2005 in the United States, seven public defender’s performances were examined. The lawyers were ethnically diverse, attended different law schools and varied in their level of legal experience. In addition, lawyers were randomly assigned to clients, as is done in New Zealand. In their findings, Abrams et al. found the following critical factors influenced outcomes for their client; firstly, being allocated an experienced lawyer reduced the amount of time individuals spent in prison. Secondly, Hispanic criminal lawyers achieved significantly better outcomes for their Hispanic clients than non-Hispanic lawyers for Hispanic clients, suggesting that law firms who employ lawyers of a similar culture to their clients have a more positive outcome.

Jacobs (2001) identifies two other dimensions which are critical for effective legal support. The first is that the poor must have the financial means to access justice. The second is that they must receive respect and understanding. Jacobs was deeply concerned by the disrespect and disgust shown by her colleagues and law students towards clients struggling to survive.
These lawyers were typically people of limited work and/or life experience who were unable to comprehend the complexity of their client’s experiences. Jacobs suggests that lawyers should reflect on their own values and beliefs to recognise how these can devalue the client and inhibit their ability to advocate for the client. Providing effective legal representation for the poor requires lawyers to think holistically and gain a greater understanding of the many stressors which impact on socio-economically disadvantaged people. Jacobs believes further research needs to examine other factors such as what happens when clients do not turn up on time or at all. Jacobs (2001) believes this has the potential to influence a lawyer’s willingness to help, if the lawyer believes the client is not helping themselves.

New Zealand legal aid lawyer Tiana Epati (cited in New Zealand Law Society, 2015) supports Abrams et al. (2007) and Jacobs’ (2001) arguments for establishing rapport and trust with a client as being essential to providing quality legal representation. She says the client is more likely to discuss their case, and other factors affecting or affected by litigation, with their lawyer if there is an established rapport. However, the reduction in legal aid fees and the fixed fee regime has limited the ability of lawyers to do this (New Zealand Law Society, 2015).

A large USA survey identified difficulties that clients experienced with lawyers. Cunningham, (2013) identified the following

- 21% of clients felt their lawyers did not keep them adequately informed (p.2);
- 15% felt there was a lack of client focus, including failure to listen, non-responsiveness and arrogance (p.2);
- 10% felt their lawyers were making decisions without client authorization or awareness; and (p.2)
- 7% felt their lawyers failed to give clear, direct advice (p.2)

This suggests that the bad experiences which occur in legal aid settings are an extension and exacerbation of behaviours that are commonplace in general legal practice.

2.7.1 Underlying drivers of crime

Whilst it is not the intention of this research to focus on the alleged criminal behaviour of the participants, it is important to explore some of the possible drivers of offending, to provide some wider context. In examining the link between social disadvantage and crime, post colonist theorists maintain that the impact of colonisation and urbanisation has directly influenced the socio-economic status of Māori, and is therefore closely linked with Māori offending (Jackson, 1988; Quince, 2007).
Epati articulates that disadvantage is multi-layered and emphasizes the importance of establishing trust and rapport to discover those layers:

There have been instances where I have been able to uncover information like mental health issues, psychological abuse, a significant head injury and substance abuse, which helps me understand what is going on for the client. Because of the personal nature of such information, I would never have otherwise obtained this from a client who doesn’t know me (Epati cited in New Zealand Law Society, 2015, p. 1).

2.7.2 Social economic status

A considerable amount of literature has investigated the link between the SES of individuals and the potential influence on justice outcomes. A report conducted by the Canadian National Council of Welfare [NCW] (2000) recognised that when a person of low SES enters the criminal justice system there is an accumulating effect from the arrest stage through to sentencing. It highlighted that in Canada almost half of those who appeared before a judge had no legal representation. This results, according to Freeman (cited in National Council of Welfare, 2000), in different patterns of sentencing with less monetary penalties but harsher incarceration punishment being applied, in contrast to high SES defendants.

SES has many components. The American Psychological Association [APA] (2017) point out that low SES not only refers to being in (or close to) poverty, but also refers to limited education, restricted access to services and being susceptible to negative “subjective perceptions of social status and social class” (APA, 2017, para 1). Whilst an individual’s level of poverty (Jarjoura, Triplett & Brinkler cited in Brown & Males, 2011) or SES (APA, 2017) cannot be solely used to predict future criminality, and low SES communities often have levels of social cohesion and communitarian spirit that are highly protective, low SES can indirectly lead to other social problems. These problems include, for example, higher levels of child abuse, which subsequently lead to crime (National Council of Welfare, 2000). Likewise, if a child has a hearing disability for example, and the parents are unable to seek medical treatment, this child may experience learning difficulties. Alternatively, a family with access to financial resources would be able to seek medical treatment and/or education services to support their child.

The Canadian NCW report also describes the significant correlation between academic failure and repeat offending, and notes that many young people in juvenile facilities and criminal courts have low academic attainment levels (NCW, 2000). In addition, Hoffman (cited in NCW, 2000) identifies that individuals of low SES were more likely to be perceived as criminal offenders than those with higher SES. Cusson (cited in NCW, 2000) argues that one of the
key explanations for the disproportionate number of low SES individuals in prison is that affluent families have access to more resources which enables delinquent young men from those families to get off the charges. This pattern is also evident in New Zealand; Table 1 (below) demonstrates very different sentencing trends for young Māori (lower SES) and young non-Māori (Statistics NZ, 2017b). Māori are twice as likely to be sent to prison, whereas non-Māori are much more likely to pay a fine or reparation.

<table>
<thead>
<tr>
<th>Culture</th>
<th>Total Sentences in 2017</th>
<th>% of Imprisonment Sentences</th>
<th>% of Community Sentences</th>
<th>% of Monetary Sentences</th>
<th>% of Other Sentences</th>
<th>% Where No Sentence Recorded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Māori Descent</td>
<td>19,346</td>
<td>9%</td>
<td>38%</td>
<td>43%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Māori Descent</td>
<td>14,307</td>
<td>17%</td>
<td>46%</td>
<td>26%</td>
<td>5%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Source: Statistics NZ, 2017b.

The NCW (2000) also point out that often high SES families and individuals do just as much harm in society as low SES, however:

Our criminal justice system ... discriminates against the poor and harms as many people as it helps. Instead of developing effective ways of dealing with conflicts within our families, our schools and our communities, we dump all our disadvantaged social misfits into the criminal justice system, where they are repeatedly warehoused and then thrown back into the street. Instead of dealing wisely with the near-universal tendency of adolescents (especially boys) to commit minor criminal offences, we arrest thousands of low-income young men and lock them up with experienced criminals who give them advanced lessons in crime (NCW, 2000, p. 4).

To conclude this section, it is arguable that “the nature and levels of offending are a product of the structural inequalities of capitalist societies, and how individuals and groups perceive themselves relative to others” (Milne, 1996 cited in McLennan, Ryan & Spoonley, 2000, p. 239). To punish those who do not have access to resources, or who have experienced inequality, perpetuates the social disparity which exists in our society (Bourdieu, 1974 cited in McLennan, Ryan & Spoonley, 2000).

### 2.8 Power, Language and Discourse

Power, language and discourse play a critical role, with lay people often frustrated by the legal jargon which is used in courts. Gail Stygall (2012) contends that this is a very challenging aspect of the courts and the legal system generally, with the power to limit and deny an
individual’s freedom. In addition, the sources of that power, the legal discourses and learned arguments, are in books and journals which are largely inaccessible to lay people who come into contact with the legal system. Although the language, rules and procedures are familiar to lawyers, these environments are exclusive and daunting for a lay person. Thus, it is important that lawyers are aware of the many facets of power, including language, that can marginalize those who come into contact personally with the legal system.

2.8.1 Collateral consequences of conviction

The inability to access quality legal services can generate and perpetuate social exclusion for individuals, especially when they are unaware of their rights or their legal rights are not successfully enforced (Buck, Balmer & Pleasence, 2005). Once Māori are in the criminal justice system, the long-term effects of having a criminal record will likely limit their future employment and other opportunities, and consequently further perpetuate social exclusion and disadvantage (Jackson, 1988; Osgood, Foster & Courtney, 2010; Love, 2005).

Love (2005) claims that often individuals are unaware, or do not fully understand, the consequences of having a criminal conviction that will limit future employment and the areas of wellbeing which are connected to employment. For example, Love (2005) claims one of the major reasons for recidivism is the inability to find meaningful employment. There is a stigma attached to being convicted, producing various forms of discrimination which are often discreet yet widespread (Love 2005). Love states that “once someone has been tagged as a criminal, it is almost impossible to get rid of the label; the public is easily persuaded that ‘convicted felons’ must be segregated and excluded from the rest of society” (2005, p. 2). Therefore, criminal convictions and the stigma of being a convicted person, can perpetuate social exclusion and further the descent into poverty and despair.

More research in this area still needs to be undertaken to gain a greater understanding of what the collateral consequences are of having a criminal record and being imprisoned, and how this contributes to social inequality. Pager (cited in Small et al., 2015) contends that the current criminal justice system is a mechanism for sorting and stratifying the employment market, with young disadvantaged men being the waste product of this process and prisons being the dump.

2.9 Dominant Discourses around Public Safety

Professor Bernard Schissel (cited in Green & Healy, 2003) claims that the continuation of biased and selective reporting by the media is influential in maintaining dominant discourses about crime increasing at an alarming rate. Fear for public safety, and groups such as the
Sensible Sentencing Trust [SST] has been instrumental in getting political parties of all persuasions to develop and implement harsher penal policies, such as the three strikes Bill.

2.10 Penal populism

In response to the public discourse around crime and safety, New Zealand governments have increased penalties, prisons and police numbers, assuring the public that this trend will continue, despite there being no evidence that these measures reduce crime or fear of crime (Rowe, 2009, National Party, 2017). At the same time, penal populism has seen the rights of offenders diminish and an increase in prison numbers, which have more than trebled since 1980, and are now 7th worst in the Organization for Economic Cooperation and Development (OECD) block (Johnston, 2016; Goodall, 2016). In New Zealand, zero tolerance policing, reduced parole opportunities, tighter bail conditions, and military style boot camps for young people were key policies for addressing criminal offending (Rowe, 2009, Workman, 2011).

Penal populism has seen a significant shift where the victim’s rights, and the rights of individuals to feel safe and secure in the community, often results in the rights of the offender being disregarded or completely removed (Pratt, 1992). Another critical influence which informs dominant discourses is moral panic, which occurs when the media regularly uses specific language to describe illegal or anti-social behaviour to describe particular groups (Pratt, 1992). Although the incidents may be minor, the reporting of these incidents are exaggerated by either the police or media which in turn heightens the concern and anxiety surrounding particular behaviours (Marsh & Melville, 2011).

Moral panic, named as white fragility in Bridgman’s (2017) report was explored in recent research in the West Auckland area around public perceptions of safety. DiAngelo (2011) explains that;

> White Fragility is a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves. These moves include the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation. These behaviors, in turn, function to reinstate white racial equilibrium (2011, p.54)

Bridgman (2017) argues that despite a substantial decline in crime and child abuse rates in the West Auckland community, surveyed participants who were of Pākehā or European descent felt that a stronger police presence and harsher penalties for criminal behaviour were needed to reduce local crime. However, Māori, Pacific and Asian participants felt that better community resources, education and community connection were the best ways to reduce crime. Bridgman surmised that Pākehā/European fear of crime was being reinforced in the
2017 election campaigns by the National Party, who promised to get tough on crime by proposing an additional 1800 prison beds exceeding a cost of $1 billion dollars (Sachdeva & Kirk, 2016).

2.11 Systemic bias and discrimination

The huge cost of continually building prisons as a futile response to reduce white fragility connects to the broader social problems experienced by Māori, located both currently and historically. Hess (2011) and Jackson (1988) contend that the over representation of Māori in the justice system has been framed as a Māori issue, rather than as evidence of racial bias or discrimination. In Quince’s (2007) article, she refers, and rejects AJ Nixon’s 1970s pronouncement that “Māori lads break the law because they belong to the social group where law-breaking occurs, and that skin colour has very little to do with the matter”. (pp. 343-344). Jackson (cited in Dyhrberg, 1994) says

Māori clearly believe that the processes of the present criminal justice system are often unfair and that the end results are consequently unjust. That belief is shaped by the reality of their experience within a system of processes developed in a non-Māori cultural setting. The powers which are exercised to determine arrest and charge, the laws which actually define the crimes, and the procedures which individuate the offence and isolate the offender, are products of a British tradition which is frequently inconsistent with Māori (p. 3)

The International Convention on the Elimination of All Forms of Racial Discrimination [CERD], provides the mechanism to address racial discrimination. However, according to Rethinking Crime and Punishment (2014), efforts to address structural discrimination and bias in the criminal justice arena, as recommended by the Human Rights Council in 2007 and 2012, have been largely ignored by the National Party Government. Although the government acknowledges that structural bias occurs, their response to the CERD council focused on cultural responsiveness to Māori, rather than undertaking specific research to address the issue of structural bias and discrimination (Rethinking Crime and Punishment, 2014).

And yet, Māori participants in a Brittain and Tuffin (2017) project shared experiences of racial discrimination, concluding that the New Zealand justice system is inherently racist. The research showed that racial discrimination has now become ingrained in the culture of prison officers, including Māori officers. However, departmental responses to allegations of racist behaviour within the Department of Corrections [DOC] initially minimised the issue (Brittain and Tuffin 2017). As Augoustinos, Tuffin and Rapley state “the denial and discounting of
racism by dominant groups is a prevailing feature of modern racism, particularly at institutional levels” (1999, cited in Brittain & Tuffin, 2017, p. 102).

Looking at the parallel situation with indigenous peoples in Canada, a longitudinal study undertaken by the Canadian NCW (2000), found that two-thirds of the research participants concluded that the justice system was unjust, as it was harsher on the poor and gave preferential treatment to the wealthy. Both national and international research constantly identifies that there continues to be a large number of ethnic-minorities, who are disproportionately over represented at each stage of the criminal justice process, and who are more likely to receive less favourable justice outcomes (Jackson, 1988; DOC, 2007; Workman, 2011; MOJ, 2009; Beresford & Omaji, 1996). Furthermore, Brittain & Tuffin (2017), DOC, (2016), Tauri (2005), Workman (2011) and Jackson (1988) all also identified that systemic bias and discrimination occurs at each consecutive stage of the justice system. DOC recognises that “relatively minor biasing influences may successfully combine to produce, at the end point, quite substantial effects” (DOC, 2007, p. 27). DOC went on to say that the government’s restraint on short–term funding limited the ability to create long term holistic services. It also contended that there had been systemic failure when it acknowledged that the impact of colonisation resulted in the marginalisation and social exclusion of Māori. (DOC, 2007). Colonisation, coupled with structural disadvantage and ethnic disparities, are identified by DOC as influential determinants which exist within the justice system.

DOC’s acknowledgement ten years ago (DOC, 2007) of the structural biases and inequalities that exist in prisons, and the need to develop an internal strategy to address these, has resulted in a stronger focus on working with families and individuals to reduce offending. However, one participant in the Brittain and Tuffin (2017) research, identified that speaking Te Reo or practising Tikanga Māori was often stopped by the prison officers, as this was “inherently connected with illicit activities; to speak Te Reo Māori arouses suspicion and equates to, ‘instigating’, ‘planning’ or ‘plotting’” (Brittain & Tuffin, 2017, p. 102).

In summary of this section regarding bias and systemic inequality, the Waitangi Tribunal (2017) recently concurred:

The Crown has breached the principle of active protection by not sufficiently prioritising the protection of Māori interests in the context of persistently disproportionate Māori reoffending. That is, the Crown, through the Department of Corrections, has not made an appropriately resourced, long-term strategic and targeted commitment to reducing the rate of Māori reoffending (pp. 12-13).
2.12 Māori Responses to the Failures of the Justice System
Quince (2007) identifies a number of prominent Māori academics who want fellow Māori to participate more actively in society, using their cultural identity as a platform for wellbeing rather than as a reference to socio-economic context. She argues it is critical that Māori values and beliefs are acknowledged, promoted and applied in both New Zealand’s legal system and wider society. Owen (2011), notes that any youth offending program needs to include well-resourced, Māori-focused programs which are holistic, grounded in Tikanga Māori and encourage whānau involvement. She claims that success requires an ongoing relationship which ensures that the young person and their whānau are integral to any decision-making process. Owens also claims that an evaluation process should be used to ensure the programs actually reducing youth offending. At the same time, she contends that government has a responsibility to address systemic and underlying drivers of youth crime, including education, training, employment and health factors. (Owen, 2001).

An example of a Tikanga Māori approach is the five-year crime and crash prevention strategy developed by the New Zealand Police for the period 2012/2013 - 2017/2018. (New Zealand Police, 2012). This strategy recognises that 40% of police arrests and 50% of the prison population are Māori, and that almost 100 Māori are involved in serious, or fatal automobile crashes each year. The New Zealand Police (2012) strategy is underpinned by the following values:

- Aroha. We all make mistakes. We stand by people who accept responsibility for their mistakes and try to put things right. We do not turn our backs on them or judge them. But we don’t make excuses for them either (p.2).
- Whakariri. Each generation strives to better themselves, for their own sakes and for the sake of their children (p.2).
- Manaakitanga. We are hospitable, fair and respectful – to ourselves and others (p.2).

The strategy was developed in partnership with Māori and aims to reduce first time adult and youth offenders by 10%, reoffending by 20%, and police arrests by 25% for low level offending (New Zealand Police, 2012).

One important Māori response to the challenges of youth offending has been the establishment in 2008 of the Rangatahi Courts. The Honourable Judge Heemi Taumaunu (2014) identified that a large number of Māori youth appearing in the Youth Court have no or limited knowledge of their tribal affiliations, and yet Te Reo me nga Tikanga Māori was integral to their identity. He concluded:
For these young Māori to have any sense of purpose in the future, they need to start by knowing where they have come from and who they are. It is difficult, if not impossible, for any court to attempt to point young people in the right direction if they are without this knowledge (Taumaunu, 2014, para 3).

The Rangatahi Court works in partnership with local kaumatua and community leaders who are able to make critical links to the defendants whānau and culture. Although the law of New Zealand is applied within the Rangatahi Courts, Te Reo me nga Tikanga Māori is embedded in the way the law is applied. There are 14 Rangatahi Courts in New Zealand (Youth Courts of New Zealand, 2017) and the success of these courts was recognised last year, when Judge Taumaunu was awarded the 2016 Veillard-Cybulski Award for his work in the Rangatahi Courts (Dolor, 2017). Likewise, MOJ (2016a) has found that the Rangatahi Courts has led to a 47% reduction in youth offending since its establishment in 2008.

A more recent Māori response to the wider issues of Māori offending has been the establishment of iwi justice panels. In 2010, Christchurch Community Law Centre launched a community justice pilot in conjunction with the New Zealand Police. In 2014 three iwi justice panels were also piloted in Gisborne, Manukau and Lower Hutt, in partnership with iwi and the New Zealand Police (Akroyd, Paulin, Paipa & Wehipeihana, 2016; Greenland, 2016). Iwi justice panels consist of members of the community, including kaumatua, who meet with the offender and whānau to understand underlying drivers of crime and to develop a plan which addresses them. Low level offences such as shop lifting are referred by the New Zealand Police and dealt with accordingly. For example, this may require the defendant to access budgeting services to prevent the need for shoplifting in the future.

Integral to the ethos of the iwi justice panel is whakawhanaungatanga (relationship building), as this provides a platform for more sustainable change for the offender (Akroyd et al., 2016). The evaluation of the pilots, which in total dealt with over 350 referrals, concluded that the iwi justice panels were “highly effective” and that “virtually all participant’s express satisfaction with the service and support received” (Akroyd et al., 2016. p. 45).

2.13 Conclusion
Almost 30 years since Moana Jackson’s report on Māori in the justice system, research continues to illustrate that there has been no change in the highly disproportionate number of Māori in the justice system. Although there are international and national frameworks which promotes access to justice such as legal aid, duty lawyers’ services and community law centres, Māori are more likely to be charged, prosecuted and sentenced then non-Māori. Systemic bias and discrimination underpin these findings. This literature review has
highlighted that although there have been various attempts from governments to reduce the imbalance, these are often viewed in isolation. Māori responses to justice have demonstrated more positive outcomes for Māori, and yet there seems a reluctance to redistribute (from prisons for example) the funding and resources to fully implement these responses.
CHAPTER THREE - Methodology & Methods

Introduction

This chapter discusses the methodology and methods which have informed this research project. In the first instance, I will provide a description of the difference between methodologies and methods, and outline the purpose of each. Secondly, an overview of the two methodological approaches which underpinned this research, will be outlined. I will do this to provide the reader with a greater understanding of Kaupapa Māori, transformative paradigms and the justification for using these approaches. Following this, the methods for collecting the data will be outlined, which includes the number of participants, the interview questions and the factors which were considered when engaging and interviewing the young men and lawyers. The next section will discuss the thematic analysis framework which was used to analyse the data. Finally, ethical concerns which were considered while conducting this thesis, will be discussed.

According to Jensen and Laurie (2016), a methodology provides a set of principles which informs how the research should be conducted, and identifies the theoretical frameworks which are intrinsic within each methodological approach. The methodology also enables the reader to gain a greater understanding of the purpose and rationale for using each paradigm. Moreover, the methodological approach informs the ethical and cultural stance of the researcher, the appropriate methods of collecting data and of analysis, and even how the outcomes of research are communicated.

As both the participants and researcher were of Māori descent, it was critical that a culturally responsive paradigm was used to ensure that the research aligned with the values which underpin kaupapa Māori research. As Cram (2016) contends, kaupapa Māori offers Māori researchers a methodology and philosophy whereby Māori values and beliefs are intrinsic to the process, and as such differs from Western orientated research.

Whilst, my paradigm is grounded in kaupapa Māori theory, other theoretical frameworks are discussed to illustrate how other schools of thought align with kaupapa Māori methodology.
While a variety of definitions of the term ‘kaupapa Māori theory’ have been voiced, this thesis uses the definition first suggested by Graham Hingangaroa Smith (1997) in his doctoral thesis, who argues that although ‘kaupapa Māori’ refers to Māori epistemologies, his deliberate adding of the term ‘theory’, provides the mechanism to engage in critical thinking and structural analysis, which in turn, has provided a transformational process of social change for Māori (Smith, Hoskins, & Jones, 2012).

3.1 Kaupapa Māori

Kaupapa Māori research has, in part, grown out of dissatisfaction with Western research methodologies. Issues of concern to Māori were often viewed as being inadequately addressed by non-Māori researchers who failed to answer questions of wellbeing, other than those which were related to “causation, disease and ... [which were] individually focused” (Smith, 1999).

As a Māori researcher, it was important that this research project utilised both kaupapa Māori theory and methodologies for the following reasons. First, I wanted to ensure that the voices of those who had experience within the justice system were able to contribute to social change. Second, I felt it was necessary to use a paradigm which would critically address issues of social justice. Finally, to affirm the legitimacy of using kaupapa Māori theory to undertake research with Māori, which will lead to individual and systemic change.

However, literature has emerged which has questioned kaupapa Māori theory and the validity of its theoretical underpinnings. Eketone (2008) argues that there are competing views of what kaupapa Māori practice is, and maintains that the understanding within an academic institution differs to that in the community. For example, organisations and schools which use the term ‘kaupapa Māori, Te Reo me ngā Tikanga Māori’ provide the guiding philosophies which inform their practice. However, Smith, Hoskins and Jones (2012) explain that whilst kaupapa Māori is grounded in culture, the development of kaupapa Māori theory provides a mechanism to draw on ideas of critical theorist Paulo Freire. They write:

> The politics of social change, the basis of critical theory, mean giving close attention to action focused on Māori self-development as well as to a theoretical analysis of the social order, including the forces of capitalism and colonisation both of which have had negative impacts on our people (Smith et al., 2012, p. 11).

Smith et al. (2012) maintain the original focus of kaupapa Māori theory was on conscientisation, resistance and praxis, however this is often ignored when applying this theoretical framework. Similar to critical theory, kaupapa Māori theory is interested in...
dismantling dominant discourses, ideologies and the many facets of power which permeate Māori lives. It seeks to position the ‘individual’ problem within a wider structural context (Eketone, 2008; Ife & Tesoriero, 2006; Mertens, 2012; L. T. Smith, 1999). This approach can help the participants to identify power relationships that underpin society, and enables a critical analysis of the often contradictory but implicit, values, structures and beliefs which have informed ways of understanding the world. By actively engaging in critical thought, power and discourses are exposed and deconstructed. A critical understanding of how these factors advantage and empower some, while marginalising and disempowering others, is established. In essence, this provides the basis for effective social change which is empowering and emancipatory, and contributes to positive social change (Ife & Tesoriero, 2006; Mertens, 2012; L. T. Smith, 1999).

Moreover, a kaupapa Māori paradigm relates to ‘being’ and ‘acting’ Māori, and is underpinned by Māori philosophies and principles (Smith, 1990 cited in Smith, 1999, p. 185). The core determinants of kaupapa Māori research are, 1) building internal mechanisms of cultural control, 2) linking research to tribal strategic goals, 3) the generation of credible research which validates traditional values, and 4) the development and utilisation of culturally appropriate assessment techniques and evaluation mechanisms. Data collection must link to community aspirations and give due credit to local knowledge and information. Kaupapa Māori research endorses traditional values while highlighting education as a key aspect to Māori success (Durie, 2013; Smith, 1999). As such, Māori recognise the reciprocal relationship whereby both the researcher and the community can learn from one another (Tangaere, cited in Chile, 2007; Drewery & Bird, 2004). As such, kaupapa Māori is the most effective paradigm for providing a framework for empowerment and emancipation for Māori as a result of the research process (Smith, 1999, p. 12).

Kaupapa Māori research is guided by a ‘code of conduct’ developed by Ngahuia Te Awekotuku (Smith, 1999). This set of values informs research and ensures that culturally appropriate research methods are fostered. Respect (aroha ki te tangata) is the fundamental characteristic underpinning this research methodology. For many indigenous peoples, respect incorporates the importance of relationships and the principles of humanity (Smith, 1999). Hence, this emphasises that establishing and building relationships are vital when engaging with Māori. Researchers must actively engage with people face to face (he kanohi kitea) and they must follow a process of observing and listening before speaking (titiro, whakarongo ... korero (Smith, 1999). This is reiterated by (2003, p. 298) who asserts that relationships will not be established if “direct questions and answer formats” provide the starting point of engagement.
Moreover, researchers must demonstrate generosity and hospitality (manaaki ki te tangata) and engage cautiously (kia tūpato). Furthermore, researchers must ensure that they do not flaunt their knowledge, and be cautious not to trample the mana of the person (kaua e takahia te mana o te tangata) being interviewed. The final value reminds the researcher that individuals are the expert of their own reality, and cautions against assuming the role of expert (kaua e māhaki) (Smith, 1999).

In addition, kaupapa Māori processes tend to favour qualitative methods, rather than processes that require categorical decision making.

### 3.2 Transformative Methodology

Similar to kaupapa Māori theory, a transformative paradigm provides a means for social justice. Mertens (2012) states that the transformative paradigm incorporates phenomenological and interpretive approaches which are at the heart of qualitative research methods. Mertens believes that three key assumptions are central to transformative methodology.

Firstly, an axiological assumption, arguing that ethically, social justice and human rights must be integral to any research. The transformative methodology is born out of the frustration with the way that traditional paradigms (positivist, interpretivist and phenomenological) viewed the lived experienced of marginalised groups as irrelevant. The transformative approach positions the people’s well-being and human rights as drivers, creating greater opportunities for marginalised communities to engage in the research process. The key values of the axiological assumption are reciprocity and transparency, which ensure that research questions and outcomes contribute to social justice and human rights.

Mertens’ second assumption, the ontological assumption, considers how individual realities are informed, especially in relation to who has access to systems of knowledge (and axiomatically resources and power) and who does not. The transformative approach recognises that there are multiple versions of reality, and people of privilege (including researchers) must examine how their realities are formed, and in doing so, consider what is excluded or included for those groups who have experienced marginalisation. Understanding the locations of knowledge and power reveals if, when, and how change needs to occur (Mertens, 2012).

Mertens’ final assumption, the epistemological assumption, considers what knowledge is and how is it generated and validated. The transformative approach argues that the lived
experience is a vital and valid form of knowledge. To explore the lived experience of participants, researchers have to build and maintain relationships which are culturally responsive. Thus, kaupapa Māori facilitates an opportunity to engage with the Māori men who have contributed to this research, but equally supports Māori researchers to undertake research for Māori, by Māori. Mertens (2012) sees kaupapa Māori theory as an example of a transformative approach with Māori researchers providing a critical worldview and a greater understanding of the issues prevalent for Māori and their desire for social justice (Barnes, 2000; Mertens, 2012). This is relevant as the participants are of Māori descent, and this provides a basis to engage in a trusting and open relationship with the researcher.

In applying a transformative framework, Sweetman, Badiée & Cresell (2010, p. 6-7) offer a number of criteria. Those which are most relevant to this project assert that the research:

- "openly references a problem in a community of concern”
- has “research questions (or purpose) written with an advocacy stance”
- will have a “literature review [that] includes discussion of diversity and oppression”
- will have “data collection and outcomes [that] benefit the community”, and
- will have “results [that] elucidate power relationships”.

Finally, this research relates specifically to legal representation and court processes, and is informed by an ‘access to justice’ approach. This approach argues “that the [legal] system must be equally accessible to all and, second that it must lead to results that are individually and socially just” (Rawls, cited in Korac-Kakabadse, Kouzmin & Reeves Knyght, 2001, p. 126). This approach aligns with kaupapa Māori and transformative approaches and incorporates four key principles - equity, access, participation and equality of outcomes. These principles ensure procedural fairness and equal opportunities for clients to protect their legal rights, regardless of their socio-economic status, and are key areas of exploration in my research.

Semi-structured narrative interviews were chosen as the best method for the exploration of lived experiences.

### 3.3 Participants
To undertake this examination of the quality of legal representation young Māori men receive in the criminal justice system, three specific groups (two offender groups, and one lawyer group) were interviewed in an attempt to create a diverse or maximum variation sample (Cohen & Crabtree, 2006). Semi-structured interviews were conducted with eight Māori men,
aged between 18 – 30 years, who had appeared on charges in the Waitakere District Court. The men interviewed had faced a variety of charges, ensuring a wide range of situations were examined, thus providing a more comprehensive illustration of the situation. Three lawyers with extensive experience of representing young people in court were also interviewed.

The eight young men interviewed were divided into two groups – first time offenders and multiple offenders who had between two and four charges in court. All of the multiple offenders group had spent time in prison. Interviews took place with each participant, and in some cases, a whanau member was present. Although the initial intention was to meet with each participant to outline the aim of the research and establish a trusting relationship, the majority of the participants felt comfortable conducting the interview during the initial meeting. At each meeting, food (kai) was provided, to acknowledge and thank participants for assisting with the research. Interviews ranged from between 40 minutes to one hour, depending on the young man’s experience in the justice system.

Participants were identified through utilising Waitakere Community Law Service, Hoani Waititi Marae, Te Whānau o Waipareira, and/or through personal networks. Social workers, or those who already had a relationship with the individual, first approached the participant to ascertain whether they were willing to be involved in the research. Moreover, snowballing or chain sampling, provided an opportunity to speak to other willing participants (Faugier & Sargeant, 1997)

3.4 Data Collection from Participants
In this study, I used semi structured narrative interviews to collect the data. Davidson (2003) provides a semi structured interview framework, which focusses on hearing the narratives of the participants before asking for any judgement about their experiences. This technique is executed in the first part of the interview, with a small number of descriptive questions which often follow the likely sequence of the narrative (for example, ‘What happened the first time? What happened next?’). Answers to the key research questions will either emerge naturally from the narrative, or in response to deeper questions introduced during an appropriate part of the interview, or at the end. Simple evaluative questions may be asked during the descriptive section, but more complex evaluative questions are left until the details of the situation have been explored or fully laid out. Finally, solution or resolution questions will be asked, providing the participants with the opportunity to contribute to various recommendations to bring about positive social change (Davidson, 2003).
Using the Davidson (2003) model, the questions (immediately below) were asked, as well as follow-up questions (ensuing) to ensure depth and a greater understanding of the participant’s experience.

3.4.1 Descriptive

- What happened when you got in trouble?
  - What did you do?
  - What did the police do?
  - What were whānau and friend’s reactions?
  - What were your reactions?

- What happened when you met your lawyer?
  - What was the environment?
  - Did you have whānau/friends in support?
  - What was your understanding of the charges and consequences?
  - What were your hopes?
  - What things did you need to/were advised to prepare?

- What happened at court?
  - Did you see the duty lawyer?
  - Did you understand the process and what the lawyer was telling you?
  - Were there options for you?

- What was the outcome?

- What were the consequences?

3.4.2 Evaluative

- How good or bad was the lawyer?
  - Were they approachable, efficient, effective, aware of the Māori process?

- How good or bad was being in court?
  - How was the judge?
  - How was your whānau support?
  - Was Māori process acknowledged at all?

- What was the worst thing?

- What was most helpful?

3.4.3 Solution

- What should happen for others?
- What would make a difference?
Demographic questions regarding age, family background and structure, educational attainment, employment status, Māori engagement (level of Te Reo for example), and nature of the current and previous charges were also asked (or ascertained) during the interview.

The third set of interviews was with three local lawyers, all of whom work in the Waitakere District Court, funded by legal aid or another funding source from the Ministry of Justice. They are all Public Defence Service [PDS] lawyers, and have extensive experience assisting Māori clients, with one lawyer being Māori and the other two, Pākehā.

Each interview with the lawyers took approximately one hour, and also used the Davidson (2003) model of description, evaluative and solution questions. The lawyers were given an overview of what emerged from the men’s interviews, and were asked to respond and provide their own analysis of these reoccurring themes. The interviews with the lawyers provided an opportunity to consider areas of improvement which could be incorporated into court and legal representation processes. The following questions were asked during the lawyer’s interviews.

**Descriptive (look at specific situations)**

- What’s your practice when you are allocated a client facing a minor charge (carrying not more than one year in prison)? (first time, subsequent times)
- Can you give specific examples of challenges? (communication, presentation, time, fees)
- What sort of things should clients be aware of when receiving legal representation?

**Evaluative - evaluating from the client’s perspective**

- What did the young male clients about their representation (describe what they thought worked, what didn’t?).
- What do you think works well (or not) in the criminal justice system? (people, procedures, Māori process, restorative processes. resources, legal aid, the courts, training, education, sentencing, rehab)

**Solution/resolution**

- What do you think could help you assist your clients more?
- Find solutions

Demographic questions (age, gender, years in role or related roles, Māori engagement - e.g. level of Te Reo, marae experience) will also be asked or ascertained during the interview.
3.5.4 Descriptive - Looking at specific situations

- What’s your practice when you are allocated a client facing a charge for the first time?
  - What is the communication process?
  - How do you present the case to the defendant?
  - How much time do you spend on the client?
  - What fees are involved?
- What sort of things should clients be aware of when receiving legal representation?
  - What constitutes quality representation?
  - What support services and cultural processes are there?
  - What are the possible outcomes for your client?

3.5.5 Evaluative - Evaluating from the client’s perspective

- What did the young male clients think about their representation?
  - What worked?
  - What didn’t work?
  - Were there any issues of perceived discrimination?
- What do you think works well (or doesn’t) in the criminal justice system?
  - In regards to training and education?
  - In regards to procedures, court, Māori process and restorative processes?
  - In regards to people, resources and legal aid?
  - In regards to sentencing and rehab?

3.5.6 Solution/Resolution

- What do you think could help you assist your clients more?
- What do you think could help assist in finding solutions?

Demographic questions regarding age, gender, years spent in role or related roles, Māori engagement (level of Te Reo or marae experience for example) were also asked (or ascertained) during the interview.

3.5 Data Analysis

Braun and Clarke’s (2006) model of thematic analysis was applied, ensuring that key themes pertinent to the participant’s perspectives, and the contexts in which they are situated, were identified, analysed and reported within the data. Some of these themes reflected theoretical frameworks such as colonisation, cultural alignment, social justice, power relations and
systemic discrimination, all of which are covered in the literature review. However, other themes also emerged from the data. Thematic charting, or coding, assisted in identifying and organising data. Gibson (2006) explains that coding relates to various categories correlating with data, whereby different instances are grouped together which can be considered as, or of, the same type. Categories are able to emerge from various factors including the data itself, theory, and literature or research experience. This method of analysis is a useful research tool which is flexible enough to offer a detailed and rich, yet multifaceted, account of data. I used techniques such as the semiotic square (Chandler, 1994) and de-construction (Boje, & Dennehy, 1994) to help enrichen the exploration of meaning underlying key themes which emerged from the research.

To ensure my own biases or values did not influence the themes, the alignment between theme and categorisation was checked by my supervisor. Additionally, the supervisor also looked at the alignment between sub-themes and categorisation, and my external supervisor (who is of Māori descent) checked on the cultural appropriateness of my reading of the data.

The thematic analysis provided a framework for dominant discourses, narratives and conversations to be critically analysed (Braun & Clarke, 2006). This interpretive, or phenomenological, approach to analysis creates a space for the researcher to gain a deeper understanding of the participant’s experiences through their narratives, and to consider how their lives have been socially constructed. Adding a deconstruction process exposes the various assumptions and power relationships within the emerging data (Boje & Dennehy, 1994).

### 3.6 Ethical Issues

This research was approved by Unitec’s Research Ethics Committee [UREC]. The application form, the participant consent forms, information sheets and the interview schedules, (including the support from Te Whānau O Waipareria and the Waitematā Community Law Centre) are attached in the appendices section.

This project followed UREC’s Guidelines (UREC, 2012) which provide eight specific principles. First, information sheets clearly set about the purpose of the research and the desired outcomes. The information sheets ensured that the participants were well informed about the project, and understood how their identities, and all information pertaining directly to them, would be kept confidential throughout, and on completion of the research project. A confidentiality form was also co-signed when a whānau member was present at the
interview. The district of practice and the culture of lawyers involved, made it impossible to ensure complete anonymity for the lawyers. This was discussed and the lawyers were satisfied with the degree of confidentiality offered.

Moreover, I recognised that this research could have a psychosocial effect, and could trigger anxiety or feelings of discomfort for the young men. Therefore, I recognised that for participants to share their story, it was important that they knew a little about me (my tribal affiliations for example), to enable me to learn about them. The research project also allowed them to have a whānau, or support person, present during the interviews. Three of the six participants had a support person with them, which made the participants feel comfortable, safe and valued throughout the process. The participants were informed that they were able to take a break, or stop the process completely, if they felt they could not continue. Throughout the interviews, I was aware of and acknowledge, the cultural and generational factors, and the power relationship between myself and the young men.

Given that some participants had a history of violent behaviour and drug use, I was aware of keeping harm (towards participants and towards myself, the researcher) to an absolute minimum during the research process. However, at no time did I feel unsafe when interviewing the participants. Additionally, although I was aware that some participants were disconnected from their whakapapa and tūrangawaewae, I was able to reassure them that this was the case for many, and possible reasons for this include the impact of colonisation. The risks associated with interviewing these young men was minimised as they were all willing to participate in the interview, and as I am of Māori descent, used kaupapa Māori to build a trusting relationship and allowed a support person during the interview, any fears or concerns they may have had were overcome. I was mindful that some questions could provoke aggression, therefore the majority of the interviews were held at a community or Māori facility. No participant was under the influence of alcohol and drugs at the time I held the interviews. Finally, in terms of psychosocial outcomes and minimizing harm, I had a list of support services that participants and whānau members could access if the participants became unduly distressed during, or as a result of, the interview. These services were not needed.

Additionally, UREC’s Guidelines require that kaupapa Māori research methodology practices with aroha and manaaki, uses values that are transparent, and acknowledges the skills, values and knowledge that participants bring to the research. This is important, especially if the participant’s court appearance had not resulted in the best outcome for them. However, I was also mindful that some Māori participants, including their support person, may have been
uncomfortable with Māori processes such as karakia or mihi. Although I asked the participants if they wanted to start with a karakia, the majority of participants felt it was unnecessary. Therefore, I was able to adapt my practice accordingly. However, other aspects of kaupapa Māori (as cited by Smith, 1999), were utilised during the interview process, and these included:

- Aroha ki te tangata - Respect
- He kanohi kitea - Face to face
- Titiro, whakarongo ... korero – Look, listen and then speak
- Manaaki ki te tangata – Be hospitable
- Kia tūpato – Be cautious
- Kaua e takahia te mana o te tangata – Don't trample the mana of the people
- Kaua e māhaki – Don’t flaunt your knowledge
CHAPTER FOUR – Findings

Introduction

The following chapter analyses the findings which emerged from eight interviews with Māori men aged 18-30, regarding their experiences with lawyers in the District Court. The chapter is divided into two sections. The first section provides a description and overview of the participants’ demographics. For easy reference, the men who have appeared once in the district court will be referred to as ‘first time’, and the other men will be referred to as ‘multiple’ experiences. Although the intention of the research was to examine the participants’ experiences with their lawyer, what emerged within the multiple category was a strong relationship with the exposure to the deprivation indicators. Therefore, the first section uses an ecological and post structural approach to critically analyse these young men’s narratives.

The second section describes the voices of participants and their experiences within the criminal justice system. The metaphor of Franz Kafka’s (1925) The Trial sets the scene for the analysis of what occurs for the young men in this research. Like the young men, Kafka’s main character is arrested, charged and processed through the criminal justice system. His analysis identifies how the discretionary power of authority, coupled with quasi-logical bureaucratic systems, produces the invisibility and marginalisation of those accessing the justice conveyor belt (Tim, 2012).

In the first instance, the participants describe what occurred when they were arrested, and their engagement with the New Zealand Police. Secondly, the section draws on the experience of the first time defendants to illustrate the difficulties of navigating through a court environment they were unfamiliar with. Following this, the young men examine (through their lens) the quality of legal representation they received, including access and contact with their lawyer, how language can prohibit understanding, the importance of client/lawyer relationships, and culturally responsive legal services. At the final stage of the justice system, the men describe what occurs in the courtroom with regards to their pleas, how their lawyer represented them, the response from judges, and the importance of whānau and/or non-legal support. Finally, the participants consider the consequences of their criminal record, and highlight the importance of Māori approaches to justice.
Within each section, the views of the lawyers have been included to provide a deeper understanding of how the criminal justice system operates and enabled the lawyers to respond to the young men’s experiences. Four of the young men had either whānau or support people attend the interviews, and therefore their perspectives have also been taken into account as they provide additional insight into these young men’s lived experiences.

The interviews were undertaken between the 26 February 2015 to the 16 April 2017.

4.1 Description of Participants

4.1.1 First time defendants

Rawhiti who is 28 years old, was the oldest participant in the group. He was immersed in kura kaupapa Māori and therefore steeped in Te Reo me ngā Tikanga Māori. Although he left school in year 11, he returned to kura in year 13. Rawhiti was charged for male assaults female following an altercation with his partner, and was the only participant who refused to plead guilty and defended his charge. He had no whanau, or external support during his court appearances. Rawhiti had aspirations of becoming a Te Reo Māori primary school teacher, however the consequences of his criminal conviction will now prevent him from fulfilling his dream.

Simon had been involved with rugby for most of his life. He was raised in a safe and supportive whanau environment, and was the only participant who left school with National Certificate in Educational Achievement [NCEA] Level 1. While at a concert, he was arrested for possession of an ecstasy pill. His lawyer advised him it would be easier if he accepted a legal fine. However, Simon was unaware that a criminal charge would then prohibit him from playing league overseas. Following his aunty requesting a change in a legal aid lawyer, Simon was appointed a Public Defence Service [PDS] lawyer, who assisted in him successfully being awarded a discharge without conviction. Simon has just returned from his overseas experience.

Adrian was born and raised in West Auckland and is of Māori and Samoan descent. Adrian was charged with possession of an offensive weapon, possession of drug utensils and with unlawfully being in a building. Adrian and his girlfriend were with a well known offender when they were all caught smoking synthetic cannabis. Although he was with his girlfriend, she was confused as to why she wasn’t charged and stated, “I kind of thought, how come I get a slap on the wrist? Like, its his first offence as well.” Adrian’s mother sought her own lawyer to represent Adrian in court and he was granted diversion.
Matt is a strong and independent young man and, although he shared similar deprivation indicators to the multiple defendants, his first charge occurred recently following an argument with his partner. Although he was initially arrested for wilful damage the charges were later changed to male assaults female. The police statement claimed that Matt had been drinking, had smashed a window, and that he had assaulted his partner. Matt disputes the allegations made, stating “I didn’t understand why I’m being charged with domestic violence. I was like, ‘So I’m getting charged for arguing with my girlfriend?’” Matt felt coerced into pleading guilty, as this was considered easier than defending the charge.

4.1.2 Multiple defendants

Syd had faced a number of challenges in his early years and found school difficult because of the teaching style. At 13 he left school and worked on a fishing boat so he could provide financially for his family. Syd committed a serious crime when he was 16 years of age. He states that, “they [the police] purposely held ... off [charging me] till I was 17, to convict me in the adult court.” The decision to charge him as an adult had major impact on this young man’s life. He was sentenced to seven years and six months’ imprisonment. In order to survive in prison Syd joined one of New Zealand’s notorious gangs. During his time in prison, at the age of 23, he was formally diagnosed with paranoia schizophrenia and ADHD. He has just recently been released from prison.

Nathan and his whānau moved to Auckland when he was nine. The move to the city proved to be a difficult one as his father was unable to find employment. Alcohol and family violence became symptoms of the financial hardship his whānau endured. Moreover, Nathan found it difficult to learn at school and consequently left when he was 14. It was only in his later years that he was diagnosed with Attention Deficit Hyperactivity Disorder [ADHD] and an anxiety disorder, which he believes impacted on his ability to learn and to retain employment. Nathan has appeared in the youth and district courts, and served time in prison. Transitioning out of prison was difficult, with Nathan and his partner experiencing homelessness for almost a year. Last year they sought support from a kaupapa Māori service, who have assisted them to find a home to raise their son in.

Jimmy who is 18, was the youngest participant. He comes from a large whānau and is the second eldest of his siblings. Jimmy recognises that alcohol makes him angry, which inflamed a fight between him, his partner and her family. As Jimmy had a non-association order against his mother, he was unable to provide a bail address. This resulted in him providing false bail addresses, periods of homelessness, and warrants out for his arrests. After appearing in court
for the third time, Jimmy was sentenced to prison for three months. Jimmy had no whānau support during his many experiences in the justice system.

Daniel grew up in a solo parent family and his mother struggled with drug and alcohol addictions. This meant that Daniel was often left on his own and during his pre-teens would resort to stealing to survive and endured periods of homelessness. His friends on the streets provided him with a sense of belonging and enabled him to connect with others who had similar experiences. Daniel was often arrested when he was intoxicated but was unable to recall what had occurred. When he appeared in the district court his mother was instrumental in ensuring Daniel had access to quality legal representation. Daniel is now a father of two children.

4.1.3 The lawyers

The senior lawyer at one of three PDS centres in Auckland has 15 years’ legal experience, including working in private legal firms and for community law - a not for profit organisation that provides free legal advice to those who experience social exclusion and marginalisation. On his return from overseas he started working for the PDS, and within the past year has been promoted to a senior lawyer role.

The Community Law Centre [CLC] lawyer is also Pākehā, and been working in the legal aid field for over 12 years. He is currently employed at a community law centre after becoming disheartened with the legal aid changes. He is a passionate social justice lawyer, and believes that regardless of an individual’s socio-economic status, clients should receive the same quality of legal representation as those who can afford representation through a private legal firm.

Similarly, the Māori lawyer has over eight years of experience in the criminal law jurisdiction. She has worked in the Rangatahi Courts, police prosecutions, PDS, and more recently started practising as a sole barrister. The range and extent of her legal experience has resulted in her understanding internal processes on both sides of the spectrum. As a Māori lawyer, she applies kaupapa Māori practices to engage with her clients regardless of their ethnicity. She is also concerned about the number of Māori present within the criminal justice system.

4.2 Demographics

Table 4.1 (below) provides an overview of the participant’s demographics, and are divided into two distinct groups. Matt, Adrian, Simon and Rawhiti are first time defendants and provide a unique view of the justice system, in particular the early stages of accessing the court environment and seeking legal representation. Whereas Syd, Nathan, Jimmy and Daniel
provided a deeper understanding of how deprivation and systemic failures have shaped their lived experiences.
Table 4.1

<table>
<thead>
<tr>
<th>Participant</th>
<th>Age</th>
<th>Tribal Affiliations</th>
<th>Court Appearance</th>
<th>Time Served</th>
<th>Sole parent family</th>
<th>CYFS care</th>
<th>Year Left School</th>
<th>High School qualifications</th>
<th>Diagnosed with Mental Illness</th>
<th>Experienced homelessness</th>
<th>Homelessness</th>
<th>Drug or Alcohol Addiction</th>
<th>Employed</th>
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<tbody>
<tr>
<td>Rawhiti</td>
<td>28</td>
<td>Ngāti Kahungunu ki Wairoa, Taranaki</td>
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<td>11</td>
<td>Nil</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Simon</td>
<td>25</td>
<td>Te Arawa</td>
<td>1</td>
<td>11</td>
<td>Level 1</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Adrian</td>
<td>21</td>
<td>Ngāti Kauwhata</td>
<td>1</td>
<td>√</td>
<td>13</td>
<td>Nil</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Matt</td>
<td>22</td>
<td>Tuhoe</td>
<td>1</td>
<td>√ √</td>
<td>10</td>
<td>Nil</td>
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<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Daniel</td>
<td>21</td>
<td>Tainui, Taranaki, Ngāti Porou</td>
<td>Multiple</td>
<td>√ √</td>
<td>10</td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Syd</td>
<td>25</td>
<td>xxx</td>
<td>Multiple</td>
<td>√ √ √</td>
<td>9</td>
<td>Nil</td>
<td>√</td>
<td></td>
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<tr>
<td>Jimmy</td>
<td>18</td>
<td>Ngāti Kahungunu, Tainui</td>
<td>Multiple</td>
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<td>10</td>
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</tr>
<tr>
<td>Nathan</td>
<td>27</td>
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<td>10</td>
<td>Nil</td>
<td>√ √ √</td>
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<td></td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>

Source: Researcher/Paula Bold-Wilson

4.3 Contextual Factors

The following section provides a brief overview of what led up to the young men appearing in court. It is not the intention of this research to focus on their charges, however it does provide a greater understanding of the various influences which have led them to appearing in court.

In analysing the men’s data, the most striking result to emerge was that all of the young men who had multiple experiences in the justice system shared most of the following negative demographic features shown in Table 4.1: sole parent families, Child Youth and Family Services [CYFS] care, low education attainment, mental illness, homelessness, substance addictions, victims of violence and unemployed. The first time participants share some of these negative features, particularly low educational attainment and being unemployed, and Matt’s profile is very similar to the multiple participants group. These results highlight that poverty, in its widest sense, has exposed these young men to social, economic, cultural and
political disadvantage. Accordingly, the data presented in these findings provides a greater insight into the underlying drivers of their behaviour, and gains a deeper understanding of the challenges they have endured during their life time.

4.3.1 Economic
Inter-generational deprivation, welfare dependency and poverty have limited the resources and opportunities available to five of the young men. Syd states he “left school at the age of thirteen to go and provide for my family.” The multiple defendants identified that a shortage of food was a contributing factor to them engaging in criminal behaviour and felt that in order to survive they needed to either shoplift or rob houses. Syd confirms this saying, “that’s why you get so many young kids robbing dairies or robbing houses just for food. It’s not about who can get the most money. It’s not about who can rob the biggest, fanciest house. It’s about getting food for your family.”

4.3.2 Social
Growing up in a single parent family resulted in the parent being under extreme financial stress as Matt confirms:

I came from quite an up and down family. I guess a lot of family violence, lot of drug and alcohol abuse, not the best of family that I grew up with. Also growing up with CYPS and stuff, and that being a constant struggle (Matt).

Daniel’s mother, who attended the interview, expresses her own difficulties: ”I saw what I was doing to him, but I was so stuck in myself I couldn’t get past all of that. I couldn’t even deal with myself, let alone deal with what was actually happening with him.” Drug and alcohol addiction were another major challenge for Nathan: “I had no income, my sister had no income, my family had no income…. that was my tradition, to steal the food first to feed the family, then rob the house for the drugs.” Nathan viewed his criminal activity “as a robin hood thing”.

Four of the young men had experienced some form of homelessness. Jimmy was unable to provide a bail address on many occasions before he was sent to prison and even admits, “That’s when I started thinking aye, prison ain’t such a bad idea. Sleeping on the streets was pretty hard.” Matt became homeless due to family violence and started living on the streets when he was at college. He recalls, “I just stayed [with] the homeless people [who] looked after me, gave me food and a place to live [and] sleep. I just kinda went to school, and just didn’t really say anything.”
4.3.3 Cultural
All the participants were able to identify their tribal affiliations, however none of the participants were born in, or had whakapapa links to mana whenua, in Auckland. When asked the question about whether they could speak Te Reo Māori, only one man was fluent. The other seven men identified that they were exposed to their language and culture in their early years, but as Matt says, “I moved to Auckland [and] going to main stream schools I lost a lot of my language…. but I still know who I am, and where I am from.” Rawhiti, who has only recently appeared in court for his first offence at 28, had been schooled in “kaupapa Māori through kohanga, kura kaupapa, and ... wharekura”.

For three of the young men, it was only when part of their sentencing required them to attend the Hoani Waititi Marae Tikanga Program, that they were able to reconnect with their culture and community, and gain a strong sense of pride in being Māori. Daniel felt that it "[made] you find yourself, and ...[made] you feel proud of who we are. I would come from the Tikanga program, walking down the road, doing pukana everywhere. I [didn't] care what anyone thought, I was proud to be Māori.”

4.3.4 Mental health
Three of the participants were diagnosed with mental illness. At the age of 23, while serving time in prison, Syd was formally diagnosed with paranoid schizophrenia and finally able to access mental health treatment. Syd attributes this to his lawyer:

[She] understood me. She asked the questions that were relevant to my case, to my life, and the offending... and what made me lash out... She was the one who actually said, ‘Have you talked to anyone about what’s going on for you?’ (Syd).

When the matter of mental illness was raised with the Māori lawyer participating in this research she stated, “the amount of people who are in our criminal justice system who are affected by mental health issues, [now] that’s a whole other topic!”

4.3.5 Child, youth and family
Four of the young men had been wards of the state during their childhood and teenage years. Matt remembered, “at the time my dad got drunk, and he started to hit us... Apparently [CYFS had] been involved all my life, but I was young, and did not understand any of it back then.” Syd felt that poverty was a significant factor in children being uplifted from their families
saying “if your parents can’t afford to look after you, they send you somewhere. They can’t even look after you.”

4.3.6 Education
Another key finding from this research was the age at which these men left school. Only one participant obtained the Level 1 NCEA, and one other participant left school at year 13 (when most students are 17 years old). However, six of the eight men left school before they were year 10 (14 years old) with no formal school qualification. The multiple defendants all identified that they found learning difficult and Daniel says:

I wasn’t that good at spelling and reading. When I went to intermediate I got into a lot of sports; when I got into high school I lost all hope. There was no sports, no encouragement really from the teachers and you could see they [had] no interest in some students (Daniel).

Syd wanted to do well at school, but found “it was difficult because [of] the way it was explained to me. I couldn’t understand their formula.” He argues, “the Pākehā have their set formula and it’s their way, or you’re … a failure”. Learning difficulties such as ADHD were identified as contributing factors to the men’s learning and development as well. As Nathan says, “I was disruptive. I didn’t listen. I fidget … had mood swings and just [didn’t] pay attention at all”. Counselling was provided for Nathan but he states during “the classes I couldn’t function in, I did counselling, and those were pretty much the ones I needed to be in”.

4.3.7 Corruption
Five of the young men have had various experience with government agencies such as Child, Youth and Families Services and the Police. They felt that the way in which these statutory agencies dealt with them has informed their perception that the system is fundamentally corrupt. Adrian thought the justice system was corrupt because of the dehumanising treatment he witnessed:

[My] first time in the cells … I walked past a cell where there was a guy on the floor [who] had been handcuffed, and he was asking for a drink and the police officer walked up, gave him a cup, closed the door and walked off. But he didn’t uncuff him, he just gave him a cup, locked the door and was like, ‘There’! (Adrian).

Syd’s expressed his distaste for the welfare and justice systems as a whole saying, “Whether it be CYFS, police, lawyers, whatever, if they have had an understanding, then I … probably wouldn’t have grown up with the problems. Fuck the police. Fuck the law. Fuck the government. Fuck the world”.

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4.4 The Nightmare Begins
The following section provides a brief overview of what occurred when the young men were arrested by the police. Unnecessary police violence, discrimination, and the way the police wrote up the initial statement, would influence how the lawyers and judges involved viewed the charges.

4.4.1 Racial bias and discrimination
Three of the first time offenders felt that racial bias and discrimination was a contributing factor to the way the police dealt with them. Matt says:

They just saw me, a Māori male, and just thought 'Oh yeah, he’s obviously trying to beat his missus up, or break stuff, and trash things'. Like I’m some mindless person. ...They didn’t even give me the chance to explain myself, which lead them to treat me like I’m a criminal” (Matt).

When the police arrested Adrian, the police officers assumed he was providing false identification, as they were unable to locate him in the system. He recalls, “I didn’t have any criminal history ... and they were like, aye?” Matt believed that the way the police arrested him was unnecessary and brutal; “It was the way they arrested me, like I was trying to resist arrest or something”. He was just sitting on the bonnet of his car when “I got man-handled, and was put down on the ground. I had three cops on top of me”. He called out, ”’Why are you treating me like this? I’m not dangerous. I’m not trying to hurt anyone; I’ve come to talk to my partner”’. Matt goes on to say “don’t assume that all Māori are violent cause that’s not true, we are not. I know there is a stereotype going around that especially Māori men are violent. Not everyone is violent. I’m not violent, I’m a good person”.

4.4.2 Whose truth
Three of the first time defendants challenged what was written in the police statements, and felt that their version of events was not considered during the arrest. They contend that the police statements were untrue and exaggerated by the police. Not being able to provide their version would ultimately predetermine whose truth the lawyers and judges considered.

Matt felt confused and upset as “in the statement the police wrote down I had been drinking. I went to have dinner with friends, because they didn’t have a sober driver... I drove them around town.” The police also stated that he had smashed the window, whereas Matt argued “the window just cracked.” He insists, ‘I didn’t break anything on purpose. I’m getting charged with wilful damage, which means you intentionally [did] something. That becomes wilful damage, [but] it wasn’t, it was an accident”.
Similarly, although Adrian was charged with smoking synthetic cannabis, the police reported that he was in possession of drug paraphernalia. This implied that he and his girlfriend were drug addicts. He says, "It’s just stupid. And it makes [it] even worse when other people are looking at you, you know, and you go up to your court and they say you’ve come up for needles and syringes". Adrian’s girlfriend explains, “It was a bobby pin, but it was stretched out”. When Adrian and his girlfriend raised the inaccuracies with their lawyer, Adrian stated "They [the police] type things, but when you go to court its not what’s in front of the judge’s eyes. But I’m just like, ‘Why? Why would they write that?’ You know?”.

Although Matt was originally arrested for wilful damage, his charges were then changed to male assaults female. The seriousness of this charge, and the false statements provided by the police, resulted in his partner writing an affidavit, affirming that she was inside the house and that he had not assaulted her. Matt asserted “[It] was a misunderstanding. Things were blown way out of proportion”

A similar incident occurred when Jimmy had been drinking and an argument occurred between him, his girlfriend and members of her whānau. Jimmy was arrested and charged with male assaults female. He explains, “They just told me that I was going for detox for one night. And I was going up against MAF [male against female] charge on my partner, and I was like aye?!“

4.4.3 Police attitudes

The men expressed feeling powerless and subjugated when dealing with police. In Syd’s case, this started before the serious assault he committed:

[When the victim] touched my little sister … and my little sister went to the police station so that the police [could] know what happened. They didn’t want to hear about it either. So, no one was helping my sister, [and] she’s in hell (Syd).

He felt he had no other option “so I took it in my own hands to sort it out”.

Daniel felt similar powerlessness when, while he was locked up, he “[saw] cops smashing this chicks head up on our paddy wagon. I was just like, what the fuck!? When witnesses tried to intervene, the police officer told them to piss off… this [has] got nothing to do with you.”

Rawhiti, a first time defendent, stated that he was not provided the right to seek legal representation and his interview was videoed and used as evidence. Rawhiti felt that he was bullied into answering the questions and, according to Rawhiti, the judge raised this as a concern when she saw the video, saying “that it was ‘pretty painful listening to the police officer hammering me’…. It was almost like a bully tactic, so it was good the judge seen that,
and picked up on that as well.” Rawhiti believed the police officer had already made up her mind that the incident was as described by the police report. He states, “It felt like she just wanted to just lock everybody up, not even caring what I was trying to tell her, she just went straight off the facts of what she seen”.

Adrian has a dual gendered name, and was humiliated by the police during his initial interview:

‘Oh, your name is Adrian.... isn’t that a girl’s name?’ I was like, ‘Bro, just cause you’re in a uniform doesn’t give you the right to insult me. It may be a girl’s name, but if it wasn’t for these handcuffs, I’d fuck you up’ (Adrian).

Adrian was offered diversion, and this process of humiliation continued with his diversion officer not explaining what diversion was:

[He had an] attitude [of] ‘Oh you’re a scumbag, you know you’re worthless’. That was his attitude straight from the beginning. He was like saying, ‘Tell me the truth, the whole truth and nothing but the truth’, and he still treated me like shit.

Matt recounted another demeaning process where he didn’t get quick access to medical treatment despite needing pain relief “because I had an injury which was quite bad and needed to be changed by a nurse. I needed my antibiotics, [but] they didn’t get it to me until the last day”.

Other first time offenders raised specific concerns relating to humiliating treatment in the cells. Adrian was “furious, you know? First time offending, and you wanna treat me like I’m some fucking murderer, like I’ve been on crack for a couple of weeks out killing people”. Matt agrees:

I’m in this place with a bunch of people who more than likely are in here for very bad things. I’m just thinking to myself, ‘Why do I have to be here? I’m not a criminal, yet I feel like a criminal. I’m being treated like a criminal’. It felt bad (Matt).

However, Simon felt he was “treated with dignity and respect”. He found the police officer was quite helpful claiming, “He was nice and helped me out, and told me exactly what was going on, [and] that I had to appear for court on a certain day”. Daniel concludes that individual’s perceptions of the police are “not from what they’ve heard, but what they’ve seen, and what they’ve experienced ... which gives police officers a bad name”.

These negative police attitudes carry through into prosecutions according one of the lawyers who was a former police prosecutor who explains, “Prosecutors these days are so heavily influenced by what they perceive to be the attitude police should have, instead of using their
initiative, making subjective calls, and being sensible and pragmatic in their approach.” Dealing with large numbers of prosecutions made the police prosecutor job tedious and mundane. They state, “I felt like I was just a factory worker ... all I did was shuffle pieces of paper, stamp, stamp, next, stamp, stamp, next, stamp, stamp”.

4.5 The Justice System

In *The Trial* (Kafka, 1925), Josef Kafka states in despair, “The justice system consists of arresting innocent people and introducing senseless proceedings against them, which for the most part, as in my case, go nowhere” (p. 327). Matt’s experience of being thrown into the cells left him feeling it was “[the] worst thing ever; sitting in a cell looking at a blank wall, in the dark, not knowing what the hell you did wrong”.

4.5.1 Court environment

From the outset, entering the court system was daunting for three of the first time participants (Simon, Adrian and Matt), as they tried to navigate a system which was completely foreign to them. Unlike Rawhiti, who had been to court previously for driving incidents, Adrian walked into the courtroom unguided and inexperienced:

[I] passed the wall with people’s names on it. I noticed my name, only by chance. If I didn’t notice that piece of paper then I [would have] got lost even more ... if they called out my name, I would’ve been like, ‘Oh where do I go now’? (Adrian)

“Feeling embarrassed...[and] a little scared as to [what] the outcome was going to be”, Matt admitted, “[I] had no clue. I felt a bit lost ... I didn’t know what to do, or who to see. I was unsure if I had to see a lawyer, or just wait ‘till they called my name”. Similarly, Adrian tells, “It was the first time being in court. I had no idea what I was doing, and someone told me you need a duty solicitor.” Simon arrived at court on time at 10am, sat down and waited for two hours until 12pm. He elaborates:

*I had no idea what to do. [It was only when] some lady goes to me, ‘See all the people in suits ... you have to actually go up and ask them if they can represent you’. And I was like ‘Oh shit! No one told me that!’ She said, ‘If you don’t get [a duty solicitor] and time goes by, it shows that you’re not here, and you get a warrant out for your arrest.’ ... I thought [that] was shocking! (Adrian)

Matt found it difficult to find a duty lawyer, and when “[I] eventually got to see a duty lawyer Matt said, ‘I don’t even know what a duty solicitor job is to be honest.’” Simon felt, “the hardest thing was, the duty solicitors were zipping all over the place [so] it was hard to stop one. They’d be like, ‘Oh nah, I’m busy’”. Adrian was able to locate a duty lawyer as they were “just walking around”, but felt that there was insufficient time to discuss his legal matter:
10 minutes, or not even 10 minutes. It was just basically walk in, sit down. I gave him the paper that I’d gotten from when I got released, and he just looked at it and was like, ‘I’ll give you diversion’ and I was like, ‘Okay’ (Adrian).

Jimmy who had appeared multiple times felt that the duty lawyers were “normally all in a rush to go to their next client. They say, ‘I’m a bit busy at the moment, I’ve got another client wanting to see me’”. Jimmy essentially accepted that they were busy and said, “All good, I’ll go to the back and wait until I get sentenced. I’ve done that a few times aye. They’re like, ‘I’m pretty busy’”. Nathan felt that, “he [the lawyer] was just crap cause he was Spanish. He couldn’t understand [me, and] I couldn’t understand what he was saying”.

The CLC lawyer noted that duty lawyers will ask clients if they need assistance, although he did mention that the scheduling of individual court appearances was a contributing factor to the young men not being able to access a duty lawyer, or the need to discuss their case, in the court room corridors:

The real issue is, you’ve got 60 people listed for 9 o’clock, 50 people listed for 10 o’clock, 20 listed for 2.15. Then all the people listed for 9 o’clock gradually start to come in about quarter past 9, and then there’s too many people to deal with. Then they’re all dealt with by half past 10, and again you’re sitting there. And then there’s another rush (CLC Lawyer).

The CLC lawyer cautioned that “the important thing is that they don’t just leave without dealing with their matter... they end up getting arrested, and then [it] just gets messy”.

Rawhiti felt the duty lawyers should be obliged to “inform us a little bit more, ’cause he just gave me one of the worst outcomes ... I just had to take it”. This was echoed by Nathan who said, “You’re getting charged, but what are the options that I have to defend myself? Like put [it] down on a piece of paper.” Matt recommended that when interviewing a client lawyers should “give them all the information you can, and don’t rush it because you have to see some other people; doesn’t mean you have to rush something. It’s people’s lives you’re playing with.” In response, the senior lawyer interviewed for this research stated “some lawyers are very nonchalant and will just push them through. Some lawyers are very vigilant, and will be very careful with what they’re doing.”

Matt and Simon both identified that their initial interview took place in the foyer of the courtroom. Simon remembers, that his lawyer “just talked to me outside on the chair.” Matt was unable to express “I was wanting to get my bail changed, or completely gone. He looked at the papers and just automatically said, ‘Sweet, we will get it sorted’, but he didn’t have the full facts.” The three lawyers admitted that they had all had “a conversation with a client in a
corridor. [However], I would try and at least find a private corridor.” The CLC lawyer noted that “the reason [this] sometimes happens, is because the rooms are full, and the lawyer, or the client doesn’t want to wait.” In frustration the Māori lawyer argued:

The facilities are not purpose built... [the] court was supposed to be rebuilt, but the Ministry of Justice does not place much significance on building a new one, even though the West Auckland Community has been crying out for one for the past 20 years (Māori lawyer).

To conclude, there were mixed reviews as to the effectiveness of the duty solicitors scheme in providing assistance during their initial engagement with their lawyer. Matt believed, “overall the duty solicitor wasn’t really any help you know, didn’t give me much motivation.” In contrast, Jimmy felt that “duty lawyers are real good, it’s your actual lawyer that you’re allocated to who are hopeless.” When the experiences of the first time defendants were raised with the Māori lawyer she acknowledged that “lawyers in the court deal with the same stuff every single day... we don’t know whether they’re a well-oiled machine, or just a frequent flyer... I guess [we’ve been] worn down and moulded into a certain way.”

4.5.2 Access to legal advice

Unfortunately, Matt’s legal aid application was denied, even though he was unemployed when he applied. Unable to access legal representation left him feeling “worried, a bit defeated. [It] felt like everything was going to go bad for me because I can’t get a lawyer, and I just didn’t feel secure. I just felt a lot of emotions, not good ones.”

The other seven participants were allocated legal aid lawyers, from either a private legal aid provider, or the government funded PDS. The multiple defendants believed that if they had the money, they would receive better legal representation. Wilson thought that “If only I had the money aye ... I'll ask her to do her job properly this time, maybe I'll chip in .... [because] she’s just chasing the money.” Wilson’s statement was echoed by Syd when he said “I want to use the word corrupted, unfair, unfair to the lower income sort of areas.” Daniel concluded that “you might as well lock everyone up in prison aye. ‘Cause there’s a lot of people who don’t know how to stick up for themselves and a lot of people don’t have the money.”

Alterations to the Legal Services Act in 2011 initiated a number of key changes, in particular the right to choose a lawyer. This impacted specifically on the multiple defendants who had relationships with their previous lawyers, such as Syd; “I tried to make her my lawyer a few times and it didn’t happen because she was too busy and stuff. She already had a lot of clients, ah all good. It is what it is.” In Syd’s case, he had established trust and confidence in his lawyer who had assisted him as a young person, however when he tried to use his youth
lawyer again “He [the lawyer] said [my] charge was too serious ... so he pawned me off to another lawyer.”

Only one of the participants (Simon) was provided with another lawyer following a complaint to legal aid. He said “My aunty rung him first ... he was like that’s fine, go find someone else, so [she] wrote a letter to the legal aid person, and then they sent us XXXX.” Daniel’s mum (who was present at the research interview) approached another lawyer, because his legal aid lawyer had stated, “He’s [Daniel’s] not getting away with this’. I [Daniel’s mum] thought to myself, ‘My God, she’s appointed to [assist you] ... this lady was gung ho ... [going after] Daniel [and] had written a really bad report.” This prompted his mother to approach his previous PDS lawyer as “she dealt with all of them, because he got done for quite a few things ... she’s a really good lawyer.”

The CLC lawyer explains the process behind the random allocation of files:

You had some lawyers taking a huge number of cases which they weren't able to handle. There are some lawyers who developed very good skills of acquiring people, and just built up a huge case load, and very little help for representation (CLC Lawyer).

When Jimmy received bad legal representation, people were telling Jimmy “to get a new lawyer, because every time I went up to court, I always got sent back to prison. ....... [even] the police in the back [of the courtroom], were telling me to get a new lawyer.” When asked why he did not change his lawyer Jimmy said, “I didn’t know how to [get a new lawyer], I just don’t bother ... It would have been helpful though, if I did.”

Although the government tried to prevent lawyers from taking on huge caseloads, the community lawyer stated that even “if you have a bad lawyer who doesn’t do anything with their clients, they still get assignments.” He elaborated that, “One of the biggest problems is the difficulty in changing your lawyer once you’ve got them. I would say that was more of a problem than not being able to choose in the first place.”

4.5.3 Contact

The Lawyers and Conveyors Act (2006) requires lawyers to act competently, in a timely way, and in accordance with any arrangements made with clients. Three of the first time defendants stated that they met their designated lawyer at the courts. Rawhiti said his lawyer “called me up, and told me to meet him at court, so we went over my case again and [he] told me the worst possible outcomes, that could happen.” Matt’s lawyer decided that the best option for him was to plead guilty, however Matt disagreed and wanted to tell his lawyer “my partner wanted the charges to be withdrawn or dropped completely, but ... the bail
conditions restricted us from seeing each other [and] there’s kids involved.” Simon noted that his original lawyer “came late and when he came, he had no idea about me. I had to go through with him what was happening, and stuff like that, and what he was going to do.” Following Simon’s complaint to the legal aid office, the new PDS lawyer he was provided wanted to meet:

To talk about how she was going to help me get off this case. She kept in contact with my mum and my aunty, to keep us all updated. She was very, very helpful; I owe that women a lot (Simon).

The multiple defendants experienced various challenges meeting with their lawyers as well. Nathan recalls:

I was chucked around literally by lawyers. I was chucked from the first one who had no clue what was going on. I was chucked to another one on my second court case, who didn’t know what was going on either. [The registrars] were calling, where is my actual lawyer (Nathan).

In Jimmy’s case, trying to ascertain who was his allocated lawyer proved to be quite difficult:

I gave her a call, and asked her if she was my lawyer, she said ‘Um, its XXXX that’s allocated to you’. I was like, ‘Oh yeah, all good’. [I checked and then] rang her back up: ‘But she said it was you that was my lawyer’. She said ‘No, its her’. So they both had to have a look into it to see who was my lawyer and stuff. I was just going back and forward (Jimmy).

Similarly, when Syd was sent to prison at 17, he tried to contact his lawyer, the one person he felt was able to help him. However, his lawyer ”kept shafting me off. I tried ringing but … their assistant, or clerk, kept saying he wasn’t there. And then I’d get one of my other bros to ring my lawyer, and he was there.” When Syd’s friend told the lawyer that “Syd wants to speak to you, and he’s just like, ‘Oh yeah, I’m going to ring him soon’. So I wait another week, and try ring him again, [but] same thing”.

According to the CLC lawyer, “the biggest area of complaints that the law society receive is communication. So lawyers have an obligation to communicate with their clients, and I make it a real important point.” When the lawyers were asked how they contact their clients, they stated it was their preference to meet with the client before they attend court. However, they also noted that this can be quite difficult, with the CLC lawyer stating:

We’d [preferably] have them in here, and have a meeting with them, and go through everything. Sometimes, time restricts that … a lot of our clients aren’t that keen on coming in to meetings, or keeping appointments. Sometimes the next time we see them is when they miss court, and get arrested (CLC Lawyer).
If the lawyer is unable to meet a client prior to the court appearance, the senior lawyer believed that, “It’s a good idea to get a good handle on the case that you’re dealing with before you go to court, and have a really careful, considered approach when you’re dealing with someone”.

However, making contact proved to be more difficult for Syd and Jimmy who were incarcerated at that time. For Jimmy, being in prison and having no contact with his lawyer was quite distressing, “I wanted her to keep me updated when I was locked up aye, I didn’t have a clue what was happening on my court date.” He felt contact with his lawyer would have brought him greater reassurance, expressing “Get in touch with me earlier and stuff. Keep me updated on news, let me know what’s happening, don’t leave me clueless inside a jail bar … It’s pretty scary.”

On the other hand, the three lawyers all identified that the Department of Corrections makes it difficult for them to contact their clients claiming, “With the mess [Mt Eden’s] been going through, we can’t put a call through to our client … We call them, we leave a message and it doesn’t get through. They won’t just let people make a call.” explained the senior lawyer. Although the lawyers identified that systemic barriers prevent them contacting their clients, the senior lawyer did note that there are other mechanisms for lawyers to stay in contact by “set[ting] up an audio visual link meeting with a client, or you can go in and see them.”

Jimmy met his lawyer for the first time in court; “I was standing in the dock and she whispered to me. And I was like, ‘Fuck, you should be talking to me at the back so I know what’s going on’ but she didn’t.” When this situation was relayed to the senior lawyer, he responded that this was not satisfactory; “Certainly in the dock is not the first time you should meet them. The prisoners are brought into court around 9.30, and you go down and see them in the cells.” Jimmy’s advocate tried to find his lawyer and “asked some of the court staff and a lawyer if they knew who his lawyer was, and one of them said ‘Oh, if it’s this lawyer, she’s in court one.’” The senior lawyer interviewed stated when that occurs it is, “poor time management … actually, I wouldn’t want to judge, not knowing the situation, but … that would worry me if that happened.”

4.5.4 Late

When a legal representative was allocated, four of the young men stated their lawyer turned up late, or in some cases not at all. Daniel’s lawyer turned up late, recalling “the second [lawyer] he ended up turning up late … my court case got postponed to after lunch, and then he eventually turned up … He was terrible.” When Jimmy first went up for bail his lawyer
“wasn’t even in the court room, and then they had to stand me down for another day, until my lawyer turned up”. Simon “got appointed a lawyer, I can’t remember what his name [was] and he came late”. Simon had multiple experiences of his lawyer often not turning up or being so unprepared the case had to be adjourned. He states, “It might have been four times. It was a lot because I remember having a lot of time off, and not getting paid for it.” Nathan remembers getting similar treatment:

They had appointed me on the first day a lawyer or duty solicitor to take my case or file for the rest of the remaining [case], but he wasn’t there on the first day, then on the second day he was there, but late, and on the third day he wasn’t there, on my actual court day he wasn’t there (Nathan).

In response to these experiences the CLC lawyer contends “that is something we would not let happen. And if one of our lawyers is doing that, it would be very stern words with them … the whole ‘not turning up’ is something that is unacceptable”.

4.5.5 Language and understanding

Men in both categories (first time and multiple) identified that they felt confused when discussing their legal matters during the interview with their lawyers. When Adrian met with the duty solicitor he noted:

For a first time offence ... you would expect they would explain stuff more ... give you proper ... information ... The guy that I ended up with didn’t really say much. [He] looked at the papers and said, ‘Okay, yeah, cool, I know what to do’. [He] went in to the [courtroom] to discuss with the police or the prosecutors, and basically said they are offering diversion, and that was it (Adrian).

Rawhiti said, “the whole jargon; when they speak to you, they think you know what they’re trying to say. [So I kept] asking him to break it down for me ... I couldn’t understand what he was saying to me.” Similarly Simon’s original lawyer “didn’t tell me what was going to happen. All he said was that it was going to be a fine.” Matt also noted that legal terminology was confusing expressing that he “didn’t really understand ... they always talk numbers, section this, section that ... I don’t know what they are talking about. They’re talking about law stuff I’m guessing.” It was only when Adrian met his designated lawyer that he felt more comfortable asking for clarification:

I was just looking at him [the lawyer] like, ‘I don’t understand what you’re on about bro’. He was like, ‘Oh, it just basically means that if you don’t do what you’re told, you’re going to get sentenced’. I was like, ‘Oh, cool’ (Adrian).
Jimmy, one of the defendants from the multiple category, felt “they just speak technical; you don’t really understand. You just go, ‘Yup, yup, all good’”. However, the two older participants were able to draw on a range of experiences with different lawyers. With Nathan’s first lawyer:

[I] couldn’t understand what he was saying because he [couldn’t] speak English properly ... I had to keep asking him to break it down for me. I couldn’t understand what he [was] saying to me. I needed it more broken down, so I could understand (Nathan).

Whereas, with Nathan’s other lawyer, “she actually told me what could happen and what won’t happen. She gave me scenarios [as to] what was going to happen, and what she was going to try and do, to help me.” Syd stated that when he got a lawyer he could trust she spoke to him “[not] like authority, it wasn’t demanding ... it was like ... friends chatting, and that’s what made it a lot easier for me to open and sort of explain what was really going on for me. She actually listened.” Syd’s lawyer also took the time to ensure he understood:

I’d go, ‘I still don’t understand’ ... She goes, ‘How do you think you’ll understand it?’ And I said, ‘What about fishing?’ ... She broke it down and was like, ‘If this fish did this, and this fish acted like that...’ Then I was like, ‘Hey! I actually get it!’ [laughing] (Syd).

Rawhiti recommends that lawyers “explain things a little simpler and easier for us to understand.” Likewise, Simon stated “we don’t know all the jargon that you get taught when you’re in school. We don’t go to law school; we don’t know what’s going on.” Nathan also concurs “It’s like me talking Māori to you. You won’t know what’s going on.” Daniel said that “if I was put in a position of power to change the system ... I would put in a system which ... guides them through the system, with understanding.”

In fact, the lawyers were critically aware of how language can create barriers for clients with the Māori lawyer claiming “Language is huge. I just talk normally ... I guess some people would say it’s unprofessional, but I never compromise my professional obligations. I’m just relating, just talking to them. Engaging and talking normally [breaks] down those barriers”.

In order to check whether clients understand, the senior lawyer stated:

We try very hard to break down the legal jargon; I think most of our lawyers do that. Some lawyers are better than others ... I try and get feedback [and] make sure it is a two-way conversation rather than me giving a lecture, [that’s when] I start to really think, ‘Are they getting what I’m saying?’ (Senior Lawyer)

4.5.6 Relationships

A particularly striking theme which emerged from the research was that the participants perceived the relationship they had with their lawyer to be instrumental in whether they received quality legal representation. The first time participants felt time restrictions and
focusing specifically on their legal matter limited the establishment of a relationship. When meeting with the duty lawyer, Matt felt:

I wasn’t able to really talk about it, cause the conversation wasn’t heading towards that way. It was more heading towards, ‘Cool, we’re going get you bail. I’m going to show the courts this and that,’ and then that’s it (Matt).

When Simon’s lawyer turned up late and then stated Simon would get a fine, Simon asserted:

‘No, I don’t want to do that.’ [My aunty] rang him up … and [said] ‘You don’t even care about what he [Simon] actually wants, you [are] just trying to get it in and out, as fast as you can’ (Simon).

The multiple participants also struggled to find sufficient time to build a relationship and Nathan relates that he “wasn’t with him long enough because there were other client’s, people waiting for him, so he didn’t have enough time to really get to know any more about me. Only what was going on.” Syd agreed that he “felt as though I wasn’t being heard. It’s just that they didn’t care, the system doesn’t care. All they care about is their bonus for, you know, how much people they can lock up.” Daniel argued that the inability to advocate for yourself in court predetermines the outcome claiming, “You might as well lock everyone up because some people won’t know how to stick up for themselves, or speak up for themselves.” Matt provides the following advice to others in similar situations:

Just voice up and say, ‘Hey, I need to explain some stuff’. Actually just say it and not expect to wait for them to know what to do. I think my thing was, I didn’t. I should have, but I need to talk about this more. I need to really sort this out (Matt).

The multiple participants were able to recall positive experiences. After getting another lawyer, Nathan explains:

We actually sat down and had a proper conversation from like, what you’re doing, from the beginning, until now. She asked the questions that were relevant to my case, to my life, and the offending … and what made me lash out (Nathan).

Syd had a similar experience with his lawyer who recognised that mental health was an underlying drive of his behaviour:

*I was arrested for my first case in 2008.* That’s how long it took to get help [six years]. I tried to explain that I was hearing voices. They came in and asked me a few questions about my past, and about what I was thinking around the time of the offending, what was going on for me. And then they brought someone else in, and then formally diagnosed me with Paranoid Schizophrenia (Syd).
Syd’s lawyer then made a referral to a psychiatrist. Understanding the drives behind the crime enabled lawyers to consider what had been happening. In Nathan’s case he “got a lesser charge ... from hearing my story and what I’d been going through, and what's been happening from the beginning to the now, to get the result on why I’m here.”

When the relationship with their lawyer was strong, the young men felt that the lawyer was less likely to judge them. Matt declared, “If anybody knows me, they know that generally I’m nice and good hearted. [They would see] it’s a normal argument, you usually have [when] you’re in a relationship.” Simon, who hoped to travel overseas to play league, found that “after a few meetings with [the lawyer] she [understood] a few things about my rugby history” that the lawyer was able to present to the judge, resulting in a positive outcome in court. Experiences like this underpin Adrian’s partner’s suggestion that lawyers let their clients “explain themselves, you know. Listen, just hear them out before you judge them.”

Overall, the multiple defendants felt that their lawyers had preconceived ideas about them. Daniel firmly believed that his lawyer had already predetermined who he was saying “Yeah, she totally judged me!” This belief was reinforced by his mother who also said, “She judged [Daniel], before she actually knew him ... from day one she had a problem with Daniel. She had already made up her mind at the type of person [he] was.” Daniels mother believed the lawyer was keeping Daniel in the system, but he (Daniel) “just wanted to get it over and done with.” Syd, one of the multiple participants warns:

The slightest judgement from the lawyer to their client, whether it be ... just a little thing, could really have a big impact on how the client thinks, and [they] will then ... judge the lawyer and others around [them].

Lawyers who believed in their clients, and in the individual’s capacity to change, was important for Daniel who said, “I wasn’t a bad kid. Maybe I was doing some bad things, it doesn’t mean I’m a bad person.”

The relationship would also determine the level of trust two of the multiple participants had with their lawyers. Jimmy’s lawyer told him, “'Your young’ and stuff, 'You should be able to get out’. And I was like, ‘Oh, all good then. I’ll put my hands in yours’”. But the outcome was not good and Jimmy moved onto other lawyers, claiming he’d had “seven bullshit ones. They’re all the same!”

Marcus, starting from the view that lawyers are acting in their client’s best interest also had his hopes dashed:
I put my trust [in] the lawyers ... I thought they were there to help me. I was a troubled kid ...
Their actions, their conversations – [it] was like they cared for me, but really it was just all a
game (Marcus).

Syd understood that his offence was serious, and the consequences would be severe; "I didn’t
really expect to get off because my charge was quite serious.” Yet Syd believed his lawyer
should have been honest with him, and given him the worst scenario possible:

He got my hopes up, sold me a good dream, then when I turned 17 he said, ‘Hey, look the case
is looking a bit more serious then I first thought’, and then I thought, ‘Rat shit’ ... Just don’t
sugar coat anything, just say, ‘Hey, look you’re going to get eight years’ ... If you get eight years,
you get eight years, at least the lawyers right, and if you get a lesser sentence, it’s a bonus
[laughing] (Syd).

However, establishing an in depth relationship with the client can dismantle the negative
perceptions that the multiple participants have of lawyers. Syd’s relationship with his previous
lawyer made him cautious when engaging with his new lawyer, and in prison “there was a
little bit of a stand-off at that time, because I [trusted] my first lawyer and then I found out I
got misled from him, so I thought this lawyer, was about to do the same.” However, the
intuition and determination of the new lawyer enabled her to work alongside Syd:

I said, ‘What are you trying to do? Are you trying to play games with me?’ ... She just told me
to basically shut up [laughing], and she said, ‘You know, that there is actually people out there
that care for people like you, who have been brought up in the system, and that haven’t had the
help’ (Syd).

Another hopeful source of positive relationships are the PDS lawyers. The two young men
who had been allocated PDS lawyers, felt that they had been provided with quality legal
representation. Although Jordan and Simon had initially been allocated private lawyers, the
lack of trust and confidence in their original lawyer enabled them to be represented by PDS
lawyers. Daniel’s mum, who provided additional support for him, states “Yeah, she was
awesome. She’s a really good, good lawyer. She’s kind, she understood and explained things
really good.”

Discussing Simon’s legal options in depth, his PDS lawyer advised him what he needed to do
to ensure the best possible outcome:

She said to me to make this more convincing to the judge, that I’m not a bad person. She got
me to get a letter from my manager, my league manager, what I was up to and my plans for
going overseas. And she said, ‘Go and do some drug and alcohol counselling, just to prove that
you don’t have a problem’ (Simon).
Despite the negative perceptions about lawyers, the Māori lawyer believed:

All the prestige and rubbish that surrounds [being a lawyer], is uncalled for. At the end of the day, we have a couple of pieces of paper, with a shiny gold sticker ... We're just people who do a job, and our job is to engage with others, and communicate about the situation they find themselves in, and what they are to expect (Māori lawyer).

When interviewing one of the lawyers at PDS, the researcher asked why the lawyer thought the men held the PDS in such high regard, compared to their private lawyers. He replied:

I think most of our lawyers are pretty committed. We also have training and support ... We have junior lawyers; those junior lawyers will have support from more senior lawyers ... If you've got a private lawyer, you don't always have that (PDS lawyer).

4.5.7 Cultural responsiveness

Adrian identified that [it would] “be good to see a few more brown people representing us; you feel more comfortable”

When the lawyers were asked about whether they change their approach when working with Māori, the Māori lawyer responded, “Working with Māori isn't any different than how I would work with anyone else, but that's because I am Māori. I introduce myself with a hariru, or 'Kia ora', or 'What's up?', depending on the situation.”

In the PDS training schedule lawyers are taught some knowledge of Tikanga Māori to encourage cultural competence when dealing with Māori clients. The CLC lawyer stated that “the PDS [provides] tikanga training, or dealing with Māori. We've actually had some sessions on that for all our lawyers, which gets delivered through the various offices.”

However, the Māori lawyer recognises that being Māori in a Western court room, does bring various challenges:

We have to be accepted, and walk in the Pākehā world, as well as being strong with our roots in our Māori world. So for me, I do really do have this dual diagnosis, per se, where we can talk the way we want to be heard in that setting, because [the court] has its own tikanga, just as we do on the Marae (Māori lawyer).

When asked about how lawyers build relationships with Māori clients, the Māori lawyer stated that she uses a Te Reo me ngā Tikanga Māori (Māori language and culture) approach:

[For instance] 'No hea koe? Ko wai to whānau? Have you always lived in West Auckland?' ... Getting to know the clients [is important] so they don't feel like a nobody, like a nothing ... [It's] about engagement so they actually feel like they're a person, by treating them with respect and dignity (Māori lawyer).
4.6 The Court Room

4.6.1 Pleas

All of the first-time defendants were advised to plead guilty. Additionally, Adrian had to plead guilty as his lawyer was going to “get [him] diversion”. Simon, who was charged with possession of a B-Class drug, was also advised to plead guilty and stated “I told him that I didn’t want to get any charges and stuff, and he said, ‘It would just be easier if you got a fine’”. However, Simon did not fully understand the consequences of having a criminal conviction and elaborated, “If I didn’t speak to [his PDS lawyer] I wouldn’t know that because of these charges I wouldn’t be able to go travelling, that I couldn’t get into certain countries.” Rawhiti was the only defendant who refused to plead guilty:

He told me what the worst outcome would be, and then asked me if I still wanted to plead not guilty. I didn’t assault, it wasn’t assault to me. I was trying to just remove her from my car and there were struggles there, that’s what happened (Rawhiti).

He stated delaying his case, “felt like I was already locked up; I couldn’t do anything, or go overseas anywhere.” Matt felt that during engagement with his two duty solicitors, the police statement would continue to haunt them, and suggests to lawyer, “Try and get a full picture of the story ... Don’t just see what you see on paper then go, ‘Okay’. You need to hear what the other person has to say.” Consequently, because of the police statement Matt, felt his lawyer coerced him into pleading guilty, even though he was adamant he was not:

I think the bigger thing [was]... I felt pressured into doing something that I didn't think was right. I felt like there wasn't a justice at all. Why do I have to go for diversion for something that I didn't do? I'm being charged with something that I didn't actually do (Matt).

Syd’s lawyer advised him that he would serve several years in prison, which was much more than Syd originally expected, but he stated, “- then I thought, ‘Well hey, that’s better than what I should get’ ... so I pled out”. His lawyers’ recommendation to plea prompted Syd to dispute [the plea] on the basis that he was “being misled ... [but] I got no support on that.”

The CLC lawyer noted that it is important to be realistic about the potential outcomes, stating that he will say to a client, “If you want to go to hearing, we’ll go to hearing [but] I can’t promise you an outcome. With diversion I can promise you an outcome. Going to trial is a risk, it is your choice.” The senior lawyer however, noted that there is scope to challenge the police testimony as often, “the person [the police are] interviewing is sometimes drunk themselves, and they may possibly exaggerate. So, various people exaggerate; you cannot simply take people on their word.”
All the legal aid lawyers agreed that some lawyers will encourage clients to plead guilty, with the senior lawyer contending that case load was a contributing factor:

The other thing is why [this occurs] … too many files. When I worked for XXXX I had a caseload of 82 clients, and then when I moved to XXXX, I had 45. 45 was a great level of cases, however that quickly increased to 70 (Senior lawyer).

The senior lawyer felt that the high number of cases, impacted on her ability to provide quality:

You cannot give justice to each of your clients when you have a high caseload. I could not manage the level of care my client was entitled to because of the high number of cases I was [individually] dealing with (Senior lawyer).

4.6.2 Litigation – fight for me
The participants from the multiple category were able to draw on their experiences of being in the court room to evaluate how well their lawyer represented them. Daniel experienced difficulties with his original lawyer from the start, as confirmed by his mother:

[He told her] I want to be a pastor of a church’, and she took offence. I think she thought he was taking the piss out of her, but he actually wasn’t. She said, ‘I’ll never come to your church’, but he wasn’t asking her to come to his church, he was just looking to the future you know … from that day on [she] started raving on, ‘I’m going to write a bad report for the judge’ (Daniel’s mother).

Because Jimmy’s lawyer had not contacted him prior to his court appearance, she was unaware of the services Jimmy’s social worker was able to provide. His social worker (Jimmy’s support person at interview) recalls what occurred on the day of Jimmy’s court appearance:

Just before Jimmy went up to appear in the dock, she pretty much just said, ‘What do you do? Can I talk to the judge about you? Can you stand in court and speak to the judge if you need to?’ (Jimmy’s social worker).

The lawyer then proceeded to tell his social worker:

‘He needs an address. He needs accommodation. If he doesn’t have any of that, the judge is highly likely to send him to custody’ … [The lawyer was] unprepared … I was unprepared … had I been able to speak to [the lawyer] I would have … [known] what the state of play was, and written up a bit of a reintegration plan to submit to the court before then (Jimmy’s social worker).

Syd states that immediately prior to sentencing:

[My lawyer was] adamant that I was going to get two and a half, three years. Then at my sentencing, my lawyer just folded, then they started off at 14 years … I managed to get down [to] … seven years, three months (Syd).
The young men were asked to consider experiences where they felt that their lawyer had represented them well. Rawhiti identified several things:

[During my court appearance] they played the video, and [my lawyer] actually stood up and was giving statements against [the police officer]. My lawyer pointed out to the judge, that [the] officer was doing a lot of things wrong, when she was interviewing me ... he was taking notes down, and ... had his own mind on how things went down ... I think he put it all together and [realised the police account] ... must not have made sense. That's why he was fighting against the police (Rawhiti).

When quality legal representation was provided the participants had a better outcome in court. Simon claims his lawyer “tried her hardest to get something, get me out of it, and I think she ended up getting me discharge without conviction.” Nathan’s lawyer got his charge downgraded from male assaults female to common assault, and he was sentenced only to doing community work. He reflects, “It was all good. They reckoned I was going to get jail time for MAF [male assaults female]”. Syd, in reference to his original lawyer, acknowledges:

There [were] points that did help me, and I’m grateful for that. My lawyer tried bringing up my history, my mentality at the time ... but he didn’t really emphasise the fact that I had a mental disability ... I didn’t feel he put enough effort into representing me on that side (Syd).

Jimmy thought that one of his lawyers, “fought real hard for me, to keep me out of prison, because she knew I was changing.”

4.6.3 The judges

When the participants were asked what happened when they appeared in front of the judge, Simon recalls "I had, like, two older men [as judges] and they didn’t even acknowledge me. They just told me to stand in the box, and that was it.” Additionally, the legal jargon used in the court room left Matt confused, feeling "I [didn’t] understand half the things they say in court.” Although the judge agreed that Adrian could apply for diversion, he “had no idea what a diversion is, what it’s for, what it does. I honestly felt like a kid that had no idea. I felt lost.” Similarly, Simon stated:

I couldn’t really understand what they were saying; they speak in their court form and I didn’t understand it. When it had finished, my aunty [who was attending] put her thumbs up to me. I was like, ‘Fuck, this must be good!’ (Simon).

Rawhiti and Daniel expressed that they really wanted an opportunity to speak directly to the judge. Rawhiti said ”[I] wanted to stand up where the police officer was, put my hand on the bible. But my lawyer said that it was ‘Best not to’. Best to let him speak for me”. Daniel recalled that whist standing in the dock:
[I watched] the duty solicitor and the judge ... talking a bit ... they just talked amongst each other; I [was] just standing there ... I'd rather just talk myself ... I would say to the judge, 'This is what I've done, and ... what I'm going to do to prevent [this happening in the future]' (Daniel).

When Syd told the judge that the victim had molested his sister, this was dismissed by the judge:

The victim came to court, then the judge goes 'Mr blah, blah, blah, what do you think about these allegations the defendant has made against you?' He [the victim] said 'That's nonsense. Why would I do something like that? He just made up a big story.' The judge said, 'Okay, Mr XXXX can you please stop making false allegations to try and make your case sound easier, or sound as though it was [because of my sister]?' (Syd).

This was deeply distressing for Syd who was suffering from episodes of undiagnosed paranoid schizophrenia at the time. When he was sentenced at the age of 18 he said it was “confusing because I don’t know how anything worked, and I wasn’t educated enough to know, or ask questions about how this works”.

With regard to feeling disconnected from the court proceedings, the Māori lawyer commented, “I'm not surprised they don't feel connected to that process; not feeling they have standing or mana, because they don't. They're not allowed to talk. The lawyer has to talk on their behalf. They are invisible”.

When the judges spoke directly to the participants they felt a greater responsibility for their actions and connected to the court process. Simon recollects his third judge as:

Very cool. She talked to [my lawyer] and then turned to me and was like, 'So, you know, you play league. I don't want to ruin any chances of that. I can see you don't have a problem; everyone makes a mistake ... It would be a shame to ruin someone's career for such a minor incident.' Yeah, I was very lucky (Simon).

In fact, even when the participants were being reprimanded by the judges, they felt it created a more inclusive process, regardless of the outcome. When the Judge spoke to Adrian and asked why he had not completed his community hours, Adrian was able to explain, "You go the XXXX or the XXXX wanting to do them hours, and you tell them 'It's to get your diversion', [and] they just turn you away. They say, 'No, they don't want to help you'”. Adrian felt that the judge considered the difficulties he had encountered and said “Okay Mr XXXX, you're given until 17th of June to do these, to do your diversion. If you don't complete it by this date you're going to get a conviction”. For multiple defendant Jimmy, the judge said, “'You're rolling on thin ice' ... and I was like, 'Yeah, I understand'".
During two court cases, the judges questioned the behaviour of the police and Rawhiti felt, “It was good that the judge seen [the bullying tactics], and picked up on that”. When Daniel appeared in court, his mother stated, “The judge made the cops apologise ... for keeping him in there [the cells] for basically nothing. They had to stand up in court, and apologise to him.” The senior lawyer concurred, “That’s why we have a court system; [to] weigh up things, sift all the rubbish out, to see what is genuine, and what isn’t.” The Māori lawyer confirmed that:

[Often] it’s the lawyer’s interpretation of the issues [and] who this person is. It’s their job to put [the evidence] in front of the judge. There’s a lot of weight placed on what and how it’s interpreted to the judge, and how that impacts on how that person feels standing in the dock (Māori lawyer).

This view was reinforced by Syd who was told by his lawyer that it was important to uphold the protocol of the court and respect court process. Syd also took this advice saying, “I was good right through all my hearings ... I’ve never once sworn at the judge, or the lawyers, or anything like that ... [But I] felt it was just a game to them.” The senior lawyer also argued that “The whole justice system is designed to make the defendant feel like that. It’s a punitive justice [system], that’s the point.”

Although the Māori lawyer acknowledges that New Zealand has seen an increase on the focus on restorative justice, (which in its initial setup was strongly influenced by Māori values), they also argue that Western influences have changed the original intent:

Restorative justice is funded [in New Zealand], and defined by the Ministry of Justice who have legislated it. However, parliament has included in our law that all cases, for which there is an identifiable victim, must be referred to restorative justice (Māori lawyer).

The Māori lawyer argues that the focus should be on restoration, which empowers both the offender and the victim. Restoration reinstates the mana of the offender and the victim, and works toward resolving the issue on a wider scale by addressing the causes of the offending.

4.6.4 Non-legal support

Four of the men recognised that whānau support was really important, with Simon stating, “Having family, having someone behind you, like, saying ‘It’s going to be alright’, is good. Being alone like that, in that situation ... not knowing what to do is ... a depressing thought”. Adrian’s partner (his interview support person) made Adrian tell his mum about what was going on in his life and recalls:

She [Adrian’s mum] was like, ‘Boom! We need to do it; this, this, this.’ Like, Wow! That wasn’t so hard! [Laughing]. His mum said that ‘If you [go] out West [Auckland], they’re gonna hammer you. But if you go out to the North Shore they won’t’ (Adrian’s partner).
Adrian appreciated this support. Daniel’s mum also stood by his side throughout his appearances, and was instrumental in ensuring Daniel received quality legal representation by contacting the PDS lawyer herself and confirmed, “I’d never let on to her [his original lawyer] that we had changed [lawyers].”

In contrast, when Syd went to trial there was no whānau support for him:

My old man showed up at my court cases, but he was only showing up to make sure that ... I got taught a lesson. I was telling him, ‘I was going to take it to trial,’ and then I found out that he was going to be a lead witness in the case - against me (Syd).

Syd’s father thought that Syd’s prison sentence would teach him a lesson but Syd said to him, “What a lesson! A seven year, three-month lesson!”

In addition to whānau members attending court with seven of the participants, two of the multiple defendants were supported by social workers; Jimmy was fortunate to have the support of a kaupapa Māori service who assisted individuals in transition out of prison:

[My social worker] was sitting in one of the chairs at the back. [My lawyer] said, ‘That ‘fulla’ over there, is going to help you get out’. But she didn't really give much detail. So he had to stand up and give his little speech (Jimmy).

His social worker (also his interview support person for this research) stated that he had difficulty contacting Jimmy’s lawyer:

I called and left a message, and then she rung me back on the way to court that morning. And then I tried to catch up with her at the court itself, but she wasn't picking up her phone ... the judge asked me to stand. I stood, and spoke, and gave him a breakdown of what we [could] do [for Jimmy] (Jimmy’s social worker).

The transition plan resulted in the judge giving Jimmy a community day sentence with judicial monitoring. His social worker continued, “every two months he [Jimmy] goes back to court, to see how he’s doing”.

Nathan has also spent the past year working with a kaupapa Māori service senior social worker. When he appeared in court, Nathan’s girlfriend (his interview support person) stated that “the judge dismissed [the lawyer] straight away.” Nathan’s girlfriend believed that the judge listened to the social worker because “it was facts. It was literally facts that came out of his mouth, and what came out of the lawyer’s mouth was uncertainty, because he didn’t know.” His girlfriend went on to describe what occurred during that court process:

So the lawyer, when he spoke to the judge, he [the judge] told him [Nathan] that he’s getting no less than nine months in prison, that’s final. [However, when] the social worker stood up and
told the judge the progress he [Nathan] had made, then that nine months got stopped, and [Nathan got] 12 months of intensive supervision (Nathan’s girlfriend).

The Māori lawyer noted that other people are allowed to speak on behalf of the defendant, although this rarely happens:

There is a provision in the sentencing Act, section 26 I believe, which provides for a kaumātua, or a representative of that person’s whānau to speak on their behalf. How many times have I ever seen that provision enacted in action in the courtroom? Umm, zero! (Māori lawyer)

She continues:

Having someone speaking on behalf of an individual ... gives [the defendant] mana, gives them a standing, makes them a person who’s standing there, who comes from a long line of chiefs (or not). But it gives them the ability to reflect who they are (Māori lawyer).

The senior lawyer agreed that having the support of social workers can be extremely beneficial as “judges will take whatever a lawyer says with a grain of salt because we’re advocating for our clients. Generally speaking, they will see social workers as being more neutral”.

The CLC lawyer explained that:

[These days] judges are also keen on rehabilitation and ways forward. Even the stricter judges, harsher judges, want to see some people change. If they see that person has a plan, got things in place, and they’re moving in the right direction, they will want to support that (CLC lawyer).

However, the CLC lawyer also noted that some Māori sovereignty groups use of Te Tiriti o Waitangi, and challenges to the Western legal process, can make things worse for the client. Whilst he appreciates their argument, he states:

In terms of all of those technicalities ... I can definitely see the argument in terms of [Māori] succession. However, regardless of all of that, the police are still going to put you in prison, and any sovereignty argument is not going to keep you out (CLC lawyer).

4.6.5 Consequences

The first-time defendants had no idea how a criminal conviction could impact on their future. Simon said, “Your boss doesn’t want to know that you’re going off to court. I just ended up telling him I got into a fight with a security guard ... but I didn’t tell him what else.” Rawhiti’s main concern was that he “didn’t understand; I didn’t really understand how badly this could influence my life.” Rawhiti had had aspirations of completing a Bachelor’s degree and teaching, but explains this was dashed:
I almost got fired from a teaching job. They did a police vetting, it took five weeks, and when it came back, I had to be supervised to be with the kids [and] there’s got to be a teacher with me, full time (Rawhiti).

Had his lawyer considered a discharge without conviction as a suitable approach, Rawhiti may have been given an opportunity at a second chance which didn’t restrict his future. If given a second chance, he could:

Do a course and they take that off your conviction ... like, some sort of 10 week or 12 week course that can take an assault conviction off, so you can teach, or get a teacher’s degree. Or, like, a timeframe; complete something and then you get it taken off. Because I need that conviction taken off, so that I can go and study and be out there, and go to studying teaching (Rawhiti).

For Jimmy being homeless and unable to provide a bail address had serious consequences in more ways than one. He reflects:

I went to Springhill [prison] first, for like a month, month or two, and then they sent me up to Mt Eden [prison] ... That’s when I started thinking, aye, ‘Prison ain’t such a bad idea.’ Sleeping on the streets was pretty hard (Jimmy).

The senior lawyer stated that sending individuals to prison because they are homeless occurs on a daily basis. She argues:

[The] police have a certain view about how things should be; you should live in a little house, with a white picket fence and you should have a safe, stable home to live in. We know that’s not the reality of our people, so the fact they require an address to live at again is imposing their ideals, which are not necessarily relevant for the people whom they’re dealing with (Senior lawyer).

Being sent to prison at 17 would come with additional consequences for Syd who clarified, “I committed several, well two, two offences while in jail.” These offences resulted in more jail time. Syd was fully aware that having a prison sentence would limit his ability to find employment so he started studying for NCEA Level 1, recalling “I left school at the age of 13, I didn’t know what the heck I was doing. I was, I guess you could say, sophisticated [Laughing].” On release, he had aspirations of continuing further study in the area of business:

I’m doing my diploma in business in September. I want to open up a gym and gib fixing business. The main reason I want to open the gib fixing business is to help inmates get released, help inmates get employed when they get released, and give them the opportunity to succeed in life that other employers wouldn’t give them because of their criminal convictions, tattoos, race, whatever (Syd).
To conclude this section, Simon essentially felt that the justice system needs to recognise that, “you’ve made a mistake; you don’t have to treat us like we don’t exist … I’m sure everyone’s made mistakes. Some people just don’t get caught.” The senior lawyer also recognised that, “It’s very difficult for people. Once they’ve become ingrained in the system, it’s very difficult to get out.”

4.6.6 Addressing the underlying drivers

Defendants from both the first timers and multiple categories were required to complete programs as part of their sentencing. Nathan who attended a family violence program stated “I did a XXXX program … I hate going there, I went the other day, I don’t like it there at all.” Although Nathan had been made to attend a number of mainstream services, he felt that he was unable to relate:

I’ve done [an alcohol and addictions recovery program] three times. I’ve only passed it once. The second time was court ordered, but it wasn’t compulsory, and I didn’t do it because I didn’t like how it worked. I never got anything out of it (Nathan).

Even though this program was unsuccessful, the courts continued to send clients back, with Nathan reiterating “they pretty much did the same thing every week, but in different ways; the same method, the same stand up, the same games, the same small talk … it did nothing literally.”

In contrast, Nathan, Daniel and Rawhiti attended the Hoani Waititi Marae Tikanga Program and believe this made a significant impact on their lives, changing the way they viewed being Māori. Nathan admitted “It’s the only thing that I feel comfortable doing, being in that environment at a marae, being with other guys who are going through the same things [criminal proceedings].” Reconnecting to their culture and language was hugely beneficial for the young men, as Nathan endorses:

They were just teaching us about who we are personally, like, trying to find ourselves as a person, as a Māori person; where we come from, who we are, who our whānau is, a little bit about [our] history … [When I learnt a haka] it felt embarrassing in the beginning, but I actually embraced it and I ended up right up in front, because it soaked into me, like it was natural (Nathan).

These quotes are a sample of the many positive statements made about the tikanga program. The following quote from Nathan summarises his entire experience, and why the program worked for him:

Everybody is going through the same things, in different ways and they [staff and other participants] supported each other, like, when someone fell, everybody would pick that person
up and help them more. It was powerful and you could feel that it wasn’t coming from their brain, it was coming from their aroha. It was actually coming from their heart (Nathan).

The senior lawyer noted the difficulty in finding tikanga support programs. When he first started at Waitakere Court there were three different providers for family violence programs, “We had the one through Te Whānau o Waipareria [a Māori provider], we had the Pacific Island Safety and Prevention Project (PISPP) [Pacific provider], we had Man Alive [mainstream]. Now all referrals go to Man Alive”.

The participant’s feelings about tikanga programs are supported by the Māori lawyer, who argues that applying Western models of justice simply doesn’t work for Māori:

As soon as the departments start recognising that [Western models do not work and] ... start implementing [Māori responses], that’s the point at which our statistics will start to turn around. New Zealand received an award for our work in the space of youth justice. That, unfortunately, hasn’t filtered through to the adult criminal justice system (Māori lawyer).

4.7 Transitions

To conclude the findings chapter, this section discusses the key transition points in the criminal justice process which provided the young men with a glimmer of hope. The following paragraphs describe the outcomes for participants (so far as the point of data collection for this research), and the points of transition that made a critical difference to their future. These points include support from whānau, social workers, community support workers, kaupapa Māori services and lawyers.

Rawhiti was the only participant who refused to plead guilty. Although his lawyer tried to argue that the police interview was unlawful, he was still convicted. During this difficult time Rawhiti made a self-referral to a tikanga program, which replenished his wairua in an environment he was familiar with. Despite his conviction, his current boss has allowed him to continue teaching Māori, under the close supervision of a senior teacher. Additionally, following the interview with the researcher, further investigation into other teaching prospects has resulted in an opportunity for Rawhiti to teach adults Te Reo Māori. He is currently working in construction but is looking forward to next semester, where he will be able to share his expertise and knowledge of Te Reo Māori and undertake an adult learning qualification.

Initially, Simon tried to deal with his legal matter on his own. On the recommendation of his lawyer, he pleaded guilty. At that point he informed his whanau, who wrote a complaint to legal aid, resulting in him being allocated a PDS lawyer instead. His mother insisted meeting his lawyer prior to his court appearance, in order to establish a relationship with the lawyer.
Even though the police prosecutions opposed the application for discharge without conviction, his lawyer put together a strong legal and moral argument, noting how this charge would impact his life. The lawyer argued he had strong whānau support and referred to them in the court. The judge spoke directly to Simon and agreed the conviction would impact upon his aspirations to play league and awarded him the discharge. Simon has just returned to New Zealand from overseas, and is now completing a building apprenticeship.

Similarly, although Adrian and his partner tried to deal with the charges on their own, when he finally told his mother she was able to obtain legal representation from her family lawyer. Adrian’s mother assisted him in getting his court appearance transferred from the Waitakere Court to the North Shore Court, as she believed he would receive a better outcome. Adrian had not completed his community work hours but his lawyer was able to explain to the judge the difficulties Adrian had experienced accessing the community agencies that he had been referred to. The judge spoke directly to Adrian, outlining the consequences of not completing his hours. This engagement with the judge made Adrian feel a greater sense of responsibility and more connected to the process. Through the support of a kaupapa Māori social service agency he was able to complete his hours, access other support services, and was finally granted diversion.

Matt had experienced severe hardship and periods of homelessness, but his Pākehā community worker (who also became his mentor) would provide him with the security and unconditional love he had always dreamed of. In fact, Matt attributes his relationship with his mentor as being the critical factor in changing his life. When Matt was in the cells it was his mentor who visited him and provided the reassurance that he needed during this difficult time. Following his legal aid being declined, Matt accessed the community law centre where he was able to obtain support from their kaupapa Māori legal team. Due to the kaihāpai (community worker) having a strong working relationship with the iwi liaison officer in the police force, they were able to provide him with both legal and non-legal support. Accordingly, Matt was referred to a kaupapa Māori counselling service, and through the intervention of the iwi liaison officer and the kaihāpai, Matt is now employed as an apprentice, and subsequently, his charges were dropped.

Syd’s experiences with his previous lawyers made it very difficult for him to trust any legal representatives, until he met his current lawyer in prison. She recognised Syd’s initial unwillingness to engage was due to a lack of trust. However, her frankness, her patience when rephrasing legal terminology, and her assertion that she cared about what happened to
him, enabled Syd to open up and build a relationship with her. As a result, she was able to identify that Syd might have a mental illness and referred him to a psychiatrist. Being diagnosed was another significant moment for Syd as it provided him with a greater understanding of what was driving his behaviour. While in prison, Syd achieved NCEA Level 1 and Level 2. On release from prison, an urban Māori authority was able to find him accommodation, help him obtain identification, and assist with setting up a bank account. Syd has recently started work on a construction site.

Nathan’s mental health issues, drug addiction and alcohol addiction permeated much of his childhood and adult life. Nathan and his dad became involved with a kaupapa Māori organisation, who provided Whānau Ora services for his whanau, when Nathan’s father became homeless. Nathan became involved with one of the organisation’s creative arts programs, where he was also able to get social worker support. It was this social worker who, standing in court, was able to provide the judge with a greater understanding of both Nathan’s demons and also his successes and achievements from the past year. This understanding is what stopped the judge from sending Nathan to jail. As part of his sentence, Nathan was required to attend a tikanga program and this would significantly impact his life. Being exposed to Te Reo me ngā Tikanga Māori would enable Nathan to connect to his culture, affirm his cultural identity, and stand proudly in the first row when doing the haka. Sadly, not long after the interview, Nathan’s father died which has impacted on his progress.

Jimmy was the youngest participant, yet due to having no association with his mother, Jimmy had no whānau support during his court appearances. Jimmy was sent to prison because he was homeless and the only support he received whilst incarcerated was through a Māori urban authority, which supports prisoners transitioning out of prison. During Jimmy’s court appearance, his lawyer requested that the social worker stand before the judge and inform him what release plans had been organised. The social worker was able to provide the judge with reassurance that support mechanisms had been put in place. However, being released back into his old community, and reconnecting with his old friends has proven to be challenging for Jimmy. Regardless, his social worker continues to meet with him regularly and provides him with ongoing support.

Daniel’s greatest strength during his last court appearance was his mother, who was able to identify early on that his lawyer was not acting in his best interest. Through his mother’s intervention Daniel was sent to whānau in Gisborne for a while, and during this time she made contact with a previous lawyer they trusted, and the two worked together to find the best
possible outcome for Daniel. Daniel also attended a tikanga program, where he learnt his whakapapa and the true meaning of what it is to be Māori. He was then able to share what he had learnt with his brothers and wider whānau. Daniel has not been in trouble since this appearance and, as stated in the beginning of this section, is now enjoying being an involved dad for his two small children.

These outcomes are largely positive, but most have been achieved in spite of the justice system, rather than because of it. The transition points for most participants occurred because whānau, social workers, community support workers and tikanga Māori services took on the advocacy role for these young men. It was only in Syd’s case that the lawyer was the instrument of transition. However, lawyers did play an important part in achieving better outcomes after the intervention of advocates, and judges were inclined to be supportive when there were advocates in court or indications of a functioning support network.

_He mihi aroha ki nga tane katoa._
5.1 Introduction
The discussion chapter provides an overview of the themes which emerged from interviews with eight Māori men, examining the quality of legal representation they received in the district court. Included within the discussion are the responses from three experienced criminal lawyers, working within the justice system. Whilst, there is a growing body of literature which discuss the disproportionate number of Māori in the justice system, there is limited research which examines specific stages of the justice system, and in particular, from those within the system.

The discussion chapter is divided into six sections and quotes from the participants introduce each new section. The first section will briefly draw attention to the critical link between colonisation and urbanisation, and how this has contributed to the social, cultural, economic and political deprivation of these young men. The section will do this to highlight that all of the multiple defendants, and one first time defendant, were socialised within a wider ecological system, thereby linking the personal to the political.

The second section will identify patterns of unconscious bias, unjust practices and white privilege, which illustrate that the justice system is inherently racist. The third section contends that the participants reached critical turning points when Māori approaches to justice occurred, including tikanga programs or receiving support from whānau or social workers.

The fourth section discusses the various court systems which create barriers to justice including the police, the court environment, the changes to legal aid, the lawyers’ caseloads, and the Department of Corrections. This section also considers the men’s experiences of their legal representation, concluding that ‘quality’ is defined by the relationship they had with their lawyer. In the fifth section recommendations will be made, drawing on the discussion points raised in this research project, as these provide the basis for social change. To conclude, the limitations of this research will be identified, followed by an overview of the research project, and a personal reflection from the researcher.
5.2 The Impact of Colonisation & Urbanisation (Historical Context)

“CYFS, police, lawyers, whatever. If they [would] have had an understanding, then I ... probably wouldn’t have grown up with the problems. Fuck the police. Fuck the law. Fuck the government. 

Fuck the world”

-Syd.

It was evident in the findings that Kafka’s (1925) description of the criminal justice system continues to be endured by those entering the district court. Although the participants of this research did not make a direct link to colonisation, feasibly their problems began over 180 years ago following the arrival of English settlers in Aotearoa. As identified in the literature review, the impact of colonisation has been attributed to the inter-generational social and economic disadvantage of Māori (Bull, 2009; Department of Corrections, 2007; Durie, 1995; Jackson, 1988; Rowe, 2009; Quince, 2007). In addition, unjust colonial practices have seen Western approaches embedded in the New Zealand justice system. Neo-liberalism maintains a dominant discourse that those in the criminal justice system are responsible for their own demise; such discourses do not link indicators of social and economic disadvantage to historical and contemporary colonial practices which circulate every day.

Colonial practices were alluded to when the Māori lawyer participating in this research stated that there needs to be a greater focus on restoration which is applied by Māori, rather than the diluted Western version of restorative justice. Unlike the current restorative practices, which focus primarily on the victim, the Māori lawyer contends that Māori restoration upholds the mana of the victim and the offender, and addresses the drives behind the offending. While there is a growing amount of Western-based literature proclaiming restorative justice as successful, critical indigenous and non-indigenous writers such as Blagg, Cunneen, Moyle, Tauri, Zellerer and Cunneen (all cited in Tauri, 2014) conclude that the cultural appropriation of indigenous models has resulted in the process being neither empowering or satisfactory for indigenous peoples. As Doolan states (cited in Tauri, 2014) those involved in developing the policy had no knowledge of restorative justice, nor that Māori were central to determining the responses of the offending. Instead, Doolan argues, “the primary goal of the new forum was making young people responsible, and decreasing the use of the Youth Court” (cited in Tauri, 2014, p. 40).
5.3 Underlying Drives of Crime

“I had no income, my sister had no income, my family had no income … that was my tradition; to steal the food first to feed the family, then rob the house for the drugs”

- Nathan

Table 4.1 (pg. 52) shows for all of the multiple defendants and one first time defendant that poverty and socio-economic deprivation was prevalent during their upbringing. Robson, Cormack and Cram (2007) revealed there are seven determinants of health and wellbeing: 1) education, 2) income and poverty, 3) employment, 4) ethnicity and culture, 5) population based services, 6) social cohesion, and 7) support. The demographics and life stories of the participants indicate that they had inadequate access to these determinants. As a consequence, they experienced greater social, cultural, economic and political disadvantage.

The poverty cycle was reinforced for the participants because of limited educational opportunities. Matt, Nathan, Syd, Jimmy and Daniel identified that they had experienced difficulties at school, ranging from misalignment with Western teaching styles, to learning difficulties, to exclusion from the wider school community. Although whānau play a key role in enabling academic achievement, the blame cannot solely be placed on the parents, especially where poverty and Western pedagogy deny access to Māori processes of learning, and inadequate resources were available to support their development. As a consequence, seven of the participants were unemployed, and as McLennan, McManus and Spoonley state, “Work defines who we are; It gives us status, provides life chances, determines the level of satisfaction and income of an individual, and contributes to the collective social and economic activities of a community or society” (2010, p. 14). In essence, life circumstances of poverty, poor education and inadequate training were channelling these men into the justice system long before any crimes were committed.
5.4 Systemic Bias and Discrimination

“They just saw me, a Māori male, and just thought, ‘Oh yeah, he’s obviously trying to beat his missus up, or break stuff and trash things’.”

-Matt

The following section discusses how unconscious bias and systemic discrimination occurred during various stages of the participant’s criminal justice experiences. A recent argument in legal and moral philosophy is that racism is embedded in the fabric and structures of society (Delgado & Stefancic, 2012). Critical race theory [CRT] provides a theoretical framework which recognises that white privilege and supremacy maintains the marginalisation of people of colour (Delgado & Stefancic, 2012). CRT theorists, contend that the justice system is neither neutral or colour blind, and that meritocracy and liberalism are underlying ideologies which maintain individualism, privilege and power. CRT argues that neo-liberalism ignores the inherent systemic inequalities which exist, and that intersectionality creates further exclusion and oppression for those of non-hegemonic race, gender, national original, class and sexual orientation (Delgado & Stefancic, 2012).

Delgado and Stefancic (2012) argue that white privilege is supported by unconscious bias. Unconscious bias is evident in the finding that five of the participants (who are more obviously Māori) were treated more harshly by the New Zealand police, than Simon, who is a fair skinned Māori. Simon was treated as if he was a young man who had made an out-of-character mistake and was provided with guidance and support from the police officers. In contrast, the other participants were automatically assumed to be embedded in the journey of criminality. Blackwell and Cunningham contend that a system which “punishes primarily on an arresting officer’s discretionary decision to arrest, combined with a defendant’s poverty, carries the real risk of condoning substantive injustice” (2004, p. 5).

Six of the participants experienced difficulties with the police, and subsequently believed that the police officers’ attitudes and behaviours were unjust. This was evident when Adrian was ridiculed for his gendered name, and witnessed the mistreatment of another cellmate, who was denied access to water. Similarly, Matt’s request for medical treatment was refused by the police officers, thus preventing adequate health care while in the cells. Rawhiti was not offered legal representation through Police Detention Legal Assistance while he was being questioned and videoed by the police, and the behaviour of the officer was of sufficient concern to be addressed by the presiding judge. However, the greatest injustice within the
findings was the suspension of Syd’s arrest until he turned 17 years old. Consequentially, the police and courts were able to apply more severe consequences for Syd’s actions than if he had been tried in a youth court. In addition, it is unclear why the police did not investigate the allegations made by Syd’s sister, that she had been molested by Syd’s victim.

Moreover, these men did not have the means to pay for or choose their lawyer. Although two of the participants were able to change their legal aid lawyers, Jimmy felt he had limited knowledge of the complaints process. The senior lawyer who took part in this research identified that he was aware that some lawyers provide inadequate legal representation, yet those lawyers continue to be allocated clients. He also warned that the reasons for changing your lawyer are restrictive, therefore change is not always guaranteed. Obtaining redress through the complaints process would be challenging for these men, given that seven of them had low literacy skills and minimal access to computers and the internet. Overall, such systemic barriers result in clients having to accept sub-standard legal services, reinforcing an unfair criminal justice system which works against the poor.

When the lawyers were told about the experiences of the first time defendants entering the court, the Māori lawyer noted the unconscious bias which occurs, although even she agreed that clients often lie or exaggerate. Guilt and a history of criminality tend to be assumed by the lawyer, and this can severely limit the assistance lawyers and the court can provide for these first time defendants. This raises concerns about what occurs when an innocent individual (who didn’t commit a crime), or an individual who committed a crime while suffering from a reality-impairing mental illness (such as Syd), appears in court.

According to The Sentencing Project [TSP] (2008) combating racial discrimination and inequalities in the justice system is complicated. TSP argues that the first step is acknowledging that discrimination and inequality occur. TSP then suggests a co-ordinated approach, to ensure that gains in one area do not offset other critical points. Moreover, the degree of disparity varies at each stage of the criminal justice system, and therefore a number of strategies are required which involve taking an approach that leads to systemic change. TSP believes change will not occur without the commitment and resources of those within the criminal justice jurisdiction, including community leaders who actively measure and address racial discrimination at each critical point in the justice system. In contrast, Banks and Ford contend that the unconscious bias rhetoric has shifted the focus to racial and antidiscrimination reform, yet the actual goal “of racial justice efforts should be the alleviation of substantive inequalities” (2008, p. 5).
5.5 White Privilege

“they just speak technical; you don’t really understand. You just go, ‘Yup, yup, all good’.”
-Jimmy.

White privilege can be seen in the data, from the positioning of Western knowledge over Māori knowledge within our education institutions and legal jurisdiction, and within the provisions of therapeutic justice interventions. In the literature review, I described the recommendations of the Department of Corrections (2007) to address the over representation of Māori in the justice system. These included the need for government to invest in long term funding resulting in sustainable rehabilitation programs, addressing systemic bias and inequalities, and acknowledging that colonisation is a contributing factor. Equally, the New Zealand Police (2012) developed strategies to reduce the number of Māori entering the criminal justice system, yet between December 2009 and March 2017 the Māori prison population has risen by 22% (Department of Corrections, 2016), a much faster rate than the Māori population growth of around 14% (Statistics New Zealand, 2017). Accordingly, questions are raised about whether the privatisation of prisons and the changes to legal aid are contributing factors as to why these strategies have failed. This implies that reducing fiscal spending on justice, prefaces a cultural, social and economic cost for Māori, especially for those accessing the system. It is also important to note, those that benefit from maintaining the status quo are predominately non-Māori.

In addition, many of the participants found it difficult to understand the legal terminology used by their lawyers. Adrian noted there were not enough Māori lawyers in the criminal jurisdiction; lawyers such as the Māori lawyer who participated in this research could speak in a language and style that was understood by these young men. The Māori lawyer confirmed that, a) law students are not given training in this type of communication at law school and, b) there is a preconception amongst law students that a legal degree provides prestige, superiority and expert knowledge, thereby further entrenching structural power and privilege over those without a degree. Van Brunt (2015) argues that the promotion of social justice needs to be a focal point for law school education. She alludes to the fact that in New York, for lawyers to qualify for the bar, it is mandatory for them to complete 50 hours of pro-bono service.
For three participants (Daniel, Nathan and Rawhiti) access to a kaupapa Māori rehabilitation program was transformative. Te Puni Kokiri (2011) argue that the investment approach advocated by the government, should be centred around what works for Māori, as western rehabilitation approaches “has shown limited impact on outcomes for Māori” (2011, p. 2). While things have improved through the whanāu ora model of service delivery, the three lawyers participating in this research believed that Western therapeutic models of rehabilitation (such as the family violence programs), continue to be preferred over cultural rehabilitation models and practices. What the data demonstrates is that tikanga programs (such as Hoani Waititi Marae Tikanga Program which reduces recidivism by addressing the underlying drives behind crime) could be game changers. However, the manager of Hoani Waititi Marae Tikanga Program feels there is insufficient funding for long term sustainable change (S. White, personal communication, 2017). Ironically, the government continues to invest over a billion (NZ) dollars in the prison system each year (Sachdeva & Kirk, 2016), and yet kaupapa Māori justice programs are either underfunded, restricted or outright denied funding (S. White, personal communication, 2017).

Another initiative which is also promising is the New Zealand police’s Turning of the Tides strategy which commits the police to working more closely with Māori (O’Reilly, 2014). However, difficulties have arisen with the implementation of the policy. For example, the Waitakere district office (in the Auckland area) has one iwi liaison officer and one Māori responsiveness manager who assists the New Zealand police to build stronger relationships within Māori communities (New Zealand Police, 2017a). It is unrealistic to expect these two individuals to serve the whole Waitakere police district, given that there are over 30,000 Māori living within the Waitakere district area (Auckland Council, 2014a, 2014b, 2014c). A recent update from the New Zealand Police (2017b) confirms this shortfall, noting there has been no significant change in the number of Māori first time offenders, and a 4-5% increase in repeat offenders. It is unsurprising there has been minimal change, given the Turning of the Tides Strategy focuses primarily on ‘fixing’ the whānau, with little focus on unconscious bias, unjust practices and white privilege, which exist within our criminal justice system.
5.6 For Māori, by Māori

“They were just teaching us about who we are personally. Like trying to find ourselves as a person, as a Māori person. Where we come from, who we are, who our whānau is; a little bit about [our] history”

- Nathan

All of the defendants were able to provide their tribal affiliations. However, a number of them felt that the move to the city resulted in a disconnection from their language, culture and wider whānau support systems. When, as part of their sentencing, three defendants were required to attend the Hoani Waititi Tikanga Program, they found this program more culturally responsive than the mainstream violence programs they attended. It enabled them to reconnect with their culture, challenging their own hegemonic views and negative discourse commonly associated with being Māori. Moeweka et al. (2012) maintain that these negative discourses are perpetuated through the media, which reinforces how we view and understand our everyday experiences.

In the Rangatahi Court System, which operates in West Auckland, the involvement of whanau, mātua or kaumātua is critical to the success of the rangatahi. However, the findings revealed that at the initial court appearance for the first time defendants, support only came from their partners, who had limited knowledge of the court process. However, at later appearances, other whanāu members (such as mothers) became involved, providing additional assistance and a greater sense of reassurance for the participants.

Another space for kaupapa Māori processes occurred in the district courts when special pleading directly to the judge was granted to social workers from kaupapa Māori organisations. Although speaking to the judge directly is usually reserved for lawyers, the allowance for social workers to advocate on behalf of two of the multiple defendants led to better outcomes for Nathan and Jimmy; for Nathan, his social worker was able to explain to the judge the underlying drives behind his behaviour and the progress he had made, whereas Jimmy’s social worker was able to reassure the judge that support systems had been put in place so Jimmy could transition successfully into the community.

To conclude this section, there is much to be learnt from the Rangatahi Courts, and from other court processes, where whānau and kaupapa Māori customs are critical to the success of the legal system.
5.7 Experience of Being Lost in the System

“Lawyers in the court deal with the same stuff every single day
... we don’t know whether they’re a well-oiled machine
or just a frequent flyer”

- Māori lawyer

Another strong theme which appeared from the data was that inadequate structures and processes created confusion in the court environment, and reduced the ability of lawyers to provide quality legal representation. First time defendants experienced huge anxiety because of the lack of guidance or support at the court, and contrary to other courts which have volunteer court ambassadors, the Waitakere District Court has none. Recognising this gap, the community law centre attempted to increase volunteer numbers, however this was blocked by bureaucratic processes which required volunteers to be vetted and to wear official court ambassador’s uniforms. Consequently, this excluded a large number of individuals who had experience of the system, from volunteering.

The Ministry of Justice’s proposal to build a new court has not occurred, even though this would eliminate the necessity for corridor conversations. The defendants and lawyers both identified that there are not sufficient spaces to interview clients in a private setting. This, in turn, raises questions around client privilege and confidentiality. The lack of investment into a new court affirms that the government places no or little value on those working in, or accessing, the criminal justice system.

Each of the defendants had an underlying expectation that the duty lawyer would provide legal advice and clarification of court processes. However, because of the high demand on duty lawyers, it was difficult for the participants to even access legal representation, let alone ask questions or get clarification in relation to their charges. This poor access to a duty lawyer, and the narrow window of time available to meet with them, casts a large shadow over the participants’ views on whether they received quality legal services.

There are structural issues at play here. The senior lawyer said that the real issue is the scheduling of court appearances, where the majority of cases are heard in the morning. Consequently, lawyers are either extremely busy or waiting around for the next influx of defendants. Another concern is that the role of the duty lawyer as outlined by the New Zealand Ministry of Justice (2017b) does not meet the expectations of the defendants. Matt wanted his duty lawyer to have some understanding of the events that led up to him being charged,
and to have some sense of relationship with the lawyer, rather than just advice on how to proceed based on the police statement of evidence. According to Wilson (2016), there is the potential for criminal lawyers to become tainted in their practice simply through being jaded. For example, institutionalisation occurs when lawyers become so familiar with court processes that they become desensitised to the affect these processes have on their clients.

At the other end of the system, Syd and Jimmy (both multiple participants in this research) identified that accessing legal representation in prison proved to be extremely difficult. The lawyers interviewed also agreed on this, stating they face similar problems, primarily due to the contracting of prison services and moderate issues which have since been exacerbated by the media. Subsequently, there has been restrictions placed on lawyer/client contact, and vice versa. The lawyers did note that they are able to discuss legal matters with prisoners via video conferencing link, however this approach may be culturally unresponsive as it does not address the need for face-to-face conversation that allows a powerful trust between the lawyer and client to be built.

### 5.8 Legal Representation

“It was confusing because I don’t know how anything worked, and I wasn’t educated enough to know, or ask questions about how this works”

- Syd

The criminal justice system sits within a neo-liberal economic system which prioritises limiting the cost of legal aid (both in hours and charges) above creating a fairer legal system for Māori. The recent staff strike of the New Orleans public defence service provides an example of what can happen when legal services are run down to the point that defendants are better off ‘in limbo’ than being incarcerated for lengthy periods, because of inadequate legal aid (Byrom, Flynn, Harrison & Hodgson, 2014). The reduction in legal aid in New Orleans saw a significant decrease in the number of available experienced criminal lawyers, and fewer lawyers entering into the field of criminal law (Byrom et al., 2014). In 2015 The Criminal Bar Association described the New Zealand legal aid system as “in disarray” and as a disincentive for practicing criminal law (New Zealand Law Society, 2015). This could result in an even greater shortage of criminal lawyers, and subsequently, already stretched existing lawyers will be required to manage more cases to meet the increased need. Additionally, there could be an increase in self representation, which ironically results in the court system becoming even more congested (New Zealand Law Society, 2015).
The three lawyers interviewed all felt that large caseloads inhibited them from providing quality legal representation, questioning whether clients actually receive the level of services they are entitled to. Wilson (2016) contends that high caseloads can result in lawyers prioritising more serious cases, limiting their ability to carefully examine less serious charges. This results in the lawyer not obtaining enough information, including what the client wants, or the client’s version of what occurred. Lawyers then make hasty decisions in trying manage the legal needs of defendants, knowing that there are a number of clients waiting in the wings desperate for their help.

Some of the men identified that their lawyers either turned up late, or in some cases not at all. This resulted in their case being adjourned, and having to return at another time or on another day. Simon felt that having an opportunity to meet with his PDS lawyer prior to his court case enabled him and his whānau to build a relationship with his lawyer. They were advised about what outcome she was trying to achieve, and what documentation and community programs Simon would need to undertake to support his application for discharge without conviction. The lawyers stated their preference is to meet with the clients prior, however they clarified that timing restricts pre-interviews and often found clients do not turn up at all or turn up late for their court appearances.

However, Simon said that not only did his lawyer turn up late but he was unprepared, making it difficult to discuss Simon’s case in detail. This also happened to Jimmy, whose first conversation with his lawyer was when he was standing in the dock. In response to these stories, the senior lawyer contended that not turning up was inexcusable, and that the Public Defence Service would ensure someone was available to assist. He also suggested that lawyers might be late because of poor time management, but without knowing the facts he was hesitant to comment. However, concluded by stating that generally there is a lack of quality control.

The Lawyers and Conveyors Act (2006), The (New Zealand Law Society, 2017a) and the Ministry of Justice’s (2017b), Quality Assurance Framework refers to the expectations and requirements of lawyers. Although the standards identify the practice requirements with regards to “responsibilities to clients, relationships with clients, and conduct of legal aid cases”, it is unclear how these standards are being monitored. If the Ministry of Justice relies solely on clients to raise complaints, (as noted in Standard 2.1), there is a good chance that very few complaints are received, especially from legal aid clients.
Both Nathan and Jimmy were unclear who their assigned lawyers were. Moreover, when Jimmy and his social worker contacted the law firm, there was confusion among the lawyers as to who was representing Jimmy. The legal aid Quality Assurance Framework and Practice Standards (Ministry of Justice, 2017b) clearly outline lawyer’s responsibilities to clients. Standard 13.3 states lawyers should “make all reasonable effort to make contact with the client by the most practical method” (p. 11). However, Standard 13.6 also states that “where the client is remanded in custody, the first meeting may be immediately prior to court” (p. 11).

It appears that often these standards are not upheld. In Jimmy’s case he had no idea what was happening or who was representing him, despite Standard 13.7 requiring lawyers “take particular care to ensure that any client remanded in custody is kept fully informed of the progress of the proceeding” (p. 11). Whilst it is unclear why Jimmy had no contact with his lawyer prior to his court appearance, his lawyer would have been paid for her services even though minimal contact or legal representation was provided.

One particularly significant moment for Syd was when his lawyer, who he had a strong relationship with, identified that his behaviour during his initial prosecution and through subsequent charges, was effected by his mental illness. The Ministry of Justice (2017b) Practice Standards (Standard 13.12.1) recommends that lawyers consider mental health, intellectual disabilities, addictions, drugs and alcohol issues when representing a client. In Syd’s instance, his lawyer’s holistic approach to providing legal services enabled a belated diagnosis of paranoid schizophrenia, and reframed aspects of his behaviour from a self-aware choice to something he had little control over.

In other examples, while standing in the courtroom in front of the judge, language and invisibility were emerging themes. When the judge spoke directly to Simon, Adrian and Rawhiti, it created a more inclusive environment and provoked a greater responsibility for their actions. On the other hand, when the lawyer and judge spoke amongst themselves, their clients felt disconnected. The Māori lawyer, who has worked in both the Rangatahi courts and the district court, agreed with these insights. She noted that the difference between the Rangatahi and district courts is that in the Rangatahi court the defendant is integral to the process.
5.9 Communication and Relationships

“I didn’t really understand …
they always talk numbers, section this, section that …
I don’t know what they are talking about.
They’re talking about law stuff I’m guessing”
- Simon

Another element that contributed to the feeling of invisibility for all the participants was the use of legal terminology, which left the men confused, especially within the court room. Although the Ministry of Justice (2017b) Practice Standards encourage lawyers to use language which is free of legal terminology and language, it also highlights the need to use lay language which is age appropriate and suitable for the capacity of the client. In contrast, lawyers are cautioned by the New Zealand Law Society in their document on Court Etiquette (New Zealand Law Society, 2017b) to refrain from using colloquial language while in the court room. Despite these differing suggestions, there is an appreciation that legal terminology becomes part of a lawyer’s everyday language, and is therefore unaware that the client does not understand.

Scott and Sage (2001) identified that individuals who have low literacy skills or limited education often find it difficult to understand the justice system. All the participants found it difficult to understand the language being used during their engagement with their lawyers. Although some participants felt confident asking for clarification, this was dependent on the relationship and trust they had with their lawyers. All three lawyers interviewed for this research stated that they have various techniques, including using plain language and seeking feedback, to ascertain whether their clients have understood what has been said.

Because duty solicitors practice within a triage role, there are limited opportunities to build a strong relationship with the client. Cunningham (2013) contends that the most significant aspect of a lawyer’s job, is not legal research or court advocacy, but the quality of the relationship with the client. They found that clients were often unsatisfied with their legal representation due to lawyers who didn’t place importance on effective communication, and Cunningham also claims that law schools place little value on the client-lawyer relationship in the curriculum. In addition, although lawyers and law firms promote themselves as client focused, there is little professional development training which enhances the fundamental skills of communication (Cunningham, 2013). Farrelly and Carlson (2011) believe that individuals who work in the criminal justice jurisdiction in Australia should be required to
undertake training on the beliefs and traditions of aboriginal communities. This training would include deepening Australian lawyers’ understanding of how historical practices and socio-economic factors impact on indigenous peoples today.

While feedback from clients is ad hoc (depending on the complaints process), the Ministry of Justice (2017a) regularly seeks information from legal aid lawyers about the value and quality of their service. Responses from 76 legal aid lawyers showed that 86% believed they deliver quality legal services at an acceptable level or higher. Four years ago, in an earlier report, only 77% felt their service was acceptable. The ministry’s legal aid service delivery manager claims that this data shows that clients receive “high levels of commitment and service from legal aid lawyers to getting the best outcomes for their clients” (Ministry of Justice, 2017a, p. 3). However, this is not the conclusion of the eight clients of legal aid services interviewed in this research, and even the three lawyers interviewed conveyed that there are a number of factors which contradict this statement. Accordingly, there would be much to learn from the ministry, if ‘quality’ was defined and evaluated by clients, rather than those providing the service.

Finally, following graduation from law school, all New Zealand lawyers are required to undertake the Professional Legal Studies Course prior to being admitted to practice as a lawyer (Institute of Professional Legal Studies, 2017). In the Professional Legal Studies Course graduates are taught personal skills, which include listening, interpreting and communicating effectively. In addition, the course focuses on lawyer’s interpersonal skills in order to gain an appreciation for gender, age, cultural difference, beliefs and values, and to generally empathise with other perspectives. However, questions are raised about whether there is enough emphasis on these skills, especially for those working in the criminal jurisdiction.

5.10 Recommendations
The aim of this research was to examine the quality of legal representation young Māori men received in the criminal justice system, and identify contributing factors which create barriers to justice. The following section provides a number of recommendations, drawn from the findings and the discussion. The first recommendation argues for an equitable justice system, whereby kaupapa Māori approaches are funded at the equivalent to Western responses. The second recommendation provides a number of strategies which expand and enhance a Māori preventative approach to justice. The third recommendation requires changes to a number of court processes which would assist clients and help lawyers to provide quality legal representation. The final recommendation requires a strong commitment from universities to
embed kaupapa Māori philosophies into their undergraduate law program, to increase future New Zealand lawyer’s capabilities of being culturally competent.

5.11 A More Equitable Justice System Which Supports Kaupapa Māori Responses to Justice

In order to ensure a more equitable justice system, the New Zealand police crime proceedings fund, the ‘Vote Justice’ money and the Ministry of Social Development funding should be reallocated to resource Māori responses to justice. We need to address the unconscious bias and discrimination that lead to higher rates of arrest, higher rates of conviction and longer sentences for Māori. Putting more resources into the Turning of the Tide program and creating designated kaupapa Māori teams within each police district would provide an opportunity to address, monitor and audit police processes, and provide cultural competence training within the police force. A designated person within the team would identify possible cases which can be referred to either kaupapa Māori providers or a Māori responsive program, rather than be dealt with through the courts. Finally, these teams would work collaboratively with key stakeholders at a local level, to address the underlying drives behind crime.

The inclusion of justice work should be included in kaupapa Māori organisation funding contracts, in order for them to provide, for example, social workers trained in court advocacy. Other tasks would include assisting individuals accessing the system, triage, advising lawyers of any presiding matters, referring clients to other services and provide advocacy within the courts. They would also encourage clients to seek support from their whānau, as this research suggests that having whānau with them makes the process less daunting. Programs, such as the Hoani Waititi Tikanga Program, should be extended to a period of three months, and expanded to ensure long term sustainable change. Part of this package would include the development and continued investment into iwi justice panels (as referred to in the literature review), which consider other offences that do not currently meet the offence eligibility criteria (Akroyd et al., 2016). Moreover, adequate funding is required to ensure that kaumātua working within the justice sector are remunerated for their cultural expertise and knowledge, and to ensure the increase of greater services, by Māori, for Māori.

Finally, the establishment of an independent National Māori Law Centre [NMCLC] (as proposed by Ngā Kaiāwhina Māori Hapori o Te Ture - Māori caucus of Community Law Centre’s of Aotearoa to the Ministry of Justice (personal communication, 2010), would provide capacity and the capability to meet the currently unmet legal needs of Māori, with particular regards for those within the criminal justice system. The law centre will operationalise satellite kaupapa
Māori teams, consisting of Māori social workers and lawyers, based within the 24 law centres. To ensure consistency and accountability to Māori, these teams will report directly to NMCLC. In addition, this specialised law centre could provide cultural professional development programs to existing, and new lawyers, as required. Essentially, NMCLC will be able to contribute to law reform where proposed legislative changes will have a negative impact on the social, cultural, economic and legal wellbeing of Māori.

5.12 Overcoming Barriers to Justice
In order to support those accessing the court environment, relevant information about court processes, the role of duty lawyers, legal aid, and community law centre services, should be made available at the police station. The information should be collated into one brochure, easily read and understood by clients.

Within court itself, the Court Ambassadors Service should consider having ambassadors who have some inside knowledge of the criminal justice system, but are well vetted and trained, as this would increase their diversity. Additionally, court ambassadors should be dressed in an informal style of uniform (polo shirts for example), which makes them both less threatening and more easily identifiable.

Court appearances should be distributed across the day, rather than being scheduled all at once in the morning. Doing this would reduce the large number of clients requiring duty solicitor’s services at the same time, thereby allowing lawyers to spend more time with each client. This would alleviate the time pressure lawyers are under, and eliminate some of the difficulties clients experience when trying to seek legal representation.

To enhance the quality of legal representation and reduce the risk of lawyer ‘burn out’, regular monitoring of lawyer’s caseloads, including the additional challenges of complex cases, is advisable. To support this, the Ministry of Justice must continue to invest in and commit to raising the fixed fees, to make it financially viable for lawyers to undertake legal aid work.

When a client receives sub-standard services, the complaints process needs to be made more accessible for legal aid clients, through means such as a telephone, computer and internet access. There should be questions included in the complaints process which pertain to observations by the client about whether the lawyer was culturally responsive. Assistance could be provided by Community Law Centres, if adequately resourced. In addition, the establishment of an independent complaints process, which utilises a number of transdisciplinary professionals, will alleviate any perceived bias by those making the complaint.
Finally, the Ministry of Justice must reconsider their decision not to invest in a new court in Waitakere. A new court is needed and it requires an adequate number of interview rooms to allow for greater discretion when clients and lawyers are discussing private matters.

5.13 Legal Representation – Developing Culturally Competent, Social Justice Lawyers

Universities play a critical role in the promotion and application of culturally competent social justice lawyers. Accordingly, the development of a national kaupapa Māori practice framework, which focuses on holistic legal services, cultural competency and effective communication, should be made a compulsory paper, for all New Zealand law students. In order to formally recognize and reward NZ university students who complete community based placements, a designated optional paper worth 15 points could be applied to students who complete community based placements, which contribute to positive social justice outcomes for Māori. As a result, a greater appreciation to undertake pro bono work or work within criminal law in the future, is created. However, Snelgar (2017) identified that the lack of career progression within the criminal jurisdiction is a contributing factor to the lack of diversity seen within the profession, and he argues that universities and the New Zealand Law Society have a responsibility to address this issue. Snelgar also identifies that the Public Defence Service, which is funded by the Ministry of Justice, has an obligation to recruit Māori lawyers if the justice system is to be reflective of those being processed through the system (Snelgar, 2017).

Mandatory cultural standards should be included in Professional Legal Studies Course which includes assessment of an understanding of tikanga Māori. The generic requirement for lawyers to undertake professional development should be increased from 10 hours to 12 hours per year, and should include a compulsory two-hour focus on Māori responsiveness. The NMCLC could then be contracted to provide cultural training to lawyers, which would generate additional income to sustain the centre. Programs could include Māori and the justice system, Te Reo and tikanga Māori, how to engage and build rapport with a wide spectrum of Māori clients, and the importance of holistic legal services.

5.14 Limitations of the Research

As part of recognising the limitations of the research project, the researcher acknowledges, as an investigator and analyst of Māori origin, this thesis is neither neutral or objective free. Therefore, the level of independence and impartiality in the data collection has been influenced by the researcher’s epistemological view point. Moreover, the researcher is not a
lawyer and considers the quality of legal representation for these men through a social justice and post-structural lens.

The group of men interviewed for this research is not a representative sample and the stories provided only give partial insight into how the New Zealand legal system works for young Māori male offenders. The research does not inform the view of all Māori accessing the justice system, nor does it represent the overall quality of legal representation provided by lawyers in the criminal justice system.

Given all of the men grew up in low socio-economic families and were provided legal aid, this research project was unable to contrast these experiences with those who have the means to access a private criminal lawyer. Moreover, no non-Māori men were interviewed, and therefore contrasts can’t be highlighted between the experience of Māori defendants’ and non-Māori defendants’ interactions with the police, the court environment and the lawyer.

5.15 Overview of Project
The over representation of Māori in the justice system is viewed as complex, and solving this issue is referred to in Williams (2001) book The Too Hard Basket. Although inequality has been named as the drive behind this over representation, what transpired through examining the quality of legal representation, was that culture and socio-economic status has exposed young Māori men to unfair treatment, which is often inherently racist. The treatment arises from a neo liberal agenda aimed at reducing the cost of legal aid, despite the government’s commitment to reducing the number of Māori accessing the system (Bootham, 2016a, 2016b).

As Snelgar argues, the current legal aid scheme has encouraged lawyers to resolve legal matters in the most effective way, resulting in a “focus ... more about efficiency, than justice” (2017, p. 2). Snelgar’s statement aligns with the view of the lawyers who participated in this research, in that the reduction to legal aid expenditure gave little consideration to the impact these changes would have on Māori, or the lawyers working within the system. As a result, the quality of legal representation faltered, with high caseloads, poor court scheduling, substandard facilities and a lack of non-legal support, being contributing factors.

The defendants were left feeling powerless, unheard and disengaged in the justice process because of the use of legal terminology, inadequate preparation time with their lawyer, and an assumption of guilt by the lawyer. What helped most was when lawyers spent time explaining things, listening to the defendant’s story and establishing a trusting relationship. Also helpful for the defendant was the intervention of Māori social workers, Māori justice programs and the ongoing support of whānau members. This affirms that ‘by Māori, for Māori’
justice practices are the key strategies to reducing the disproportionately high Māori incarceration rates.

Overall, it is hoped that this research enables the reader to look beyond the statistics, to engage with the complex stories of the participants, who are otherwise invisible behind the numbers.

5.16 What has to be Addressed

Whilst there have been attempts from various government departments to address the disproportionate number of Māori accessing the criminal justice system, these strategies are often carried out in isolation, with various political decisions contradicting the intent of the desired outcome. The issue therefore requires an overarching, trans political party vision, with short and long term objectives, which are regularly monitored and evaluated by iwi leaders and key stakeholders within the justice sector.

There must be specific objectives in the trans political party vision to combat unconscious bias, unjust practices and white privilege, and to recognise that disparity occurs at each stage of the criminal justice system. Clear benchmarks need to be determined which aim to reduce the number of Māori being charged, prosecuted and sentenced, ensuring greater accountability of those within the justice arena. The strategy needs to identify key objectives, including regular professional development and supervision for police officers, lawyers and justice officials. In addition, those within the justice sector must develop monitoring tools or practice frameworks, which set an equitable gauge to ensure consistent practices are applied within the justice sector.

Moreover, there is a need to challenge dominant discourses which position the blame on the individual without recognising that the root cause is social inequality and disadvantage. There is a need to shift from a punitive justice system, to one which upholds the mana of the individual and their whānau. Thus, the focus needs to be on rehabilitation and addressing the causes of the harm.

In order to achieve greater justice outcomes, Māori must be given a greater proportion of resources, and the autonomy to establish innovative and culturally responsive approaches to justice, as outlined in the recommendations.

In conclusion, the Ministry of Justice’s claim of success in the delivery of legal aid services is indefensible, given its failure to survey the users of the service (Ministry of Justice, 2017a). This survey requires both qualitative and quantitative data, which assesses the real life
engagement of Māori in the justice system. As such, client feedback will provide the information which will lead to improvements in the criminal justice jurisdiction.

5.17 Personal Reflection
In 2010, I attended the National Community Law Centre Hui where Kim Workman and Pita Sharples identified an urgent need to address the disproportionate number of Māori in the justice system. Similarly, when delivering legal education at Paremoremo Prison, I distinctly remember looking into the courtyard and seeing an overwhelming number of young, Māori men. As a Māori researcher and a social justice advocate, I was deeply impacted by this issue, and felt an overwhelming responsibility to identify opportunities for change.

It is my aspiration that this research project reflects the voices of the young men who participated, rather than my own. Their willingness to share their stories has provided them with the opportunity to contribute towards positive justice outcomes, for both Māori and non-Māori. Using kaupapa Māori methodologies provided a framework, which was culturally congruent with my own, as well as with the participants’ values and beliefs. In fact, feedback from the multiple defendants’ social workers was that the young men couldn’t stop talking about their interview, affirming kaupapa Māori research is empowering, and leads to personal and social change. Whilst I am a naturally systemic thinker, undertaking the research with these participants impacted me more deeply than I had anticipated. All of them, though vulnerable, also showed an incredible amount of resilience and strength, regardless of the multitude of challenges they have faced.

It is my view that our justice system is unjust, and that the quality of legal representation is an influential factor in the outcomes young Māori men receive in the justice system. Unless we are prepared to listen and learn from these participants, hegemonic practices may continue, akin to Kafka’s experience of processing people through the justice conveyor belt. Thus, placing little value on the detrimental impact such hegemonic practices have on whānau and wider communities.
REFERENCES


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Glossary

Acronyms

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<th>Acronym</th>
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<tr>
<td>MOJ</td>
<td>Ministry of Justice</td>
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<td>PDS</td>
<td>Public Defence Service</td>
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<td>CYF</td>
<td>Child, Youth and Family Services, now known as Oranga Tamariki</td>
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Legal Terms

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<th>Term</th>
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<tr>
<td>MAF</td>
<td>Male Assaults Female</td>
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<tr>
<td>Section 1 06</td>
<td>Discharge without conviction see (New Zealand Statutes, 2002)</td>
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Māori Words

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<td>Aotearoa</td>
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<tr>
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<tr>
<td>Iwi</td>
<td>Extended kinship group, tribe, nation, people, nationality, race - often refers to a large group of people descended from a common ancestor and associated with a distinct territory.</td>
</tr>
<tr>
<td>Hapū</td>
<td>Kinship group, clan, tribe, subtribe - section of a large kinship group and the primary political unit in traditional Māori society.</td>
</tr>
<tr>
<td>Whanāu</td>
<td>Extended family, family group, a familiar term of address to a number of people.</td>
</tr>
<tr>
<td>Tikanga</td>
<td>Customary system of values and practices that have developed over time and are deeply embedded in the social context</td>
</tr>
<tr>
<td>Kohanga</td>
<td>Māori language preschool.</td>
</tr>
<tr>
<td>Kura Kaupapa</td>
<td>Primary school operating under Māori custom and using Māori as the medium of instruction.</td>
</tr>
<tr>
<td>Wharekura</td>
<td>Secondary school run on kaupapa Māori principles - these schools use Māori language as the medium of instruction and incorporate Māori customary practices into the way they operate</td>
</tr>
<tr>
<td>Pukana</td>
<td>To stare wildly, dilate the eyes - done by both genders when performing haka and waiata to emphasise particular words and to add excitement to the performance.</td>
</tr>
<tr>
<td>Māori</td>
<td>Māori, indigenous New Zealander, indigenous person of Aotearoa/New Zealand</td>
</tr>
<tr>
<td>Pākehā</td>
<td>New Zealander of European descent - probably originally applied to English-speaking Europeans living in Aotearoa/New Zealand</td>
</tr>
<tr>
<td>Kaupapa Māori</td>
<td>Māori approach, Māori topic, Māori customary practice, Māori institution, Māori agenda, Māori principles, Māori ideology - a philosophical doctrine, incorporating the knowledge, skills, attitudes and values of Māori society</td>
</tr>
<tr>
<td>Rumaki</td>
<td>To immerse</td>
</tr>
</tbody>
</table>

Definitions provided by Te Aka Māori-English, English-Māori Dictionary and Index (2017)
8.1 Letter of Information for Participants - Defendants

Information for Participants

The quality of legal representation young Māori men receive in the criminal justice system.

What the project is about
My name is Paula Bold-Wilson, and I am the Manager of the Waitematā Community Law Centre. I am doing research for my Master’s thesis at Unitec. I am interested in the experiences of young Māori men before the courts. The number of young Māori in the criminal justice system is very high when compared to other groups. There is no research where young Māori before the court have been asked about their experience of support from lawyers and the court system. This is what I want to do.

I believe this piece of research has the potential to influence change in the way that young Māori are supported and represented in court by lawyers.

What we are doing
Part of the research is to interview 10 young men (18-30 years) who have appeared in the Auckland District Courts with the support of a member of their whānau. I will ask questions about what happened when got you in trouble, what support you got from your lawyer, what happened in court, and how you are now. Your whānau member is there to support you in the interview and help you tell your story. In the end part of the interview, you will be able to talk on your own, without your whānau member being present.

Benefits to you
This provides you with a chance to share your experience of the quality of legal representation you received within the justice system.

What it will mean for you
I would like to meet with you, and a member of your whānau to discuss your experience with your lawyer/s. It is envisaged that the first part of the interview will take approximately three quarters of an hour, and then you will be interviewed on your own for about 15 minutes. Your interview will be recorded and then written down. You can read and change things in it if you want to. Once we have a good paper copy of your interview the audio-file will be destroyed.

Whilst this research project will interview lawyers, your lawyer/s will not be interviewed.

If you agree to participate, you and your whānau member will be asked to sign a consent form. This does not stop you from changing your mind if you wish to withdraw from the project during the interview or later. However, because of our schedule, any withdrawals must be done before you and you whānau member have approved the transcript of your interview.
Your name and information that may identify you will be kept completely confidential. No report from this research will contain any information that can identify you or any member of your whānau. All information collected from you will be stored on a password-protected file and only you, I and my supervisors will have access to this information.

Please contact me if you need more information about the project. My phone number is 021 492 947 and my email is paula@waitematalaw.org.nz

At any time if you have any concerns about the research project you can contact my supervisor, Dr Geoff Bridgman, phone 815 4321 ext. 5071 or email gbridgman@unitec.ac.nz

UREC REGISTRATION NUMBER: 2013-1085

This study has been approved by the UNITEC Research Ethics Committee from 16 May 2016 to 16 May 2017. If you have any complaints or reservations about the ethical conduct of this research, you may contact the Committee through the UREC Secretary (ph: 09 815-4321 ext 8551. Any issues you raise will be treated in confidence and investigated fully, and you will be informed of the outcome.
8.2 Letter of Information for Participants - Lawyers

Information for Participants

Research project title
The quality of legal representation young Māori men receive in the criminal justice system.

What the project is about
My name is Paula Bold-Wilson and I am the Manager of the Waitematā Community Law Centre. I am doing research for my Master's thesis at Unitec. I am interested in the experiences of young Māori men before the courts. The number of young Māori in the criminal justice system is very high when compared to other groups.

There is no research where young Māori before the court have been asked about their experience of support from lawyers and the court system. What I want is to interview ten young Māori men who have appeared in the Waitakere District Court, along with a member of their whānau. I also want to interview five lawyers who have represented young Māori first time offenders, and offenders with between two and four charges in court, but excluding those who have committed crimes that are likely to carry a prison sentence of more than one year.

What we are doing
Part of the research is to interview five lawyers. I will ask you questions about engagement with young Māori male clients, typical issues that arise, your perspective on how the criminal justice system is working for this group of people, and what can be done to improve it.

It is not the intention of this research project to interview your clients.

What it will mean for you
I would like to meet you to for approximate three-quarters of an hour. Your interview will be recorded and then transcribed. You can read the transcription and change things in it if you want to. Once we have a good transcription of your interview the audio-file will be destroyed.

If you agree to participate, you will sign a consent form. This does not stop you from changing your mind if you wish to withdraw from the project during the interview or later. However, because of our schedule, any withdrawals must be done before you have approved the transcript of your interview.

Your name and information that may identify you will be kept completely confidential. No report from this research will contain any information that can identify you or your practice. All information collected from you will be stored on a password-protected file and only you, I and my supervisors will have access to this information.

Please contact me if you need more information about the project. My phone number is 021 492 947 and my email is paula@waitematalaw.org.nz
At any time if you have any concerns about the research project you can contact my supervisor, Dr Geoff Bridgman, phone 815 4321 ext. 5071 or email gbridgman@unitec.ac.nz

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8.3 Participants Consent Form – (young Men)

Participant Consent Form (young men)

Research Project Title: The quality of legal representation young Māori men receive within the criminal justice system.

I have had the research project explained to me and I have read and understand the information sheet given to me.

I am happy have a whānau member present to support me for part of this interview.

I understand that I don’t have to be part of this research project should I chose not to participate and may withdraw at any time prior to our approval of the written record of our interview.

I understand that everything I say or my whānau support person says is confidential and none of the information we give will identify us or any members of our whānau.

I understand that the only persons who will know what we have said will be the researcher and her supervisor. I also understand that all the information that we give will be stored securely on a computer at Unitec for a period of 5 years.

I understand that our discussion with the researcher will be taped and transcribed.

I understand that we can see the finished research document.

I have had time to consider everything and I give my consent to be a part of this project.

Participant’s name: ……………………………………………………………………………………………………

Participant Signature: …………………………………………………………… Date: ……………………..

I understand the above statements agreed to by the participant and am happy to be their whānau support person.

I understand and accept the sections above that protect my anonymity and the confidentiality of my contribution to this project.

Whānau member’s name: …………………………………………………………………………………………………

Whānau member’s signature: …………………………………………………………… Date: ……………………..

Project Researcher: ………………………………………………………………………………………………… Date: ……………………..

UREC REGISTRATION NUMBER: 2013-1085
This study has been approved by the UNITEC Research Ethics Committee from 20 November 2013 to 20 November 2014. If you have any complaints or reservations about the ethical conduct of this research, you may contact the Committee through the UREC Secretary (ph: 09 815-4321 ext 8551). Any issues you raise will be treated in confidence and investigated fully, and you will be informed of the outcome.
8.4 Participants Consent Form (Lawyers)

Participant Consent Form (lawyers)

Research Project Title: "The Injustice in Justice" The quality of legal representation young Māori men receive within the criminal justice system.

I have had the research project explained to me and I have read and understand the information sheet given to me.

I understand that I don't have to be part of this research project should I chose not to participate and may withdraw at any time prior my approval of the written record of my interview.

I understand that everything I say is confidential and none of the information I give will identify me or my practice.

I understand that the only persons who will know what I have said will be the researcher and her supervisor. I also understand that all the information that we give will be stored securely on a computer at Unitec for a period of 5 years.

I understand that my discussion with the researcher will be taped and transcribed.

I understand that I can see the finished research document.

I have had time to consider everything and I give my consent to be a part of this project.

Participant's name: ………………………………………………………………………………………………………

Participant Signature: ……………………………………….. Date: …………………

Project Researcher: ……………………………….. Date: …………………

UREC REGISTRATION NUMBER: 2013-1085
This study has been approved by the UNITEC Research Ethics Committee from 20 November 2013 to 20 November 2014. If you have any complaints or reservations about the ethical conduct of this research, you may contact the Committee through the UREC Secretary (ph: 09 815-4321 ext 8551). Any issues you raise will be treated in confidence and investigated fully, and you will be informed of the outcome.
8.5 Confidentiality Agreement

Researcher Confidentiality Agreement

Research title: The quality of legal representation for young Māori within the criminal justice system

Researcher/s Name: Paula Bold-Wilson

Address: 30 Seabrook Avenue, New Lynn, Auckland, New Zealand

Phone number: +64 21 492 947

Email: paula@waitematalaw.org.nz

I Paula Angela Bold-Wilson agree to treat in absolute confidence all information that I become aware of in the course of transcribing the interviews or other material connected with the above research topic. I agree to respect the privacy of the individuals mentioned in the interviews that I am transcribing. I will not pass on, in any form, information regarding those interviews to any person or institution. On completion of transcription I will not retain or copy any information involving the above project.

I am aware that I can be held legally liable for any breach of this confidentiality agreement, and for any harm incurred by individuals, if I disclose identifiable information contained in the audiotapes and/or files to which my supervisor and I will have access.

Signature: ........................................ Date: ........................................

UREC REGISTRATION NUMBER: 2013-1085

This study has been approved by the UNITEC Research Ethics Committee from 16 May 2016 to 16 May 2017. If you have any complaints or reservations about the ethical conduct of this research, you may contact the Committee through the UREC Secretary (ph: 09 815-4321 ext 8551). Any issues you raise will be treated in confidence and investigated fully, and you will be informed of the outcome.
8.6 Ethics Approval 2013

Paula Bold-Wilson
30 Seabrook Avenue
New Lynn
Auckland

21.11.13

Dear Paula,

Your file number for this application: 2013-1085
Title: The Injustice in Justice.

Your application for ethics approval has been reviewed by the Unitec Research Ethics Committee (UREC) and has been approved for the following period:

Start date: 20.11.13
Finish date: 20.11.14

Please note that:

1. The above dates must be referred to on the information AND consent forms given to all participants.

2. You must inform UREC, in advance, of any ethically-relevant deviation in the project. This may require additional approval.

3. Organisational consent/s must be cited and approved by your primary reader prior to any organisations or corporations participating in your research. You may only conduct research with organisations for which you have consent.

You may now commence your research according to the protocols approved by UREC. We wish you every success with your project.

Yours sincerely,

Gillian Whalley
Deputy Chair, UREC

cc: Geoff Bridgman
Cynthia Almeida
8.7 Ethics Amendment 2015

Paula Bold-Wilson
30 Seabrook Avenue
New Lynn
Auckland
19.3.15

Dear Paula,

Your file number for this application: 2013-1085
Title: The Injustice in Justice.

Your application for an extension to the above ethics approval has been reviewed by the Unitec Research Ethics Committee (UREC) and has been approved for the following period:

Start date: 19.3.15
Finish date: 19.3.16

Please note that:

1. The above dates must be referred to on the information AND consent forms given to all participants.
2. You must inform UREC, in advance, of any ethically-relevant deviation in the project. This may require additional approval.
3. Organisational consent/s must be cited and approved by your primary reader prior to any organisations or corporations participating in your research. You may only conduct research with organisations for which you have consent.

You may now commence your research according to the protocols approved by UREC. We wish you every success with your project.

Yours sincerely,

Sara Donaghey
Deputy Chair, UREC

cc: Geoff Bridgman
Cynthia Almeida
Paula Bold-Wilson
30 Seabrook Avenue
New Lynn
Auckland
18.5.16

Dear Paula,

Your file number for this application: 2013-1085
Title: The Injustice in Justice.

Your application for an extension to the time frame for the above ethics application has been reviewed by the Unitec Research Ethics Committee (UREC) and has been approved for the following period:

Start date: 16.5.16
Finish date: 16.5.17

Please note that:

1. The above dates must be referred to on the information AND consent forms given to all participants.

2. You must inform UREC, in advance, of any ethically-relevant deviation in the project. This may require additional approval

You may now commence your research according to the protocols approved by UREC. We wish you every success with your project.

Yours sincerely,

Sara Donaghey
Deputy Chair, UREC

cc: Geoff Bridgman
Cynthia Almeida
8.9 Consent Te Whānau O Waipareira

Monday 21st October 2013

To Whom it may concern,

Organisational Consent

I, John Tamihere, Chief Executive Officer of Te Whanau O Waipareira Trust give consent for Paula Bold-Wilson to undertake research in this organisation as discussed with the researcher.

The consent is subject to approval of research ethics application number: (application number) by the Unitec Research Ethics Committee and a copy of the approval letter being forwarded to the organisation as soon as possible.

Signature:

Date: 20.10.13

Head Office: Gre Edmonton & Great Norih Roads, Henderson;
Whanau Centre: Reception level 2, 6-8 Pioneer Street, Henderson
Postal: PO. Box 21 081, Henderson, Auckland 0650
Phone: +64 9 836 6683 0800 924 942 Facsimile: +64 9 837 5379 www.waiwhanau.com
8.10 Consent Waitakere Community Law Service (known as Waitemata Community Law Centre)

Organisational Consent

I, Catherine McClintock, Chairperson of the Waitakere Community Law Service give consent for Paula Bold-Wilson to undertake research in this organisation as discussed with the researcher.

The consent is subject to approval of research ethics application number: (application number) by the Unitec Research Ethics Committee and a copy of the approval letter being forwarded to the organisation as soon as possible.

Signature: [Signature]
Date: 02/09/2013

1a Trading Place Henderson, Waitakere City, PO Box 121104 Henderson, Waitakere City
Phone: (09) 835 2130 Fax: (09) 835 2133 E-mail: paula@waitakerelaw.org.nz
Full name of author: Paula Angela Bold-Wilson

ORCID number (Optional): ..............................................................

Full title of thesis/dissertation/research project ('the work'):
The Injustice, In Justice
An examination of the quality of legal representation
young Māori men receive in the criminal justice system

Practice Pathway: Social Practice - Health & Community & Sciences Network
Degree: Master of Social Practice
Year of presentation: 2018

Principal Supervisor: Dr. Geoff Bridgman
Associate Supervisor: Dr. Teorangeriri Josie Keeloh

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Signature of author: ...........................................
Date: 5/1/2018
Declaration

Name of candidate: Paula Bold-Wilson

This Dissertation/Research Project entitled: The Injustice, Injustice

is submitted in partial fulfillment for the requirements for the Unitec degree of

Principal Supervisor: ____________________
Associate Supervisor/s: ____________________

CANDIDATE’S DECLARATION

I confirm that:

- This Thesis/Dissertation/Research Project represents my own work;
- The contribution of supervisors and others to this work was consistent with the Unitec Regulations and Policies.
- Research for this work has been conducted in accordance with the Unitec Research Ethics Committee Policy and Procedures, and has fulfilled any requirements set for this project by the Unitec Research Ethics Committee. Research Ethics Committee Approval Number: 2013 - 1085

Candidate Signature: ____________________ Date: 5/1/2018

Student number: 1001206