

“Behind the Bars” - a family mediation initiative in New Zealand prisons.

Nicola M Hartfield. June 2016

Aotearoa¹ New Zealand is a country with a population of 4.5 million, with 1.42 million people living in Auckland, our largest city² and the balance spread throughout the two main islands³ that comprise New Zealand. We pride ourselves on our ability to be resourceful and independent, this no doubt a reflection of our geographical isolation to the rest of the world, excluding Australia and our Pacific neighbours. We also enjoy freedom of speech, the ability to pursue educational, political, religious and employment choice. We have good access to social services and agencies by world standards and enjoy a physical environment of exquisite beauty. In comparison to the US we have a very non-litigious justice system, with a Government department known as the Accident Compensation Corporation⁴ in place for New Zealanders which supersedes the ability for individuals to sue each other for accidental personal harm and injury.

However New Zealand is no different from other countries with its own brutal history of colonialization during the 18th and the first half of the 19th century which resulted in the signing of a Treaty⁵ which forms the constitutional basis of New Zealand. The Treaty was written in English and translated into Māori. As a result of this translation, fundamental differences emerged as to the intended meaning of it, culminating in the landmark 1987 case; *New Zealand Māori Council v. Attorney-General*.⁶ This case created a set of Treaty Principles which bind the Crown and include redress for past breaches (mainly in the return of land and money), a right to consultation and to act in good faith toward the other.⁷

The impacts of this past societal injustice are still very visible today and land heavily in the laps of people not of the dominant culture. For New Zealand, this is evidenced by the disparity between Māori and New Zealand European in their ability to remain in education to a tertiary level which largely determines occupational options, housing availability and access to many health care opportunities. As a result Māori are over represented in poverty statistics, overcrowding, ill-health, under achievement and crime.

New Zealand’s Prison Sub Culture

New Zealand has approximately 9,500 inmates currently serving a sentence in one of our 18 adult correctional facilities (prisons).⁸ Along with the US and Australia, New Zealand has one of the

¹ Aotearoa is the Māori name for New Zealand

² 2014 estimates

³ North Island – Te Ika a Maui (fish of Maui) South Island – Te Wai Pounamu (the waters of greenstone)

⁴ Accident Compensation Corporation (ACC) is a New Zealand Crown entity responsible for administering the country’s universal no-fault accidental injury scheme.

⁵ The “Treaty” was signed at Waitangi (The Treaty of Waitangi) 1840 between the Crown by the then Governor General, William Hobson, and the 500 Māori chiefs throughout New Zealand.

⁶ [1987] 1 NZLR 641 (lands case)

⁷ Dispute Resolution and the Justice System: The New Zealand Experience: Deborah Hart

⁸ There are 14 male prisons and 3 female prisons in New Zealand

⁹ [http://fatherandchild.org.nz/magazine/issue-23/braking-the-chains/Article Chains](http://fatherandchild.org.nz/magazine/issue-23/braking-the-chains/Article%20Chains) by Chris Corbett 2003

highest rates of imprisonment in the world.⁹ It has the highest rate of intimate partner violence and the second highest prison population in the developed world. It is estimated that there are at least 20,000 children separated from their parents by incarceration. The New Zealand prison population is forecast to continue to grow over the next ten years by at least 3 percent.

The majority of prison inmates in New Zealand are Māori (51 percent of all inmates), male and aged between 25-29 years old. The 6 most common offenses are sexual assault, acts intended to cause injury, unlawful entry, robbery and extortion, drug offences and homicide.¹⁰

Inmates have a significantly higher rate of mental disorder than people in the community especially for schizophrenia, bi-polar, major depression, obsessive-compulsive disorder and post-traumatic stress. Sixty percent of all inmates have at least one major personality disorder.¹¹ Two thirds of inmates did not complete secondary school education and have no educational qualifications. They have a higher incidence of head injury and 47 percent of the male Maori prison population has a chronic disease of some kind, asthma being the most common.¹²

Research tells us that the children of prisoners are 6 to 7 times more likely to end up in prison than any other child without intervention of some kind being offered them. Children of incarcerated parents are referred to as “the invisible children”¹³ and are at risk of suffering shame and ostracism throughout their childhood years by virtue of having an incarcerated parent. Two out of every five prisoners who are parents, stated that they were arrested in front of some or all of their children,¹⁴ a child’s last memory being one of crying and chaos. It is a common story that inmates have no knowledge of where their children are living and who is bringing them up. For the child involved, their parent has simply ceased to exist in their physical life.

However in New Zealand being incarcerated does not exclude inmates from their right to be involved in the guardianship¹⁵ decisions that impact on the lives of their children or absolve them of their duty to parent. New Zealand’s guiding piece of legislation in this area is the Care of Children’s Act 2004, which requires that in any decisions relating to the care of children that the welfare and best interests of each particular child must be the paramount consideration and that includes the involvement of both parents in their life. In determining what is in the best interests of the child, parents are directed to Family Dispute Resolution (FDR) to mediate these guardianship concerns and care issues. Parents outside of prison however, *may* be exempt from attending mediation in circumstances where there has been violence or where there is or has been a situation which makes mediation unsuitable. This allows them to apply directly to the Family Court for a determination. The operational guidelines also state that prisoners *may* also be exempt from attending mediation. However many parents in prison want to maintain relationships with their children and want to be involved in making decisions about their children’s care without initiating Family Court proceedings.

¹⁰ Prison facts and statistics 2016 Dept of Corrections

¹¹ Ministry of Health, New Zealand 2006 *Results from the prisoner Health Survey 2005* Wellington New Zealand

¹² Ministry of Health, New Zealand 2006 *Results from the prisoner Health Survey 2005* Wellington New Zealand

¹³ “Invisible Children” First year research report “ A study of the children of prisoner” 2009 Liz Gordon

¹⁴ Te Puni Kōkiri: A study of the children of prisoners June 2011

¹⁵ Guardianship Act 1968

As a mediator with a contract to FairWay Resolution¹⁶ and a specialist practice in family and community dispute resolution, this is one of the community of mothers and fathers that I mediate with, and attempt to negotiate the exchange of a photograph or a school report, a phone call to the child or perhaps a visit on visiting day, or the right to be involved in the day to day decisions affecting their child/ren.

To date, FairWay Resolution has developed three parts to FDR in the prison environment. Preparation for mediation coaching is provided via telephone, legal advice is provided via video conferencing and mediation is provided face to face with the inmate and phone shuttle with the parent or care giver in the community. If I can't mediate between the parent inside and the parent or care giver on the outside, sometimes I can mediate between a relative of the inmate and the parent or caregiver.

Parents and caregivers of the children in the community are encouraged to attend a 4 hour free course called "parenting through separation" and work is under way to provide an adapted version of this course to prisoners.

Mediation begins with an assessment of the parent or caregiver in the community once the request for mediation has been made by the inmate. It takes considerable skill and perseverance to engage and speak with them about the possibility of mediating, as they can be difficult to locate, often having moved out of the area and not told the parent inside, due to a need to distance themselves from past connections and extended family. Given the nature of the offending which suggests difficulties in setting and maintaining personal boundaries, resistance to reconnecting with the other parent is understandably often high.

When I assess the inmate inside the prison, there is little time for relationship building and my questions seem intrusive and blunt however I frame them. But with only a small interviewing room, guards standing at the window often looking in, and no part of the inmate's personality or cultural heritage being able to be displayed in any way – there is very little to use, in order to soften the harsh blow of the assessment questions.

Inmates often call me "Miss" or "Maam," a title that I am not used to and feel uncomfortable with. It could be a term of respect, acknowledging hierarchy. It could also signify a feeling of lack of control over one's destiny. During this assessment phase, I find it difficult to locate any connecting tissue from my world into theirs.

The assessment information that I seek is information about their approved phone and visiting list, their past and current offending, the length of their sentence, their history of mental health, substance use and domestic violence and the current state of their mental health. It is important to know their relationship history to the children's other parent or care giver.

It is common for mediations to stop here as the inmate may not have the mental or emotional capacity to continue to mediation, or that reconnecting through mediation is deemed unsafe or not wanted by the other party. Safety is paramount for all parties and professionals involved in this process. Each case is discussed by a team of mediators and assessors and at any time the process can be halted and an exemption provided for the parties.

¹⁶ FairWay Resolution is one of New Zealand's suppliers of FDR services to the Ministry of Justice

My mediator role is often educative, assisting both parties to understand the other and the environmental routines and activities they are both involved in. As in all of our mediation practice, we are trying to build tolerance and increase the capacity of participants, as we assist each party to negotiate with the other.

I try to build meaning and value to the inmate's role as parent. I have helped a father to create a script containing acceptable questions that covered the topics of school, sport, and friends that he could talk through on his monthly phone call that we had just negotiated. He was 2 years into a 21 year sentence and had no idea how to talk with his child. He was anxious that his emotions would lead the conversation and ruin it for all concerned. As we wrote out the questions he wanted to ask, he was openly weeping, a behaviour rarely seen in the prison environment where the show of strength determines your safety. The phone call script created a level of protection for the parent on the outside, the child involved, and provided a necessary structure for them all.

At present, the mediation process follows that which is used to mediate with non-Māori, being a process that follows the characteristics of Edward Hall's theory of low context culture. Communication relies mainly on words and is direct and straightforward. There are few if any rituals involved, mediation is conducted in a stark interviewing room at the prison, with only the inmate present.¹⁷ There is a more defined script or process, typically around identification of the issues, exploration of the interests, option generation and the creation of a Mediated Agreement. The dialogue entered into with parties is ordered and all information exchange is transparent unless parties wish it to remain private, excluding any reference to possible threat to harm person or property. Mediated Agreements are final, written down in detail with future dispute resolution clauses likely to be included. My relationship with the parties lasts for the length of the mediation and exist for this specific reason. It would be seen to be unethical to extend a relationship outside of and beyond the conclusion of the mediation.

But this way of doing things may not suit our Māori community. We have very few Māori mediators in New Zealand, and if working with Māori in the prison community, my belief is that we need to look at working alongside a Māori elder, someone known to the inmate who he or she regards in high esteem – who has *mana*¹⁸ and status. These people are likely to know the history of the inmate and their *whanau*,¹⁹ this approach being in line with a higher context collectivist culture where more emphasis and meaning is placed on the group impact of decisions and how they affect the community. In the Māori world, decisions are often made collectively and restitution and resolution is guided by "*utu*"²⁰ which restores "*whanaungatanga*."²¹ This concept of decision making and relationship care is in contrast to the notion that disclosing a conflict of interest and the self determination of parties, matters. In the Māori world view, knowing parties and being guided by community elders, enhances decision making and establishes a correct community order.

When I reflect upon the prison sub-culture where Māori reside and I mediate within, I am reminded of Hofstede's model of certainty versus uncertainty, a continuum which relates to a society's ability to tolerate ambiguity. This is reflected in how people embrace or avert something unexpected, unknown or different from the status quo. Where there is a high level of uncertainty, there are stiff codes of behavior, guidelines, rules and laws to assist in the management of unpredictability. Where there are low levels of uncertainty, societies or groups impose fewer regulations. High security

¹⁷ A guard may be present for security

¹⁸ Mana – authority, influence and power handed down from one's ancestor.

¹⁹ Whanau – extended family

²⁰ Utu- an action taken for example, the return of goods and services

²¹ Whanaunatanga – the relationships between people

prison is probably the most extreme example of a high uncertainty subculture.

I am therefore tasked with bringing my lower more individualistic cultural need and connecting with an inmate who has a higher more collective cultural need in the context of a prison environment which sits at the extreme end of the high uncertainty index.

This project is new and over time my hope is that a robust system of FDR is created in our prison community that emanates from its users and not a model created to suit the professionals that use it. This will take practitioners and project managers to work together with inmates and respondents in the community as well as with the many other people and agencies involved in this field of work. This collaborative approach is especially important if we feel that our culture is more aligned to one party rather than the other, perhaps to the structure of the prison system itself.

For this work to continue, various challenges arise that involve the resourcing of time, expertise and money. We will need prison staff to get on board with the model and attorneys to refer to prison FDR. The community at large will be needed to support the parents and caregivers of the children involved by creating additional resources for example to allow for petrol and a safe car to transport the children to visiting day,²² and support people to assist the children in visiting or receiving phone calls if the other parent is not comfortable to perform this role. For this to happen stakeholders need to understand that child/parent attachment is vital to a child's healthy development and that this must be kept alive throughout the years of a parent's incarceration and not left to a release date. To date the Department of Corrections is in support of offering FDR in prisons and view this as a positive initiative in terms of reducing reoffending. If we can encourage child/parent involvement throughout the long years of incarceration, this might be one step in turning the tide on children following their parent(s) into prison, and be of benefit to New Zealand society as a whole.

²² It is common for offenders to be moved to prisons outside of their previous geographical area