Child Rights, Family Rights and the Family Group
Conference: The New Zealand Experience

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Te Hokinga Mai – Coming Home

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Enactment of the Children, Young Persons and their Families Act (1989) marked a radical change from previous child protection and juvenile offending law and practice in New Zealand. The statutory establishment of family group conferences set an international precedent for the involvement of children and families in decisions affecting them. The legislation arose out of a deep concern about the position of indigenous children within the care and protection system. In this presentation I review the background to this innovative policy development, discuss the opportunities and risks posed by the legislative change, and provide a brief snapshot of the current functioning of the process. Ways of moving forward are outlined with particular emphasis on children’s rights.

Until the 1980s, Aotearoa New Zealand had a welfare system that would have been familiar in many similar jurisdictions, for situations where children and young people came to official notice, either because they allegedly offended against the law, or because they were abused or neglected or at risk of such maltreatment. Responsibility
for decisions about the placement and care of children in such circumstances rested with the courts, with the assistance of police and child protection service (Hassall, 1996).

**Slide 4: Growing Concern**

Within official circles there was growing concern about the disproportionate number of indigenous children involved in the social welfare system. Similar concern was being expressed in non-governmental social justice circles, as organisations reflected on their practice and identified systematic biases and examples of inequity. Aotearoa New Zealand was also moving toward the sesquicentennial of the 1840 signing of a Treaty between indigenous Maori and representatives of Queen Victoria, with renewed interest in understanding how past breaches of the Treaty should be addressed and how the bicultural commitments should be expressed in contemporary society.

**Slide 5: Puao-te-ata-tu**

In 1985 the Minister of Social Welfare charged a Ministerial Advisory Committee with investigating the operations of her Department from a Maori perspective. The Committee undertook 65 meetings, including meetings on marae, in institutions and in Department of Social Welfare offices. The stories they heard were remarkably similar, although the faces and places were different. In their report back in 1988, the Ministerial Advisory Committee stated:
They have been messages of frustration, anger and alienation...We have borne the brunt of feelings far wider than anything which lies within the remedies of the Social Welfare Act. We have been confronted with a Maori perception of issues which are deep rooted and structural...

Slide 6: Institutional Racism

The report highlighted the insidious nature of institutional racism, in which “National structures are evolved which are rooted in the values, systems and viewpoints of one culture only. Participation by minorities is conditional on them subjugating their own values and systems to those of “the system” of the power culture.” The sentiment was well expressed by participants in the consultation:

Particular concern was raised about fostering and adoption, where a child was often placed without any information about or consideration of tribal identity. Criteria for selecting adoptive and foster parents were perceived to consider material wellbeing without any adequate attempt to find a caregiver within the wider family or kinship group (Ministerial Advisory Committee on a Maori perspective for the Department of Social Welfare, 1988, pp. 17, 19, 22, 29). Other observers noted that while Maori children were placed with Pakeha families, no Pakeha children were placed with Maori families.

Slide 7: The Place of Children

To more fully understand this concern it is important to recognise the traditional place of children in Maori culture. From this perspective, the child is always part of a wider kin network of extended family, whanau, hapu and iwi. I am assuming that you are all
reasonably knowledgeable about what whanau, hapu and iwi are by this stage of the Conference. The decisions about a child were the shared responsibility of the wider whanau and not just that of the birth parents. This contrasts with many other jurisdictions where parents have the sole pejorative unless usurped by the State for reasons of child protection or neglect. This responsibility of the wider family is for all aspects including instilling identity, safety and meeting other basic needs.

Slide 8: Collective Responsibility

A well-known proverb, or whakatauki, summarises this collective responsibility and has been interpreted to mean that even though a child’s behaviour created a dilemma, responsibility for that behaviour rested with the whanau and with the hapu:

*He tangi to te tamariki, he whakama to te pakeke*

*Children cry but the embarrassment or shame belongs to the elders*

(Traditional, cited by Maxwell et al., 2004)

Slide 9: A New Pattern - The Family Group Conference

The Children, Young Persons and their Families Act (1989) introduced a new forum for child protection and youth justice decision-making – the family group conference (FGC). This change marked a fundamental shift in power from the statutory social workers, who had previously made all decisions about children in need of care and protection, to family and kinship groups. While many welcomed the change, for
others the move from a paternalistic to a facilitating role was too difficult and led to job dissatisfaction and resignations.

**Slide 10: The Family Group Conference**

*Central to the practice of family group conferences is the idea that children and families have a fundamental right and responsibility to participate in decisions that affect them... [This notion] stems from a belief that all people should be treated with respect, even though their behaviour may not always have been adequate... Family group conferences offer an opportunity for families to contribute substantially to their children and to address what are, in a most fundamental sense, both private family problems and public issues.* (Hudson, Galloway, Morris, & Maxwell, 1996)

**Slide 11: Family Group Conference Outcomes**

Family group conferences are convened or reconvened by a coordinator. In care and protection cases, the purpose of the FGC is for members of the family group/whanau/hapu/iwi to discuss with social workers what needs to be done to make sure a child or young person is safe and well cared for. In youth justice cases, the FGC provides an opportunity for members of the family group/whanau/hapu/iwi, the young offender and the victim to decide how the young offender can be held accountable and encouraged to take responsibility for their behaviour (Child, Youth and Family, 2006).

**Slide 12: The Phases of the Family Group Conference**

There are four phases to the Family Group Conference process:

- preparation
• information sharing

• family time

• negotiating the plan

Slide 13: Factors in the Success of the Family Group Conference

The role of the coordinator is crucial to the successful operation of FGCs. The coordinator must undertake careful preparation, to identify the widest possible network of extended family members and ensure that they understand the process. During the FGC s/he must manage the process to ensure the views and wishes of the child or young person are heard, that all relevant information is presented, that the family has time away from the professionals to develop their plan and that this is negotiated in an appropriate manner with the professional participants. Best outcomes are achieved when the initial identification of eligible participants moves through the extended family, and in the case of Maori through hapu and iwi, to find the people and groups who are best able to provide support to the affected family or safe and secure placement for the children at risk.

Slide 14: The Family Group Conference Today:

It is important to note that in Aotearoa New Zealand the “Family Group Conference is a high tariff legal intervention, which means that families proceeding to FGC often present with the most complex and difficult problems” (Connolly, 2006. p.526). This is true of both care and protection and youth justice matters and these can only come
before the Family or Youth Court following an FGC (Spier & Segessenmann, 2004). Initially there was a great deal of enthusiasm for the family group conference and the idea has been taken up in a number of countries. There are however, some important lessons to learn from our experience, particularly given the high ongoing level of international interest in FGCs.

The Family Group Conference Today

Initially the FGC model resulted in a dramatic reduction in the numbers of children in State care, especially in residential care. Many children who would once have been placed with strangers, instead found safety and protection within their wider family network (Ryburn, 1992). Over time these improvements have lost ground and there has been an increase in the numbers of children in care. There are a number of reasons for this associated with each of the phases of the FGC process.

Slide 15: Preparation

Immediately following the introduction of FGCs resources were available to transport family members to conferences and to provide food for participants (an important cultural consideration). This level of funding was not maintained and it is rarely possible for out of town family members to attend. The substitute, participation by telephone is not as satisfactory. Lack of resources can also impact on the amount of time spent locating family/whanau members and preparing them for participation. Further difficulties also arose in that some families are resistant to wider family involvement, preferring to keep such matters private (Connolly, 2006). Resources
and social worker attitudes influence the extent to which efforts are made to overcome this resistance.

**Slide 16: Information Sharing**

The quality of the information shared with family is crucial to their ability to develop appropriate plans acceptable to the professionals involved. Experienced coordinators have commented that high staff turnover has created difficulties for the FGC process. Inexperienced workers unfamiliar with the process, lacking in-depth knowledge of the family, and nervous about presentation affected the quality of information sharing (Connolly, 2006). In some cases, there was reluctance to share information that was not backed up by corroborated evidence, especially in cases of sexual abuse. This led to situations where family plans were rejected for reasons that they did not fully understand, undermining their confidence in the process.

Families’ ability to participate was sometimes undermined by the imposition of ‘bottom lines’ during the information sharing stage (Robertson, 1996). In some cases this led families to believe that decisions had already been made and that the FGC was a waste of time. As Holland et al. (2005) note there is a fine line between a professional outlining her concerns at the start of a meeting and imposing an agenda and preferred solution on the meeting. These difficulties were perhaps exacerbated by simplistic assumptions about the ability of families to make decisions that ensured the on-going safety of their children or addressed the issues underlying offending behaviour. Paternalism and participation have become polarized in ways that deny the complex power relations inherent in this work (Healy, 1998, cited by Horan & Dalrymple, 2003).
Slide 17: Family time

The risk of conflict sometimes led to exclusion of family members, especially in abuse cases. Although this was undoubtedly appropriate in some cases, it limited opportunities for abusers to be confronted about their actions and allowed them to remain entrenched in denial. Of more concern is the exclusion of children from care and protection conferences. The early research indicated that this occurred in about 20% of cases for reasons related to age or level of maturity, abuse, or that the child was scared or anxious or likely to be upset (Paterson & Harvey, 1991). Over time this appears to have increased and in some districts it is unusual for children to attend.

The legislation preceded New Zealand’s ratification of the United Nations Convention on the Rights of the Child (UNCROC) and it is possible the paternalistic attitudes to children contributed to their exclusion. There is evidence that New Zealand social workers adopt a “hands-off” attitude to children – gathering information from adult informants without speaking directly to children who are the focus of investigations. McKenzie (2005) found that in an analysis of 300 cases of alleged abuse 18.7% of the children had not been sighted by the social worker and 30% had never been spoken to about the allegation. It is hardly surprising in the light of this that children would not be involved in the FGC. The new Practice Framework currently being rolled out by Child, Youth and Family, should address this shortcoming, but creating an expectation that all social workers will speak with the child they are responsible for. As an interesting aside, this is not unique to social workers’ practice, lawyers who worked as Counsel for the Child under now repealed...
guardianship legislation, also infrequently bothered to speak with the children whom they represented. Training and professional expectations have shifted within the legal fraternity, helped along by new legislation such as the Care of Children Act.

In contrast to care and protection FGCs, young people always attend youth justice family group conferences. Their presence however, does not necessarily guarantee their active participation. Some young people are overwhelmed and find it difficult to speak. Others report that they did not feel heard and had no choice but to go along with what others decided. The restorative principles on which the conference is based are clearly undermined if the young person does not feel that s/he is an active participant and they are less likely to co-operate with the plan put in place. Despite this the evidence suggests that the youth justice conference is successful in deterring some young people from further involvement in offending (Maxwell et al., 2004).

**Slide 18: Implementation of Plans**

A key factor in determining the success of family group conferences is adequate resourcing to carry out the plan. There is a need for a fundamental, across sector appreciation of the paramount nature of protecting and promoting the best interests of the child. Families are generally realistic in their expectations of the system when they devise the plan for ongoing assistance. However the need for approval of spending at a higher institutional level, and inter-sectoral issues around cross-funding can thwart their implementation. For example the health sector may require child protection services to fund addiction treatment where this is part of a FGC plan,
despite the clear responsibility for a health intervention. There have also been squabbles with education over learning-disruptive behaviour, where this overlaps with care and protection or youth justice matters. This needs to be sorted out. Children in care cannot be left at the mercy of bureaucracies who risk shift. I recognise that it may be difficult to ascertain the complexity of underlying causes because these problems are often myriad and multi-causative. More and more young people involved with the child protection and youth justice systems have dual diagnosis health problems such as borderline personality disorder as well as serious drug and alcohol problems from a young age.

Australia provides us with a clue as how we might best manage this type of problem in New Zealand. South Australia, New South Wales, Victoria and Queensland (to name some) have introduced a kind of priority system called “Rapid Response” or “Gold Card” for these children and young people. Money is pooled to meet their individualised care plans, health and educational needs. This would allow the child welfare agency, Child Youth and Family, greater flexibility and a speedier response win respect of high needs children who come into care.

**Slide 19: Kin Placements**

Kin placements were not supported in the same way as ‘stranger’ placements and some failed because the family was unable to cope with challenging behaviours. Multiple kin placements was seen as evidence that the system was failing to meet
children’s needs and opponents of the original legislation called for a return to a more professionalized approach to decision-making.

**Slide 20: Changes**

This debate was encapsulated in legislative change. In the original legislation it was stipulated that where there was a conflict of principles or interest, the welfare and interests of the child shall be the deciding factor. In 1994 this clause was repealed and replaced but what is known as the paramountcy principle:

> In all matters relating to the administration or application of the Act…the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act

These changes occurred during a time when care and protection and youth justice services were under increasing pressure. Numbers of notifications increased dramatically and there have been several high profile child deaths. Consistent with developments elsewhere in the world New Zealand moved to a more procedural and investigatory approach, which does not sit comfortably with an ethos of family empowerment (Horan & Dalrymple, 2003). High staff turnover also meant that there was a loss of knowledge and commitment to the principles of the legislation (Connolly, 2006). In the light of increasing pressure in the care and protection sector, youth justice became the poor relation with similar loss of knowledge and commitment to the underlying principles.

**Slide 21: Youth Justice FGCs**
Despite this, the youth justice family group conference has continued to be remarkably successful. A review of the outcomes of Youth Justice FGCs has shown that some form of restorative response was normally part of the agreed plans. Such responses included apology, monetary reparation or donations, or work for the victim or for the community. Five years later, information from young offenders from 80 per cent of FGCs indicated that the required tasks were completed (Maxwell et al, 2004). Unfortunately this is often overlooked in the light of serious crimes committed by youth. Although overall rates of offending have remained relatively stable there has been an increase in serious offences and these gain media attention creating an impression that youth crime is not being dealt with. A recent symposium hosted by my Office demonstrated considerable support for the current system and the FGC, which remains at the heart of it.

**Slide 22: Moving Forward**

A number of recent developments make this an opportune moment to revisit the principles on which the family group conference is based and reinvigorate practice. Child Youth and Family have recently introduced new practice frameworks for both care and protection and youth justice. The frameworks are strengths and evidence based, family-led and culturally responsive, and child/young person centred. The youth justice framework also includes a justice and accountability focus. Both emphasise the importance of engagement and assessment. The care and protection framework aims to secure safety and belonging and seeks solutions. The Youth Justice framework identifies the FGC as the key to seeking solutions and is aimed at
changing behaviour and enhancing wellbeing. Such an approach would address many of the shortcomings identified.

Of central importance is engagement with children and young people to facilitate their active participation in decision-making processes. Cashmore (2002) found that children would prefer to have more involvement in decisions about their lives. Thomas and O’Kane (1999) found that children wanted to have a say rather than their own way. Recent research with children demonstrates that they value the opportunity to participate in family group conferences (Bell & Wilson, 2006; Holland et al., 2005; Horan & Dalrymple, 2004). Ironically this research has taken place in the United Kingdom and apart from some research on youth justice FGCs no research has been undertaken with New Zealand children. I think the absence of their voices in the research domain reflects their absence in care and protection investigation and decision-making processes.

New Zealand does not have a strong tradition of involving children in decision-making. Lawyers represent children in family group conferences but this does not guarantee that their voices are heard, for example the Counsel for the Child (now called Lawyer for the Child), mentioned earlier. All participants in FGCs bring their own subjective views of children and what should happen when they are at risk and the absence of children and young people from these forums increases the likelihood of paternalistic views going unchallenged (Atwool, 1999 & 2006). Children’s presence creates the opportunity to speak out and challenge adults’ assumptions about what is in their best interests. This is a very difficult thing to do and it may also be
necessary to consider the role of advocates in these processes. Research demonstrates that children find advocates a valuable support in negotiating the challenges of participation (Horan & Dalrymple, 2003) and their presence helps overcome some of the reasons given for children’s exclusion. They are able to support the child or young person in what can be an intensely emotional experience, they can speak for them if they are unable to do so, and they can facilitate their withdrawal at the request of the child or young person.

Gilligan (2000) identifies that the key task of professional systems and services for children in care “may be said to be to help release the inner strengths, resilience and healing powers of the child in care and of the caring systems which surround the child” (p. 272). He stresses the importance of mobilizing children’s natural and informal systems of community and culture and I think this vision can be extended to all children coming into contact with care and protection and youth justice systems. He reminds us that the family group conference has enormous potential for achieving this. The model originated with indigenous concerns about the over-representation of their children in the care system and the long-term impact of this on children, whanau, hapu and iwi. Although the model has been criticized, the mobilization of informal systems of community and culture is vital for all children and the time has come to put them at the centre of these processes. We have to actively work against their marginalization by all the adults, including professionals, in their lives.

**Slide 23: Realising the vision**
The FGC is a model of family empowerment. The model recognises that family members are the experts on their own specific family. There is a greater likelihood that these plans will be to the long-term benefit of children, since they are based on the paradox that whilst most abuse of children occurs within their immediate family, families also have the knowledge to protect children and young people when they are charged and empowered to do so. The model is founded on the belief that family, in its widest sense, is more motivated than any other social institution to care for and to protect its own children. The task is to ensure that children and young people have a voice in these deliberations. It is likely that past failures to ensure safety and stability for children and young people are the result of losing sight of them in the midst of conflicting adult views, time pressure and lack of resources. These mistakes are less likely when children and young people are present as the living reminders of what is important and can call adults to account when they are overlooked.

Slide 24: Conclusion

New Zealand has much to be proud of through the development and embedding of Family Group Conferences. Please lets not forget our own history as we face calls for harsher penalties against young people who commit crimes, and a perception in some circles that Family Group Conferences are a ‘whoosy cop out’. They are not, but they do need skilled and dedicated people to ensure that the process is carried out as intended. We need to resource them so that the children and young people can have their needs met. Many of these children and young people have already endured unimaginable things at the hands of parents, caregivers, family members or friends.
They should not be made to endure bureaucratic confusion and risk shifting or political point-scoring based on inadequate information.

We face fundamental challenges ahead, let us grasp onto the tools that have proven effective and let us again show leadership on how to genuinely involve families in making the transition to a healthier relationships, and guarantee children their birthright of identity and safety. I wish you all the best in your work with and for, children and young people.

References


