THE NEW ZEALAND FAMILY GROUP CONFERENCE CONFIDENTIALITY PROTECTIONS: LESSONS LEARNED AND AN APPLICATION IN U.S. CHILD WELFARE SYSTEMS

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With the adoption of statutes, policies and administrative guidance since the late 1980s, statutory child welfare agencies around the world have been implementing practice approaches to resolving and addressing child abuse and neglect concerns that involve extended family systems in decision making and planning. One such approach is the family group conference (FGC), enshrined in New Zealand law. This article provides a historical context and describes numerous provisions of the family group conference that protect participants and the proceedings. It then describes applications of FGC-like approaches in the United States where practice models and policies—not laws—guide the implementation of such approaches.

Key Points for the Family Court Community:

- To understand the privacy and confidentiality provisions of the family group conference as legislated in New Zealand.
- To support policy development for family meeting approaches that builds in sufficient participant protections.

Keywords: *Child Protection; Confidentiality; Family Group Conference; Family Meetings; New Zealand; Privilege.*

With the adoption of statutes, policies and administrative guidance since the late 1980s, statutory child welfare agencies around the world have been implementing practice approaches and system reforms to resolving and addressing child abuse and neglect concerns that involve extended family systems in decision making and planning. Still to this day, New Zealand's Oranga Tamariki Act (OTA),[1] also known as the Children and Young Persons Well-being Act 1989, is the most comprehensive example of legislation that requires, and with very specific provisions, the family group conference (FGC) as a decision-making construct in child welfare.

Other countries have also attempted to implement the FGC but with patchwork policies and guidance documents and without comprehensive legislation. What is often missing from these international efforts is recognizing that the OTA is predicated on the concept of citizens' rights to make decisions about issues that concern them. The consequence is that there is emphasis on ostensibly limiting the decision-making powers of government and correspondingly increasing the decision-making powers of all family groups, as a check and balance to the powers of the state in family life. This article explores two primary legislative protections—privilege and confidentiality—within the FGC context, first describing this in New Zealand, followed by examples from the United States.

I. THE ORANGA TAMARIKI ACT

In Aotearoa/New Zealand, the OTA is the public law statute dealing with children where there are concerns for the safety of children[2] arising from allegations of neglect or abuse or where the

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FAMILY COURT REVIEW, Vol. 58 No. 1, January 2020 109–125

children have been involved in criminal offenses. The OTA requires that the best interest and well-being of the child is the paramount consideration in dealing with cases that come within it.[3] The OTA has a range of applicable principles related to its operation and are applied where issues relating to children who may be embraced by the Act are determined.[4]

With an acknowledgment that institutional racism has disproportionality impacted Māori, the OTA promotes the Māori worldview relating to children and the place of children within that society. Accordingly, the Act looks further afield than the parents and guardians of the child as the people primarily responsible for making decisions about the care of the children to include the child's extended family (*whānau*) and broader family (*hapū*) and tribal groups (*iwi*).[5] This Māori worldview applies to all children in Aotearoa/New Zealand who may be embraced by the operation of the OTA, regardless of their ethnicity. This is now re-emphasized by the inclusion of three Māori expressions in the Act as of July 1, 2019 (and which are specifically defined in section 2, the interpretation section and then placed in the principles sections). They are "*mana tamaiti* (*tamariki*),"[6] "whakapapa"[7] and "*whanaungatanga*."[8] They will go to inform decision making that occurs under the Act, including deliberations of the family group conference.

Essential to the operation of the OTA is the FGC. This is the core of the Act and nothing substantive can be done, including any court proceedings that may be instituted, without an FGC being convened.[9] In order to understand the role of the FGC, an understanding of the historical context is required.

II. A HISTORICAL PERSPECTIVE[10]

On February 6, 1840 a treaty was signed between representatives of the British Crown and rangatira (chiefs) of the indigenous people of Aotearoa—Māori. A partnership relationship was created through the signing of Te Tiriti o Waitangi/Treaty of Waitangi on February 6, 1840. Debate and controversy about the interpretation of that treaty has occurred since. The history of New Zealand's emerging understanding of that treaty is well demonstrated by the development of the OTA.

For Māori, children are precious treasures, or "*taonga*:"[11] *Taonga* is an expression:

> … which has comparatively recent usage by non-Māori and is essentially metaphorical. *Taonga* … are both tangible, such as *mere* and *hei-tiki* (greenstone weapons and ornaments) and intangible, such as language and knowledge. *Taonga* belong to a descent group but at any given time are held by individuals on behalf of that descent group, in trust for future generations. As *taonga*, children are to be treated with respect, responsibility, love and care by all members of the group.[12]

As such, Māori children were never, and still today are not, the exclusive property of their parents as they are in Pākehā (European non-Māori) society. Rather, they are the children not only of their parents, but also of their *whānau* and *hapū*.[13] The child is a member of a wider kin group that has traditionally exercised responsibility for the care of the child. Māori children belong to their *whānau*, *hapū* and *iwi*,[14] with the "physical, social and spiritual well-being of a Māori child is inextricably related to the sense of belonging to a wider *whānau* group."[15] This was, and is, the case for *whāngai*[16] children too. *Whāngai* children are cared for by relatives, both within and without the *hapū*, of the child. Their placement could not be with strangers or into another culture as this was an avoidable act of cultural violence.[17] It is argued that sustaining Māori children's cultural connections within their cultural and familial groups supports their identity development and helps to insulate Māori children from the damaging impacts of institutional racism.

It is through this specific paradigm of recognizing familial life that whānaungatanga[18] is expressed and mana enhanced.[19] Integral to this is mauriora, the development of a secure cultural identity, which among indigenous peoples is a prerequisite[20] promoting health, wellness and social capital.[21] For Māori knowledge of whakapapa, through which Māori children learn their specific genealogical story, is the means by which they develop an understanding of who they are, which they can, in turn, pass onto their own children.[22]

A. COLONISATION AND ASSIMILATION

This fundamental worldview of the nature of children was clearly at odds with the English (*Pākehā*)-New Zealand legal paradigm of children. Consequently, the imposition of an Anglo-centric legal system, whereby children were not seen as belonging to the wider *whānau* or *hapū*, contributed to dislocation and discontent at all levels of Māori society. Legislative reform from the Native Land Act 1901 (which required registration[23] of *whāngai* children and its subsequent 1910 amendment which removed legal recognition to *whāngai* placements)[24] saw a further and related process of disempowerment for Māori. Although Māori could formally adopt Māori children and Pākehā could adopt Māori children,[25] it was not permissible for Māori to adopt Pākehā children. The adopted Māori child assumed a new lineage and lost the binding ties that ordinarily exist between a child and his or her parents.[26]

The distancing of Māori from their cultural norms continued with the Māori Affairs Act 1953. The Act removed recognition of Māori customary marriage and confirmed that no Māori since 1909 was able to adopt any "child in accordance with Māori custom."[27] Notwithstanding the passing of the Adoption Act 1955, the adoption of Māori children by Māori remained within the jurisdiction of the Māori Land Court until 1962. Adoptions then took place under the Adoption Act 1955, completing the process of legal assimilation.[28]

The Children and Young Persons Act 1974, [29] the immediate predecessor to the OTA, and the administration and operation of that Act by the (then) Department of Social Welfare continued, and was indicative of, that assimilationist approach. Prior to the 1960s, Māori child welfare was seen as being the responsibility of, and left to, the *whānau*.[30] With the de-population of the rural countryside this changed and drew Māori to the attention of the mainstream welfare authorities.[31] The operation of the 1974 Act, with the removal and placement of Māori children in non-kin placements, conflicted with the belief that children should not be removed or isolated from their *whānau*, causing significant anguish.[32] There was little, if any recourse, at law for families whose children were taken, with "the only control"[33] being provisions inserted in 1977 into the 1974 Act which required decision-makers to have regard to family groups and *whānau* when it came to questions of removal and placement of children. Māori children who were in foster care felt an absolute sense of dislocation when placed outside of their *whānau*.[34]

B. *PUAO-TE-ATA-TU*

The discontent within Māori about what was happening to their *tamariki* and mokopuna[35] was one manifestation of a powerful indigenous renaissance that was then occurring. This was made very clear by the report *Puao-Te-Ata-Tu* (Daybreak),[36] the preface of which records that:[37]

> At the heart of the issue is a profound misunderstanding or ignorance of the place of the child in Māori society and its relationship with *whānau*, *hapū iwi* structures.

In the context of the OTA and its genesis, it is hard to exaggerate the importance and influence of *Puao-Te-Ata-Tu*.[38] This report played a highly significant role in the development of the OTA in crystallising fundamental concerns Māori had about the role they played in society and how that was marginalized in the construction and operation of social policy in respect to children. *Puao-Te-Ata-Tu* had its origins in dissatisfaction with both an original public discussion paper and the Children and Young Persons Bill introduced into Parliament in December 1986. The report highlighted issues (consequences)[39] arising from the colonial settlement of New Zealand and the legacy of institutional racism within the Department of Social Welfare. It noted "several complaints of children being placed with children outside of the kin group intended to meet the child's immediate and material needs but without any (adequate) attempt to find foster parents within the *hapū*[40]" and of *hapū* being rarely consulted, "often as an omission, but more usually through a positive opinion that the *hapū* had no right

to be involved, or because of an exaggerated emphasis on 'confidentiality.'"[41] *Puao-Te-Ata-Tu* named the issue: "Institutional Racism."[42]

Although the Bill and accompanying discussion paper were commended for their enlightened approach to children and their needs, and to the independence and integrity of the family, there was nonetheless significant criticism of its monocultural nature. *Puao-Te-Ata-Tu* noted that in respect of Māori: [43]

> … social work practices in regard to court procedures, adoption and family case work contributed to the breaking down of the whānau system and the traditional tribal responsibilities of the Māori lifestyle… [and with] [D]epartmental foster… frequently seen as insisting on unrealistically high standards… [T]he area of fostering and adoption and the practice of confidentiality caused considerable concern. This not only denied the extended family its traditional rights but often resulted in a child being placed without any information about tribal identity being available for proper consideration. It was also stated that adoptive and foster parents were selected on the Pākehā basis of material values, while the ability of Māori to bring a child up in its own whānau surrounded by tribal aroha, was ignored.

The Government accepted that the spirit and recommendations of *Puao-Te-Ata-Tu* should be incorporated into the Bill.[44]

C. THE AMENDING BILL/THE OT ACT

A significant feature of the Act was and remained its emphasis on family and the imperative to keep children, when possible, within their families. This reflected the concern of Māori arising from their experience of the operation of the Act's predecessors.[45] Durie noted that the Bill,[46] as first drafted, "was felt by many Māori to over-emphasise the paramount interest of the child, ignoring *whānau* (family) rights … [with the Bill being] redrafted to reflect 'the family centred focus', '*whānau* decision making', and 'family orientated practice.'" This was a "philosophical shift" that some commentators thought could "compromise the safety of the child."[47] However, the Act nonetheless retained the requirement that when children cannot be maintained in their birth families, they must have the right to have their sense of continuity and personal and cultural identity maintained and for this to occur in a positive manner. This is for the purpose of protecting the Māori child from the "pervasive and detrimental effects of the dominant Pākehā culture as they enter the care system."[48]

III. THE FAMILY GROUP CONFERENCE

Although there have been significant amendments to the legislation since July 1, 2019, the family group conference remains at the very heart of the OTA. Its operation is central to everything that occurs under the Act in both its care and protection, and youth justice environments. It is the primary way in which the family and extended family group of a child or young person—his or her *whānau*, *hapū* and *iwi*—participate in decision-making when their child or young person is the subject of intervention by the state in the form of either Oranga *Tamariki*, should there be a care and protection issue, or Oranga *Tamariki*, and/or the police in respect of child or youth offending. It has been described as the formal vehicle for collaboration between the state and the family.[49] In 1989 the then Minister of Social Welfare was reported as saying in regard to a case of sexual abuse that he saw the family group conference as saying to the child "your position and your world are secure—those closest to you are ready to listen to you and put things right."[50]

The inherent concept behind the family group conference is that by convening the widest net of members of the child or young person's family, a family group will be formed which is positioned to make decisions for and with the child/young person. This is on the premise that family knows "best" and that the context for resolving child protection concerns is the family group. This

conversation nonetheless takes place within an overarching paradigm set by social workers as they present the issues of concern that have led to the conference being convened.

While the two conferences—care and protection, and youth justice—differ in the process, they serve the same purpose. This is to agree on a plan which addresses the identified concerns that are before the conference and which will make sure that matters are put right to the extent possible.[51] More formally, the FGC is to make such decisions, recommendations, and plans as are in accordance with the principles of the Act and which the conference thinks are necessary or desirable—sections 6, 13, and 258.

The FGC process has been enhanced by amendments passed in 2017 and which took effect as of July 1, 2019.[52] A conference can now be held when a report of concern is received and where it is considered that holding a conference will assist in formulating a plan to help the child, notwithstanding that there are no identified care and protection issues. This makes the FGC a vehicle for delivering support to children and families, where that is perceived as being necessary but where the issues do not reach the statutory definition of the child being in need of care and protection.

When there are formal court proceedings, a lawyer will be appointed to represent the child or young person. This will be a youth advocate where there are proceedings for young people in the youth court (addressing criminal offending) or a lawyer for child in respect to proceedings in the family court. Where a conference takes place and there are no proceedings, care must be taken by the Co-ordinator to address any power imbalance between the family/family group and the professionals. Concerns have been raised over the actual functioning of family group conferences with various suggestions made on how that could be improved.[53]

IV. THE FGC PROCESS

The conference is convened by a Co-ordinator. The position of Co-ordinator is a statutory one established under the Act and will be either a care and protection Co-ordinator or a youth justice Co-ordinator.[54] The Co-ordinator is employed[55] by Oranga *Tamariki* and although the Co-ordinator holds a statutory and ostensibly independent position, he is nonetheless directly accountable to Oranga *Tamariki*.[56] The Co-ordinator is responsible for organizing the conference by widening the family circle and arranging for family and professionals who are involved to attend the conference. The family may also invite support people. In arranging the conference, the Co-ordinator is to make all reasonable endeavours to consult with the family as to date, time, place, and the procedure to be followed at the conference, and, to the extent possible, to give effect to the wishes of the child's family in regard to these. It is unclear to what extent views of the family are taken into account, in terms of the organisation of a conference. The process/procedure of a conference cannot be significantly departed from as this is prescribed by the Act. The ability of the family group conference to regulate its own procedure does not mean it can agree to record details about any non-agreement, or the opinions of individual participants or their differing views. An exception is the views of the child, which must be recorded in the written decision, and if the views are not followed, the reasons for doing so.[57]

Interestingly, while seldomly implemented, there are provisions of the OTA that empower Co-ordinators to enable the family to determine the process of the conference and also delegate some of its key functions to others. These empowering functions, when implemented, would enhance the rights and power of the family group in constructing and individualizing processes that align with their norms, decision-making styles and traditions.

The Act differentiates between those who are "entitled" to be at the conference and those who are information givers. The former are able to participate in the decision-making processes of the conference, and include the child who is the subject of the conference,[58] the parents and guardians or the person having care of the child, a member of the child's family, *whānau* or family group, the lawyer for child, and youth advocate. The information givers are there for that specific purpose only. This provision has been strengthened since July 1, 2019 as OT are required to enter into

partnerships with *iwi* whereby *iwi* will have the responsibility for arranging the FGC process and engaging the Co-ordinator.

The family group conference takes place in three stages. In the first stage of information giving and sharing, the social worker outlines the issues of concern and needs for the child or young person, followed by information sharing by other professionals and agency representatives—resulting in a comprehensive portrait to address the well-being of children. The information provided to the Family Group Conference at this initial stage is not "confidential" as it is known by people outside of the FGC and is part of the external record held by those whose concerns have led to the FGC being held.

The second stage is private family time. Here, the family group has time alone to consider the information and decide whether there is agreement that a care or protection[59] order should be made (reflecting that the child is in need of care and protection or has committed the offence charged). If there is no agreement, then the conference ends. As with all stages of the conference, this family time is also privileged and confidential. Within this setting, however, information may be shared by and between family members that is not known to the excluded professionals. The conference here becomes a forum where family issues can be aired and addressed. This needs to be seen in the context of the collectivist nature of particularly Māori families which see issues related to the family as "family business" in contrast to a more Pākeha/English approach who tend to view these as "private" matters. There are no limits on what information can be provided by family members during the family time. The expectation is that the discussion was and will remain "confidential." However, there is no way of knowing how much further discussion occurs within the family following the conference. If there is agreement that the concerns outlined by social workers are present, then the family group develops an initial plan that will address the care and protection/youth justice concerns.

The third stage, plan finalization, occurs with the family group presenting their plan designed to address the statutory agency's concerns to the social worker and professionals. The FGC Co-ordinator facilitates the group to reach a consensus on the plan. This can involve further discussion of the information shared during the family time and which the family have agreed can be shared with those entitled professionals and the FGC Co-ordinator. Discussion of the plan is confidential, and it is only the agreed plan which is disclosed to the court. Offers, statements and information shared during this part of the process are privileged. Agreement by consensus is required. The plan must be agreed to by those who are entitled to be present as specified by OTA.[60] The Co-ordinator must prepare a written record of the agreement. This is a statutory requirement found in section 29 (3) of the Act. The Co-ordinator has no power to record matters upon which there was disagreement.

V. ISSUES OF PRIVILEGE AND CONFIDENTIALITY WITHIN THE FGC

The pivotal provision in the OTA is section 37. Section 37(1) provides that no evidence shall be admissible in any court, or before any person acting judicially, of *any information, statement, or admission disclosed or made in the course of a family group conference*. This restriction does not apply to a record made by a care and protection Co-ordinator under section 29(3). To be covered by the privilege, the item or subject of concern must involve information, statement or admission. It does not extend to embrace behaviour. Equally, if it is information, a statement or admission that was not disclosed within the course of the FGC, it is not covered. Thus, discussions immediately prior to the FGC commencing or immediately after it has concluded are not protected. The privilege does not apply to information or reports given to the conference by information-givers such as psychologists or medical professionals who may provide a report identifying a child's emotional or psychological needs or of injuries that a child has suffered. Using a purposive interpretation of section 37, the section is aimed at any information, statement, or admission which comes to light for the first time during a family group conference's deliberations.[61]

A substantive judicial comment on the operation of section 37 is:

> "The purpose of s 37 is to ensure that all parties attending a Family Group Conference may speak candidly and freely to the Conference, knowing that … admissions, or statements made against their interests cannot be brought up in later proceedings A purposive interpretation of the section leads to a conclusion that it is designed to promote open, honest discussion during the Conference in order to achieve solutions for children who are in need of care and protection.[62]

The court in that same case then went on to note that the section is restricted to the admissibility in a court of actual disclosures made at a conference, reflecting the need for frank discussion by entitled participants of the issues. The nature and scope of the privilege was further explored with the observation that the privilege accorded to the FGC does not apply to information or reports by those present at the conference for that purpose:

> [12] The section is not designed to suppress evidence deriving from sources outside the Conference, but which may have been conveyed to the Conference as part of the 'information giving' exercise. Otherwise, any report to the Conference by a doctor, school teacher, policeman or neighbour of the facts which have led to the concerns arising for the child would, for all intents and purposes, vanish, never to be repeated if for example it became necessary to litigate an opposed application for declaration, or to review orders and plans prepared in terms of the Act, once a declaration had been made.
>
> [13] The phrase 'disclosed or made in the course of' refers to information unveiled, or admissions made in the context of the Conference.
>
> [14] If that information is available from an extraneous source it is of course admissible. If for example a youth offender admitted culpability for offences, in the course of a statement to the police, and then did so again in the course of the Family Group Conference, his admission to the police would not become inadmissible simply because he had repeated the admissions in the course of the Conference.
>
> [15] Similarly here, evidence of observations and opinions, reduced to writing and which are prepared for a variety of purposes, including presentation to a Family Group Conference, are not thereby inadmissible or barred from use for the other purposes."

The privilege therefore does not apply to actions of a person within a conference that may constitute an offence against the criminal law or provide a basis for intervention by the family court under the Family Violence Act 2018.[63] Thus, if an assault occurs in an FGC, that can be the subject of criminal proceedings or result in proceedings under the Family Violence Act 2018. In *L.D.H. v. S.H.*,[64] the court was required to determine whether an applicant[65] for a protection order under the Domestic Violence Act 1995[66] could rely on evidence of both being physically "charged at" and verbal threats by family members as to her safety that occurred within the conference (but with the issues relating to those actions and statements not related to its purpose). The conference concerned the applicant's granddaughter. The applicant had made an audio recording of the FGC. The court held that in the particular family context the threats were uttered in the course of the FGC and thus were covered by the privilege. There were ongoing tensions within the *whānau* about matters outside of those which were the subject of the conference, which added to the likelihood that discussion of whether a child was in need of care or protection would be heated. The judge was satisfied that the threats were simply part of an inflammatory exchange and did not meet the standard required so as to amount to a criminal offence which would have taken the threats outside the bounds of the statutory privilege.

What emerges from the case is the recognition of a necessary balancing exercise: on the one hand that the discussion can get heated and tempers frayed, which can include threats of assault and worse but which will never be acted upon in literal manner and, on the other hand, a need to ensure that the privilege is not used to protect or hide criminal behaviour or family/domestic abuse. The

nature and extent of what is done or said could, from a public policy perspective, result in the protective cloak being lifted, so that where words spoken at a family group conference amounted to gross domestic violence or worse, evidence of that abuse might also be admissible in a domestic violence application.

Thus, "behaviour" within the FGC is not covered by the Act, not being information, statement or admission, and evidence of it is admissible in a court, if that was the consequence. This also reflects the situation where (now repealed) section 18 of the Family Proceedings Act 1980 provided a statutory privilege for counsellors and is now reflected in section 14 of the Family Dispute Resolution Act. A counsellor could give evidence of where a person was and of that person's state of mind as distinct from statements that may have been made during counselling. Similarly, evidence could be given of matters of fact that were not of information, statement or admission made in the course of counselling.[67] The OT website notes that "many people will only speak freely if they believe the information they share will not be repeated anywhere else" and where actions of a conference participant give rise to an offence being committed within the conference—an assault for example—"it's still a crime if someone assaults another person at a conference. However, nothing that is said at the conference can be used as evidence in court against them." This statement fails to appreciate the nuances of the law section 43 as explained by the associated caselaw.

Family group conferences therefore at times will address allegations that go to the very heart of family life—the physical and sexual abuse and neglect of children. It is likely to be inevitable that when a conference comes to hear the narrative of concern, that tension between family members will be present and the atmosphere within the conference will be similarly tense. It is the duty of the Co-ordinator to manage those dynamics, as was captured by the court in *L.D.H. v. S.H.*[68]

> Parliament can have expected that topics that arise in family group conferences will sometimes arouse strong feelings among participants. The substance of the concerns can be incendiary. Allegations of neglect, abuse or inadequacy are hurtful, even if true. Unexpected revelations or allegations can evoke strong responses. Subject of perceptions and misperceptions are likely to be aired. Where there are questions about whether a person is fit to be a caregiver, reactions can be visceral.

Hence, the need for that statutory privilege to ensure that the FGC functions as intended and within a structure of privacy, enabling necessary free and frank exchanges about the issues of concern touching upon the child whose wellbeing is at the centre of the conference.

Conceptually, there is tension whether the privilege conveyed is so wide as to prevent subsequent inquiry by social workers or police to investigate issues arising from a statement made at a conference that may impact on the protection and welfare of a child or young person. The welfare and best interests of the child are such that it must trump the presumption of privilege. Nonetheless, any subsequent inquiry that leads to formal intervention must be proven on the basis of evidence other than that, obtained from a family group conference. The section 37 restriction should also not be so narrowly interpreted so that the protection applies to statements which are not related to the statutory functions of the family group conference, for so long as what was said occurred within the conference. Therefore, if there is an allegation made that an outcome was achieved by coercion, that is a justiciable reviewable decision, and must be capable of being supported by evidence of what took place. The public interest in the confidentiality of the process must be balanced with the public interest in due process and in the system not being seen to support oppression.[69] However, in the case *Re the B Children*,[70] it was held that section 37 prevented the court from going behind the official record of the family group conference and listening to the parents' allegations that pressure had been placed on them to agree.

It is an offence under the Act to publish any report of the proceedings of the conference by any means, (including social media).[71] If this occurs, prosecution can occur, and a consequence could see a person fined up to NZ $2000 for any individual who commits that offence. The only exception is publication that relates to the collection of statistical information relating to conferences generally or the publication of the results of bona fide research relating to conferences.

VI. CHILD WELFARE LEGAL CONTEXT IN THE UNITED STATES

Since approximately 1935, the U.S. federal government has enacted laws and regulations that provide for the protection of children who must be removed from their parent(s) care due to neglect, abandonment or abuse. The U.S. Department of Health and Human Services, Children's Bureau provides information about programs and develops policies which guide each state in meeting those federal requirements. Specifically, the Children's Bureau "supports states (plus the District of Columbia, Puerto Rico, and the Virgin Islands) to provide board and care payments for eligible children who are under the supervision of the state and placed in foster family homes or childcare institutions that are safe and licensed. The program is authorized by Title IV-E of the Social Security Act, as amended, and implemented under the Code of Federal Regulations (CFR) at 45 CFR parts 1355, 1356, and 1357. The program's focus is children who are eligible under the former Aid to Families with Dependent Children program and who were removed from their homes as the result of maltreatment, lack of care, or lack of supervision."[72]

Recognizing the voluminous and compelling research indicating that children who are removed from the custody of their biological parent(s) had much better outcomes when they were placed with family (kinship placements),[73] the United States Congress passed one of the most important bills addressing gaps within the U.S. foster care system. That new law, Public Law 110-351 is titled, "Fostering Connections to Success and Increasing Adoptions Act of 2008."[74] There are many provisions contained within this legislation. However, one of the most significant is the requirement that once a child or youth is removed from his/her home, states must implement a process to identify, locate and notify "relatives."[75]

Fostering Connections, (hereinafter "The Act") is a comprehensive measure designed to improve outcomes for children in foster care by providing networks and support for kinship guardians, promoting permanent family placement, and enhancing health care and education services for children in foster care. In addition, the law extends federal support for young adults in foster care to age twenty-one years.[76] Subpart 1 of the Act includes Section 103: Notification of Relatives which states:

> … within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to the following relatives: all adult grandparents, all parents of a sibling of the child, where such parent has legal custody of such sibling [233], and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence.[77]

The notice provided to the relatives must include the following: (1) that the child has been or is being removed from the custody of the parent(s); (2) an explanation of options the relative has under federal, state and local law to participate in the care and placement, including any options that may be lost by failing to respond to the notice; (3) the requirements to become a foster family home and additional services and supports that are available for the children; and (4) if applicable, kinship guardianship assistance payments.

The Act and other federal legislation or policy, fail to address or provide specific procedures for any type of "family engagement" process once family members have been notified and they express an interest in becoming involved with planning and/or placement for the youth.[78] The U.S. Department of Health and Human Services published a "Program Instruction" memorandum in 2010, two years after the passage of The Act.[79] This memorandum included, among other things, the following paragraph:

> We encourage the agency to develop protocols for caseworkers that describe the steps that should be taken to identify and notify relatives when a child is removed from his or her home. Further, **we encourage the agency to go beyond this requirement to specify ways to identify and work with relatives when the agency first becomes involved with a child at risk of removal**.[80] [emphasis added].

Other U.S.-based organizations published resources to further assist those working with relatives once family members had agreed to be involved.[81] These additional resources suggest that child welfare professionals have many options when meeting with relatives, including the use of family group decision making, team decision making, family team conferencing, permanency teaming, and "other similar family group conferencing meetings…."[82]

VII. THE IMPLEMENTATION OF THE FGC AND OTHER RELATED APPROACHES IN THE UNITED STATES

In the United States, the implementation of the family group conference in some communities preceded the 2008 Act. A number of public child welfare agencies in the United States began FGC implementation efforts in the mid-1990s, without a legal framework or mandate. Initially most of these child welfare agencies viewed the family group conference as an innovative or best practice, with some instituting policies and procedures to support the implementation of FGCs. In New Zealand, as noted above, this legislation lays out the rights, obligations, powers and entitlements that guide the FGC, with all children entitled to the statutory agency organizing their family group into a decision-making forum. Vacant that type of structure, U.S. child welfare agencies have relied on procedures or a new practice paradigm with committed practitioners to install the family group conference.[83] With insufficient capacity to meet demands, this approach has resulted in social workers and other agency representatives serving as gatekeepers to which families are referred to receive an FGC, based on their judgments of "appropriate" families, the perceptions of FGC effectiveness,[84] and other factors such as a worker's time in a current position, perceptions of supervisor competence and leadership support.[85]

The family group conference was envisioned as a technical tool—a specific meeting process. However, what was missing from most implementation efforts was a legal foundation that mirrored the confidentiality and privilege protections that were embodied in New Zealand laws. In addition, the United States' implementation of the FGC was missing an understanding of how the FGC challenged child welfare system orthodoxy and for the FGC to be in alignment with the values of the approach required the deconstruction of dominant processes (such as professional risk and safety assessments) and structural changes within the child welfare and court systems. The objectives of inclusivity, family participation in decisions about their children, building social and community networks, self-determination, equity in service access, and privileging the voice of family groups proved difficult to achieve when they are solely dependent on agencies and courts that have patriarchal and oppressive structures and tendencies.

In the early 2000s, other family meeting models emerged, such as team decision making, family team meetings, and rapid planning conferences. In common, these models required child welfare agencies to hold family meetings in expedited timeframes, within twenty-four to seventy-two hours of the referral. Minimal efforts, if any, were made to widen the family circle for decision making. In addition, independent professionals were hired to facilitate what were typically scheduled to be no longer than two-hour meetings. With significant personnel and financial resources, agencies constructed procedures that required one of these meetings within days of an imminent placement or before a placement change with the intent of decreasing unnecessary placements or placement moves. While these other family meeting types proliferated, the FGC withered as a decision-making construct. The objectives undergirding the FGC also stalled, as did the notions of the extended family group having a say in the lives of their children, the importance of social networks, and self-determination, since these are not embodied in these other models. Ultimately any model that was promised to increase the use of kinship care, without the provision of any kinship supports, was embraced, most likely because it was seen as a way to conserve government resources and less so because there was a desire to genuinely involve family groups in decision making.

Thus, while many states were early adopters of family engagement models, the 2009 Act spurred further growth with most, if not all, states incorporating one or more of the family engagement

models once relatives become involved; or they developed their own processes to involve and plan with the family.[86] Through their state representatives, many have passed legislation to ensure these processes are followed by those mandated to work with families.[87]

For example, in 2012, the California Governor signed legislation which markedly changed the state's implementation of child welfare services.[88] After meeting the federal and state mandates to identify and notify relatives, these changes included a requirement that the child welfare agency convene "a group of individuals that includes the child or youth, family members, professionals, natural community supports and other individuals identified by the family who are invested in the child, youth and family's success."[89] The team is identified as a "Child and Family Team" and the meeting is designated as a "Child and Family Team Meeting." A fundamental principle of the Child and Family Team meeting is to involve every member of the team in an ongoing process of assessing, planning, intervening, monitoring and refining services for the youth and family. The intent is to ensure that those children who must live apart from the biological parents, live in a permanent home with committed adults who can meet their needs, while at the same time, building a network of support for the family and youth.[90] The first meeting is mandated to occur within sixty days of removal from the youth's biological parents.[91]

Wisconsin's Child and Family Team Meetings provides another example policy that guides the child welfare agencies in engaging families in case planning. These meetings are to be conducted using a strengths-based, solution-focused approach that incorporates the values and principles of family centeredness, respectful interaction, cultural responsiveness, and partnership. The size, composition, function, and goals of the family team must be driven by the underlying needs and safety concerns of the family. The team must be identified by the family and consist of extended family members, the caseworker, informal/formal supports and service providers. Ideally, all of the identified team members are committed to the family's goals and invested in change. Initial Child and Family Team Meetings should occur during the assessment and planning phase of the case process.[92]

VIII. ISSUES OF CONFIDENTIALITY AND PRIVILEGE IN THE UNITED STATES

Even with state specific laws and policies to identify, notify and engage relatives, and require the family to determine who participates as part of the "family team," issues of confidentiality and information sharing have emerged in "family meeting" contexts. Child welfare agency professionals struggle with issues of confidentiality as well as with what information can be shared with those attending these "family meetings." These struggles begin immediately when professionals initially reach out to family or when family members contact the state child welfare agencies.[93]

Legal scholars have suggested that two federal child welfare laws—PL 96-272 and the Child Abuse Prevention and Treatment Act—have provisions that would enable information sharing to extended family members in family meeting contexts.[94] While states' interpretation of CAPTA vary significantly, the "need to know" provision may provide a legal foundation that would permit disclosure of case information to extended family participating in family meetings.[95] As extended family members become classified as part of multi-disciplinary teams or gain formal status, they would be entitled to receive case information, as their involvement in family meetings would be seen as fulfilling the functions of CAPTA in improving assessment and service planning.[96] In other words, they would "need to know" the agency-held information about the child and family's involvement with government agencies and community-based providers related to the child welfare concerns to be able to make well-informed decisions.

Some states have sought to address these specific issues with the passage of statutory mandates and/or local policies. For example, California passed additional legislation and added a statute which addressed the issue of confidentiality *within* the Child and Family Team meeting to protect communications within the meeting and encourage transparent and robust conversations. Specifically, that statute outlined that the information shared among the team shall be received "in

confidence for the limited purpose of providing necessary services and supports to the child or youth and family and shall not be further disclosed except to the juvenile court with jurisdiction over the child or as otherwise required by law."[97] It further provided that those with the legal power to consent shall sign an authorization to release information to team members as well as language that specified that the information shared within this meeting "shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law." The only limitation is when the team deems that disclosure of some information would present "a reasonable risk of a significant adverse or detrimental effect on the child's or youth's psychological or physical safety." If shown, the information shall not be disclosed. The goal of this legislation was to promote more effective communication to develop a plan to address the needs of the youth and family.[98]

Other organizations have sought to provide additional guidance for child welfare workers and judicial officers/judges who are required to oversee the agencies efforts to find and involve family and who may be worried about even the initial sharing of confidential information.[99] The Judicial Guide to Implementing the Fostering Connections Act addresses concerns related to the Act's requirement to notice relatives.[100] This publication indicates that:

> Federal, state and local laws require child welfare agencies to keep certain information confidential. The requirement that states provide notice that a child is entering or has entered foster care supersedes and preempts those provisions. However, only the information necessary to comply with this federal requirement can be shared. "There is no requirement to share the circumstances leading to the removal in the initial notice. If the child is placed with the relative or the relative becomes involved in the child's care, additional information may be shared as appropriate. As in most aspects of child welfare practice, a determination of what can be shared will depend upon the individual circumstances, as well as local, state and federal law.[101]

In lieu of additional guidance or state/local policies that further delineate confidentiality and privilege in information sharing in family meeting contexts, child welfare agencies have embedded a number of practices that create informal protections. Before family meetings, some child welfare agencies have developed release forms that, upon parent/guardian signature, allow them to share the child abuse and neglect concerns with anyone who has a relationship to the child(ren) for purposes of encouraging and preparing them to participate in family meetings. During the meeting, these practices include: having family meeting participants sign confidentiality forms before the meeting begins to encourage participants to keep the discussions during the family meetings confidential; and asking child abuse and neglect mandated reporters to self-identify so that participants can make informed decisions about what information to share in their presence. Ultimately, both the formal policies and informal practices intend to create family meeting forums that ensure that the assembled family group is provided the agency-held information, agrees to keep the conversation within the family meeting confidential, and understands the context of privilege so that they can determine what information they wish to share during the forum.

IX. CONCLUSION

The New Zealand law that enshrined the FGC as a construct in child welfare and youth justice decision-making has entitlements and intricacies that create the opportunity for inclusive, transparent and protected forums. Given that the law protects entitled members' participation in the FGC and lays out the provisions related to confidentiality and privilege, it is likely that these protections facilitate family groups sharing and discussing more freely, melding the information shared by the agency and using the private information held by their family group in their decision-making. This, it is hypothesized, leads to family groups making the most well-informed and protective decisions.

In comparison, the implementation of confidentiality and privilege notions in family meeting practices in the United States, are heavily dependent on the implementing State or local jurisdiction. While this article provided a few state policy examples with information sharing protections, before family meeting processes are initiated, it is important that family group participants have a full understanding of what, if anything that is shared during the family meeting, can be used by whom and under what circumstances. Otherwise, a system reform strategy, like the FGC or other family meeting type, that is intended to facilitate a decision-making process that is comprehensive and transparent, may compromise the privacy of family members and expose family members to additional inquiries into their private lives. Ultimately, the lack of detailed confidentiality and privilege provisions may undermine the intent of family meetings which was to facilitate a free exchange of information so that the plans developed with and on behalf of children take into account family-held knowledge and wisdom.

ENDNOTES

1. It is notable that the when the Act was changed on July 14, 2017, the word "families" which was in the original 1989 legislation, was removed. While seemingly a minimal change, this likely represents an attempt to shift the focus away from families to the child, even though the family group remains central to the FGC.

2. The Act formally deals with children (defined as persons under the age of fourteen years) and young persons who are generally defined as being over the age of fourteen years and under the age of eighteen years. There are exceptions to the upper age depending on the context. The expression "children" is used in this article.

3. Oranga Tamariki Act 1989, ss 4A, 6 (N.Z.).

4. *Id*. at ss 4, 4A, 5, 13.

5. *Id*. at ss 5, 13.

6. *Id*. at s 13(2)(b)(ii) (referencing a Māori child and meaning their intrinsic worth, well-being, capacity, and ability to make decisions in their own life).

7. *Id*. (defining the multi-generational kinship relationships that help to describe who a person is in terms of their *mātua* (parents) and *tūpuna* (ancestors)).

8. *Id*. (meaning in relation to a person—

(a) the purposeful carrying out of responsibilities based on obligations to *whakapapa*;

(b) the kinship that provides the foundations for reciprocal obligations and fifteen responsibilities to be met; and

(c) the wider kinship ties that need to be protected and maintained to ensure the maintenance and protection of their sense of belonging, identity, and connection).

9. *See* Oranga Tamariki Act 1989, s 19 (N.Z.) (discussing referrals to FGC and the FGC process in section 19). The exception to this is where a social worker considers that the situation for a child is so grave that immediate court action is required to safeguard that child. An order under the Act may be made by the Family Court. However, the next step must be the FGC.

10. Allan Cooke, *State Responsibility for Children in Care* (Unpublished PhD Thesis, University of Otago, December 17, 2013) (on file with author) (last visited July 26, 2019). https://ourarchive.otago.ac.nz/bitstream/handle/10523/4796/CookeAllanJ2014PhD.pdf?sequence=1&isAllowed=y

11. Ministry of Soc. Dev., The White Paper for Vulnerable Children Vol. I, at 6 (2012) (referring to this dynamic and stating "[w]e want to make that: Māori view of children a reality today. Not just something we say, and not just for Māori").

12. Jacinta Ruru, *Kua Tutū toPpuehu, Kia Mau: Māori Aspirations and Family Law Policy*, in Family Law Policy in New Zealand 63 (Wellington, 4th ed. 2013); Dame Joan Metge, *Ko Te Wero Māori – the Māori challenge*, in Family Court, Ten Years On 21–28 (Paper presented to New Zealand Family Law Conference New Zealand Law Society, 1991); Erica Newman, *A Right to Be Māori? Identity Formation of Māori Adoptees* 14 (Unpublished MA Thesis, University of Otago, 2012).

13. *See*, *e.g*., Nicola Atwool, *Attachment and Post-Intervention Decision Making for Children in Care*, J. of Child Centred Prac. 6 (1996); Metge, *supra* note 12; Newman, *supra* note 12. John Rangihau, P□ao Te-Ata-T□ (Day break) The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare 74–75 (Wellington, 1987). The committee was asked to "advise the Minister of Social Welfare on the most appropriate means to achieve the goal of an approach which would meet the needs of Māori in policy, planning and service delivery in the Department of Social Welfare. Ruru, *supra* note 12, at 63 (noting that children are "*ātātou tamariki*" (the children of many of us) as well as "*ā tāua tamariki*" (the children of two)).

14. Nicola Atwool, *Who Cares? The Role of Attachment Assessments in Decision-making for Children in Care* (PhD Dissertation, University of Otago, November 2008), at 210 (stating, "The identity of Māori children is inextricably linked to

whakapapa (genealogy) and this, in turn, links them to specific places, symbolised by mountains and rivers. Whether living in this locality or not, this is their *Tūrangawaewae* or primary place of belonging.") Hirini Moko Mead, Tikanga Māori: Living by Māori Values (Huia Publishers et al. eds., 2003); Ruru, *supra* note 12 at 47–80.

15. Rangihau, *supra* note 13, at 30. The New Zealand Law Commission and its report, *Adoption and Its Alternatives: A Different Approach and a New Framework* (NZLC R65, 2000) noted at 80 in respect of adoptions and Māori that for the purpose of adoption children, once the order is made, are treated as children of the adoptive use and ceased to be children of the birth parents. The Adoption Act therefore is seen to be an imposition on customary rules relating to lines of descent. The commission went on to note that nonetheless some participants at a hui convened around New Zealand by the Commission to discuss adoption argued that no law can break the links of blood in Māori tradition, so although the Adoption Act alters familial relationships in law, does not necessarily do so in fact, as Māori children adopted with multi-families know their family connections and relationships." *See also* Ruru, *supra* note 12, at 72–74.

16. This occurred when a child was not raised by its parents but by relatives, a system of care not involving permanent placement of the child nor preventing the child from having access to biological parents or to their history. The origin of *whāngai* derived from *Māui-tiki-ā-Taranga* who was thought to be still-born, cast into the ocean but found by a grandparent who raised him, becoming his *mātua whāngai* (feeding/nurturing parents). Newman, *supra* note 12, at 13.

17. Newman, *supra* note 12, at 14–15.

18. Richard Benton, Alex Frame, & Paul Meredith, Te Mātaʻpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law 524 (Te Mātāhauraki Research Institute et al eds., 2013). This is the state or circumstances of being a relative; that is kinship and the rights, responsibilities, and expected modes of behaviour that accompany that relationship. Today, it is used to cover, when appropriate, kin-like reciprocal relationships among people generally.

19. Ruru, *supra* note 12, at 70.

20. Mason Durie, Launching Māori Futures 148 (Huia Publishing et al. eds., 2003). The absence of such an identity is associated with poor health (especially mental health).

21. Emily Keddell, *Cultural Identity and the Children, Young Persons, and Their Families Act 1989: Ideology, Policy, and Practice* 32 Soc. Pol'y J. of N. Z. 49–71, at 50 (2007). Benton, *supra* note 18, at 239 (observing that the concept is "difficult to grasp because it encapsulates two related but distinct ideas; the life principle or essential quality of a being or entity, and a physical object in which this essence has been located.").

22. Newman, *supra* note 12, at 16.

23. Rangihau, *supra* note 13. Registration brought advantages in securing benefit payments, allowances, housing opportunities and succession rights in Māori land.

24. Newman, *supra* note 12, at 23. *Whāngai* placements still occur of course. The 2012 decision of the Family Court of a matter involving a *whāngai* placement *PED v MHB [Whangai: Final parenting order]* 2012 NZFLR 35. Paragraphs [4]–[12] contain a useful summary of *whāngai* and its use. The attachment paradigm was determinative. *See also*, *T v T*, [2007] NZFLR 307. The court respected a *whāngai* placement that had subsisted for two years (the child at the time of the judgment was aged four years). It did so expressly subject to the welfare and best interest test set out in ss 4 and 5 of the Care of Children Act, the private law statute governing relationships between children and those who care for them.

25. Such adoptions occurred with parental consent, but not that of the child's community.

26. Rangihau, *supra* note 13.

27. Rangihau, *supra* note 13, at 75.

28. Rangihau, *supra* note 13, at 75–76.

29. Similarly, the general welfare system—as manifested by the Social Welfare Act 1971 and the Social Security Act—was the subject of significant criticism by Rangihau and his committee in Puao-Te-Ata-Tu (day break). The welfare system was part of a system of institutional racism that ignored and froze out the cultures of those who were not of the majority. For minorities (Māori) to participate, Māori values and systems had to be subjugated to the dominant Pākeha culture. Despite recent statutory changes, the "institutional structures …are so heavily weighted in favour of *tikanga pākehā* and against *tikanga* Māori.

30. *See*, *e.g., PED v. MHB [Whāngai: Final parenting order]* 2012 NZFL 35 (2012). The Court in discussing the circumstances where *whāngai* was used, refers at paragraphs [10] and [11] to risk situations for the child due to parental mental health and/or alcohol issues or where there are accepted or known risks to the wellbeing of a child or particular whānau and where those risks are internal to the whānau. In both situations either the whānau or the "wider whānau" may intervene. This case is indicative of situations where there is an uneasy merging of tikanga Māori and statute law. The *whāngai* placement is ultimately challenged by the birth parents who seek return of the child; the caregivers refuse to do so and the case moves into the Family Court. *See also*, *PRR v LRN & RNP* (FC Taupo, FAM 2008 -069 -309 - 29) (2011). At paragraph [83] the Judge opined: "care arrangements are not about possessory rights. Parents have responsibilities, rather than rights. Whilst I am aware of Ms. N. and Mr. P.'s anguish and hurt at their decision to give TK to Ms. R. as a *whāngai* child, to return TK to their care is not the answer from TK's perspective, insofar as her welfare and best interests are concerned."

31. The contrast is made with the experience of aboriginal societies in Canada, Australia and the United States, where forced removal of children had long occurred. With the move of Māori to the cities, that same process now occurred.

32. Mike Doolan & Marie Connolly, *Care and Protection Capturing the Essence of our Practice* (last visited February 24, 2013) http://www.practicecentre.cyf.govt.nz/practice-vision/care-and-protection/capturing-the-essence-of-our-practice/care-and-protection-capturing-the-essence-of-our-practice.html; This is notwithstanding the 1977 amendments to the Children

and Young Persons Act 1974. These introduced for the first time provisions into legislation requiring social workers and the Court to have regard to familial groupings.

33. Neil Johnstone & Rod Hooker, *The Law Relating to Foster Care in New Zealand*, [985 N.Z. L. J. 160, 161. These were ss 4, 4A, 4B and 4C of the 1974 Act. The comment was made by the authors that in their research the provisions "are unique to the New Zealand legislation." The expressions "family group" and "whānau" were used in what were provisions redolent of the far more sophisticated provisions set out in s 13 of the Act. The article, which ran over two instalments of the New Zealand Law Journal, also provided a useful discussion of relevant case law with the emphasis on issues for foster parents given their absence of formal legal status and notwithstanding that the children may have been with those foster parents for a number of years. The article notes (at 164) that in time the Director-General began supporting foster parents to seek legal status. Under the 1974 Act, children could be placed with foster parents under different regimes: firstly, placed by the Director-General of Social Welfare, secondly, by voluntary agencies (usually the church affiliated social services), and thirdly, as a private arrangement between friends and relatives. Children could be placed with the Director-General in two ways: by agreement between the Director-General and the parents, with the duration of the agreement being open-ended, but set administratively at three years. There could be successive agreements. The second pathway was by order of the court. These placements would be sustained by an order for guardianship. To have a child returned, a parent had to apply to the court to cancel that order. The preponderance of cases referred to indicate the court looking to the issue of psychological attachment as being the significant factor. It should be noted as well that it was not possible to make an application for access under the 1974 Act. *See Cunningham v. D-GSW* 4 NZFLR 129. Finally, of course there were no statutory reviews of guardianship orders taking place.

34. Ross MacKay, Children in Foster Care: An Examination of Case Histories of a Sample of Children in Care, With a Particular Emphasis on Placements of Children in Foster Homes 8, 59–81 (Department of Social Welfare, 1981). The example is given of fifteen-year-old Brian. He had seen his birth family only once (it is not said over what period of time); Brian had twenty-seven placements and had been to nineteen different schools.

35. Children and grandchildren.

36. Rangihau, *supra* note 13.

37. Rangihau, *supra* note 13. This identified, as previously noted, the fundamental difference between Māori and non-Māori as to how children are perceived: the Māori child is not to be viewed in isolation or as part of the nuclear family.

38. This is not to overlook the agitation and work that occurred beforehand. For example, in 1984 the Women Against Racism Action Group, comprising staff of the Department of Social Welfare in Auckland, published a report on institutional racism in their workplace. As a result, the government later undertook to respond better to the needs of Māori. Robert Consedine, *Story: Anti-Racism and Treaty of Waitangi Activism- Organising Against Racism, 1970s to Early 21st Century*, in Te Ara-The Encyclopedia of New Zealand 4 (2011) (last visited October 4, 2019) http://www.teara.govt.nz/en/anti-racism-and-treaty-of-waitangi-activism/page-4. Ranginui Walker, Ka Whawahi Tonu Matou: Struggle Without End 277–81 (Penguin, Auckland, 2004). Walker notes that the Women Racism Action Group reported that a survey of staff in the Auckland (Tamaki-makau-rau) region, Pākehā outnumbered Māori by 15:1 whereas the national average was 9:1. Ninety-nine percent of staff spoke English, three percent Samoan and two percent Māori. The imbalance in ethnic composition meant that there was no correlation to the client group. There was a significant bias in this respect. The processes of staff recruitment, training and promotion were all imbued with a Pākehā paradigm.

39. *See* Rangihau, *supra* note 13, at 57–79.

40. Rangihau, *supra* note 13.

41. Rangihau, *supra* note 13.

42. Rangihau, *supra* note 13 at 46, 77.

43. Rangihau, *supra* note 13.

44. Fiona Cram, Safety of Subsequent Children: Māori Children and Whānau: A Review of Selected Literature (Families Commission January, 2012). Cram notes that Te Punga, the departmental response to Puao-Te-Ata-Tu, was the subject of scepticism by many Māori. Te Punga was said to symbolise an anchor of departmental policy building on the momentum created by Puao-Te-Ata-Tu. *See* Department of Child, Youth and Family Services, Te Pounamu, manaaki tamariki, manaaki whānau 10 (Wellington, 2001). The concern expressed was that this anchor would operate to prevent the probability of the canoe of Puao-Te-Ata-Tu being allowed to move anywhere. There was a realisation by iwi that the Crown would not deliver on its stated commitment to partnership with iwi or to the departmental endorsement of the principal of whakapakari whānau.

45. The Child Welfare Act (N.Z.) (1925); The Children and Young Persons Act (N.Z.) (1974). The 1974 Act consolidated what had become an entrenched child welfare system. *See also* Doolan, *supra* note 32.

46. The Children and Young Persons Bill (N.Z.) (unenacted bill).

47. Durie, *supra* note 20, at 132.

48. Emily Keddell, Cultural Identity and the Children, Young Persons, and Their Families Act 1989: Ideology, Policy and Practice in Social Policy Journal of New Zealand: Issue 32, (Nov 2007) at page 50.

49. Bartlett. *An Unusual, and Intensely Private, Beast*, 21 Social Work Now 33 (2002), https://www.westlaw.co.nz/maf/wlnz/app/document?docguid=I51922cd7e04e11e08eefa443f89988a0&&src=rl&startChunk=1&endChunk=1&snippets=true&originates-from-link=false&isTocNav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&extLink=false#anchor_I198c987ae04e11e08eefa443f89988a0 (as cited in Nessa Lynch & Pauline Tapp, Brookers Family Law II (2019))

50. The then Minister of Social Welfare, the Hon Dr Michael Cullen, cited in Westlaw Online, https://www.westlaw.co.nz/maf/wlnz/app/document?docguid=I51922cd7e04e11e08eefa443f89988a0&&src=rl&startChunk=1&endChunk=1&snippets=true&originates-from-link=false&isTocNav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&extLink=false#anchor_I198c987ae04e11e08eefa443f89988a0 (as cited in Nessa Lynch & Pauline Tapp, Brookers Family Law II (2019))

51. Paora Moyle, *From Family Group Conferencing to Whanau Ora: Māori Social Workers Talk About Their Experiences* (Unpublished MA Thesis, Massey University, 2013) (on file with author).

52. Oranga Tamariki Act 1989, s 18AA.

53. Child Youth and Family, Final Recommendations on Improving Family Group Conferences to Achieve Better Outcomes for New Zealand's Most Vulnerable Children (Ministry of Social Development, 2013).

54. Oranga Tamariki Act 1989, s 254(2).

55. The Act also provides that they may be employees of designated approved services.

56. Where the co-ordinator is an employee of an approved service, he or she must perform his/her duties independently of his/her employer and must have regard to formal guidance for co-ordinators issued by the Chief Executive.

57. *Confidentiality and the Family Group Experience*, Oranga Tamariki Ministry for Children (last visited July 27, 2019), https://practice.orangatamariki.govt.nz/our-work/interventions/family-group-conference (last updated January 7, 2019).

58. The child/young person will of necessity always be present at a youth justice conference. The converse is not necessarily so for a care and protection conference—assuming the child was of an age.

59. Prior to July 1, 2019, the family group conference (and the court as the case may be) had to agree or determine that a declaration should be made that the child was in need of care or protection. As of July 1, 2019, this no longer occurs. The issue is whether a care of protection order (which is defined) should be made. The nature of the order will reflect the seriousness of the issues.

60. Oranga Tamariki Act 1989, s 29. For care and protection cases, primarily the co-ordinator, the lawyer for child and the responsible social worker are the critical persons. In a youth justice case, the critical person is the responsible prosecuting authority.

61. *Re B (children: privilege)* [1992] NZFLR 801 (N.Z.) *DAJ-B v. SJO* (N.Z.) (FC New Plymouth) FAM-2003-043-687, January 28, 2005).

62. *Id*. at paragraph [11].

63. This would involve the application for a protection order. There would need to be the presence of family violence (extensively defined), a qualifying relationship (as defined), and the court being satisfied as to necessity—that the order is necessary for the protection of the person.

64. [2010] NZFLR 821, (2010) 28 FRNZ 283

65. The applicant sought orders against her sister and brother and her niece's boyfriend. The first two were qualifying relationships for orders under the Domestic Violence Act. The boyfriend was not. He could, however, be an associated respondent.

66. Domestic Violence Act 1995 (N.Z.). This was the predecessor to the Family Violence Act 2018. The actions complained of must however involve people who are in a direct family relationship (as defined in the Act). *LDH v SH* 28 FRNZ 283 (N.Z.).

67. *Milner v. Police* [1987] 4 NZFLR 424 (N.Z.); op cit (1987) 2 FRNZ 693 (N.Z.); *Parsons v. Mathieson* [1991] NZFLR 362 (N.Z.); op cit (1990) 7 FRNZ 79.

68. [2010] NZFLR 821, (2010) 28 FRNZ 283, Paragraph [18].

69. NT5.5.06 (01)

70. 5/4/93, FC Palmerston North OT054/37/91.

71. Oranga Tamariki Act 1989, S 38. Publication can occur in certain prescribed circumstances: (2) Nothing in subsection (1) applies to the publication of—(a) statistical information relating to family group conferences; or (b) the results of any bona fide research relating to family group conferences. The reference to social media is made by the OT website.

72. *See* Children's Bureau, *Foster Care*, U.S. Department of Health & Human Services, (last visited July 25, 2019) https://www.acf.hhs.gov/cb/focus-areas/foster-care (last updated August 9, 2019).

73. Noonan et al., Securing Child Safety, Well-Being, and Permanency Through Placement Stability in Foster Care (Policy Lab et al. eds., 2009); Child Welfare Information Gateway, Working with Kinship Caregivers (Children's Bureau, 2012).

74. 42 U.S.C. § 671(a)(West 2019); H.R. 110th Cong. (2008).

75. The bill allowed each state to define "relative." However, the definition must include at least to the 3rd degree.

76. 42 U.S.C. § 671(a).

77. *Id*.

78. Child Welfare Information Gateway, *supra* note 73.

79. Admin. on Child., Youth, and Fam., U.S. Dep't of Health and Hum. Serv., ACYF-CB-PI-10-11, Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2006 (2010).

80. *See id*. at 23.

81. *See* Grandfamilies State Law and Policy Res. Ctr., Judicial Guide to Implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Am. Bar Ass'n Ctr. on Children and the Law et al. eds., 2011).

82. *Id*. at 10; *see also*, Child Welfare Information Gateway, Family Engagement: Partnering With Families to Improve Child Welfare Outcomes (Children's Bureau, 2016); *Family to Family: Key Characteristics of Family Meetings* (2005), http://www.f2f.ca.gov/res/revision_matrix.pdf.

83. Mike Doolan, The Family Group Conference: A Mainstream Approach to Child Welfare Decision Making (2004).

84. Jason Williams et al., *Factors Associated with Staff Perceptions of the Effectiveness of Family Group Conferences*, 6 J. Soc'y for Soc. Work and Res. 343 (2015).

85. Heather Allan et al., *The Impact of Worker and Agency Characteristics on FGC Referrals in Child Welfare*, 81 Child. and Youth Serv. Rev. 229 (2017).

86. *See* Colo. Code of Regulations, 12 CCR 2509-4: 7.300 (2012); Pa. Office of Children, Youth & Families, 3130-12-03(2012); Division of Safety & Permanency, Wis. Dep't. of Children & Families, Ongoing Services Standards 14 (2017); *Family Centered Case Planning & Case Managements*, Child Welfare Information Gateway, https://www.childwelfare.gov/topics/famcentered/caseworkpractice/caseplanningmgmt/; Cal. Welfare and Insts. Code §§706.6, 832, 16501.1 (West).

87. *Id*.

88. Assembly Bill 403, W&I §706.6, 832, 16501.1(1),(3),(4); State of Cal. Health and Human Servs. Agency, ACL No. 16-84 (2016).

89. ACL No. 16-84 (2016).

90. ACL No. 16-84; W & I § 16501(a)(3).

91. ACL No. 16-84 at 5.

92. Wis. Dep't. of Children & Families, Ongoing Services Standards 14 (2017), *supra* note 86.

93. *See* Children's Bureau, *Child Welfare Policy Manual*, U.S. Department of Health & Human Services (1996), https://www.acf.hhs.gov.cwpm/public_html/programs/cb/laws_policies/laws/cwpm/index.jsp.

94. Mark Hardin, Family Group Conferences in Child Abuse and Neglect Cases (American Bar Association, 1996).

95. *Id*.

96. *Id*.

97. §832(2).

98. §832(2).

99. Grandfamilies State Law and Policy Res. Ctr, *supra* note 81.

100. *Id*. at 12

101. *Id*.

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