

**5<sup>th</sup> World Congress on Family Law and Children's Rights**

**Safeguarding Children's Rights in Child Protection: The Use of Family Group**

**Conferencing in the Family Court**

**World Trade and Convention Centre,**

**Halifax, Nova Scotia, Canada**

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**I. Introduction**

Family Group Conferences ('FGCs') were first introduced into New Zealand legislation in 1989, when the Children, Young Persons, and Their Families Act 1989 ('the Act') came into force. Since then, the concept has captured the attention of all involved in safeguarding children's rights in child protection, and their use has flourished worldwide.<sup>1</sup> By reinforcing the paramount importance of the interests of the child or young person and by empowering the family and community to care for their children and young people, FGCs have become the backbone of both the care and protection and youth justice processes.

This paper will outline the origins and ideals of the FGC, before examining the role they play in safeguarding children's rights in child protection. It will highlight a number of important aspects of FGCs when used in care and protection matters, and examine what the Court does when the application of the model seems inadequate, or plans are unable to be properly implemented.

This paper will also discuss the possibility of introducing the FGC model into the conciliation branch of childcare disputes, an area where historically there has been no provision for FGCs. New Zealand legislation places great emphasis on the Court involving children in decisions that affect them; and this paper will illustrate how the FGC could be a successful way of involving children during conciliation in private law disputes.

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<sup>1</sup> Including in Australia, the United Kingdom, the United States and Europe.

## **II. Family Group Conferences in the Context of Children's Right's**

Prior to the introduction of FGCs in 1989 there had been an underlying assumption, perpetuated by the prevailing legislation,<sup>2</sup> that 'the state knew best' when it came to child protection matters. Consequently any intervention involved substantial paternalistic overtones and the extent to which the family was involved was limited to that available in any other civil dispute - the Court would listen to the parties and others concerned before making a determination of its own. The family's role in both coming to a decision and in implementing any plan was highly restricted, with responsibility for the child retained by the State.

The Children, Young Persons, and Their Families Act 1989 introduced a very different philosophy. This new philosophy centred on the creation of a child protection system in which families were empowered to take responsibility for the care of their children to the greatest degree possible with state intervention reduced to the minimal level necessary.<sup>3</sup> The Act supported this philosophical change by explicitly stating that the primary responsibility for caring for a child lay with that child's family, whanau,<sup>4</sup> hapu,<sup>5</sup> or iwi;<sup>6</sup> and any intervention by the State must be at the minimum level necessary to ensure a child's safety and protection.<sup>7</sup> The legislation continued by instructing that, wherever possible, a child's family should participate in decisions, regard should be had to their views;<sup>8</sup> and State agencies exist to assist families in discharging their responsibilities to prevent children suffering harm, neglect or abuse.<sup>9</sup>

Such a philosophy accords with the United Nations Convention on the Rights of the Child (UNCROC), the worlds most widely ratified human rights instrument.<sup>10</sup> Having ratified that Convention, New Zealand has taken responsibility for adhering to its aims<sup>11</sup> and the use of FGCs is one way in which we do that.<sup>12</sup>

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<sup>2</sup> Children and Young Persons Act 1974, (N.Z.)

<sup>3</sup> See the long title of the Children, Young Persons, and Their Families Act 1989 (N.Z.).

<sup>4</sup> Whanau is a Maori language term meaning family, and embraces the concept of extended family.

<sup>5</sup> Hapu is a Maori language term meaning the wider group in which the family belongs, and which shares familial links.

<sup>6</sup> Iwi is a Maori language term which embraces all Maori who identify their genealogy as emanating from a specific geographical area.

<sup>7</sup> Children, Young Persons, and Their Families Act 1989, s.13(b) (N.Z.)

<sup>8</sup> Children, Young Persons, and Their Families Act 1989, s.5(a) (N.Z.)

<sup>9</sup> Children, Young Persons, and Their Families Act 1989, s.4(b) (N.Z.)

<sup>10</sup> Convention on the Rights of the Child, *available at* <http://www2.ohchr.org/english/law/crc.htm>

<sup>11</sup> *Tavita v Ministry of Immigration* [1994] 2 NZLR 257 at 266

<sup>12</sup> Particularly in relation to upholding our obligations under Article 18.

The use of FGCs is therefore the primary mechanism by which the principles of the Act, and New Zealand's obligations under UNCROC, are put into practice. It enables a family to be primarily responsible for the direction of their children's care, while ensuring that any necessary assistance is provided by the State.

### **III. Attendance and Involvement in Conferences**

The circumstances under which an FGC must or may be convened are extensive. By way of illustration, an FGC will be convened by a Care and Protection Co-ordinator for a number of occasions and purposes. These include:<sup>13</sup>

- After an investigation of a report of child abuse by a social worker or member of police who "reasonably believes" that the child or young person is in need of care and protection, and notifies the Co-ordinator;<sup>14</sup>
- After an "inquiry" by a social worker or member of the police who then "believes" that the child or young person is in need of care and protection and reports to the Co-ordinator;<sup>15</sup>
- Where an agreement for extended care of the child or young person by the Director-General, Iwi Social Service or Cultural Social Service is proposed;<sup>16</sup>
- Where an agreement for the extended care of a severely disabled child or young person is proposed;<sup>17</sup>
- Where an application for a declaration has been lodged, pursuant to certain emergency orders having been made but without a prior family group conference, the registrar shall thereupon refer the application to the Co-ordinator;<sup>18</sup>
- Where, at any time during the hearing of an application for a declaration, the Court directs the Co-ordinator to convene a conference;<sup>19</sup>
- Where after a report reviewing a plan has been furnished to the Court,<sup>20</sup> the Court directs the convening of a Conference; and
- Where upon an application for variation or discharge of an order the Court directs the convening of a Conference.<sup>21</sup>

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<sup>13</sup> As set out in LexisNexis Family Law Service, 6.560 (as at 29 June 2009).

<sup>14</sup> Children, Young Persons, and Their Families Act 1989, s.17(2) (N.Z.)

<sup>15</sup> Children, Young Persons, and Their Families Act 1989, s.18(1) (N.Z.)

<sup>16</sup> Children, Young Persons, and Their Families Act 1989, s.145(2)(a) (N.Z.)

<sup>17</sup> Ibid

<sup>18</sup> Children, Young Persons, and Their Families Act 1989, s.70(3) (N.Z.)

<sup>19</sup> Children, Young Persons, and Their Families Act 1989, s.72(3) (N.Z.)

<sup>20</sup> Children, Young Persons, and Their Families Act 1989, s.137(1)(c) (N.Z.)

<sup>21</sup> Children, Young Persons, and Their Families Act 1989, s.126A (N.Z.)

Similarly an FGC may be convened by a Care and Protection Co-ordinator.<sup>22</sup>

- Where, after an inquiry, any body or organisation concerned with the welfare of children or young persons “believes” that the child or young person is in need of care and protection and refers the matter to the Co-ordinator;<sup>23</sup>
- Where the extension or termination of an agreement for extended care of the child or young person by the Director-General, Iwi Social Service or Cultural Social Service is proposed;<sup>24</sup>
- Where the extension or termination of an agreement for the extended care of a severely disabled child or young person is proposed;<sup>25</sup>
- Where, in any proceedings, a Court believes the child or young person to be in need of a care and protection, and refers the matter to a Co-ordinator;<sup>26,27</sup>
- Where a person required to review a plan requests the convening of a Conference;<sup>28</sup>
- Where a request from at least two members of a Conference previously convened is received to review any previous decision, recommendation or plan made;<sup>29</sup> and
- Where the Co-ordinator is unable to secure the requisite agreements to any decisions made by the previous Conference.<sup>30</sup>

However, no matter how an FGC comes to be convened, once convened the functions of the conference are the same.<sup>31</sup> They are:

- To consider such matters in relation to the care and protection of the child or young person as the conference thinks fit;
- To make decisions or recommendations and to formulate plans; and
- To review decisions, recommendations, and plans and their implementation.

An FGC will work to maximum effect if a wide range of family and others closely connected to the child, along with appropriate professionals, have input into the conference. Those entitled to attend care and protection conferences are:<sup>32</sup>

- The child or young person;
- A parent or guardian of, or a person having the care of the child or young person;
- A member of the family, whanau, or family group;
- The Care and Protection Co-ordinator;

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<sup>22</sup> As set out in LexisNexis Family Law Service, 6.560 (as at 29 June 2009).

<sup>23</sup> Children, Young Persons, and Their Families Act 1989 s.19(1)(a) (N.Z.)

<sup>24</sup> Children, Young Persons, and Their Families Act 1989, s.145(2)(a) (N.Z.)

<sup>25</sup> Ibid

<sup>26</sup> Children, Young Persons, and Their Families Act 1989, s.19(1)(b) (N.Z.)

<sup>27</sup> Whilst the Court, under this provision, can only make a referral to the Co-ordinator (as opposed to a direction to convene a conference), the judicial indication must surely be of substantial weight in the exercise of the Co-ordinator’s discretion whether to convene a Conference.

<sup>28</sup> Children, Young Persons, and Their Families Act 1989, s.135(4) (N.Z.)

<sup>29</sup> Children, Young Persons, and Their Families Act 1989, s.36 (N.Z.)

<sup>30</sup> Children, Young Persons, and Their Families Act 1989, s.30(3) (N.Z.)

<sup>31</sup> Children, Young Persons, and Their Families Act 1989, s.28 (N.Z.)

<sup>32</sup> Children, Young Persons, and Their Families Act 1989, s.22 (N.Z.)

- Where there is an FGC after a report under section 18(1) from a Social Worker or a member of the Police, that Social Worker or member of the Police, or any Social Worker or member of the Police who is acting for that person;
- Where the conference has been convened on the basis of a referral of a matter under section 19(1)(a) of this Act by any body or organisation, a representative of that body or organisation;
- Where the conference relates to an agreement about who should have the care of the child under s145, a representative of the person who has the care of the child, or who it is proposed should have the care of the child;
- If the child or young person is under the guardianship of the Court under the Care of Children Act 2004, any person appointed as agent for the Court under that Act, or any representative of that person.
- Any barrister or solicitor or lay advocate representing the child or young person; and
- Any person whose attendance at that conference is in accordance with the wishes of the family, whanau, or family group of the child or young person as expressed under section 21 of this Act.

A close examination of the above will show that the third lines states that someone who is a member of the “family group” may attend. This phrase, “family group”, is defined very broadly in the Act so as to include extended family which the child has either a biological or significant psychological attachment to, or members of the child’s whanau or culturally recognised family group.<sup>33</sup> The aim is to include everyone who has a significant connection with the child. As this will differ in each case, the care and protection co-ordinator must consult both the child and their family prior to the conference in order to establish who should be invited to participate in the FGC.

Where Court assistance has been sought in determining who should be present, the common law has confirmed that no emphasis should be given to biological family over those with whom the child has a significant attachment.<sup>34</sup> The people with whom the child is most connected, regardless of blood ties, will be able to make the best decisions and afford the best possible outcome for that child, and should therefore be invited. In further recognising the vital role that consultation plays, the legislation provides that, where any of the people listed above are unable to attend, the care and protection co-ordinator is required to ascertain their views<sup>35</sup> prior to the FGC so that their views can be considered notwithstanding their absence.

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<sup>33</sup> Children, Young Persons, and Their Families Act 1989, s.2 (N.Z.)

<sup>34</sup> *CMP v DGSW* [1997] NZFLR 1, (1996) 15 FRNZ 40

<sup>35</sup> Children, Young Persons, and Their Families Act 1989, s.24 (N.Z.)

A further evaluation of the case law<sup>36</sup> however shows that, whilst the family is to be given every opportunity to direct the decision-making process, if they refuse this opportunity the State is able to take over and protect the children.

With such a focus on family involvement, one must be cautious to not only invite family members; but also others who may be able to contribute to discussion on the relevant issues. Again the Courts have considered how far this invitation needs to extend. For example, in a recent case a Judge held<sup>37</sup> that where a child of nine months had been placed outside the family and the FGC was to determine the child's long-term care arrangements, the foster parents should have been invited. They were clearly people having care of the child under s.22(1)(b)(i), as well as being part of the "family group" as defined in s.2 as a person with whom the child has a significant psychological attachment.

The message to be taken from this is that an effective FGC must involve all of the people significantly connected to the child. Whilst there may be those who choose not to attend, the opportunity must be extended to all to ensure the interests of the particular child are fully assessed. In care and protection cases we must never forget that the individual child's best interests are the paramount consideration. While the Act provides guiding principles to aid in the assessment of what is in the child's best interests, those principles cannot be assumed to apply in every case, so each and every time they must be tested against the circumstances of the particular child.

#### **IV. Procedure at the FGC**

Once convened, the actual procedure at an FGC may, subject to the provisions of the Act, be determined by those attending the Conference.<sup>38</sup> As far as is practicable and consistent with the Act, the wishes of the family, whanau, or family group are to be followed when deciding on the practical aspects of the FGC such as venue and date, and the procedure to be followed.<sup>39</sup> While there is discretion for the family to decide on their own procedure, the conference process must conform to the principles of natural justice<sup>40</sup> and allow for the principles of the Act to guide the

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<sup>36</sup> See for example *Application by A* [1990] NZFLR 97 and *H v Police* [1999] NZFLR 966.

<sup>37</sup> *SH v KM WM RT TM CYFS* FC CHCH, FAM 2006-009-002310, 11 August 2006

<sup>38</sup> Children, Young Persons, and Their Families Act 1989, s.26(1) (N.Z.)

<sup>39</sup> Children, Young Persons, and Their Families Act 1989, s.21 (N.Z.)

<sup>40</sup> LexisNexis Family Law Service, 6.561 (as at 29 June 2009)

outcome.<sup>41</sup> The FGC may be adjourned from time to time, but the time-frame for such adjournments must be appropriate to the child's or young person's sense of time.<sup>42</sup>

To give you an example of a typical procedure, a study conducted a few years after FGCs first started being used<sup>43</sup> indicated that co-ordinators often used the following process: commencement by karakia/prayer, followed by a welcome and introductions/mihimihi, explanation of the FGC process by the co-ordinator, information-giving by the referral agency and others, family/whanau private discussion, the formulation of the plan, and closing of the conference.<sup>44</sup>

## **V. Elements of a Successful Plan**

Whilst the above is a typical situation it by no means represents the only procedure. An FGC establishes a platform from which individualised resolutions can be reached. There are consequently no limitations on the imagination or possible solutions or outcomes. So what makes a successful plan? Whilst individuality is valued for its ability to focus on the interests of the particular child, all successful plans need to be specific as to what issues were addressed at the FGC, what outcomes are sought, and why this is in the best interests of the child. The means by which those outcomes are going to be achieved also needs to be specified in as much detail as possible. For example, if it was agreed that a child is in need of care and protection and that a declaration from the Court to that effect is required under s.67, then the conference needs to specify this, and also specify exactly what grounds under s.67 apply. Plans need to be specific about what resources are to be applied and by whom, and what the fine details are for care and protection. Importantly, there must also be good contingency arrangements in the event of difficulty.

In the event that the Court has become involved through an application for a declaration that the child is in need of care and protection and is considering a services order,<sup>45</sup> a support order,<sup>46</sup> a final custody order<sup>47</sup>, or appointing an additional

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<sup>41</sup> Children, Young Persons, and Their Families Act 1989, ss 28 and 29 (N.Z.)

<sup>42</sup> Children, Young Persons, and Their Families Act 1989, s.26(2) (N.Z.) referring to Children, Young Persons, and Their Families Act 1989, s.5(f) (N.Z.)

<sup>43</sup> See Paterson and Harvey, *An evaluation of the Organisation and operation of Family Group Conferences* (Evaluation Unit, DSW, Wellington, 1991), at 22-23

<sup>44</sup> LexisNexis Family Law Service, 6.561 (as at 29 June 2009). See also Paul Ban, *Dialogue and alignment in preparing families for family group conferences*, Australasian Dispute Resolution Journal, February 2009, at 33

<sup>45</sup> Pursuant to Children, Young Persons, and Their Families Act 1989, s.86 (N.Z.)

guardian,<sup>48</sup> the Court must look at whether the plan accords with the requirements of s130 of the Act. Therefore if an FGC considers that such an order is necessary, or is likely, the plan must cover the areas specified in s130. They are:

- Specify the objectives sought to be achieved for that child or young person, and the period within which those objectives should be achieved;
- Contain details of the services and assistance to be provided for that child or young person and for any parent or guardian or other person having the care of the child or young person;
- Specify the persons or organisations who will provide such services and assistance;
- State the responsibilities of the child or young person, and of any parent or guardian or other person having the care of the child or young person;
- State personal objectives for the child or young person, and for any parent or guardian or other person having the care of the child or young person; and
- Contain such other matters relating to the education, employment, recreation, and welfare of the child or young person as are relevant.

## **VI. Judicial Involvement**

Much consideration has been given to where the responsibilities of the family end and the Court's begin. When considering this judicially<sup>49</sup> it has been determined that there is a clearly defined point where the responsibilities of the Department of Child, Youth and Family Services ('the Department') and the family end and the Family Court's begin. While the decision of the FGC or the recommendation of the social worker will no doubt be very influential, in the end the Court must decide the issue, taking into account the principles of sections 4 and 5, and the welfare of the child. This is a safeguard against the FGC coming to a binding decision based on an imperfect grasp of the facts, or on expediency, or disproportionately influenced by a sense of family loyalty. It is also a safeguard against the uncritical acceptance of fashionable or ephemeral ideals. The decision of the FGC indicates what the family will accept, but it does not follow that the decision is necessarily in the best interests of the child or young person, which is ultimately what the Court must be convinced of.

In some situations the plan may not be realistic given the severity of the situation. In others, the FGC may not have followed a process or covered all of the issues to the extent necessary to convince the Court that its planned outcomes are practicable and

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<sup>46</sup> Pursuant to Children, Young Persons, and Their Families Act 1989, s.91 (N.Z.)

<sup>47</sup> Pursuant to Children, Young Persons, and Their Families Act 1989, s.101 (N.Z.)

<sup>48</sup> Pursuant to Children, Young Persons, and Their Families Act 1989, s.110 (N.Z.)

<sup>49</sup> (1990) 6 FRNZ 55



in the best interests of the child. Where such situations occur Court involvement becomes necessary.

The plan the parents agreed to in *CYFS v H Children*<sup>50</sup> is an example of where the plan not only failed to provide sufficient protection having regard to the severity of the situation, but was also not specific enough about how the proposed protection would be provided. The case involved parents who abused alcohol to such a degree that it was impacting on the children's safety;<sup>51</sup> necessitating the convening of an FGC. The FGC plan was designed to avoid the involvement of the Department, despite a ten year history with the family, with support provided to the parents solely by a social services agency, church, and whanau. Yet the family was about to leave the region, with no indication where the support services were to come from in the new town. The Judge emphasised that the plan was not to be discarded, and that the trust placed by the parents in their church and whanau was to be retained. However without supervision from the Department there was a risk that the family would 'slip through the cracks' and the children remain at risk. A declaration was therefore made, and an adjournment ordered for the filing of a new plan after specific service providers had been established.

## **VII. Ensuring Implementation of the Plan**

Whether a plan is adopted solely by means of an FGC or whether the Court has been more proactively involved, once implemented one of the functions of the FGC is to review its decisions, to ensure they are being properly implemented.<sup>52</sup> Oversight and commitment by case social workers is one of the single most important aspects to this Act functioning well. Where court orders have been made, the court must review those orders either every six months, or every twelve months. This further ensures that families carry through with their responsibilities under the FGC plan, and equally, holds the State to account when the official response has been inadequate.

In some situations potentially effective plans are simply not carried out, and the Court must take greater control. It is all very well to come up with an excellent plan, but action is what really counts. A truly effective plan requires the 'buy-in' of those it

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<sup>50</sup> FC LHTT, FAM 2004-032-000432, 14 September 2004

<sup>51</sup> On one occasion the mother was found with her children, the youngest five months old, in the family van, slumped over the steering wheel with a breath alcohol level of 925 micrograms - the limit for driving according to Land Transport Act 1998, s.11 (N.Z.) is 400 micrograms of alcohol per litre of breath.

<sup>52</sup> Children, Young Persons, and Their Families Act 1989, s.28 (N.Z.)

requires to act. The Department has a duty to carry out any plan made at an FGC unless to do so is clearly impracticable or inconsistent with the principles of the Act.<sup>53</sup> Unfortunately this is not always as straightforward as one would hope. There are often chronic resource issues which, despite the best efforts of the Department, mean that a plan cannot be put into action. For instance, in *Re C*<sup>54</sup> an FGC decided that a child needed a short-term placement beyond the family and a programme to aid his behaviour. The Department was unable to specify the programme that would be provided as required by s.130(c), as there were no programmes available. The Department was also unable to get a psychological assessment carried out for three months, resulting in a breach of s.5(f) - which requires decisions to be implemented within a timeframe appropriate to the child's sense of time. Clearly there were serious resource deficiencies within the Department and the local service providers. After the hearing, the Department had to be given further time to submit a plan that met s.130. Some two months later, a satisfactory plan was filed. The most the Court could do under these circumstances was allow the publication of the decision so that the situation could be publicly recognised and hopefully improved.

In other situations, people do not carry out their obligations under the plan, and the Court is forced to step in. In *AD v SD*<sup>55</sup> both the parents of a child and the Department failed to undertake their responsibilities as agreed to in an FGC and the Court was required to implement the plan through orders. A review in July 2004 had decided that the child should be permanently placed with his father. In June 2005 the mother and father came to an independent agreement that the child should remain with the mother, as one of the child's siblings had moved in with the mother and they felt it was important not to split them up. The social worker was of the opinion that this should not be allowed and that the children should be removed immediately, in accordance with the original plan. However this social worker resigned, and circumstances conspired so that the replacement could not properly attend to the family.

The matter came before the Court and the Judge decided that the child should be with the father and that the Court had to intervene to make this happen as, left to the Department, it was clear nothing would change in a timeframe appropriate to the child. The Judge made a custody order in favour of the father to be implemented in

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<sup>53</sup> Children, Young Persons, and Their Families Act 1989, s.34 (N.Z.)

<sup>54</sup> (2004) 24 FRNZ 708

<sup>55</sup> FC LH77, FAM 2005-032-000746, 31 October 2005

stages by a specified access regime until the child was in the fulltime care of the father.

### **VIII. Utilising the FGC model in private childcare disputes**

The FGC model is a successful way of getting wider family members together to devise with their own solutions. As this applies to many areas of family life, not just the care and protection setting, the successful Conference model might usefully be applied to other areas of family dispute resolution.

In July 2005 the Care of Children Act 2004 came into force. This Act brought the laws of childcare and guardianship into the present, emphasising that children are entitled to certain rights, one of which is the right to participate in decisions that affect them. To this end children must be given a reasonable opportunity to express a view, and that view must be taken into account.<sup>56</sup> The Court has interpreted this entitlement as placing a heavy burden on the courts to ensure that children are involved in the proceedings that we preside over using means which suit their individual personalities and circumstances.<sup>57</sup>

However only 5% of cases require a Judge to make a decision. Nearly three quarters (74%) of all Court orders<sup>58</sup> are made with the consent of the parties after a solution is reached in the conciliation arm of the Court. Whilst this is exactly the way in which the system is intended to work, until recently children were not legislatively provided with a voice in conciliation matters. On paper this changed in September 2008 when the New Zealand Parliament passed the Family Courts Matters Legislation. Above all, this legislation brought into law the ability for children to utilise the conciliation arm of the court for Care of Children Act matters; thereby allowing children to attend mediation with their parents where they are the subject of the dispute<sup>59</sup> and to attend counselling with their parents where appropriate.<sup>60</sup> Whilst these provisions of the legislation have yet to come into force, when they do the format for such conciliation will need to be carefully crafted.

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<sup>56</sup> Care of Children Act 2004, s.6 (N.Z.)

<sup>57</sup> See for example *P v P* FC MAN, FAM 2004-004-003261, 6 June 2006, and *C vC* FC DUN, FAM 2005-002-108, 27 March 2006

<sup>58</sup> Figures for the year September 2005 to August 2006.

<sup>59</sup> Care of Children Amendment Act 2008, s.8 (N.Z.)

<sup>60</sup> Ibid

One possible solution is an FGC type meeting as part of the conciliation services.<sup>61</sup> Along with involving children, an FGC type meeting would allow other family members to be involved, and would uphold many important principles of family law. This would also allow for whanau involvement to a greater extent than currently exists, which is consistent with the realities of many Maori and Pacific families. An FGC would be a proven and easily adopted mechanism to make this happen.

Parents can also benefit in their decision-making from hearing the views of others who care for their children and who can provide some objectivity during the difficult separation period. Professionals such as teachers and psychologists might also provide sound information upon which decisions can be made.

## **IX. Conclusion**

The introduction of FGCs as part of the 1989 legislation marked a significant philosophical shift from State power, to family involvement and responsibility in the area of child protection. Under the Act family and community participation is the central principle, and the FGC is the primary way this principle is put into practice. As far as possible a child's family is to take responsibility for its own children, and the State is to provide assistance only to the degree required.

Conferences can in themselves be all that is required to reach a solution. However if the Court needs to be involved, Judges place the utmost reliance on FGC outcomes and will follow what the family have decided upon in all but rare cases. The outcomes of FGCs must conform to the principles of the Act but in terms of the specific details of how this is achieved, there is almost endless scope for families to come up with ideas to suit their individual needs. Their success in engaging families and communities in problem-solving would seem to be unique.<sup>62</sup> Of course, in the worst cases, the State must take a more central role, and it does, but this is reserved for situations of necessity. In saying this, it is of critical importance to recognise when such a case is before us, and not apply the principle of family control mechanically and to the detriment of the children involved.

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<sup>61</sup> For more on this topic see Peter Boshier, *Dispute Resolution in the Family Court*, New Zealand Family Law Journal, December 2007, at 297 and Bill Atkin, *Editorial: Family law getting fatter*, New Zealand Family Law Journal, December 2003, at 184

<sup>62</sup> Nathan Harris, *Family Group conferencing in Australia 15 years on*, Child Abuse Prevention Issues, No 27 2008, at 1

With the success that FGCs have had in the areas of care and protection and youth justice, it seems logical to look at the possibility of using this model in other areas where families need the Court's assistance. I hope that the suggestion here of utilising the FGC as a means of involving children and wider family in private childcare proceedings can provide a basis for future discussion.