

K971 Kusen, J. The family group conference as a means of decision-making in matters of
2006 adult guardianship

JULIA KUSEN

THE FAMILY GROUP CONFERENCE
AS A MEANS OF DECISION-MAKING
IN MATTERS OF ADULT GUARDIANSHIP

LLM RESEARCH PAPER

LAWS 582: MASTER LEGAL WRITING

Faculty of Law

Victoria University of Wellington

2006

AW

8741
UW
86
871
006

Victoria

UNIVERSITY OF WELLINGTON

*Te Whare Wānanga
o te Ūpoko o te Ika a Māui*



LIBRARY

Table of Contents

Abstract III

Statement of word length III

I INTRODUCTION 1

**II THE CURRENT REGIME OF DECISION-MAKING IN ADULT GUARDIANSHIP
LAW 2**

**A Decision-making Forums and Procedures under the Current Adult Guardianship
Law 3**

1 The Family Court 3

(a) Powers of the Court 3

(b) Jurisdiction 4

(c) Procedure 5

2 The Welfare Guardian (Personal Affairs) 7

3 The Manager (Property Affairs) 8

4 The Attorney with Enduring Powers 9

B The Principles of Decision-Making 10

1 The Principle of Least Restrictive Intervention 11

2 The Principle of Encouragement 11

3 The Best Interest Principle 12

C Shortcomings of the Current System of Decision-Making 14

1 Determination of the Protected Person's Best Interest 14

2 No Reference to Cultural Diversity - Especially Maori Culture 16

3 The Concerned Persons' Readiness to Accept Heteronomous Decisions 17

4 The Dominant Role of the Family Court 18

**III THE FAMILY GROUP MODEL UNDER THE CHILDREN, YOUNG PERSONS,
AND THEIR FAMILIES ACT 1989 19**

A Procedure 20

B Effects of the Family Group Conference's Decision 21

C Participants of the Family Group Conference 22

D Principles of Decision-Making 22

ABSTRACT

This essay considers the question whether the family group conference should be introduced as a new and additional means of decision-making in New Zealand's adult guardianship law. Currently the Family Law knows the family group conference only in another context: When there are special problems with children the Children, Young Persons and Their Families Act 1989 gives the family as a group the authority to make decisions concerning the child. The question is whether this procedure is also suitable for decision-making on the affairs of adult family members who are not capable of leading their lives autonomously and cannot make their own decisions, for example because they suffer from mental disease or an intellectual handicap.

After providing an overview of the current adult guardianship law, its principles and shortcomings, the family group conference will be presented and discussed as it works under the Children, Young Persons, and Their Families Act 1989. The main part of this research paper, then, deals with the advantages and disadvantages of the family group model being introduced for matters of adult guardianship. It will be considered whether this decision-making model can cope with the shortcomings of the current system and whether it serves the guiding principles of adult guardianship law. Although family group conferences do not always work without problems, this essay recommends their introduction also for adults. The inclusion of the wider family in the decision-making process has many benefits for the concerned person, especially in terms of his or her best interest being realised. Besides, the family group model fits well into the current regime, serves its guiding principles, and is able to remedy the current system's shortcomings. Hence, the decision by the family group is of additional value when dealing with the affairs of adults who are not able to make "healthy" decisions for themselves, and should therefore be introduced as an additional means of decision-making.

STATEMENT OF WORD LENGTH

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises approximately 12.338 words.

IV	PROS AND CONS OF THE FAMILY GROUP CONFERENCE BEING INTRODUCED FOR THE AFFAIRS OF ADULT FAMILY MEMBERS.....	23
A	<i>Would the Introduction of the Family Group Model Remedy the Shortcomings of the Current Adult Guardianship Law?.....</i>	23
1	Shortcoming 1: Difficulties in the Determination of the Best Interest.....	23
2	Shortcoming 2: No Reference to Maori Culture and Cultural Diversity.....	25
3	Shortcoming 3: Lack of Acceptance of Heteronymous Decisions.....	26
4	Shortcoming 4: Dominant Role of the State.....	27
5	Summary.....	29
B	<i>Would the Introduction of the Family Group Model Serve the Principles of Adult Guardianship Law?.....</i>	29
1	Accordance with the Best Interest Principle.....	30
2	Accordance with the Principle of Encouragement.....	31
3	Accordance with the Principle of Least Restrictive Intervention.....	31
C	<i>Consideration of the Objections Against the Family Group Model As Such.....</i>	32
1	Concerns Against the Functioning of Family Group Conferences.....	33
(a)	General Concerns Against the Functioning of Family Group Conferences.....	33
(b)	Concerns against the Functioning of Family Group Conferences within Pakeha Families.....	37
(c)	Concerns against the Functioning of Family Group Conferences within Maori Families.....	37
2	Concerns Against the Strong Role of the Co-ordinator.....	38
D	<i>Summary.....</i>	40
V	HOW SHOULD THE FAMILY GROUP CONFERENCE WORK REGARDING THE AFFAIRS OF ADULT FAMILY MEMBERS?.....	41
A	<i>Administration.....</i>	41
B	<i>Procedure.....</i>	41
C	<i>Contents and Effects of the Family Group Conference's Decision.....</i>	42
D	<i>Principles of Decision-making.....</i>	43
VI	CONCLUSION.....	44
	BIBLIOGRAPHY.....	45

I INTRODUCTION

Usually adults lead their lives autonomously. But some are not capable of doing so because they suffer from mental disease, intellectual handicap, dependency to alcohol or drugs, or unconsciousness eg after an accident. For these people the Protection of Personal and Property Rights Act 1988 (PPPR Act 1988) provides a variety of options and procedures protecting the concerned persons' personal and property affairs. The Family Court can make specific orders with regard to certain affairs of the concerned person,¹ or it can appoint a welfare guardian² or a manager³ who then deal with the concerned person's affairs. All the given options have in common that help is mainly provided by giving the authority of decision to someone else rather than leaving it with the concerned person.

There is another means of decision-making that is not yet included in the current adult guardianship law, but is in the Children, Young Persons, and Their Families Act 1989 (CYPF Act 1989): the decision by the family group conference.⁴ This model provides the wider family with the possibility to work out their own – legally effective – solutions where certain problems with a child occur.

This model could also be an appropriate means of decision-making regarding the affairs of adult family members who are incapable of handling their affairs autonomously and cannot make decisions on their own. This research paper investigates the question whether and how the family group conference could be introduced into the current regime of New Zealand's adult guardianship law.

After giving an overview of the current adult guardianship law and of the way the family group conference works under the CYPF Act 1989, this essay considers the advantages as well as the disadvantages of the family group model being introduced as an additional decision-making model for the affairs of adult family members. Although family group conferences do not always work flawlessly, they involve many benefits for the concerned person, for example in terms of this person's best interest being realised. Besides, they acknowledge the special traditional responsibilities the wider family has in Maori culture. However, not only Maori but also people from any other cultural background can benefit

¹ Protection of Personal and Property Rights Act 1988, s 10.

² Protection of Personal and Property Rights Act 1988, s 12.

³ Protection of Personal and Property Rights Act 1988, s 31.

⁴ Children, Young Persons, and Their Families Act 1989, ss 20 to 38.

from this decision-making model, eg in terms feeling more comfortable in the hands of their own family than in the hands of an unfamiliar Court, welfare guardian or manager. Moreover, the family group model would serve the principles of adult guardianship law partly better than the current means of decision-making do. For these reasons, this research paper recommends the introduction of the family group conference for dealing with the affairs of adult family members who are not capable of leading their lives autonomously and cannot make "healthy" decisions for themselves.

II THE CURRENT REGIME OF DECISION-MAKING IN ADULT GUARDIANSHIP LAW

The New Zealand law concerning adult guardianship is mainly regulated by the Protection of Personal and Property Rights Act 1988, which came into force on 1 October 1988. Where an adult person is unable, or partly unable, to deal with his or her own affairs - due to mental illness, an intellectual handicap, drug addiction or other reasons - the Act provides several possibilities to make decisions on behalf of this person. These decisions can either be made by the Family Court,⁵ by a court appointed welfare guardian⁶ or manager,⁷ or by an attorney with enduring powers.⁸ All these different decision-making bodies have to follow certain procedures and principles to make sure that the civil rights of the concerned adult do not get infringed, and to promote this person's wellbeing.⁹ They have to strike an appropriate balance between the concerned person's protection on the one hand, and, on the other hand, the freedom of this person to make his or her own decisions and to lead his or her life autonomously.

It is important to understand this current regime of decision-making, its procedures and, most importantly, its principles before considering the family

⁵ Protection of Personal and Property Rights Act, s 10.

⁶ Protection of Personal and Property Rights Act, s 18(2).

⁷ Protection of Personal and Property Rights Act, s 38. On request of the concerned person or a third party the position of a manager can also be held by a trustee corporation without being appointed by the Family Court, see Protection of Personal and Property Rights Act, s 32(5).

⁸ Protection of Personal and Property Rights Act, ss 97(2) and 98(5).

⁹ W R Atkin "The courts, family control and disability - aspects of New Zealand's Protection of Personal and Property Rights Act 1988" (1988) 18 VUWLR 345, 349 ["The courts, family control and disability"].

group conference as a new and additional means of decision-making. Only when this regime is understood properly, it is possible to judge whether the family group conference would serve the purposes of the current law similarly or even better, whether it would be commensurate with the principles of adult guardianship law, and whether it is able to cope with the shortcomings of the current regime. Therefore, the current adult guardianship law and its principles and potential shortcomings will be considered first, before the family group conference and its introduction for adult guardianship matters can be investigated.

A *Decision-making Forums and Procedures under the Current Adult Guardianship Law*

1 *The Family Court*

(a) Powers of the Court

Under the current adult guardianship law the Family Court has a very strong and guiding role and broad powers throughout all proceedings dealing with adults who are unable to make decisions on their own.¹⁰ Where the Court has jurisdiction,¹¹ it has the power to make specific orders regarding certain personal affairs of the concerned person, for example regarding living arrangements,¹² medical advice or treatment,¹³ or educational, rehabilitative or therapeutic services.¹⁴ Supplementary orders and directions are always possible where they are expedient or necessary to give effect or better effect to the court order.¹⁵ Apart from these orders which are generally related to a specific and single situation, the Family Court can also, as a long term measure, appoint a welfare guardian who then looks after the subject person's personal affairs¹⁶, or a manager who then administers the subject person's property affairs.¹⁷ The Court determines which

¹⁰ Atkin "The courts, family control and disability", above n 9, 348.

¹¹ This requirement will be explained shortly.

¹² Protection of Personal and Property Rights Act 1988, s 10(1)(e).

¹³ Protection of Personal and Property Rights Act 1988, s 10(1)(f).

¹⁴ Protection of Personal and Property Rights Act 1988, s 10(1)(g).

¹⁵ Protection of Personal and Property Rights Act 1988, s 10(4).

¹⁶ Protection of Personal and Property Rights Act 1988, s 12.

¹⁷ Protection of Personal and Property Rights Act 1988, s 31.

powers the welfare guardian respectively the manager has by specifying the aspects of the concerned person's life that should be subject of the guardianship respectively the management.¹⁸ Besides, the Court has a monitoring function in that it reviews the welfare guardian's and the manager's decisions.¹⁹ The Family Court holds a similar controlling function regarding the powers of an attorney with enduring powers.²⁰

(b) Jurisdiction

Before the Family Court can exercise these powers (making specific orders, appointing a manager etc) it has to have jurisdiction over the concerned person. The crucial point of the jurisdiction test is the question whether the concerned person lacks capacity (where the application has been made for a personal order)²¹ or competence (where the application has been made for a property order).²²

Lack of capacity means either the – complete or partial - inability to “understand the nature, and to foresee the consequences, of decisions in respect of matters relating to [one's] personal care and welfare”²³ or the complete inability “to communicate decisions in respect of such matters”²⁴. In both cases the concerned person cannot deal with his or her affairs autonomously and needs help from outside. However, it has to be borne in mind that any intervention in a person's life is a denial of his or her civil rights.²⁵ Therefore, a lack of capacity must not be assumed easily. Each case has to be assessed individually and assumptions merely based on categories, eg age, mental illness or drug addiction, are not permissible.²⁶ Besides, the question whether the concerned person lacks capacity

¹⁸ Protection of Personal and Property Rights Act 1988, ss 18(2), 29(3), 31(1) and 38(1).

¹⁹ Protection of Personal and Property Rights Act 1988, s 89.

²⁰ Protection of Personal and Property Rights Act 1988, s 103.

²¹ Protection of Personal and Property Rights Act 1988, s 6.

²² Protection of Personal and Property Rights Act 1988, s 25.

²³ Protection of Personal and Property Rights Act 1988, s 6(1)(a).

²⁴ Protection of Personal and Property Rights Act 1988, s 6(1)(b).

²⁵ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, (online commentary, LexisNexis, Wellington, 1980) para 7.801 <<http://helicon.vuw.ac.nz:2467/nz/legal/search/servicessubmitForm.do>> (last accessed 24 August 2006).

²⁶ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.813.

must not be answered by applying an objective standard.²⁷ A person does not lack capacity merely because he or she is eccentric and fails to act like an average reasonable person.²⁸ Although the making of imprudent and unreasonable judgments can be evidence of a lack of capacity, the capacity test is an individual and subjective one and is only failed where the concerned person definitely is not able to understand the decisions at issue.²⁹ These considerations are supported by the statutory presumption of competence according to which every person is presumed to have full capacity until the contrary is proved.³⁰ The burden of proof therefore lies on the applicant who seeks the Court's order.

Where the application has been made for a property order a similar presumption of competence is in place.³¹ Therefore, a property order is only possible where the concerned person's lack of competence is proven. Lack of competence refers to the inability to *manage* one's financial affairs.³² Thus, it is not the inability to understand or communicate decisions related to one's financial affairs, but the inability to actually manage these affairs, which is decisive. Apart from that different reference point of inability, both jurisdiction tests are quite similar; ie both have to be applied carefully, on a individual and subjective basis³³ and without the possibility of concluding the lack of competence merely because of the concerned person's imprudent behaviour.³⁴

(c) Procedure

Proceedings under the PPPR Act 1988 can be initiated by the application of a wide range of people, including the concerned person him- or herself,³⁵ this person's relatives,³⁶ a social worker,³⁷ a medical practitioner,³⁸ or any other per-

²⁷ Susan Potter "Protection of Personal and Property Rights Act 1988" (1989) 6 AULR 281, 283.

²⁸ Protection of Personal and Property Rights Act 1988, s 6(3).

²⁹ *BF v SF* (1992) 9 FRNZ 231, 237 (FC) Judge Boshier; *Re RMS* (1993) 10 FRNZ 387, 392 (FC) Inglis QC J.

³⁰ Protection of Personal and Property Rights Act 1988, s 5.

³¹ Protection of Personal and Property Rights Act 1988, s 24.

³² LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.844.

³³ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.844.

³⁴ Protection of Personal and Property Rights Act 1988, s 25(3).

³⁵ Protection of Personal and Property Rights Act 1988, s 7(a) and s 26(a).

³⁶ Protection of Personal and Property Rights Act 1988, s 7(b) and s 26(b).

son who has a legitimate interest in the concerned person's wellbeing, the latter only with the leave of the Court.³⁹

Once an application has been filed the Court appoints a counsel to represent the person subject to the proceedings.⁴⁰

Certain persons, who are considered to have a legitimate interest in the concerned person's wellbeing, are to be served with notice of the proceedings. The crucial point about being served with notice is that notification entitles the served person to appear before Court and to be heard as a party.⁴¹ People who are served with notice are, *inter alia*, the concerned person him- or herself,⁴² his or her parents,⁴³ the person with whom the concerned person lives,⁴⁴ and any other person specified by the Court.⁴⁵ In the course of this last option, the Court may give notice also to the wider family. However, it has been observed that usually only the immediate family (ie parents, children, siblings) gets served with notice, while the wider family is left out.⁴⁶ Thus, aunts/uncles and cousins etc usually do not have a voice when the Family Court deals with the affairs of an adult family member.

During the main proceedings the Court collects evidence⁴⁷ (including the calling of witnesses)⁴⁸, hears expert reports,⁴⁹ eg from a psychiatrist or social worker, and considers the views of all parties.⁵⁰ The Court's discretion whether to make an order and which order to make has to be guided by the principle of least restrictive intervention,⁵¹ meaning that from a number of possible options the one option is to be taken that has the least adverse impact on the subject person's life.

³⁷ Protection of Personal and Property Rights Act 1988, s 7(c) and s 26(c).

³⁸ Protection of Personal and Property Rights Act 1988, s 7(d) and s 26(d).

³⁹ Protection of Personal and Property Rights Act 1988, s 7(h) and s 26(i).

⁴⁰ Protection of Personal and Property Rights Act 1988, s 65(1).

⁴¹ Protection of Personal and Property Rights Act 1988, s 63(3).

⁴² Protection of Personal and Property Rights Act 1988, s 63(1)(a).

⁴³ Protection of Personal and Property Rights Act 1988, s 63(1)(b).

⁴⁴ Protection of Personal and Property Rights Act 1988, s 63(1)(c).

⁴⁵ Protection of Personal and Property Rights Act 1988, s 63(1)(g).

⁴⁶ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

⁴⁷ Protection of Personal and Property Rights Act 1988, s 77.

⁴⁸ Protection of Personal and Property Rights Act 1988, s 78.

⁴⁹ Protection of Personal and Property Rights Act 1988, s 76.

⁵⁰ The Court is obliged to consider the views of all parties. See LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.875.

⁵¹ Protection of Personal and Property Rights Act 1988, s 8(a) and 28(a).

The appointment of a welfare guardian is the most drastic personal order, because the welfare guardian is vested with comprehensive powers to regulate the personal affairs of the concerned person,⁵² even though these powers are restricted to the area(s) of the person's life for which the welfare guardian has been appointed.⁵³ Therefore, the principle of least restrictive intervention requires that the concerned person wholly lacks capacity in the particular area of life for which the welfare guardian shall be appointed and that this appointment is the only possible way of dealing with the concerned person's shortcoming.⁵⁴

The welfare guardian must be able and willing to act in the concerned person's best interest.⁵⁵ This includes the readiness and ability to enforce this person's best interest even in situations where others, eg family members, try to assert their own interests to the detriment of the concerned person.⁵⁶ Since family members are considered to have contrary interests more likely than people from outside the family,⁵⁷ Courts are exhorted to be careful with choosing a family member as welfare guardian to avoid a potential conflict of interest.⁵⁸ However, family members usually know the concerned person much better than anybody else and are more sympathetic for the person's interests.⁵⁹ Hence, there is no reason why family members generally should not be appointed as welfare guardian, especially when the Court is convinced that they are willing and able to put the concerned person's best interest first.⁶⁰

In order to identify this person's best interest, the welfare guardian is obliged to consult not only with the concerned person him- or herself,⁶¹ but also with any person who is, "in the opinion of the welfare guardian, interested in the welfare of the person and competent to advise the welfare guardian in relation to

⁵² Protection of Personal and Property Rights Act 1988, s 18(2).

⁵³ Protection of Personal and Property Rights Act 1988, s 12; *Re L* (1993) 11 FRNZ 114, 116 (FC) Inglis QC J.

⁵⁴ Protection of Personal and Property Rights Act 1988, s 12(2).

⁵⁵ Protection of Personal and Property Rights Act 1988, s 12(5)(b).

⁵⁶ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.825.

⁵⁷ Atkin "The courts, family control and disability", above n 9, 352.

⁵⁸ Protection of Personal and Property Rights Act 1988, s 12(5)(c).

⁵⁹ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.825.

⁶⁰ Atkin "The courts, family control and disability", above n 9, 357.

⁶¹ Protection of Personal and Property Rights Act 1988, s 18(4)(c)(i).

the personal care and welfare of that person".⁶² Although the latter can include members of the wider family, their influence is limited. This is firstly because it depends on the welfare guardian's discretion whether the particular person can contribute, and secondly because consultation is only mandatory "so far as may be practicable".⁶³ It has been observed that often family members are not asked for advice.⁶⁴

Besides promoting the concerned person's best interest, the welfare guardian must encourage this person to exercise and develop his or her remaining skills.⁶⁵

3 *The Manager (Property Affairs)*

Where the concerned person lacks the competence to manage his or her financial affairs, the Court can appoint a manager.⁶⁶ Like a welfare guardian a manager must be willing and able to act in the concerned person's best interest.⁶⁷ Equally, when appointing a manager the Court takes into account any potential conflict of interest.⁶⁸ Again, a family relationship can be an incentive to check for a potential conflict of interest more carefully, but there is no reason why family members should in principle not be appointed as manager.⁶⁹ On the contrary, in *Re NC* the management task was transferred to family members who knew the concerned person well, because this solution was regarded more appropriate than the Public Trustee exercising impersonal management from the distance.⁷⁰

The promotion of the concerned person's best interest does not always mean pursuing the best *financial* result, but can also include the consideration of the concerned person's wellbeing and his or her moral obligations.⁷¹

⁶² Protection of Personal and Property Rights Act 1988, s 18(4)(c)(ii).

⁶³ Protection of Personal and Property Rights Act 1988, s 18(4)(c).

⁶⁴ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

⁶⁵ Protection of Personal and Property Rights Act 1988, s 18(3) and 4(a).

⁶⁶ Protection of Personal and Property Rights Act 1988, ss 25 and 31.

⁶⁷ Protection of Personal and Property Rights Act 1988, s 31(5)(b).

⁶⁸ Protection of Personal and Property Rights Act 1988, s 31(6).

⁶⁹ Atkin "The courts, family control and disability", above n 9, 357.

⁷⁰ [1956] NZLR 259, 261 (SC) Gresson J; being a decision under the Aged and Infirm Persons Protection Act 1912.

⁷¹ *Re Lane* [1990] NZFLR 79, 81 (FC) Judge Inglis QC.

Like the welfare guardian, the manager is obliged to consult with the concerned person and any other person whose advice might be helpful.⁷² Equally, the family's influence is very limited for the above mentioned reasons.⁷³

Like the welfare guardian, the manager must encourage the concerned person to exercise and develop his or her skills. This can for example be done by giving back part of the control over the property under management to the concerned person.⁷⁴

4 The Attorney with Enduring Powers

Under Common Law an ordinary power of attorney is no longer valid once the grantor has entered the state of mental incapacity. This is because in an agency relationship the agent can only do what the grantor can do as well.⁷⁵ In order to encourage people to act for themselves and to restrict formal interventions by the Court, the PPPR Act 1988 introduced the attorney with enduring powers.⁷⁶ Where the donor has enough capacity to understand the nature and the effect of the enduring powers, he or she can grant someone with enduring powers with regard to both personal and property matters.⁷⁷ The attorney can then act on behalf of the concerned person and deal with that person's affairs, although this person is not capable of doing so by him- or herself. While enduring powers concerning property matters can come into effect immediately, enduring powers of attorney concerning personal matters can only come into force once the donor has entered the state of incapacity.⁷⁸

The decisions of an attorney with enduring powers are monitored by the Family Court. The Court can review specific decisions of the attorney, vary the

⁷² Protection of Personal and Property Rights Act 1988, s 43.

⁷³ See above Part II A 2 The Welfare Guardian (Personal Affairs).

⁷⁴ Protection of Personal and Property Rights Act 1988, s 36(2).

⁷⁵ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.890; Andrew Long *Powers of Attorney and Other Instruments Conferring Authority* (ICSA Publishing, Cambridge, 1987) 41; F M B Reynolds *Bowstead and Reynolds on Agency* (16ed, Sweet&Maxwell, London, 1996) 38.

⁷⁶ Protection of Personal and Property Rights Act 1988, s 95; LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.890.

⁷⁷ *Re Tony* (1990) 5 NZFLR 609, 624 (FC) Inglis QC J; *Re EW* (1993) 11 FRNZ 118, 120 (DC) Robinson J.

⁷⁸ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.893.

enduring powers or even revoke them where the attorney failed to act in the donor's best interest.⁷⁹ The procedural rule concerning service of notice, legal representation, pre-hearing conferences etc apply.⁸⁰

The powers of the attorney depend on the extent to which powers have been granted by the donor. But in any case the attorney has to act in the donor's best interest.⁸¹

B The Principles of Decision-Making

The PPPR Act 1988 marks a significant change in New Zealand's legislature when it comes to dealing with adults who are incapable of handling their own affairs autonomously.⁸² The Act replaces the Aged and Infirm Persons Protection Act 1912 and Part VII of the Mental Health Act, both having dealt only with the concerned person's property affairs. While the former legislation was rather paternalistic and focused on protection, the current law advances the idea of self-determination and concentrates upon the rights of the individual person who is subject to the proceedings.⁸³ Since every intervention in a person's life constitutes a denial of this person's civil rights,⁸⁴ several guiding principles apply as safeguards and to promote the wellbeing of that person.⁸⁵

⁷⁹ Protection of Personal and Property Rights Act 1988, s 105(1).

⁸⁰ Protection of Personal and Property Rights Act 1988, s 108.

⁸¹ This can be concluded from the Court's power to revoke the enduring powers of attorney where the attorney fails to act in the donor's best interest. See Protection of Personal and Property Rights Act 1988, s 105(1).

⁸² Jonathan Kieft "The Protection of Personal and Property Rights Act 1988: A summary and Implications for People with Intellectual Disabilities" (1992) 12 Ment Hcp NZ 18, 26; LexisNexis, John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.800.

⁸³ Anne Bray "The Protection of Personal and Property Rights Act 1988: Progress for people with intellectual disabilities?" – Part I (1996) 2 BFLJ 51, 51 ["Part I"]; LexisNexis, John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.800.

⁸⁴ LexisNexis, John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.801.

⁸⁵ Atkin "The courts, family control and disability", above n 9, 349.

1 *The Principle of Least Restrictive Intervention*

According to the already mentioned principle of least restrictive intervention⁸⁶ an intervention in the concerned person's life must be kept at the least possible extent. When there is more than one possible solution, the one option has to be chosen that has the least adverse impact on the subject person's life. This principle is significant when it comes to balancing the civil rights of people with incapacities against their need for protection.⁸⁷ It finds expression, for example, when the appointment of a welfare guardian is only possible as a last resort, or when the Court restricts the powers of the welfare guardian on certain areas of the concerned person's life or the powers of the manager on certain parts of that person's property. Furthermore, the principle of least restrictive intervention also affects the interpretation of other principles, such as the best interest principle, as will be seen shortly,⁸⁸ since it is one of the paramount principles in adult guardianship law.

2 *The Principle of Encouragement*

Another important feature of the current law is the endeavour to encourage the concerned person to exercise and develop the skills and capacities which he or she still has or is able to attain.⁸⁹ This principle marks the change from mere protection towards the notion of self-determination.⁹⁰ It is built on the acknowledgment that people suffering from different degrees of incapacity can still be able to do different things on their own. A person suffering from mental disease can usually handle his or her affairs to a greater extent than someone who is in a vegetative condition, eg due to a coma. Welfare guardians and managers in particular are called upon when it comes to the encouragement of the concerned person.⁹¹ But the Court also is bound to this guideline when making its decisions.⁹²

⁸⁶ Protection of Personal and Property Rights Act 1988, s 8(a) and 28(a).

⁸⁷ Atkin "The courts, family control and disability", above n 9, 349.

⁸⁸ See below Part II A B 3 The Best Interest Principle.

⁸⁹ Protection of Personal and Property Rights Act 1988, ss 8(b), 18(3) and (4)(a), 28(b) and 36(1).

⁹⁰ Atkin "The courts, family control and disability", above n 9, 350.

⁹¹ Protection of Personal and Property Rights Act 1988, ss 18(4)(a) and 36(1).

⁹² Protection of Personal and Property Rights Act 1988, ss 8(b) and 28(b).

3 The Best Interest Principle

The most fundamental principle of adult guardianship law is the best interest principle,⁹³ meaning that the best interest of the concerned person should be of paramount consideration.

Nonetheless, Miller J in *R v R* preferred to cover the best interest principle when applying the other stated principles (the principle of least restrictive intervention and the principle of encouragement), because these principles “are a surer guide to the exercise of the decision-maker’s discretion than a general appeal to the welfare principle”.⁹⁴ However, the more general approach of Ellis and Doogue JJ is more convincing. In *In the Matter of A* they pointed out that the whole legislation (the PPPR Act 1988) is nothing other than an endeavour to provide a means of decision-making in order to promote the subject person’s best interest and welfare. Therefore, they rightly rejected to take a too narrow and legalistic approach which would not serve the legislation’s paramount purpose.⁹⁵ The best interest principle therefore has always to be considered when decisions on behalf of the subject person are made. It can be regarded as *the* fundamental principle of adult guardianship law.

The best interest principle requires that the subject person’s best interest be put above the interests of other people, for example family members. It can even include the demand to act contrary the subject person’s wishes where these wishes run counter that person’s best interest.⁹⁶ Apart from that, the best interest principle can call for being creative and finding alternative solutions for a problem apart from the obvious possibilities. Therefore, the principle requires intense preoccupation with the subject person’s affairs and surroundings.

This leads to the difficult question how exactly the contents of a person’s best interest are to be determined. The notion – admittedly⁹⁷ – requires interpreta-

⁹³ Protection of Personal and Property Rights Act 1988, ss 12(5)(b), 18(3), 31(5)(b), 32(3)(b) and 36(1).

⁹⁴ [2004] NZFLR 797 para 63 (HC).

⁹⁵ [1996] NZFLR 359, paras 371-372 (HC).

⁹⁶ LexisNexis, John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.801. However, it is unclear whether the protection of Personal and Property Rights Act does confer the power to coerce such decisions against the person’s will, even though they are in that person’s best interest, see D F Dugdale “Coercing the disadvantaged” [2002] NZLJ 170.

⁹⁷ As Miller J in *R v R*, above n 94, para 63, pointed out, the contents of the best interest principle is less sure than of the other principles of adult guardianship law.

tion. On first sight, the best interest principle seems to be paternalistic in nature. It seems to suggest that someone else should decide what is "best" rather than the concerned person's views being determinative.⁹⁸ However, the case law suggests otherwise. In *R v R* it was held that the Court has "to make a decision that the person would make if capable and fully informed".⁹⁹ A similar subjective approach has been taken in *Re Lane* where Judge Inglis found that the "manager must place himself in the protected shoes and do what the protected person would have done".¹⁰⁰ Equally, it has been decided that, where the Court according to s 55 of the PPPR Act 1988 authorises the manager to execute a will on behalf of the protected person, the task is "to give effect to what the testator with all his or her traits and foibles would have seen fit to do if now able to do it".¹⁰¹ This subjective approach is highly commensurate with the other principles of adult guardianship law, especially with the principle of least restrictive intervention. This is because a decision by the Court, the welfare guardian, or the manager on behalf of the protected person is nothing else than a denial of that person's freedom to make his or her own decisions. But where the decision made by someone else is guided by the views and values of the protected person, that person's freedom gets restricted less than it would if the decision-making body could enforce its own ideas or refer to the ideas of the "average reasonable person". Besides that, the subjective approach is more commensurate with the principle of promoting the person's autonomy and self-determination, as it helps realising this person's personal values and beliefs.¹⁰²

The best interest of the protected person must be determined subjectively whenever possible and is of paramount consideration throughout the whole adult guardianship law.

In practice it is often very difficult to determine the best interest from the concerned person's viewpoint. Mentally confused people in particular are often not able to communicate their personal values and beliefs.¹⁰³ In these situations it

⁹⁸ Atkin "The courts, family control and disability", above n 9, 350.

⁹⁹ Above n 94, para 75, Miller J.

¹⁰⁰ Above n 71, 82.

¹⁰¹ *K v Public Trustee* [1995] NZFLR 249, 257 (HC) Morris J.

¹⁰² Anne Bray "The Protection of Personal and Property Rights Act 1988: Progress for people with disabilities?" Part II (1996) 2 BFLJ 64, 65 ["Part II"].

¹⁰³ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

is extremely difficult to determine the concerned person's best interest, when the decision-making body is not closely familiar with this person's personality.

C Shortcomings of the Current System of Decision-Making

The current regime already addresses the most important issues of this area of law in a way that is quite satisfying. It acknowledges that the best interest of the concerned person should be of paramount consideration, it provides for procedural safeguards such as the monitoring function of the Family Court, it allows for the participation of the concerned person's family and other people who have an interest in that person's wellbeing and protection, and, last but not least, sets up fundamental principles of decision-making which function as both safeguards and means to advance the protected person's wellbeing.¹⁰⁴ Nevertheless, there are some aspects of the current system that still need further consideration and amendment.

1 Determination of the Protected Person's Best Interest

As seen above,¹⁰⁵ it is a fundamental principle of adult guardianship law that the concerned person's best interest is of paramount consideration. Thereat, the principle of least restrictive intervention calls for a subjective approach when determining what actually constitutes this best interest. Taking into account the concerned person's personal views and values requires a certain familiarity with that person. Where the concerned person has granted someone he or she is trusting with enduring powers of attorney, or where a family member is acting as welfare guardian or manager, this is not so much of a problem. These people know the protected person usually very well and can therefore estimate how that person would have decided if he or she was still capable of doing so. However, in many cases it is the Court or a welfare guardian or manager from outside who makes the decision on behalf of the protected person.

¹⁰⁴ Atkin "The courts, family control and disability", above n 9, 349.

¹⁰⁵ See above Part II B 3 The Best Interest Principle.

The deciding judge may not have met the person subject to the application before, so that he or she will have difficulties determining what actually lies in the that person's best interest. Of course the Court can collect evidence,¹⁰⁶ including the calling of witnesses¹⁰⁷ and reports.¹⁰⁸ Furthermore, it can serve family members, who are close with the subject person, with notice so that they have a right to appear before the Court and to be heard as a party.¹⁰⁹ By these means the Court can acquire knowledge about the concerned person's living situation, and maybe even about his or her personal views and values. But, considering the short amount of time available and the busy atmosphere of Court proceedings, this acquired knowledge will only be vicarious and superficial. A Court will never be able to reach the same familiarity with the subject person's values and views as the familiarity resulting from a longstanding close family relationship. Besides, judges do not have any personal relationship with the subject person and are therefore much less affected to this person than a caring family member. Subsequently, they put less effort in the determination of what really is in the subject person's best interest.

All these considerations are equally true for managers or welfare guardians coming from outside. Although they are required to get familiar with the concerned person by consulting that person and others who have an interest in that person's wellbeing,¹¹⁰ their insight will never reach as deep as the familiarity of family members.

For these reasons it is desirable to introduce alternative ways of decision-making that allow for a deeper insight in the concerned person's personal values and views. This is because the best interest of that person is of paramount importance whenever a decision is made on his or her behalf, and needs to be determined subjectively, ie based on the person's personal views and values.

¹⁰⁶ Protection of Personal and Property Rights Act 1988, s 77.

¹⁰⁷ Protection of Personal and Property Rights Act 1988, s 78.

¹⁰⁸ Protection of Personal and Property Rights Act 1988, s 76.

¹⁰⁹ Protection of Personal and Property Rights Act 1988, s 63(3).

¹¹⁰ Protection of Personal and Property Rights Act 1988, ss 18(4)(c) and 43.

The current regime recognises the concerned person first of all as an individual.¹¹¹ It does so by emphasising this person's individual civil rights and freedom¹¹² and putting his or her individual best interest in the foreground.¹¹³ At the same time the current adult guardianship law fails to recognise the concerned person within his or her cultural and ethnical environment. Especially in Maori culture the wider family (*whanau*¹¹⁴) is of special cultural value and importance. An interviewed Maori solicitor explained that within a Maori family the members have responsibility towards each other. This concept of family responsibility within a *whanau* is much more developed than in Pakeha culture. It is not restricted to the children of the *whanau*, but also valid for adult family members. That means, where an adult family member is in need of care or protection the *whanau* is called upon to help.¹¹⁵ This idea of family responsibility is currently not reflected in New Zealand's adult guardianship law.¹¹⁶

It is true that the concerned person's wider family can be included in the decision-making process,¹¹⁷ since welfare guardians and managers have a duty to consult such persons that – in the welfare guardian's respectively the manager's opinion – may be able to provide some advice.¹¹⁸ However, participation is not guaranteed because, firstly, the welfare guardian and the manager may not be of the opinion that the wider family is competent to advise, and secondly, the duty to consult reaches only as "far as [it] may be practicable"¹¹⁹ and is therefore quite vague. In practice, the wider family is usually not included in the decision-making process.¹²⁰

¹¹¹ Atkin "The courts, family control and disability", above n 9, 353.

¹¹² LexisNexis, John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.801.

¹¹³ See above Part II B 3 The Best Interest Principle.

¹¹⁴ *The New Zealand Oxford Dictionary* (Oxford University Press, Melbourne, 2005).

¹¹⁵ Interview with K, anonymous Maori solicitor (the author, Wellington, 20 October 2006); Interview with T, anonymous Maori law-related education Co-ordinator (the author, Wellington, 26 October 2006).

¹¹⁶ Atkin "The courts, family control and disability", above n 9, 353.

¹¹⁷ Atkin "The courts, family control and disability", above n 9, 365.

¹¹⁸ Protection of Personal and Property Rights Act 1988, ss 18(4)(c)(ii) and 43(1)(b).

¹¹⁹ Protection of Personal and Property Rights Act 1988, ss 18(4)(c) and 43(1).

¹²⁰ See above Part II A 2 The Welfare Guardian (Personal Affairs) and Part II A 3 The Manager (Property Affairs).

The same is true where the decision is made by the Court. It is true that the Court is obliged to consider the views of all parties,¹²¹ but members of the wider family become parties of the proceedings only when the Court decides to serve them with notice,¹²² which in practice seldom happens.¹²³

The critical point about the wider family being excluded is not only that it contravenes the Maori understanding of family responsibility, but also that an important part of the concerned person's identity is neglected: his or her cultural background. It is the people of the same kind, ie the wider family, that understand the significance of this background best, while others' comprehension often is only very limited.

For these reasons a more binding reference to the individual's wider family and its cultural value and responsibility is desirable, especially when having regard to the fact that approximately 15 %¹²⁴ of New Zealand's population are Maori.¹²⁵

The Domain of the Family Court

3 The Concerned Persons' Readiness to Accept Heteronymous Decisions

These considerations about the cultural value of the wider family, especially in Maori culture, lead to another shortcoming of the current regime, again, especially with regards to Maoris. Where the decision made on behalf of the protected person is not coming from the family but from an outside institution, the concerned person is less likely to accept this decision. In particular, Maori who are used to being protected by their families may find the intervention by a Court or other outside person disturbing. Besides, as several interviewed Maoris working in the area of legal advice reported, Maoris tend to be suspicious when it comes to the use of and the trust in New Zealand's legal system, which is – at

¹²¹ LexisNexis John Lulich (ed), *Family Law Service, Protection of Personal and Property Rights Act*, above n 25, para 7.875.

¹²² *Protection of Personal and Property Rights Act 1988*, s 63(1)(g) and (3).

¹²³ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

¹²⁴ See the website of Statistics New Zealand which contains the latest census' figures from 2001 <<http://www.stats.govt.nz/census/2001-census-statistics/default.htm>> (last assessed on 9 September 2006).

¹²⁵ W R Atkin "Adult Guardianship Reforms – Reflections on the New Zealand Model" (1997) 20 *Int'l JL&Psychiatry* 77, 95 ["Adult Guardianship Reforms – Reflections on the New Zealand Model"].

least from their point of view – mainly established and organised by Pakeha people and ideas.¹²⁶

While this is particularly true only for Maori people, the lack of acceptance of decisions made by outside institutions can also be a problem where the concerned person is not Maori. It should be considered that people who become subject to the adult guardianship legislation often suffer from mental disease or an intellectual handicap and are therefore often distrustful towards unfamiliar people and institutions. One of the interviewed solicitors observed that the concerned persons often feel comforted when family members take care of them.¹²⁷ Since the protected person's acceptance of the protecting decision is often very important for the success of the intended help, it is desirable to create a law that promotes this acceptance.

4 *The Dominant Role of the Family Court*

The current adult guardianship law is characterised by the dominant role of the Family Court.¹²⁸ The Court can intervene in the concerned person's life by making any order it thinks appropriate,¹²⁹ as long as it has jurisdiction¹³⁰ and has regard to the guiding principles.¹³¹ Besides, it has control over the welfare guardian, the manager and any attorney with enduring powers, since it has the power to review their decisions and to give directions.¹³² Furthermore, it decides which persons are served with notice and consequently become parties of the proceedings.¹³³

This concept of a strong Court with wide discretionary powers concerning the intervention in an individual's life may not be disturbing in a Common Law country, where the Courts generally are very powerful. It would be, however, quite disturbing in a Civil Law country. For example in Germany the Court has

¹²⁶ Interview with K, anonymous Maori solicitor (the author, Wellington, 20 October 2006).

¹²⁷ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

¹²⁸ Atkin "The courts, family control and disability", above n 9, 348.

¹²⁹ See for the most important examples Protection of Personal and Property Rights Act 1988, ss 10, 12 and 31.

¹³⁰ Protection of Personal and Property Rights Act 1988, ss 6 and 25.

¹³¹ Protection of Personal and Property Rights Act 1988, ss 8 and 28, including the best interest principle, see above Part II B 3 The Best Interest Principle.

¹³² Protection of Personal and Property Rights Act 1988, ss 10(4), 38(2), 89 and 103.

¹³³ Protection of Personal and Property Rights Act 1988, s 63(1)(g).

only a monitoring function in matters of adult guardianship law and cannot make any specific orders.¹³⁴ Although New Zealand obviously is a Common Law country, this difference can at least be an incentive to question the dominance of the Family Court within New Zealand's adult guardianship law.

Decisions made under the PPPR Act 1988 mostly require investigations within the concerned person's private sphere. Very intimate details, eg regarding that person's mental condition or very personal beliefs, have to be scrutinised. This sensitive subject matter suggests that investigations be entrusted to private institutions (such as the concerned person's family) rather than to official decision-making bodies. The private environment of a concerned person appears to be a more appropriate forum to discuss these private issues and should therefore be used in the first place.

This does not imply that the monitoring function of the Court should be abrogated. Procedural safeguards and control of decision-making are essential. But the Court's powers to intervene in an individual's private life should be restricted.

III THE FAMILY GROUP MODEL UNDER THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989

Following the recommendations of *The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare*,¹³⁵ the family group conference was introduced in the course of the Children, Young Persons, and Their Families Act 1989. The underlying objective was to acknowledge the significance of a child's wider family, especially with respect to Maori culture,¹³⁶ and to empower the family in terms of decision-making concerning their children's problems.¹³⁷

¹³⁴ Bürgerliches Gesetzbuch, §§ 1908 I 1 and 1837 II 1.

¹³⁵ PUAO-TE-ATA-TU *The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare* (September 1988, Wellington), Recommendation 4.

¹³⁶ W R Atkin "The courts and child protection – aspects of the Children, Young Persons, and Their Families Act 1989" (1990) 20 VUWLR 319, 320 and 327 ["The courts and child protection"].

¹³⁷ LexisNexis, John Lulich (ed), *Family Law Service, Children, Young Persons, and Their Families Act* (online commentary, LexisNexis, Wellington, 1980) para 6.551 <http://helicon.vuw.ac.nz:2467/nz/legal/results/docview/docview.do?risb=21_T701374726&forma

A Procedure

Where a child is in "need of care or protection",¹³⁸ for example where a child has been physically or sexually abused,¹³⁹ the law gives the family as a group the authority to make a decision and find a solution for the child.¹⁴⁰

It is the Care and Protection Co-ordinator's¹⁴¹ responsibility to convene a family group conference when someone who is concerned with the child's wellbeing reasonably believes that a child is in need of care and protection.¹⁴² This someone can for example be a social worker,¹⁴³ a member of the police,¹⁴⁴ or an institution being concerned with the child's welfare.¹⁴⁵ In preparation of the family group meeting the Co-ordinator, who is guiding the whole proceedings,¹⁴⁶ has to consult with the child's family regarding the organisational details of the meeting¹⁴⁷ and to make sure that all information and advice necessary for the conference's work will be available for the actual meeting.¹⁴⁸ In the course of this meeting the attending family members can make decisions, recommendations or plans in order to regulate the problematic situation.¹⁴⁹ The Act does not say whether the decision by the family group conference can be a majority decision or whether it has to be unanimous. However, the latter was assumed in *CMP v D GSW*.¹⁵⁰ The

t=GNBFULL&sort=BOOLEAN&startDocNo=11&resultsUrlKey=29_T701374729&cisb=22_T701374728&treeMax=false&treeWidth=0&csi=274493&docNo=13> (last accessed 24 August 2006).

¹³⁸ For a comprehensive definition see Children, Young Persons, and Their Families Act 1989, s 14.

¹³⁹ Children, Young Persons, and Their Families Act 1989, s 14(1)(a).

¹⁴⁰ Children, Young Persons, and Their Families Act 1989, s 28.

¹⁴¹ According to s 423 of the Children, Young Persons, and Their Families Act 1989 the chief executive of the Government Department of Child, Youth, and Family Services appoints a sufficient number of Care and Protection Co-ordinators.

¹⁴² Children, Young Persons, and Their Families Act 1989, s 20; see also Atkin "The courts and child protection", above n 136, 328.

¹⁴³ Children, Young Persons, and Their Families Act 1989, ss 17(2) or 18(1).

¹⁴⁴ Children, Young Persons, and Their Families Act 1989, ss 17(2) or 18(1).

¹⁴⁵ Children, Young Persons, and Their Families Act 1989, s 19(1)(a). For a comprehensive overview of all possible initiators of family group conference proceedings see LexisNexis, John Lulich (ed), Family Law Service, Children, Young Persons, and Their Families Act, above n 137, para 6.560.

¹⁴⁶ See Children, Young Persons, and Their Families Act 1989, s 424; see also Atkin "The courts and child protection", above n 136, 328.

¹⁴⁷ Children, Young Persons, and Their Families Act 1989, s 21(b).

¹⁴⁸ Children, Young Persons, and Their Families Act 1989, s 23.

¹⁴⁹ Children, Young Persons, and Their Families Act 1989, s 29(1).

¹⁵⁰ [1997] NZFLR 1, 38 (HC) Elias J; See also The General's Manager's Office, New Zealand Children & Young Persons Service "Critical analysis of FGCs: a response" [1993] 1 BFLJ 7, 8.

experience is that in over 85% the family group conference could reach an agreement.¹⁵¹

It should be noted that the Family Court's jurisdiction is, in most cases, constrained until a family group conference has been held.¹⁵² This makes the conference a mandatory preliminary proceeding.

B Effects of the Family Group Conference's Decision

Principally, the Chief Executive shall give effect to the decision of the family group conference, unless it is "clearly impracticable or clearly inconsistent with the principles" of the Act.¹⁵³ In most cases, however, this "veto" was not necessary.¹⁵⁴ The Family Court functions as a second safeguard,¹⁵⁵ at least where the matter is brought before the Court after the family group conference has been concluded with an agreement.¹⁵⁶ Where the Court considers the conference's decision impracticable or inappropriate, it can override the conference's decision.¹⁵⁷ Thus, the final responsibility stays with the Family Court.¹⁵⁸ However, the opinion of the family group conference usually will be highly influential when the Court makes its decision.¹⁵⁹

¹⁵¹ The General's Manager's Office, above n 150, 7.

¹⁵² Children, Young Persons, and Their Families Act 1989, s 72.

¹⁵³ Children, Young Persons, and Their Families Act 1989, s 34(1). Note, however, the exception of the family group's autonomy where the proceedings have been initiated under s 18(1) of the Act, ie based on the report of a member of the police or a social worker. In these cases the Coordinator has to seek agreement with the reporting person, see Children, Young Persons, and Their Families Act 1989, s 30(1)(a)(ii).

¹⁵⁴ Marie Connolly "An Act of Empowerment: The Children, Young Persons and their Families Act (1989)" (1994) 24 Br J Social Wk 87, 94.

¹⁵⁵ *Re Children* (1990) 6 FRNZ 55, 57 (FC) Judge Inglis QC.

¹⁵⁶ See LexisNexis, John Lulich (ed), Family Law Service, Children, Young Persons, and Their Families Act, above n 137, para 6.562 n 5.

¹⁵⁷ Children, Young Persons, and Their Families Act 1989, s 73(1).

¹⁵⁸ *Re Children*, above n 155, 57 Judge Inglis QC.

¹⁵⁹ *Re Children*, above n 155, 57 Judge Inglis QC.

C *Participants of the Family Group Conference*

The persons entitled to attend the family group conference are listed in section 22 CYPF Act 1989. Apart from the child,¹⁶⁰ the parents and every person being a member of the child's family or *whanau* are included.¹⁶¹ However, the Co-ordinator can exclude family members if he or she is of the opinion that their attendance would not be in the child's best interest or inappropriate for any other reason.¹⁶²

Beyond that, but not exhaustively, the Co-ordinator,¹⁶³ a solicitor representing the child,¹⁶⁴ and any person whose attendance is commensurate with the wishes of the family¹⁶⁵ may attend the conference.

D *Principles of Decision-Making*

The family group conference is bound to the principles set up in sections 5, 6 and 13 CYPF Act 1989.¹⁶⁶ This means – *inter alia* – that decisions are to be made in an appropriate time frame,¹⁶⁷ and that the child's wishes should be considered as far as appropriate.¹⁶⁸ Much more importantly, however, the family group is bound to the best interest principle; ie the interest and welfare of the child is of first and paramount consideration.¹⁶⁹ Consequently, the family members are obliged to put their own interests behind the interests of the child.

¹⁶⁰ Children, Young Persons, and Their Families Act 1989, s 22(1)(a).

¹⁶¹ Children, Young Persons, and Their Families Act 1989, s 22(1)(b).

¹⁶² Children, Young Persons, and Their Families Act 1989, s 22(1)(b).

¹⁶³ Children, Young Persons, and Their Families Act 1989, s 22(1)(c).

¹⁶⁴ Children, Young Persons, and Their Families Act 1989, s 22(1)(h).

¹⁶⁵ Children, Young Persons, and Their Families Act 1989, s 22(1)(i).

¹⁶⁶ Children, Young Persons, and Their Families Act 1989, s 29(2).

¹⁶⁷ See Children, Young Persons, and Their Families Act 1989, s 5(f).

¹⁶⁸ See Children, Young Persons, and Their Families Act 1989, s 5(d).

¹⁶⁹ See Children, Young Persons, and Their Families Act 1989, s 6.

IV PROS AND CONS OF THE FAMILY GROUP CONFERENCE BEING INTRODUCED FOR THE AFFAIRS OF ADULT FAMILY MEMBERS

The question whether or not the family group conference should be introduced as an additional means of decision-making for adult guardianship matters requires consideration of many different aspects on different levels. First of all, the introduction of a new decision-making model should, at least partly, be able to remedy the shortcomings of the current system, because otherwise there would be no point for making a change. Secondly, there is a need for the family group conference being commensurate with the guiding principles of adult guardianship law. Lastly, the model itself must be a feasible and desirable way of decision-making, especially for the intended use for adult guardianship matters.

A Would the Introduction of the Family Group Model Remedy the Shortcomings of the Current Adult Guardianship Law?

1 Shortcoming 1: Difficulties in the Determination of the Best Interest

One of the current system's shortcomings has been identified as the difficulty to determine the concerned person's best interest.¹⁷⁰ This is because the best interest has to be derived from the protected person's subjective viewpoint in order to intervene as little as possible in this person's life and freedom.¹⁷¹ This approach requires a high degree of familiarity with the personal beliefs, values and views of the protected person. Regularly, judges, welfare guardians and managers, who do not have a longstanding family or friendship relationship with the concerned person, do not have this familiarity. And, as an interviewed solicitor stated,¹⁷² in most cases it is impossible to communicate with the protected persons about these questions, as they are often mentally confused. This is not surprising, when the question is supposed to be: "How would *you* decide, if you were able to?" A solution would be to consult people, who know the concerned person very well, about this person's personal values and views. Family members often have

¹⁷⁰ See above Part II C 1 Determination of the Protected Person's Best Interest.

¹⁷¹ See above Part II B 3 The Best Interest Principle.

¹⁷² Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

experienced each other's attitudes within their long-standing family relationship and in many different situations in life. So, their advice on the concerned person's subjective best interest can be very valuable. However, as seen above, welfare guardians and managers tend to consult only with the immediate family, if at all.¹⁷³ Similarly, the Courts usually serve only the subject person's children, parents, and siblings with notice of the proceedings.¹⁷⁴ Some argue that this is sufficient family involvement.¹⁷⁵

However, the current family involvement practice is missing out on some benefits regarding the determination of the concerned person's best interest, which a family group conference, ie the involvement of the wider family, would have to offer. The introduction of the family group model for adult guardianship matters would institutionalise the participation also of wider family, even where it is not obvious from the beginning in which way they could contribute to the solution. It should be considered that, even where family members have not had any contact with the concerned person for years, they may still have a deep understanding of this person's personality. Apart from that, experiences with the family group conference in the context of the CYPF Act 1989 have shown that large family groupings can offer a wider range of experiences and skills and often result in creative and feasible solutions.¹⁷⁶ The cooperation within the wider family can be (re-) strengthened for the benefit of the adult family member who is needing help. For example, an aunt or cousin may be able and willing to provide some help in the day-to-day care of the concerned person or can assist with legal skills in property matters. Since the finding of innovative solutions is part of the task to determine the subject person's best interest,¹⁷⁷ these opportunities should not be left out. Although the current system already provides avenues for family participation, the institutionalisation of the family group conference would be able to advance the best interest of the concerned person additionally.

¹⁷³ See above Part II A 2 The Welfare Guardian (Personal Affairs) and Part II A 3 The Manager (Property Affairs).

¹⁷⁴ See above Part II A 1 (c) Procedure.

¹⁷⁵ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

¹⁷⁶ Marie Connolly, above n 154, 98.

¹⁷⁷ See above Part II B 3 The Best Interest Principle.

The current regime of adult guardianship law contains no reference to Maori culture. The introduction of the family group conference would redress this shortcoming, since this decision-making model is based on the Maori concept of family responsibility within the wider family.¹⁷⁸ Wherever a family member, no matter whether adult or child, is in need for help, the family members of the wider family, the *whanau*, are called upon and are obliged to help.¹⁷⁹ However, one of the interviewed Maoris stated that the family group conference as it currently works under the CYPF Act 1989 reflects rather the Pakeha interpretation of Maori culture than real Maori culture, because the whole process is controlled by the Care and Protection Co-ordinator and not by the concerned family.¹⁸⁰ This, however, is rather a question of the way the decision-making procedure and the role of the Co-ordinator are drafted. Since the introduction of the family group conference for matters of adult guardianship law would require new legislation, this issue can be considered for the actual drafting of the new provisions. It will be discussed later in this research paper.¹⁸¹ The fact remains that the basic idea of a family group conference being responsible for problems concerning individual family members originates from Maori values and is an important feature within their culture and their everyday way of handling these problems.

Since Maori constitute a considerable part of New Zealand's society,¹⁸² it is highly desirable that legislation does not ignore their culture and values.¹⁸³ The introduction of the family group conference for matters of adult guardianship would also be a sign of respect towards their culture. More practically, it would enable them to handle their affairs in the Maori way.

¹⁷⁸ See PUAO-TE-ATA-TU The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (September 1988, Wellington), Annex 2, 52.

¹⁷⁹ See above Part II C 2 No Reference to Cultural Diversity – Especially Maori Culture.

¹⁸⁰ Interview with K, anonymous Maori solicitor (the author, Wellington, 20 October 2006).

¹⁸¹ See below Part V How Should the Family Group Conference Work Regarding the Affairs of Adult Family Members?

¹⁸² See the website of Statistics New Zealand which contains the latest census' figures from 2001 <<http://www.stats.govt.nz/census/2001-census-statistics/default.htm>> (last assessed on 9 September 2006).

¹⁸³ Atkin "Adult Guardianship Reforms – Reflections on the New Zealand Model", above n 125, 95.

But the introduction of the family group conference is not only desirable with view of the respect for Maori culture, but also for other reasons originating from the cultural diversity of New Zealand's population. The incorporation of the wider family in the decision-making process would make it easier to take into account the needs, values and beliefs of the particular cultural or ethnic group to which the concerned person belongs.¹⁸⁴ Since this cultural or ethnic background forms part of the concerned person's identity, it must be considered when determining this person's subjective best interest. The family of the person subject to the proceedings have the same cultural or ethnical background. Therefore, they are more able than others to understand and implement their specific values and beliefs appropriately. This is not only true for Maori families, but also for families with a Jewish, Islamic, European or any other background.

3 *Shortcoming 3: Lack of Acceptance of Heteronymous Decisions*

The core problem in adult guardianship matters is that the concerned persons are – for whatever reason – not able to make “healthy” decisions for themselves. They are not capable of realising their best interest by themselves and therefore need help from the outside. Effective help can only be provided by giving the authority of decision to some else rather than leaving it with the concerned person.¹⁸⁵ Regularly, it is essential for the success of the intended help that the concerned person accepts the heteronymous decision and “cooperates”.

However, most of the persons subject to proceedings under the PPPR Act 1988 are mentally confused, which leads them to be distrustful towards official and unfamiliar decision-making bodies, such as Courts. The phenomenon of distrust is even more apparent within the Maori population. As several interviewed Maoris explained, many Maori generally are suspicious towards official institutions as they regard them as Pakeha established and controlled.¹⁸⁶

¹⁸⁴ See LexisNexis, John Lulich (ed), Family Law Service, Children, Young Persons, and Their Families Act, above n 137, para 6.553.

¹⁸⁵ See above Part I Introduction.

¹⁸⁶ Interview with K, anonymous Maori solicitor (the author, Wellington, 20 October 2006); Interview with T, anonymous Maori law-related education Co-ordinator (the author, Wellington, 26 October 2006).

The introduction of the family group conference could help to circumvent this problem; firstly, because the family group conference corresponds with the Maori way of decision-making, and secondly, as an interviewed solicitor observed, people usually feel comforted when it is the family who is taking care of them.¹⁸⁷ Another (Maori) interviewee said that Maori in particular would accept heteronymous decisions much better if they are made by their family instead of an official and impersonal institution like a Court.¹⁸⁸

4 Shortcoming 4: Dominant Role of the State

Above it has been identified as desirable to restrict the dominant role of the Family Court since the issues under investigation are often very intimate and private.¹⁸⁹ Accordingly, one of the reason for introducing the family group conference with the CYPF Act 1989 was the prevention of over-regulation and the protection of the concerned families from the interference of over-zealous professionals.¹⁹⁰ By strengthening the concept of family responsibility the role of the state and the Family Court has been limited and families have been empowered to find their own solutions for problems occurring within their family.¹⁹¹ An interviewed Maori Care and Protection Co-ordinator expressed the view that the concept of decision-making by the wider family has turned out to be very successful and desirable.¹⁹²

Apart from the privacy aspect, it has to be considered that one of the reasons for this success may be the consideration that family members often feel inhibited when they have to express their views in front of a Court or in other official meetings in the presence of professional social workers, experts etc.¹⁹³ The

¹⁸⁷ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006). This view was shared by another interviewee, see Interview with T, anonymous Maori law-related education Co-ordinator (the author, Wellington, 26 October 2006).

¹⁸⁸ Interview with T, anonymous Maori law-related education Co-ordinator (the author, Wellington, 26 October 2006).

¹⁸⁹ See above Part II C 4 The Dominant Role of the Family Court.

¹⁹⁰ See LexisNexis, John Lulich (ed), *Family Law Service, Children, Young Persons, and Their Families Act*, above n 137, para 6.551.

¹⁹¹ See LexisNexis, John Lulich (ed), *Family Law Service, Children, Young Persons, and Their Families Act*, above n 137, para 6.551.

¹⁹² Interview with W, anonymous Maori Care & Protection Co-ordinator (the author, Wellington, 11 September 2006).

¹⁹³ David Geddis "A critical analysis of the family group conference" (1992) 3 BFLJ 141, 142.

family group conference can cope with this problem. Section 22(2) CYPF Act 1989 offers the opportunity to hold family discussions or deliberations in private. This is only an option; the family is free to request any person attending the family group conference to be present during discussions.¹⁹⁴ However, private family discussions have proven to be very fruitful and have been experienced positively by their participants.¹⁹⁵ In particular, intimate knowledge, which can help to find innovative solutions, is more likely to be disclosed during private discussions.¹⁹⁶ Therefore, Co-ordinators keep encouraging private family discussions.¹⁹⁷ Apart from this specific possibility, family group conferences generally are more informal than Court proceedings, which can further the free and open exchange of ideas between the participants.¹⁹⁸

However, one has to be careful not to simply shift the dominant role of the state from the Family Court to the Care and Protection Co-ordinator. Even though a Co-ordinator does not have the same "intimidating" position a judge might have, his or her influence within the whole process can be very strong. This issue will be discussed later in this research paper.¹⁹⁹

However, the Family Court and the Co-ordinator must function as safeguards, even though their role is a limited one.²⁰⁰ Otherwise, conflicts of interests within the family or other reasons could result in solutions that are not in the best interest of the concerned person. These issues will be discussed shortly.²⁰¹ In the context of the CYPF Act 1989 it has been observed that "the courts have deliberately been made a "last port of call" by giving the first instance authority to the family group conference."²⁰²

In sum, this result is desirable for two reasons. Firstly, the investigation of intimate personal details should be imposed on the concerned person's family rather than on official institutions. Secondly, the informal atmosphere of family group conferences can enhance the free and uninhibited exchange of views and

¹⁹⁴ Children, Young Persons, and Their Families Act 1989, s 22(2).

¹⁹⁵ Connolly, above n 154, 93.

¹⁹⁶ Atkin "The courts and child protection", above n 136, 330.

¹⁹⁷ Connolly, above n 154, 93.

¹⁹⁸ Atkin "The courts and child protection", above n 136, 330.

¹⁹⁹ See below Part V How Should the Family Group Conference Work Regarding the Affairs of Adult Family Members?

²⁰⁰ LexisNexis, John Lulich (ed), Family Law Service, Children, Young Persons, and Their Families Act, above n 137, para 6.551.

²⁰¹ See below Part IV C Consideration of the Objections Against the Family Group Model As Such.

²⁰² Atkin "The courts and child protection", above n 136, 342.

ideas between family members, and thus further the finding of solutions that are in the concerned person's best interest.

5 Summary

As stated earlier,²⁰³ the identified shortcomings of New Zealand's adult guardianship law are not serious. The system already addresses the most important issues appropriately. Nonetheless, the family group conference has some benefits to offer that would improve the current adult guardianship law. It would be easier to determine the concerned person's best interest. The included reference to cultural diversity, especially regarding Maori culture, is highly desirable. Besides, when decisions were made by the concerned person's wider family rather than by official institutions, the readiness to accept these decisions could be advanced. And lastly, it would be possible to restrict the dominant role of the Family Court a little bit.

B Would the Introduction of the Family Group Model Serve the Principles of Adult Guardianship Law?

The current adult guardianship law is guided by principles that work both as safeguards and as means to enhance the welfare of the concerned person.²⁰⁴ Because of the significance of these principles it is important that any new decision-making model is commensurate with them. Therefore, the family group conference has to serve the best interest principle²⁰⁵ as well as the principle of encouragement²⁰⁶ and the principle of least restrictive intervention.²⁰⁷

²⁰³ See above Part II C Shortcomings of the Current System of Decision-Making.

²⁰⁴ Atkin "The courts, family control and disability", above n 9, 349.

²⁰⁵ Protection of Personal and Property Rights Act 1988, ss 12(5)(b), 18(3), 31(5)(b), 32(3)(b) and 36(1).

²⁰⁶ Protection of Personal and Property Rights Act 1988, ss 8(b), 18(3) and (4)(a), 28(b) and 36(1).

²⁰⁷ Protection of Personal and Property Rights Act 1988, s 8(a) and 28(a).

1 Accordance with the Best Interest Principle

The introduction of the family group conference for matters of adult guardianship would enhance and ease the identification of the concerned person's best interest. This has been pointed out above and needs no further elaboration.²⁰⁸

Apart from that, family members are usually more sympathetic for the concerned person's interests than judges or other professionals.²⁰⁹ Therefore, it can be expected that they put more effort in the task of finding a solution that is in this person's best interest.²¹⁰ Although this is certainly not true in every single case, it is a general thought that is worth to be considered, at least as a side aspect.

However, concerns regarding the realisation of the child's best interest have been expressed regarding family group conferences in the context of the CYPF Act 1989. The *Mason Report* found that by institutionalising family group decisions the number of competing interests have been increased. It pointed out the risk of family group decisions being "self serving" instead of focusing on the child's best interest.²¹¹ Indeed, individual family members may have strong counter-interests that can tempt them to misuse the institution of the family group conference. For example, the daily care for a physically and mentally ill family member at home can be very exhausting, enervating and time-consuming. In this situation the caring family member may be tempted to vote for the placement of the care-needing person in a nursing home, even though the care within a familiar environment may serve this person's best interest much better. Situations like this can be problematic, because it is not the purpose of family group conferences to provide an avenue for the consideration of the other family members' interests. It is rather the interest of the concerned person that has to be of sole and paramount consideration.²¹²

In this respect the Co-ordinator has an important function as a safeguard. He or she has to monitor the decision-making process in order to prevent self-

²⁰⁸ See above Part IV A 1 Shortcoming 1: Difficulties in the Determination of the Best Interest.

²⁰⁹ Interview with T, anonymous Maori law-related education Co-ordinator (the author, Wellington, 26 October 2006).

²¹⁰ See LexisNexis John Lulich (ed), *Family Law Service, Protection of Personal and Property Rights Act*, above n 25, para 7.825.

²¹¹ Ken Mason (ed) *Review of the Children, Young Persons and Their Families Act 1989* (Report of the Ministerial Review Team to the Minister of Social Welfare, Department of Social Welfare, Wellington, 1992), 12.

²¹² See above Part III D Principles of Decision-Making.

serving decisions that are not in the concerned person's best interest. The Family Court has the role of a second safeguard and can intervene where the family has insisted on a decision contradicting the best interest principle.²¹³ In most cases, however, it can be assumed that the family is interested in finding an appropriate solution and does not intend to simply "get rid" of the help-needing family member by means of the family group conference.²¹⁴

In sum, the family group conference serves the best interest principle, at least partly, better than the current system, although possible conflicts of interests must be watched.

2 *Accordance with the Principle of Encouragement*

Several psychological aspects of the family group model can encourage the concerned person to use and develop his or her remaining skills and to live as autonomously as possible. As seen above, decisions made by the own family are easier to accept than decisions by official and impersonal institutions (like Courts), because people generally are less suspicious towards their own caring family members.²¹⁵ This acceptance and the concerned person's feeling of being looked after by his or her loved ones can further this person's willingness to "co-operate" and to actively take part in the whole endeavour to find the most appropriate solution. In this respect the family group model can further the principle of encouragement.

3 *Accordance with the Principle of Least Restrictive Intervention*

Compared with Court proceedings family group conferences are less formal and have a less official character.²¹⁶ Both aspects make the whole proceedings less stressful and less intimidating for the concerned person. However, family group conferences can be stressful for other reasons, especially where the in-

²¹³ *Re Children*, above n 155, 57 Judge Inglis QC.

²¹⁴ Interview with W, anonymous Maori Care & Protection Co-ordinator (the author, Wellington, 11 September 2006).

²¹⁵ See above Part IV A 3 Shortcoming 3: Lack of Acceptance of Heteronomous Decisions.

²¹⁶ Atkin "The courts and child protection", above n 136, 334.

volved family members do not get along with each other and argue a lot. Although conflicts up to a certain extent can be constructive,²¹⁷ and although the Co-ordinator is in place to guide the conference appropriately, grave quarrels within the family can be a problem. Where quarrels endanger the success of the conference or cause too much stress for the concerned person, the Co-ordinator should make use of the power to exclude individual family members from the conference.²¹⁸ Apart from that, it should be noted that the majority of families are not dysfunctional in the described way and that related concerns have not manifested in practice.²¹⁹ Thus, the family group model can serve the principle of least restrictive intervention, when handled with the necessary consideration of the concerned person's exertion during the proceedings.

C Consideration of the Objections Against the Family Group Model As Such

So far, it could be shown that the family group model would be able to equate the (minor) shortcomings of the current system of adult guardianship law, and that this way of decision-making would be commensurate with the current system's guiding principles. However, concerns against the family group conference as such have been expressed in the context of the CYPF Act 1989. These concerns might be valid or equally valid if family group conferences were used for dealing with the affairs of adult family members who cannot make decisions for themselves. Therefore, these concerns have to be investigated more closely before any recommendations can be made. Eventually, these concerns turn out to be partly justified. However, the advantages of the family group model outweigh its minor flaws. Besides, the problems occurring with family group conferences can be handled by good drafting of the respective provisions and by the awareness of potential conflicts when convening such a conference. Therefore, the introduction of the family group conference is finally recommended in this research paper.

²¹⁷ Connolly, above n 154, 87; Sabine Aeschlimann *How Could Family Group Conferences Be Used as Decision-Making Forum for Custody and Access Decisions under the Guardianship Act 1968?* (2001) Victoria University of Wellington Research Paper, 33.

²¹⁸ Children, Young Persons, and Their Families Act 1989, s 22(1)(b).

²¹⁹ Karen Paterson and Michael Harvey *An Evaluation of the Organisation and Operation of Care and Protection Family Group Conferences* (Department of Social Welfare, Wellington, 1991) 59.

The expressed concerns can be divided into two main groups. The first group sees problems in the way a family functions (respectively does not function) as a decision-making body. The second main concern regards the role of the Care and Protection Coordinator as too strong and dominating. Both concerns stand in a strained relationship with each other, because problems within the family are sought to be solved by giving more power to the Co-ordinator. Vice versa, the mitigation of the Co-ordinator's guiding and monitoring powers may lead to more problems in the decision-making process within the family. However, an appropriate balance can be struck to make the family group conference work beneficially for matters of adult guardianship law.

1 Concerns Against the Functioning of Family Group Conferences

(a) General Concerns Against the Functioning of Family Group Conferences

One of the more general concerns against family group conferences has been the consideration that imbalances within the particular family could result in one-sided decisions.²²⁰ Where the power of decision-making is removed from the state, in particular the Family Court, and given to the family group, it has been feared that the power of the family "will lie where it is allowed to fall, generally on adult males".²²¹

While it does not always have to be adult *males* who take over a dominant role within a family (in recent times women can tend to be quite dominant as well), there is indeed a risk of some family members taking a stronger influence in the decision-making process than others. Like in every group – family or not – some people tend to take the role of a leader, while others prefer to stay in the background. In the context of family group conferences this is not necessarily a bad thing, as long as the conference is still able to find a solution that promotes the best interest of the concerned person effectively. However, family members

²²⁰ Isabel Mitchell "Children's Needs in Practice" in Family Law Conference Papers *The Family Court Ten Years On* (New Zealand Law Society, Auckland, 1991) 75, 77.

²²¹ LexisNexis, John Lulich (ed), Family Law Service, Children, Young Persons, and Their Families Act, above n 137, para 6.551.

who are rather quiet or shy can still be able to contribute to the discussion with valuable information, advice and thoughts. Therefore, it is the co-ordinator's task to encourage them to speak. This does not necessarily need to happen during the actual conference meeting. The Co-ordinator is obliged to prepare the conference thoroughly.²²² Part of this should be to talk to the individual family members, gather first impressions of their views and ideas, and get an idea how the family group conference can be conducted best. During this stage the Co-ordinator should encourage each family member to make him- or herself heard during the conference. Where this turns out to be too difficult, the Co-ordinator him- or herself can repeat the thoughts of the quiet person in the conference so that they can be considered in the family discussions. It has to be borne in mind that it is not the interest of each family member in participating in the decision-making process that is at issue. It is rather the interests and wellbeing of the concerned person, whose affairs shall be organised by the conference, that is of paramount consideration.²²³

Therefore, imbalances within the particular family do not necessarily endanger the success of a family group conference. Still, the Co-ordinator has to be careful and make sure that no valuable information or advice is been overlooked due to these imbalances.

Another general concern is based on the consideration that family members are more likely than others to be in a conflict of interest. Accordingly, the fear has been expressed that decisions of the family group conference are self-serving instead of promoting the concerned family member's best interest.²²⁴ This issue has been touched upon in the context of family members becoming welfare guardians or managers,²²⁵ and when considering the question whether the family group model would serve the best interest principle.²²⁶ There, it has been seen that - indeed - family members can find themselves in a conflict of interest, especially when they are involved in the exhausting, enervating and time-consuming day-to-day care of the concerned person. However, it has been shown that other aspects,

²²² Children, Young Persons, and Their Families Act 1989, s 21.

²²³ See above Part III D Principles of Decision-Making.

²²⁴ Mitchell, above n 220, 77.

²²⁵ See above Part II A 2 The Welfare Guardian (Personal Affairs) and Part II A 3 The Manager (Property Affairs).

²²⁶ See above Part IV B 1 Accordance with the Best Interest Principle.

such as the high degree of familiarity between family members²²⁷ and their affection towards each other,²²⁸ outweigh this potential risk. Besides, the Family Court functions as a safeguard and can intervene where the result of a family group conference is “self-serving” rather than enhancing the concerned person’s best interest.²²⁹

From a more practical point of view, experiences have shown that sometimes families are unable to reach any agreement because there is too much quarrelling in this particular family and family members are unable to communicate with each other.²³⁰ An interviewed Care and Protection Co-ordinator reported that sometimes she had to deal with very complex and deeply problematic family relationships.²³¹ Solicitors working in this area of family law expressed their view that the success of a family group conference is highly dependent on both the skills of the particular Co-ordinator²³² and the family’s ability to communicate with each other.²³³ Disputes within a family have been identified as the major reason for the failure of family group conferences.²³⁴

It is true that not every family and not every situation has the potential to come out with a successful family group conference decision at the end. However, experiences have shown that in 85% of the cases families *were* able to reach an agreement.²³⁵ It would not be wise to dismiss the whole model only because it does not work in a minority of the cases.²³⁶ Apart from these inextricable cases of dysfunctional families, the overall experience with family group conferences is very good.²³⁷ It has been observed that the family relationships improve due to the

²²⁷ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.825.

²²⁸ LexisNexis John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act, above n 25, para 7.825.

²²⁹ Children, Young Persons, and Their Families Act 1989, s 73(1).

²³⁰ Interview with M, anonymous Pakeha solicitor (the author, Tauranga, 1 October 2006).

²³¹ Interview with W, anonymous Maori Care & Protection Co-ordinator (the author, Wellington, 11 September 2006).

²³² Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

²³³ Interview with M, anonymous Pakeha solicitor (the author, Tauranga, 1 October 2006).

²³⁴ Connolly, above n 154, 94.

²³⁵ The General’s Manager’s Office, above n 150, 7.

²³⁶ Paterson and Harvey, above n 219, 59.

²³⁷ Paterson and Harvey, above n 219, 59; Connolly, above n 154, 99; General Manager’s Office, above n 150, 7; Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006); Interview with W, anonymous Maori Care & Protection Co-ordinator (the author, Wellington, 11 September 2006); Interview with M, anonymous Pakeha solicitor (the author, Tauranga, 1 October 2006).

conference meeting, for the benefit of the concerned child.²³⁸ This benefit could be equally gained when family group conferences would be implemented for the affairs of help-needing adult family members.²³⁹

As to the too complex and too difficult cases, it should be noted that the family group conference can be handled quite flexibly. For example, the Co-ordinator has a discretion to exclude individual family members from the meeting when the best interest of the concerned person (ie the child) or other reasons requires him or her to do so.²⁴⁰ Although Co-ordinators use this possibility only reluctantly,²⁴¹ it can be an appropriate way of avoiding too much quarrelling at the conference when the disturbance radiates mostly from one single person.

Where the whole family is involved in the dispute and reasonable communication is not possible, a family group conference is probably not in the concerned person's best interest, because it would cause only trouble and stress without any prospect of success.²⁴² To avoid this burden on the concerned person the Co-ordinator should be able to bring the case directly before the Family Court without (further) convening a family group conference. To keep the Co-ordinators powers on a reasonable level, the Court should only be able to make orders when it is satisfied that a family group conference has little prospect of finding an appropriate solution for the problem at issue and is likely to cause nothing but stress for the concerned person. Apart from that, Court proceedings should generally be constrained until a family group conference has been held, as it is regulated under the CYPF Act 1989.²⁴³

In sum it can be observed that family group conferences do not always work without flaws. However, these problems can be overcome by a competent guidance of the Co-ordinator and by the implementation of the Family Court as a safeguard.

²³⁸ Walker "Family Members' Experience of the Care and Protection Family Group Conference Process" (1996) 6 Social Policy Journal of New Zealand, 216, 218.

²³⁹ See also above Part IV A 1 Shortcoming 1: Difficulties in the Determination of the Best Interest.

²⁴⁰ Children, Young Persons, and Their Families Act 1989, 22(1)(b).

²⁴¹ Connolly, above n 154, 92.

²⁴² Apart from that, family group conference are quite time-consuming. Since it is regularly better to find a solution quickly, family group conferences appear not to be in the concerned person's best interest when they take only time without any prospect of success.

²⁴³ Children, Young Persons, and Their Families Act 1989, s 72.

(b) Concerns against the Functioning of Family Group Conferences within Pakeha Families

Apart from these general concerns, experiences have shown that Pakeha families sometimes have problems with making a family group conference a constructive forum of decision-making. An interviewed solicitor observed that Pakeha tend to stick to their own viewpoints instead of taking the whole-family-approach.²⁴⁴ He expected this tendency to carry over into a family group conference dealing with adult guardianship matters. On the other hand, he also expects the process of decision-making to become less polarised than in child protection cases and accordingly more constructive.²⁴⁵

Apart from that, the interviewed practitioners expressed their belief that the introduction of family group conferences for adult guardianship matters would be welcomed by Pakeha families. A Maori Care and Protection Co-ordinator reported that Pakeha families have had a more individualistic approach rather than being used to have a problem dealt with by the whole family. Meanwhile, however, she felt that Pakeha families more and more value the advantages of the family approach.²⁴⁶ Equally, a Pakeha solicitor expressed her view that Pakeha would embrace the opportunity to deal with adult guardianship matters within their own family.²⁴⁷

(c) Concerns against the Functioning of Family Group Conferences within Maori Families

Although the family group model is based on Maori culture, problems may occur where Maori families would have to decide over the affairs of one of their elders.²⁴⁸ This is because elders are highly respected in Maori culture and their opinion is very valuable for "inferior" family members.²⁴⁹ The concern is that

²⁴⁴ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

²⁴⁵ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

²⁴⁶ Interview with W, anonymous Maori Care & Protection Co-ordinator (the author, Wellington, 11 September 2006).

²⁴⁷ Interview with M, anonymous Pakeha solicitor (the author, Tauranga, 1 October 2006).

²⁴⁸ This concern was expressed by one of the interviewed Pakeha solicitors, see Interview with M, anonymous Pakeha solicitor (the author, Tauranga, 1 October 2006).

²⁴⁹ Interview with K, anonymous Maori solicitor (the author, Wellington, 20 October 2006).

Maori elders would be left without sufficient protection where they cannot make “healthy” decisions for themselves, because the members of their family would not dare to make unpleasant decisions on behalf of them.²⁵⁰ However, the interviewed Maori explained that decisions that need to be made would always be made,²⁵¹ even though Maori would treat their elders very carefully and with the appropriate respect.²⁵²

Considered more carefully, this respect towards elders would not at all be a problematic issue within the adult guardianship legislation. It is rather highly desirable that every person, who becomes subject to this legislation, is treated with as much as respect as possible and is left with as much freedom as possible. This is required by the principle of encouragement²⁵³ and the principle of least restrictive intervention.²⁵⁴

2 Concerns Against the Strong Role of the Co-ordinator

“The family group conference is a Pakeha interpretation of Maori culture, not real Maori culture.” said one of the interviewed Maori solicitors.²⁵⁵ She backed up her view with the strong position of the Care and Protection Co-ordinator. Real Maori decision-making would be governed by the family itself, not by an official co-ordinator, she said.

Concerns against the dominant role of the Co-ordinator have also been expressed in the legal literature.²⁵⁶ Three issues are problematic in this context. The first has been mentioned earlier when it has been pointed out that the state’s influence should be decreased.²⁵⁷ One has to be careful not to take the power away from one official decision-making body, the Family Court, only to give it to another official institution, the Co-ordinator. The second issue is concerned with the

²⁵⁰ Interview with M, anonymous Pakeha solicitor (the author, Tauranga, 1 October 2006).

²⁵¹ Interview with K, anonymous Maori solicitor (the author, Wellington, 20 October 2006).

²⁵² Interview with T, anonymous Maori law-related education Co-ordinator (the author, Wellington, 26 October 2006).

²⁵³ Protection of Personal and Property Rights Act 1988, ss 8(b), 18(3) and (4)(a), 28(b) and 36(1).

²⁵⁴ Protection of Personal and Property Rights Act 1988, s 8(a) and 28(a).

²⁵⁵ Interview with K, anonymous Maori solicitor (the author, Wellington, 20 October 2006).

²⁵⁶ Connolly, above n 154, 99; Ann Barbour “Family Group Conferences: context and consequences” (1991) 3 Social Work Review, 16, 20; Atkin “The courts and child protection”, above n 136, 329.

²⁵⁷ See above Part IV A 4 Shortcoming 4: Dominant Role of the State.

Co-ordinator's key position in the whole process of a family group conference. Some expressed the concern that the success of a family group conference is entirely and therefore too much dependent on the skills and the strength of the Co-ordinator.²⁵⁸ The third issue concerns the Co-ordinator's wide and vaguely defined discretion to exclude individual family members from the conference.²⁵⁹

It is true that the Co-ordinator holds a key position. He or she has to organise the whole conference,²⁶⁰ has to prepare the actual meeting,²⁶¹ is called upon to guide the discussions and to encourage everybody to participate etc.²⁶² However, this key position should not be regarded as a flaw. It has one very important advantage: To bundle up the organisational responsibility in one single office is much more effective than dividing it on many shoulders. Where responsibility is widely spread the result often is that no one feels really responsible. Therefore, the Co-ordinator's organisational key position is an important component of the family group conference's ability to work effectively and successfully. Nonetheless, it is good to be aware of the Co-ordinator's important role. Only people with good organisation and mediation skills should be appointed.

Although the Co-ordinator holds a key position, his or her powers are mainly restricted to an organising, guiding and assisting function. The Co-ordinator is not an investigator and not the decision-making body. He or she does not make the family group's decisions, but rather takes an independent position.²⁶³ Therefore, the role is completely different from the role of the Family Court in current adult guardianship law. The Co-ordinator's powers are far less determinative than the powers of the Court. Therefore, the concern that the state's influence in the investigation and decision-making process would only be shifted instead of decreased is not justified.

The power to exclude individual family members from the conference is indeed vaguely defined, as section 22(1)(b) CYPF Act 1989 grants this power whenever the Co-ordinator "is of the opinion that that person's attendance would not be in the interests of the child or young person, or would be undesirable for

²⁵⁸ Barbour, above n 256, 20.

²⁵⁹ Atkin "The courts and child protection", above n 136, 329.

²⁶⁰ Children, Young Persons, and Their Families Act 1989, s 20.

²⁶¹ Children, Young Persons, and Their Families Act 1989, ss 21, 23, 24, 25.

²⁶² See above Part IV C I 1 General Concerns Against the Functioning of Family Group Conferences.

²⁶³ Connolly, above n 154, 93.

V HOW SHOULD THE FAMILY GROUP CONFERENCE WORK REGARDING THE AFFAIRS OF ADULT FAMILY MEMBERS?

It is not in the scope of this paper to elaborate on the provisions introducing the family group conference in adult guardianship law in full detail. But at least a broad overview of the main features should be provided.

A Administration

The new legislation should be administrated by the Ministry of Social Development, as they are already responsible for families, disability issues and senior citizens.²⁶⁴ Equivalent to section 423 CYPF Act 1989 the Ministry's Chief Executive should appoint a sufficient number of Co-ordinators that are skilled in organisation and mediation.

B Procedure

Similar to the child's need of care or protection²⁶⁵, the family group conference for adult guardianship matters should be evoked when adults lacks the ability to make "healthy" decisions by themselves and cannot handle their affairs autonomously. This test would be similar to the jurisdiction test under the PPPR Act 1988, ie to the test of lack of capacity or competence.²⁶⁶

Similar to section 7 PPPR Act 1988 everybody who has a legitimate interest in the concerned person's wellbeing should be able to initiate the proceedings. This could be done by an application to the Family Court or the Ministry of Social Development or the Co-ordinator directly. Since not every person subject to the proceedings might be willing to accept the family group conference's authority, and since the proceedings constitute a limitation of this person's freedom, the Family Court should ascertain and declare whether there is a lack of capacity re-

²⁶⁴ See website of the Ministry of Social Development <<http://www.msd.govt.nz/>> (last assessed 23 October 2006).

²⁶⁵ Children, Young Persons, and Their Families Act 1989, s 14.

²⁶⁶ See above Part II A 1 (a) Jurisdiction.

spectively competence. Subsequently, the family group conference can be officially convened.

Equivalent to the CYPF Act 1989, the Co-ordinator should play a central role in terms of the organising the conference, guiding and encouraging the discussions etc. As seen above,²⁶⁷ the Co-ordinator's power to exclude individual family members from the conference²⁶⁸ can be essential for the conference's success. Therefore, this possibility should also be included when family group conferences are used for adult guardianship matters.

Apart from that, the people entitled to attend the family group conference should be the same as enumerated in section 22 CYPF Act 1989, including the concerned person, the wider family, a lawyer who represents the concerned person etc. Decisions should be made unanimously.

Although the Family Court's jurisdiction should generally be constrained until a family group conference has been held,²⁶⁹ the Court should function as a safeguard in that it should be able to overrule the family group conference's decision when this decision is impracticable or not in the concerned person's best interest.²⁷⁰

C Contents and Effects of the Family Group Conference's Decision

A family group decision is a quite time-consuming and complex decision-making process. Therefore, it is not suitable for making day-to-day decisions. The scope of possible decisions should therefore rather resemble the scope of decisions the Family Court can make under the current adult guardianship legislation. This includes for example specific living arrangements,²⁷¹ decisions about

²⁶⁷ See above Part IV C 1 (a) General Concerns Against the Functioning of Family Group Conferences and Part IV C 2 Concerns Against the Strong Role of the Co-ordinator.

²⁶⁸ Children, Young Persons, and Their Families Act 1989, s 22(1)(b).

²⁶⁹ Similar to Children, Young Persons, and Their Families Act 1989, s 72. So, the family group conference would be a mandatory preliminary proceeding. However, exceptions must be made in emergency cases, such as a surgical emergency. When decisions need to be made quickly, the Family Court should decide.

²⁷⁰ Similar to Children, Young Persons, and Their Families Act 1989, s 73(1). Where the convening of a family group conference appears to become too stressful and is without any prospect of success the way to the Family Court should be open immediately, see above Part IV C 1 (a) General Concerns Against the Functioning of Family Group Conferences.

²⁷¹ Protection of Personal and Property Rights Act 1988, s 10(1)(e).

long-term medical treatment,²⁷² and the appointment of a welfare guardian²⁷³ or manager.²⁷⁴ One of the interviewed solicitors expressed the view that the appointed person would feel more confident in carrying out his or her duties when having been empowered by the whole family.²⁷⁵ Where the concerned person has appointed an attorney with enduring powers, this decision should be respected by the family group as an expression of the concerned person's freedom, and should not be overruled by a decision of the family group conference, for example by appointing a manager for the same affairs.

Similar to the CYPF legislation²⁷⁶ the chief executive of the Ministry of Social Development should generally be obliged to give effect to the conference's decisions, unless he regards the particular decision impracticable or not in the concerned person's best interest. In this case the way would be open for traditional Court proceedings under the PPPR Act 1988.

D Principles of Decision-making

The family group conference dealing with adult guardianship matters first and foremost should be bound by the best interest principle. The wellbeing of the concerned person should always be of first and paramount consideration. As a matter of respect towards this person, his or her wishes should be regarded as far as possible.²⁷⁷ Apart from that, the family group should also encourage the concerned person to use his or her remaining skills, and should seek to find a solution that interferes in this person's life and freedom as little as possible.

²⁷² Protection of Personal and Property Rights Act 1988, s 10(1)(f).

²⁷³ Protection of Personal and Property Rights Act 1988, s 12.

²⁷⁴ Protection of Personal and Property Rights Act 1988, s 31.

²⁷⁵ Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006).

²⁷⁶ Children, Young Persons, and Their Families Act 1989, s 34.

²⁷⁷ Similar to Children, Young Persons, and Their Families Act 1989, s 5(d).

VI CONCLUSION

The family group model is a feasible means of decision-making that should be used for matters of adult guardianship law as well. Although it does not always work without flaws, such as imbalances within the particular family or vehement quarrels, it has many general benefits to offer that outweigh its occasional problems.

It is able to equate the (minor) shortcomings of the current adult guardianship legislation. In a family group conference decisions are made by people who know the concerned person very well and who can therefore more easily determine what lies in this person's (subjective) best interest. Apart from these very individual needs, also cultural and ethnical values and beliefs can be more easily included in the considerations. Besides, decisions may be more easy to accept when they derive from the family rather than from an unfamiliar official institution, such as a Court. The concept of decision-making by family group conferences would further be highly commensurate with the guiding principles of the current adult guardianship legislation, ie the best interest principle, the principle of encouragement and the principle of least restrictive intervention. Lastly, a closer look at the objections against the family group model has shown that these concerns are not convincing enough to reject the whole decision-making model. In sum, the benefits of a family group conference outweigh any of the discussed minor flaws.

For these reasons the family group model is recommended for adult guardianship matters, in order to provide appropriate assistance and protection for adults, who cannot lead their lives autonomously and cannot make their own decisions.

BIBLIOGRAPHY

I Primary Sources

Legislation

- Protection of Personal and Property Rights Act 1988 (NZ)
- Children, Young Persons, and Their Families Act 1989 (NZ)
- Bürgerliches Gesetzbuch (Germany)

Cases

- *BF v SF* (1992) 9 FRNZ 231 (FC)
- *Re RMS* (1993) 10 FRNZ 387 (FC)
- *Re L* (1993) 11 FRNZ 114 (FC)
- *Re NC* [1956] NZLR 259 (SC)
- *Re Lane* [1990] NZFLR 79 (FC)
- *Re Tony* (1990) 5 NZFLR 609 (FC)
- *Re EW* (1993) 11 FRNZ 118 (DC)
- *R v R* [2004] NZFLR 797 (HC)
- *In the matter of A* [1996] NZFLR 359 (HC)
- *K v Public Trustee* [1995] NZFLR 249 (HC)
- *CMP v D GSW* [1997] NZFLR 1 (HC)
- *Re Children* (1990) 6 FRNZ 55 (FC)

Dictionaries

- *The New Zealand Oxford Dictionary* (Oxford University Press, Melbourne, 2005).

Reports

- PUAO-TE-ATA-TU The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (September 1988, Wellington)
- Ken Mason (ed) *Review of the Children, Young Persons and Their Families Act 1989* (Report of the Ministerial Review Team to the Minister of Social Welfare, Department of Social Welfare, Wellington, 1992)
- Karen Paterson and Michael Harvey *An Evaluation of the Organisation and Operation of Care and Protection Family Group Conferences* (Department of Social Welfare, Wellington, 1991)

Interviews

- Interview with D, anonymous Pakeha solicitor (the author, Tauranga, 6 October 2006)
- Interview with K, anonymous Maori solicitor (the author, Wellington, 20 October 2006)
- Interview with W, anonymous Maori Care & Protection Co-ordinator (the author, Wellington, 11 September 2006)
- Interview with M, anonymous Pakeha solicitor (the author, Tauranga, 1 October 2006)
- Interview with T, anonymous Maori law-related education Co-ordinator (the author, Wellington 26 October 2006)

Dictionaries

- *The New Zealand Oxford Dictionary* (Oxford University Press, Melbourne, 2005).

II Secondary Sources

Texts

- Andrew Long *Powers of Attorney and Other Instruments Conferring Authority* (ICSA Publishing, Cambridge, 1987)
- F M B Reynolds *Bowstead and Reynolds on Agency* (16ed, Sweet&Maxwell, London, 1996)
- Sabine Aeschlimann *How Could Family Group Conferences Be Used as Decision-Making Forum for Custody and Access Decisions under the Guardianship Act 1968?* (2001) Victoria University of Wellington Research Paper

Articles

- W R Atkin "The courts, family control and disability – aspects of New Zealand's Protection of Personal and Property Rights Act 1988" (1988) 18 VUWLR 345
- W R Atkin "The courts and child protection – aspects of the Children, Young Persons, and Their Families Act 1989" (1990) 20 VUWLR 319
- W R Atkin "Adult Guardianship Reforms – Reflections on the New Zealand Model" (1997) 20 Int'l JL&Psychiatry 77
- Ann Barbour "Family Group Conferences: Context and Consequences" (1991) 3 Social Work Review 16
- Anne Bray "The Protection of Personal and Property Rights Act 1988: Progress for people with intellectual disabilities?" – Part I (1996) 2 BFLJ 51
- Anne Bray "The Protection of Personal and Property Rights Act 1988: Progress for people with disabilities?" Part II (1996) 2 BFLJ 64

- Marie Connolly "An Act of Empowerment: The Children, Young Persons and their Families Act (1989)" (1994) 24 Br J Social Wk 87
- D F Dugdale "Coercing the disadvantaged" (2002) NZLJ 170
- David Geddis "A critical analysis of the family group conference" (1992) 3 BFLJ 141
- Jonathan Kieft "The Protection of Personal and Property Rights Act 1988: A summary and Implications for People with Intellectual Disabilities" (1992) 12 Ment Hcp NZ 18
- Isabel Mitchell "Children's Needs in Practice" in Family Law Conference Papers *The Family Court Ten Years On* (New Zealand Law Society, Auckland, 1991) 75
- Susan Potter "Protection of Personal and Property Rights Act 1988" (1989) 6 AULR 281
- The General's Manager's Office, New Zealand Children & Young Persons Service "Critical analysis of FGCs: a response" [1993] 1 BFLJ 7
- Walker "Family Members' Experience of the Care and Protection Family Group Conference Process" (1996) 6 Social Policy Journal of New Zealand, 216, 218.

Electronic sources

- LexisNexis, John Lulich (ed), Family Law Service, Protection of Personal and Property Rights Act (online commentary, LexisNexis, Wellington, 1980) <<http://helicon.vuw.ac.nz:2467/nz/legal/search/servicessubmitForm.do>> (last accessed 24 August 2006)
- LexisNexis, John Lulich (ed), Family Law Service, Children, Young Persons, and Their Families Act (online commentary, LexisNexis, Wellington, 1980) para 6.551 <http://helicon.vuw.ac.nz:2467/nz/legal/results/docview/docview.do?risb=21_T701374726&format=GNBFULL&sort=BOOLEAN&startDocNo=11&resultsUrlKey=29_T70>

1374729&cisb=22_T701374728&treeMax=false&treeWidth=0&csi=274493&docNo=13> (last accessed 24 August 2006)

- Website of Statistics New Zealand: <<http://www.stats.govt.nz/census/2001-census-statistics/default.htm>> (last assessed on 9 September 2006)
- Website of the Ministry of Social Development <<http://www.msd.govt.nz/>> (last assessed 23 October 2006)

A5741
V4W
A66
K971
2006

1374729&cihp=22_T701374728&troubleshoot=0&cat=274493&doc/=
<13> (last accessed 24 August 2006)
Website of Statistics New Zealand. <http://www.stats.govt.nz/census/2001-census-
statistics/default.htm> (last accessed on 9 September 2006)
Website of the Ministry of Social Development. <http://www.msd.govt.nz/> (last ac-
cessed 23 October 2006)



~~WSS 424 1167~~
PLEASE RETURN BY
~~03 JUN 2010~~
TO W.U. INTERLOANS

28 JUL 2010

VICTORIA UNIVERSITY OF WELLINGTON LIBRARY

3 7212 01712465 0