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S671 SNELSON, J. Protecting the powerless...

**PROTECTING THE POWERLESS:
AN EXAMINATION OF THE IMPACT OF 'NEW
DIRECTIONS' ON THE REPORTING OF,
INVESTIGATION AND INTERVENTION INTO
CASES OF POTENTIAL CHILD
MALTREATMENT**

LLB(HONS) RESEARCH PAPER
FAMILY LAW (LAWS 507)

LAW FACULTY
VICTORIA UNIVERSITY OF WELLINGTON

2002

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ABSTRACT

The object of this paper is to examine the impact of the Child Youth and Family Services (CYFS) initiative known as New Directions on the child maltreatment investigative and intervention procedure that the Department has in place. Towards that end three key points of the process (the reporting of child abuse, the investigation and recognition of suspected cases of maltreatment and intervention when a suspected case is substantiated and the child is considered to be in need of care and protection) have been selected and discussed in some detail. They were chosen because all three were believed to reflect the challenges that are inherent in protecting at risk children and are therefore possibly best placed to reveal any limitations of the New Directions Policy.

The scene is set with a discussion of the circumstances of three particular children, which led to a public outcry as well as a ministerial inquiry into the adequacy of CYFS, as a child protective service. The results and recommendations of said ministerial inquiry are canvassed and the broad aims of and some specific projects related to the New Directions Initiative are also outlined. CYFS reporting, investigative and intervention procedure is explained and it is argued that while New Directions will have no direct impact, the potential increase in social workers might lead to it working appropriately for more at risk children. Next the reporting of suspected child abuse is explored and the merits of mandatory reporting debated to determine whether or not this would bring the plight of more at risk children to the authorities. It is concluded that, irrespective of the scheme in place, the key determinants of whether or not notifications will be made are the degree of public education about abuse and public confidence in child protective services. New Directions has a public education role and the entire Scheme is intended to restore the Department's credibility, so it may impact positively upon the number of notifications that CYFS receives. However, the fickle nature of public confidence is noted, as is a concern as to whether or not CYFS has the resources to keep up with an increased demand for its services.

When it comes to the investigation and recognition of cases of suspected abuse it is argued that social workers must operate with limited time, information and ultimately use their discretion. Additionally our understanding of the signs and symptoms of child abuse is in a constant state of evolution and change and children tend to experience multiple forms of abuse. Therefore it is questionable whether or not the definition of a child in need of care and protection found in the Children Young Persons and their Families Act 1989 can be expanded on to any great extent in order to limit this discretion. It is suggested that even if such a thing were possible, it would not be desirable because of the unique circumstances of each child, the need to take a holistic approach to investigation and concerns about potentially excluding a negative form of child treatment. Emotional neglect is examined in order to show the difficulties of substantiating this form of maltreatment, when the signs usually will not manifest themselves until years later and only if the maltreatment was serious, as well as the difficulties of intervening in such an area. New Directions appears to be of limited help in this area, except to the extent that it allows the Department to work in partnership with other agencies who are able to observe children more closely than they can. To the extent that emotional neglect is caused by parental ignorance about development, the Initiative might help with non-traditional forms of intervention such as public education.

It is then argued that intervention, when a child is determined to be in need of care and protection, is complicated by the fact a social worker must balance the best interests of the child with the need for family unity. Despite a common law duty as well as an international obligation to protect children, society has not had much experience with putting the interests of children first. Confusion is caused for social workers and Courts alike by the competing principles embedded in the Children Young Persons and their Families Act 1989 but the real difficulty lies in the fact that the welfare of a child is inextricably linked to family unity. Therefore the increased training offered by New Directions and/or a potential clarification of the Act is unlikely to get rid of the confusion and difficulty in determining what is a child's best interests. This is where the increased funding used to launch the New Directions scheme may help. To the extent that it increases the range of feasible welfare enhancing options for a social worker - improving the ability to monitor the child and follow up their situation, as well as offering

additional support to caregivers so that placements do not break down – it may make the decision as to what is in the best interests of the child a little easier.

Overall, it is suggested that the impact of New Directions on these three areas is mild at best and the inherent difficulties remain. It is further argued that in some respects New Directions does not go far enough. Specifically there is a need for increased clarity when it comes to information disseminated about the Initiative, and a comprehensive interagency scheme that allows multiple agencies to work in partnership when it comes to the reporting, investigation and intervention into cases of suspected abuse. Lastly, problems of capped funding and overly high expectations remain and are likely to be exacerbated if increased public confidence and education leads both rising notifications and demand for resources.

This paper is 17, 484 words long (excluding abstract, footnotes and bibliography).

Section II of this essay will rehearse upon the circumstances of each of these children in order to show why the public's attention was strongly focused on the role that Child Youth and Family Services (CYFS) played or should have played in preventing what happened to them. It will also explore the findings of *The Brown Report*² which was the result of a year-long ministerial inquiry into the adequacy of the services provided by CYFS, along with some key recommendations for change. In tandem with this, the Department's response in the interim, the New Directions initiative will be discussed.

This paper aims to evaluate the impact of New Directions on CYFS' child maltreatment investigations and intervention procedures. Towards this end, three key aspects of the process are examined and will

¹ Carr Swinney "The State's Protection of Children" *NY Times Magazine* 28, 29-30.
² Michael J. A. Brown *Case and Proceedings of the Public Inquiry: The Report of the Ministerial Inquiry into Child Youth and Family Services and Department Plan, New Zealand* (Wellington, 2007).

I INTRODUCTION

Few things are more horrific than the death or serious injury of a child, especially at the hands of the people that are supposed to love and nurture them the most, their family. Unfortunately, New Zealand is no stranger to this phenomenon. Over the past decade 87 children were killed at the hands of abusers, giving this country "one of the highest rates of child death due to abuse amongst developed countries."¹ Naturally, society objects to this state of affairs and when details of such incidents come to light, the demands to "do something" are loud and persistent, the need to blame someone or something immense. Never was this truer than during the years 1999 and 2000, when the appalling circumstances of three particular children, came to light in a blaze of media sensationalism. All three were extremely young, all subjected to horrific and prolonged physical abuse at the hands of family members and, perhaps worst of all, in all three cases the devastating consequences were almost certainly preventable.

Section II of this essay will elaborate upon the circumstances of each of these children in order to show why the public's attention was strongly focused on the role that Child Youth and Family Services (CYFS) played or should have played in preventing what happened to them. It will also explore the findings of The Brown Report,² which was the result of a yearlong ministerial inquiry into the adequacy of the services provided by CYFS, along with some key recommendations for change. In tandem with this, the Department's response to this report, the New Directions initiative will be discussed.

This paper aims to evaluate the impact of New Directions on CYFS' child maltreatment investigative and intervention procedure. Towards this end, three key points of the process have been selected and will

¹ Clare Swinney "The Stolen Generation" (January 2002) *Investigate* 28, 29-30.

² Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000)

be discussed in detail. They have been chosen because all three are believed to reflect the challenges that are inherent in trying to protect at-risk children and are therefore possibly best placed to reveal the potential limitations of the New Directions Policy.

Section III outlines the reporting, investigation and intervention procedure prescribed by the Children, Young Persons and their Families (CYP&F) Act 1989. This has been done in an effort to provide some guidance and insight into the three different stages that will be subsequently examined, as well as to demonstrate how they are intended to fit together. Section IV will explore the reporting of instances of suspected abuse and will discuss various ways to bring more at risk children to the attention of the appropriate authorities. The pros and cons of mandatory reporting will be examined, as well as the benefits of public education and confidence in child protective services. Section V will look at the difficulties associated with substantiating claims of abuse both generally and specifically. To aid with this the devastating consequences and evidential challenges of emotional neglect will be examined in depth.

This paper will conclude with a focus on the necessity of balancing the best interests of the child with family unity once the decision to intervene has been made. The justifications for state intervention in the area of child maltreatment will be touched upon, followed by a brief discussion of the history of child welfare. Lastly, the implications for social workers of the potentially competing principles contained in the CYP&F Act 1989 will be explored as well as the difficulties of determining what is in the best interests of a child in an abusive situation.

II BACKGROUND TO AND OUTLINE OF NEW DIRECTIONS

A *Suffer Little Children - The Public Outcry*

1 *James Whakaruru*

On 4 April 1999 James Whakaruru died, at the age of four years old, shortly after his arrival at a hospital emergency department. He had extensive internal injuries and tissue damage that was consistent with one or more likely several prolonged beatings, beatings that undoubtedly caused his death. What made this situation so tragic, aside from the obvious, was the fact that James was known to a number of different agencies before he died. An investigation into the death by the Commissioner for Children, found that "poor interagency communication characterised the professional work with James and his family. Agencies worked without reference to each other, and ended their involvement assuming that other parts of the system would protect James."³ In the end, no one did.

CYFS first became involved with James' case when the police made a formal care and protection notification on 19 July 1996, after the toddler had been physically assaulted by his mother's partner, Ben Haewera (an assault for which he was subsequently charged, convicted and imprisoned). Social workers assigned to the case failed to gather information about James' situation from family and other agencies, consult with the Care and Protection Resource Panel or convene a Family Group Conference, as mandated by the CYPF Act 1989. Instead they informally encouraged James' maternal grandparents to become his permanent caregivers. During a subsequent custody hearing for James at the Family Court, two conflicting reports were presented by the Department. The first

³ Commissioner for Children, *Executive Summary of the Final Report on the investigation into the death of James Whakaruru* (Wellington, 2000), 1
<http://www.occ.org.nz/pdf/ExecSmJames.pdf> (last accessed 25 September 2002).

expressed concern for James' safety while in the care of his mother, while the second indicated that CYFS had no care and protection concerns.⁴

Eventually, the child was returned to his mother with the Court's strong recommendation that CYFS check on the boy once a week following Haewera's release from prison, as it was apparent that James' mother wished to live with her son's abuser again. This did not happen. In fact "CYFS....had only checked upon James once,...[and] believed the boy to be at a safe distance from Haewera"⁵ in spite of repeated warnings from the boy's maternal grandmother that this was not the case.

2 *Sade Trembath*

In July 2000, a toddler named Sade Trembath suffered permanent brain damage after her caregiver punched her in the head, broke her arm and burned her with cigarettes. Once again there was prior CYFS involvement in this case. Social workers had taken Sade from her parents in May 2000, "after deciding the couple were inappropriate caregivers for the child"⁶ and placed her in the care of Patricia Bisset, the child's maternal grandmother. An independent review of Sade's case found that the Department had failed to accurately assess her grandmother as an appropriate caregiver. A police check had revealed she was an alcoholic with a criminal record and several people had raised concerns about her use of physical discipline.

CYFS was already aware of these issues and approved Patricia on the understanding that close monitoring and strong family support would be required. Unfortunately, these requirements were not met. Shortly after the placement Sade's grandmother "told social workers that she was not coping, was financially in trouble and had fallen out with family in Palmerston

⁴ Commissioner for Children, above, 2-3.

⁵ Clare Swinney "The Stolen Generation" (January 2002) *Investigate* 28, 30.

⁶ "Sade's mother may sue CYFS" (28 February 2001) *One National News New Zealand* http://oneneeds.nzoom.com/oneneeds_detail/0,1227,31192-1-7,00.html (last accessed 25 September 2002).

North.”⁷ Other errors that were found to have jeopardised Sade’s wellbeing included the fact that the social worker assigned to look after Sade’s interests had approximately nine days experience when the case was first allocated to her. Further, on two occasions when social workers visited the home they were told Sade was asleep and left without seeing her.⁸

3 *Lillybing*

At approximately the same time as Sade suffered irreversible brain damage, 23 month old Lillybing died while in the care of her Aunt Rachealle Namana and Rachealle’s sister Rongomai. A few days prior to her death, both women noticed that the toddler had a bloody vagina, but fearing an adverse reaction, decided not to report it to medical authorities. Additionally she had sustained a large lump on her forehead, which resulted in her losing consciousness at least twice. They applied an icepack to the wound, followed by a cloth soaked in boiling water, which burned a large area of skin on Lillybing’s face.

The following day the child was unable to stop falling over and cried incessantly. It was this ‘complaining’ that angered her aunt and led to her shaking Lillybing so violently she died from a brain hemorrhage hours later. Five months prior to this Rachealle had spoken with a local Maori health worker and informed her of the problems that she was having, revealing that she was taking out her frustrations on Lillybing and had bashed her. After this discussion it was decided that she would no longer be left with the baby and the family was told that CYFS would be notified if it happened again. Sadly it did happen again, and this time with tragic consequences.⁹

⁷ “Review critical of CYFS errors” (27 February 2001) *One National News* New Zealand http://oneneews.nzoom.com/oneneews_detail/0,1227,31107-1-7,00.html (last accessed 25 September 2002.)

⁸ “Details in bashed toddler’s case” (8 May 2001) *One National News* New Zealand http://oneneews.nzoom.com/oneneews_detail/0,1227,39317-1-7,00.html (last accessed 25 September 2002).

⁹ “The Tragedy of Lillybing” (date unknown) NZCity - crime.co.nz <http://crime.co.nz/c-files.asp?ID=10661> (last accessed 25 September 2002).

4.2 The blame CYFS mentality

CYFS, being the agency most directly responsible for the care and protection of at risk children was the target for most, if not all, of the understandable public outrage brought about by these three cases. No doubt this was due to the revelation that departmental error when dealing with two of the three children had contributed to the failure to alleviate their dire circumstances. However it should be pointed out that James Whakaruru was a victim of multiple agency failure, for which there is little if any excuse. Therefore more than one agency must take responsibility for the consequences. CYFS were not notified when Ben Haewera was released from prison and the Community Probation Service under whose supervision Ben was, neglected to make home and employment visits and reporting was allowed to lapse. Perhaps most significantly of all James was seen 40 times by health practitioners who due to poor communication failed to put together and report what would have been a very detailed picture of James' circumstances.¹⁰

Additionally, even though Lillybing's situation was never reported to CYFS, the timing and circumstances of her death nonetheless contributed to the 'blame CYFS mentality'. It is difficult to say whether this was deserved or not, as it depends entirely on the reasons why the Health Worker in question, although aware of the child's situation, failed to notify the Department. If it was due to a lack of confidence that once appraised CYFS would fail to intervene in an appropriate manner, then the tragedy of that little girl's death should be, at least partially, attributed to it.

¹⁰ Commissioner for Children, *Executive Summary of the Final Report on the investigation into the death of James Whakaruru* (Wellington, 2000), 4-5.
<http://www.occ.org.nz/pdf/ExecSmJames.pdf> (last accessed 25 September 2002).

B Care and Protection is about Adult Behaviour – The Brown Report

The circumstances of James' short life and tragic death prompted a yearlong ministerial inquiry into CYFS. Headed by former Family Court Judge Michael Brown, the Committee examined the adequacy of the Department's resources and capability and found both lacking. They were very conscious of the timing of the report, which did nothing to enhance CYFS' extremely negative public image. Nonetheless it was felt that there would be serious repercussions for at risk children if the Department continued to function as it had been, despite the fact that the current state of CYFS was due in large part to external factors that were beyond its control.¹¹

The main causes of CYFS' recent difficulties, as outlined by the Brown Report, can be divided into four areas and are as follows.

1 Restructuring

In the 1970s CYFS was known as the Department of Social Welfare. Its statutory functions were much wider than care and protection and included the provision of benefits. Because of this wide focus "social work became a second class citizen as the Department.....focused resources on the core issues of unemployment and the management of the benefits scheme."¹² As a result there was minimal effort applied to the development of social services practice or professional training. Decoupling the care and protection area of the Department from other functions did little to help the situation.

To date CYFS has undergone no less than three name changes and just as many restructuring efforts. During the period of 1998-1999 it was restructured twice in just under a year with an entirely new management

¹¹ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 6-8, 97.
http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

structure put in place and major changes occurring at the National Office.¹³ The overall impact of these changes was the forced redundancy of many qualified social workers and an increasing departmental preoccupation with its own infrastructure at the National Office rather than concentrating on the resource needs of children and families at a regional level.

2 *Fiscal Considerations*

The changes at the Department were reflective of an overall government imperative to cut costs and save money. There was a shift towards family responsibility and the contracting out of service provision to community agencies who could “do the job cheaper.” Consequently, as the number of abuse cases continued to rise, the number of children in the care of the State had been drastically reduced. This resulted in a shortage of families able to offer quality foster care as well as a lack of financial support for family caregivers. The Public Finance Act 1989, with its emphasis on purchase agreements and performance indicators also had a substantial impact. The Budget for the Department was tightly capped, which inevitably led to inadequate resources in a demand driven and necessary service such as the one provided by CYFS.¹⁴

It was next to impossible to reconcile the tensions between the expenditure requirements of the Government and the needs of frontline staff and their clients. Because the duties to the Public Finance Act were paramount “social workers were confronted with the painful knowledge that they were practically unable to provide the quality of service that their professional judgement would otherwise dictate.”¹⁵ Performance indicators under the Department’s Purchase Agreement created incentives to avoid

¹² Brown, above, 1-2.

¹³ Brown, above, 3-5.

¹⁴ Brown, above, 12, 14-15, 18, 21.

¹⁵ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 16

http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

costs as well as long term intervention with families. Interagency cooperation was also severely compromised, with agencies reluctant to take a lead role on a case that was funded by another agency for fear that it would impact detrimentally on their budget.¹⁶ These resource constraints had caused CYFS to become 'crisis driven' and social workers were forced to deal with some families multiple times.

3 *Staff Training and Retention*

At a time when child abuse notifications were at an all time high, the fiscal restraints had extremely negative impacts on social workers who were forced to "[focus] on high energy and intervention protection work without respite."¹⁷ Caseloads were quickly becoming unmanageable and too much was expected from staff given that the tasks they were undertaking could be physically dangerous, always stressful and inevitably complicated. Quality slipped dramatically with frontline workers who were spread too thin often not having contact with a child until a crisis had occurred. By the year 2000 CYFS had the highest turnover rate of any Government Department in New Zealand. It was estimated that every day and a half a front line social worker quit and the average burnout time was approximately two years.

In addition to this serious concerns were raised about the amount of training and skill level attained by front line workers. Eight years earlier the Mason Report¹⁸ had expressed similar reservations, noting with dismay the increasing number of social workers who were hired without any training whatsoever. By the time the Brown Report had been released, 44 per cent of frontline staff and 55 per cent of new recruits had a B level social work qualification. However, in 1992 the Government promised that 90 per cent of CYFS frontline staff would have this qualification by the year 2000. The lack of care and protection content in tertiary social work courses was also

¹⁶Brown, above, 13, 16, 24.

¹⁷Brown, above, 27.

commented upon and while CYFS offered a full introductory training on such matters, attendance was extremely difficult to achieve due to high casework demands.¹⁹

4 Overly High Expectations

CYFS has often been viewed as the dumping ground for all things child related, requiring the Department to stretch its already over stretched resources that much further. One such area mentioned in the Brown Report was child and adolescent mental health. It was found that a significant number of children in care had special needs due to disability or serious mental health problems. Clearly, it is difficult for families to manage such children and traditionally many would have been in institutional or psychopaedic care under the supervision of trained health professionals. However, increasingly restrictive criteria meant that it was becoming very difficult for children and their families to access the resources provided by mental health services. Such families looked to CYFS as the 'agency of last resort' and "[o]ther agencies view[ed] the department as the purse to fund...educational, health counselling and other needs for the child."²⁰ The end result of such expectations was that front line staff were having to manage increasingly critical and complex cases with little or no support and training.²¹

5 Final Points and Recommendations

By 31 October 2000 a total of 3379 child abuse notifications remained unallocated and confidence in CYFS was at an all time low. The Brown Report made approximately 57 recommendations, which included the

¹⁸ Judge Ken Mason *Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley* (Auckland, 1992).

¹⁹ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 27, 52-54.

http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

²⁰ Brown, above, 95-96.

²¹ Brown, above, 96.

provision of emergency funding to hire more social workers and reduce the number of unallocated cases down to zero. It was further suggested that an Education Review Office type organisation might need to be established to monitor CYFS and that the Department publicise its activities in an effort to reassure the public.²²

Other important recommendations included the provision of adequate funding to revamp the service, in recognition of the fact that the "Department needs adequate resources to provide the quality personnel required"²³ and that a system of demand driven rather than capped funding be introduced to cover client costs. Additional funding was also suggested in order to increase support to and the professional up-skilling of all caregivers, irrespective of their relationship to the child, and to investigate and find solutions to current foster care shortages. Emphasis was placed on the importance of coming up with an outcomes focused set of performance indicators that reflected the needs and development of children and their families instead of quantitative cost saving practices.²⁴

It was also suggested that all social work staff should be required to complete the full introductory training programme by the end of 2001 and that the matter of introducing social work registration be given urgent consideration. Additionally a coaching system was thought to be necessary where senior staff would supervise and support no more than four fulltime social workers. Finally, in terms of the mental health requirements of children it was recommended that all CYFS workers receive further training and that the Ministry of Health be the lead agency for provision and funding of child mental health services.²⁵

²² Brown, above, 28, 61.

²³ Michael J A Brown *Care and Protection is about adult Behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 29
http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

²⁴ Brown, above, 28-31, 75.

²⁵ Brown, above, 56-57, 96.

Overall it was felt that prevention of child maltreatment should be the main goal rather than crisis management of currently abusive situations. Such an aim required extensive local community and interagency involvement and support. CYFS could not do it alone.²⁶

C New Directions

1 New Directions Outlined

Both the Government and CYFS supported the findings in the Brown Report. It resulted in the launching of an initiative called New Directions which would progressively implement the 57 recommendations contained therein. This implementation would be aided by the extra \$216 million allocated to CYFS in the 2001 Budget.²⁷ In order to achieve this the programme has developed three broad approaches, which are:²⁸

- To join and build alliances with communities to achieve better outcomes
- To become a joined-up agency that is outcomes-focused, strengths-based and client-centred.
- To take a regional approach to delivery.

The initiative has five key strategies involving:²⁹

- Improving CYFS delivery of core care and protection services

²⁶ Brown, above, 97-103.

²⁷ Steve Maharey, Minister of Social Services and Employment "Maharey launches circuit-breaker New Directions Plan for Child Youth and Family." (13 June 2001) Media Statement.

²⁸ Child Youth and Family "New Directions" (date unknown) Child Youth and Family – Official Government Website
<http://www.cyf.govt.nz/view.cfm?pid=155&CFID=3905648&CFTOKEN=72422903> (last accessed 25 September 2002).

²⁹ Child Youth and Family "New Directions for Child Youth and Family" (date unknown) Child Youth and Family – Official Government Website, 2-3.
<http://www.cyf.govt.nz/UploadLib/pdf/NewDirections.pdf> (last accessed 25 September 2002). [New Directions for Child Youth and Family]

- Improving support for social workers and their professional practice through models, training, supervision and support.
- Developing clear strategies, relationships and alliances with communities.
- Aligning CYFS structure, processes and systems to support a regional approach.
- Improving the organisation's strategic capacity and developing strong leadership.

Each of the aforementioned strategies has specific projects attached to it, with some requiring immediate implementation. Overall 24 projects have been designed and project teams brought together in order to oversee them. Nine such projects have been identified as critical to the programmes eventual success.³⁰

- Holding Future Search Conferences with community partners
- Designing the joined-up and regionally focused agency.
- Improving the interface with communities
- Implementing an organisational governance and strategic leadership programme.
- Implementing a learning and development strategy to meet social workers development needs.
- Implementing a comprehensive social workforce planning strategy.
- Implementing strengths-based, outcomes-focused approaches to social work practice.
- Designing and implementing meaningful performance measures for CYFS.
- Establishing quality assurance and internal monitoring processes and systems.

³⁰New Directions for Child Youth and Family, above, 3.

To help with implementation it was proposed that an External Reference group should be established to provide CYFS with advice on New Directions and selected individual projects. It would also play a public accountability role by explaining the plan to people outside of the Department and would consist of people who were not part of CYFS but had significant knowledge of care and protection work. An Internal Reference group would also be formed in order to provide perspectives and advice from those in the front lines of social work.³¹

2 *Specific Initiatives*

The New Directions Initiative has been in operation for just over a year. It is estimated that little will be known about its true effectiveness in the area of care and protection until it has been operating for three to five years, but initial developments are widespread and look promising.

Remuneration has been increased in recognition of the difficulties and complexities of the job and salary progression is now being more closely linked to a social worker's skills and progression.³² An intensive recruitment drive is underway, with social workers visiting tertiary education campuses throughout the country in an effort to increase interest in the area.³³ In terms of training, each new social worker is introduced to the e-learning training programme based on the Department's intranet, which is a "self-directed orientation process that takes place over.....two weeks." Once social workers have completed this they are enrolled in the six-week national induction-training programme.³⁴

³¹ Child Youth and Family "New Directions: Safe Children – strong families – stronger communities" (date unknown) Child Youth and Family – Official Government Website, 7-8. <http://www.cyf.govt.nz/UploadLib/pdf/NewDirections.pdf> (last accessed 25 September 2002).

³² Child Youth and Family "Improving Performance" (March 2002) 3 *New Directions in Action* 1, 2. <http://www.cyf.govt.nz/UploadLib/images/ndia0302.pdf> (last accessed 25 September 2002). [Improving Performance]

³³ Child Youth and Family "Moving Ahead" (November 2001) 2 *New Directions in Action* 1, 6. http://www.cyf.govt.nz/UploadLib/images/ndia2_20011220_094547.pdf (last accessed 25 September 2002.). [Moving Ahead]

CYFS has plans to introduce additional intermediate social work training in January 2003, followed by more advanced training approximately twelve months after that. The Department has also worked with the schools of social work to introduce a component into the courses offered which aims to increase understanding of the CYP&F Act 1989 and the way that statutory powers and duties should be exercised under it. Thirty-eight practice manager positions around the country have been created to take responsibility for practice quality and to provide support for supervisors, which will in turn enable effective supervision of social workers. Additionally the Social Worker Registration Bill is before the House and should be enacted very shortly.³⁵ In order to be registered under the Bill, a social worker must have a social work qualification. This means that all social workers that are presently without a qualification will be required to start working towards one. To aid with this the New Zealand Qualifications Authority has approved CYFS as a Government Training Establishment, meaning that social workers will be able to credit their success in various training and skill development programmes towards a National Diploma of Social Work.³⁶

A coordinators network has been established which aims to strengthen the Departments relationship with the police and provide additional resources to individual coordinators who are struggling to cope with unreasonable workloads.³⁷ Six Regional Service Teams have been developed to provide funding advice, community liaison social work, quality analysts and care specialists. The care specialists will work closely with service delivery staff in order to achieve the best care practice and increase community involvement.³⁸ A pilot programme has also been introduced

³⁴ Improving Performance, above, 7.

³⁵ Improving Performance, above, 2.

³⁶ Moving Ahead, above, 7, 5, 13.

³⁷ Child Youth and Family "Improving Performance" (March 2002) 3 *New Directions in Action* 1, 6-8. <http://www.cyf.govt.nz/UploadLib/images/ndia0302.pdf> (last accessed 25 September 2002). [Improving Performance]

³⁸ Child Youth and Family "New Directions" (date unknown) Child Youth and Family – Official Government Website <http://www.cyf.govt.nz/view.cfm?pid=155&CFID=3905648&CFTOKEN=72422903> (last accessed 25 September 2002).

called 'local services mapping' which aligns funding and resources at a local level. It is hoped that by "developing service plans based on a local level understanding[CYFS] can provide integrated, community-based solutions for children and families"³⁹

New Directions also aims to enhance and expand its relationship with other organisations. To this end the role of Police Liaison Social Worker has been created and a new service aimed at troubled young people has been introduced that operates in partnership with one of New Zealand's largest community health providers – Richmond Fellowship. CYFS has also been working more closely with local service providers, such as Mana Social Services, in an effort to open up referrals. Future Search conferences were also held around the country in November and December 2001.

Such conferences are viewed as an important and necessary step towards highlighting important issues, such as the need for abuse prevention services, and building and maintaining alliances with communities.⁴⁰ To aid in this endeavor the Everyday Communities pilot programme was launched in Whakatane in an effort to publicly promote "positive parenting, safety for children and help communities create environments where child abuse is less able to exist."⁴¹ In November 2001 the Building Tomorrow: Paths to Stopping Child Abuse initiative was also launched in an attempt to educate New Zealanders, via television, newspapers and the internet, on effective ways of preventing child abuse.⁴²

Lastly, increased support for family caregivers is expected with the appointment of 24 new caregiver liaison social workers. The extra support is

³⁹ Improving Performance, above, 10.

⁴⁰ Improving Performance, above, 7, 9-10.

⁴¹ Child Youth and Family "Improving Performance" (March 2002) 3 *New Directions in Action* 1, 4. <http://www.cyf.govt.nz/UploadLib/images/ndia0302.pdf> (last accessed 25 September 2002). [Improving Performance]

⁴² Child Youth and Family "Moving Ahead" (November 2001) 2 *New Directions in Action* 1, 14. http://www.cyf.govt.nz/UploadLib/images/ndia2_20011220_094547.pdf (last accessed 25 September 2002.). [Moving Ahead]

intended to "reduce the number of children re-entering care and the number of placement breakdowns."⁴³

III REPORTING, INVESTIGATION & INTERVENTION PROCEDURE IN CASES OF SUSPECTED CHILD MALTREATMENT

The prevention of child abuse is a laudable goal, one that should be pursued with passion and determination by society as a whole. However, it must be accepted that, despite best efforts, children will continue to be mistreated and that there will always be a need for social work services designed to protect them from such situations.

Before the inherent difficulties associated with dealing with cases of suspected child maltreatment are discussed it is helpful to set out CYFS reporting, investigation and intervention procedure.

A CYFS Reporting, Investigation and Intervention Procedure

In order for CYFS to determine whether or not a situation of child abuse exists sufficient to warrant intervention, they must be informed that the child is at risk in some way. According to the CYP&F Act 1989 there are two different ways to notify the Department about suspected cases of child maltreatment.

Under section 15 it is possible for any member of the public to report their suspicions in this area to a social worker, member of the police or via a phone call to the CYFS National Call Centre. If the notification is made to the Call Centre, an initial assessment will be made based on such things as the amount and type of information given by the caller and whether or not the child is already on CYFS records. This initial assessment

⁴³ Improving Performance, above, 4.

determines whether or not the call will be accepted as a notification or referred on to an agency that is considered more appropriate.⁴⁴

Should the call result in a notification then the case will be sorted into one of four potential categories. These categories are Critical (requiring same day investigation), Very Urgent (requiring investigation within two days), Urgent (investigation must occur within seven days) or Low Urgency (investigation will occur within 28 days). Once the case has been categorised it will be allocated to a social worker for investigation.⁴⁵

It is also possible to make a referral directly to a Care and Protection Co-ordinator under section 19. This type of notification can only be made by a Court or other agency concerned about the welfare of a child or young person and should result either in a Family Group Conference [FGC] or in a referral to another agency. The Co-ordinator can request that the matter be investigated by social workers in order to determine which is the best option.

Section 17 requires social workers to commence an investigation into a child abuse 'report' as soon, as is practicable. The investigation should proceed in conjunction with the consultation of a care and protection resource panel by the social worker, as well as with the input of cultural advisors.⁴⁶ Under this section there is a further requirement to inform the person who reported the suspected abuse whether or not the claim is being investigated and whether or not any further action in respect of the allegations is underway.⁴⁷

⁴⁴ Interview with F, anonymous social worker, CYFS National Office (the author, Wellington, 2 September 2002).

⁴⁵ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 58.
http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

⁴⁶ Peter J Trapski *Trapski's Family Law: Volume I Children Young Persons and their Families* (Brookers Ltd, Wellington, 2002), 1-110(a).

⁴⁷ Children Young Persons and their Families Act 1989, s 17(d).

In making a determination as to whether or not a child is in need of care and protection, as defined by section 14 of the Act, investigative social workers have well developed procedures and practices and are supported by various tools of assessment. The publication "Recognition of Child Abuse and Neglect" is used,⁴⁸ as well as the Care and Protection Handbook, which outlines the sections of the CYP&F Act 1989 and explains what they apply to and how they are intended to work in practice.

The Handbook also provides a guide as to the services available for a child and their family and details their legislative duties and responsibilities under other relevant statutes such as the Guardianship, Adoption and Domestic Violence Acts. In order to help substantiate claims of suspected maltreatment the social worker "should have access to and use the expertise of other professionals, such as that of a pediatrician." It is also possible for the investigative team to get a Court order for a medical examination of the child⁴⁹ or for the production of documents to assist them.⁵⁰

Once a report of suspected maltreatment has been substantiated, other tools of assessment are used in order to determine whether or not the child (or children) in question is in need of care and protection. The first of these is the Risk Estimation System, which provides guidance through a set of broad questions that are designed to assess the level of ongoing risk to the child. For example seeing if there is a history of substance or alcohol abuse or lack of supervision. It also helps the social worker to gather information about the extent of family wellbeing and the support networks that they have, or could have, in place.⁵¹

There is also a Wellbeing Assessment of the family which attempts to ascertain a child's strengths and needs in this area. The social worker

⁴⁸ Brown, above, 59.

⁴⁹ This can also be done with parental consent. See Children Young Persons their Families Act 1989, s 53.

⁵⁰ Children Young Persons and their Families Act 1989, s 49, s 50, s 51, s 59, s 60, s 61.

looks at attitudes, social interactions and peer relationships, education, employment, patterns of offending, the physical and emotional environment as well as whether or not the child has a strong family attachment.⁵² Overarching the Risk Estimation System and the Wellbeing Assessment is the Towards Wellbeing Guide which encourages social workers to trust their intuition, check their assumptions, share information and ensure that the investigation is done in a culturally appropriate manner.⁵³

If an investigation results in the social worker deciding that a child is in need of care and protection they must refer the matter to a Care and Protection Co-ordinator who will convene a FGC in accordance with sections 20 to 38 of the Act.⁵⁴ The purpose of such a conference is for the child's family to have an opportunity to listen to the information presented by the professionals that have been involved in the investigation and to come up with a joint plan that will ensure the child's care and protection needs are satisfied.⁵⁵

The Co-ordinator must consult with the family before convening a conference, attempt to ascertain the views of family members unable to attend and obtain the agreement of the social worker, police officer or referral agency and others directly involved in formulating the plan.⁵⁶ However, it is important to note that where a case is considered to be critical and the investigative team considers the child to be in imminent danger, a place of safety warrant may be obtained and executed. This can result in the

⁵¹ Interview with F, anonymous social worker, CYFS National Office (the author, Wellington, 2 September 2002).

⁵² Wellbeing Assessment Document (given to the author by duty social worker J, Porirua CYFS Office, Wellington, 13 September 2002).

⁵³ Interview with F, anonymous social worker, CYFS National Office (the author, Wellington, 2 September 2002).

⁵⁴ Children Young Persons and their Families Act 1989, s 17(2).

⁵⁵ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 63.

http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

⁵⁶ Children Young Persons and their Families Act 1989, s 21, s 24, s 30.

removal of the child from their home before a FGC can be called and a management plan agreed upon.⁵⁷

Sometimes it will be impossible for all members of the FGC to agree on the best way to protect the child, or it can be agreed that the best way to resolve the matter is to bring it before a judge. If this occurs then under sections 68 and 69 of the Act the matter can be referred to the Family Court with an application for a declaration that the child is in need of care and protection. Although a declaration will only be granted if the Court is satisfied that the child's need for care and protection cannot be met by other means.⁵⁸

B The Impact of New Directions

The implementation of New Directions involves little if any statutory change and consequently is likely to have no direct impact on CYFS reporting, investigation and intervention procedure. However, it is possible that there may be an 'indirect' effect. One of the aforementioned criticisms of the Brown Report was the high number of unallocated cases. It was felt that the Department was too slow and inefficient when it came to investigating notifications of abuse, meaning many at risk children never made it past the first stage of the procedure mandated by the CYP&F Act 1989.⁵⁹

The additional funding allocated to CYFS has allowed for an increase in the hiring remuneration and (hopeful) retention of frontline social workers. According to the Department this has substantially reduced the

⁵⁷ Children Young Persons and their Families Act 1989, s 39; Interview with F, anonymous social worker, CYFS National Office (the author, Wellington, 2 September 2002).

⁵⁸ Children Young Persons & their Families Act 1989, s 73.

⁵⁹ Michael J A Brown *Care and Protection is about adult Behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 60-61.

http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

number of unallocated cases.⁶⁰ Additional training may also lead to social workers being able to process reports in a more efficient manner, to the extent that delays were caused by a lack of skills or knowledge about how to properly investigate and intervene into such matters. This will hopefully give the reporting, investigation and intervention procedure a chance to work properly for a greater number of at risk children, to work the way it was intended to work and process all notifications appropriately.

IV REPORTING CHILD MALTREATMENT

In his final report on the adequacy of CYFS as a child protective service, Michael Brown made the comment that “perhaps the greatest risk to a child is that no one notices or brings to notice their predicament.”⁶¹ Simply put, irrespective of the deficiencies of the Department, they can do nothing if they are not informed in some way about cases of suspected abuse. It is only logical to assume that for every incident that does get reported to CYFS, there are many more that are not. This assumption has generated much discussion as to the best way to increase maltreatment notifications, so that such children do not continue to slip through the cracks.

Systems of mandatory reporting,⁶² which are said to substantially increase the number of child abuse notifications made, have been recommended and endorsed by both the Mason Report and the Brown Report.⁶³ Michael Brown noted that as a result of the publication of the James Whakaruru report, ACC had informed CYFS of approximately 236

⁶⁰ Child Youth and Family “New Directions for Child Youth and Family” (date unknown) Child Youth and Family – Official Government Website <http://www.cyf.govt.nz/UploadLib/pdf/NewDirections.pdf> (last accessed 25 September 2002).

⁶¹ Brown, above, 65.

⁶² Mandatory reporting is where certain segments of society or society as a whole is legally obligated to report situations where they suspect child abuse may be occurring.

⁶³ Judge Ken Mason *Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley* (Auckland, 1992), 17-18; Michael J A Brown *Care and Protection is about adult Behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 65-66 http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002). Currently New Zealand operates under a system of voluntary reporting.

children under the age of five who had had more than 10 accidents in their lives. Fifty-two of these children were already known to the Department. It was felt that if this organisation could be mandated to report all children suffering an agreed number of accidents to CYFS that this would provide very broad coverage, as all Doctors, irrespective of whether they work in private practice or in a hospital, must report all accidents to ACC.⁶⁴

Once the decision has been made to implement such a scheme, it is necessary to decide which portions of society such a requirement to report should attach to. Should all members of society be required to report or just selected professionals? The Mason Report found the former option to be "untenable" and suggested that only registered medical practitioners, teachers, nurses, police and social services workers should bear the burden.⁶⁵ There are good reasons for this limitation. Such a requirement would be unenforceable against most of society, as it is always open to someone to claim ignorance of the situation. Social workers have a difficult enough time substantiating claims of abuse, let alone working out who may or may not have known about it beforehand. However, professionals who have a lot of interactions with children would have more difficulty claiming ignorance since the majority would or should have a lot of experience when it comes to recognising situations of potential maltreatment.⁶⁶

A Reasons why a Mandatory Reporting Scheme will help More Children.

Mandatory reporting is said to help more at risk children because it reflects society's abhorrence of child abuse. It sends a message that society views the child as an individual with rights to preservation of life and health and consequently will not tolerate their maltreatment. Additionally, it is recognition that the community cares and recognises that child abuse is "a grave matter calling for public scrutiny and perhaps for intervention by

⁶⁴ Brown, above, 69.

⁶⁵ Mason, above, 17-18.

⁶⁶ Mason, above, 17.

agencies of the state."⁶⁷ This is why such regimes generally carry a penalty for failing to report instances of suspected abuse. It has been suggested that if such a scheme is restricted to certain professionals then most failures could be dealt with using internal disciplinary procedures. However, in the United States where most states have mandatory-reporting schemes in some form, a criminal penalty usually also applies.⁶⁸

It is argued that a penalty is necessary to remind reporters of the positive duty imposed on them and the seriousness with which society views the abuse of children. This will encourage professionals, particularly those that may be hesitant to notify the relevant authorities to do so. Further, failure to impose a penalty is said to indicate a lack of serious legislative intent. Without a sanction a mandatory reporting scheme becomes to all intents and purposes a voluntary reporting scheme. Reporters are usually granted immunity provided that they have reported in good faith, meaning that they have a reasonable suspicion that abuse may be occurring. To do otherwise would leave individuals who are obligated to report in a no-win situation where they can be penalised if they do and will be penalised if they do not notify the authorities of their suspicions. Failing to provide such people with immunity may have a chilling effect on the number of child abuse notifications received.

Mandatory reporting is also said to alleviate the need to make difficult moral decisions. A reporter may struggle with the issue of whether or not to report due to a fear of undermining a relationship of confidence or because of pressure from the family in question or community groups. A legal obligation to report suspected abuses is said to remove this ambivalence. The individual has no choice; he or she must report their suspicions. Additionally, it has been argued that it will provide the reporter with a justification for notifying the authorities. Abusive family members who may have a relationship of trust with the professional will view them as

⁶⁷ Judge Ken Mason *Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley* (Auckland, 1992), 212.

attempting to protect themselves from liability rather than voluntarily assuming the role of an accuser.⁶⁹ However it must be noted that reality is never that simple. For the family that is unwilling or unable to admit that there is an abusive situation occurring it is highly likely that they will become upset that the professional even "reasonably suspected" that there was abuse. Therefore there is a strong possibility that an atmosphere of distrust will be fostered and relationships will be damaged or even destroyed due to the reporters actions.

Lastly, and perhaps most importantly, overseas evidence does show that there is a strong correlation between the implementation of a mandatory reporting provision and substantial increases in the number of child abuse notifications that are made.⁷⁰

B Reasons why a Mandatory Reporting Scheme is unlikely to help more At Risk Children

Opponents of mandatory reporting suggest that while such schemes do increase the number of child abuse reports, the number of unsubstantiated reports rise in line with this. In the U.S it was suggested that while one million reports are substantiated each year, there are nearly two million false or unsubstantiated reports. This means that social workers are conducting a number of unnecessary investigations, which may result in inappropriate interventions into family life, such as removing the child from their home. It is further argued that investigating these cases prevents social workers from focusing on or even getting to those children who are truly in need of protection.⁷¹

⁶⁸ Steven J Singley "Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters" (1998) 19 JJUVL 236, 246-247.

⁶⁹ Mason, above, 213-214.

⁷⁰ Singley, above, 238. The reasons why this increase may not necessarily help at risk children will be elaborated upon in the following section.

⁷¹ Caroline T. Trost "Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments" (1998) 51 VNLR 183, 207.

A suggested reason for this increase in unsubstantiated allegations is that many professionals are unsure what the term 'reasonable suspicion' actually means. Because they are fearful of being prosecuted, or losing their job and/or reputation this leads to them erring on the side of caution and reporting many incidents which are subsequently not classified as child abuse. In addition reporters are usually prohibited from investigating before reporting. Discussing the situation with a family member beforehand and possibly tipping them off is considered detrimental to the child's wellbeing.⁷² Secondly, the increase can also be seen as the end result of a self-perpetuating problem. Because case workers have heavy case loads, they have less time to investigate each report "consequently, some reports where abuse is occurring may not be detected due to the lack of time and [stretched] resources of social service agencies."⁷³

There are two counter arguments to this. Firstly, it was noted by the Mason Report that mandatory reporting had been legislated for in many American states and in New South Wales and Victoria in Australia. In those two countries, it was "common ground that following the introduction of mandatory reporting, the number of complaints rose and then settled to a manageable level." The Committee also stated that "scarcity of resources is an unacceptable reason for rejecting the concept of mandatory reporting. If the need is serious enough, resources must follow. The need is serious."⁷⁴ Secondly, it should never be assumed that any unsubstantiated report is unnecessary. This ignores the fact that reporting statutes deliberately place the degree of suspicion required for child abuse reporting at a low level in order to protect as many children as possible. Such a low level of suspicion "necessarily assumes that enduring some erroneous reports is the price of detecting as much abuse as possible."⁷⁵

⁷² Steven J Singley "Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters" (1998) 19 JJUVL 236, 242-244.

⁷³ Singley, above, 240.

⁷⁴ Mason, His Hon Judge Ken *Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley*, (Auckland, 1992), 14.

⁷⁵ Caroline T. Trost "Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments" (1998) 51 VNLR 183, 207.

Another concern, frequently raised, is that child abusers may be prevented from seeking medical attention for their child or even sending them to school for fear that the abuse may be reported. Professionals would be unable to report what they never get a chance to detect and at risk children would be placed in greater danger. Statistically, it is impossible to determine how many abusive parents might be discouraged in such a way. However, evidence indicates that individual incidents of abuse can be triggered by a crisis with which the parent is unable to cope. In their calmer moments they are often very concerned about the welfare of their child and horrified by what they have done. Such parents will tend to seek help once a crisis is passed. In contrast "neglectful parents by their very nature are unlikely to seek medical help or otherwise for children at present and thus a reporting law will have no effect on their willingness to help."⁷⁶ Additionally, under New Zealand's current voluntary reporting law, professionals dealing with children can report suspected abuse, the only difference is that they are not generally legally required to do so.

Also associated with a mandatory reporting regime are negative impacts upon relationships of confidence. In some cases the same professionals who are required to notify authorities of suspected abuse "are often also the beneficiaries of a statutory privilege to keep their client's [communications] and secrets confidential."⁷⁷ Physician-patient and psychotherapist-client relationships tend to be covered by this privilege. Other relationships such as that of a teacher-student are not subject to this, nonetheless confidences are often made and trust given on the implicit understanding that the information imparted will not be revealed to anyone. However, the aforementioned legal privilege is usually waived when it comes to reporting cases of child abuse.⁷⁸ Even though New Zealand is subject to a voluntary reporting regime, section 22C of the Health Act 1956 allows for the disclosure of health information to CYFS. Crown Health Enterprises have also stated that all the privacy restrictions relating to such

⁷⁶ Mason, above, 209.

⁷⁷ Alison Beyea "Competing Liabilities: Responding to Evidence of Child Abuse that Surfaces During the Attorney-Client Relationship" (1999) 51 MELR 269, 290.

information "are overridden by sections 15 and 16 of the CYP&F Act (1989)"⁷⁹

This is because it is considered anomalous if a relationship of confidence designed to protect the interests of a patient should be used to justify leaving the patient to suffer abuse. Professional responsibilities to protect life and health must take precedence over matters of confidence.⁸⁰ Irrespective of this it is logical to assume that a requirement to report information given in confidence will destroy trust, damage reputations and stop individuals from imparting further, potentially important information. The knowledge that the professional is required to report is also very likely to prevent others from confiding in or coming to them for help, meaning that many at risk children who previously might have come to their attention could fall through the cracks.

C The Impact of New Directions

An examination of the literature relating to the notification of child abuse reveals two key elements that will impact on the level of reporting irrespective of whether a mandatory or a voluntary reporting provision is enacted. These two elements are that of public education and public confidence.

1 Public Education

In order for people to report child maltreatment they have to be able to recognise the signs when they are confronted with them. It has been argued that under-reporting of child abuse is due to a lack of guidance as to what constitutes abuse. This means that a possible reason that at risk children are being missed is due to an education gap, not because not enough

⁷⁸ Beyea, above, 291-292.

⁷⁹ New Zealand Children and Young Persons Service *Breaking the Cycle: Interagency Protocols for Child Abuse Management* (New Zealand Children and Young Persons Service, Wellington, 1996), 3-5.

people are mandated reporters. Specifically, CYFS working in concert with other professionals needs to provide⁸¹

realistic guidance about deciding to report such as educational materials, which clarify legal definitions of abuse and neglect, examples of reporting situations, how to recognize abuse and neglect and what to expect when a report is made.

There is a danger that this might lead to a 'check-list' mentality with individuals focusing on the signs that they have been educated about. This means that while it may lead to a reduction "of false reports it does so at the possible expense of missed cases of abuse."⁸² However, it must be acknowledged that for the general public some guidance in terms of what to look for is better than nothing.

In 1995 publications were made available (alongside an extensive publicity campaign) that provided such guidance. *Breaking the Cycle: An Interagency Guide to Child Abuse* provided detailed information relating to the aims, principles and services of CYFS, definitions and signs of abuse and neglect and what to expect when reporting suspected cases of maltreatment.⁸³ This campaign did increase the number of notifications.⁸⁴ Additionally, section 7(2)(ba)(I) of the CYP&F Act 1989 requires the Chief Executive to:

Promote, by education and publicity, among members of the public (including children and young persons) and members of professional and

⁸⁰ Judge Ken Mason *Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley* (Auckland, 1992), 212.

⁸¹ Alison Beyea "Competing Liabilities: Responding to Evidence of Child Abuse that Surfaces During the Attorney-Client Relationship" (1999) 51 MELR 269, 293.

⁸² Steven J Singley "Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters" (1998) 19 JJUVL 236, 243.

⁸³ Children Young Persons and their Families Service *Breaking the Cycle: An Interagency Guide to Child Abuse* (Children Young Persons and their Families Service, Wellington, 1998).

⁸⁴ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 66-67

http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

occupational groups, awareness of child abuse, the unacceptability of child abuse, the ways in which child abuse may be prevented, the need to report cases of child abuse, and the ways in which child abuse may be reported.

New Directions is committed to strengthening its public education role and has begun this process with the pilot programme mentioned in section II of this paper "Everyday Communities". This initiative was viewed as such a success that it has been expanded "from a one-off six week programme to 12 months of activity including three-eight week radio programmes." The radio sessions focus on aspects of abuse such as emotional neglect. Local people were encouraged to share their experiences on the air and it is believed that this helps to "raise local awareness of the problem of child abuse and provide some solutions."⁸⁵ Building Tomorrow: Paths to Stopping Child Abuse is another New Directions education campaign, which targets society as a whole as opposed to particular communities.⁸⁶ It is unclear at this time what impact Everyday Communities and Building Tomorrow have had or will have on the reporting of child abuse, as they are still in the initial stages but they can be viewed as a giant step in the right direction.

2 Public Confidence

It is argued that mandatory reporting schemes are unnecessary because the professionals that are required to notify authorities of their suspicions would do so irrespective of whether or not a legal imperative to do so existed. However, where there is a relationship of trust and previously unsatisfactory dealings with child protective services the professional will be reluctant to report when they doubt that social workers will respond adequately, if at all.⁸⁷ This was illustrated in the Brown report, which mentioned a case where a child had died as the result of

⁸⁵ Child Youth and Family "Improving Performance" (March 2002) 3 *New Directions in Action* 1, 3. <http://www.cyf.govt.nz/UploadLib/images/ndia0302.pdf> (last accessed 25 September 2002).

⁸⁶ For more information on these two projects see: Section II, Part C: New Directions Outlined.

injuries and "a doctor had failed to report purportedly because of previous poor response from CYF."⁸⁸ Michael Brown emphasised how crucial it was that public confidence in CYFS be restored⁸⁹, which is no easy task given current perceptions of the ability of the Department to respond to notifications.

The New Directions strategy may go a long way towards alleviating public concern. Even the perception that the Department is aware that there is a problem and is prepared to address it via comprehensive initiatives and external monitoring can reassure people. Additionally, CYFS is being very transparent when it comes to detailing what it is doing to improve the quality of its service.⁹⁰ The Social Worker Registration Bill is said to be "a key step in building public confidence in the social work profession"⁹¹ and in the adequacy of knowledge and skill in the child protection area. As has been mentioned earlier increased government funding should lead to a rise in the number of social workers available to investigate reports, as well as an improvement in the retention rate of the Department. This should improve responsiveness as well as perceptions of responsiveness.

However, it should be noted that the goals articulated by CYFS as part of the New Directions initiative are vague and broad ranging and while there is information available on specific projects it is often hard to determine what aim or outcome they are linked with. Increased clarity of that information may go a long way towards decreasing confusion and

⁸⁷ Alison Beyea "Competing Liabilities: Responding to Evidence of Child Abuse that Surfaces During the Attorney-Client Relationship" (1999) 51 MELR 269, 293.

⁸⁸ Brown, above, 65.

⁸⁹ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 6, 97.

http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

⁹⁰ There is a lot of information available at the Child Youth and Family – Official Government Website. Additionally a newsletter called New Directions in Action detailing progress is can be accessed as a PDF file.

⁹¹ Child Youth and Family "Moving Ahead" (November 2001) 2 *New Directions in Action* 1, 3. http://www.cyf.govt.nz/UploadLib/images/ndia2_20011220_094547.pdf (last accessed 25 September 2002.).

increasing confidence in both the New Directions strategy and the Department.

To the extent that CYFS is prepared to work with and address the concerns of community partners and other agencies through Future Search Conferences and sharing its workload, it may regain the respect and co-operation of a number of professionals. It is essential that this happens, as individuals such as doctors and teachers are often best placed to observe and recognise maltreated children and should be viewed as one of CYFS greatest assets in the fight against abuse.

This was recognised in 1995 when a series of Interagency Protocols were designed between the Department and other agencies such as the Ministry of Education, Crown Health Enterprises, the New Zealand Police, the Ministry of Youth Affairs and the New Zealand Association of Counsellors. These protocols provided extensive guidelines to assist in the reporting and management of child abuse by various different professions. However, the Brown Report found that there was no way to judge their effectiveness as the development and implementation of protocols had not been reported on or evaluated. Additionally existing reporting protocols in some agencies had had no official promotion and very little staff training.⁹²

It can be strongly argued that conferences and a few isolated projects in partnership with other agencies does not go far enough and that a comprehensive interagency co-operative scheme is needed in order to prevent children like James Whakaruru from slipping through the cracks. It may also help to bolster public confidence if the Department has partnerships in place with other agencies and professions that will in all likelihood increase its ability to respond quickly and appropriately to notifications of abuse. The Interagency Protocols might be a good way of

⁹² Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 66-67
http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

achieving this. Unfortunately there is no indication that the New Directions initiative will be revisiting or making use of them.

It is necessary at this stage to point out that in the area of child protection, public confidence is not an easy thing to get or maintain. Michael Brown acknowledged all too often that the positive outcomes of many cases are disregarded and media attention zeros in on the situations where despite social workers' involvement death or serious injury has occurred.⁹³ That this happens at all once the Department has been made aware of potential problems is horrifying but not surprising. As will be discussed in the remainder of this paper, inherent difficulties in recognising maltreatment and balancing competing interests once the decision has been made to intervene means that the appropriate response does not always occur.

3 *Voluntary versus Mandatory Reporting Provisions*

It has been suggested that the combined effect of public education and public confidence in CYFS would make a voluntary reporting provision virtually indistinguishable from a mandatory-reporting scheme. In both instances the number of reports would significantly increase, necessitating extra funding and resources to keep up with demand.⁹⁴ The proposed measures in New Directions are in many ways directed towards dealing with the current level of child abuse reports and there seems to be little doubt that the Department would be unable to cope with the implementation of mandatory reporting at this point in time. However, should public education continue and society's confidence in CYFS be restored, will this impact upon the number of notifications made and in turn the capacity of the Department? As a matter of logic increased reporting calls for increased funding and resources, which begs the question – will CYFS always be running to catch up with the demand for its services?

⁹³ Brown, above, 1, 6.

V DIFFICULTIES OF INVESTIGATING CHILD MALTREATMENT REPORTS

A General Difficulties

Investigating allegations of suspected child abuse is, at best, a difficult task. Social workers operate from the outside looking in and are provided with at most a mere snapshot of a child's situation. All too often it becomes necessary to make a decision based on limited and ambiguous information and (when the child's immediate safety is at stake) limited time. CYFS staff are "in the business of predicting human behaviour and it is beyond the ability of any social work system to accurately and consistently anticipate how people might act."⁹⁵ The work is complex; there are few absolutes and even fewer valid and reliable measures of either the negative impact or positive outcomes of social work investigation.⁹⁶ Due to these aforementioned factors as well as the devastating consequences that might result from a failure to intervene, it is enough that the social worker "reasonably believes" at the time of investigation that the child is in need of care and protection.⁹⁷ *CMP v D-GSW*⁹⁸ reinforces this, in this case Elias J maintained that this relatively low standard was⁹⁹

appropriate in the scheme of the Act which [contained]...the further safeguards of family group conference and Court consideration before a determination whether a child is in need of care and protection can be made. It would be wrong to set the trigger for these closer assessments too highly.

1 Expanding the Statutory Definition

⁹⁴ Brown, above, 67.

⁹⁵ Brown, above, 9.

⁹⁶ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 9
http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

⁹⁷ Children Young Persons and their Families Act 1989, s 17(2).

⁹⁸ *CMP v D-GSW* [1997] NZFLR 1 (HC) Elias J.

⁹⁹ *CMP v D-GSW*, above, 27.

Under section 14 of the CYP&F Act 1989, a potentially maltreated child will be considered to be in need of care and protection if

- They are “being or [are] likely to be, harmed (whether physically or emotionally or sexually), ill-treated, abused or seriously deprived; or”¹⁰⁰
- Their “development or physical or mental or emotional wellbeing is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, serious and avoidable.”¹⁰¹

It is unclear what constitutes the harm, ill treatment, deprivation, impairment and/or neglect of a child and the Act does not provide any further explanation of these terms. Given this seeming lack of clarity, how does a social worker know what to look for when attempting to substantiate allegations of abuse? Should the aforementioned definitions to be expanded upon in order to provide some guidance in this area?

It is necessary at this stage to point out that social workers do not have to rely only on the definitions of abuse and neglect in section 14. They are provided with training and tools that should (theoretically) aid in the recognition of the signs and symptoms of maltreatment. Staff on the frontline are encouraged to take a holistic approach and to that end will examine four different areas of a child’s life when they investigate reports. These four areas, in no particular area of importance are:¹⁰²

- Physical Signs – such as bruises and welts, cuts and abrasions, head, abdominal and/or genital injuries, non-organic failure to thrive, malnutrition, dehydration and inadequate hygiene.

¹⁰⁰ Children Young Persons and their Families Act 1989, s 14(1)(a).

¹⁰¹ Children Young Persons and their Families Act 1989, s 14(1)(b)

¹⁰² Children Young Persons and their Families Service *Breaking the Cycle: An Interagency Guide to Child Abuse* (Children Young Persons and their Families Service, Wellington, 1998), 30. [Interagency Guide to Child Abuse]

- Behavioural Signs – such as aggression, frozen watchfulness, withdrawal, anxiety and regression, fear, sadness, defiance, overly responsible behaviour, obsessions, sexual behaviour and suicidal thoughts and plans.
- Parent, Caregiver or Family Signs – such as exposure to family violence, unrealistic expectations, inappropriate or inconsistent discipline, isolation from family, friends and culture, rejecting of the child or dependency.
- Developmental Signs – there may be specific delays such as motor, emotional, speech and language, social, cognitive, vision and hearing or there may be an overall development delay or unusual development patterns.

Each sign is explained in some depth. Other aids to investigation include the Risk Estimation System and the Wellbeing Assessment, which are used to get a clearer picture of the risks facing the child and the overall wellbeing of the family unit.¹⁰³ If one attempted to successfully incorporate all this information into the definition of a child in need of care and protection it would in all likelihood make up an Act in of itself. Yet, to attempt to avoid this and instead pick and choose between what information to put into the definition would also create difficulties.

The signs and symptoms outlined above are for the most part non-specific to abuse and may be indicative of something other than maltreatment. Consequently it is important that they all be examined within the total context of the individual child's situation.¹⁰⁴ Additionally, there is a great deal of difficulty involved in adequately defining aspects of child abuse and neglect. Understanding of the causes and symptoms is in a

¹⁰³ For further explanation of the Risk Assessment System and the Wellbeing Assessment, see Section III: Reporting, Investigation and Intervention Procedure in Cases of Suspected Maltreatment.

¹⁰⁴ Interagency Guide to Child Abuse, above, 9-33.

constant state of evolution and change and it is "no longer possible to separate physical abuse, sexual abuse, emotional abuse and neglect, as many children experience multiple forms."¹⁰⁵

However, because the aforementioned tools are not enshrined in legislation, at the most they amount to broad guidelines. At the end of the day, the decision that maltreatment is present and that the child is in need of care and protection is largely a judgement call, requiring the social worker to call on their experience and intuition.¹⁰⁶ There are significant dangers inherent in giving social workers such discretion. Individual biases and values will inevitably influence the decision-making process. This means that there is a strong chance that socio-economic and cultural preconceptions about the 'average child' and what constitutes abuse and neglect, may lead to either an inappropriate intervention or a failure to intervene when it is crucial that intervention occur.¹⁰⁷ Logically, the likelihood of such a thing happening must increase when social workers have little experience or training in the area of child abuse recognition and investigation. On the other hand, as has been discussed in the previous section, attempts to provide exhaustive definitions and minimum conditions required for intervention are also dangerous.

No two situations of child abuse are the same and involve children of differing age and resiliency, differing degrees and types of maltreatment as well as unique family circumstances. Attempting to impose rigid standards may result in a checklist mentality. Social workers may fail to appreciate the child's true situation or the fact that there are alternative explanations for what may appear to be visible signs of abuse because they are concentrating on satisfying what they perceive to be the legal requirements before they can intervene. Consequently, drafting grounds for

¹⁰⁵ Australian Institute of Criminology "Child abuse and neglect: integrated approach essential" (21 March 2000) Media Release <http://www.aic.gov/au/media/20000321.html> (last accessed 25 September 2002).

¹⁰⁶ Interview with J, duty social worker, Porirua CYFS Office (the author, Wellington, 13 September 2002).

¹⁰⁷ Peter J Trapski *Trapski's Family Law Volume 1: Children Young Persons and their Families* (Brookers Ltd, Wellington, 2002), 1-145.

intervention must be "sufficiently general so as not to unintentionally exclude the many possible variations of the treatment of children."¹⁰⁸ For these reasons, attempting to adequately 'bulk up' the definition of a child in need of care and protection found in section 14 may not be desirable or even feasible.

However, while it is difficult to draw clear boundaries around the elements of the definition it might be possible to tidy it up somewhat. A close examination of section 14(1)(a) suggests that this ground of intervention relates to the harm resulting from deliberate acts of abuse. Meanwhile section 14(1)(b) appears to focus more on instances of neglect, which more often than not stems from a series of omissions rather than actions on the part of the caregiver. This distinction could be made clearer without compromising the need for generality.

Lack of information, time and guidance as to what constitutes child abuse are not the only difficulties faced by social workers when attempting to investigate claims of maltreatment. With the exception of physical abuse, it is often very difficult to prove that a child is at risk, because there generally are no readily identifiable signs of maltreatment in the majority of abuse cases. In order to explore this difficulty more fully, the next section will outline the challenges involved in recognising symptoms of and intervening meaningfully in cases of emotional neglect.¹⁰⁹

B Emotional Neglect

In this section there will be a strong focus on impacts of the emotional neglect of infants. This is because it is believed that emotional neglect will usually begin at this time in a child's life, and (as will be shown) this is when emotional neglect has the potential to cause the greatest amount of damage.

¹⁰⁸ Trapski, above, 1-145.

Emotional neglect occurs when “meaningful adults are unable to provide necessary nurturance, stimulation, encouragement and protection to the child at various stages of development, which inhibits [their] optimal functioning.”¹¹⁰ It is a difficult area of child maltreatment to say the least and probably one of the least developed, due to the fact that a great deal of time and attention has been focused elsewhere in an attempt to discover the causes and signs of physical and sexual abuse. This type of neglect is usually the result of “subtle or blatant acts of omission or commission experienced by the child, which causes handicapping stress....and is manifested in patterns of inappropriate behavior.”¹¹¹ Such ‘acts’ may include – the rejection, isolation or oppression of the child, a deprivation of affection of cognitive stimulation, negative impacts due to the emotional or mental condition of the parent or caregiver and/or the negative impact of substance abuse by the parent/caregiver.¹¹²

1 Why is it so important to intervene in cases of emotional neglect?

A number of years ago, child development expert John Bowlby proposed what has come to be known worldwide as ‘Attachment Theory’. This refers to a special bond, which is characterised by the unique qualities of primary caregiver-infant relationships. Such a bond represents an “enduring emotional relationship with a specific person....[which] brings safety, comfort and pleasure...[and] loss or threat of loss of the person evokes intense distress.”¹¹³ As more and more research has been undertaken

¹⁰⁹ This is with the full recognition that there are evidential difficulties with other aspects of child maltreatment, for instance sexual abuse. Additionally, it is acknowledged that emotional neglect will often be present with other forms of abuse and neglect.

¹¹⁰ Dr G. Steven Neely “The Psychological and Emotional Abuse of Children: Suing Parents in Tort for the Infliction of Emotional Distress” (2000) 27 NKYLR 689, 691-692.

¹¹¹ Neely, above, 691.

¹¹² Children Young Persons and their Families Service *Breaking the Cycle: An Interagency Guide to Child Abuse* (Children Young Persons and their Families Service, Wellington, 1998), 12.

¹¹³ Dr Bruce D Perry “Bonding and Attachment in maltreated children: consequences of emotional neglect in childhood.” (date unknown)

in order to investigate the implications of this bond, people have come to realise just how crucial these early childhood relationships are to the subsequent healthy development of a child.

Recent developments in the neurosciences have led to dramatic breakthroughs in the area of brain development and the understanding of the consequences of neglect. The brain's development has been described as "an experience-dependent process, in which experience activates certain pathways in the brain, strengthening existing connections and creating new ones. Lack of experience can lead to cell death in a process called pruning."¹¹⁴ The stimulation that an infant receives will determine which neuron connections will strengthen and which will wither away, this "initial construction of synaptic connections serves as the foundation for all future learning."¹¹⁵

Consequently, it is essential that the child have time with their primary caregiver. Face-to-face interactions, eye contact, physical proximity, touch, and other primary sensory experiences such as smell, sound and taste are all necessary for the healthy emotional development of an infant.¹¹⁶ It has been consistently stated that this must occur during the first three years of a child's life because while an individual's brain will continue to change throughout their entire life, the experiences of early childhood determine the brain's receptivity and ability to process new information.¹¹⁷

Theories such as these demonstrate that emotional neglect can have devastating consequences. It has been associated with delays in motor, language and social development (which has a negative impact on academic achievement and career prospects later on in life) and a range of emotional

<http://teacher.scholastic.com/professional/bruceperry/bonding.htm> (last accessed 25 September 2002).

¹¹⁴ Janet Weinstein "Before its too Late: Neuropsychological Consequences of Child Neglect and their Implications for Law and Social Policy" (2000) 33 UMIJLR 561, 593.

¹¹⁵ Weinstein, above, 594.

¹¹⁶ Perry, above.

¹¹⁷ Weinstein, above, 594-595.

problems including depressive and anxiety symptoms. Inappropriate modeling is not uncommon, with maltreated children learning that abusive behaviour is the right way to interact with others. This causes problems with their social and emotional interactions with peers.

Other major problems include aggression. Emotionally neglected children often suffer from a lack of empathy for others and poor impulse control, because their ability to understand the emotional impact of their actions on others is impaired. Such children often feel compelled to lash out and hurt other people less powerful than they are and while they may show regret (an intellectual response) they will seldom show remorse (an emotional response). Unfortunately, it is all too easy to understand why a number of emotionally neglected children end up being featured prominently in the criminal justice system.¹¹⁸

Another arguably important reason to intervene in this area is to attempt to halt the ripple effect that emotional neglect causes. This type of maltreatment (as with most forms of abuse) is intergenerational. The neglectful parent who was neglected as a child, in turn passes on the inadequate way in which they were parented because they were never taught or given the opportunity to learn the skills necessary for the healthy development of their offspring. This may result in what is known as, the 'parentification' of the child, which happens when the parent is so immature and uninformed about children that they may treat their child like a playmate or even a fellow adult.¹¹⁹

The biggest cause of emotional 'neglect' has been found to be simple parental ignorance about the developmental and emotional needs of children rather than any form of sustained abuse. This can be illustrated by

¹¹⁸ Dr Bruce D Perry "Bonding and Attachment in maltreated children: consequences of emotional neglect in childhood." (date unknown) <http://teacher.scholastic.com/professional/bruceperry/bonding.htm> (last accessed 25 September 2002); Janet Weinstein "Before its too Late: Neuropsychological Consequences of Child Neglect and their Implications for Law and Social Policy" (2000) 33 UMIJLR 561, 590-592.

¹¹⁹ Perry, above.

the non-parental care debate that has generated a great deal of publicity in recent years. Increasingly, mothers are returning to work within a few months of having a child, leaving their care in the hands of others. Concerns have been raised about the effect this has upon emotional, cognitive and verbal development and the quality of the care has been viewed as crucial in meeting the needs of young children.¹²⁰

Placing a child into a crèche, where the ratio of workers to children is small, has been associated with an increased ability to get along with other children, a larger vocabulary and higher levels of cognitive functioning.¹²¹ However, many children are looked after by friends, neighbours and relatives who balance these duties with paid work and often do not have the skills or support to promote adequate development.¹²² The lack of encouragement and stimulation that may be found in such homes, combined with the fact that some children spend more of their waking hours with their caregivers than their own parents can interfere with attachment and cause other negative consequences which may amount to emotional neglect.

The breakdown of a relationship that results in the separation and/or divorce of a child's parents, is a common cause of the emotional neglect of older children, where previously the majority of their developmental and emotional needs were being adequately met. Such an occurrence will more often than not be devastating and traumatic for a child, who is inevitably faced with a more or less permanent separation from one of the two most important people in their lives.

¹²⁰ Parents as Teachers National Center Inc "National Study of Children of Working Moms Cites Quality of Child Care and Sensitivity of Mother as Important Contributors to Early Development" (19 July 2002) Press Release
<http://www.patnc.org/MOM'S%20WORK%20AFFECTS%20CHILD%20STUDY.pdf> (last accessed 25 September 2002).

¹²¹ Childcare Resource and Research Unit "The Great Child Care Debate: The Long-Term Effects of Non-Parental ChildCare" (date unknown), Toronto, Canada.
www.childcarecanada.org/resources/CRRUpubs/op7/7op1.html (last accessed 25 September 2002).

¹²² Steven Goldsmith "Nation's Vast Informal Sector of Child Care Needs and Wants help" (21 February 2002) *Newswise*, Washington D.C (USA)

Divorce has been linked with behavioural difficulties such as, acting out, slipping academic performance, aggression with peers and in more extreme cases substance abuse and criminal activity.¹²³ It is usually a devastating event in the life of the parents as well, which can lead to a preoccupation with their own pain. Consequently, at a time when their children need their love, support and nurturing the most, parents may be unable to provide it. Additionally bitter fights may ensue over custody and access where parents focus more on destroying each other rather than the needs of their children. Emotional neglect can quickly turn into emotional abuse where children are confused, torn apart by conflicting loyalties and become increasingly distressed as one parent denigrates the other in front of them or as decisions are made that use them as pawns for revenge.¹²⁴

2 *Why is it so difficult to intervene in cases of emotional neglect?*

As with most forms of maltreatment, there are varying degrees of emotional neglect and the consequences can range from mild interpersonal discomfort to profound social and emotional problems. Only in the most serious of emotional neglect cases are there likely to be immediately visible and potentially identifiable signs, such as odd eating behaviours where children hoard food and eat as if there will be no more meals despite years of consistently available foods. They may also engage in soothing behaviour where they may bite themselves, head bang, rock, chant, scratch or cut themselves or seem so starved for affection that they will hug virtual strangers.¹²⁵ Emotional neglect is not due to one omission on the part of the caregiver, but rather a sustained pattern of behaviour. Therefore the effects of this form of maltreatment are cumulative and there may be a substantial

<http://www.newswise.com/articles/2002/2/KIDCARE.UWA.html> (last accessed 25 September 2002).

¹²³ Elizabeth Scott and Andre Derdeyn "Symposium: The Parent-Child Relationship and the Current Cycle of Family Law Reform" (1984) 45 OHSLJ 455, 459-461, 488-491.

¹²⁴ Judge Blaikie "Emotional Abuse of Children: some responses from the Family Court." (1994) 1 BFLR 77.

¹²⁵ Dr Bruce D Perry "Bonding and Attachment in maltreated children: consequences of emotional neglect in childhood." (date unknown)

<http://teacher.scholastic.com/professional/bruceperry/bonding.htm> (last accessed 25 September 2002).

delay before they manifest into visible symptoms. Additionally there are always alternative explanations for such signs, the child may have an undiagnosed medical condition or simply be "difficult" or a slow starter.¹²⁶

Section 14(1)(b) of the CYP&F Act 1989, which seems the most relevant ground to use in substantiated cases of emotional neglect because of its focus on the developmental and emotional wellbeing of a child, only allows intervention where potential impairment is both serious and avoidable. No doubt there are justifiable reasons for such a limitation. As has already been mentioned, the phenomenon of emotional neglect is very widespread and will often vary in degree. Attempts to investigate every suspected instance would quickly overwhelm Departmental resources and may lead to many inappropriate interventions.

However, given the traditional lack of evidence in this area, how are social workers able to make the decision that case is serious enough to warrant a decision that the child is in need of care and protection? Additionally, if social workers are required to wait until the case is considered serious little if anything is likely to be gained by intervention. It has been argued that it can take many years of hard work to help repair the damage from only a few months of neglect and very little "is known about the ability of replacement experiences later in life to replace or repair the undeveloped or poorly organised bonding and attachment capabilities."¹²⁷

3 *The Court's Approach*

The aforementioned difficulties in deciding whether or not to intervene in cases of emotional neglect can be illustrated by *D-GSW v S*.¹²⁸ The mother in this case had a very unstable history where she had been periodically addicted to prescription medication, incarcerated twice for short

¹²⁶ Janet Weinstein "Before its too Late: Neuropsychological Consequences of Child Neglect and their Implications for Law and Social Policy" (2000) 33 UMIJLR 561, 566.

¹²⁷ Perry, above.

¹²⁸ *DGSW v S* [1992] NZFLR 309 (HC) McGechan J.

periods of time and was believed to be mildly depressed.¹²⁹ It was found that she was “without awareness, [seeing] situations in terms of her own need ahead of the needs of her child.”¹³⁰ Consequently she was “unable to allow for the emotional needs of a 9-year-old child and in particular the needs of a...9-year-old...to develop as such.”¹³¹ The child appeared to have a pseudo-parent relationship with her mother, which had caused a bond of mutual dependency to develop as opposed to a more normal mother daughter bond. Latent development problems had also been noted.¹³²

When this matter came before the Family Court the application for care and protection was denied and it was held that.¹³³

the child's emotional patterns now probably were set, and secondly that the Act did not justify intervention on the grounds that a parent was less than ideally perceptive of a child's emotional needs, and...in effect it was not shown that what was happening was grave enough to require intervention within the statute.

The decision was appealed and by the time the matter had come before the High Court, circumstances had changed somewhat. The mother had been caught assisting in the burglary of a Palmerston North residence. Subsequent searches of her house revealed a significant quantity of stolen goods. Her daughter had been present for these searches and “was understandably upset and tearful at the experience.”¹³⁴ There was a strong possibility that the mother would once more have to go to prison. The Declaration for Care and Protection was granted, with the Judge holding that emotional harm was occurring again and it was compounding. He further stated that had the circumstances not changed he might have been inclined to grant the Declaration anyway, as he did¹³⁵

¹²⁹ *DGSW v S*, above, 310-311

¹³⁰ *DGSW v S*, above, 311.

¹³¹ *DGSW v S*, above, 311.

¹³² *DGSW v S* [1992] NZFLR 309, 310-311. (HC) McGechan J.

¹³³ *DGSW v S*, above 312.

¹³⁴ *DGSW v S*, above, 311.

not share, with respect, any view that this child at least probably would not be worth any attempt at change. There are very few mindsets in one so young, which are utterly incapable of improvement....there is much to be said for a longer term approach, acting early to prevent later likely trouble. The focus should not be too short.

C *The Impact of New Directions.*

Will New Directions help social workers to better identify situations of abuse? Theoretically, the extra resources and funding that CYFS now have should allow it to substantially increase the current number of frontline social workers. This in turn should lower case loads, giving the Department more time to investigate cases, and to detect and properly evaluate possible signs and symptoms of maltreatment. Similarly, extensive initial and continuing training and increasing supervision by more experienced social workers, all of which are in the process of being implemented as part of the scheme, may also help in this respect.

New Directions is also intended to provide opportunities to work in tandem with professionals and other agencies who are in a position to observe at risk children and have the expertise to recognise abuse when they see it. Not only should this increase the number of notifications made to the Department by these individuals and groups but this 'partnership' may provide social workers with helpful evidence that will aid in their assessment of the situation at hand. However, as has already been mentioned in Section IV, it is questionable whether the projects envisaged by New Directions are enough to successfully establish a 'true' partnership.

Additionally, it has been suggested that in times of resource constraints and/or high notification rates social workers have a tendency to deliberately narrow child abuse definitions in order to cope. The focus is usually on physical and sexual abuse as well as cases of extreme neglect,

¹³⁵ *DGSW v S*, above, 312.

where the signs are more visible and/or the child's wellbeing is the most at risk.¹³⁶ The extra resources associated with New Directions might encourage CYFS to investigate other, less obvious, forms of abuse such as emotional neglect. Yet, the Department tends to steer clear of cases involving emotional neglect, not due to a lack of resources, but because it is next to impossible to find enough evidence to substantiate the allegations.¹³⁷

This is understandable. How is a social worker expected to find in a matter of weeks what it might take a child development specialist years to uncover? Although it is entirely possible that 'typical' intervention is not what is required in this area. It is argued that the majority of cases of emotional neglect involve parents who either know of no other way to raise their child or are ignorant of child development and its associated consequences. Therefore, just as CYFS increased public education role under New Directions could potentially increase the number of reports made to the Department, so too could it be used to teach parents and the general community about the causes and potentially devastating consequences of emotional neglect.

However, in general terms, New Directions does little to alleviate the problems inherent in identifying abuse. There will always be limits to the information and evidence that CYFS is able to gather when it suspects child abuse and it is important to note that these children are termed 'at risk' for a reason. Time is frequently of the essence, irrespective of caseloads. New Directions does intend to review the CYP&F Act 1989, as it relates to care and protection. Although, it is unclear whether this review will examine the care and protection portion of the Act in general or concentrate

¹³⁶ Michael J A Brown *Care and Protection is about adult Behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 60-61.

http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002); Steven J Singley "Failure to Report Suspected Child Abuse: Civil Liability of Mandated Reporters" (1998) 19 JJUVL 236, 243.

¹³⁷ Interview with J, duty social worker, Porirua CYFS Office (the author, Wellington, 13 September 2002). [Interview with J]

on more specific aspects.¹³⁸ So even though it may be possible to clarify certain aspects of section 14, it is by no means a certainty that this will be done. Additionally, it is unable to provide detailed statutory guidelines or definitions that would allow social workers to know exactly how to identify and when to intervene in situations of suspected child abuse.

Despite the fact that it is considered an almost impossible task, there are good reasons (outlined above) why such a thing should never be attempted and why the matter must inevitably come down to the social worker's discretion and intuition. It should also be noted that the social worker does not make a decision in isolation. A child's case will be discussed with fellow team members and supervisors. The evidence that the social worker has will be examined as well as the family's previous experience (if any) with CYFS and what was done by the Department in similar situations prior to a decision being made about intervention.¹³⁹ In the end, perhaps this is the most realistic limit that can be placed on individual social worker discretion.

VI BALANCING THE BEST INTERESTS OF THE CHILD WITH FAMILY INTEGRITY

Once allegations of suspected abuse have been substantiated and a decision has been made to intervene, new difficulties arise. Specifically, finding the best way to reconcile the best interests of the child with the goal of family unity.

A When Rights Collide

In an ideal world the best interests of the child and the need to maintain the integrity of the family would never come into conflict. It can

¹³⁸ Child Youth and Family "New Directions for Child Youth and Family" (date unknown) Child Youth and Family – Official Government Website, 9 <http://www.cyf.govt.nz/UploadLib/pdf/NewDirections.pdf> (last accessed 25 September 2002).

¹³⁹ Interview with J, above.

usually be safely assumed that a child's parents are the people best placed to determine what their offspring's physical, emotional and developmental needs are and to ensure that they are met. However, when a young person is being abused or otherwise maltreated in some way by members of their own family this cannot be said to be in their best interests. Should this happen the State is obligated to intervene and the right to family integrity and privacy becomes subordinated to the need to protect society's most vulnerable citizen, the child.

Traditionally most countries maintain a policy of minimal feasible intervention when it comes to the family unit. This "reflects a humanistic philosophy that promotes civil liberty and resists State interference in the lives of individuals and families."¹⁴⁰ Another rationale for this stance emerged in the mid-1980s, one that has been subsequently been reflected in New Zealand policy and practice. Simply put, State intervention (particularly in the area of welfare) is a costly exercise and placing the responsibility onto families to ensure their own health and wellbeing helps to reduce public expenditure.¹⁴¹

Despite this there are two justifications for state interference when it comes to matters of child maltreatment. The first is the common law doctrine of *parens patriae*, "which maintains essentially, that as a father to all persons, the State has the inherent prerogative to provide for the commonwealth and individual welfare."¹⁴² This means that the Government and its agents have the authority to protect those who are not yet legally competent to act on their own behalf and such authority naturally extends to minor children, who because of their age are not yet able to take care of themselves.¹⁴³ Secondly, New Zealand is a party to the United

¹⁴⁰ Leon C Fulcher "The Role of Support Services in Caring for Children in Families" in *Toward a Child and Family Policy for New Zealand* (Office of the Commissioner for Children, Wellington, 1991) 116, 123.

¹⁴¹ Fulcher, above, 123.

¹⁴² Richard Salmon and M. David Alexander "Child Abuse and Neglect: Implications for Educators" (1986) 28 WELR 9, 9.

¹⁴³ Salmon and Alexander, above, 9.

Nations Convention on the Rights of the Child 1989, which it ratified in 1993. Article 19 of the Convention states:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Therefore the New Zealand Government has not only a common law duty but also an international obligation to intervene in cases of suspected maltreatment, irrespective of the negative impact upon family integrity that may result.

Despite the Convention's emphasis on the best interests of the child being a paramount consideration, the need to have regard to competing interests and rights when intervening to protect a child is reflected in Article 3:¹⁴⁴

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

B A History of Child Rights

To gain some insight into why the State is faced with the difficult prospect of having to reconcile such potentially divergent interests, it is

¹⁴⁴ See also United Nations Convention on the Rights of the Child 1989, Art. 5 and Art. 18.

important to realise that until recently children have had very few legal rights that were theirs alone. Historically, they were considered to be chattels, part of the property of the household. Additionally, there were very few rules that regulated or applied to an intact family. This meant that children could legally be treated any way that fellow family members saw fit. They could be beaten, killed, disposed of at will, sold, traded or farmed out and there were no measures in place to protect them.¹⁴⁵

In the first half of the 20th century this attitude changed. After the World Wars governments around the globe were becoming increasingly concerned about the health and productivity of their citizens. This meant that the “State began to take an investment interest in the health, education and welfare of children. Parents were no longer given complete autonomy in this area.”¹⁴⁶ In 1962, despite the fact that it had existed for centuries, Dr Henry Kempe discovered the phenomenon of ‘child abuse’. It was viewed as a treatable medical condition and it was assumed that children could be protected if their parents were given assistance and support during periods of crisis. This, in conjunction with influential theories on the importance of the continuity of adult-child relationships to child development, led to a renewed emphasis on family autonomy and unity.¹⁴⁷

The 1970s and 1980s saw the emergence of a strong child rights movement as more and more people began to realise that a policy of family autonomy left unchecked all too often led to the death or serious injury of young people. Children were beginning to be viewed as legal subjects with rights; “a potential citizen entitled to grow into an autonomous adult without any avoidable prejudice caused by family behaviour.”¹⁴⁸ International treaties such as the United Nations Convention on the Rights of the Child

¹⁴⁵ Peter J Trapski *Trapski's Family Law Volume 1: Children Young Persons and their Families* (Brookers Ltd, Wellington, 2002), 1-5 – 1-6.

¹⁴⁶ Trapski, above, 1-6.

¹⁴⁷ Trapski, above, 1-6 – 1-7.

¹⁴⁸ Trapski, above, 1-7 – 1-8.

1989 were developed and adopted by a multitude of countries and domestic legislation was also altered to reflect this trend.¹⁴⁹

Examining the murky and complex history of child welfare suggests that only very recently have the rights and needs of children become an important consideration. Most societies do not have all that much experience, practice or expertise in the area of putting the child first. Further, the requirement to respect family autonomy has not disappeared. Social workers must attempt a precarious tightrope walk when attempting to balance and reconcile these potentially competing interests and it seems all too easy to overbalance and come down heavily on the wrong side.

C Balancing Competing Interests in the Children Young Persons and Their Families Act 1989.

Once the decision has been made to intervene, social workers are expected to, whenever possible, reconcile the competing interests of family autonomy and unity with the best interests of the child. This is made explicit in the CYP&F Act 1989, specifically sections 5, 6 and 13.

Section 5 outlines the principles to be applied when powers are exercised under the Act. It requires individuals exercising statutory powers under the Act to have regard to:

- The right of the family/whanau to participate in the making of decisions effecting the child
- The importance of maintaining and strengthening a child's relationship with their family.

¹⁴⁹ In the case of New Zealand, the need to take into consideration the welfare and interests of the child, as well as the requirement to make decisions in their best interests, is reflected in the Adoption Act 1955, the Guardianship Act 1968 and the Children, Young Persons and their Families Act 1989.

- How a decision will affect the welfare of the child and the stability of their family.
- The wishes of the child, although the weight given to their preferences may vary depending upon their age, maturity and culture.
- The need to make an effort to gain the consent of the child's parents or guardian, as well as the child themselves to the exercise of powers under the Act.
- The need for decisions to be made and implemented in a time frame that is appropriate to the child's sense of time is also emphasised.

Section 13 relates to the principles that are intended to guide the care and protection decisions of a social worker. It states that:

- Children should be "protected from harm, their rights upheld and their welfare promoted."¹⁵⁰
- The family group has a primary role in caring for and protecting their child is emphasised. Therefore decisions made by CYFS should support and assist the family as much as possible and intervention should be the minimum possible to ensure a child's safety and protection.
- It is desirable for a child to, where possible, live in association with his or her family and continue their education uninterrupted and undisturbed.
- If a child is considered to be in need of care and protection social workers should where practicable, provide the necessary assistance

¹⁵⁰ Children, Young Persons and their Families Act 1989, s 13(a).

and support to allow the child to be cared for within the extended family group.

- A child should only be removed from the extended family group if there is a risk of serious harm coming to them.
- When a child is taken into care, where it is practicable they should be returned to the family. If that is not immediately possible then they should live in a family-like setting that is preferably in the same locality as their family and be allowed to maintain and strengthen their links with them.
- When a child cannot be returned to their family, arrangements should be made for the child to become a member of a new family group in an appropriate setting that allows them to develop a sense of belonging and maintain their continuity and identity.
- When a child cannot be returned to their family, their new family group should where possible have the same ethnic and cultural background as the child and live in the same locality.
- Children should also be given the opportunity to form a psychological attachment to the person in whose care they are placed, if they are unable to be safely returned to their family group.

In instances of substantiated abuse it is easy to see how the welfare of the child and the rights of the family might come into conflict, as it cannot always be in the best interests of the child to remain living with their family group. However, while acknowledging that any intervention will impinge upon family autonomy to a certain extent, one could be forgiven for reading through the principles and assuming that if reconciling the competing interests is impossible, the matter should be resolved in favor of maintaining family integrity and unity. This view is likely to be reinforced by the fact

that when an FGC is convened members of the child's family group have a right to attend and participate in the decision-making process and if they cannot attend efforts must be made to ascertain their views on the matter.¹⁵¹

Undoubtedly the potential for such confusion is the reason for the existence of section 6:

In all matters relating to the administration or application of this Act (other than Parts IV and V and sections 351 to 360), the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act.

1 The Difficulties of Reconciling sections 5, 6 and 13

Section 6 originally read as follows:

Where, in the administration or application of this Part or Part II or Part III or Part VI (other than sections 351 to 360) or Part VII or Part VIII of this Act, any conflict of principles or interests arises, the welfare and interests of the child or young person shall be the deciding factor.

It was altered to its present form by section 3 of the Children, Young Persons and their Families Amendment Act 1994 due to fears expressed in the Mason Report that it represented a substantial dilution of the paramountcy principle. Section 6 appeared to require a conflict of principles or interests before it could be activated. However it was submitted that the principles that social workers were required to take account of had been drafted in such a way that a direct conflict might never arise.¹⁵²

The Committee, which was charged the responsibility of reviewing the operation of the CYP&F Act 1989, examined several Family Court judgments and concluded "[t]here is no doubt that the Courts interpret s 6 as

¹⁵¹ Children Young Persons and their Families Act 1989, s 22, s 24, s 28.

a restatement of the paramountcy principle in a different form.”¹⁵³ However, they accepted that there was some confusion as the meaning of the term and that consequently social workers failed to acknowledge a conflict of principles and interests where one clearly existed. This meant that the welfare and interest of the child would not be the deciding factor in these cases.¹⁵⁴ An amendment to section 6 of the Act was recommended.

However, evidence suggests that much confusion remains amongst those in the care and protection field over how to reconcile the principles articulated in the Act. This can be illustrated by the case of *Re ITA*¹⁵⁵ which involved an eight month old baby admitted to hospital with life-threatening head injuries. Due to the family’s previous involvement with CYFS and information received about the father’s violent tendencies the child was declared to be in need of care and protection. When the matter came before the Family Court, it was revealed that the social worker in charge had delegated the responsibility for the child’s safety to a Maori community health worker, who was unaware of the child’s serious injuries or of medical specialists serious concern for the child’s safety.¹⁵⁶ Judge Green commented¹⁵⁷

Throughout the case....attention was drawn away from the child’s injuries onto the programmes which had been provided and what was seen as the reasonably positive response of the parents. Throughout the hearing I was given information proceeded by the words ‘but for the injuries sustained’ or ‘other than the physical injuries’....In the course of the hearing when at times I attempted to refocus the parties on the actual injuries and remind them that that was why the hearing was proceeding, there appeared to be general bemusement and distraction onto other issues.

¹⁵² Judge Ken Mason *Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley* (Auckland, 1992), 10-11.

¹⁵³ Mason, above, 11.

¹⁵⁴ Mason, above, 11.

¹⁵⁵ *Re ITA* [1997] NZFLR 385 (DC) Judge Green.

¹⁵⁶ *Re ITA*, above, 385.

¹⁵⁷ *Re ITA*, above, 394.

It is generally agreed that sections 5 and 13 must be subordinate to the best interests of the child and that parents are trustees of their children with rights only so far as they exercise them for the welfare of their offspring.¹⁵⁸ Despite this however, there are a number of contradictory Family Court judgments about the importance of family unity versus the welfare of the child.

Judge Inglis QC in *Re B (children)*¹⁵⁹ had this to say about the goal of preserving family integrity at the expense of the child.¹⁶⁰

The ideal of family reunification cannot possibly be treated as if it were an end in itself. It cannot be assumed that the return of the child to his or her family will automatically be in the child's best interests and welfare simply because they are family.....That is not permissible because it makes the blood tie and parental and family rights rather than the child's welfare and interests, the deciding factor.

This can be contrasted with Elias J's approach in *CMP v DGSW*¹⁶¹

Fundamental to the policy implemented by the Act are the judgements of the Legislature that the wellbeing of children, except in exceptional circumstances, lies with their families and that where intervention is required it is the family itself which is best placed to make decisions about children.....The family itself is therefore an important object of concern under the Act.

Such judgments provide little to no guidance to social workers on the front line and illustrate the difficulties inherent in attempting to strike a reasonable balance.

¹⁵⁸ See: *In the matter of the S Children* [1994] NZFLR 971, 981 and *Re Baby B* (9 March 1993) Family Court Feilding CYPF015/002/93, Judge Inglis QC.

¹⁵⁹ *Re B (children)* [1992] NZFLR 726 Judge Inglis QC

¹⁶⁰ *Re B (children)*, above, 757-758.

2 *The Conflicting Nature of the Best Interests of the Child.*

To complicate matters further, determining what is in the child's best interests is far from easy. This is because the child's wellbeing is often tied to maintaining a relationship with their family. Article 19 of the United Nations Convention on the Rights of the Child 1989, gives a child the legal right to be protected from all forms of abuse. However, Article 9 states that, subject to the best interests of the child, they shall not be separated from their parents against their will and further holds that where this occurs a child has the right to maintain personal relations and direct contact with their family. This indicates that what makes intervening in situations of child maltreatment difficult is that sometimes it will not be in the best interests of the child to have any contact with their family and sometimes it will. Even then the amount of contact that can be considered to be welfare enhancing will vary.

It may seem surprising to some that where allegations of abuse and mistreatment are substantiated that efforts are made to keep the child within the family group. For surely the child will always benefit from being removed from a potentially dangerous and destructive situation. However, it is important to keep in mind that in spite of the maltreatment that some children in this country experience, usually they love their parents very much and being ripped away from the only home that they have ever known can have severe emotional and developmental consequences. The child in question may view the intervention as more of a punishment than a rescue.¹⁶²

It is presumably for this reason that when the child's home situation is considered to be too unsafe, attempts are made to place them in the care of extended family members who are familiar with the child and who can (theoretically) provide them with some much needed stability,

¹⁶¹ *CMP v D-GSW* [1997] NZFLR 1, 3 (HC) Elias J.

¹⁶² Mary Elizabeth Putnick "The State as Parent: Using Attachment Theory to Develop Child Welfare Policy in the Best Interests of the Child" (1998) 24 NYURLSC 419, 438-440.

support and love. Therefore the principles in the CYP&F Act 1989 do not exist to protect the family's rights, so much as attempt to ensure that full consideration is given to what the best interests of the child actually are.

Sadly, it will not always be in the best interests of the child to remain in contact or living with their parents. Assuming that a young person's welfare will always be promoted by devoting time and resources to family unity may result in them being left in the abusive situation indefinitely while social workers struggle to deliver the appropriate assistance to the family.¹⁶³ This can also have devastating consequences and death or serious injury (either physical or psychological) may be an unfortunate side-affect of such 'interventions'. Additionally, abuse might be widespread throughout most of the extended family. When this is the case it is usually not a good idea for the child to be cared for by family members. James Whakaruru, Sade Trembath and Lillybing are all tragic reminders that the welfare and interests of a child are not always served by attempting to keep families intact.

D The Impact of New Directions.

If the situation outlined in *Re ITA* can be taken to illustrate the full extent of the difficulties facing social workers when it comes to balancing the best interests of the child against the goal of family unity, then the initiatives proposed by New Directions may very well be helpful. Judge Green suggested that the problems in that case were caused by a "lack of resources coupled with a lack of focus."¹⁶⁴ Despite the confusion that has been caused by the potentially conflicting principles contained in the CYP&F Act 1989, clarity and understanding could almost certainly be increased through more rigorous training.

¹⁶³ See: *Re Baby B* (9 March 1993) Family Court Feilding CYPF015/002/93, Judge Inglis QC.

¹⁶⁴ *Re ITA* [19970 NZFLR 385, 394 (DC) Judge Green.

Such confusion is probably the reason why CYFS are working on introducing a component into tertiary social work courses aimed at increasing understanding of the way in which the CYP&F Act 1989 is intended to operate.¹⁶⁵ No doubt social workers can be taught that they need to focus on the best interests of the child ahead of family unity and to recognise potential conflicts between the two.

Additionally, as has been previously mentioned New Directions also proposes to review the CYP&F Act 1989 as far as it relates to matters of care and protection. Section 6 has already been amended once in order to make it clear that the best interests of the child are paramount yet confusion still remains. Perhaps this is because of the way the section is worded with the welfare of the child seeming to be subject to the necessity to have "regard to the principles set out in sections 5 and 13 of this Act."¹⁶⁶ Social workers may have a more accurate focus if this part of the section were removed.

Unfortunately, things are not quite that simple. The real difficulty does not lie in the need to balance the welfare of the child against family unity. As has already been mentioned problems stem from the fact that, although each child's situation is different, the best interests of the child are inextricably linked with family unity and reunification. This is the real reason for requiring social workers to have regard to the principles embodied in section 5 and 13. The interests are not separate, consequently it is unlikely that social workers can be trained to focus on one at the expense of another.

It is possible that New Directions may be able to alleviate this inherent difficulty somewhat. The Brown Report noted that much social worker frustration stemmed from the fact that they were unable to provide the appropriate services and resources to their clients because of fiscal

¹⁶⁵ Child Youth and Family "Improving Performance" (March 2002) 3 *New Directions in Action* 1, 2. <http://www.cyf.govt.nz/UploadLib/images/ndia0302.pdf>. (last accessed 25 September 2002).

constraints.¹⁶⁷ Many of these 'unavailable' services might have gone a long way towards enhancing the welfare of the child. For example, it may be in the best interests of the young person in question to remain with their family provided enough resources (such as enough social workers to enable contact to be made with the family every day) are available to ensure adequate monitoring and supervision.

There is nothing in the Statute that would help a social worker to determine what might constitute adequate monitoring. Some of the same arguments that were used to weigh against widening the definition of a child in need of care and protection under section 14 of the CYP&F Act 1989, can no doubt also be applied to this area in order to explain why that might be.¹⁶⁸ Deciding what constitutes adequate monitoring is likely to be extremely difficult, as it will depend entirely on the individual circumstances of the child and their family. Additionally follow up and monitoring can usually only be considered 'inadequate' when, despite its existence, it is discovered after the fact that the child is still being subjected to abuse.

Irrespective of whether or not monitoring can be adequately defined or not, there are undoubtedly ways to improve practice in this area. New Directions does not address the issue of monitoring specifically, however the appointment of 38 practice managers who will focus on improving practice quality may very well impact positively in this area¹⁶⁹ as will the increased training and supervision of frontline social workers. Similarly initiatives such as the Regional Services Teams, the Coordinators Network and the Local Services Mapping Pilot may serve to more

¹⁶⁶ Children Young Persons and their Families Act 1989, s 6.

¹⁶⁷ Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 16
http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

¹⁶⁸ See: Section V, Part A: General Difficulties for a fuller discussion of these arguments.

¹⁶⁹ Child Youth and Family "Moving Ahead" (November 2001) 2 *New Directions in Action* 1, 1. http://www.cyf.govt.nz/UploadLib/images/ndia2_20011220_094547.pdf (last accessed 25 September 2002).

effectively target the resources and funding needed for improved monitoring.¹⁷⁰

However, the situations of James Whakaruru and that of the child in *Re ITA*, which were exacerbated by poor interagency communication and coordination, suggest that the monitoring of at risk children is not necessarily the sole responsibility of CYFS. There is much that other agencies can do to help. It has been previously mentioned that many professionals and organisations that work with children will often be able to observe their situation in a more extensive manner than what might be possible for an agency such as CYFS. Because of this, working in partnership seems to be a key ingredient in the successful monitoring of a number of potentially maltreated children. Consequently, there seems to be a need for a comprehensive interagency scheme to be put in place rather than the isolated projects that CYFS has underway with organisations such as the Richmond Fellowship and Mana Social Services.¹⁷¹ Here again, the detailed Interagency Protocols, mentioned earlier on in this paper, might well be very useful.

Sometimes an out of home placement for a child with a relative or foster parent may be required. However, this is frequently not in their best interests due to the strong possibility of it breaking down and hence failing to provide the child with much needed stability. This is because family caregivers have traditionally been provided with little or no support and have found themselves unable to cope. Additionally, the number of appropriate foster care facilities has also decreased sharply due to the Act's emphasis on family group placement.¹⁷² Therefore, the Care Services

¹⁷⁰ For further information on these initiatives see: Section II, Part C: New Directions Outlined.

¹⁷¹ For further information on these initiatives see: Section II, Part C: New Directions Outlined.

¹⁷² Michael J A Brown *Care and Protection is about adult behaviour: The Report of the Ministerial Review Team to the Minister of Social Services and Employment Hon. Steve Maharey* (Wellington, 2000), 12, 14-15

http://www.cyf.govt.nz/UploadLib/images/BrownReport_20010620_172514.pdf (last accessed 25 September 2002).

Strategy¹⁷³ and increased support for caregivers¹⁷⁴ available under New Directions may very well be welfare enhancing.

To the extent that these extra resources can increase the range of feasible options that a social worker has when deciding what is in the best interests of the child, it may make what is a difficult decision just that little bit easier. However it is not clear exactly just how many 'extra resources' will be available in this area. Although extra funding was provided for the implementation of New Directions, it was by no means unlimited and was not exclusively intended for the benefit of potentially maltreated children.¹⁷⁵ This suggests that despite the existence of the New Directions initiative, the problems of capped budgets and overly high expectations identified in the Brown Report remain.

VII CONCLUSION

The situations of James Whakaruru, Sade Trembath and Lillybing served to focus both the public's and the Government's attention on the adequacy of child protective services in New Zealand. While there is no doubt that CYFS errors contributed to the failure to protect at least two of these children, the resultant finger pointing was perhaps not entirely deserved. However, the tragedies did lead to a ministerial inquiry into CYFS, which revealed a number of deficiencies believed to seriously compromise its ability to intervene appropriately when dealing with at risk children. In response to this the Department launched a comprehensive

¹⁷³ Child Youth and Family "Moving Ahead" (November 2001) 2 *New Directions in Action* 1, 13. http://www.cyf.govt.nz/UploadLib/images/ndia2_20011220_094547.pdf (last accessed 25 September 2002.). This strategy will focus on the improved management of care through implementing a structure to ensure that placements are managed adequately and permanency outcomes are achieved.

¹⁷⁴ As was mentioned in Section II, support for family caregivers has been provided for in the form of 24 new caregiver liaison social workers, as well as regional care specialists who will work with service delivery staff to achieve the best care practice. So far nothing has been done specifically to attempt to improve New Zealand's foster care situation.

¹⁷⁵ Child Youth and Family "Budget 2001 Summary – Vote Child Youth and Family" (date unknown) Child Youth and Family – Official Government Website, 7-8.

<http://www.cyf.govt.nz/UploadLib/pdf/NewDirections.pdf> (last accessed 25 September 2002). A significant portion of the extra funding provided by the Government will be funneled into youth justice and adolescent mental health initiatives.

initiative known as New Directions. This initiative was intended to turn CYFS into a professional, outcomes focused service with an emphasis on child abuse prevention, regional service delivery and working in partnership with the community.

The reporting of suspected child maltreatment was explored to see if New Directions would impact positively on the number of notifications made. Although New Zealand operates under a voluntary reporting scheme, the merits of mandatory reporting were critically examined, as it has been associated with substantially increased reporting of child abuse. However, the two biggest factors that determined whether or not the authorities would be informed of at-risk children were not specific to this scheme. These factors were public education about the signs and symptoms of abuse and confidence that child protective services would intervene appropriately and adequately. These are both things that New Directions endeavours to provide, even though there are concerns about the somewhat fickle nature of public confidence and whether CYFS would be able to cope with the substantially increased demand for its services that would be the likely result.

When the difficulties of investigation of child abuse are examined it is revealed that social workers must operate with limited information, time and ultimately use their discretion when deciding such cases. Matters would more than likely not be improved by attempting to expand the definition of a child in need of care and protection as outlined by section 14. Not only might it have negative consequences for at risk children, but also it is questionable whether abuse can be adequately defined at all. In terms of these general difficulties New Directions may help slightly, with the provision of more social workers and encouraging CYFS to work in conjunction with professionals who are best placed to recognise signs of abuse, but the challenges of the job remain.

This was illustrated by a discussion of emotional neglect. Although the impacts can be devastating for the subsequent development of

the child, its widespread nature and lack of visible signs make it very difficult to recognise or intervene successfully in. Therefore there may be legitimate reasons for focusing intervention on more traditional forms of abuse, where the Department can be of the most help. Additionally, to the extent that emotional abuse is due to simple ignorance, then New Directions public education role could help with the identification and prevention of this type of abuse.

Once CYFS has substantiated and decided to intervene in a case of child maltreatment, social workers must balance the best interests of the child with the goal of family unity. A policy of minimal feasible intervention and the recent development of legal rights for children means that society has not had much experience with putting the child first. It is possible for the principles embedded in the Act to come into conflict when situations of child abuse exist and although section 6 has been amended to make the focus on child welfare more clear, confusion still remains. If this confusion were simply due to a lack of clear focus then the increased training provided by New Directions would help a great deal. However, the real problem is the difficulty involved in determining the best interests of the child, which are more often than not strongly linked with family unity. New Directions can do little to alleviate this tension, except to the extent that it allows for the increased provision and more accurate targeting of services, which may increase the range of feasible, welfare enhancing, options open to the social worker.

Therefore while New Directions may help with some of the problems associated with the aforementioned three areas (particularly the reporting of child abuse) for the most part, inherent difficulties remain. In some respects it appears that New Directions does not go far enough. There is a need for the broad ranging aims of the Initiative to be linked more closely with specified projects in order to increase public understanding of what the Scheme is actually trying to achieve. Additionally, in all three stages discussed in this paper, the need for a comprehensive interagency scheme that would establish workable partnerships was identified. Finally,

New Directions does little to address the problems of capped funding and overly high expectations in the Brown Report. These difficulties are likely to be exacerbated if public education and confidence leads to increased reporting and a greater demand for resources.

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