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DOYLE, M.M.

Family group conferences.

MARTIN M DOYLE

FAMILY GROUP CONFERENCES

THE POLICE POSITION
IN THE BALANCE OF POWER
BETWEEN MEMBERS

LLM RESEARCH PAPER
FAMILY LAW (LAWS 513)

LAW FACULTY
VICTORIA UNIVERSITY OF WELLINGTON
1994

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ABSTRACT

This paper focuses on the Police role in regard to the Family Group Conference (FGC) as convened under the youth justice provisions in Part IV of the Children, Young Persons, and Their Families Act 1989, and in particular on the relative powers and influence of the Police and other key members. The main thesis of this paper is that despite provisions empowering the family, it is the Police which plays the dominant role in the FGC system. However, as one of the members of the FGC, the Police is obliged to act in accordance with the principles of youth justice, respect the family in all its forms, recognise the special status accorded to Maori family forms, and consider the vulnerability of the young person. Police influence is exercised within a statutory framework that requires agreement by the members of the FGC. Further, proposed amendments to the Act confer on victims and Police new rights which bear on Police influence in the FGC process.

The text of this paper (excluding contents page, footnotes, and bibliography) comprises approximately 15,000 words.

GLOSSARY

The following abbreviations will be used in the course of the paper.

Amendment Bill	Children, Young Persons, and Their Families Amendment Bill 1993.
CYPF Act	Children, Young Persons, and Their Families Act 1989.
DSW	Department of Social Welfare.
FGC	Family Group Conference.
Mason Report	Review of the Children, Young Persons, and Their Families Act 1989: Report of the Ministerial Review Team to the Minister of Social Welfare the Hon. Jenny Shipley, chaired by Ken Mason, February 1992.
Principal Act	Children, Young Persons, and Their Families Act 1989, as originally enacted.
VSG	Victim Support Group.
YJC	Youth Justice Co-ordinator.

Use of word "Police":

Although not explicitly listed amongst the persons entitled to attend the Family Group Conference, the Police does so in the majority of cases as "the informant" or as "a representative of the appropriate enforcement agency".¹ Consequently, this paper deals with the Police in particular, rather than informants and enforcement agencies generally.

¹ Children, Young Persons, and Their Families Act 1989, s 251 (d), (e).

I INTRODUCTION

The Children, Young Persons, and Their Families Act 1989 was revolutionary at the time it became law. It assigned crucial decision-making powers to a group containing the family rather, than limiting such powers to the Court or the state agencies dealing with offending by young persons. Under the new regime, the majority of young persons who come to the notice of the Police are dealt with by way of family group conferences. Whether through direct referral to the Youth Justice Co-ordinator from the Police, or through referral from the Court after Police have laid an information against a young person, the family group conference is used to find possible alternatives to prosecution. Rather than deciding on recommendations with other officials, the FGC system obliges the Police to be party to a consensus-seeking forum.

Chapter II provides an historical background to the creation of a consensus-seeking group involving the family. Particular attention will be paid to two influential Reports: *Puao-Te-Ata-Tu* and *The Maori and the Criminal Justice System: He Whaipanga Hou - A New Perspective , Part 2*.

Chapter III describes key features of the Act: the Justice model; provisions for Maori; and the special status of the family in family groups conferences.

Chapter IV provides a general introduction to the members of the FGC and considers their roles and level of influence relative to the Police.

Chapter V describes the Police role in the FGC system. Police are required to exercise discretion, consultation with officials, confer with the other members, and give effect to reasonable recommendations.

Chapter VI considers the role of the Youth Justice Co-ordinator and how it relates to the Police role and influence in the FGC system. The YJC consults with the Police on the suitability of cases for FGCs, facilitates and mediates at the FGC, and ensures that the FGC functions according to the provisions of the Act.

Chapter VII examines the status and role of the family in the FGC system. The Act makes many provisions for the family but its authority is always dependent on the discretion of other members. The youth justice provisions enable the family to significantly determine its own representation at the FGC as well as the procedure to be followed. The principles of the Act have implications for how the Police view the family.

Chapter VIII considers the Police relationship with the young person. While seeking accountability for offending, the Police are also required by the youth justice principles to view the young person as a member of the family. Once the young person has admitted the charge at the start of the FGC, the Police role is not one of proving a case as much as joining in the process of developing the most beneficial recommendations concerning the young person and the victim.

Chapter IX describes the role of the victim in the FGC and the victim's relationship with the Police. Police are aligned with the victim by the process of investigating crime. Police have statutory obligations to the victim under the Victims of Offences Act. The Amendment Bill provides new rights for the victim which have the potential to increase Police influence within the FGC.

Chapter X details the main conclusions of the paper.

II BACKGROUND TO THE ACT

A General

Although the Act is often described as being revolutionary and innovative, many of its features evolved gradually over several years and are based on social customs of the Maori people. Particular points concerning Maori features of the FGC are made later in the paper. This chapter cites documents that had a major impact on the Act and indirectly on the Police in its role as provided for by the Act. In particular, Trapski² suggests that the philosophy and format of the youth justice provisions have been greatly influenced by two major reports:

B *Puao-Te-Ata-Tu*

The Report *Puao-Te-Ata-Tu* had considerable influence on the Act. It was very critical of the way Maori had fared within the system and noted that the operation of the law had been largely "inimical to the interests of the Maori people".³ It criticised monocultural institutions and called for the involvement of "kin groups" in the processes dealing with Maori children.⁴

The Report *Puao-Te-Ata-Tu* maintained that the paramountcy accorded to the child in the Children and Young Persons Act 1974 was "not in keeping with Maori tradition".⁵

Under this tradition the importance attached to the child's interests is subsumed under the importance attached to the responsibility of the tribal group through the tribal

² *Trapski's Family Law* Volume 1 (Brooker and Friend, Wellington, 1991) A-228, para 1.16.01.

³ Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare *Puao-Te-Ata-Tu* (Wellington, 1986) 18.

⁴ See n 3, 30.

⁵ See n 3, 52.

traditions and lore of inherited circumstances. The tribal group (HAPU) is bound to provide for the physical, social and spiritual well-being of the child and its upbringing as a member of the particular hapu. This responsibility would take precedence over the views of the birth parents.

C *He Whaipaanga Hou*

In 1988, the Justice Department produced a Report *The Maori and the Criminal Justice System: He Whaipaanga Hou - A New Perspective* from a research project which attempted to reach an understanding of Maori offending.⁶ Up to 6000 Maori people were either interviewed or surveyed. The Report acknowledged that Maori are disproportionately represented in the crime statistics. It also described an institutional monoculturalism and racism which placed Maori people at a distinct disadvantage in their dealings with the Police and the criminal justice system.

The Report suggested the system alienated and disempowered Maori, and called for greater involvement of Maori whanau, hapu and iwi in the disposition of cases involving Maori offenders. The case for a parallel Maori justice system rested on "the need for Maori people to be able to assert their own rangatiratanga and their own control over the consequences of wrongdoing by their young".⁷ The Report praised diversionary programmes.⁸

They involve the community in the disposition and treatment of offenders and help the process of reintegrating them back into stable behaviour patterns. Many schemes stress restoration and reparation more than conventional processes do, and the consequent involvement of victims often helps reduce their trauma as well.

⁶ M Jackson *The Maori and the Criminal Justice System: He Whaipaanga Hou - A New Perspective, Part 2* (Department of Justice, Wellington, 1988).

⁷ See n 6, 278.

⁸ See n 6, 239.

On a cautionary note, the Report pointed out that overseas diversion models tended to lose these positive features in the face of a gradual bureaucratisation and take over by professional counsellors and experts. "Rather than being community alternatives to formal processes, they end up as part of them."⁹

The Report advocated an autonomous system for dealing with Maori offenders that paralleled the existing criminal justice system. Metge and Durie-Hall have suggested that administrators of family law consider the special status of Maori people as signatories of the Treaty.¹⁰

The Report criticised the justice system for inhibiting whanau contribution to the process.¹¹

An unwillingness or inability to recognise the cultural importance of whanau input or support, an unawareness of culturally-defined barriers to communication, or an unwitting expression of socially-instilled ideas of Maori conduct and worth, can inhibit an effective understanding of the client's situation.

Comment

These two major reports on Maori social policy contain ideas that find response in the CYPF Act. Four ideas relevant to this paper are: the child as a member of the hapu whose responsibility takes precedence over the views of the birth parents; the monoculturalism of the criminal justice system; the need for Maori autonomy; and the need for whanau input into the justice process. All four concepts are relevant to the Police role and influence under the Act.

⁹ See n 6, 239.

¹⁰ J Metge and D Durie-Hall "Kua Tutu Te Puehu, Kia Mau: Maori Aspirations and Family Law" in M Henaghan and B Atkin (eds) *Family Law Policy in New Zealand* (Oxford University Press, Auckland, 1992) 55.

¹¹ See n 6, 136.

III CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989

A General

The new Act provided for dealing with offending by young persons in a way which took account of age and provided scope for different family forms and cultural protocols. A key feature of the Act was the way it effectively steered young persons away from many of the formal processes of the criminal justice system. A special Youth Court, operating within the Family Court jurisdiction, was established.¹² Rather than dealing with all cases involving young persons, it could provide a last resort when all other diversionary measures, notably the family group conferences, had been exhausted.

The general requirement for young persons to be initially dealt with by FGCs affects the way Police interact with the Court. Rather than placing matters before the Court, Police are now encouraged to initially seek available alternatives. This means that instead of a Court determining the best way of dealing with the case, plea, victim, and disposal, such matters will now be determined either by the Police alone or by the Police in consultation with the YJC, or the Police as part of the FGC.

Section 4 (f) of the Children, Young Persons, and Their Families Act 1989 provides as an object that young persons who offend "are held accountable, and encouraged to accept responsibility, for their behaviour..." Based on notions of empowerment and control through participation, the FGC approach emphasises that families and young people should participate in all parts of the decision-making process and be party to outcomes agreed to by all who are involved, including

¹² See n 1, s 433.

the young person, the family, the Police and the victim.¹³ The FGC is authorised to find alternatives to prosecution in dealing with an offender who admits guilt.

Shortly before the Act became law in 1989, Principal Youth Court Judge Brown commented that the success of the youth justice model was dependent on a commitment from inter alia "government agencies and the legal profession" involving "a flexibility of mind, innovation, attitudinal changes and a strong desire to make the legislation work".¹⁴ Families should be assisted to "develop their own means of dealing with their juvenile offenders".¹⁵ Members of the judiciary were aware of the possibility of discomfort by some parties to this new alignment of powers under the Act. Just as the Act was empowering the family in a new way, it was also removing power from state agencies. Judge Aubin observed of the Act that "the role of the state and of the Court is a limited one. It is to assist the family to make the decisions that have to be made".¹⁶

B Justice Model

The Act is based on the youth justice model which, as stated by Trapski, holds that much of criminal offending in juveniles is a normal part of growing up and ceases with maturity.¹⁷

[I]ntervention should be kept to the minimum because introducing the young person into the welfare and justice systems can lead to associations and attitudes which may increase offending.

The model focuses on the alleged offence and aims to hold young people responsible for their behaviour while giving them the right to a

¹³ G Maxwell and A Morris "The New Zealand Model of Family Group Conferences" in C Alder and J Wundersitz (eds) *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (Australian Institute of Criminology, Canberra, 1994) 16.

¹⁴ New Zealand Law Society *Children, Young Persons and Their Families Act Seminar Paper* (October, 1989) p 2.

¹⁵ See n 14, p 30.

¹⁶ *DSW v H* (District Court, Auckland, 12 January 1990 (CYP and F 4/90 at 1.))

¹⁷ See n 2, (Brooker and Friend, Wellington, 1991) A-18, para 1.1.09.

fair hearing.¹⁸ Judge Brown et al have described it as "a criminal justice model, with the emphasis on due process and accountability".¹⁹ The legislators intended the process to deal with young people in ways that were appropriate to their age and culture.²⁰

C Provisions for Maori

Metge and Durie-Hall note that the CYPF Act is not assimilationist as are other family statutes, but rather endeavours to recognise and support Maori social policies and objectives.²¹ A salient feature of the Act is the specific provision of rights for the young person's whanau, hapu, and iwi. While the Act does not limit these terms to only Maori young persons, their employment within the Act points to: a clear recognition of the over-representation of Maori in the crime statistics; acknowledgement of the advice contained in major reviews of Maori policy; as well as a special right to recognition for Maori people based on the Treaty of Waitangi.

The youth justice principles reflect the Maori concept that the family should take responsibility for the development of its young people. Section 251 (1) (b) separates the entitlements of the birth parents from those of the hapu. By extending rights of membership of FGC to Maori groupings, the Act guarantees the widest possible support for any Maori young persons who do offend. Whanau members traditionally accept responsibility for each other's behaviour, check undesirable behaviour, share the blame when a member offends against the community, and help the offender make reparation.²² Metge and Durie-Hall have commented that some "...whanau contain a wealth of experience which it would be wasteful not to tap."²³ The legislators intended to cater for Maori but in a way that did not result in exclusive privileges:²⁴

¹⁸ M Levine and H Wyn *Orders of the Youth Court and the Work of Youth Justice Coordinators* (DSW, Wellington, 1991) 3.

¹⁹ See n 14, p 29.

²⁰ See speech of Judy Keall, Chairperson of the Social Services Select Committee, 47 *Parl Deb* 20 April 1989, 10106.

²¹ See n 10, 59.

²² See n 10, 61, 62.

²³ See n 10, 66.

²⁴ See speech of Hon. Peter Tapsell, NZPD, no 47, 10306, 20 April 1989.

The Bill provides that everyone in New Zealand will be treated equally. At the same time, it is clear that in order to be treated equally there is no demand that people should be treated in exactly the same way. To the extent that the Bill borrows from Maori custom and Maori culture, it is better for it. Indeed, those changes may be better adopted for all New Zealanders.

Maori autonomy

The FGC system does not provide Maori with an autonomous system parallel to the prevailing one. However, the Act specifically provides for the involvement of Maori family groupings. The family is also consulted regarding the time, date, place and procedure to be adopted at the FGC. Maori people can potentially have considerable influence over the FGC process.

D Family Group Conference

The Act introduced a new feature to the youth justice system: the Family Group Conference. It has been described as the "central mechanism"²⁵ of the Act and consequently represents the cornerstone of the State's response to offending by 14 - 16 year-olds. In the 12-month period ending 30 June, 1993, the Children and Young Persons Service convened 6,559 Youth Justice FGCs.²⁶

The FGC is a strategy for diverting cases from the Youth Court. Instead of laying charges before the Court, Police can refer the case to a YJC who convenes a FGC. This is a meeting of entitled persons, including the young person, young person's family, YJC, Police, and Victim. It considers the offence and attempts to come to agreement on an alternative course of action to prosecution. It is authorised to make any decisions, recommendations and plans it considers necessary or desirable. The Act canvasses certain general options, including prosecution, formal Police cautioning, declaration that the young person is in need of care and protection, penalties and reparation.²⁷

²⁵ *Family Law in New Zealand* (6 ed, Butterworths, Wellington, 1993) para 6.601, p 622.

²⁶ Data supplied by the New Zealand Children and Young Persons Service.

²⁷ See n 1, s 260.

If the young person conforms to the plan developed by the FGC, the Police may withdraw the charge. In this case, the Police and the FGC process will have achieved a valuable result in sparing the young person a criminal record. Where a young person defaults on the FGC recommendations, the Police can relay the charges before the Youth Court.

Police discretion

It can be seen that Police exercise discretion at four stages, each with a bearing on the FGC process: the initial decision on whether to lay charges against the young person or to deal with the matter by way of a warning or caution; whether to refer the matter to a Youth Aid Officer who in turn will decide either to divert the matter or refer it to the YJC for consultation and possible FGC; if a FGC is held, Police have the option to accept the recommendations of the FGC or to lay charges before the Court; and after accepting the FGC recommendations, the Police may adjudge whether the young person has satisfactorily met the requirements of the recommendations and, if not, whether to relay the original charges before the Court.

Flexibility

The simple yet adaptable provisions for FGCs offer scope for different cultures and varying family groupings to become involved in the decision-making process dealing with the offending of young persons. It is also a model of decision-making that can operate as a "parallel" to the conventional justice system.²⁸ Proceedings can, for example, occur in a Maori setting, if desired.

Even balance of powers

The FGC brings together a wide range of interested parties. While the parties could be heard in a Court hearing, the final disposition of a case would lie with the Court. However, in a FGC, the interested parties are all entitled to membership of the forum which develops recommendations and plans. Police, victim, young person, and the young person's family, sit down at a meeting convened by the Youth Justice Co-ordinator. The power is evenly balanced in the sense that

²⁸ See n 6, 278.

no one member is assigned greater decision-making power than any other member. Nor is there a restriction on the number of individuals who may attend as part of the family group. The key factor affecting the use of any personal powers or influence within the FGC setting is that the conference must reach agreement. Real power is held by the FGC itself as a united group rather than by any single one of its members.

E Amendments

The Children, Young Persons, and Their Families Amendment Bill due to be enacted on 1 October 1994 makes amendments to 43 sections of the principal Act, with several other sections consequentially amended. In introducing the Bill to Parliament, the Minister of Social Welfare said the principal Act focuses on strengthening the family unit "...to ensure that families carry out their responsibilities towards their children, and, where necessary, with further support from other family members."²⁹

While many of the amendments are minor pieces of fine-tuning to an Act after its first five years in practice, there are other amendments that are more substantial. This paper addresses those which materially alter the rights and influence of the members of the Family Group Conference and other interested parties.

F Need For Scrutiny

It has been suggested that any process like the FGC that involves criminal guilt, the imposition of penalties, the machinery of state control, and victims' rights deserves scrutiny.³⁰ As this paper is concerned with the Police position in relation to other members of the conference, it will provide perspectives on these matters.

²⁹ NZPD, vol 537, 17305, 10 August 1993.

³⁰ M Carroll "Implementational Issues: Considering the Options for Victoria" in C Alder and J Wundersitz (1994), for reference see n 13, 167.

IV MEMBERS AND POWERS OF MEMBERS

A General

1 Definitions

As the focus of this paper is the balance of power between members of the FGC, in particular in relation to the Police, it is important to define what is meant by "power" and how the notion of "balance" can be applied to power as provided by the relevant provisions of the Act. The paper will then examine constructions on the words relating to families and victims.

(a) Power

Power can be defined as:³¹

"[an] [a]bility (to do), capacity (of doing, to do); an active property or principle"; "(Possession of) control or authority over others; dominance; government, command; personal, social, or political influence or ascendancy"; "Ability to act or affect something strongly; strength, might, vigour, energy; effectiveness"; "Legal authority to act for another, esp. in a particular capacity; delegated authority; authorisation".

Although the ability to act may be dependent on authorisation, the two are not synonymous. Even with authorisation to act, a person may not be "able" to act for a number of reasons. The ability to act can be frustrated by ignorance, lack of motivation, misinformation, and lack of resources. It can also be effectively neutralised by the contrary exercise of similar powers by another person. In this way, a nominally empowered person is rendered effectively powerless. Conversely, a

³¹ *The New Shorter Oxford Dictionary of Historical Principles: Volume 2, N - Z* (5 ed, Oxford University Press, Oxford, 1993) 2315.

party without authorisation may still be able to act or to be influential, in effect to have power.

(b) Balance

"Balance" is a useful image to use in considering the powers by members of the FGC. The word conveys the idea of evenness and fairness; "equilibrium", "stability" and "harmony of proportion and design"; a balance of power being "a state of international equilibrium with no nation predominant".³²

In almost any forum where members possess different and conflicting interests and positions, a struggle of wills, opinions and personal objectives will occur. Viewed from a selfish perspective, each party wants to have as much control over proceedings and the final result as possible. For that reason, any legal assignation of roles and powers is crucial to the conduct of the forum.

It is understandable that individuals who are in dispute will insist that any assignation of powers within a judicial forum be fair and equal so that no one party dominates proceedings. Any favouring of one party stands to be seen as unfair and creating a situation which is out of balance.

This paper will examine the power, rights and influence of each of the principal members of the FGC. The principal Act places a clear focus on the family of the young person, actively involving it in the processes of the FGC which makes decisions. State agencies are specifically required to comply with FGC decisions.³³

In theory, the need for agreement tempers any domination by forceful members while ensuring that quieter members are involved. All members are either constrained or empowered by the need for agreement. Without agreement, the FGC recommendations are not adopted and the YJC will refer the matter back to the Police or the Court.

³² *The New Shorter Oxford Dictionary of Historical Principles: Volume 1, A - M* (5 ed, Oxford University Press, Oxford, 1993) 171.

³³ See n 1, ss 267, 268.

B Family

1 Definition

Despite the repeated use of the word "family" throughout the Act, section 2 does not define what is meant by the word. Atkin has described the breadth of possible interpretations.³⁴ A family group could range from one solo parent to a whole tribe, and may not even include a blood relative. An "adult member...[t]o whom the...young person has a significant psychological attachment" could be a teacher or the proprietor of the local video parlour. This vagueness is an advantage if it encompasses the full variety of family groupings to which young people actually belong. It allows for the presence of people with meaning and influence for the young person. There is also no limit on the number of family members who may attend. The implication is that as the Act allows for such breadth of definition, then the Police and other officials should accord all family forms the same respect.

2 Long title

To understand the Act's intention as regards the balance of power within the FGC, it is crucial to consider the long title, the objects and the principles of the Act which all focus principally on the family. The long title states that the Act provides for matters relating to young persons "who have offended against the law to be resolved, wherever possible, by their own family, whanau, hapu, iwi, or family group". The family is thus accorded significant status within the FGC process. The interests of the young person are seen to be intrinsically bound to the family.

3 Whanau, hapu, iwi

Maori family forms are given special listing within the provisions of the Act. The Act makes specific allowance for a three-tier "hierarchy of groups organised on the basis of descent".³⁵ Because descent from ancestors is traced through links of both maternal and paternal lines,

³⁴ See W R Atkin "The courts and child protection - aspects of the Children, Young Persons, and Their Families Act 1989" (1990) 20 VUWLR 321, 322.

³⁵ See n 10, 65.

individuals have many descent lines and can claim membership in more than one whanau, hapu, or iwi.

A practical implication for officials is that a family group of related whanau (hapu) is often associated with a marae, and the group may function more efficiently on a marae where mutual links can be asserted and revived. The marae is also an appropriate setting for meeting FGC recommendations of the nature of community work, and providing the young person with a positive environment for future development. Without a marae to unite the different family strands, the family may remain weak or even unrepresented at the FGC. Of relevance in this regard is section 208 (c) which aims inter alia to "strengthen" whanau and to "foster the ability" of whanau to develop their own means of dealing with young people's offending.

4 *Family group conference name*

Just as the family is given special mention in the title of the Act, the choice of the name Family Group Conference defines the actual conference in terms of the family. There can be little doubt of the primary role intended for the family at the conference. The conference could conceivably have been named the Police Diversion Meeting, Young Offenders Conference, or Victim Acknowledgement Meeting. The effect of the name is to place attention on the family rather than the Police, young person, victim, or the offence.

All three words of the name suggest the presence of several individuals comprising a cohesive unit, while "conference" in particular conveys a sense of purposeful seeking for solutions. The name embraces all entitled members of the conference and in so doing suggests an alliance between them.

5 *Family privacy*

Potentially the only time when the young person's family confers amongst itself is when the other members withdraw while it considers matters in private. This private meeting does effectively give the family a form of power by enabling it to construct the family's proposals to be submitted for discussion by the whole FGC. No such provision is made for other private discussions during the FGC. If the family were viewed as just one of the competing players in the FGC, then such a special

provision for privacy is excessive, unbalanced, and possibly unfair. However, if the family is viewed as by far the most important factor in the young person's prospects for positive reform and growth, a view apparently embodied in the long title of the Act, then such an authorisation should be better viewed as representing the right balance.

C Young Person

1 Principles

The principles governing youth justice as provided under section 208 are by contrast far more circumspect about the young person's interests which appear secondary to the interests of the family and the public. In fact, the word "interest" is only used in two of the eight principles, and then only to cover "the public interest"³⁶ and "the interests of any victims".³⁷ Consideration is also made of "the safety of the public".³⁸ The principles consistently define the purposes of youth justice in terms of the family. In particular, section 208 (c) provides that any measures for dealing with offending should be designed "to strengthen the family" and "to foster the ability of families...to develop their own means of dealing with offending by their children and young persons".

The first two principles, (a) and (b), which are implicitly advantageous to the young person, are stated as negatives. Principle (c), the first positive, aims to "strengthen" and "foster the ability of" the family, whanau, hapu, iwi, and family group of the young person. The fact that section (c) (ii) aims to foster the ability of the family to develop its own means of dealing with offending hints at a new partnership between the State and the family in the important matter of youth offending.

Section (d), presumably referring to young persons who would otherwise be sentenced to custodial care, aims that they be "kept in the community". The obvious responsibility for housing them lies with their families. For many families, it is a significant new responsibility for

³⁶ See n 1, s 208 (a).

³⁷ See n 1, s 208 (g).

³⁸ See n 1, s 208 (d).

which help is required. Certainly, section (c)(i) aims to "strengthen" such families.

The majority of the principles address the young person only in terms of other people's interests: the public, family, and victim. However, several of the principles contain advantages for the young person: "alternative means" are to be preferred to criminal proceedings; criminal proceedings should not be instituted solely in order to provide assistance or services to the young person or the family; a potentially strengthened family whose ability to deal with the offending in question has been fostered; continued life in the community; age to be taken as a mitigating factor; sanctions, being the least restrictive, to promote the young person's development within the family; an entitlement, owing to the young person's "vulnerability", to special protection during any investigation.³⁹

2 *Age-centred wording*

The Act, with two exceptions, avoids using the word offender.⁴⁰ The Act is worded in such a way as to keep the issue of age constantly in focus, and consequently practitioners are led to focus on a person's youth rather than on a person's offending. No other quality is given similar consideration. Gender as a concept is almost non-existent in the wording of the Act: the words boy and girl are used only rarely. Similarly, race and ethnicity are barely used to describe an individual.

It is instructive to measure the extent to which age-specific terminology is used throughout the Act. The words "child" and "children" are collectively used at least 1443 times in the principal Act. The word "young person(s)" is used at least 1553 times in the principal Act. Taken together, the terms "child", "children", and "young person(s)", are used at least 2996 times in the principal Act to describe the individuals with whom the Act is mainly concerned. The reader can be left in very little doubt about the significance the legislators are placing on the aspect of age.

³⁹ See n 1, s 208 (a) (b) (c) (d) (e) (f) (h).

⁴⁰ In both instances, the word offender occurs in dealing with other legislation. See ss 294 (b), and p 1 of the Second Schedule of the CYPF Act where reference is made to The Offenders Legal Aid Act 1954 .

3 *Age principle*

Further, the Act suggests ways in which age should be acknowledged by people involved in its processes. Of relevance to this paper, age is considered in the principles of the Youth Justice provisions of the Act. Section 208 (e) provides:

The principle that a child's or young person's age is a mitigating factor in determining -

- (i) Whether or not to impose sanctions in respect of offending by a child or young person; and
- (ii) The nature of such sanctions

4 *Contrast with South Australia*

In order to illustrate the way in which terminology goes hand in hand with an underlying philosophy, it is instructive to consider one recent piece of legislation in Australia. In South Australia, the Young Offenders Act 1993 has the aim *inter alia* "to enhance the role of Police in the juvenile justice system" and "to allow victims to confront young offenders and make them aware of the harm they have caused".

Even the title of this Act sets it apart from the New Zealand Children, Young Persons, and Their Families Act 1989. The "young persons" of New Zealand become the "young offenders" of South Australia. It is enlightening to note the clear assignations of roles: offenders, victims, Police. Appropriately for the polarised terms, the victims are allow[ed] to "confront" young offenders. It is more likely given the stereotyping of the players that the victims are expected to confront the offenders. The Act places community protection and accountability ahead of the welfare needs of the young person, and introduces deterrence as a principle for juvenile offenders.⁴¹

5 *Ethnicity and wording*

With the New Zealand Act, there is no such phrase as "a Maori young person", although the Act is cognizant of the needs of Maori by regular allowance for the involvement of whanau, hapu and iwi in FGCs.

⁴¹ J Wundersitz "Family Conferencing in South Australia and Juvenile Justice Reform" in C Alder and J Wundersitz (1994). For reference see n 13, 89.

D Victim

1 Principle

One of the principles of youth justice considers the interests of the victim. Of most significance is the entitlement of the victim to be a member of the FGC. However, some contend the victim deserves more rights than are provided under the principal Act.

2 Police Association

The Police Association contends that the victim requires greater recognition throughout the youth justice section of the Act, and that it should be made easier for victims to attend FGCs in order to address the young person. Despite wishing to attend, "...victims...can be intimidated by the venue of the conference and the number of supporters attending on the offender's behalf."⁴² In addition, the Police Association contends that the victim should be entitled to remain throughout the whole FGC "and that permission should not be sought from the family of the offender".⁴³ The Association believes that the victim should be accompanied by family, friends, or representatives from Victim Support Groups. "This has the advantage of confronting the offender with the impact and results of their offending."⁴⁴ Amendments are necessary to offer the victim rights of representation and a say in the arrangement of the FGC "equivalent to those of the offender and the offender's family".⁴⁵ This submission illustrates the potential for conflict between the family and the Police, as well as the difficult choice Police make when forced to decide between the interests of the victim or the perpetrator of a crime.

3 Greater involvement of victims

However, despite the possibility for negative relations between members, the FGC process can bring about reconciliation between the victim and the young person. The Department of Social Welfare has

⁴² *Report of the Children, Young Persons, and Their Families Act 1989: Report of the Ministerial Review Team to the Minister of Social Welfare The Hon. Jenny Shipley, February 1992, 160.*

⁴³ See n 42, 161.

⁴⁴ See n 42, 161.

⁴⁵ See n 42, 161.

noted victims often "seeking to have a continuing supportive role in the lives of the young offenders."⁴⁶

Despite the lack of statutory legitimation, the DSW has already operated a policy of encouraging victims to bring supporters to FGCs. However, because in some parts of the country YJCs have interpreted their role as being advocates for the young person and the young person's family "...[this] in turn has forced/created a counter alliance between the victim and the Police. (This role has been particularly taken up by those Police Officers who are not favourably disposed towards the Act)."⁴⁷ Although the Mason Report recommended that section 250 be amended to include the victim in the consultation concerning the convening of the FGC, the Amendment Bill includes both the victim and the Police ("the informant").

4 *Parliament*

When the Amendment Bill was introduced to Parliament, the Minister of Youth Affairs observed that the principal Act was "the best of its type in the world" and went on:⁴⁸

I have a view that in many ways the Act seeks to do things the Maori way, the way that things have been done for thousands of years in terms of involving the family in consultation to solve the problems at their source.

In explaining why victims should be consulted as regards the time, date and place of the conference, he cited the case of a victim who had been unable to attend due to being given only one day's notice. In another case:⁴⁹

[I]t was reported that of 20 complainants who could have attended the family conference at a marae only 2

⁴⁶ J Renouf, G Robb and P Wells *Children Young Persons and Their Families Act 1989: Report on its First Year of Operation* (Department of Social Welfare, Wellington, November 1990) 32.

⁴⁷ See n 42, 162.

⁴⁸ See n 29, 17318.

⁴⁹ See n 29, 17319.

attended. The main reason stated for not attending was that the complainants felt intimidated by the venue.

The matter stirred no debate in the House. It would seem that current legislators do not view the choice of FGC venue in the same light as the original legislators. Certainly, some victims may feel uncomfortable by a venue chosen by the family.

5 Choice of venue

However, as many of the youth justice principles focus on the young person in a family setting, it is arguably more relevant to find a venue conducive to developing family-based recommendations. Despite the important role the victim plays in the FGC, the victim is not the central subject of the conference. The conference is essentially concerned with developing recommendations for the young person, and important issues such as the choice of venue should be made with that goal in mind. The writer submits that to change a venue because the weight of family support provided there for the young person intimidates the victim, or because the venue is culturally more appropriate to the young person than to the victim, is to miss the point of the FGC process.

Further, if a YJC arranges for a FGC to be held on a marae then this is a strong sign that the young person's extended family has made a commitment to address the offending seriously. In fact, the venue would encourage whanau to attend. Shifting the FGC to a neutral venue that satisfies the victim may lessen the willingness of whanau to gather round the young person and victim in order to offer solutions. The final discretion on these matters lies with the YJC.

6 Domination by officials

Making the young person accountable does not necessarily demand greater involvement of officials. It has been noted that previous diversionary schemes adopted in New Zealand were defective in being largely constructed around panels of officials and professionals. Maxwell found that the majority of young people had not been involved in the FGC process or in the decision about the outcome; for the same reason, the Children's Boards of the previous system had been tagged 'Parents' Boards'. Without "increased involvement" of young people,

they would not understand the consequences of their actions or take responsibility.⁵⁰

In a similar vein, Jackson (1988) noted that diversionary schemes had to maintain community control and input if the schemes were to gain the trust of the people they were intended for. "This is particularly so with Maori offenders as the mere dressing up of essentially formal procedures with Maori input would have damaging cultural and social effects that will negate the purposes of the diversion."⁵¹

The FGC model is less likely than its predecessors to be either dominated by officials or superficially 'dressed up' for Maori. Apart from the ostensibly neutral YJC, the only official normally present is the Youth Aid officer. Family members can ensure genuine Maori protocol is followed both by means of the pre-conference consultation with the YJC and by their personal involvement. The Youth Aid officer sometimes has a significant role in Maori protocol surrounding FGCs. For example, if both the officer and the YJC are Maori, and it is in keeping with the kawa of their tribe, the officer, rather than the YJC, may welcome the other members to the FGC, especially if held on a marae. In another situation, where the officer is of the same tribe as the young person, the officer may join the family in being welcomed onto the victim's marae. In doing so, Police are respecting the family's choice of "procedure" provided by section 250 (c).

E Consensus

The Act does not provide for domination in the relations between the members. Rather, the emphasis is on shared decision-making. For example, Police hold a "consultation" with the YJC; the YJC "endeavours to consult" with entitled persons; the YJC shall "ascertain the views" of absent persons; the conference is to "consider", "formulate", "recommend", and reach "agreement".

⁵⁰ G Maxwell and A Morris *Family, Victims and Culture: Youth Justice in New Zealand* (Social Policy Agency and Institute of Criminology, Victoria University of Wellington, 1993) 128.

⁵¹ See n 6, 239.

Certainly, there is provision for the YJC to canvas the views of people unable to attend and to make their views known to the conference.⁵² However, it has been the practice in some districts for the Youth Aid Officer present at the FGC not to have the delegated Police authority to make decisions at the conference. In these cases, the final Police decision is made away from the conference by the Prosecuting Sergeant. Although provided for by section 263, this method has been criticised as it reduces the agreement reached at the FGC to the status of a "non-agreement".⁵³ A YJC commented, "If you're going to be making a decision in relation to the acceptance of those decisions by the Family Group Conference, you need to be a part of the process".⁵⁴ Judge McElrea has commented that directions to the youth aid officer by the prosecutor "would be a retrograde step and would be contrary to the spirit of the Act".⁵⁵

F Youth Aid Section

Generally, however, the Police is represented at the FGC by a Youth Aid Officer whose section of the Police works to General Instructions that authorise seeking "alternatives" to prosecution.⁵⁶ Despite the General Instructions, individual Youth Aid Officers vary in the exercise of their discretion and some are less willing than others to divert cases instead of holding a FGC, or to accept FGC recommendations, preferring instead to refer cases back to Court.⁵⁷

G Publicity

Publicity concerning the FGC system usually been negative and predominantly from the perspective of the Police and victim.⁵⁸ Rarely is the point of view of the young person or the family explained to the public. The rights of members within the FGC are partly determined by

⁵² See n 1, s 254.

⁵³ See n 18, 12.

⁵⁴ See n 18, 12.

⁵⁵ *Police v P and T (young persons)* (1991) 8 FRNZ 642, 646.

⁵⁶ Police General Instructions, Y51 (1) (a) (b).

⁵⁷ See n 18, 14.

⁵⁸ See "Victim Tells Her Story" *The Evening Post*, Wellington, New Zealand, 13 July 1994, 7.

the members' respective influence outside the FGC. Public opinion, the ministerial review, and political climate have played a role in creating pressure to amend the Act. Two members, the YJC and the enforcement officer, are publicly represented by DSW and the Police respectively; the victim is often spoken for by the Police and increasingly by the VSG.

In contrast, the position of young people and their families has not been successfully advocated. A point to be made might be that the sanctions placed on them by FGCs are considerable. Maxwell and Morris (1993) observed that "real and sometimes quite heavy penalties were being agreed to for almost all the FGCs which did not go to Court".⁵⁹ Despite this, the Mason Report noted that media attention on individual cases had created a public impression that the Act was "soft"; it recommended a comprehensive publicity campaign referring inter alia to the FGC process.⁶⁰ The government concurred with this need.⁶¹ Potentially, there is a valuable role here for the Police. Since it has played such a crucial part in the efficient functioning of the FGC model it could, for the benefit of all members, publicly champion the advantages of the FGC.

⁵⁹ See n 50, 95.

⁶⁰ See n 42, 108.

⁶¹ See Review Recommendation 26 in *The Government's Response to the Report of the Ministerial Review Team*, May 1992, 37.

V POLICE

A *General*

As the principal enforcement agency for investigating crime and apprehending and prosecuting offenders, the Police merits a significant role in determining the nature of the diversionary outcomes of the FGC. Contrary to this presumption, the Police receives very modest mention in the Act. The Police performs a significant but complicated role in the operation of FGCs.

This chapter will describe the Police role in the FGC, consider aspects of the role that are not defined by the Act, tensions between the statutory role and the normal professional role, and discuss ways in which the role is evolving in response to the natural allegiance between Police and victims.

Reference to Police in the Act

An effect of the wording of the Act is to minimise, at least superficially, the sense of crime, offending, and Police involvement with the young person [only twice referred to as "offender"]. Even Police receive only minimal direct mention; their role is often subsumed under the more general terms "enforcement officer" and "informant". This is due more to historical accident than specific intention. At the time when the Act came into force in November 1989, the Traffic Safety Service of the Ministry of Transport was responsible for up to ten per cent of referrals, but since the merger of the Traffic Safety Service with the Police in July 1992, the Police (either directly or through the Youth Court) is responsible for nearly all referrals. In contrast to "enforcement officer" and "informant", the Children and Young Persons Act 1974 refers to "the member of the Police" in similar provisions.

Section 2 defines an Enforcement agency as "(a) The New Zealand Police: (b) Any Department (as defined in section 2 (1) of the State Sector Act 1988): (c) A local authority".

B System

1 FGCs to be used in nearly all cases

One of the defects of previous diversionary mechanisms was that "[t]hey have always been by-passed whenever Police exercised their powers of arrest".⁶² Section 246 provides that, except in certain particular instances, the Court will deal with an arrested young person by directing a YJC to convene a FGC.

2 Pre-conference: Police and Youth Justice Co-ordinator

Where a young person is alleged to have committed an offence but has not been arrested, Police are required to "consult" with a YJC in relation to the matter and have it considered by a FGC.⁶³ This consultation gives effect to section 208 (a) preferring "alternative means" to criminal proceedings. If the young person is arrested, then the Court will dispose of the matter if the young person denies the charge; in any other case the Court will direct a YJC to convene a FGC. Generally, the end result for a young person is a FGC whether the matter goes through the Court or by direct referral to a YJC. The young person avoids summary jurisdiction by admitting the charge, both at the Court stage, as well as later in the FGC.

Section 208 (a) provides the principle that, unless the public interest requires otherwise, criminal proceedings should not be instituted if there is an alternative means of dealing with the matter. In cases that deserve more than a warning or a caution, the Police will generally refer the matter to a YJC. The YJC offers a point of view different from the Police's view. Whereas the Court "direct[s]"⁶⁴ the YJC to convene a conference, Police "consult" a YJC. The consultation ensures that minor cases that could be settled by Youth Aid do not proceed to a

⁶² M P Doolan "Youth Justice Reform in New Zealand", a paper presented at the "Preventing Juvenile Crime" Conference, Australian Institute of Criminology, Melbourne, 17 - 19 July 1989, 5.

⁶³ See n 1, s 245 (b) (ii), (c).

⁶⁴ See n 1, s 246 (b) (i).

FGC. The consultation is also the first stage of the FGC process and demonstrates the consultation and shared decision-making which differentiates the Police role provided by the Act from the previous system. The consultation involves considering options to the FGC such as a police caution or a diversionary activity. In this way, the Police and YJC discuss what could be termed Police options. The relationship between the two parties is to an extent like that of colleagues. It may place strain on the two. There are sometimes "problems" between YJCs and the Police over attitudes and practices, resistance to the principles of youth justice, and differing interpretations of the Act.⁶⁵ YJCs have been described as "the managers of the youth justice system" who are instrumental in diversion or prosecution of young people.⁶⁶

3 *Maori YJCs*

The fact over half YJCs are Maori offers a possible sensitivity to the needs of Maori young people and their families.⁶⁷ Whether the young person is well supported or not by family at the FGC is more in the hands of the YJC than the Police. YJCs blame insufficient time and resources for the almost total lack of family support at many FGCs.⁶⁸ In the early years of the Act, there was a danger that generic social workers who did not appreciate the role of the victim at the FGC would accord the victim a low priority and not even extend the invitation.⁶⁹ In contrast, the first contact for the Police is naturally the victim as complainant.

4 *Impact of Police decision to prosecute*

For the young person, the one possible advantage of being arrested and appearing in Court is the advantage of having a Youth Advocate appointed who may accompany the young person through into the FGC. In rare circumstances, the YJC may arrange a Youth Advocate for a young person referred directly by the Police, but this option is severely limited due to the lack of available funds.

⁶⁵ See n 18, 7.

⁶⁶ See n 18, 7.

⁶⁷ See n 18, 7.

⁶⁸ See n 18, 7.

⁶⁹ See n 18, 7.

5 *Police discretion and the gatekeeper role*

Police are the gatekeepers of the FGC system. Police control the intake into the FGC system through a series of decisions. In the first analysis, they determine whether a young person will be dealt with by way of a warning or formal caution;⁷⁰ and where more serious action is required, they determine whether to prosecute through the court or to refer the matter directly to a YJC for a FGC. These decisions are critical to the functioning of the youth justice system.

Net-widening

Wundersitz (1994) has expressed concerns of net-widening, whereby a larger range of young people is funnelled into a state-controlled, interventionist justice process. However, the success of FGCs is predicated upon effective Police cautioning which diverts over 70 per cent of juvenile offenders from the formal justice system.⁷¹

6 *Ascertaining whether young person admits offence*

The Police is represented at the FGC by the Youth Aid Section one of whose General Instructions is: "where appropriate, implementing alternative methods of dealing with young offenders, other than by way of criminal proceedings".⁷² Usually, after the initial introductions at the FGC, Police describe the offence and the young person admits or denies involvement.⁷³ In this way, Police contribute the essential information about the offending on which the conference focuses. The wording of the summary, the manner in which the officer reads it, and the mere fact it is read at the start of the conference, all help establish the tone of the conference. The family may confer in private but the agreement must be reached involving all members of the FGC, including the Police.

⁷⁰ See n 1, ss 209 - 213.

⁷¹ See n 41, 91.

⁷² See n 56, Y51 (1) (a) (b).

⁷³ See n 13, 18.

7 *Decisions*

The Act provides for "time-limited, goal-directed, community sentences, in line with the principles set out in S 208".⁷⁴ The Police has identified criteria by which to assess recommendations.⁷⁵

Fifteen per cent of families identified professionals, the Police in particular, as making the decisions. Thus, the FGC is perceived by some to be a mechanism of state control.⁷⁶ "The Police see themselves as being involved very much in the decision making process as to what may be an effective diversionary measure in any given case. They anticipate a role in thinking up suitable diversionary measures and in supervising them. There is some concern though that the resources for diversion are not in place."⁷⁷

C *Criticisms of FGC Process*

Australian experience shows that young persons very rarely take up their right to contest the case against them by pleading not guilty and forcing the prosecution to plead the case. By doing so, they abandon many of the procedural protections implicit in due process.⁷⁸ Pursuant to section 259, if the young person does not admit the charge, the FGC is severely limited in the recommendations it may make. This can be viewed as coercive with young persons making inappropriate admissions of guilt simply to avoid a court attendance and criminal record.⁷⁹ The young person may wrongfully admit guilt for many reasons.⁸⁰ Rather than "diversion" from justice processing, the FGC can be viewed as just an "alternative"⁸¹ that lacks safeguards for the young person's rights.

⁷⁴ See n 14, p 2.

⁷⁵ See n 56, Y62 (6).

⁷⁶ See n 13, 32.

⁷⁷ See n 14, p 37.

⁷⁸ See n 13, 5.

⁷⁹ See n 41, 96.

⁸⁰ K Warner "Family Group Conferences and the Rights of the Offender" in C Alder and J Wundersitz (1994). For reference see n 13, 142, 143.

⁸¹ K Polk "Family Conferencing: Theoretical and Evaluative Questions" in C Alder and J Wundersitz (1994). For reference see n 13, 129.

Morris has warned:⁸²

"The dangers of exploiting the unequal power inherent in plea bargaining and of 'coerced' co-operation in diversion schemes may merely relocate discriminatory practices from the Police station or the court-room into other equally impenetrable areas."

On this issue, the Commissioner for Children has indicated dangers in the FGC model, two of which are: "[t]he loss of the kind of fairness expected from a Court"; and "[t]he manipulation of families by officials, lawyers and others".⁸³

D Ministerial Pressure For Amendments

Nevertheless, the 1989 Act was revolutionary and some would say optimistic in its provisions for dealing with offending by young persons. As practitioners worked with the Act, and as new legislators became involved in the issue of young offending, it was inevitable that the Act would be revisited. In 1992 the Minister of Police criticised prevailing laws for favouring the interests of "criminals" and "wrongdoers" at the expense of victims and the broader community. "The victims of crime, and the communities they live in, are suffering while many criminals are walking away unscathed..."⁸⁴ The Minister also referred to the public's desire "to be free of terrorism by teenage thugs".⁸⁵

⁸² H Giller and Coline Covington "Structuring Discretion" in A Morris and H Giller (eds) *Providing Criminal Justice for children* (Edward Arnold, London, 1983) 145.

⁸³ *An Appraisal of the First Year of the Children, Young Persons and Their Families Act 1989* (Papers presented by the Office of the Commissioner for Children, 1991) at 12.

⁸⁴ See "Whose Rights Are We Protecting?" *New Zealand Herald*, Auckland, New Zealand, 12 March 1992, 9.

⁸⁵ See n 84, 9.

VI YOUTH JUSTICE CO-ORDINATOR

A Ongoing Relationship

The Youth Justice Co-ordinator is normally the only other official Police work with on FGCs. Whereas each particular family, young person and victim are temporary visitors to the FGC system, the YJC and the Youth Aid Officer have a constant ongoing working relationship. When the Police first consult the YJC about the need for a FGC marks the point where a young person's alleged offending ceases to be a matter to be determined by Police alone. The YJC discusses the referral and whether there are alternatives to an FGC available to the Police. The Police supplies details of the offence, victim and young person to the YJC so that preparations for convening the FGC may begin. Through the consultation with the YJC, Police enter into the first stages of shared decision-making that characterises the FGC process. A key to the success of FGCs is the pre-conference preparations made by the Youth Justice Co-ordinator. "Input is required to establish and engage the extended family, explain the youth justice process, and prepare the family for decision making at the conferences."⁸⁶

B YJC Role As Regards Other Members

The Youth Justice Co-ordinator is employed by the Department of Social Welfare. Some have suggested that through working alongside social workers, YJCs risk losing their impartiality, sometimes seeing themselves as advocates of the young person.⁸⁷ The Police Association believes that the YJC's role is more to do with "youth offending" than "the well-being and welfare of people", and for that

⁸⁶ See n 46, 31.

⁸⁷ See n 42, 60.

reason they should be employed by the Justice Department.⁸⁸ In reply, the Justice Department points out that "YJCs are better located... in DSW where the aim of the Act to separate Youth Justice from the criminal justice system is more easily attained. There are dangers that, as Justice Department employees, YJCs might adopt a criminal justice ethos".⁸⁹

Comment

As the FGC is a form of diversion which attempts to avoid labelling, it is vital that the family's first contact with an official regarding a FGC should involve an explanation of the youth justice principles. It is vital that the family understands that the YJC is independent of the Police and the Justice System. The YJC's ability to convince family members to attend the conference and be prepared to support the young person and victim in terms of the Act is crucial to the success of the FGC.

C Time Required to Convene a FGC

Research has shown that for no discernible reason some branches of the Children and Young Persons Service manage to convene FGCs in the required space of time while others do not. The amendment will provide a blanket of statutory tolerance to the latter while tempting the former to let arrangements stretch out to the full. One effect of this amendment will be in more instances to increase the amount of time that elapses between the initial referral to the YJC and the eventual FGC that is convened to consider the matter. In some instances, the added delay will be contrary to the principle of section 5 (f) of the Act which provides "that decisions affecting a child or young person should, wherever practicable, be made and implemented within a time-frame appropriate to the... young person's sense of time".⁹⁰

⁸⁸ See n 42, 61.

⁸⁹ See n 42, 63.

⁹⁰ See n 1, s 5 (f).

VII FAMILY

A General

The Act empowers families in several ways. In the first analysis, it acknowledges families in its title, its objects, and its principles.

Right to attend

The family is entitled to attend the FGC pursuant to section 251 (1) (b) (ii) which entitles every person who is a "member of the family, whanau, or family group" of the young person. Any parent, guardian, or person having the care of the young person is provided for under the preceding subclause. The Act interprets "Family group" as including "an extended family [i]n which there is at least 1 adult member [t]o whom the child or young person has a significant psychological attachment".⁹¹

Providing for the whanau

The principal Act lessens any potential alienation felt by Maori families by making the family a vital member of the conference. In particular, section 250 enables the whanau, hapu and iwi, where appropriate to particular families, to play host either on a marae or at least in a Maori way. The advantage of this is the opportunity it gives to the whanau to communicate successfully with the young person, victims and Police. Writing on Maori customs and protocol, Hiwi and Pat Tauroa have pointed out "it is when gathered together on their marae that the Maori most fully express themselves as a people".⁹² Some of the rituals of the marae are "based on deep feelings and beliefs, expressing Maori spirituality". It is a place where Maori people speak freely while being expected to hear others with respect. "Here they may express

⁹¹ See definition of "Family group", n 1, s 2.

⁹² H and P Tauroa *Te Marae: A Guide to Customs and Protocol* (Heinemann Reed, Auckland, 1986) 3.

themselves, they may weep, laugh, hug and kiss. Every emotion can be expressed and shared with others".⁹³

Viewed in these terms, it is possible to view the marae as a suitable venue for meetings such as FGCs that are likely to involve emotions, different viewpoints, and important social decisions. Therefore, it could be argued that in the case of some Maori people, it is in keeping with the principles of the Act to hold the FGC on a marae. Consequently, the Police has a statutory obligation to have regard to measures such as holding the FGC on a marae.

B Date, Time, Place, Persons

The principal Act required the YJC to "consult with" the young person's family in relation to the time, date, venue, persons attending, and procedure to be adopted at the FGC.⁹⁴ The family were not in this way given the power to determine these matters, but as the only member so consulted, their opinions were accorded considerable statutory support.

This exclusive consultation offered a clear signal to the family that the conference was 'theirs' and that they were being accorded proper respect by the system. The consultation was thus motivational. Arguably, the amendment⁹⁵ to section 250, which requires the YJC to also consult with the victim and the informant⁹⁶ as regards the date, time and place, weakens this motivational aspect by sharing the requirement with the other two major parties to the FGC. The proposed amendments do not, however, interfere with the exclusive consultation with the family concerning persons and procedure to be adopted.

There is no compulsion on individual family members to attend the FGC.⁹⁷ Section 250 provides that the family, whanau or family group are to be consulted concerning the persons who should attend the

⁹³ See n 92, 6.

⁹⁴ See n 1, s 250.

⁹⁵ Children, Young Persons, and Their Families Amendment Bill 1993, as reported from the Social Services Committee, House of Representatives, 24 March 1994, p 30, No. 36.

⁹⁶ "The informant" in practice would normally mean the Police.

⁹⁷ Section 278 provides that a parent or guardian may be summoned to appear in the Youth Court when a young person is charged with an offence.

conference. Presumably there is discretion available to both the family members so consulted and the YJC as to which persons are invited to attend as part of the family group. Although the conference is convened in respect of an offence by a young person, the young person is limited in the types of people who may attend in his or her support. These people are family members, guardians, caregivers, and adults with whom the young person has a significant psychological attachment. Any other person may attend whose attendance is in accordance with the wishes of the family. In addition, any barrister or solicitor or Youth Advocate or lay advocate representing the child or young person may attend.

C Family Consultation As Regards Procedure

The YJC's consultation with the family regarding procedure can have advantages for a family group that does not normally function as a unit. The consultation can engender a sense responsibility that is vital in the later stages of the FGC when the family considers alternatives to prosecution, or community-based activities for the young person that may require personal and financial support from the family. For a dysfunctional family, or a family group gathered together from various places to address unpleasant realities, the act of playing host serves as a unifying and sobering influence, bringing to the fore the group's sense of responsibility to its guests and to its own vulnerable members. The principal Act effectively provided them with the mana of playing tangata whenua to the manuhiri of the victim and officials. By way of contrast, it is possible to imagine the sense of powerlessness and unwillingness to attend that a family might experience if it were summoned to appear before a committee of officials in a strange venue to explain their child's offending. In such circumstances, a disadvantaged family can only share with the young person a sense of shame and alienation from the system.

D Privacy During FGC

Families are entitled to deliberate in private and to arrive at decisions and plans, which must then be negotiated with the officials present. In

practical terms, Police and other professionals are required by the Act to withdraw during the FGC to give the family some time to consider the decision on their own.⁹⁸ Maxwell and Morris found professionals did not withdraw in 42 per cent of FGC cases.⁹⁹ So, apparently not all Police think private family discussion is desirable. The Police Association has questioned the right to privacy in submissions to the Ministerial Review Team.¹⁰⁰ One legislator disputed the right of some families to meet privately in this way on the grounds they might have a long record of criminal offending; excluding the Police from their deliberations would "enable deviant families to exclude an objective assessment".¹⁰¹

However, Police have no choice but to accept the statutory right of any family to be present to avail itself of the elements provided under the Act. Further, no matter what the nature of the family, their recommendations developed in private always require the agreement of the whole FGC before they are accepted. The opinion that victims should be permitted to be present throughout the FGC, presumably including the private family deliberation, seems to be based on a philosophy that does not endorse the family-empowering principles of the Act. Their presence could deny the family the opportunity to respond creatively to the matters placed before the FGC; it could also be difficult for the family to objectively consider the plight of the victim with the victim present. For this reason, while Police are doing no more than their duty in supporting victim involvement in the FGC process, they would be undermining a vital aspect of the process by insisting on victims being present throughout.

Theft of decision-making

Despite the respect accorded the family by the FGC system, research has suggested that professionals shaped the information given to families and 'constructed' the final decision for them - a kind of 'theft' of decision-making.¹⁰² This theft need not occur if the YJC fully briefs the family on what to expect from the FGC and the role they have to play.

⁹⁸ See n 1, s 251 (2).

⁹⁹ See n 50, 92.

¹⁰⁰ See n 42, 161.

¹⁰¹ See speech of Ross Meurant, NZPD, vol 47, 10316, 2 May 1989.

¹⁰² See n 50, 114.

Certainly, the Police shapes the summary of facts, indicating under which Act an offence has occurred, but this is an essential starting point for the conference. While empowering the family, the Act also partially 'constructs' decisions for the family in the sense it details possible recommendations, such as reparation, that may be arrived at.

It is the FGC and not specifically the family which finally agrees on a recommendation, and as officials are entitled members there can be no theft as such. If theft is defined as the will of others predominating over the will of the family, then the fault lies with the Act itself rather than the behaviour of officials. Given the fact that the family have a say in the date, time, place, and procedure of the FGC, as well as the right to confer privately, it is well provided for to control the decision-making process. However, if the YJC and Police are in any way usurping the family's decision-making rights, then it is a breach of the Act's principles.

E Recommendations of the FGC

The principles of the Act as laid out in section 5, provide a good foundation for any FGC recommendations that attempt to keep young persons out of custody and more in the care of their families:¹⁰³

(c) The principle that consideration must always be given to how a decision affecting a child or young person will affect -

- (i) The welfare of that child or young person; and
- (ii) The stability of that child's or young person's family, whanau, hapu, iwi, and family group...

Also of particular relevance is:¹⁰⁴

(e) The principle that endeavours should be made to obtain the support of -

¹⁰³ See n 1, s 5 (c).

¹⁰⁴ See n 1, s 5 (e).

(i) The parents or guardians or other persons having the care of a child or young person...to the exercise or proposed exercise, in relation to the child or young person, of any power conferred by or under this Act...

Consequently, to ensure a family pledges its support for a very difficult young person, the FGC must engender a sense of good will, family commitment, and shared responsibility for the young person's offending. Such an exercise requires giving primacy to the family at a FGC.

Pressure on families

The Act is hesitant to coerce families to perform activities relating to the offending of young persons. Nevertheless, forceful provisions do exist. Section 278 provides for the summoning of "any" parent, guardian or person having the care of a young person, to appear before a Youth Court; any such parent may be examined in respect of any matter relating to the proceedings.¹⁰⁵ In relation to the family of a young person, the Court may make a range of orders.¹⁰⁶

Requirements placed on agencies

Significantly in terms of the balance of power between members of the FGC, the Act requires enforcement agencies to give effect to any decision, recommendation, or plan made by a FGC unless it is clearly impracticable or clearly inconsistent with the principles set out in sections 5 and 208 of the Act.¹⁰⁷ Consequently, even the young person and the family are granted a share in decision-making that affects the Police.

105 See n 1 s 278.

106 See n 1, s 283.

107 See n 1, s 267.

VIII YOUNG PERSON

A *General*

It has been noted that the Act makes strong and consistent use of age-related terms to describe individuals who offend. Section 2 defines a young person as a boy or girl of or over the age of 14 but under 17 years; but does not include any person who is or has been married.

Sensitivity to the special needs of young persons who have offended is reflected in the Act's avoidance of the word "criminal" or "offender" when referring to a young person who has offended. The choice of words is more than just semantics. The words "criminal" and "offender" define an individual in terms of a single activity as well as conveying the sense that there is no other activity or quality of the individual that should take precedence in one's conception of the individual. These labels are based on narrow terms of reference that allow little opportunity for individuals so named to be reintegrated with the rest of society.

In contrast, a term such as "[a] young person who commits an offence"¹⁰⁸ semantically draws a distinction between the young person and the offence. They are two different things and can be considered separately. It is thus possible to condemn the offence while retaining respect for the young person. The conceptual separation of the young person from the offence also enables the young person to objectify the offence, examine it through the eyes of other people, and then personally reject it as a true representation of his or her own identity.

However, when the young person and the offence have been fused, and the young person has been branded a "criminal" or an "offender",

¹⁰⁸ See n 1, s 208 (d).

there is less chance that the young person will consider the offence objectively or through the eyes of anyone else. There is less likelihood of young persons rejecting the crime or 'putting it behind' them since the crime has become part of their own public identity. They cannot condemn the crime without also condemning themselves.

B Vulnerability of Young Person

It should also be remembered that the young person in many instances is also a victim. The mere existence of a Youth Court is a recognition that young people have special needs that should be respected by the State. Furthermore, the youth justice principles refer to the "vulnerability" of young persons who, it could be argued, are vulnerable to harm inflicted by processes and measures taken in their regard.¹⁰⁹

Judge Brown et al have commented that the criminal justice system has in the past failed young persons whose offending is "opportunistic, trivial and transient" by its own attendant "problems of entrenchment and labelling".¹¹⁰ On this subject, it should be remembered that one of the guiding principles of Youth Justice mentions the "vulnerability" of young persons.¹¹¹ Its applicability to the present issue of victims is that in a situation involving strong labelling of 'victims', the young person is by virtue of age vulnerable to being labelled a criminal. The purpose of the Act has been defeated when young people are so labelled.

In applying this construction to the principle, the writer submits that any unfair process used in dealing with young persons stands to make them victims of the youth justice system. They often defy the dichotomy of offenders and victims. They are "a vulnerable strata of society" on whom is imposed rehabilitation and retribution.¹¹²

¹⁰⁹ See n 1, s 208 (h). Although the word "vulnerability" is used in this principle in such a way that it suggests vulnerability is a quality that accompanies young age, the sentence goes on to deal with "any investigation".

¹¹⁰ See n 14, p 30.

¹¹¹ See n 1, s 208 (h).

¹¹² D Sandor "The Thickening Blue Wedge in Juvenile Justice" in C Alder and J Wundersitz (1994). For reference see n 13, 155.

The Roper Report cited the home as the place where as much as 80 per cent of all violent offending occurs, in the way of assault, rape and incest.¹¹³ It develops the tendency to commit violence. The Commissioner of Police has commented that violent criminals often share a common family background.¹¹⁴

As children they have been bashed and abused from an early age, they have been in families where liquor and drugs are regularly abused, where there is little love and affection, guidance or direction. They have experienced extremes of discipline - too much or none at all.

Even provisions designed to protect young people can be exploited by the unscrupulous. Police have noted the danger that young people will be used for criminal purposes by adults who realise that one of the principles of the youth justice system is to seek alternatives to criminal proceedings. The suggestion is that young people's crime bosses remain in the background like modern day Fagins.¹¹⁵

C Maori Young Persons

In addressing the subject of young persons who appear in Court, the Report *Puao-Te-Ata-Tu* noted the tension and bewilderment of Maori in the District and Family Courts. Young persons had a right to be more informed about the processes of which they were a part. "[I]t would seem to us to be an inherent tenet of justice that a youngster before the Court is enabled to know what the procedures are about."¹¹⁶

The *Report of the Royal Commission on Social Policy* (1988)¹¹⁷ echoed many of the themes of *Puao-Te-Ata-Tu*, and highlighted the

¹¹³ *Report of Ministerial Committee of Inquiry into Violence* (Wellington, 1987) 95.

¹¹⁴ See "Poor Parenting Seen as Key Cause of Violence" *The Evening Post*, Wellington, New Zealand, 27 August 1994, 3.

¹¹⁵ See "Getting heavy with tough young crims" *The Evening Post*, Wellington, New Zealand, 13 June, 1994, 5.

¹¹⁶ See n 3, 53.

¹¹⁷ See the paper "Nga Kohikohinga Mai No Nga Putea i Whakairia ki Nga Tahuu o Nga Whare Tupuna: An Analysis of Views Expressed on Marae".

sense of alienation that many Maori people feel from their own families the Maori community, and from decision-making levels.¹¹⁸

Jackson (1988) observed that the police role as prosecutors in the District Court was fraught with the same potential for discrimination as is the discretion to arrest.¹¹⁹

The concept of equality between the prosecution and the defence, which would support the burden of proof argument, is diminished by the dominant role of the police in the whole judicial process. They arrest, prosecute, and present evidence with a degree of resource backup unavailable to the defendant.

Jackson observed that Maori defendants were often confused and unaware of either their rights or the operation of the system. Many young Maori plead guilty out of cultural shame in order to quickly extricate themselves from an embarrassing situation. "In this case, any prejudiced decision to prosecute is given substance by an affirmation of guilt which may bear little relation to the merits of, or reason for, the prosecution."¹²⁰

D Pressure to Admit Guilt

In a similar way, a young person of any race, may feel under pressure to admit an offence at a FGC in order to curtail the embarrassing process, or even under a sense of pressure from the adults present in the room. This pressure and the resulting wrongful admission of guilt was one of the reasons for the safeguards concerning the taking of statements.¹²¹ Unless the young person admits the charge, the FGC is not empowered to make any recommendations.

Without an admission of guilt, the matter may be referred to the Youth Court. Therefore, there is a natural pressure to dispose of a case in

¹¹⁸ See n 10, 56.

¹¹⁹ See n 6, 134.

¹²⁰ See n 6, 134.

¹²¹ See n 20, 10311.

one sitting rather than two, and this should also be considered when evaluating what pressure a young person is under to admit guilt in a FGC.

Another aspect disadvantaging the young person at the time of admission in the FGC is the problem of separating aspects of the charge. The young person might feel partially guilty to the charge, but not wholly guilty. With legal assistance, the young person can contest the charge and have it reformulated. However, many young people are without legal representation, astute knowledge of the law, or confidence to take on the system. The FGC is not a suitable forum for contesting the admissibility of evidence.

The Youth Advocate may make representations on behalf of the young person at a FGC. The young person is not required to pay for these legal services as the Act provides that fees and expenses are to be paid from the Consolidated Account. Given the fact that many young persons come from disadvantaged backgrounds, it is unlikely they have sufficient financial resources to retain the services of a Youth Advocate to represent them at a FGC. Such representation is in their own interests considering the knowledge, experience and legal advice available to other members of the conference, such as the enforcement agency and the victim.

E Support for Young Person

The young person cannot be presumed to have supporters at the conference. The constant use of the terms "family", "hapu", "iwi" and "family group" creates a strong, and in many circumstances unrealistic, sense that young persons in fact have functioning families, whanau, hapu, iwi, and other family groupings. By the repeated use of familial terminology, the Act places the young person within a social grouping that may not exist. In this way, the Act partly creates an illusion of social unity around the young person.

The familial words also create a sense of collective cohesion shared among large groupings of people. For example, an "iwi" (tribe) may represent thousands of people possessing a shared land, culture,

language and history. If each Maori young person who attended a FGC had that level of group support, the balance of power would be enormously in the favour of the young person. Young offenders are more likely to come from disadvantaged, dysfunctional, nuclear families than from cohesive, highly mobilised power blocks.

Another aspect is that not all young offenders are Maori. So, while the use of words such as whanau, hapu, and iwi suggest large social dynamics at work around the Maori young person, for the pakeha young person there is an even greater misrepresentation in having the level of his or her support overrated to this extent. It may well be that other family members will come in support, but their support cannot be presumed. As part of the shame they feel as a family for the offending, they may adopt a condemnatory attitude to the young person. If the family is dysfunctional, it may not be capable of operating as a unit. Hence, there may not be a collective attitude to bring to the conference. In a dispute at the conference concerning levels of guilt or recommendations, the family may not necessarily rally behind the young person.

IX VICTIM

A General

The principal Act defines "Victim" as:¹²²

[A] person who, through or by means of an offence, suffers physical or emotional harm, or loss of or damage to property; and where an offence results in death, the term includes the members of the immediate family of the deceased...

The victim, through the act of lodging a complaint, is often the first member of the FGC that Police meet. The relationship between the two is influenced by statutory obligations detailed in recent legislation. The Victims of Offences Act 1987 requires the Police inter alia to treat victims with courtesy, compassion and respect, and to inform victims of services and remedies that are available to them. Of particular relevance to FGCs is the provision for Victim Impact Statements concerning any physical or emotional harm, or any loss or damage of property, suffered by the victim, to be made available to the sentencing Judge. The CYPF Act, by providing for the attendance of the victim at the FGC, gives the victim greater ability to influence the young person and lay claim to any reparation. The victim is a member of the forum that recommends the reparation. In addition, the challenge of meeting the victim in such a forum is one that even adult offenders do not often experience. The simple fact of being referred to as the victim is a constant reminder to the FGC of the impact of the offending. Whereas the term "young person" is preferred to "offender", the Act retains the word "victim" when talking of the complainant. Section 208 (g) provides

¹²² See n 1, s 2.

the principle that any measures "should have due regard to the interests of any victims".¹²³

B Public Nature of Offending

While most of the Acts encompassed by Family Law deal with matters that primarily concern the best interests of children and adults within the family, the CYPF Act deals with behaviour by a family member that has contravened the rights of individuals, in the main, outside the family. The presence of the victim at the FGC is the tangible sign of the interface between family privacy and public rights.

The victim is the member who has suffered either personal harm or loss or damage to property. Measures developed for dealing with offending are to have "due regard to the interests of any victims of that offending".¹²⁴ The offence may represent the first time that the victim has been harmed, so the victim may approach the FGC process as an inexperienced newcomer to the process. However, the victim is not without support. The mere fact of seeking help from the Police at the time of an offence establishes a functional alliance between victim and Police that might be expected to carry over to some extent into the FGC process.

C Wording

It is important to examine the use of the word "victim" in the Act and the Amendment Act, as well as in the general context of the functioning of the FGC system. The word victim defines a person solely according to one subjective activity: being victimised. It begs the questions: Victim of what? Victimised by whom?

The corollary of victim is victimiser or offender. Excessive use of the word "victim" creates a polar category whose logical opposite pole would be the "offender". In terms of role play, there are professional

¹²³ See n 1, s 208 (g).

¹²⁴ See n 1, s 208 (g).

offenders and professional victims. If one of the effects of giving the "victim" a vivid profile in the FGC is to foster an equally vivid offender profile for the young person, then the effect is contrary to the intentions of the Act. It has used the FGC as a tool to label the young person.

D Police allegiance to victims

Police judgement in agreeing to or rejecting a family's recommendations could be influenced by the presence of the victim, and to a further extent the presence of victim supporters. Meeting the needs of the victim and the offender "must involve a contradiction".¹²⁵ Victims can be expected to be angry and hurt following offences, conceivably too affected to make a valuable contribution to the FGC. It is possible that some victims' sense of injury is far out of proportion to the offence that has occurred. Victims can be expected to feel a sense of injustice. It is crucial to the ongoing success of the FGC model that Police temper the desire for retributive 'justice' on the part of victims with a broader view to meeting the objects of the Act.

E Victim/Young Person Relationship

The two may have no personal knowledge of each other. In fact, if the offence in question had been the burglary of an unoccupied bach, the victim and the young person may not have even met prior to the FGC. There may exist no personal animosity between the two. Groups such as the Victim Support Group must be aware that in preparing victims for the FGC they are dealing with only one party to the FGC and that for the FGC to be fruitful the members should avoid entrenched attitudes. The danger posed is the risk that young persons will be labelled as "offenders" both by others and themselves. Such labelling may help determine further decisions to offend.¹²⁶

In an adversarial context, it is natural to cast the offender and the victim as poles apart. However, the lives of the two may be closely

¹²⁵ See n 13, 41.

¹²⁶ The labelling theory is part of the theoretical base of the Act. See n 62.

connected. Examples might include a young person whose offending is viewed as the inevitable outcome of being raised in a violent, abusive household; a young person who steals to acquire food for siblings; a young person whose offending has been against members of his or her own family.

F Family as Victim

In a case where the son of a family has sexually assaulted a daughter of the family, the family attends the resulting FGC with divided loyalties. An adversarial approach would be counterproductive. Also, in such a case, the family itself grieves both because of the harm which has been perpetrated on the daughter, and also for the fact the son has betrayed the trust of the family to such an extent as to harm one of its own members. In this sense, the family is also aligned with the victim.

In some cases, the victim's opinion may have a bearing on whether or not a young person is placed in custodial care. In other cases, recommendations can be framed to take specific account of the victim's interests. Two youth justice principles are instructive in this regard. Young persons who offend are to be kept in the community so far as that is "consonant with the need to ensure the safety of the public".¹²⁷ Any measures taken "should have due regard to the interests of any victims".¹²⁸

G Amendments

The Amendment Bill repeals subsection (2) of section 251 of the principal Act and substitutes the following, entitling a victim to be accompanied to the FGC by supporters:¹²⁹

(2) Where...any victim of an offence or alleged offence attends a family group conference in person and not by a representative, that person may be accompanied by any

¹²⁷ See n 1, s 208 (d).

¹²⁸ See n 1, s 208 (g).

¹²⁹ See n 95, p 31, No. 37.

reasonable number of persons (being members of his or her family, whanau, or family group or any other persons) who attend the conference for the purpose of providing support to that victim.

The substituted subsection (4) of the Amendment Bill provides that any such person attending a family group conference shall not be a member of the conference. It is clear that such supporters will be present to provide emotional support to the victim rather than to verbally contribute to discussions and decisions, although in the close confines of a conference their mere presence, body language and association with the victim, will have some effect on the process. The inclusion of the words "or any other persons" bestows a right on the victim that is as broad as any provided to the family.¹³⁰ While it might be argued that any individual whose presence is desired by the young person can be accommodated under the mantle of "lay advocate", the provisions still do not match the unqualified breadth of "any persons" provided for the victim. In fact, unless the young person's FGC is a Court referral, he or she may not be represented by any form of counsel or advocate.

Family and victim

The amendments will encourage victims to not only attend more FGCs but also to attend with supporters. Such increased representation should provoke greater awareness by the FGC of the victim's experiences and needs, and consequentially greater cognizance of the victim's plight by way of an increase in recommendations that address the victim's needs.

New rights for the victim

Under the amendments, the victim is given a say in whether a FGC even takes place in some cases.¹³¹ The FGC is being converted to a proceeding that attempts to equally serve the interests of all members, including the Police and the victim, rather than principally those of the

¹³⁰ See n 1, s 251 (o) provides for "[a]ny other person whose attendance at that conference is in accordance with the wishes of the family..."

¹³¹ See n 95, clause 34 which repeals s 248 of the principal Act. See the substituted s 248 (3) and (4) which require the YJC to consult entitled persons concerning the waiving of a FGC.

young person and his or her family. Once again, this is an example of how the character of the Act has been altered by the amendments.

Victim Support Group

The victim may be assisted at the FGC by a group with links to the Police. The Victim Support Group may provide assistance to the victim from the time of the offence through to the FGC itself. The VSG is a grouping of volunteers which serves the interests of victims and is resourced by the Police. Its staff are trained and organised to perform a role that primarily supports the victim. At the time an offence occurs, Police supply details of the victim and the offence to the VSG who then contact the victim to offer support.

H Police Involvement in VSG

In meeting their duties under that Victims of Offences Act, Police provide personnel and resources to the Victim Support Group, one of whose recent additions has been the function of supporting victims at FGCs. However, critics have linked Police advocacy of victim rights to the infringement of the rights of the alleged offender.¹³²

¹³² D Sandor "The Thickening Blue Wedge in Juvenile Justice" in C Alder and J Wundersitz (1994). For reference see n 13, 154.

X CONCLUSION

This paper has described aspects of the Police role in regard to the Family Group Conference as provided for under the youth justice provisions of the Children, Young Persons, and Their Families Act 1989. It has also considered the relevance to the Police of amendments to the Act effected by the Children, Young Persons, and Their Families Amendment Bill 1993.

The paper has shown that two major reports on Maori social policy provided useful analyses of how Maori people fared in the criminal justice system. The Reports called for greater recognition of the interests of Maori people, and acknowledgement of the importance of Maori family forms. They advocated greater control for Maori people over the consequences of wrongdoing by their young.

The paper has characterised the Act as being based on a justice model. However, it also looks to the social development of young people. The Act offers a broad interpretation of family forms. Its provisions can be used to involve Maori family forms and protocols. The FGC is a meeting of potentially conflicting interests in which the members are mutually constrained by the need to reach an agreement. The Act avoids the use of language that labels young people as offenders, but rather focuses on the age, responsibilities and interests of the young persons as members of families. The paper has indicated how these facets of the Act influence the Police role and influence over other members.

The paper has argued that despite potential for conflict between members of the FGC, the need to reach agreement is a factor promoting mutual respect. The paper contends that the Police plays a significant but complicated role within FGCs that is far more influential than the role of other members.

Police have an ambiguous relationship with the young person. On the one hand, the Police maintains that the young person's offending is of such a serious nature that criminal proceedings may result. On the other hand, the Police is willing to accept diversionary proceedings that conform to the principles of the Act.

The paper has shown that the family has significant rights to consultation concerning the convening of the FGC and the procedure to be followed. The Police role as regards the family is one of respect for its form and procedure selected. The support of the family for the young person is vital if the aims of the Act are to be realised. Police have an important duty in respecting the family's right to private discussion at a certain stage of the FGC.

The paper contends that the proposed amendments to the Act give increased influence to the Police and the victim: in particular, amendments to section 250, now requiring the YJC to consult the victim and the Police as regards the date, time, and place of the conference; and section 251, which now entitles the victim to be accompanied to the conference by any reasonable number of support persons.

The paper observes that there is a vacuum in the public relations required to explain the FGC model to the public. The Police may in future years play a bigger role in this regard.

The overall conclusion of the paper is that the FGC offers the Police, and indeed all members, a very flexible model for making consensus decisions concerning young people who have offended against the law. The need for agreement potentially creates a balance of power between all members.

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