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New Zealand introduced an innovative system of juvenile justice in legislation that came into force in 1989. It sought to overcome many of the problems of the welfare system of juvenile justice (1), and to constructively deal with issues of, and problems created by, "children" (boys and girls under the age of 14) and "young persons" (persons aged 14, 15 and 16) who offend. (2)

Family group conferences (FGC) are the lynch-pin of the New Zealand youth justice system. Their purpose is to make such decisions, recommendations and plans as are thought to be "necessary or desirable in relation to the child or young person in respect of whom the conference was convened." (3) They lie at the heart of the New Zealand procedures: both as a pre-charge mechanism to determine whether prosecution can be avoided (accounting for approximately 40% of all FGCs), and also as a post-charge mechanism to determine how to deal with cases admitted or proved in the Youth Court.

The economic, social and political climate in New Zealand in the 1980s was one of flux: increasing importance was being placed on the role of the Treaty of Waitangi and rangatiratanga; an economic

slump was generating a new economic order, leading to government pressure for efficiency and accountability; and there was a move towards less government interference and a questioning of the welfare state ethos.

The 1989 legislation physically separated the youth justice system from the Family Court process by creating a specialist Youth Court. This was intended to keep "care and protection" proceedings in the Family Court separate and to ensure that dispositions for offences were time-limited, commensurate with the offence, and just. While to some, it initially looked like a return to a culturally inappropriate adversarial system, it was hoped that Family Group Conferences would counter this by empowering the community.

While the new youth justice system was an attempt to move away from the traditional welfare model, the system attempts to reconcile the dichotomies of "justice" and "welfare" by holding a young offender accountable while giving appropriate consideration to the needs of the young offender. It is the FGC process that largely facilitates this reconciliation.

Family Group Conferencing aims to involve the young offender, the victim and their families in the decision-making process with the objective of reaching a group-consensus on a 'just' outcome. In this way they reflect some aspects of centuries-old sanctioning and dispute resolution traditions of the Maori of New Zealand. They also encapsulate restorative justice ideologies, by including the victim in the decision-making process and encouraging the mediation of concerns between the victim, the offender and their families as a means to achieve reconciliation, restitution and rehabilitation.

In respect of an alleged "child"(7) offender when an enforcement officer believes that the child is in need of care or protection, and that, after consultation with the co-ordinator, an application for a declaration is required in the public interest - a "child offender care and protection conference";

Where a young person is alleged to have committed an offence, and has not been arrested, no charge can be laid in the Youth Court before there has been consultation between the police and the FGC Co-ordinator. If after consultation the police still wish to charge the young person, a FGC must be convened - a "pre-charge FGC";

Approximately 62% of youth offending is dealt with by police diversion schemes devised and operated by specialist officers.(10) Approximately 6% are referred by Police to FGCs (where there is an intention to charge) and outcomes are agreed and implemented usually without referral to a Court, (however, in rare circumstances a charge is still laid). In the other 29% of cases the youth is arrested and is referred directly to the Youth Court, which must refer all proved(11) cases within its jurisdiction to an FGC for a recommendation.(12)

The FGC is made up of the young person, his or her youth advocate(14) if one has been arranged, members of the family, whanau or family group and whoever they invite, the victim(s) and supporters, (or representative of the victim(s)), the Police, the Youth Justice Co-ordinator (YJC) and, a CYFs social worker (in cases where CYFs has had a statutory role in relationship to the custody, guardianship or supervision of the young person).(15)

The process endeavours to address the statistics that suggest that Maori children and young people comprise around half of all youth apprehended by Police, having a youth justice FGC or being prosecuted in court.(16) Two specific factors are aimed at promoting participation by the young Maori offender:(17)

Information arising from FGCs is privileged and is not to be published.(18) This principle extends to restrict the amount of information that can be reported back to the Court.(19) However, legitimate research material about FGCs can be published, but must not reveal information that could lead to the identification of FGC participants.(20)

Where a young person is in custody, a FGC must be convened within seven days; and completed

within a further seven days.(22) Where the Youth Justice Co-ordinator receives notification of an intended prosecution of a young person who has not been arrested(23), or a child aged 10 to 13 is alleged to be in need of care and protection by reason of offending(24), the FGC must be convened within 21 days of that notification and must be completed within one month.

Professionals play a low-key role in an FGC. The Youth Justice Co-ordinator is merely a facilitator, ensuring that the process is managed constructively. The role of the police is usually limited to describing the offence, and possibly the impact of it on the victim if the latter (or their representative) is not present. They may also voice concerns if family proposals seem inadequate or excessive. A youth advocate, if present, advises on legal issues and protects the young person's rights, though they may also express an opinion about the proposed penalties if they seem excessive. A social worker if present will normally only provide background information on the young person and participate in supporting the plans of the family and the young person for the future.

However, there are no other legislative, or formal or informal prescription for FGC plans. The established processes merely provide the platform from which creative and individualised resolutions are formulated. There are consequently no limitations on the imagination and ideas that flow from the group of people who wish to produce constructive solutions to the problems of the young person's behaviour.

For 95% of cases, FGC-recommended outcomes involve accountability measures of some kind.(36) Plans commonly include an apology and/or reparation to the victim (the amount of which is often in excess of what the court might order in the same case), community service requirements, counselling and rehabilitation programmes and educational requirements.

FGC plans must be agreed to by all participants in the FGC and all persons directly involved in the implementation of the plan. Where there is agreement, the plan will almost always be accepted by the enforcement agency (in the case of a pre-charge FGC) or Youth Court. That is unless it is clearly impracticable or clearly inconsistent with the principles of the Act, or so extreme or so lenient as to lack general parity with outcomes in respect of similar offences. The Youth Court thus retains an important supervisory and monitoring role in respect of plans. FGC plans are binding when they are agreed to by all those present and, when relevant, by the Court.

If a plan is successfully completed by a young person the Court is able to discharge the offender(37), whereby the charge is deemed never to have been laid.(38) However, despite granting a discharge, if the Court is satisfied that the charge is proved, it may, still, when appropriate, order the young person to fulfil additional requirements such as pay money towards the cost of the prosecution or pay reparation to the victim etc.(39)

The Youth Court can accept the plan, but has the residual discretion to impose additional orders if necessary. It may, for example, admonish the offender, impose a fine, or direct community service work.(40) When imposing an order, the Court must have regard to a comprehensive range of considerations including the offender's background, attitude towards the offence and any previous offending proved in the Youth Court.(41)

Where no agreement is secured the FGC is adjourned and referred back to either the appropriate enforcement agency, or the Youth Court for determination. This is only necessary in approximately 10% of FGC cases.(42) In the majority of these cases it is the Police or professionals who take a different view from the family.(43) In accordance with the confidentiality requirements in the Act, the agency or Court is not informed of the reasons for non-agreement.(44)

All FGC participants' attendance and involvement is voluntary. Voluntariness is an important aspect of FGCs. Members are given the autonomy to participate in a decision-making process and the freedom to accept or reject a particular decision. Permitting FGC members to be surrounded by supporters, buttresses the voluntariness of their involvement and is intended to engender an environment that encourages participation by all members.

Conventional juvenile justice systems do not encourage the involvement of the young offender. There, the principal players are the professionals and the legal representative's role is expressly to speak for his or her client. Young offenders may take no actual part in the proceedings. In contrast, FGCs expect and facilitate full and active participation by the young offender in discussions about how best to deal with their offending. This approach reflects three ideologies:

Article 22 of the United Nations Convention on the Rights of the Child provides a basis for giving young people the opportunity to both express their views and to have them taken into account in all matters affecting them, but particularly in any judicial or administrative proceedings. This sentiment is echoed in section 5(d) of the CYPFA.

Further, the physical inclusion of the offender in the sanctioning process reaffirms that the offender has an important interest in the outcome. Exclusion from the process, in contrast, signals that the offender's concerns are minor or unworthy of consideration, perpetuating the feelings that often underlie offending. Importantly, the offender's inclusion is not a result of an intention to shame, but rather an intention to help the offender understand the harm caused and to support them in taking full responsibility for that harm.(47) It provides the offender with a sense of "ownership" in the means and ends of the outcome and the subsequent fulfilment of it. It also signals an affirmation by the offender of the community's legal norms and the desire to be part of legitimate society. Participation by the offender at the FGC thereby provides the first step towards re-integrating them into the community.(48)

The youth justice system avoids formal pleas of "guilty"; all that is needed for a "standard" FGC to proceed is a formal acknowledgement that the charge is "not denied".(50) If the charge is denied the young person's case will be determined by a conventional , adversarial hearing in the Youth Court. This is because the success of a FGC is premised on the young offender taking responsibility for his or her own offending.

Early in the FGC the offender must acknowledge responsibility for the offence by admitting the charge. This is not to say that a blind admission is required. If the essential elements of the charge are in dispute the conference allows an opportunity to discuss and reach agreement on the facts. If, following discussion, there is still not agreement the case is referred back to the Youth Court or to the Police depending on the method of arrival at the conference.

It is necessary to identify as best as possible the causes of the offending so that the outcome formulated later at the FGC responds to immediate issues and meets the future needs of the offender. This reflects the ideal that an FGC can play a part in the early intervention and prevention of recidivist offending.

It should be observed that this aspect of the FGC could be done better. A FGC should address both the deed (the offence) and the need (the cause of the offending). At present, New Zealand FGCs are good at identifying and addressing the deed, but are falling short of identifying and addressing the need(s). This may be a result of the anti-welfare philosophy underlying the new legislation, or it may simply be a pragmatic response to a lack of resources and programmes to combat the causes of youth offending.

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