

**Children and young person's encounters with the
family court: A hermeneutic phenomenological
study**

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Abstract

The research question that guides this study is 'what are the lived experiences of children and young people who encounter professionals in the family court?' Qualitative research studies in the literature have partially answered this question. The methodology of hermeneutic phenomenology has allowed the voice of the child to shine, to tell the story of children and young people's lived experiences of meeting professionals from the court. Participants were six children and young people aged 8–16 years; augmented by four lawyers for the children, four psychologists who write specialist reports regarding such children/young people, and one parent.

Children and young people were able to share many mixed experiences of engaging with professionals which were bolstered by the adult reflections. Extra-ordinary listening by the professional helped to create an authentic relationship between the child/young person and the professional from the court. The importance of the space 'between' the two was revealed as a place of conversation, of listening and hearing each other. When the 'in-between' space was open and trusting, it helped children/young people to have a voice and to feel hope for their future. If the relationship was positive, it was likely that the child/young person's wellbeing was enhanced.

Changes to operating practice are recommended around the child/young person being more actively supported to share their insights and wisdom-born-of-experience in family court meetings. The child/young person needs to be recognised as a key focus and participant in their family's issues rather than an object around which decisions are made. Recommendations are also made regarding legislative terms that are not understood by the child/young person, and that a photo of the child/young person be a feature of any discussion about them. Children and young people can meaningfully participate in influencing the final decision of parental involvement in their lives.

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Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

31 January 2021

Signature

Date

Dedication

To all families and especially the children and young people who engage with professionals from the family court:

May you each receive extra-ordinary listening!!!!

To Mum and Dad and all my family who have supported this journey



Acknowledgements and Thanks to All of My Team



Ethics Approval

This research was approved under Auckland University of Technology Ethics Committee approval number 18/229 dated 17 July 2018. A subsequent modification to include adult participants was approved on 29 October 2018.

Chapter 1 Introduction

It hasn't been easy because I haven't been listened to. I would like to be heard and listened to by someone who won't twist what I say and be able to make a change for me... They're not taking into account my feelings. (Nigel, 13 years, Waikato Times, June 30, 2018, p. B3)

1.1 The phenomenon of interest

This research asks: 'what are the lived experiences of children and young people who encounter professionals in the family court?' The research is set in Aotearoa New Zealand. A hermeneutic phenomenological lens has been used, seeking to uncover meaning from accounts of everyday lived experience.

Children/young people's experiences when engaging with professionals in the family court can be negative, as for Nigel, who felt unheard in words and feelings. He felt his words were "twisted" and he was not valued. Other children/young people have reported positive experiences; thus, outcomes may be variable. When parents separate, their children can bear the brunt of the strong adult emotions that surface when perceptions of rights and wrongs come to the fore. I would suggest that this is, at least in part, due to the child/young person's voice being muted or silenced by the adults who surround them, such as their parents and extended family members. If the court is involved, potentially the professionals who work within this formal system become involved and may or may not enable the child/young person to have a voice.

Whānau/families are considered a key social and cultural norm in Aotearoa New Zealand, as will be seen below. When parents separate and they cannot agree how to share the care of their children, the court may become involved to make the decision. If a young person is a youth offender, a similar process occurs. The court is approached to assist in the resolution. Family and youth courts are headed by a Judge who may ask professionals (lawyer, psychologist, social worker) to assist the child/young person to have their voice heard; and to

promote decisions being made in the child/young person's best interests and welfare.

As a psychologist who works with children/young people who are journeying through the family court, my interest was piqued about children/young people's experiences when involved with me and the other professionals mandated by the court or their parents. Questions were pondered over: what would it be like for a child or young person to have a (professional) stranger come along and ask about my family life, successes, and challenges? There could be a parade of professionals, all seeking the child/young person's voice. What was needed so these experiences would be positive and healing? I believe that children/young people are capable of participating, relating, and trying to make sense of their experiences; rather than being akin to objects, whom adults need to protect and speak for, and thus silence. Children and young people deserve (and have a right) to be listened to and heard as they have unique experiences that can help positively create the outcome of their family court matters, when these proceedings affect the child/young person's life and living. Hardman (1973) posited that children/young people's voices tend to be "muted" in research (p. 205), a theme which has continued through until, perhaps, the present (Smith, 2016). I would suggest that adults and professionals can mute children/young people's voices in practice in my area of interest, within the family court context. I was interested in whether the child/young person sensed their voice was heard, valued, and respected and what enhanced or detracted from this experience? This research was aimed to understand more about children and young people's experiences of engaging with professionals who had been assigned to them by the family court staff. This is what led to the question for this study: 'what are the lived experiences of children and young people who encounter professionals in the family court?

1.2 The gap

Since the 1980s, there has a growing body of international and New Zealand literature in which children/young people who have journeyed through the family court have been participants (Birnbaum & Bala, 2017; Birnbaum & Saini, 2015; Meehan, 1982; Parkinson & Cashmore, 2008, 2020; N. J. Taylor, 2006c; N. J. Taylor & Gollop, 2015). This literature increasingly introduces the child/young person's voice directly to the question, though there remain studies where adults' voices are also explored. Many of these studies use methodologies that thematise the voice of the child/young person or adult. A study that uses a hermeneutic phenomenological methodology with children/young people in the family court has not been identified. However, hermeneutic phenomenology has been used with children needing medical care (Dean & Black, 2015; Karlsson et al., 2016), children in education (C. S. Nielsen et al., 2020), and children in sport (Ryba, 2008). Thus, hermeneutic phenomenology is an approach where children/young people can be participants and it arguably allows the richness of their voices to be heard.

This study about the experiences of children/young people who meet professionals in the family court aims at starting an exploration and interpretation of this identified gap in the knowledge. By listening to and interpreting children and young people's voices about their encounters with professionals, this research seeks to honour their experiences, recognising that they have been thrown into their predicament by their parent's separation (five participants) or the young person offending (one participant). Recruitment of children/young people proved difficult. In order to meet the time constraints of this thesis for a Doctor of Health Science, adult participants were added: four lawyers and four psychologists were the professionals, and a parent. Each of these people was asked to focus on their understanding of children/young people's experiences of encountering professionals from the family court.

This thesis turns to set the context of my study within Aotearoa New Zealand, then introduces the Aotearoa New Zealand family/youth courts and the professionals and their roles.

1.3 Context of the study in Aotearoa New Zealand

In 2020, as this study is being written up, I live, as I always have done, in Aotearoa New Zealand. There is a population of approximately five million people (worldometer, 2021) of which about 24 percent are under 18 years (Children's Commissioner, 2016).

According to Statistics New Zealand (Stats NZ, 2018), nearly 21,000 marriages and 7500 divorces were granted in New Zealand in 2018. This is part of a long-term downward trend. In 2008, it was said that 5,600 children/young people, under 17 years of age, were affected by their parents' marital separation. This represented a decrease of 2,000 children/young people compared with a decade prior and 4,000 children/young people fewer compared with 20 years prior, 1998 (Stats NZ, 2018). Using longitudinal tax and welfare records from the New Zealand government, Fletcher et al. (2020) identified that sole-parenthood occurred at 23.7 percent, a rate about 1.5 above the OECD average, and that 15 percent of parents had at least one child under 18 years not living with them. Sligo et al. (2017), using data from a longitudinal study of 1037 children born in Dunedin in 1972–1973, and followed through until today, found that 43 percent of these children lived continuously with both parents until the age of 16 years. Thus, there is a high rate of family separation in Aotearoa New Zealand, the reasons for which are beyond the remit of this study. Most families, where the parents separate, resolve their children's care and contact issues, with mothers still being the majority primary parent, though more fathers are seeking and attaining a shared care arrangement (Smyth & Chisholm, 2017). Those parents who cannot resolve their care arrangements can make an application under the Care of Children Act (2004) to the family court.

One participant was a youth offender, though his parents had previously separated. His court issue was heard under the Children Young Persons and their Family's Act (1989), which was amended in 2018 and is known as the Oranga Tamariki Act (1989), the Children and Young Persons Wellbeing Act (1989); hereafter referred to as OTA. The Ministry of Justice has reported that between 2010 and 2019 there has been a significant decrease to approximately one third of offenders with finalised charges in the youth court. This is despite the July 2019 addition of 17-year-old young people to this court as a result of law changes. This change, and the addition of a year older group, affected six months of the data (Ministry of Justice, 2021). Reasons for this decrease are beyond this thesis but could include a continuing change in adult perceptions of the value of young people which will be further discussed in Chapter 2.

1.3.1 Aotearoa New Zealand is a multicultural society

Aotearoa New Zealand is a multicultural society. Through Te Tiriti o Waitangi (the Treaty of Waitangi), there is a primary bicultural recognition of the indigenous Māori population alongside the European (known as Pākehā) settlers. The Māori population are considered to have arrived in the 14th century (Shortland, 1856). Pool (2010) stated that British settlement of New Zealand, during the 19th century, was as an extension to the “mother country” (p. 151), and for many years New Zealand was protected by virtue of this ‘parent-child’ relationship. “Our immigrant flows until 1945 were remarkably homogeneous, not just by religion and ethnicity but also in terms of occupations. Moreover, most settlers were British in origin, and were largely Protestant” (Pool, 2010, p. 155). Thus, the prevailing notions of childhood (being seen and not heard), were imported with the parents of what has become the majority culture. The next section traverses the unification (or not) of the fledgling population through Te Tiriti o Waitangi which remains relevant today.

1.3.2 Te Tiriti o Waitangi (The Treaty of Waitangi)

In 1840, Te Tiriti o Waitangi was agreed by the Crown in the name of the ruling monarch, Queen Victoria and Māori Chiefs. It is the founding document of Aotearoa New Zealand law. This is a Treaty between the Māori and the colonising English population which guaranteed that all New Zealand citizens be protected by the Crown and treated equally. There were three articles of principle that have been summarised as partnership, participation, and protection (Hudson & Russell, 2009). It is clear that these principles have not been adequately addressed, as Māori and Pasifika children and families are over-represented in the socially impoverished groups on all measures (Moss, 2017). Two versions of te Tiriti were printed, one in Māori and one in English. The fundamental meaning between the words used is disparate which has led to many social and legal arguments about the rights and wrongs of the government care for and inclusion of Māori. Despite this, te Tiriti remains a foundation document which, over the years, increasingly influences family court practice.

Having set a cultural and societal context, brief consideration is now given to the family court from its founding in modern times. Following, is an equivalent section about the youth court, which also is likely to include the same Judge and professionals.

1.4 Introduction to the family court in Aotearoa New Zealand

The participant children/young people experienced the family court through parental dispute over care arrangements (five children/young people), or through youth offending (one young person). The family court, as a social intervention agent, holds parents' and children/young people's emotions and livelihoods, perceptions and experiences, in its day-to-day workload and the Judges decide future living arrangements where parents and others cannot. Boshier (2008), then the Principal Family Court Judge, highlighted the

challenges for the family court from being perceived as anti-male, closed to public scrutiny, and time delayed. He noted that since the media could attend, there had been limited interest. These thoughts continue today with little change over the ensuing 13 years.

Prior to the 1980 establishment of the family court, issues related to post-parental separation childcare and youth offending were split between the Magistrates Court and the Supreme Court. The Magistrates Court, and subsequently the family court, has a two-pronged function: both as a court, where justice is dispensed; and as a social agency, where the social issues presented are resolved (Beattie et al., 1978).

In 1976, a Royal Commission of Enquiry into the Courts, known as the Beattie Commission, was established to review the history and structure of the New Zealand Courts, not the law. N. J. Taylor (2006b) commented that "The Royal Commission was concerned about the split in the family jurisdiction between the Supreme Court and the Magistrates Court because it provided an opportunity for harassment by parties' cross-filing applications under different jurisdictions" (p. 6). The Commission's final report highlighted the necessity for a separate family court. Further it was noted that it was "fundamental that the family as a unit should be dealt with as an organic whole" (Beattie et al., 1978, p. 150). This report showed that the proposed future family court was recommended to be focused on adults and their disputes. In the section, "The Future: Proposed Court Structure", the word "children" is mentioned in only two places: the minority decision regarding appeals of custody hearing (paras. 506–508) and family counselling services, which could be provided "to ensure that the children of the marriage have a maximum of security and a minimum of hurt through the conduct of their parents" (Beattie et al., 1978, p. 165). It appears that this founding document of the modern family court was adult centred and driven with little consideration being given to the children and

young people whose lives it would impact. Their value was unrecognised and their voices were effectively silenced.

As a result of the Beattie Commission, the family court was established in 1980 under the Family Court Act, 1980. At the same time, other domestic and marital legislation were also reviewed and adapted to the time and changes society had undergone. The family court became a separate division of the District Court with Judges being appointed with specialist warrants. Professionals, with experience in child and family matters, were recruited to work alongside the child/young person. Parents were, and are, able to approach the family court to seek help with resolution of their difficulties as to how their children/young people are cared for post-separation, as well as other adult issues such as relationship property. The youth court administers justice around youth offending. Both the family and youth courts are linked through having the same professional roles involved. Between them, these courts oversee all judicial applications with respect to children and young people.

In 2014, re-reviewed in 2019, an expert panel addressed the reforms of the family court (Noonan et al., 2019); and in 2015, another expert panel addressed reforms to the state child protection agency, Oranga Tamariki (Ministry of Social Development, 2015). In part, need for improved functioning with respect to outcomes for children/young people and their families was identified by all three panels. In terms of my study, these applications were about care and contact arrangements for children/young people whose parents had separated; and a young person who had offended, though his parents were separated. As one of the participants was a youth offender, brief consideration is now applied to this court, which is an equivalent of the family court.

1.4.1 The youth court

In Aotearoa New Zealand, the youth court was officially commissioned as a separate court in 1925; though since the middle of the 19th century, youth who

offended started to be recognised as needing different interventions than adults. "These courts were founded on the principle that young offenders were victims of their environment and in need of help rather than punishment" (Watt, 2003, p. 2). Today, if a youth has offended, the state child protection agency—Oranga Tamariki—is involved and the youth court monitors the intervention and determines whether a conviction will be entered against the youth's name (OTA, 1989).

1.4.2 How do children/young people reach the court?

There are two major ways children and young people come to the attention of the court: following parental separation where the parents cannot agree about future care and contact arrangements; or through the care and protection proceedings, including youth justice. Once parents separate, adult and parental disputes can occur at multiple levels: who is the best caregiver for the child(ren)/young people, the faults of the other parent, the parent who wants to relocate to be geographically closer to their family of origin or with a new partner, the presence and safety of a new partner and them supplanting the other parent, school changes, religious conversion, child/young person medical issues, are but some of the disputes. Parents raise real, presumed, and assumed real pillow-talk, and sometimes fabricated allegations about the other, and their child/young person is caught in the middle. These represent some of the families that the court deals with, those who were previously intact families where the parents were cooperating and sharing their children/young people at whatever level worked for that family. Children/young people in need of care and protection and young people involved in youth court proceedings have additional complexity to the above as a wider number of people and relationships are involved.

All mothers and most fathers are legal guardians of their children. This means that they are responsible to make major welfare decisions for their child such as if medical treatment is required, where the child/young person will live, and

what school they will attend. When parents separate and cannot agree about care and contact or guardianship arrangements for their children, they can apply to the family court, via the Care of Children Act [CoCA] (2004), for assistance. If staff from the state child protection agency, Oranga Tamariki, or the Police considers that a child/young person is in need of care and protection, through parental ill-treatment or neglect or through the youth's offending, an application is made to the court for decisions to be made about state intervention. These applications are made under the OTA (1989). In both these cases, the children/young people become the often unseen, non-parties to the dispute as they are not served with affidavits and reports about them and they are not usually in the courtroom. Children/young people may be consulted through the professionals (as below), but their thoughts and wishes are clearly not the total answer; rather, just considered a piece of the outcome.

The Court will usually direct that a lawyer is appointed to represent the child/young person. If Oranga Tamariki is involved, a social worker is already a professional involved in the process. If specialist expert knowledge about the child/young person's development, relationships, wishes and thoughts, and/or their parents' capacity to parent, the Court will often appoint a psychologist. The child/young person is expected to interact with all these, and sometimes additional, adult professionals such as supervised contact people, teachers, and counsellors. How they experience these interactions is the focus of my study, so I will now introduce the professionals who work within the family/youth court system and who meet the children/young people as they journey through this environment.

1.4.3 Professionals in the family court

In the Aotearoa New Zealand family court, the Judge is the ultimate decision-maker when parents and other legal guardians cannot make decisions about the future care arrangements for children/young people or when a young person has offended. On 16 November 2020, there were 65 full- and 17 part-time

specialist judges who held warrants for family practice; and 57 full- and 8 part-time specialist judges who held youth court warrants. Some of these judges hold dual appointments to both family and youth courts (The District Court of New Zealand, 2021). Whilst family and youth justice courts are separate, the main principles of their guiding Acts of Parliament are similar: to enhance the welfare of the child or young person, within the context of their family, also known as whānau, hapū (sub-tribe), and iwi (tribe).

When children/young people request to meet the Judge, or the Judge deems this meeting may help in the decision they are being asked to make, children and young people, accompanied by their lawyer, attend the Judge either in their chambers or in the court room (N. J. Taylor & Caldwell, 2013). However, usually the Court receives information about the child/young person through the court-appointed lawyer for the child, a psychologist, an Oranga Tamariki social worker, and/or the parents. The child/young person would usually meet one or more of these professionals and sometimes they would meet all of these and more, including supervised contact personnel and counsellors who are not necessarily formally appointed by the court.

Lawyer for the child has a dual role; that of representing the child/young person and their views or wishes and presenting their belief about the child/young person's best interests (s9B of the Family Court Act 1980). These roles can be in conflict. If a significant conflict occurs, the Court will sometimes appoint a 'Lawyer to Assist the Court' to take on one of the roles (s9C Family Court Act, 1980). In representing the child/young person, the lawyer will canvas the views of a language-able child/young person and may comment on their maturity based on their assessment of the child/young person within the context of their environment.

Social workers who report to the family court are predominantly employed by Oranga Tamariki, the state agency responsible for children and young people's

welfare. Initially, in CoCA cases, the social worker may only report on the file maintained by Oranga Tamariki and the police family harm records.

Alternatively, with a Court-directed brief, a social worker may be asked to visit the parents and children/young people to conduct a fuller social work examination of the situation. This report may extend to discussing the child/young person's wishes. If, in a CoCA proceeding, the social worker has concerns that the child/young person is in need of care and protection, the social worker may request the Court to make a referral under s19 of the OTA. In this case, a family group conference must be convened by the Oranga Tamariki Care and Protection Coordinator. Identified family of the child/young person who may be in need of care and protection, are invited to a meeting to make decisions about the current and future needs of their young family member. Consensus of all family members in attendance leads to the agreement being put before the Court. Non-consensus of all family is also recorded and Oranga Tamariki staff then apply to the court if they believe protection of the child/young person is required. This may implement intervention within the framework of the existing COCA orders; or, following a court hearing a change of care arrangements under CoCA; or orders being sought under the OTA, that the child/young person are in need of care and protection.

The psychologist usually interviews and observes the child/young person and their parents within their family environment(s) and gains information from significant others (e.g., grandparents, parents' new partner(s), teachers). A report about the child/young person's psychological wellbeing and factors that contribute to or lessen their wellbeing is presented to the Court.

Children/young people's relationships with the important people in their lives and the child/young person's views are canvassed and reported, along with a psychological assessment of the context and influences that may affect the weight to be given to any decisions.

In summary, in the family court, children/young people are participants in their family, where their parents are seeking the Court's assistance or where the child/young person is in need of care and protection and/or has offended. One or more professionals are engaged to assist the Court's decision-making process. As the child/young person is promoted as the centre of the legislation, it is important that children/young people's voices are heard in practice and research. This was recognised in world-leading research conducted from the Children's Issues Centre at Otago University in New Zealand (N. J. Taylor, Gollop, & A. B. Smith, 1999). My research is to extend the understanding that children/young people's voices and participation provide valuable input for adults who make decisions about these children/young people's lives.

In terms of furthering the context for my study regarding children/young people's experiences of engaging with professionals from the family court, I now change direction and address the research methodology, that of hermeneutic phenomenology according to Heidegger, Gadamer, and van Manen, and including a more relational philosopher, Buber.

1.5 Introduction to the methodology

Everything has the potential to be data... nothing becomes data without the intervention of a researcher who takes notes—and often makes note—of some things to the exclusion of others.
(Wolcott, 1994, pp. 4-5)

Hermeneutic phenomenology has been selected for this study, with the phenomenon being the child/young person's '**experience**' of engaging with professionals in the family court. It was hoped that the child/young person's individual voice would be heard and presented, rather than minimised, ignored or mis-heard, or be a part of a group of voices report. Consideration was applied to a methodology such as participatory research which can add children/young people's voices to the formulation, design and/or execution of

the research but was discarded as the literature and experience was consistent that there would be difficulty in attracting child/young person participants who were able and willing to assist. Methodologies, such as mixed methods, thematic, grounded theory, and narrative, either thematised children/young people's statements to create a theory or did not interrogate sufficiently to lead to an interpretation and understanding of all that the individual child/young person was saying.

To ask about 'experience' is a hermeneutic phenomenological question which aligns with my values and belief that children/young people have something important to tell us about their lives. It is the 'art' of my discipline of clinical psychology. 'Experience' is defined as "an event or occurrence which leaves an impression on someone"; as a verb 'experience' means to "encounter or undergo (an event or occurrence)" and "(to) feel (an emotion or sensation)" (Oxford English Dictionary, n.d.). van Manen (1990) said "The lifeworld, the world of lived experience, is both the source and the object of phenomenological research" (p. 53). This experience is accessed through language, which needs to be common between the participants so that understanding can occur. As Smythe (2011) stated "[u]nderstanding is deeply informed by experience" (p. 36). Thus, language through discourse and having a relationship between people is the way to access the child/young person's experience of engaging with professionals in the family court.

van Manen (1990) said: "the problem of phenomenological understanding is not that we know too little about the phenomenon we wish to investigate, but that we know too much" (p. 46). In hermeneutic phenomenological research there is no right or correct answer; rather, there may only be questions. To understand requires that I interpret and think, which necessitates questioning, interpreting, and reflecting on the participant's narrative. This process may raise more questions.

Alongside the hermeneutic phenomenological lens, a more relational lens was provided by Martin Buber (1878–1965). In his two classic books, '*Between Man and Man*' (Buber, 1947/2014) and '*I and Thou*' (Buber, 1923/2010), he explores the relationships 'between' people, drawing on conversations and language at the core. This has extended my interpretation and understanding of the experiences of children and young people who meet professionals in the court.

At the core of hermeneutic phenomenological research is the premise that we bring to all research our own histories, contexts, and prejudices (Gadamer, 1975). Prejudices, also known as pre-understandings, influence the lens through which we look at the data. Both Heidegger (1962) and Gadamer (1975) spoke of the necessity that a person/researcher be aware of their preunderstandings that influence how they perceive the world. These preunderstandings can cloud the relationship between the participant and the researcher; hence, they need to be crystallised to reveal taken-for-granted assumptions. Only from here can another's story be translucently understood and interpreted.

To further this pivotal methodological point, consideration of my personal and professional history that has contributed to the pre-understandings that I bring to my study follows.

1.5.1 My personal preunderstandings as a family member, psychologist, and researcher

What is the landscape of a child like? Can I, as an adult observer, describe the spatial world of children? Can I describe my own?
 ...How do you know, until you are really out there, interacting with the children? (Beekman, 1983, pp. 38-39)

As Kofi Annan (n.d.) said "We were all children once". I was raised as one of five siblings within an intact family. My parents, nanna, and aunt all encouraged education and thinking. My mother was a stickler for having the correct word in the correct place, with her favourite sayings being "we have less

cabbage and fewer cabbage leaves" and "compare with, never to". This study's hermeneutic phenomenological lens allowed me to focus on the words, the communication, the verbal and the non-verbal talking of my participants.

I have been 'teased' all my life as being a constant student, wanting to learn, and when would I really do something useful? Recently, I learned the term for such a person, and I will use it proudly—I am a 'philomath'. I have a love of learning and study. Within my family of origin, the political issues of the day were discussed and debated. I recall perhaps being about eight years of age and debating with my father who was a stalwart National party supporter, that the world would be a better place if money was shared equally. I recall feeling heard as I gardened alongside Dad that day.

My aunt took me on trips around Northland when she visited clients who had intellectual disabilities and their families. This surely contributed to my interests in people who have disabilities and children as people, as I saw this role-modelled to me. These customs have been carried through the generations. I am privileged to share in the lives of my nephews and nieces, and now their children. A great-nephew, Tom, and I have had ongoing conversations about the 'books' we are writing. I was privileged to receive one of his latest creations titled '*Jailbreak*'.

From this background, this study is rooted in my Western cultural history; though I also recognise the primary bicultural context of Aotearoa New Zealand society. I have practiced as a specialist psychologist in the family court for more than 30 years and I have often reflected on how it would be to be a child/young person who meets a professional stranger and is expected to relate to them their life story, fears, and hopes about their family. My experiences of the many children/young people I have met are that most often they are generous with their sharing, which may speak to a relationship being formed. As an example, I was talking with Harry (pseudonym), a seven-year-old boy

who related "*I have Mum pulling me on this arm (left) and Dad on this arm (right)*" while he was physically moving back and forth across the room. He said in tears: "*and I don't know what to do and who to choose*". When reassured that he did not have to choose and that I would help other adults, including his Mum and Dad, make decisions, he audibly sighed, sat down next to me and cuddled in while crying. After about three minutes he sat up and dried his eyes and checked that he did not need to make a choice. He walked out of the room in what may be described a jaunty manner. As a result of the subsequent report that Harry loved and was well-cared for by both parents, his parents decided to share Harry's care, which met Harry's needs. Harry's voice had finally been heard by those adults, his parents, who needed to hear it. Within this child/young person-professional relationship, I hope I have listened to and heard the child/young person and have come to some understanding of their context. If this understanding and interpretation can be transmitted to the parents and the Court, then the professional has been true to the child/young person having an active participation and agency.

As a clinical psychologist, I was raised in the scientist-practitioner model of behavioural psychology and its belief in quantitative methods. Framing, measuring, and rigorous scientific assessment and intervention are the hallmarks of applied behavioural analysis psychology. Counting, measuring intensity, and observing change in the behavioural data are the hallmarks of this methodology.

I have moved to hermeneutic phenomenology which is a significant shift from the taken-for-granted paradigm of my profession. Yet, I see that hermeneutic phenomenology and scientist-practitioner clinical practice are inter-related as the art and science of practice. I have come to believe that in psychology we need both when we work with people. Psychologists meet and talk with people. In these conversations, I am in the moment, always seeking to listen and to develop, in concert with my client, a deeper understanding of what has brought

the person to me. The client's narrative is the clay with which we work together to reform something different. I may craft a story back to the client, recognising their sharing. When I step out of the moment, I then put my other objective hat on and seek the defining and measurement of the problem. Thus, the two methodologies weld together into what can be termed the scientist-practitioner model of psychology. In saying this, I am acutely aware of the power of my position as an educated professional on whom the Court relies, and the strength of the scientist-practitioner model in today's world. This study could have been focused on these power relationships, but that would have been a different interpretation of the data and another study.

My history is in working with people, initially in the area of intellectual disability, then in a community setting, and for the last three decades with a focus of families and family dysfunction following parental separation and when the State has intervened to ensure children/young people are physically, sexually, and psychologically safe, or where young people have offended. I have met with at least 8,000 children/young people in my professional life. Each child/young person has brought a story about how their life is. These stories have resonated at the time and been emphatic in my understandings today of children/young people who journey through the family court.

To relationships, I bring an understanding that conflict can be positive and can be resolved. It does not need to dominate or become insidious and affect other people or generations, especially the children/young people. Too often, my professional contact is with families who exhibit multiple generational traumas. I have many memories of children/young people I have met as a family court professional. Court approved interventions have resulted in the children/young people having improved lives and relationships, often with a parent who had previously been absent. I also have memories of siblings of children/young people who have been harmed or who have died; and/or where one of their parents has been killed. These memories have contributed to my developing

competency as a professional and to who I am as a person. I carry these memories and experiences daily; they are in the background of my study.

Children/young people are the reason for my contact with their family. They are the people who may be the most harmed by their parents' actions or inactions, and may become both the most vulnerable and the most resilient. In my experience, children/young people have an amazing trust in people who come to talk with them. They often easily share personal stories.

I bring a desire to know what has happened, a forensic lens to my work. What has happened has a context of time, place, environment, and prior events. I recognise the fusing of horizons (Gadamer, 1975) between the story I am told and my interpretation. So many stories have multiple perceptions; all of them may be correct given each person's individual history and context. However, the Court decides based on the 'facts' and the welfare of each, unique child/young person who is embroiled in the parental dispute. Sometimes this means the Court needs to determine whose facts or narrative is more correct, be it a parent or a professional. Parents may claim that their child/young person's story has been manipulated if it does not suit the parents' perception. Parents can align their child/young person to their position. It is also possible that the professional does not hear or accurately report the child's position or views. For example, Macdonald (2017) found that social workers in English court domestic violence proceedings did not report on the child/young person's narrative of the violence, instead preferring to maximise the opportunity for parents to cooperate into the future.

My sense is that hermeneutic phenomenology is a way to participate and acknowledge the 'art' of clinical psychology. The rapport-building, the interpersonal interactions, and notions such as respect and trust in relationships are all recognised in psychology. These are the phenomenologies of the 'relationship.' They seek deeper understandings akin to reflexive practice

(Elliott et al., 2012; Fook, 2007; Rankine, 2017). Self-reflection, considering how my life and actions affect others; and reflexivity, thinking about how I hear and influence the information that is presented to me, within the context of my internal and external life, are strategies I practice in order to understand what is happening. I frequently reflect on my day and try to understand what I have contributed to the outcome.

The mindfulness movement has become a major player in the profession of psychology. This can be compared with Heidegger's philosophical stance that we are always living in-the-moment: "Human life is always immersed in a specific situation, involved with its surroundings in a very particular way" (G. Harman, 2007, p. 25).

In summary, my desire to hear children and young people's voices is a protective factor for me within my practice. Listening carefully to children and young people's experiences resonates with my beliefs and my history. It is a privilege to share their hard times and to carry their voices forward to other people, in the hopes the conflict is resolved and good decisions are made. As I traverse the study, I will find where my previously unknown or unaware prejudices come to the forefront and I will reflect on these in an effort to understand their influence on my practice and me personally.

1.6 Map of this thesis

This thesis comprises nine chapters. The introduction precedes this reading. In Chapter 2, the study is set within the context of childhood and the history of children and young people being recognised as people who have something to say and contribute. Chapter 3 addresses the literature around children and young people who have been researched within the family court environment. Whilst international research is considered, there is a focus on that for Aotearoa New Zealand as the University of Otago, especially, has provided significant quality research.

The next two chapters—4 and 5—address the hermeneutic phenomenology methodology and the specific methods used to conduct this research. These are followed by three data interpretation chapters. Chapter 6 looks at narratives the children and young people told me through van Manen's (1990) four existentials paradigm. Chapter 7 considers the adults' narratives through the lens of Heidegger (1962) and Gadamer (1975). Chapter 8 relates the 'between' of relationships, the space between the children/young people and the professional they are engaging with through the court, as considered by Buber (2010, 2014). Finally, my interpretation of all that has been written is presented along with consideration of recommendations for practice where the focus is on the child/young person's experience of engaging with professionals in the family court.

Children are human beings to whom respect is due, superior to us by reason of their innocence and of the greater possibilities of their future. (Maria Montessori)

Chapter 2 A Historical Development of Children as People of Value with Voices

Childhood is to be understood as a social construct; it makes reference to a social status delineated by boundaries that vary through time and from society to society but which are incorporated in the social structure and thus manifested through and formative of certain typical forms of conduct. Childhood then always relates to a particular cultural setting. (Jenks, 2005, pp. 6-7)

As noted in the above quotation, childhood is not and has not been a static concept over the ages or among cultures. Perhaps the two things that can be agreed upon are that childhood commences with either conception or birth and comprises the first stage of a person's life; and that children have two biological parents, a father and a mother. Children are born into their country and culture, though, until 2020 and COVID-19, migration was also a feature of some children's lives, requiring them to adapt to different cultural norms. The purpose of this chapter is to explore the changes over time in children's positions within western culture and Aotearoa New Zealand. Historical reports of children within medieval and earlier societies are available and will be briefly considered through to the 19th century. Discussion about pre-colonial Māori children and their valued position within this culture will follow. Post Te Tiriti o Waitangi influences on both Māori and European cultures is then explored, including a brief consideration of the negative effects of colonisation on the first Māori people. The chapter turns to address a brief review of children's position and voice within Aotearoa New Zealand from historical to current times. Over the last four decades or so, children have become more valued and have been granted a voice through the legal and quasi-legal system. Brief consideration of the notions agency, rights, and participation ensues. A discussion of the post 1980 treaties, reports, and legislation that have enabled children in Aotearoa New Zealand to be seen as having value and a voice, will

follow. The context is set for the more formal literature review, in Chapter 3, about children's experiences of engaging with professionals in the family court.

2.1 Children in medieval societies to the 19th century

Justinian 1 (2015) and McGillivray (2011) contended that the earliest identified writing about a child's life and position in European society dated back to Roman times (27BC–476AD). In these times, the principle *patria potestas* was applied, where the father had total ownership and power over their children that extended to whether the baby lived or died and how it was treated. The notion of *pater familias*, a male presumption of authority and all rights, was also enabled. All possessions were held by the senior male in the family. This patriarchal principle has dominated through to at least the 19th century and it devalued children and women (Aries, 1962).

Pre-13th century, the protection of wealthy orphaned children was, initially, primarily about the use and abuse of their hereditary land by the lords who controlled the territory. In contrast, orphaned poor children who lost their parents were absorbed into their local community wherever they could be of most value (Dingwall et al., 1984; Hurstfield, 1949; Kroll, 1977; Seymour, 1994). Alternate provisions were made for land held in 'socage' or non-military tenancy (Plucknett, 1956). When the tenant died, the land was initially equally divided among the sons; later, succession of the oldest son became common (Plucknett, 1956). The succeeding minor child, defined as being under 15-years, later reduced to 14-years, was placed under the wardship of the relative who was not able to succeed to the land. This guardian was responsible for the care of the land and they assumed the care and nurture, or not, of the child. The child had no voice and no rights, which has continued until recently.

In the 14th century, arguably the first family court equivalent, was established in England, known as the Court of Chancery. This court was headed by the Chancellor who was responsible for the financial affairs of the United Kingdom

(Hurstfield, 1949; Tucker, 2000). This Court's terms obligated the Chancellor to care for the "poor and weak, those who, because of their position, were unable to obtain redress from the ordinary courts" (Seymour, 1994, p. 167). Care of children was not the Court's only function but it was one place where concerns about a minor's care could be adjudged on an equitable and conscience basis (Tucker, 2000).

"The wardship jurisdiction developed from attempts to arbitrate in such disputes and from the Crown's concern to regulate possible concentrations of power and wealth within the feudal aristocracy" (Dingwall et al., 1984, p. 209). With this jurisprudence came the concept of *parens patriae*, the ability for the Court of Chancery "to 'act' in the place of a parent, as if it were the parent of the child" (Seymour, 1994, p. 159). Although originally connected with property, over time the Court's adoption of *parens patriae*, with respect to children, was associated with protection and ensuring that children/young people's rights were met.

By late in the 17th century, a change was foreshadowed and children were being seen as beings in their own right, who could be found to be culpable for criminal acts and able to be deported or incarcerated at a young age. Alongside this change, there was some recognition that children were incomplete adults and they typically had no voice (Hendrick, 1994). This notion developed so that from the 19th century forward, patriarchy was gradually replaced with mothers being allowed more rights, especially if the father failed in their moral duty. If there was a substantial legacy in favour of the child or the father was declared bankrupt or had breached trust of other adults, the father's right to be a guardian could be challenged in the Court (Abramowicz, 1999; Austin, 1994). In such cases, the mother may be awarded custody and guardianship of the minor child. In the 19th century, Harris (2004) alluded to a class bias in the United States, where if a woman had more property or resources, she may have been

more likely to gain care of children and/or management of property than a woman of lesser means.

In the United Kingdom, poor or destitute adults or children who had criminally offended were sentenced by Courts to be apprenticed, with varying requirements for the master to supposedly protect the young person's welfare. There was recognition that children needed guidance and protection, but unscrupulous masters took advantage and made many children more vulnerable than they were previously (Horsburgh, 1980; Margery, 1978; May, 1973). In the early 19th century, laws to protect children from exploitation in factory work were enacted, with an aim to make lower-class children, who were known as "delinquents", conform to the expectations of society (Hill & Cornwallis, 1853, p. iii). "Neglect and delinquency were seen to stand side by side" (Hendrick, 1994, p. 27). Education and training in skills was adopted as the way to reverse this moral failure. The tension of the child as a commodity versus the child as a person in need of care was in play during this phase of history. The child had little value and no voice.

In contrast, as will be shown next, children of Māori heritage and culture were valued. Whether they had a voice is unknown, but likely.

2.2 Māori children were valued in pre-colonial times

As an Aotearoa New Zealand study, and in honour of the 1840 Te Tiriti o Waitangi, it is important to explore the place of the child within Māori society. Most authorities consider that around the 14th century, the Māori emigrated from Hawaiki, a group of islands to the north or north-east of New Zealand (Shortland, 1856). They arrived in waka (canoes), with seven lineages (whakapapa) initially settling in Aotearoa New Zealand. These seven groups are known by the waka they arrived in: Tainui, Te Arawa, Mātaatua, Kurahaupō, Tokomaru, Aotea, and Tākitimu. They each settled in different areas and, today, are considered to be the founding Tūrangawaewae (aboriginal

people) of Aotearoa. Māori narratives were passed through the generations orally, with no written words until the European settlers arrived.

Ward (1974) cautioned that any description of Māori society pre-settler times was constrained by the colonising settlers being the reporters. Any descriptions were influenced by changes which they had wrought and their own biases when reporting the history. However, within these constraints, Ward drew on a number of historians of the pre-European settlement with respect to Polynesian culture to form his views. “The (Māori) migrants to New Zealand, in adapting to a cold climate and a relatively large land mass, passed through considerable social change, and this was continuing when Europeans arrived” (Ward, 1974, p. 3).

Māori children, known as tamariki, were, and are, considered to be a gift and are immersed in their whānau (extended family), hapū (sub-tribe) and iwi (their tribe, based on which waka their forebears arrived on). In pre-European colonisation, and continuing today, Mead (2019) noted that many adults did not wish to recognise the “mana of the child” (p. 56), known today as mana tamaiti, which was so important in traditional society. Māori parents could be censured by their elders for hurting their children. There was a class-like system with royal and first born, especially male, children having more mana or intrinsic worth and respect.

Māori children were cared for and socialised by adult members of their whānau, not necessarily their parents (Moeke-Pickering, 1996). They were not raised as individuals but as part of a collective kinship group (Durie-Hall & Metge, 1992; Mead, 2019; Mikaere, 2011; Ward, 2013), and with a strong knowledge of their whakapapa, their genealogy which includes everybody and everything in their world (Somerville, 2003). This connection into the group formed an inter-dependence in living, both to people and within the

environment, and with their ancestors and deities (Mikaere, 2011). Children were valued as a part of the group.

In educating their young people, an emphasis on bravery and skill to keep their land free of invaders from other hapū or iwi was a primary focus. "The chief aim, therefore, in the education of children, being to make them bold, brave, and independent in thought and act, a parent is seldom seen to chastise his child, especially in families of rank" (Shortland, 1856, p. 156). For all children/youth, language was very important due to the oral traditions of the Māori people and the importance of keeping the history, their traditions, known as tikanga (Shortland, 1856). Thus, it is likely that children were given a voice in some settings at least.

2.2.1 Marginalisation of Māori

Dawson (2008) wrote about the colonial people's failures to recognise Te Tiriti o Waitangi. These failures included denial of Māori tikanga/customs. Laws were enacted that conflicted with Māori customary practices and values. As a result of a decision in the case of *Wi Parata v Bishop of Wellington* (1878) "both the Supreme Court and the New Zealand Court of Appeal held tenaciously to the precedent on native title which they believed this case had established" (Tate, 2003, p.1). This meant that native title was not enforceable against the Crown, so that the Crown was the "sole arbiter of its own justice on native title matters" (Tate, 2003, p. 113). Since then, there have been many challenges as to who owns what might be termed 'public property'. Ownership of beaches, rivers, and the sea were given to the State, which made these now public areas open to all citizens. This had an effect of alienating Māori from their customary lands and kai (food) collection. Other land became single titled and owned, which could then be sold. This led to a decrease in the more customary collective society in favour of the individual. "What we mostly see in this stage, however, is the use of the law as an explicit instrument of colonisation... The effect on Māori society, and the Māori asset base was drastic" (Dawson, 2008, p. 59)

leading to population decline and 20th century urbanisation in search of work.

Young Māori people became dis-enfranchised from their previously strong base and disconnected from the source of their belonging (Mikaere, 2011). This led to Māori people being perceived as being of less value and having less voice, which, as will be seen below, has led to Māori children and young people being significantly socially and culturally disadvantaged.

From this challenging start of colonisation, the next section moves the co-joint Aotearoa society and children's place and role to the current day.

2.3 Brief history of colonial settlement and children in Aotearoa New Zealand to the current day

In 1642, Abel Tasman led the first European expedition to New Zealand and apparently encountered the Māori people (K. A. Simpson, 2019). However, there are no records of more expeditions from Europe finding Aotearoa New Zealand until 1769 when Captain James Cook commanded HMS Endeavour and during this, and his next two voyages, he mapped New Zealand and proved there was not a significant continent in the southern seas (Mackay, 2007). According to Ward (2013), between 1769 and te Tiriti o Waitangi in 1840, the Māori population decreased from about 130,000 to perhaps 85,000, through their exposure to European transmitted diseases. These infections, plus the settlers imposing English law while disregarding Māori customs and tikanga (jural system), led to difficulties in relationships from the beginning. The English settlers dominated in all respects.

Pool (2010) stated that British settlement of New Zealand during the 19th century was as an extension to the "mother country"; and for many years New Zealand was protected by virtue of this parent-child relationship. "Our immigrant flows until 1945 were remarkably homogeneous, not just by religion and ethnicity but also in terms of occupations. Moreover, most settlers were British in origin, and were Protestant" (Pool, 2010, p. 155). Thus, the prevailing

notions of childhood were imported with the parents of what has become the majority culture.

Children in Aotearoa New Zealand came from different cultural ethea, with Māori children being valued and European children being owned and controlled by their fathers. A similarity noted, is that male first-born children were prioritised in both groups, which continued the patriarchy principle. Some women and their children were abandoned by their husbands, which created resource vulnerability for sole woman parents and their children. European law, with its centuries of history was imprinted on the Māori people who were expected to assimilate and accept, with no complaint, which has led to the loss of their heritage, tikanga, and mana. Over the years there have been many appeals to the Crown in England and to the New Zealand Parliament, which demonstrates that the Māori people did not give up. It is only over perhaps the last three to four decades that these losses have started to be addressed, with a definite time lag to reversing the negative social statistics. Reversal has not yet occurred.

In the early to middle years of the 19th century, children were seen as lesser beings, who had no individual rights and who were equivalent to adults with mental illness (Abramowicz, 1999). Between 1830 and 1840, when English settlers arrived in Aotearoa New Zealand, there was limited recognition in the United Kingdom and Australia that the Court should treat delinquent children and young people differently from adults. The legislation did not protect those children who were identified as needing care and protection and it is apparent that punitive approaches were still in evidence (Margery, 1978; May, 1973). Thus, protection of children developed from a moral standpoint.

In Aotearoa New Zealand, the earliest legislation to provide support for children through their mothers' rights being affirmed, included the 1846 Destitute Persons Ordinance, the 1847 Marriage Ordinance, and the 1847

Registration Ordinance (Spiller et al., 1996). According to these Ordinances, any woman who lived with a man as his wife could obtain orders for support of herself and any children from the man or members of his family who were able to assist.

2.3.1 Development of the law around Māori children and young people

In 1881, New Zealand became the first country in the Commonwealth to develop a law around adoption, as there was an awareness of the informal arrangements, such as Māori children being whāngai'd to other family for varying reasons. These children still knew their parents. "The adoption legislation gave legal status to adoption but did not supplant the Māori practice of whāngai placement" (Baragwanath et al., 2000, p. 13). Merkel-Holguin et al. (2020) noted the European influence and dominance in the early 20th century which led to disempowerment and distress among whānau, hāpu and iwi. The 1901 Native Land Act registered whāngai children who were raised by another member of the whānau but not legally adopted. However, the 1910 amendment removed the legitimacy of this practice. Māori children could legally be adopted by European families, but not vice versa, which cut off the child from their family and history—their whakapapa—a major ethos of their belonging. Despite there being an Adoption Act 1955, this applied only to children of European descent as, until 1962, the adoption of Māori children by Māori was the responsibility of the Māori Land Court. Further, prior to the 1960s, welfare of Māori children was left to their whānau to care for but, with the rural to city migration, too frequently these children became a part of the State welfare system. Often Māori children were removed and placed with non-kin, European-origin caregivers which led to the child being dislocated and disconnected (Merkel-Holguin et al., 2020). This was and is a continuing reason for the numbers and extent of the over-representation of Māori in the negative social statistics. Arguably, children of Pākehā descent have done better with these laws but this also has another factor related to socio-economic status,

which is a known risk factor for poorer child/young person outcomes, including mental and physical health (Danese et al., 2009; Felitti et al., 2010; Finkelhor et al., 2015; Gibson et al., 2017). It seems that, until the last three to four decades, the Aotearoa New Zealand government did not value children/young people, especially Māori children and young people who were disadvantaged. Nor did children and young people have a voice about matters that affected them.

An attempt to redress the lack of children's voices being heard and the marginalisation of Maori, especially children, was made in 1983 when Mātua Whāngai was established, a Māori organisation to increase the availability of culturally appropriate placements (Fernandez & Atwool, 2013). Unfortunately, placement into a safe and secure environment for children in need of care and protection remains a significant issue. That children must be placed within their whānau, hāpu and iwi is legislated in the OTA (1989) that was reviewed in 2018. Today, at the beginning of 2021, the practice is still being embedded.

2.3.2 Development to the Care of Children Act (2004) and the Oranga Tamariki Act (1989)

As children were no longer productive labour units, a change in the valuing of them to being emotionally positively regarded occurred in the late 19th and early 20th century (Jans, 2004). This seems to have contributed to a change in the care and control of children, the 'tender years' doctrine, which supported that young children should be with their mother who was the 'best' parent (Warshak, 2017). The law caught up with this societal shift when the Guardianship of Infants Act 1926 extended the decision-making about their children, known as guardianship, to both parents equally and not just the father as previously. This signalled that both parents could be considered to care and make decisions for the child; however, care of young children by their mother still predominated. It also provided for the State to pay a family allowance to married or widowed mothers, with single and abandoned mothers excluded until the Domestic Purposes Benefit Act 1973. This created different standards

of government financial support for children, depending on parental marital status.

The 1968 Guardianship Act established the enduring principle that the interests of the child/young person were paramount. This Act took the concept of wardship from the previous Chancery Court to family court proceedings (Inglis, 2007) and has been continued in both care and protection and care of children proceedings, with the Court having the ability to assume wardship of children or young people if considered necessary (Inglis, 2007; R. Joseph, 2005). For example, if, today, life-saving medical treatment for a child was refused by the parents on religious grounds, the family court could decide whether intervention is to be provided by the treating hospital. In this example, the child's position has changed from being someone 'owned' to someone in need of 'care' and protection.

In 1980, the Guardianship Act was amended to legislate against presumptions of the 'tender years' doctrine, and that older children should be with their same gendered parent to benefit from role modelling (N. J. Taylor, 2006a). This Act was subsequently replaced by the 2004 CoCA, which has similar provisions as well as an increased priority on the child's voice being heard and children having a right to an ongoing relationship with both parents and their extended families/whānau. Again, both parents were to be considered if care of children applications were made, not primarily the mother as being the 'best' parent as was perhaps apparent in people's beliefs during the 20th century (Hoffman & Moon, 2000). In practice, this has led to more fathers towards seeking greater shared care of the children in both intact and separated families (Cabrera et al., 2018).

Alongside the development of care of children legislation was the Children Young Persons and their Families Act (1989), which was enacted at the same time as the United Nations Convention on the Rights of the Child (UNCROC).

As its title suggests, the Children Young Persons and their Families Act was one that provided for children who were adjudged to be in need of care and protection, through family members being unable to care for the abused or neglected child; or where the child/young person had offended. This act has been administered over the years by the Ministry of Social Development, with its subsidiary organisation having multiple names following multiple reviews. In 2018, following another major review the legislation and the organisation responsible for children in need of care and protection was renamed Oranga Tamariki and the Act retitled the 'OTA (1989)' and 'Children and Young People's Wellbeing Act (1989)'. In this new, still being embedded legislation, is a considerable emphasis on the provision of culturally appropriate services for families who identify as Māori and are over-represented in the statistics. The English colonisation of Aotearoa New Zealand has led to significant distress and dislocation for the previous Māori population with children and young people being the main bearers of much distress. There have been attempts to make changes to better incorporate Māori values in Aotearoa New Zealand law (OTA 2018) but, in my view, there needs to be a societal change in attitudes and values for any meaningful change to occur. Children are still injured/murdered at a distressing rate (Child Matters, 2021) and there is a failure to prioritise children in public policy (D'Souza et al., 2017). This is in spite of the current prime minister, as of December 2020, having again, personally taken the role of Minister for Child Poverty Reduction, to use her position to prioritise their needs.

My narrative now turns to the notions of children and young people having agency and rights to participate in matters and decisions that affect them (as in Articles 12 and 13 of the UNCROC).

2.4 Consideration of child/young person agency, rights, and participation

The notions of a child/young person having agency and rights, and being able to participate in matters that affect them have appeared in the literature in the

1970s and, more so, in the health care literature from the 1980s to today (Montreuil & Carnevale, 2016). These terms—agency and rights—are closely linked and bound in the discourses of child/young person independence as a person through to child vulnerability and need for protection.

Montreuil and Carnevale (2016) discussed the change in child/young person agency in health care over since the 1980's, from children as "*becoming*" (p.506, italics in original) immature adults who develop agency as they mature. They go on to clarify 'agency' as children/young people having the "capacity to act, shape one's life, have an influence on other human beings" (Montreuil & Carnevale, 2016, p. 507) and to reflect on their lives and social world. A further definition of agency is "the capacity to act intentionally" (Varpanen, 2019, p. 2).

Sirkko et al. (2019) raised concerns about the notion that children and young people have agency, including children and young people's vulnerability and need for protection, their lives being lived alongside the life of their parents/adult caregivers who have the power, the cultural and political norms where children and young people are the least considered, and the overall institutional structures. Advocacy and awareness are needed to break down these real barriers to allow children/young people to act as they choose to influence decisions about matters that affect them and to participate in decisions.

The notion of child/young person rights is embraced in a similar discourse to that of agency (Bendo, 2020). However, thoughts about the nexus of rights and responsibilities is also raised in this area of study and advocacy, as is the notion of a lack of economic resourcing preventing children's rights being emancipated (Stalford, 2019). In the youth justice sector, Hollingsworth (2013) has embraced that minors under 18 years are not independent rights holders but their "foundational rights" (p. 1046) as people need to be protected so they can gather the resources needed for autonomy.

Children and young people need agency and rights to be able to participate in decisions about their welfare. van Rooyen et al. (2015) wrote of these notions within the terminology of a competent child, a young person who can make decisions about health care without adult consent being needed. Ford et al. (2018) discussed repositioning children and young people in health and other care scenarios to being in the middle. This concept of child centred-care replaces that of family centred care, where the child is a member of the family and thus others' (e.g., adult) needs will be prioritised. Atwool (2020) endorsed this approach for Aotearoa New Zealand's bi- and multi-cultural society and child protection. She contrasted the tension of the "kin defender", those adults who advocate for children and young people to be supported to remain within their family and whānau at all costs, to "society as parent protagonist" (Atwool, 2020, p. 305), those adults who believe that children who are removed from a family due to care and protection issues need to find a secure and safe haven at the earliest opportunity. In essence, she advocated that all practitioners need to focus on the child within the context of their family and whānau. Further, that culturally and professionally safe practice and policy and legislation is needed to lead this approach. There was a need for change at all these levels going forward. This is a current aspirational and theoretical paper which placed a challenge—a line in the sand—for the future.

This discussion has led to consideration of two major aspirational documents that guide New Zealand law, practice, and research around children and young people, starting with Pūao-te-Ata-Tū, The Daybreak Report which investigated and made recommendations to remedy some of the cultural imbalances; and then the UNCROC which is a treaty aspiring to give children and young people stated rights to participate decisions that affect the child. As a result of these two documents, in 2018, the OTA (1989) was amended to address legal principles that surround children and young people who need care and protection or who have offended. This should lead to children being more

valued and having an improved voice if they choose. Finally, I will briefly address this change.

2.5 National and international contributions that enhance children's positions in Aotearoa New Zealand

2.5.1 Pūao-te-Ata-Tū (Day Break): The report of the Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare

The Pūao-te-Ata-Tū, Daybreak Report was commissioned by the then-Minister of Social Welfare, Anne Hercus, in July 1985. The Committee reported on the policies, procedures, recruitment, training, and overall working of the then-largest Government department, Ministry of Social Welfare. The committee "examined the conditions of the day in the context of the social and legal history of Aotearoa New Zealand, undertaking that examination through an overtly Māori lens" (Otene, 2019, p. 140).

In the preface, the Committee noted: "At the heart of the issue is a profound misunderstanding or ignorance of the place of the child in Māori society and its relationship with whānau, hapū, iwi structures" (The Maori Perspective Advisory Committee, 1988, p. 7). This statement noted that Māori children were valued within their whānau from which many were now dislocated. Further at paragraph 77, page 24, the writers noted that Māori had become dependent on the welfare system; therefore, the system needed to be much more responsive to Māori. Effectively little changed over the next 30 years as Clark et al. (2018) stated that "For Māori youth, this is evidenced by significant health, education and social disparities. Māori youth are substantially more likely to report poorer physical health, sexual health, mental health and more harmful substance use, compared to New Zealand European/Pākehā students" (p. 553). Thus, some three decades ago, the disconnection of Māori youth from their whāngai, whakapapa, and whanaungatanga was recognised and written about, but little occurred to redress the imbalance until very recently. It has again been written about, with little change occurring. Time will tell.

Pūao-te-Ata-Tū, Daybreak Report strongly recommended that bicultural attitudes and norms be adopted, including “the sharing of responsibility and authority for decisions with appropriate Māori people” (The Māori Perspective Advisory Committee, 1988, p. 19). It was further recommended that decision-makers share information gathering, values and accountability. Using and promoting Māori culture and language was considered imperative. Educational programs to minimise or expel racism from the Department of Social Welfare and society in general were recommended. Further recommendations included that Māori be resourced to manage and control their own programmes, with the Department of Māori Affairs being in a lead position. Whilst this report was not specifically about children, because of it there has been a significant impact on legislation about children and young people. These children/young people-focused changes are covered in the following legal section, where I consider the adoption of these highlighted principles in recent law changes which pertain to children and young people’s living arrangements. In the meantime, the worldwide UNCROC was also instrumental in influencing children being valued and having a voice.

2.5.2 United Nations Convention on the Rights of the Child

The UNCROC was signed in New York on 20 November 1989 to be implemented on 2 September 1990. It is somewhat ironic that the signing of such a leading document occurred in New York since, as of today, the United States has not ratified this Convention (Office of the High Commissioner, 2018). I understand that the United State position is that while UNCROC is an aspirational document, it violates the rights of parents to be ‘in charge’ and decision-makers, and thus could break down the family structure (Nauck, 1994), which is an adult rights-driven approach. This Convention was ratified by New Zealand on 6 April 1993.

The UNCROC is one of six major international treaties where human rights are prioritised (N. J. Taylor & Te One, 2016). “While acknowledging children as

rights holders, it also firmly recognises the interdependence of children, parents and society" (N. J. Taylor & Te One, 2016, p. 49). The UNCROC comprises 54 articles which set out the rights of children and how they are to be protected. An initial premise taken from the Preamble of the 1959 Declaration of the Rights of the Child was: "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth" (p. 1). Children were defined as being any human being under the age of 18 years, unless a country's law had children attaining the age of majority at a younger age (Article 1). The focus of all states and institutions was to be on "the best interests of the child" (Article 3.1). Three main categories are endorsed: provision, protection, and participation. Children have the right to life within a family; to having a name and a cultural identity, food and education and other necessities of their life; to be protected from all forms of abuse whether this is within or outside of their family or perpetrated by the State; and to participate in decisions which affect their lives. The parental, wider family, and community rights were recognised early in the Convention (Articles 3 and 5). The child's right to participate in decisions that affect them is expressed in Article 12:

1. Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13 provides for children to receive information and express their views in matters affecting them in whatever way they feel most able or comfortable to do so. The 2018 report to the United Nations with respect to Aotearoa New Zealand meeting the UNCROC parameters stated: "While there have been

ad hoc additions to legislation over time, there is little evidence of consistent and progressive implementation of the Children's Convention into domestic law in the last 25 years" (The Children's Convention Monitoring Group, 2018, p. 6). Further the Children's Convention Monitoring Group (2018) noted that in the 2017 amendment to the Education Act (1989), children's views were unsought; and discrimination against children with disabilities continued. As noted: "It remains to be seen how the inclusion of the Children's Convention into the Oranga Tamariki Act will lead to judges, or those exercising powers under the legislation, making decisions differently" (The Children's Commission Monitoring Group, 2018, p. 11).

Most research where children are participants cite UNCROC as a key document that guides the participation and accepts that children and young people do have a voice worthy of listening to. I now turn to considering the two major Acts of Parliament that guide the Courts' relationship with children and young people and how and where the Pūao-te-Ata-Tū (Daybreak) report and UNCROC have contributed to the changes occurring today to give children a voice.

2.5.3 Children and the Court: Legal, value, and voice

Children of separated parents or where parents cannot agree about the child's welfare can approach the family court for assistance with resolution. After mediation and the completion of a 'parenting information programme' or, in the alternative, if a Without Notice Order is to be made (interpartner violence applications may follow this path), the CoCA 2004 is the appropriate vehicle for application. I will summarise the key principles of this Act, relating them to specific sections.

- Section 4: The child's welfare and best interests are paramount.
 - Decisions must occur within a child's timeframe.

- May take account of the behaviour of a person applying to care for the child, if this is relevant to the child's welfare and best interests.
- There is to be no assumption that gender is determinative to parenting capacity.
- Section 5: Principles related to a child's welfare and best interests.
 - Physical, psychological, sexual, and emotional safety must be protected.
 - A child should be primarily raised by his or her parents or guardians.
 - Parents and/or guardians should work cooperatively to make the best decisions for the child.
 - A child should have continuity of care.
 - A child should continue a relationship with both parents and their relationship with their family, whānau, hapū, or iwi should be preserved and strengthened.
 - A child's culture, language, religion, and any other items that affect his or her identity should be preserved and strengthened.
- Section 6: Child's views
 - A child must be given the opportunity to state their views on matters affecting them.
 - Those views must be given weight however they are expressed, either directly or through a professional or other person.

In contrast, if a child/young person is in need of care and protection or has offended, the OTA 2018 becomes applicable. I will now address the similar sections to those above from the CoCA.

- Section 4A: Wellbeing and best interests of child or young person is paramount but to be weighed against
 - Public interest and safety.

- Interests of any victim.
 - That the child should be held accountable for their behaviour.
- Section 5: Principles to be applied in the exercise of powers
 - The child/young person must be encouraged and assisted, known as scaffolded, to participate and express their views on matters that affect them.
 - The wellbeing of the young person must be central to decision-making. This includes considering the child/young person's rights as outlined in the UNCROC. Children and young people must always be treated with respect and dignity and protected from harm. If they have been harmed this must be remedied. They must have a safe, stable, and loving home.
 - Mana tamaiti, the child's mana/spirit must be protected by recognising the whakapapa and whanaungatanga from the family, whānau, hapū, and iwi.
 - Decision making must occur in the child's timeframe.
 - The child should be seen as a whole person and decisions should allow for the child's development, education, and health; or disability needs, culture, gender and sexual orientation.
 - The child's support for the decision should be sought if possible.
 - The primary responsibility for caring for the child is their parents, family whānau, or iwi. These relationships should be promoted and strengthened. If a child is removed from their family, they must be placed, if possible, within their wider whānau, hapū, or iwi.
- Section 13: Principles
 - This section sets out the key principles of the paramountcy of family, whānau, hapū, and iwi for the child/young person and to make decisions on their behalf.

Without attempting a legal analysis, I would suggest that there is a primary difference between the Acts which govern children's wellbeing in Aotearoa New Zealand. The CoCA, with respect to care and contact arrangements and parenting, is about the adults' responsibilities to provide safety, parenting and continuity of relationships and care within the child's cultural needs. The OTA is more focused on the child/young person and their participation which is more in line with the UNCROC. The family/whānau driver is stronger in terms of the OTA, than in the CoCA. Judges are starting to challenge these differences (Oranga Tamariki, Ministry for Children v SP & Ors [2020] NZFC 4046 and MSD v W & D, unreported decision of Moss, J., 10 August 2020). I wonder if these principles will be transposed into the CoCA to develop and maintain some consistency in legal outcomes for children.

From 31 July 2019, significant changes in the OTA (1989) were to be implemented in a step-by-step fashion. For the first time, Te Tiriti o Waitangi was included in legislation about children (New Zealand Family Violence Clearinghouse, 2019). The mandated changes included that the Chief Executive, all social workers, and other staff were to "recognise and provide a practical commitment to the principles of the Treaty of Waitangi (Te Tiriti-O-Waitangi)" (OTA, s7AA). The mana tamaiti (inherent dignity and value) of all tamariki (children) was to be honoured within their whakapapa (genealogy) and whanaungatanga (relationships). Partnerships with Māori iwi and hapū were to be developed and meaningful to allow recognition of these principles. As suggested by Aotearoa New Zealand family court Judge Sharyn Otene (2019), I perceive that the implementation of these principles in all legal processes concerning children and young people remains a challenge going forwards.

In summary, this section has demonstrated that from the mid-1980s, Aotearoa New Zealand has been on a continuous improvement model to allow the child/young person to be valued and to have a voice. A significant feature of this has been the implementation of the 'partnership' provision of the 1840 te

Tiriti o Waitangi in that the law and practice of the law around children are supportive of engagement of children and young people in their own cultural niche, their family/whānau, hapū, and iwi. From here, there appears to be aspiration that children are valued and their voices can be heard. Yet, do children engaging with professionals from the court system experience this value and voice?

Before concluding, I wish to briefly highlight the Office of the Commissioner for Children and a relatively new non-governmental organisation, VOYCE: Whakarongo Mai, as being two agencies which are positioned to promote children's voices.

2.6 Places where children's voices are heard and advocated

2.6.1 Office of the Commissioner for Children

The Office of the Commissioner for Children was established in 1989, at a watershed time in terms of children/young people starting to be viewed as being of value. It was at a time when the UNCROC and a new Child, Youth and their Families Act were also being established, and was further formalised by the Children's Commissioner Act 1993. There are three primary prongs to the work of the Commission: firstly, to assess, monitor and report about children who are in care; secondly, to advocate on issues that apply to children and young people; and lastly, to raise awareness and advocate for the UNCROC to be embedded in Aotearoa New Zealand society (Children's Commissioner, 2021). In July 2019, the current Commissioner, Judge Andrew Becroft, created four goals which are in line with other legislative changes as in the OTA above (Children's Commissioner, 2020). First, to create improved services and supports for Māori, especially children and their whānau, which includes hearing children/tamariki's voices and thus giving them rights to speak and participate amid their whānau, hapū, and iwi. Second, to enhance child wellbeing by prioritising child rights and contributing to the Government's

child wellbeing prioritisation. Third to encourage and support the transformation of Oranga Tamariki to better support children/tamariki and whānau. Lastly, to ensure education for all children, including those with disabilities or who are in care. This education should be consistent and stable, and seek and consider the child's voice.

I observe that this Commission is frequently reported and it publishes research and comment about children and their wellbeing. The hope is that this will eventually influence society's attitudes so that children/young people really have a voice and are valued.

2.6.2 VOYCE: Whakarongo Mai

In 2017, VOYCE: Whakarongo Mai was established to provide a voice for children who are in state care. This charity is a co-construction between experienced children in care and a formal Board structure. "We exist to amplify the voices of these children and ensure that they are heard – so as to positively influence their individual care and to collectively affect change in the wider care system" (Voyce – Whakarongo Mai, 2021). I am aware of this organisation, but I do not perceive that it has the same degree of engagement with the media as the Children's Commissioner.

2.7 Summary

In this chapter I have highlighted the major societal and legal developments of children/young people from being chattels and unworthy, to today being a valued people with priority, who can have a voice in at least certain settings. There has been a focus on the colonisation of Māori people by European Pākehā and the challenges this has given to those who care for children and young people as our future generation. Over the last three decades, the law has caught up to the developments in quasi-legal developments. The re-written OTA (1989), which became law in 2018, aspires to a new beginning which is yet to be realised. Thus, in the late 2010s, there is an increased focus on children, their

value and their voice—arguably a major step forward. Children's experiences appear to matter more, which can only increase their participation in events of significance in their lives. Future research will show whether this is really the case or is another example of gold plating the legislation with words, while making little change.

2.8 Moving forwards

James (2004) made two important distinctions about the history and status of childhood. Firstly, that the generic concept of childhood changes depending on the lens through which it is considered. Children may be seen as simply needing protection or they can also be seen as having thoughts and an ability to express these. Secondly, that children are newly sought research participants and new approaches are required to take advantage of their voices and experiences directly. My study takes the perspective that children and young people have meaningful experiences that they can express. Further, those involved in some way with their process through the family court need to take time to reflect on how they influence their experience.

These arguments lead to the next chapter, in which I review research literature where children and young people have been participants. I specifically include literature related in the family/youth courts and profile literature from a wider sphere that informs my thinking.

Chapter 3 What Have Others Told Us About My Phenomenon?

Thus the hermeneutical problem concerns not the correct mastery of language but coming to a proper understanding about the subject matter, which takes place in the medium of language. (Gadamer, 1975, p. 403)

All research occurs within a context, which I have introduced in the previous two chapters. In Chapter 1, I addressed my prejudices and biases that I bring to reviewing the literature. Chapter 2 provided my understanding of the development of children and young people, from being objects owned by their fathers, to today, where aspirationally, at least, they are valued as people separate from their parents who can have a voice within judicial proceedings. In this chapter I offer my understanding and interpretation of previous researchers' findings about children/young people's experiences of engaging with professionals from the court. In keeping with my hermeneutic approach, I acknowledge that my pre-understandings colour what has been focused on (or not). As Heidegger (1968) said: "For we are capable of doing only what we are inclined to do. And again, we truly incline only towards something that in turn inclines towards us, toward our essential being" (p. 5).

From an educational perspective, Lundy (2007) provided a model for child/young person participation with an emphasis on the UNCRC inter-related articles of participation (Article 12), non-discrimination (Article 2), best interests (Article 3), right to safety (Article 19), right to guidance from adults (Article 5) and right to information (Article 13). The child/young person needed an appropriate space and support to have a voice and express their view. The view needed to be heard by someone with influence within the audience to which it is directed. This model seems to apply also to children participating in the family court, where participation needs children/young people to have a voice that may be supported, in a space and which is heard by someone of influence who can take the child/young person's experiences into their consideration.

As I read the writing and research of others, I found myself excited when their findings resonated with my own views and disappointed when it seemed again children/young people were not being listened to. I have sought to be open to examining my discomfort and discerning of my 'ready acceptance'. Hardman (1973) commented that children/young people's voices have been quiet and effectively silenced in social science research and this seems to continue, though to a lesser extent, today. Most of the articles, no matter the methodology, had similar results about what children and young people needed, or did not need, to have a positive experience with professionals. My hermeneutic quest was to stay open to the insights of these authors to keep my own thoughts 'thinking on'.

This chapter is structured to give the reader a sample and an understanding of the literature around the experiences of children and young people who meet professionals in the court. Foregrounding my review of literature, I offer a discussion of the hermeneutic way of working with the literature. I then identify how I found what I considered to be the key articles before naming the key researchers in this area along with where they research. I then discuss how I came to theme the literature selected. This is followed by using the identified themes to illustrate what is known about children/young people's experiences of engaging with professionals in the court system. The section finishes with a review of the word 'participation' in its varying forms to provide another angle about children/young people's experiences of engaging with professionals. I then turn to the other aspect of my literature review, which is to address the use of hermeneutic phenomenological research with children/young people. My review of literature identifies the gap which guided the direction of my research.

3.1 Literature review method

This study is a hermeneutic phenomenological revealing of children and young people's lived experiences of engaging with professionals in the family court of

Aotearoa New Zealand. Gadamer (1975) pointed out that "language influences our thought. We think with words" (p. 568). Thus, words are the means of my reading and thinking, and capturing my insights in this thesis. Smythe and Spence (2012) said the primary purpose of a literature review is to "encourage readers to engage in dwelling, pondering, thinking and questioning" (p. 14), which are the same steps that I have employed throughout the research. My literature review, using a hermeneutic lens informed by Gadamer (1900–2002), involves dwelling in my social context, while recognising that my interpretation comes from within my own historical horizon.

According to Gadamer, any literature relied on should be from "*eminent* or *classical* text(s)" (Austgard, 2012, p. 831, italics in original text). I have been guided by this thought and tried to work with the principal authors and texts where children and young people's experiences of engaging with professionals from the family court has been addressed.

3.1.1 How did I identify my literature?

Throughout the course of my study, I have been constantly receiving Scopus alerts using terms "children and young people", "family court" and "experience". Additionally, I have searched the Auckland University of Technology (AUT) electronic databases using the terms "child or young person or adolescent or teenager" and "experience" and "professional" and "family court". I also searched all combinations of three of these words as a group. All articles were written in English. There was no specific time range as this literature has only been available over the last three to four decades. When a new article arrived, I would read it carefully seeking other references that may apply to my study. My review involved reading the articles to see if they really were about children and young people's experiences of professionals; or adult perceptions of child/young person experiences; or their mission was otherwise. Those that were theoretical, often about rights, or opinion pieces, and that did not include primary research that considered children and young people's

experiences of professionals in the family court were discarded. All articles were then summarised in chronological order.

3.1.2 The key authors

As I read the relatively small but growing body of literature that has considered children and young person's experiences of engaging with professionals in the family court, I became aware of researchers and authors who tended to share their distinctive research in this field. Research has occurred in Aotearoa New Zealand, especially around the turn of the century, which was reported in varying iterations (A. B. Smith & Gollop, 2001; A. B. Smith & N.J. Taylor, 2000; A. B. Smith et al., 2003; N.J. Taylor, Gollop, & A.B. Smith, 1999; N.J. Taylor, Gollop, A.B. Smith, & Tapp, 1999). More recently, newer researchers have joined the New Zealand ranks (Boshier, 2006; Fernando, 2013; Fitzmaurice, 2017; Goldson & N.J. Taylor, 2009; Horsfall, 2013; Tapp, 2006; N. J. Taylor & Caldwell, 2013). Based in Australia, Cashmore and Parkinson have researched children/young people in the court system (Cashmore, 2011; Cashmore & Bussey, 1994; Cashmore & Parkinson, 2007, 2009a, 2009b; Cashmore et al., 2010; Parkinson & Cashmore, 2007, 2008, 2020; Parkinson et al., 2007). In Canada, Birnbaum and Bala have also been leading researchers in this area (Bala & Birnbaum, 2018; Bala, Birnbaum, & Bertrand, 2013; Bala, Birnbaum, Cyr, & McColley, 2013; Bertrand et al., 2012; Birnbaum & Bala, 2009; Birnbaum & Bala, 2010; Birnbaum et al., 2013; Birnbaum et al., 2011). The United Kingdom is another centre of research around the experience of children/young people engaging with professionals in the family court (K. Marshall, Cleland, Kay, Tisdall, & Plumtree, 2002; K. Marshall, Tisdall, & Cleland, 2002; F. Morrison, 2014; F. Morrison & Tisdall, 2013; Tisdall, Baker, et al., 2002; Tisdall et al., 2004; Tisdall & Morrison, 2012).

I read these authors, plus others, to identify the themes and subthemes that were apparent (Hsiao, 2015). "What we call 'themes' are not necessarily 'the same thing' said again and again, but rather an understanding we have seen

something that matters significantly, something that we wish to point the reader towards" (Smythe et al., 2008, p. 1392). G. Harman (2007) and Christensen and James (2008) cautioned that taking themes can objectify the person, rather than allow the unique voice to be heard. For me, thematising is a way to synthesise and understand previous research in a way that I can tell you, the reader, my story and interpretation which will lead to ongoing questions. It is a different approach to that of 'thematic analysis' where words are thematised and studied using a computer assisted package such as NVivo (Braun & Clarke, 2014; Maguire & Delahunt, 2017).

3.1.3 Identifying themes

This section develops the themes and subthemes in my area of interest: the experiences of children/young people who see professionals in the court. These themes have similarities to those identified by the UNCROC (2009) in General Comment 12 which addressed the right of children and young people to participate in decisions about their wellbeing. The key principles are that to provide for the right of children/young people to be heard are:

- a) To be informed that participation is voluntary.
- b) To have age-appropriate information transparently presented about the process and any outcomes or risks associated.
- c) Adults should provide feedback to children as part of the process.
- d) The issues children and young people are asked about must be relevant to their lives.
- e) The environment should be appropriate for the child to feel comfortable participating.
- f) All communication must be respectful and observe the inherent dignity of the child/young person.
- g) Cultural and health barriers to participation should be recognised and minimised.
- h) Adults must receive and use training that allows them to be child-centric in their dealings with children. This also requires the adults to assess and mitigate against risk.

The literature refers to these principles and others (Lundy, 2007) to allow children and young people to participate, but there is debate about whether this really occurs.

No matter the methodology or group of young people and adults who participated in the research to date, I perceived similar themes that were aligned with those identified by the General Comment 12 above, which led to a positive (or not) experience of seeing professionals. I have constricted the themes into six areas that represented what I conceived to be the main ideas in the literature. These are:

1. communication, especially listening.
2. information available to the child/young person, including at the conclusion of proceedings.
3. confidentiality issues.
4. environmental issues.
5. bias towards or against a parent.
6. participation as a more general notion.

As will be seen, although individual voices have been used to illustrate whichever theme, much of the data are grouped so the individual voice is lost beyond a snippet. Using hermeneutical phenomenology allowed me to prioritise the individual voice and interpret it in a way that remains open to further asking and interpretation. Using key articles, especially with a focus on research from Aotearoa New Zealand, I will now address themes from previous research that I have identified. I caution that the themes are not independent, but they have elements of each other which has allowed for a story to be created along with the questions that will continue to be asked.

3.2 The themes

1. Communication especially listening – Am I being heard?

Styles of communication can significantly influence the quality of information that can be elicited from children, and lawyers should be encouraged and supported to develop an effective approach to

communication with children. (N. J. Taylor, Gollop, & A.B. Smith, 1999, p. 130)

In the above-mentioned New Zealand study, about children and young people's experiences of their lawyers and the lawyers' perceptions of the young people, 20 young people, aged 8–15 years who had met with counsel for the child/young person; and 12 lawyers for the child/young person were interviewed using a semi-structured schedule (N. J. Taylor, Gollop, A. B Smith, & Tapp, 1999). These authors followed the young people's experiences of engaging with their lawyers in a chronological order from pre-meeting, or knowing they were being appointed a lawyer, to discharge of proceedings. A thematic methodology was used to unpack the data.

At the start of the engagement between the lawyer and child, mostly parents told their children about the appointment of a lawyer to assist the child. Only one child had not been told by anyone that she had a lawyer. This was consistent with findings by Hay (2003) in Western Australia.

N. J. Taylor, Gollop, and A. B. Smith (1999) found that children and young people who were listened to and heard, felt respected and understood. The children/young people liked their lawyer to have a sense of humour and to be pleasant in their manner. Talking about feelings created a stronger positive relationship for some children/young people. Communication with their lawyer was negatively impacted by there being infrequent meetings. Often the children/young people perceived that their lawyer only met with them when there was a purpose, such as a court date. Many of the children/young people knew that they could initiate contact if they wished but few took this option. Older children and young people understood that the role of their lawyer was to assist with court appearances. Additionally, a smaller group of children/young people, who did not feel heard, said that it was tedious and interfering in their lives to have to see a lawyer.

In contrast with this generally positive study, which was focused on behaviours that contributed (or not) to child-lawyer communication, Hay (2003) explored the experience of the participants with their Court Appointed Expert (CAE) and lawyer using a mixed methods design. Participants in this study were from families in which the children's father perpetrated family violence. Participants were 11 children/young people aged 8–16 years, eight mothers of these children/young people, as well as 10 child and family counsellors or therapists. Generally, the children and young people were negative about the professional relationships using phrases such as "the court expert's face looked angry", "does not listen", "he had a tendency to minimize everything", "was unfriendly", was "just a job for them" and "she wasn't really interested and she didn't really want to hear from me... She was too busy" (Hay, 2003, pp. 7-8; 13-14).

Common themes throughout the children/young people's conversations regarding how they were excluded, included that they felt that child abuse concerns were 'covered up', that children/young people's abilities were underestimated, and they were not consulted from the beginning of the family court proceedings. This led to Orders being made without the child's voice or participation (Hay, 2003). The child's voice was silenced through prioritising the abusive parent's wish for contact. A similar theme of communication failures was also reported by the mothers and the therapist/counsellors who participated. The mothers described the child's engaging with either the CAE or the child's lawyer as being "unprotective and lacking a child focus" (Hay, 2003, p. 15). However, this described experience was also entwined with the mother's experience of being a victim of domestic violence. Mothers thought that CAE did not have child focused rapport building or questioning skills, rather they were focused on an outcome that met their biases. Seven of the eight mothers

commented that "children were invisible" (Hay, 2003, p. 17) and the process was all about the adults.

The 10 child and family counsellors described the CAE and family court process for the child/young person as:

(they) had no voice, were not believed; were left feeling betrayed and powerless... and where children had to take self-protective action due to the failure of child protective systems... That children were left vulnerable to ongoing abuse both via the processes within the Family Court and the final outcomes left but one conclusion; that in many instances known to the participants, the Family Court process is not working for the best interests of the children in matters where there are allegations of abuse in residency and contact disputes. (Hay, 2003, p. 22)

This discussion speaks to the children/young people's voices being abused and silenced through poor professional communication and systemic abuse. That this was recognised by the counsellors who worked with these doubly abused children/young people may be positive for these children/young people's future and signals that professional-child communication can change and become more respectful with improved listening by the professional. I note that the children/young people and their mothers recognised and railed against systemic abuse. While recognising that little change would occur, they revealed a despondency about the system, whose role is to firstly protect vulnerable children/young people.

Some five years later, in 2008, in Sweden, a similar marginalisation of a child/young person occurred, as told in the story of Bill:

When they came here the first time, [and] should talk to me and they said that it was me, that I should feel safe and that it should all be about me (pause) and not about him (pause) and then they came several times and said, but he [has] said that he wants to see you

and he has the right to see you because he is your daddy, he is your biological daddy, but then I told them that you said that it was I who should feel safe and I do not feel safe because I do not want to see him at home. Okay. But you can try a little. Then I said No. Then they said okay, we will come another time. [They] came another time, said he wants to see you and he has the right to see you. Then they started... . they came so many times, so I said that okay, I can see him but I do not want to. (Eriksson & Näsman, 2008, pp. 268–269)

The authors interpreted this story as representing the first step of participation as defined by Hart (1997), who presented a ladder which indicated the varying steps on the continuum of being involved. Eriksson and Näsman (2008) said that Bill was told that the social workers were coming but there was no consultation about the time or place of the meeting. Both parents were present. Bill perceived that the social workers were focused on the father's rights rather than Bill's perceptions of his safety. Contradictorily, although giving no weight to safety, the social workers also noted that Bill felt unsafe in the spectre of his father's presence.

My reflection of this snippet was similar yet different from the authors. I perceived that Bill reflected on his experiences of multiple visits by professionals whose sole aim was to convince or bully him into seeing his father, who was also present in the room. This presence would have scared Bill further as he recalled witnessing his father's violence towards his mother and thus is likely carrying some traumatic memories. His father's rights overshadowed Bill's child/young person rights to express his wishes and to have a voice. There was no suggestion that the professionals listened to Bill's feeling of a lack of safety. Each time Bill refused, the professionals threatened him with another visit, until he agreed against his better judgment. Bill was badgered into the adult needs and wishes so his file could be closed as the professionals had 'done their job'. Bill's voice and safety needs were discarded

in favour of adult needs—those of the social worker and his father. These adult voices were valued, his was not.

A similar theme occurred when Rosie attended a family meeting:

We went one day for a family conference and the thing that got me most was that nobody listened to what I had to say... Like they didn't understand that I couldn't talk to mum and I could talk with dad. So, they didn't take any notice of that. Excuse me [cries]... I mean how hard is it to hear somebody saying "I want to be with him instead of her". (Rosie, now 21 years, in Darlington, 2006, p. 59)

The author noted that Rosie remained angry some seven years later, that she had not been listened to or heard, which was similar to other stories reported in this study. I made a similar interpretation but arguably at a deeper level about how this was for Rosie at the time. The excerpt notes that, at a family group conference, the family/professionals placed Rosie with her mother against her wishes. I assume Rosie went into the conference with an underlying belief that adults would listen to her and her wishes would carry weight, only to find the opposite. Nobody listened to Rosie and her reasons for her choice. They all went against her wishes. The term 'nobody' alerted me to an understanding that this was a professional conference and Rosie's parents may not have been present, or her father's voice was silenced as well. Rosie felt a 'nobody' and devalued as such. That this is still the case seven years later speaks to the profound nature of such 'care-less' decision making for a young person who was present.

In New Zealand, Sanders et al.'s (2017) study of young people who were participants in the child protection system identified three themes: communication, consistency and continuity, and cultural responsiveness. If these were present the young people were able to be and to experience "conditional openness" (Sanders et al., 2017, p. 261) with professionals. Hanna and Sarah were two participants in this study.

Rather than rejecting out of hand the appearance of child protection workers in her life, Hanna believed that in order to secure her positive involvement in this intervention, time needed to be taken to explain to her why this action was needed. It appeared that, while child protection services were very familiar with Hanna's life, for her part, she had little understanding of who they were and why they were removing her [from her home].

Sarah was clear that if the social worker had communicated with her differently and provided an explanation as to why she was not allowed to do all the things she wanted to do she would have been more likely to comply with these directions. However, because her social worker did not take the time to explain decisions and to engage Sarah, she would not allow the social worker to help her.

(Sanders et al., 2017, p. 268)

The authors noted that Hanna felt that child/young person protection workers needed to take time to help her understand what was happening, not just assume that because she had lived her life under the gaze of the child/young person protection agency, she would know. Sarah had a similar experience to Hanna and wished that the case workers had provided more communication and discussion about what was happening and why. The authors reported that Sarah felt she would have cooperated differently and there was the possibility of an improved worker-child/young person relationship through the years.

My interpretation of these two young people's voices is again similar but arguably different. I am not as focused on the actions as the underlying experiences for Hanna and Sarah. It appears that the social workers were not listening or explaining their decisions to Hannah and Sarah who had been removed from their homes. Consistent with the CAEs referred to in Hay (2003), the social worker was perceived as taking the charge role, and the child/young

person became the object to be managed as convenient for the adult needs. Little consideration was given to the young people having their own consciousness and experiences and that these may have value. Non-cooperation with the worker was Sarah's only way of retaliating and trying to have her voice heard. The worker likely perceived her reaction as representing Sarah having significant psychological issues, not rebellion at non-inclusion. In fact, I would suggest that the way Hannah and Sarah were treated added to the trauma of their past lives, which each young person well-remembered. Sanders et al. (2017) concluded that the best outcomes for children and young people engaging with their social workers came if communication was open and transparent, and any decision-making included the active involvement of young people. I agree with this sentiment.

Overall, the literature suggests that the sensitive and empathic listening to and exploration of their lives with children and young people is an important factor. If children/young people were well-respected and developed a relationship with legal personnel, such as their lawyer, they were more likely to adhere to Court orders; but, if this relationship was more distant, the children/young people felt undervalued (N. J. Taylor & Gollop, 2015). The authors promoted that sensitive and empathic listening by the professional was a skill that needed to be nurtured and practised, to support children and young people to have a positive relationship. This may be aligned with ensuring that children/young people have information about the matters that affect them, which is the next area of this literature that I turn to.

2. Information available to the child/young person during proceedings and at the end – Am I being told?

An important part of scaffolding is to give children clear information to help them to understand the issues and, to the extent appropriate, the legal process through which the dispute will be resolved. This includes “the nature, scope and purpose of each

stage of the justice process, including how long it will take, where it will take place, why it is taking place at all, and who will be involved in the decision-making". (Parkinson & Cashmore, 2020, p. 835)

In this excerpt, the authors are arguing that professionals need to provide information and to "scaffold", or support, children/young people to give them the opportunity to participate. Scaffolding includes giving information to young people in a language and way that they can comprehend the issues and how these will be legally resolved. Important details include the length and time delays of the process and the adult participants being required to employ, or at least attempt to scaffold the child/young person, thereby allowing effective participation. I agree with this statement, especially the concept of scaffolding children/young people to participate, by informing them of processes and ensuring that they feel heard and their experiences are respected.

One of the consistent themes in the literature has been that children and young people seek information about the progress and outcomes of their family's court proceedings and this wish is inconsistently met. Pryor (2008) spoke to the importance of professionals providing information about their parents' separation and the subsequent court processes to children and young people. This information, along with support, was important for the children/young person's wellbeing. She suggested that information might help a child/young person to think more widely about their own situations and to come to a more versant position.

N. J. Taylor, Gollop, and A. B. Smith (1999) found that 13 of 20 children/young people received some form of feedback from their lawyer about the outcome of their family proceedings, but seven did not with no reasons given. These children/young people did not know what decisions had been made, with some being uncertain that their views had been represented.

Children and young people do not always receive information as shown by the following quote which highlights the failure of professional communication: “Like both my parents are going to mention what finally happened, but parents are going to have a bias, they [the lawyer] should tell me what finally happened” (Birnbaum & Bala, 2009, p. 58). The authors used this as one example of six provided where lawyers did not provide information to their child/young person clients, which they said “resonated” with other studies (Birnbaum & Bala, 2009, p. 57). However, I also heard that this child/young person was aware that their parents have a vested interest in the outcome and they wanted a neutral understanding of how and what decisions have been made. If the lawyer explained the final decision and outcome, the child/young person may have developed more understanding and the outcome of the proceedings may have been enhanced. The child/young person’s relationship with and experience of the professional would, arguably, have been advanced.

Damiani-Taraba et al. (2018) invited youth to a two-day workshop where they could share their experience of being in care however they chose; with talking, drawing, and acting being preferred modes. This was participatory research with a lens of Heideggerian phenomenological analysis. One of the seven themes that emerged was the need for the young person to be given information, as one participant shared:

We were 6, 7 and 9... we didn't really know what was going on, I actually didn't know until about 4 years ago and I've been in care for almost 10 years [and] it would have been nice to know when I was younger 'cause I was so confused...I remember the day I was taken crystal clear... it never leaves me (Te, female, age 17).
 (Damiani-Taraba et al., 2018, p. 84)

Te is describing that she and her siblings aged 6, 7, and 9 years were “confused” as there was no information given or shared. She has clear, traumatic memories of being removed from her parents’ care, for reasons that she did not know until six years after her removal. A sense of frustration from this

disempowerment and objectification has been shared in this excerpt. Aligned with the previous section, poor communication and lack of information has led Te to reflect on her past, though today she may have clarity of view. The authors concluded that there is a need for information to be available to the child/young person at any age, in a way that could be understood. The child/young person needed to know why decisions were being made and given the opportunity to discuss the impact on her life. Without information the young person has confusion and a lack of understanding which appeared to permeate Te's whole being. She still appears to wonder about the past and perhaps to seek answers, in spite of knowing.

Bala and Birnbaum (2018) also considered that an important role for lawyers for the child, or another professional, was to keep the child/young person informed of the progress of the family dispute. This was to help create improved outcomes for child/young person's participants in family law disputes. These researchers echo the findings of nearly two decades earlier (N. J. Taylor, Gollop, & A. B. Smith, 1999).

Section 4.4 of the New Zealand Law Society Best Practice Note for Lawyers (Swadling, 2018) who represent children/young people, outlines such practice involves keeping the child/young person informed of the progress and outcome of their family's case. Yet, it seems that there are a group of children/young people whose need for information continue not to be met by lawyers, and possibly other professionals in the family court. The literature suggests that information being shared, or not, changes the outcome of children/young person's ability to participate. If information is shared, this raises the issue of how this will be kept confidential, which is the next theme discussed.

3. Confidentiality – Can you keep my information private?

Adult-lawyer communication is confidential. How this plays out for children and young people is a theme that the literature has addressed. N. J. Taylor,

Gollop, and A. B. Smith (1999) in their New Zealand study uncovered a theme about children/young people understanding that their communication with their lawyer was confidential. They said that children/young people felt this allowed them to speak openly with their lawyer without fear of repercussion from other family members. About two-thirds of the children/young people knew that what they said would be discussed with their parents and other people within the court system. The rest expected complete confidentiality. The one child/young person whose confidentiality was breached, sounded annoyed and disrespected.

K. Marshall, Tisdall, et al. (2002) noted this child-professional confidentiality dilemma in their report about Scottish children/young people's participation in the family court system. For most children/young people, confidentiality of their information and experiences was paramount, but the system did not allow for this. Some children/young people commented that they would have spoken to teachers but did not do so because of a lack of confidentiality. The Court 'Sheriff' (akin to a family court judge in New Zealand) also determined whether the child/young person's communication with them would be kept confidential. Some children/young people considered that their lawyers treated "children as second-class citizens" (K. Marshall, Tisdall, et al., 2002, p. 33). Interestingly, once trust and rapport had been established, confidentiality became a lesser issue for the children and young people, so this may be associated with relationship variables and development. Fernando (2013) noted that children and young people did not want to share their views with a report writer because the report would contain those views, with no confidentiality applying. In an Israeli pilot project to aid child/young person participation in family law proceedings, half the children/young people wanted their information to be kept confidential from their parents, and a further quarter wanted partial confidentiality. The last quarter was happy for all information to be shared (Morag et al., 2012).

In contrast to the mixed messages above, Chaplan (1996) commented that the seven youths interviewed about lawyer-child ethics, valued communication which promoted their participation in decision making over the confidentiality of their discussions.

Caldwell (2011) considered judicial interviews of children/young people from a legal perspective and no confidentiality was applied:

It will be seen that an established, though not invariable, expectation is for the child to be told by the interviewing judge that information will be shared and a report of the conversation relayed to the parties - this has proved uncontroversial and is not perceived to have detracted from the value of the interview. (p. 52).

My concern with this statement is that the lack of confidentiality is not perceived to have detracted from the interview. There is no comment about whose perception and how this view was reached. It seems likely that the perception that children/young people do not have a right to, or a need for, confidentiality is an adult perception, arguably of those whose needs the court serves.

In a 2015 report about re-designing the child/young person protection system in New Zealand, a section about digital communication spoke of the importance of confidentiality of the data. It went on to say that "all who work with a child can view the information about the child" (Rebstock et al., 2015, p. 125). I ask where is the confidentiality with these vulnerable children/young people? Who is protecting their information and the confidentiality of this?

In summary, there are clear messages that children and young people want to feel respected through having their communications being treated with confidentiality, as an adult's communications are. As Alderson (1995) said, more than two decades ago,

Children have the same rights to confidentiality as any other person. No one has an absolute right to confidentiality. In rare cases, a breach may be justified if it is thought that the person describing the danger, or some other person, is at risk of being exploited or abused. If so, the researcher should first try to encourage the young person to talk to adults who could help or else to agree that the researcher should talk to them. (p. 19)

Two other themes appeared in the literature, to a smaller extent than the previous themes—environmental factors and bias toward a parent. These will be considered in the following sections.

4. Environmental factors – Where will you see me?

In the literature there is comment about children/young people being seen in a place of their choosing at a time of their choosing, with this being considered the first step on a ladder representing true participation (Hart, 1997, 2013). Consultation appears to be something that is important for some children/young people as illustrated below.

[M]ay be if it was in their home environment or something it would be easier rather than going into the city, into a strange office with strange people and stuff... (Karen, in Darlington, 2006, p. 57)

The author placed this statement within a subheading of helping the child/young person to be relaxed, and drew attention to the importance of environment which could assist. In my similar interpretation, Karen is retrospectively looking at ways that professionals could make the environment in which they see their child/young people clients, more comfortable. Karen recognised the strangeness of the situation, the people, the offices. I hear her being somewhat daunted and perhaps fearful of this “strange” place with “strange people and stuff”. Karen has been thrown into a “strange” situation.

The United Nations Committee, in General Comment 12 above, noted that the environment in which the child/young person was seen was an important consideration, as this was third on their list. Some studies considered the effect of where children/young people were seen as having an impact on the outcomes of the interviews. In their New Zealand study of children/young people's experiences of seeing their lawyer, N. J. Taylor, Gollop, and A. B. Smith (1999) found that children/young people preferred being seen in their lawyer's office rather than in their school, as privacy was better preserved. Many meetings occurred after school, with some at weekends or in school holidays. However, the parent who brought the child or was present could provide an influence as Buchanan et al. (2001) and Hay (2003) found. N. J. Taylor and Caldwell (2013) interviewed Judges and found that often Judges interviewed children and young people in their chambers with the child/young person's lawyer present. About a quarter occasionally also involved the reporting psychologist, with comments about cost prohibiting this occurring more frequently. Use of the courthouse spaces, including their office, the mediation room, or the court room proper for interviews was thought about by Judges as "better respect[ing] the significance of the occasion for the child" (N. J. Taylor & Caldwell, 2013, p. 459). Horsfall (2013) argued that the environment was one of the significant factors that affected children/young people's relationships with their lawyer. Lawyer's busyness and managing multiple cases in the children's court, as well as the intimidating non-child focused courthouse, were factors identified.

Notably, in the Rebstock et al. (2015) report about investing in the future of children/young people in need of care and protection in New Zealand, the authors recommend that:

Other agency teams could be co-located and will use a variety of channels such as phone, video conference and online services. They will also offer face-to-face meetings in an office environment that is

child and family-friendly in its design and furnishings. The voices of children, families and wider stakeholders will be included in the design process. (p. 126)

In my experience, none of this has occurred. Oranga Tamariki environments tend to be sterile, with perhaps a small box of toys suitable for young children and some posters on the wall about people's rights and the service they can expect.

5. Bias towards a parent – Whose side are you on?

Again, in the literature, children/young people and adults perceived that bias for or against a parent existed and this was deleterious to the child/young person's experience. In New Zealand family disputes, there are typically two adult camps, each alleging bias by the other gender. Firstly, as recognised by Boshier (2005) and Moorhead et al. (2008), there are those, often men's rights groups, who consider that there is judicial and professional bias in favour of women keeping their children/young people. Secondly, often women's rights groups consider that the bias favours men who are stronger than women and that the Court does not recognise and prioritise the inherent domestic violence which occurs because of this power inequity (The Backbone Collective, 2021). Buchanan et al. (2001) reported that only one-third of parents who went to a hearing for final dispute resolution with respect of their children/young people felt that they had been fairly heard by Judges. According to Cleland (2013), cultural biases against Māori families are well reported and arguably under-recognised, but this line of enquiry is beyond the current review.

The following excerpt reflects a lawyer's view of feeling that his lawyer-child/young person relationship was marred by the parent perceiving bias and the children/young people taking the mother's side.

[Mother] accused me of bias in favour of [father]. The children said that they were angry with having to come and see me. They were

both sad and angry (Lawyer 02, Guardianship case). (N. J. Taylor, Gollop, A. B. Smith, et al., 1999, p. 143)

[Mother] explained that she and the children thought I was biased against them in my previous report, and that I took little notice of what she and the children had to say. So I wrote to the Court and said because of their perception of my stance there isn't anything further I can do and that I request that my appointment be terminated. (N.J. Taylor, Gollop, A.B. Smith, et al., 1999, p. 172)

My interpretation of this snippet of conversation focused on the children/young people's anger and sadness, which they attributed to the lawyer's preconceived idea that their father was better than their much beloved mother. To me, it appeared that the mother had drawn the children/young people into the dispute, which is unhelpful for children/young people to experience a good outcome in family disputes (A. J. Baker & Ben-Ami, 2011; Drozd & Olesen, 2004; Garber, 2011; J. R. Johnston & Sullivan, 2020; S. G. Miller, 2013; Papaleo, 2013; Rowen & Emery, 2018). The lawyer then sought to be released from his involvement with the children/young people which potentially left the children/young people unrepresented and without a voice. The children/young people may consider that their mother can tell of their feelings, but other adults may consider the mother has influenced the children's voices. Alternately, the children/young people may have to build a relationship with another professional, which will be more difficult as their environment already has untrustworthy elements apparent. Similarly, with an adult focus, seven of eight mothers, in Western Australia, considered that the lawyer appointed for their child/young person either actively advocated against the child/young person's voice being heard and/or displayed a bias against the child/young person living with them.

From children/young people's perspectives, three of five children/young people who had been involved in care and protection proceedings in N. J. Taylor, Gollop, and A. B. Smith's (1999) study felt that their lawyer did not hear their views due to bias towards a parent. Children/young people gave advice to Judges to not be biased and to listen to them with open minds (Birnbaum et al., 2011). Thus, both children/young people and their surrounding adults may perceive that bias occurs in favour of one parent, which appears to be an inherent problem. I wonder how this perception of unfairness is associated with the preconceptions or fore-understandings and influences that the professionals took into the meetings? Stahl and Simon (2016), followed by Gould and Flens (2020), have provided advice to family court professionals about minimising their biases, but how many actively do this seems unknown.

Having looked at the sections of the literature which fitted with General Comment 12, I then was left with articles which took more of an overview of the term 'participation' and the child/young person seeking to have a say or a voice. I hoped to identify other notions raised by young people in their experiences of professionals in the family/youth courts. The key notions, from this more general area of participation, appear to further reveal the child/young person's experiences of professionals in the family court.

6. Participation – Can I have a say?

Children/young people participating in decisions that matter to them, is a key tenet of the UNCROC and much of the literature. Participation is considered to have benefits for the child/young person as it respects the rights and dignity of children/young people and can check that decisions are responsive to children/young people's needs. Children/young people may be more likely to abide by the decisions if they have had input (Kennan et al., 2018). Other reasons are to uphold children/young people as legal entities who have rights and the need to fulfil these rights, to build skills towards later adulthood. Also observed is the need to empower and enhance the child/young person's self-

esteem and feelings of self-efficacy (Herbots & Put, 2015). Creaney (2014) described one of the benefits for offender youth participating in planning their rehabilitation service, is that if the youth is more involved, they are more likely to engage and less likely to re-offend. For children and young people who have been maltreated, participation led to increased confidence in themselves and in professionals, provided the child was heard and listened to (Cossar et al., 2014).

A dominant theme from research in New Zealand conducted at the turn of the 21st century was that children and young people wanted to participate in family court proceedings. According to N. J. Taylor, Gollop, and A. B. Smith (1999), children and young people did not want to make the decision about which parent they should live with. Choice of living arrangements and contact with parents is an aspect of participation as discussed below using Sally's comments.

Sally (12): I think it's important that the child should choose, because I wish I could have chosen... I don't know, it takes a lot of thought because you don't want to make the wrong decision or hurt any of your family. (Neale, 2002, p. 463)

This comment occurred as a child/young person's response to a vignette about a child/young person who was oppressed and decisions needed to be made about their living arrangements. The author constructed these children/young people as being unable to work "democratically with their parents" (Neale, 2002, p. 462). In this case, a number of the children/young people felt the need to exert their decision as being correct and the right one, as Sally did. Neale (2002) also noted Sally considering the effect of her decision on other family members.

In my interpretation, which again is similar but perhaps at a different level, Sally is speaking of her wish to have a voice, though considering the effects of her having the ultimate choice. She recognises the difficulties that her choosing will have on others and herself. She does not want to make a poor decision or hurt any other person. This research by Neale (2002) reported the results of

interviews with 117 young people about post-parental separation lives, within their family, not the experiences of children/young people and professionals. However, I chose this quote as it is one commonly found in the child/young person and professionals' literature where participation versus welfare needs of children/young people is highlighted. Sally speaks about seeking choice, which represents the full participation model, whereas the welfare model feeds into parents/adults as being 'in charge'.

The power struggle between participation of children and young people versus their parents' rights was considered by A. Campbell (2008) who wrote about children/young people's experiences of decision-making following their parents' divorce. He found that children/young people wished to participate in decision-making but they felt that final decisions should be made by the parents. In participating, children wanted a voice not a choice about their final living arrangements.

Eriksson and Näsmann (2008) reported that half the children/young people had their non-residential, allegedly abusive parent in the room when the child was being interviewed about their wishes. The child/young person felt unsafe and unable to participate or disclose their experiences and views. Whether or not abuse had occurred, this view that the presence of either parent in the room negatively interfered in a child's ability to participate in an interview with a professional had previously been supported by Buchanan et al. (2001) and Hay (2003).

There is debate in the literature about the advantages or not of children/young people engaging with the Judge. As the Judge is the ultimate decision-maker, this meeting could be seen, likely by the adults and perhaps by some young people, as representing the zenith of participation. Yet, only a minority of children/young people wish to see Judges (Caldwell, 2011; Henaghan, 2012;

Parkinson & Cashmore, 2007; Parkinson et al., 2007; Savoury, 2012; Tapp, 2006).

As one commentator said:

Meeting with the Judge should be a last resort and creates a host of problems. Among them are the extent to which a judge should disclose what is told by the child. The Judge cannot simply state that s/he has taken into account the child's wishes at arriving at a decision. Another problem relates to disclosures made by the child. What is the Judge to do if, e.g. the child discloses, e.g. previously un-disclosed sexual abuse at the hands of a parent? The Judge is now a witness to the disclosure and must consider the extent to which questioning should be pursued and the need to report the disclosure. [Alberta lawyer] (Birnbaum et al., 2013, p. 476)

This answer was one of a widespread number of responses given to a question about children/young people meeting the judge and under what circumstances this would occur. The minority of lawyers in four states of Canada would promote this engagement (Birnbaum et al., 2013).

In my interpretation, the lawyer is highlighting the adulthood of the family court process and the evidentiary rules rather than having any focus on the child/young person's participatory needs. These 'problems' outweigh the child/young person's needs to see the decision-maker and to feel heard. There is no comment that the children/young people were asked if they wished to meet this Judge; rather, the adult legal professional made the decision about the child/young person's right to participate. According to this lawyer, the child/young person's full participation in their family court system is to be muted. There is no consideration given to the unlikely event that the child/young person may disclose for the first time that a parent has sexually abused them, as this would create a conundrum that the system is ill-equipped to manage.

Notably, none of the articles I reviewed have had Judges speaking of this particular facet—that a child/young person may disclose sexual or other abuse, being of concern (Bertrand et al., 2012; Birnbaum & Bala, 2010; Birnbaum et al., 2013; Boshier, 2006, 2008; Caldwell, 2011; G. Joseph & Kirby, 2020; Parkinson et al., 2007; Savoury, 2012; Tapp, 2006; N. J. Taylor & Caldwell, 2013). According to Parkinson et al. (2007), Birnbaum et al. (2011), and G. Joseph and Kirby (2020), whilst interviews with the Judge may be anxiety provoking, most children and young people found the experience positive and thought that this should be an option for young people in family court proceedings. I can only think that the particular lawyer, in the segment above, was more focused on the ‘host of problems’ and sought an unlikely reason to cancel judicial meetings. There is concern in the literature about what the judge does with the information s/he collects and what needs to be discussed with the parents. Fairness of having information applies to the adults but not to the children/young people who are so often the centre of the dispute.

Balancing children/young people’s rights to participate reveals a complex decision-making process. Factors that need to be balanced are age, cognitive and emotional competence, each child/young person’s unique life experience, alongside each parent’s rights and/or competence to make decisions for their children/young people’s welfare. This child/young person’s rights and participation continuum has the child/young person with experience and self-agency at one end, and the vulnerable child-young person and (in)competent parent at the other. This continuum was also expressed as a “liberationist view” (Eriksson & Näsmann, 2008, p. 261), that children/young people are social beings who are creative and have experiences that inform their views at one end and a “welfare principle” (Eriksson & Näsmann, 2008, p. 261), involving the child being protected by the dominant adult at the other. According to a previous New Zealand Principal Family Court Judge, the Court has found that a way to balance these competing views is to ensure that the voice of the child/young

person is represented by professionals: their lawyer, a Court-appointed psychologist, and/or a social worker (Boshier, 2006). It is assumed that they will present the child's experiences, life story, and wishes to the Court on behalf of the child. However, as explored by Macdonald (2017), this is not always the case. Using two methodologies, both a content analysis and a critical discourse analysis, reports from the United Kingdom Child Welfare agency were evaluated when the child/young person's father had been domestically violent and was seeking contact with their child/ren. There was a presumption that the offending parent had the right to contact with the child/young person. Results showed that younger children/young people's voices were less likely to be reported as they were considered too young to have a meaningful view and had less "perceived agency" (MacDonald, 2017, p. 7). Older children/young people's views were more frequently reported as having meaning for final decision-making. Worryingly, if a child/young person wished for contact with their allegedly abusive father, the child/young person's views were accepted, but if they did not want contact for any reason, the child/young person's view tended to be discounted. These views were categorised as having been influenced by the other parent. Thus, in a very small sample of reports, these social workers were prone to reporting from their biases, rather than perhaps considering the child/young person's experiences and views could have weight if they were contra to the dominant discourses of parental harmony and parent-child contact at most times. Hay (2003) described similar experiences of negating the abuse by the fathers and an expectation for contact was reported by both the children/young people and their mothers, even when the father had been criminally convicted of sexual abuse. Thus, it appears that the privacy of the family and the dominance of parental decision-making appears to be the most important consideration rather than a focus on the child/young person's experiences and voice, their rights to be heard and to participate (Beazley et al., 2009; Neale, 2002; Tisdall et al., 2004).

Considering participation of children/young people from another way, in Australia, Parkinson and Cashmore (2007) explored the differences in the participation of children and young people whose lives were entwined as victims of the criminal court or as participants of a family in the family court. In criminal proceedings, the child/young person is the complainant and thus able to participate in cross-examination, although special provisions may be made. The child/young person frequently appears as a witness before the Judge, the lawyers, and, perhaps, the jury. Bala et al. (2010) studied the competence of children/young people to testify and found strategies that could enhance the reliability of their evidence. These children/young people rarely participate in the criminal court where they have complained about another's behaviour. However, in contrast, in the family court, the child/young person is protected. They tell their views and experiences to a professional, who carries these to the adult family court. It is unusual for the child/young person to appear or to be present at court. I would suggest that both children/young people, in either court, may well have been traumatised; yet, their requirement to participate fully in court proceedings is different, as noted by the authors. I suggest that in family court proceedings, the emphasis is more on the vulnerability of the child/young person and the importance of the adult rights, whereas in criminal court proceedings, the child/young person has disclosed alleged offending and thus is seen to have more agency and rights to participate.

The presentation of a child/young person's voice via a professional requires the professional to be trained and aware of their own biases. The following excerpt demonstrates what Horsfall (2013) perceived to be three behaviours that lawyers could demonstrate to have effective child and young person participation in family law proceedings.

Natalie [the lawyer] asked Luke [child client aged 10-13 years]: "*Do you know why you had to come today mate?*" and he indicated that he wasn't really sure why. Natalie explained the issue as being: "*Dad*

has asked the judge to think about how often you see him. How often do you see him now?" Luke replied "about once a month" and described the things they do together. Natalie asked Luke to describe his Dad's house and whether other people were there during access visits (she seemed to be checking the safety of the household from Luke's perspective). After this she asked: "About how much time do you spend together?" Luke said usually "about seven hours", to which Natalie inquired "and what's that like?" Luke screwed up his face and replied that it's "too short a time, not enough". Natalie acknowledged to Luke that she had noticed his facial expression and understood he was not happy with the current access arrangements. (Horsfall, 2013, p. 437, italics in original).

According to the author, the lawyer applied the concepts of "democratic communication", which was defined as being "how lawyers in these observations engaged in conversation, including verbal and non-verbal expressions with children/young people. Lawyers were curious about children's worlds and also receptive to children's curiosity" (Horsfall, 2013, p. 435).

Throughout this excerpt, the lawyer was attuned to Luke and his verbal and non-verbal expressions, and provided and sought information in a respectful manner. The focus was on the lawyer hearing from Luke about aspects of his visits to his father and whether there were any changes that would better meet Luke's needs. In this way Luke could clearly participate in decision-making. This positive connection with Luke revealed much information to the lawyer, who could then advocate fully for him to have more time with his father. In this way, Luke has participated and his voice was heard.

In contrast to lawyers for adults who represent their clients, lawyers who represent children and young people have a two-pronged role. These roles are advocacy (as they do for the adults) and presenting arguments as to the child/young person's best interests. These two roles can conflict and creates a

legal dilemma which is not necessarily recognised for the child/young person (Ahmad et al., 2016; Appell, 2008; Bala & Birnbaum, 2018; Bala et al., 2013; Banham et al., 2017; Beckhouse, 2016; Bell, 2016; Birnbaum & Bala, 2009; Carson et al., 2014; Cashmore & Bussey, 1994; Cashmore et al., 2010; Chaplan, 1996; Ross, 2012, 2013; 2018; N. J. Taylor, Gollop, A.B. Smith, & Tapp, 1999). I would question how any professional can hold these dual roles of representation and best interests, when these positions are contrasting, especially if it is assumed that children/young people are competent and they wish to participate. The Court may appoint a 'Lawyer to Assist' to allow both roles to be separated, but cost can sometimes prohibit this, potentially leaving a vacuum. I would suggest that this if this dichotomy is not resolved, it creates another way of silencing the child/young person's participation in favour of the adult clamour (Pryor, 2008).

3.3 Summary of the themes

This section has considered the themes that are evident in the literature, which are in line with those discussed in the United Nations. It is important that there is an ongoing process to enable a positive experience to occur for the child/young person. Many factors which promote a child/young person's voice to be heard and given weight have been examined in the literature. They include that the professional communicates and shares information with the child/young person, they discuss and adhere to confidentiality agreements, bias is not shown towards or against a parent, and an appropriate environment is accessed for the interviews/meetings to occur. These factors are inter-related and can be considered, though perhaps not easily addressed under the current system, to create a space and a place where children/young people's voices can be scaffolded and enhanced to allow them to meaningfully participate. This would likely promote a positive experience for the child/young person.

A number of researchers, using a hermeneutic phenomenology approach, have retrospectively considered the adult's recollection of them as the child/young person who experienced parental separation and divorce (Du Plooy & Van

Rensburg, 2015; Kay-Flowers, 2014; Kim & Tasker, 2013; S. C. Morrison et al., 2017). However, memory mutates over time, and experiences reflected on as adults may not really be the child/young person's experience.

Thus, the final area of literature I am addressing is that of studies where hermeneutic phenomenology has been a methodology with children and young people. The purpose of this section is to briefly demonstrate that this methodology has successfully been used with children/young people as participants. There are no identified hermeneutic phenomenological studies with young people/children and their experience of engaging with professionals from the family court.

3.4 Studies using hermeneutic phenomenological approaches with children/young people as participants

The phenomenological interview is a *collaborative* process of evoking colorful descriptions of the phenomenon and empathetic understanding of the multiple ways in which the child makes sense of the lived experience. (Ryba, 2008, p. 340)

In the 1970s, childhood research considered children/young people as being socially agentive, with a voice and that they could contribute to society (Corsaro, 2020). Four decades ago, Beekman (1983) encouraged adults who were studying children/young people to do this from the child's lens and experience, which required a mind and behavioural shift. The child/young person inhabits a different space in time concept as compared with adults, which leads to different relationships and meaning being accrued. The child/young person lives more in the present. Over the years, the concept of child socialisation, a linear theory of child development, has been replaced with a more non-linear theory of what Corsaro (2020) termed "interpretive reproduction" (p. 10). This means that preschool children/young people have a desire to be involved with and share with others that is driven by the

child/young person. They also express a desire to challenge the rules and boundaries set by adults. According to Corsaro, both of these notions go to the heart of the child culture where an ethnographic lens is often applied and may be considered an appropriate methodology in research with children/young people as participants. However, a hermeneutic phenomenological lens, where children/young people can share their own lived experiences in a way that can be interpreted, has been successfully used with these younger participants. Medical research is perhaps the most common field where this methodology has been applied (Dean & Black, 2015; Fioretti et al., 2014; Hussain & Sanders, 2012; S. Miller, 2000). More recently, education (Ó Breacháin, 2016), sport (Ryba, 2008), and spirituality (Hyde, 2005) research have all considered children and young people's lived experiences.

In the context of child athletes who undertook competitive figure skating, Ryba (2008) argued the utility of using hermeneutic phenomenology with children/young people (aged 8-10 years). The aim was to understand the lived experience, especially the rich and diverse ways the young athletes experienced the sport. The author debunked that children/young people could not express their views and experiences as previous authors had tried to argue (P. Taylor & Delprato, 1994). Sadowski and McIntosh (2015) researched the lived experience of children/young people aged 8-12 years who were in the shared care of their parents. These children/young people could provide rich, meaningful data about their experiences. All these authors found that children/young people could participate in interviews and provide rich data. This is what I am hoping to achieve with my study, because the hermeneutic phenomenological approach was one aspect of the gap in the current research. I agree that children and young people have meaningful lived experiences and once language-able, these can be shared to allow them to have a voice in matters which affect them.

3.5 The gap

Having established that children/young people can be studied using a phenomenological methodology, there are no identified child/young person studies using this methodology in the family and youth court literature reviewed, beyond the Sadowski and McIntosh (2015) article where the researchers considered the lived experiences of children/young people who were in shared parental care. Researching children and young people's experiences is a necessary and useful way to gain their insights, as they are the subjects, but too often treated as the objects of their parents' disputes following separation. Hermeneutic phenomenology is an approach to allow the true child/young person and other participants' voices to be heard and interpreted.

Pryor (2008⁷) said very clearly that children and young people need and deserve to be consulted when their family is a client of the family court:

Listening to the voices of children in situations that are of serious consequence for them has become an issue that cannot be ignored. Children have the right to express their wishes; they benefit measurably by being heard, and they want to have a voice in the often-fraught processes that accompany the separation and divorce of their parents. Research that has asked young people directly about their perspectives on divorce indicates first that children want information about what is going on; they almost overwhelmingly believe that where possible close relationships should be maintained with both parents; and they want in a variety of ways to have their wishes and feelings taken into consideration.

(p. 7)

In 2020, the research continues to acknowledge these points (Parkinson & Cashmore, 2020; Stolzenberg, 2020). Stolzenberg (2020) summarised a 2019 conference where there were arguments that legal language needed to be

simplified to make the law accessible to all, and especially self-represented litigants. While children/young people were not mentioned, this is an area where legal jargon can disadvantage them as participants (Hart, 2013). In a more theoretical article about children/young people's participation, Parkinson and Cashmore (2020) concluded with the following thought:

When children/young people are heard in a way that is sensitive to what they want to tell adults about their family circumstances and needs, the decisions are much more likely to be in their best interests. The challenge is in finding ways to listen that are effective and safe for the child (pp. 13-14)

Hermeneutic phenomenology as a methodology may go some way to answering these current challenges. It may allow an interpretation and uncovering of factors that create either a positive or a negative experience for children/young people who meet professionals in the family court, in a way that is arguably different and perhaps deeper than the research above. Whilst the above research points to the importance of an ongoing professional-child/young person relationship where the professional actively listens, communicates, and shares information; seeks to assist the child to participate or not if the child does not want to; minimises bias and uses an appropriate environment to conduct their relationship; is there more than these behavioural constructions of the notion? My study attempts to go some way to uncovering this from the experience of the child/young person.

3.6 Chapter summary and looking forward

This chapter has reviewed literature which has used other than hermeneutic phenomenological methods to explore children/young people's experiences when they meet professionals from the family/youth courts. Using the United Nations General Comment 12 with respect to the UNCROC provided a platform for the thematic review. Participation and having a voice required the

professionals to carefully listen to the child and young person. Information about the proceedings needed to be consistently shared. Information which the young person gave and the confidentiality of this was identified as an issue, as was the venue at which they were seen. One particular issue the literature addressed, that was not in the General Comment 12, was that some professionals could be seen to be biased against a child or a parent.

To fill a gap in this body of knowledge, my study using hermeneutic phenomenology as a methodology will allow an exploration and honouring of firstly children/young person's experiences of engaging with professionals in the family court; and secondly, those adults who interact with them through their experience. How this study is based theoretically is the subject of Chapter 4, with specific methods used in Chapter 5.

To conclude, Andrew Becroft, Children's Commissioner, New Zealand said:

[Meeting with children/young people] constantly leaves me convinced of their insight, empathy and authenticity. Just like adults, children and young people are citizens and participants in our society, with human rights that must be respected and protected. (Children's Convention Monitoring Group, 2019, p. 5)

It is now well accepted that children/young people have experiences which are worth learning about. I now turn to the methodology to explore the theoretical basis of my particular study of children/young people's experiences of engaging with professionals from the family court.

Chapter 4 Methodology

Phenomenological methodology is challenging as it can be argued that its methods of inquiry constantly has to be invented anew and cannot be reduced to a general set of strategies or research techniques. (van Manen, 2014c, p. 40)

In terms of the narrative for my research, I am now moving from the context and previous authors' understandings of children/young people's experiences of engaging with professionals from the court to the philosophical underpinnings behind how the research was constructed. I will introduce the principal philosophers whose writing I have worked with and explain why they have been used. There is discussion of the potential prejudices of my chosen philosophers that may have influenced their scholarship. I will then introduce some of the major notions that are a part of hermeneutic phenomenology according to Heidegger, Gadamer, and van Manen; and Buber as a relational anthropologist and discuss how these apply to my study. I conclude the chapter with a view forward as to how this methodology leads into the specific methods that I used.

4.1 Introduction

This study was predicated on the proposition that adults, children, and young people have their own Dasein (Being-in-the-world) and inter-relationships. At no point does Heidegger exclude children or people from Dasein on the basis of age (Joensuu, 2012); "This is why even an infant is not some sort of animal, but is *immediately* human" (Heidegger, 2010, p. 137). These understandings are consistent with the UNCROC (1989): that children are their own being (Ponizovsky-Bergelson et al., 2019); and the family court's ethos that the child's wellbeing is paramount. Thus, the child is their own person (Dasein) entwined with, but set apart from, others including their parents and family/whānau.

As I wished to study the voice of the child/young person in an authentic way, so as to better hear, understand, and interpret their experiences of engaging with professionals in the court, a qualitative approach was fitting. "Qualitative research is a way of looking at the world and a constellation of approaches used to generate knowledge about the human world" (Higgs & Cherry, 2009, p. 3). As Jackson et al. (2007) said of qualitative research, "the focus turns to understanding human beings' richly textured experiences and reflections about those experiences" (p. 22).

S. Campbell (2014) identified five primary qualitative research methodological approaches. First is ethnography, where the researcher studies a cultural group in their natural setting for a time. Second, grounded theory occurs when a theory of process, action, or interaction is developed from the data. Third, a narrative approach examines the participant's story to question why it was told in such a way. A case study occurs when one or more participants and their interactions or processes are studied. Then there is phenomenology, where lived experiences of people are interpreted and understood to reveal hidden or taken-for-granted meaning. Higgs and Cherry (2009) added action and advocacy-based inquiry, where problems or challenges facing an often marginalised group are studied and interventions are enacted and reported about.

In making my choice, I was hesitant to work with a methodology in which the individual, unique story got lost. Rather, I sought an approach where each narrative was able to illuminate the lived experience, to be heard and understood. I was led to hermeneutic phenomenology and two main philosophers: Martin Heidegger [1889–1976] and Hans-Georg Gadamer [1900–2002]. I have appreciated the writing of Max van Manen [1942–], who interpreted and simplified Heidegger especially. Because of the relational nature of the experience, I have also drawn on the writing of Martin Buber [1878–1965].

The words ‘experience’, ‘voice’, ‘listening’, and ‘hearing’ all resonated within this methodology as did the use of reflection and reflexivity to unpack and understand the words spoken by the participants in my interviews. As a clinical psychologist, I am constantly reflecting on my clients’ words as being suggestive of their worlds and experiences. This is consistent with Heidegger (1993) who emphasised that words were signs towards or away from the phenomena: “What is spoken is never, in any language, what is said” (p. 393).

4.2 The philosophers

Martin Heidegger is a disciple of Husserl who has been considered the ‘father of phenomenology’ (Crotty, 1998; McConnell-Henry et al., 2009); just as Hans Georg Gadamer was Heidegger’s disciple. Martin Buber was slightly older than Heidegger but in many respects a contemporary. Buber is not a hermeneutic phenomenologist; rather, he is recognised as a philosophical anthropologist (Friedman, 2003) who wrote about relationships. Max van Manen is a more contemporary philosopher and educator who has interpreted and made understandable many of the Heideggerian notions which remained hidden in the language. I have become a learner from each of these eminent scholars and will now introduce them one by one.

4.2.1 Martin Heidegger

Heidegger [1889–1976] was born in Messkirch, Germany (Harman, 2007). His parents were of the Catholic faith with his father being the local Church sexton. His education was within the Catholic system. He was an adept learner who achieved scholarships that allowed him to attend higher education. Heidegger briefly joined the priesthood but was stood down due to a health condition. He then attended the University of Freiberg, studying mathematics, chemistry, and physics, before starting to read and study philosophy. His early focus was on Husserlian notions. Due to his health, he served as a meteorologist during World War I, which started when Heidegger was 25 years of age (Dahlstrom,

2013). In 1919, at age 30 years, he wrote of his disillusionment with Catholicism to a friend and separated himself from the church (Hodge, 2015).

Germany had been annihilated after World War I. In the 1920s and 1930s, the rising Hitler was promising a new way forward. Between 1925 and 1930, Hitler led the rebuild of the Nazi party against all odds and, it seems, by strength of character (Williamson, 2018). He used his political will and harnessed the German disaffection arisen from the past, by promising a future of strength and German dominance, along with better housing and conditions for supporters. He also commenced a political career, seeking votes at the ballot box. Between 1930 and 1932, Hitler's support increased from 18 to 37 percent, and he became a national figure of significance in Germany. This change occurred during the Depression which further disadvantaged the German people, many of whom lived an impoverished existence. In 1931, reparation payments from the World War I Treaty of Versailles were stopped, but this did not help the 'average' German person. Discontent rose, especially in those who had been in the middle classes (Williamson, 2018). In January 1933, following resignations from previous short-term Chancellors, Hitler was sworn in as Chancellor and he took full control of the government of Germany when he proposed the Enabling Act and dissolved the governing Reichstag some three months later. Hitler was now in total control of Germany and his policies became embedded in the culture of the country (Williamson, 2018).

Heidegger and the Nazis

Heidegger's star as a philosopher rose alongside Hitler's strength and power (Dahlstrom, 2013; G. Harman, 2007). That Heidegger's connection to the contemptible Nazi party remains a topic of significance when discussing philosophical thought is due to Heidegger being such a renowned philosopher, whose writing and teaching led to significant new developments in thinking (Faye et al., 2006; Grange, 1991; Paskow, 1991). The question that has since perplexed scholars is: did Heidegger have characterological traits that drew

him to strong nationalistic doctrines, which set the way of his life? Or did he succumb to the safety of being aligned to those with ever increasing power (Dahlstrom, 2013; Faye et al., 2006; Grange, 1991)? Was his thinking tainted with fascism or can I take some of his key notions and use these with care?

There are a range of views about why Heidegger joined Hitler's regime and supported it over varying timelines. Sheehan (1988) suggested that after World War I, Heidegger joined a group of other intellectuals who considered that the world was ending and failing people. It was important to stop the spread of Marxism, communism and "Americanism" (Sheehan, 1988, p. 53), which were other perceived scourges. There was a need for a new order. "Heidegger thought his mission was to help European culture recover the long-forgotten mystery of "Being" and thereby find its way through the tortured night of nihilism and on to a better dawn" (Sheehan, 1988, p. 52).

Another view is that Heidegger became infatuated by himself and his academic importance. In 1933, three months after being elected Rector of Freiburg University, Heidegger moved to dis-establish academic elections in favour of appointment to prestigious positions by the Minister of Education. This suggested that Heidegger considered himself the most influential education academic of the time (Sheehan, 1988).

Yet another view was promoted by Bjorkman et al. (2019), who stated that scientists did not necessarily think about anything other than their topics of interest. Heidegger may have been a part of this non-thinking beyond himself and his ideas, even more so as he had been ostracised from the academic community, due to his dictatorial command at Freiburg University. As Paskow (1991) says of Heidegger, he has a "category of value (authenticity), but for an individual human being the world of the social, is primarily a theatrical stage upon which he or she may achieve or fail to achieve authenticity" (p. 526). As I interpret this, Paskow is suggesting that Heidegger found his stage within the

Hitler regime and advanced his thinking along similar totalitarian lines. This seems to be supported when I consider the Faye et al.'s (2006) writings.

At the other end of a continuum lies the view that Heidegger made 'an error of judgment' (Dahlstrom, 2013; Faye et al., 2006; Grange, 1991; G. Harman, 2007; Safranski, 2002; Sheehan, 1988). This seems an unlikely proposal. Grange (1991) raised and discredited the argument that Heidegger's immersion in Nazi politics was a "mistake in judgement" (p. 515) given the degree of entanglement. He suggested that Heidegger's failure to define "Being" was a failure in his thinking that led to him having a moral ineptitude and a lack of ethics.

Among a small minority of writers, Safranski (2002) argued that Heidegger did not express anti-Semitic thoughts or actions. He cited that Heidegger wrote in support of two Jewish professors retaining their posts. He also employed and then arranged for his Jewish assistant to move to Cambridge University in England to keep them and their family safe.

The debate continues today, perhaps to a greater extent, as more of Heidegger's work is available and translated so more people can interpret what Heidegger wrote and then enter the debate. More evidence of Heidegger's collusion with the Nazi party is interpreted through the translations, where evidence has been found that Heidegger denied the Holocaust and challenged whether the concentration camp victims really died (Faye et al., 2006). "At the foundation of Heidegger's work, one finds not a philosophical idea, but rather a *völkish* belief in the ontological superiority of a people and a race... with a 'strong anti-Semitic orientation'" (Faye et al., 2006, p. 58). The question that has arisen from this debate about Heidegger and his role as a Nazi and his thesis about 'Being' has been: "But if Being needs a name, so does Evil. Philosophy's future revolves about such a responsibility" (Grange, 1991, p. 520). The Nazi regime was evil personified, and it engulfed and subjugated many people. Sadly, today there

has been a resurgence of far-right people who have questioned whether the Nazi evils were really perpetrated and/or inflicted harm on others in the name of a fascist-like world-view.

Post-World War II, Heidegger strategically rewrote/edited his overtly Nazi texts that he produced through the war, to better reflect the turn in society and the growing distaste with the Hitler era (Faye et al., 2006; Sheehan, 1988).

According to G. Harman (2007), post-World War II, Heidegger was shunned until about 1949. Was this a time when he could have apologised or at least shown insight into the damage the regime that he supported had caused to millions of people worldwide, including the Jewish people especially? Or maybe the political climate now enabled him to express more authentic views? Heidegger continued to write and publish, including his re-consideration of previous manuscripts which had been retained by his brother. He then lectured in Europe and published in the United States. He died in Germany aged 86 years.

My thoughts regarding Heidegger's actions

From my perspective, it seems that when Nazi rule emerged, Heidegger joined the other people (the inauthentic "anyone") without questioning the authenticity of his actions in supporting such a totalitarian regime. At best, Heidegger's choice was "decisionist" (Safranski, 2002, p. 254). Paskow (1991) took a more moderate line suggesting that as philosophy cannot be separated from one's politics or culture, it is important to read Heidegger's writings with an air of "suspicion" (p. 524); a statement I agree with. Can a person's actions or inactions belie their words? This is something that I consider frequently in my professional life.

I do not support Heidegger's actions and alignment with the Nazi Party as I do not support any regime that subjugates people. Yet, I am mindful that it is easy to hold such views in a situation where one's own life is not threatened by

voicing such an opinion. As Grange (1991) said, Heidegger's post-War silence about the Nazi regime speaks volumes about his lack of remorse for his participation. Perhaps, at best, he was so self-focused that he could not see outside of himself and his thinking.

However, Heidegger remains one of the most significant philosophers of recent times. As Wrathall (2005) said

Heidegger did more than any other thinker of the twentieth century to develop a coherent way of thinking and talking about human existence without reducing it to a natural scientific phenomenon or treating it as a ghostly mind haunting the physical world. (pp. 5-6)

Perhaps Palmer (2007) stated the draw of Heidegger most cogently:

In Heidegger, the development of thought in the philosophical tradition came to life because it was understood as answers to real questions. The disclosure of the history of motivation of these philosophical questions lent to them a certain inevitability. And questions that are understood cannot simply pass into one's stock of knowledge. They become one's own questions. (p. 11)

Heidegger was the start of a new way of considering my Being and my world and interpreting the worlds of others. I use his notions with care and with respect. I now move to Heidegger's disciple and colleague, Hans Georg Gadamer, whose work is more readable and understandable compared with that of Heidegger.

4.2.2 Hans-Georg Gadamer

Hans Georg Gadamer [1900–2002] was born in Marburg, Germany, in February 1900 (Lawn, 2006). His father was an academic scientist who attained his professorship some two years after Gadamer's birth. Gadamer's younger sister

died in infancy and his mother died when he was four years of age. His father remarried but Gadamer did not emotionally connect with his step-mother. However, his father's academic bent is likely to have influenced Gadamer as, after completing school, he also pursued an academic career, initially in the arts. He studied first under Paul Natorp [1854–1924] at the University of Marburg. In 1922, Gadamer contracted polio which affected his wellbeing for the rest of his long life.

In 1922, Gadamer met Heidegger and in 1923, became his protégé when he moved to Freiburg to attend Heidegger's classes. It was during the next year that Heidegger denigrated Gadamer's academic skills, which resulted in lifelong self-doubt and lack of self-confidence (Lawn, 2006). Gadamer changed direction to study language/philology, which remained a life-long commitment (Lawn & Keane, 2011). However, Heidegger supervised Gadamer's ongoing academic work and they remained colleagues for the rest of Heidegger's life, though there is no evidence that Gadamer took Heidegger's stance with respect to the Nazi society that influenced the world for a decade plus. In fact, according to Palmer (2002), there was almost no contact between the two men from before Heidegger joined the Nazis through World War II. Shalin (2010) refuted any connection between these two scholars and suggested that, as above, Heidegger was genuinely involved with the Nazi party, while Gadamer did what he had to while remaining non-sympathetic. Thus, the suggestions that Heidegger and Gadamer were connected through the National Socialist organisation were ill-founded.

Gadamer and the Nazis

Along with many professors, Gadamer signed the "Declaration of Professors at German Universities in favour of Adolf Hitler and the National Socialist State" dated 11 November 1933 (Lawn, 2006). Gadamer was a privatdozent (teacher who was paid dependent on the number of students in his classes). If the academic staff did not sign, they feared having to emigrate from their home and

work/studies (Grondin, 2003). Later, Gadamer explained that his signature was given at a rally at Marburg and he only signed to say that he did not oppose Hitler (Grondin, 2003; Shalin, 2010). It is also widely suggested that the scholars (and others) of the day had a belief that the “madness” of Nazi terror could not last and a new society would soon emerge; however, as history showed, this was 12 years (1945) and about 60 million lives later (Lawn, 2006).

A signal that Gadamer did not support the regime was shown in that he did not publish during the Nazi period (Grondin, 2003). However, there are critics who suggest that Gadamer was more culpable than previous authors have suggested. Teresa Orozco (1996) proposed that Gadamer had to make “political concessions” (p. 18). She reinterpreted Gadamer’s 1934 essay “Plato and the Poets” into implying fascist support. Molin (2000) extended this argument and cited Gadamer as portraying “himself as being a ‘liberal’” (p. 40). In a German context this means having been a “national liberal” (Molin, 2000, p. 40)—a supporter to the law and parliamentary process, though someone who is not opposed to the realisation of national aims by the traditional means of power politics. However, most other scholars rebutted this assertion as being a product of his research in the 1920s (Lawn, 2006; Shalin, 2010). Palmer (2002) is identified as an ardent supporter of Gadamer not being aligned with the National Socialist movement as he challenged both Wolin and Orazco’s ‘facts’, claiming they had misconstrued many terms that Gadamer promoted. Perhaps this discourse demonstrates the power of hermeneutical phenomenology, in that authors interpreted and left questions unanswered about who and why eminent thinkers and philosophers joined a regime that was so horrific for the people.

From what I know, I do not share the same concerns about Gadamer being supportive of the Nazi regime; rather, it appears that he did what he needed to at the time, and otherwise remained at least neutral. This view is consistent with other writers (Grondin, 2003; Lawn, 2006; Palmer, 2002; Shalin, 2010) and

an overall belief that Gadamer was not complicit in any dealings with the Nazis.

After World War II

Post World War II, Gadamer continued to lecture and to work on his magna opus, "Truth and Method", which was eventually presented in 1960. According to Lawn (2006), this led to the recognition of him as a world-class philosopher, which was extended when Truth and Method was translated into English in 1975. Gadamer then became a celebrity speaker in the United States, until he was a centurion in age. He died in 2002, aged 102 years.

As Lawn and Keane (2011) said:

The work of Hans-Georg Gadamer – unlike a good deal of modern philosophy – is significantly lacking in abstruse and highly technical terminology. Because his work emphasizes our dependence upon every day, that is non-philosophical language, he is at pains to develop ideas that avoid the all too easy descent into complex and bewildering terminology. (p. 1)

Such writing makes Gadamer a more accessible philosopher to read and understand when interpreting the experiences of people. I continue the line of more readable philosophers to Max van Manen who writes in the present day. He is a commentator about Heidegger and Gadamer.

4.2.3 Max van Manen

According to his website, maxvanmanen.com, Max van Manen [1942 –] was born in the Netherlands, where he completed his education. His first language was Dutch. Early prominence came when he compared the different meanings of the word "care" across English, Dutch, and German languages; the latter two which incorporated the notion of care and worry being connected (van Manen,

2002). I have taken his notion of ‘care’ into my study as will be evident in Chapter 7.

In 1967, van Manen immigrated to Canada. Initially, he was a schoolteacher. He completed his academic education with a PhD at the University of Alberta and spent four years lecturing in Toronto before returning to his alma mata, University of Alberta, where he has taught and undertaken research since. The website identifies six major foci for van Manen’s research, two of which have become of special interest to me: his explication of hermeneutic phenomenological methodology and how to write up phenomenological research. In the methodology, van Manen proposed four existential—lived relationship, lived time, lived body, and lived space—which guide my data interpretation in Chapter 6.

I now turn to the fourth scholar, Martin Buber, who is considered to be a relational anthropologist. When I was planning and executing my study, the relationships that the participants spoke of when experiencing professionals in the family court became important to think about. Buber’s writings offered a way of understanding these notions.

4.2.4 Martin Buber

Martin Buber [1878–1965] was born in Vienna. His family roots were Jewish. His parents separated when he was three years of age. His mother deserted him which led to a feeling of loss and an early experience of the importance of relationships (Ventimiglia, 2008). Buber was raised by his Jewish grandparents and became multi-lingual, perhaps an early sign of his later interest in language (Zank & Braiterman, 2014). His grandfather produced the first editions of modernised rabbinic literature. His grandfather’s reputation opened doors for Martin Buber when he became affiliated with Hasidic and Zionist principles (Zank & Braiterman, 2014).

When he was 22 years, he and his wife, Paula Winkler, moved to Berlin. Buber became editor of the Zionist publication “Die Welt”. Between 1905 and 1912, Buber edited 40 social monographs in a series entitled *Die Gesellschaft* which translates to ‘Society’ (Friedman, 1999). In the introduction to this series, Buber used the term “*das Zwischenmenschliche*” which “stood for the social-psychological – an impersonal process in which individuals participate, a process that happens between individuals” (Friedman, 1999, p. 404). Buber’s Jewish culture permeated all his writings, primarily about relationships with other beings and their environment (Blenkinsop, 2005; Friedman, 1999, 2002; R. G. Smith, 2010; Winetrot, 1963; Zank & Braiterman, 2014). Although “I and Thou” (published 1923) and “Between Man and Man” (first published 1947) may be his most recognised books, Buber regularly published, with many of his texts being considered religious in nature (R. G. Smith, 2010; Zank & Braiterman, 2014). R. G. Smith (2010) considered “I and Thou” to be a poem and suggested that it be read as such. He also noted that reading Buber is akin to a spiral process where different parts illuminate obscurities, and the present reading relates to the past, which is reflective of Buber’s beliefs and expressions of these.

Buber’s contribution to philosophical thought has been to speak to relationships. He separated two major types of relationships, the ‘I- It’ and the ‘I- Thou’. I-It relationships relate to my involvement with an object which I can study but not interact with; or when I partake in an inauthentic dialogue with another person which is consistent with Buber’s (2010) notion of a monologue. In contrast, I-Thou relationships occur in two situations: between two mutually connected people and between a person and God. The space between these beings is known as the ‘between’ and, for some, this may be known as the ‘spirit’ (Buber, 2014). Kaufmann (1970) elegantly explained the difference when he said,

[Buber] singled out two relationships: the in which I recognize It as an object, especially of experience and use. And that in which I respond with my whole being to You. And the last part of his book dealt with the divine You. (p. 16)

As examples of Buber's importance on the world stage, as a Jewish philosopher who stayed true to his religion and world view, he was nominated for the Nobel Literature prize on 10 occasions, the Nobel Peace prize on 7 occasions (Wikipedia, 2021), and in 1953 was the recipient of the Peace Prize from the German Book Trade (Litt, 2017). R. G. Smith (2010) commented "But the pioneer work of Buber (with respect to relationships) will in any event remain a classic" (p xii). Buber is credited with being the father of dialogical psychotherapy due to his focus on the relationship between people and especially between client and therapist (Friedman, 2002, 2003). The confirmation of each person in the dialogue as being unique is a key focus (Friedman, 2002).

After World War II, Buber and Heidegger met. According to Mendes-Flohr (2014), Buber spoke of this meeting:

We were able, Buber relates, to laugh about ourselves, two elderly, contentious men, full of prejudices and resentment, less about our own than about the prejudices and resentment of our environment—here against the Jews, and there against the Nazi Rector. (p. 3)

However, Buber later denied that this meeting involving a walking together was in anyway a reconciliation. This description and repudiation demonstrated the feelings of the times and contemporary academics' repudiation of Heidegger for his support of the Nazis.

Arguably, Buber's contribution to my study is in his descriptions and unpacking of the dialogue and what happens 'between' the participants and I,

who were each focused on understanding my topic: children and young people's experiences of seeing professionals in the family court:

When two men converse together, the psychological is certainly an important part of the situation, as each listens and each prepares to speak. Yet this is only the hidden accompaniment to the conversation itself, the phonetic event fraught with meaning, whose meaning is to be found neither in one of the two partners nor in both together, but only in their dialogue itself, in this "between" which they live together. (Buber, 2007, p. 367)

Buber died in June 1965 aged 87 years. He left a legacy about relationships and the dialogues required to sustain these, which I will be using in part to interpret the data in my study, especially in Chapter 8.

I am informed by the writing of each of these four men when I consider the experiences of young people who meet professionals on their journey through the family court. I will now speak to the methodology in greater detail before discussing some of the key notions from my methodology that need explanation.

4.3 What is hermeneutic phenomenology?

"The goal of phenomenology is to describe lived experience" (Carpenter, 2011, p. 74). Hermeneutic phenomenology is situated within qualitative research paradigms, arguably at the opposite end of a research continuum with behavioural psychology and randomised control trials at the other. Hermeneutic phenomenology allows the study of individual experience with an attempt to understand, at a deeper level, what the experience of this particular person is within their culture, space, time, and inter-relationships. It is of note that such research gets 'closer to' rather than pretends to reveal the 'truth' of an experience. There is no ending of interpretation as each interpretation may reveal a further understanding, while covering something else (Heidegger, 1962).

Phenomenology celebrates the authentic voice of the individual person who has had the experience. It is not thematic or collecting data into a group model or representation (Caelli, 2000; Flood, 2010; Lawthom & Tindall, 2011). Each person offers their own unique account of how it was for them, on that day, in that place, with all the background information and pre-judgements that they brought to the encounter.

According to Heidegger (1962), phenomenology is about two notions; that of 'phenomenon' "*that which shows itself in itself*" (p. 51, italics in original) and that of 'logos' "discourse" and "letting something be seen" or "discovered" (pp. 56-57). My study's phenomenon is the young person's lived **experience** (my emphasis) within the context that they are engaging with professionals from the family court. I am seeking to uncover the experiences of young people as discussed with them, some professionals, and one parent.

Phenomenology does not have a set method and is seen to be "inductive and descriptive in its design" (Carpenter, 2011, p. 74). There are guidelines available to aid understanding and interpreting of the phenomena (Carpenter, 2011; Smythe, 2011; Smythe et al., 2008; van Manen, 1990, 2007). These will be discussed further in the next chapter where the method is addressed.

Gadamer (1975) talked of hermeneutics being "the art of understanding" (p. 164). Whilst initially hermeneutics was applied to the interpretation and understanding of theological scriptures, it has, more recently, been applied to human sciences and texts. Hermeneutics is based in the language of humans and is the understanding and interpreting of the text or the voice. From a Gadamerian perspective, my understanding is always historical (Thaning, 2015). There is an acceptance that my own prejudices, biases, views and values, as discussed in Chapter 1, will also be interacting with the narratives of the people who shared their experiences, and that the interpretation can only be mine. Within a six-person research group, N. King et al. (2008) demonstrated differences in

interpretation of an interview about the concept of mistrust, which reinforced the reality of the individual's interpretation.

In this study, I want to interpret deeper than my taken-for-granted understandings. I want to come to understand more about the experiences of young people who see professionals in the family court. How is this experience for those young people who do not have a choice about being on this journey through the family court? To understand, I need to further unpack the notion of 'lived experience' as this is crucial to my methodology.

4.3.1 The phenomenon of lived experience

What is experience? Gadamer (1975) said "something becomes an 'experience' not only insofar as it is experienced, but insofar as its being experienced makes a special impression that gives it lasting importance" (p. 56). Thus, an experience is more than being there; it involves a connection which leaves a lasting impression that can be spoken or written about, understood and interpreted by another. Further Gadamer says that "[e]very experience is taken out of the continuity of life and at the same time related to the whole of one's life" (p. 63). This is a nod to the past, present, and future as the continuity of life which one experiences, and the importance of the hermeneutic circle, while reflective of the investigator's own life, foreshadows, and prejudices. With respect to myself I discussed these in Chapter 1.

Buber (2014) considered experience in terms of the dialogical interaction of two individual and independent people. The uniqueness of each individual person needs to be confirmed. If, then, each person unreservedly enters into the dialogue seeking understanding, empathy, and engagement with the other's thinking, a mutual dialogue has been achieved (Friedman, 2002). Both persons in a two-person dialogue must fully participate with the other to open the way for shared understanding. There is no room for each to keep to themselves; rather, this "betweenness" of the relationship is the experience (Buber, 2010,

2014). As Friedman (2003) said of Buber's dialogical experience, "I meet you from my ground and you meet me from yours, and our lives interpenetrate as person meeting person in the life of dialogue" (p. 55).

Within research, lived experience is experience that is lived, that happens to a participant, is noticed, and comes to the attention of and matters to the researcher. As van Manen (1990) said:

Lived experience is the starting point and the end point of phenomenological research. The aim of phenomenology is to transform lived experience into a textual expression of its essence – in such a way that the effect of the text is at once a reflective re-living and a reflective appropriation of something meaningful: a notion by which a reader is powerfully animated in his or her own lived experience. (p. 36)

So much occurs daily that does not get noticed when one is concentrating; for example, breathing or the weather outside. Experience is 'mine'. Through language I may share part of this experience with another, but never the whole. I need to be fully involved, in all aspects of my being, with the 'other' to authentically listen to and hear their voice and experiences. However, there is always much that is left un-said and un-noticed. As I uncover one lived experience another may become concealed; as I find one possible answer, another may be hidden. This research will take me 'on the way' to finding answers about the lived experience of young people who meet professionals in the family court but, at the end, I will be left with questions.

In the last section I have addressed the ideas around hermeneutic phenomenology and lived experience. I now move to discussing specific notions that are needed to unpack my interpretation of the data around the lived experience of children/young people who meet professionals in the court.

4.4 Notions within my study

This discussion of important notions that I draw on in the upcoming chapters is more than a glossary of terms. Philosophical notions require understanding to allow the uncovering and interpretation of the complex meaning within. The first two concepts, that of Dasein, also known as Being, and Being-in-the-world, underpin Heidegger's philosophy, so are addressed first.

4.4.1 Heidegger and Dasein

Heidegger's (1962) principal conceptualisation is that of Dasein, which is also known as 'Being' with a capital 'B', and can be interpreted varyingly as being human, existence, or being-in-the-world. "*The 'essence' of Dasein lies in its existence*" (Heidegger, 1962, p. 67, italics in original). "Dasein is a being that does not simply occur among other beings. Rather it is ontically distinguished by the fact that in its being this being is concerned about its very being" (Bonevac, 2014, p. 167). Thus, a facet of Dasein is to wonder about itself, its own existence and its own Being (van Manen, 1990)—to reflect. Heidegger separated man from other beings and objects as being the only entity to have Dasein. This separation includes that humankind can think, plan, have forethoughts, and interact and interpret these interactions with others. "Only Dasein has existence and only Dasein has mineness" (G. Harman, 2007, p. 60); which means, 'my' experience is always uniquely my own.

All knowledge is within and available within the world in which I live (G. Harman, 2007). To know something, it must concern me, and I must have a relationship with the thing (Dahlstrom, 2013). "Knowing is a mode of Dasein founded upon Being-in-the-world" (Heidegger, 1962, p. 90). Knowledge is gained when the essential is uncovered into the truth (Cerbone, 2010; Dahlstrom, 2013).

4.4.2 Dasein is within-the world and with others

Dasein lives-in-the-world within a particular context, time, language, and culture, which ‘I’ know as it is a part of ‘me’. I interpret the entities in the world that I am aware of, that ‘matter to me’, that I am interested in and notice. For example, when the wind blows down my gully, it can be a cold wind that is too hard and blowing the trees; or it can be a cooling wind in summer; or it can be a heralding rain wind. It depends on what I plan to do that day as to how I perceive and experience the wind. When something is broken or not there, I then notice its presence or absence, but I am unaware of all the things and relationships around me. I focus on what matters to me at this time, in this place. According to G. Harman (2007), Dasein’s Being is its existence which occurs in-the-world and with-the-world. Dasein is constantly embedded within and entwined in the world, unable to be separated (Horrigan-Kelly et al., 2016). In spite of this individualistic approach, we can never talk about ‘Being’ without recognising that we are always situated with others, other Dasein, in a specific context, ‘being-there’ (Horrigan-Kelly et al., 2016) and being-in-the-world.

There are two existentials related to being-in-the-world—state of mind and understanding (Heidegger, 1962). State-of-mind refers to an internal mood. Dasein is always within a mood” (Lebech, 2007, p. 6). “State-of-mind is *one of* the existential structures in which the Being of ‘there’ maintains itself” (Heidegger, 1962, p. 182). Understanding has a number of components such as the ability to perceive, project, see, and disclose, to open a way while recognising another way is closed.

Underlying these existentials are three equiprimordial notions—interpretation, language, and discourse. Understanding is closely aligned with interpretation. “In interpretation, understanding does not become something different. It becomes itself” (Heidegger, 1962, p. 188); that which is understood, becomes known “as”, which is the interpretation (Heidegger, 1962, p. 189). I see this ‘as’

a thesis, which is my interpretation of this book I am writing about my study of children/young people's experiences engaging with professionals in the court. A sign is needed in words to have an understanding and interpretation, this refers to language with the speaking of the words being discourse. "The intelligibility of something has always been articulated, even before there is any appropriative interpretation of it. Discourse is the Articulation of intelligibility... The way in which discourse gets expressed is language" (Heidegger, 1962, pp. 203-204).

Thus, I understand that these five notions constitute an understanding and interpretation of Dasein, my being in the world, where language and discourse are the signs. Overlying all is the mood which, at the moment, has changed from perplexity to some clarity and seeing of the path.

I now turn to exploring more of the complex philosophical terms that have and will appear in my study.

4.4.3 Heidegger and equipment in my world

Central to our being-in-the-world, Heidegger (1962) conceived of the world having equipment, things that were present-at-hand or ready-to-hand. "Heidegger characterises our dealings with the surrounding world (environment, or Umweltlichkeit) through the use of equipment (Werkzeug)" (K. Nielsen, 2007, p. 456). An item of equipment that is 'present-at-hand' is brought to one's mind. This contrasts with when I use the equipment though may not be aware of using it, the item is termed 'ready-to-hand' (Heidegger, 1962). When I use the hammer with a nail to build something, the hammer is 'ready-to-hand' even though in the hammering I may not be focused on the hammer but on the finished product. The hammer becomes 'present-to-hand' when my neighbour comments that "it is a fine looking hammer". My computer is ready-to-hand as I write my thesis, but most of the time I am unaware of it as my thinking is the focus. It is only when the object breaks and

becomes ‘unready-to-hand’ or for some reason it matters that I focus on the handiness of the object, that it is then ‘present-to-hand’ (Dourish, 1999). “Heidegger stresses … that the handiness of a piece of equipment is only grasped in its use” (K. Nielsen, 2007, p. 457). Things that are ready-to-hand have a place and a time where they are available (or not, so unready-to-hand). My understanding of my world comes from my interactions and manipulation of the equipment in my world (K. Nielsen, 2007).

4.4.4 Prejudices and fore-meanings

As a part of interpretive phenomenology, it is important to identify my prejudices and pre-understandings that I bring to my research. These come from where I do my culture, family experiences, education, relationships with others, and my own previous experiences in my world. Gadamer (1975) used the term ‘prejudice’ as a phenomenon that simply indicates we come to any experience with our taken-for-granted pre-thinking, which may be positive, negative or somewhere in between. Drawing on Heidegger, the term prejudice has phenomenologically come to mean my fore-havings, my fore-sights, and my fore-conceptions (Gadamer, 1975). These are the beliefs and values that I carry into my relationships-within-the-world. It is from my fore-meanings that I interpret my world and the interactions I have with others. Husserl and other philosophers recommended “bracketing” these and not acknowledging them. Heidegger and Gadamer argued that these are a part of my Dasein, and it is impossible to bracket them (Smythe et al., 2008; Smythe & Spence, 2012; Spence, 2017). From my clinical perspective, I agree with this impossibility, as I will explore further below.

By understanding and directly seeking to address my prejudices, phenomenology separates itself from the natural sciences where researchers deny having biases or prejudices. In human sciences, and especially psychology, there is an expectation that a researcher comes to a study with a value-neutral attitude and can offer an objective perspective. Clinical

psychology has aligned itself with a positivist evidence-based model as have other scientists such as physicists and mathematicians. This refers to those sciences that have action and reaction using natural objects that will do the same each time (Albee, 2000; D. B. Baker & Benjamin, 2000; Giorgi, 1995; Petersen, 2007; J. A. Smith et al., 1995). The dilemma for psychology is that a person is not an object; rather, it has a subjective reaction which may not be predictable and replicable (Giorgi, 1995). In essence, human beings are not inanimate beings as rocks and waterfalls or measurable as a chemical reaction. I have an ability to know myself and reflect and emote, as it is considered animals do not. Humans are aware of our classifications by culture, colour, religion, or gender and our interactions with others (Raeff, 2019); "...in psychology, the object or phenomenon being studied possesses the same type of consciousness as the researcher. This fundamental fact is missing in the natural sciences" (Skea, 2016, p. 1134).

As a psychologist who has been schooled in more quantitative objective expectations, I have moved to embrace a hermeneutic view as informed by Heidegger (1962) and Gadamer (1975) where I recognise I cannot escape or free myself from the fore-understandings I bring. Thus, in Chapter 1, I sought to identify my assumptions and to keep them open to question throughout the thesis.

4.4.5 Uncovering and understanding

Understanding must be conceived as part of the event in which meaning occurs. (Gadamer, 1975, p. 164)

Hermeneutic phenomenology is focused on the phenomenon of uncovering/understanding a person's experience (the phenomenon) or truth which is recorded in text (which is inclusive such as art, poetry, or any form of recording). Smythe (2011) focused on uncovering the experience that is often "covered over, taken for granted and/or silenced"; that is "unique, dynamic and informed" by both the past and the future; that "resonates with others" (the

hermeneutic nod); and where “Meaning lies between the lines of what is said to be uncovered” (p. 36). Thus, this research will be using the participants’ narratives to uncover, interpret, and understand children/young people’s lived experiences when they meet professionals from the court.

4.4.6 Heidegger and thrownness

“‘Thrownness’ is Heidegger’s name for the way that we always find ourselves ‘thrown’ into or ‘delivered over’ to circumstances that are beyond our control” (Wrathall, 2005, p. 35). The children/young people in my study who met with the court professionals have been ‘thrown’ there. They had no say or control over their parents’ separation or inadequate parenting. Events that I have been thrown into include my family of origin, my culture as a New Zealander in bi-cultural Aotearoa New Zealand, and my gender. I can have some choices about how my life is lived given these starting points; but, for some people, their ‘thrown’ history has placed significant barriers in place.

4.4.7 Solicitude and care

How I care about others who matter to me, is termed solicitude. Solicitude can occur in two ways: “leaping-in” (Heidegger, 1962, p. 158) and taking away from or dominating another, which can be appropriate at times; or “leaping ahead” (Heidegger, 1962, p. 159) where I scaffold and support the other to achieve in their own way. Joensuu (2012) suggested that care and solicitude are the basis of all human relations with the world and relationships with each other, the essence of being human.

4.4.8 Gadamer and the hermeneutic circle and the fusion of horizons

The hermeneutic circle is a key focus of phenomenological interpretation and understanding (Gadamer, 1975; Heidegger, 1962). A circle implies feeding back into itself, whereas I have perceived this to be more akin to a spiral which delves down deeper into the uncovering and interpretation. This circle/spiral is used to “interrogate” the past to find the new, the future, and to place this in

the present (G. Harman, 2007, p. 57). Using this circle approach, I am constantly looking at the big picture or the small piece and entwining them in and out to uncover, interpret, and, hence, understand the world and especially the data/experiences of my participants. I am constantly aware of the ‘big picture’, each of the parts that contribute and the inter-play between these two. A constant in-out focus is needed to provide interpretation of the unique experience in time that the participants are sharing. The whole is greater than the sum of the parts.

4.4.9 Buber, van Manen, and dialogue

This last notion of dialogue goes to the heart of my hermeneutic phenomenological study. I wanted to understand the experiences of children/young people who met professionals from the court. To achieve this, I needed to dialogue with my participants, to gather their experiences so I could understand and interpret these.

The word dialogue comes from two old Greek words—“dia” meaning across or between, and “legien” meaning to speak (Harper, 2021). This definition is consistent with the use of the word by Buber. Martin Buber wrote about relationships and dialogue ‘between’ people; and experienced by people and objects (Blenkinsop, 2005; Buber, 2007, 2010, 2014; Friedman, 2005; Wolfson, 1989). “The fundamental fact of human existence, according to Martin Buber’s philosophical anthropology is “person with person” with the space “between” them, needing to be understood (Friedman, 2005, p. 138). Buber’s strong Jewish belief system underpinned his thinking as his dialogue extended to the “eternal Thou”, known as God (Buber, 2010).

To explain further, Buber speaks of the different types of dialogue, from that which is genuine, to that which is technical, to that which is monological (Buber, 2014). Genuine dialogue involves two or more people meeting and sharing their deepest connection with a focus on the two “spirits” remaining

intact but very aware of the other. This sharing may be with words or silence, it is the space 'between', to interconnectedness of the exchange that makes it authentic and genuine, an I-Thou relationship. Buber (2007) wrote: "It is true that my basic attitude can remain unanswered, and the dialogue can die in seed. But if mutuality stirs, then the interhuman blossoms into genuine dialogue" (p. 372).

...when two persons "happen" to each other, then there is an essential remainder which is common to them, but which reaches out beyond the special sphere of each. That remainder is the basic reality, the "sphere of the between." The participation of both partners is in principle indispensable to this sphere. The unfolding of this sphere Buber calls "the dialogical." The psychological, what happens within the souls of each, is only the secret accompaniment to the dialogue. The meaning of this dialogue is found in neither one nor the other of the partners, nor in both taken together, but in their interchange. (Friedman, 2005, p. 138)

In contrast, technical speaking involves sharing information so may be one-sided, with the expert the speaker. Monological talk is inauthentic dialogue where two (or more) people talk without reference to the other as they have their pre-set ideas. Other words for monological dialogue are chatter or gossip. These relationships are more I-It relationships due to their lack of mutuality.

Buber's formulation of the two primary words, I-You and I-It, is intended to illustrate the quality of relationship that is being experienced. They represent the state of an individual's inner attitude (Rustin, 1999). To further contrast: "The particular *Thou*, after the relational event has run its course, *is bound* to become an *It*. The particular *It*, by entering the relational event, *may* become a *Thou*" (Buber, 2010, p. 33).

It is important to remember that I can choose which relationship to enter into: to open myself up to another (which raises the possibility of an I-Thou interaction) or to close them down (which is an I-It interaction). If I am interacting with an object, this is an I-It interaction as the object cannot give back.

van Manen (2014c) also spoke to the importance of dialogue between people. He spoke of two people meeting (usually) and said: "A good talk happens between people who experience a special affinity or attunement to each other—and not only to each other, but also to their shared world" (van Manen, 2014c, p. 31). Dialogue is the sharing of the signs of words to accept and embrace another in an authentic relationship where ideas are transmitted and shared in the space between the people.

4.5 Conclusion

In this chapter I have introduced the key philosophers and notions that will inform my interpretation of the data around children/young people's experiences of engaging with professionals in the family court. As I was exploring the notions, I became aware of how Heidegger, Gadamer, and Buber all started their major thinking in the late 19th and early 20th centuries. World War II was a cataclysmic event to which each adapted differently. Yet, they each wrote about similar ideas including the importance of listening to form a meaningful authentic relationship with another; thinking, looking at, and interpreting from one's own life experience and prejudices. They raised questions about the covering and uncovering of events and thoughts, while remembering that as one is uncovered another is hidden. They each explored the meaning of understanding and interpreting another's life experience from within one's own life experience. Joining another, not overtaking them or withdrawing from them, is the key to my understanding another's life experience. This leads me to the next chapter where I will describe how this methodological approach translated into method as I undertook the research.

Chapter 5 The Way and the Path to my Study

Method, or ‘the way’ must also embrace Heidegger’s understanding of Dasein as being-there, being-open, being in-the-play, going with what comes, awaiting the moment of understanding. (Smythe et al., 2008, p. 1392)

A phenomenological study is about the phenomena: “that which shows itself in itself” (Heidegger, 1962, p. 51 italics in original). It is about uncovering the phenomena whilst recognising that, as I do so, I am covering something else. According to Heidegger (1962), Gadamer (1975), and van Manen (1990), there are no pre-determined strategies and techniques to conduct the study as there are in a positivist scientific study such as a randomised control experiment. However, there is a way, a following of paths to the clearing to find “the essential nature” (van Manen, 1990, p. 29) of the phenomenon. Time, writing and rewriting, thinking and interpreting mark the method, along with reflection and reflexion on my fore-conceptions and prejudices (Chapter 1), are all involved in my study. This chapter will unpack the method for my study, with the successes and challenges involved. As a new academic researcher, the challenges were real and thought provoking. I will attempt to faithfully record my story about my research.

I turned to the notion of the experience of children/young people who see professionals in the family court. I have been interested in how it is for the child/young person who has been ‘thrown’ into their parents’ separation, or where care and protection issues have been raised, and who then are introduced and expected to speak with a variety of professionals mandated by the Court. These professionals could include the children/young person’s lawyer, a social worker through Oranga Tamariki, a psychologist (if a specialist report is sought), a Judge, along with community people such as counsellors, therapists, and supervised contact providers.

In understanding my method, I sought “to stay close to experience itself (ontologic) rather than try to articulate a more generalised analysis of essence (ontic)” (Smythe et al., 2008, p. 1390). I tried to listen carefully to the people who participated in a conversation where the children/young people shared their experience of engaging with professionals and the adults developed their interpretations as to how children/young people experienced meeting the professional. I then thought about what was said, wrote and rewrote, as my interpretation and thinking developed. More questions led to more thinking which is never finished. My method has led to my interpretation of the children/young people’s experiences of engaging with professionals from the Court.

This study is not one that can be replicated nor are the answers in numbers or facts. “Stories of experience from a group of individuals, in which their own standpoints of time, place, culture and experience are embedded, are interpreted by researchers who bring their own prejudices” (Smythe et al., 2008, p. 1396). The interpretations of each participant’s story are drawn from my understandings, with all my pre-conceived ideas and experiences. As I delve into understanding, this raises more questions. Again and again I came to realise there is no one truth. I hope that the reader will find more questions and embrace and consider the participants’ interpreted experiences in a different way. I can only point towards the experience, which is withdrawing as I draw attention to glimpsed meaning (Heidegger, 1962). By opening this conversation within this research study, potentially my practice can be enhanced, and others will glean insights that mean children/young people’s experiences may be positively impacted in the future.

While undertaking this study, I was also a practicing clinical psychologist in the family court. This meant that most weeks I would see at least one child/young person whose family was a part of the court system. In my professional role, I would talk with the child/young person about their family, their fears and

hopes, their experiences and the effect of these on other family members and themselves. Often the child/young person had been traumatised in some way by their family-of-origin experience. However, this trauma did not invalidate their story; rather, it added to the experience. Some children/young people are babies, infants, toddlers, and pre-school children with limited language. However, as the saying goes “behaviour as a picture speaks/tells a thousand words”. Comfort, attunement, and being able to be settled speaks to the child’s sense of security and attachment. That is what I look for and try to understand on behalf of the very young pre-language child. With older children, their words are augmented by observations of their behaviours and my interpretation and understanding of the underlying issues that contribute to complex interactions. So, in my day-to-day life, I involve myself in the thinking, listening, challenging, writing, thinking, and rewriting that is all integral to hermeneutic phenomenology in a clinical sense (Smythe, 2011; Smythe et al., 2008). In my report about the child/young person to the court, I write about their experiences within their family and daily life—sometimes in direct quotes and sometimes by summarising this akin to a crafted story (Crowther et al., 2017). This is when the key facets are identified and grouped into a story that highlights the experience to which I refer. Kafle (2011) directly referred to the practicality and clinical focus of the method of hermeneutic phenomenology. This is the art of psychology which, arguably, is as or more important than the positivist behavioural notions of my training and experience.

For my research I was very much guided by my supervisors, Professor Smythe and Dr Dickinson, with whom I met regularly and who were very willing and committed to feeding back about my iterations and thinking. Alongside these conversations I was reading about methods applied to hermeneutic phenomenology (Crist & Tanner, 2003; Holroyd, 2007; C. M. Johnston et al., 2017; Kafle, 2011; Miles et al., 2013; Smythe, 2011; Smythe et al., 2008; Smythe & Spence, 2012; van Manen, 1990). All these erudite scholars pointed me towards

the paths which I forged through my own woodland using words as the signs towards interpretation.

Phenomenological method, in particular, is challenging, because it can be argued that its method of inquiry constantly has to be invented anew and cannot be reduced to a general set of strategies or research techniques. (van Manen, 2014b, p. 14)

This chapter follows my chronological timeline, with the segments often intermingling. There was order in the frequent chaos. I start with setting the scene by addressing the topic of researching children, as this had its own pitfalls due to the tensions between vulnerability and agency. It has continued to test my thinking throughout the study and in my practice. I follow this topic by discussing how I came to set the research question; how I came to select the phenomena I did, among the options available. I then move to the preparation phase: how I planned the study and applied to the Auckland University of Technology Research and Ethics Committee (AUTEC). During this time, Professor Smythe undertook a conversation with me about my pre-understandings, which continued my thinking. I then turn to the study proper: how the participants were selected; arrangements made to meet the children and young people and the adults; a description of the conversations I had; and how I managed the data. This leads onto a section about building the thesis. I then address the notion of how trustworthy this research is given the small number of participants and that the interpretation is all mine. Finally, I will summarise the chapter which leads towards the data that will be uncovered and unpacked in the subsequent three chapters.

5.1 Research with children

To be human means that one is or was once a child. The experience of being or having been a child is known to every person as an essential condition of his or her existence. (Briod, 1989, p. 115)

Prior to the UNCROC, children as research participants was a more novel approach, as researchers tended to ask adults on their behalf. Children were seen as being vulnerable, less than competent, a 'becoming' adult and without agency (Beazley et al., 2009; Broström, 2012; Inder, 2020; Koch, 2019; Powell et al., 2018; Quennerstedt, 2010; N. J. Taylor, Gollop, & A. B. Smith, 1999; Tisdall et al., 2012). In the three decades since, research with children with their own voices has increased in partnership with the children's rights movement. This movement has been especially prevalent in the education sector (Broström, 2012; Correia et al., 2019; Lillard, 2012; Ó Breacháin, 2016; Quennerstedt, 2011; Terreni, 2013). Research with children has focused on article 13 of UNCROC and how children can participate. Hart (1997, 2013) is credited with creating a ladder or continua of participation from adult manipulation of and speaking for the child/young person participant at one end, to a child/young person participant who drives the research in consultation with adults at the other end. Today, it is accepted that children and young people are valid research participants. Somewhat cynically perhaps, Beazley et al. (2009) commented that childhood researchers focus on children who are of an age and maturity to comment, those of 10–17 years; as opposed to infants, toddlers, and pre-school children. However, today there is research with pre-school children using play or drawing as a medium (Broström, 2012; Danaher & Broiod, 2008; Koch, 2019; Lillard, 2012; Lucas, 2017; Margett & Witherington, 2011; I. Smith, 1991). In my professional practice, behaviour can tell a story of many words.

Danaher and Broiod (2008) wrote about researching with children using a phenomenological method to allow the capturing of what it is like to be a child as they experience the world with more inquisitiveness and wondering compared to adults. There is a need for language to be available at some level; even if only to interpret and make meaning of a child's scribble or artwork. If a child could not speak, then interpretation is from the adult's world and may entirely subvert what the child was trying to communicate. Thus, Danaher and

Briod promoted that using phenomenology more traditionally, with words being the signs to the meaning and able to be interpreted, is a useful way to capture children/young people's lived experiences.

In this study, consideration of the literature guided thinking about how to give children/young people participants agency, so that they could authentically participate to share their lived experiences (Davidson, 2017; Lucas, 2017; Tisdall, 2016). In line with the literature, it is important that participants' assent is sought; that they are willing to discuss their experiences with professionals from the family court (Dockett & Perry, 2011). Young people need to be supported to choose a place and time of interview that works for them, and in which they feel safe (Beckhouse, 2016; Koch, 2019; Lundy, 2007; Oliver, 2016). Ongoing open-ended questions are encouraged to promote story-telling as this is most associated with free recall (Crane & Broome, 2017; Kennan et al., 2018).

Children are not only relevant and competent witnesses to the process of their parent's divorce, they are also the most reliable witnesses of their own experience. (Butler et al., 2006, p. 99)

I believe that children have meaningful experiences about their experience of going through Court procedures that they can share, and which can be interpreted. Having recognised this as my area of interest I then pondered my specific research question.

5.2 Setting the question

Hermeneutic phenomenological questions are about experience and meaning (Smythe, 2011). My interest in hearing children/young people's voices has been addressed previously. I became aware of the effect on children/young people from my visits. One young lad, with tears in his eyes and anguish in his voice, put his arms out to each side while he rocked side to side and cried "Mum pulls me this way and Dad pulls me this way. I don't know who to choose". This alerted me to thinking about the effect of my visiting children/young people,

where I visited them. Were there more intense ramifications on the child/young person as a result of my visits than I was aware? The literature had told me about interviewing children and their loyalty crises in the midst of their family's involvement in the family court (Ahmad et al., 2016; Banham et al., 2017; Benia et al., 2015; Bertrand et al., 2012; Cossar et al., 2014; Francia & Millear, 2015; Inder, 2020; Parkinson et al., 2007; Stokkebekk et al., 2019; Target et al., 2003; Westcott & Littleton, 2008; Westrupp et al., 2015). I wanted to understand and interpret what the experience was for children/young people who engaged with professionals within the Aotearoa New Zealand family court system. In discussion with my supervisors, the question was set: What are the lived experiences of children/young people who engage with professionals from the family court?

Having been drawn to my research question, my participants needed to be children and young people whose family had traversed the family court. With the assistance of a senior family court judge, I sought a blessing and permission to conduct the research from the Principal Family Court Judge (Appendix A). I requested that lawyers for the children could place information about my study and actively speak with clients who were leaving the family court. This was granted. The way was open to begin my research.

5.3 Preparation

5.3.1 Planning the study

Having determined the question, I continued reading about my broad methodology and within the area of children/young people engaging with professionals. I talked with colleagues, from within the Court (see Appendix B for letters of support) and from the hermeneutic phenomenology area. I looked for learning opportunities. Within our class weeks in the Doctor of Health Science, we each had to present on our topic and update our peers about our progress. I began the experience of thinking, writing, and re-thinking. My

research proposal, known as PGR9, was often in front of me. I considered the steps needed and the timelines that I hoped to meet within the parameters of the expectations of the University. I considered the ethical issues for children/young people; that they may have difficulty re-telling their stories of their experiences within such a challenging time in their family history. I started filling in and preparing research and ethical approval forms. I questioned myself and if I could do this project. Of importance has been my development of a team around me: colleagues from the family court and psychology, family and close friends, including seeking colleagues to advise on Māori and Pasifika cultural issues. All these people have had a contribution from encouragement to talking and mulling to editing. Each of the formal stages will be addressed in the steps in which they occurred below.

5.3.2 Research approval

During the course of my third semester paper, I completed a PGR9 research proposal form to seek approval from the Research Committee at AUT. This form required an outline of the research including a basic literature review which pointed to the gap, discussion of the methodology and method, consideration of participants which fore-shadowed the accompanying ethics approval. A timeline to complete the study was an important consideration. In general, I have been able to meet these guides towards completion. My initial proposal was submitted after a class presentation in early July 2018. It was approved a month later.

5.3.3 Ethics

In a review of ethical standards in Aotearoa New Zealand institutions, Powell and A. B. Smith (2006) recognised the inconsistency of ethical requirements across social science research. They commented that the researcher-child relationship should be the same as a researcher-adult participant relationship and be characterised by “respect, beneficence and justice” (Powell & A. B. Smith, 2006, p. 127). Generally, children were seen to be a part of a group

defined as being vulnerable and needing 'special protection' but it was not often specified what this meant. Parental consent was needed in most cases for children to participate, with the age of childhood not being agreed by all. This vulnerability is highlighted in the following statements from the New Zealand National Ethical Standards for Health and Disability Research and Quality Improvement (2019) where it is stated:

6.19 Researchers should only conduct research with children if comparable research with adults could not adequately/appropriately answer the research question and the purpose of the research is to gain knowledge relevant to the health needs of children.

6.19.a Researchers must balance the benefits of inclusion of children and young people in health and disability research with the need to protect them against unnecessary harms.

6.20 Before undertaking research with children or young people, researchers must ensure that:

if children from a range of age groups can answer the study question, the study involves older children in preference to younger ones.

people experienced in working with children are involved in the design, supervise and conduct the research

if a child participant is under 16 years old and lacks the necessary capacity to give legally effective consent, the researcher gets consent for the child to participate from their parent or legal guardian (Care of Children Act 2004)

they are aware of cultural considerations such as differing compositions of families and/or guardianship rights having been appointed to wider family members.

if consent is provided by a parent or guardian, the researcher still gets the child's assent (agreement) to participate whenever possible and respects a child's refusal to participate in research (p.66).

In my view, these current guidelines are focused on the vulnerability of the child, with little attention to the child's self-agency and ability to share their experiences, no matter their age. An eight-year-old child has an eight-year-old child's perspective which can only be accessed at that time. This guideline is in direct contradiction to my understanding of article 12 of UNCROC. Inder (2020) proposed a model of participation for children and young people based on steps which ensured that outcome was authentic with the child/young person's voice being presented if they wished to take this option. These thoughts are in line with those proposed by Coyne (2010), who proposed that children should be able to decide to participate without parental permission, providing the correct scaffolding is in place.

Research on ethics when researching children, reports that power imbalance is a major consideration due to child-adult socialisation principles where children look up to adults (Alderson, 1995; Aldridge, 2017; David et al., 2005; Farrell, 2005; Gallagher, 2012; Graham et al., 2015; Kutrovátz, 2017; Morris et al., 2012; Powell et al., 2012; Powell et al., 2018; Powell & A. B. Smith, 2006). To counter, Powell et al. (2012) proposed that research with children could be more participatory and led by children. Researcher attitude including reflectiveness and reflexivity are other ways to minimise the power imbalance. These attitudes are key ingredients of my methodology of hermeneutic phenomenology.

In planning my project, I considered the points raised above in my thinking and application. In May 2018, I submitted an application to the AUTEC. Cultural and other issues were raised.

Cultural

Initially, I had wondered if I should limit my sample group of children/young people to Pākehā children. As a Pākehā researcher I was unsure of the appropriateness of me interpreting data from Māori and Pasifika children. I was advised by senior academics that it was important that Māori and Pasifika children were able to participate in this study as their particular issues need to be revealed. I agree with this notion. The study then became inclusive of all children and young people who had met professionals in the family court. I identified and sought advice from cultural consultants for both Tainui (the largest Waikato Iwi for Māori) and Pasifika people. Unfortunately I did not meet any participants who identified as Māori or Pasifika.

Identified issues

In line with AUT policy, my ethics application identified the following issues:

- a) Recognising that I was involved in this field of interest in my professional role as a clinical psychologist, I took steps to position myself as a (student) researcher. I set up a separate research account on my computer with which I communicated with participants. I used AUT letterhead in all communications with participants.
- b) It was vital that I respected the privacy of all participants. They would be known by a pseudonym of their choice, which would be discussed at conversation if not addressed on the consent form. Where participants lived remained confidential and, if the context were important, it would be disguised in the reported data.
- c) I did not engage with any children/young people or families with whom I had a previous professional or personal relationship.

- d) All children and young people and later a parent who I interviewed had to have non-current cases in the Court.
- e) That consent for conversation with children and young people under the age of 16 years needed to be given by a parent or guardian with assent given by the child/young person. Young people of 16 years could provide their own consent.
- f) As the age group of the children and young people I wished to have conversation with, was between 8 and 16 years (reasons below in the participants' section), I needed to develop a selection of information and consent forms: for younger children (8–9 years); for children/young people 9–15 years; for young people 16 years of age and for their parents/guardians (Appendices C and D).
- g) I wished to recognise the child/young person's participation in a way that was not an inducement to take part or could be seen as bribery. I determined that when I returned the crafted story summary of our conversation to them, I would enclose a \$20-25 Warehouse gift card as a way of saying thank you for their participation.
- h) I also offered all participants the option to receive a copy of my final findings, which was accepted by all.
- i) As Smythe (2011) counselled, I was aware that during the conversation a participant may recall negative events that raised issues for them. If I became aware of this, I offered to provide the participant with counselling within their home area. To my knowledge this did not occur.
- j) I was also cautious about whether a participant may have had a poor experience and, in reflecting this back to the participant in a crafted story, a litigious parent might use this to re-open their grievances in the court. If I assessed this risk to arise, I committed to not report this section in the crafted story that was sent back to the child/young person participant.

- k) I addressed the risk to myself as the researcher being in any danger by arranging professional office space to meet with participants. All participants were happy with this arrangement.
- l) Discussion occurred about the confidential storage of all information and ensuring confidentiality of participants.

This ethics application was approved by AUTEC on 17 July 2018 (Appendix E).

Research extension to include adults

It quickly became apparent that in spite of commitments from lawyers to assist me to recruit child/young people participants, I was unable to gain sufficient numbers. Parental gatekeeping of children from research is not unusual (Coyne, 2010; Kutrovátz, 2017; Stötzel & Fegert, 2005). Lawyers who tried to recruit participants told me of parental tiredness, frustration, and a wish to protect their children from any more intervention, even if the result might influence how the system treated other children/young people in the future. From discussions, I was aware that lawyers and psychologists had views about the experiences of children and young persons who saw professionals; so, in October 2018, I sought and gained acceptance from AUTEC to include these professionals and parents as another stakeholder adult, in my research. I added four lawyers and four psychologists who were working in the area of interest. One parent subsequently asked if they could participate. Prior to this approval I had not sought parents and thus was left with one only. If I were doing a similar study again and including adults, I would actively seek more parents/caregivers to better balance their unique positions on behalf of their children. I was also given an introduction to one 16-year-old youth, who had been the subject of youth justice proceedings, though I noted that his parents had separated. I interviewed Daniel as an adjunct to my other five children/young people who were solely in the family court due to their parents' separations. In hindsight, it could be argued that this was a mistake. However, as will be seen, Daniel provided another perspective about the experience of

children/young people engaging with professionals from the court, which arguably could apply across both the family and youth courts. In my view, Daniel's experiences have validity.

5.3.4 Pre-understanding conversation

While I was waiting my approval from AUTEC, Professor Smythe, my supervisor, interviewed me to help me uncover my fore-conceptions, prejudices, and biases. Some philosophers, such as Husserl, and quantitatively-focused scientists, have suggested that a researcher can bracket their own selves out from the research. However, Heidegger, Gadamer, Buber, and van Manen all believed (as do I) that my own connections to the question of interest and the information that I hear and deem to be important to focus on, comes from my life experiences. I am seeing through the looking glass and reflecting about matters that I may have knowledge of but do not realise. I am pulling new ideas forward while others are hiding to open new conversations, about how children/young people experience seeing professionals in the family court. These have been discussed in the Chapter 1.

5.4 The study

5.4.1 Selecting the participants

On the basis of my knowledge and experience of child development that the most useful verbal data would be available from children and young people aged between 8 and 16 years, this group was targeted. This was consistent with other research with children about their experiences (Danaher & Broiod, 2008; Hay, 2003). By the time children are eight years of age, they can order their thoughts, hold and manipulate ideas, and speak clearly of their experiences, often referred to as metalinguistic development (C. L. Smith & Tager-Flusberg, 1982). In hermeneutic phenomenology, words are the signs that point to the phenomena.

By this stage, I had been talking with colleagues in person and by email about my study. As above, once all the approvals were in place, I sent emailed posters to 'lawyers for children' (Appendix F) with an accompanying letter seeking their assistance to recruit possible participants (Appendix G). I also asked them to pass the flyers onto others. To my knowledge, these flyers went to many places in the North Island, which is where I mostly work clinically and have contacts. The aim was to gain a group of child/young people interviewees who could tell their individual stories about their experiences of seeing professionals in the family court.

I regularly communicated with these 'lawyers for the children' to remind them of the research. Quickly I began receiving feedback about the number of parents they had spoken with who refused to even countenance engagement in anything to do with the family court. The common themes reported were exhaustion, not being heard, and a need to rebuild their family. This has been discussed and recognised as being family experiences by others (Coyne, 2010; Hay, 2003; Inder, 2020; Kutrovátz, 2017; Moorhead et al., 2008; Stötzel & Fegert, 2005).

As noted above, the research was extended to include professionals and parents who also had clear views about how children/young persons' experienced seeing professionals in the family court. As suggested by Elo et al. (2014), the professional group was selected purposively to include professionals who had experience of working with children in the family court. Lawyers for children and psychologists were invited to take part and all asked agreed to being interviewed. The parent was a mother of a child interviewed, who asked to be able to speak. In respect to her request, I included her in the research but took care to make no links between her data and her child's. In hindsight, there were opportunities to gain other parents, which I did not take at the time as I was trying to keep the stories to one participant from each family. However, this was not possible because of the difficulties encountered to gain participants.

The participants

With the assistance of lawyers for the children, six children/young people aged 8-16 years, who were prepared to participate in the interview, were identified. Lawyer for the child or the participant would contact me directly to give me the details of the child/young person and their parent, who was prepared to meet with me. This first contact could be by phone to my office, or by email to my dedicated email address. I then phone-called the prospective person or parent to discuss my research and seek their agreement for me to email permission. If the proposed participant was a child/young person, I asked the parent about their age, so I could send an appropriate information and consent form to the child/young person. Within 24 hours, I sent the study information and consent form to the identified email address (Appendices C and D).

Two young people (Daniel and Hugh) gave their independent consent and the other children/young people had parental consent and child assent. In terms of the children/young people, Daniel's reason for his contact with professionals in the family court was different from the others in that he was involved with youth justice under the OTA (1989). This means that Daniel had offended and was receiving Court-mandated treatment and rehabilitation which, if successful, would mean that he would not have a conviction that followed him into adult life.

As above, once permission from AUTEC was received I purposively selected four lawyers for the children and four psychological report writers to create my professional group. As mentioned, one parent asked to have a voice, and this occurred as well. In summary, I interviewed six children/young people; one parent, four 'lawyers for the child', and four psychologists who write reports for the family court. Table 1 outlines the participants and who the children/young people met in their journey through the court.

Table 1: Study Participants

Children/young people, ages and who did they identify engaging with									
Name	Age	Judge	Lawyer	Social Worker	Psych*	Therapy* *	S.C.P. ⁺⁺	Police	Counsel ⁺
Rebecca	8	No	Yes	No	Yes	No	Yes	No	
Aimee	11	No	Yes	Yes	Yes	Yes	Yes	Yes	
Ben	11	Yes	Yes	No	Yes	Yes	Yes	Yes	
Jack	13	Yes	Yes	No	Yes	Yes	Yes	Yes	
Hugh	15	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Daniel	16	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

Adults and their relationship to the children/young people									
Donna			Parent						
Molly			Lawyer for the Child						
Isaac			Lawyer for the Child						
Marie			Lawyer for the child						
William			Lawyer for the Child						
Maria			Psychologist						
Mary			Psychologist						
Emm			Psychologist						
Diana			Psychologist						

* Psychologist; **Therapist; ⁺Therapist/Counsellor; ⁺⁺Supervised contract provider

5.4.2 Making arrangements to meet with the children/young people and professional/parent participants

Once I received agreement to participate from the child/young person and their parent or the professional/parent, I then scheduled the conversation. By either phone or email, I arranged to meet the child/young person at a place of their convenience. I met Daniel on the deck of his home; Rebecca and Aimee at my office; and Ben, Hugh, and Jack at an office in their home-town. All children/young people were seen alone and they said that they were comfortable with this. The professional and parent participants were also seen at a place and time of their choice. Some I interviewed in their or my office, one in a hotel room when I was visiting their town. Two interviews with

psychologists occurred over Zoom. The parent was met in a coffee shop in their home-town.

5.4.3 Clinical and forensic interviews vs research interviews using a hermeneutic phenomenological approach

Clinical interviews occur within health professional-client/patient relationships with a goal of forming a relationship to promote transparent information sharing, diagnosis, formulation of treatment and change (Hunt et al., 2011; Targum, 2011). The goal of forensic interviews is to gain the most information possible about alleged [abusive] events that have been perpetrated on a child/young person or another person (Benia et al., 2015; Canning & Peterson, 2020; Saywitz & Camparo, 2009). These interviews are conducted by trained professionals who have a semi-structured through to structured interview protocol and methodology (Child Youth and Family and NZ Police, 2012; Lamb et al., 2009; Orbach et al., 2000). Open-ended questions are encouraged to elicit multi-word answers, with the questions becoming more closed to gain specific data about the allegations (Saywitz et al., 2019). The professional is likely to be seen as the 'expert' in these interviews (Hunt et al., 2011; Targum, 2011). Little consideration may be given to any power imbalances and children/young people are often perceived as being vulnerable and needing protection (Bell, 2016).

Hermeneutic phenomenological interviews have a different focus in that their key aim is to bring forth the voice of the participant for the purpose of shedding light on their experience (Smythe, 2011). As Ryba (2008) said "The phenomenological interview is a collaborative process of evoking colorful descriptions of the phenomenon and empathetic understanding of the multiple ways in which the child makes sense of the lived experience" (p. 340). Akin to the professional interviews mentioned above, they start with open-ended questions to explore the participants' experiences of the phenomenon of interest, in this case the child/young person's encounters with professionals in

the family court (Canning & Peterson, 2020; Turoy-Smith et al., 2018). Crowther and Thomson (2020) stated that lived experiential descriptions are unpacked following a standard question such as “Tell me about your experience of (the phenomenon being studies)” followed by further open-ended probing to “elicit rich in-depth insights of an experience” (p. 4). The child/young person participant is considered to have a narrative about the phenomenon of interest that they wish to and can speak about, if appropriately supported. The focus of the hermeneutic phenomenological interview is non-diagnostic (Targum, 2011) and remains on the phenomenon under study. The child/young person participant is encouraged to think and reflect deeply on the experience as they have perceived it (Hunt et al., 2011). They are perceived to be the ‘expert about the phenomenon under study (Hunt et al., 2011). This research interview needs to consider balancing of the adult investigator-child/young person power dynamics to promote participant participation such as selecting a place, time, and space of the interview that are comfortable to the child/young person participant; and focusing on the language used by the participant so a mutual dialogue occurs (Kutrovátz, 2017; Ryba, 2008).

5.4.4 The conversation

Conversations were held in private spaces as agreed with the participant. As recommended by Smythe (2011) all conversations were double-taped to ensure that no data was lost due to technical error (Appendix H).

I began the conversation by thanking the person for meeting; and again introducing the study, its purpose, and the process of the interview. I sought the participant’s verbal consent again. I also sought the participant’s preferred name by which their contribution would be recorded in the study. Once this was concluded and I had agreement, I then turned on the tapes.

With children/young people participants, I used a similar process. I became engaged with the words the young person used so I could ‘tune into’ their

language. This was achieved by talking about them as people; what they liked doing; if they had travelled, how their trip had gone; if they had been working, what they did and how the shift had gone. As Ryba (2008) said, this pre-conversation is “a moment of engagement into a phenomenological dialogue, unfolding on its own terms” (p. 340). I again spoke of the research and sought their engagement and their permission to tape. I spoke of having two tapes in case one failed. Then, their permission was sought to turn on (and at the end off) the tapes. The purpose was to attempt to engage fully with the young person and their experiences and to minimise the potential power dynamics. Creating a feeling of safety for the participant was at the forefront of my mind. I was friendly, interested, and listening attentively as the young person shared their experiences of meeting with professionals from the family court.

Child/young person conversations started with a comment such as: “I am really interested in how it was for you to meet your lawyer and other people from the family/youth (Daniel) court. Can we start by writing down who you met and what we shall call them?” I then had a piece of paper and wrote down names and what their role was, if the child/young person knew. Otherwise, we explored briefly about how the professional was remembered and what tasks they were involved in with the young person. This allowed us to agree on a ‘title’ or job for this person, to be able to record as above. At some stage of the conversation, we would create a pseudonym for the person. Some older participants said that I could do this.

Adult conversations started with a comment around the topic such as “As you know, I am interested in your view on children and young people’s experience of engaging with professionals in the family court”. I wrote a list of the people that they thought children/young people met and this was used to guide differences if needed. I then let the participant take the lead as I listened and prompted the conversation. When discussion occurred around indefinite ideas, I would prompt with questions such as “tell me more about …”, or “can you

give me an example of”, or “can you help me unpack that idea...” The aim was to use open-ended questions to gather the most information that reflected children/young person’s experiences of engaging with professionals from the family court. As Leach (2005) said, open-ended questions help to provide rapport in relationships. Overall, my conversations were aimed at being open and dialogical; and, in review, I believe I achieved this aim.

As I spoke with children/young people, I discovered that the range of people and professionals with whom they interacted was much greater than I first considered. The usual Court-appointed professionals include the Judge, the child’s lawyer, a social worker, and a psychologist. The children/young people augmented these with counsellors, some of whom had different specialities, therapists, teachers, and police. The adults supported this wider group of professionals being involved in their family. The child/young person experience was influenced by the support, or not, of their parents and siblings.

In terms of language, language used by the child/young person was focused on, to ensure that the conversees were both connected and the child/young person was supported in another way to participate. Hence, if a young person used a Christian name for a parent, that lead was followed. If the child/young person changed their father’s name to “Dad”, again that lead was followed.

Crist and Tanner (2003) wrote about the importance of interviewing until the data was saturated. Saturation of data occurs when the researcher knows that there were clear themes and experiences uncovered and it seemed unlikely that these would be extended if further conversations occurred. However, Morse (1989) argued that saturation was a myth as a different set of participants or a different researcher will open up new horizons and understandings. Smythe (2011) took a pragmatic approach when she advised that a researcher should stop interviewing when any more data may discourage the honouring of the individual participant voices. This advice seemed opportune and I embraced it

within the context that every person interviewed had their own story and in effect, it would be impossible to reach saturation. I realised that I could only interpret and open up possibilities from the received information with the hope that the conversation would be important enough to continue. The data that I recorded has many stories about children/young people's experiences of seeing professionals in the family/youth court and it is these experiences that I will be focused on.

5.5 Working with the data

They [crafted stories] can communicate the way we humans make sense of events and relationships, both with ourselves and with others. In a story, we encounter ourselves in dialogue and experience ourselves in different ways. As Gadamer (1976) explains, we are at once interpreting and making the story our own; understanding a story is to 'always and already' to understand and recognize ourselves within it. (Crowther et al., 2017, p. 827)

As noted in the methodology section, there is no set method to undertake hermeneutic phenomenology, especially data analysis. Different authors provided similar guidance which was used to provide a way of structuring the data. Carpenter (2011) suggested using three main steps for hermeneutic phenomenology: reading the complete text as a whole to formulate ideas about further points to analyse; interpreting the key points; and, again, reading these points into the main texts. Smythe (2011) set out her method of undertaking hermeneutic phenomenological research, from start to finish. Key points I have taken from this include: to trust the process and to write, think, rewrite, re-think and continue in the circle until I reach a point of opening my understanding to fresh thinking. van Manen (1990) also alluded to a method whereby one reads, seeks themes, reflects, writes, thinks, and rewrites in a focused circle of endeavour, seeking meaning and understanding. van Manen (2007) stated that there were no rules or prescriptions to being a phenomenological researcher. The researcher needs to remain involved in the world, be present in the present, reflect and be free from "calculative reality" (p. 9) to allow the experience to

flow. All of these methods are similarly focused and have required me to be focused on the phenomena, the experience of children/young people who engage with professionals from the court.

Transcription of the data

Once I had completed the conversations, these were transcribed by professional typists (Appendix I). The transcription was kept to the spoken words of the participants rather than being grammatically correct. The duplicate tapes and the transcriptions were held on my secure computer and regularly referred to so I could listen and/or read again. On several occasions I listened to the tapes as I read the transcripts to try to gain different and deeper understandings of the experiences of children/young people who met with professionals.

Crafting the stories

An early step was to create a crafted story from each transcript as suggested by Crowther et al. (2017). This story portrayed the participant's narrative and key experiences while removing redundant words or repetitive themes. Again, the participants' words and order of these were preserved over grammatical correctness. I returned this crafted story to the participant. Only two professional participants replied, suggesting minor changes in emphasis. All participants accepted that the crafted story was an accurate statement of their thoughts and experiences. An early example of an initial interpretation appears at Appendix J.

I then read and re-read the crafted stories and the original transcripts seeking greater understanding. The more I read the more I spiralled towards different understandings. I was seeking key ideas to work with. When an idea or some words "jumped out" at me, I took this and unpacked. Firstly, I thought and wrote about what the participant was saying, and then my interpretation. Sometimes this process occurred sentence by sentence, even word by word. At other times a more global interpretation of experience occurred. As van Manen

(2014b) said "Phenomenological inquiry cannot really be separated from the practice of writing" (p. 7). It was important to keep to the statements and the words used to honour the participant's voice. My interpretation is just that, from the voice to what I made of it to create a story and to open up questions by uncovering and illuminating possibly known experiences.

Themes started to emerge within and between participants. Of themes, van Manen (1990) said "Phenomenological themes may be understood as the *structures of experience*" (p. 79). I already knew I wanted to highlight the children/young people's voices, so a chapter that had only their voices about their lived experiences was the first to be constructed. I was drawn to van Manen's four "fundamental existential themes which probably pervade the lifeworlds of all human beings" (p. 101). These existentials are lived relationships, lived space, lived body, and lived time. Each is inter-related to the other as there are many shared facets. This notion of the experience of 'being-in-the-world' gave me an interpretive lens which resonated with the stories in the first of the data analysis chapters.

When I read the adult data, the word 'care' leapt off the page and caused me to reflect. The adults felt that the children/young people appreciated, or not, the care that was provided by the adults. Heidegger (1962) wrote of care being one of his major tenets in that this is very much a part of Dasein. Exploring this theme about care became the second of the data analysis chapters.

Having considered these notions, I still felt there was something missing, which was best described as the 'between' of the relationship, the gap in the middle which can be filled by each participant, or not. Relational dialogue seemed to be a key to interactions between children/young people and myself. This became my focus in the third chapter of the data. Buber (2010, 2014) informed this thinking. As I worked with and interpreted the data, the over-riding experience of children/young people was in the quality of the relationship. Each experience

of a relationship they had with a professional was either good or bad as there were few neutral experiences dwelt upon. If an experience was poor, the child/young person may have found a mitigating factor. Time delays were understood as being due to other cases, other demands on the court. However, children/young people were able to clearly explain when an experience was poor and attribute that to the professional without themselves taking responsibility.

This study uncovers the *lived experiences* of children and young people who have seen professionals during their journey through the family/youth court. Each story that I have unpacked sits on its own. I am not seeking a universal truth or a generalisable outcome as in an objective study. Others may find a different interpretation to these experiences and that is the nature of hermeneutic phenomenology as a methodology. It opens more questions rather than finding resolute answers.

5.6 Building the thesis

Just trust the process. (Smythe & Spence, 2020, p. 8)

Throughout my time of enrolment through to completion, I have been reading and writing about issues all focused on building a thesis. At times, my reading and writing included literature not seemingly related. I noticed that my thoughts were constantly on whatever I was working on and the thesis as a whole. Walking the beach or gardening could result in a new idea that needed to be immediately captured in case it floated out of my mind. At stages, I made purposive leaps to certain sections and, at other times, I purposefully stopped working on sections when I needed to pause and think, regroup, re-read and re-write. Sometimes I needed to go back to the original data to re-hear the message as it was told. I needed to focus on both the individual words and the overall story, the play between the helicopter and the close-up views.

I set a target of writing at least 200 words a day, even if I was not satisfied with them at the end. Sometimes my work commitment would overtake my writing, but thinking was constant. I remembered that I needed to build an argument through the thesis from start to end. This was a challenge that continued to the end. The building of the thesis has been a personal challenge. Constantly I reminded myself of my focus on my question: the **experience** of children/young people who see professionals from the family court.

Gradually, over time, my thesis has built to the point where it is now finalised. This achievement is greater than I thought myself capable. But with my team, and the guidance of my supervisors, the result is in this report.

5.7 Trustworthiness

Qualitative research can be seen by the scientists and positivist research proponents as being “a soft option” (Whitehead, 2004, p. 512). Some of my colleagues challenged my approach of using hermeneutic phenomenology, saying that as a psychologist I should be using a more quantitative approach, as that was my training. However, it was not my passion to count or measure; rather, I wanted to hear and honour children/young people’s voices. I wanted to allow these to shine. I wanted to focus on the art of my profession. However, I also recognised that it was important to demonstrate that the study was trustworthy (Birt et al., 2016; Elo et al., 2014; Graneheim & Lundman, 2004; Krefting, 1991; Morrow, 2005; Rolfe, 2006; Shenton, 2004; Smythe et al., 2008; Standing, 2009; Tobin & Begley, 2004; Whitehead, 2004).

In hermeneutic phenomenology, trustworthiness occurs when resonance or attunement occurs between the people who were participants, the people who read the research through their interest, and the researcher (Smythe et al., 2008). “In the end, as in all phenomenologies, it must be left to the thoughtful reader to decide on the accuracy of the phenomenological description” (Schmidt, 2006, p. 66). This accords with van Manen’s (1990) approach that was further

explicated and confirmed by Kafle (2011). These authors propose that the researcher's orientation, the strength and richness of the data, and the depth of understandings reached, are the key components of trustworthiness. Through being a psychological report writer for the court, I am oriented to the participants who all were involved in the court. I consider that the data my participants provided was strongly oriented to the question and rich in its explication. I have been attempting to understand the participants' experiences of the professionals they met, to develop a rich and deep interpretation. It is up to you, as the reader, to say if I have achieved this.

I now turn to examining specific ways, beyond those more general ones above, that added to the trustworthiness of my study. Firstly, I will reflect on the learning I have undertaken. I then turn to the decision trail that I took. Lastly, I consider the participants' voices and if I felt I had enhanced and interpreted these. Thus, I used specific strategies to create trustworthiness of the methodology.

Learning

In 2018, I attended a introductory course followed by a day-long conference in Scotland (Professors Susan Crowther and Gill Thompson) in Aberdeen, Scotland. In 2019, I attended the Canadian Hermeneutic Phenomenological Institute, where Professor James Risser was the key speaker over the three days. In the mornings, he presented lectures about concepts and methodology. In the afternoons, students who had applied, presented papers of their research. These attendances were to allow me time to immerse myself in the breadth of my methodology and to meet other students who were on a similar path. They opened my eyes and ears to the boundless possibilities. In addition to such formal learning, on a monthly to six-weekly basis during the academic year, a group of people from AUT who were interested in hermeneutic phenomenology met in person and by video-link. Papers with different issues within the field provided the discussion and interpretation.

I met about monthly with my supervisors who provided regular feedback about my writing or issues. On occasion, when I was stuck, there would be an in-between phone or video call with one supervisor. This support was invaluable to keep me focused and to normalise my unique experience of being a new researcher within an older clinical practitioners' world.

Decision trail

Whitehead (2004) recommended that researchers needed to make authentic decisions at each step. In my method section above, I have tried to demonstrate the decisions I made at different times. For example, before starting meeting participants, I clearly unpacked my fore-havings, biases, and prejudices in a conversation with my supervisor and with colleagues. I tried to position myself as a student researcher, not a specialist report writer. I considered confidentiality of the participants' narrative, including that some may share a story that could be mis-used by another if it were returned to the participant. Crafting stories and checking these back with the participants, occurred in all cases as recommended by Birt et al. (2016). Throughout all this time, I constantly thought, wrote, interpreted, thought and wrote again in the hope I would achieve an interpretation and the uncovering of notions and understanding of children/young people's lived experiences, when engaging with professionals from the court. Thus, I have tried to show a consistent and thoughtful decision-trail which has led to the participants' voices being heard and celebrated.

Voices

Lincoln (2002) counselled that a part of trustworthiness in qualitative research was to ensure that the 'correct' voices are heard. This has been an important step for me to consider. I have struggled to gain access to the children/young people so their voices could be heard directly and have needed to use adult proxies. Children/young people's voices are presented in the first data chapter

which follows. It could be seen that the multiple voices from different positions, has increased the trustworthiness of this study.

However, as above, this study is unique and is not intended to be generalisable, beyond the relationships which are interpreted within it. You, the reader, will determine the trustworthiness of the study; perhaps when you read something and provide a 'phenomenological nod' to signal that you too understood the point and that there are more questions.

5.8 Summary

This chapter has focused on the steps I took to functionalise the philosophical approach of hermeneutic phenomenology to the question about children and young people's experiences of engaging with professionals in the family court. Laying out the steps brings credibility and trustworthiness to the study as a thoughtful approach has occurred. There are different decisions that I could have taken at different times which I will discuss in the final discussion chapter. However, now the stories await. I seek to share the richness of these narratives over the next three chapters, starting with hearing the children/young people voices within van Manen's (1990) four existentials.

Chapter 6 Children/Young People's Voices

This first data chapter presents only the voices of children/young people as they describe experiences when engaging with professionals in the family/youth court. It is important that these young participants are given primacy and respect, for voices of children and young people are noticeably silent in the literature. The legislation has a focus on the importance of the child/young person's views and wishes, as well as a requirement that their best interests be paramount. This research offers the opportunity to listen to the stories of children/young people and consider if they felt their appointed professionals listened attentively to their voices. The data revealed some children/young people had positive experiences, but others felt silenced and demeaned. I will firstly address the term 'experience' before setting out the structure of the chapter.

6.1 Experience

Experience is often taken for granted. Even when asked "what was your experience?", it is hard to put the whole of what it was like into words. I have to recall the experience to be able to verbalise it; yet, I still cannot tell you 'everything' about that moment. I can simply speak about what I remember as mattering or important to tell. Lived experiences occur to, and within, the person, and are unique to them.

Experience as a notion has been considered by van Manen (1990) who wrote about four existentials that "pervade the life world of all human beings" (p. 101). These four existentials are: lived relationships, lived space, lived body, and lived time. Experience may be seen through the lens of four distinct, yet inter-related, notions as a way to understand 'how it was'. Overarching these existentials is the notion of 'mood': "Mood colors and influences every encounter, experience, thought, belief, and desire that we have" (Freeman, 2014, p. 450). The insights of Buber are also included in exploring the nature of lived

relationships for children/young people who meet professionals from the court. van Manen's existentials, including the notions of 'lived mood', and Buber's insights regarding relationships provide the over-riding structure for this chapter. I approach each existential as though they were an independent notion, while fully recognising the interdependence of each with the other. This provides a means of capturing the fullness of children/young people's experiences of engaging with professionals during their family court journey. Narratives have been assigned as an example of one mode of lived experience recognising that in each telling other experiences are silently incorporated within.

I begin this chapter with showing experience at work with Hugh's story of his experience of meeting professionals. This shows how I have taken some of the crafted stories and interpreted these to illustrate the child/young person's experience of engaging with professionals from the court. I then address van Manen's (1990) described four existentials, starting with lived relationships, then lived space, followed by lived body and lived time. Surrounding these notions are mood and relational issues. The children/young people's voices bring to light the experiences of their meetings with professionals.

6.1.1 Hugh's story

Hugh (15 years) summarised his experience of engaging with professionals in a positive light.

I felt my journey through the family court was actually pretty good. I felt like it was organised although it was a bit slow it still ended up being quite an effective thing and I reckon the professionals did things appropriately and all around I think they did a good job...
...Looking back at the professionals and my experience of the family court, it was helpful in the way that just it calmed this family drama down and it made time available for people to have a break and be able to breathe and think about what they do. There was a time where it was very tense and I just felt like it wasn't a very good time. The Courts helped us so much and so well that it allowed us

to get our bearings on life and get back to some sort of normal, yeah a new normal but it works.

Hugh's account of his experience provides a big picture view. This is about no one professional or one time. Yet, it points to the various dimensions involved. He has shared that the professional involvement and the family court's "organised" but "slow" pace, helped to provide space and time for his family and himself to reconstruct themselves into a new normal. He is thoughtful about the tension and drama that family separation has created but which he recognised as a part of the process. He considered that his experience of professionals met his needs in a positive way.

Within this narrative, Hugh speaks of his experience with professionals as being in his body (tension), his relationships (the family drama), space (people have a break to be able to breathe), and time (time moved slowly). He was able to safely express what he needed and felt his voice was heard. Experience is always about 'everything'; yet, in the telling of any one story, it is likely that the focus turns to a particular aspect. For example: 'Being able to breathe' is a metaphor that suggests a more relaxed body. There is space to ponder and to think things through. Lived time gives this space; a feeling that the pressure is off. There is no need to rush a decision. Breathing space is likely to be about the absence of feeling pressured to make decisions in this time of waiting. Other relationships, space, body, and time (in their presence or absence) are all intertwined as part of lived experience.

In the following section, I take excerpts from children/young people's crafted stories to illustrate van Manen's (1990) four existentials as introduced above.

6.2 Lived relationships

Children/young people experience numerous lived relationships within their meetings with professionals from the family court. Lived relationships refer to the interpersonal interactions between people and how these are connected

(van Manen, 2014a). Buber is another researcher who focuses on the way we live relationships through using dialogue. Although Buber (2010, 2014) referred similarly to dual concepts of relationships (I-It and I-Thou), he proposed something different to Heidegger's 'Dasein' and 'They' notions in relationship to dialogue. According to Buber (2014), there are three types of dialogue: "genuine dialogue", akin to authentic conversation where each participant listens to the other's discourse in order to establish a mutual connection; "technical dialogue" for the purposes of explaining something; and "monologue" where each participant speaks their words with no recourse to the other. It appears that children/young people's experiences of lived relationships with family court professionals may be reflective of these various forms of dialogue at different times.

Within children/young peoples' experiences of lived relationships is the notion of safety and (un)safety. Safety within lived relationship for the children/young people includes being listened to, respected, having neutrality shown by the professional towards the parent (a lack of bias), and the professional supporting the child/young person to have a voice in place. Each of these leads the child/young person to perceptions (or not) of safety as described in the follow section.

Rebecca's account of her lived relationship with a contact supervisor demonstrates that not all professional adults listen to the child. The presence (or absence) of these professional behaviours appear to be a key notion for a child/young person to feel safe (or not).

One of the contact supervisors (Abigail) kept on talking with my father, Justin, and like only spoke to me and my sister when she was like telling us stuff. Abigail was telling us that Justin was amazing. This was kinda weird, like confusing and disrespectful.

The supervisor was often talking about her own life: she was saying that some children don't have any parents or only have a mother and that Justin is amazing. As she was talking to us about this, she

was getting really loud about how amazing Justin was. She wasn't listening to us and what had happened to us.

I am just kind of thinking it is weird because they're thinking Justin is telling the truth when me and my sister Judy are making it quite clear that we like mum and that we don't really like Justin. She is still on his side but he hurt Judy. That's what was kind of like weird to me.

It would have been better if the supervisor had played with us and not talked anything about Dad. (Rebecca, 8 years)

Rebecca spoke of the contact supervisor, Abigail, who did not provide a safe space or mood for her sister and her to visit their Dad who had hurt her sister. Abigail aligned with her father leading to Rebecca feeling confused and disrespected by the supervisor. Rebecca felt extremely unsafe and violated. She labelled this as feeling "weird". The supervisor did not listen to or process Rebecca's life experience. Rebecca stated that it would have been more appropriate for Abigail to play with and listen to the children, not the adults. Even at eight years old, Rebecca knew that Abigail had no right to take sides. Being able to say this seemed to demonstrate Rebecca's wisdom and resilience.

Rebecca's truth is that her father hurt her sister Judy, and this was not respected by her father or the 'safe and protective' supervisor. This led to Rebecca's feelings of disregard being amplified. The encounter reflects what Buber (2014) might consider a monologue. Abigail 'told' Rebecca 'stuff' about her own life; thus, devaluing Rebecca's experience of her father's domination. Rebecca's voice was silenced in favour of the supervisor and father's voices being primary, heard, and thus, being the truth. As Buber would say, there is little recourse for Rebecca. When Rebecca said that Abigail's comments that her father "was amazing", she followed with it "was kinda weird, like confusing and disrespectful... She wasn't listening to us and what had happened to us." In my interpretation, Rebecca was signalling that she knew that whatever the supervisor's view about parents/fathers may be, it is immaterial and does not

need to be shared with the child. Rebecca recognised that the supervisor should be impartial, neither positively or negatively aligned with either parent. "It would have been better if she had played with us." My concern about Rebecca's perception of the supervisor's alignment in favour of her father is that this could lead to a greater fracturing of their father-child relationship, which would reduce the likelihood of reconciliation. In the statement above, Rebecca referred to her father by his Christian name, Justin, but when speaking of the possibility of play, she introduced the familial "Dad". This gave me some hope of a future possibility for a relationship, albeit a different one, rather than the current stand-off.

Supervisors of contact have a role to monitor the interactions between a parent and a child in a safe environment, due to concerns that the parent may be unsafe, or that this relationship needs to be built through absence of the parent, or rebuilt (Aotearoa New Zealand Supervised Contact Services, 2019). For Rebecca, this absence of a safe relationship with the supervising adult will likely have reinforced her feeling that her father is unsafe. Rebecca's feeling of "weirdness" signalled an experience that is located within herself. In Buber's (2002) terms, "feeling is also a kind of experience, one in which we still have an It, although a psychic kind" (p. 171). This is suggesting that the feeling is akin to an experienced object where there is no other person with whom to be mutually involved, but it is still a real experience of this lived relationship.

Rebecca also extends her thinking to encompass the idea of play: that the child and supervisor and her father should play together. Gadamer (1975) explicated this idea using the word game or play as synonymous notions, depending on the translation (Grondin, 2014).

Play fulfils its purpose only if the player loses himself in play...

Seriousness in playing is necessary to make the play wholly playing... The mode of being of play does not allow the player to play as if toward an object. (Gadamer, 1975, p. 106)

In summary, the inauthentic and monological dialogue by Abigail (the supervisor) has portrayed Rebecca as an object, not a person with whom she seeks to have a genuine dialogue. Rebecca is very aware of this and feels devalued and de-personalised. At the end, Rebecca suggests that the supervisor should play with and listen to the children. She recognised that Abigail needed to build a relationship with herself to bridge the lack of child-father relationship. If Rebecca had visited her father in an environment where Abigail maintained safe child-parent boundaries, if the mood was warm and embracing, and she felt she was being listened to and respected, then the child-parent relationship may have rebuilt. Rebecca's opinion was that play (active engagement of each player) could have helped. Drawing on Gadamer's insights, if both participants lost themselves in the game then the mood and attunement could change in a positive direction.

6.2.1 Lived mood within relationship

The following two scripts are based on Ben's experiences of his mood which arose through lived relationships. In the first paragraph, his parents' separation and his fear of the outcome for himself and his family, especially parents, is discussed. In this scenario, Ben is clearly feeling unsafe and confused. In the second paragraph, his lived relationships with professionals assist him to resolve his fear and confusion and to restore a feeling of safety. This shows the importance of connection between children/young people and professionals to allow resolution of family issues and hence self-safety.

At times, it felt like I was staring into the abyss, like what would happen if I go through here and what would I look like at the end of it and what would the people around me look like in the end. I mean what do people look like mentally at the end. What kind of mental or physical state could people be in at the end? It was the unknownness of the outcome, what would happen at the end of the family court? I was really worried about Dad and Mum and how they would be at the end of all this.

The abyss was darkness which I could let go of at the end, let go of some of that sadness or anger because a lot has been solved during this process. Professionals gave me solutions at the end which was good. (Ben, 11 years)

Ben was speaking of his fear of how the family court process would interplay with his lived relationships with important people. He had an experience of darkness when he looked into the abyss and he was uncertain how he and his parents, his family, would be at the end. He thought of their physical and mental wellbeing. He perceived that the court process took a mental toll on people but was uncertain what their physical changes would look like. He was especially concerned about the effects on his mother and father of the process.

In this short narrative, Ben addresses his sadness (perhaps bleakness), fear, his uncertainty and his concern for others. He spoke of his perception that he was "above the world" and "staring into the abyss" which implies a place of darkness. He considered the possibility that he could traverse through this to another place but wondered how he would then look. How would his relationships look? I wondered if he perceived this akin to a time machine where the outcomes on the physical body and relationships were unknown. That Ben was worried about his parents, his previous secure foundational people, was a sign of his inner knowledge that this process was especially hard on them. Fear of the impact of going through such a major life-changing event is the focus of Ben's story. He recognised this threatening change for himself and for his Mum and Dad.

In Heidegger's (1962) terms, Ben has been 'thrown' into his parents' separation and his mood is of confusion and bleakness, his Dasein perhaps looking towards a kind-of-death, when he looks into the darkness of the abyss. Ben does not have the tools ready-to-hand to care for himself or others, namely his parents. He identified the family court as being a tool but the outcome for his lived relationships with members of his family was unknown. M. King (1964)

argued that, for Heidegger, dread is the basic mood that is at the essence of man's being-in-the-world. Fear is different; a mood of fear of something specific that is ready-to-hand or approaching. For Ben, the fear is of the outcomes of the decisions of the family court. He is fearful of how people, especially his parents, "will look" at the end, how they will present in-the-present and will they still be the same people as they always have been? Will his relationships be the same? For Ben, his family's involvement in the family court, and with the professionals, has been a cataclysmic event, which at one point appeared to have no end.

When solutions were provided by professionals, Ben felt his pressure relieved and he could live with the changes that had occurred. The solutions allowed him to let his worries and concerns go and to return to his usual mood of hope and optimism, albeit a new world with his family reconstructed and different relational connections. He realised that it was not as bad as he feared. Solutions allowed Ben to rebalance and move forwards into his brave new world.

At the time I spoke with Ben, he felt more attuned with the world. His past has evolved through time and working with professionals to find solutions around his familial relationships allowed Ben to "let go". His emotional mood was not so bleak, and the darkness and his possible fear of death-of-family had passed. Ben felt more present-at-hand. This positive experience of professionals was safe, and the issues resolved. Ben came out the other side of the abyss/darkness, feeling safe, reinvigorated, and into a new 'normal'.

6.2.2 Choice within relationship

Hugh introduced the concept of being able to choose as being important for his experience of lived relationship and creating a sense of safety with family court professionals, in this case the Judge.

We could choose to see Dad or not on our own accord. Having that choice was important all around. We weren't being forced into

anything and we only went or did what was comfortable. The Judge gave me the choice and Mum would check what we wanted to do about seeing Dad as Mum needed to make arrangements with the supervised contact lady.

In terms of the Judge giving us a choice, I think this was about his concern for our safety and how we were doing. The fact that we weren't forced to go allowed us to think about how we were feeling and whether to see Dad or not. Then the supervised contact people monitored what Dad said to stop him saying inappropriate things. That worked pretty well and helped my feelings of safety. Having a choice all around was pretty important and I found it to be quite effective because it was like we weren't being forced into anything and we only went when we felt comfortable. (Hugh, 15 years)

Hugh is speaking about his need to have a choice which helped him to feel safe in his lived relationship with his father. It meant that he was not directed or forced to visit his father. That the Judge gave Hugh the choice to visit or not, validated Hugh's right to be a participant and to voice his feelings. If he chose to visit, the Judge then provided further protection by directing the visits to occur in a monitored environment where professional supervisors would ensure his father's behaviour did not transgress expected standards. Hugh felt comfortable about this choice being mandated by the Court as he understood that the Judge has that power. Overall, Hugh spoke to feeling safe as a primary need in his experience of professionals in the family court, and this need was met by the Judge.

Once Hugh had exercised his choice and made his decision, he informed his mother, who was then responsible for notifying the supervisors. His father and other adults were not allowed to challenge Hugh's choice.

As I reflected on Hugh's story, I heard him speaking of his safety being akin to comfort, having a choice and having adults who have listened to him and trusted his voice. As Dreyfus (1991) said, having a "choice resolves the problem of vulnerability because, while I can lose an object of choice, I cannot lose my

capacity for choice. I shall always be able to choose another role or another relationship" (p. 173). Hugh shared his fear of feeling unsafe due to his father's behaviour. This lack of safety was heard by the Judge, who implemented steps to try to balance the need for Hugh to have an ongoing relationship with his father and his feelings of safety. That the Judge did this, showed Hugh that he had been listened to and that his voice had value. Hugh's experience with this Judge who heard and respected him assisted in building his trust in professionals to do the right thing. This aided Hugh's healing from his parents' separation. Perhaps, prior to this experience, Hugh's mood was downcast and he felt helpless at times. However, by giving him a choice, the Judge supported Hugh to grow and become positive about his future.

At 15 years of age, Hugh needed to express his voice, be heard, and be allowed to choose. Hugh has been thrown into a new world following his parents' separation and the mood is of fear of harm, a lack of safety. He still needs adult protection to keep him safe from a dominant and bullying parent. Hugh's relationship with his father has been challenged and Hugh is grateful to be able to have choices to re-establish this previously lived relationship, or not. Choice is a tool-ready-to-hand that Hugh is aware of and attuned. The tension between the child being in control and the parental rights, in this case father's rights for contact, is palpable in Hugh's story.

In summary, positive lived relationships between children/young people and the professionals, involved the child/young person feeling safe and having a voice in the child/young person and professional relationship. Notions that created this feeling of safety, involved professionals offering solutions and or choices, trusting in the child/young person and the child/young person feeling connected. These allowed the child/young person to seemingly feel resolution of the challenges that threw them into the professional relationship(s) and to have this strength or resoluteness to move into the changed world ahead. When these factors were absent (as for Rebecca), she felt unvalued and silenced, her

voice was not heard. In every situation/relationship, there was a mood that coloured the experience.

I now turn to the second of van Manen's existentials, that of lived space.

6.3 Lived space

Lived space or spatiality is not the dimensions of a room; rather, it is the felt space. It may be felt in terms of closeness to or distance from another, be it another person or an object. As van Manen (1990) stated "it is helpful to inquire into the nature of the lived space that renders that particular experience its quality of meaning" (p. 103). He also noted that children are likely to experience space in a different way to adults as they have fewer experiences of the social nature of space.

In this next section, I will present my findings about the theme of lived space and how it was revealed in the children and young people's experiences of engaging with professionals.

6.3.1 Attacked outside

For children and young people, their parents are often their initial guides into the world, with little power or control ascribed to the young person. In the following story, Jack speaks of the clash with his father with whom he had a minimal relationship, apparently due to his father's aggressive behaviour. His mother, and then his lawyer's, support allowed Jack to regain his composure and security.

Something that really stood out as a bad thing happened when Tom (my brother) and I and two of my friends were walking down the street to my mother's office. I saw my Dad coming towards us on like this electric trike. I actually just kept walking and ignored him.

Dad stopped Tom and talked to him. I kept walking.

Dad then actually stopped me. He got off his bike and just stood in my way and just goes "give me your phone" and I say "no, why"

and he says “give me your phone” and he is like starting to get angry. I go “no, why do you want it” and he doesn’t answer and he is just like “give me your phone”.

We start having an argument, well it’s not really an argument, it’s just like a repeated “give me your phone” and “no, why do you want it” and then eventually he grabs me and puts me on the seat and grabs my phone out of my pocket and gaps it on his trike.

Tom and I, we just sprinted to Mum’s office, and then Mum rang my lawyer and I talked to her about my Dad wrestling me on the bench and then taking my phone. We ended up not going home that night cos he also sent me a message saying, “where are you and your mother?” We were with like the rest of our family there so even if he did find out we were there he would be way outnumbered. So, we ended up not going home that night. We were just staying somewhere else. (Jack, 13 years)

For Jack, this is a story about his personal space, on the street, a public place, being violated by his father. Jack was already aware of his father’s potential for anger. To protect himself, Jack detaches by walking on. However, his father then aggressively approached Jack seeking his phone. There is a stop-start nature to the debate about whether Jack will hand over the phone, as Jack struggles to maintain his power and sense of self. Jack holds staunch and refuses to pass over his phone until his father assaults/violates him and forcibly removes the phone. Jack’s fear is palpable when he spoke of being wrestled on the bench for his phone—his communication lifeline. Using his flight reaction, he “sprinted to” his mother’s office sanctuary. He connected with his mother and his lawyer who is a trusted professional. Jointly, they provide Jack with a sense of some safety. To improve Jack’s mood and safety, his mother takes the nuclear family to stay with extended family. This other home is to provide people and space to improve the mood of safety. Jack was not confident to return to his home, which I am presuming was previously a safe space. Thus, for Jack, his father was over-exerting relationship power, to employ a parenting role which father felt entitled, but which Jack rejected. Jack felt sad and

distressed that his father was so abusive and controlling of him and his previous safe relationships and spaces.

This story is about spaces where communication can be absent, can occur and be violated. Jack was distraught about his father's encroachment of his space on a public street and then his disrespect of Jack's body. That his personal property was removed was a further violation of Jack as he no longer had his communication-with-the-world device. This unsafety of space extended to other members of Jack's family as they all needed to move to another home for their protection. Lived space is "*felt*" space (Bollnow, 1961, p. 38) and dependent on the person's mood. Bollnow (1961) asserted that a person's home is their safe space: "an area protected and hidden, an area in which he can be relieved of continual anxious alertness, into which he can withdraw in order to return to himself" (p. 33).

His father's actions violated Jack's safe space and kept his vigilance (alertness) alive for a time, even into the time and space when he told his story to me. It was vital for Jack that the professional he engaged with, the lawyer, was able to offer a sense of protection through hearing his voice and fear and responding appropriately to help him keep safe. I interpreted Jack's sharing of this story in such depth with me was about him explaining how he regained his power and sense of self. He regained safety in spaces where he lived by gaining support from trusted people including his mother, his lawyer, and extended family.

6.3.2 Play in space

In this next section, I focus on the potential way relationships can play out in the space available. I introduce Aimee and Jack's experience of play and the importance of play in their healing. Both these young people reflect on the space of play. Aimee liked the doll's house and Jack preferred the sandbox compared with drawing on the board. Both these spaces were opportunities to play and express their feelings, to be listened to, to be heard, and to be safe.

Sandra, a therapist, just wanted to see me play, like especially with dolls and how I interacted and what people were in it. There was a big doll's house with lots of different dolls. In contrast another professional I saw, she just asked me questions, though she also gave me a set of dolls; a mum doll, a dad doll, a sibling doll, and a me doll. She asked me to place them as I wanted to. Well I really remember that I enjoyed playing with the dolls. (Aimee, 11 years)

I enjoyed playing in the sandbox with Nicola and she had all these stories. She told me to make up what my world was like and how it was with Dad and Mum. Nicola let me draw stuff on the board. She put stuff into groups like feelings and then asked me to pick someone in the circle of feeling and tell about the thoughts I had towards them. I liked playing in the sandbox better but it was all fine. (Jack, 13 years)

Both Aimee and Jack felt supported in their play spaces by their therapists. Play was an opportunity to safely express how they were feeling about their worlds, families, and parents. Nothing was imposed upon them. There was a freedom where each was able to let their thoughts and emotions emerge, or not. Questions opened opportunities to say more but did not seem to demand or threaten. There was a 'letting' that built trust and safety.

Both children/young people spoke of play as being a preferred modus operandi. Of play, Gadamer said:

Play clearly represents an order in which the to-and-fro motion of play follows of itself. It is part of play that the movement is not only without goal or purpose, but also without effort. It happens, as it were, by itself. (p. 108)

Lucas (2017) speaks to children's spaces as being just that, spaces that are unencumbered by adult needs and desires. Children and young people are able to participate in their way.

Children's spaces are those that reflect the participation of children at some level (Boylan & Dalrymple, 2011; Moss, 2006, 2007; Moss &

Petrie, 2002). This term is not about a physical place one can go to necessarily, but forms of institutional or relational space, where the participation of children reflects a tangible shift in power, discourse, and structure. (Lucas, 2017, p. 1384)

In both Aimee and Jack's lives, their therapist provided a safe space and a listening ear for these two children/young people to play, process experiences, and express their thoughts. Play was a way for Aimee and Jack to mindlessly explore their worlds, their spaces and relationships, without effort to reach an understanding. Child-centred play is appreciated by young people as it allows them to learn, not be taught or dominated by adult needs. However, for the adult participant, the therapist, allowing the play to be the child/young person's expression can be challenging. As Heidegger (1968) said:

Teaching is even more difficult than learning because what teaching calls for is this: to let learn. The real teacher, in fact, lets nothing else be learned than—learning... The teacher is ahead of his apprentices in this alone, that he has still more to learn than they—he has to learn to let them learn. (p. 15)

The young people in this study remind us that the child's space is just this, a space for them to focus on their talking and to be listened to with attentiveness. The young person appears to be seeking a safe space to express and experience their relationships positively. It is the professional who is being taught and needs to listen, using whatever modality the child/young person prefers as referred to in article 13 of the UNCROC (1989).

I now turn to the third existential for understanding children/young people's experiences of engaging with professionals from the court, that of lived body.

6.4 Lived body

In the Zollikon Seminars, Heidegger (2001) distinguished between the corporal (objective) body and the lived (psychic) body in which experiences occurred. Aho (2016) also clearly separated the corporal body, that of the object that medical science could objectify to study and treat, from the lived body, “one’s own bodily experiences, feelings, and perceptions as they are expressed, lived, and made intelligible within the context of a ‘life-world’ (*Lebenswelt*)” (p. 117). According to van Manen (2014c), the lived body is often not noticed or experienced unless one’s attention is drawn to it. “While we are bodily engaged in the world, do we not really pay attention to the body? How and when do we become aware of our bodies?” (van Manen, 2014c, p. 6). This section focuses on asking: How did some children/young people experience their body and reactions when engaged with professionals.

6.4.1 Intimidation as a lived body experience

Daniel, while also involved in family court proceeding, described his experience of going to court as a youth offender, perhaps a more personally confronting experience than the other participants. In this extract, I pay particular attention to how it was for Daniel-as-body:

I remember standing in the courtroom just absolutely shitting my pants. It was definitely daunting standing up right at the front of the courtroom when everyone else was kind of sitting down and you just had to stand there, arms folded. In the courtroom, I would stand right up on the left hand, go up on the left-hand row and stand right at the front sort of a couple of metres from the Judge’s box, just stand in the middle of the row. That’s how they always made me do it. It was like the bad boy’s spot. This was pretty daunting. I used to stand up dressed in my college suit and tie and uniform and it definitely was quite daunting. And standing all the time, not sitting like the professionals and others in the room. I used to get the wobbles. I don’t know if you have ever tried to stand in the same place for 40 minutes but it’s not easy. (Daniel, 16 years)

Daniel recalled his experience of being in the courtroom and the effects on his body, emotionally, physically, and psychologically. The mood of the space was described as “daunting” and “intimidating”, which were used almost synonymously. He had to stand in a particular ‘bad boy’s’ spot in his school uniform for up to 40 minutes. He tells of how difficult this was. It was a form of subjugation as he noted that all the professionals were allowed to sit. Daniel’s physical bodily sensations which he said included “shitting my pants” and “getting the wobbles” are clearly established along with the accompanying daunted and intimidated emotional responses which all reinforced that he was a bad boy.

In this scenario, Daniel was aware that he had done wrong, but he felt doubly punished by what he experienced as the inhumane treatment of having to stand in an isolated position in the middle of the front row, just under the eye of the Judge, who was considered to be ‘the powerful one’. The other professionals gazed at his back, which created a further vulnerability. His school uniform was his armour plating that helped to keep his body together. His arms were crossed which protected his vulnerable heart. He was trapped in his body and the space. Daniel was afraid of falling apart and collapsing. His physical self was daunted and intimidated, which reflected the mood of the courtroom.

The courtroom is a place where power exudes from the placement of the Judge’s dais above the others, whether people stand or sit. The adults all sat while Daniel stood. Rather than allowing Daniel his own Dasein with his own responsibility, he was objectified, the focus of the court process. For a child/young person who has done wrong, to be left standing as an object, was punishment and denigration, both of which may not help the rehabilitation process and may further perpetuate his belief that he is ‘bad’ and thus a bad person.

van Manen (1998) referred to how another evaluates the person's body in multiple ways. For the first time, Daniel, who is a physically fit young man, becomes aware of his lived-body being frail. His body is no longer silent and seemingly absent, rather it is very-present and loud in expressing its presence. At the same time his voice was silenced. He felt intimidated and vulnerable. Daniel also noticed that the professionals, the Judge sitting high at the front, and the lawyers and social worker sitting behind, are powerful, and it seems they do not appreciate or read his body or his mood as he feels it. The professionals are guided by the decorum and the mood of the courtroom. In my understanding, the decorum of the courtroom is so instilled in professional behaviour that if a professional did recognise Daniel's experience, they may be unable to make a change.

6.4.2 Bodily support

In contrast to the above physical and psychological intimidation, objectification and denigration, Daniel was also aware of and able to describe how important it was for him to have professionals with whom he felt connected, those who saw him as a person with value and who provided bodily and emotional support:

I think Tara (my therapist) and Katy (my social worker) both knew I was different to the usual type who they worked with. Katy and Tara both kind of connected to me on a personal level. I think that is a big thing going from that professional with a personal level I think is quite cool. Like Katy would see me in the Court and she would come and give me a hug, how are you, ask about family and how is school going? Tara also gave me personal ideas and touches while asking me to change within a professional relationship.
(Daniel, 16 years)

Daniel shared the importance to him of his social worker and his primary therapist forming a personal connection with him to support him. Katy touched his body by giving him a hug and she asked him genuine questions. Tara remained within a professional relationship but shared her touches and ideas

which helped Daniel's connection and therapeutic process. This approach, by both professionals, validated Daniel as a person with worth who had a voice, which contrasted with his experiences in court of feeling objectified. It gave Daniel hope that there was a future and knowledge that there were others with whom he could connect, in body, in relationship and in space who demonstrated care in an all-encompassing way.

For Daniel, the physical and personal connection and respect shared by his social worker and therapist led to healing. Rapport building, which needs to consider physical touch/bodily connection as appropriate, is key to developing a therapeutic relationship. This relationship is needed to build trust, before personal change is likely to occur (Ackerman & Hilsenroth, 2003; Leach, 2005; S. D. Miller & Hubble, 2017). As professionals, we are cautioned against making physical connections beyond a handshake and an occasional shoulder tap or hold. The limited physical connection keeps people within their own lived-body space. Yet, for children/young people, when their world feels tough, as it was for Daniel, to physically hold them can help them rebalance and gain their own personal space back.

van Manen (1998) commented that when another person is positive towards me, this can help with my sense of self-appraisal; which for Daniel was much needed after his experiences in Court. "Experiences like this may eventually have certain lasting effects on the nature and quality of the intimate appreciation of one's own embodied being" (van Manen, 1998, p. 18). I suggest that for Tara and Katy, Daniel's wellbeing was an ethical responsibility as they recognised his vulnerability and weaknesses as revealed by his body. "The ethical experience of the other occurs in the situation in which this vulnerable other bursts upon my world" (van Manen, 1998, p. 23). Both Katy and Tara were aware of Daniel's reactions and mood, his present-body, as he journeyed through his court experience. Their actions assisted him to develop a meaningful reconnection between his physical uneasy body as experienced in

the Courtroom, and his normal state of demeanour. Daniel learned that his body was never silent as he moved through his experiences within the system.

In summary, this section has addressed two positions in which Daniel, a youth offender, found himself. Firstly, when he was in the courtroom, he was an object of the professionals' attention and he became very aware of his bodily sensations and discomfit. The mood was sombre and for Daniel scary and intimidating. However, in the second position, his social worker and a therapist treated Daniel very much as a person with experiences and a voice. He felt valued and respected and thus able to make positive choices. His body lived-through this experience in a way that revealed and called out care from others.

I now move to the final existential where lived time and the notion of temporality will be the prime focus.

6.5 Lived temporality and time

Temporality or time is one of Heidegger's main foci as it appears in the title of his magna opus 'Being and Time'. He argued that time and Being are the same, as one could not exist without the other (van Manen, 2014a). How is time experienced, either in terms of the objective clock or the phenomenologically subjective time? Time has significance when I speak of time passing and having time for something (Heidegger, 2001). Time is experienced in the past, the present or the future with continual movement between each, depending on one's mood (G. Harman, 2007).

Time and space are connected phenomenologically as I speak about the time taken: the length of time, or in a short or long space of time. "Lived time is also experienced as telos: the wishes, plans, and goals we strive for in life. Our sense of identity is experienced in terms of the times of our childhood" (van Manen, 2014a, p. 260). For young people of say 10 years, one year is one tenth of their life; yet, for an older person of say 70 years, one year can be described as 'flashing past'. As van Manen (2014c) said, "time is life, time is who we are" (p.

49). Although time allowed an opportunity for issues to resolve, the delays did not assist with the child/young person's experience of professionals in the family court. A common notion for the children/young people in my study, was that time was passing too slowly.

6.5.1 Time is helpful but too slow

In common with other children/young people, Hugh related that the time he and his family were involved in the family court process was too long and convoluted. He was not able to control this time passing:

It was a bit slow for things to start happening, but we couldn't control that. Other people's cases were before ours. It would have been better if it was a bit faster getting to the final result. This outcome was very easily known to most of us, but some found it difficult to realise this. (Hugh, 15 years)

Time underpinned Hugh's interactions with the family court and also ended these interactions when an outcome was found. To Hugh, the outcome was self-evident, yet time kept ticking by. The outcome required other cases to be progressed or resolved before happening. It seems that Hugh recognised that the Court's time was 'encumbered' by others as well as themselves (van Manen, 1998).

Daniel had similar and different experiences as Hugh. For Daniel, time was generally seen as being too long. As seen in the story below, Daniel's experience of time with court and its professionals was within the context of him being in a youth justice residence. Here, much of the process for the young person is managed through Family Group Conferences (FGCs) where family members and professionals meet and try to reach consensus decisions about the needs and future for the young person.

One thing I definitely felt about the Court was that obviously everything just takes forever, and at my age it just felt pointless. I would go to a FGC and a decision would be made, and then you

know three months later you would have another FGC and be still trying to make the same decision, it would be little things. Just felt like just the hierarchy of courts, everything has to be passed through a different person and everything just takes time. This time delay was frustrating and at the time I was really annoyed because they were making decisions that could ultimately affect my whole future. It was kind of taking forever. More big stuff, and there would be little stuff as well that would affect me when I was living away from home and family, and I just really wanted an answer. (Daniel, 16 years)

Daniel expressed his frustration about the time and repetition of decision-making that played between the family meetings and the Court giving approval. There were constant delays in the Court system which was needed for overall approval of planning. The number of people involved, the bureaucracy that needed to occur, and the delay and repetition of decision-making events were frustrating to Daniel who saw time ticking away with no change. I wonder if he is also questioning the role, importance, and value of the FGC process. Daniel was also losing the opportunity to live his life. van Manen (2014b) summarised the experience of time when he said, "Indeed, its (time) significance not only lies always already in the past, it also lies in the latency of its future" (p. 52).

Time was passing until the Court approved of the FGC plans and solutions. For Daniel, especially, there is a sense of boredom when time was passing too slowly and repetitively. At the end of the time, Daniel felt trapped and shut down by the passing of time with no result. Time became a punishment for a young man who was on the cusp of adulthood and all the opportunities that this presented.

As I reflect on Hugh and Daniel's experience of time as being too slow, I feel a sense of frustration for these young people. For Hugh, the family issues are dragging through time. For Daniel, the repeated meetings to revisit the decision made at an earlier meeting were frustrating. They have both spoken about what

would work for them and there are known outcomes available that linger with the passing of time. Both these youth were very aware of their childhoods passing as the time ticked by. It opened up a possible sense of a lack of safety in their relationships with professionals and belief in the system through failures to operate in a child-friendly time frame.

As Boshier, N. J. Taylor, and Seymour (2011) said:

Children's sense of time increases the importance of making early decisions. In the perception of a child, a drawn-out dispute can occupy the majority of their childhood. The law in New Zealand explicitly recognises that children have a different perception of time to adults and accordingly directs that, "in determining what best serves the child's welfare and best interests, a court or a person must take into account the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time." (s 4, CoCA, p. 826)

For the children/young people who are the powerless recipients of the family/youth court, time is often a mentioned issue. That time remains an issue in the Court is one of the perennial problems tackled unsuccessfully at each review. Passing of time with no resolution led to both these young people feeling less positive and, perhaps, less safe in terms of their engagement with the professionals. It may be that if too much time passes, the child/young person feels silenced by the oppression of nothing changing.

6.6 Summary

In this chapter I have presented some of the children and young people's experiences of engaging with professionals from the family/youth court, using van Manen's (1990) existentials of lived relationships, lived space, lived body, and lived time, encompassed by lived mood. All of these notions are interconnected. The loud voice that shone through was that their relationship with professionals needed to be safe to be positive. When safety occurred in their relationship with professionals, the children/young people had a voice, felt more empowered, and they saw that family issues were resolved. They healed

and their life moved forwards, sometimes into a ‘new normal’. Conversely, when the relationships were unsafe, the children/young people’s lives felt compromised and they became vulnerable with silenced voices. They experienced more fear and a sense of ‘unknowness’. Time delays in the court process were another factor that created a less positive and less safe experience, even when the child/young person understood and could articulate why this occurred. These factors all relate to the mood of their expressed experience and how this changed as safety and voice were found. Children/young people wanted to have a voice and to have this heard and acknowledged. They were able to clearly share their experiences of their journey through the court. Having heard this message, in the next chapter, I will present the adult’s perceptions of the children and young people’s experiences of engaging with professionals from the court.

Chapter 7 Care as a Lived Experience

In the previous chapter, I considered children and young people's lived experiences of engaging with professionals from the court, in terms of their relationships, their mood, space, place, body, and time. A significant aspect that the adult participants commented on about the experiences of children/young people who meet professionals from the court, was the notion of "care".

Lawyers for the children, psychologists, and one parent provided the stories that I am interpreting.

To start the conversation, I made a standard introductory comment to the professionals and parent who were interviewed: "As you know, I am interested in your view on children and young people's experience of engaging with professionals in the family court". In reading their transcripts and re-listening to the conversations, I was drawn to the notion of care (or not) for the child/young person as seen by the professionals and the parent. They spoke about caring, being alongside the children/young people, and physically and emotionally supporting/scaffolding them to speak their views and experiences in times of challenge and change. There are descriptions of adults believing the child/young person felt their caring—both in a protective way, where harm was not wanted; and in an enhancing way, where they wanted the child/young person to have their view heard and experienced by others.

In much of their writing, Heidegger, Gadamer, and van Manen spoke of care as a notion, knowing that again 'mood' overarches all notions when Dasein is present. In unpacking this notion of care, I start with considering the philosophical notions as proposed by Heidegger and Gadamer, and then van Manen (2007) who extended the notion to 'pathic' care. This philosophical thinking is illustrated as the ideas reveal themselves in the adults' conversations about their perceptions of the children/young people's experiences. According to the adults, this care extends from the 'meeting and greeting' phase, to

enhancing children and young people's voices, along with recognition of the mood as care and time as care. Finally, the notions of understanding and interpretation of the child/young person's voice and lived experience are explored as a possible overview of the notion of care. The summary ties these notions together within a framework of adults considering how children/young people may experience care in their relationships with professionals from the court.

7.1 Heidegger, Gadamer and care

Heidegger (1962) has created an understanding where the notion of care is related to his primary concept of Dasein: "Dasein's Being reveals itself as *care*" (p. 227, italics in original). Care can be positive, indifferent, or negligent depending on the circumstances, the mood, and the context. Care involves itself in three equal and interrelated concepts. This first is '*Sorge*' also known as "being-in-the-world"; the second, 'concern' (*Besorge*) "Being-alongside-the-world" and "present-at-hand" (Heidegger, 1962, p. 237); and the third, 'solicitude' (*Fursorge*) "being-with-others".

To clarify these notions, "care" involves that the cared for is thrown into a situation or context, which may or may not matter to the carer and cared for. Attunement, concern, and solicitude are all needed for the care to be felt as being supportive. These events happen in a mood, time, and a place. Care is an inter-relationship which exists between the carer, the cared-for, and their mutual world (Joensuu, 2012); and which exists in a mood and in time, as Dasein.

When I (referring to the generic 'I') authentically care, I must do this from a stance whereby I listen and hear with openness to other, and try to meet and understand the other's view in a fusion of our horizons (Gadamer, 1975). In providing care, I, the professional, can leap in and take away from the child/young person's independence or voice, perhaps as a protective

mechanism; or I can leap ahead and allow them to take the care and take their voice back (Heidegger, 1962). In other words, I can take away and speak for the child/young person or I can help them build; thus, I can scaffold them, enabling them to express their voices. In my understanding, either of these acts can be perceived by children and young people as ‘care’, depending on the context, the time, and the mood of the meetings and their relationship.

Heidegger also reminded us that mood is always already there, before language, before named recognition of how one is feeling. The professionals seemed to appreciate that where they met with the child/young person and how they acted would evoke a mood. Therefore, they worked to ensure it was a mood that felt supportive to the child.

7.2 van Manen and care: Professional pathic

Building from Heidegger and Gadamer above, van Manen proposed that the other person often feels ‘cared for’ or not, depending on the presence or absence of the care dynamic. Often in the professional world, ‘rapport’ is used to express this connection, which is developed in-the-moment.

The competence of professional practitioners is itself largely tied into pathic knowledge. Professional knowledge is pathic to the extent that the act of practice depends on the sense and sensuality of the body, personal presence, relational perceptiveness, tact for knowing what to say and do in contingent situations, thoughtful routines and practices, and other aspects of knowledge that are in part pre-reflective, pre-theoretic, pre-linguistic. (van Manen, 2007, p. 20)

van Manen (2002) extended this ‘care as pathic’ to ‘care as worry’ and suggested that this is part of one’s professional vocation. “Caring responsibility increases in proportion to the measure that it is assumed. The more I care for this person, the more I worry, and the more I worry, the stronger my desire to

care. Why? Because care *is* worry" (van Manen, 2002, p. 269). In my understanding of van Manen's pathic and caring practice, it refers to the experience of myself as a psychologist knowing what to say and how to say it in a caring and relational way. I sometimes speak of a 'gut instinct' that plays out positively. I worry about the outcome for the child/young person I am seeing including asking "have I got this right" or "have I got the right balance of information?" In my view, this is certainly about 'care' of a person and a client, in terms of being on the same 'emotional page' and giving them a feeling of me being attuned to them. In the following section I will illustrate, using the stories of the adult participants, how this notion of attunement and care allowed voices to be heard.

7.3 Pathic-ness and attunement combined to allow a voice to be heard

Molly, who self-described as a newly practicing Lawyer for the Child, described a time when a child/young person's voice was enhanced in the engaging with professionals in the family court:

Recently a colleague shared that she had acted for children for several years and they were looking at discharging the OT (Oranga Tamariki) orders. The 14-year-old girl (Moana) came to Court and the Judge asked if she wanted to talk and she stood up and spoke just so eloquently, I don't think there was a dry eye in the house, and you know afterwards her lawyer gave her a big cuddle and thanked her for speaking and that struck me that there clearly had been over that five or six years, a really good relationship developed between them. It was really nice to see. I guess if some of my children could learn to trust me in that same way in that professional space, that would be an honour really. (Molly, Lawyer for the Child)

In this courtroom, Moana was given an opportunity to directly address the family court professionals, which, to my knowledge, is uncommon. Moana's words were heard, and the other participants were emotionally attuned to the heartbreak of her experiences. Moana's lawyer showed care and empathy when

she supported Moana to speak for herself. At the end, she physically supported Moana by sharing a physical cuddle. The mood in the courtroom was of attunement “Befindlichkeit”:

Within being-in-the-world, Heidegger assigned Befindlichkeit, which is roughly translated to affectedness or attunement (mood), as the particular mode of existence that provides the possibility of the world as “always already” mattering in some way. (Reuther, 2014, p. 104)

Befindlichkeit occurred in Moana finding her voice, speaking to her experiences, all within the space of the formal courtroom. The mood that was evoked spoke of what mattered to Moana, her lawyer, the Judge, and the other participants on that day. Moana was able to contribute eloquently to shape the outcome of the Court’s decision.

In my interpretation, Molly, as a new Lawyer for the Child, reflected on the care from her legal colleague to Moana. She considered the trust which had mutually built between the child/young person and her Court-appointed lawyer over five or six years, which was nearly half Moana’s life. Molly hoped that she could also build similar relationships with her children/young people clients in the future. Care was perceived to be an important component for helping this young person have the confidence to let her own voice be heard.

As I further reflect on this story, the concept of the professional’s leaping ahead is recognised, when the Judge invited Moana to speak and her lawyer supported her. She was given the opportunity to speak for herself rather than adults leaping-in and speaking on her behalf. Moana was clearly a child/young person who had suffered a challenging childhood. At 14 years of age, she wished to be able to speak to those who had been and were making decisions on her behalf. Moana’s account of her experiences was clearly heard as it emotionally moved them. In all this, Moana’s resilience appeared and was

enhanced as she spoke and was respectfully acknowledged. This professional pathic response and care, where space and respect for Moana's views were provided by all the professionals who listened to Moana has likely enhanced her present and future wellbeing. Molly brought forth the notion of care provided by this pathic response.

My fear when I heard this story was what if the 'system' did not listen respectfully and Moana's voice was silenced or in some way devalued? What would be the effect on Moana as a child/young person who was trying to speak for herself? This silencing is akin to oppression of the child/young person who has experienced their life challenges from within their family of origin. It highlights a concern expressed by children/young people who feel not heard or devalued in the name of protection. It takes a court of caring professionals to create a space that feels safe to speak.

7.3.1 Providing care for the child/young person

Children and young people, because of their parents' separation or having allegedly offended, are thrown into the justice system. They meet professionals within the court. Having reflected on the notions of care as outlined in the previous sections, I pondered whether they feel cared for by having attuned, concerned, and solicitous professionals; or does something else happen? The adults who participated in this study believe that they provided care to the children/young people. The following sections further develop this notion of care, or not, from the professionals' and one parent's perspective.

My interpretation of the data suggests that care may start with the meeting and greeting phase, the introductory connection of children/young people and professionals. Adult participants then suggest that care is reflected in how they enhanced or scaffolded the child/young person's voice. In the following sections, I will illustrate how the care notions—that of mood then time—were

reflected in the narratives of the adult participants, before turning to how they understand and interpret the child/young person's voice with care.

7.4 Meeting and greeting and care

Mary, a psychologist, addressed the importance of meeting and greeting towards forming a care-relationship:

When I first meet my clients (the children/young people) I do not go straight into the worky stuff. I have usually got a few toys and games and magic tricks, and fart cushions and silly things like that if I am seeing children. I usually introduce myself that I am a lady that has come along to talk to them, they are probably wondering what that's all about but hey we will get to that later, have a go at this. I have got a few little games that engage them. And we start doing that, I have got a list of kid jokes that I launch into and wait until we are all sort of feeling a bit relaxed and laughing. Only then do I start asking questions. I think that a slow introduction and play helps because I know when if I have ever gone back to do an updated report, some of those kids will remember those games or those toys that I brought the first time I met them. They will ask: have you brought that thing, have you brought that clown's nose? I think it's important to build rapport and not launch straight into the serious stuff. This gives the child/young person some safety in the relationship to start with. (Mary, Psychologist)

Mary's narrative reflected her sense that it was important to the child/young person that they mutually develop a safe relationship before doing the work or asking about the issues that led to the meeting. She has noticed that this early connection-building has lasted across time. When she again met the child/young person at a subsequent time, they often reminded her of the toys or activities she brought to their initial meeting. It helped to set the attunement and mood at these subsequent meetings.

In van Manen (2002)'s terms, Mary was possibly worried to ensure that she provided care to the child/young person she was interacting with. She has used a caring mood to exert a fun presence. For Mary, this introductory play is a

pathic routine that is used at each interview with a child/young person, to build rapport and engagement prior to the work phase of the interview. Mary set the mood of the conversation by using fun before work. The child/young person has responded to Mary's caring approach and interacted and expressed themselves. Mary was leaping-ahead, supporting and scaffolding the child/young person which she would then carry forward into the working relationship. This has led to relational attunement (mood) that goes ahead to continue into each interview. Mary clearly felt that the child/young person benefitted from this caring and careful involvement and fun space, perceiving that she worked in a way that gave a feeling of positive care which continued across time.

Isaac, a Lawyer for the Child, also spoke of the importance of the initial meeting with the children/young people and how he thought his role/ intervention was perceived by the child/young person:

In my mind I start off the relationship with a 'meet and greet' phase. I try to meet the child for the first time at their home with one of the parents present so the child becomes comfortable with me. For the child, I think sometimes there is a little bit of uncertainty as to what this person is doing here. I think the child/younger children have an idea from one of the parents why they are there, and I think there is a little bit of who's this strange person, but I tend to find that it goes away fairly quickly. Other kids I think are just really happy to see a friendly face. The child offers a view or expresses a view, which I put before the Court. I think I was certainly perceived as someone who was going to 'help' in some way. Some children see me as the Judge. (Isaac, Lawyer for the Child)

Isaac reflects on the importance of engaging with the children/young people in a place that is comfortable and protective for the child. This often occurs at a home with a parent. Isaac seems to have assumed that home is a safe place for the child/young person. He believed that this promoted the comfort of the child/young person who is meeting with a stranger. Isaac has noticed that

children and young people give him different responses due to their familiarity with his role. He recognises that some children/young people may or may not know why he is present. He also senses other children/young people see him as a friendly face. Isaac perceives that some children/young people see him as akin to the Judge, who has the authority to protect them. Each of these roles requires different approaches, as Isaac wishes to care for the child/young person. Isaac considers that his care role extends to asking children/young people what their views are and he then represents the child/young person and re-presents their views in the adult court environment.

Throughout this discourse, Isaac has reflected on the roles for Lawyer for the Child. He acknowledged that as a stranger he is not familiar to the child/young person. He believes an important caring role is to protect the child/young person from adult conflict and exposure. For other children/young people, he is someone with whom they can speak and be assured that Isaac will listen and validate their self-hood. Relationship-building in a comfortable place with a parent who is assumed to be safe, is most likely to promote a feeling of safety for the child/young person in engaging with a professional. Some children/young people see Isaac as the decision-maker (which may be correct) and some see him as the Judge. He is mindful of his responsibility to take the child/young person's views to the adult environment of the Court, which is a protective measure in caring for the child/young person.

Isaac feels that if the child/young person perceives him to be a safe person, the first meeting has achieved its aim. Isaac showed care for the child/young person in the way he reflected on his approach and his role, and he feels that there can be a mutuality of sharing and listening, connectedness, and experience between the child/young person and himself. As a safe person, the child/young person needs to feel that Isaac has care for them in terms of being present and leaping-ahead to gain and then take the child/young person's words and views forward to the Court. All these roles are done with care by Isaac, who measures the

child/young person's positive (or not) connection to him as a marker of the degree of care they have felt.

William, a Lawyer for Child, spoke of his belief that if he cared for the child/young person, their voice is more likely to be heard. As with the previous psychologist and lawyer, he noted that it is the beginning of the relationship where care was vital.

In the beginning, when meeting them, you have to be careful to build rapport. Something I do when talking with children, in the 8 to 16-year age group, is to show them the notes I have made during the interview. I highlight any comments made by the child and am clear that I will pass these on. I am the child's voice in proceedings so unless they get a judicial interview, they don't get necessarily other opportunities to express or share their views. I realise that to engage with the child is a fundamental. If you are not on the same page as the child from the start then you are not going to be able to effectively represent them. (William, Lawyer for the Child)

William spoke of 'caring' for the child/young person by being "careful", and by considering how he builds the relationship. William spoke about his care for children/young people of eight years and over, by sharing his notes with them. He tells them about the importance of their voice being heard. He is the agent for their voice to the Court. Thus, he is introducing the system and the way in which it works to his clients. The importance of "engag(ing) with the child" is a fundamental step in William's ability to represent them in the legal system where the child is a participant usually only through an adult.

In my interpretation, when William meets the children/young people, he is conscious throughout of being the professional and the adult, who works within the care-structure of the court. He uses a pathic approach with the child/young person as his primary focus. He is aware of their history, and how they were thrown into the world of a separated family and/or youth justice, and where the Court system, with him as the agent, is the ready-to-hand equipment.

His role is to take the child/young person's views and wishes to the Court, having shared these with their parents. William shares his notes including the child's views with the child/young person so he can be certain that he has heard correctly and he has accurately written these down. He recognises the danger of his own biases potentially taking over from the child's own life story and world-view. This can only enhance his relationship with the child/young person as he is continuing to leap-ahead and consult with the child/young person. It seems he is working from a stance of having no secrets. He is building trust with the child in 'not hiding' his report from them. William is conscious of the responsibility he holds in representing the child/young person, for their benefit.

In this exposition, William is demonstrating the notion of care for the child, by recognising and responding to the child/young person's vulnerable position and mood, in the past, present, and future. The child/young person client has come from a history of parents who cannot agree; even to prioritise their child's need to be free of their adult conflicts. William is also focused on the future, the wellbeing of the child/young person going forwards; while working in the present and interacting with the child/young person in a "genuine dialogue" (Buber, 2014, p. 19). This allows William to feel that he is adequately representing the child/young person to the Court as he has an understanding, knowledge and appreciation of the child/young person's world and their perceived needs. Again, William demonstrates that, in children/young people's experience, if professionals show caring by demonstrating respect, listening, and scaffolding them to share their view about matters affecting them ('leaping-ahead') it helps the lived relationship of mutuality and trust develop. The child/young person will feel cared for in an appropriate manner.

In summary, these three professionals have reflected on the importance of the care of the child/young person from the first meeting. Helping the child/young person to feel comfortable can occur by choosing an environment in which to meet the child, playing with them, and sharing one's notes and one's role with

them. There is recognition by these professionals that children/young people may be overwhelmed by their meeting and participation, and the professionals seek to recognise and to care for the children/young people. If the meeting and greeting professional care is successful, it can lead to the professionals being in a position to enhance the child/young person voice.

7.5 Enhancing the children/young people's voices and care

Donna, a parent, summarised the experiences of her children/young people, whose four voices were enhanced by the professionals who cared for the children/young people:

At first our situation looked like it was quite simple and straightforward but the more the kids started talking and the more the professionals heard, the more complex the situation became, indicating a very different situation to what was thought. Each of the children has ended up much stronger and they have clear senses of themselves from this family court situation. They now have their own ideas and opinions on what is right and wrong in the way you treat people and also about what kind of people therefore they want to be. Because they have realised, actually, there is, somewhere out there in this world, there is accountability.
(Donna, Parent)

In this statement, Donna reflects on the professionals allowing the children/young people to grow through scaffolding their voices. This leaping-ahead promoted the children and young people and assisted them to grow personally and to be able to express their views. It led to a very different understanding of what her four children/young people wanted for their family, which was revealing to Donna. She noted the maturity that the children/young people developed by their voices being heard, as she spoke of the children/young people learning a value important to Donna—that of taking people seriously and accountably.

I have always believed that children/young people have an ability to speak if we only give them an opportunity and can scaffold them into expressing their

voices. In Donna's family, it seems that prior to the family court involvement, the children/young people's voices had been silenced and they had been prevented from speaking. Once they were freed from their silence, their speech showed Donna that her children/young people could speak and have valid views. Although the family situation had seemed "simple and straightforward", the intervention of the professionals had revealed the complex nature of the issues. Donna spoke of her children/young people's views being acknowledged as valid, which was important to them and her own sense of what mattered. She saw them grow in their confidence and align with the values they saw as "right". Importantly she spoke of how they now "know" the system held people to account for their behaviour. These professionals were there to protect and ensure appropriate care for her children/young people.

In Heideggerian terms, the children/young people who were cared for had been allowed to 'leap-ahead' and express their views. The professionals provided the space, the listening, and the clarifying. They also ensured the message was carried to the Judge who could use their voice to assist in decision-making. In speaking and being heard the children/young people gained self-efficacy and confidence as well as learning about being a citizen. Respect and trust ensued which benefited these children/young people and their future relationships. This care all occurred within a mood, which may be described as positive and supportive. I now consider the notion of mood as care.

7.6 Mood as care

Maria, a psychologist, spoke of the changing moods that can occur in a meeting with children and young people, from the enjoyment to the stress. Many moods may be present in the one meeting:

I think children's experiences of seeing psychologists varies enormously for the children. Some children seem to quite enjoy it and enjoy the attention. They find the exercises and games and

"tests" that we do quite fun and they leave and tell their parents that that was enjoyable and fun.

For other children, it's terribly stressful for them. On Friday afternoon I saw a child, let's call her Lucy, in an extremely alienated family. We had a reasonable interview for two hours. At the end I asked her how she would feel about an observation in my office with her father, one on one, where he wouldn't be allowed to ask her any questions. She took a huge strain and burst into tears and rushed out. Her older sister reported to me that she hadn't slept. She took a lot of strain because she had been clearly led to believe, that she had a choice in all of this all along. I was the person saying that the Judge is going to make a decision. She then modified her position, saying that it would be collaborative, that she and the Judge would make the decision together. I said that really it is up to the Judge in the last instance and she was horrified. This girl had no experience of the Judge but had been told it was her choice by her mother and older sister. I was the bringer of bad news. (Maria, Psychologist)

Maria reflects on the extremes of experiences that children/young people have when they see psychologists in the family court. There are those children/young people who enjoy the attention, the games, and the experience of the play; and there are those for whom this was "a huge strain". "For Heidegger, moods are inundated with meanings and are responsible for attuning us to our being-in-the-world" (Reuther, 2014, p. 102). Maria is acutely conscious of these moods and the effect her interventions may have on the child/young person.

Depending on the mood, the child/young person perceives whether or not they have been cared for.

In the example Maria shared, a child/young person, Lucy, had been led to believe that her choice about who in her family she would live with and see, was hers alone, and no-one would interfere in this choice. When Maria suggested that the Judge may have a decision to make, the child/young person moderated her position suggesting that the Judge would collaborate with her, which did not change the outcome as perceived by Lucy. She considered that

her voice and choice would be the option that others would also endorse. When informed that her decision did not necessarily follow, the child/young person then became distressed as her heartfelt belief was being challenged. The mood of the meeting had quickly changed from being positive and Lucy feeling cared-for, to being negative and Lucy feeling vulnerable and 'cheated' by the professional. Lucy's views were being challenged as not being hers to own. She then felt uncared for and that her perceived authentic views were repudiated. Maria felt for Lucy and was very aware of the distress and experienced horror when the other options were laid out as being possibilities. Maria was also speaking of her awareness of the effect on children/young people when a parent or other family member informs them incorrectly of the right of the child/young person to make their own choice.

In my interpretation, many children/young people, including the one used in the Maria's example, experience the meeting with a psychologist as fun and interesting. The mood is positive and the relationship is formed. The games and interactions are child-centred and show care is taken to help the child/young person to express themselves. The games are the ready-to-hand equipment that allows exploration of the child/young person's history and future. Lucy's meeting started out in this 'typical vein' of feeling cared for in a mutual relationship.

However, being caught between two worlds creates anxiety and loyalty crises. Lucy's mother and sister had led her to believe that she was in charge and could decide who to see and who she would live with. Lucy, supported by her mother and sister, believed that she was her own person with her own rights. She had a voice and a choice. She did not want to see her father and any mention of this possibility was rejected with extreme emotion. Her innate beliefs had been challenged and the mood changed to one of "huge strain". It seems Lucy no longer saw the psychologist as caring, but as an 'ogre', the harbinger of bad news, and even news that Lucy considered was entirely

incorrect. The extreme of the challenge about the validity of her views raised trust issues with Maria now seemingly being seen as treacherous and uncaring. Lucy had to remain loyal and connected with her mother and sister. What a conundrum.

My understanding of Lucy's experience is informed by Heidegger (1962) who considers anxiety to be a "kindred phenomenon" (p. 230) with fear. However, these are distinguished with fear being a "state-of-mind (which is) a detrimental entity within-the-world which comes from some definite region but is close by and is bringing itself close, and yet might stay away" (Heidegger, 1962, p. 230). In contrast, anxiety does not have a specific entity within-the world: "entities within-the-world are not 'relevant' at all... it is already 'there', and yet nowhere; it is so close that it is oppressive and stifles one's breath, and yet it is nowhere" (Heidegger, 1962, p. 231). Hence, fear is towards a specific trigger whereas anxiety is towards something that cannot be realised. M. King (1964) says of dread (akin to fear):

Dread is the basic mood which lies at the ground of man's being, although it rarely rises to the surface and few of us might recognise it as fully and explicitly experienced by us. Nonetheless, the threat it reveals is attested precisely by man's flight from it, and the disowned way of existing may serve as the basis. (p. 128)

For Lucy, her "strain" was a mixture of fear, the thought of her father entering her space, although he was not present. Nevertheless, it bred anxiety, an unknown, threatening future. Where did she now fit? Her beliefs, her being-in-the-world, her Dasein, had been challenged and her future was uncertain. When it was suggested that she could see her father in a professionally-constructed 'safe' environment, Lucy fled from the fearful situation, whilst at the same time building a dread as this proposed scenario was out of her control. She returned to what she had now seen as her only safe haven, to be with her mother and sister, who she believed would support her 'decision' and belief

system. Even the most caring professional, in such a situation, cannot promise to fulfil the child's ardent hope. Maria clearly had a deep care for Lucy in this moment of angst; yet, felt powerless to 'make it better'.

As I explore the notion of adult care in the experience of children who meet professionals from the court, the notion of time as care also became a consideration.

7.7 Care as constrained by time

Care always has a temporal nature. On the one hand, when there has been good care in the past, it projects itself as a possibility for the future. When, on the other hand, a child/young person, such as Lucy above, is thrown into a situation of disappointing care, a mistrust grows that is unlikely to be won over with any quick fix strategy. The mistrust lingers on in the now and the future. Further, as previously explored in the child/young person chapter, time is lived as experience. Waiting for 'care' can seem endless for the child/young person trapped in the limbo of seemingly nothing happening. Marie recognises this temporal nature of care:

I guess that's where I go back to my belief that for kids this journey is scary in that we get caught up in doing this job all the time if you do it for so long, oh you're off to see another kid but actually it might be the 1000th kid but actually it's the first time for that kid... Time is a real issue as I go to see the child and then the system is so delayed that I have to go back again. I go back 12 months later, and the child's reaction is like "Oh are you still around?" The kids, even if you tell them we are waiting for a hearing, they have no idea, 12 months in their life has been and gone and then you are turning up again. "Oh, and why are you still here?" That causes a real problem. You have to build the trust again because especially if they are aged between say 10 years and 16 years a lot changes in their world and their attitude. Initially the child may have been really engaging but through time delays, puberty and other life events, the kid's experience is probably more negative because their life carries on or has carried on and we are interfering for a longer period of time.

I think the kid is being interfered with by the system. It's not ideal, but it is the world that we are in. (Marie, Lawyer for the Child)

In this account, Marie reflects on the professional and the system, and her awareness of the difficulties that occur for children/young people. It starts with Marie's reflection about the first time a child/young person sees a professional during their family court journey, and how scary it may be for the child/young person. She contrasts this with the possibility that the professional becomes blasé, as this is the thousandth child/young person they have seen. The professional may not see the child/young person as a unique being. Marie then reflects on the time delays within the system and the destruction of any past trust that may have been built and the need to rebuild the relationship. She is thinking here about the different perceptions of time for young people and children. For a child/young person of say eight years, a year is one-eighth of their existence. She then reflects on the developmental and life changes for children/young people between 10 and 16 years (the six years in the middle allows for pre-adolescent and adolescent development) which represents temporally between one-third and one-half of the child/young person's life. These developmental changes also lead to different thinking and perceptions, of which Marie appears to be highly aware. Marie further comments that systemic delays are abusive of the child/young person, but she then softens when she says that it is pragmatically a reality that she feels is unchangeable.

In my interpretation, the child/young person's journey through the family court is not in a moment of time, devoid of everything else. Marie sees the time passing from the present to the past; with the future constantly becoming the present and the past. The journey does not start when the parents separate. The family structure and the (un)safety for the child/young person in the family is already present before the professionals encounter the child/young person. Their history with their family and the professionals on-going over the years is

a factor that will go ahead towards determining the outcome for the child/young person in their adult years.

Marie's story explains the link between Dasein, and time and care, both being present-in-the-world. Marie shares her concern for the children and young people she sees, in that it may be the client's first time to meet a professional, although the professional has met many children/young people. To share her concern with and to care for the child/young person is a way of not treating this meeting as a job, rather an opportunity to meet the child/young person and to have them experience her, the professional, positively. Marie also reflected about the time the family court process takes and the effect on the child/young person's experience of professionals. She spoke of the child/young person greeting her with a mood of possible resignation: "Oh it's you again", as the years tick by in the child/young person's life and the system remains seemingly immobile. For the child/young person, the system may be or may seem negligent in its care as it does not end, maybe until the child/young person ages out. Adult care cannot mitigate against this implacability and Marie is highly aware of this. Recognition does not change the system or mitigate against it; all Marie can do is to care for and understand her clients as best as she can within these limitations.

7.8 Understanding, interpretation and care

The projecting of the understanding has its own possibility—that of developing itself [sichauszubilden]. This development of the understanding we call "interpretation". In it the understanding appropriates understandingly that which is understood by it. In interpretation, understanding does not become something different. It becomes itself. (Heidegger, 1962, p. 188)

As unravelled in Chapter 4, understanding is one of the two existentials and five equiprimordial notions of being-in-the-world (Dasein). Once something

matters-to-me-in-the-world, then I have to make sense of it by first understanding it and then by forming an interpretation of that-which-mattered. Understanding and interpretation are part of my personal experience. In my study, the professionals have shown an ability to think about how the child/young person's understanding and interpretation are as a part of their experience with seeing professionals in the family court. This is a two-step process, bound within the hermeneutic circle: that the professional understands and interprets the child/young person's understanding and interpretation of their experience of seeing the professional.

A psychologist, Diana, commented about children/young person's understandings of the role of the psychologist and the importance for the experience of the children/young people when a long-term relationship mutually developed:

I think that children and young people are mostly confused because I don't think children really understand the role of the psychologist. If they do, I think that in most cases, most children clearly understand that the issues in the family court are about their parents and not really about them. I mean there are obviously some cases where the child understands it is about them such as when there are allegations. Primarily most of the children that I interview understand quite clearly that the reason that they have to see me, is because of something to do with their parents.

Most children are not properly briefed by Lawyer for the Child, so they then don't have a clue really what the psychologist is going to do. I think it is highly confusing. These are adult processes that don't necessarily easily make any sense to children. I mean children really have to go through them repeatedly, for example, I am writing a report at the moment about children I have seen since 2014. Having seen these children over five years, I am like a long-lost friend. Every time I turn up, they know what the situation is and we talk about the changes in their lives. They quite like me because they see me as a buffer between them and their complex and difficult parents. They like talking to me. (Diana, Psychologist)

Diana is speaking about the children and young people's understanding of the role of the psychologist, in the light that the children/young people 'know' and 'understand' that the issues are related to the adults/parents and not about them. This may be different when the allegations are about harm to the child/young person, but this is a smaller group. Diana believes that the Lawyer for the Child could assist children/young people's experiences by "properly" briefing the child/young person to save the mood of confusion existing for the child/young person. Diana gave an example of a family where she had been seeing the children/young people for five years, which she perceived as a long time. The relationship had morphed to perhaps being more friend-like for the children/young people. She was a buffer between the parents, as well as someone who could help them understand and interpret the family changes and who could hear and/or scaffold their voices. She felt that she became akin to a parent figure, though someone who was safe as opposed to the children/young people's "complex and difficult parents." This positive relationship has led to a positive dialogue between the children/young people and Diana, which is part of the caring relationship.

In my interpretation of this narrative, Diana is focused on the child and young person's understanding and interpretation of the usually adult dilemmas and dramas. Over a five-year relationship with one family, Diana has become akin to a friend or even a 'parent-like' sharing person. She has become someone with whom the children/young people can talk about the family changes and how these affect them. The mood of this trusted relationship, and Diana's care for the children/young people, has created the space in which these conversations can occur. The children/young people can place their family difficulties as being with the adults, not themselves. They value the opportunity to be able to talk about their experiences of being caught up in such family dramas.

Diana spoke critically that another professional, Lawyer for the Child, has not assisted the children/young person's understandings by informing their clients,

the children/young people, about the role of the psychologist. This (un)care, while not likely deliberately negligent, results in a sub-optimal outcome. By the lawyer failing to give this care, Diana perceived children/young people were left confused about who each professional was and how they linked to the system. She believed that professionals need to share consistent information with the child/young person about the court, and the processes involved, so the child/young person's understandings of the system they have been thrown into, can develop. Only then, according to Diana, can a caring relationship be built, which for some children/young people may be a long-term lived experience of positive care by professionals from the court.

Another psychologist, Emm, reflected on a child/young person's post-parental separation understanding of family structures and their changes:

Mother and/or father may have re-partnered and that creates a whole lot of adjustment to become a new family. When this re-partnering happens, children need to adjust. The child needs to accept that new person and also look at their father or mother who may have cheated on the other; and then think about the betrayal. There is also the loyalty conflict and wanting to like or not like their new step-parent. Children can be embarrassed, or emotionally raw. This is really difficult when there has been no violence and no major arguments. The child is talking about what really happened. We are talking about this happy family childhood but one day mother or father come and say we are separating and suddenly a house has been established with the other parent. It is a huge loss for the child, their original family is gone. They may also have to adjust to stepchildren. (Emm, Psychologist)

Emm is reflecting on the adjustment for children/young people when their parents have separated and then re-partnered. She is using an example of the child/young person feeling that they came from a seemingly happy and overtly conflict-free family, to being told that their parents are separating. Very quickly, then, at least one parent re-establishes a home with another adult partner, the child's upcoming step-parent, and sometimes their children/young people.

Emm is reflective of the sense of embarrassment, loss, betrayal and loyalty-conflict for the original nuclear family children/young people, which no-one seems to address. The adult needs are clearly paramount and the children/young people's raw emotions and needs are recognised by the professional, but not necessarily their parents who are caught up in their new relationship.

In my understanding, Emm hears and interprets that these children/young people, in this bind, have a mood of rawness comprised of loss, betrayal, confusion, embarrassment, and loyalty, often in favour the parent who has been left behind. The need for the child/young person to adjust to the adult needs and wishes with no consultation sits hard on the child/young person. I often hear parents saying words to the effect that "we only get one chance at life, and I want to be happy". There is little parental thought for the child/young person who has yet to adjust to their parents' separation and quick re-partnering. Each of these events has high stake outcomes in the child/young person's future. In this scenario, the child/young person's future with two parents in a happy conflict-free family, is clearly destroyed and replaced by a present of emotional heartache, which remains an ongoing trauma, to which the child/young person struggles to adjust. The child/young person is no longer attuned outside of themselves and internally they are likely to be struggling with a lack of equanimity.

In Heideggerian terms, the child/young person is "burdened" ...where having a mood brings Being to its 'there'" (Heidegger, 1962, p. 173). Suddenly the world weighs heavy to the child/young person. They have been thrown into a new world by their parents' behaviours. It is apparent that this professional is highly aware of the consternation for the child/young person which is ongoing in their changing moods, the depth of which can only be perceived by the child/young person who is the one feeling these (Heidegger, 2001). The child/young person will need to understand and interpret the events which are

now happening in their world before they can return to their usual being-in-the-world.

Emm's interpretation of the child/young person caught in this separation/re-partnering family divide is that post-separation, the child/young person needs to form an understanding about their parents' choices and moods. The children/young people may share with the professional about how they are worried about their parents and how they need to provide the care to their parents. This asks the child/young person to be 'mature' and to be reflective about and caring for their parents, a topsy-turvy view of the adult need to protect and care for children/young people.

Re-partnering, especially soon in time after separation is not a benign experience for children/young people. The child/young person can still feel raw as they process the parental separation. The new partner has their own history and family structure which also needs to be processed for them and their children. For children/young people, this processing can take longer than adults realise or credit as they have moved on with their lives, especially the parents who have re-partnered. Emm shares that as a professional she believes that children/young people she meets experience care when they share their voices, their worries, and their processing of change. Emm also recognised the significant shift in the child/young person's wellbeing and Dasein. Their world has rotated, and they are clinging on. As Diana above noted, professionals may step into a quasi-parenting role in listening to the sharing by the children/young people.

In both these scenarios about understanding and interpretation, the professionals, Diana and Emm, have shown that "leaping ahead" and listening and unpacking the worlds that the children/young people are caught in, help the children/young people's understandings. At times, they have leapt in to provide information and support to the child/young person. Both Diana and

Emm have been attuned to the mood of confusion caused by the children/young people being thrown into a situation of significant change, where the rules and understanding of their new environment are not certain. Time is apparent as another variable, with the length of time that Diana was engaged with her family, and the shortness of time between separation and re-partnering.

The children/young people's fore-structured previous lives were settled in a family, with two parents who generally cooperated. Children, who are adequately parented, form attachment relationships where a secure base is developed in at least one child/young person-caregiver relationship. As a result of the separation, the child/young person may have neither parent fully available, with maybe at least one of their parents moving onto another relationship. Inter-adult conflict may continue and may now be rooted in the adult relationships with an impact on the children/young people. The children/young people remain in their chaotic worlds. Being able to share their voices somewhere and to be heard and listened to/feeling understood by an adult, helps the child/young person transition their attachment and trust to the professional who has become a secure friend/confidante. In this way, the child/young person feels cared for by the professional. Does this professional care go some way to replacing parental care? Yet, clearly, there are boundaries and limits they must keep, within the ethos of being professional. When a professional feels care for a child dwelling-within, what guides do they have for recognising when to pull-back? Smythe et al. (2018) wrote of this in the context of a phenomenological study of mental health workers and clients developing trust. They found that if the workers 'blurred' the professional boundaries and allowed their in-dwelt care feelings to emerge, more trust with their clients was engendered.

The stories of mental health support workers, not so tightly constrained, reveal that trust extends beyond professional

boundaries, trust is free to respond to the human-to-human relationship; it enlivens and restores. Is it a call for the nursing profession to rethink the limits and limitations of the line/s that hold back trust? (Smythe et al., 2018, p. 294)

7.9 Summary

In this chapter I considered the adults' understandings of the child/young person's experiences of engaging with professionals, during their families' journeys through the court. The adult participants talked of children/young people's experiences which reflected positive care or deficient care or negligent care. Care is a complex phenomenon that is multi-faceted, with each facet joining and shining on the other.

The adults interviewed appeared to be very aware of different facets to the care the children/young people experienced. Care occurs, or not, within the world of the child/young person, including the mood and context of the meeting. The professional may provide positive care when they recognise the child/young person's fears and needs and then act pathically. My understanding of the adults' perceptions of the experience of children and young people engaging with professionals in the court is that positive care requires setting the mood and the language as being appropriate, finding a place and time to meet, and using more than language, sometimes touch, to enhance and scaffold the child/young person's voice. Negligent care may be the opposite but may also be influenced by parental absence, where the professional may be perceived akin to a psychological parent, who does not provide physical care.

Overall, it is important for a professional to take the time to 'know' and 'understand' the child/young person's experiences, before they can interpret it to anyone else, such as the Judge in the court. The complexities of the child/young person's own life experience play against the professional's own life story and development. The professional and parent all showed facets of

care towards and worry about the child/young person, which was perceived to be recognised and appreciated by the child/young person. In some cases, giving information was one way to start a difficult relationship with a child/young person and to build one of respect and sharing, a measure of the care felt. If a professional is representing a child/young person's voice, care needs to be taken to ensure a melding and authentic interpretation is given to the Court, not one that is reflective of the professional's experiences and fore-conceptions.

Care exists as a mood. Mood occurs within a time and as a series of mutual interactions of being present-with-another person. There is an overall 'pathicness' apparent that is more than the words rapport, empathy, and sympathy imply. Each of these notions of care is equal and inter-related. The court professionals described times that they were intentionally present-at-hand and representing a system which determines the longer-term outcome for the child. In this study about experiences of children/young people who meet professionals within the family court, the child/young person and the professional are both being(s)-in-the-world, who have met in a particular place and space (alongside each other), with the court providing the mechanism by which decisions are made with respect to the child/young person's future.

At this stage of interpreting and understanding the data, I have noticed that similar words such as mood, time, relationship, pace and place, support and care all impact on the child/young person's voice enhancement and their experience of professionals in the family court. In the last two chapters, I have interpreted children/young people's experiences of professionals through the four existential lenses of van Manen (1990); and the adults' perceptions of the care the children/young persons' experienced, through the lenses of van Manen, Gadamer and Heidegger. In the next chapter, I will draw together these interpretations toward the relational "between" as described by Buber (2007, 2010, 2014).

Chapter 8 A Safe Space: The ‘Between’ of Family Court Relationships

All real living is meeting. (Buber, 2010, p. 11)

In the previous data chapters, stories have revealed the tensions and possibilities that exist in the relationship between the child/young person and the professional. From such stories emerges the notion of the ‘betweenness’, the space between the child/young person and the professional. The participants all used words signifying ‘the between’, such as safe and safety, care, healing, mutual, belief/being believed or affirmed, respect and hope which led to trust being developed. The language shared needed to be common to both participants to enable conversation and dialogue to occur in a between or therapeutic space. What happened in the ‘between’ meant young people felt their voices were scaffolded and heard, or not, by the professionals with whom they met.

The stories that follow, point to what happened between ‘me’ and ‘them’. Between, builds on Buber’s assumption that all real living is in the meeting with. This chapter will explore that space of the ‘between’: the children/young people’s experienced relationship with the professionals who work for the court. I start by looking at the notion of the ‘between’, followed by unpacking a notion that conversation may be an expression of this betweenness. I then take more specific ideas that contribute within conversation and between people: the notions of mutual respect, belief, hope, trust, and boundaries leading again to the central thought of the need for a common language allowing interpretation and understanding within the relationship between the young person and their court professional. When these notional feelings, attitudes, and behaviours occur in sync, the young person appears to have the ability to express their voice, knowing that it will be heard and the professional is more likely to glean an authentic impression of how it is for this young person. I finish by

summarising the data which have been understood and interpreted in this study of children and young people's experiences of professionals in the court. This will lead to my final discussion chapter.

8.1 The between

Man can become whole not in virtue of a relation to himself but only in virtue to a relation with another. (Buber, 2014, p. 168)

Philosophically, Buber (2010, 2014) and Gadamer (1975) provided guidance in understanding this "between". "What lies between those relating is variously described as a space, a gap, or an opening, which allows room for relational happenings" (Giles et al., 2012, p. 2015). According to Buber (2010, 2014), primary relationships can only exist between people who both contribute mutually, where they create a space 'between', allowing both to engage. This must be a safe space. He referred to this as the inter-human, as against the intra-psychic which relates to the thoughts within an individual's mind. When speaking of people meeting and interacting, Buber (2014) devoted a book to exploring the between of man and man. Towards the end of this book he says "On the far side of the subjective, on this side of the objective, on the narrow ridge, where *I* and *Thou* meet, there is the realm of "between"" (Buber, 2014, p. 204). He further says that when an experienced relationship is within the between there is "genuine dialogue" between "genuine people" allowing establishment of a "genuine community" (Buber, 2014, p. 205). Friedman (1955), a scholar of Buber, explained it clearly when he said that the notion of "I- Thou" is essential to a genuine conversation. This conversation is characterised by relationships which are mutual and direct, and where both conversees are present and engage intently. He spoke of such conversational outcomes being ineffable, much more than can be expressed in words. This is the relationship and experience of the between.

Buber (2010, 2014) also spoke of two other types of dialogue. There is technical dialogue which occurs when an "objective understanding" (Buber, 2014, p. 19)

is required, such as instructions being given or information shared. Lastly, there is monologue, which occurs in usual everyday interactions, where two or more people speak and share their thoughts but these are not heard by the other, who are also talking. Gossip, chatter, and small talk fit into this category. Thus, the next place to explore is that of dialogue or conversations and their influence on the between of the relationship of children/young people who meet professionals from the court.

8.2 Conversations can lead to the between

Gadamer (1975, 2000, 2002, 2006) addressed the notion of conversation and language as being the glue that holds society together. He noted that speaking with another is not about “hashing things through” or about speaking past the other. “Rather in speaking with another person builds up an aspect held in common, the thing being talked about... Genuine conversation transforms the viewpoint of both” (Gadamer, 2007, p. 96).

Gadamer’s (1975) notion of play points to the between space between relationships, “in the play of the speakers” (White, 1994, p. 94). “Play fulfils its purpose only if the player loses himself in the play” (Gadamer, 1975, p. 107). Play is movement/motion between two or more people or people and things; for example, perception of light changes, towards and away, with no rules and no end goal. It occurs in the present moment with little awareness of anything else than the between of the relationship (Gadamer, 1975). Play occurs in conversation between two people, not only in the meaning of the words, but in the relational interchange (White, 1994). The between, the space between people, which is accessed in conversational play, can lead to understanding through mutual, trusting, and respectful relationships where hope is apparent. The young person is heard and believed/affirmed and there is a common language. Safety is found in the relationship, in the ‘between’ space. That they are understood, safe, respected and allowed/encouraged to have a voice, appear

to be key features for children and young people's experience of professional relationships in the family court.

The space of 'between' focuses on the conversation and the interchange.

"Language is central to human understanding. The world is presented to us in language" (White, 1994, p. 92). Language matters, but in the between space there is more than the exchange of words. It needs to be noted that each participant in the between brings their own fore-havings, their own histories and biases which contribute to the experience of the between, or alternatively the lack of experience of this state of connection. In presenting the stories and reflections of participants that follow, I point to specific aspects that emerge from the betweenness.

8.3 Mutual respect in relationship experience

The notion of mutual relationships was raised by some children/young people as a feeling of connection, where each participant in a conversation has a say and is heard by the other. Ben (11 years) raised the notions of mutual and respect within his relationship with professionals when he said: "I liked it when people gave me advice, when they respected and trusted me as this then was mutual".

Here, Ben proposed ideas that lead him to the idea of a mutual relationship with a professional. Advice-giving, trust, and respect are needed together when Ben is receiving what he termed to be a "mutual" relationship. In this, Ben recognised that the adults may hold information that he needs to understand his world, as it is with the professional. The notion of a mutual relationship could be challenged as not being of equal power, as Ben may be perceived to be a vulnerable child. While this is true, to me, this power imbalance does not cancel the mutual relationship. Ben is the reason for the professional's engagement. Power can be rebalanced if both hold an attitude towards a mutual interaction and where both listen to the other and discuss the client's

(child/young person's) issues openly. This may allow the voice and rights of the young person to appear and be heard and respected.

Hugh (15 years) had similar thoughts to Ben about mutual relationships: "In essence there was mutual trust with all these people. I didn't mind telling all these people about my family drama. Each person I talk to has some more advice". Again, the notion of a mutual relationship which involved trust, including the young person seeking and being given advice from the professional, were key to Hugh's perception of a positive relationship. Hugh and Ben are not referring to power imbalances, rather the sharing of a relationship, which may be the 'between'. They both recognised that the professionals had useful advice which they could share. This advice giving and a development of trust were identified by both participants as being a part of the development of a positive relationship with a professional. Both Ben and Hugh have focused on the need for mutual trust to develop.

Although the word mutual is perhaps replaced with respect in this next segment of my conversation with Hugh, I interpreted that he implied a mutual relationship:

I have developed respect for my relationships with professionals. You have to show people respect because how can you expect them to help you if you don't choose to cooperate. Treat people the way you want to be treated so if you treat them with respect, they will treat you with respect in turn, it's just how the world goes around .(Hugh, 15 years)

Hugh spoke of cooperating "to develop his relationship with professionals" and the importance of treating others as you would like to be treated, which he suggests leads to mutual "respect". "Co-operating", as a word sign, has the feeling of mutuality as in its word structure it means two or more people or objects operating jointly and, in my understanding, for mutual benefit.

Underlying this statement, I interpret a nod to the between, the space where both client and professional bring themselves. Hugh takes responsibility for showing respect to the professional as part of what he brings to the relationship. Even at his age of 15 years, it seems that he has learnt that when the professionals feel that Hugh offers them respect, they are more likely to reciprocate that respect. This professional respect of the client is a theme directly represented in Section One of the New Zealand Code of Ethics for Psychologists (NZ Psychologists Board, NZ Psychological Society, & NZ College of Clinical Psychology, 2012). Perhaps, what has not previously been considered is the reciprocal nature of respect that Hugh reveals.

Respect is a word that I hear in professional talk. It has multifaceted uses as a word, and its understanding is dependent on the sentence context. For example, “I respect you” is very different from “In respect of X”. According to Dillon (2018), respect is a behaviour, an attitude, a value-laden word, a feeling, a tradition, a duty, and a principle. I understand that this puts respect as being one of those word signs which glue (or not) relationships together, a notion of the between which, if mutual, as Hugh has indicated is important, will enable children/young people to positively experience relationships with the professionals assigned from the court. Thus, to have an attitude of respect, the professional needs to look at and pay attention to their child/young person client, with the intention of understanding the client’s inner world, and without removing their autonomy. This is akin to Heidegger’s concepts of Dasein (being-in-the-world) and the professional leaping ahead and supporting the child/young person’s voice so they can present themselves. To achieve this is a balancing act, perhaps aligned to the notion that Buber proposes of “making present” the other person, in that one can experience their world, while still remaining true to their own (Friedman, 1955).

In summary of the notion of mutual relationships, Gadamer (1975) wrote:

Reaching an understanding in conversation presupposes that both partners are ready for it and are trying to recognise the full value of what is alien and opposed to them. If this happens mutually, and each of the partners, while simultaneously holding on to his own arguments, weighs the counterarguments, it is finally possible to achieve – in an imperceptible but not arbitrary reciprocal translation of the other's position (we call this an exchange of views) – a common diction and a common dictum. (p. 405)

In talking of “reciprocal translation” Gadamer reminds us that every interchange is an interpretation. One makes their own meaning of what the other seems to be saying. In the quote above, Gadamer spoke of mutual relationships, reciprocity, and, perhaps, respect within the conversation, which then led to an exchange of views, and finally to imperceptible translations, which signal that a common language and thus understanding may develop. It is recognised that the conversation may start with each participant holding a different story, but while maintaining that position, using respect and mutuality, they can also hear and adjust until there is commonality and then understanding. Both partners need to be ready and able to make adjustments to their views, to achieve a mutual, respectful relationship as Ben and Hugh have both described. I now turn to another facet of the between, that of children/young people being believed, or not in their relationships with professionals.

8.4 The notion of ‘belief/ being believed’ in relationship experiences

In children/young people’s narrating of their experience, as well as the notions of mutual and respect, being believed was another word-sign used. I wondered how does ‘belief/ being believed’ or affirmed in one’s belief contribute to the between relationship?

Aimee shared an experience of how professionals believed her and kept her safe:

And I also found that the police were also very good. I had to tell my story of what happened, and they kept on saying ah ha, yeah, I understand, and they kept on helping me when I got lost for words. They said 'yes, we believe you Aimee', so I felt that was really good. It wasn't being believed, it was that they were able to listen and understand. Yes, it was important to be believed and professionals to say this, because I was confident in what I said. When I was at the police station, I was with people that I knew that would protect me because they are police. They protected me twice and they helped a lot. (Aimee, 11 years)

For Aimee, being heard, believed, and affirmed was important to allow her story to develop fully. That the police gave her a safe space, and protected her, appeared to be paramount to her being able to tell her story. Aimee's perceptions of safety and confidence grew from her interactions and subsequent positive relationships with the police interviewers. As her confidence grew, her story developed, which increased her confidence. She was bolstered and able to have a voice, which was also important for Aimee to feel safe and confident. In summary, Aimee was believed, affirmed, and validated for her speaking by being allowed to speak and listened to.

In my interpretation, when a 'responsible' adult first listens intently to a child/young person, it portrays to them that the adult understands them. This listening further reflects to the child/young person that they are believed. The relationship becomes a safe haven. It is a place that feels protected. It gives the child/young person confidence to keep talking, to keep telling their story, to maybe share things they have not said out loud before. Aimee had found the police to have helped her previously. Their reflective listening created greater safety for Aimee and supported her recollection and ability to tell her story, and thus her voice.

Gordon (2011) said of Buber “genuine listening involves encouraging the other to create his or her own meanings, which may be very different from one’s own” (p. 207). Gordon goes onto say that a “real conversation is not preconceived” (p. 208) but it follows from the leads given by the speaker and melds into a shared space and relationship of understanding. In Aimee’s case, this conversation may have been more like a “technical dialogue” where Aimee is sharing information with the police, who treat this as an authentic exchange. They created a safe space by believing what she told them, and ensuring protective strategies were in place. In other words, they acted on what she told them, demonstrating their trust in her and their commitment towards keeping her safe.

Donna (parent) also spoke to the importance for her children and young people, of being affirmed and “validated”, leading to acceptance of the issues and that these participants were not “crazy”. Being heard and believed was important for balance to occur.

Part of the reason why we have had such a positive experience through the family court because we have had all the support around us. The professionals going: “actually it is not okay for him to treat you guys like that.” Being validated in our concerns was a key thing the professionals did for us. The kids and I were very validated through the whole family court process. Validation is being listened to and being believed (this is huge). Having the affirmation that I wasn’t the crazy one was also massive.

One Judge was fantastic and the other abysmal and it comes down to preparation and validation of the children, especially. (Donna, Parent)

Donna reflected on the support that was available within the Court system. Most of the professionals appear to have been united in their validation that the behaviour of another family member, which the children/young people and she had experienced, was not appropriate. As Aimee above said, Donna iterated that validation and affirmation came from being heard and being believed.

However, Donna also reflected briefly at the end about two judges, one of whom validated the children/young people well, and the other who was “abysmal”. She attributed the difference to the Judge’s level of preparation and whether or not they validated, perhaps another word is valued, the children/young people. I understand that all of these notions contribute to the children/young people’s experience of between, their relationship with professionals from the court.

Of experience, Gadamer (1975) speaks that this is only real if it is “confirmed” (p. 356) or at least “not contradicted” (p. 358). Thus, validation or affirmation is one strategy that makes an experience real, rather than being in the realms of mental distress. The word “affirm” means to “declare one’s support for, uphold” and “accept or confirm the validity of” (Oxford English Dictionary, n.d.). The term “validate” has a similar meaning “to recognize or affirm the validity or worth of (a person or their feelings or opinions); cause (a person) to feel valued or worthwhile” (Oxford English Dictionary, n.d.). Thus, for an experience to be positive the use of affirmation, belief, and validation assists children/young people to feel valued and it is easier for them to share their stories/voices. Notions of mutuality, respect, affirmation, belief, and validation all contribute to the between. I now follow with another, that of hope which some participants spoke of.

8.5 Hope in relationship experiences

Hope was another word which was used by some participants. The hope of ‘hope’ means to me that one is forward looking and has a positive outcome ahead. The hope of a person by another, signals that the hoper sees the hopee in a positive light with a future beyond where they are now.

Daniel epitomised the need for hope when time, as experienced in his lived life, was passing, and he felt nothing was happening. However, as in the following

description, he advocated for the importance of professionals keeping hope which if not present meant that his mood became “hopeless”:

My social worker was a flippin awesome social worker, couldn't ask for a better social worker. I think she always had hope for me, sometimes it felt like people kind of look for the worst in you, they always look at the worst case scenario and then go off that whereas Katy always had hope that I was going to work out. I did in the end. I didn't actually like Katy when I was down south, I felt like she wasn't doing enough and once I understood why because she was having to go through different people, I understood that a bit more. I wasn't supposed to be leaving my residence for probably another six months. There was a period in the middle where I was kind of just losing hope and oh, am I going to be in this bloody place forever? I felt like Katy wasn't doing anything. I felt hopeless. Losing hope was not much fun... not much fun when I had been there for sort of 6 months and I was looking at another 6 to 8 months or even longer though I knew in my head I would not need to do the whole 18 months or more. (Daniel, 16 years)

Daniel contrasts the hope and the hopelessness of his situation and clearly ties the hope that his social worker had for him as being a sign of understanding and a future. When Daniel felt the social worker, Katy, was not working for him, he lost hope and saw time impenetrably stretching before him. He did not like this feeling of no fun and a seemingly expanding, non-productive time ahead. He did acknowledge that he was unaware of all the different resources Katy had to navigate to reach success. He “worked out in the end” and this was success in part attributed to Katy. Her hope for him and her actions showed to Daniel her understanding of him as a person.

In my interpretation of this story, Daniel is contrasting the hope that he felt Katy held and developed within him, while acknowledging his fear of the hopeless and the infinitude of the time within the situation he was living. He needed others to barrack for him to combat the hopelessness, which was, at times, not felt. When it seemed nothing was happening, he saw the

bureaucracy, including Katy, as keeping him in his same place and space, which he feared would continue into infinity. However, hope prevailed and the ending was positive, with a possible implication that Daniel trusted Katy. I heard here that hope is as self-fulfilling as is hopelessness, almost as though these are both transmittable to and from others. Gadamer (1975) perceived "hope" to be one example of human experience and a positive sign. "We are always affected, in hope and fear, by what is nearest to us" (Gadamer, 1975, p. 316). For Daniel, the time passing and the situation he was in were nearest to him, and until Katy could alter these and engage with him, hope and hopelessness/ fear played off against each other. It took Katy's understanding to move the barriers for Daniel to achieve what he needed to, for a positive outcome to occur.

Isaac also related to the notion of hope and the necessity of this for understanding to develop and a positive outcome to ensue.

Children have hopes or expectations of professionals being able to somehow help them achieve something that they feel very strongly about. An example of this may be who they want to spend time with (or not) through to Mum and Dad getting back together and all being happy again. (Isaac, Lawyer for the Child)

In this short section, Isaac refers to the hopes that children hold, that professionals will help them or ensure that what the child/young person wants will occur, including perhaps that the parents will reconcile and there will be a happy nuclear family. This is a nod to the children's wishes being an important guide to the future care and contact arrangement and solutions for youth justice. There is, however, the tension of the child/young person's hope being unrealistic and unlikely to happen.

Hope and expectation both point to the future. Gadamer (1975) sees expectation as being a fore-projection, which as interpreted and experienced may be altered to reach an understanding. If the child/young person and professional have a relationship where hope and expectations are shared, these may be some

conditions which help with understanding, the goal of the mutual between relationships. It may also enable the professional to help the child/young person discern their specific hopes against the background of reality. If such an experience occurs for the child/young person, trust, respect, mutuality, hope can all co-exist within the conversations. The notion of trust and the need for boundaries will next be examined.

8.6 Trust and boundaries in relationship experiences

The word trust was used by many of the participants as being a key notion for the experience of a positive relationship between children and young people and their professionals in the family court. In my interpretation of the data, trust was a word that collected some of the other words of safety, mutual, respect, affirmation, and hope together. When these were present there was a shared notion of trust. When there was no mutual respect or affirmation it appeared that trust was missing. Trust was a word that was often implied. In my interpretation, trust was a notion of the between in the child/young person-professional relationship and was an overarching ‘glue’ for children and young people’s relationships with professionals.

T. W. Simpson (2012) noted that the word trust has no one meaning or use. People live in a social way and the perception of trust allows living and sharing together. He concluded that whilst trust fails to be defined, it may be an “invisible assumption” (T. W. Simpson, 2012, p. 565). Trust may be morally right, obligatory, able to be praised; or it may be “voluntary or involuntary” (T. W. Simpson, 2012, p. 566); or there may be a presumption that trust will or will not occur. Trust appears to be a multifaceted notion, and there seems to be no one answer to the question ‘what is trust?’ I see trust as being an important social attitude that can glue experiences of relationships together. If trust is not achieved, social relationships may fragment. Trust appears to be in the eye of the beholder, like so many social attitudes where behaviours can generate the feeling or not. Using examples from participants who have spoken of trust, I

will now explore the notion of boundaries and of the other words or word-signs of the between, which appear to be also aligned with the 'trust'. I am wondering if trust is an overarching concept of the between.

Donna stressed the importance of the professional maintaining their boundaries to allow the relationship to be safe and trustworthy.

Overall, it was important for the kids' positive experience of professionals and to trust them, that the professionals kept to the designated boundaries, because they are there for a reason. Kids don't understand what the boundaries are and it's not their job to understand what the boundaries are. That's their normal. It has been a huge shift for us all as to what normal is. Our normal was over here and everybody else's normal was over there (big gap between the hands). We have had to move our normal to meet everybody else's because it's through this process that we have all learned how much of the children's father's behaviours was not okay. We all just put up with stuff because you lose sight of the fact that actually you don't have to. (Donna, Parent)

I understand that for Donna, the boundaries provided by professionals were one of the pivotal features for the young people to have a positive experience of these professionals. Donna was contrasting the professional boundaries with the behaviours of the children/young people's other parent, their father, who she thought the children had experienced as someone with few boundaries. Boundaries are an ethical requirement for professionals. When professionals kept appropriate boundaries, they may have helped Donna and her children/young people understand that the inappropriate boundaries of their husband/father were not acceptable. Thus, trust was developed through the professional modelling of boundaries and the education, when a lack of boundaries was understood. Donna spoke of her family's "normal" being skewed away from the "normal" of others. A needed change for her family was to rebalance this skewed normal towards that she perceived other families had, to again achieve a connection with others in the world.

Marie, a lawyer, also spoke of children over eight years of age and their developing of trust in her.

If you are a goodie, by eight years of age the child can suss you out and their guard drops. Some children think I look like a family member and this helps trust develop, sometimes too quickly, they can become too friendly. This is true of especially little children. When the child fully trusts me, they open up. They are less guarded, they will talk more freely. We can talk about teenagers smoking, drinking or needing to have contraception, all without giving health advice. It's a reality. (Marie, Lawyer for the Child)

In this segment, Marie spoke of impressions that a child or young person gained when looking at her. If she looks like a family member, this may assist the development of trust. However, she also noted that some younger children/young people can over-trust and become too friendly, which could be a vulnerability for them and her. Curiously, she recognises the danger in trust without a degree of caution. Marie has noticed that trust is important for communication to open-up and the child/young person will speak more freely about real world issues for teenagers such as substance abuse and the need for contraception. Marie is very clear that she does not give health advice in these conversations as this is a breach of her professional boundaries.

In my understanding of this narrative about trust development, the factors Marie has perceived are important for children/young people to trust her, include that she presents in a way that the child/young person can relate to, that she is open for discussion about issues of concern for the child/young person and that she maintains her professional boundaries. The maintenance of boundaries and openness may be seen as being praiseworthy attributes; but these are professional obligations which, if not adhered to, will complicate a relationship with the client, the child/young person.

Smythe et al. (2018) examined the literature pertaining to the need for and the structure of professional boundaries with a special focus on mental health

support workers. These researchers acknowledged that boundaries are mandated but that there is flexibility in terms of how loosely these workers kept to the limits, compared with the tight boundaries maintained by nurses or other health professionals. Children and young people who see professionals within the family court system are already vulnerable due to their parents' separation, care concerns, or offending issues. Thus, it could be argued that maintenance of professional boundaries was a key to provide safety in the experiences of children and young people which led to them trusting the professional.

Trust is always a step of faith, a vote of confidence, an affirmation of care, a decision to believe the best of a person. It is won not once, but in the again and again, in being true to one's word, of being consistent, of showing the character of trustworthiness. (Smythe et al., 2018, p. 293)

I found this quote an appropriately inclusive summary of the nature of trust and the need for this in child/young person-professional relationships within the family court. Trust requires some affirmation/belief, mutuality and connectedness in a positive way between the participants. An active process is needed to develop trust.

Aimee (11 years) explained about a lack of trust which occurred in her relationships with professionals:

I met a number of professionals and I saw that Ros (therapist) and Sheila (contact supervisor) told me that Dad was good, and they shared their stories about their lives as children and not having a Dad. They did not give me a choice or listen to me. I think the professionals who trusted dad didn't trust me, like dad didn't trust me. So, they had no faith in me. (Aimee, 11 years)

In this segment, Aimee is reflecting about if the professionals trusted her father then they could not trust her, which is a stark contrast. Aimee spoke of the professionals who valued their lost relationship with their own fathers, over Aimee's needs. Her voice was discarded, thus effectively silenced by those

professionals and her father jointly. There was no ethical or supported relationship with these professionals, rather the professionals spoke in a monologue. They attempted to direct Aimee to have a relationship with her father, due to the professionals' own childhood losses. The adult needs were paramount. Aimee appeared to feel that it was either her father or her who could have a meaningful relationship with these professionals. To Aimee's consternation, the adults banded together and excluded her and her voice.

In my interpretation, I turn to Gadamer (1975), who spoke to what I perceive to be some professionals seeking authority over Aimee and objectifying her childhood, while maintaining her father's voice, as being the more important. As Gadamer described, "Authority cannot be bestowed but is earned and must be earned if someone is to lay claim to it" (p. 291). In the story above, the father and the professionals have created their authority jointly, with no understanding or thought for Aimee. Thus, Aimee has lost trust in them both. The possible effect on this child/young person-father relationship is that it has been banished and unlikely to be rekindled by the professionals not setting and keeping to their professional boundaries.

Some of the professionals noted that meeting with the child regularly enough to keep trust in a relationship was sometimes difficult, especially when the relationship occurred over a number of years. Marie, a lawyer, was concerned about this when she told the story about a young person whom she is representing.

A child (Jane) who has been in the system for some 10 or so years and her placement failed, struggles with trusting the professional. She has had a number of social workers, no-one permanent there. Her current placement is unstable as she is being provided with drugs and alcohol. Previous placements had caregivers with strict rules, but currently there are no rules or boundaries. She chose this placement and when the caregiver said well go there, there has been a sense of rejection again. She is between worlds, she has little security in her attachment to people, so it is difficult for her to trust

or tell about her life and dreams to a professional. I think she feels that she is not being heard, not being understood and she is very angry but does not know how to express this. If she has been drinking, she will physically lash out. If she spoke about all she was doing, her hurt and rejection, it might mean that her mum gets in trouble. Her experiences of professionals and placements have been confusing for her. (Marie, Lawyer for the Child).

In this narrative, Marie appears to speak with sadness and realisation about the connection between a child/young person's involvement for 10 years in the court and State system. The lack of permanency and insecurity in living placements, the lack of boundaries, and her access to alcohol and drugs has led to Jane to being "between worlds"; in this case having no or limited connection to any pro-social world or person. Jane is described as being angry about not being heard or understood and she does not yet have the tools to express this without lashing out physically. She has been hurt and rejected; yet, she still maintains a loyalty to her mother who might get into trouble. Jane cannot relate to professionals or the system as she is confused and untrusting in so many aspects of her world. Jane's dreams and life cannot be shared through this lack of a relationship with those professionals who were tasked with keeping Jane safe.

In my understanding of Jane's story, as related by Marie, Jane has feelings of anger which perhaps covers a deep and abiding sadness through all-of-life rejection by caregivers and professionals, as well as family and other adults. She wanted to be loved and cared for but this has not been available. Jane appears to have had little stability in relationships, even with professionals and caregivers who have a responsibility to provide care. Jane's expression of anger may drive people away from her, thus replicating the cycle of loss and lack of trust. Time and involvement in the system seem to be components of Jane's lack of trust. Her loyalty to her mother may be seen as misplaced and idealised, but

her mum is the foundation that she is holding onto, and maybe the only person who Jane yearns to trust or to trust her.

Buber (2014) addressed the importance of the mother as the solid foundation when he spoke of a human being existing and being present for the child, not a phantom. “(S)he need possess none of the perfections which the child may dream (s)he possesses; but (s)he must really be there” (Buber, 2014, p. 98). However, Buber goes on to speak to the importance of the teacher, who may be the parent, gathering the child to them and being in communion with the child and their needs, to achieve mutual trusting relationships. But this is not provided to Jane by anyone. Jane feels as though she is isolated and alone with no support or positive connection. The lawyer, the caregivers, and the system have all been part of this lack of positivity in Jane’s experience.

In contrast, Ben (11 years) had a different, a positive experience of trust with professionals:

I trusted my counsellors with my mental state. To trust someone with my mental state felt different because I hadn’t done that before. Knowing the person and seeing them face to face a few times is at least something for me to actually trust them. I trusted and respected the professionals I saw only a few times because I knew they were a professional who was trained, and I had to trust in a good outcome from the process. (Ben, 11 years)

Ben spoke about trusting professionals who he met on a “few” occasions, with his “mental state”. During the process of his parents’ separation, it sounds as if Ben became worried for himself and his emotional wellbeing. Meeting on several occasions and knowing that the professionals were trained, was an important component in allowing Ben to develop his trust. He gained trust by the implicit professional boundaries, which he understood were developed through the professionals’ training. From his experience of the professionals, Ben then came to trust that the system would give him a good outcome. For Ben, trust of the professional who was trained seemed to be one key to his

positive experience of them. Although Ben did not necessarily trust himself emotionally, he gave this to the professionals to guard in his vulnerability.

Behaviours and attitudes which could assist and enhance the building of trust were described by professionals when they reflected on their beliefs about young people's experiences of engaging with them.

Giving a child a choice about where to meet them creates a little trust. As soon as you connect with the child about something, then it just becomes someone that they kind of talk to about these things. The experience for the child, is that when they talk with you that there is a little bit of trust. Ultimately, the child's comfort has to be the most important thing in the relationship with professionals proceeding successfully. (Isaac, Lawyer for the Child)

In this narrative, Isaac is promoting giving children/young people choices, for example where to meet. The child/young person's comfort is recognised as being paramount to the early relationship development to a 'between'. This comfort is a platform to build the conversation and the trust, hence the relationship. Comfort has been a word in especially the financial literature associated with trust (Carrington & Catasús, 2007; Sharpe et al., 2007).

Kivlighan et al. (1998) examined client comfort with therapists from an attachment perspective: "the extent to which the client values relatedness with others" (p. 274). They concluded that clients who were comfortable with intimacy and who could depend on others formed stronger working relationships. I wonder if this comfort is an early word sign towards the word trust, which Isaac appears to perceive. Comfort may also be pointing towards a space for a 'between' conversation and relationship; hence, a positive experience for the child/young person with the professional from the court.

Two other professionals—William and Diana—focused on the importance of honesty and transparency and the need for these in building trust and relationships in the between of young person and professionals.

Honesty and transparency are key things to take to meetings with children. You have got to be entirely honest because children will pick up on something if they feel that they are being misled. (William, Lawyer for the Child)

If a kid feels they have been duped, this adds to their general sense that this is all about grown-ups and grown-ups are not trustworthy. One of the long-term outcomes for all of these children in this kind of highly conflicted family court cases is that they don't trust relationships. I think people think they don't trust relationships because mum and dad, because of mum and dad, but actually I think it is much more complicated for kids. The whole process is untrustworthy for kids. (Diana, Psychologist)

Although they come at the issue of trust, and, in my interpretation, the between, from the opposite angle, both professionals are speaking to the importance of honesty and transparency from the professionals to assist the building of a trustworthy relationship with children and young people. Diana has tied this back to psychological theory of failed primary parental attachments which is so often an observation in practice. However, she also noted that if the system is not honest and transparent, it can add to the lack of trust children/young people have for adults. Is it that there is an obligation on the system to be honest and transparent if it is to be trustworthy? This question raises ideas beyond this study about what gets in the way of an honest and transparent system and how can such breaches be detected and removed?

Having explored word signs such as mutuality, respect, belief, validation and affirmation, hope, boundaries, and trust, I now turn to the need for a common language which may tie together my understanding and interpretation of children/young people's experiences of engaging with professionals from the court.

8.7 A common language, understanding and feeling understood

Above, I have interpreted what I am going to call the word signs of positive between-relationship development. In the following section, I have returned to the data to look for more awareness of the child/young person's relationship with professionals from the court. The words understanding and understood came to the fore. The data drew me to wonder if these notions of understanding and understood, which needed the previous word signs, may occur through young people and professionals developing a common language which is separate from the jargon used in the legal system.

Hermeneutical conversation, like real conversation, finds a common language, and that finding a common language is not, any more than in real conversation, preparing a tool for the purpose of understanding but, rather, coincides with the very act of understanding and reaching agreement. Even between the partners of this "conversation" a communication like that between two people takes place is more than mere accommodation. The text brings a subject matter into language, but that it does so is ultimately the achievement of the interpreter. (Gadamer, 1975, p. 406)

In the data, children/young people used the word "understanding" as an important component of a positive language relationship with professionals. The success of the child/young person–professional conversation which leads to understanding may be in the ability of the professional to be an interpreter of the jargon to help the child/young person understand. When this was missing, there appeared to be a negative quality of experience. Children/young people liked to feel understood and to understand, and I suggest that these notions are required before the child/young person could experience their voice being heard.

8.7.1 The Court experiences

When an intractable family dilemma arises, the child/young person may then come to the face of the Court which is ready-to-hand. A judicial meeting is one space provided for children and young people's voices to be heard and for the child/young person with an opportunity to meet the ultimate decision-maker (N. J. Taylor & Caldwell, 2013). In spite of this, and the success of these meetings for some, other children/young people spoke of needing a translator so they could participate in the legal system in the family court. This section will address both these experiences of the Court interaction experience for young people and look at whether it really provides a 'between' or might be more technical or even monological dialogue. In the latter, children/young people perhaps feel less safe and less understood, and the between is not established.

Hugh and Jack spoke of the Judge (the Court) hearing them and working towards a common language.

I knew the Judge understood me because there were a couple of times where I may not have explained something very clearly, but he still managed to pick up on the message that I was trying to deliver. I feel he was able to connect with me and just understand really. My meeting with the Judge contributed to the outcome which was what I wanted and needed. (Hugh, 15 years)

Hugh noted here that the Judge clarified (mis)understandings to ensure that s/he heard Hugh's views accurately. The Judge understanding him created trust and a common language, which created the connection between them in the relationship, understanding and this all led to what Hugh considered a good outcome.

I know how it felt and I learned lots of things such as how the Court works and how people react so yeah I think the Court was good. The Judge heard all our opinions and took them into account which helped him with his decision and we got exactly what we wanted.

He didn't take sides with my parents and he certainly listened to us kids. This was a good experience. (Jack, 13 years)

As with Hugh, Jack had a similar positive experience of the Judge. The Judge listened, explained, and accorded respect to Jack by taking Jack's views seriously and weighing them in his decision. That his parents' views did not predominate was noted. As a young person, Jack considered that his views and wishes were paramount and heard in the space of the relationship with the Judge.

However, Daniel had an opposite experience where he needed a "translator." He reflected on the lack of commonality of language and the jargon used in the Court to provide a barrier to his participation and his voice being heard.

You need an adult to translate for you. You find all the, I call it adult language, say stuff like "the fundamental elements of Daniel's success" and stuff. And I am sort of sitting there and thinking why don't you just say "what Daniel needs is..." I think that was quite daunting. It is everywhere like they talk, Judges and lawyers and that talk, I guess use unnecessary big words and when you are a little kid it is quite daunting, (Daniel, 16 years; recounting an experience aged 12-13 years)

At 12-13 years of age, Daniel did not understand the adult words and concepts. He started his reflection by stating that he needed an adult to translate for him. As he is older now, he was able to interpret the language and make sense of it, but at the time of his experience, he found the legal and professional language to be "daunting". He saw the jargon as being "unnecessary big words" which excluded him, about whom the Court and professionals were meeting.

In Gadamer's (1975) terms, there was no possibility of a 'fusion of horizons' for Daniel as at the time he did not understand the jargon of the words or the discussion that ensued. He needed an adult to translate or interpret the words as though they were a foreign language. Leach (2005) considered jargon to be

technical language, language used by experts beyond the grasp of lay people and especially children/young people.

Aimee (11 years) spoke passionately about the need for her and other children and young people to be heard and understood. She spoke to her knowledge that children/young people are people in their own right, people with opinions and thoughts that need to be heard by the other adults. The child/young person's thoughts need to be accounted for. However, as will be seen, the adult words dominated and Aimee perceived these to be more important than her thoughts and opinions.

I think people seeing children should understand the children because children have thoughts. Children have a self, and they actually have an opinion. They (the professionals) shouldn't bring what the adult said into the conversation with the children because what the adult said might not be what the children want. What they should do is have a bit of companion for the children and comfort the children if they get a bit sad and overwhelmed with it all... Children need a say and professional adults can tell other adults what I am saying, whereas children are put off by the Court. If Dad told other adults he was listened to. (Aimee, 11 years)

Aimee spoke of children/young people being their own 'person', having a sense of independence from adult self-hood and having an opinion. She firmly rejected that professionals should bring their thoughts and histories to the meetings as the focus should be on the child/young person and their experience and needs. Professionals could be a companion or someone who comforts the child/young person and perhaps supports and bolsters the child/young person to express their views to the Court. She thought that professionals could tell other adults about the child/young person's views as she did not perceive the Court as being child/young person-friendly. To Aimee, the Court appeared to be adult focused and it listened only to her father.

In my interpretation, Aimee explained that for her, a positive, feeling understood relationship with professionals, involved being listened to, affirmed and recognised that she is a child/young person who has had a different experience from the adults. She is very aware of the Court being adult focused as she knew that her father would be heard. She said directly that “children are put off by the Court”, as this is an unfriendly place and space. Gadamer (2007) said that understanding fails when a common language is missing. For Aimee, this common language may not have been made available to her. Aimee appears to feel that adults are needed to help her express and to carry her message to the unfriendly Court where only adults are heard.

Thus, in summary, the participant children/young people had different experiences of the Judges’ meeting and understanding them. This is consistent with research where children/young people’s views of judicial interviews have been explored (Birnbaum, 2009; Birnbaum & Bala, 2009; Birnbaum et al., 2011; Birnbaum & Saini, 2012; Henry & Hamilton, 2012; Parkinson et al., 2007).

The Court experience is dependent of the Judge and their ability to create a ‘between’ conversation, valuing the child and young person, believing and affirming them, respecting and perhaps providing hope. However, there is also a need identified by three child/young people participants that the Judge creates a common language, free from jargon, as a sign of their understanding the child/young person and their experience of their family dilemmas, which has led to their meeting. I believe that this need for a common language continues into other professional relationships and needs to be a future focus, which I turn to next.

8.7.2 Other relationships and common language

Ben (11 years) said “I liked feeling understood by professionals”. He also spoke about his lawyer taking his words, “what I really wanted” (Ben) and writing a report to the Court, which was checked by him prior to it being sent. This

experience occurred over several meetings between Ben and his lawyer. This collaborative partnership involved his lawyer listening and writing down Ben's words and ensuring these were accurately reported. Ben later met the Judge, which for him was not an important event apart from "it did help me to understand what was going on during this time in Court better" (Ben).

Ben's statements signalled the importance for him of feeling understood.

Although the dialogue was technical, where information was given and checked, for Ben this common language, instigated by the lawyer, made the Court process understandable and workable. A lawyer and a Judge assisted this, these people both being legally trained in a legal system.

Donna (parent) commented about the importance of language being friendly and accessible by the children/young people.

In interviews, Henry (psychologist) was always really even-handed. He does a good job of using language or not talking in a way which shows any of his own personal viewpoints. (Donna, Parent)

In this quote, Donna is talking about both the balance that the psychologist provided when he was interviewing the children/young people and about the professional language being appropriate for her children/young people. Even-handed might suggest that Donna believed her children/young people found the process and language to be smooth, transparent, and understandable, with few bumps on the way. Donna may have considered that this opened the path for the children/young people to share their views and their voice.

Opening the doors to the family court process and language may be a way for children/young people to understand and be supported to participate in a positive experience with professionals. Throughout the data there was this explicit wish, either present or present in its absence, that the children/young people have a voice. To have a voice is only possible if the relational issues, the between is present, as the conversation develops. Ensuring the process is

child/young person-focused, not adult driven seems to be an important consideration as Donna has raised.

That there may not be a common language between professionals and their child/young person clients in the court was spoken about by Diana, a psychologist. She appeared to be somewhat scathing when speaking about how the Court and professionals were not focused on understanding children and young people, in spite of their remit that the child/young person's best interests should prevail and their views heard.

Overall, children's experiences of the family court is that it is not child focused, it is confusing, it uses a lot of adult words, it uses a lot of adult concepts, and at the end of the day the kids are just left out to dry. They are confused and have no understanding. I think we need to focus on getting people really focused on what are good ways to talk to children, what are good developmental ways to engage children. I think, I would say the best thing is not to bullshit them. (Diana, Psychologist)

The legal system has clear rules and methods including what, for non-legal professionals, could be a dense and seemingly incomprehensible jargon. This may well be true for children/young people unless someone, such as a Judge or a lawyer or a psychologist, clarifies and brings an understandable mutual language to allow sharing. They can be left seemingly confused and this may add to the trauma of their experience of the professionals within the family court. Diana notes that the lack of a common language leaves "kids" confused and "hung out to dry". She appears to consider that there is little training focused on how professionals talk with children and young people. She then changes tack to comment on the importance of transparency and honesty towards children/young people, which may be wrapped up in the adult concepts and language that are developmentally unavailable for children and young people. However, this is not true for all child/young person and professional encounters.

In contrast to Diana's views, Hugh shared his story of the understanding that he and his counsellor, James developed, which I interpreted as a clear example of the between in action:

I feel like he was very professional and still very low key. He has his own kids, so he understands all the new trends. He likes sports so all around I felt like we had a good connection. He did a superb job. James wasn't afraid to tell me what he thought about the matter we were discussing. He treated me as an adult which I found to be very helpful. I found we could have a genuine conversation that was not just me ranting about something I had been thinking about for days. He was so open. That is really important for my experiences of people. (Hugh, 15 years)

In this narrative, Hugh appears to be speaking about James' attunement with him occurring through James being a father. They have shared interests. They discuss issues and allow interplay of ideas. Hugh feels he is being treated as an adult. In Buber's terms a 'genuine conversation' occurred which included them using a common language. These were all important for Hugh's positive experiences of having a 'between' relationship with James.

The relational qualities between a young person and a professional that grew over time and mutual involvement in a relationship became evident. That James understood Hugh led to mutuality of relationship and a development of a common language, which may have been important to assist Hugh's healing. He could mull over issues for days and then, in discussion with James, resolve these in a way that was helpful. That the discussions were open and transparent and Hugh was not protected from "adult" concepts, rather these were introduced and talked over, was important to Hugh's perception of being understood.

As I wonder about the relational interplay of all the participants, I have reflected on the notion of play as espoused by Gadamer (1975, 2007). Perhaps, understanding comes about by the players being in the moment and responsive

to the to and fro common language interchange. Hugh appeared to indicate that James was able to accept and respond to his uncertainty, and even the tenuousness of the discussion topics. Through this clarifying discussion, Hugh reached important understanding which may have contributed to his current wellbeing and the success of this relationship. In Buber's (2014) terms, this relationship may meet the genuine dialogue and the positive and mutually respective "between" experience of a child/young person talking with a professional. Diana disputed this in recital of the issues that children/young people face such as adult concepts and a lack of transparency which lead to confusion. In my mind she is clearly giving a nod to a lack of respect, trust, mutuality and an (un)common language, where children and young people are excluded from the system that purports to have their best interests at heart.

8.8 Summary

We do not need to just hear one another but to *listen to* one another. Only when this happens is there understanding. (Gadamer & Palmer, 2001, p. 39)

Between relationships for children/young people who experience engaging with family court professionals is the presence of a 'between-relationship' as being key to their voices being heard. A 'between' relationship has many facets and may be seen as having congruence with Gadamer's (1975) "fusion of horizons". I perceive the facets to be the need for a common language, surrounded by hope, respect, trust, and mutuality, which creates safety and understanding and an ability for the professionals to scaffold the child/young person's voice. To unpack further these above word signs: the language with the professionals needs to be common, that used by the child/young person, and not the jargon or technical terms used to uphold the rule of law.

I have interpreted that trust is comprised of relational values and behaviours of belief that relationships are safe, mutual and respectful, hope is shared, and the narratives are affirmed.

Trust, respect, mutuality, hope, and a common language combined seem destined to create as safe space, the 'between', the understanding of the child and young person within their experience of their relationship with professionals from the court. Each of these notions is needed to gain the ultimate conversation and relationship, where the client, the child/young person feels heard and understood. From here they can share their voice and only then take a meaningful part in proceedings in the family court. As Dunne (1993) says of Gadamer: "He shows that understanding is an event that happens within a relationship of vulnerability ...that it arises out of a fusion of the contexts of both" (p. 105).

From here, in the final chapter, I will address an overall discussion of the data leading towards my thesis and recommendations.

Chapter 9 Discussion

This study demonstrates that children and young people have had mixed experiences of meeting with and engaging with (or not) professionals during their journey of going through the family court system. Consistent with the literature, being listened to and feeling heard improved children/young people's experiences of engaging with professionals from the court. It gave them a sense of having agency. Contrary to this, being negated and over-talked, and as a consequence denied a voice, made their experience unsatisfactory. All participants in my study demonstrated that children/young people can share their voice. Moreover, they have meaningful reflections to share about their family complexities and dynamics. The children/young people were able to provide a rich narrative about their experiences within the court process. It is likely that others would also be able to give voice as to 'how it was for them'. Children/young people who are journeying with their family through the court, are a party to their parents' dispute, but it seems too often they are silenced or ignored in the adult clamour.

In my view, the court and parents would be negligent in deciding their child's best interests without having the child/young person's voice telling of their experiences authentically heard. This includes both words and non-verbal cues, including behaviour and, perhaps, metaphors. Professionals are likely to need to interpret the meaning of what is being said, and how that fits within their understanding of the bigger picture. The professionals must first listen attentively to the child/young person. Without doing so, they are missing the key piece in this complex tangle of rights, emotions, practicalities, and options. This chapter will consider the importance for children/young people to be authentically listened to and heard within the complexities of their family dynamics, mediated by the legal system with all its convolutions. The Judge is the ultimate decision-maker for the child/young person's future life; yet, judges spend their time with the conflicted adults. There are a limited number of

decisions a judge can make. For example, if it were a care and contact dispute, the child/young person can live primarily with their mother or father or have some sort of shared care regime. Both parents remain guardians by law. The judge and the parents may or may not have heard the child/young person's voice; and, if they do, it is likely to be through a professional's voice, with their prejudices, biases, and fore-understandings as lenses through which the child/young person's voice is filtered. The court hearing may occur at a tokenistic level when describing the child/young person's experiences. I argue that a professional who listens authentically to the child/young person, is likely to allow them to feel that whatever decisions are made for their future relationship/s with their parents and wider family are in their best interests. Further, it may create hope and influence the child/young person's development towards appropriate emotional maturity, competence, future relational resilience, and being meaningful citizens in their future world. Feeling like her voice was heard and heeded, happened in Moana's case (Chapter 7) where her lawyer assisted her to speak to the Court. That Moana's lawyer could support her client to have a voice was recognised by another lawyer, Molly, as being 'good practice' and interpreted as being an example of listening and care. In contrast, Daniel (Chapter 6) was made to stand on the left at the front of the court room for up to 40 minutes, until his body was shaking with dread and exhaustion. As a youth offender, he felt as though he was treated as an object and his voice, in that situation, was muted. However, on other occasions he had two professionals, his social worker and his therapist, who listened to him and gave him hope through his 'darkest moments'.

This chapter is also structured to support my argument that children/young people can participate in family court, and likely other proceedings, providing the professionals who support them, listen to them, using extraordinary perception and authenticity. Listening is an important, and vital, subfield of understanding another person. It appears to be an underpinning to the

development of respect, trust, hope, and feeling valued and authenticated for the young people. I will start by discussing what listening is, followed by relating this to listening in the family court. I will then link these thoughts to the literature. These forward-looking discussions lead to the recommendations for practice. I will then turn back to my research and consider limitations and what I would do differently if I were starting again. I will finish with sharing my personal reflections about the value of this research for me—personally and for my professional practice.

9.1 What I mean by ‘listening’.

“Listening to... is Dasein’s existential way of Being-open as Being-with others... Dasein hears, because it understands... Being-with develops in listening to one another” (Heidegger, 1962, p. 206). Listening is a part of the existential of understanding which occurs within a mood and a context. Attunement with the person who is speaking is required for any listening and understanding as in Heidegger’s (1962) exposition. Mood underpins all human interactions. This is consistent with Buber’s (2014) discussion of the ‘between’, the space between conversees, where they listen to and understand the other’s discourse in an authentic way.

Listening involves hearing more than the words, such as non-verbal cues. Tone, speed of speech, coherency, and body language are all important to allow one to interpret and understand the full context of a person’s experience. There is also a wider context and a mood present in all interactions. There needs to be a relationship and an attitude of openness, of uncovering what is being said. The participants need to feel safe to be able to participate in a way that they can share their experiences. However, the complexities of this are difficult. Another way of understanding listening is:

Hearing is a sense; listening is a skill. Listening can be thought of as applying meaning to sound: allowing the brain to organize, establish vocabulary, develop receptive and expressive language,

learn, and internalize concepts. Indeed, listening is where hearing meets the brain. *Extraordinary* listening appears to be a uniquely human characteristic... Listening is an active process, it requires attending and paying attention to things that matter to us, while dismissing things of less interest. (Beck & Flexer, 2011, pp. 30-31)

Thus, listening involves two or more people, who have a united goal to dialogue, hear, listen and make sense, to understand each other in an authentic manner. This can happen with words or in silence (Heidegger, 1962). Listening is the key to understanding. As a skill, listening can be learned if one has an attitude and an ability to uncover and understand one's own biases and fore-havings. The quote above talks of 'extraordinary listening'. It is the kind of listening that requires attending and attention. If professionals actively listened to their clients, a better understanding of their experiences should occur. Listening opens the way for the child/young person to increase their sense of agency.

9.2 Listening in the family court

In considering listening, I see a common central point of the child/young person's voice surrounded by five main, albeit linked, clusters: the child, their siblings, their family, the professionals, and the court. These clusters are surrounded by Aotearoa New Zealand society, which is akin to Heidegger's notion of Being-there in mood and context which in its moment-by-moment unfolding influences every experience. There is a complex interwoven and dynamic flux between these clusters related to hearing the child and young person's voice, with each person holding elements of the others.

9.2.1 The family cluster

The family cluster includes the child/young person, siblings, parents, and extended family, each of whom will likely influence the other and thus the child/young person's voice. Commonly, each person in the cluster has personal

experience of their family, and for the adults especially, experiences of their own family of origin, both from having been a child and now an adult with their own children. The relationships are complex and ever-changing.

Child/young person

As the youngest stakeholder, and so often considered the minor participant in terms of power and voice, the child/young person, together with their sibling, need/s to be given a safe space from which to be listened to and heard. In my study, each child/young person had a unique experience and could share aspects of this. As noted in my data chapters, there were similarities among the child/young people participants, but no two children/young people had the 'same' experience.

The child/young person's age and maturity is a factor often considered by the court in terms of weight given to the child/young person's voice. Older children/young people's views are often given more weight than younger children. Children/young people's behaviour may help the adults—the parents and professionals—determine whether the child/young person's experience is 'worth listening to', as measured by adult 'knowledge'. However, behaviour can be interpreted in different ways by different people, depending on their stake or biases within the context(s) of the situation.

Therefore, as required in the legislation, each child/young person's voice must be placed in the decision-making pool of information in a way that values this participants' wisdom born of experience. Children/young people can tell us about their worlds without being expected to make the ultimate decision.

Child/young person within family cluster

The child/young person's relationship with their siblings may contribute to the adult hearing of the child/young person's voice. For Rebecca, her sister had been physically hurt by their father and, as a consequence, she was more reluctant to meet with her father, perhaps partly in support of her sister's needs.

Jack and his brother Tom supported each other when their father attacked Jack in the street seeking his phone, and to impose his 'parental rights'. Jack and Tom resisted as much as possible. However, as Tom was not attacked, his experience of this event may have been different, perhaps more like Rebecca, who was the one supporting the victimised sibling. Both children/young people's experiences are likely to help a professional understand more about the complexities of the dynamics in their child/young person client's life and family.

Older siblings can provide contextual information which may assist a professional to reach different understandings of a situation, especially if the professional feels more comfortable in a conversational environment, rather than an observation of behaviour. This means the professional may have to interpret more non-verbal interactions and, for some, this may be beyond their skills and readiness.

The relationship between each child/young person in the family, and with each parent and other family members, will affect the child/young person's life. There are some closer affinities between people, which are part of a person's interactions within relationships. This may go to the heart of the professional's and the court's perception of the parent-child/young person relationship and whether this has been influenced by the favoured parent against the less-favoured parent.

Parents have their own experiences and relationships which, if post-separation, may influence their children/young person by their stories. These influencers or influences may be in the parents' own history, beliefs, and values which pre-date the parental relationship. Different adult life events, such as redundancy, illness, or parents changing their roles can mean that, at different stages of a child/young person's life, one parent has cared more for them, or has been less available. As an example, Jack's father had not cared or parented Jack for a

considerable time. Jack's father may have continued his belief in his 'fatherhood rights' and thus he approached Jack to demand his phone. Jack's perception may have been that his father had no rights and no reason act in this way, so the intrusion was more fear-making than in another situation. His now-family, comprising of mother and siblings, found a safe space to move to for the night, so that all felt safe among extended family.

Recognising the complexities of family relationships and connections places a responsibility on the professional who wishes to listen to their child/young person client. As above, 'extraordinary listening' will be required to do this successfully, including a consideration of the rest of the intricacies below, the professionals, the court, and societal overlay.

9.2.2 Professionals cluster

I turn to the professionals identified in my study as being social workers, lawyers for the child/young person, psychologists, judges, teachers, counsellors, police, and supervised contact providers. The professionals are themselves involved in their own familial, collegial, and friendship inter-relationships; along with their fore-understandings, perhaps even those that led them to train in the profession. Their personalities, attitudes, beliefs, and values will cloud or filter how they hear the child/young person's voice. Each professional practices within an ethical code which is likely to have clauses that encourage them to promote the needs of their clients. However, underpinning this code is the professional's own history which may include beliefs about where children/young people's experiences are valued on the continuum between 'children/young people need protection' to the 'child/young person is an independent socially agentive person'. Adults assess the child/young person's maturity, often based on age or from the perceptions of parents or important others. This potentially negates the child's experience as was found by Rebecca and Aimee (Chapter 6). Here the supervisor of contact expounded the value for them of their fathers. Yet, both fathers had treated both children/young people

and their mothers badly. Aimee also had a therapist, Ros, who tried to impress her about the ‘goodness’ of her father (Chapter 6) when her experience was not of good care. Rebecca and Aimee both felt that their voices were not heard in this situation. The contact supervisor and the therapist did not listen to their experiences. In contrast, Ben (Chapter 8) spoke of the trust and respect he gave to the counsellors which was reciprocated in a mutual way. Hugh did likewise when he spoke of trust within his relationship with professionals which allowed professionals to share advice which Hugh received seemingly gratefully (Chapter 8). However, in the same chapter, Donna, a parent, spoke of the Judge who was unprepared and who did not validate the children. Donna perceived this Judge to be “abysmal” and to have let the children and the system down. Daniel needed a translator to understand the adult language, something which the professionals could have easily assisted with, if they were child/young person centred.

In Chapter 7, the professionals spoke of the importance of meeting and greeting their child/young person client to set the scene and to build the relationship. A successful relationship was built if the child/young person was given the opportunity to engage, sometimes in fun activities as a precursor to the “worky stuff” (Mary, Psychologist).

Marie, Lawyer for the Child, spoke of situations that did not help the child/young person relationship such as time delays (also a feature of some child/young person discussion) and the child/young person’s age and developmental/maturity changes which occur as a product of the time delays. Frequently, it appeared that the child/young person did not have the information that their family issues were still in front of the court. To Marie, they appeared “surprised”, “confused”, and/or “wondrous” that the professional was re-engaging with them. Perhaps this highlights the need for an ongoing relationship to occur between the professional and the child/young person, which may be separate from court dates. This is likely to create a

genuine relationship, where the child/young person feels heard and respected as a person of worth. Marie noted that the time delays “interfere” with the child/young person. She said, “it’s not ideal but it is the world that we are in”; almost an apology to children/young people for these delays, but also that this is unchangeable.

This suggests that to Marie, the system continues in its implacable way, irrespective of what is really happening. The value of the child/young person’s voice has been recognised for years, but little systemic change has occurred. In spite of this, my experience is that the professionals in the system have changed and are eager to attempt alternative strategies to gain resolution of family disputes and including the child/young person’s voice in creative ways that may not be legislated. This leads to systemic change from within. Often the court is used to facilitate such interventions. I now turn to the Court as being the system that children/young people are caught within.

9.2.3 The Court cluster

The Court is the institution that has the power in the system that children and young person’s experiences occur within. The family court has two roles: a legal institution and a social agency. Thus, it has a legal role, based from Aotearoa New Zealand law that is implemented in a social manner. It is recognised that the Court cannot ‘force’ some participants to do something. A father cannot be compelled to turn up for contact with their children or to stay away as happened to Jack (Chapter 6) when his father attacked him in a public street. Sanctions can be ordered, but limitations apply and the effects on the child/young person may be great. If a parent is fined for non-compliance, what effect may that have on their available finances to support the child? If there is a reversal of care of the child/young person to the parent who has been vilified while they lived with the other parent, what effect does this have on the child/young person’s long-term welfare and psychological attachments? As an institution, I note that the Court is an object; yet, the person who is in the

forefront, the Judge, is very much a person. As such, the Judge has their own fore-history and experiences that they bring to the role. They are also the ultimate decision-maker with a legislative focus on the child/young person's best interests. Judges wear gowns which could be the uniform that allows them to be 'the same', non-individuals, part of the hierarchical system. Does this breed respect for the Court and its decisions, or is it merely strengthening the bureaucracy and immutability that has been considered above?

When parents cannot agree about care and contact arrangements for their beloved children, there are limited options available to the Judge. In these types of disputes there is a continuum from primary care with one parent to primary care with the other parent, with shared care arrangements, considered to occur when the child spends at least 35 percent of their nights in a year with each parent. Usually both parents are guardians, so in all but the most unusual families, they retain joint parental decision-making.

In court proceedings, professionals are the key to supporting or muting the child/young person voice but there are many other factors that contribute and influence the strength and assertiveness of this voice. The legislation, the rules that guide practice, including the professional practice notes, all make changes to how the Court experiences the child/young person's voice. However, there is a lack of consistency between the 'Best Practice Guidelines for Lawyer for the Child' (Swadling, 2018) and the 'Specialist Report Writer's Practice Note' (D. Smith, 2018) about the relationship between the professionals, especially Lawyer for the Child and report writers. For example, the Lawyer for the Child practice note, speaks to liaison with the report writer, whereas the specialist report writer's note is silent on this point. Without Lawyer for the Child updating the report writer and informing them about upcoming court events or outcomes, the report writer would often not fulfil court expectations. This adds another systemic issue to the child and young person's voice being heard, as there is not even agreement about who might be on the child's 'team'.

Thus, the child/young person's voice is buried under a myriad of adult complexities. Their agency is diminished. Overarching all these identified person interactions are the societal morés, the customs and traditions within Aotearoa New Zealand society today. Our societal beliefs and traditions are evolving over the years and are very different to those I described at the beginning of Chapter 2, where children and young people were the property of others, often senior males in the family. I now include the next cluster where I discuss aspects of Aotearoa New Zealand society that may promote or hinder children and young people's voices being heard by professionals within the court.

9.2.4 Context of Aotearoa New Zealand cluster

Throughout the time of my study, we have had a Labour Government and again reviewed the family court system (Noonan et al., 2019). Multiple recommendations have been made, and I can only hope that now the 2020 election has occurred and Labour is again in office that these recommendations can be implemented and money given to address inequities. In the current Aotearoa New Zealand Cabinet of 20 Ministers, there are two Ministers for Children, one Associate Minister and a Minister for Youth outside of Cabinet. In addition, there are Ministers for Education and Social Development who have a large population of children within their brief. At a societal level, children have representatives and advocates, and only time will tell if the changes are followed through with action.

In my opinion, the whānau/family is the basis of Aotearoa New Zealand society. If it is under-recognised and under-funded, the impact on all other systems is immense and society is irreparably damaged. Historically, there has been a melding or assimilation of the indigenous people, the Māori, into Aotearoa New Zealand society and reparations paid for damages done to them by preceding generations of European, predominantly English settlers. We have a multi-cultural society, with each person having their own culture and history.

COVID-19 challenged Aotearoa New Zealand's economic status, and over the next years there is talk of the need to rebuild the economy. Arguably, we need to prioritise the welfare and best interests of children/young people to have a sustainable future as a country and society.

9.2.5 Summary

There are many complexities and interactions which interplay to allow a child/young person's voice to be heard within the Aotearoa New Zealand family court system. Many of these are related to the individual person and how they are able to value the children and young people who are the centre of my discussion. It is possible to 'blame the system' but the system is comprised of individuals with their own fore-havings, their own biases and beliefs, their own cultural traditions and their own relationships as children/young people or with children and young people. I move on now to consider the literature as it is today, at the end of 2020.

9.3 Linking to the literature

9.3.1 Influences on the child/young person's voice

In the above, I have addressed the need for children/young people's voices and experiences to be authentically heard by professionals using extra-ordinary listening skills. If professionals did listen extra-ordinarily and authentically, they would meet the legislative need for children/young people's voices to be presented in matters that affect them. This refers to all of the UNCROC (1989), the OTA (1989) and the COCA (2004). Jans (2004) argued that a strengths and competencies-based approach within a supportive cultural, social, political and economic context, enables children/young people to participate in matters that affect them. This points to the overarching mood and societal variables that impact on listening to the child/young person's voice. Baacke (1985, as cited in Jans, 2004) added to this when discussing the concept of children as 'meaning-givers': "children and young people are seen as developing personalities who

appropriate their environment and simultaneously influence it" (p. 36). As such, children and young people are seen as being agentive in terms of being autonomous social actors who are experts in their own lives and can make sense and explain these to others given the right conditions (Hartung, 2017; Jans, 2004; Lundy, 2007).

Words that are frequently used in family law proceedings are children and young people want a voice but not a choice (Bala, Birnbaum, Cyr, et al., 2013; Birnbaum, 2017; Brighouse, 2003; Misca et al., 2019; Paetsch et al., 2009).

Expanding on this thought, Brighouse (2003) stated that he considered that children and young person's "voices should be taken to be consultative, but not authoritative, where their interests are at stake" (p. 2). He differentiated the terms with authoritative being that one has a choice where their interests are defined and decision-making occurs as a result; whereas consultative occurs when say a parent consults with a child, but the adult takes the multiple interests, including their own, into consideration and makes the decision. This is a mix of children/young people being independent beings who can make valid choices and children/young people needing to be protected by older and 'wiser' parents. I suggest that the continuum between these points may be wide or narrow and, in part, depend on the listening skills and attitude of the adult.

Walker and Misca (2019) continued this theme when they adapted Hart's (1992) ladder of participation for children/young people in the family court. They proposed six steps in three groups, with the bottom three—hindrance, manipulation, tokenism—representing non-participation; followed by participation, starting with informed children/young people, consulting with them and, at the pinnacle, making shared decisions with children/young people. This is what Lucy, as described by psychologist Maria, considered was her right in Chapter 7. However, again, my concern with these ladders is that the participation is managed by the adults who hold the power to allow or disavow the child/young person's voice (Hartung, 2017). Adult-down

protection or adult denial of children/young people having a voice due to parental beliefs that they are the decision-makers, is associated with parents being the 'owners' of their children and entitled to 'custody'. Thankfully, today the word custody has been changed to day-to day-care and parenting orders in the CoCA 2004, but not in the OTA (1989).

This legislation places the child/young person and their best interests at the centre (s4A OTA, 1989; ss4 and 5 COCA 2004) and allows for a child/young person's voice to be heard (s6 CoCA and s5(1)a OTA 1989). To know the child/young person's voice, requires exceptional and authentic listening, to more than the words, but also the actions and affectations of the voice and behaviours.

However, as previously seen, the child/young person's voice is not heard or valued for varying reasons. Toros (2020) systematically reviewed the child protection literature, finding 12 articles, dated between 2006 and 2017, that addressed children/young people's "participation in decision making in the child protection system" (p. 4). These articles originated from the United Kingdom, including England (5); Australia (3); Ireland (2); Austria (1); and Spain (1). The overall finding was that children/young people did not feel that they had the information or the ability to participate in matters that directly affected them. Many children/young people felt decisions were made with no discussion or feedback. Many children/young people commented that they were not listened to or their experiences valued. This finding was consistent with literature reviewed in Chapter 3 (Bala & Birnbaum, 2018; Birnbaum & Bala, 2009; Damiani-Taraba et al., 2018; Parkinson & Cashmore, 2020; Pryor, 2008; N. J. Taylor, Gollop, & A. B. Smith, 1999). It was also somewhat consistent with some participant children/young people's experiences with some professionals, but my finding was not as strong as in the cited articles.

9.3.2 Societal influences on the child/young person's voice

Aotearoa New Zealand governments have reviewed the family court system on a number of occasions, with arguably the most influential being the 2014 National government review, following which counselling prior to court proceedings was scrapped. There was also talk of Lawyer for the Child and specialist reports being sparingly used, as a financial constraint was needed. In today's world, economic policies require 'value for money' and meeting KPIs (key performance indicators) which can place pressure on the professionals to not 'waste time and money' by making 'unneeded' visits to their child/young person clients, for the sake of the relationship. However, the last six years' experience has not seen those economic cuts occur. This may be a nod to the importance of professionals to, at least, present children/young people's voices and needs to the Court. That legislation has been amended to try to enable the child/young person's voice to be heard has been a long-standing goal for varying societies across the world.

Other countries have followed a similar course of reviews to enable children and young people voices to be heard, in line with the premises of the UNCROC (1989). I briefly consider some of these international reviews in the chronological order in which they occurred.

Nearly two decades ago, Tisdall et al. (2002) reviewed the changes to the Children (Scotland) Act (1995), which "mandated that a person making 'any major decision' in exercising parental responsibilities or rights must consider the child's wishes" (p. 387). This study described some of the complex interactions among a number of factors. These elements included:

- What was the definition of a "major decision" and could the parents or the court decide this?
- At what age was a child "mature enough" to instruct a lawyer?
- What decision-making powers could the professional take?

- What information should be given to the child/young person and what support should be provided to enable them to understand the information?
- What special support should be provided in the case the child/young person was disabled?

These complexities continue through to today. In my more family-oriented study, I have also included complexities such as the presence of siblings and the child's parents and extended families adding to the child/young person participation challenges.

Similarly, in the United Kingdom, Boylan and Braye (2007) evaluated the Children's Act (1989) as it applied to children/young people in care, and their contribution to policy. These authors found a complex interaction with professionals who were paid to advocate for the child/young person. They proposed that advocacy could be self, peer, or citizen-led, thus minimising the need for paid professionals. It could be seen as a step towards up-ending the current system, that, to my knowledge has not been robustly tested anywhere in the world.

Cossar et al. (2014) extended the focus of the previous discussion about the professional and child relationship, adding the complexities of the family interactions and the child's age and maturity. It was recognised that the child and social worker relationship needed to be built on trust for participation to occur. Where this social worker-child relationship was less positive, the importance of children/young people having advocates was expounded. However, it was beyond the research as to how this next level of relationship with another professional could be better than the first. This could be especially problematic if the child/young person felt let down by the first professional, so that they would be less likely to relate to the next. Their voice could be easily muted or silenced.

Bala and Birnbaum (2018) again considered the role of children/young people in a relationship with their lawyer. They suggested that for older language-able children and young people, they could be supported to self-present to the decision-maker or their views could be ascertained by varying reports and assessments. Younger children required an advocate for their best interests. They reinforced the importance of children and young people's views being heard and considered in a cost-effective manner.

9.3.3 Harm to the child/young person if their voice is not heard

Walker and Misca (2019) took the position that it was and is harmful if children and young people do not participate in matters that directly affect their lives such as family law proceedings. As above, they developed a participation model based on Hart's (1992) ladder of participation. They found that participation of children and young people in family dispute mediation was patchy and depended on professional skills and attitudes. As supported by McIntosh et al. (2011), child-inclusive mediation tended to require practitioners who had unspecified child-focused skills to enable the child's voice to be heard, when they were language-skilled (older primary school age and above). These children who were consulted tended to feel less anxious and be more settled about the decision and their parents tended to keep more stable arrangements. The challenge remains to understand the wishes and views of younger children.

9.3.4 Summary

Child/young person participation is accepted by many authors as being good for the child/young person and often for their parents. However, this participation occurs in a complex set of interacting variables, and I argue needs the adult, the professional, to listen extra-ordinarily well to the child/young person and the nuances of their discussion. The space between the discourses, the child/young person, and the professional, needs to be authentic and open to discussion and understanding. The child/young person needs to feel a sense of agency and that their voice is welcomed. The participant children/young

people in this study showed that they could share both positive and negative experiences with professionals from the court. This suggests that these children/young people and their contemporaries can have a meaningful participation if they are genuinely heard and valued with extraordinary listening occurring from the adults. I now offer the recommendation that have emerged from the findings of my thesis.

9.4 Recommendations for practice

Relationship is the fundamental truth of this world of appearance. (Tagore, 1931, p. 22).

9.4.1 The professional

My major recommendation for practice is that professionals prioritise the child/young person's relationship by authentically hearing their experiences of their lives and their experiences through the court. This will require the professional to listen extraordinarily to the child/young person. To achieve this, the professional needs to have identified their own biases, prejudices, and fore-understandings so they understand the lens they bring to the interview.

I recommend experiential workshops to teach professionals to listen to more than the words, to hear the child/young person's body language and nuances of expression, while understanding the complexity of the system in which these clients are thrown and embroiled. They need to support the discussion to allow a development of the 'between' spaces, a space between the child/young person and the professional where authentic dialogue occurs. Ideally, part of this experience would be led by young people.

As well as upskilling in listening, all professionals who work in the court should have regular professional supervision where their own lenses can be identified and unpacked. It is only when one appreciates the assumptions one carries, that one can be open to difference. A key component of this learning would be one's own experience of being listened to as a child, one's mode of

parenting, and the attitudes and values that might get in the way of accepting the importance of each child/young person's voice being heard and heeded. This will require a person who is skilled in family court work and in supervision.

I believe that it is important that the professionals working on behalf of the child/young person are recognised to be a team. As a professional revealed, there may be times when professionals are diametrically opposed and this can only become confusing for the child/young person. Daniel spoke of different experiences with different professionals, which were brought to a positive end by his social worker who worked instilled hope in his future. In the practice notes for lawyers for the children and psychologists, this team approach and involvement in communication between them has been long-debated and seemingly will continue. If the committed focus were on the child/young person, then I do not believe there is any debate. Child-appointed professionals need to work together in a manner that enables the child/young person to feel their best interests are being served.

9.4.2 The Court

The court is unarguably an adult construction to meet adult needs, which paradoxically states that the child/young person is the centre of its deliberations, yet all too easily overlooks them. What could happen if at every meeting of the court, or where adults are present without the child, a photo of the child was front and centre to keep the focus on whom this group is meeting about? What if the challenge was always to question whether the child/young person themselves could have access and involvement in these proceedings? And when the child/young person is present, that they leave any meeting feeling respected and heard, as though everyone present understands they 'matter'.

On the application papers for a parenting order, the children's names and details are essentially for information only. If the adults believed children were important to the process, would there not be information expected, from the those who complete the forms, about the child(ren) affected by the arrangements having had their best interests addressed? These application papers could be modified by adding a reply box which asks the writer to talk about the child and their needs, the writer's understanding of their wishes or views. I suggest that this might help focus parental disputes on the central person, who is also at least a subject, if not a participant to this dispute.

Jargon or 'court language' is a deterrent to children/young people's participation. Calling people, the "child", the "applicant", and the "respondent" objectifies the person to a role and takes away the person's humanness. There is no 'between' when objects are in place. I recommend we use people's names and family titles ("Mum", "Dad") to keep the possibility open to enable mutuality or at least respect to occur which can lead to trust and somewhere approaching the 'between'. As the Court is a social agency, dealing with social issues, it is important that it exudes the possibility of positive relationship development for the child/young person and their family going forwards.

All reviews of the family court, in my experience, have noted the time delays in reaching resolution. Some of my participants bemoaned this; yet, the professionals tended to say it was unchangeable. If a system is unchangeable, it is not flexible to meet the children/young people's needs, including that decisions are made in a child's time frame, as the focus. My experience of the Court is of time being used strategically by some adult participants. Future research, which includes legal scholars, could consider how to change the time delays in a practical way.

9.4.3 Ethics

As a last recommendation, as other researchers have discovered, I found my participant children/young people to be excellent reporters of their experiences. The children/young people in my study showed capacity to give consent. I would respectfully recommend that ethics committees consider this and do more to promote the importance of children/young peoples' experiences being explored, which would assist Aotearoa New Zealand to meet better the requirements of the treaties such as the UNCROC (1989). The practice that an adult must be a gatekeeper, a protector of a child who has an opportunity to participate in events that matter to them, including research, reinforces the argument of this thesis, that children have their rights undermined by policy. It is time to consider the risks of not enabling a child to have the right to consider an invitation to participate in research themselves, rather than when their parents allow permission.

9.5 Limitations of this research

My study involved a small number of participants whose narratives were deeply explored and interpreted with my hermeneutic phenomenological lens. Others may have a different interpretation as they have different biases and prejudices. Whilst this is a feature of my epistemological approach and methodology, that a rigorous positivist approach had not occurred may be criticised. However, without such a positivist approach, the individual voice of children/young people's lived experience with professionals from the family court would be lost.

I had hoped to have all my participants being children/young people aged 8–16 years. However, this became a difficulty for reasons addressed above, including parental gatekeeping. I wonder if there is still a major societal belief about children being vulnerable and in need of protection as represented in the National Ethics Advisory Committee (2019), or if adults were concerned that if

their children/young people participated, they may expose familial issues. Whatever the reason, this limited my ability to explore these children/young person's experiences directly.

The data for this research were collected and analysed between 2018 and 2020, so is contextualised within this time frame. At the conclusion of this study, there are winds of change continuing to blow over Oranga Tamariki and how its services are provided; alongside a review of how the family court functions. These reviews have been ongoing through the last four plus decades and change is slow to come. However, at a different time, in a different system, the lived experiences of children and young people who meet professionals from the court may be different.

9.6 What would I do differently/future research opportunities?

If I were starting this study again, today, I would still have the same topic, using the same epistemology, theoretical perspective, methodology and method and, if possible, the same committed supervisors and support team. I believe that children/young people's experiences need to be heard and understood in research, as too often these are muted. Children/young people need to be language-literate enough to allow exploration of their lived experience of engaging with professionals from the family court, using a hermeneutic phenomenological lens. Thus, my child/participant age group of 8–16 years appeared appropriate, though with recent legislative changes, it could be increased to 18 years. Maybe there is research that could work differently with younger children/young people versus older young people, but this would be a future discussion.

I would use my improved confidence to negotiate with the Principal Family Court Judge and the Ministry of Justice to seek permission for posters to be put in courthouses and where members of the public who are attending the family and youth courts could see them. I would also approach the professionals who

see these children/young people (not just lawyers for the child), to help my recruitment of children/young people. If ethics approval was different, I could also put 'contact me' posters with a phone number in places that children/young people frequent, so they could talk directly with me without their adult gatekeepers/parents being involved. Parental gatekeeping will be an issue in research until children/young people being viewed as vulnerable rather than having self-agency has been resolved.

I would likely consider if children who attend the family court may have different experiences if they were in parenting, care and contact, disputes as against those who enter through the child protection legislation. These two groups may have different stories and interpretations. How important this is, I am constantly still considering. Daniel certainly had a different experience to the other children/young people, but in this he augmented the experiences of my target participants.

The adults have a valuable perspective about the notion of 'care' for the children/young people who meet professionals in the family court. I believe that we professionals and adults are in this work because we are 'care-full' and 'caring', with, of course, some exceptions as the children/young people identified. However, if doing a future study, professionals and parents could be either a mixed adult or separate participant groups to allow further exploration of this notion. If an adult group were to participate, consideration could be given to exploring with more parents about their perceptions of children/young people's experiences of engaging with professionals in the court. This could extend to parents where the decisions went in their favour versus parents who felt the court did not hear them. There are many combinations and separations of people who could contribute to enlightening this notion of children/young people's experiences of engaging with professionals in the court.

The understanding of the 'between' was something I 'knew' about but in the simplicity of this notion, the path was clear for my better understanding. The concept of rapport has been understood, but I see the 'between' as different. Rapport is often about the professionals' view of the relationship with their client, whereas the between has a notion of more mutuality, which perhaps incorporates the notion of extra-ordinary listening. Further research could explore this further and reach beyond the court system.

Building, from this 'between', has been the notion of extra-ordinary listening. To further unpack this notion with children/young people, in situations other than the court, could be useful for their participation in decisions that matter to them. Children/young people are able to share their experiences if the adults only listen and understand with extraordinary insight, attunement, and attitude. The conversation needs to be authentic, with the child/young person feeling valued and scaffolded to share their views. Research is needed to gain more insight into how to help professionals to listen actively and effectively.

9.7 Personal reflections

In spite of my early assertion that I have studied and learned all my life, this study has been life-changing for me, both professionally and personally. This thesis experience has provided a time for me to look in-depth at my practice and to reflect in a positive way on my relationships with children/young people with whom I have regularly met over the last 30 years.

My appreciation of what I personally bring to my work has been described and opened to the light. My understanding of my clients, the children/young people who meet me in my court work, has been enhanced. I feel that I am listening at a different level and seeking interpretation to understand their positions, their fears, challenges, and positive events, their lives to a greater extent. I appreciate their uniqueness, even if their story feels similar to others. Each story belongs to this child/young person. It has given meaning to words from the legislation

about this child at this time. I constantly reflect on and discuss with others the notion of the 'between' of my relationships. In summary, this study has allowed me to practice and to study the art of my profession of clinical psychology.

In saying these comments, I am not describing my previous practice as unprofessional in any form; rather, this development reflects greater awareness of the subtleties. These have developed as a result of a four-year immersion in the literature, alongside listening to my participants' voices, leading to refining my thinking which has been challenged by my supervisors and my team around me. With respect to my interaction with a child/young person, and in fact all clients, I now consider 'how do I get into your space without getting into your face?' Hearing, understanding, and interpreting the words and moods they shared for this research has been monumental. On the other side, I only hear what calls us, which has been balanced in some ways by being more open of my fore-havings, my biases and my prejudices, which I bring to my research and my clinical work.

A profound reflection is that the word 'child' can be used to devalue the young person's experience, whereas using 'young person' gives more status to their experience. We speak about children's rights and then add age and maturity as held by the adults who are their advocates or supporters to the mix. While children and young people do not and should not be made to take the ultimate decision as to where to live and who to see, their experiences are valid and need to be seen within the context of their lives. There is an expression of a 'Gillick-competent' child/young person that allows a professional to state whether the child/young person is able to make a decision related to their wellbeing and aware of the consequences. I have met many adults who would fail this decision-process, yet they still are able to make decisions. Valuing the experiences of children and young people and respecting them as people by listening extra-ordinarily is a goal for my future life.

Lastly, and not least, and circling back to my first reflection above, it has been challenging for me to share myself in this project. As a professional, I have been taught to keep myself private which was also a family ethos. Reading the article by Smythe et al. (2018) about mental health workers self-disclosure helping client-worker relationships has caused me to pause and think. A change may be afoot as being human also is part of the art of psychology.

The thesis of my thesis

Gathering the many threads of this thesis together I offer this conclusion to my thesis.

In the family court, children/young people's voice can be heard, respected, and understood when their relationship is with a professional who listens in an extra-ordinary, attuned manner and who shows appropriate care. A space between the child/young person and professional is filled by both conversees interacting in a mutual and respectful manner that recognises the value and experiences of each as a participant. In such a relationship, the child/young person's voice is paramount. If this kind of listening occurs the child/young person feels valued, understood, has hope and can participate in a meaningful way, leading to an outcome that meets the child/young person's best interests. They can then grow a sense of having agency that enables them to actively participate in and shape the complex situations in which they may otherwise find themselves entrapped. How professionals work with these children/young people thus has long term consequences on the sense of personhood they grow through the family court experience.

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Appendices

Appendix A Letter from the Judge

Research

To: Moss, Judge
Subject: My research
Attachments: 180628Ethics changes letter.docx

Good morning Jill

I have received advice from the AUT Ethics Committee (letter attached) that I need to inform the Judges with whom I communicated that the research has been extended to all children in New Zealand not just Pakeha children. I have arranged cultural advice if Maori or Pasifika children will participate.

Could you please pass this onto Judge Doogue (who I understand is not longer the Chief Family Court Judge and perhaps Judge Smith, her replacement as is appropriate.

Many thanks again for your assistance.

Kath Orr



CHIEF DISTRICT COURT JUDGE FOR NEW ZEALAND
TE KAIWHAKAWĀ MATUA O TE KŌTI-Ā-ROHE

ACTING PRINCIPAL FAMILY COURT JUDGE OF NEW ZEALAND
TE KAIWHAKAWĀ MATUA O TE KŌTI WHĀNAU

Judge Jan-Marie Doogue

01 May 2018

Kathy Orr
Clinical Psychologist
P O Box 19273
Hamilton 3244 email: kath@pyschologist.co.nz

DOCTORAL RESEARCH PROJECT

Dear Kathy

Thank you for your letter, dated 25 April 2018, that I received on 30 April 2018 via Judge Jill Moss, seeking my 'blessing' for you to undertake doctoral studies and research "Experiences of Pakeha NZ children who meet professionals during their journey through the Family Court".

I give you approval for this research project to take place within the Family Court jurisdiction.

I will be very interested in your findings and I am more than happy to support you with this study.

Yours faithfully

Jan-Marie Doogue
Chief District Court Judge

Appendix B Letters of Support

Anglican Action
Mahi Mihinare



Pursuing justice through service

I roto I te whakaritenga mahi ka whai tika

25th May 2018

To whom it may concern,

My name is Bonnie Maihi, I writing this letter in support of Kathy Orr and her research relating to ‘Experiences of children who meet professionals during their journey through the Family Court’. She has asked me to consider assisting her in overseeing some of her writing pertaining to Māori children that she would be interviewing, and ensuring her interpretation is culturally sensitive in terms of a Māori lens. I have gladly accepted this and am only too happy to help. My suitability to do so rest with, firstly, the fact I am Māori of Ngaati Te Wehi decent related to the Waikato-Tainui iwi.

I am fluent in Te Reo Māori me ona Tikanga, I also serve on my marae committee, and am a representative for our marae in Te Whakakitenga o Waikato. This is the governing branch which oversees Waikato-Tainui tribal development. Secondly, I work for Anglican action within their Kids First Whaanau centre hub. My role is that of a children’s worker, as well as a key worker who works closely with at risk mothers and their children, majority of which are predominantly Māori. We are a residential parenting program and our clients are referred to us by Oranga Tamariki.

Finally, I myself am a Doctoral student at Te Whare Waananga o Waikato, just beginning my doctoral journey, however the theoretical framework I utilized in my Master’s thesis “Connection of Urban Māori whanau to Cultural Confidence”, was that of Kaupapa Māori theory. The use of kaupapa Māori theory is relevant in its position towards inclusiveness of the Māori perspective and is directly favourable to me being able to assist Kathy with ensuring her interpretations are culturally appropriate. Should further information be needed, feel free to contact me on my mobile number 0212031455.

Ngaa mihi

Bonnie Maihi

Te Ara Hou, PO Box 13117, Hillcrest, Hamilton 3251
Phone: (07) 856 5820 Fax: (07) 856 9823

100 Morrinsville Road, Hillcrest, Hamilton 3216
Email: info@anglicanaction.org.nz



Sinclair Simonsen Trust Building
500 Main Street
PO Box 12058
Palmerston North
New Zealand

P: 06 358 8129
F: 06 358 2100
E: info@jfl.co.nz

02 July 2018

Kathy Orr
130 Rostrevor Street
HAMILTON 3204
(via email)

Dear Sir/Madam

ASSISTANCE FOR KATHY ORR THESIS

I am happy to assist Kathy Orr with her thesis about the experiences of children and young people who meet professionals from the Family Court from a Pasifika perspective if this is required.

I confirm my agreement to provide cultural advice and guidance to Ms Orr should Ms Orr meet with a child who identifies themselves as Pasifika.

Yours faithfully
JACOBS FLORENTINE

A handwritten signature in black ink, appearing to read 'Lemalu Moevao Faimalie'.

Lemalu Moevao Faimalie
Partner
moevao@jfl.co.nz

Encl.
LMF:LMF

Cathy Flynn

BARRISTER & SOLICITOR

541 Pollen Street • P.O. Box 450 • Thames 3540 • Phone 07-868 3405 • Fax 07-868 3405
Mobile 021-702 438 • Email: cflynn@xtra.co.nz

17 April 2018

Kathy Orr
Clinical Psychologist
(by email only)

Dear Kathy

RE: Research project for your studies

I confirm that we have discussed the parameters of the research you are proposing, and the best way to make contact with potential participants.

I agree with the draft letter that you are proposing to send to Lawyers in order to recruit participants.

Yours faithfully



Cathy Flynn

Kath B Orr

From: Vikki Bateman <vikki@batemanlaw.co.nz>
Sent: Saturday, 12 May 2018 11:59 AM
To: Kath B Orr
Subject: Doctorate

Good morning Kath,

Thanks for the communication. I would be delighted to act as a support person for your doctorate studies. It sounds really interesting and I'd love to be part of it.

Regards
VIKKI BATEMAN
Principal
BATEMAN LAW



18 Stanley Street, Levin 5510 OR P O Box 150, Levin 5540
Phone: 06 367 6322 and Fax: 06 367 6325

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Kath B Orr

From: Rachel - The Law Room <Rachel@thelawroom.co.nz>
Sent: Tuesday, 1 May 2018 6:03 PM
To: Kath B Orr
Subject: Your Doctorate Research

Hi Kath

I refer to your e-mails regarding the study you are undertaking.

I confirm that I am happy to speak to children within your identified age range about the possibility of speaking with you about their experiences in dealing with professionals at the conclusion of their proceedings. There are a couple of children in particular that I am currently acting for whom I think would welcome the opportunity to discuss their experiences and views.

I have no doubt that this will be important and valuable work and am happy to assist in any way that I can.

Kind regards,

Rachel Lohrey

Barrister & Solicitor
The Law Room
502 Main Street
P O Box 1153, Palmerston North 4440

Email: rachel@thelawroom.co.nz
Phone: (06) 358 8962
Fax: (06) 354 1650

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NIEMAND PEEBLES HOULT

barristers & solicitors

Johan Niemand LLB
Kay Hoult LLB (hons)

15 May 2018

TO WHOM IT MAY CONCERN

RESEARCH BY KATH ORR

1. We have been talking with Kath about her research about how children experience professionals during their family court journey. In our view, this is essential research. We are also aware that it has the support of the judiciary, including the Chief District Court Judge.
2. We are happy to hand out flyers to children and/or parents who have finished their family court journey.
3. Both of us have had various discussions with Kath about her research, which we have found enjoyable and interesting.
4. As already indicated above, we consider the research to be important and we are pleased to support and assist Kath with her research as much as possible.

Yours faithfully,
NIEMAND PEEBLES HOULT

Per/
KAY HOULT
Partner



JOHAN NIEMAND
Partner



Dianne Cameron	100 Clarence Street, Hamilton Central
M.A. (Hons)	PO Box 20,
Diploma in Clinical Psychology	Waikato Mail Centre
Clinical Psychologist	Hamilton, 3240
dianne.cameron@psych.co.nz	Phone: (021) 588 399

16 May 2018

TO WHOM IT MAY CONCERN

RE: Kath Orr

I am Kath's supervisor for her clinical and Family Court work.

I confirm that Kath has spoken to me about her research and the potential ethical issues.

I will continue to offer discussion and reflection opportunities about Kath's DHSc work as part of supervision.

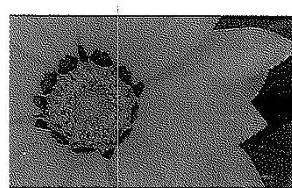
Regards,



Dianne Cameron
Clinical Psychologist

Tanya Breen

Consultant Clinical Psychologist
tanya@tanyabreen.co.nz
www.tanyabreen.co.nz



15 Cattanach Street
St Andrews
Hamilton 3200
New Zealand
Ph: 07 849 4240
Mob: 027 3561600

16 May 2018

Kath Orr
Clinical Psychologist
130 Rostrevor Street
P O Box 19273
Hamilton 3244

Dear Kath

This letter is to confirm that we have discussed your proposed DHSc research into the voice of the child involved in Family Court proceedings on numerous occasions, as part of our regular monthly supervision. We have addressed the topic itself, feasibility, ethical and professional issues, and research approaches.

Warm regards

Tanya Breen
Consultant Clinical Psychologist
M. Soc. Sci. (1st Hons.); Dip. Psyc. (Clin.); MNZPsS; MICP



21st May 2018

The Ethics Committee
Auckland University of Technology
AUCKLAND

To Whom It May Concern

RE: DHSc ETHICS APPLICATION KATHLEEN BLANCHE ORR

This is to confirm that Ms Kath Orr has consulted regarding her DHSc project. The project's feasibility and other aspects have been/and still are discussed regularly as needed within the progress of Kath's DHSc process.

Please do not hesitate to get in touch if you would like more information.

Yours sincerely

A handwritten signature in black ink, appearing to read "V. Isler".

Dr Veronika Isler-Bezek
Clinical Psychologist, PhD

Dr. Veronika Isler
CBT Plus Psychological Services

Phd, PGDip(Clin)Psych, NZPS, NZICP
Registered Clinical Psychologist
Phone: 07/823 8290
Mobile: 021/457 944
www.cbtplus.co.nz
veronika@isler.co.nz

Postal Address: PO Box 6057, Urlich, Hamilton
Hamilton Office: 130 Rostrevor St/Tristram St, Hamilton



INFANT, CHILD & ADOLESCENT SERVICE
 206 Collingwood Street, Private Bag 3200,
 Hamilton, New Zealand.
 Phone 07 839 7828 Fax 07 839 4249
 17/05/2018

To whom it may concern,

Since Kathy Orr started her doctorate we have spent many hours discussing her current research proposal. We have deliberated the various methodologies and have had many discussions about the potential ethical implications of her research. Kathy has always been able to consider various perspectives, and is always open to being challenged. She is able to substantiate her claims with her extensive experience and relevant literature. I am privileged to be a part of her psychology professional support team. The topic which she is investigating has been greatly neglected, not only in New Zealand, but also internationally. I believe that the research that Kathy Orr is undertaking will have a considerable impact on the lives of many children within New Zealand. I am looking forward to the continued discussions and debates with Kathy as she continues her doctoral journey.

Should you require any additional information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads 'Roberts'.

Dr Kathrine A Roberts (Dip. Clin. Psych; PhD; MSc MED.)

Clinical Psychologist

P1007FX5

Our goal: To earn the reputation as a service people trust with their loved ones' care

www.waikatodhb.health.nz

Appendix C Information Sheets



01 November 2018

Project title: Experiences of children who journey through the Family Court

Project Supervisor: **Liz Smythe** liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: **Kath Orr** research@psychologist.co.nz 07 8390005

Hello.

My name is Kath Orr and I am asking that you read this information about a project I am doing.

I want to talk with children and young people between the ages of 8 and 16 years who have recently been seen by people from the Family Court: a lawyer, social worker, psychologist and/ or Judge (professionals). I want to understand what it was like and how it felt for you to see these people i.e. how did you “experience” these interactions.

You are receiving this letter because your lawyer spoke with you and/ or your parents. Please speak together with your parents and/ or guardians and other important people about this. You are welcome to say “no” to taking part in this project.

What I am asking you to do:

I am asking for about an hour of your time to have a conversation about how it was for you to see professionals from the Family Court. You can tell me anything that you want. I may ask some questions to better understand what you are saying.

I will audio tape the conversation we have, and then type this up. I will then listen to the tape, read the typed copy and think about what you (and other children and young people) have told me.

If you are willing to help, I have attached another form (known as an Assent form) for you to complete and return to me. I need both your parents’ or guardian’s consent and signatures for you to take part. I can send a form to them if they do not have one.

Who am I talking to?

I want to speak with up to fifteen children/ young people aged 8 – 16 years who have recently finished seeing people such as lawyers, social workers, psychologists and judges in the Family Court.



What will I do with the information

I will read and listen to all the conversations to try to make sense of how it is to be a child/ young person who sees professionals in the Family Court in New Zealand. I will write a story about this.

I am hoping that this study will have several outcomes:

1. That I can share through talking with professionals or writing in journals that professionals read about how it is to be a child/ young person who sees professionals in the Family Court.
2. That if there were changes that you suggested, I could speak to those who make changes to try to help other children.
3. That I get a degree called a Doctorate of Health Science.

What about privacy?

Privacy is very important. I will only be discussing what you say with my team who are supporting me (my supervisors).

I would like you to think of a nick- name you would like to be called when I write up. This means that your real name is hidden.

All the conversations are held securely. They need to stay there for six years after the conversation has occurred then they will be removed and fully deleted.

Questions

All questions are good questions, so please ask me any question.

Summary of outcomes

When I have finished writing up all the stories, I will be happy to tell you what I found. Please tick the box on the Assent form.

Summary

I am doing a project about your experience of seeing different professionals in the Family Court.

I am seeking children and young person to have a conversation for maybe an hour or so about this topic.

You can agree to take part in this conversation. At any time you can withdraw and we can talk about whether you want the information destroyed or used in the study.

I will answer any questions you have.



Your Assent and your safety

I have attached an Assent form for you to complete and return to me if you want to take part in this project. I need both your parents' or guardian's consent and signatures for you to take part. I can send a form to them if they do not have one.

You are welcome to say "No" to taking part in my project.

If you say "yes" you are welcome to stop at any time just by saying "stop" and I will stop talking about the project. I will then talk with you about what to do with any information I have collected i.e. I can keep it or do you want it destroyed? Within three weeks of the conversation you can tell me if you want me to destroy the information that you said to keep.

If you tell me anything bad happened to you, I will need to think about how or if I need to tell adults. We can talk about this if it happens.

If anything happens in the interview that concerns you, please tell me if you can. Otherwise please talk with your parents who can talk to me or my supervisor Liz Smythe liz.smythe@aut.ac.nz 09921 999 ext 7196.

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEC, Kate O'Connor, ethics@aut.ac.nz, 921 9999 ext 6038.

Thank you for reading this information. If you would like to take part please email me the Assent form (as attached) to research@psychologist.co.nz or by posting to me at P O Box 19273 Hamilton.

Kind regards

Kath Orr

*Approved by the Auckland University of Technology Ethics Committee on 17 July 2018
reference number: 18/229*

Note: The Participant should retain a copy of this form.



01 November 2018



Information Sheet Parents

Project title: Experiences of children who journey through the Family Court

Project Supervisor: **Liz Smythe** liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: **Kath Orr** research@psychologist.co.nz 07 8390005

An invitation

Thank you for contacting me about my research project.

I am really keen to hear about how children and young people (between the ages of 8 years and 16 years) experience meeting and interacting with the professionals who visit them through the family's journey through the Family Court. This is **not** about what the issues were and what happened. It is about how a child perceives their interactions with the professionals i.e. Judge, the child's lawyer, a lawyer appointed by the court, a social worker and/ or a psychologist/ specialist report writer. Children who have seen more professionals than one will be preferred in the selection process.

I am talking with your child as I want to learn from the children with whom I speak.

The child's conversation with me will be audiotaped and this audio-tape will be transcribed by a person also bound to confidentiality. As a participant in the study, your child will be asked to give me a unique nom-de-plume (nickname) and this will appear in the transcription and any subsequent publications (thesis or articles for professional journals).

I cannot share with you what your child has spoken with me about. However, if there were any distress or concern I would certainly alert you to this and work with you to find a place where your child could have assistance to address the issues. If a child spoke about an illegal behaviour on the part of the professional then I would stop the interview, notify both parents and Oranga Tamariki (mandatory reporting).

The researcher:

I'm Kath Orr, a student at Auckland University of Technology. I have thirty plus years' experience in writing specialist reports for the Family Court and this has piqued my interest in this topic.

This research is for my doctoral thesis though I also intend to write articles for peer-journals. I also want to share what I learn with peers and other professionals both formally and informally through speaking with them. I may make some recommendations through my professional associations about useful changes professionals can make when speaking or supporting children through the Family Court.



How was your family identified?

I approached some lawyers for the children and asked them to be my mid-person. If they met a family (child or parent) whose case was completed in the Family Court and the child had seen professionals from the Court, I asked if they would pass on a flyer to both parents or guardians and/ or children for consideration that I could meet with the child. I thank you for contacting me so I can discuss further with you about your child's participation..

Important information about selection of people with whom I would like to have a conversation with.

- Children aged between 8 and 16 years who have for any reason journeyed through the Family Court and met mandated professionals i.e. a Judge, Lawyer for the Child, Lawyer to Assist the Court, social worker and/ or psychologist.
- The Family Court proceedings must have ended and there must be no impending appeals.
- Both parents or all guardians and the child must give consent for the child to have a conversation with me.
- Only one child from each family is intended to be a part of the conversation.
- I must not have had any contact with the family in any way.

Your child's participation in this research is voluntary (your child's choice) and s/he may withdraw at any time with no reason given or asked for. If your child chooses to withdraw from the study, either at interview or within three weeks of the interview, the interview data will be destroyed if requested. However, having had a conversation I cannot erase the information and knowledge given in my brain. The data will not appear in the final thesis or any subsequent research papers.

What will happen in this research process?

I am asking for about an hour (estimated) of your child's time to have a conversation about the experience of the child who saw Family Court professionals i.e. how it was for them?

As above, this is not about what happened in the Court process, rather how the child found/ felt about the process. The conversation is unstructured, but it will be guided by the researcher.

Private one: one conversations will occur in an office close to where your child lives. We can arrange this at the time of making the appointments.

The conversation will be audio-taped and transcribed.

Within six weeks of the conversation, a thank you letter will be sent to your child. Included in this will be a small voucher to recognise your child's input.

**How do I give my consent for my child to participate in the research?**

I attach a consent form for you and the child's other parent to sign and an assent form for your child to complete. Please do discuss this project with whoever, so everyone is comfortable.

Please could you return these forms to me at research@psychologist.co.nz. Please either email or phone my office at 07 839 0005 to ask for further information.

Costs and benefits of the research:

The time commitment I am asking for from your child is about an hour. I request that I meet children in a neutral setting as I don't want any concerns about loyalty conflict to surface, based on the environment I see the child in. I am also proposing to give them a voucher to recognise their vital input. Thirdly, all participants will be acknowledged by their nom-de-plumes in the thesis when this is presented.

The benefits of the research at this stage may be small as the number of people I am seeing is small. However, if there are commonalities of experiences for children who see Family Court professionals, then these can be highlighted and if changes were needed/ suggested these would be reported on.

The benefits to me of this research is that at the end I hope to have gained new research skills and a degree (Doctor of Health Science). I would like to share the results within the professional community, which creates professional expertise.

I would also like to share the outcomes of this research with you and your child if you would like this.

Privacy:

Confidentiality of what your child talks with me about is very important to me. All conversations after the introductions and revisiting the consent will be audio-taped. These will be transcribed by a confidential typist and the transcriptions will be only available to my supervisors and me. They will be held safely. The voice data will be stored on AUT One Drive for safety.

How long do I have to consider whether my child can take part in the research?

The flyer was sent through a number of Lawyers for the Children. When I have enough participants, if you then offer for your child to take part I may ask to put you on a waiting list in case someone withdraws; or otherwise I may just thank you for your interest. I do not know these time frames.

Will I receive feedback about the outcomes of this research?

On the consent form is a place where you can request the outcome summary sheet to be sent to you. It may take up to two years until this sheet is available.

**What do I do if I have concerns about this research?**

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, *Liz Smythe* liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEC, Kate O'Connor, *ethics@aut.ac.nz*, 921 9999 ext 6038.

Who do I contact for further information about this research?

Project Supervisor: *Liz Smythe* liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: *Kath Orr* research@psychologist.co.nz 07 8390005

Kath Orr

research@psychologist.co.nz

*Approved by the Auckland University of Technology Ethics Committee on 17 July 2018
reference number: 18/229*

Note: The Participant should retain a copy of this form.



Information and Assent Sheet for younger children

01 November 2018

Project title: Experiences of children who journey through the Family Court

Project Supervisor: **Liz Smythe** liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: **Kath Orr** research@psychologist.co.nz 07 8390005

Introduction:

I am asking if you would like to take part in a project. Before you decide if you want to take part you need to know what I am doing and what will happen. This sheet will tell you about the project. Please talk with your parent or guardian about this.

What is this project about?

I want to talk with children who have recently been seen by people from the Family Court: a lawyer, social worker, psychologist and/ or Judge (professionals). I want to understand what it was like and how it felt for you to see these people.

Who is doing this project?

I am Kath Orr. I see children whose families are involved in the Family Court. I am interested in how it is for the children.

Do I have to take part?

No you don't, it is up to you and your parents or guardian as to whether you take part. If you do decide to take part and then you change your mind, you can tell Kath or your parents and you don't have to take part.



What I am asking you to do:

I am asking for about an hour of your time to talk with me about how it was for you to see professionals from the Family Court. You can tell me anything that you want. I may ask some questions to better understand what you are saying.



I will audio tape the conversation we have.



What will I do with the information

I will listen carefully to what you tell me. I will then write a book about how you (and the other children and young people I have seen) felt about seeing these people from the Family Court.



What are the good things about taking part?

I hope you will enjoy taking part. What you tell me could help other children when they speak with people from the Family Court.

Are there any bad things about taking part?

I don't think there are any bad things that will happen to you about taking part. I will need some of your time (one hour or so). When you talk with me you might recall something bad that happened to you. If this happens Kath will look after you and we can call your parents or carer straight away. If you want to stop talking at any time then just tell me and we will stop.

What about privacy?

Privacy is very important. No-one apart from your parents and you will know that you took part. Kath will only be discussing what you say with my team who are supporting me (my supervisors).

I would like you to think of a nick-name you would like to be called when I write up and put this on the Assent form. This means that your real name is hidden.

Questions

All questions are good questions, so please ask me any question.

Summary of outcomes

When I have finished writing up all the stories, I will be happy to tell you what I found. Please tick the box on the Assent form.



Your Assent and your safety

If you are willing to help, I have attached another form (known as an Assent form) for you to complete and return to me. I need both your parents' or guardian's consent and signatures for you to take part. I can send a form to them if they do not have one.



If anything happens in the interview that concerns you, please tell me if you can. Otherwise please talk with your parents who can talk to me or my supervisor Liz Smythe liz.smythe@aut.ac.nz 09921 999 ext 7196.

Any worries about the research or how I talked with you should be notified to the Executive Secretary of AUTEC, Kate O'Connor, ethics@aut.ac.nz, 921 9999 ext 6038.

Thank you for reading this information. If you would like to take part please email me the Assent form (as attached) to research@psychologist.co.nz or by posting to me at P O Box 19273 Hamilton.

Kind regards

Kath Orr

*Approved by the Auckland University of Technology Ethics Committee on 17 July 2018
reference number: 18/229*

The Participant should retain a copy of this form.



01 November 2018

Project title: Experiences of children who journey through the Family Court

Project Supervisor: **Liz Smythe** liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: **Kath Orr** research@psychologist.co.nz 07 8390005

Hello.

My name is Kath Orr and I am asking that you read this information about a project I am doing.

I am talking with children and young people between the ages of 8 and 16 years who have recently been seen by people from the Family Court: a lawyer, social worker, psychologist and/ or Judge (professionals). I want to understand what it was like and how it felt for you to see these people i.e. how did you “experience” these interactions.

You are receiving this letter because your lawyer spoke with you and/ or your parents. Please speak together with your parents and/ or guardians and other important people about this.

What I am asking you to do:

I am asking for about an hour of your time to have a conversation about how it was for you to see professionals from the Family Court. You can tell me anything that you want. I may ask some questions to better understand what you are saying.

I will audio tape the conversation we have, and then type this up. I will then listen to the tape, read the typed copy and think about what you (and other children and young people) have told me.

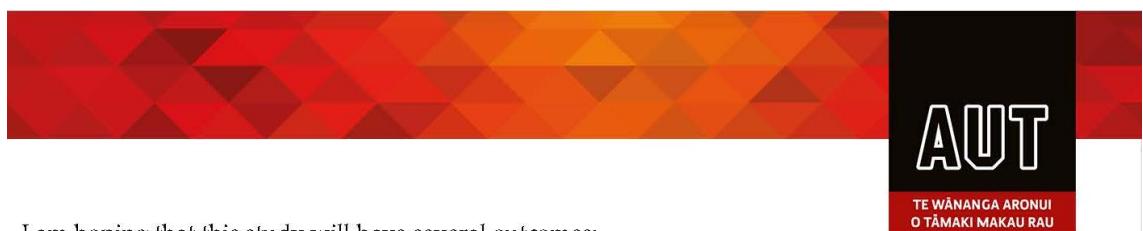
I have attached a Consent form for you to complete and return to me if you want to take part in this project. Please send this Consent form to me at research@psychologist.co.nz or via the mail to P O Box 19273, Hamilton.

Who am I talking to?

I want to speak with up to fifteen children/ young people aged 8 – 16 years who have recently finished seeing people such as lawyers, social workers, psychologists and judges in the Family Court.

What will I do with the information

I will read and listen to all the conversations to try to make sense of how it is to be a child/ young person who sees professionals in the Family Court in New Zealand. I will write a story about this as I think it is important that we have information about this area.



I am hoping that this study will have several outcomes:

1. That I can share through talking with professionals or writing in journals that professionals read about how it is to be a child/ young person who sees professionals in the Family Court.
2. That if there were changes that you suggested, I could speak to those who make changes to try to help other children.
3. That I get a degree called a Doctorate of Health Science.

What about privacy?

Privacy is very important. I will only be discussing what you say with my team who are supporting me (my supervisors).

I would like you to think of a nick-name you would like to be called when I write up. I only need a first name. This means that your real name is hidden.

All the conversations are held securely. They need to stay there for six years after the conversation has occurred then they will be removed and fully deleted.

Questions

All questions are good questions, so please ask me any question.

Summary of outcomes

If you would like I can send you a summary of what I found when I have finished the research. At this stage this summary is planned to be ready about the end of 2019 or early 2020 so this is a long way out.

Summary

I am doing a project about your experience of seeing different professionals in the Family Court.

I am seeking children and young person to have a conversation for maybe an hour or so about this topic.

You can agree to take part in this conversation. At any time you can withdraw and we can talk about whether you want the information destroyed or used in the study.

I will answer any questions you have.



Consent and your safety

You are welcome to say "no" to taking part in this project.

If you say "yes" you are welcome to stop at any time just by saying "stop" and I will stop talking about the project. I will then talk with you about what to do with any information I have collected i.e. I can keep it or do you want it destroyed? Within three weeks of the conversation you can tell me if you want me to destroy the information that you said to keep.

If you tell me anything bad happened to you, I will need to think about how or if I need to tell adults. We can talk about this if it happens.

If anything happens in the interview that concerns you, please tell me if you can. Otherwise please talk with your parents who can talk to me or my supervisor Liz Smythe liz.smythe@aut.ac.nz 09921 999 ext 7196.

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEC, Kate O'Connor, ethics@aut.ac.nz, 921 9999 ext 6038.

Thank you for reading this information. If you would like to take part please email me the Assent form (as attached) to research@psychologist.co.nz or by posting to me at P O Box 19273 Hamilton.

Kind regards

Kath Orr

*Approved by the Auckland University of Technology Ethics Committee on 17 July 2018
reference number: 18/229*

Note: The Participant should retain a copy of this form.



Participants information sheet - Parents

08 October 2018

Project title: How do children, parents and professionals perceive the experience of a child's journey through the Family Court?

Project Supervisor: **Liz Smythe** liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: **Kath Orr** kath.orr@aut.ac.nz 07 8390005

An invitation

My name is Kath Orr and I am a registered Clinical Psychologist who works within the Family Court setting and I am also a student enrolled in a Doctor of Health Science (DHSc) degree. The research I am conducting will contribute to the completion of the DHSc qualification through Auckland University of Technology (AUT).

I am really keen to hear about how children and young people (between the ages of 8 years and 16 years) experience meeting and interacting with the professionals who visit them through the family's journey through the Family Court. This project is considering the children's experiences through the eyes of the child, parents whose children have seen professionals in the family court and the professionals who work in the family court. This is **not** about what the issues were and what happened. It is about how a child perceives their interactions with the professionals i.e. Judge, the child's lawyer, a lawyer appointed by the court, a social worker and/ or a psychologist/ specialist report writer.

I wish to talk with you about how you as a parent perceived your child's journey through the family court.

What is the purpose of this research?

The purpose of this study is increase our understanding about how it is for children and young people to meet professionals when their parents journey through the Family Court of New Zealand. The findings in this study may contribute to changes to how professionals are involved with children as the child's voice will be ascertained along with the parents' and the professionals' understanding of how it is for children. I also anticipate this study will contribute to my knowledge and practice development as a psychologist who practices within the Family Court. It will also contribute to completion of the DHSc qualification. I intend to disseminate (publish in journals and/ or conference presentations) any findings both nationally and internationally.

How were you identified and why are you being asked to participate in this research?

I have approached Lawyers for the Children who will have passed this invitation on to you as a parents who may be interested in participating. You have been invited because you have a child between the age of 8-16 years who has for whatever reason journeyed through Family Court and met with mandated professionals i.e. a Judge, Lawyer for the Child, Lawyer to Assist the Court, social worker and/ or psychologist.

How do I agree to participate in this research?

Your participation in this research is voluntary (it is your choice) and whether or not you choose to participate will neither advantage nor disadvantage you. If you decide to participate, you will be asked to sign a written consent form provided by me indicating your agreement to participate in the study. If your child would also like to be part of the conversation there I will also ask you complete a separate consent form.

Please could you return these forms to me at kath.orr@aut.ac.nz; or by posting to me at P O Box 19273 Hamilton 3244; or if you like we can complete this form together when we met.

You are able to withdraw from the study at any time and for any reason. If you choose to withdraw from the study, then you will be offered the choice between having any data that is identifiable as belonging to you removed or allow it to continue to be used. However, once the findings have been produced, removal of your data may not be possible.

What will happen in this research process?

Being involved in this research will mean participating in an interview with me, the researcher (Kath Orr) at a mutually agreeable location. It is estimated that the interview will take about an hour of your time. The conversation will be focused on the experience of your child when meeting with Family Court professionals i.e. how it was for them? This conversation is not about what happened in the Court process, rather how the child found/ felt about the process. I will start the conversation by asking you to tell me about what you think it was like for your child when meeting with professionals during the family court process?

The conversation between yourself and myself will be audiotaped and this audio-tape will be transcribed (typed up) by a person also bound to confidentiality. As a participant in the study, you will be asked to give me a unique nom-de-plume (nickname) and this will appear in the transcription and any subsequent publications (thesis or articles for professional journals).

If you wished to review your transcript, I am happy to send this to you, but please do not feel pressured to review this.

Within six weeks of the conversation, a thank you letter will be sent to you.

If you would like more information about the study before you decide to consent please either email or phone my office at 07 839 0005 and I can answer your questions or give you further information.

What are the discomforts and risks and how will these be alleviated?

There is minimal risk in being involved in this study. You do not need to respond to any questions that you do not wish to answer and you have the right to stop the conversation whenever you wish to.

All participants will be acknowledged by their nom-de-plumes in the thesis or in subsequent papers when this is presented.

What are the benefits of this study?

There is no direct benefit to you however but we hope that this study may highlight areas within professional and family court practices which can be developed or improved to make the journey more comfortable for children and their families.

The benefits to the researcher will be the completion of the necessary requirements for a doctoral degree (Doctor of Health Science).

I would also like to share the outcomes of this research directly with you if you would like this or I can send you a summary of our findings.

How will my privacy be protected?

No material which could personally identify you will be used in any reports arising from this study. Participant interview transcripts will be identified by an alias (false name) and any quotes used will have any potential identifiers removed. Interview data will be stored electronically on a password encrypted external storage device inside a locked cabinet at AUT. Hard copies of the consent forms will be stored in a separate office at AUT in a locked cabinet.

What are the costs of participating in this research?

The cost incurred by you is in the time taken to attend the interview of approximately one hour and the time, if you request, to read and check your transcript.

How long do I have to consider whether my participation can take be considered?

When I have enough participants, if you then offer for to take part I may ask to put you on a waiting list in case someone withdraws; or otherwise I may just thank you for your interest.

Will I receive feedback about the outcomes of this research?

On the consent form is a place where you can request the outcome summary sheet to be sent to you.
What

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, *Liz Smythe liz.smythe@aut.ac.nz 09 921 9999 ext.7196*

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEC, Kate O'Connor, *ethics@aut.ac.nz*, 921 9999 ext 6038.

Who do I contact for further information about this research?

Project Supervisor: Liz Smythe liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: Kath Orr kath.orr@aut.ac.nz 07 8390005

Kath Orr

*Approved by the Auckland University of Technology Ethics Committee on 17 July 2018 AUTEC
Reference number 18/229*

Note: The Participant should retain a copy of this form.



08 October 2018

Participant Information Sheet - Professionals

Project title: How do children, parents and professionals perceive the experience of a child's journey through the Family Court?

Project Supervisor: **Liz Smythe** liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: **Kath Orr** kath.orr@aut.ac.nz 07 8390005

An invitation

Thank you for contacting me about my research project.

I'm Kath Orr, a student at Auckland University of Technology. I have thirty plus years' experience in writing specialist reports for the Family Court and this has piqued my interest in this topic.

This research is for my doctoral thesis though I also intend to write articles for peer-journals. I also want to share what I learn with peers and other professionals both formally and informally through speaking with them. I may make some recommendations through my professional associations about useful changes professionals can make when speaking or supporting children through the Family Court.

I am really keen to hear about how children and young people (between the ages of 8 years and 16 years) experience meeting and interacting with the professionals who visit them through the family's journey through the Family Court. This project is considering the children's experiences through the eyes of the child, parents whose children have seen professionals in the family court and the professionals who directly support children in the family court. This is **not** about what the issues were and what happened. It is about how a child perceives their interactions with the professionals i.e. Judge, the child's lawyer, a lawyer appointed by the court, a social worker and/ or a psychologist/ specialist report writer. Children and parents whose children have seen more professionals than one will be preferred in the selection process (for the family participants).

I wish to talk with you about how you think children experienced meeting with professionals mandated by the Family Court.

The conversation between yourself and myself will be audiotaped and this audio-tape will be transcribed by a person also bound to confidentiality. As a participant in the study, you will be asked to give me a unique nom-de-plume (nickname) and this will appear in the transcription and any subsequent publications (thesis or articles for professional journals).

If you wished to review your transcript, I am happy to send this to you, but please do not feel pressured to review this.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, *Liz Smythe liz.smythe@aut.ac.nz 09 921 9999 ext.7196*

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEC, Kate O'Connor, *ethics@aut.ac.nz, 09 921 9999 ext 6038*

Who do I contact for further information about this research?

Project Supervisor: Liz Smythe liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: Kath Orr kath.orr@aut.ac.nz 07 8390005

Kath Orr

kath.orr@aut.ac.nz

*Approved by the Auckland University of Technology Ethics Committee on **17 July 2018** AUTEC
Reference number 18/229*

Note: The Participant should retain a copy of this form.

Appendix D Consent Forms



Assent Form - Children

Project title: How do children, parents and professionals perceive the experience of a child's journey through the Family Court?

Project Supervisor: **Liz Smythe** liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: **Kath Orr** kath.orr@aut.ac.nz 07 838 0005

- I have read and understood the sheet telling me what will happen in this study and why it is important.
- I have been able to ask questions and to have them answered.
- I understand that our conversations will be audio-taped and transcribed. Notes may also be taken.
- I understand that I can stop being part of this study whenever I want and that it is perfectly ok for me to do this.
- If I stop being part of the study, I understand that we will discuss what I want to have done with my conversation. Will we destroy it or can you still use the conversation? I also understand that sometimes, if the results of the research have been written, some information may not be able to be removed.
- I agree to take part in this research.
- After Kath has finished and written up the story from the conversations with children, I would like a copy of the summary:

YES NO

Which people who came from the Family Court did you see?

- | | | |
|--|---|---|
| <input type="checkbox"/> Judge | <input type="checkbox"/> Lawyer for the Child | <input type="checkbox"/> Lawyer to Assist the Court |
| <input type="checkbox"/> Social Worker | <input type="checkbox"/> Psychologist | |

Do you have any preference where you would like to meet me?

- At an office in the same town as your home
- Somewhere else (please say, though it needs to be private)



What name would you like to be called by in the study (just a first name)?

Child's signature:

Child's name:

Contact Details:

One or both parents' signatures to say that this was discussed with your child:

.....

Date:

*Approved by the Auckland University of Technology Ethics Committee on 17 July 2018
AUTEC Reference number 18/ 229*

Note: The Participant should retain a copy of this form.



Parent/Guardian Consent Form

Project title: How do children, parents and professionals perceive the experience of a child's journey through the Family Court?

Project Supervisor: *Liz Smythe liz.smythe@aut.ac.nz 09921 999 ext 7196*

Researcher: *Kath Orr research@psychologist.co.nz 07839 0005*

- I have read and understood the information provided about this research project in the Information Sheet dated 01 October 2018
- I have had an opportunity to ask questions and to have them answered.
- I understand that notes may be taken during the interviews and that they will also be audio-taped and transcribed.
- I understand that my child taking part in this study is voluntary (his/ her choice) and that s/he may withdraw from the study at any time without being disadvantaged in any way.
- I understand that if my child withdraws from the study then a discussion will occur (if possible) about what happens to the child's conversation about themselves and my family. The child will have three weeks to instruct whether it is to be destroyed or it can be used. However, once the findings have been produced, removal of our data may not be possible.
- I agree to my child taking part in this research.
- I wish to receive a summary of the research findings (please tick one):

Yes No

Your child's journey through the Family Court

When did proceedings start and end (month and year is good if possible)

Children's names, ages and current living situation who have been through the Family Court system (only one child in each family is able to participate).

Christian Name	Age	Current living situation i.e. primary residential parent/ shared care or whatever



Which professionals mandated by the Family Court did your children see?

- Judge Lawyer for the Child Lawyer to Assist the Court
- Social Worker Psychologist

Do you have any preference where your child would like to meet me?

- At an office in the same town as your home
 Somewhere else (please say)

Child name :

Parent/ Guardian's signature:
.....

Parent/ Guardian's name:
.....

Parent/ Guardian's contact details:
.....

Date:

*Approved by the Auckland University of Technology Ethics Committee on 17 July 2018
AUTEC Reference number 18/229*

Note: The Participant should retain a copy of this form.



08 October 2018

Parents and Professionals' Interview Consent Form

Project title: How do children, parents and professionals perceive the experience of a child's journey through the Family Court?

Project Supervisor: **Liz Smythe** liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: **Kath Orr** kath.orr@aut.ac.nz 07 8390005

- I have read and understood the information provided about this research project in the Information Sheet dated 01 October 2018.
- I have had an opportunity to ask questions and to have them answered.
- I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- I understand that taking part in this study is voluntary (my choice) and that I may withdraw from the study at any time without being disadvantaged in any way.
- I understand that if I withdraw from the study then I will be offered the choice between having any data that is identifiable as belonging to me removed or allowing it to continue to be used. However, once the findings have been produced, removal of my data may not be possible.
- I agree to take part in this research.
- I wish to receive a summary of the research findings (please tick one): Yes No

To maintain your privacy what first name would you like to be called in any reports of this research?

.....

Participant's Signature:

Participant's Name:

Participant's Contact Details:

.....

.....

.....

Date:

*Approved by the Auckland University of Technology Ethics Committee on 17 July 2018 AUTEC
Reference number 18/229*

Note: The Participant should retain a copy of this form.



Young person's consent form

Project title: How do children, parents and professionals perceive the experience of a child's journey through the Family Court?

Project Supervisor: Liz Smythe liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: Kath Orr kath.orr@aut.ac.nz 07 838 0005

- I have read and understood the information provided about this research project in the Information Sheet dated 18 November 2018
- I have had an opportunity to ask questions and to have them answered.
- I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- I understand that taking part in this study is voluntary (my choice) and that I may withdraw from the study at any time without being disadvantaged in any way.
- I understand that if I withdraw from the study then I will be offered the choice between having any data that is identifiable as belonging to me removed or allowing it to continue to be used. However, once the findings have been produced, removal of my data may not be possible.
- I agree to take part in this research.
- I wish to receive a summary of the research findings (please tick one): Yes No

Participant's signature

Participant's name

What name would you like to be called in the research?

.....

What are your contact details?

.....

Date

Approved by the Auckland University of Technology Ethics Committee on 17 July 2018.

AUTEC Reference Number 18/ 229

Note: The participant should retain a copy of this form

Appendix E Ethics Approval



Auckland University of Technology Ethics Committee (AUTEC)

Auckland University of Technology
D-88, Private Bag 92006, Auckland 1142, NZ
T: +64 9 921 9999 ext. 8316
E: ethics@aut.ac.nz
www.aut.ac.nz/researchethics

17 July 2018

Liz Smythe
Faculty of Health and Environmental Sciences

Dear Liz

Re Ethics Application: **18/229 Experiences of children who journey through the Family Court**

Thank you for providing evidence as requested, which satisfies the points raised by the Auckland University of Technology Ethics Committee (AUTEC).

Your ethics application has been approved for three years until 17 July 2021.

Non-Standard Conditions of Approval

1. Review the Information Sheet for reference to parents only;
2. Do not collect data via the young person's Consent Form.

Non-standard conditions must be completed before commencing your study. Non-standard conditions do not need to be submitted to or reviewed by AUTEC before commencing your study.

Standard Conditions of Approval

1. A progress report is due annually on the anniversary of the approval date, using form EA2, which is available online through <http://www.aut.ac.nz/research/researchethics>.
2. A final report is due at the expiration of the approval period, or, upon completion of project, using form EA3, which is available online through <http://www.aut.ac.nz/research/researchethics>.
3. Any amendments to the project must be approved by AUTEC prior to being implemented. Amendments can be requested using the EA2 form: <http://www.aut.ac.nz/research/researchethics>.
4. Any serious or unexpected adverse events must be reported to AUTEC Secretariat as a matter of priority.
5. Any unforeseen events that might affect continued ethical acceptability of the project should also be reported to the AUTEC Secretariat as a matter of priority.

Please quote the application number and title on all future correspondence related to this project.

AUTEC grants ethical approval only. If you require management approval for access for your research from another institution or organisation then you are responsible for obtaining it. You are reminded that it is your responsibility to ensure that the spelling and grammar of documents being provided to participants or external organisations is of a high standard.

For any enquiries, please contact ethics@aut.ac.nz

Yours sincerely,

Kate O'Connor
Executive Manager
Auckland University of Technology Ethics Committee

Cc: research@psychologist.co.nz; Annette Dickinson



Auckland University of Technology Ethics Committee (AUTEC)

Auckland University of Technology
D-88, Private Bag 92006, Auckland 1142, NZ
T: +64 9 921 9999 ext. 8316
E: ethics@aut.ac.nz
www.aut.ac.nz/researchethics

29 October 2018

Liz Smythe
Faculty of Health and Environmental Sciences

Dear Liz

Re: Ethics Application: **18/229 Experiences of children who journey through the Family Court**

Thank you for your request for approval of an amendment to your ethics application.

The amendment to extend the participant group to parents and professionals who support children court proceedings is approved.

Non-Standard Conditions of Approval

1. Recruitment advertisement should include AUT logo.

Non-standard conditions must be completed before commencing your study. Non-standard conditions do not need to be submitted to or reviewed by AUTEC before commencing your study.

I remind you of the **Standard Conditions of Approval**.

1. A progress report is due annually on the anniversary of the approval date, using form EA2, which is available online through <http://www.aut.ac.nz/research/researchethics>.
2. A final report is due at the expiration of the approval period, or, upon completion of project, using form EA3, which is available online through <http://www.aut.ac.nz/research/researchethics>.
3. Any amendments to the project must be approved by AUTEC prior to being implemented. Amendments can be requested using the EA2 form: <http://www.aut.ac.nz/research/researchethics>.
4. Any serious or unexpected adverse events must be reported to AUTEC Secretariat as a matter of priority.
5. Any unforeseen events that might affect continued ethical acceptability of the project should also be reported to the AUTEC Secretariat as a matter of priority.

Please quote the application number and title on all future correspondence related to this project.

AUTEC grants ethical approval only. If you require management approval for access for your research from another institution or organisation then you are responsible for obtaining it. If the research is undertaken outside New Zealand, you need to meet all locality legal and ethical obligations and requirements.

For any enquiries please contact ethics@aut.ac.nz

Yours sincerely,

Kate O'Connor
Executive Manager
Auckland University of Technology Ethics Committee

Cc: research@psychologist.co.nz; Annette Dickinson



Auckland University of Technology Ethics Committee (AUTEC)

Auckland University of Technology
D-8B, Private Bag 92006, Auckland 1142, NZ
T: +64 9 921 9999 ext. 8316
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www.aut.ac.nz/researchethics

28 June 2018

Liz Smythe
Faculty of Health and Environmental Sciences

Dear Liz

Ethics Application: 18/229 Experiences of children who journey through the Family Court

Thank you for submitting your application for ethical review. I am pleased to advise that the Auckland University of Technology Ethics Committee (AUTEC) approved your ethics application at their meeting on 25 June 2018, subject to the following conditions:

1. Please confirm that it is not just experience of pakeha children that is being researched, as communicated in the letter to judges;
2. Please confirm that the relevant judges have been advised that the inclusion criteria has been widened;
3. Please reflect on whether as part of the researcher's safety protocol it is appropriate to have a responsible person available in the vicinity of the research;
4. Confirm that access to research@psychologist.co.nz email address supplied is restricted to the researcher;
5. Amend the recruitment flyer since 16 years old may not like being referred to as children;
6. In all places "Christian" name appears in the recruitment material, replace with "first" name;
7. Consider a simplified Information Sheet for younger children and apply a consent process for 16 year old (supply a consent form, and an Information Sheet that explains that they can consent for themselves).
8. On the Information Sheet ensure that the contact details for the Executive Secretary are supplied, and change references to 'Mum and Dad' to parent or guardian.

Please provide me with a response to the points raised in these conditions, indicating either how you have satisfied these points or proposing an alternative approach. AUTEC also requires copies of any altered documents, such as Information Sheets, surveys etc. You are not required to resubmit the application form again. Any changes to responses in the form required by the committee in their conditions may be included in a supporting memorandum.

Please note that the Committee is always willing to discuss with applicants the points that have been made. There may be information that has not been made available to the Committee, or aspects of the research may not have been fully understood.

Once your response is received and confirmed as satisfying the Committee's points, you will be notified of the full approval of your ethics application. Full approval is not effective until all the conditions have been met. Data collection may not commence until full approval has been confirmed. If these conditions are not met within six months, your application may be closed and a new application will be required if you wish to continue with this research.

To enable us to provide you with efficient service, we ask that you use the application number and study title in all correspondence with us. If you have any enquiries about this application, or anything else, please do contact us at ethics@aut.ac.nz.

I look forward to hearing from you,

Yours sincerely

Kate O'Connor
Executive Manager
Auckland University of Technology Ethics Committee

Cc: research@psychologist.co.nz; Annette Dickinson

Ms Kate O'Connor
 Executive Manager
 AUCKLAND UNIVERSITY OF TECHNOLOGY ETHICS COMMITTEE

Ethics Application: 18/229 Experiences of children who journey through the Family Court

Thank you for your letter of 28 June 2018 with approval subject to the following conditions.

1. Please confirm that it not just experience of pakeha children that is being researched, as communicated in the letter to judges;

Correct. The letter to Judges was written prior to the change made.

2. Please confirm that the relevant judges have been advised that the inclusion criteria has been widened;

This has occurred (copy of email attached)

3. Please reflect on whether as part of the researcher's safety protocol it is appropriate to have a responsible person available in the vicinity of the research;

I do think this is a worthy idea and I will make arrangements to include this person, either office staff from the practice where I am interviewing the child; a parent waiting in the waiting room; or one of my staff members.

4. Confirm that access to research@psychologist email address supplied is restricted to the researcher;

This is correct. this email address is only on the primary researcher's password protected computer.

5. Amend the recruitment flyer since 16 years old may not like being referred to as children;

Attached

6. In all places "Christian" name appears in the recruitment material, replace with "first" name;

Done.

7. Consider a simplified Information Sheet for younger children and apply a consent process for 16 year old (supply a consent form, and an Information Sheet that explains that they can consent for themselves).

Attached

8. On the Information Sheet ensure that the contact details for the Executive Secretary are supplied, and change references to 'Mum and Dad' to parent or guardian.

Appendix E attached

Kath Orr
 Primary researcher

Appendix F Posters

The experiences of New Zealand children who have met professionals during their journey through the Family Court

A research project

Are you a child who has seen people like lawyers, psychologists, social workers and/ or a Judge (professionals) when your family was involved with the Court?

Have you seen two or more of these people?

Are you aged between 8 and 16 years?

Are you interested in talking to me about how it was for you to see these professionals?

I don't want to know about what happened and the decisions made. I am interested in your feelings and thoughts (experiences) about meeting with the professionals.

If you are interested and you have talked with both parents or people who make decisions for you, please contact me so we can talk some more.

Kath Orr
research@psychologist.co.nz
07- 839 0005



AUT
TE WÄHANGA AROHUA
O TĀMAKI MAKAU RAU

How do children experience meeting professionals during their journey through the Family Court?

Research from the child's, parents and associated professionals' eyes

- Are you a parent of a child / young person who has met a lawyer for the child; a psychologist; a social worker and/ or a Judge (at least two of these professionals)?
- Is your child / young person interested in sharing their experiences in a conversation about their meetings?
- Is your child aged 8 – 16 years?
- Has your child / young person seen at least two of the professionals above?
- *Will both parents or all decision-makers (guardians) give consent for the child / young person to take part? OR*
- *As a parent of a child/ young person who meets the criteria above, are you prepared to meet with me to discuss how you feel your child experienced meeting professionals from the Family Court?*

I will not be asking about the outcomes, the decisions made or how these were made. I am interested in how it was for your child / young person to see a professional from the Family Court i.e. how they felt and experienced these meetings. This conversation with your child/ you will take about an hour of your time.

If you are happy for your child / young person or yourself to be considered please contact me:

Kath Orr
Kath.orr@aut.ac.nz
 07- 839 0005



How do children experience meeting professionals during their journey through the Family Court?

Research from the child's, parents and associated professionals' eyes

Are you a lawyer for the child, psychologist, or social worker who provides reports to the Family Court about children and their welfare?

Are you interested in how children, aged 8 – 16 years, experience meeting professionals?

Do you have time to have a conversation with me about these children's experiences (not the case or the outcome)?
This will be about an hour.

If you would like to take part in this research, please contact me

Kath Orr
Kath.orr@aut.ac.nz
07- 839 0005



Appendix G Letter to Lawyers for the Children



08 October 2018

Amended letter to Lawyers for the Children re my research project

Project title: How do children, parents and professionals perceive the experience of a child's journey through the Family Court?

Project Supervisor: Liz Smythe liz.smythe@aut.ac.nz 09 921 9999 ext.7196

Researcher: Kath Orr kath.orr@aut.ac.nz 07 8390005

Hello Colleague

I am Kath Orr, a specialist report writer in the Family Court. I am also studying for a Doctor of Health Science through Auckland University of Technology.

I am seeking your assistance to help me gather child/ young person and/or parent participants from families whose Family Court proceedings are:

- Recent
- Finished
- Where the children aged 8 – 16 years have seen professionals in the Family Court (the more the better) and will give assent to having a conversation with me.
- Where parents/ guardians consent to the 15 year old and younger child's participation. Young people of 16 years can consent for themselves.

The child/ young person's involvement in the Family Court could be under either the Children Young Persons and their Families Act or the Care of Children Act.

I have enclosed a flyer for the family (child, young person and parents). All I am asking you to do is to give this to parents and/ or children and young people or to make it available in your office. You will see that I am asking them to contact me for more information. Of course, any encouragement that you feel able to offer will be gratefully accepted.

If the parent is willing to be engaged in discussing the research, either for themselves or their child (I cannot have both a parent and a child from the same family) please ask them to contact me directly, either through a dedicated email (kath.orr@aut.ac.nz) or via my office phone number (07 839 0005 which will get a message to me to discuss with the parent/ child/ young person).

Many thanks in advance for any assistance you are able to give me.

Kind regards

Kath Orr

Appendix H Protocols for Researcher Safety and Digital Recording of Conversations

Researcher Safety Protocol

1. In the invitation to participate and consent/ assent forms (Appendices D - G) I ask each participant (and parents of the child) where they would like to meet to meet me. I will ensure that the requests align (telephoning as needed). This will then be the location. There is a bias towards conversations occurring in a neutral office setting as for children this removes one potential bias about the loyalty to one or other parental home.
2. If a participant wishes to have the conversation in their home, this will only occur in a communal room where there is a table for the dictaphone to be placed. No conversations will occur in bedrooms.
3. As I am asking Lawyers for the Children to be the intermediary people i.e. to hand out the invitation letters to children and parents (for child consents) and different parents for parent conversations. I believe that there will be no greater risk (and likely less risk) that I encounter in my usual job when I am writing specialist reports for the Family Court.
4. Wherever possible conversations will occur during office hours (0800 – 1700). I will dress professionally.
5. Should a situation arise where the conversation derails, Kath will exit the situation or request the client exits (as normally occurs). This will be noted and debrief can occur with either or both the project supervisor or clinical supervisor (with client confidentiality maintained).
6. If a child raises a professional malpractice issue about a professional they have seen (not that they were not heard, but that they were say physically touched or verbally abused) I would end the conversation as appropriate. I would then notify my academic and clinical supervisors and the parents. A likely step would include notification to Oranga Tamariki. Child data will not be included in the thesis.
7. If a child raises issues about the other parent, these will be diverted back to the topic of interest and will not be present in the analysis of the data. This is not my interest area.

Protocol for Digital Recording of Conversations

Conversations in Person

Conversations will be recorded on a digital recorder.

Recording will commence after initial meeting and greeting has taken place, and the Consent Form has been signed.

The digital recorder will be placed between the researcher and the participant, within recording range. Where possible, its location will be unobtrusive.

Recording will stop at the end of the interview.

The digital recording file will be downloaded on to the researcher's personal computer upon arrival back at the office. The file will be password protected.

A digital copy will be stored on the AUT One Drive.

Conversations by Telephone or Skype

Conversations by telephone will be conducted with a microphone attached to the telephone receiver.

Conversations by Skype will be recorded by a digital recorder placed on the researcher's desk, beside her computer.

Consent will be gathered in advance.

The rest of the procedure above will be followed.

Appendix I Transcriber Confidentiality Agreement



Transcriber Confidentiality Agreement

Project title: Experiences of children who journey through the Family Court

Project Supervisor: Liz Smythe liz.smythe@aut.ac.nz 09 921 9999 ext 7126

Researcher: Kath Orr research@psychologist.co.nz 07 839 0005

- I understand that all the material I will be asked to transcribe is confidential.
- I understand that the contents of the tapes or recordings can only be discussed with the researchers.
- I will not keep any copies of the transcripts nor allow third parties access to them.

Transcriber's signature:

Transcriber's name:

Transcriber's Contact Details (if appropriate):

.....
.....
.....

Date:

Project Supervisor's Contact Details (if appropriate):

Professor Liz Smythe
Faculty of Health and Environmental Sciences
liz.smythe@aut.ac.nz
09 921 9999 ext 7196

Approved by the Auckland University of Technology Ethics Committee on 17 July 2018 AUTEC Reference number 18/229

Note: The Transcriber should retain a copy of this form.

Appendix J Sample of data and interpretation

Daniel and silence

At the beginning of my journey, I was quite ignorant, and had a just do whatever kind of attitude. Like I didn't really care what happened. I didn't feel like I really had any control at the time, so I was kind of just stuff it, let the professionals decide. I definitely had a say but I didn't use it. I wouldn't say they didn't give me a say, I definitely had a say but I just didn't use it. I had all these people around me telling me what I should do, what I need to do, what I should wear to Court and how I should address the Judge. There were just a whole lot of professionals around me telling me what to do, so I was just kind of you guys make decisions and I will sit back and take it.

I couldn't say my voice was silenced because I always had the opportunity to say stuff I just chose not to. Whether that was because it was daunting to say stuff or didn't feel like I was being heard I don't know. I don't remember.

Daniel's story started at the beginning of his engagement with the Family Court. He expressed that he stayed silent as he did not feel that he had any control within the system. He had a lot of professionals allocated to him, but through his respect for them, his fear and lack of agency he did not feel that he could contribute. He spoke of powerlessness and the system possibly being daunting. Daniel spoke of giving in to others who knew better than him.

It seems that Daniel is speaking of him being an insignificant child looking up at this huge system run by people who told him what to do. He was overwhelmed. I wonder if he was frightened by the number of professionals, each of whom would have been giving him advice, a cacophony of sound in a new and scary world. His fear and intimidation are clearly expressed and his voice was silenced. He commented that he was uncertain that he was heard, which suggests strongly that his voice was seen as being unimportant. The interplay between the noise of the professionals and the silence of Daniel is stark.

He decided to "take it" i.e. to do what he was told by the powerful ones. This sort of reaction suggest that Daniel felt disempowered. Passivity does not allow a voice to be heard or a person's needs met.

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