Cultural diversity and context

Kate Woodd

The "browning of New Zealand" and the extent to which our society is becoming ethnically and culturally diverse were brought into sharp focus at the 5th Annual Child Law conference held in Auckland recently.

Among the defining principles that must be considered in an assessment of what is in the best interests and welfare of a child under the Care of Children Act 2004, is the principle that a "child's identity as part of their family, family group, whanau, hapu or iwi and including, without limitation, his or her culture, language, and religious denomination and practice, should be preserved and strengthened".

Section 133 of the Act now gives the Family Court jurisdiction to request a cultural report from someone it considers qualified for the purpose, the substance of which "may address any aspect or aspects of that child's cultural background".

Considering a child's cultural background in decisions regarding their welfare and care is not an entirely new concept. The Children Young Persons and Their Families Act 1989 similarly compelled the state child welfare agencies to consider issues of culture, particularly in the context of their "whanau, hapu and iwi". That legislation, enacted 17 years ago, was one of the first steps in overhauling the laws affecting children's welfare and care since the Guardianship Act 1968. It also sought to recognise the cultural importance of whanau to Māori and to ensure the Crown discharged its Treaty of Waitangi obligations to Māori.

However political rhetoric that New Zealand is a bicultural society with Pakeha and Māori as the predominant cultural groups is fast losing its persuasiveness. Presenting her paper, "Cultural Diversity and Context: Responding to the Needs of 'This Child' in 'This Family'", senior researcher at the Centre for Asian and Migrant Health Research at the Auckland University of Technology, Ruth DeSouza, together with barrister Fazilat Shah and Families Commissioner and barrister Sandra Alofivae, spoke of the significant challenges facing professionals in their efforts to effectively work with clients from different ethnic, cultural and religious backgrounds to their own.

DeSouza believes that "biculturalism is a good beginning and we should be looking at how we implement principles such as partnership, participation and protection in our professional practice and then expand this to other groups".

DeSouza's paper presented some staggering statistics on the multi-cultural make up of New Zealand's society today, projections for the future and the implications for family law professionals working with families.

Describing herself as a Tanzanian born Goan-Indian raised in East Africa, who has variously been mistaken for being Māori herself, DeSouza's own ethnic identity and background graphically demonstrates how easy it is to make incorrect assumptions as to a person's cultural identity or race.

According to DeSouza's references, "The world's migrant stock increased by 75 million between 1980 and 2000, with Europe's migrant numbers rising from 11 million to 33 million between 1980 and 2000. The US foreign born population grew from 14 million to 35 million between 1980 and 2000. Now, one in every 15 people in Europe and one in every

eight in the US was born overseas (La Guardia, 2005). In the developed world, migration accounts for a greater share of population increase than natural growth".

In New Zealand, "almost one in five New Zealanders was born overseas. This rises to one in three in Auckland, where half of the migrant population resides. The highest proportion of Pacific and Asian migrants live in Auckland."

Europeans (1 per cent increase), more Māori (28 per cent increase), more Pacific people (58 per cent increase) and more Asians (122 per cent increase)."

Despite this growing multiculturalism in our society, DeSouza notes that "New Zealand has yet to encompass multiculturalism as a social policy framework". She reasons that this is possibly due to our early links with the UK and Ireland, and that "when the time did come to explore issues regarding

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"Between 1991 and 2001 the number of people identifying as Asians more than doubled to almost 6.4 per cent of the population exceeding Pacific peoples. Chinese are the largest ethnic group within the Asian population, followed by Indian and Korean. In the Auckland region, 1 in 8 people are Asian, 1 in 8 Pacific and 1 in 10 Māori. It doesn't end there though, the fastest growing ethnic groups were Korean, Arab, Croat, Iraqi, South African and Russian, while the greatest increase in counts of overseas birthplaces between 1996-2001 were China, South Africa, India, Fiji and Korea. Linguistic and religious diversity were also a hallmark of the 2001 Census, which noted a 20 per cent increase in the number of multilingual people and an increase in people whose religion was non-Christian, including Hindu 56%, Buddhist 48 per cent and Islam 74 per cent".

With children the picture is somewhat different. "The 2001 Census found... First, that New Zealand children were more ethnically diverse than adults, and secondly that they were less likely to have been born overseas than adults. A significant number of children in New Zealand were born here rather than overseas, compared to adults. Nine per cent of children were born overseas, compared with 23 per cent of adults. Of the children born overseas, 34 per cent were born in Oceania (Australia and the Pacific), 27 per cent were born in Asia and 21 per cent were born in Europe. The trend towards a growing diversity is expected to continue with projections for 2021 showing that, relatively speaking, there will be fewer

nation and nationality, this coincided with a rise in indigenous concerns and the Treaty". By comparison to the multicultural policies developed in Australia and Canada in the 1970s, New Zealand was instead "debating issues of indigeneity and the relationship with tangata whenua".

In the Family Court context, however, one might argue that it should be relatively simple to recognise when and from whom a cultural assessment is required to assist the court in its decision as to what is in the best interests of a child. The reality for many family law professionals is, however, quite the contrary. As Alofivae notes, significant challenges and questions now exist for the Court and lawyers in identifying whether a cultural report is needed and secondly, "who is qualified to give it and on what basis are they qualified for the purpose?" Difficulties exist in obtaining interpreters and identifying those 'qualified' in their particular cultural, ethnic or religious communities to assist.

Before even getting to that point, however, DeSouza's challenge for all family law professionals is the ability to appropriately recognise the importance of, and subtleties that can exist from a cultural perspective when working with family law clients.

DeSouza suggests that "legal services, family lawyers, judges, specialists and professional advisers in the area of child law need to delicately balance between the universal (treating people equally) and

particular (responding to people's different needs differently) in order to be equitable. Provision of universal services can result in stereotyping, as the importance of culture is minimised and differences put down as individual. Equally universalism as a guiding ideology can be a means of indirect discrimination which is when service provision is the same for everyone but people from various ethnic groups cannot access or gain maximum benefit because of language, religious or cultural reasons".

In the health sector, 'cultural safety' and 'cultural competence' have become well established concepts, and it is the embrace of cultural competence by the individual professionals at one level and the framework of the court system at another that is critical if more than mere tokenism is paid to considering the cultural issues involved.

Cultural competence in the health context has been defined as "the ability of systems to provide care to patients with diverse values, beliefs and behaviours, including tailoring delivery to meet patients' social, cultural and linguistic needs".

DeSouza notes that "cultural competence is becoming an increasingly relevant concept in health care, and The New Zealand Medical Council recently consulted its members on cultural competence as a response to the introduction of the Health Practitioners Competence Assurance Act, and in line with its responsibility to ensure the cultural competence of medical practitioners. The consultation document includes a proposed framework and says that cross-cultural doctor-patient interactions are common, and doctors need to be competent in dealing with patients whose cultures differ from their own".

While there is an increasing awareness and acknowledgement of the diversity of families before the Court, DeSouza suggests "a number of strategies will need to be considered at different levels to ensure the application of cultural safety and cultural competence. Professionals in the Family Court arena need to enhance their knowledge, skill and understanding of how to relate to the different families they deal with. Part of this process is an openness to reflect on one's own attitudes and beliefs".

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